Treasury Department : : : Bureau of Internal Revenue

Internal Revenue Bulletin

Cumulative Bulletin 1952-2

JULY-DECEMBER 1952

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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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

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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 : 1953

For sale by Superintendent of Documents, U. S. Government Printing Office Washington 25, D. C.
Price $1.00

INTRODUCTION

Internal Revenue Cumulative Bulletin 1952–2, 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 14 to 26, inclusive, for the period July 1 to December 31, 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 July 1 to December 31, 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.—Taxas 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 JULY 1, 1952, TO DECEMBER 31, 1952, INCLUSIVE

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[1] Estate tax decision.
[2] Nonacquiescence published in Cumulative Bulletin 1945, page 8, withdrawn.

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[1] Nonacquiescence published in Cumulative Bulletin 1945, page 8, withdrawn.
[2] Acquiescence relates only to allocation of income from "Abar" partnership.
[3] Gift tax decision.
[4] Acquiescence relates only to the issue whether the term "talc" as used in section 114(b)(4)(A), I. R. C. refers to the product known industrially and commercially as talc, or to theoretically or chemically pure talc.
[5] Estate tax decision.

ACQUIESCENCES—Continued

Taxpayer	Docket No.	Report	
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O			
Oahu Beach and Country Homes, Ltd	27473	17	1472
P			
Pacific Grape Products Co	15596	17	1097
Palm Beach Aero Corporation	24578	17	1169
Peabody, George, transferee [1]	22025	17	1293
Peabody, Stephen, estate of [1]	22026	17	1293
Peabody, Jr., Stephen, transferee [1]	22027	17	1293
Peabody, Jr., et al., Stephen, executors of the will of Stephen Peabody [1]	22026	17	1293
Produce Reporter Co.[2]	24044	18	69
R			
Rice, Charles C	21134	14	503
Roth et ux., Louis M	26112	17	1450
Rowen, Ruth Halle	31666	18	874
Ruspyn Corporation	31452	18	769
S			
Saalfield Publishing Co., The [3]	15535	11	756
Salt, Mary D	26048	18	182
Salt, Waldo	26049	18	182
Sellers, Gladys	25083	17	101
Sellers, N. M	25082	17	101
Sheridan et ux., Donald H	28109	18	381
Sherman, Kate Baker	26522	18	746
Society Brand Clothes, Inc	28122	18	304
Sullenger, J. H.[3]	15631	11	1076
Sullenger, Lela [3]	15630	11	1076
T			
TeLinde et ux., Richard W	29712	18	91
V			
Victory Housing No. 2, Inc	30299	18	466
W			
West Missouri Power Co	30230	18	105
White, Carl L	28984	17	1562
Worthington, Lesley Diana, estate of [1]	25975	18	796

[2] Estate tax decision.
[1] Acquiescence relates only to the issue whether bonuses declared in December of the taxable year but paid to employees in the following year are deductible in the year of declaration.
[3] Nonacquiescence published in Cumulative Bulletin 1949-1, page 6, withdrawn.

The Commissioner does NOT acquiesce in the following decisions:

Taxpayer	Docket No.	Report	
		Volume	Page
A			
Ambrose, Frank J	29340	18	690
Atwell, Laura Burgher	27597 29776	17	1374
Atwell, Webster	27596 29775	17	1374
B			
Bradley, Jane Easton	7298	9	115
C			
Childress, Stanley Hedges	29469	18	681
D			
Darnell, T. H.[1]	14315	12	475
Dwight, Arthur S., estate of [2]	25873	17	1317
F			
First National Corporation of Portland, The [3]	108224 109642	2	549
Fisher, Carl G., estate of	26856	17	1625
G			
Gary Theatre Corporation (formerly Young-Wolf Corporation) [4]	2849	5 6	1251 357
Gary Theatre Corporation, transferee of Young-Wolf Corporation [4]	2850	5 6	1251 357
Ginn, William J. R.[5]	105265	[a] 47	41
H			
Hamby et al., Barbara Chapin, executors of estate of Arthur S. Dwight [2]	25873	17	1317
Hedges, Ralph E	29288	18	681
Hobart, John H., executor of estate of Ralph H. Hobart	27397	18	570
Hobart, Ralph H., estate of	27397	18	570
Humpage, F. R	26855	17	1625
Humpage et al., F. R., executors of estate of Carl G. Fisher	26856	17	1625
I			
International Talc Co., Inc.[6]	24087	15	981

[a] Board of Tax Appeals.

[1] Acquiescence published in Cumulative Bulletin 1949-2, page 1, insofar as it relates to the issue whether amounts expended for legal services in connection with the dissolution of the corporate taxpayer constituted allowable deductions as ordinary and necessary business expenses, withdrawn.

[2] Estate tax decision.

[3] Acquiescence published in Cumulative Bulletin 1943, page 8, insofar as it relates to the issue whether $1,000 expended for legal services in connection with the dissolution of The First National Corporation of Portland in 1938 constituted an allowable deduction, withdrawn.

[4] Nonacquiescence relates only to the issue regarding taxability of increase in value of property, in the hands of the shareholders, where such property was distributed by a corporation as a dividend in kind.

[5] Acquiescence published in Cumulative Bulletins 1942-2, page 9, and 1943, page 9, withdrawn with respect to the treatment of distributions from a pension trust fund which represents earnings and accretions of the fund as "earned income," and nonacquiescence substituted therefor, effective on the dates set forth in IR-Mimeograph 71, page 170, this Bulletin.

[6] Nonacquiescence relates only to the issue whether the processes of crushing and grinding crude talc ore are includible in the term "mining" as that term is used in section 114(b)(4)(B), I. R. C.

NONACQUIESCENCES—Continued

Taxpayer	Docket No.	Report	
		Volume	Page
K			
King, Jr., Willis L., estate of [1]	30907	18	414
L			
Laster, Carolyn Faust, transferee [2]	97714	[a] 43	159
Laster, E. C., transferee [2]	97716	[a] 43	159
Laster, Edward Carroll, transferee [2]	97713	[a] 43	159
Laster, Inc., E. C.[2]	97442	[a] 43	159
M			
McGay, Bonnie	29387	17	1399
McGay, J. B	29386	17	1399
Mellon National Bank & Trust Co., executors of estate of Willis L. King, Jr.[1]	30907	18	414
Moss Tie Co., T. J	32213	18	188
N			
National Bank of Commerce in Memphis, executor under the last will and testament of John B. Snowden, II [3]	14316	12	475
National Hosiery Mills, Inc.[4]	24640	17	231
Nicholson, G. E	29384	17	1399
Nicholson, Oma M	29385	17	1399
O			
Oates, James F	27396	18	570
Occidental Life Insurance Co., transferee of The First National Corporation of Portland [5]	108367 109644	2	549
P			
Papineau, George A	24256 24257	16	130
Produce Reporter Co.[6]	24044	18	69
R			
Ray, Julia	30910	18	438
Ray, Louis W	30909	18	438
Rite-Way Products, Inc.[3]	14314	12	475
Roberts et ux., John T	24285	17	1415

[a] Board of Tax Appeals.

[1] Estate tax decision.

[2] Acquiescence published in Cumulative Bulletin 1941-1, page 7, insofar as it relates to the issue whether amounts expended for legal services in connection with the dissolution of the corporate taxpayer constituted allowable deductions as ordinary and necessary business expenses, withdrawn.

[3] Acquiescence published in Cumulative Bulletin 1919-2, page 3, insofar as it relates to the issue whether amounts expended for legal services in connection with the dissolution of the corporate taxpayer constituted allowable deductions as ordinary and necessary business expenses, withdrawn.

[4] Nonacquiescence relates only to allocation of income from "Hosiery" partnership.

[5] Acquiescence published in Cumulative Bulletin 1943, page 18, insofar as it relates to the issue whether $1,000 expended for legal services in connection with the dissolution of The First National Corporation of Portland in 1938 constituted an allowable deduction, withdrawn.

[6] Nonacquiescence relates only to the issue with respect to the deductibility of certain contributions made by the taxpayer to two trusts created for certain age-group employees.

NONACQUIESCENCES—Continued

Taxpayer	Docket No.	Report Volume	Report Page
S			
Sailer, Patricia O'Leary	29778 32203	17	1374
Sailer, Wm. A	29777 32202	17	1374
Schucker et ux., Paul F.[1]	105297	[a] 47	41
Snowden, II, John B., estate of [2]	14316	12	475
Starr Brothers, Inc	32916	18	149
T			
Thompson, "A" Trust, Jeremiah W	29781	17	1374
Thompson, III, Trust "A", Joe Clark	29780	17	1374
Thompson, John P	29779	17	1374
Transamerica Corporation, transferee of The First National Corporation of Portland [3]	108305 109645	2	549
W			
Western States Corporation, transferee of The First National Corporation of Portland [4]	108306 109643	2	549
Western Transmission Corporation	29490	18	818
Y			
Young, V. U.[5]	2848	5 6	1251 357

[a] Board of Tax Appeals.

[1] Acquiescence published in Cumulative Bulletins 1942-2, page 16, and 1943, page 20, withdrawn with respect to the treatment of distributions from a pension trust fund which represent earnings and accretions of the fund as "earned income," and nonacquiescence substituted therefor, effective on the dates set forth in IR-Mimeograph 71, page 170, this Bulletin.

[2] Acquiescence published in Cumulative Bulletin 1949-2, page 3, insofar as it relates to the issue whether amounts expended for legal services in connection with the dissolution of the corporate taxpayer constituted allowable deductions as ordinary and necessary business expenses, withdrawn.

[3] Acquiescence published in Cumulative Bulletin 1943, page 23, insofar as it relates to the issue whether $1,000 expended for legal services in connection with the dissolution of The First National Corporation of Portland in 1938 constituted an allowable deduction, withdrawn.

[4] Acquiescence published in Cumulative Bulletin 1943, page 24, insofar as it relates to the issue whether $1,000 expended for legal services in connection with the dissolution of The First National Corporation of Portland in 1938 constituted an allowable deduction, withdrawn.

[5] Nonacquiescence relates only to the issue regarding taxability of increase in value of property, in the hands of the shareholders, where such property was distributed by a corporation as a dividend in kind.

INCOME TAX RULINGS.—PART I

INTERNAL REVENUE CODE

CHAPTER 1.—INCOME TAX

SUBCHAPTER B.—GENERAL PROVISIONS

PART I.—RATES OF TAX

SECTION 11.—NORMAL TAX ON INDIVIDUALS

SECTION 29.11–1: Income tax on individuals. (Also Section 12, Sections 29.12–1, 29.12–2, 29.12–3, 29.12–4; Section 400, Sections 29.400–1; Section 401, 29.401–1.)

1952–25–13975
T. D. 5944

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 101, 102, 103, and 104 of the Revenue Act of 1950 and sections 101, 102, 104, and 105 of the Revenue Act of 1951.

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On June 6, 1952, notice of proposed rule making, regarding amendments to conform Regulations 111 [26 CFR, part 29] to sections 101, 102, 103, and 104 of the Revenue Act of 1950 (Public Law 814, 81st Cong.), approved September 23, 1950, and to sections 101, 102, 104, and 105 of the Revenue Act of 1951 (Public Law 183, 82d Cong.), approved October 20, 1951, was published in the Federal Register (17 F. R. 5143). No objection to the rules proposed having been received, the amendments to Regulations 111 set forth below are hereby adopted.

PARAGRAPH 1. There is inserted immediately preceding section 29.11–1 [26 CFR 29.11–1] the following:

SEC. 101. INCREASE IN NORMAL TAX AND SURTAX ON INDIVIDUALS [PART I, TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) NORMAL TAX.—Section 11 (relating to the normal tax on individuals) is hereby amended to read as follows:

"SEC. 11. NORMAL TAX ON INDIVIDUALS.

"(a) TAXABLE YEARS BEGINNING AFTER SEPTEMBER 30, 1950.—In the case of taxable years beginning after September 30, 1950, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax of 3 per centum of the amount of the net income in excess of the credits against net income provided in section 25. For alternative tax which may be elected if adjusted gross income is less than $5,000, see supplement T.

"(b) TAXABLE YEARS BEGINNING BEFORE OCTOBER 1, 1950.—In the case of taxable years beginning before October 1, 1950, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax determined by computing a tentative normal tax of 3 per centum of the amount of the net income in excess of the credits against net income provided in section 25, and by reducing such tentative normal tax as provided in section 12(c). For alternative tax which may be elected if adjusted gross income is less than $5,000, see supplement T. For computation of tax in case the taxable year (other than the calendar year 1950) ends after September 30, 1950, see section 108(e)."

(b) * * *

* * * * * * *

(3) Section 12(c) (relating to reduction of tentative normal tax and tentative surtax) is hereby amended to read as follows:

"(c) REDUCTION OF TENTATIVE NORMAL TAX AND TENTATIVE SURTAX.—

"(1) CALENDAR YEAR 1950.—In the case of a taxable year beginning on January 1, 1950, and ending on December 31, 1950, the combined normal tax and surtax under section 11 and subsection (b) of this section shall be the aggregate of the tentative normal tax and tentative surtax, reduced as follows:

"If the aggregate is:	The reduction shall be:
Not over $400	13% of the aggregate.
Over $400 but not over $100,000	$52 plus 9% of excess over $400.
Over $100,000	$9,016 plus 7.3% of excess over $100,000.

In no event shall the combined normal tax and surtax for such taxable year exceed 80 per centum of the net income.

"(2) OTHER TAXABLE YEARS BEGINNING BEFORE OCTOBER 1, 1950.—In the case of taxable years (other than the calendar year 1950, to which paragraph (1) applies) beginning before October 1, 1950, the combined normal tax and surtax under section 11 and subsection (b) of this section shall be the aggregate of the tentative normal tax and tentative surtax, reduced as follows:

"If the aggregate is:	The reduction shall be:
Not over $400	17% of the aggregate.
Over $400 but not over $100,000	$68 plus 12% of excess over $400.
Over $100,000	$12,020 plus 9.75% of excess over $100,000.

If combined normal tax and surtax so computed exceeds 77 per centum of the net income for the taxable year, the combined tax shall be reduced to 77 per centum of the net income. For computation of tax in case the taxable year ends after September 30, 1950, see section 108(e)."

(4) Effective with respect to taxable years beginning after September 30, 1950, section 12(f) is hereby amended to read as follows:

"(f) LIMITATION ON TAX.—In the case of a taxable year beginning after September 30, 1950, the combined normal tax and surtax shall in no event exceed 87 per centum of the net income for the taxable year."

SEC. 103. COMPUTATION OF TAX IN CASE OF CERTAIN JOINT RETURNS [PART I, TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

If a joint return of a husband and wife is filed under the provisions of section 51(b)(3) of the Internal Revenue Code in a case where the husband and wife have different taxable years because of the death of either spouse, and the taxable year of the surviving spouse covered by such joint return began before October 1, 1950, and ended after September 30, 1950, the amendments made by this part [inc. secs. 101 and 102] shall be applicable in respect of such joint return as if the taxable years of both spouses covered by the joint return ended on the date of the closing of the surviving spouse's taxable year.

SEC. 104. EFFECTIVE DATE OF PART I [TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

Except as provided in section 103, the amendments made by this part [inc. secs. 101 and 103] shall be applicable only with respect to taxable years ending after December 31, 1949. For treatment of taxable years (other than the calendar year 1950) beginning before October 1, 1950, and ending after September 30, 1950, see section 131.

SEC. 101. INCREASE IN SURTAX FOR 1951, 1952, AND 1953 [PART I, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(b) LIMITATION ON TAX.—Section 12(f) (relating to limitation on tax) is hereby amended to read as follows:

"(f) LIMITATION ON TAX.—

"(1) CALENDAR YEAR 1951.—In the case of a taxable year beginning on January 1, 1951, and ending December 31, 1951, the combined normal tax and surtax shall in no event exceed 87.2 per centum of the net income for the taxable year.

"(2) TAXABLE YEARS BEGINNING AFTER OCTOBER 31, 1951, AND BEFORE JANUARY 1, 1954.—In the case of taxable years beginning after October 31, 1951, and before January 1, 1954, the combined normal tax and surtax shall in no event exceed 88 per centum of the net income of the taxable year.

"(3) TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953.—In the case of taxable years beginning after December 31, 1953, the combined normal tax and surtax shall in no event exceed 87 per centum of the net income for the taxable year."

SEC. 104. COMPUTATION OF TAX IN CASE OF CERTAIN JOINT RETURNS [PART I, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

If a joint return of a husband and wife is filed under the provisions of section 51(b)(3) of the Internal Revenue Code in a case where the husband and wife have different taxable years because of the death of either spouse, and the taxable year of the surviving spouse covered by such joint return began before November 1, 1951, and ended after October 31, 1951, the amendments made by this part [inc. secs. 101, 102, and 103] and section 131 shall be applicable in respect of such joint return as if the taxable years of both spouses covered by the joint return ended on the date of the closing of the surviving spouse's taxable year.

SEC. 105. EFFECTIVE DATE OF PART I [TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

Except as provided in section 104, the amendments made by this part [inc. secs. 101 and 104] shall be applicable only with respect to taxable years beginning after October 31, 1951, and to taxable years beginning on January 1, 1951, and ending on December 31, 1951. For treatment of taxable years (other than the calendar year 1951) beginning before November 1, 1951, and ending after October 31, 1951, see section 131.

PAR. 2. Section 29.11–1, as amended by Treasury Decision 5687, [C. B. 1949–1, 9], approved February 16, 1949 [26 CFR 29.11–1], is further amended as follows:

(A) By inserting in the heading of (*b*) thereof after "*Taxable years beginning after December 31, 1943*" the following: ", *and before October 1, 1950*".

(B) By inserting in the first sentence of (*b*) thereof after "For taxable years beginning after December 31, 1943," the following: "and before October 1, 1950,".

(C) By striking out all of (*b*) after the fourth sentence thereof and inserting in lieu thereof the following:

For taxable years beginning after December 31, 1947, and before October 1, 1950, the normal tax on individuals is determined by computing a tentative normal tax of 3 percent of the amount of the net income in excess of the credits against net income provided in section 25 for such years and by reducing such tentative normal tax as follows:

(1) For taxable years beginning after December 31, 1947, and ending before January 1, 1950, the reduction shall be made under the provisions of section 12(c) prior to its amendment by the Revenue Act of 1950;

(2) For taxable years beginning before October 1, 1950, and ending after December 31, 1949 (other than the calendar year 1950), the reduction shall be made under the provisions of section 12(c)(2), as amended by the Revenue Act of 1950;

(3) For a taxable year which is the calendar year 1950, the reduction shall be made under the provisions of section 12(c)(1), as amended by the Revenue Act of 1950.

See section 29.12–2. For computation of tax in the case of a joint return of husband and wife for a taxable year beginning after December 31, 1947, and before October 1, 1950, see section 29.12–4.

For treatment of taxable years beginning in 1945 and ending in 1946, see section 29.108–2. For treatment of taxable years beginning in 1947 and ending in 1948, see section 29.108–3.

(*c*) *Taxable years beginning after September 30, 1950.*—For taxable years beginning after September 30, 1950, chapter 1 of the Internal Revenue Code imposes an income tax on individuals consisting of a normal tax (section 11) and a surtax (section 12). For optional tax in the case of taxpayers with adjusted gross income of less than $5,000, see section 400 and section 29.400–1(*b*). The normal tax on individuals for taxable years beginning after September 30, 1950, is at the rate of 3 percent and is upon net income reduced by the amount of the credits against net income provided in section 25 for such years. For computation of tax in the case of a joint return of husband and wife for a taxable year beginning after September 30, 1950, see section 29.12–4. For treatment of taxable years beginning before October 1, 1950, and ending after September 30, 1950 (other than the calendar year 1950), see section 29.108–4. For treatment of taxable years beginning before November 1, 1951, and ending after October 31, 1951 (other than the calendar year 1951), see section 29.108–7. For treatment of taxable years beginning in 1953 and ending in 1954, see section 29.108–8.

PAR. 3. There is inserted immediately preceding section 29.12–1 [26 CFR 29.12–1] the following:

SEC. 101. INCREASE IN NORMAL TAX AND SURTAX ON INDIVIDUALS [PART I, TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(b) SURTAX.—

(1) So much of section 12(b) as precedes "Not over $2000" is hereby amended to read as follows:

"(b) RATES OF SURTAX.—

"(1) TAXABLE YEARS BEGINNING AFTER SEPTEMBER 30, 1950.—In the case of taxable years beginning after September 30, 1950, there shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual the surtax shown in the following table:

"If the surtax net income is: The surtax shall be:"

(2) Section 12(b) is hereby amended by adding at the end thereof the following:

"(2) TAXABLE YEARS BEGINNING BEFORE OCTOBER 1, 1950.—In the case of taxable years beginning before October 1, 1950, there shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax determined by computing a tentative surtax under the table in paragraph (1), and by reducing such tentative surtax as provided in subsection (c) of this section."

(3) Section 12(c) (relating to reduction of tentative normal tax and tentative surtax) is hereby amended to read as follows:

"(c) REDUCTION OF TENTATIVE NORMAL TAX AND TENTATIVE SURTAX.—

"(1) CALENDAR YEAR 1950.—In the case of a taxable year beginning on January 1, 1950, and ending on December 31, 1950, the combined normal tax and surtax under section 11 and subsection (b) of this section shall be the aggregate of the tentative normal tax and tentative surtax, reduced as follows:

"If the aggregate is:	The reduction shall be:
Not over $400	13% of the aggregate.
Over $400 but not over $100,000	$52 plus 9% of excess over $400.
Over $100,000	$9,016 plus 7.3% of excess over $100,000.

In no event shall the combined normal tax and surtax for such taxable year exceed 80 per centum of the net income.

"(2) OTHER TAXABLE YEARS BEGINNING BEFORE OCTOBER 1, 1950.—In the case of taxable years (other than the calendar year 1950 to which paragraph (1) applies) beginning before October 1, 1950, the combined normal tax and surtax under section 11 and subsection (b) of this section shall be the aggregate of the tentative normal tax and tentative surtax, reduced as follows:

"If the aggregate is:	The reduction shall be:
Not over $400	17% of the aggregate.
Over $400 but not over $100,000	$68 plus 12% of excess over $400.
Over $100,000	$12,020 plus 9.75% of excess over $100,000.

If combined normal tax and surtax so computed exceeds 77 per centum of the net income for the taxable year, the combined tax shall be reduced to 77 percentum of the net income. For computation of tax in case the taxable year ends after September 30, 1950, see section 108(e)."

(4) Effective with respect to taxable years beginning after September 30, 1950, section 12(f) is hereby amended to read as follows:

"(f) LIMITATION ON TAX.—In the case of a taxable year beginning after September 30, 1950, the combined normal tax and surtax shall in no event exceed 87 per centum of the net income for the taxable year."

SEC. 103. COMPUTATION OF TAX IN CASE OF CERTAIN JOINT RETURNS [PART I, TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

If a joint return of a husband and wife is filed under the provisions of section 51(b)(3) of the Internal Revenue Code in a case where the husband and wife have different taxable years because of the death of either spouse, and the taxable year of the surviving spouse covered by such joint return began before October 1, 1950, and ended after September 30, 1950, the amendments made by this part [inc. secs. 101 and 102] shall be applicable in respect of such joint return as if the taxable years of both spouses covered by the joint return ended on the date of the closing of the surviving spouse's taxable year.

SEC. 104. EFFECTIVE DATE OF PART I [TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

Except as provided in section 103, the amendments made by this part [inc. secs. 101 and 103] shall be applicable only with respect to taxable

years ending after December 31, 1949. For treatment of taxable years (other than the calendar year 1950) beginning before October 1, 1950, and ending after September 30, 1950, see section 131.

SEC. 101. INCREASE IN SURTAX FOR 1951, 1952, AND 1953 [PART I. TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) RATES OF SURTAX.—Section 12(b) (relating to rates of surtax) is hereby amended to read as follows:

"(b) RATES OF SURTAX.—

"(1) CALENDAR YEAR 1951.—In the case of a taxable year beginning on January 1, 1951, and ending on December 31, 1951, there shall be levied, collected, and paid for such taxable year upon the surtax net income of every individual the surtax shown in the following table:

"If the surtax net income is:	The surtax shall be:
Not over $2,000	17.4% of the surtax net income.
Over $2,000 but not over $4,000	$348, plus 19.4% of excess over $2,000.
Over $4,000 but not over $6,000	$736, plus 24% of excess over $4,000.
Over $6,000 but not over $8,000	$1,216, plus 27% of excess over $6,000.
Over $8,000 but not over $10,000	$1,756, plus 32% of excess over $8,000.
Over $10,000 but not over $12,000	$2,396, plus 36% of excess over $10,000.
Over $12,000 but not over $14,000	$3,116, plus 40% of excess over $12,000.
Over $14,000 but not over $16,000	$3,916, plus 45% of excess over $14,000.
Over $16,000 but not over $18,000	$4,816, plus 48% of excess over $16,000.
Over $18,000 but not over $20,000	$5,776, plus 51% of excess over $18,000.
Over $20,000 but not over $22,000	$6,796, plus 54% of excess over $20,000.
Over $22,000 but not over $26,000	$7,876, plus 57% of excess over $22,000.
Over $26,000 but not over $32,000	$10,156, plus 60% of excess over $26,000.
Over $32,000 but not over $38,000	$13,756, plus 63% of excess over $32,000.
Over $38,000 but not over $44,000	$17,536, plus 66% of excess over $38,000.
Over $44,000 but not over $50,000	$21,496, plus 70% of excess over $44,000.
Over $50,000 but not over $60,000	$25,696, plus 72% of excess over $50,000.
Over $60,000 but not over $70,000	$32,896, plus 75% of excess over $60,000.
Over $70,000 but not over $80,000	$40,396, plus 79% of excess over $70,000.
Over $80,000 but not over $90,000	$48,296, plus 81% of excess over $80,000.
Over $90,000 but not over $100,000.	$56,396, plus 84% of excess over $90,000.
Over $100,000 but not over $150,000.	$64,796, plus 86% of excess over $100,000.
Over $150,000 but not over $200,000.	$107,796, plus 87% of excess over $150,000.
Over $200,000	$151,296, plus 88% of excess over $200,000.

"(2) TAXABLE YEARS BEGINNING AFTER OCTOBER 31, 1951, AND BEFORE JANUARY 1, 1954.—In the case of taxable years beginning after October 31, 1951, and before January 1, 1954, there shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual (other than a head of a household to whom subsection (c) applies) the surtax shown in the following table:

"If the surtax net income is:	The surtax shall be:
Not over $2,000	19.2% of the surtax net income.
Over $2,000 but not over $4,000	$384, plus 21.6% of excess over $2,000.
Over $4,000 but not over $6,000	$816, plus 26% of excess over $4,000.
Over $6,000 but not over $8,000	$1,336, plus 31% of excess over $6,000.
Over $8,000 but not over $10,000	$1,956, plus 35% of excess over $8,000.
Over $10,000 but not over $12,000.	$2,656, plus 39% of excess over $10,000.
Over $12,000 but not over $14,000.	$3,436, plus 45% of excess over $12,000.
Over $14,000 but not over $16,000.	$4,336, plus 50% of excess over $14,000.
Over $16,000 but not over $18,000.	$5,336, plus 53% of excess over $16,000.
Over $18,000 but not over $20,000.	$6,396, plus 56% of excess over $18,000.
Over $20,000 but not over $22,000.	$7,516, plus 59% of excess over $20,000.
Over $22,000 but not over $26,000.	$8,696, plus 63% of excess over $22,000.
Over $26,000 but not over $32,000.	$11,216, plus 64% of excess over $26,000.
Over $32,000 but not over $38,000.	$15,056, plus 65% of excess over $32,000.
Over $38,000 but not over $44,000.	$18,956, plus 69% of excess over $38,000.
Over $44,000 but not over $50,000.	$23,096, plus 72% of excess over $44,000.
Over $50,000 but not over $60,000.	$27,416, plus 74% of excess over $50,000.
Over $60,000 but not over $70,000.	$34,816, plus 77% of excess over $60,000.
Over $70,000 but not over $80,000.	$42,516, plus 80% of excess over $70,000.
Over $80,000 but not over $90,000.	$50,516, plus 82% of excess over $80,000.
Over $90,000 but not over $100,000.	$58,716, plus 85% of excess over $90,000.
Over $100,000 but not over $150,000.	$67,216, plus 87% of excess over $100,000.
Over $150,000 but not over $200,000.	$110,716, plus 88% of excess over $150,000.
Over $200,000	$154,716, plus 89% of excess over $200,000.

"(3) TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953.—In the case of taxable years beginning after December 31, 1953, there shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual (other than a head of a household to whom subsection (c) applies) the surtax shown in the following table:

"If the surtax net income is:	The surtax shall be:
Not over $2,000	17% of the surtax net income.
Over $2,000 but not over $4,000	$340, plus 19% of excess over $2,000.
Over $4,000 but not over $6,000	$720, plus 23% of excess over $4,000.

"If the surtax net income is:	The surtax shall be:
Over $6,000 but not over $8,000	$1,180, plus 27% of excess over $6,000.
Over $8,000 but not over $10,000	$1,720, plus 31% of excess over $8,000.
Over $10,000 but not over $12,000	$2,340, plus 35% of excess over $10,000.
Over $12,000 but not over $14,000	$3,040, plus 40% of excess over $12,000.
Over $14,000 but not over $16,000	$3,840, plus 44% of excess over $14,000.
Over $16,000 but not over $18,000	$4,720, plus 47% of excess over $16,000.
Over $18,000 but not over $20,000	$5,660, plus 50% of excess over $18,000.
Over $20,000 but not over $22,000	$6,660, plus 53% of excess over $20,000.
Over $22,000 but not over $26,000	$7,720, plus 56% of excess over $22,000.
Over $26,000 but not over $32,000	$9,960, plus 59% of excess over $26,000.
Over $32,000 but not over $38,000	$13,500, plus 62% of excess over $32,000.
Over $38,000 but not over $44,000	$17,220, plus 66% of excess over $38,000.
Over $44,000 but not over $50,000	$21,180, plus 69% of excess over $44,000.
Over $50,000 but not over $60,000	$25,320, plus 72% of excess over $50,000.
Over $60,000 but not over $70,000	$32,520, plus 75% of excess over $60,000.
Over $70,000 but not over $80,000	$40,020, plus 78% of excess over $70,000.
Over $80,000 but not over $90,000	$47,820, plus 81% of excess over $80,000.
Over $90,000 but not over $100,000	$55,920, plus 84% of excess over $90,000.
Over $100,000 but not over $150,000	$64,320, plus 86% of excess over $100,000.
Over $150,000 but not over $200,000	$107,320, plus 87% of excess over $150,000.
Over $200,000	$150,820, plus 88% of excess over $200,000."

(b) LIMITATION ON TAX.—Section 12(f) (relating to limitation on tax) is hereby amended to read as follows:

"(f) LIMITATION ON TAX.—

"(1) CALENDAR YEAR 1951.—In the case of a taxable year beginning on January 1, 1951, and ending December 31, 1951, the combined normal tax and surtax shall in no event exceed 87.2 per centum of the net income for the taxable year.

"(2) TAXABLE YEARS BEGINNING AFTER OCTOBER 31, 1951, AND BEFORE JANUARY 1, 1954.—In the case of taxable years beginning after October 31, 1951, and before January 1, 1954, the combined normal tax and surtax shall in no event exceed 88 per centum of the net income of the taxable year.

"(3) TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953.—In the case of taxable years beginning after December 31, 1953, the combined normal tax and surtax shall in no event exceed 87 per centum of the net income for the taxable year."

SEC. 104. COMPUTATION OF TAX IN CASE OF CERTAIN JOINT RETURNS [PART I, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

If a joint return of a husband and wife is filed under the provisions of section 51(b)(3) of the Internal Revenue Code in a case where the

husband and wife have different taxable years because of the death of either spouse, and the taxable year of the surviving spouse covered by such joint return began before November 1, 1951, and ended after October 31, 1951, the amendments made by this part [inc. secs. 101, 102, and 103] and section 131 shall be applicable in respect of such joint return as if the taxable years of both spouses covered] by the joint return ended on the date of the closing of the surviving spouse's taxable year.

SEC. 105. EFFECTIVE DATE OF PART I [TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

Except as provided in section 104, the amendments made by this part [inc. secs. 101 and 104] shall be applicable only with respect to taxable years beginning after October 31, 1951, and to taxable years beginning on January 1, 1951, and ending on December 31, 1951. For treatment of taxable years (other than the calendar year 1951) beginning before November 1, 1951, and ending after October 31, 1951, see section 131.

PAR. 4. Section 29.12–1, as amended by Treasury Decision 5687 [26 CFR 29.12–1], is further amended by striking out (*d*) and inserting in lieu thereof the following:

(*d*) *Taxable years beginning after December 31, 1947, and before October 1, 1950.*—For taxable years beginning after December 31, 1947, and before October 1, 1950, there is imposed, in addition to the normal tax, a surtax determined as specified in section 12 for such years upon the surtax net income of every individual, resident or nonresident, except nonresident alien individuals subject to the tax imposed by section 211(a). The surtax net income for such years is the net income minus the credits provided in section 25(b) prior to its amendment by the Revenue Act of 1951. For such taxable years, section 12 provides that the surtax shall be determined by computing a tentative surtax in accordance with the table contained in section 12(b) for such taxable years and by reducing such tentative surtax as follows:

(1) For taxable years beginning after December 31, 1947, and ending before January 1, 1950, the reduction shall be made under the provisions of section 12(c) prior to its amendment by the Revenue Act of 1950;

(2) For taxable years beginning before October 1, 1950, and ending after December 31, 1949 (other than the calendar year 1950), the reduction shall be made under the provisions of section 12(c)(2), as amended by the Revenue Act of 1950;

(3) For a taxable year which is the calendar year 1950, the reduction shall be made under the provisions of section 12(c)(1), as amended by the Revenue Act of 1950.

For treatment of taxable years beginning in 1947 ending in 1948, see section 29.108–3.

(*e*) *Taxable years beginning after September 30, 1950, and before November 1, 1951 (other than the calendar year 1951).*—For taxable years beginning after September 30, 1950, and before November 1, 1951 (other than the calendar year 1951), there is imposed, in addition to the normal tax, a surtax determined as specified in section 12 for such years upon the surtax net income of every individual, resident or nonresident, except nonresident alien individuals subject to the tax imposed by section 211 (a). For taxable years beginning prior to January 1, 1951, the surtax net income for such years is the net income minus the credits provided in section 25(b) prior to its amendment by the Revenue Act of 1951. For taxable years beginning after December 31, 1950, the surtax net income for such years is the net income minus the credits provided in section 25(b), as amended by the Revenue Act of 1951. For taxable years beginning after September 30, 1950, and before November 1, 1951 (other than the calendar year 1951), the surtax shall be determined in accordance with the surtax table contained in section 12(b)(1) prior to its amendment by the Revenue Act of 1951. For treatment of taxable years beginning before October 1, 1950, and ending after September 30, 1950 (other than the calendar year 1950), see section 29.108–4.

(*f*) *Calendar year 1951 and taxable years beginning after October 31, 1951.*—For a taxable year which is the calendar year 1951 and for taxable years begin-

ning after October 31, 1951, there is imposed, in addition to the normal tax, a surtax determined as specified in section 12, as amended by the Revenue Act of 1951, upon the surtax net income of every individual, resident or nonresident, except nonresident alien individuals subject to the tax imposed by section 211(a). The surtax net income is the net income minus the credits provided in section 25(b), as amended by the Revenue Act of 1951. Section 12 specifies that the surtax shall be determined in accordance with the applicable surtax table contained therein. For treatment of taxable years beginning before November 1, 1951, and ending after October 31, 1951 (other than the calendar year 1951), see section 29.108-7. For treatment of taxable years beginning in 1953 and ending in 1954, see section 29.108-8.

PAR. 5. Section 29.12-2, as amended by Treasury Decision 5687 [26 CFR 29.12-2], is further amended as follows:

(A) By inserting in the first sentence after "taxable years beginning after December 31, 1945," the following: "and before October 1, 1950,".

(B) By inserting in the heading of the tentative surtax table after "Taxable Years Beginning After December 31, 1945" the following: ", and Before October 1, 1950".

(C) By inserting after "For taxable years beginning after December 31, 1947," in the first sentence of the second paragraph following the tentative surtax table, the following: "and before October 1, 1950 (other than the calendar year 1950),".

(D) By striking out the last two paragraphs of the section and inserting in lieu thereof the following:

For a taxable year which is the calendar year 1950, section 12 provides that the combined normal tax and surtax shall be determined by reducing the aggregate of the tentative normal tax and tentative surtax as provided in the following table:

If the aggregate of the tentative normal tax and the tentative surtax is:	The reduction shall be:
Not over $400	13% of the aggregate.
Over $400 but not over $100,000	$52 plus 9% of the excess over $400.
Over $100,000	$9,016 plus 7.3% of the excess over $100,000.

Accordingly, if the normal tax net income and the surtax net income for the calendar year 1950 each amounts to $150,000 the combined normal tax and surtax will be $101,941.14, computed as follows:

Tentative normal tax:	
3 percent of $150,000	$4,500.00
Tentative surtax on $150,000 from table	107,320.00
Aggregate of tentative normal tax and tentative surtax	$111,820.00
Reduction of tentative tax:	
$9,016 plus 7.3 percent of $11,820 (excess of the aggregate tentative tax over $100,000)	9,878.86
Combined normal tax and surtax	$101,941.14

Section 12(f) prior to its amendment by the Revenue Act of 1950 provides that whenever it is necessary to ascertain the normal tax and the surtax separately for a taxable year beginning after December 31, 1947, and before October 1, 1950, the surtax shall be an amount which is the same proportion of the combined normal tax and surtax as the tentative surtax is of the aggregate of the tentative normal tax and tentative surtax, and the normal tax shall be the remainder of such combined normal tax and surtax. Such computation, for example, is necessary for the purpose of section 105, relating to tax on the gain from the sale of oil or gas properties, and for the purpose of section 106, relating to tax on amounts received with respect to claims against the United States

involving acquisition of property. The surtax on the net income of $150,000 involved in the above example with respect to the tax for the calendar year 1950 would under section 12(f) be $101,941.14 (combined normal tax and surtax) multiplied by $\frac{107,320 \text{ (tentative surtax)}}{111,820 \text{ (tentative total tax)}}$, or $97,838.70, and the normal tax would be $101,941.14 minus $97,838.70, or $4,102.44.

SURTAX TABLE—TAXABLE YEARS BEGINNING AFTER SEPTEMBER 30, 1950, AND BEFORE NOVEMBER 1, 1951 (OTHER THAN CALENDAR YEAR 1951)

Surtax net income	Percent	Total surtax
$0 to $2,000	17	$340
$2,000 to $4,000	19	720
$4,000 to $6,000	23	1, 180
$6,000 to $8,000	27	1, 720
$8,000 to $10,000	31	2, 340
$10,000 to $12,000	35	3, 040
$12,000 to $14,000	40	3, 840
$14,000 to $16,000	44	4, 720
$16,000 to $18,000	47	5, 660
$18,000 to $20,000	50	6, 660
$20,000 to $22,000	53	7, 720
$22,000 to $26,000	56	9, 960
$26,000 to $32,000	59	13, 500
$32,000 to $38,000	62	17, 220
$38,000 to $44,000	66	21, 180
$44,000 to $50,000	69	25, 320
$50,000 to $60,000	72	32, 520
$60,000 to $70,000	75	40, 020
$70,000 to $80,000	78	47, 820
$80,000 to $90,000	81	55, 920
$90,000 to $100,000	84	64, 320
$100,000 to $150,000	86	107, 320
$150,000 to $200,000	87	150, 820
$200,000 up	88	--------

The surtax for any amount of surtax net income not stated in round figures in the surtax table is computed by adding to the surtax for the largest amount stated which is less than the surtax net income, the surtax upon the excess over that amount at the rate indicated in the table. Accordingly, the surtax upon a surtax net income of $63,128 would be $34,866, computed as follows:

Surtax on $60,000 from table	$32, 520
Surtax on $3,128 at 75 percent	2, 346
Total	34, 866

SURTAX TABLE—TAXABLE YEAR WHICH IS CALENDAR YEAR 1951

Surtax net income	Percent	Total surtax
$0 to $2,000	17.4	$348
$2,000 to $4,000	19.4	736
$4,000 to $6,000	24	1,216
$6,000 to $8,000	27	1,756
$8,000 to $10,000	32	2,396
$10,000 to $12,000	36	3,116
$12,000 to $14,000	40	3,916
$14,000 to $16,000	45	4,816
$16,000 to $18,000	48	5,776
$18,000 to $20,000	51	6,796
$20,000 to $22,000	54	7,876
$22,000 to $26,000	57	10,156
$26,000 to $32,000	60	13,756
$32,000 to $38,000	63	17,536
$38,000 to $44,000	66	21,496
$44,000 to $50,000	70	25,696
$50,000 to $60,000	72	32,896
$60,000 to $70,000	75	40,396
$70,000 to $80,000	79	48,296
$80,000 to $90,000	81	56,396
$90,000 to $100,000	84	64,796
$100,000 to $150,000	86	107,796
$150,000 to $200,000	87	151,296
$200,000 up	88	

SURTAX TABLE (FOR OTHERS THAN HEAD OF HOUSEHOLD)—TAXABLE YEARS BEGINNING AFTER OCTOBER 31, 1951, AND BEFORE JANUARY 1, 1954

Surtax net income	Percent	Total surtax
$0 to $2,000	19.2	$384
$2,000 to $4,000	21.6	816
$4,000 to $6,000	26	1,336
$6,000 to $8,000	31	1,956
$8,000 to $10,000	35	2,656
$10,000 to $12,000	39	3,436
$12,000 to $14,000	45	4,336
$14,000 to $16,000	50	5,336
$16,000 to $18,000	53	6,396
$18,000 to $20,000	56	7,516
$20,000 to $22,000	59	8,696
$22,000 to $26,000	63	11,216
$26,000 to $32,000	64	15,056
$32,000 to $38,000	65	18,956
$38,000 to $44,000	69	23,096
$44,000 to $50,000	72	27,416
$50,000 to $60,000	74	34,816
$60,000 to $70,000	77	42,516
$70,000 to $80,000	80	50,516
$80,000 to $90,000	82	58,716
$90,000 to $100,000	85	67,216
$100,000 to $150,000	87	110,716
$150,000 to $200,000	88	154,716
$200,000 up	89	

SURTAX TABLE (FOR OTHERS THAN HEAD OF HOUSEHOLD)—TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Surtax net income	Percent	Total surtax
$0 to $2,000	17	$340
$2,000 to $4,000	19	720
$4,000 to $6,000	23	1, 180
$6,000 to $8,000	27	1, 720
$8,000 to $10,000	31	2, 340
$10,000 to $12,000	35	3, 040
$12,000 to $14,000	40	3, 840
$14,000 to $16,000	44	4, 720
$16,000 to $18,000	47	5, 660
$18,000 to $20,000	50	6, 660
$20,000 to $22,000	53	7, 720
$22,000 to $26,000	56	9, 960
$26,000 to $32,000	59	13, 500
$32,000 to $38,000	62	17, 220
$38,000 to $44,000	66	21, 180
$44,000 to $50,000	69	25, 320
$50,000 to $60,000	72	32, 520
$60,000 to $70,000	75	40, 020
$70,000 to $80,000	78	47, 820
$80,000 to $90,000	81	55, 920
$90,000 to $100,000	84	64, 320
$100,000 to $150,000	86	107, 320
$150,000 to $200,000	87	150, 820
$200,000 up	88	

For computation of tax in the case of a joint return of husband and wife for a taxable year beginning after December 31, 1947, see section 29.12–4.

PAR. 6. Section 29.12–3, as amended by Treasury Decision 5687 [26 CFR 29.12–3], is further amended to read as follows:

SEC. 29.12–3. LIMITATION ON AMOUNT OF TAX.—The combined normal tax and surtax for taxable years beginning after December 31, 1943, computed before the application thereto of the credit provided in section 31 (relating to the credit for foreign income tax), section 32 (relating to the credit for tax withheld at the source under section 143 or 144), and section 35 (relating to the credit for tax withheld on wages), shall not exceed an amount equal to the following percent of the taxpayer's net income for the taxable year:

	Percent
For taxable years beginning after December 31, 1943, and before January 1, 1946	90
For taxable years beginning after December 31, 1945, and before January 1, 1948	85½
For taxable years beginning after December 31, 1947, and before October 1, 1950 (other than the calendar year 1950)	77
For a taxable year which is the calendar year 1950	80
For taxable years beginning after September 30, 1950, and before November 1, 1951 (other than the calendar year 1951)	87
For a taxable year which is the calendar year 1951	87.2
For taxable years beginning after October 31, 1951, and before January 1, 1954	88
For taxable years beginning after December 31, 1953	87

For treatment of taxable years beginning in 1945 and ending in 1946, see section 29.108–2. For treatment of taxable years beginning in 1947 and ending in 1948, see section 29.108–3. For treatment of taxable years beginning before October 1, 1950, and ending after September 30, 1950 (other than the calendar year 1950), see section 29.108–4. For treatment of taxable years beginning before November 1, 1951, and ending after October 31, 1951 (other than the calendar year 1951),

see section 29.108–7. For treatment of taxable years beginning in 1953 and ending in 1954, see section 29.108–8.

PAR. 7. Section 29.12–4, as added by Treasury Decision 5687 [26 CFR 29.12–4], is amended as follows:

(A) By striking out the period in the heading and inserting in lieu thereof the following: "—(*a*) *In general.*"

(B) By striking out the second paragraph (which begins with the words "The method of computing") and the third paragraph (which begins with the words "The limitation under section 12(c)"), and inserting in lieu thereof the following:

(*b*) *Taxable years beginning after December 31, 1947, and before October 1, 1950.*—For a taxable year beginning after December 31, 1947, and before October 1, 1950, the method of computing, under section 12(d), as added by the Revenue Act of 1948, the tax of husband and wife in the case of a joint return is as follows:

First, the net income and applicable credits against net income are reduced by one-half. Second, the tentative normal tax and tentative surtax are determined as provided in sections 11 and 12(b) for such year, by using the net income and applicable credits so reduced. Third, the tentative normal tax and tentative surtax so determined are aggregated and this aggregate tentative tax is then reduced as provided in section 12(c) for such year. See section 29.12–2. Fourth, this reduced aggregate, which is the combined normal tax and surtax that would be determined if the net income and the applicable credits against net income provided by section 25 for such year were reduced by one-half, is then multiplied by two, to produce the tax imposed in the case of the joint return.

The limitation under section 12(c) of the combined normal tax and surtax to an amount not in excess of a specified percent (80 percent for the calendar year 1950 and 77 percent for other taxable years beginning after December 31, 1947, and before October 1, 1950) of the net income for the taxable year is to be applied before the fourth step above, that is, the limitation is to be applied upon the combined normal tax and surtax determined under section 12(c) as the specified percent (80 percent or 77 percent, as the case may be) of one-half of the net income for the taxable year (such one-half of the net income being the actual aggregate net income of the spouses reduced by one-half). After such limitation is applied, then the combined normal tax and surtax so limited are multiplied by two as provided in section 12(d).

(C) By striking out the last two paragraphs and inserting in lieu thereof the following:

If a joint return of a husband and wife is filed under the provisions of section 51(b)(3), as added by the Revenue Act of 1948, if the husband and wife have different taxable years solely because of the death of either spouse, and if the taxable year of the surviving spouse covered by such joint return began before October 1, 1950, and ended after September 30, 1950, the taxable year of the deceased spouse covered by the joint return shall, for the purpose of the computation under section 12(d) and this section of the combined normal tax and surtax in respect of such joint return, be deemed to have ended on the date of the closing of the surviving spouse's taxable year.

For computation of tax under Supplement T in the case of a joint return, see sections 29.400–1 and 29.401–1.

For treatment of taxable years beginning in 1947 and ending in 1948, see section 29.108–3.

(*c*) *Taxable years beginning after September 30, 1950.*—For a taxable year beginning after September 30, 1950, the method of computing, under section 12(d), as added by the Revenue Act of 1948, the tax of husband and wife in the case of a joint return is as follows:

First, the net income and applicable credits against net income are reduced by one-half. Second, the normal tax and surtax are determined as provided in sections 11 and 12(b) for such year, by using the net income and applicable credits so reduced. Third, the normal tax and surtax so determined are aggregated. Fourth, this aggregate, which is the combined normal tax and surtax that would be determined if the net income and the applicable credits against net income provided by section 25 for such year were reduced by one-half, is then multiplied by two, to produce the tax imposed in the case of the joint return.

The limitation under section 12(f) of the combined normal tax and surtax to an amount not in excess of a specified percent of the net income for the taxable year is to be applied before the fourth step above, that is, the limitation to be applied upon the combined normal tax and surtax is determined under section 12(f) as the applicable specified percent of one-half of the net income for the taxable year (such one-half of the net income being the actual aggregate net income of the spouses reduced by one-half). For the percent applicable in determining the limitation under section 12(f) of the combined normal tax and surtax, see section 29.12-3. After such limitation is applied, then the combined normal tax and surtax so limited are multiplied by two as provided in section 12(d).

The following computation illustrates the method of application of section 12(d) in the determination of the tax of a husband and wife filing a joint return for the calendar year 1951. If the joint net income is $8,200 and the only allowable credits under section 25 are the two exemptions of the taxpayers under section 25(b)(1)(A), as amended by the Revenue Act of 1948, the tax on the joint return for 1951 is $1,488, determined as follows:

1. Net income	$8,200
2. Net income reduced by one-half	4,100
3. Credits against net income under section 25 (2 exemptions under section 25(b)(1)(A))	1,200
4. Credits in item 3 reduced by one-half	600
5. Net income reduced by one-half (item 2) minus credits reduced by one-half (item 4)	3,500
6. Normal tax computed under section 11 on amount in item 5 (3 percent of $3,500)	105
7. Surtax computed under section 12(b) on amount in item 5 ($348 plus 19.4 percent of excess of $3,500 over $2,000)	639
8. Combined normal tax and surtax computed on net income and credits reduced by one-half	744
9. Twice the combined normal tax and surtax determined in item 8	1,488

If the alternative tax for a taxable year beginning before October 20, 1951, is computed under section 117(c)(2) prior to its amendment by the Revenue Act of 1951, relating to the alternative tax where a taxpayer (other than a corporation) has a net long-term capital gain in excess of a net short-term capital loss, the partial tax shall be computed under sections 11 and 12 as stated above but without inclusion of such excess in net income, and the total tax shall be such partial tax plus 50 percent of such excess as provided in such section 117(c)(2). If the alternative tax for a taxable year beginning after October 19, 1951, is computed under section 117(c)(2), as amended by the Revenue Act of 1951, relating to the alternative tax where a taxpayer (other than a corporation) has a net long-term capital gain in excess of a net short-term capital loss, the partial tax shall be computed under sections 11 and 12 as stated above but without inclusion of 50 percent of such excess in net income, and the total tax shall be such partial tax plus a specified percent of such excess (26 percent for taxable years beginning after October 31, 1951, and before November 1, 1953, and 25 percent for all other taxable years) as provided in such section 117(c)(2).

If a joint return of a husband and wife is filed under the provisions of section 51(b)(3), as added by the Revenue Act of 1948, if the husband and wife have different taxable years solely because of the death of either spouse, and if the taxable year of the surviving spouse covered by such joint return either began before November 1, 1951, and ended after October 31, 1951, or begins in 1953 and ends in 1954, the taxable year of the deceased spouse covered by the joint return shall, for the purpose of the computation under section 12(d) and this section of the combined normal tax and surtax in respect of such joint return, be deemed to have ended on the date of the closing of the surviving spouse's taxable year.

For computation of tax under Supplement T in the case of a joint return, see sections 29.400-1 and 29.401-1.

For treatment of taxable years beginning before October 1, 1950, and ending after September 30, 1950 (other than the calendar year 1950), see section 29.108-4. For treatment of taxable years beginning before November 1, 1951, and ending after October 31, 1951 (other than the calendar year 1951), see section 29.108-7. For treatment of taxable years beginning in 1953 and ending in 1954, see section 29.108-8.

PAR. 8. There is inserted immediately preceding section 29.400–1 [26 CFR 29.400–1] the following:

SEC. 102. INDIVIDUALS WITH ADJUSTED GROSS INCOME OF LESS THAN $5,000 [PART I, TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

So much of section 400 (relating to optional tax on individuals with adjusted gross incomes of less than $5,000) as precedes the tax table therein is hereby amended to read as follows:

"SEC. 400. IMPOSITION OF TAX.

"In lieu of the taxes imposed by sections 11 and 12, there shall be levied, collected, and paid for each taxable year upon the net income of each individual whose adjusted gross income for such year is less than $5,000, and who has elected to pay the tax imposed by this supplement for such year, a tax as follows:

"TABLE I

"Taxable years beginning after September 30, 1950

If adjusted gross income is—		And the number of exemptions is—				If adjusted gross income is—		And the number of exemptions is—								
									2		3					
At least	But less than	1	2	3	4 or more	At least	But less than	1	And if other than a joint return is filed	And if a joint return is filed	And if other than a joint return is filed	And if a joint return is filed	4	5	6	7	8 or more
		The tax shall be—						The tax shall be—								
$0	$675	$0	$0	$0	$0	$2,325	$2,350	$301	$181	$181	$61	$61	$0	$0	$0	$0	$0
675	700	4	0	0	0	2,350	2,375	305	185	185	65	65	0	0	0	0	0
700	725	8	0	0	0	2,375	2,400	310	190	190	70	70	0	0	0	0	0
725	750	13	0	0	0	2,400	2,425	314	194	194	74	74	0	0	0	0	0
750	775	17	0	0	0	2,425	2,450	319	199	199	79	79	0	0	0	0	0
775	800	22	0	0	0	2,450	2,475	323	203	203	83	83	0	0	0	0	0
800	825	26	0	0	0	2,475	2,500	328	208	208	88	88	0	0	0	0	0
825	850	31	0	0	0	2,500	2,525	332	212	212	92	92	0	0	0	0	0
850	875	35	0	0	0	2,525	2,550	337	217	217	97	97	0	0	0	0	0
875	900	40	0	0	0	2,550	2,575	341	221	221	101	101	0	0	0	0	0
900	925	44	0	0	0	2,575	2,600	346	226	226	106	106	0	0	0	0	0
925	950	49	0	0	0	2,600	2,625	350	230	230	110	110	0	0	0	0	0
950	975	53	0	0	0	2,625	2,650	355	236	235	115	115	0	0	0	0	0
975	1,000	58	0	0	0	2,650	2,675	359	239	239	119	119	0	0	0	0	0
1,000	1,025	62	0	0	0	2,675	2,700	364	244	244	124	124	4	0	0	0	0
1,025	1,050	67	0	0	0	2,700	2,725	368	248	248	128	128	8	0	0	0	0
1,050	1,075	71	0	0	0	2,725	2,750	373	253	253	133	133	13	0	0	0	0
1,075	1,100	76	0	0	0	2,750	2,775	377	257	257	137	137	17	0	0	0	0
1,100	1,125	80	0	0	0	2,775	2,800	382	262	262	142	142	22	0	0	0	0
1,125	1,150	85	0	0	0	2,800	2,825	386	266	266	146	146	26	0	0	0	0
1,150	1,175	89	0	0	0	2,825	2,850	391	271	271	151	151	31	0	0	0	0
1,175	1,200	94	0	0	0	2,850	2,875	395	275	275	155	155	35	0	0	0	0
1,200	1,225	98	0	0	0	2,875	2,900	400	280	280	160	160	40	0	0	0	0
1,225	1,250	103	0	0	0	2,900	2,925	405	284	284	164	164	44	0	0	0	0
1,250	1,275	107	0	0	0	2,925	2,950	410	289	289	169	169	49	0	0	0	0
1,275	1,300	112	0	0	0	2,950	2,975	415	293	293	173	173	53	0	0	0	0
1,300	1,325	116	0	0	0	2,975	3,000	420	298	298	178	178	58	0	0	0	0
1,325	1,350	121	1	0	0	3,000	3,050	427	305	305	185	185	65	0	0	0	0
1,350	1,375	125	5	0	0	3,050	3,100	437	314	314	194	194	74	0	0	0	0
1,375	1,400	130	10	0	0	3,100	3,150	447	323	323	203	203	83	0	0	0	0
1,400	1,425	134	14	0	0	3,150	3,200	457	332	332	212	212	92	0	0	0	0
1,425	1,450	139	19	0	0	3,200	3,250	467	341	341	221	221	101	0	0	0	0
1,450	1,475	143	23	0	0	3,250	3,300	476	350	350	230	230	110	0	0	0	0
1,475	1,500	148	28	0	0	3,300	3,350	486	359	359	239	239	119	0	0	0	0
1,500	1,525	152	32	0	0	3,350	3,400	496	368	368	248	248	128	8	0	0	0
1,525	1,550	157	37	0	0	3,400	3,450	506	377	377	257	257	137	17	0	0	0
1,550	1,575	161	41	0	0	3,450	3,500	516	386	386	266	266	146	26	0	0	0
1,575	1,600	166	46	0	0	3,500	3,550	526	395	395	275	275	155	35	0	0	0
1,600	1,625	170	50	0	0	3,550	3,600	536	404	404	284	284	164	44	0	0	0
1,625	1,650	175	55	0	0	3,600	3,650	546	414	413	293	293	173	53	0	0	0
1,650	1,675	179	59	0	0	3,650	3,700	556	424	422	302	302	182	62	0	0	0
1,675	1,700	184	64	0	0	3,700	3,750	566	434	431	311	311	191	71	0	0	0
1,700	1,725	188	68	0	0	3,750	3,800	575	443	440	320	320	200	80	0	0	0
1,725	1,750	193	73	0	0	3,800	3,850	585	453	449	329	329	209	89	0	0	0
1,750	1,775	197	77	0	0	3,850	3,900	595	463	458	338	338	218	98	0	0	0
1,775	1,800	202	82	0	0	3,900	3,950	605	473	467	347	347	227	107	0	0	0
1,800	1,825	206	86	0	0	3,950	4,000	615	483	476	356	356	236	116	0	0	0
1,825	1,850	211	91	0	0	4,000	4,050	625	493	485	365	365	245	125	5	0	0
1,850	1,875	215	95	0	0	4,050	4,100	635	503	494	374	374	254	134	14	0	0
1,875	1,900	220	100	0	0	4,100	4,150	645	513	503	383	383	263	143	23	0	0
1,900	1,925	224	104	0	0	4,150	4,200	655	523	512	392	392	272	152	32	0	0
1,925	1,950	229	109	0	0	4,200	4,250	665	533	521	401	401	281	161	41	0	0
1,950	1,975	233	113	0	0	4,250	4,300	674	542	530	410	410	290	170	50	0	0
1,975	2,000	238	118	0	0	4,300	4,350	684	552	539	420	419	299	179	59	0	0
2,000	2,025	242	122	2	0	4,350	4,400	694	562	548	430	428	308	188	68	0	0
2,025	2,050	247	127	7	0	4,400	4,450	704	572	557	440	437	317	197	77	0	0
2,050	2,075	251	131	11	0	4,450	4,500	714	582	566	450	446	326	206	86	0	0
2,075	2,100	256	136	16	0	4,500	4,550	724	592	575	460	455	335	215	95	0	0
2,100	2,125	260	140	20	0	4,550	4,600	734	602	584	470	464	344	224	104	0	0
2,125	2,150	265	145	25	0	4,600	4,650	744	612	593	480	473	353	233	113	0	0
2,150	2,175	269	149	29	0	4,650	4,700	754	622	602	490	482	362	242	122	2	0
2,175	2,200	274	154	34	0	4,700	4,750	764	632	611	500	491	371	251	131	11	0
2,200	2,225	278	158	38	0	4,750	4,800	773	641	620	509	500	380	260	140	20	0
2,225	2,250	283	163	43	0	4,800	4,850	783	651	629	519	509	389	269	149	29	0
2,250	2,275	287	167	47	0	4,850	4,900	793	661	638	529	518	398	278	158	38	0
2,275	2,300	292	172	52	0	4,900	4,950	803	671	647	539	527	407	287	167	47	0
2,300	2,325	296	176	56	0	4,950	5,000	813	681	656	549	536	416	296	176	56	0

"TABLE II

"Taxable year beginning January 1, 1950, and ending December 31, 1950

If adjusted gross income is—		And the number of exemptions is—				If adjusted gross income is—		And the number of exemptions is—								
									2		3					
At least	But less than	1	2	3	4 or more	At least	But less than	1	And if other than a joint return is filed	And if a joint return is filed	And if other than a joint return is filed	And if a joint return is filed	4	5	6	7	8 or more
		The tax shall be—						The tax shall be—								
$0	$675	$0	$0	$0	$0	$2,325	$2,350	$262	$157	$157	$53	$53	$0	$0	$0	$0	$0
675	700	3	0	0	0	2,350	2,375	266	161	161	57	57	0	0	0	0	0
700	725	7	0	0	0	2,375	2,400	269	165	165	61	61	0	0	0	0	0
725	750	11	0	0	0	2,400	2,425	273	169	169	65	65	0	0	0	0	0
750	775	15	0	0	0	2,425	2,450	277	173	173	69	69	0	0	0	0	0
775	800	19	0	0	0	2,450	2,475	281	177	177	72	72	0	0	0	0	0
800	825	23	0	0	0	2,475	2,500	285	181	181	76	76	0	0	0	0	0
825	850	27	0	0	0	2,500	2,525	289	185	185	80	80	0	0	0	0	0
850	875	31	0	0	0	2,525	2,550	293	189	189	84	84	0	0	0	0	0
875	900	35	0	0	0	2,550	2,575	297	192	192	88	88	0	0	0	0	0
900	925	38	0	0	0	2,575	2,600	301	196	196	92	92	0	0	0	0	0
925	950	42	0	0	0	2,600	2,625	305	200	200	96	96	0	0	0	0	0
950	975	46	0	0	0	2,625	2,650	309	204	204	100	100	0	0	0	0	0
975	1,000	50	0	0	0	2,650	2,675	313	208	208	104	104	0	0	0	0	0
1,000	1,025	54	0	0	0	2,675	2,700	316	212	212	108	108	3	0	0	0	0
1,025	1,050	58	0	0	0	2,700	2,725	320	216	216	112	112	7	0	0	0	0
1,050	1,075	62	0	0	0	2,725	2,750	324	220	220	115	115	11	0	0	0	0
1,075	1,100	66	0	0	0	2,750	2,775	328	224	224	119	119	15	0	0	0	0
1,100	1,125	70	0	0	0	2,775	2,800	332	228	228	123	123	19	0	0	0	0
1,125	1,150	74	0	0	0	2,800	2,825	336	232	232	127	127	23	0	0	0	0
1,150	1,175	78	0	0	0	2,825	2,850	340	236	236	131	131	27	0	0	0	0
1,175	1,200	82	0	0	0	2,850	2,875	344	239	239	135	135	31	0	0	0	0
1,200	1,225	85	0	0	0	2,875	2,900	348	243	243	139	139	35	0	0	0	0
1,225	1,250	89	0	0	0	2,900	2,925	352	247	247	143	143	38	0	0	0	0
1,250	1,275	93	0	0	0	2,925	2,950	357	251	251	147	147	42	0	0	0	0
1,275	1,300	97	0	0	0	2,950	2,975	361	255	255	151	151	46	0	0	0	0
1,300	1,325	101	0	0	0	2,975	3,000	366	259	259	155	155	50	0	0	0	0
1,325	1,350	105	1	0	0	3,000	3,050	373	265	265	161	161	56	0	0	0	0
1,350	1,375	109	5	0	0	3,050	3,100	382	273	273	168	168	64	0	0	0	0
1,375	1,400	113	8	0	0	3,100	3,150	391	281	281	176	176	72	0	0	0	0
1,400	1,425	117	12	0	0	3,150	3,200	400	288	288	184	184	80	0	0	0	0
1,425	1,450	121	16	0	0	3,200	3,250	409	296	296	192	192	87	0	0	0	0
1,450	1,475	125	20	0	0	3,250	3,300	418	304	304	200	200	95	0	0	0	0
1,475	1,500	129	24	0	0	3,300	3,350	427	312	312	207	207	103	0	0	0	0
1,500	1,525	132	28	0	0	3,350	3,400	436	320	320	215	215	111	7	0	0	0
1,525	1,550	136	32	0	0	3,400	3,450	445	328	328	223	223	119	14	0	0	0
1,550	1,575	140	36	0	0	3,450	3,500	454	335	335	231	231	127	22	0	0	0
1,575	1,600	144	40	0	0	3,500	3,550	463	343	343	239	239	134	30	0	0	0
1,600	1,625	148	44	0	0	3,550	3,600	472	352	351	247	247	142	38	0	0	0
1,625	1,650	152	48	0	0	3,600	3,650	481	361	359	254	254	150	46	0	0	0
1,650	1,675	156	52	0	0	3,650	3,700	490	370	367	262	262	158	54	0	0	0
1,675	1,700	160	55	0	0	3,700	3,750	499	379	375	270	270	166	61	0	0	0
1,700	1,725	164	59	0	0	3,750	3,800	508	388	382	278	278	174	69	0	0	0
1,725	1,750	168	63	0	0	3,800	3,850	517	397	390	286	286	181	77	0	0	0
1,750	1,775	172	67	0	0	3,850	3,900	526	406	398	294	294	189	85	0	0	0
1,775	1,800	176	71	0	0	3,900	3,950	535	415	406	301	301	197	93	0	0	0
1,800	1,825	179	75	0	0	3,950	4,000	544	424	414	309	309	205	100	0	0	0
1,825	1,850	183	79	0	0	4,000	4,050	553	433	422	317	317	213	108	4	0	0
1,850	1,875	187	83	0	0	4,050	4,100	562	442	429	325	325	221	116	12	0	0
1,875	1,900	191	87	0	0	4,100	4,150	571	451	437	333	333	228	124	20	0	0
1,900	1,925	195	91	0	0	4,150	4,200	580	460	445	341	341	236	132	27	0	0
1,925	1,950	199	95	0	0	4,200	4,250	589	469	453	349	348	244	140	35	0	0
1,950	1,975	203	99	0	0	4,250	4,300	598	478	461	358	356	252	147	43	0	0
1,975	2,000	207	102	0	0	4,300	4,350	607	487	468	367	364	260	155	51	0	0
2,000	2,025	211	106	2	0	4,350	4,400	616	496	476	376	372	268	163	59	0	0
2,025	2,050	215	110	6	0	4,400	4,450	625	505	484	385	380	275	171	67	0	0
2,050	2,075	219	114	10	0	4,450	4,500	634	514	492	394	388	283	179	74	0	0
2,075	2,100	223	118	14	0	4,500	4,550	643	523	500	403	395	291	187	82	0	0
2,100	2,125	226	122	18	0	4,550	4,600	652	532	508	412	403	299	194	90	0	0
2,125	2,150	230	126	22	0	4,600	4,650	661	541	515	421	411	307	202	98	0	0
2,150	2,175	234	130	25	0	4,650	4,700	670	550	523	430	419	315	210	106	1	0
2,175	2,200	238	134	29	0	4,700	4,750	679	559	531	439	427	322	218	114	9	0
2,200	2,225	242	138	33	0	4,750	4,800	688	568	539	448	435	330	226	121	17	0
2,225	2,250	246	142	37	0	4,800	4,850	697	577	547	457	442	338	234	129	25	0
2,250	2,275	250	146	41	0	4,850	4,900	706	586	555	466	450	346	241	137	33	0
2,275	2,300	254	149	45	0	4,900	4,950	715	595	562	475	458	354	249	145	40	0
2,300	2,325	258	153	49	0	4,950	5,000	724	604	570	484	466	361	257	153	48	0

"TABLE III

"Taxable years (other than the calendar year 1950) beginning before October 1, 1950"

SEC. 103. COMPUTATION OF TAX IN CASE OF CERTAIN JOINT RETURNS [PART I, TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

If a joint return of a husband and wife is filed under the provisions of section 51(b)(3) of the Internal Revenue Code in a case where the husband and wife have different taxable years because of the death of either spouse, and the taxable year of the surviving spouse covered by such joint return began before October 1, 1950, and ended after September 30, 1950, the amendments made by this part [inc. secs. 101 and 102] shall be applicable in respect of such joint return as if the taxable years of both spouses covered by the joint return ended on the date of the closing of the surviving spouse's taxable year.

SEC. 104. EFFECTIVE DATE OF PART I [TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

Except as provided in section 103, the amendments made by this part [inc. secs. 102 and 103] shall be applicable only with respect to taxable years ending after December 31, 1949. For treatment of taxable years (other than the calendar year 1950) beginning before October 1, 1950, and ending after September 30, 1950, see section 131.

SEC. 102. INDIVIDUALS WITH ADJUSTED GROSS INCOME OF LESS THAN $5,000 [PART I, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

Section 400 (relating to optional tax on individuals with adjusted gross incomes of less than $5,000) is hereby amended by striking out the tables contained therein and inserting in lieu thereof the following:

"TABLE I

"Taxable year beginning January 1, 1951, and ending December 31, 1951

If adjusted gross income is—		And the number of exemptions is—				If adjusted gross income is—		And the number of exemptions is—								
								1	2		3		4	5	6	7	8 or more
At least	But less than	1	2	3	4 or more	At least	But less than		And taxpayer is single or married filing separately	And a joint return is filed	And taxpayer is single or married filing separately	And a joint return is filed					
		The tax shall be—						The tax shall be—									
$0	$675	$0	$0	$0	$0	$2,325	$2,350	$307	$184	$184	$62	$62	$0	$0	$0	$0	$0
675	700	4	0	0	0	2,350	2,375	311	189	189	67	67	0	0	0	0	0
700	725	8	0	0	0	2,375	2,400	316	194	194	71	71	0	0	0	0	0
725	750	13	0	0	0	2,400	2,425	321	198	198	76	76	0	0	0	0	0
750	775	18	0	0	0	2,425	2,450	325	203	203	80	80	0	0	0	0	0
775	800	22	0	0	0	2,450	2,475	330	207	207	85	85	0	0	0	0	0
800	825	27	0	0	0	2,475	2,500	334	212	212	90	90	0	0	0	0	0
825	850	31	0	0	0	2,500	2,525	339	216	216	94	94	0	0	0	0	0
850	875	36	0	0	0	2,525	2,550	343	221	221	99	99	0	0	0	0	0
875	900	41	0	0	0	2,550	2,575	348	226	226	103	103	0	0	0	0	0
900	925	45	0	0	0	2,575	2,600	353	230	230	108	108	0	0	0	0	0
925	950	50	0	0	0	2,600	2,625	357	235	235	112	112	0	0	0	0	0
950	975	54	0	0	0	2,625	2,650	362	239	239	117	117	0	0	0	0	0
975	1,000	59	0	0	0	2,650	2,675	366	244	244	122	122	0	0	0	0	0
1,000	1,025	63	0	0	0	2,675	2,700	371	249	249	126	126	4	0	0	0	0
1,025	1,050	68	0	0	0	2,700	2,725	376	253	253	131	131	8	0	0	0	0
1,050	1,075	73	0	0	0	2,725	2,750	380	258	258	135	135	13	0	0	0	0
1,075	1,100	77	0	0	0	2,750	2,775	385	262	262	140	140	18	0	0	0	0
1,100	1,125	82	0	0	0	2,775	2,800	389	267	267	145	145	22	0	0	0	0
1,125	1,150	86	0	0	0	2,800	2,825	394	272	272	149	149	27	0	0	0	0
1,150	1,175	91	0	0	0	2,825	2,850	399	276	276	154	154	31	0	0	0	0
1,175	1,200	96	0	0	0	2,850	2,875	403	281	281	158	158	36	0	0	0	0
1,200	1,225	100	0	0	0	2,875	2,900	408	285	285	163	163	41	0	0	0	0
1,225	1,250	105	0	0	0	2,900	2,925	413	290	290	168	168	45	0	0	0	0
1,250	1,275	109	0	0	0	2,925	2,950	418	295	295	172	172	50	0	0	0	0
1,275	1,300	114	0	0	0	2,950	2,975	423	299	299	177	177	54	0	0	0	0
1,300	1,325	119	0	0	0	2,975	3,000	428	304	304	181	181	59	0	0	0	0
1,325	1,350	123	1	0	0	3,000	3,050	435	311	311	188	188	66	0	0	0	0
1,350	1,375	128	5	0	0	3,050	3,100	446	320	320	197	197	75	0	0	0	0
1,375	1,400	132	10	0	0	3,100	3,150	456	329	329	207	207	84	0	0	0	0
1,400	1,425	137	15	0	0	3,150	3,200	466	338	338	216	216	93	0	0	0	0
1,425	1,450	142	19	0	0	3,200	3,250	476	347	347	225	225	103	0	0	0	0
1,450	1,475	146	24	0	0	3,250	3,300	486	356	356	234	234	112	0	0	0	0
1,475	1,500	151	28	0	0	3,300	3,350	496	366	366	243	243	121	0	0	0	0
1,500	1,525	155	33	0	0	3,350	3,400	506	375	375	252	252	130	8	0	0	0
1,525	1,550	160	37	0	0	3,400	3,450	516	384	384	262	262	139	17	0	0	0
1,550	1,575	164	42	0	0	3,450	3,500	526	393	393	271	271	148	26	0	0	0
1,575	1,600	169	47	0	0	3,500	3,550	536	402	402	280	280	158	35	0	0	0
1,600	1,625	174	51	0	0	3,550	3,600	546	412	412	289	289	167	44	0	0	0
1,625	1,650	178	56	0	0	3,600	3,650	556	422	421	298	298	176	54	0	0	0
1,650	1,675	183	60	0	0	3,650	3,700	566	432	430	308	308	185	63	0	0	0
1,675	1,700	187	65	0	0	3,700	3,750	577	442	439	317	317	194	72	0	0	0
1,700	1,725	192	70	0	0	3,750	3,800	587	452	448	326	326	203	81	0	0	0
1,725	1,750	197	74	0	0	3,800	3,850	597	462	457	335	335	213	90	0	0	0
1,750	1,775	201	79	0	0	3,850	3,900	607	472	467	344	344	222	99	0	0	0
1,775	1,800	206	83	0	0	3,900	3,950	617	482	476	353	353	231	109	0	0	0
1,800	1,825	210	88	0	0	3,950	4,000	627	493	485	363	363	240	118	0	0	0
1,825	1,850	215	93	0	0	4,000	4,050	637	503	494	372	372	249	127	5	0	0
1,850	1,875	220	97	0	0	4,050	4,100	647	513	503	381	381	259	136	14	0	0
1,875	1,900	224	102	0	0	4,100	4,150	657	523	513	390	390	268	145	23	0	0
1,900	1,925	229	106	0	0	4,150	4,200	667	533	522	399	399	277	155	32	0	0
1,925	1,950	233	111	0	0	4,200	4,250	677	543	531	409	409	286	164	41	0	0
1,950	1,975	238	116	0	0	4,250	4,300	687	553	540	419	418	295	173	50	0	0
1,975	2,000	243	120	0	0	4,300	4,350	698	563	549	429	427	304	182	60	0	0
2,000	2,025	247	125	2	0	4,350	4,400	708	573	558	439	436	314	191	69	0	0
2,025	2,050	252	129	7	0	4,400	4,450	718	583	568	449	445	323	200	78	0	0
2,050	2,075	256	134	11	0	4,450	4,500	728	593	577	459	454	332	210	87	0	0
2,075	2,100	261	138	16	0	4,500	4,550	738	603	586	469	464	341	219	96	0	0
2,100	2,125	265	143	21	0	4,550	4,600	748	614	595	479	473	350	228	106	0	0
2,125	2,150	270	148	25	0	4,600	4,650	758	624	604	489	482	360	237	115	0	0
2,150	2,175	275	152	30	0	4,650	4,700	768	634	614	499	491	369	246	124	2	0
2,175	2,200	279	157	34	0	4,700	4,750	778	644	623	509	500	378	256	133	11	0
2,200	2,225	284	161	39	0	4,750	4,800	788	654	632	519	509	387	265	142	20	0
2,225	2,250	288	166	44	0	4,800	4,850	798	664	641	530	519	396	274	151	29	0
2,250	2,275	293	171	48	0	4,850	4,900	808	674	650	540	528	405	283	161	38	0
2,275	2,300	298	175	53	0	4,900	4,950	818	684	659	550	537	415	292	170	47	0
2,300	2,325	302	180	57	0	4,950	5,000	829	694	669	560	546	424	301	179	57	0

"TABLE II

"Taxable years beginning after October 31, 1951, and before January 1, 1954

If adjusted gross income is—		And the number of exemptions is—				If adjusted gross income is—		And the number of exemptions is—										
								1		2			3					
At least	But less than	1	2	3	4 or more	At least	But less than	And taxpayer is single or married filing separately	And taxpayer is head of household	And taxpayer is single or married filing separately	And taxpayer is head of household	And a joint return is filed	And taxpayer is single or married filing separately	And taxpayer is head of household	And a joint return is filed	4	5	6	7	8 or more
		The tax shall be—						The tax shall be—										
$0	$675	$0	$0	$0	$0	$2,325	$2,350	$334	$334	$201	$201	$201	$67	$67	$67	$0	$0	$0	$0	$0
675	700	4	0	0	0	2,350	2,375	339	339	206	206	206	72	72	72	0	0	0	0	0
700	725	9	0	0	0	2,375	2,400	344	344	211	211	211	77	77	77	0	0	0	0	0
725	750	14	0	0	0	2,400	2,425	349	349	216	216	216	82	82	82	0	0	0	0	0
750	775	19	0	0	0	2,425	2,450	354	354	221	221	221	87	87	87	0	0	0	0	0
775	800	24	0	0	0	2,450	2,475	359	359	226	226	226	92	92	92	0	0	0	0	0
800	825	29	0	0	0	2,475	2,500	364	364	231	231	231	97	97	97	0	0	0	0	0
825	850	34	0	0	0	2,500	2,525	369	369	236	236	236	102	102	102	0	0	0	0	0
850	875	39	0	0	0	2,525	2,550	374	374	241	241	241	107	107	107	0	0	0	0	0
875	900	44	0	0	0	2,550	2,575	379	379	246	246	246	112	112	112	0	0	0	0	0
900	925	49	0	0	0	2,575	2,600	384	384	251	251	251	117	117	117	0	0	0	0	0
925	950	54	0	0	0	2,600	2,625	389	389	256	256	256	122	122	122	0	0	0	0	0
950	975	59	0	0	0	2,625	2,650	394	394	261	261	261	127	127	127	0	0	0	0	0
975	1,000	64	0	0	0	2,650	2,675	399	399	266	266	266	132	132	132	0	0	0	0	0
1,000	1,025	69	0	0	0	2,675	2,700	404	404	271	271	271	137	137	137	4	0	0	0	0
1,025	1,050	74	0	0	0	2,700	2,725	409	409	276	276	276	142	142	142	9	0	0	0	0
1,050	1,075	79	0	0	0	2,725	2,750	414	414	281	281	281	147	147	147	14	0	0	0	0
1,075	1,100	84	0	0	0	2,750	2,775	419	419	286	286	286	152	152	152	19	0	0	0	0
1,100	1,125	89	0	0	0	2,775	2,800	424	424	291	291	291	157	157	157	24	0	0	0	0
1,125	1,150	94	0	0	0	2,800	2,825	429	429	296	296	296	162	162	162	29	0	0	0	0
1,150	1,175	99	0	0	0	2,825	2,850	434	434	301	301	301	167	167	167	34	0	0	0	0
1,175	1,200	104	0	0	0	2,850	2,875	439	439	306	306	306	172	172	172	39	0	0	0	0
1,200	1,225	109	0	0	0	2,875	2,900	444	444	311	311	311	177	177	177	44	0	0	0	0
1,225	1,250	114	0	0	0	2,900	2,925	449	449	316	316	316	182	182	182	49	0	0	0	0
1,250	1,275	119	0	0	0	2,925	2,950	455	454	321	321	321	187	187	187	54	0	0	0	0
1,275	1,300	124	0	0	0	2,950	2,975	460	459	326	326	326	192	192	192	59	0	0	0	0
1,300	1,325	129	0	0	0	2,975	3,000	466	465	331	331	331	197	197	197	64	0	0	0	0
1,325	1,350	134	1	0	0	3,000	3,050	474	473	338	338	338	205	205	205	72	0	0	0	0
1,350	1,375	139	6	0	0	3,050	3,100	485	483	348	348	348	215	215	215	82	0	0	0	0
1,375	1,400	144	11	0	0	3,100	3,150	496	494	358	358	358	225	225	225	92	0	0	0	0
1,400	1,425	149	16	0	0	3,150	3,200	507	504	368	368	368	235	235	235	102	0	0	0	0
1,425	1,450	154	21	0	0	3,200	3,250	518	515	378	378	378	245	245	245	112	0	0	0	0
1,450	1,475	159	26	0	0	3,250	3,300	529	525	388	388	388	255	255	255	122	0	0	0	0
1,475	1,500	164	31	0	0	3,300	3,350	541	536	398	398	398	265	265	265	132	0	0	0	0
1,500	1,525	169	36	0	0	3,350	3,400	552	546	408	408	408	275	275	275	142	8	0	0	0
1,525	1,550	174	41	0	0	3,400	3,450	563	557	418	418	418	285	285	285	152	18	0	0	0
1,550	1,575	179	46	0	0	3,450	3,500	574	567	428	428	428	295	295	295	162	28	0	0	0
1,575	1,600	184	51	0	0	3,500	3,550	585	578	438	438	438	305	305	305	171	38	0	0	0
1,600	1,625	189	56	0	0	3,550	3,600	596	588	448	448	448	315	315	315	181	48	0	0	0
1,625	1,650	194	61	0	0	3,600	3,650	607	599	459	459	458	325	325	325	191	58	0	0	0
1,650	1,675	199	66	0	0	3,650	3,700	618	610	470	469	468	335	335	335	201	68	0	0	0
1,675	1,700	204	71	0	0	3,700	3,750	629	620	482	480	478	345	345	345	211	78	0	0	0
1,700	1,725	209	76	0	0	3,750	3,800	640	631	493	490	488	355	355	355	221	88	0	0	0
1,725	1,750	214	81	0	0	3,800	3,850	651	641	504	501	498	365	365	365	231	98	0	0	0
1,750	1,775	219	86	0	0	3,850	3,900	662	652	515	511	508	375	375	375	241	108	0	0	0
1,775	1,800	224	91	0	0	3,900	3,950	673	662	526	522	518	385	385	385	251	118	0	0	0
1,800	1,825	229	96	0	0	3,950	4,000	684	673	537	532	528	395	395	395	261	128	0	0	0
1,825	1,850	234	101	0	0	4,000	4,050	696	683	548	543	538	405	405	405	271	138	5	0	0
1,850	1,875	239	106	0	0	4,050	4,100	707	694	559	553	548	415	415	415	281	148	15	0	0
1,875	1,900	244	111	0	0	4,100	4,150	718	704	570	564	558	425	425	425	291	158	25	0	0
1,900	1,925	249	116	0	0	4,150	4,200	729	715	581	574	568	435	435	435	301	168	35	0	0
1,925	1,950	254	121	0	0	4,200	4,250	740	725	592	585	578	445	445	445	311	178	45	0	0
1,950	1,975	259	126	0	0	4,250	4,300	751	736	603	596	588	456	455	455	321	188	55	0	0
1,975	2,000	264	131	0	0	4,300	4,350	762	746	614	606	598	467	466	465	331	198	65	0	0
2,000	2,025	269	136	2	0	4,350	4,400	773	757	625	617	608	478	476	475	341	208	75	0	0
2,025	2,050	274	141	7	0	4,400	4,450	784	768	636	627	618	489	487	485	351	218	85	0	0
2,050	2,075	279	146	12	0	4,450	4,500	795	778	648	638	628	500	497	495	361	228	95	0	0
2,075	2,100	284	151	17	0	4,500	4,550	806	789	659	648	638	511	508	504	371	238	105	0	0
2,100	2,125	289	156	22	0	4,550	4,600	817	799	670	659	648	522	518	514	381	248	115	0	0
2,125	2,150	294	161	27	0	4,600	4,650	828	810	681	669	658	533	529	524	391	258	125	0	0
2,150	2,175	299	166	32	0	4,650	4,700	839	820	692	680	668	544	539	534	401	268	135	2	0
2,175	2,200	304	171	37	0	4,700	4,750	851	831	703	690	678	555	550	544	411	278	145	12	0
2,200	2,225	309	176	42	0	4,750	4,800	862	841	714	701	688	566	560	554	421	288	155	22	0
2,225	2,250	314	181	47	0	4,800	4,850	873	852	725	711	698	577	571	564	431	298	165	32	0
2,250	2,275	319	186	52	0	4,850	4,900	884	862	736	722	708	589	581	574	441	308	175	42	0
2,275	2,300	324	191	57	0	4,900	4,950	895	873	747	732	718	600	592	584	451	318	185	52	0
2,300	2,325	329	196	62	0	4,950	5,000	906	883	758	743	728	611	603	594	461	328	195	62	0

"TABLE III

"Taxable years beginning after December 31, 1953

If adjusted gross income is—		And the number of exemptions is—				If adjusted gross income is—		And the number of exemptions is—										
								1		2			3					
At least	But less than	1	2	3	4 or more	At least	But less than	And taxpayer is single or married filing separately	And taxpayer is head of household	And taxpayer is single or married filing separately	And taxpayer is head of household	And a joint return is filed	And taxpayer is single or married filing separately	And taxpayer is head of household	And a joint return is filed	4	5	6	7	8 or more
		The tax shall be—						The tax shall be—										
$0	$675	$0	$0	$0	$0	$2,325	$2,350	$301	$301	$181	$181	$181	$61	$61	$61	$0	$0	$0	$0	$0
675	700	4	0	0	0	2,350	2,375	305	305	185	185	185	65	65	65	0	0	0	0	0
700	725	8	0	0	0	2,375	2,400	310	310	190	190	190	70	70	70	0	0	0	0	0
725	750	13	0	0	0	2,400	2,425	314	314	194	194	194	74	74	74	0	0	0	0	0
750	775	17	0	0	0	2,425	2,450	319	319	199	199	199	79	79	79	0	0	0	0	0
775	800	22	0	0	0	2,450	2,475	323	323	203	203	203	83	83	83	0	0	0	0	0
800	825	26		0		2,475	2,500	328	328	208	208	208	88	88	88	0	0	0	0	0
825	850	31	0	0	0	2,500	2,525	332	332	212	212	212	92	92	92	0	0	0	0	0
850	875	35	0	0	0	2,525	2,550	337	337	217	217	217	97	97	97	0	0	0	0	0
875	900	40	0	0	0	2,550	2,575	341	341	221	221	221	101	101	101	0	0	0	0	0
900	925	44	0	0	0	2,575	2,600	346	346	226	226	226	106	106	106	0	0	0	0	0
925	950	49	0	0	0	2,600	2,625	350	350	230	230	230	110	110	110	0	0	0	0	0
950	975	53	0	0	0	2,625	2,650	355	355	235	235	235	115	115	115	0	0	0	0	0
975	1,000	58	0	0	0	2,650	2,675	359	359	239	239	239	119	119	119	0	0	0	0	0
1,000	1,025	62	0	0	0	2,675	2,700	364	364	244	244	244	124	124	124	4	0	0	0	0
1,025	1,050	67	0	0	0	2,700	2,725	368	368	248	248	248	128	128	128	8	0	0	0	0
1,050	1,075	71	0	0	0	2,725	2,750	373	373	253	253	253	133	133	133	13	0	0	0	0
1,075	1,100	76	0	0	0	2,750	2,775	377	377	257	257	257	137	137	137	17	0	0	0	0
1,100	1,125	80	0	0	0	2,775	2,800	382	382	262	262	262	142	142	142	22	0	0	0	0
1,125	1,150	85	0	0	0	2,800	2,825	386	386	266	266	266	146	146	146	26	0	0	0	0
1,150	1,175	89	0	0	0	2,825	2,850	391	391	271	271	271	151	151	151	31	0	0	0	0
1,175	1,200	94	0	0	0	2,850	2,875	395	395	275	275	275	155	155	155	35	0	0	0	0
1,200	1,225	98	0	0	0	2,875	2,900	400	400	280	280	280	160	160	160	40	0	0	0	0
1,225	1,250	103	0	0	0	2,900	2,925	405	404	284	284	284	164	164	164	44	0	0	0	0
1,250	1,275	107	0	0	0	2,925	2,950	410	409	289	289	289	169	169	169	49	0	0	0	0
1,275	1,300	112	0	0	0	2,950	2,975	415	414	293	293	293	173	173	173	53	0	0	0	0
1,300	1,325	116	0	0	0	2,975	3,000	420	419	298	298	298	178	178	178	58	0	0	0	0
1,325	1,350	121	1	0	0	3,000	3,050	427	426	305	305	305	185	185	185	65	0	0	0	0
1,350	1,375	125	5	0	0	3,050	3,100	437	435	314	314	314	194	194	194	74	0	0	0	0
1,375	1,400	130	10	0	0	3,100	3,150	447	445	323	323	323	203	203	203	83	0	0	0	0
1,400	1,425	134	14	0	0	3,150	3,200	457	454	332	332	332	212	212	212	92	0	0	0	0
1,425	1,450	139	19	0	0	3,200	3,250	467	464	341	341	341	221	221	221	101	0	0	0	0
1,450	1,475	143	23	0	0	3,250	3,300	476	473	350	350	350	230	230	230	110	0	0	0	0
1,475	1,500	148	28	0	0	3,300	3,350	486	482	359	359	359	239	239	239	119	0	0	0	0
1,500	1,525	152	32	0	0	3,350	3,400	496	492	368	368	368	248	248	248	128	8	0	0	0
1,525	1,550	157	37	0	0	3,400	3,450	506	501	377	377	377	257	257	257	137	17	0	0	0
1,550	1,575	161	41	0	0	3,450	3,500	516	511	386	386	386	266	266	266	146	26	0	0	0
1,575	1,600	166	46	0	0	3,500	3,550	526	520	395	395	395	275	275	275	155	35	0	0	0
1,600	1,625	170	50	0	0	3,550	3,600	536	530	404	404	404	284	284	284	164	44	0	0	0
1,625	1,650	175	55	0	0	3,600	3,650	546	539	414	413	413	293	293	293	173	53	0	0	0
1,650	1,675	179	59	0	0	3,650	3,700	556	549	424	423	422	302	302	302	182	62	0	0	0
1,675	1,700	184	64	0	0	3,700	3,750	566	558	434	432	431	311	311	311	191	71	0	0	0
1,700	1,725	188	68	0	0	3,750	3,800	575	567	443	441	440	320	320	320	200	80	0	0	0
1,725	1,750	193	73	0	0	3,800	3,850	585	577	453	451	449	329	329	329	209	89	0	0	0
1,750	1,775	197	77	0	0	3,850	3,900	595	586	463	460	458	338	338	338	218	98	0	0	0
1,775	1,800	202	82	0	0	3,900	3,950	605	596	473	470	467	347	347	347	227	107	0	0	0
1,800	1,825	206	86	0	0	3,950	4,000	615	605	483	479	476	356	356	356	236	116	0	0	0
1,825	1,850	211	91	0	0	4,000	4,050	625	615	493	489	485	365	365	365	245	125	5	0	0
1,850	1,875	215	95	0	0	4,050	4,100	635	624	503	498	494	374	374	374	254	134	14	0	0
1,875	1,900	220	100	0	0	4,100	4,150	645	634	513	508	503	383	383	383	263	143	23	0	0
1,900	1,925	224	104	0	0	4,150	4,200	655	643	523	517	512	392	392	392	272	152	32	0	0
1,925	1,950	229	109	0	0	4,200	4,250	665	653	533	527	521	401	401	401	281	161	41	0	0
1,950	1,975	233	113	0	0	4,250	4,300	674	662	542	536	530	410	410	410	290	170	50	0	0
1,975	2,000	238	118	0	0	4,300	4,350	684	671	552	545	539	420	419	419	299	179	59	0	0
2,000	2,025	242	122	2	0	4,350	4,400	694	681	562	555	548	430	429	428	308	188	68	0	0
2,025	2,050	247	127	7	0	4,400	4,450	704	690	572	564	557	440	438	437	317	197	77	0	0
2,050	2,075	251	131	11	0	4,450	4,500	714	700	582	574	566	450	448	446	326	206	86	0	0
2,075	2,100	256	136	16	0	4,500	4,550	724	709	592	583	575	460	457	455	335	215	95	0	0
2,100	2,125	260	140	20	0	4,550	4,600	734	719	602	593	584	470	467	464	344	224	104	0	0
2,125	2,150	265	145	25	0	4,600	4,650	744	728	612	602	593	480	476	473	353	233	113	0	0
2,150	2,175	269	149	29	0	4,650	4,700	754	738	622	612	602	490	486	482	362	242	122	2	0
2,175	2,200	274	154	34	0	4,700	4,750	764	747	632	621	611	500	495	491	371	251	131	11	0
2,200	2,225	278	158	38	0	4,750	4,800	773	756	641	630	620	509	504	500	380	260	140	20	0
2,225	2,250	283	163	43	0	4,800	4,850	783	766	651	640	629	519	514	509	389	269	149	29	0
2,250	2,275	287	167	47	0	4,850	4,900	793	775	661	649	638	529	523	518	398	278	158	38	0
2,275	2,300	292	172	52	0	4,900	4,950	803	785	671	659	647	539	533	527	407	287	167	47	0
2,300	2,325	296	176	56	0	4,950	5,000	813	794	681	668	656	549	542	536	416	296	176	56	0"

SEC. 104. COMPUTATION OF TAX IN CASE OF CERTAIN JOINT RETURNS [PART I, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

If a joint return of a husband and wife is filed under the provisions of section 51(b)(3) of the Internal Revenue Code in a case where the husband and wife have different taxable years because of the death of either spouse, and the taxable year of the surviving spouse covered by such joint return began before November 1, 1951, and ended after October 31, 1951, the amendments made by this part [inc. secs. 101, 102, and 103] and section 131 shall be applicable in respect of such joint return as if the taxable years of both spouses covered by the joint return ended on the date of the closing of the surviving spouse's taxable year.

SEC. 105. EFFECTIVE DATE OF PART I [TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

Except as provided in section 104, the amendments made by this part [inc. secs. 102 and 104] shall be applicable only with respect to taxable years beginning after October 31, 1951, and to taxable years beginning on January 1, 1951, and ending on December 31, 1951. For treatment of taxable years (other than the calendar year 1951) beginning before November 1, 1951, and ending after October 31, 1951, see section 131.

PAR. 9. Section 29.400–1(*b*), as amended by Treasury Decision 5687 [26 CFR 29.400–1(b)], is further amended by striking out the last two paragraphs of the section and inserting in lieu thereof the following:

The tax tables in section 400 applicable with respect to taxable years beginning after December 31, 1947, and before November 1, 1951, contain, in certain instances, double columns, in one of which is shown the tax if a separate return is filed, and in the other of which is shown the tax if a joint return is filed. The tax tables in section 400 applicable with respect to taxable years beginning after October 31, 1951, contain, in certain instances, double columns, in one of which is shown the tax if the taxpayer is single (and not the head of a household) or married and files a separate return, and in the other of which is shown the tax if the taxpayer is the head of a household, and, in other instances, triple columns, in the first of which is shown the tax if the taxpayer is single (and not the head of a household) or married and files a separate return, in the second of which is shown the tax if the taxpayer is the head of a household, and in the third of which is shown the tax if a joint return is filed. In the case of double or triple columns, the tax shall be determined by reference to the applicable column. Since the computations of tax shown in the case of a joint return reflect the income-splitting method provided in section 12(d), as added by the Revenue Act of 1948, the tax shown in the joint return column may be lower than that shown in the separate return column even though the amounts of adjusted gross income and the exemptions are the same. Thus, if H, a married man, has adjusted gross income of $4,925 for the calendar year 1951 and his wife has no gross income for such year and his only exemptions under section 25(b) are the exemptions for himself and spouse under section 25(b)(1)(A), the tax on a joint return under Supplement T, as shown in the second column applicable to a person with two exemptions, is $659. If H should file a separate return, his tax, as shown in the first column applicable to an individual with two exemptions, would be $684.

If a joint return of a husband and wife is filed under the provisions of section 51(b)(3), as added by the Revenue Act of 1948, if the husband and wife have different taxable years solely because of the death of either spouse, and if the taxable year of the surviving spouse covered by such joint return began before October 1, 1950, and ended after September 30, 1950, began before November 1, 1951, and ended after October 31, 1951, or begins in 1953 and ends in 1954, the taxable year of the deceased spouse covered by the joint return shall, for the purpose of determining the tax under section 400 and this section in respect of such joint return, be deemed to have ended on the date of the closing of the surviving spouse's taxable year.

For taxable years beginning after December 31, 1943, the fact that the taxable year is a period of less than 12 months resulting by reason of the death of the taxpayer does not prevent the application of Supplement T in the determination of the tax for such period.

For treatment of taxable years beginning in 1947 and ending in 1948, see section 29.108–3. For treatment of taxable years beginning before October 1, 1950, and ending after September 30, 1950 (other than the calendar year 1950), see section 29.108–4. For treatment of taxable years beginning before November 1, 1951, and ending after October 31, 1951 (other than the calendar year 1951), see section 29.108–7. For treatment of taxable years beginning in 1953 and ending in 1954, see section 29.108–8.

PAR. 10. Section 29.401–1, as amended by Treasury Decision 5687 [26 CFR 29.401–1], is further amended as follows:

(A) By inserting in the heading of (*b*) thereof after "*Taxable years beginning after December 31, 1943*" the following: ", *and before January 1, 1946*".

(B) By inserting in the first sentence of (*b*) thereof after "The term 'number of surtax exemptions'" the following: ", which term is used under Supplement T for taxable years beginning after December 31, 1943, and before January 1, 1946,".

(C) By striking out all of the first paragraph of (*b*) after the third sentence thereof.

(D) By striking out example (3) at the end of such section and inserting in lieu thereof the following:

(*c*) *Taxable years beginning after December 31, 1945.*—The term "number of exemptions", which, for taxable years beginning after December 31, 1945, is used instead of the term "number of surtax exemptions", means the number of exemptions allowed under section 25(b) for such years as credits against net income for the purpose of the normal tax and the surtax imposed by sections 11 and 12. One exemption is allowed for the taxpayer; one exemption for his spouse if a joint return is made, or if a separate return is made by the taxpayer and his spouse has no gross income for the calendar year in which the taxable year of the taxpayer begins and is not the dependent of another taxpayer for such calendar year; and one exemption for each dependent whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $500 in the case of a taxable year beginning before January 1, 1951, or is less than $600 in the case of a taxable year beginning after December 31, 1950. For taxable years beginning after December 31, 1947, additional exemptions are allowed under section 25(b)(1) (B) and (C) for a taxpayer or spouse who has attained the age of 65 years and for a blind taxpayer or blind spouse. See section 29.25–3. After the number of exemptions is ascertained, the tax under Supplement T for the taxable year is determined by reference to the table contained in section 400 applicable to such taxable year and by reference to the column of such table appropriate to such number of exemptions and, in certain cases, appropriate to either the status of the taxpayer (whether single, head of household, or married) or kind of return (whether separate or joint), or both. The tax is the amount in such column shown on the line appropriate to the taxpayer's adjusted gross income.

Example. D, a married man with no dependents, attains the age of 65 years on September 1, 1951. The aggregate adjusted gross income of D and his wife for 1951 is $4,840. D and his wife file a joint return for 1951 and are entitled to three exemptions, one for each taxpayer and one additional exemption for D because of his age. Since the adjusted gross income of D and his wife falls within the tax bracket $4,800–$4,850, the tax on a joint return is $519.

(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 November 10, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 14, 1952, 8:54 a. m.)

SECTION 12.—SURTAX ON INDIVIDUALS

SECTION 29.12-3: Limitation on amount of tax. (Also Section 117, Section 29.117-3.) 1952-23-13952 I. T. 4103

INTERNAL REVENUE CODE

The limitation on the combined normal tax and surtax provided under section 12(f) of the Internal Revenue Code should be applied to the statutory net income reduced by the excess of net long-term capital gain over net short-term capital loss in computing the partial tax under section 117(c)(2) of the Code.

Advice is requested whether the limitation prescribed by section 12(f) of the Internal Revenue Code with respect to the combined normal tax and surtax imposed on individuals is applicable to statutory net income reduced by the excess of net long-term capital gain over net short-term capital loss in computing the partial tax under section 117(c)(2) of the Code.

Section 12 of the Code provides in part as follows:

(f) LIMITATION ON TAX.—

(1) CALENDAR YEAR 1951.—In the case of a taxable year beginning on January 1, 1951, and ending December 31, 1951, the combined normal tax and surtax shall in no event exceed 87.2 per centum of the net income for the taxable year.

(2) TAXABLE YEARS BEGINNING AFTER OCTOBER 31, 1951, AND BEFORE JANUARY 1, 1954.—In the case of taxable years beginning after October 31, 1951, and before January 1, 1954, the combined normal tax and surtax shall in no event exceed 88 per centum of the net income of the taxable year.

(3) TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953.—In the case of taxable years beginning after December 31, 1953, the combined normal tax and surtax shall in no event exceed 87 per centum of the net income for the taxable year.

(g) CROSS REFERENCES.—

* * * * * * *

(2) TAX IN CASE OF CAPITAL GAINS.—For rate and computation of alternative tax in lieu of normal tax and surtax in the case of capital gain from the sale or exchange of capital assets held for more than 6 months, see section 117(c).

Section 117(c)(2) of the Code provides as follows:

(c) ALTERNATIVE TAXES.—

* * * * * * *

(2) OTHER TAXPAYERS.—If for any taxable year the net long-term capital gain of any taxpayer (other than a corporation) exceeds the net short-term capital loss, there shall be levied, collected, and paid, in lieu of the tax imposed by sections 11 and 12 * * * a tax determined as follows, if and only if such tax is less than the tax imposed by such sections:

(A) A partial tax shall first be computed upon the net income reduced by an amount equal to 50 per centum of such excess, at the rates and in the manner as if this subsection had not been enacted.

(B) There shall then be ascertained an amount equal to 25 per centum of the excess of the net long-term capital gain over the net short-term capital loss. In the case of any taxable year beginning after October 31, 1951, and before November 1, 1953, there shall be ascertained, in lieu of the amount computed under the preceding sentence, an amount equal to 26 per centum of the excess of the net long-term capital gain over the net short-term capital loss.

(C) The total tax shall be the partial tax computed under subparagraph (A) plus the amount computed under subparagraph (B).

In *Charles E. Merrill* v. *United States* (105 Fed. Supp. 379), it is held that the limitation provision of section 12(g) of the Internal

Revenue Code (which at the time the issue was raised corresponds to the present section 12(f) of the Code) is applicable only to the tax imposed by sections 11 and 12 of the Code on ordinary net income, exclusive of net capital gains, in computing the partial tax prescribed by section 117(c)(2) of the Code.

In view of the foregoing, it is held that the limitation on the combined normal tax and surtax provided under section 12 of the Internal Revenue Code should be applied to the statutory net income reduced by the excess of net long-term capital gain over net short-term capital loss in computing the partial tax under section 117(c)(2) of the Code.

SECTION 13.—NORMAL TAX ON CORPORATIONS

SECTION 29.13–1: Tax on corporations in general. (Also Section 14, Section 29.14–1, etc.; Section 430, Section 40.430–2, Regulations 130.) 1952–26–13989 T. D. 5950

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 29 AND PART 40

Regulations 111 amended to conform to sections 121 (a), (b), (c), (d), and (g) (1), (2), (4), and (5), 122, and 123 of the Revenue Act of 1950, sections 201 (a), (b), and (e) and 202 of the Excess Profits Tax Act of 1950, and sections 121 (a), (c), (f) (other than the addition of section 15(c) of the Internal Revenue Code), and (g), 122, 124, 125, 311, and 612 of the Revenue Act of 1951; and Regulations 130 amended to conform to sections 121(b) and 125 of the Revenue Act of 1951.

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On October 1, 1952, notice of proposed rule making, regarding amendments to conform Regulations 111 [26 CFR, part 29] to sections 121 (a), (b), (c), (d), and (g) (1), (2), (4), and (5), 122, and 123 of the Revenue Act of 1950, approved September 23, 1950, sections 201 (a), (b), and (e) and 202 of the Excess Profits Tax Act of 1950, approved January 3, 1951, and sections 121 (a), (c), (f) (other than the addition of section 15(c) of the Internal Revenue Code), and (g), 122, 124, 125, 311, and 612 of the Revenue Act of 1951, approved October 20, 1951, and to conform Regulations 130 [26 CFR, part 40] to sections 121(b) and 125 of the Revenue Act of 1951, was published in the Federal Register (17 F. R. 8692). No objection to the rules proposed having been received, the amendments to Regulations 111 and 130 set forth below are hereby adopted.

REGULATIONS 111 [26 CFR, PART 29]

PARAGRAPH 1. There is inserted immediately preceding section 29.13–1 [26 CFR 29.13–1] the following:

SEC. 121. INCREASE IN RATE OF CORPORATION INCOME TAXES [PART II, TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) AMENDMENT OF SECTION 13.—Section 13 (relating to the normal tax on corporations) is hereby amended to read as follows:

"SEC. 13. NORMAL TAX ON CORPORATIONS.

"(a) DEFINITIONS.—For the purposes of this chapter—

"(1) ADJUSTED NET INCOME.—The term 'adjusted net income' means the net income minus the credit provided in section 26(a), relating to interest on certain obligations of the United States and Government corporations.

"(2) NORMAL TAX NET INCOME.—

"(A) Calendar Year 1950 and Taxable Years Beginning After June 30, 1950.—In the case of a taxable year beginning on January 1, 1950, and ending on December 31, 1950, and in the case of taxable years beginning after June 30, 1950, the term 'normal-tax net income' means the adjusted net income minus the sum of the following credits:

"(i) The credit for dividends received provided in section 26(b);

"(ii) In the case of a public utility, the credit for dividends paid on its preferred stock provided in section 26(h); and

"(iii) In the case of a western hemisphere trade corporation (as defined in section 109), the credit provided in section 26(i).

"(B) Other Taxable Years Beginning Before July 1, 1950.—In the case of taxable years (other than the calendar year 1950, to which subparagraph (A) applies) beginning before July 1, 1950, the term 'normal-tax net income' means the adjusted net income minus the credit for dividends received provided in section 26(b).

"(b) IMPOSITION OF TAX.—

"(1) TAXABLE YEARS BEGINNING AFTER JUNE 30, 1950.—In the case of taxable years beginning after June 30, 1950, there shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every corporation (except a corporation subject to a tax imposed by section 231(a), Supplement G, or Supplement Q) a tax of 25 per centum of the normal-tax net income.

"(2) CALENDAR YEAR 1950.—In the case of a taxable year beginning on January 1, 1950, and ending on December 31, 1950, there shall be levied, collected, and paid for such taxable year upon the normal-tax net income of every corporation (except a corporation subject to a tax imposed by section 231(a), Supplement G, or Supplement Q) a tax of 23 per centum of the normal-tax net income.

"(3) OTHER TAXABLE YEARS BEGINNING BEFORE JULY 1, 1950.—In the case of taxable years (other than the calendar year 1950, to which paragraph (2) applies) beginning before July 1, 1950, there shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every corporation the normal-tax net income of which is more than $25,000 (except a corporation subject to a tax imposed by section 14, section 231(a), Supplement G, or Supplement Q) whichever of the following taxes is the lesser:

"(A) General Rule.—A tax of 24 per centum of the normal-tax net income; or

"(B) Alternative Tax (Corporations With Normal-Tax Net Income Over $25,000, But Not Over $50,000).—A tax of $4,250, plus 31 per centum of the amount of the normal-tax net income in excess of $25,000.

For computation of tax in case the taxable year ends after June 30, 1950, see section 108(f).

"(c) EXEMPT CORPORATIONS.—For corporations exempt from taxes under this chapter, see section 101.

"(d) TAX ON PERSONAL HOLDING COMPANIES.—For surtax on personal holding companies, see section 500.

"(e) IMPROPER ACCUMULATION OF SURPLUS.—For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102."

* * * * * * *

SEC. 123. EFFECTIVE DATE OF PART II [TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

The amendments made by this part [inc. sec. 121(a)] shall be applicable only with respect to taxable years ending after December 31, 1949. For treatment of taxable years (other than the calendar year 1950) beginning before July 1, 1950, and ending after June 30, 1950, see section 131.

SEC. 121. INCREASE IN RATE OF CORPORATION NORMAL TAX [PART II, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) AMENDMENT OF SECTION 13.—Subsections (a) and (b) of section 13 (relating to normal tax on corporations) are hereby amended to read as follows:

"(a) DEFINITIONS.—For the purposes of this chapter—

"(1) ADJUSTED NET INCOME.—The term 'adjusted net income' means the net income minus the credit provided in section 26(a), relating to interest on certain obligations of the United States and Government corporations.

"(2) NORMAL-TAX NET INCOME.—The term 'normal-tax net income' means the adjusted net income minus the sum of the following credits:

"(A) The credit for dividends received provided in section 26(b);

"(B) In the case of a public utility, the credit for dividends paid on its preferred stock provided in section 26(h); and

"(C) In the case of a western hemisphere trade corporation (as defined in section 109), the credit provided in section 26(i).

"(b) IMPOSITION OF TAX.—There shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every corporation (except a corporation subject to a tax imposed by section 231(a), Supplement G, or Supplement Q)—

"(1) CALENDAR YEAR 1951.—In the case of a taxable year beginning on January 1, 1951, and ending on December 31, 1951, a tax of 28¾ per centum of the normal-tax net income.

"(2) TAXABLE YEARS BEGINNING AFTER MARCH 31, 1951, AND BEFORE APRIL 1, 1954.—In the case of taxable years beginning after March 31, 1951, and before April 1, 1954, a tax of 30 per centum of the normal-tax [net] income.

"(3) TAXABLE YEARS BEGINNING AFTER MARCH 31, 1954.—In the case of taxable years beginning after March 31, 1954, a tax of 25 per centum of the normal-tax net income."

* * * * * * *

SEC. 125. EFFECTIVE DATE [PART II, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

The amendments made by this part [inc. sec. 121(a)] shall be applicable only with respect to taxable years beginning after March 31, 1951, and to taxable years beginning on January 1, 1951, and ending on December 31, 1951, * * * For treatment of taxable years (other than the calendar year 1951) beginning before April 1, 1951, and ending after March 31, 1951, see section 131.

PAR. 2. Section 29.13–1, as amended by Treasury Decision 5517 [C. B. 1946–2, 8], approved June 12, 1946 [26 CFR 29.13–1], is further amended as follows:

(A) By striking out the period and dash in the heading of the section and the first sentence of the section and inserting in lieu thereof the following: "—(*a*) *Taxable years beginning before July 1, 1950 (other than the calendar year 1950)*.—For taxable years beginning before July 1, 1950 (other than the calendar year 1950), section 13 imposes an income tax on corporations in general the normal-tax net income of which is more than $25,000."

(B) By striking out the third, fourth, and fifth sentences of the second paragraph of the section and inserting in lieu thereof the following:

For taxable years beginning after December 31, 1945, and before July 1, 1950 (other than the calendar year 1950), the normal-tax net income is the adjusted net income minus the credit for dividends received provided in section 26(b). Section 26(b) applicable to such taxable years relates to dividends received from a domestic corporation which is subject to taxation under chapter 1 (85 percent of dividends received) For taxable years beginning in 1945 and ending in 1946, see section 29.108–2. For taxable years beginning before July 1, 1950, and ending after June 30, 1950 (other than the calendar year 1950), see section 29.108–5.

(C) By striking out in the fifth paragraph of the section "This section may be illustrated by the following examples:" and inserting in lieu thereof "The computation of the tax under section 13 may be illustrated by the following examples:".

(D) By adding at the end of the section the following:

(*b*) *Calendar year 1950 and taxable years beginning after June 30, 1950.*—For a taxable year which is the calendar year 1950 and for taxable years beginning after June 30, 1950, section 13 imposes an income tax on corporations generally. Every corporation is liable to the tax imposed by such section, except (1) corporations expressly exempt from all taxation under chapter 1 (see section 101); (2) corporations subject to tax under Supplement U (see section 421); (3) foreign corporations not engaged in trade or business within the United States (see section 231 (a)); (4) insurance companies (see Supplement G); and (5) regulated investment companies (see Supplement Q).

It makes no difference that a domestic corporation subject to any tax imposed by section 13 may derive no income from sources within the United States. The tax imposed by section 13 for a taxable year is computed upon the "normal-tax net income" for the taxable year, that is, the adjusted net income for such year minus (i) the credit for dividends received provided in section 26(b) for such year, and (ii), in the case of a public utility, the credit for dividends paid on its preferred stock provided in section 26(h) for such year, and (iii), in the case of a Western Hemisphere trade corporation (see section 109), the credit provided in section 26(i) for such year. For taxable years beginning after June 30, 1950, and before April 1, 1951, and ending after March 31, 1951 (other than the calendar year 1951), see section 29.108–6. For taxable years beginning before April 1, 1954, and ending after March 31, 1954, see section 29.108–9. The "adjusted net income" of a corporation is the net income as defined in section 21 minus the credit provided in section 26(a), relating to interest on certain obligations of the United States and its instrumentalities.

The tax imposed by section 13 is payable upon the basis of returns rendered by the corporations liable thereto, except that in some cases a tax is to be paid at the source of the income (see also sections 47, 52, 53, 144, and 235). For what the term "corporation" includes and for the difference between domestic and foreign corporations, see section 3797(a). For treatment of the tax imposed on foreign corporations engaged in trade or business within the United States, see section 29.231–1(*b*). In the case of foreign corporations not engaged in trade or business within the United States, the tax is as provided in section 231(a). In the case of insurance companies, the tax is as provided in Supplement G

(sections 201 to 207, inclusive). In the case of regulated investment companies, the tax is as provided in Supplement Q (sections 361 and 362). In the case of corporations subject to tax under Supplement U, the tax is as provided in sections 421 to 424, inclusive. For surtax on corporations generally, see section 29.15–1. For surtax on personal holding companies, see sections 500 to 511, inclusive. For surtax on corporations improperly accumulating surplus, see section 102. For treatment of capital gains and losses, see section 117. For treatment of mutual savings banks conducting life insurance business, see section 110.

The tax imposed by section 13 for a taxable year which is the calendar year 1950 and for a taxable year beginning after June 30, 1950, is computed by applying to the "normal-tax net income" the rate in effect for such taxable year. The rates of tax under section 13 applicable for the respective taxable years are as follows:

	Percent
For a taxable year which is the calendar year 1950	23
For taxable years beginning after June 30, 1950, and before April 1, 1951 (other than the calendar year 1951)	25
For a taxable year which is the calendar year 1951	28¾
For taxable years beginning after March 31, 1951, and before April 1, 1954	30
For taxable years beginning after March 31, 1954	25

The computation of the tax under section 13 may be illustrated by the following example:

Example. The A Corporation, a domestic corporation (which is neither a public utility referred to in section 26(h) nor a Western Hemisphere trade corporation referred to in section 26(i)), has for the calendar year 1951 a net income of $130,000, including interest on United States obligations (allowable as a credit under section 26(a)) in the amount of $10,000 and cash dividends received (allowable as a credit under section 26(b)(1)) in the amount of $10,000. The corporation's tax under section 13 for the calendar year 1951 is $32,056.25, computed as follows:

Net income	$130,000
Less credit for interest on United States obligations	10,000
Adjusted net income	120,000
Less credit for dividends received (85 percent of $10,000)	8,500
Normal-tax net income	111,500
Tax under section 13(b)(1) (28¾ percent of $111,500)	$32,056.25

PAR. 3. There is inserted immediately preceding section 29.14–1 [26 CFR 29.14–1] the following:

SEC. 121. INCREASE IN RATE OF CORPORATION INCOME TAXES [PART II, TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(b) AMENDMENT OF SECTION 14(a).—So much of section 14 (relating to normal tax on special classes of corporations) as precedes subsection (b) thereof is hereby amended to read as follows:

"SEC. 14. TAX ON SPECIAL CLASSES OF CORPORATIONS IN CASE OF TAXABLE YEARS (OTHER THAN THE CALENDAR YEAR 1950) BEGINNING BEFORE JULY 1, 1950.

"(a) IMPOSITION OF TAX IN CASES OF TAXABLE YEARS (OTHER THAN THE CALENDAR YEAR 1950) BEGINNING BEFORE JULY 1, 1950.—In the case of taxable years beginning before July 1, 1950 (other than a taxable year beginning on January 1, 1950, and ending on December 31, 1950), there shall be levied, collected, and paid for each taxable year upon the normal-tax net income of the following corporations (in lieu of the tax imposed by section 13(b)(3)) the tax hereinafter in this section specified. For computation of tax in case the taxable year ends after June 30, 1950, see section 108(f)."

* * * * * * *

SEC. 123. EFFECTIVE DATE OF PART II [TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

The amendments made by this part [inc. sec. 121(b)] shall be applicable only with respect to taxable years ending after December 31, 1949. For treatment of taxable years (other than the calendar year 1950) beginning before July 1, 1950, and ending after June 30, 1950, see section 131.

SEC. 121. INCREASE IN RATE OF CORPORATION NORMAL TAX [PART II, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(g) TECHNICAL AMENDMENT.—Section 14 (relating to normal tax on special classes of corporations in the case of taxable years beginning before July 1, 1950) is hereby repealed.

SEC. 125. EFFECTIVE DATE [PART II, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

The amendments made by this part [inc. sec. 121(g)] shall be applicable only with respect to taxable years beginning after March 31, 1951, and to taxable years beginning on January 1, 1951, and ending on December 31, 1951, * * *

PAR. 4. Section 29.14–1 [26 CFR 29.14–1] is amended as follows:

(A) By striking out the heading and the first sentence of the section and inserting in lieu thereof the following:

SEC. 29.14–1. TAX ON SPECIAL CORPORATIONS FOR TAXABLE YEARS BEGINNING BEFORE JULY 1, 1950 (OTHER THAN THE CALENDAR YEAR 1950).—Section 14 and this section are applicable with respect to taxable years beginning after December 31, 1941, and before July 1, 1950 (other than the calendar year 1950).

(B) By adding after the third sentence of the third paragraph of the section the following:

For taxable years beginning in 1945 and ending in 1946, see section 29.108–2. For taxable years beginning before July 1, 1950, and ending after June 30, 1950 (other than the calendar year 1950), see section 29.108–5.

PAR. 5. There is inserted immediately preceding section 29.15–1 [26 CFR 29.15–1] the following:

SEC. 121. INCREASE IN RATE OF CORPORATION INCOME TAXES [PART II, TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(c) AMENDMENT OF SECTION 15.—Section 15 (relating to surtax on corporations) is hereby amended to read as follows:

"SEC. 15. SURTAX ON CORPORATIONS.

"(a) CORPORATION SURTAX NET INCOME.—For the purposes of this chapter—

"(1) CALENDAR YEAR 1950 AND TAXABLE YEARS BEGINNING AFTER JUNE 30, 1950.—In the case of a taxable year beginning on January 1, 1950, and ending on December 31, 1950, and in the case of taxable years beginning after June 30, 1950, the term 'corporation surtax net income' means the net income minus the sum of the following credits:

"(A) The credit for dividends received provided in section 26(b);

"(B) In the case of a public utility, the credit for dividends paid on its preferred stock provided in section 26(h);

"(C) In the case of a western hemisphere trade corporation (as defined in section 109), the credit provided in section 26(i).

"(2) OTHER TAXABLE YEARS BEGINNING BEFORE JULY 1, 1950.—In the case of taxable years (other than the calendar year 1950, to which paragraph (1) applies) beginning before July 1, 1950, the

term 'corporation surtax net income' means the net income minus the credit for dividends received provided in section 26(b) and minus, in the case of a public utility, the credit for dividends paid on its preferred stock provided in section 26(h). For the purposes of this paragraph, dividends received on the preferred stock of a public utility shall be disregarded in computing the credit for dividends received provided in section 26(b).

"(b) IMPOSITION OF TAX.—

"(1) TAXABLE YEARS BEGINNING AFTER JUNE 30, 1950.—In the case of taxable years beginning after June 30, 1950, there shall be levied, collected, and paid for each taxable year upon the corporation surtax net income of every corporation (except a corporation subject to a tax imposed by section 231(a), Supplement G, or Supplement Q) a surtax of 20 per centum of the amount of the corporation surtax net income in excess of $25,000.

"(2) CALENDAR YEAR 1950.—In the case of a taxable year beginning on January 1, 1950, and ending on December 31, 1950, there shall be levied, collected, and paid for such taxable year upon the corporation surtax net income of every corporation (except a corporation subject to a tax imposed by section 231(a), Supplement G, or Supplement Q) a surtax determined by computing a tentative surtax of 19 per centum of the amount of the corporation surtax net income in excess of $25,000, and by reducing such tentative surtax by an amount equal to 1 per centum of the lower of (A) the amount of the credit provided in section 26(a), or (B) the amount by which the corporation surtax net income exceeds $25,000.

"(3) OTHER TAXABLE YEARS BEGINNING BEFORE JULY 1, 1950.—In the case of taxable years (other than the calendar year 1950, to which paragraph (2) applies) beginning before July 1, 1950, there shall be levied, collected, and paid for each taxable year upon the corporation surtax net income of every corporation (except a western hemisphere trade corporation as defined in section 109, and except a corporation subject to a tax imposed by section 231(a), Supplement G, or Supplement Q) a surtax as follows:

"(A) Surtax Net Incomes Not Over $25,000.—Upon corporation surtax net incomes not over $25,000, 6 per centum of the amount thereof.

"(B) Surtax Net Incomes Over $25,000 But Not Over $50,000.—Upon corporation surtax net incomes over $25,000, but not over $50,000, $1,500 plus 22 per centum of the amount of the corporation surtax net income over $25,000.

"(C) Surtax Net Incomes Over $50,000.—Upon corporation surtax net incomes over $50,000, 14 per centum of the corporation surtax net income.

For computation of tax in case the taxable year ends after June 30, 1950, see section 108(f)."

* * * * * * *

SEC. 123. EFFECTIVE DATE OF PART II [TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

The amendments made by this part [inc. sec. 121(c)] shall be applicable only with respect to taxable years ending after December 31, 1949. For treatment of taxable years (other than the calendar year 1950) beginning before July 1, 1950, and ending after June 30, 1950, see section 131.

SEC. 201. SURTAX ON CORPORATIONS [TITLE II, EXCESS PROFITS TAX ACT OF 1950, APPROVED JANUARY 3, 1951].

(a) RATE OF TAX.—Section 15(b)(1) of the Internal Revenue Code (relating to rate of surtax in the case of taxable years beginning after June 30, 1950) is hereby amended by striking out "20 per centum" and inserting in lieu thereof "22 per centum".

* * * * * * *

(e) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning on or after July 1, 1950.

SEC. 121. INCREASE IN RATE OF CORPORATION NORMAL TAX [PART II, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(f) AMENDMENT OF SECTION 15.—Section 15 (relating to surtax on corporations) is hereby amended to read as follows:

"SEC. 15. SURTAX ON CORPORATIONS.

"(a) CORPORATION SURTAX NET INCOME.—For the purposes of this chapter, the term 'corporation surtax net income' means the net income minus the sum of the following credits:

"(1) The credit for dividends received provided in section 26(b);

"(2) In the case of a public utility, the credit for dividends paid on its preferred stock provided in section 26(h);

"(3) In the case of a western hemisphere trade corporation (as defined in section 109), the credit provided in section 26(i).

"(b) IMPOSITION OF TAX.—There shall be levied, collected, and paid for each taxable year upon the corporation surtax net income of every corporation (except a corporation subject to a tax imposed by section 231(a), Supplement G, or Supplement Q) a surtax of 22 per centum of the amount of the corporation surtax net income in excess of $25,000.

* * * * * * *

SEC. 125. EFFECTIVE DATE [PART II, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

The amendments made by this part [inc. sec. 121(f)] shall be applicable only with respect to taxable years beginning after March 31, 1951, and to taxable years beginning on January 1, 1951, and ending on December 31, 1951. * * * For treatment of taxable years (other than the calendar year 1951) beginning before April 1, 1951, and ending after March 31, 1951, see section 131.

SEC. 612. CREDIT IN PRIOR TAXABLE YEARS FOR DIVIDENDS RECEIVED ON PREFERRED STOCK OF A PUBLIC UTILITY [TITLE VI, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

In the case of taxable years beginning before April 1, 1951, any reference in section 15(a) or 26(b) of the Internal Revenue Code to dividends received on the preferred stock of a public utility shall be construed as referring only to dividends received on the preferred stock of a public utility with respect to which the credit provided in section 26(h) of such Code for dividends paid was allowable.

PAR. 6. Section 29.15–1, as amended by Treasury Decision 5517 [26 CFR 29.15–1], is further amended as follows:

(A) By striking out the period and dash in the heading of the section and the first sentence of the section and inserting in lieu thereof the following: "—*(a) Taxable years beginning before July 1, 1950 (other than the calendar year 1950).*—For taxable years beginning before July 1, 1950 (other than the calendar year 1950), section 15 imposes a surtax upon the corporation surtax net income of every corporation, except (1) corporations expressly exempt from taxation under chapter 1 (see section 101), (2) Western Hemisphere trade corporations (see section 109), (3) foreign corporations taxable under section 231(a), (4) insurance companies (see Supplement G), or (5) regulated investment companies (see Supplement Q)."

(B) By striking out the second sentence of the second paragraph and the second sentence of the fourth paragraph of the section and inserting in lieu of each the following:

For the purposes of determining the corporation surtax net income, dividends received on the preferred stock of a public utility with respect to which the credit for dividends paid is allowable under section 26(h) must be disregarded in computing the credit provided in section 26(b) for dividends received.

(C) By inserting in the first sentence of the fourth paragraph and in the first sentence of the fifth paragraph of the section after "For taxable years beginning after December 31, 1945," the following: "and before July 1, 1950 (other than the calendar year 1950),".

(D) By adding at the end of the seventh paragraph of the section the following:

For treatment of taxable years beginning before July 1, 1950, and ending after June 30, 1950 (other than the calendar year 1950), see section 29.108–5.

(E) By adding at the end of the section the following:

(b) Calendar year 1950 and taxable years beginning after June 30, 1950.—For a taxable year which is the calendar year 1950 and for taxable years beginning after June 30, 1950, section 15 imposes a surtax upon the corporation surtax net income of every corporation, except (1) corporations expressly exempt from all taxation under chapter 1 (see section 101), (2) corporations subject to tax under Supplement U (see section 421), (3) foreign corporations not engaged in trade or business within the United States (see section 231(a)), (4) insurance companies (see Supplement G), and (5) regulated investment companies (see Supplement Q). For surtax on personal holding companies, see sections 500 to 511, inclusive. For surtax on corporations improperly accumulating surplus, see section 102. For treatment of capital gains and losses, see section 117. For treatment of mutual savings banks conducting life insurance business, see section 110.

For such taxable years, the "corporation surtax net income" of a corporation is its net income for the taxable year minus (i) the credit for dividends received provided in section 26(b) for such year, and (ii), in the case of a public utility, the credit for dividends paid on its preferred stock provided in section 26(h) for such year, and (iii), in the case of a Western Hemisphere trade corporation (see section 109), the credit provided in section 26(i) for such year. The credit provided in section 26(a) for interest received on obligations of the United States or its instrumentalities is not allowable in computing corporation surtax net income for any taxable year.

Section 15 imposes a surtax only upon so much of the corporation surtax net income as is in excess of $25,000. For a taxable year which is the calendar year 1950, the surtax on corporations is determined by computing a tentative surtax of 19 percent of the amount of the corporation surtax net income in excess of $25,000, and by reducing such tentative surtax by an amount equal to 1 percent of the lower of (*a*) the amount of the credit provided in section 26(a), relating to interest on certain obligations of the United States and its instrumentalities, or (*b*) the amount by which the corporation surtax net income exceeds $25,000. For taxable years beginning after June 30, 1950, the surtax on corporations is at the rate of 22 percent and is upon corporation surtax net income in excess of $25,000.

For treatment of taxable years beginning after June 30, 1950, and before April 1, 1951, and ending after March 31, 1951 (other than the calendar year 1951), see section 29.108–6. For treatment of taxable years beginning before April 1, 1954, and ending after March 31, 1954, see section 29.108–9.

The computation of the surtax on corporations may be illustrated by the following examples:

Example (1). The A Corporation, a domestic corporation (which is neither a public utility referred to in section 26(h) nor a Western Hemisphere trade corporation referred to in section 26(i)), has for the calendar year 1950 a net income of $86,000. The net income includes cash dividends received from a corporation (allowable as a credit under section 26(b)(1)) in the amount of $10,000, and interest on United States obligations (allowable as a credit under section 26(a) in determining adjusted net income for purposes of corporation normal tax) in the amount of $10,000. The A corporation's surtax for the calendar year 1950 is $9,875, computed as follows:

Net income		$86,000
Less credit for dividends received (85 percent of $10,000)		8,500
Corporation surtax net income		77,500
Tentative surtax (19 percent of $52,500, the excess of $77,500 over $25,000)		$9,975
Less the lower of:		
1 percent of $10,000 (amount of the credit provided in section 26(a))	$100	
or		
1 percent of $52,500 (the excess of $77,500 (corporation surtax net income) over $25,000)	525	100
Surtax		9,875

Example (2). The facts are the same as in example (1), above, except that the taxable year is the calendar year 1951 instead of the calendar year 1950. The A Corporation's surtax for the calendar year 1951 is $11,550, computed as follows:

Net income	$86,000
Less credit for dividends received (85 percent of $10,000)	8,500
Corporation surtax net income	77,500
Surtax (22 percent of $52,500, the excess of $77,500 over $25,000)	$11,550

PAR. 7. There is inserted immediately preceding section 29.26-1 [26 CFR 29.26–1] the following:

SEC. 121. INCREASE IN RATE OF CORPORATION INCOME TAXES [PART II, TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(g) TECHNICAL AMENDMENTS.—

(1) Section 26(b)(2) (relating to definition of public utility) is hereby amended by striking out "As used in this subsection and section 15(a)" and inserting in lieu thereof "As used in this subsection, subsection (b), and sections 13 and 15".

* * * * * * *

SEC. 122. CREDITS OF CORPORATIONS [PART II, TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) DIVIDENDS RECEIVED CREDIT.—Section 26(b) (relating to credits allowed corporations with respect to dividends received) is hereby amended to read as follows:

"(b) DIVIDENDS RECEIVED.—An amount equal to the sum of—

"(1) IN GENERAL.—85 per centum of the amount received as dividends (other than dividends received in taxable years described in paragraph (2) on the preferred stock of a public utility) from a domestic corporation which is subject to taxation under this chapter; and

"(2) CERTAIN PREFERRED STOCK.—

"(A) Taxable Years Beginning After June 30, 1950.—In the case of taxable years beginning after June 30, 1950, 59 per centum of the amount received as dividends on the preferred stock of a public utility which is subject to taxation under this chapter.

"(B) Calendar Year 1950.—In the case of a taxable year beginning on January 1, 1950, and ending on December 31, 1950, 57 per centum of the amount received as dividends on the preferred stock of a public utility which is subject to taxation under this chapter.

For the purpose of this subsection (but not for the purposes of computing adjusted net income), if the whole or any part of a dividend is received after August 31, 1950, in property other than money, then, with respect to such property, the shareholder shall not be considered to have received as a dividend an amount in excess of the adjusted basis of such property in the hands of the distributing corporation at the time of distribution increased in the amount of gain or decreased in the amount of loss recognized to the distributing corporation by reason of such distribution. The credit allowed under this subsection shall not be allowed in respect of dividends received from a corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., title 15, c. 4), or from a corporation which under section 251 is taxable only on its gross income from sources within the United States by reason of its receiving a large percentage of its gross income from sources within a possession of the United States. In no event shall the credit allowed by this subsection exceed 85 per centum of the adjusted net income computed without regard to the deduction allowed by section 23(s)."

(b) CREDIT FOR DIVIDENDS PAID ON CERTAIN PREFERRED STOCK.—The first sentence of section 26(h)(1) (relating to amount of credit for dividends paid on certain preferred stock) is hereby amended to read as follows: "In the case of a public utility, the amount of dividends paid during the taxable year on its preferred stock, except that (A) in the case of a taxable year beginning on January 1, 1950, and ending on December 31, 1950, only an amount equal to 33 per centum of the lower of (i) the amount of dividends paid during such taxable year on its preferred stock or (ii) the adjusted net income for such taxable year minus the credit for dividends received provided in subsection (b) for such year, and (B) in the case of any taxable year beginning after June 30, 1950, only an amount equal to 31 per centum of the lower of (i) the amount of dividends paid during such taxable year on its preferred stock or (ii) the adjusted net income for such taxable year minus the credit for dividends received provided in subsection (b) for such year.".

(c) WESTERN HEMISPHERE TRADE CORPORATIONS.—Section 26 (relating to credits of corporations) is hereby amended by adding at the end thereof the following new subsection:

"(i) WESTERN HEMISPHERE TRADE CORPORATIONS.—In the case of a western hemisphere trade corporation (as defined in section 109)—

"(1) TAXABLE YEARS BEGINNING AFTER JUNE 30, 1950.—In the case of any taxable year beginning after June 30, 1950, an amount equal to 31 per centum of its normal-tax net income computed without regard to the credit provided in this subsection.

"(2) CALENDAR YEAR 1950.—In the case of a taxable year beginning on January 1, 1950, and ending on December 31, 1950, an amount equal to 33 per centum of its normal-tax net income computed without regard to the credit provided in this subsection."

SEC. 123. EFFECTIVE DATE OF PART II [TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

The amendments made by this part [inc. secs. 121(g)(1) and 122] shall be applicable only with respect to taxable years ending after December 31, 1949. For treatment of taxable years (other than the calendar year 1950) beginning before July 1, 1950, and ending after June 30, 1950, see section 131.

SEC. 202. CREDITS OF CORPORATIONS [TITLE II, EXCESS PROFITS TAX ACT OF 1950, APPROVED JANUARY 3, 1951].

(a) CREDIT FOR DIVIDENDS PAID ON CERTAIN PREFERRED STOCK.—Section 26(h)(1)(B) of the Internal Revenue Code (relating to credit for dividends paid on certain preferred stock) is hereby amended by striking out "31 per centum" and inserting in lieu thereof "30 per centum".

(b) WESTERN HEMISPHERE TRADE CORPORATIONS.—Section 26(i)(1) of such Code (relating to credit of western hemisphere trade corporations) is hereby amended by striking out "31 per centum" and inserting in lieu thereof "30 per centum".

(c) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning on or after July 1, 1950.

SEC. 122. CREDITS OF CORPORATIONS [PART II, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) DIVIDENDS RECEIVED CREDIT.—Paragraphs (1) and (2) of section 26(b) (relating to credit for dividends received) are hereby amended to read as follows:

"(1) IN GENERAL.—85 per centum of the amount received as dividends (other than dividends described in paragraph (2) on the preferred stock of a public utility) from a domestic corporation which is subject to taxation under this chapter.

"(2) CERTAIN PREFERRED STOCK.—

"(A) Calendar Year 1951.—In the case of a taxable year beginning on January 1, 1951, and ending on December 31, 1951, 61 per centum of the amount received as dividends on the preferred stock of a public utility which is subject to taxation under this chapter and with respect to which the credit provided in section 26(h) for dividends paid is allowable.

"(B) Taxable Years Beginning After March 31, 1951, and Before April 1, 1954.—In the case of taxable years beginning after March 31, 1951, and before April 1, 1954, 62 per centum of the amount received as dividends on the preferred stock of a public utility which is subject to taxation under this chapter and with respect to which the credit provided in section 26(h) for dividends paid is allowable.

"(C) Taxable Years Beginning After March 31, 1954.—In the case of taxable years beginning after March 31, 1954, 59 per centum of the amount received as dividends on the preferred stock of a public utility which is subject to taxation under this chapter and with respect to which the credit provided in section 26(h) for dividends paid is allowable."

(b) CREDIT FOR DIVIDENDS PAID ON CERTAIN PREFERRED STOCK.—The first sentence of section 26(h)(1) (relating to amount of credit for dividends paid on certain preferred stock) is hereby amended to read as follows: "In the case of a public utility, (A) for a taxable year beginning on January 1, 1951, and ending on December 31, 1951, an amount equal to 28 per centum of the lesser of (i) the amount of dividends paid during the taxable year on its preferred stock or (ii) the adjusted net income for such taxable year minus the credit for dividends received provided in subsection (b) for such year, (B) for a taxable year beginning after March 31, 1951, and before April 1, 1954, an amount equal to 27 per centum of the lesser of (i) the amount of dividends paid during the taxable year on its preferred stock or (ii) the adjusted net income for such taxable year minus the credit for dividends received provided in subsection (b) for such year, and (C) for a taxable year beginning after March 31, 1954, an amount equal to 30 per centum of the lower of (i) the amount of dividends paid during the taxable year on its preferred stock or (ii) the adjusted net income for such taxable year minus the credit for dividends received provided in subsection (b) for such year."

(c) WESTERN HEMISPHERE TRADE CORPORATIONS.—Section 26(i) (relating to credit of a western hemisphere trade corporation) is hereby amended to read as follows:

"(i) WESTERN HEMISPHERE TRADE CORPORATIONS.—In the case of a western hemisphere trade corporation (as defined in section 109)—

"(1) CALENDAR YEAR 1951.—In the case of a taxable year beginning on January 1, 1951, and ending on December 31, 1951, an amount equal to 28 per centum of its normal-tax net income computed without regard to the credit provided in this subsection.

"(2) TAXABLE YEARS BEGINNING AFTER MARCH 31, 1951, AND BEFORE APRIL 1, 1954.—In the case of a taxable year beginning after March 31, 1951, and before April 1, 1954, an amount equal to 27 per centum of its normal-tax net income computed without regard to the credit provided in this subsection.

"(3) TAXABLE YEARS BEGINNING AFTER MARCH 31, 1954.—In the case of a taxable year beginning after March 31, 1954, an amount equal to 30 per centum of its normal-tax net income computed without regard to the credit provided in this subsection."

SEC. 125. EFFECTIVE DATE [PART II, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

The amendments made by this part [inc. sec. 122] shall be applicable only with respect to taxable years beginning after March 31, 1951, and to taxable years beginning on January 1, 1951, and ending on December 31, 1951, * * * For treatment of taxable years (other than the calendar year 1951) beginning before April 1, 1951, and ending after March 31, 1951, see section 131.

SEC. 311. CREDIT FOR DIVIDENDS RECEIVED [TITLE III, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) DIVIDENDS FROM FOREIGN CORPORATION ENGAGED IN TRADE OR BUSINESS IN THE UNITED STATES.—Section 26(b) (relating to dividends received credit) is hereby amended by inserting after paragraph (2) the following new paragraph:

"(3) DIVIDENDS RECEIVED FROM CERTAIN FOREIGN CORPORATIONS.—In the case of dividends received from a foreign corporation (other than a foreign personal holding company) which is subject to taxation under this chapter, if, for an uninterrupted period of not less than 36 months ending with the close of such foreign corporation's taxable year in which such dividends are paid (or, if the corporation has not been in existence for 36 months at the close of such taxable year, for the period the foreign corporation has been in existence as of the close of such taxable year) such foreign corporation has been engaged in trade or business within the United States and has derived 50 per centum or more of its gross income from sources within the United States—

"(A) an amount equal to 85 per centum of the dividends received out of its earnings or profits specified in clause (2) of the first sentence of section 115(a), but such amount shall not exceed an amount which bears the same ratio to 85 per centum of such dividends received out of such earnings or profits as the gross income of such foreign corporation for the taxable year from sources within the United States bears to its gross income from all sources for such taxable year, and

"(B) an amount equal to 85 per centum of the dividends received out of that part of its earnings or profits specified in clause (1) of the first sentence of section 115(a) accumulated after the beginning of such uninterrupted period, but such amount shall not exceed an amount which bears the same ratio to 85 per centum of such dividends received out of such accumulated earnings or profits as the gross income of such foreign corporation from sources within the United States for the portion of such uninterrupted period ending at the beginning of such taxable year bears to its gross income from all sources for such portion of such uninterrupted period.

For determination of earnings or profits distributed in any taxable year, see section 115(b)."

* * * * * * *

(c) EFFECTIVE DATE.—The amendments made by this section shall be applicable only with respect to taxable years beginning after December 31, 1950.

SEC. 612. CREDIT IN PRIOR TAXABLE YEARS FOR DIVIDENDS RECEIVED ON PREFERRED STOCK OF A PUBLIC UTILITY [TITLE VI, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

In the case of taxable years beginning before April 1, 1951, any reference in section 15(a) or 26(b) of the Internal Revenue Code to dividends

received on the preferred stock of a public utility shall be construed as referring only to dividends received on the preferred stock of a public utility with respect to which the credit provided in section 26(h) of such Code for dividends paid was allowable.

PAR. 8. Section 29.26–5, as amended by Treasury Decision 5384 [C. B. 1944, 148], approved June 30, 1944 [26 CFR 29.26–5], is further amended as follows:

(A) By amending the first sentence of (*a*) of the section to read as follows:

A credit is provided in section 26(h) for dividends paid during the taxable year by certain public utility corporations on certain preferred stock.

(B) By inserting in the first sentence of the second paragraph of (*a*) of the section after "For the purposes of section 26(h)" the following: "and this section".

(C) By striking out the heading and the first sentence of (*b*) of the section and inserting in lieu thereof the following:

(*b*) *Amount of credit.*—For taxable years beginning before July 1, 1950 (other than the calendar year 1950), the credit provided in section 26(h) is an amount equal to the dividends paid during the taxable year by a public utility on its preferred stock. For a taxable year which is the calendar year 1950 and for taxable years beginning after June 30, 1950, the credit provided in section 26(h) is an amount equal to a specified percent of the lesser of (1) the amount of the dividends paid during the taxable year by a public utility on its preferred stock or (2) the adjusted net income of the public utility for such taxable year minus the credit for dividends received allowable to such public utility for such taxable year under section 26(b). The specified percent applicable for the respective taxable years is as follows:

	Percent
For a taxable year which is the calendar year 1950	33
For taxable years beginning after June 30, 1950, and before April 1, 1951 (other than the calendar year 1951)	30
For taxable year which is the calendar year 1951	28
For taxable years beginning after March 31, 1951, and before April 1, 1954	27
For taxable years beginning after March 31, 1954	30

For taxable years beginning before July 1, 1950, and ending after June 30, 1950 (other than the calendar year 1950), see section 29.108–5. For taxable years beginning after June 30, 1950, and before April 1, 1951, and ending after March 31, 1951 (other than the calendar year 1951), see section 29.108–6. For taxable years beginning before April 1, 1954, and ending after March 31, 1954, see section 29.108–9.

For taxable years beginning after December 31, 1943, the amount of dividends paid in a given taxable year shall not include any amount distributed in such year with respect to dividends unpaid and accumulated in any taxable year ending prior to October 1, 1942.

(D) By striking out in the second sentence of the second paragraph of (*c*) of the section "the appropriate allocable portion of the total amount of dividends paid on such stock will be allowable as a credit under such section" and inserting in lieu thereof "the appropriate allocable portion of the total amount of dividends paid on such stock will be considered as having been paid on stock which was issued prior to October 1, 1942".

(E) By striking out the fourth and sixth sentences of the second paragraph of (*c*) of the section.

PAR. 9. There is inserted immediately after section 29.26–5, as amended by Treasury Decision 5384 [26 CFR 29.26–5], the following new sections:

SEC. 29.26–6. CREDIT FOR DIVIDENDS RECEIVED.—(*a*) *Dividends on stock of domestic corporations.*—A credit is provided in section 26(b) for dividends received from a domestic corporation which is subject to taxation under chapter 1 of the Internal Revenue Code. Such credit of a corporation for a taxable year is, except as provided in paragraph (*d*) of this section, an amount equal to 85 percent of such dividends received by the corporation during the taxable year. For the purpose of determining the corporation surtax net income for taxable years beginning before July 1, 1950 (other than the calendar year 1950), dividends received on the preferred stock of a public utility with respect to which the credit for dividends paid provided in section 26(h) is allowable to the distributing corporation shall be disregarded in determining the credit under this paragraph. The credit under this paragraph for a taxable year which is the calendar year 1950 and for taxable years beginning after June 30, 1950, shall be determined without regard to dividends received on the preferred stock of a public utility with respect to which the credit for dividends paid provided in section 26(h) is allowable to the distributing corporation. For taxable years beginning before July 1, 1950, and ending after June 30, 1950 (other than the calendar year 1950), see section 29.108–5. For credit for such dividends received on the preferred stock of a public utility, see paragraph (*b*) of this section. If a credit for dividends paid is not allowable to the distributing corporation under section 26(h) with respect to the dividends on its preferred stock, such dividends received from a domestic public utility corporation subject to taxation under chapter 1 are includible in determining the credit under this paragraph.

(*b*) *Dividends on certain preferred stock of public utilities.*—For a taxable year which is the calendar year 1950 and for taxable years beginning after June 30, 1950, a credit is provided in section 26(b)(2) for dividends received on certain preferred stock of certain public utility corporations subject to taxation under chapter 1 of the Internal Revenue Code. Such credit is allowable only for dividends received on the preferred stock of a public utility with respect to which the credit for dividends paid provided in section 26(h) is allowable to the distributing corporation. The credit of a corporation under section 26(b)(2) for a taxable year is, except as provided in paragraph (*d*) of this section, an amount equal to the following percent of such dividends received by the corporation during the taxable year:

	Percent
For a taxable year which is the calendar year 1950	57
For taxable years beginning after June 30, 1950, and before April 1, 1951 (other than the calendar year 1951)	59
For a taxable year which is the calendar year 1951	61
For taxable years beginning after March 31, 1951, and before April 1, 1954	62
For taxable years beginning after March 31, 1954	59

For taxable years beginning before July 1, 1950, and ending after June 30, 1950 (other than the calendar year 1950), see section 29.108–5. For taxable years beginning after June 30, 1950, and before April 1, 1951, and ending after March 31, 1951 (other than the calendar year 1951), see section 29.108–6. For taxable years beginning before April 1, 1954, and ending after March 31, 1954, see section 29.108–9.

(*c*) *Dividends on stock of certain foreign corporations.*—For taxable years beginning after December 31, 1950, a credit is provided in section 26(b)(3) for dividends received from a foreign corporation (other than a foreign personal holding company as defined in section 331) which is subject to taxation under chapter 1 of the Internal Revenue Code if, for an uninterrupted period of not less than 36 months ending with the close of the foreign corporation's taxable year in which the dividends are paid, such foreign corporation has been engaged in trade or business within the United States and has derived 50 percent or more of its gross income from sources within the United States. If the foreign corporation has been in existence less than 36 months as of the close of the taxable year in which the dividends are paid, then the applicable uninterrupted period to be taken into consideration in lieu of the uninterrupted period of 36 or more months is the entire period such corporation has been in existence as of the close of such taxable year. An uninterrupted period which satisfies the twofold requirement with respect to business activity and gross income may start at a date later than the date on which the foreign corporation first commenced an uninterrupted period of engaging in trade or business within the United States, but the applicable uninterrupted period is in any event the longest uninterrupted period which satisfies such twofold requirement.

The credit of a corporation under section 26(b)(3) for a taxable year is, except as provided in paragrpah (*d*) of this section, an amount equal to 85 percent of such dividends—

(1) received out of the foreign corporation's earnings or profits for its taxable year in which the dividends are paid (computed as of the close of such taxable year without diminution by reason of any distributions made during such taxable year) without regard to the amount of the earnings and profits at the time the distribution was made, but not in excess of an amount which bears the same ratio to 85 percent of such dividends received as the gross income of the foreign corporation for such taxable year from sources within the United States bears to its gross income from all sources for such year, and

(2) received out of that part of the foreign corporation's earnings or profits accumulated after February 28, 1913, which has accumulated after the beginning of the applicable uninterrupted period, but not in excess of an amount which bears the same ratio to 85 percent of such dividends received as the gross income of the foreign corporation from sources within the United States for that portion of the applicable uninterrupted period which ends at the beginning of its taxable year in which the dividends are paid bears to its gross income from all sources for the same portion of such applicable uninterrupted period.

The determination of earnings or profits distributed in any taxable year shall be made in accordance with the principles of section 115(b) of the Internal Revenue Code. For the determination of the source of income, see section 119 and the regulations thereunder.

The application of section 26(b)(3) may be illustrated by the following examples:

Example (*1*). Corporation A (a foreign corporation filing its income tax return on a calendar year basis) whose stock is 100 percent owned by Corporation B (a domestic corporation filing its income tax return on a calendar year basis) for the first time engaged in trade or business within the United States on January 1, 1940, and qualifies under section 26(b)(3) for the entire period beginning on that date and ending on December 31, 1951. Corporation A had accumulated earnings or profits of $50,000 immediately prior to January 1, 1940, and had earnings or profits of $10,000 for each taxable year during the uninterrupted period from January 1, 1940, through December 31, 1951. It derived for the period from January 1, 1940, through December 31, 1950, 90 percent of its gross income from sources within the United States, and in 1951 derived 95 percent of its gross income from sources within the United States. During the calendar years 1940, 1941, 1942, 1943, and 1944 Corporation A distributed in each year $15,000; during the calendar years 1945, 1946, 1947, 1948, 1949, and 1950 it distributed in each year $5,000; and during the year 1951, $50,000. For 1951 a dividends received credit of $31,025 is allowable to Corporation B with respect to the $50,000 received from Corporation A, computed as follows:

(i) $8,075 which is $8,500 (85 percent of the $10,000 of earnings or profits of the taxable year) multiplied by 95 percent (the portion of the gross income of Corporation A derived during the taxable year from sources within the United States), plus

(ii) $22,950 which is $25,500 (85 percent of $30,000 (that part of the earnings or profits accumulated after the beginning of the uninterrupted period)) multiplied by 90 percent (the portion of the gross income of Corporation A derived from sources within the United States during that portion of the uninterrupted period ending at the beginning of the taxable year).

Example (*2*). If in example (1) Corporation A for the taxable year 1951 had incurred a deficit of $10,000 (shown to have been incurred prior to December 31), and if it had distributed $50,000 on December 31, 1951, the dividends received credit allowable to Corporation B would be $15,300, computed by multiplying $17,000 (85 percent of $20,000 earnings or profits accumulated after the beginning of the uninterrupted period) by 90 percent (the portion of the gross income of Corporation A derived from United States sources during that portion of the uninterrupted period ending at the beginning of the taxable year).

For taxable years beginning before July 1, 1950, and ending after June 30, 1950 (other than the calendar year 1950), see section 29.108–5. For taxable years beginning after June 30, 1950, and before April 1, 1951, and ending after March 31, 1951 (other than the calendar year 1951), see section 29.108–6.

(*d*) *Limitations on credit.*—No credit is allowable under section 26(b) in respect of dividends received from a corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., title 15, c. 4), or from a corporation which under section 251 is taxable only on its gross income from sources within the United States by reason of its receiving a large percentage of its gross income from sources within a possession of the United States. For taxable years beginning before January 1, 1946, the credit under section 26(b) is limited to 85 percent of the corporation's adjusted net income reduced by the credit provided in section 26(e) for income subject to the excess profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code. For taxable years beginning after December 31, 1945, and ending before January 1, 1950, the credit under section 26(b) is limited to 85 percent of the corporation's adjusted net income. For taxable years ending after December 31, 1949, the credit under section 26(b) (that is, the sum of the credits determined under paragraphs (a), (b), and (c) of this section) is limited to 85 percent of the corporation's adjusted net income computed without regard to the deduction for net operating loss allowed by section 23(s). For the purpose of section 26(b) and this section (but not for the purpose of computing adjusted net income), if the whole or any part of a dividend is received after August 31, 1950, in property other than money, the amount of such dividend in such property shall not be considered to be in excess of the adjusted basis of such property in the hands of the distributing corporation at the time of distribution increased in the amount of gain or decreased in the amount of loss recognized to the distributing corporation by reason of such distribution. In no event shall the amount of the dividend in property other than money be treated as an amount greater than the fair market value of such property received by the shareholder. For definition of the term "adjusted net income", see section 13(a)(1) and section 29.13–1. For taxable years beginning in 1945 and ending in 1946, see section 29.108–2.

SEC. 29.26–7. CREDIT OF WESTERN HEMISPHERE TRADE CORPORATIONS.—For a taxable year which is the calendar year 1950 and for taxable years beginning after June 30, 1950, a credit is provided in section 26(i) for Western Hemisphere trade corporations as defined in section 109. The credit under section 26(i) of a Western Hemisphere trade corporation for a taxable year is an amount equal to the following percent of its normal-tax net income for such taxable year computed without regard to such credit:

	Percent
For a taxable year which is the calendar year 1950	33
For taxable years beginning after June 30, 1950, and before April 1, 1951 (other than the calendar year 1951)	30
For a taxable year which is the calendar year 1951	28
For taxable years beginning after March 31, 1951, and before April 1, 1954	27
For taxable years beginning after March 31, 1954	30

For taxable years beginning before July 1, 1950, and ending after June 30, 1950 (other than the calendar year 1950), see section 29.108–5. For taxable years beginning after June 30, 1950, and before April 1, 1951, and ending after March 31, 1951 (other than the calendar year 1951), see section 29.108–6. For taxable years beginning before April 1, 1954, and ending after March 31, 1954, see section 29.108–9.

PAR. 10. There is inserted immediately preceding section 29.51–1 [26 CFR 29.52–1] the following:

SEC. 124. FILING OF CORPORATION RETURNS FOR TAXABLE YEARS ENDING AFTER MARCH 31, 1951, AND BEFORE OCTOBER 1, 1951 [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

In the case of a corporation subject to a tax imposed by chapter 1 of the Internal Revenue Code for a taxable year ending after March 31, 1951, but prior to October 1, 1951, such corporation shall after the date of the enactment of this Act and on or before January 15, 1952, make a return for such taxable year with respect to the tax imposed by chapter 1 of the Internal Revenue Code for such taxable year. The return required by this section for such taxable year shall constitute the return for such taxable year for all purposes of the Internal Revenue Code; **and no**

return for such taxable year, with respect to any tax imposed by chapter 1 of such Code, filed on or before the date of the enactment of this Act shall be considered for any of such purposes as a return for such year. The taxes imposed by chapter 1 of such Code (determined with the amendments made by this Act) for such taxable year shall be paid on January 15, 1952, in lieu of the time prescribed in section 56(a) of such Code. All payments with respect to any tax for such taxable year imposed by chapter 1 of such Code under the law in effect prior to the enactment of this Act, to the extent that such payments have not been credited or refunded, shall be deemed payments made at the time of the filing of the return required by this section on account of the tax for such taxable year under chapter 1 determined with the amendments made by this Act.

PAR. 11. There is inserted immediately after section 29.52-3, as added by Treasury Decision 5861 [C. B. 1951-2, 41], approved October 18, 1951 [26 CFR 29.52-3], the following new section:

SEC. 29.52-4. CERTAIN CORPORATE RETURNS FOR TAXABLE YEARS ENDING AFTER MARCH 31, 1951, AND BEFORE OCTOBER 1, 1951.—The return of a corporation subject to a tax imposed by chapter 1 of the Internal Revenue Code for a taxable year ending after March 31, 1951, and before October 1, 1951, shall be filed after October 20, 1951 (the date of enactment of the Revenue Act of 1951), and on or before January 15, 1952. Such return shall constitute the return for such taxable year, and no return for such taxable year filed on or before October 20, 1951, shall be considered as a return for such taxable year. The taxes for such taxable year shall be paid on or before January 15, 1952. All payments of tax (including interest, penalties, and additions to the tax) for such taxable year made on or before October 20, 1951, shall be deemed to be payments of tax made at the time of the filing of the return required by this section to be filed on or before January 15, 1952, except to the extent any such payments are credited or refunded prior to the time such return is filed. The provisions of section 29.56-1(*b*)(3) (ii) and (iv) shall apply with respect to the payment of such tax by installment payments, and for such purpose, the date prescribed for the payment of the tax as a single payment is January 15, 1952.

PAR. 12. Section 29.53-1, as amended by Treasury Decision 5893 [C. B. 1952-1, 126], approved April 4, 1952 [26 CFR 29.53-1], is further amended by adding at the end of the section the following:

For provisions relating to the time for filing certain corporation returns for taxable years ending after March 31, 1951, and before October 1, 1951, see section 29.52-4.

PAR. 13. Section 29.104-1 [26 CFR 29.104-1] is amended to read as follows:

SEC. 29.104-1. TAX ON BANKS.—For taxable years beginning before July 1, 1950 (other than the calendar year 1950), a bank, as defined in section 104(a), is, under section 104(b), subject to the tax imposed by section 13 if it has a normal-tax net income of more than $25,000 (see section 29.13-1), or to the tax provided by section 14(b) if it has a normal-tax net income of not more than $25,000 (see section 29.14-1). For a taxable year which is the calendar year 1950 and for taxable years beginning after June 30, 1950, a bank, as defined in section 104(a), is, under section 104(b), subject to the normal tax on corporations imposed by section 13 (see section 29.13-1). Such a bank is also subject to the surtax imposed by section 15 (see section 29.15-1). For treatment of mutual savings banks conducting life insurance business, see section 110.

PAR. 14. Section 29.109-1 [26 CFR 29.109-1] is amended as follows:

(A) By striking out the first sentence and so much of the second sentence as precedes the colon and inserting in lieu thereof the following: "The term 'Western Hemisphere trade corporation' for the purposes of chapter 1 of the Internal Revenue Code means a domestic corporation which meets the following tests".

(B) By striking out in the last sentence of the first paragraph of the section "A domestic corporation is not excluded from the exemption" and inserting in lieu thereof "A domestic corporation is not excluded from the definition".

(C) By striking out in the first sentence of the second paragraph of the section "A corporation which claims exemption as a Western Hemisphere trade corporation" and inserting in lieu thereof "A corporation which claims to qualify as a Western Hemisphere trade corporation".

PAR. 15. There is inserted immediately preceding section 29.119–1 [26 CFR 29.119–1] the following:

SEC. 311. CREDIT FOR DIVIDENDS RECEIVED [TITLE III, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(b) TECHNICAL AMENDMENT.—Section 119(a)(2)(B) (relating to rules as to source of income in the case of dividends) is hereby amended by inserting before the semicolon at the end thereof the following: "to the extent exceeding the amount which is 100/85ths of the amount of the credit allowable under section 26(b) in respect of such dividends".

(c) EFFECTIVE DATE.—The amendments made by this section shall be applicable only with respect to taxable years beginning after December 31, 1950.

PAR. 16. Section 29.119–3 [26 CFR 29.119–3] is amended as follows:

(A) By changing the last sentence of (*b*) of the section to read as follows:

However, for the purpose of section 131, relating to credits for taxes of foreign countries and possessions of the United States, dividends from a foreign corporation shall, for taxable years beginning before January 1, 1951, be treated as income from sources without the United States; and, for taxable years beginning after December 31, 1950, as income from such sources to the extent exceeding the amount which is 100/85ths of the amount of the credit, if any, allowable under section 26(b) in respect of such dividends.

(B) By striking out in the last paragraph of the section "(except for the purposes of section 131)" and inserting in lieu thereof the following: "(except for the purpose of section 131 to the extent indicated in paragraph (b))".

PAR. 17. There is inserted immediately preceding section 29.122–1 [26 CFR 29.122–1] the following:

SEC. 121. INCREASE IN RATE OF CORPORATION INCOME TAXES [PART II, TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(g) TECHNICAL AMENDMENTS.—

* * * * * * *

(2) Section 122(c) (relating to amount of net operating loss deduction) is hereby amended by striking out "without the credit provided in section 26(e)" and inserting in lieu thereof "without the credits provided in section 26 (h) and (i)".

* * * * * * *

SEC. 123. EFFECTIVE DATE OF PART II [TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

The amendments made by this part [inc. sec. 121(g)(2)] shall be applicable only with respect to taxable years ending after December 31, 1949. * * *

PAR. 18. Section 29.122–5 [26 CFR 29.122–5] is amended by striking out at the end of the first sentence "the credit provided in section 26(e) for income subject to the excess profits tax shall not be allowed" and by inserting in lieu thereof the following: "the credits provided in section 26(e) for income subject to the excess profits tax, section 26(h) for dividends paid by a public utility on its preferred stock, and section 26(i) in the case of a Western Hemisphere trade corporation, shall not be allowed".

PAR. 19. There is inserted immediately preceding section 29.204–1 [26 CFR 29.204–1] the following:

SEC. 121. INCREASE IN RATE OF CORPORATION INCOME TAXES [PART II, TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(g) TECHNICAL AMENDMENTS.—

* * * * * * *

(4) 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 204(a)(1) (relating to insurance companies other than life or mutual) is hereby amended by striking out "at the rates specified 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)".

* * * * * * *

PAR. 20. Section 29.204–1, as amended by Treasury Decision 5369 [C. B. 1944, 333], approved May 11, 1944 [26 CFR 29.204–1], is further amended by striking out the last paragraph and inserting in lieu thereof the following:

Insurance companies are subject to both normal tax and surtax. For taxable years beginning before July 1, 1950 (other than the calendar year 1950), the normal tax shall be at the rate specified in section 13(b) for such years if the company has a normal-tax net income of more than $25,000, or at the rate specified in section 14(b) for such years if it has a normal-tax net income of not more than $25,000. For a taxable year which is the calendar year 1950 and for taxable years beginning after June 30, 1950, the normal tax shall be computed as provided in section 13(b) for such years. For what constitutes normal-tax net income for the respective taxable years, see section 29.13–1. For taxable years beginning before July 1, 1950 (other than the calendar year 1950), the surtax shall be at the rate specified in section 15(b) for such years. For a taxable year which is the calendar year 1950 and for taxable years beginning after June 30, 1950, the surtax shall be computed as provided in section 15(b) for such years. For what constitutes corporation surtax net income for the respective taxable years, see section 29.15–1. For alternative tax where the net long-term capital gain for any taxable year exceeds the net short-term capital loss, see section 117(c) and the regulations thereunder.

PAR. 21. There is inserted immediately preceding section 29.207–1 [26 CFR 29.207–1] the following:

SEC. 121. INCREASE IN RATE OF CORPORATION INCOME TAXES [PART II, TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(d) MUTUAL INSURANCE COMPANIES OTHER THAN LIFE OR MARINE.—

(1) Section 207(a)(1) (relating to normal tax and surtax on mutual insurance companies, other than life or marine) is hereby amended by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) Taxable Years Beginning After June 30, 1950.—In the case of taxable years beginning after June 30, 1950.—

"(i) Normal tax.—A normal tax on the normal-tax net income, computed at the rate provided in section 13(b)(1), or 50 per centum of the amount by which the normal-tax net income exceeds $3,000, whichever is the lesser; plus

"(ii) Surtax.—A surtax on the corporation surtax net income, computed as provided in section 15(b)(1).

"(B) Calendar Year 1950.—In the case of a taxable year beginning on January 1, 1950, and ending on December 31, 1950—

"(i) Normal tax.—A normal tax on the normal-tax net income, computed at the rate provided in section 13(b)(2), or 46 per centum of the amount by which the normal-tax net income exceeds $3,000, whichever is the lesser; plus

"(ii) Surtax.—A surtax on the corporation surtax net income, computed as provided in section 15(b)(2)."

(2) Section 207(a)(3) (relating to normal tax and surtax on interinsurers or reciprocal underwriters) is hereby amended by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) Taxable Years Beginning After June 30, 1950.—In the case of taxable years beginning after June 30, 1950—

"(i) Normal Tax.—A normal tax on the normal-tax net income, computed at the rate provided in section 13(b)(1), or 50 per centum of the amount by which the normal-tax net income exceeds $50,000, whichever is the lesser; plus

"(ii) Surtax.—A surtax on the corporation surtax net income, computed as provided in section 15(b)(1), or 30 per centum of the amount by which the corporation surtax net income exceeds $50,000, whichever is the lesser.

"(B) Calendar Year 1950.—In the case of a taxable year beginning on January 1, 1950, and ending on December 31, 1950—

"(i) Normal tax.—A normal tax on the normal-tax net income, computed at the rate provided in section 13(b)(2), or 46 per centum of the amount by which the normal-tax net income exceeds $50,000, whichever is the lesser; plus

"(ii) Surtax.—A surtax on the corporation surtax net income, in an amount computed as provided in section 15(b)(2), or in an amount equal to one and one-half times the surtax which would be computed under section 15(b)(2) if the corporation surtax net income were reduced by $25,000, whichever amount is the lesser."

(3) The amendments made by this subsection shall apply only with respect to taxable years beginning after June 30, 1950, and to taxable years beginning on January 1, 1950, and ending on December 31, 1950.

* * * * * * *

SEC. 201. SURTAX ON CORPORATIONS [TITLE II, EXCESS PROFITS TAX ACT OF 1950, APPROVED JANUARY 3, 1951].

* * * * * * *

(b) MUTUAL INSURANCE COMPANIES OTHER THAN LIFE OR MARINE.—Section 207(a)(3)(A)(ii) of such Code (relating to surtax on interinsurers or reciprocal underwriters) is hereby amended by striking out "30 per centum" and inserting in lieu thereof "33 per centum".

* * * * * * *

(e) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning on or after July 1, 1950.

SEC. 121. INCREASE IN RATE OF CORPORATION NORMAL TAX [PART II, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(c) MUTUAL INSURANCE COMPANIES OTHER THAN LIFE OR MARINE.—(1) Section 207(a)(1) (relating to normal tax and surtax on mutual insurance companies, other than life or marine) is hereby amended by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) Taxable Years Beginning After December 31, 1950, and Before April 1, 1951.—In the case of taxable years beginning after December 31, 1950, and before April 1, 1951, and ending after March 31, 1951—

"(i) Normal tax.—A normal tax of 28¾ per centum of the normal-tax net income, or 57½ per centum of the amount by which the normal-tax net income exceeds $3,000, whichever is the lesser; plus

"(ii) Surtax.—A surtax of 22 per centum of the corporation surtax net income in excess of $25,000.

"(B) Taxable Years Beginning After March 31, 1951, and Before April 1, 1954.—In the case of taxable years beginning after March 31, 1951, and before April 1, 1954—

"(i) Normal tax.—A normal tax of 30 per centum of the normal-tax net income, or 60 per centum of the amount by which the normal-tax net income exceeds $3,000, whichever is the lesser; plus

"(ii) Surtax.—A surtax of 22 per centum of the corporation surtax net income in excess of $25,000.

"(C) Taxable Years Beginning After March 31, 1954.—In the case of a taxable year beginning after March 31, 1954—

"(i) Normal tax.—A normal tax of 25 per centum of the normal-tax net income, or 50 per centum of the amount by which the normal-tax net income exceeds $3,000, whichever is the lesser; plus

"(ii) Surtax.—A surtax of 22 per centum of the corporation surtax net income in excess of $25,000."

(2) Section 207(a)(3) (relating to a normal tax and surtax on interinsurers and reciprocal underwriters) is hereby amended by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) Taxable Years Beginning After December 31, 1950, and before April 1, 1951.—In the case of taxable years beginning after December 31, 1950, and before April 1, 1951, and ending after March 31, 1951—

"(i) Normal tax.—A normal tax of 28¾ per centum of the normal-tax net income, or 57½ per centum of the amount by which the normal-tax net income exceeds $50,000, whichever is the lesser; plus

"(ii) Surtax.—A surtax of 22 per centum of the corporation surtax net income in excess of $25,000, or 33 per centum of the amount by which the corporation surtax net income exceeds $50,000, whichever is the lesser.

"(B) Taxable Years Beginning After March 31, 1951, and Before April 1, 1954.—In the case of taxable years beginning after March 31, 1951, and before April 1, 1954—

"(i) Normal tax.—A normal tax of 30 per centum of the normal-tax net income, or 60 per centum of the amount by which the normal-tax net income exceeds $50,000, whichever is the lesser; plus

"(ii) Surtax.—A surtax of 22 per centum of the corporation surtax net income in excess of $25,000, or 33 per centum of the amount by which the corporation surtax net income exceeds $50,000, whichever is the lesser.

"(C) Taxable Years Beginning After March 31, 1954.—In the case of a taxable year beginning after March 31, 1954—

"(i) Normal tax.—A normal tax of 25 per centum of the normal-tax net income, or 50 percentum of the amount by which the normal-tax net income exceeds $50,000, whichever is the lesser; plus

"(ii) Surtax.—A surtax of 22 per centum of the corporation surtax net income in excess of $25,000, or 33 per centum of the amount by which the corporation surtax net income exceeds $50,000, whichever is the lesser."

* * * * * * *

SEC. 125. EFFECTIVE DATE [PART II, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

The amendments made by this part [inc. sec. 121(c)] shall be applicable only with respect to taxable years beginning after March 31, 1951, and to taxable years beginning on January 1, 1951, and ending on December 31, 1951, except that the amendments made to sections 207 * * * of the Internal Revenue Code shall be applicable to taxable years beginning after December 31, 1950, and ending after March 31, 1951. In the case of an insurance company subject to the tax imposed by section 207, the provisions of section 26(b) of such code applicable to the calendar year 1951 shall be applicable to a taxable year beginning after December 31, 1950, and before April 1, 1951, and ending after March 31, 1951. * * *

PAR. 22. Section 29.207–1, as amended by Treasury Decision 5600 [C. B. 1948–1, 5], approved February 2, 1948 [26 CFR 29.207–1], is further amended as follows:

(A) By adding after the third sentence in the second paragraph of (*a*) of the section the following:

With respect to the credit for dividends received provided in section 26(b) for taxable years beginning after December 31, 1950, and before April 1, 1951, and ending after March 31, 1951, the provisions of section 26(b) applicable to the calendar year 1951 shall, in the case of such companies, be applicable to such taxable years.

(B) By inserting in the heading of (*c*) of the section after "*Taxable years beginning after December 31, 1945*" the following: ", *and before July 1, 1950 (other than the calendar year 1950)*".

(C) By inserting in the first sentence of (*c*) of the section after "For any taxable year beginning after December 31, 1945," the following: "and before July 1, 1950 (other than the calendar year 1950),".

(D) By adding at the end of the section the following:

(*d*) *Calendar year 1950; taxable years beginning after June 30, 1950, and before January 1, 1951; and taxable years beginning after December 31, 1950, and ending before April 1, 1951.*—For a taxable year which is the calendar year 1950, for any taxable year beginning after June 30, 1950, and before January 1, 1951, and for any taxable year beginning after December 31, 1950, and ending before April 1, 1951, the tax under section 207(a)(1) and 207(a)(3), except as hereinafter indicated, is computed upon normal-tax net income at the rate provided in section 13(b) applicable to such year and upon corporation surtax net income as provided in section 15(b) applicable to such year. The tax under section 207(a)(2), except as hereinafter indicated, is 1 percent of the gross amount of income from interest, dividends, rents, and net premiums, minus dividends to policyholders and minus wholly tax-exempt interest.

Under section 207(a)(1) companies with normal-tax net incomes of over $3,000 and not over $6,000 pay a normal tax, at a specified rate, on that portion of the normal-tax net income in excess of $3,000. The rates applicable for the respective taxable years in computing the normal tax of such companies are as follows:

	Percent
For a taxable year which is the calendar year 1950	46
For taxable years beginning after June 30, 1950, and before January 1, 1951	50
For taxable years beginning after December 31, 1950, and ending before April 1, 1951	50

Under section 207(a)(2) companies with gross amounts of income from interest, dividends, rents, and net premiums, minus dividends to policyholders and minus wholly tax-exempt interest, of over $75,000 and not over $150,000 pay a tax equal to 2 percent of that portion in excess of $75,000. Under section 207(a)(3) interinsurers and reciprocal underwriters with normal-tax net incomes of over $50,000 and not over $100,000 pay a normal tax, at a specified rate, on that portion of the normal-tax net income in excess of $50,000. The rates applicable for the respective taxable years in computing the normal tax of such interinsurers and reciprocal underwriters are as follows:

	Percent
For a taxable year which is the calendar year 1950	46
For taxable years beginning after June 30, 1950, and before January 1, 1951	50
For taxable years beginning after December 31, 1950, and ending before April 1, 1951	50

For a taxable year which is the calendar year 1950, the surtax under section 207(a)(3) of an interinsurer or reciprocal underwriter with corporation surtax net income of over $50,000 and not over $100,000 is an amount equal to one and one-half times the surtax which would be computed under section 15(b)(2) applicable to such taxable year if the corporation surtax net income of such interinsurer or reciprocal underwriter were reduced by $25,000. If, for a taxable year which is the calendar year 1950, an interinsurer or reciprocal underwriter has any partially tax-exempt interest for which a credit is provided in section 26(a) and has corporation surtax net income of over $100,000 and not over $102,777.72, the surtax under section 207(a)(3) of such interinsurer or reciprocal underwriter is the lesser of (1) the amount of the surtax computed as provided in section 15(b)(2) applicable to such taxable year, or (2) an amount equal to one and one-half times the surtax which would be computed under section 15(b)(2) applicable to such taxable year if the corporation surtax net income were reduced by $25,000. For a taxable year beginning after June 30, 1950, and before January 1, 1951, or a taxable year beginning after December 31, 1950, and ending before April 1, 1951, the surtax under section 207(a)(3) of an interinsurer or reciprocal underwriter with corporation surtax net income of over $50,000 and not over $100,000 is an amount equal to 33 percent of that portion of its corporation surtax net income in excess of $50,000.

Section 207(a)(4) provides for an adjustment of the amount computed under section 207(a)(1), section 207(a)(2)(A), and section 207(a)(3) where the gross amount received during the taxable year from interest, dividends, rents, and premiums (including deposits and assessments) is over $75,000 and less than $125,000. The adjustment reduces the tax otherwise computed under those sections to an amount which bears the same proportion to such tax as the excess over $75,000 bears to $50,000.

The application of section 207(a) (1), (2), (3), and (4) may be illustrated by the following examples:

Example (1). The X Company, a mutual casualty insurance company, for the calendar year 1950 has corporation surtax net income of $35,000 and, due to partially tax-exempt interest of $5,000, normal-tax net income of $30,000. The gross amount received from interest, dividends, rents, and premiums (including deposits and assessments) is $120,000, and the gross amount of income from interest, dividends, rents, and net premiums, minus dividends to policyholders and wholly tax-exempt interest, is $100,000. Under section 207(a)(1), without application of section 207(a)(4), the normal tax would be 23 percent of $30,000, or $6,900, since this is less than $12,420, 46 percent of $27,000 (excess of normal-tax net income of $30,000 over $3,000); and the surtax computed as provided in section 15(b)(2) would be $1,850, tentative surtax of 19 percent of $10,000 (excess of corporation surtax net income of $35,000 over $25,000), or $1,900, reduced by $50, 1 percent of $5,000 (the lower of $5,000, amount of partially tax-exempt interest, or $10,000, excess of corporation surtax net income of $35,000 over $25,000). The combined tax of $8,750 ($6,900 plus $1,850) would then be reduced by applying section 207(a)(4), since the gross receipts are between $75,000 and $125,000. The tax under section 207(a)(1), as thus adjusted, would be 90 percent of $8,750, or $7,875, since $45,000 (excess of $120,000 over $75,000) is 90 percent of $50,000. Under section 207(a)(2)(A), without reference to section 207(a)(4), the tax is 2 percent of $25,000 (excess of $100,000 over $75,000), or $500, since this is less than $1,000, 1 percent of $100,000. Applying section 207(a)(4) reduces this to $450, or 90 percent of $500. Since $7,875, the tax under section 207(a)(1), as adjusted, exceeds $450, the tax

under section 207(a)(2), as adjusted, the tax under section 207(a)(1), as adjusted, is applicable. The X Company would accordingly pay a combined normal tax and surtax of $7,875.

Example (2). The Y Exchange, an interinsurer for the calendar year 1950 has corporation surtax net income of $100,000 and, due to partially tax-exempt interest of $20,000, normal-tax net income of $80,000. The gross amount received from interest, dividends, rents, and premiums (including deposits and assessments) is $3,000,000. Under section 207(a)(3) the normal tax of the Y Exchange for the taxable year is 46 percent of $30,000 (excess of normal-tax net income of $80,000 over $50,000), or $13,800, since this is less than $18,400, 23 percent of $80,000. The surtax under section 207(a)(3) of the Y Exchange for the taxable year is $13,950, one and one-half times $9,300, the surtax which would be computed under section 15(b)(2) if the corporation surtax net income were reduced by $25,000 ($9,500 (19 percent of $50,000, excess of $75,000, corporation surtax net income of $100,000 reduced by $25,000, over $25,000) reduced by $200 (1 percent of $20,000, the lower of $20,000, amount of partially tax-exempt interest, or $50,000, excess of $75,000, corporation surtax net income of $100,000 reduced by $25,000, over $25,000)), since this is less than the surtax on corporation surtax net income of $100,000 computed as provided in section 15(b)(2). The surtax computed as provided in section 15(b)(2) would be $14,050, tentative surtax of $14,250 (19 percent of $75,000, excess of corporation surtax net income of $100,000 over $25,000) reduced by $200 (1 percent of $20,000, the lower of $20,000, amount of partially tax-exempt interest, or $75,000, excess of corporation surtax net income over $25,000). Since the Y Exchange is not subject to the tax imposed by section 207(a)(2) and is not entitled to the adjustment provided in section 207(a)(4), as its gross receipts are not less than $125,000, its total tax under section 207(a) is $27,750 ($13,800 plus $13,950).

Example (3). The Z Exchange, an interinsurer, for the calendar year 1950 has corporation surtax net income of $102,700 and, due to partially tax-exempt interest of $52,700, normal-tax net income of $50,000. The gross amount received from interest, dividends, rents, and premiums (including deposits and assessments) is $2,500,000. The Z Exchange is not subject to normal tax under section 207(a)(3) for the taxable year as its normal-tax net income does not exceed $50,000. The surtax under section 207(a)(3) of the Z Exchange for the taxable year is $14,229, one and one-half times $9,486, the surtax which would be computed under section 15(b)(2) if the corporation surtax net income were reduced by $25,000 ($10,013 (19 percent of $52,700, excess of $77,700, corporation surtax net income of $102,700 reduced by $25,000, over $25,000) reduced by $527 (1 percent of $52,700, the lower of $52,700, amount of partially tax-exempt interest, or $52,700, excess of $77,700, corporation surtax net income of $102,700 reduced by $25,000, over $25,000)), since this is less than the surtax on corporation surtax net income of $102,700 computed as provided in section 15(b)(2). The surtax computed as provided in section 15(b)(2) would be $14,236, tentative surtax of $14,763 (19 percent of $77,700, excess of corporation surtax net income of $102,700 over $25,000) reduced by $527 (1 percent of $52,700, the lower of $52,700, amount of partially tax-exempt interest, or $77,700, excess of corporation surtax net income over $25,000). Since the Z Exchange has no normal tax, is not subject to the tax imposed by section 207(a)(2), and is not entitled to the adjustment provided in section 207(a)(4), as its gross receipts are not less than $125,000, its total tax under section 207(a) is $14,229.

Example (4). If in the above example the partially tax-exempt interest were $53,500, the surtax under section 207(a)(3) of the Z Exchange for the calendar year 1950, computed as provided in section 15(b)(2), would be $14,228 (tentative surtax of $14,763, 19 percent of $77,700, reduced by $535, 1 percent of $53,500), since it is less than $14,229, one and one-half times $9,486, the surtax which would be computed under section 15(b)(2) if the corporation surtax net income were reduced by $25,000.

(e) *Taxable years beginning after December 31, 1950, and ending after March 31, 1951.*—For any taxable year beginning after December 31, 1950, and ending after March 31, 1951, the normal tax under section 207(a)(1) and 207(a)(3), except as hereinafter indicated, is computed upon normal-tax net income at the following rates:

	Percent
For taxable years beginning after December 31, 1950, and before April 1, 1951, and ending after March 31, 1951	28¾
For taxable years beginning after March 31, 1951, and before April 1, 1954	30
For taxable years beginning after March 31, 1954	25

For any taxable year beginning after December 31, 1950, and ending after March 31, 1951, the surtax under section 207(a)(1) and 207(a)(3), except as hereinafter indicated, is computed on that portion of the corporation surtax net income in excess of $25,000 at the rate of 22 percent. The tax under section 207(a)(2), except as hereinafter indicated, is 1 percent of the gross amount of income from interest, dividends, rents, and net premiums, minus dividends to policyholders and minus wholly tax-exempt interest.

Under section 207(a)(1) companies with normal-tax net incomes of over $3,000 and not over $6,000 pay a normal tax, at a specified rate, on that portion of the normal-tax net income in excess of $3,000. The rates applicable for the respective taxable years in computing the normal tax of such companies are as follows:

	Percent
For taxable years beginning after December 31, 1950, and before April 1, 1951, and ending after March 31, 1951	57½
For taxable years beginning after March 31, 1951, and before April 1, 1954	60
For taxable years beginning after March 31, 1954	50

Under section 207(a)(2) companies with gross amounts of income from interest, dividends, rents, and net premiums, minus dividends to policyholders and minus wholly tax-exempt interest, of over $75,000 and not over $150,000 pay a tax equal to 2 percent of that portion in excess of $75,000. Under section 207(a)(3) interinsurers and reciprocal underwriters with normal-tax net incomes of over $50,000 and not over $100,000 pay a normal tax computed on that portion of the normal-tax net income in excess of $50,000 at the following rates:

	Percent
For taxable years beginning after December 31, 1950, and before April 1, 1951, and ending after March 31, 1951	57½
For taxable years beginning after March 31, 1951, and before April 1, 1954	60
For taxable years beginning after March 31, 1954	50

Under section 207(a)(3) interinsurers and reciprocal underwriters with corporation surtax net incomes of over $50,000 and not over $100,000 pay a surtax, at the rate of 33 percent, on that portion of the corporation surtax net income in excess of $50,000.

Section 207(a)(4) provides for an adjustment of the amount computed under section 207(a)(1), section 207(a)(2)(A), and section 207(a)(3) where the gross amount received during the taxable year from interest, dividends, rents, and premiums (including deposits and assessments) is over $75,000 and less than $125,000. The adjustment reduces the tax otherwise computed under those sections to an amount which bears the same proportion to such tax as the excess over $75,000 bears to $50,000.

The application of section 207(a) (1), (2), (3), and (4) may be illustrated by the following examples:

Example (1). The W Company, a mutual casualty insurance company, for the calendar year 1952 has corporation surtax net income of $5,500 and, due to partially tax-exempt interest of $800, normal-tax net income of $4,700. The gross amount of income of the W Company from interest, dividends, rents, and net premiums, minus dividends to policyholders and wholly tax-exempt interest, is $150,000. Its normal tax under section 207(a)(1) for the calendar year 1952 is 60 percent of $1,700 ($4,700–$3,000), or $1,020, since its normal-tax net income is not over $6,000. It is not liable for surtax for the calendar year 1952 as its surtax net income does not exceed $25,000. It has no surtax and, therefore, its total tax under section 207(a)(1) is the normal tax of $1,020. The tax under section 207(a)(2) is 2 percent of $75,000 ($150,000–$75,000), or $1,500. Since the tax under section 207(a)(2) exceeds the tax under section 207(a)(1), the tax under section 207(a) is $1,500, namely, that imposed by section 207(a)(2).

Example (2). If in the above example the normal-tax net income were not over $3,000, the corporation surtax net income were not over $25,000, the gross amount received from interest, dividends, rents, and premiums (including deposits and assessments) were $90,000, and the gross amount of income from interest, dividends, rents, and net premiums, minus dividends to policyholders and wholly tax-exempt interest, were $70,000, the W Company would be required to file an income tax return but due to section 207(a) no income tax would be imposed.

Example (3). The X Company, a mutual casualty insurance company, for the calendar year 1952 has corporation surtax net income of $28,000 and, due to partially tax-exempt interest of $5,000, normal-tax net income of $23,000. The gross amount of income of the X Company from interest, dividends, rents, and net premiums, minus dividends to policyholders and wholly tax-exempt interest, is $1,200,000. Under section 207(a)(1) its normal tax for the calendar year 1952 is 30 percent of $23,000, or $6,900, and the surtax is 22 percent of $3,000 ($28,000–$25,000), or $660. The combined tax under section 207(a)(1) is $7,560 ($6,900 plus $660). The tax under section 207(a)(2) is 1 percent of $1,200,000, or $12,000. Since the tax under section 207(a)(2) exceeds the tax under section 207(a)(1), the tax under section 207(a) is $12,000, namely, that imposed by section 207(a)(2).

Example (4). The Y Company, a mutual fire insurance company subject to the tax imposed by section 207, for the calendar year 1952 has corporation surtax net income of $35,000 and, due to partially tax-exempt interest of $5,000 normal-tax net income of $30,000. The gross amount received from interest, dividends, rents, and premiums (including deposits and assessments) is $120,000, and the gross amount of income from interest, dividends, rents, and net premiums, minus dividends to policyholders and wholly tax-exempt interest, is $100,000. Under section 207(a)(1), without application of section 207(a)(4), the normal tax would be 30 percent of $30,000, or $9,000, since this is less than $16,200, 60 percent of $27,000 (excess of normal-tax net income of $30,000 over $3,000); and the surtax would be 22 percent of $10,000 (excess of corporation surtax net income of $35,000 over $25,000), or $2,200. The combined tax of $11,200 ($9,000 plus $2,200) would then be reduced by applying section 207(a)(4), since the gross receipts are between $75,000 and $125,000. The tax under section 207(a)(1), as thus adjusted, would be 90 percent of $11,200, or $10,080, since $45,000 (excess of $120,000 over $75,000) is 90 percent of $50,000. Under section 207(a)(2)(A), without reference to section 207(a)(4), the tax is 2 percent of $25,000 (excess of $100,000 over $75,000), or $500 since this is less than $1,000, 1 percent of $100,000. Applying section 207(a)(4) reduces this to $450, or 90 percent of $500. Since $10,080, the tax under section 207(a)(1), as adjusted, exceeds $450, the tax under section 207(a)(2), as adjusted, the tax under section 207(a)(1), as adjusted, is applicable. The Y Company would accordingly pay a combined normal tax and surtax of $10,080.

Example (5). The Z Exchange, an interinsurer, for the calendar year 1952 has corporation surtax net income of $60,000 and, due to partially tax-exempt interest of $12,000, normal-tax net income of $48,000. The gross amount received from interest, dividends, rents, and premiums (including deposits and assessments) is $2,700,000. The Z Exchange is not liable for normal tax under section 207(a)(3) for the calendar year 1952 as its normal-tax net income does not exceed $50,000. Its surtax is 33 percent of $10,000 ($60,000–$50,000), or $3,300, since that amount is less than $7,700, 22 percent of $35,000 (excess of corporation surtax net income of $60,000 over $25,000). Since the Z Exchange has no normal tax, is not subject to the tax imposed by section 207(a)(2), and is not entitled to the adjustment provided in section 207(a)(4), its total tax under section 207(a) is $3,300.

PAR. 23. There is inserted immediately preceding section 29.231–1 [26 CFR 29.231–1] the following:

SEC. 121. INCREASE IN RATE OF CORPORATION INCOME TAXES [PART II, TITLE I, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(g) TECHNICAL AMENDMENTS.—

* * * * * * *

(5) 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 231(b) (relating to foreign corporations engaged in trade or business within the United States) is hereby amended by striking out "section 14(c)(1)" and inserting in lieu thereof "section 13".

PAR. 24. Section 29.231-1, as amended by Treasury Decision 5709 [C. B. 1949-2, 56], approved June 27, 1949 [26 CFR 29.231-1], is further amended by striking out all of (*b*) of such section other than the last paragraph thereof and inserting in lieu thereof the following:

(*b*) *Resident foreign corporations.*—A resident foreign corporation is not taxable upon the items of fixed or determinable annual or periodical income enumerated in section 231(a) at the rate specified in that section. For taxable years beginning before July 1, 1950 (other than the calendar year 1950), a resident foreign corporation is, under section 14(c)(1), liable to a tax of 24 percent of its normal-tax net income (regardless of the amount thereof). For a taxable year which is the calendar year 1950 and for taxable years beginning after June 30, 1950, a resident foreign corporation is, under section 13, liable to a tax in an amount equal to a specified percent of its normal-tax net income. The rates of tax under section 13 applicable for the respective taxable years are as follows:

	Percent
For a taxable year which is the calendar year 1950	23
For taxable years beginning after June 30, 1950, and before April 1, 1951 (other than the calendar year 1951)	25
For a taxable year which is the calendar year 1951	28¾
For taxable years beginning after March 31, 1951, and before April 1, 1954	30
For taxable years beginning after March 31, 1954	25

The normal-tax net income of a resident foreign corporation is its net income from sources within the United States (gross income from sources within the United States minus the statutory deductions provided in sections 23 and 232) less, for taxable years beginning before January 1, 1946, the credits provided in section 26 (a), (b), and (e) for such years, and less, for taxable years beginning after December 31, 1945, the credits provided in section 26 (a) and (b) for such years.

A resident foreign corporation is also liable to the corporation surtax imposed by section 15. For taxable years beginning before January 1, 1946, the rates of corporation surtax are as follows:

(1) Upon corporation surtax net incomes of $25,000 or less, 10 percent of the amount thereof.

(2) Upon corporation surtax net incomes over $25,000 but not over $50,000, $2,500 plus 22 percent of the amount of such income in excess of $25,000.

(3) Upon corporation surtax net incomes of more than $50,000, 16 percent of the entire amount thereof.

For a taxable year beginning after December 31, 1945, and before July 1, 1950 (other than the calendar year 1950), the rates of corporation surtax are as follows:

(i) Upon corporation surtax net incomes of $25,000 or less, 6 percent of the amount thereof.

(ii) Upon corporation surtax net incomes over $25,000 but not over $50,000, $1,500 plus 22 percent of the amount of such income in excess of $25,000.

(iii) Upon corporation surtax net incomes of more than $50,000, 14 percent of the entire amount thereof.

For a taxable year which is the calendar year 1950, the surtax is determined by computing a tentative surtax of 19 percent of the amount of the corporation surtax net income in excess of $25,000, and by reducing such tentative surtax by an amount equal to 1 percent of the lower of—

(*a*) the amount of the credit provided in section 26(a), or

(*b*) the amount by which the corporation surtax net income exceeds $25,000.

For taxable years beginning after June 30, 1950, the surtax is at the rate of 22 percent and is upon corporation surtax net income in excess of $25,000.

The corporation surtax net income of a resident foreign corporation is its net income from sources within the United States (gross income from sources within the United States minus the statutory deductions provided in sections 23 and 232) less, for taxable years beginning before January 1, 1946, the credits provided in section 26 (b) and (e) for such years, and less, for taxable years beginning after December 31, 1945, the credit provided in section 26(b) for such years. For the purpose of determining the corporation surtax net income of a

resident foreign corporation, the credit provided in section 26(b) is limited, for a taxable year beginning before January 1, 1946, to 85 percent of its net income from sources within the United States reduced by the credit provided in section 26(e) for such year, and, for a taxable year beginning after December 31, 1945, and ending before January 1, 1950, to 85 percent of its adjusted net income from sources within the United States, and, for a taxable year ending after December 31, 1949, to 85 percent of its adjusted net income from sources within the United States computed without regard to the deduction for net operating loss allowed by section 23(s).

For taxable years beginning in 1945 and ending in 1946, see section 29.108–2. For taxable years beginning before July 1, 1950, and ending after June 30, 1950 (other than the calendar year 1950), see section 29.108–5. For taxable years beginning after June 30, 1950, and before April 1, 1951, and ending after March 31, 1951 (other than the calendar year 1951), see section 29.108–6. For taxable years beginning before April 1, 1954, and ending after March 31, 1954, see section 29.108–9.

PAR. 25. Section 29.251–3 [26 CFR 29.251–3] is amended by striking out the first sentence of the section and inserting in lieu thereof the following:

For taxable years beginning before July 1, 1950 (other than the calendar year 1950), a domestic corporation entitled to the benefits of section 251 is, under section 251(c)(1), subject to the tax imposed by section 13 if it has a normal-tax net income of more than $25,000 (see section 29.13–1), or to the tax provided by section 14(b) if it has a normal-tax net income of not more than $25,000 (see section 29.14–1). For a taxable year which is the calendar year 1950 and for taxable years beginning after June 30, 1950, a domestic corporation entitled to the benefits of section 251 is, under section 251(c)(1), subject to the normal tax on corporations imposed by section 13 (see section 29.13–1).

PAR. 26. Section 29.261–1 [26 CFR 29.261–1] is amended by striking out the first sentence of the section and inserting in lieu thereof the following:

For taxable years beginning before July 1, 1950 (other than the calendar year 1950), a China Trade Act corporation is, under section 261(a), subject to the tax imposed by section 13(b) if it has a normal-tax net income of more than $25,000 (see section 29.13–1), or to the tax provided by section 14(b) if it has a normal-tax net income of not more than $25,000 (see section 29.14–1). For a taxable year which is the calendar year 1950 and for taxable years beginning after June 30, 1950, a China Trade Act corporation is, under section 261(a), subject to the normal tax on corporations imposed by section 13 (see section 29.13–1).

REGULATIONS 130 [26 CFR, PART 40]

PAR. 27. There is inserted immediately preceding section 40.430–1 [26 CFR 40.430–1] the following:

SEC. 121. INCREASE IN RATE OF CORPORATION NORMAL TAX [PART II, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(b) MAXIMUM TAX.—Section 430(a)(2) (relating to the limitation on the rate of the excess profits tax) is hereby amended as follows:

(1) By inserting after "(2)" the following: "(A) in the case of taxable years ending before April 1, 1951,".

(2) By striking out the period at the end of paragraph (2) and inserting ", or" and by adding after paragraph (2) the following:

"(B) in the case of taxable years beginning on January 1, 1951, and ending on December 31, 1951, an amount equal to 17¼ per centum of the excess profits net income for the taxable year, except that in the case of an affiliated group of includible corporations making or required to make a consolidated return for the taxable year under section 141, such amount shall be reduced by an amount which bears the same ratio (but not in

excess of 100 per centum) to the increase of 2 per centum in the surtax imposed by reason of section 141(c) as the amount of the consolidated excess profits net income bears to the amount of the consolidated corporation surtax net income, or

"(C) in the case of taxable years beginning after March 31, 1951, an amount equal to 18 per centum of the excess profits net income for the taxable year, except that in the case of an affiliated group of includible corporations making or required to make a consolidated return for the taxable year under section 141, such amount shall be reduced by an amount which bears the same ratio (but not in excess of 100 per centum) to the increase of 2 per centum in the surtax imposed by reason of section 141(c) as the amount of the consolidated excess profits net income bears to the amount of the consolidated corportation surtax net income, or".

* * * * * * *

SEC. 125. EFFECTIVE DATE [PART II, TITLE I, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

The amendments made by this part [inc. sec. 121(b)] shall be applicable only with respect to taxable years beginning after March 31, 1951, and to taxable years beginning on January 1, 1951, and ending on December 31, 1951, * * * For treatment of taxable years (other than the calendar year 1951) beginning before April 1, 1951, and ending after March 31, 1951, see section 131.

PAR. 28. Section 40.430–2 [26 CFR 40.430–2] is amended as follows:

(A) By inserting in (*a*)(1) after "(ii)" the following: "in the case of taxable years ending before April 1, 1951,".

(B) By striking out the period at the end of (ii) of (a)(1) of the section and inserting in lieu thereof a comma and "or" and by inserting after such (ii) as so amended the following:

(iii) in the case of a taxable year which is the calendar year 1951, an amount equal to 17¼ percent of the excess profits net income for the taxable year, except that in the case of an affiliated group of includible corporations making or required to make a consolidated return for the taxable year under section 141, such amount shall be reduced by an amount which bears the same ratio (but not in excess of 100 percent) to the increase of 2 percent in the surtax imposed by reason of section 141(c) as the amount of the consolidated excess profits net income bears to the amount of the consolidated corporation surtax net income, or

(iv) in the case of taxable years beginning after March 31, 1951, an amount equal to 18 percent of the excess profits net income for the taxable year, except that in the case of an affiliated group of includible corporations making or required to make a consolidated return for the taxable year under section 141, such amount shall be reduced by an amount which bears the same ratio (but not in excess of 100 percent) to the increase of 2 percent in the surtax imposed by reason of section 141(c) as the amount of the consolidated excess profits net income bears to the amount of the consolidated corporation surtax net income.

(C) By striking out in (2) of (*a*) of the section "section 430(a)(2)" wherever appearing therein and inserting in lieu thereof "section 430(a)(2)(A)".

(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).)

JUSTIN F. WINKLE,
Acting Commissioner of Internal Revenue.

Approved December 2, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 5, 1952, 8:49 a. m.)

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 117, Section 29.117–1.)

1952–19–13917
G. C. M. 27322

INTERNAL REVENUE CODE

A lump-sum payment received by a taxpayer purportedly for fee simple title to all minerals in and under certain land owned by him, but in conjunction with which he reserved a royalty interest in any minerals produced from the land, constitutes ordinary income under section 22(a) of the Internal Revenue Code and does not represent the proceeds from the sale of a capital asset.

An opinion is requested, in view of the decisions in *Wesley W. West et al.* v. *Commissioner* (3 T. C. 431, affirmed, 150 Fed. (2d) 723, certiorari denied, 326 U. S. 795) and *Arthur N. Trembley et al.* v. *Commissioner* (Tax Court memorandum opinion, decision entered December 29, 1948) as to the proper treatment, for Federal income tax purposes, of a lump-sum payment received by a taxpayer purportedly for the sale of fee simple title to all minerals in and under certain land owned by him, but in conjunction with which he reserved a royalty interest in any minerals produced from the land.

In the West case, the grantors entered into a transaction whereby they purported to sell and convey to the grantee, for a lump-sum payment and a royalty interest in the usual form, certain surface lands, leases, and minerals. The grantee also obligated itself to drill, develop, and operate the properties for minerals. The courts held, in effect, with respect to the minerals that the transaction effected a leasing arrangement and that the part of the cash payment allocable to such minerals represented an advance royalty or bonus taxable as ordinary income. However, the position thus taken was based, not on the objective legal effect of the transaction as such, but on the ground that the subjective intent of the parties controlled and the factors indicating an intent to effectuate a lease predominated over those indicating an intent to effectuate a sale. Among the facts influencing the decisions in this case were those showing the grantor's predominating purpose to secure the development and operation of the property and the obligations assumed by the grantee to undertake such development and operation. The facts that the transaction was in form a sale, that a substantial cash payment was made to the grantor at the time of the transaction, and that no provision was made for forfeiture or reversion were held not to control.

The Trembley case also involved a purported sale of mineral in place in consideration of a lump-sum payment and retention of a royalty interest in the usual form. In that case, however, it was expressly stipulated that the grantee would never be under any obligation, either express or implied, to drill for, mine, produce, continue to produce, or attempt to produce the mineral (sulphur) from the property involved, except to the extent of affording reasonable protection against drainage of the mineral or compensating the grantor for loss therefrom. It

was there held that the cash payments received by the grantors were not advance royalties (bonuses) taxable as ordinary income, but payments for the sale of sulphur in place, the profits therefrom being taxable as capital gains under section 117 of the Internal Revenue Code.

The Tax Court stated in the Trembley case, *supra*, that the principal reason for concluding that the transaction in the West case was *not* a sale, but a lease, was that the moving consideration and predominating purpose was to secure the immediate and complete development of the land for oil. The Tax Court further stated that in the Trembley case the grantee did not propose to engage in the extraction of sulphur and the grantors did not expect it, the grantee, instead of being obligated to drill for sulphur, being expressly exempted from so doing. Notice was also taken of the large cash consideration of approximately $2,000 an acre paid for sulphur under land in a wildcat or unproven sulphur producing area. It was stated that the acquisition of title to minerals is obviously of far greater value and will bring a larger consideration than a mere leasehold right to develop; that conveyances of minerals are frequently actuated by a motive of investment on the part of the grantee and the cash consideration or other down payment (rather than a desire to secure development of the property) is the moving cause for the conveyance by the grantor; and that such was clearly the purpose and intention of the parties involved in the Trembley case. The court further stated that the reservation of a royalty interest, while an attribute of a lease, was not controlling where development of the land for minerals was not the predominating purpose of the transaction involved; that all or a fractional part of the minerals under a tract of land may be sold; and that the reservation of a royalty interest, when considered with other language of the instruments involved and the circumstances surrounding their execution, indicates that such royalty interest was a retention to that extent of the minerals sold.

In the Trembley case the Tax Court stated that *Burnet* v. *Harmel* (287 U. S. 103, Ct. D. 611, C. B. XI-2, 210 (1932)), is "clearly distinguishable," since there "admittedly" the transactions involved were leases, not sales. The Tax Court also stated that the decision in *Palmer* v. *Bender* (287 U. S. 551, Ct. D. 641, C. B. XII-1, 235 (1933)), is not applicable because in that case the transaction was based, "not on the sale of minerals, but an assignment of oil and gas leases, which leases expressly required the development of the oil and gas under the land on which oil had been discovered and on which operations were then being carried on."

It is the opinion of this office that the theory of the Tax Court in both the West and Trembley decisions, as well as the result reached by it in the Trembley case, is at variance with controlling decisions of the Supreme Court of the United States involving receipt of lump-sum payments by grantors with coincident retention of royalty interests in the usual form in consideration of grants of mineral rights. The Supreme Court has repeatedly taken the position that where, in consideration of a lump-sum payment and stipulated royalties payable out of production, a grantor extends to a grantee a right to enter upon land for purposes of exploitation of the minerals therein, the lump-sum payment constitutes an advance royalty, taxable as ordinary income, and not proceeds from a sale of a capital asset. (See *Burnet* v. *Harmel*, *supra*; *Bankers Pocahontas Coal Co.* v. *Burnet*, 287 U. S.

308, Ct. D. 618, C. B. XII-1, 272 (1933); *Murphy Oil Co.* v. *Burnet*, 287 U. S. 299, Ct. D. 619, C. B. XII-1, 231 (1933); *William E. Herring et al.* v. *Commissioner*, 293 U. S. 322, Ct. D. 904, C. B. XIV-1, 303 (1935); and *Palmer* v. *Bender*, *supra*.)

The cases cited show that the character of the cash payment as ordinary income is not dependent upon retention by the grantor of ownership of, or any other particular form of legal interest in, the mineral content of the land; and is not affected by the facts that the grant may be cast in the form of a sale, that under local law title to the mineral in place passes immediately to the grantee upon execution of the instrument, that there is no existing production of mineral or practical assurance thereof in the future, or that the grantor had no right to compel the drilling of wells. In such transactions the grantor merely extends to the grantee exclusive exploitation privileges, retaining as his (the grantor's) share of the whole reservoir of mineral, a right, upon production, to that portion of the mineral which, *freed of* the burdens of development and operating costs, has a value equivalent to the value of the entire interest *subject to* such burdens of development and operation. So considered, the view that a grantor parts with no capital interest in the mineral, though the grantee acquires one, presents no logical difficulties, since, though potentially highly valuable, the grantee's interest ordinarily achieves such value as the result of the investment incident to exploitation or by reason of discovery. (See G. C. M. 22730, C. B. 1941-1, 214.)

It is believed that the decisions of the Supreme Court do not afford a basis for the view expressed in the West and Trembley decisions that the presence of a dominating purpose to secure development is the controlling factor in determining whether a lump-sum payment received by a grantor of mineral rights in conjunction with retention of a royalty interest in the usual form is ordinary income. This office is of the opinion that the Tax Court was in error in concluding that the decision in *Burnet* v. *Harmel*, *supra*, is distinguishable from the Trembley case. The Supreme Court stated the issue in *Burnet* v. *Harmel* as follows:

> The only question presented here is whether the bonus payments to the respondent, after allowed deductions, if any, are "gain from the sale or exchange of capital assets" within the meaning of the taxing Act.

Concerning that fundamental issue, which is also the basic question involved in the Trembley case, the Supreme Court said:

> It is an incident of every oil and gas lease, where production operations are carried on by the lessee, that the ownership of the oil and gas passes from the lessor to the lessee at some time and the lessor is compensated by the payments made by the lessee for the rights and privileges which he acquires under the lease. But notwithstanding this incidental transfer of ownership, it is evident that the taxation of the receipts of the lessor as income does not ordinarily produce the kind of hardship aimed at by the capital gains provision of the taxing Act. Oil and gas may or may not be present in the leased premises, and may or may not be found by the lessee. If found, their abstraction from the soil is a time-consuming operation and the payments made by the lessee to the lessor do not normally become payable as the result of a single transaction within the taxable year, as in the case of a sale of property. The payment of an initial bonus alters the character of the transaction no more than an unusually large rental for the first year alters the character of any other lease, and the taxation of the one as ordinary income does not act as a deterrent upon conversion of capital assets, any more than the taxation of the other.

* * * * * * *

The court below thought that the bonus payments, as distinguished from the royalties, should be treated as capital gain, apparently because it assumed that the statute authorizes a depletion allowance upon the royalties alone. * * * But bonus payments to the lessor have been deemed to be subject to depletion allowances under section 214(a)9, Revenue Act of 1924, by article 216, Treasury Regulations 65, as well as under earlier Acts. * * * Bonus and royalties are both consideration for the lease and are income of the lessor. We can not say that such payments by the lessee to the lessor, to be retained by him regardless of the production of any oil or gas, are any more to be taxed as capital gains than royalties which are measured by the actual production. * * *

In the opinion of this office the Tax Court similarly erred in concluding that the decision in *Palmer* v. *Bender*, *supra*, is inapplicable to the Trembley case. The reason assigned by the Tax Court for such conclusion is that in *Palmer* v. *Bender* the grant involved an assignment of "leases" which "expressly required the development of the oil and gas under the land on which oil had been discovered and on which operations were then being carried on." By whatever name called, there was involved in *Palmer* v. *Bender*, as in Trembley, a grant of mineral rights, a lump-sum cash payment, and royalties in the usual form. Moreover, there is nothing in either the *Palmer* v. *Bender* decision, or any of the other decisions of the Supreme Court mentioned above, to show that in treating as ordinary (depletable) income a lump-sum payment received by a grantor of mineral rights in conjunction with retention of a royalty interest in the usual form, the position taken by the Court was the result of, or controlled by, provisions in the agreements between the parties requiring development and operation of the properties by the grantee. In this respect it may also be noted that in *Burnet* v. *Harmel*, quoted above, there is no mention of the existence of such a requirement, and in *Herring* v. *Commissioner*, *supra*, in which a lump-sum payment received by a grantor was again treated as ordinary (depletable) income, it is expressly stated that "The lessors had no right to compel the drilling of wells * * *." In the latter case, there was no production at the time of the grant and "no practical assurance of production in the future." As a matter of fact in the great majority of instances, grants of mineral rights involving lump-sum payments and retention of royalties or other economic interests by grantors do not contain any provision which compels development and operation by the grantees.

Accordingly, it is believed that irrespective of the presence or absence of a "dominating purpose" of the parties to secure development and operation of the property, the controlling decisions of the Supreme Court require a lump-sum payment received by a grantor of mineral rights in conjunction with retention by him of a royalty interest to be treated as ordinary income and not as proceeds from the sale of a capital asset.

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

SECTION 29.22(a)–1: What included in gross income. 1952–23–13953
IR-Mim. 51

Inclusion in gross income of taxpayer of Federal income taxes paid to or for the account of such taxpayer under a contract providing for a stipulated payment plus any Federal income taxes thereon. Mimeograph 6779 (C. B. 1952–1, 8) supplemented.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., October 14, 1952.

Officers and Employees of the Internal Revenue Service and Others Concerned:

Mimeograph 6779 (C. B. 1952–1, 8), dated March 12, 1952, relating to lessor-lessee cases, is hereby supplemented by adding the following after paragraph 2 thereof:

3. The rule set forth herein is applicable to all types of income payments including, but not confined to, payments for personal services, alimony, and the purchase or rental of property.

4. Under authority contained in section 3791(b) of the Internal Revenue Code, the provisions of this mimeograph will not be applied for taxable years beginning prior to January 1, 1952, in determining the amount of gross income of the recipient of an income item on account of the taxes paid by the payor other than the initial tax computed on the stipulated amount, except that any Federal income or excess profits taxes which have been paid on account of the inclusion in gross income of the taxes paid by the payor will not be refunded.

JOHN B. DUNLAP,
Commissioner.

SECTION 29.22(a)–2: Compensation for personal services. 1952–14–13862 Ct. D. 1746

(Also Section 22(b), Section 29.22(b)(3)–1; Section 107, Section 29.107–2.)

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT

1. GROSS INCOME—EXCLUSIONS—PROPERTY ACQUIRED BY GIFT—COMPENSATION FOR SERVICES RENDERED FOR PERIOD OF 36 MONTHS OR MORE.

A prize awarded to a composer in 1947 for a symphony which he had composed between the years 1936 and 1939 did not constitute a nontaxable gift under section 22(b)(3) of the Internal Revenue Code; the amount of the award should be taxed ratably over the 36 calendar months from 1945 through 1947 rather than for the period from 1937 through 1939, under the provisions of section 107(b) of the Internal Revenue Code.

2. DECISION AFFIRMED.

Decision of the United States Court of Appeals for the Tenth Circuit, 190 Fed. (2d) 680 (1951) affirmed.

SUPREME COURT OF THE UNITED STATES

Leroy J. Robertson, petitioner, v. *The United States of America*

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

[June 2, 1952]

OPINION

Mr. Justice DOUGLAS delivered the opinion of the Court.

Petitioner is a musician and composer who between the years 1936 and 1939 composed a symphony. In 1945 Henry H. Reichhold, a philanthropist, established a music award offering $25,000, $5,000, and $2,500 for the three best symphonic works written by native-born composers of this hemisphere. The terms of the offer provided that none of the compositions could be published or publicly performed prior to entry in the contest and that each composition receiving an award would remain the property of the composer except that he would grant the Detroit Orchestra, Inc., (1) all synchronization rights as applied to motion pictures, (2)

all mechanical rights as applied to phonograph recordings, electrical transcriptions and music rolls, and (3) the exclusive right to authorize the first performance of the composition in each of the countries whose citizens were eligible to enter the contest and to designate the publisher of the composition.

Petitioner submitted his symphony and on December 14, 1947, won the $25,000 award. He included that amount in his 1947 income tax return as gross income, claimed the benefits of section 107(b) of the Internal Revenue Code[1] (26 U. S. C. (1946 ed.) section 107(b), 53 Stat. 878, as amended), and computed the tax as though the $25,000 had been received ratably during the years 1937, 1938, and 1939. Thereafter he filed a claim for refund on the ground that the award constituted a nontaxable gift.[2] The Commissioner did not allow the claim but determined a deficiency on the ground that the tax should have been computed under section 107(b) as though the award had been ratably received over the 3-year period ending with 1947. Petitioner paid the deficiency, filed a supplemental claim for refund, and brought this suit to obtain it. The district court held that the award was a gift and not taxable by reason of section 22(b)(3) of the Internal Revenue Code. The court of appeals reversed. 190 Fed. (2d) 680. The case is here on certiorari because of the conflict between that decision and *McDermott* v. *Commissioner*, 150 Fed. (2d) 585, decided by the Court of Appeals for the District of Columbia. And see *Williams* v. *United States*, 84 Fed. Supp. 362.

I

In the legal sense payment of a prize to a winner of a contest is the discharge of a contractual obligation. The acceptance by the contestants of the offer tendered by the sponsor of the contest creates an enforceable contract. See 6 Corbin on Contracts section 1489; Restatement, Contracts, section 521. The discharge of legal obligations—the payment for services rendered or consideration paid pursuant to a contract—is in no sense a gift. The case would be different if an award were made in recognition of past achievements or present abilities, or if payment was given not for services (see *Old Colony Trust Co.* v. *Commissioner*, 279 U. S. 716, 730 [Ct. D. 80, C. B. VIII–2, 222 (1929)]), but out of affection, respect, admiration, charity or like impulses. Where the payment is in return for services rendered, it is irrelevant that the donor derives no economic benefit from it.

II

Section 107(b)[3] defines "artistic work" as the "musical" or "artistic composition" of an individual, "the work on which * * * covered a period of thirty-six calendar months or more from the beginning to the completion" of the composition. In case the gross income from a particular artistic work in the taxable year is not less than a particular percentage (not material here), the tax attributable to the income of the taxable year may be computed as though it had "been received ratably over that part of the period preceding the close of the taxable year but not more than thirty-six calendar months." The question is whether the amount of the prize should be taxed ratably over the 36 months ending with the close of 1947 (the taxable year in which it was received) or over the last 36 months of the period (1937 to 1939) when petitioner wrote the symphony.

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[1] Section 107(b) provides: "For the purposes of this subsection, the term 'artistic work or invention', in the case of an individual, means a literary, musical, or artistic composition of such individual or a patent or copyright covering an invention of or a literary, musical, or artistic composition of such individual, the work on which by such individual covered a period of thirty-six calendar months or more from the beginning to the completion of such composition or invention. If, in the taxable year, the gross income of any individual from a particular artistic work or invention by him is not less than 80 per centum of the gross income in respect of such artistic work or invention in the taxable year plus the gross income therefrom in previous taxable years and the twelve months immediately succeeding the close of the taxable year, the tax attributable to the part of such gross income of the taxable year which is not taxable as a gain from the sale or exchange of a capital asset held for more than 6 months shall not be greater than the aggregate of the taxes attributable to such part had it been received ratably over that part of the period preceding the close of the taxable year but not more than thirty-six calendar months."

[2] Section 22(b)(3) of the Internal Revenue Code provides:

"The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

"The value of property acquired by gift, bequest, devise, or inheritance. * * *"

[3] See note 1, *supra*.

The phrase in question, as it originated (H. R. 7378, 77th Cong., 2d sess., section 128) read "ratably over the period of thirty-six calendar months ending with the close of the taxable year." In that form the present tax would have been computed as the Commissioner contended, viz the tax would be laid over a period of 36 months extending back from the close of the taxable year. The change in wording does not seem to us to have made a change in meaning. The present words "ratably over that part of the period preceding the close of the taxable year but not more than thirty-six calendar months" would on their face seem to refer to a period ending with the close of the taxable year and extending back a maximum of 36 months. That wording was adopted in order to treat the income as though it had "been received ratably over (1) the part of the period of the work which preceded the close of the taxable year, or (2) a period of 36 calendar months, whichever of such periods is the shorter." See S. Rept. No. 1631, 77th Cong., 2d sess., page 109. The House Conferees, in agreeing to the change, stated that it "clarifies the language of the House bill." H. R. Conf. Rept. No. 2586, 77th Cong., 2d sess., page 43. That history strongly suggests that the purpose was not to change the allowable period of allocation from one ending with the close of the taxable year to one covering any 36 months in the past when the work was done, but to prevent tax reduction by proration of income over a period of work greater than the duration of the work preceding the close of the taxable year. That is the construction given by Treasury Regulations 111, section 29.107-2;[4] and while much more could be said, it seems to us that that construction fits the statutory scheme.

Affirmed.

Mr. Justice FRANKFURTER, not having heard the argument owing to illness, took no part in the disposition of this case.

Mr. Justice JACKSON dissents.

SECTION 29.22(a)-2: Compensation for personal services. (Also SECTION 22(b).) 1952-24-13965 Ct. D. 1750

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF COURT

1. GROSS INCOME—DEDUCTIONS—COMPENSATION FOR INJURIES OR SICKNESS—RETIREMENT PAY OF DISTRICT OF COLUMBIA FIREMAN.

Payments made to taxpayer as the result of an order of the Board of Commissioners of the District of Columbia retiring him for age are not exempt from tax under section 22(b)(5) of the Internal Revenue Code as an amount received under "workmen's compensation acts, as compensation for personal injuries or sickness", notwithstanding that at the time of his retirement taxpayer was suffering from physical disabilities which were incurred in the line of duty for which he might have been retired had he not been retired for age. There had been no determination by the Commissioners of the extent of disability as a basis for fixing an amount of relief for disability, and, even though the Federal authorities are not

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[4] Section 29.107-2 provides in part:

"The method of allocating the gross income from the artistic work or invention to the taxable years in which falls any of the calendar months (not exceeding 36 calendar months) included within the part of the period of work which precedes the close of the current taxable year may be illustrated by the following examples:

"*Example (1).* On October 1, 1942, A, an individual, who makes his returns on a calendar year basis and on the basis of cash receipts and disbursements, receives $36,000 in full payment for a musical composition, the work on which was commenced by A on July 10, 1938, and completed on January 29, 1943. Although the period of work covers 55 calendar months, allocations may be made to only the last 36 calendar months included within the part of the period of work which precedes the close of 1942 (the current taxable year). Therefore, $1,000 (36,000 divided by 36) must be allocated to each of the 36 calendar months preceding January 1, 1943. Accordingly, $12,000 is allocated to 1940, $12,000 to 1941, and $12,000 to 1942 (the current taxable year).

"*Example (2).* Assume the same facts as in example (1) except that the period of work was commenced by A on July 1, 1941, and completed on September 1, 1944. Although the period of work covers 38 calendar months, allocations may be made to only the 18 calendar months which are included within the part of the period of work which precedes the close of 1942 (the current taxable year). Therefore, $2,000 ($36,000 divided by 18) must be allocated to each of 18 calendar months preceding January 1, 1943. Accordingly, $12,000 is allocated to 1941, and $24,000 to 1942 (the current taxable year)."

bound by the interpretation of the situation made by the District authorities, namely, that he was retired for age, the correct interpretation for Federal income tax purposes is that taxpayer was retired for age.

2. DECISION AFFIRMED.

Decision of The Tax Court of the United States (17 T. C. 1) affirmed.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Joseph B. Simms, petitioner, v. *Commissioner of Internal Revenue, respondent*

[196 Fed. (2d) 238]

Petition for review of decision of The Tax Court of the United States

Before EDGERTON, WILBUR K. MILLER and FAHY, Circuit Judges

[April 3, 1952]

OPINION

FAHY, Circuit Judge: Petitioner Joseph B. Simms seeks reversal of a decision of The Tax Court of the United States to the effect that he owes a deficiency of income tax for the year 1945 in the sum of $572.71. His position is that the income which resulted in the tax was in legal contemplation received for physical disability incurred in the line of duty as a member of the Fire Department of the District of Columbia. Accordingly, he contends, it was no part of his taxable income because section 22(b)(5) of the Internal Revenue Code, 53 Stat. 9 (1939), as amended, 26 U. S. C. section 22(b)(5) (1946), exempts amounts received "under workmen's compensation acts, as compensation for personal injuries or sickness." The respondent, Commissioner of Internal Revenue, ruled that the income was paid to petitioner as a result of his retirement for age and not for disability. If this is right there is no controversy the deficiency is due. The Tax Court agreed with the Commissioner that petitioner was retired for age and therefore his retirement pay is not attributable to disability.

The District of Columbia Code, section 4–501–517, D. C. Code (1940), as amended, supp. VII (1949), provides that firemen may be retired with compensation to be paid from the Policemen and Firemen's Relief fund (1) by reason of permanent disability incurred in line of duty, or (2) after twenty-five years' service, under certain conditions, or, (3) having reached the age of 60 years, in the discretion of the Commissioners.

Petitioner was retired under an order of the Board of Commissioners of the District, dated January 31, 1942, reciting that he and others of the Fire Department, "having reached or passed the age of 64 years" are retired, and "are granted relief * * * payable from the Policemen and Firemen's Relief of the District of Columbia * * *." Petitioner's relief was stated to be the sum of $187.50 per month, which petitioner states was 50 percent of his salary, in which event it was the maximum permitted by law. Section 4–507, D. C. Code (1940). On April 20, 1948, the Commissioners by a further order recited that at the time of his retirement petitioner, and others, "were suffering from physical disabilities which were incurred in the line of duty to such an extent that had they not been retired when they were, for age, they would have been retired for physical disability incurred in the line of active Fire Department duty * * *." It appears independently that prior to retirement petitioner had suffered physical disability in line of duty. The extent of this disability, however, except that it was permanent, has never been ascertained or translated by administrative action into an award of compensation or retirement pay for disability. See footnote 1, *infra*.

Notwithstanding that both the 1942 and 1948 orders make clear that petitioner was retired not for disability but for age, he contends that since he had become permanently disabled it was the duty of the Commissioners to retire him for disability under section 4–507, D. C. Code (1940).[1] Therefore, he con-

[1] This section reads in pertinent part:

"Whenever any member of the * * * fire department of the District of Columbia shall become so permanently disabled through injury received or disease contracted in the line of duty as to incapacitate him for the performance of duty * * *, he shall * * * be retired from the service thereof and be entitled to receive relief from the said policemen and firemen's relief fund, District of Columbia, in an amount not to exceed 50 per centum per year of the salary received by him at the date of retirement. * * *"

tinues, a vested right to disability retirement accrued and the determination made in connection with his retirement that he should receive 50 percent of his salary is in legal effect an award of that amount for disability. We are unable to accept this view for two reasons. In the first place there has been no determination by the Commissioners of the extent of disability as a basis for fixing an amount of relief for disability. See *Waller* v. *United States*, 86 U. S. App. D. C. 93, 180 Fed. (2d) 194 (1950). In the second place, even though, as petitioner argues, the Federal authorities are not bound by the interpretation of the situation made by the District authorities, namely, that he was retired for age, nevertheless it is our view that the correct interpretation for Federal purposes is that petitioner was retired for age. Therefore the income he received as a consequence was not paid to him "under workmen's compensation acts, as compensation for personal injuries or sickness," section 22(a)(5), *supra*, and is not excludable from his gross income in the process of arriving at his Federal income tax.

Affirmed.

SECTION 29.22(a)-2: Compensation for personal services.

INTERNAL REVENUE CODE .

Amounts received by former employees of the Isthmian Canal Commission or the Panama Railroad Co. under Public Law 319, Seventy-eighth Congress (58 Stat. 257). (See I. T. 4098, page 74.)

Section 29.22(a)-3: Compensation paid other than in cash. 1952-22-13945 IR-Mim. 38

Retroactive effect of Mimeograph 6472 (C. B. 1950-1, 15) with respect to refunds allowed prior to its publication.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., September 19, 1952.

Officers and Employees of the Internal Revenue Service and Others Concerned:

1. The purpose of this mimeograph is to clarify, in response to a number of inquiries, the extent to which Mimeograph 6472 (C. B. 1950-1, 15) will be applied without retroactive effect in cases in which living quarters or meals are determined to be compensatory without reference to the "convenience of the employer" rule and in which income taxes withheld or paid on the value of such living quarters or meals had been refunded prior to the publication of the mimeograph.

2. In paragraph 5 of the mimeograph it was stated that:

> Under the authority contained in section 3791(b) of the Internal Revenue Code, the provisions of this mimeograph will be applied without retroactive effect from January 1, 1949, in cases in which living quarters or meals are determined to be compensatory without reference to the "convenience of the employer" rule, except that any taxes which have been withheld or paid on the value of such living quarters or meals will not be refunded.

The issue raised is the meaning which is to be given to the words "will not be refunded" in cases where the tax paid for taxable years ending prior to January 1, 1949, had already been refunded in processing returns subsequent to January 1, 1949, but prior to the publication of Mimeograph 6472, on February 15, 1950. This involves the

related issue of whether it is proper to assert a deficiency in tax to recover such a refund on the ground that the refund was erroneously made.

3. In paragraph 4 of the mimeograph, the Bureau announced a change of policy in the treatment of the issue involved therein, and previous published rulings on the subject were modified. In most cases, the amount of tax deficiency or tax refund involved was too small to warrant the cost of litigation, and the *general* policy of paragraph 5 of the mimeograph, quoted above, was not to disturb cases related to taxable years ending prior to January 1, 1949. Under this policy, the Bureau will make no attempt to assert possible deficiencies in tax for such taxable years; and all of the refunds which had been made for such taxable years prior to the published announcement, on February 15, 1950, of the change in policy will not be disturbed. Accordingly, the words "will not be refunded" have no application to refunds which had been accomplished prior to February 15, 1950, and such refunds will not be subject to recovery by the Bureau.

4. The exception in paragraph 5 of the mimeograph relates to cases where the refunds for taxable years ended prior to January 1, 1949, were otherwise allowable under the new policy but had not yet been allowed when the mimeograph was published. Such cases do not involve the reversal of an action previously taken and, hence, the overpayments "will not be refunded." Accordingly, the words "will not be refunded" apply only to overpayments which may be under consideration on or after February 15, 1950, for refund purposes with respect to taxable years ended prior to January 1, 1949.

5. Correspondence relating to this mimeograph should refer to its number and the symbols O:A:EIM.

JOHN B. DUNLAP,
Commissioner.

SECTION 29.22(a)-5: Gross income from business. 1952-23-13954
I. T. 4104

INTERNAL REVENUE CODE

Amounts paid for goods in excess of ceiling prices established by the Office of Price Administration, under the Emergency Price Control Act of 1942 (Title 50, App. U. S. C. A.), are allowable as a part of the cost of goods sold in computing income subject to Federal income taxation.

I. T. 3724 (C. B. 1945, 57) modified.

I. T. 3724 (C. B. 1945, 57) holds in part that amounts paid for goods in excess of ceiling prices established by the Office of Price Administration, under the Emergency Price Control Act of 1942 (Title 50, App. U. S. C. A.), are not allowable as a part of the cost of goods sold in computing income subject to Federal income taxation.

In *Commissioner* v. *Benjamin Weisman et al.* (197 Fed. (2d) 221), *Hofferbert* v. *Anderson Oldsmobile, Inc.* (197 Fed. (2d) 504), *Jones* v. *H. S. Herber et al.* (198 Fed. (2d) 544), *Commissioner* v. *Winnifred Guminski et al.* (198 Fed. (2d) 265), *Commissioner* v. *Bruce E. Gentry et al.* (198 Fed. (2d) 267) it is held that amounts paid for goods in excess of ceiling prices established under the Emergency Price Control Act of 1942, *supra*, are includible in the cost of goods sold in computing gross income for Federal income tax purposes. To the same effect is

the holding in *Lela Sullenger et al.* v. *Commissioner* (11 T. C. 1076, nonacquiescence, C. B. 1949–1, 6, withdrawn, and acquiescence substituted therefor, page 1, this Bulletin).

In view of the foregoing, it is held that amounts paid for goods in excess of ceiling prices established by the Office of Price Administration, under the Emergency Price Control Act of 1942, *supra*, are allowable as a part of the cost of goods sold in computing income subject to Federal income taxation. I. T. 3724, *supra*, insofar as it is inconsistent with the foregoing, is hereby modified. (*Cf.* I. T. 4105, page 93, this Bulletin.)

SECTION 29.22(a)–5: Gross income from business.

INTERNAL REVENUE CODE

Amounts paid in violation of price stabilization provisions of the Defense Production Act of 1950, as amended. (See I. T. 4105, page 93.)

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

1952–15–13871
I. T. 4088

INTERNAL REVENUE CODE

For Federal income tax purposes, the tax-exempt status of disability retirement pay of a retired officer of the Regular Army, which pay is suspended during his employment as a civilian with the Federal Government, will not be affected when payment thereof is resumed upon termination of such civilian employment. The compensation received by the taxpayer during such civilian employment is includible in gross income under section 22(a) of the Internal Revenue Code.

Advice is requested as to the tax-exempt status of disability retirement pay received by a retired officer of the Regular Army where such pay is suspended during his employment as a civilian with the Federal Government but is to be resumed upon termination of such civilian employment.

In the instant case, an officer of the Regular Army was retired from active service under section 1251 of the Revised Statutes (section 933, Title 10, U. S. C. A.) which provides as follows:

When a retiring board finds that an officer is incapacitated for active service, and that his incapacity is the result of an incident of service, and such decision is approved by the President, said officer shall be retired from active service and placed on the list of retired officers.

Section 1251 of the Revised Statutes, *supra*, was repealed, effective October 1, 1949, by section 531(b)(2) of the Career Compensation Act of 1949 (63 Stat. 802, 838), and section 402 of such Act was enacted in lieu thereof but not limited to section 1251 of the Revised Statutes. (See I. T. 4017, C. B. 1950–2, 12, relating to the taxable status of disability retirement pay received by members of the "uniformed services" who retire under section 402(f) of the Career Compensation Act.)

I. T. 3641 (C. B. 1944, 70) holds that the retirement pay or allowances received by officers of the Regular Army who have been retired from active service under section 1251 of the Revised Statutes, *supra*, for personal injuries or sickness resulting from active service in the United States Army, are not subject to Federal income tax for the year 1942 and subsequent years.

It is held that, for Federal income tax purposes, the tax-exempt status of disability retirement pay of a retired officer of the Regular Army, which pay is suspended during his employment as a civilian with the Federal Government, will not be affected when payment thereof is resumed upon termination of such civilian employment. The compensation received by the taxpayer during such civilian employment is includible in gross income under section 22(a) of the Internal Revenue Code.

1952-23-13961
I. T. 4107

INTERNAL REVENUE CODE

Self-insured plans established by employers which provide for the payment of sickness or accident disability benefits to their employees, and which are not in themselves plans of insurance within the purview of section 22(b)(5) of the Internal Revenue Code, do not become plans of insurance merely by virtue of compliance with State disability benefits statutes and approval by the appropriate State agencies. Benefits received under self-insured plans which do not qualify as plans of insurance are includible in gross income of the recipients and are subject to withholding of income tax at the source on wages under section 1622 of the Code.

I. T. 4000 (C. B. 1950-1, 21), I. T. 4015 (C. B. 1950-1, 23), and I. T. 4060 (C. B. 1951-2, 11) modified.

Advice is requested whether disability benefits received by employees under a self-insured plan established by an employer and approved by appropriate State agencies as conforming to the requirements of article 9 (known as the disability benefits law) of the New York workmen's compensation law, and chapter 21, title 43 of the Revised Statutes of New Jersey, as amended, are excludable from gross income under section 22(b)(5) of the Internal Revenue Code and whether such payments are subject to withholding of income tax at the source on wages under section 1622 of the Code.

The submitted self-insured plan provides regular salaried and hourly employees who are necessarily absent from work because of illness or accident with cash benefits which equal regular wages (with the exception of a 3-day waiting period for hourly employees) and which exceed in amount and duration benefits required by New York and New Jersey disability benefits statutes. Such cash benefits are provided not only in case of an accident sustained in connection with company activities but also in the event of any other type of accident. The plan also provides that if an absence from work is due to sickness or accident which entitles employees to payments under workmen's compensation laws, only the difference, if any, between the payments under the company plan and any such other compensation will be allowed. The employer has the sole discretion to determine who

shall receive benefits and may also revoke the plan at will within the time limits fixed by applicable State disability benefits statutes. Benefits paid under the self-insured plan are not made from any independent fund or under any contract with an insurance carrier, the entire expense being borne by the employer.

Section 22(b)(5) of the Code provides in part as follows:

(b) EXCLUSIONS FROM GROSS INCOME.—The following items shall not be included in gross income and shall be exempt from taxation under this chapter [chapter 1 of the Code]:

* * * * * * *

(5) COMPENSATION FOR INJURIES OR SICKNESS.—Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 23(x) in any prior taxable year, *amounts received, through accident or health insurance* * * * as compensation for personal injuries or sickness * * * [Italics supplied.]

It is held that the self-insured plan in the instant case is not in itself a plan of insurance within the purview of section 22(b)(5) of the Code. The fact that such plan has been established pursuant to State disability benefits statutes and has been approved by the appropriate State agencies does not transform it into a plan of insurance. Since the plan does not qualify as a plan of insurance, benefits received thereunder are includible in gross income of the recipients and are subject to withholding of income tax at the source on wages under section 1622 of the Code.

I. T. 4000 (C. B. 1950-1, 21), I. T. 4015 (C. B. 1950-1, 23), and I. T. 4060 (C. B. 1951-2, 11) are modified to the extent that they are inconsistent with the views expressed herein.

Pursuant to authority contained in section 3791(b) of the Internal Revenue Code, the instant ruling will not be applied with respect to disability benefit payments received prior to January 1, 1953, under a self-insured plan which has been approved by appropriate State agencies as conforming to the requirements of State disability benefits statutes.

INTERNAL REVENUE CODE

Retirement pay of District of Columbia firemen. (See Ct. D. 1750, page 68.)

SECTION 29.22(b)(2)-5: Employees' annuities.

INTERNAL REVENUE CODE

Federal income tax treatment by nonresident beneficiaries of employees annuities. (See IR-Mim. 71, page 170.)

SECTION 29.22(b)(3)-1: Gifts and bequests. 1952-20-13928
(Also Section 22(a), Section 29.22(a)-2.) I. T. 4098

INTERNAL REVENUE CODE

Amounts received by former employees (citizens of the United States) of the Isthmian Canal Commission or the Panama Railroad Co. under the provisions of Public Law 319, Seventy-eighth Congress (58 Stat. 257), approved May 29, 1944, constitute gifts under section 22(b)(3) of the Internal Revenue Code and are not includible in the gross income of the recipients.

I. T. 3701 (C. B. 1944, 66) revoked.

Reconsideration has been given to I. T. 3701 (C. B. 1944, 66) in view of the decision in *Andrew W. Dewling* v. *United States* (101 Fed. Supp. 892).

In I. T. 3701, *supra*, it is held that annuities received by civilian officials and employees (citizens of the United States) of the Isthmian Canal Commission or the Panama Railroad Co. under the provisions of Public Law 319, Seventy-eighth Congress (58 Stat. 257), approved May 29, 1944, in recognition of services rendered during the construction period (May 4, 1904, to March 31, 1914) of the Panama Canal, are subject to Federal income tax and that the full amount of such annuities is includible in the gross income of the recipients.

Section 22(b)(3) of the Internal Revenue Code provides in part as follows:

(b) EXCLUSIONS FROM GROSS INCOME.—The following items shall not be included in gross income and shall be exempt from taxation under this chapter [chapter 1 of the Code]:

* * * * * * *

(3) GIFTS, BEQUESTS, DEVISES, AND INHERITANCES.—The value of property acquired by gift, bequest, devise, or inheritance. * * *

In the Dewling case, *supra*, the court emphasized that 30 years or more had elapsed between the rendering of the services and the passage of the Act of May 29, 1944, and that all legal obligation on the part of the United States with respect to such services had been discharged. The court concluded that the Act was passed, not to fulfill a legal obligation, but as a token of the gratitude of Congress for the arduous services rendered, and that the amounts paid under the Act were gifts from the United States Government and should not be included in the gross income of the taxpayer.

The Bureau will follow the decision in the Dewling case with respect to amounts paid under Public Law 319, *supra*, but will not consider that case as a precedent in the disposition of any case not involving amounts paid under Public Law 319. Accordingly, I. T. 3701, *supra*, is hereby revoked.

SECTION 29.22(b)(3)-1: Gifts and bequests.

INTERNAL REVENUE CODE

Prize received for symphonic composition. (See Ct. D. 1746, page 66.)

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

SECTION 29.22(d)-1: Inventories under elective method. 1952-26-13990 I. T. 4112

INTERNAL REVENUE CODE

Price indexes for July 1952, published by the Bureau of Labor Statistics September 5, 1952, for use by department stores employing the retail inventory and elective inventory methods.

The following price indexes for July 1952, published by the Bureau of Labor Statistics on September 5, 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 June 30, 1952, and July 31, 1952.

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

[January 1941=100]

Group	July 1951	July 1952	Percent change from July 1951 to July 1952
I. Piece goods, domestics, and draperies	222.4	204.2	−8.
II. Shoes	222.8	210.8	−5.
III. Ladies' underwear	180.3	174.7	−3.
IV. Ladies' outerwear and girls' wear	179.8	179.5	−0.
V. Men's and boys' wear	203.3	203.4	0.
VI. Furniture and bedding	209.8	205.3	−2.
VII. Home furnishings	198.0	190.0	−4.
VIII. Major appliances and electrical goods	167.3	159.0	−5.
IX. Notions and toilet articles	160.3	160.4	0.
X. Ladies' accessories	168.3	170.6	1.
Total, Groups I, II, III, IV, V, IX, and X	193.7	189.5	−2.
Total, Groups VI, VII, and VIII	194.0	186.6	−3.
Store total	193.6	188.5	−2.

SECTION 29.22(d)-7: Involuntary liquidation and replacement. (Also Section 19.22(d)-7, Regulations 103.) 1952-21-13936 T. D. 5932

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

Regulations 103 and 111 amended to conform to Public Law 919, Eighty-first Congress [C. B. 1951-1, 179], and to section 306 of the Revenue Act of 1951, relating to involuntary liquidation and replacement of inventories accounted for on the last-in first-out method.

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On April 9, 1952, notice of proposed rule making to conform Regulations 103 [26 CFR, part 19] and 111 [26 CFR, part 29] to Public Law 919, Eighty-first Congress [C. B. 1951-1, 179], approved January 11, 1951, and to section 306 of the Revenue Act of 1951, approved October 20, 1951, was published in the Federal Register (17 F. R. 3105). After consideration of all relevant matter presented by interested persons, the amendments to such regulations set forth below are hereby adopted.

[REGULATIONS 103 [26 CFR, PART 19]

PARAGRAPH 1. There is inserted immediately preceding section 19.22(d)-1 [26 CFR 19.22(d)-1] the following:

PUBLIC LAW 919, EIGHTY-FIRST 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 22(d)(6) (relating to the involuntary liquidation and replacement of elective inventories) of the Internal Revenue Code is hereby amended as follows:

(a) By amending the title of subparagraph (A) thereof to read as follows:

"(A) Adjustment of Net Income and Resulting Tax.—Years beginning prior to January 1, 1948".

(b) By striking out in subparagraph (A) thereof "January 1, 1951" and by inserting in lieu thereof "January 1, 1953".

(c) The amendments made by this section shall be applicable with respect to taxable years beginning after December 31, 1940.

* * * * * * *

PAR. 2. Section 19.22(d)–7, as amended by Treasury Decision 5841 [C. B. 1951–1, 11], approved May 22, 1951 [26 CFR 19.22(d)–7], is further amended by striking from the second paragraph, as revised by Treasury Decision 5645 [C. B. 1948–2, 14], approved July 20, 1945 [26 CFR 19.22(d)–7], the date "January 1, 1951" and inserting in lieu thereof the following: "January 1, 1953".

REGULATIONS 111 [26 CFR, PART 29]

PAR. 3. There is inserted immediately preceding section 29.22(d)–1 [26 CFR 29.22(d)–1] the following:

PUBLIC LAW 919, EIGHTY-FIRST 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 22(d)(6) (relating to the involuntary liquidation and replacement of elective inventories) of the Internal Revenue Code is hereby amended as follows:

(a) By amending the title of subparagraph (A) thereof to read as follows:

"(A) Adjustment of Net Income and Resulting Tax.—Years beginning prior to January 1, 1948".

(b) By striking out in subparagraph (A) thereof "January 1, 1951" and by inserting in lieu thereof "January 1, 1953".

(c) The amendments made by this section shall be applicable with respect to taxable years beginning after December 31, 1940.

SEC. 2. LIQUIDATIONS IN TAXABLE YEARS ENDING AFTER JUNE 30, 1950, AND PRIOR TO JANUARY 1, 1954.

(a) IN GENERAL.—Section 22(d)(6) of the Internal Revenue Code is hereby amended by the addition of the following subparagraph:

"(F) Years Ending After June 30, 1950, and Prior to January 1, 1954.

"(i) Adjustment of Net Income and Resulting Tax.—If, for any taxable year ending after June 30, 1950, and prior to January 1, 1954, the closing inventory of a taxpayer inventorying goods under the method provided in this subsection reflects a decrease from the opening inventory of such goods for such year, and if the taxpayer elects, at such time and in such manner and subject to such regulations as the Commissioner with the approval of the Secretary may prescribe, to have the provisions of this paragraph apply, and if it is established to the satisfaction of the Commissioner, in accordance with such regulations, that such decrease is attributable to the involuntary liquidation

of such inventory as defined in subparagraph (B) (as modified by clause (ii) of this subparagraph), and if the closing inventory of a subsequent taxable year, ending prior to January 1, 1956, reflects a replacement, in whole or in part, of the goods so previously liquidated, the net income of the taxpayer otherwise determined for the year of such involuntary liquidations shall be increased by an amount equal to the excess, if any, of the aggregate cost of such goods reflected in the opening inventory of the year of involuntary liquidation over the aggregate replacement cost, or decreased by an amount equal to the excess, if any, of the aggregate replacement cost of such goods over the aggregate cost thereof reflected in the opening inventory of the year of the involuntary liquidation. The taxes imposed by this chapter and by chapter 2 for the year of such liquidation, for preceding taxable years, and for all taxable years intervening between the year of liquidation and the year of replacement shall be redetermined, giving effect to such adjustments. Any increase in such taxes resulting from such adjustments shall be assessed and collected as a deficiency but without interest, and any overpayment so resulting shall be credited or refunded to the taxpayer without interest.

"(ii) Definition of Involuntary Liquidation.—For the purposes of this subparagraph the term 'involuntary liquidation' shall have the meaning given to it in subparagraph (B) and, in addition, it shall mean a failure, as referred to in that subparagraph, on the part of the taxpayer due, directly and exclusively, to disruption of normal trade relations between countries For the purposes of this subparagraph the words 'enemy' and 'war', as used in subparagraph (B), shall be interpreted, pursuant to regulations prescribed by the Secretary, in such a way as to apply to circumstances, occurrences and conditions, lacking a state of war, which are similar, by reason of a state of national preparedness, to those which would exist under a state of war.

"(iii) Application of Subparagraphs (C) and (E).—Subparagraphs (C) and (E), to the extent that they refer to any taxpayer subject to the provisions of subparagraph (A) or to the adjustments specified in or resulting from the effect of subparagraph (A), shall be as applicable to a taxpayer subject to the provisions of this subparagraph or to adjustments specified in or resulting from the effect of this subparagraph as though they specifically referred to this subparagraph. For this purpose, and with respect to the taxable years covered by this subparagraph, the reference in subparagraph (E) to section 734(d) shall be taken as a reference to section 450(d) [sic]."

(b) EFFECTIVE DATE.—The amendment made by this section shall be applicable with respect to taxable years ending after June 30, 1950.

Approved January 11, 1951.

SEC. 306. INVOLUNTARY LIQUIDATION AND REPLACEMENT OF INVENTORY [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951]

(a) AMENDMENT OF SECTION 22(d)(6)(F)(iii).—Section 22(d)(6)-(F)(iii) (relating to replacement of inventory involuntarily liquidated) is hereby amended by striking out the last sentence and inserting in lieu thereof the following: "If, for any taxable year ending after June 30, 1950, and prior to January 1, 1953, subparagraph (C) is applicable with respect to involuntary liquidations of goods of the same class subject to the provisions of both subparagraph (A) and this subparagraph, the involuntary liquidations of such goods subject to the provisions of this subparagraph shall be considered for the purpose of subparagraph (C) as having occurred prior to the involuntary liquidations of

such goods subject to the provisions of subparagraph (A). For the purpose of this clause, and with respect to the taxable years covered by this subparagraph, the reference in subparagraph (E) to section 734(d) shall be taken as a reference to section 452(d)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be applicable with respect to taxable years ending after June 30, 1950.

PAR. 4. Section 29.22(d)–7, as amended by Treasury Decision 5841, approved May 22, 1951 [26 CFR 29.22(d)–7], is further amended as follows:

(A) By striking from the first sentence "If prevailing war conditions beyond the control of the taxpayer should render it impossible during the period of the war for a taxpayer using the elective inventory method to have on hand at the close of the taxable year a stock of merchandise" and inserting in lieu thereof the following:

If prevailing war conditions beyond the control of the taxpayer, or certain prescribed postwar conditions beyond his control, should render it impossible either during the period of the war or within the prescribed postwar period for a taxpayer using the elective inventory method to have on hand at the close of the taxable year a stock of merchandise

(B) By striking "If the taxpayer notifies the Commissioner at any time not later than 6 months after the time of filing his income tax return for the year of the liquidation" from the second sentence and inserting in lieu thereof the following:

If the taxpayer notifies the Commissioner at any time not later than 6 months after the time of filing his income tax return for the year of the liquidation, or at any time not later than December 15, 1952, in the case of the year of liquidation being a taxable year ending after June 30, 1950, and before March 1, 1952,

(C) By striking "January 1, 1951" from the second paragraph and inserting in lieu thereof the following: "January 1, 1953".

(D) By inserting at the end of the second paragraph the following:

The statutory provisions affording recognition to the involuntary character of inventory decreases which become apparent in postwar taxable years and authorizing for tax purposes a replacement of the items of merchandise so liquidated are limited in their application to liquidations occurring in taxable years ending after June 30, 1950, and prior to January 1, 1954, and to inventory replacements effected in taxable years ending prior to January 1, 1956.

(E) By striking "A failure on the part of the taxpayer" from the first sentence of the third paragraph and inserting in lieu thereof the following: "With respect to inventory decreases occurring during the period of the war, a failure on the part of the taxpayer".

(F) By inserting immediately after the third paragraph the following new paragraph:

With respect to inventory decreases occurring in taxable years ending after June 30, 1950, and prior to January 1, 1954, the rules prescribed in the preceding paragraph shall apply. For the purpose of such rules, the words "enemy" and "war" shall be interpreted to apply to circumstances, occurrences, and conditions lacking a state of war, which are similar, by reason of a state of national preparedness, to those which would exist under a state of war. The various directives, orders, regulations, and allotments issued by the Federal Government in connection with national preparedness are among such circumstances and conditions. Likewise, a voluntary compliance with a request of an authorized representative of the Federal Government made upon an industry or an important segment thereof, or a voluntary allocation of materials by an industry or important segment thereof sanctioned by the Federal Government, if made in connection with the national preparedness program, might be considered as such a circumstance or condition. Similarly, so much of an inventory decrease as is directly and exclusively attributable to the Federal Government's stock piling program for periods during which an item is not subject to allotment shall also

be considered as subject to the provisions of section 22(d)(6). Thus, so much of an inventory decrease as is due wholly to the effect of directives, orders, regulations, or allotments issued pursuant to the Defense Production Act of 1950, or to any other circumstance or condition which is solely dependent upon other actions taken by the Federal Government in furtherance of the national preparedness program, ordinarily shall be considered as an involuntary liquidation under section 22(d)(6) and this section; however, to the extent that such a decrease is due to the disposition or condition of goods acquired in violation of such directives, orders, regulations or allotments, such decrease shall not be considered as such an involuntary liquidation. With respect to an inventory decrease in a taxable year ending after June 30, 1950, and prior to January 1, 1954, due directly and exclusively to a disruption of normal trade relations between countries, such an inventory decrease shall be considered as an involuntary liquidation subject to the rules and requirements prescribed in the preceding paragraphs, including the requirement that the taxpayer establish to the satisfaction of the Commissioner the cause of the involuntary liquidation. A disruption of normal trade relations between countries may be reflected by unusual export limitations imposed by a foreign government, by unusual exchange restrictions, or by other unusual circumstances or conditions beyond the control of the taxpayer.

(G) By striking the first sentence from the fourth paragraph and inserting in lieu thereof the following:

If the taxpayer would have the involuntary liquidation and replacement provisions applicable with respect to any inventory decrease, he must so elect within the time prescribed by these regulations.

(H) By striking from the second sentence of the fourth paragraph "(3) the circumstances relied upon as rendering the taxpayer unable to maintain throughout the taxable year a normal inventory of the items involved" and inserting in lieu thereof the following:

(3) the circumstances relied upon as rendering the taxpayer unable to maintain throughout the taxable year a normal inventory of the items involved, including evidence of the applicable National Production Authority inventory control figures for the beginning and the close of the taxable year (or if none, a statement to that effect), allotments applied for, allotments received, and reason for failure to place allotments received

(I) By striking the period at the end of the first sentence of the penultimate paragraph and inserting in lieu thereof the following:

; however, in a case involving involuntary liquidations of goods of the same class subject to the provisions of both section 22(d)(6)(A) and section 22(d)(6)(F), the involuntary liquidations of such goods subject to the provisions of section 22(d)(6)(F), shall, for the purpose of replacements made in taxable years ending prior to January 1, 1953, be considered as having occurred prior to the involuntary liquidations of such goods subject to the provisions of section 22(d)(6)(A).

(J) By changing the penultimate sentence of the last paragraph to read as follows:

The tax previously determined shall be ascertained in accordance with the principles stated in section 734(d) and section 452(d) and those sections of the regulations prescribed thereunder

(This Treasury Decision is issued under the authority contained in sections 22, 62, and 3791 of the Internal Revenue Code (53 Stat. 9, 32, 467; 26 U. S. C. 22, 62, 3791).)

NORMAN A. SUGARMAN,
Acting Commissioner of Internal Revenue.

Approved September 22, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 24, 1952, 8:46 a. m.)

SECTION 22(k).—GROSS INCOME: ALIMONY, ETC., INCOME

SECTION 29.22(k)-1: Alimony and separate maintenance payments—Income of former wife.

INTERNAL REVENUE CODE

Periodic payments received by a divorced wife after she has remarried. (See I. T. 4108, page 113.)

SECTION 22(n).—GROSS INCOME: DEFINITION OF "ADJUSTED GROSS INCOME"

SECTION 29.22(n)-1: Adjusted gross income. (Also Section 117, Sections 29.117-1, 29.117-2, 29.117-3, 29.117-6, 29.117-7; Section 122, Section 29.122-3; Section 162, Sections 29.162-1, 29.162-2; Section 189, Section 29.189-1.)

1952-26-13991
T. D. 5951

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 123 and 322 of the Revenue Act of 1951, relating to the treatment of capital gains and losses.

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On August 8, 1952, notice of proposed rule making with respect to amendments to conform Regulations 111 to section 123 (relating to the alternative tax on corporations in the case of capital gains and losses) and section 322 (relating to the treatment of capital gains and losses) of the Revenue Act of 1951 (82d Cong., 1st sess.), approved October 20, 1951, was published in the Federal Register (17 F. R. 7249). 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 preceding section 29.22(n)-1, as added by Treasury Decision 5425 [C. B. 1945, 10], approved December 29, 1944 [26 CFR 29.22(n)-1], the following:

SEC. 322. CAPITAL GAINS AND LOSSES [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(c) TECHNICAL AMENDMENTS.—

(1) AMENDMENT OF SECTION 22(n).—Section 22(n) (relating to the definition of adjusted gross income) is hereby amended by striking out the word "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and inserting in lieu

thereof "; and", and by inserting after paragraph (6) the following new paragraph:

"(7) LONG-TERM CAPITAL GAINS.—The deduction allowed by section 23(ee)."

* * * * * * *

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

PAR. 2. Section 29.22(n)-1, as added by Treasury Decision 5425 [26 CFR 29.22(n)-1], is amended as follows:

(A) By striking the word "and" immediately preceding "(6)" in the third paragraph thereof.

(B) By striking the period at the end of the third paragraph and inserting in lieu of such period a semicolon and the following: "and (7) for taxable years beginning on or after October 20, 1951, the deduction for long-term capital gains allowed by sections 23(ee) and 117(b)."

PAR. 3. There is inserted immediately after section 29.23(bb)-1, as added by Treasury Decision 5873 [C. B. 1952-1, 23], approved December 7, 1951 [26 CFR 29.23(bb)-1], the following:

SEC. 322. CAPITAL GAINS AND LOSSES [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) TREATMENT OF LONG-TERM CAPITAL GAINS AND LOSSES.—

(1) AMENDMENT OF SECTION 23.—Section 23 (relating to deductions from gross income) is hereby amended by adding at the end thereof the following new subsection:

"(ee) LONG-TERM CAPITAL GAINS.—In the case of a taxpayer other than a corporation, the deduction for long-term capital gains provided in section 117(b)."

* * * * * * *

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

PAR. 4. There is inserted immediately preceding section 29.117-1 [26 CFR 29.117-1] the following:

SEC. 123. COMPUTATION OF ALTERNATIVE CAPITAL GAINS TAX [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

Section 117(c)(1) (relating to alternative tax on corporations) is hereby amended by striking out the second paragraph and inserting in lieu thereof the following:

"(A) A partial tax shall first be computed upon the net income reduced by the amount of such excess, at the rates and in the manner as if this subsection had not been enacted.

"(B) There shall then be ascertained an amount equal to 25 per centum of such excess, except that in the case of any taxable year beginning after March 31, 1951, and before April 1, 1954, there shall be ascertained an amount equal to 26 per centum of such excess.

"(C) The total tax shall be the partial tax computed under subparagraph (A) plus the amount computed under subparagraph (B)."

SEC. 322. CAPITAL GAINS AND LOSSES [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) TREATMENT OF LONG-TERM CAPITAL GAINS AND LOSSES.—

* * * * * * *

(2) AMENDMENT OF SECTION 117(b).—Section 117(b) (relating to treatment of long-term capital gains and losses) is hereby amended to read as follows:

"(b) DEDUCTION FROM GROSS INCOME.—In the case of a taxpayer other than a corporation, if for any taxable year the net long-term capital gain exceeds the net short-term capital loss, 50 per centum of the amount of such excess shall be a deduction from gross income. In the case of an estate or trust, the deduction shall be computed by excluding the portion (if any), of the gains for the taxable year from sales or exchanges of capital assets, which, under section 162 (b) or (c), is includible by the income beneficiaries as gained derived from the sale or exchange of capital assets."

(b) ALTERNATIVE TAX.—Section 117(c)(2) (relating to alternative tax) is hereby amended to read as follows:

"(2) OTHER TAXPAYERS.—If for any taxable year the net long-term capital gain of any taxpayer (other than a corporation) exceeds the net short-term capital loss, there shall be levied, collected, and paid, in lieu of the tax imposed by sections 11 and 12 (or, in the case of certain tax-exempt trusts, in lieu of the tax imposed by section 421), a tax determined as follows, if and only if such tax is less than the tax imposed by such sections:

"(A) A partial tax shall first be computed upon the net income reduced by an amount equal to 50 per centum of such excess, at the rates and in the manner as if this subsection had not been enacted.

"(B) There shall then be ascertained an amount equal to 25 per centum of the excess of the net long-term capital gain over the net short-term capital loss. In the case of any taxable year beginning after October 31, 1951, and before November 1, 1953, there shall be ascertained, in lieu of the amount computed under the preceding sentence, an amount equal to 26 per centum of the excess of the net long-term capital gain over the net short-term capital loss.

"(C) The total tax shall be the partial tax computed under subparagraph (A) plus the amount computed under subparagraph (B)."

(c) TECHNICAL AMENDMENTS.—

* * * * * * *

(2) AMENDMENT OF SECTION 117(a).—Paragraphs (2) and (4) of section 117(a) (relating to definitions of short-term capital gain and long-term capital gain) are each hereby amended by striking out "net income" and inserting in lieu thereof "gross income".

(3) AMENDMENT OF SECTION 117(j).—Section 117(j)(2)(A) (relating to gains and losses from involuntary conversion and from the sale or exchange of certain property used in the trade or business) is hereby amended to read as follows:

"(A) In determining under this paragraph whether gains exceed losses, the gains described therein shall be included only if and to the extent taken into account in computing gross income and the losses described therein shall be included only if and to the extent taken into account in computing net income, except that subsection (d) shall not apply."

* * * * * * *

(d) EFFECTIVE DATE.—The amendments made by this section shall be applicable only with respect to taxable years beginning on or after the date of the enactment of this Act. In determining under section 117(e) of the Internal Revenue Code the amount of the carryover to a taxable year beginning on or after such date, of the capital loss for a taxable year beginning before such date, such amendments shall not affect the computation of the amount of the net capital loss or of the net capital gain for any taxable year beginning before such date.

PAR. 5. Section 29.117-1, as amended by Treasury Decision 5893 [C. B. 1952-1, 126], approved April 4, 1952 [26 CFR 29.117-1], is further amended as follows:

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

Gains and losses from the sale or exchange of such property are not treated as gains and losses from the sale or exchange of capital assets, except to the extent provided in section 117(j).

(B) By striking from the fifth sentence of the second paragraph thereof the words "is not subject to the limitations of section 117 (b), (c), and (d)" and inserting in lieu thereof the words "is not subject to the provisions of section 117".

(C) By striking from the fourth sentence of the fourth paragraph thereof the words "are not subject to the percentage provisions of section 117(b) and losses from such transactions are not subject to the limitation on losses provided in section 117(d)" and inserting in lieu thereof the words "are not subject to the limitations provided in section 117".

(D) By striking from the eighth paragraph of such section (beginning "Gains and losses from the sale or exchange") the second sentence thereof.

(E) By striking the fifth sentence from the ninth paragraph thereof.

PAR. 6. Section 29.117-2, as amended by Treasury Decision 5893 [26 CFR 29.117-2], is further amended as follows:

(A) By striking all that precedes paragraph (*b*) thereof and inserting in lieu thereof the following:

SEC. 29.117-2. PERCENTAGE OF CAPITAL GAIN OR LOSS TAKEN INTO ACCOUNT—DEDUCTION FOR LONG-TERM CAPITAL GAINS—LIMITATION ON CAPITAL LOSSES—NET CAPITAL LOSS CARRY-OVER.—(*a*) *General.*—(1) *Taxable years beginning prior to October 20, 1951.*—In computing the net capital gain, net capital loss, adjusted gross income, and net income of a taxpayer, other than a corporation, for a taxable year beginning prior to October 20, 1951 (the date of the enactment of the Revenue Act of 1951), only the following percentages of the gain or loss (computed under section 111, recognized under section 112, and taken into account without regard to section 117) upon the sale or exchange of a capital asset shall be taken into account:

(i) One hundred percent if the capital asset has been held for 6 months or less;

(ii) Fifty percent if the capital asset has been held for more than 6 months.

For instance, if unimproved real estate purchased by an individual for $20,000 is a capital asset and is sold by him for $25,000 after having been held for more than 6 months, only 50 percent of the recognized gain ($5,000), or $2,500, shall be taken into account in computing net income; or if such property is sold for $14,000, only 50 percent of the recognized loss ($6,000), or $3,000, shall be so taken into account. (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.)

(2) *Taxable years beginning on or after October 20, 1951.*—In computing gross income, adjusted gross income, net income, net capital gain, and net capital loss, for a taxable year beginning on or after October 20, 1951, 100 percent of any gain or loss (computed under section 111, recognized under section 112, and taken into account without regard to section 117) upon the sale or exchange of a capital asset shall be taken into account regardless of the period for which the capital asset has been held. Nevertheless, the net short-term capital gain or loss and the net long-term capital gain or loss must be separately computed. In computing the adjusted gross income or the net income of a taxpayer other than a corporation, if for any such taxable year the net long-term capital gain exceeds the net short-term capital loss, 50 percent of the amount of the excess is allowable as a deduction from gross income under sections 23(ee) and 117(b).

For instance, if an individual realizes $2,000 of long-term capital gain and sustains $1,500 of short-term capital loss during the taxable year, the whole amount of the gain ($2,000) is includible in gross income. Since the net long-term capital gain exceeds the net short-term capital loss by $500, 50 percent of the excess ($250) is allowable as a deduction under section 23(ee).

In the case of an estate or trust, for the purpose of computing the deduction allowable under section 23(ee), any long-term or short-term capital gains which under section 162 (b) or (c) are includible in the gross income of its income beneficiaries as gains derived from the sale or exchange of capital assets must be excluded in determining whether for the taxable year of the estate or trust its net long-term capital gain exceeds its net short-term capital loss. For example, during 1952 a trust realized a gain of $1,000 upon the sale of stock held for 10 months. Under the terms of the trust instrument all of such gain must be distributed not later than 30 days after the close of the year to A, the sole income beneficiary. The trust is not entitled to any deduction with respect to such gain under sections 23(ee) and 117(b). On the other hand, assuming A had no other capital gains or losses in 1952, he would be entitled to a deduction of $500.

(B) By striking the second, third, and fourth sentences of paragraph (*b*) thereof and inserting in lieu of such sentences the following:

Thus, where in a taxable year beginning prior to October 20, 1951, an individual taxpayer, having an ordinary net income of $5,000, has a loss of $4,000 from the sale of a capital asset which he held for more than 6 months, of which loss $2,000 (50 percent of $4,000) is taken into account, such net long-term capital loss of $2,000 is allowable only to the extent of $1,000, the remaining $1,000 being a net capital loss. If the taxpayer's ordinary net income had been $400 instead of $5,000, only $400 of the net long-term capital loss of $2,000 would have been allowed, leaving a net capital loss of $1,600. If the taxable year in this illustration were a taxable year beginning on or after October 20, 1951, the entire $4,000 loss would be taken into account as a net long-term capital loss, of which $1,000 and $400 would be allowable as deductions under the respective assumptions, and the net capital loss would be $3,000 and $3,600, respectively. (For carryover of a net capital loss, see (*c*) of this section.)

(C) By striking all that follows the first paragraph of (*c*) of such section and inserting in lieu thereof the following:

The practical operation of the provisions of section 117(e)(1) may be illustrated by the following example:

For the taxable years 1950 to 1954, inclusive, an individual is assumed to have a net short-term capital loss, net short-term capital gain, net long-term capital loss, net long-term capital gain, and net income as follows:

	1950	1951	1952	1953	1954
Carry-over from prior years:					
From 1950		($50,000)	($29,500)	($29,500)	
From 1952				(19,500)	($13,000)
Net short-term loss (computed without regard to the carry-overs)	($30,000)	(5,000)	(10,000)		
Net short-term gain (computed without regard to the carry-overs)				40,000	
Net long-term loss:					
50 percent taken into account	(20,500)				
100 percent taken into account			(10,000)	(5,000)	
Net long-term gain:					
50 percent taken into account		25,000			
100 percent taken into account					15,000
Ordinary net income (computed without regard to capital gains and losses)	500	500	500	1,000	500
Net capital gain (computed without regard to the carry-overs)		20,500		36,000	
Net capital loss	(50,000)		(19,500)		
Deduction allowable under section 23(ee)			None	None	1,000
Net income (computed without regard to deduction allowable under section 23(ee))			None	None	1,500

NET CAPITAL LOSS OF 1950

The net capital loss is $50,000. This figure, computed by taking into account 100 percent of short-term gains and losses and 50 percent of long-term gains and losses, is the excess of the losses from sales or exchanges of capital assets over the sum of (1) gains from such sales or such exchanges, and (2) ordinary net income of $500. This amount may be carried forward in full as a short-term loss to 1951. However, in 1951 there was a net capital gain of $20,500, as defined by section 117(a)(10)(B) and limited by section 117(e)(1), against which this net capital loss of $50,000 is allowed in part. The remaining portion—$29,500— may be carried forward to 1952 and 1953 since there was no net capital gain in 1952. In 1953 this $29,500 is allowed in full against net capital gain of $36,000, as defined by section 117(a)(10)(B) and limited by section 117(e)(1). For 1952 and 1953 the net long-term capital loss is computed by taking into account 100 percent of gains and losses upon the sale or exchange of capital assets held for more than 6 months. However, in determining the amount of the capital loss carry-over ($29,500) to 1952 and 1953, the net capital loss for 1950 is computed by taking into account only 50 percent of gains and losses upon the sale or exchange of capital assets held for more than 6 months, and the net capital gain for 1951 is similarly computed.

NET CAPITAL LOSS OF 1952

The net capital loss is $19,500. This figure, computed by taking into account 100 percent of both long-term and short-term gains and losses, is the excess of the losses from sales or exchanges of capital assets over the sum of (1) gains from such sales or exchanges and (2) ordinary net income of $500. This amount may be carried forward in full as a short-term loss to 1953. However, in 1953 there was a net capital gain of $6,500, as defined by section 117(a)(10)(B) and limited by section 117(e)(1), against which this net capital loss of $19,500 is allowed in part. The remaining portion—$13,000— may be carried forward to 1954. Since this amount is treated as a short-term capital loss in 1954 under section 117(e)(1), the excess of the net long-term capital gain over the net short-term capital loss is $2,000. Half of this excess is allowable as a deduction under sections 23(ee) and 117(b). Thus, the taxpayer has a net income of $1,500 for 1954.

PAR. 7. Section 29.117–3, as amended by Treasury Decision 5928 [page 181, this Bulletin], approved August 28, 1952 [26 CFR 29.117–2], is further amended as follows:

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

For any taxable year beginning prior to October 20, 1951 (the date of the enactment of the Revenue Act of 1951), this alternative tax is the sum of (1) a partial tax, computed at the rates provided by sections 11 and 12 on the net income, excluding therefrom for this purpose the whole amount of such excess of the net long-term capital gain (determined by taking into account only 50 percent of the gains and losses upon the sale or exchange of capital assets held for more than 6 months) over the net short-term capital loss, plus (2) 50 percent of such excess. In the case of a taxable year beginning on or after October 20, 1951, this alternative tax is the sum of (1) a partial tax, computed at the rates provided by sections 11 and 12 on the net income reduced by an amount equal to 50 percent of the excess of the net long-term capital gain (determined by taking into account 100 percent of the gains and losses upon the sale or exchange of capital assets held for more than 6 months) over the net short-term capital loss, plus (2) 25 percent (or 26 percent if the taxable year begins after October 31, 1951, and before November 1, 1953) of the excess of the net long-term capital gain over the net short-term capital loss.

(B) By inserting immediately after the words "25 percent" in the second sentence of the second paragraph thereof the following: "(or 26 percent if the taxable year begins after March 31, 1951, and before April 1, 1954)".

(C) By inserting immediately after the words "provisions of this section" in the first sentence of the third paragraph thereof the follow-

ing: "(other than those applicable to a taxable year beginning on or after October 20, 1951)".

PAR. 8. Section 29.117–6, as amended by Treasury Decision 5881 [C. B. 1952–1, 56], [26 CFR 29.117–6], is further amended as follows:

(A) By striking from the first sentence of the first paragraph thereof the words "the percentage of the recognized gain or loss to be taken into account under section 117(b) from a short sale shall be computed" and inserting in lieu thereof the following: "whether the recognized gain or loss from a short sale is long-term or short-term capital gain or loss shall be determined".

(B) By striking from the second sentence of the first paragraph thereof the words "100 percent of the recognized gain or loss would be taken into account under section 117 (b)" and inserting in lieu thereof the following: "the recognized gain or loss would be considered short-term capital gain or loss".

PAR. 9. Section 29.117–7, as amended by Treasury Decision 5881 [26 CFR 29 117–7], is further amended as follows:

(A) By striking therefrom the second and third undesignated paragraphs and inserting in lieu thereof the following:

In determining whether such gains exceed such losses for the purposes of section 117(j), losses upon the destruction in whole or in part, theft or seizure, requisition or condemnation of the property described in section 117(j) are included whether or not there was a conversion of such property into money or other property. For example, if a capital asset held for more than six months, with an adjusted basis of $400, is stolen, and the loss from this theft is not compensated for by insurance or otherwise, the $400 loss is included in the computations under section 117(j) to determine whether gains exceed losses. Furthermore, in making this computation for any taxable year, the gains and losses described in section 117(j) are taken into account in full, that is, 100 percent of such gains and losses is taken into account. For example, if a taxpayer for a taxable year beginning before October 20, 1951, sustains a loss of $400 upon the sale under threat of condemnation of a capital asset, held for more than six months, such loss is taken into account for the purpose of section 117(j) to the extent of $400, even though only $200 would be taken into account under section 117(b), prior to its amendment by the Revenue Act of 1951, in computing net income. Similarly, the provisions of section 117(d) limiting the deduction of capital losses are not applicable to exclude any losses from the computations under section 117(j). With these exceptions, gains are included in the computations under section 117(j) only to the extent that they are taken into account in computing gross income, and losses are included only to the extent that they are taken into account in computing net income. Thus, losses which are not deductible items under section 24 or section 118 are not included in the computations under section 117(j). Similarly, if a taxpayer reports on the installment basis under section 44 the gain on the sale of property described in section 117(j), only the portion of the gain reported under section 44 is included in the computations for such taxable year under section 117(j). Any gains and losses which are not recognized under section 112 are not included in the computations under section 117(j). Thus, if property is involuntarily converted into similar property, so that the gain on such conversion is not recognized under the provisions of section 112(f), such gain is not included in the computations under section 117(j).

If it is determined under the above computations that the gains exceed the losses, all of such gains and losses are treated as gains and losses from the sale or exchange of capital assets held for more than six months. All such gains and losses are then subject to the limitations of section 117 (c) and (d), relating to the alternative tax in the case of capital gains and losses and the extent to which capital losses are allowed; and in the case of taxable years beginning prior to October 20, 1951, such gains and losses are taken into account only to the extent of 50 percent. If it is determined under the above computations that the gains do not exceed the losses, none of such gains and losses are treated as gains and losses from the sale or exchange of capital assets. Such

gains and losses are then to be taken into account in full, and such losses are not subject to the limitations provided in section 117(d). For example, if the taxpayer during the taxable year 1942 has losses of $1,000 on the sale of certain depreciable machinery used in his trade or business, held for more than six months, and a gain of $400 on the sale under threat of condemnation of a capital asset held for more than 6 months, such losses exceed such gain, and such losses and gain are not treated as losses and gain from the sale or exchange of capital assets. The gain on the sale of the capital asset would therefore be taken into account in full, instead of to the extent of 50 percent.

(B) By inserting in the second sentence of *example* (*1*) thereof immediately following the words "section 117(b)," the following: "prior to its amendment by the Revenue Act of 1951,".

(C) By inserting in the second sentence of the second paragraph of *example* (*1*) thereof immediately following the words "section 117(b)." the following: "prior to its amendment by the Revenue Act of 1951,".

(D) By inserting in the second sentence of *example* (*3*) thereof immediately following the words "section 117(b)" the following: ", prior to its amendment by the Revenue Act of 1951,".

PAR. 10. There is inserted immediately preceding section 29.122–1 [26 CFR 29.122–1] the following:

SEC. 322. CAPITAL GAINS AND LOSSES [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(c) TECHNICAL AMENDMENTS.—

* * * * * * *

(4) Amendment of section 122(d)(4).—Section 122(d)(4) (relating to computation of net operating loss deduction) is hereby amended to read as follows:

"(4) The amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from such sales or exchanges. The deduction provided in section 23(ee) shall not be allowed."

* * * * * * *

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

PAR. 11. Section 29.122–3 [26 CFR 29.122–3] is amended as follows:

(A) By striking (4) from (*a*) thereof and inserting in lieu thereof the following:

(4) Gains and losses recognized upon sales or exchanges of capital assets held for more than 6 months shall be taken into account in full. The deduction provided in sections 23(ee) and 117(b), applicable to taxable years beginning on or after October 20, 1951, shall not be allowed;

(B) By striking out the words "(as defined in section 117(a)(4))" from the second sentence of (*d*) thereof.

PAR. 12. There is inserted immediately preceding section 29.162–1 [26 CFR 29.162–1] the following:

SEC. 322. CAPITAL GAINS AND LOSSES [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(c) TECHNICAL AMENDMENTS.—

* * * * * * *

(5) AMENDMENT OF SECTION 162(a).—Section 162(a) (relating to computation of net income of estates and trusts) is hereby

amended by striking out the semicolon and inserting in lieu thereof a period and the following: "Where any amount of the income so paid or set aside is attributable to gain from the sale or exchange of capital assets held for more than 6 months, proper adjustment of the deduction otherwise allowable under this subsection shall be made for any deduction allowable to the trust under section 23(ee);".

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

PAR. 13. Section 29.162–1, as amended by Treasury Decision 5838 [C. B. 1951–1, 35], approved April 17, 1951 [26 CFR 29.162–1], is further amended by inserting, immediately before the last sentence of paragraph (*a*) thereof, the following:

For any taxable year beginning before October 20, 1951 (the date of the enactment of the Revenue Act of 1951), if an amount of the income so paid or set aside is attributable to gain from the sale or exchange of capital assets held for more than 6 months, the amount of the deduction allowable under section 162(a) must be determined with reference to the requirement that only 50 percent of such gains be included in gross income of the trust. See *United States v. Benedict et al., Trustees*, (1950) 338 U. S. 692 [Ct. D. 1730, C. B. 1950–1, 70]. Similarly, in a taxable year beginning on or after October 20, 1951, where any amount of the income so paid or set aside for the charitable uses or purposes referred to or described in section 162(a) is attributable to gain from the sale or exchange of capital assets held for more than 6 months, the amount of the deduction allowable under section 162(a) must be determined with regard to the inclusion of 100 percent of such gains in gross income and with appropriate adjustment for the deduction provided in sections 23(ee) and 117(b) of 50 percent of the excess, if any, of the net long-term capital gain over the net short-term capital loss. See section 29.117–2(*a*)(2). The application of these rules is illustrated in the following examples.

Example (1). Under the terms of a trust created by the will of a decedent, the trust net income (including capital gains) is to be distributed, one-half to certain individual beneficiaries and one-half to M University, an organization exempt from taxation under section 101(6). During 1951 the trust has ordinary net income of $100,000, and in addition $100,000 of gains from the sale of capital assets held for more than 6 months, of which only 50 percent, or $50,000, is includible in gross income. The trust pays $100,000—one-half of its net income under the terms of the trust—to M University. The deduction allowable to the trust under section 162(a) is limited to $75,000, since only 50 percent of the capital gains is included in gross income for tax purposes.

Example (2). During 1952 the trust referred to in example (1) also has ordinary net income of $100,000, plus $100.000 of gains from the sale of capital assets held for more than 6 months. In computing the gross income of the trust for tax purposes 100 percent of such gains are includible. M University receives a total of $100,000 from the trust in respect of the year 1952. However, the amount allowable to the trust as a deduction under section 162(a) is subject to appropriate adjustment for the deduction allowable under section 23(ee). In view of the distributions made to individual beneficiaries, the deduction allowable to the trust under section 23(ee) is limited by the provisions of section 117(b) to $25,000. Since the whole of this deduction is attributable to the distribution to M University, the deduction allowable in 1952 to the trust under section 162(a) will be $75,000.

PAR. 14. Section 29.162–2, as amended by Treasury Decision 5458 [C. B. 1945, 45], approved June 15, 1945 [26 CFR 29.162–2], is further amended by inserting immediately following the words "section 117(b)" appearing in the first example of (*a*) thereof, the following: "prior to its amendment by the Revenue Act of 1951".

PAR. 15. Section 29.189–1 [26 CFR 29.189–1] is amended as follows:

(A) By striking the first sentence of paragraph (*a*)(1) and inserting in lieu thereof the following:

The partnership's gains and losses from sales or exchanges of capital assets held for more than 6 months shall be taken into account in full.

(B) By striking the sentence in paragraph (*b*)(2) and inserting in lieu thereof the following:

The partnership's gains and losses from sales or exchanges of capital assets held for more than 6 months shall be taken into account in full.

(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).)

JUSTIN F. WINKLE,
Acting Commissioner of Internal Revenue.

Approved December 2, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 5, 1952, 8:50 a. m.)

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

SECTION 29.23(a)-1: Business expenses. 1952–18–13909
I. T. 4095

INTERNAL REVENUE CODE

Expenses incurred by a Congressman in printing and addressing a letter to his constituents, which letter consists principally of a report of his activities and findings in connection with an official inspection trip to foreign countries but also contains a brief personal message, qualify as ordinary and necessary business expenses within the meaning of section 23(a)(1)(A) of the Internal Revenue Code.

Advice is requested relative to the deductibility, for Federal income tax purposes, of the expenses incurred by a Congressman in printing and addressing a letter to his constituents, which letter consists principally of a report of his activities and findings in connection with an official inspection trip to foreign countries but also contains a brief personal message.

Section 23(a)(1)(A) of the Internal Revenue Code provides that in computing net income there shall be allowed as deductions all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Section 48(d) of the Code provides that the term "trade or business" includes the performance of the functions of a public office. On the other hand, section 29.23(a)-15(*b*) of Regulations 111 precludes the deduction of campaign expenses of a candidate for public office. (See *Michael F. McDonald* v. *Commissioner*, 323 U. S. 57, Ct. D. 1617, C. B. 1944, 94.)

It is often difficult to determine the line of demarcation between deductible business expenses and nondeductible campaign expenses of a Congressman. The mere fact, however, that it might be politically expedient for a Congressman to incur an otherwise deductible expense would not ordinarily convert that expense into a nondeductible campaign expense. For example, O. D. 310 (C. B. 1, 104 (1919)) holds that an amount expended by a Member of Congress for clerk hire, in

excess of the allowance made by the Government for such purpose, may be properly deducted as a business expense. The principle in O. D. 310, *supra*, is applicable even though such clerks may be employed primarily to answer the Congressman's mail, a function which might be considered as incidentally furthering the Congressman's candidacy for reelection. It is the opinion of this office that reporting to constituents with respect to a Congressman's official actions should be recognized, for Federal income tax purposes, as a part of the official duties of his office.

Accordingly, it is held that expenses incurred by a Congressman in printing and addressing a letter to his constituents, which letter consists principally of a report of his activities and findings in connection with an official inspection trip to foreign countries but also contains a brief personal message, qualify as ordinary and necessary business expenses. It follows that a Member of Congress may deduct such expenses provided his stationery allowance is included in gross income and his tax-exempt expense allowance has been exhausted by other expenses properly chargeable thereto for which no deduction is claimed. (The expense allowance of $2,500 is tax-exempt until January 3, 1953, but not thereafter. See section 619 of the Revenue Act of 1951.)

SECTION 29.23(a)–1: Business expenses. 1952–18–13910
I. T. 4096

INTERNAL REVENUE CODE

Treatment for Federal income tax purposes of payments made by surgeons to other physicians for professional assistance and under fee-splitting arrangements.

Advice is requested relative to the deductibility, for Federal income tax purposes, of payments made by a surgeon for professional assistance in conducting his practice, and of payments made by a surgeon, on a split-fee basis, to other physicians who refer patients to him.

Section 23(a)(1)(A) of the Internal Revenue Code provides that 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, including a reasonable allowance for salaries or other compensation for personal services actually rendered * * *.

Thus, reasonable compensation for personal services actually rendered which is paid by a surgeon for professional assistance in conducting his practice may be deducted under section 23(a)(1)(A) of the Code as an ordinary and necessary expense of carrying on a trade or business.

Whether reasonable payments made by a surgeon, on a split-fee basis, to other physicians who refer patients to him represent deductible business expenses must be determined in the light of all the circumstances in each case. However, as a general rule, such payments are deductible for Federal income tax purposes provided they are normal, usual, and customary in the profession and in the community; are appropriate and helpful in obtaining business; and do not frustrate

sharply defined National or State policies evidenced by a governmental declaration proscribing particular types of conduct. (See *Thomas B. Lilly et ux.* v. *Commissioner*, 343 U. S. 90, Ct. D. 1741, C. B. 1952-1, 16.)

SECTION 29.23(a)-1: Business expenses.

INTERNAL REVENUE CODE

Payments made in violation of the Defense Production Act of 1950, as amended, and payments made by way of fine for violation of such Act. (See I. T. 4105, page 93.)

SECTION 29.23(a)-6: Compensation for personal services.

INTERNAL REVENUE CODE

Amounts paid in violation of wage stabilization provisions of the Defense Production Act of 1950, as amended. (See I. T. 4105, page 93.)

SECTION 29.23(a)-14: Expenditures for advertising or promotion of good will. 1952-25-13976 T. D. 5946

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 303 of the Excess Profits Tax Act of 1950, relating to the deduction of expenditures for advertising and good will.

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On September 5, 1952, notice of proposed rule making, regarding certain provisions of the Excess Profits Tax Act of 1950, approved January 3, 1951, was published in the Federal Register (17 F. R. 8048). No objection to such rules having been received, the amendments set forth below necessary to conform Regulations 111 to such provisions are hereby adopted.

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

SEC. 303. EXPENDITURES FOR ADVERTISING AND GOOD WILL [EXCESS PROFITS TAX ACT OF 1950, APPROVED JANUARY 3, 1951].

Section 23(a)(1)(C) of the Internal Revenue Code (relating to expenditures for advertising and good will) is hereby amended to read as follows:

"(C) Expenditures for Advertising and Good Will.—If a corporation has, for the purpose of computing its excess profits tax credit under Chapter 2E, or subchapter D of this Chapter, claimed the benefits of the election provided in section 733 or section 451, as the case may be, no deduction shall be allowable

under subparagraph (A) to such corporation for expenditures for advertising or the promotion of good will which, under the rules and regulations prescribed under section 733 or section 451, as the case may be, may be regarded as capital investments."

PAR. 2. Section 29.23(a)-14 [26 CFR 29.23(a)-14] relating to the deduction of expenditures for advertising or promotion of good will, is amended to read as follows:

SEC. 29.23(a)-14. EXPENDITURES FOR ADVERTISING OR PROMOTION OF GOOD WILL.—A corporation which has, for the purpose of computing its excess profits credit, elected under section 733 (applicable to the excess profits tax imposed by subchapter E of chapter 2) or under section 451 (applicable to the excess profits tax imposed by subchapter D of chapter 1) to charge to capital account for taxable years in its base period expenditures for advertising or the promotion of good will which may be regarded as capital investments may not deduct similar expenditures for the taxable year. Such a taxpayer has the burden of proving that expenditures for advertising or the promotion of good will which it seeks to deduct for such later taxable years may not be regarded as capital investments under the provisions of the regulations prescribed under sections 733 or 451, as the case may be. For rules for determining what expenditures for advertising or the promotion of good will may be regarded as capital investments, and for information required to be submitted with respect to such expenditures, see section 30.733-2 of Regulations 109 and section 35.733-2 of Regulations 112 (which sections are applicable to the excess profits tax imposed by subchapter E of chapter 2) and section 40.451-2 of Regulations 130 (applicable to the excess profits tax imposed under subchapter D of chapter 1).

(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).)

JUSTIN F. WINKLE,
Acting Commissioner of Internal Revenue.

Approved November 19, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 21, 1952, 8:50 a. m.)

SECTION 29.23(a)-16: Wage and salary payments in contravention of wage and salary limitations not deductible. 1952-23-13955 I. T. 4105

(Also Section 29.23(a)-1, Section 29.23(a)-6; Section 22(a), Section 29.22(a)-5.)

INTERNAL REVENUE CODE

Payments made in violation of the Defense Production Act of 1950 (64 Stat. 798), as amended, payments made by way of fine for violation of such Act, and payments made to the United States or to any buyer of any material or service in compromise or satisfaction of any liability arising from a violation of such Act will be disregarded and disallowed, for Federal income tax purposes, in the amounts determined and certified to the Bureau of Internal Revenue by the Economic Stabilization Agency or its authorized components.

Advice is requested regarding the policy of the Bureau of Internal Revenue with respect to the treatment, for Federal income tax purposes, to be accorded payments made in violation of the Defense Production Act of 1950 (64 Stat. 798), as amended (sometimes hereinafter referred to as the Act), payments made by way of fine for vio-

lation of such Act, and payments made to the United States or to any buyer of any material or service in compromise or satisfaction of any liability arising from a violation of the Act.

Title IV of the Act, as amended, which title relates to price and wage stabilization, provides in part as follows:

SEC. 401. * * * Whenever the authority granted by this title is exercised, all agencies of the Government dealing with the subject matter of this title, within the limits of their authority and jurisdiction, shall cooperate in carrying out these purposes.

* * * * * * *

SEC. 405. (a) It shall be unlawful, regardless of any obligation heretofore or hereafter entered into, for any person to sell or deliver, or in the regular course of business or trade to buy or receive, any material or service, or otherwise to do or omit to do any act, in violation of this title or of any regulation, order, or requirement issued thereunder, or to offer, solicit, attempt or agree to do any of the foregoing. The President shall also prescribe the extent to which any payment made, either in money or property, by any person in violation of any such regulation, order, or requirement shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any such person for the purposes of any other law or regulation, including bases in determining gain for tax purposes.

(b) No employer shall pay, and no employee shall receive, any wage, salary, or other compensation in contravention of any regulation or order promulgated by the President under this title. The President shall also prescribe the extent to which any wage, salary, or compensation payment made in contravention of any such regulation or order shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any employer for the purposes of any other law or regulation.

SEC. 409. (d) The President shall also prescribe the extent to which any payment made by way of fine pursuant to subsection (b) of this section 409, or any payment made to the United States or to any buyer in compromise or satisfaction of any liability or of any right of action, suit, or judgment, authorized pursuant to subsection (c) of this section 409 for selling any material or service, in violation of a regulation or order providing a ceiling or ceilings, shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any such person for the purposes of any other law or regulation.

Executive Order 10161 (15 F. R. 6105, September 12, 1950) creates the Economic Stabilization Agency and provides that the functions conferred upon the President by title IV of the Act are delegated to the Administrator of the Agency.

General Order No. 15 (17 F. R. 2994, April 5, 1952), of the Economic Stabilization Agency, promulgated pursuant to the Act, as amended, and Executive Order 10161, as amended, sets forth the policy and procedure with respect to disallowances and clarifies the respective functions of the Economic Stabilization Administrator and the constituent organizations of the Economic Stabilization Agency. The General Order states that the Director of Price Stabilization has authority to determine whether any person has made any payment either in money, or property, or other consideration in violation of the Act or of any regulation, order, or requirement relating to prices under the Act. Where such determination has been made, the Director has authority further to determine the amount of such payment to be disregarded and disallowed for the purposes listed in the General Order. Similar statements are made with respect to fines paid for violation of the Act or for amounts paid in compromise or satisfaction of any liability, right or action, suit or judgment for violation of a price regulation or order under the Act. The General Order

further sets forth extenuating and mitigating circumstances to be taken into consideration and provides that the agency shall certify and forward its final determination in each case to the appropriate governmental agency or agencies.

General Order No. 18 (17 F. R. 6925, July 29, 1952), establishes the National Enforcement Commission within the Economic Stabilization Agency and redelegates certain authority to that Commission to determine whether any wage, salary, or other compensation has been paid in violation of the Act. The Commission is further authorized to certify and transmit such determinations in accordance with the policy and procedure set forth in General Order No. 15, *supra*, and other orders, directives, general policies or general regulations of the Economic Stabilization Administrator.

In view of the foregoing, payments made in violation of the Defense Production Act of 1950, as amended, payments made by way of fine for violation of such Act, and payments made to the United States or to any buyer of any material or service in compromise or satisfaction of any liability arising from a violation of such Act will be disregarded and disallowed, for Federal income tax purposes, in the amounts determined and certified to the Bureau of Internal Revenue by the Economic Stabilization Agency or its authorized components.

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

SECTION 29.23(c)-1: Taxes. 1952-22-13946
T. D. 5935

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 Act of May 12, 1951 (Public Law 29, 82d Cong. [C. B. 1951-1, 183]).

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On July 10, 1952, there was published in the Federal Register (17 F. R. 6200) a notice of proposed rule making to conform Regulations 111 [26 CFR, part 29] to the Act of May 12, 1951, Public Law 29, Eighty-second Congress [C. B 1951-1, 183], allowing the consumer of gasoline to deduct, for income tax purposes, State taxes on gasoline imposed on the wholesaler and passed on to the consumer. No objection to the rules proposed having been received, the amendments set forth below are hereby adopted.

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

PUBLIC LAW 29 (82d CONG.) APPROVED MAY 12, 1951

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 23(c) (3)

of the Internal Revenue Code (relating to deduction of retail sales taxes) is hereby amended to read as follows:

"(3) GASOLINE AND RETAIL SALES TAXES.—In the case of a tax imposed by any State, Territory, District, or possession of the United States, or any political subdivision thereof, upon persons engaged in selling tangible personal property at retail, or upon persons selling gasoline or other motor vehicle fuels either at wholesale or retail, which is measured by the gross sales price or the gross receipts from the sale or which is a stated sum per unit of such property sold, or upon persons engaged in furnishing services at retail, which is measured by the gross receipts for furnishing such services, if the amount of such tax is separately stated, then to the extent that the amount so stated is paid by the consumer (otherwise than in connection with the consumer's trade or business) to his vendor such amount shall be allowed as a deduction in computing the net income of such consumer as if such amount constituted a tax imposed upon and paid by such consumer."

SEC. 2. The amendment made by this Act shall apply to taxable years beginning after December 31, 1950.

PAR. 2. Section 29.23(c)-1, as amended by Treasury Decision 5458 [C. B. 1945, 45], approved June 15, 1945 [26 CFR 29.23(c)-1], is further amended as follows:

(A) By revising the heading and first paragraph of (*b*) thereof to read as follows:

(*b*) *State and local sales and gasoline taxes.*—Amounts representing sales or gasoline taxes paid by a consumer of services or tangible personal property are deductible by such consumer as taxes, provided they are not paid in connection with his trade or business. The fact that, under the law imposing it, the incidence of the sales or gasoline tax does not fall on the consumer is immaterial. The requirement of section 23(c)(3) that the amount of the tax must be separately stated will be deemed complied with where it clearly appears that, at the time of sale to the consumer, the tax was added to the sales price and collected or charged as a separate item. It is not necessary, for the purposes of this section, that the consumer be furnished with a sales slip, bill, invoice, or other statement on which the tax is separately stated. Where the law imposing the sales or gasoline tax for which the taxpayer seeks a deduction contains a prohibition against the seller absorbing the tax, or a provision requiring a posted notice stating that the tax will be added to the quoted price, or a requirement that the tax be separately shown in advertisements or separaely stated on all bills and invoices, it is presumed that the amount of the sales or gasoline tax was separately stated at the time paid by the consumer; except that such presumption shall have no application to a gasoline tax imposed upon a wholesaler unless such provisions of law apply with respect to both the sale at wholesale and the sale at retail.

(B) By adding at the end of (*b*) thereof the following new paragraphs:

For taxable years beginning after December 31, 1950, the term "gasoline tax" means, for purpose of this section, a tax imposed by such authorities upon persons selling gasoline or other motor vehicle fuels either at wholesale or retail, which is measured by the gross sales price or the gross receipts from the sale, or which is a stated sum per unit of the gasoline or fuel sold; but such term does not exclude from the definition of "sales tax", for taxable years beginning before January 1, 1951, a tax imposed by such authorities upon persons selling such products at retail.

In general, the term "consumer" means the ultimate user or purchaser; it does not include a purchaser who acquires the property for resale, such as a retailer.

PAR. 3. The amendments hereby prescribed shall be applicable with respect to taxable years beginning after December 31, 1950.

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

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved October 3, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 8, 1952, 8:49 a. m.)

SECTION 29.23(c)-1: Taxes. 1952-25-13977
(Also Section 43, Section 29.43-2.) G. C. M. 27440

INTERNAL REVENUE CODE

Deductibility, for Federal income tax purposes, as between a grantor and a grantee of real property, of real estate taxes levied by the State of Washington.
G. C. M. 21373 (C. B. 1939-2, 82) modified.

An opinion is requested as to the deductibility of real estate taxes levied under the laws of the State of Washington as between an accrual basis taxpayer who sells the property subsequent to January 1, 1951, and a cash basis taxpayer who purchases the property and pays such taxes during the year 1952.

In *Commissioner* v. *Theodore Plestcheeff et ux.* (100 Fed. (2d) 62. Ct. D. 1410, C. B. 1939-2, 200), it was held that the deduction for accrued real property taxes is limited to the person who owns the realty at the time the lien for the taxes attaches; that under the statutes of the State of Washington the lien for real property taxes attaches on March 1 of each year (the date of the assessment of the property), except as between a grantor and a grantee, in which case it attaches on the first Monday in February of the succeeding year; and that a devisee is a grantee within the meaning of the Washington statute. The statute considered in that case provided in part as follows:

The taxes assessed upon real property shall be a lien thereon from and including the first day of March in the year in which they are levied until the same are paid, but as between a grantor and grantee such lien shall not attach until the first Monday in February of the succeeding year.

G. C. M. 21373 (C. B. 1939-2, 82), insofar as it relates to Washington real estate taxes, was based on the decision in the Plestcheeff case, *supra*, and states that the decision in that case should not be given general application but should be applied only in cases involving Washington real property taxes.

The pertinent sections of title 84, of the Revised Code of Washington, provide in part as follows:

84.40.010 Property subject to taxation. All property now existing, or that is hereafter created or brought into this state, shall be subject to assessment and taxation for state, county, and other taxing district purposes, upon equalized valuations thereof, fixed with reference thereto on the first day of January at 12 o'clock meridian in each year, * * *

* * * * * * *

84.60.020 Time of attachment of realty lien. The taxes assessed upon real property shall be a lien thereon from and including the first day of January in the year in which they are levied until the same are paid, but as between the grantor and grantee of any real property, and as between the vendor and purchaser of any real property, when there is no express agreement as to payment of the taxes thereon due and payable in the calendar year of the sale or the contract to sell, the grantor or vendor shall be liable for the same proportion of such taxes as the part of the calendar year prior to the day of the sale or the contract to sell bears to the whole of such calendar year, and the grantee or purchaser shall be liable for the remainder of such taxes and subsequent taxes. * * *

Since the present statute provides for only one date for the lien to attach, which date is also the date of assessment, it is the opinion of this office that the lien attaches even as between grantor and grantee on January 1, and is an encumbrance on the property from that date.

In *M. Hampton Magruder* v. *Frederick M. Supplee et ux.* (316 U. S. 394, Ct. D. 1559, C. B. 1942–1, 173), it was held that where either a lien or personal liability exists before the sale of realty takes place, the purchaser is not entitled to a deduction for taxes paid. (See G. C. M. 23512 (C. B. 1943, 134).) The Court further stated:

* * * For "only the person owning the property at that time [i. e., when the tax lien attaches] is subjected to the burden which the law imposes; and only the person who has been thus subjected to the burden of the tax is entitled to a deduction for paying it. Payment by a subsequent purchaser is not the discharge of a burden which the law has placed upon him, but is actually as well as theoretically a payment of purchase price; for, after the lien attaches and the taxing authority becomes pro tanto an owner of an interest in the property, payment of the tax by a purchaser is nothing but a part of the payment for unencumbered title." * * *

Accordingly, it is the opinion of this office that the cash basis taxpayer who purchased the property and pays the 1951 taxes during the year 1952 may not deduct such taxes but must add them to the cost basis of the property as a part of the purchase price. The seller must likewise treat the taxes paid by the purchaser as a part of the purchase price and as income to the seller in addition to the cash or other consideration received for the property. Furthermore, it would seem to follow, since the prorating provisions of the present Washington statute do not even provide for a special lien in the grantor-grantee relationship, that even where the prorating provisions are invoked, the rights of the State are not affected and the lien imposed as of January 1 remains as a liability similar to the encumbrance considered in the Magruder case, *supra*.

In G. C. M. 21373, *supra*, it is stated that it has been the Bureau's position that generally State property taxes accrue on the date as of which the assessment of the tax is made (frequently referred to as the assessment date), even though the amount of the tax is not ascertainable on that date. Since the statute considered in the Plestcheeff case, *supra*, provided for two liens while the present statute provides for only one lien, it is the opinion of this office that the Plestcheeff case no longer is applicable to the grantor-grantee situation and that since the assessment date and the lien date coincide on January 1, the accrual date for real property taxes in Washington is January1. Accordingly, the seller may properly accrue the total amount of Washington real property taxes on that date and may deduct the total amount, provided, of course, that the amount is also included in income on the sale of the property as pointed out above.

G. C. M. 21373, *supra*, is modified to the extent that it is inconsistent with the opinions herein expressed.

CHARLES W. DAVIS,
Chief Counsel, Bureau of Internal Revenue.

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

SECTION 29.23(e)-1: Losses by individuals. (Also Section 23(f), Section 29.23(f)-1; Section 42(a), Section 29.42-1; Section 43, Section 29.43-2.)

1952-25-13978
I. T. 4110

INTERNAL REVENUE CODE

Treatment, for Federal income tax purposes, of interest on United States savings bonds, Series K, and of the refund by a taxpayer of a portion of such already realized interest upon redemption of such a bond before its maturity.

Advice is requested relative to the proper treatment, for Federal income tax purposes, of interest on United States savings bonds, Series K, and of the refund of a portion of such previously realized interest which holders of the bonds are required to make upon redemption thereof before their maturity (except if acquired in exchange for matured United States savings bonds, Series E, and in certain cases upon death) in accordance with their issuance terms incorporated therein.

Beginning May 1, 1952, these bonds, the terms and conditions of which are set forth therein and in Department Circular No. 906, were placed on sale, and the sale of United States savings bonds, Series G, was discontinued.

In I. T. 3504 (C. B. 1941-2, 93) the pertinent terms and conditions of United States savings bonds, Series G, were quoted and discussed. It was there held (1) that the interest thereon is includible in gross income when received or accrued, depending upon the taxpayer's method of accounting, and that it accrues when it becomes payable but not until then; (2) that no adjustment, for Federal income tax purposes, is to be made in any taxable year of such already realized interest on account of the refund by the taxpayer of a portion thereof upon redemption of such a bond before its maturity, but that the amount thus refunded by the bond purchaser is deductible in the taxable year of such redemption and refund as an ordinary loss incurred in a transaction entered into for profit; and (3) that, insofar as the bond itself is concerned, a purchaser thereof has no gain or loss, either ordinary or capital, upon its redemption, whether at or before its maturity.

Although those bonds bear interest payable semiannually by check at the rate of 2½ percent per annum from date of issue, whereas United States savings bonds, Series K, bear interest so payable at the rate of 2.76 percent per annum, it appears that the terms and conditions of both series of bonds are substantially the same insofar as here material. Accordingly, the rules stated in I. T. 3504, *supra*, are also applicable in cases involving United States savings bonds, Series K.

SECTION 23(f).—DEDUCTIONS FROM GROSS INCOME: LOSSES BY CORPORATIONS

SECTION 29.23(f)–1: Losses by corporations.

INTERNAL REVENUE CODE

Interest "refunded" upon redemption prior to maturity of United States savings bonds, Series K. (See I. T. 4110, page 99.)

SECTION 23(g).—DEDUCTIONS FROM GROSS INCOME: CAPITAL LOSSES

SECTION 29.23(g)–1: Capital losses.

INTERNAL REVENUE CODE

Payment of judgment by transferees of liquidating corporation. (See Ct. D. 1752, page 136.)

SECTION 23(o).—DEDUCTIONS FROM GROSS INCOME: CHARITABLE AND OTHER CONTRIBUTIONS

SECTION 29.23(o)–1: Contributions or gifts by individuals. 1952–18–13911 T. D. 5924

(Also Section 23(q), Section 29.23(q)–1; Section 101, Sections 29.101–3, 29.101(6)–1; Section 275, Section 29.275–1; Section 3813, Sections 29.3813–1, 29.3813–2, 29.3813–3; Section 3814, Section 29.3814–1.)

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 certain provisions of parts I and III of title III of the Revenue Act of 1950, to section 11 of the Internal Security Act of 1950 [C. B. 1950–2, 250], and to section 601 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 was published in the Federal Register (17 F. R. 78), in order to conform Regulations 111 [26 CFR, part 29] to certain provisions of parts I and III of title III of the Revenue Act of 1950, approved September 23, 1950, to section 11 of the Internal Security Act of 1950 [C. B. 1950–2, 250], enacted September 23, 1950, and to section 601 of the Revenue Act of 1951, 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 29.23(o)–1 [26 CFR 29.23(o)–1] the following:

SEC. 11. DENIAL OF TAX DEDUCTIONS AND EXEMPTIONS [INTERNAL SECURITY ACT OF 1950, ENACTED SEPTEMBER 23, 1950].

(a) Notwithstanding any other provision of law, no deduction for Federal income-tax purposes shall be allowed in the case of a contribution to or for the use of any organization if at the time of the making of such contribution (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board [the Subversive Activities Control Board] requiring such organization to register under section 7.

* * * * * * *

SEC. 332. TECHNICAL AMENDMENTS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) AMENDMENT OF SECTION 23(o).—Section 23(o)(2) is hereby amended by striking out "legislation;" and inserting in lieu thereof the following: "legislation. For disallowance of certain charitable, etc., deductions otherwise allowable under this paragraph, see sections 3813 and 162(g)(2);".

* * * * * * *

PAR. 2. Section 29.23(o)–1, as amended by Treasury Decision 5893 [C. B. 1952–1, 126], approved April 4, 1952 [26 CFR 29.23(o)–1], is further amended by inserting immediately preceding the last sentence of the first paragraph thereof the following:

For disallowance of certain charitable deductions otherwise allowable under section 23(o)(2), see sections 3813 and 162(g)(2) and the regulations promulgated pursuant thereto. For certain provisions with respect to gifts made before January 1, 1951, see section 29.101–3(a).

PAR. 3. There is inserted immediately preceding section 29.23(q)–1 [26 CFR 29.23(q)–1] the following:

SEC. 11. DENIAL OF TAX DEDUCTIONS AND EXEMPTIONS [INTERNAL SECURITY ACT OF 1950, ENACTED SEPTEMBER 23, 1950].

(a) Notwithstanding any other provision of law, no deduction for Federal income-tax purposes shall be allowed in the case of a contribution to or for the use of any organization if at the time of the making of such contribution (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board [the Subversive Activities Control Board] requiring such organization to register under section 7.

* * * * * * *

SEC. 332. TECHNICAL AMENDMENTS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(b) AMENDMENT OF SECTION 23(q).—Section 23(q)(2) is hereby amended by striking out "legislation; or" and inserting in lieu thereof the following: "legislation. For disallowance of certain charitable, etc., deductions otherwise allowable under this paragraph, see sections 3813 and 162(g)(2); or".

* * * * * * *

PAR. 4. Section 29.23(q)–1, as amended by Treasury Decision 5796 [C. B. 1950–2, 24], approved July 19, 1950 [26 CFR 29.23(q)–1], is further amended by inserting immediately after the last sentence of the first paragraph thereof the following:

For disallowance of certain charitable, etc., deductions otherwise allowable under section 23(q)(2), see sections 3813 and 162(g)(2) and the regulations promulgated pursuant thereto. For certain provisions with respect to gifts made before January 1, 1951, see section 29.101–3(a).

PAR. 5. There is inserted immediately preceding section 29.101-1 [26 CFR 29.101-1] the following:

SEC. 11. DENIAL OF TAX DEDUCTIONS AND EXEMPTIONS [INTERNAL SECURITY ACT OF 1950, ENACTED SEPTEMBER 23, 1950].

* * * * * * *

(b) 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 [the Subversive Activities Control Board] requiring such organization to register under section 7.

SEC. 301. INCOME OF EDUCATIONAL, CHARITABLE, AND CERTAIN OTHER EXEMPT ORGANIZATIONS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(b) FEEDER ORGANIZATIONS.—Section 101 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."

* * * * * * *

SEC. 303. EFFECTIVE DATE OF PART I [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

The amendments made by this part [sections 301, 302, and 303 of the 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.

PAR. 6. There is inserted immediately after section 29.101-2 [26 CFR 29.101-2] the following:

SEC. 29.101-3. LIMITATIONS ON EXEMPTION.—(*a*) *In general.*—Under section 11(b) of the Internal Security Act of 1950, no organization is entitled to exemption under section 101 for any taxable year if at any time during such year such organization is registered under section 7 of such Act or if there is in effect a final order of the Subversive Activities Control Board established by section 12 of such Act requiring such organization to register under section 7 of such Act. Under sections 3813 and 3814 of the Internal Revenue Code, certain organizations described in section 101(6) may be denied exemption under section 101(6) for taxable years beginning after December 31, 1950. See section 29.3813-1

and section 29.3814–1 of these regulations. Section 302 of the Revenue Act of 1950 as amended by section 601 of the Revenue Act of 1951, prescribes the following rules respecting exemption of certain organizations for taxable years beginning prior to January 1, 1951:

"(a) TRADE OR BUSINESS NOT UNRELATED.—For any taxable year beginning prior to January 1, 1951, no organization shall be denied exemption under paragraph (1), (6), or (7) of section 101 of the Internal Revenue Code on the grounds that it is carrying on a trade or business for profit if the income from such trade or business would not be taxable as unrelated business income under the provisions of supplement U of the Internal Revenue Code, as amended by this Act, or if such trade or business is the rental by such organization of its real property (including personal property leased with the real property).

"(b) PERIOD OF LIMITATIONS.—In the case of an organization which would otherwise be exempt under section 101 of the Internal Revenue Code were it not carrying on a trade or business for profit, the filing of the information return required by section 54(f) of the Internal Revenue Code (relating to returns by tax-exempt organizations) for any taxable year beginning prior to January 1, 1951, shall be deemed to be the filing of a return for the purposes of section 275 of the Internal Revenue Code (relating to period of limitation upon assessment and collection). In the case of such an organization which was, by the provisions of section 54(f) of the Internal Revenue Code, specifically not required to file such information return, for the purposes of the preceding sentence a return shall be deemed to have been filed at the time when such return should have been filed had it been so required. The provisions of this subsection shall not apply to a taxable year of such an organization with respect to which, prior to September 20, 1950, (1) any amount of tax was assessed or paid, or (2) a notice of deficiency under section 272 of the Internal Revenue Code was sent to the taxpayer.

"(c) DENIAL OF DEDUCTIONS.—A gift or bequest to an organization prior to January 1, 1951, for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals) otherwise allowable as a deduction under section 23(o)(2), 23(q)(2), 162(a), 505(a)(2), * * * of the Internal Revenue Code, may not be denied under such sections if a denial of exemption to such organization for the taxable year of the organization in which such gift or bequest was made is prevented by the provisions of subsections (a) or (b) of this section.

"(d) PROFITS INURING TO THE BENEFIT OF CERTAIN EDUCATIONAL ORGANIZATIONS OR HOSPITALS.—For any taxable year beginning prior to January 1, 1951, an organization operated for the primary purpose of carrying on a trade or business for profit, no part of the net earnings of which inures to the benefit of any private shareholder or individual and all of the net earnings of which inure to the benefit of an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on, or to the benefit of a hospital, or an institution for the rehabilitation of physically handicapped persons, which maintains or is building for proper maintenance a hospital or institution staffed or to be staffed by qualified professional persons for the treatment of the sick and/or the rehabilitation of the physically handicapped, shall not be denied exemption from taxation under section 101 of the Internal Revenue Code on the ground that it is carrying on a trade or business for profit. The determination as to whether an organization other than one described in this subsection 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 this subsection and section 301(b) [adding the last two sentences to section 101, relating to feeder organizations] of this Act had not been enacted and without inferences drawn from the fact that this subsection and the amendment made by section 301(b) are not expressly made applicable with respect to taxable years beginning before January 1, 1951."

(*b*) *Feeder organizations.*—In the case of an organization operated for the primary purpose of carrying on a trade or business for profit, exemption is not allowed under any paragraph of section 101 on the ground that all the profits of such organization are payable to one or more organizations exempt from taxation under section 101. For the purpose of this rule, the term "trade or business" does not include the rental by an organization of its real property

(including personal property leased with the real property). In determining the primary purpose of an organization, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of those activities of such organization which are specified in the applicable paragraph of section 101. If a subsidiary organization of a tax-exempt organization would itself be exempt on the ground that its activities are an integral part of the exempt activities of the parent organization, its exemption will not be lost because, as a matter of accounting between the two organizations, the subsidiary derives a profit from its dealings with its parent organization, for example, a subsidiary organization which is operated for the sole purpose of furnishing electric power used by its parent organization, a tax-exempt educational organization, in carrying on its educational activities. However, the subsidiary organization is not exempt from tax if it is operated for the primary purpose of carrying on a trade or business which would be an unrelated trade or business (that is, unrelated to exempt activities) if regularly carried on by the parent organization. For example, if a subsidiary organization is operated primarily for the purpose of furnishing electric power to consumers other than its parent organization (and the parent's tax-exempt subsidiary organizations), it is not exempt since such business would be an unrelated trade or business if regularly carried on by the parent organization. Similarly, if the subsidiary is owned by several unrelated exempt organizations, and is operated for the purpose of furnishing electric power to each of them, it is not exempt since such business would be an unrelated trade or business if regularly carried on by any one of the tax-exempt organizations.

In certain cases an organization which carries on a trade or business for profit but is not operated for the primary purpose of carrying on such trade or business is subject to tax under supplement U of chapter 1 of the Internal Revenue Code (which supplement begins with section 421) on its unrelated business net income.

PAR. 7. Immediately preceding each of sections 29.101(1)-1 [26 CFR 29.101(1)-1] to 29.101(5)-1 [26 CFR 29.101(5)-1], inclusive, each of sections 29.101(7)-1 [26 CFR 29.101(7)-1] to 29.101(13)-1 [26 CFR 29.101(13)-1], inclusive, section 29.101(18)-1 [26 CFR 29.101(18)-1], and immediately after section 101(19) (which section is set forth immediately after section 29.101(18)-1 [26 CFR 29.101(18)-1]), there is inserted the following:

SEC. 301. INCOME OF EDUCATIONAL, CHARITABLE, AND CERTAIN OTHER EXEMPT ORGANIZATIONS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(b) FEEDER ORGANIZATIONS.—Section 101 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."

* * * * * * *

SEC. 303. EFFECTIVE DATE OF PART I [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

The amendments made by this part [sections 301, 302, and 303 of the 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.

PAR. 8. There is inserted immediately preceding section 29.101(6)-1 [26 CFR 29.101(6)-1] the following:

SEC. 301. INCOME OF EDUCATIONAL, CHARITABLE, AND CERTAIN OTHER EXEMPT ORGANIZATIONS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(b) FEEDER ORGANIZATIONS.—Section 101 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."

* * * * * * *

SEC. 303. EFFECTIVE DATE OF PART I [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

The amendments made by this part [sections 301, 302, and 303 of the 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.

SEC. 332. TECHNICAL AMENDMENTS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(c) AMENDMENT OF SECTION 101(6).—Section 101(6) is hereby amended by striking out "legislation;" and inserting in lieu thereof the following: "legislation. For loss of exemption under certain circumstances, see sections 3813 and 3814;".

* * * * * * *

PAR. 9. Section 29.101(6)-1 [26 CFR 29.101(6)-1] is amended by adding at the end thereof the following:

Sections 3813 and 3814 set forth rules under which certain organizations described in section 101(6) may be denied exemption. See section 29.3813-1 and section 29.3814-1.

PAR. 10. There is inserted immediately preceding section 29.162-1 [26 CFR 29.162-1] the following:

SEC. 11. DENIAL OF TAX DEDUCTIONS AND EXEMPTIONS [INTERNAL SECURITY ACT OF 1950, ENACTED SEPTEMBER 23, 1950].

(a) Notwithstanding any other provision of law, no deduction for Federal income-tax purposes shall be allowed in the case of a contribution to or for the use of any organization if at the time of the making of such contribution (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board [the Subversive Activities Control Board] requiring such organization to register under section 7.

* * * * * * *

PAR. 11. Section 29.275-1, as amended by Treasury Decision 5516 [C. B. 1946-1, 159], approved May 27, 1946 [26 CFR 29.275-1], is further amended by adding at the end thereof the following:

For special provisions with respect to taxable years beginning prior to January 1, 1951 in the case of an organization which would be exempt from tax under section 101 were it not carrying on a trade or business for profit, see section 302(b) of the Revenue Act of 1950, set forth in section 29.101-3(*a*).

PAR. 12. There is inserted immediately preceding section 29.505-1 [26 CFR 29.505-1] the following:

SEC. 11. DENIAL OF TAX DEDUCTIONS AND EXEMPTIONS [INTERNAL SECURITY ACT OF 1950, ENACTED SEPTEMBER 23, 1950].

(a) Notwithstanding any other provision of law, no deduction for Federal income-tax purposes shall be allowed in the case of a contribution to or for the use of any organization if at the time of the making of such contribution (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board [the Subversive Activities Control Board] requiring such organization to register under section 7.

* * * * * * *

SEC. 332. TECHNICAL AMENDMENTS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(d) AMENDMENT OF SECTION 505(a).—Section 505(a)(2) is hereby amended by adding at the end thereof the following: "For disallowance of certain charitable, etc., deductions otherwise allowable under this paragraph, see sections 3813 and 162(g)(2)."

* * * * * * *

PAR. 13. There is inserted immediately preceding subpart H of Regulations 111 [26 CFR 29.6000] the following:

SEC. 331. EXEMPTION OF CERTAIN ORGANIZATIONS UNDER SECTION 101(6) AND DEDUCTIBILITY OF CONTRIBUTIONS MADE TO SUCH ORGANIZATIONS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

Chapter 38 is hereby amended by inserting at the end thereof the following new sections:

"SEC. 3813. REQUIREMENTS FOR EXEMPTION OF CERTAIN ORGANIZATIONS UNDER SECTION 101(6) AND FOR DEDUCTIBILITY OF CONTRIBUTIONS MADE TO SUCH ORGANIZATIONS.

"(a) ORGANIZATIONS TO WHICH SECTION APPLIES.—This section shall apply to any organization described in section 101(6) except—

"(1) a religious organization (other than a trust);

"(2) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on;

"(3) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 101(6)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public;

"(4) an organization which is operated, supervised, controlled, or principally supported by a religious organization (other than a trust) which is itself not subject to the provisions of this section; and

"(5) an organization the principal purposes or functions of which are the providing of medical or hospital care or medical education or medical research.

"(b) PROHIBITED TRANSACTIONS.—For the purposes of this section, the term 'prohibited transaction' means any transaction in which an organization subject to the provisions of this section—

"(1) lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;

"(2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

"(3) makes any part of its services available on a preferential basis to;

"(4) makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth, from;

"(5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth, to; or

"(6) engages in any other transaction which results in a substantial diversion of its income or corpus to;

the creator of such organization (if a trust); a person who has made a substantial contribution to such organization; a member of the family (as defined in section 24(b)(2)(D)) of an individual who is the creator of such trust or who has made a substantial contribution to such organization; or a corporation controlled by such creator or person through the ownership, directly or indirectly, of 50 per centum or more of the total combined voting power of all classes of stock entitled to vote or 50 per centum or more of the total value of shares of all classes of stock of the corporation.

"(c) DENIAL OF EXEMPTION TO ORGANIZATIONS ENGAGED IN PROHIBITED TRANSACTIONS.—

"(1) GENERAL RULE.—No organization subject to the provisions of this section which has engaged in a prohibited transaction after July 1, 1950, shall be exempt from taxation under section 101(6).

"(2) TAXABLE YEARS AFFECTED.—An organization shall be denied exemption from taxation under section 101(6) by reason of paragraph (1) only for taxable years subsequent to the taxable year during which it is notified by the Secretary that it has engaged in a prohibited transaction, unless such organization entered into such prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purposes, and such transaction involved a substantial part of the corpus or income of such organization.

"(d) FUTURE STATUS OF ORGANIZATION DENIED EXEMPTION.—Any organization denied exemption under section 101(6) by reason of the provisions of subsection (c), with respect to any taxable year following the taxable year in which notice of denial of exemption was received, may, under regulations prescribed by the Secretary, file claim for exemption, and if the Secretary, pursuant to such regulations, is satisfied that such organization will not knowingly again engage in a prohibited transaction, such organization shall be exempt with respect to taxable years subsequent to the year in which such claim is filed.

"(e) DISALLOWANCE OF CERTAIN CHARITABLE, ETC., DEDUCTIONS.—No gift or bequest for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), otherwise allowable as a deduction under section 23(o)(2), 23(q)(2), 162(a), 505(a)(2), * * * shall be allowed as a deduction if made to an organization which, in the taxable year of the organization in which the gift or bequest is made, is not exempt under section 101(6) by reason of the provisions of this section. With respect to any taxable year of the organization for which the organization is not exempt pursuant to the provisions of subsection (c) by reason of having engaged in a prohibited transaction with the purpose of diverting the corpus or income of such organization from its exempt purposes and such transaction involved a substantial part of such corpus or income, and which taxable year is the same, or prior to the, taxable year of the organization in which such transaction occurred, such deduction shall be disallowed the donor only if such donor or (if such donor is an individual) any member of his family (as defined in section 24(b)(2)(D)) was a party to such prohibited transaction.

"(f) DEFINITION.—For the purposes of this section, the term 'gift or bequest' means any gift, contribution, bequest, devise, legacy, or transfer."

* * * * * * *

SEC. 333. EFFECTIVE DATES [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

Subsections (c) and (d) of section 3813 * * * of the Internal Revenue Code, added by section 331 of this Act, shall apply with respect to taxable years beginning after December 31, 1950, and subsection (e) of section 3813 of the Internal Revenue Code shall apply only with respect to gifts or bequests (as defined in section 3813 of the Internal Revenue Code) made on or after January 1, 1951.

SEC. 29.3813–1. DENIAL OF EXEMPTION TO ORGANIZATIONS ENGAGED IN PROHIBITED TRANSACTIONS.—The prohibited transactions enumerated in section 3813(b) are in addition to and not in limitation of the restrictions contained in section 101(6). Even though an organization has not engaged in any of the prohibited transactions referred to in section 3813(b), it still may not qualify for tax exemption in view of the general provisions of section 101(6). Thus, if a trustee or other fiduciary of the organization (whether or not he is also a creator of such organization) enters into a transaction with the organization, such transaction will be closely scrutinized in the light of the fiduciary principle requiring undivided loyalty to ascertain whether the organization is in fact being operated for the stated exempt purposes.

An organization described in section 101(6), other than an organization excepted by section 3813(a), which has engaged in any prohibited transaction (as described in section 3813(b)) after July 1, 1950, shall not be exempt from taxation under section 101(6) for any taxable year subsequent to the taxable year in which there is mailed to it a notice in writing by the Commissioner that it has engaged in such prohibited transaction. Such notification by the Commissioner shall be by registered mail to the last known address of the organization. However, notwithstanding the requirement of notification by the Commissioner, exemption shall be denied with respect to any taxable year beginning after December 31, 1950, if such organization during or prior to such taxable year commenced the prohibited transaction with the purpose of diverting income or corpus from its exempt purposes and such transaction involved a substantial part of the income or corpus of such organization. For the purpose of this section, the term "taxable year" means the established annual accounting period

of the organization; or, if the organization has no such established annual accounting period, the "taxable year" of the organization means the calendar year.

Example (1). A creates a foundation in 1949 ostensibly for educational purposes. B, as trustee, accumulates the foundation's income from 1952 until 1955 and then uses a substantial part of this accumulated income to send A's children to college. The foundation would lose its exemption for the taxable years 1952 through 1955 and for subsequent taxable years until it regains its exempt status.

Example (2). If under the facts in example (1) such private benefit was the purpose of the foundation from its inception, such foundation is not exempt by reason of the general provisions of section 101(6) and without regard to the provisions of section 3813 for all years since its inception, that is, for the taxable years 1949 through 1955 and subsequent taxable years, since under section 101(6) the organization must be organized and operated exclusively for exempt purposes. (See section 29.101(6)–1. See also section 29.3814–1 for loss of exemption in the case of certain organizations accumulating income.)

SEC. 29.3813–2. FUTURE STATUS OF ORGANIZATION DENIED EXEMPTION.—Any organization denied exemption under section 101(6) by reason of the provisions of section 3813(c) may file, in any taxable year following the taxable year in which notice of denial of exemption was issued, a claim for exemption with the collector for the district in which is located the principal place of business or principal office of the organization. Form 1023, the exemption application, a copy of which may be obtained from any collector, shall be used for this purpose. The claim must contain or have attached to it, in addition to the information generally required of an organization claiming exemption under section 101(6), an affidavit, by a principal officer of such organization authorized to make such affidavit, that the organization will not knowingly again engage in a prohibited transaction. See section 29.101–2 for proof of exemption requirements in general.

If the Commissioner is satisfied that such organization will not knowingly again engage in a prohibited transaction and that the organization also satisfies all other requirements under section 101(6), he shall so notify the organization in writing. In such case the organization will be exempt (subject to the provisions of sections 101(6), 3813, and 3814) with respect to the taxable years subsequent to the taxable year in which such claim is filed. Section 3813 contemplates that an organization denied exemption because of the terms of such section will be subject to taxation for at least one full taxable year. For the purpose of this section, the term "taxable year" means the established annual accounting period of the organization; or, if the organization has no such established annual accounting period, the "taxable year" of the organization means the calendar year.

SEC. 29.3813–3. DISALLOWANCE OF CERTAIN CHARITABLE, ETC., DEDUCTIONS.—No gift or contribution made on or after January 1, 1951, which would otherwise be allowable as a charitable or other deduction under section 23(o)(2), 23(q)(2), 162(a), or 505(a)(2), shall be allowed as a deduction if made to an organization which at the time the gift or contribution is made is not exempt under section 101(6) by reason of the provisions of section 3813.

If an organization, which receives a gift or contribution made after December 31, 1950, is not exempt under section 101(6) because it engaged in a prohibited transaction involving a substantial part of its income or corpus with the purpose of diverting its income or corpus from its exempt purposes, and if the taxable year of the organization during which such gift or contribution is made begins after December 31, 1950, and is the same as, or is prior to, the taxable year of the organization in which such transaction occurred, then a deduction by the donor with respect to the gift or contribution shall not be disallowed under the preceding paragraph unless the donor (or any member of his family if the donor is an individual) is a party to such prohibited transaction. For the purpose of the preceding sentence, the members of an individual donor's family include only his brothers and sisters, whether by whole or half blood, spouse, ancestors, and lineal descendants.

Example. In 1952, corporation A, which files its income tax returns on the calendar year basis, creates a foundation purportedly for charitable purposes and deducts from its gross income for that year the amount of the gift to the foundation. Corporation A makes additional gifts to this foundation in 1953, 1954, and 1955, and takes charitable deductions for such years. B, an individual, also contributes to the foundation in 1953, 1954, and 1955, and takes charitable deductions for such years. In 1953, the foundation commences purposely to divert its

corpus to the benefit of corporation A, and a substantial amount of such corpus is so diverted by the close of the taxable year 1954. For 1953 and subsequent taxable years, the exemption allowed the foundation under section 101(6) is denied by reason of the provisions of section 3813(c). Both corporation A and individual B would be disallowed any deduction for the contributions made during 1955 to the foundation. Moreover, the charitable deductions taken by corporation A for contributions to the foundation in the years 1953 and 1954 would also be disallowed since corporation A was a party to the prohibited transaction. If the facts and surrounding circumstances indicate that the contribution in 1952 by corporation A was for the purpose of the prohibited transaction, then the charitable deduction for the year 1952 shall also be disallowed with respect to corporation A, since the prohibited transaction would then have commenced with the making of such contribution and the exemption allowed the foundation under section 101(6) would then be denied for 1952 by reason of provisions of section 3813(c).

SEC. 331. EXEMPTION OF CERTAIN ORGANIZATIONS UNDER SECTION 101(6) AND DEDUCTIBILITY OF CONTRIBUTIONS MADE TO SUCH ORGANIZATIONS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

Chapter 38 is hereby amended by inserting at the end thereof the following new sections:

* * * * * * *

"SEC. 3814. DENIAL OF EXEMPTION UNDER SECTION 101(6) IN THE CASE OF CERTAIN ORGANIZATIONS ACCUMULATING INCOME.

"In the case of any organization described in section 101(6) to which section 3813 is applicable, if the amounts accumulated out of income during the taxable year or any prior taxable year and not actually paid out by the end of the taxable year—

"(1) are unreasonable in amount or duration in order to carry out the charitable, educational, or other purpose or function constituting the basis for such organization's exemption under section 101(6); or

"(2) are used to a substantial degree for purposes or functions other than those constituting the basis for such organization's exemption under section 101(6); or

"(3) are invested in such a manner as to jeopardize the carrying out of the charitable, educational, or other purpose or function constituting the basis for such organization's exemption under section 101(6),

exemption under section 101(6) shall be denied for the taxable year."

* * * * * * *

SEC. 333. EFFECTIVE DATES [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * section 3814 of the Internal Revenue Code, added by section 331 of this Act, shall apply with respect to taxable years beginning after December 31, 1950, * * *.

SEC. 29.3814-1. DENIAL OF EXEMPTION UNDER SECTION 101(6) IN THE CASE OF CERTAIN ORGANIZATIONS ACCUMULATING INCOME.—The restrictions enumerated in section 3814 are in addition to and not in limitation of the restrictions contained in section 101(6). Even though an organization has not violated any of the terms of section 3814, it still may not qualify for tax exemption in view of the general provisions of section 101(6). Thus, if a trustee or other fiduciary of the organization (whether or not he is also a creator of such organization) enters into a transaction with the organization, such transaction will be closely scrutinized in the light of the fiduciary principle requiring undivided loyalty to ascertain whether the organization is in fact being operated for the stated exempt purposes.

For any taxable year beginning after December 31, 1950, any organization described in section 101(6) other than an organization described in section 3813 (a) (1) through (5), inclusive, shall not be exempt under section 101(6) if the amounts accumulated out of income during the taxable year, or any prior tax-

able year (including taxable years beginning prior to January 1, 1951), and not actually paid out for exempt purposes by the end of the taxable year, are unreasonable. Amounts accumulated out of income become unreasonable when more income is accumulated than is needed, or when the duration of the accumulation is longer than is needed, in order to carry out the purpose constituting the basis for the organization's exemption. Furthermore, an organization shall not be exempt under section 101(6) if amounts accumulated out of income are used to a substantial degree for purposes or functions other than those constituting the basis for the organization's exemption, or if such amounts are invested in such a manner as to jeopardize the carrying out of the purpose or function constituting the basis for the organization's exemption.

For the purpose of section 3814, the term "income" means gains, profits, and income determined under the principles applicable in determining the earnings or profits of a corporation. The amount accumulated out of income during the taxable year or any prior taxable year shall be determined under the principles applicable in determining the accumulated earnings or profits of a corporation. In determining the reasonableness of an accumulation out of income, there will be disregarded the following: (1) The accumulation of gain upon the sale or exchange of a donated asset to the extent that such gain represents the excess of the fair market value of such asset when acquired by the organization over its substituted basis in the hands of the organization; (2) the accumulation of gain upon the sale or exchange of property held for the production of investment income, such as dividends, interest, and rents, where the proceeds of such sale or exchange are within a reasonable time reinvested in property acquired and held in good faith for the production of investment income.

Whether the conditions specified in paragraphs (1), (2), and (3) of section 3814 are present in any case must be determined from all the facts. The conditions specified in section 3814 (1), (2), and (3) may result from the use of only one organization or of a chain of two or more organizations.

An organization that has lost its exempt status by reason of the provisions of section 3814 may, in order to reestablish its exemption, file a claim for exemption with the collector for the district in which is located the principal place of business or principal office of the organization. Form 1023, the exemption application, a copy of which may be obtained from any collector, shall be used for this purpose. The claim for exemption must contain or be accompanied by information or evidence showing that the circumstances that caused the loss of exemption under section 3814 no longer exist, and an affidavit, by a principal officer of such organization authorized to make such affidavit, that the organization will not knowingly again violate the terms of section 3814. See section 29.101-2 for proof of exemption requirements in general. The provisions of section 3814 contemplate that an organization denied exemption thereunder will be subject to taxation for at least one full taxable year. For the purpose of this section, the term "taxable year" means the established annual accounting period of the organization; or, if the organization has no such established annual accounting period, the "taxable year" of the organization means the calendar year.

In the case of an organization denied exemption under section 101(6) solely by reason of the provisions of section 3814, deductions otherwise allowable under section 23(o)(2), 23(q)(2), 162(a), or 505(a)(2) for gifts or contributions to such organization shall not be disallowed.

(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 August 4, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register August 7, 1952, 8:50 a. m.)

SECTION 29.23(o)-1: Contributions or gifts by individuals
(Also Section 107, Section 29.107-1, Section 29.107-2, Section 29.107-3.)

1952-22-13947
IR-Mim. 43

Recomputation of deductions for medical expenses and charitable contributions in connection with the computations required by section 107 of the Internal Revenue Code.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., September 30, 1952.

Officers and Employees of the Internal Revenue Service and Others Concerned:

1. Section 107(a) of the Internal Revenue Code provides that if at least 80 per centum of the total compensation for personal services covering a period of 36 calendar months or more (from the beginning to the completion of such services) is received or accrued in one taxable year by an individual or a partnership, the tax attributable to any part thereof which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period which precedes the date of such receipt or accrual.

2. In determining the limitation upon tax liability under section 107(a) of the Code, *supra*, it is necessary to make certain tax computations with respect to the compensation subject to the provisions of that section. The computations to be made are set forth in section 29.107-1 of Regulations 111.

3. In *Edward C. Thayer et ux.* v. *Commissioner* (12 T. C. 795, acquiescence, C. B. 1950-1, 5), The Tax Court of the United States held that the deduction for medical expenses under section 23(x) of the Internal Revenue Code must be recomputed each time a different amount is taken to represent adjusted gross income in the computations required under section 107(a) of the Code. The Commissioner announced his acquiescence in that decision in Internal Revenue Bulletin 1950-2 (page 1), dated January 23, 1950. Since the amount of the charitable contributions deduction under section 23(o) of the Code is based on a percentage of adjusted gross income, as is the medical expense deduction under section 23(x) of the Code, it is held that the interrelation between the charitable contributions deduction under section 23(o) of the Code and the provisions of section 107(a) of the Code is required to be construed in the same manner as the Tax Court, in the Thayer case, construed the interrelation between the medical expense deduction under section 23(x) of the Code and the provisions of section 107(a) of the Code.

4. Accordingly, in determining the limitation upon the amount of the charitable contributions deduction allowable under section 23(o) of the Code, there must be a recomputation each time a different amount is taken to represent adjusted gross income in the computations required under section 107(a) of the Code. This rule of recomputation will also apply with respect to the determination of the limitation upon tax liability under section 107 (b) of the Code, relating to income from artistic work or invention, and section 107(d) of the

Code relating to back pay, since the requirements of those subsections are analogous to the requirements of section 107(a) of the Code.

5. Pursuant to authority contained in section 3791(b) of the Internal Revenue Code, the provisions of this mimeograph will not be applied with respect to taxable years ended prior to January 1, 1950.

6. Correspondence relating to the contents of this mimeograph should refer to its number and to symbols T:R:C.

JOHN B. DUNLAP,
Commissioner.

SECTION 23(p).—DEDUCTIONS FROM GROSS INCOME: CONTRIBUTIONS OF AN EMPLOYER TO AN EMPLOYEES' TRUST OR ANNUITY PLAN AND COMPENSATION UNDER A DEFERRED-PAYMENT PLAN

SECTION 29.23(p)–9: Contributions of an employer under an employees' annuity plan that meets the requirements of section 165(a) (Section 23(p)(1)(B)).

INTERNAL REVENUE CODE

Applicability of sections 165(a) and 23(p)(1)(B) of the Internal Revenue Code to nonresidents of the United States. (See IR-Mim. 71, page 170.)

SECTION 23(u).—DEDUCTIONS FROM GROSS INCOME: ALIMONY, ETC., PAYMENTS

SECTION 29.23(u)–1: Periodic alimony payments. (Also Section 22(k), Section 29.22(k)–1.) 1952–24–13966 I. T. 4108

INTERNAL REVENUE CODE

Payments made to a divorced wife after she has remarried and prior to retroactive modification of the decree of divorce to designate such payments as support for a minor child, rather than as alimony and support of the child without allocation, as originally provided in the decree, qualify, within the meaning of sections 22(k) and 23(u) of the Internal Revenue Code, as periodic payments in discharge of a legal obligation imposed, because of the marital relationship, under a decree of divorce.

Advice is requested whether payments made under the circumstances herein by a former husband to a divorced wife after she has remarried qualify as "periodic payments" which are deductible by the former husband under section 23(u) of the Internal Revenue Code.

The taxpayer's former wife procured a decree of divorce in 1937 which required the taxpayer to pay a weekly sum as alimony and as support of their minor child, without allocation. In 1941, the wife remarried. The taxpayer continued to make payments pursuant to the divorce decree after such remarriage. In 1947, the taxpayer, having fallen in arrears with his payments, was cited for failure to comply with the order of the divorce court with respect to support of the minor child. The court stated that alimony terminated as of the date of the former wife's remarriage in 1941, but entered an order

continuing the payments "as and for the support of the minor child of the parties."

Section 22(k) of the Internal Revenue Code provides in part as follows:

(k) ALIMONY, ETC., INCOME.—In the case of a wife who is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, periodic payments (whether or not made at regular intervals) received subsequent to such decree in discharge of * * * a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce or separation shall be includible in the gross income of such wife * * *

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

(u) ALIMONY, ETC., PAYMENTS.—In the case of a husband described in section 22(k), amounts includible under section 22(k) in the gross income of his wife, payment of which is made within the husband's taxable year. * * *

Section 29.22(k)-1(*d*) of Regulations 111 provides that where periodic payments are received by the wife for the support and maintenance of herself and of minor children of the husband without specific designation of the portion for the support of such children, the whole of such amounts is includible in the income of the wife as provided in section 22(k) of the Code.

In *Estate of Homer Laughlin* v. *Commissioner* (167 Fed. (2d) 828), the principles of which have been accepted in G. C. M. 25999 (C. B. 1949-1, 116), the decedent had entered into a property settlement agreement with his then wife, which agreement was later incorporated in a final decree of divorce. The agreement provided that he or his estate, should his wife survive him, would pay her for her natural life $800 a month for support and maintenance, such amount to be reduced to $300 a month should she remarry. His estate paid the former wife $9,600 during 1942 pursuant to the agreement and the divorce decree and claimed such sum as a deduction in its income tax return. The Government contended that section 23(u) of the Code contemplated only those payments made under a decree of divorce or separation which are in the nature of alimony, that is, payments for support and maintenance; that at his death the decedent's obligation to support his wife ceased at common law and in accordance with the applicable State law; and, therefore, that the payments made by his estate were not in discharge of his legal obligation for support but were in discharge of contract obligations, and as such were not deductible. The court, in rejecting such position, stated in part as follows:

* * * It will be noted that the text of the statute makes no reference to "alimony" as such, nor to payments for support or maintenance, but seems to encompass all payments made under a decree of divorce or separation in discharge of a legal obligation imposed under a decree of divorce because of the marital relationship. * * * In the instant case we think it is clear that the payments made by the estate were in discharge of the legal obligation imposed under a decree of divorce because of the marital relationship. * * *

Thus, in the Laughlin case the court held in effect that, despite the death of the husband, payments made after his death continued to come within the scope of section 22(k) of the Code. Likewise, in the instant case the payments made by the husband to the divorced wife after her remarriage and prior to the entry of the modifying order in 1947, continued to come within the scope of section 22(k). Such pay-

ments, in the words of the court above, were payments made under a decree of divorce in discharge of a legal obligation imposed under a decree of divorce because of the marital relationship. As such, they should be treated as taxable to the wife under section 22(k) and deductible by the husband under section 23(u) of the Code. (In the Laughlin case the court held that the deduction was provided for by section 162(b) and section 171(b) of the Code, rather than section 23(u), since section 23(u) applies only during the husband's lifetime).

The modifying order of the court does not, for tax purposes, have the effect of making retroactive specific designation of the entire amount as a sum payable for the support of the minor child beginning with the date of the former wife's remarriage, and thus removing the payments from the scope of sections 22(k) and 23(u) of the Code.

The determination of Federal income tax consequences is not controlled by retroactive judgments of State courts. (See *Robert L. Daine* v. *Commisioner*, 168 Fed. (2d) 449, and *Peter Van Vlaanderen* v. *Commissioner*, 175 Fed. (2d) 389.) The payments, when made, were made under a decree of divorce which fixed no amount of money or portion of the payments as sums payable for the support of the minor child. (*Edna M. Gilbertson* v. *Commissioner*, Tax Court memorandum opinion, decided June 20, 1951; *cf. Robert L. Daine* v. *Commissioner, supra; Peter Van Vlaanderen* v. *Commissioner, supra.*)

In view of the foregoing, it is held that payments made by a former husband to a divorced wife after she has remarried and prior to retroactive modification of the decree of divorce to designate such payments as support for a minor child, rather than as alimony and support of the child without allocation, as originally provided in the decree, qualify, within the meaning of sections 22(k) and 23(u) of the Internal Revenue Code, as periodic payments in discharge of a legal obligation imposed, because of the marital relationship, under a decree of divorce.

SECTION 25.—CREDITS OF INDIVIDUAL AGAINST NET INCOME

SECTION 29.25–3: Personal exemption, surtax exemptions, and exemptions for both normal tax and surtax. 1952–17–13893 I. T. 4092

INTERNAL REVENUE CODE

In determining whether a serviceman has furnished more than one-half of the support of an individual claimed as a dependent under section 25(b)(1)(D) of the Internal Revenue Code, the entire amount furnished by the serviceman, including the tax-exempt basic allowance for quarters to which the serviceman is entitled under the Career Compensation Act of 1949 (63 Stat. 802), as amended, and used for the support of such dependent, must be considered.

Advice is requested whether a serviceman may take into consideration his basic allowance for quarters, received under the Career Compensation Act of 1949 (63 Stat. 802), as amended, and used for the support of a dependent, in determining whether he furnished more than one-half of such dependent's support, for the purposes of a dependency credit under section 25 (b) (1) (D) of the Internal Revenue Code.

Section 25(b)(1)(D) of the Internal Revenue Code, as amended, allows (with an exception not material here) the taxpayer an exemption of $600 for each dependent whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $600. In order to be entitled to this exemption, the taxpayer must have furnished more than one-half of the dependent person's support for the taxable year and the dependent must be closely related to the taxpayer. (See section 25(b)(3) of the Code.)

Under the provisions of the Servicemen's Dependents Allowance Act of 1942 (56 Stat. 381), an enlisted member of the Armed Forces was considered as furnishing only that portion of the "monthly family allowance" received by his dependents which was allotted from his service pay. The balance consisted of the Government's contribution, which was regarded as being in the nature of a gift. (See I. T. 3574, C. B. 1942–2, 52, and I. T. 3723, C. B. 1945, 122.) In determining whether the serviceman furnished the major support of his dependents, he was permitted to take into consideration the amount deducted from his pay for allotment to his dependents, but not the amount contributed to his dependents by the Government. However, most of the provisions of the Servicemen's Dependents Allowance Act of 1942 have become inoperative by reason of the enactment of the Career Compensation Act of 1949 (63 Stat. 802), as amended by the Dependents Assistance Act of 1950 (64 Stat. 794).

The Career Compensation Act of 1949, as amended by the Dependents Assistance Act of 1950, has replaced the monthly family allowance with a "basic allowance for quarters." An enlisted member with dependents is now entitled to a basic allowance for quarters of $45, $67.50, or $85 a month, depending on his pay grade and the number of his dependents. Such allowance is paid to, or on behalf of, the specified dependents, provided the enlisted member has in effect an allotment of pay, for the support of his dependents, of not less than the sum of the basic allowance for quarters to which he is entitled plus $40, $60, or $80, according to his pay grade.

That portion of the monthly payment to dependents which constitutes the basic allowance for quarters is excludable from wages subject to withholding of income tax at the source and from gross income of both the serviceman and his dependents. The balance received by the dependents, which is charged to the serviceman's pay, is includible both in the serviceman's wages subject to withholding of income tax and in his gross income, but is not taxable to his dependents. Although the basic allowance for quarters may be excluded from taxable income, it is not regarded as a gift from the Government to the dependents. The serviceman now allots both the quarters allowance and the required amount of his service pay to his dependents. He is considered as furnishing the total amount thus received by his dependents in much the same manner as if he (like an officer in the Armed Forces) had actually assigned or given such amount to them.

The test to be applied in determining whether a taxpayer has furnished more than one-half of the support of a person claimed as a dependent is one of *actual support*, and it is, therefore, a question of fact in each case. (See I. T. 3723, C. B. 1945, 122.) Accordingly, in determining whether a serviceman has furnished more than one-half of the support of an individual claimed as a dependent under section

25(b)(1)(D) of the Internal Revenue Code, the entire amount furnished by the serviceman, including the tax-exempt basic allowance for quarters to which the serviceman is entitled under the Career Compensation Act of 1949, as amended, and used for the support of such dependent, must be considered.

SECTION 27(b).—CORPORATION DIVIDENDS PAID CREDIT: BASIC SURTAX CREDIT

SECTION 29.27(b)-1: Basic surtax credit. 1952-20-13934
(Also Section 27(i); Section 29.27(i)-1.) I. T. 4099

INTERNAL REVENUE CODE

The provisions of article XIV(1) of the United States-Switzerland income tax convention, exempting from United States income tax dividends paid by a corporation other than a United States domestic corporation to a nonresident alien resident in Switzerland or to a Swiss corporation not having a permanent establishment in the United States, do not have the effect of excluding, under section 27(i) of the Internal Revenue Code, such nontaxable dividends from the calculation of the basic surtax credit under section 27(b) of the Code.

Advice is requested whether the provisions of article XIV(1) of the United States-Switzerland income tax convention, T. D. 5867, C. B. 1951-2, 75, 78, have the effect of excluding, under section 27(i) of the Internal Revenue Code, in computing the basic surtax credit under section 27(b) of the Code dividends paid by a corporation other than a United States domestic corporation where the stockholders receive such dividends free of United States income tax by reason of the terms of that article.

Article XIV(1) of the United States-Switzerland income tax convention provides as follows:

Dividends and interest paid by a corporation other than a United States domestic corporation shall be exempt from United States tax where the recipient is a nonresident alien as to the United States resident in Switzerland or a Swiss corporation, not having a permanent establishment in the United States.

Article XVIII(2) of the convention provides as follows:

The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.

Section 27(b) of the Internal Revenue Code sets forth the manner in which the basic surtax credit shall be computed, and provides, among other things, that there shall be included in such computation the dividends paid during the taxable year. Section 27(i) of the Code provides for the exclusion from such computation of any part of a distribution which is not a taxable dividend in the hands of such of the shareholders as are subject to taxation under chapter 1 of the Code for the period in which the dividend is distributed.

To hold that article XIV(1) of the convention converts an otherwise taxable distribution into a nontaxable distribution as contemplated by section 27(i) of the Code would be to construe that article in such a manner as to place a restriction upon the basic surtax credit

computed under section 27(b) of the Code, a construction in direct contravention of the provisions of article XVIII(2) of the convention and one which, in the opinion of this office, is not contemplated by section 27(i) of the Code.

Accordingly, it is held that the provisions of article XIV(1) of the United States-Switzerland income tax convention, exempting from United States income tax dividends paid by a corporation other than a United States domestic corporation to a nonresident alien resident in Switzerland or to a Swiss corporation not having a permanent establishment in the United States, do not have the effect of excluding, under section 27(i) of the Internal Revenue Code, such nontaxable dividends from the calculation of the basic surtax credit under section 27(b) of the Code.

SECTION 27(i).—CORPORATION DIVIDENDS PAID CREDIT: NONTAXABLE DISTRIBUTIONS

SECTION 29.27(i)-1: Nontaxable distributions.

INTERNAL REVENUE CODE

Corporate distributions which are nontaxable under article XIV(1) of the United States-Switzerland income tax convention. (See I. T. 4099, page 117.)

PART IV.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

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

SECTION 29.42-1: When included in gross income.

INTERNAL REVENUE CODE

Interest on United States savings bonds, Series K. (See I. T. 4110, page 99.)

SECTION 43.—PERIOD FOR WHICH DEDUCTIONS AND CREDITS TAKEN

SECTION 29.43-2: When charges deductible. 1952-21-13937
I. T. 4101

INTERNAL REVENUE CODE

For taxable years ending after December 31, 1945, real property and tangible personal property taxes levied by the State of Missouri accrue, for Federal income tax purposes, on January 1 of each year. I. T. 3777 (C. B. 1946-1, 63) is inapplicable with respect to taxes for years subsequent to 1945.

Advice is requested with respect to the proper accrual date, for Federal income tax purposes, of real property and tangible personal property taxes levied by the State of Missouri.

I. T. 3777 (C. B. 1946-1, 63), which modified I. T. 2885 (C. B. XIV-1, 64 (1935)), holds that real property taxes in the State of

Missouri do not accrue until the date upon which they are levied, i. e., the date upon which the lien for such taxes attaches; and that no date can be fixed as the date of levy of real property taxes throughout the State, but that they are not actually levied until the year for which they are imposed.

On February 27, 1945, the State of Missouri adopted a new constitution wherein it is provided that all taxes shall be levied and collected by general laws and shall be payable during the fiscal or calendar year in which the property is assessed (section 3, article X, Constitution of 1945 of the State of Missouri).

The pertinent provisions of the Missouri Laws of 1945 effectuating the foregoing section of the new constitution are contained in chapter 137 of the Missouri Revised Statutes of 1949, which provides in part as follows:

137.075. What property liable for taxes

Every person owning or holding real property or tangible personal property on the first day of January including all such property purchased on that day, shall be liable for taxes thereon during the same calendar year.

* * * * * * *

137.080. Annual assessment date

Real estate shall be assessed at the assessment which shall commence on the first day of January, 1946, and shall be required to be assessed every year thereafter.

* * * * * * *

137.085 * * * state lien on real property, extent of

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2. Real property shall in all cases be liable for the taxes thereon, and a lien is hereby vested in favor of the state on all real property for all taxes thereon, which lien shall accrue and become a fixed encumbrance as soon as the amount of the taxes is determined by assessment and levy, and said lien shall be enforced as provided by law; said lien shall continue to be enforced until all taxes, forfeitures, back taxes and costs shall be fully paid or the land sold or released as provided by law.

* * * * * * *

137.115. Real and tangible personal property—time and manner of assessment

1. After receiving the necessary forms the assessor or his deputy or deputies shall, except in the city of St. Louis, between the first day of January and the first day of June, 1946, and each year thereafter, proceed to make a list of all real and tangible personal property in his county, town or district, and assess the same at its true value in money * * *

* * * * * * *

137.020. Annual levy for state revenue

There shall be annually levied, assessed and collected on the assessed value of all real estate and tangible personal property, subject by law to taxation in this state, three cents on each one hundred dollars valuation for state revenue.

In *United States* v. *Certain Land Situate in City of St. Louis, Mo., et al.* (86 Fed. Supp. 297), the court, in determining when the lien for State, school and city taxes commenced for taxes due and payable in 1946, held that the State had at least an inchoate lien from January 1, 1946, for taxes due on the land in 1946, which became fixed in amount by relation back to that date after the assessment and levy were completed.

The general rule of the Bureau, based upon *United States* v. *Anderson* (269 U. S. 422, T. D. 3839, C. B. V-1, 179), has been that the event which determines the liability for property taxes is the ownership of

the property on the day as of which the assessment is made under the State law. In *Albert P. Long et al.* v. *City of Independence* (229 S. W. 2d. 686), the Supreme Court of Missouri, in holding that the effective date of assessment is January 1, stated:

* * * The General Assembly has enacted many laws outlining the entire taxing process, and prescribing the powers and duties of various officials and boards of the State, county, city and other subdivisions, relative to the assessment, levy and collection of taxes. Chap. 79, Mo. R. S. A. The result of this process, which commences January 1 and is not completed until months later, is the "official assessment" as to each individual person or property unit.

While this official assessment is not made *on* January 1, it is *as of* that date so far as assessment of State and county taxes is concerned. See Secs. 10942.3, 10942.8, 11000.16, 11000.25 and 11000.38. This is true also as to city taxes upon property within the city on January 1. * * *

In view of the foregoing, it is held that for taxable years ending after December 31, 1945, real property and tangible personal property taxes levied by the State of Missouri accrue, for Federal income tax purposes, on January 1 of the calendar year and are deductible as of that date by taxpayers who file income tax returns on the accrual basis of accounting. It is further held that I. T. 3777, *supra*, is inapplicable with respect to taxes for years subsequent to 1945.

SECTION 29.43–2: When charges deductible.

INTERNAL REVENUE CODE

Deductibility of real property taxes in the State of Washington as between a grantor and a grantee of the real property. (See G. C. M. 27440, page 97.)

SECTION 29.43–2: When charges deductible.

INTERNAL REVENUE CODE

Interest "refunded" upon redemption prior to maturity of United States savings bonds, Series K. (See I. T. 4110, page 99.)

SECTION 44.—INSTALLMENT BASIS

SECTION 29.44–1: Sale of personal property on installment plan. (Also Section 29.44–4.) — 1952–14–13863 G. C. M. 27169

INTERNAL REVENUE CODE

A taxpayer regularly engaged in the sale, on the installment plan, of complete factory-built houses constructed in its own factory is a dealer in personal property within the meaning of section 44(a) of the Internal Revenue Code. However, a taxpayer whose business transactions consist of engaging in the construction of "shell" or semifinished houses on land owned by others is not a dealer in personal property within the meaning of section 44(a) of the Code, and such transactions do not constitute sales or other dispositions of real property within the meaning of section 44(b) of the Code.

An opinion is requested whether a taxpayer may be permitted to report income on the installment basis, under section 44 of the Internal

Revenue Code, from (1) the sale of complete factory-built houses constructed in its own factory, and (2) the sale of "shell" or semifinished houses constructed on land owned by the purchasers.

The taxpayer proposes to engage in the sale of complete factory-built houses constructed in its own factory, such houses to be sold at a fixed contract price, plus costs of transportation to lots owned by the purchasers where the houses will be placed upon foundations not installed or erected by the taxpayer. These houses will be sold either for cash or partly for cash with the balance on time evidenced by a note and secured by a mortgage in like manner as in the case of the "shell" houses hereinafter described.

The taxpayer is presently engaged in construction, under contracts, of "shell" or semifinished houses consisting of a completed exterior and a studded interior (interiors to be completed by the owners of the premises). It also constructs garages for use in connection with houses already constructed, makes retail sales of lumber and other building materials, and does some remodeling work. However, over 90 percent of the total volume of its business has consisted of construction of "shell" houses. More than 95 percent of its house and garage construction and remodeling work is paid for on a time basis, as evidenced by an installment note (including title, insurance, and finance charges, etc.), payable over a period of 5 to 10 years and secured by a first mortgage on the land and building, with a cash down payment which, together with monthly installments received during the same taxable year, does not exceed 30 percent of the contract price. The construction contract is headed "Construction Agreement," and the taxpayer is repeatedly referred to therein as "contractor" and the "shell" house as "improvement on the premises."

Section 44 of the Internal Revenue Code provides in part as follows:

(a) DEALERS IN PERSONAL PROPERTY.—Under regulations prescribed by the Commissioner with the approval of the Secretary, a person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

(b) SALES OF REALTY AND CASUAL SALES OF PERSONALITY [sic].—In the case (1) of a casual sale or other casual disposition of personal property (other than 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), for a price exceeding $1,000, or (2) of a sale or other disposition of real property, if in either case the initial payments do not exceed 30 per centum of the selling price * * *, the income may, under regulations prescribed by the Commissioner with the approval of the Secretary, be returned on the basis and in the manner above prescribed in this section. * * *

It is the opinion of this office that a taxpayer regularly engaged as above stated in the sale, on the installment plan, of complete factory-built houses constructed in its own factory is a dealer in personal property within the meaning of section 44(a) of the Internal Revenue Code, *supra*, and that the taxpayer may report on the installment basis the income from any such installment plan sales. However, a taxpayer whose business transactions consist of engaging in the construction of the above-described "shell" or semifinished houses on land owned by others is a building construction contractor, both in form

and substance, and clearly is not a dealer in personal property within the meaning of section 44(a) of the Code, *supra*, and such transactions do not constitute sales or other dispositions of real property within the meaning of section 44(b) of the Code, *supra* (see G. C. M. 7871, C. B. IX–1, 207 (1930)). It follows that the income from such sales may not be reported on the installment basis.

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

SECTION 29.44–4: Deferred-payment sale of real property not on installment plan.

INTERNAL REVENUE CODE

"Shell" or semifinished houses constructed on land owned by purchaser. (See G. C. M. 27169, page 120.)

PART V.—RETURNS AND PAYMENT OF TAX

SECTION 51.—INDIVIDUAL RETURNS

SECTION 29.51–1: Individual returns. 1952–24–13967
(Also Section 275, Sections 29.275–1, 29.275–2; T. D. 5942
Section 322, Section 29.322–7.)

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 the provisions of section 312 of the Revenue Act of 1951, relating to the filing of joint return after separate return has been filed.

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On July 17, 1952, notice of proposed rule making with respect to regulations under section 51(g) of the Internal Revenue Code, as added by section 312 of the Revenue Act of 1951, approved October 20, 1951, was published in the Federal Register [17 F. R. 6561]. 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.

PARAGRAPH 1. There is inserted immediately preceding section 29.51–1 [26 CFR 29.51–1], the following:

SEC. 312. JOINT RETURN AFTER FILING SEPARATE RETURN [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) CHANGE OF ELECTION.—Section 51 of the Internal Revenue Code (relating to making of individual returns) is hereby amended by adding at the end thereof the following new subsection:

"(g) JOINT RETURN AFTER FILING SEPARATE RETURN.—

"(1) IN GENERAL.—If an individual has filed a separate return for a taxable year for which a joint return could have been made

by him and his spouse under subsection (b) of this section, and the time prescribed by law for filing the return for such taxable year has expired, such individual and his spouse may nevertheless make a joint return for such taxable year. A joint return filed by the husband and wife in such a case shall constitute the return of the husband and wife for such taxable year, and all payments, credits, refunds, or other repayments made or allowed with respect to the separate return of either spouse for such taxable year shall be taken into account in determining the extent to which the tax based upon the joint return has been paid.

"(2) PAYMENTS REQUIRED BEFORE JOINT RETURN CAN BE MADE.—A joint return can be made under paragraph (1) only if there is paid in full at or before the time of the filing of the joint return—

"(A) all amounts previously assessed with respect to either spouse for such taxable year;

"(B) all amounts shown as the tax by either spouse upon his separate return for such taxable year; and

"(C) any amount determined, at the time of the filing of the joint return, as a deficiency with respect to either spouse for such taxable year if, prior to such filing, a notice under section 272(a) of such deficiency has been mailed.

"(3) TIME FOR MAKING JOINT RETURN.—A joint return cannot be made under paragraph (1)—

"(A) after the expiration of three years from the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse);

"(B) after there has been mailed to either spouse, with respect to such taxable year, a notice of deficiency under section 272(a), if the spouse, as to such notice, files a petition with The Tax Court of the United States within the time prescribed in such section;

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

"(D) after either spouse has entered into a closing agreement under section 3760 with respect to such taxable year, or after any civil or criminal case arising against either spouse with respect to such taxable year has been compromised under section 3761.

"(4) ELECTIONS MADE IN SEPARATE RETURN.—If a joint return is made under this subsection, any election (other than the election to file a separate return) made by either spouse in his separate return for such taxable year with respect to the treatment of any income, deduction, or credit of such spouse shall not be changed in the making of the joint return where such election would have been irrevocable if the joint return had not been made.

"(5) DEATH OF SPOUSE.—If a joint return is made under this subsection after the death of either spouse, such return with respect to the decedent can be made only by his executor or administrator.

"(6) ADDITIONS TO THE TAX.—Where the amount shown as the tax by the husband and wife on a joint return made under this subsection exceeds the aggregate of the amounts shown as the tax upon the separate return of each spouse—

"(A) Negligence.—If any part of such excess is attributable to negligence or intentional disregard of rules and regulations (but without intent to defraud) at the time of the making of such separate return, then 5 per centum of the total amount of such excess shall be assessed, collected, and paid in the same manner as if it were a deficiency;

"(B) Fraud.—If any part of such excess is attributable to fraud with intent to evade tax at the time of the making of such separate return, then 50 per centum of the total amount of such excess shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612(d)(2).

"(7) RULES FOR APPLICATION OF SECTIONS 275 AND 291.—For the purposes of section 275 (relating to period of limitations upon assessment and collection), and for the purposes of section 291 (relating to delinquent returns), a joint return made under this subsection shall be deemed to have been filed—

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

"(B) where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had less than $600 of gross income for such taxable year—on the date of the filing of such separate return (but not earlier than the last date prescribed by law for the filing of such separate return); or

"(C) where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had gross income of $600 or more for such taxable year—on the date of the filing of such joint return.

"(8) RULE FOR APPLICATION OF SECTION 322.—For the purposes of section 322 (relating to refunds and credits), a joint return made under this subsection shall be deemed to have been filed on the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse).

"(9) ADDITIONAL TIME FOR ASSESSMENT.—If a joint return is made under this subsection, the period of limitations provided in sections 275 and 276 on the making of assessments and the beginning of distraint or a proceeding in court for collection shall with respect to such return include one year immediately after the date of the filing of such joint return (computed without regard to the provisions of paragraph (7) of this subsection).

"(10) RULE FOR APPLICATION OF SECTION 3809(a).—For the purposes of section 3809(a) (relating to criminal penalties in the case of fraudulent returns) the term 'return' includes a separate return filed by a spouse with respect to a taxable year for which a joint return is made under this subsection after the filing of such separate return."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be applicable only with respect to taxable years beginning after December 31, 1950.

PAR. 2. Section 29.51–1, as amended by Treasury Decision 5893 [C. B. 1952–1, 126], approved April 4, 1952 [26 CFR 29.51–1], is further amended as follows:

(A) By striking therefrom the second undesignated paragraph of (b)(1), commencing "A joint return may not be made", and inserting in lieu thereof the following:

With respect to taxable years beginning prior to January 1, 1951, a joint return may not be made by a husband and wife for a taxable year if a separate return has been filed by one of the spouses for such year and the time for filing the return of such spouse has expired. For taxable years beginning after December 31, 1950, see subparagraph (3). For any taxable year where a joint return has been filed, separate returns may not be made by the spouses after the time for filing the return of either has expired. See, however, subparagraph (2) for the right of an executor to file a late separate return for a deceased spouse and thereby disaffirm a timely joint return made by the surviving spouse.

(B) By inserting in the first sentence of (b)(2), after "except as provided by section 51(b), as amended by the Revenue Act of 1948," the following: "or by section 51(g), as added by the Revenue Act of 1951,".

(C) By inserting immediately preceding the last sentence of the

first undesignated paragraph of (b)(2), which sentence begins "For the purposes of this subparagraph", the following:

Section 51(g), as added by the Revenue Act of 1951, provides, for taxable years beginning after December 31, 1950, that a joint return may be made, under certain conditions, after separate returns have been filed even though the time prescribed by law for filing the return for such year has expired. See section 29.51–1(b)(3). A joint return made under section 51(g) after the death of either spouse shall, with respect to the decedent, be made only by his executor or administrator. Thus where no executor or administrator has been appointed, a joint return cannot be made under section 51(g).

(D) By adding immediately after (b)(2) the following new subparagraph:

(3) *Joint return after filing separate return.*—(i) *In general.*—Section 51(g), as added by the Revenue Act of 1951, provides, for taxable years beginning after December 31, 1950, where an individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse under section 51(b), and the time prescribed by law for filing the return for such taxable year has expired, such individual and his spouse may, under conditions hereinafter set forth, make a joint return for such taxable year. The joint return filed pursuant to section 51(g) shall constitute the return of the husband and wife for such year, and all payments, credits, refunds, or other repayments, made or allowed with respect to the separate return of either spouse are to be taken into account in determining the extent to which the tax based on the joint return has been paid.

For the purpose of this section, the determination whether an individual is married at any time during the taxable year shall be made in accordance with the provisions of section 51(b)(5). See section 29.51–1(b)(1). The fact that the taxpayer and his spouse are divorced or legally separated at any time after the close of the taxable year for which separate returns are filed shall not deprive them of their right to file a joint return for such taxable year pursuant to section 51(g).

(ii) *Payments required before joint returns can be made.*—A joint return may not be made under section 51(g) for a taxable year unless at or before the time of the filing of such joint return the following amounts are paid:

(A) all amounts previously assessed with respect to either spouse for such taxable year;

(B) all amounts shown as the tax by either spouse upon his separate return for such taxable year; and

(C) any amount determined, at the time of the filing of the joint return, as a deficiency with respect to either spouse for such taxable year if, prior to such filing, a notice under section 272(a) of such deficiency has been mailed.

(iii) *Time for making joint return.*—A joint return may not be made under section 51(g) with respect to a taxable year

(A) after the expiration of 3 years from the last day prescribed by law for filing the return for such taxable year determined without regard to any extension of time granted to either spouse. Thus where an extension of time for filing returns has been granted by the Commissioner or his representative in accordance with section 53(a), the extension shall be disregarded in determining the last day upon which a joint return may be filed after separate returns have been filed;

(B) after there has been mailed to either spouse, with respect to such taxable year, a notice of deficiency under section 272(a), if the spouse, as to such notice, files a petition with The Tax Court of the United States within the time prescribed in section 272(a), that is, within 90 days (or 150 days if notice is addressed to taxpayer outside the States of the Union and the District of Columbia) after the mailing of the notice, excluding Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day;

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

(D) after either spouse has entered into a closing agreement under section 3760 with respect to such taxable year, or after any civil or criminal case arising against either spouse with respect to such taxable year has been compromised under section 3761.

(iv) *Elections made in separate return.*—If a joint return is made under section 51(g), any election, other than the election to file a separate return, made by either spouse in his separate return for the taxable year with respect to the treatment of any income, deduction, or credit of such spouse shall not be changed in the making of the joint return where such election would have been irrevocable if the joint return had not been made. Thus, if one spouse has made an irrevocable election to adopt and use the elective inventory method under section 22(d), this election may not be changed upon making the joint return under section 51(g).

(v) *Additions to the tax.*—Where the amount shown as the tax by the husband and wife on a joint return made under section 51(g) exceeds the aggregate of the amounts shown as tax on the separate return of each spouse, and such excess is attributable to negligence, intentional disregard of rules and regulations, or fraud at the time of the making of such separate returns, there shall be assessed, collected, and paid in the same manner as if it were a deficiency an additional amount as provided in the two succeeding sentences. If any part of such excess is attributable to negligence, or intentional disregard of rules and regulations, at the time of the making of such separate return, but without any intent to defraud, this additional amount shall be 5 percent of the total amount of the excess. If any part of such excess is attributable to fraud with intent to evade tax at the time of the making of such separate return, this additional amount shall be 50 percent of the total amount of the excess. The latter addition is in lieu of the 50 percent addition to the tax provided in section 3612(d)(2).

(vi) *Rules for application of sections 275 and 291.*—For the purpose of section 275, relating to the period of limitations upon assessment and collection, and section 291, relating to delinquent returns, a joint return made under section 51(g) shall be deemed to have been filed, giving due regard to any extension of time granted to either spouse, on the following dates:

(A) where both spouses filed separate returns, prior to making the joint return under section 51(g), on the date the last separate return of either spouse was filed for the taxable year, but not earlier than the last date prescribed by law for the filing of the return of either spouse;

(B) where only one spouse was required to file and did file a return prior to the making of the joint return under section 51(g), on the date of the filing of the separate return, but not earlier than the last day prescribed by law for the filing of such return; and

(C) where both spouses were required to file a return, but only one spouse did so file, on the date of the filing of the joint return under section 51(g)

(vii) *Rule for application of section 322.*—For the purpose of section 322, relating to refunds and credits, a joint return made under section 51(g) shall be deemed to have been filed on the last date prescribed by law for filing the return for such taxable year, determined without regard to any extension of time granted to either spouse for filing the return or paying the tax.

(viii) *Additional time for assessment.*—In the case of a joint return made under section 51(g), the period of limitations provided in sections 275 and 276 shall not be less than 1 year after the date of the filing of such joint return. The expiration of the 1 year is to be determined without regard to the rules provided in (vi) above, relating to the application of sections 275 and 291 with respect to a joint return made under section 51(g).

(ix) *Rule for application of section 3809(a).*—For the purposes of section 3809(a), relating to criminal penalties in the case of a fraudulent return, the term "return" includes a separate return filed by a spouse for the taxable year for which a joint return is subsequently made under section 51(g).

PAR. 3. Section 29.275–1, as amended by Treasury Decision 5924 [page 100, this Bulletin], approved August 4, 1952 [26 CFR 29.175–1], relating to the period of limitation upon assessment of tax is further amended by inserting immediately preceding the last paragraph thereof the following:

(12) In the case of a joint return made under section 51(g), the period of limitations shall not be less than 1 year immediately after the date of the actual filing of such return, computed without regard to the provisions of section 51(g)(7).

PAR. 4. Section 29.275–2 [26 CFR 29.275–2], relating to the period of limitation upon collection of tax, is amended by inserting at the end thereof the following:

(6) In the case of a joint return made under section 51(g), the period of limitations shall not be less than 1 year immediately after the date of the actual filing of such return, computed without regard to the provisions of section 51(g)(7).

PAR. 5. Section 29.322–7, as amended by Treasury Decision 5837 [C. B. 1951–1, 61], approved April 5, 1951 [26 CFR 29.322–7], relating to limitations upon the crediting and refunding of taxes paid, is further amended by inserting immediately preceding the last paragraph of (*a*) the following:

In the case of a filing of a joint return under section 51(g), the joint return shall be deemed to have been filed on the last date prescribed by law for filing the return for such taxable year, determined without regard to any extension of time granted to either spouse for filing the return or paying the tax. See section 29.51–1(b)(3).

(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 October 24, 1952.

JOHN S. GRAHAM,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 28, 1952, 8:52 a. m.)

SECTION 55.—PUBLICITY OF RETURNS

1952–25–13979
T. D. 5945

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

Inspection of returns by Senate Committee on the Judiciary.

TREASURY DEPARTMENT,
Washington 25, D. C.

To Officers and Employees of the Internal Revenue Service and Others Concerned:

SEC. 458.315. INSPECTION OF RETURNS BY SENATE JUDICIARY COMMITTEE IN CONNECTION WITH INVESTIGATION OF ADMINISTRATION OF TRADING WITH THE ENEMY ACT.—(*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 1941 to 1951, inclusive, shall, during the Eighty-second Congress, be open to inspection by the Senate Committee on the Judiciary or any duly authorized subcommittee thereof for the purpose of carrying out the provisions of Senate Resolution 245 (82d Cong., 2d sess.), agreed to March 24, 1952,

with respect to the administration of the Trading with the Enemy Act.

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 of the Treasury and any officer or employee of the Treasury Department, with the approval of the Secretary of the Treasury, may furnish such committee or subcommittee with any data relating to or contained in any such return, or may 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 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 the Judiciary to inspect the returns herein mentioned, it is hereby 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.

E. H. Foley,
Acting Secretary of the Treasury.

Approved November 15, 1952.

Harry S. Truman,
The White House.

(Filed with the Division of the Federal Register November 17, 1952, 10:11 a. m.)

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INSPECTION OF RETURNS BY SENATE COMMITTEE ON THE JUDICIARY

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 1941 to 1951, inclusive, shall, during the Eighty-second Congress, be open to inspection by the Senate Committee on the Judiciary or any duly authorized subcommittee thereof for the purpose of carrying out the provisions of Senate Resolution 245 (82d Cong., 2d sess.), agreed to March 24, 1952, with respect to the investigation of the administration of the Trading with the Enemy Act, subject to the condi-

tions 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,
November 15, 1952.

(E. O. 10412)

(Filed with the Division of the Federal Register November 17, 1952, 10:11 a. m.)

SUBCHAPTER C.—SUPPLEMENTAL PROVISIONS

SUPPLEMENT A.—RATES OF TAX

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

SECTION 29.107-1: Personal services.

INTERNAL REVENUE CODE

Recomputation of charitable contributions and medical expense deductions in connection with computations under section 107 of the Internal Revenue Code. (See IR-Mim. 43, page 112.)

SECTION 29.107-2: Artistic work or invention.

INTERNAL REVENUE CODE

Prize received in 1947 for symphony composed between 1936 and 1939. (See Ct. D. 1746, page 66.)

SECTION 29.107-2: Artistic work or invention.

INTERNAL REVENUE CODE

Recomputation of charitable contributions and medical expense deductions in connection with computations under section 107 of the Internal Revenue Code. (See IR-Mim. 43, page 112.)

SECTION 29.107-3: Back pay attributable to prior taxable years.

INTERNAL REVENUE CODE

Recomputation of charitable contributions and medical expense deductions in connection with computations under section 107 of the Internal Revenue Code. (See IR-Mim. 43, page 112.)

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

SECTION 29.111-1: Computation of gain or loss. (Also Section 423, Section 29.423-3.) 1952-23-13957 I. T. 4106

INTERNAL REVENUE CODE

Application of G. C. M. 27491 (page 221, this Bulletin)

Under authority contained in section 3791(b) of the Internal Revenue Code, the provisions of G. C. M. 27491 (page 221, this Bulletin) revoking G. C. M. 10857 (C. B. XI-2, 105 (1932)), will be applicable only to sales occurring in taxable years beginning after December 31, 1950.

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

SECTION 29.112(b)(1)-1: Property held for productive use in trade or business or for investment. 1952-17-13894 I. T. 4093

INTERNAL REVENUE CODE

An exchange of a producing oil lease extending until the exhaustion of the deposit, which lease is held for productive use in trade or business or for investment, for the fee interest in an improved ranch to be held for productive use in trade or business or for investment constitutes an exchange of property for property of a like kind under section 112(b)(1) of the Internal Revenue Code to the extent of the ranch land and permanent improvements thereon, but not including that part of the ranch property consisting of the personal residence, equipment, and livestock.

Advice is requested whether the exchange of a producing oil lease extending until the exhaustion of the deposit for the fee interest in an improved ranch qualifies as an exchange with respect to which no gain or loss is recognized under section 112(b)(1) of the Internal Revenue Code.

Section 112(b)(1) of the Internal Revenue Code provides in part as follows:

(1) PROPERTY HELD FOR PRODUCTIVE USE OR INVESTMENT.—No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale * * *) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

Section 29.112(b)(1)-1 of Regulations 111 provides in part as follows:

SEC. 29.112(b)(1)-1. PROPERTY HELD FOR PRODUCTIVE USE IN TRADE OR BUSINESS OR FOR INVESTMENT.—As used in section 112(b)(1), the words "like kind" have reference to the nature or character of the property and not to its grade or quality. One kind or class of property may not, under such section, be exchanged for property of a different kind or class. The fact that any real estate involved is improved or unimproved is not material, for such fact relates only to the grade or quality of the property and not to its kind or class. * * *

No gain or loss is recognized if * * * a taxpayer who is not a dealer in real estate exchanges city real estate for a ranch or farm, or a leasehold of a fee with 30 years or more to run for real estate, or improved real estate for unimproved real estate * * *

Section 112(b)(1) of the Code does not apply to property held for trading purposes or for personal use.

It is the position of the Bureau that the interest of a lessee in a producing oil lease extending until the exhaustion of the deposit constitutes an interest in real property for Federal income tax purposes. (See I. T. 3693, C. B. 1944, 272, and *Palmer* v. *Bender*, 287 U. S. 551, Ct. D. 641, C. B. XII-1, 235 (1933).)

In *Kate J. Crichton* v. *Commissioner* (42 B. T. A. 490, acquiescence, C. B. 1952-1, 2, affirmed, 122 Fed. (2d) 181), it is held that under article 112(b)(1)-1 of Regulations 94, which article is substantially the same as section 29.112(b)(1)-1 of Regulations 111, an exchange of oil, gas, and mineral rights for an undivided one-half of the fee in a parcel of improved realty was an exchange of properties of a like kind under section 112(b)(1) of the Revenue Act of 1936 (identical to section 112(b)(1) of the Internal Revenue Code). The United States circuit court of appeals concluded that under the regulations and the interpretation therein, "the distinction intended and made by the statute is the broad one between classes and characters of properties, for instance, between real and personal property," and that "it was not intended to draw any distinction between parcels of real property however dissimilar they may be in location, in attributes and in capacities for profitable use."

In the Crichton case, the United States Board of Tax Appeals (now The Tax Court of the United States) distinguished its decision in *Midfield Oil Co.* v. *Commissioner* (39 B. T. A. 1154, acquiescence, C. B. 1939-2, 25), in which it held that an exchange of an oil payment right for an overriding oil and gas royalty reserved from the same lease was not an exchange of property of like kind. The Board pointed out that an oil payment was a limited interest in the property, whereas an overriding royalty was to continue so long as oil or gas might be produced. In other words, an oil payment is a limited interest that is not attributable to the entire natural resource in the property as in the case of an overriding royalty. Therefore, the decision in the Crichton case is not regarded as affecting the conclusions reached in the Midfield Oil case.

In view of the foregoing, it is held that an exchange of a producing oil lease extending until the exhaustion of the deposit, which lease is held for productive use in trade or business or for investment, for the fee interest in an improved ranch to be held for productive use in trade or business or for investment constitutes an exchange of property for property of a like kind under section 112(b)(1) of the Internal Revenue Code to the extent of the ranch land and permanent improvements thereon, but not including that part of the ranch property consisting of the personal residence, equipment, and livestock.

SECTION 29.112(b)(6)-1: Distributions in liquidation of subsidiary corporation.

INTERNAL REVENUE CODE

Cancellation by the parent of a subsidiary's indebtedness to it. (See I. T. 4109, page 138.)

SECTION 29.112(b)(7)–1: Corporate liquidations in calendar month in 1944, 1951, or 1952. 1952–16–13880 T. D. 5918

(Also Sections 29.112(b)(7)–2, 29.112(b)(7)–4, 29.112(b)(7)–5; Section 113(a), Section 29.113(a)(18)–1; Section 148, Sections 29.148–2 and 29.148–3.)

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

Regulations 111 amended to conform to section 316 of the Revenue Act of 1951.

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 order to conform Regulations 111 [26 CFR, part 29] to the provisions of section 316 of the Revenue Act of 1951, approved October 20, 1951, relating to election as to recognition of gain in certain corporate liquidations, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 29.112(b)(7)–1 [26 CFR 29.112(b)(7)–1] the following:

SEC. 316. ELECTION AS TO RECOGNITION OF GAIN IN CERTAIN CORPORATE LIQUIDATIONS [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) AMENDMENT OF SECTION 112(b)(7).—Section 112(b)(7) (relating to recognition of gain in certain corporate liquidations) is hereby amended by striking out in subparagraph (A)(ii) "1951" and by inserting in lieu thereof "1951 or 1952".

* * * * * * *

(c) EFFECTIVE DATE.—The amendments made by this section shall be applicable only to taxable years ending after December 31, 1951.

PAR. 2. Section 29.112(b)(7)–1, as amended by Treasury Decision 5856 [C. B. 1951–2, 56], approved September 14, 1951 [26 CFR 29.112(b)(7)–1], is further amended as follows:

(A) By striking from the heading and from the section "in 1944 or 1951", wherever "in 1944 or 1951" appears therein, and by inserting in lieu thereof the following: "in 1944, 1951, or 1952".

(B) By inserting in the first and third sentences of paragraph (*b*) immediately after "in 1951", wherever "in 1951" appears therein, the following: "or 1952".

PAR. 3. Section 29.112(b)(7)–2, as amended by Treasury Decision 5856 [26 CFR 29.112(b)(7)–2], is further amended by inserting in the second parenthetical clause in the first sentence immediately after "in 1951", the following: "or 1952".

PAR. 4. Section 29.112(b)(7)–4, as amended by Treasury Decision 5856 [26 CFR 29.112(b)(7)–4], is further amended as follows:

(A) By inserting in the second parenthetical clause in the first sentence of paragraph (*b*)(2) immediately after "in 1951" the following: "or 1952".

(B) By striking from the second sentence of paragraph (*b*)(2)

the date "August 15, 1951" and by inserting in lieu thereof the following: "August 15, 1950".

PAR. 5. Section 29.112(b)(7)–5, as amended by Treasury Decision 5856 [26 CFR 29.112(b)(7)–5], is further amended by inserting immediately after "in 1951", where it appears in (*b*) of such section, the following: "or 1952".

PAR. 6. There is inserted immediately preceding section 29.113(a)(18)–1 [26 CFR 29.113(a)(18)–1], the following:

SEC. 316. ELECTION AS TO RECOGNITION OF GAIN IN CERTAIN CORPORATE LIQUIDATIONS [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(b) BASIS OF PROPERTY.—Section 113(a)(18) (relating to basis of property received in certain corporate liquidations) is amended by striking out "the Revenue Act of 1950" and by inserting in lieu thereof "any revenue act".

(c) EFFECTIVE DATE.—The amendments made by this section shall be applicable only to taxable years ending after December 31, 1951.

PAR. 7. Section 29.113(a)(18)–1, as amended by Treasury Decision 5856 [26 CFR 29.113(a)(18)–1], is further amended by inserting in paragraph (*a*)(2)(iii) immediately after "calendar year 1951", the following: "or 1952".

PAR. 8. Section 29.148–2, as amended by Treasury Decision 5856 [26 CFR 29.148–2], is further amended as follows:

(A) By striking in the heading of paragraph (*b*)(2) and in the first sentence of such paragraph "1944 or 1951", wherever "1944 or 1951" appears therein, and by inserting in lieu thereof the following: "1944, 1951, or 1952".

(B) By inserting in the second parenthetical clause in paragraph (*b*)(2)(iii) immediately after "in 1951", the following: "or 1952".

PAR. 9. Section 29.148–3, as amended by Treasury Decision 5859 [C. B. 1951–2, 88], approved September 20, 1951 [26 CFR 29.148–3], is further amended by striking from the second sentence of the second paragraph "1944 or 1951" and by inserting in lieu thereof the following: "1944, 1951, or 1952".

Inasmuch as this Treasury Decision merely provides for the extension of the applicability of section 112(b)(7) of the Internal Revenue Code to liquidations occurring in 1952 and makes a technical correction, 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 the said 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) and pursuant to the provisions of Public Law 183 (82d Cong.), approved October 20, 1951.)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved July 7, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register July 9, 1952, 8:58 a. m.)

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

SECTION 29.113(b)(1)–1: Adjusted basis: General rule. 1952–17–13895 I. T. 4094

INTERNAL REVENUE CODE

The cost of repainting a personal residence immediately prior to its sale is not a proper adjustment to the basis of the property under section 113(b)(1) of the Internal Revenue Code in determining gain on the sale.

Advice is requested whether the cost of repainting a taxpayer's personal residence immediately prior to its sale constitutes a capital expenditure for which an adjustment to the basis may be made, under section 113(b)(1) of the Internal Revenue Code, in determining gain on the sale.

Section 113(b)(1) of the Internal Revenue Code provides in part as follows:

(1) GENERAL RULE.—Proper adjustment in respect of the property shall in all cases be made—

(A) For expenditures, receipts, losses, or other items, properly chargeable to capital account, * * *.

In general, expenses chargeable to capital account include only those which are incurred in connection with the original acquisition of property or the subsequent enlargement or permanent improvement thereof. (See *Union Pacific Railroad Co.* v. *United States*, 99 U. S. 402.) In I. T. 1550 (C. B. II–1, 83 (1923)), it is held that outside painting, inside painting, and papering of rental property are in the nature of ordinary repairs (as distinguished from permanent improvements) and that the cost thereof (unlike a capital expenditure) is deductible as an ordinary and necessary business expense.

Accordingly, it is held that the cost of repainting a personal residence immediately prior to its sale is not a proper adjustment to the basis of the property, under section 113(b)(1) of the Internal Revenue Code, in determining gain on the sale.

SECTION 115.—DISTRIBUTIONS BY CORPORATIONS

SECTION 29.115–1: Dividends. 1952–20–13929 Ct. D. 1749

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF COURT

1. DISTRIBUTIONS BY CORPORATIONS—DIVIDENDS—EFFECT OF OPERATING DEFICIT AS OF MARCH 1, 1913.

In the case of a corporation whose wholly owned subsidiaries had operating deficits as of March 1, 1913, its earnings subsequent to that date need not first be devoted to eradicating such deficits before becoming available for distribution as dividends taxable to recipient-stockholders in the years 1938, 1939, and 1940. The words "accumulated after February 28, 1913", in section 115(a)(1) of the Internal Revenue Code are unambiguous. They appear to wipe out past history and levy a tax on income earned in the future and accumulated for distribution. Taxpayers may not escape the common burden of taxation on income currently received simply because the corporation which made the distribution from current earnings had losses over 35 years ago, before the Constitution permitted unapportioned taxation on income.

2. DECISION REVERSED.

Decision of The Tax Court of the United States, 13 T. C. 984 (1949), reversed.

3. CERTIORARI DENIED.

Petition for certiorari denied on April 21, 1952 (343 U. S. 927).

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Commissioner of Internal Revenue, petitioner, v. *Grace H. Kelham, Leila H. Neil, Ellis M. Moore, Harriet H. Belcher, and Lillie S. Wegeforth, respondents*

[192 Fed. (2d) 785]

On petitions for review of the decisions of The Tax Court of the United States

Before HEALY and POPE, Circuit Judges, and FEE, District Judge

[November 5, 1951]

OPINION

JAMES ALGER FEE, District Judge: During the years 1938 to 1940, both Grace H. Kelham and the other respondents, who were stockholders in the J. D. and A. B. Spreckels Company,[1] received distributions therefrom. The parties stipulated how much of the distributions were to be taxed as dividends for each year, presenting the solution varying upon the answer to three questions presented to the Tax Court. Other stipulations covered other problems.

This is a review of the decision of the Tax Court upon only one of these questions.

We must determine whether the operating deficits of wholly owned subsidiaries of Spreckels as of March 1, 1913, must be restored by subsequent earnings in determining the amount of profits available for dividends for tax purposes, where the distribution to the taxpayer was received in the years 1938, 1939 and 1940.

Section 115(a)(1), Internal Revenue Code, defines a taxable dividend as a distribution by a corporation out of its earnings or profits accumulated after February 28, 1913.[2] Section 115(b) provides also that earnings and profits accumulated before March 1, 1913, may be distributed tax-free after the earnings and profits accumulated after that date have been distributed.[3]

The language of the statute appears plain Gross income covers "gains or profits and income derived from any source whatever."[4] Specifically, "Any distribution made by a corporation to its shareholders * * * out of its earnings or profits accumulated after February 28, 1913," is taxed. An interpretation of such words in accordance with common definition compels us to hold these sums paid over to the respondents were taxable as the Commissioner contends.

The decision might well stop here, but the able opinion of the Tax Court should not be treated in such cavalier fashion. No other court[5] has had this question squarely presented, and the matter should be carefully reviewed.

The mere fact that, as a proposition of general corporation law, dividends paid in the face of an operating deficit are regarded as paid from capital, is of no importance. For corporations organized since March 1, 1913, this is a plausible interpretation and may be applied. But here the tax on an individual who has received a distribution from a corporation 35 years after the critical date alone is involved. If it were shown that the identical individual was insolvent as of February 28, 1913, it would not be contended that he must have paid his past debts and be on a level of solvency before his income of the year 1938 could be taxed. Congress drew a line between February 28, 1913, and March 1, 1913.

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[1] Hereinafter called "Spreckels".
[2] 26 U. S. C. A. 115(a)(1).
[3] 26 U. S. C. A. 115(b).
[4] 26 U. S. C. A. 22(a).
[5] There are cited as cases dealing with the point. *Hadden* vs. *Commissioner,* 2 Cir., 49 Fed. (2d) 709; *Chapman* vs. *Anderson,* 11 Fed. Supp. 913; *Helvering* vs. *Canfield,* 291 U. S. 163 [Ct. D. 783, C. B. XIII–1. 176 (1934)]. The Chapman case was a holding on another point. (Whether the writeup on the corporate books in 1925 of the value of the corporate assets as of March 1, 1913, was sufficient to eliminate the March 1, 1913, deficit.) On motion to dismiss the complaint, a single district judge in the Southern District of New York, held that it was not. Even if it were on the point here, that opinion would have little weight, since this dispute is not given consideration in that opinion, and certainly the holding there has no binding effect here.

Before the passage of the Sixteenth Amendment, the Supreme Court of the United States had held that a tax could not be constitutionally levied without apportionment. *Pollock* vs. *Farmers' Loan & Trust Co.*, 158 U. S. 601. After the critical date, taxation of all sums received as income was possible. There was no tax levied upon property owned or corporate surplus from income received before the critical date. The power to tax all income after that date is incontrovertible. And the intention to burden all income after that date is beyond cavil.

The mere statement that, upon the critical date, the capital was impaired shows that the property was not there. It had already been practically lost. The law does not prevent the use of earnings to repair the loss. "Since the money here involved as distributed to stockholders was in fact earned by the corporation since February 28, 1913, it is to be presumed that Congress, intending to use its taxing power to the fullest extent, intended to tax such funds." Dissenting opinion of Judge DISNEY, concurred in by Judge ARNOLD and Judge OFFER.

The use of the word "accumulated," coupled with the words "after February 28, 1913," bear no such implications as are attributed by the Tax Court, that there can be no accumulation of earnings until an impaired capital is restored. On the contrary, these words appear to wipe out the past history and levy a tax on income earned in the future and accumulated for distribution. If the legislative body had intended such an exemption, it would have been written in clear and unambiguous language as exemptions should be, and as the exemption of "any earnings or profits accumulated or increase in the value of property accrued before March 1, 1913," actually was.

The argument concerning the history of the changes of the statutory language, since its first enactment, has but little effect either way. These changes speak with varying voices. The present statute is here construed in the light of its language and the broad purpose to tax all income. That taxpayers should escape the common burden of taxation, which falls on the just and unjust alike on income currently received, simply because the corporation which made the distribution from current earnings had losses over 35 years ago, before the Constitution permitted unapportioned taxation of income, is inconceivable.

The decision of the Tax Court is reversed.

SECTION 29.115–5: Distributions in liquidation. (Also Section 23(g), Section 29.23(g)–1.) 1952–26–13992 Ct. D. 1752

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT

1. CAPITAL GAINS AND LOSSES—DISTRIBUTIONS IN LIQUIDATION—LATER PAYMENT OF JUDGMENT BY TRANSFEREES OF LIQUIDATING CORPORATION.

Petitioners, who had equal stock ownership in a corporation in liquidation, reported distributions received from the corporation in the taxable years 1937 to 1940 as capital gains. In 1944, they paid, as transferees of the assets of the corporation, a judgment rendered against the corporation and against one of them individually, and claimed deductions therefor as ordinary business losses.

Held: The nature of the loss for tax purposes arising from the 1944 payment may be classified by considering all the 1937–1944 liquidation transaction events, and the loss sustained falls squarely within the definition of capital losses contained in sections 23 and 115 of the Internal Revenue Code. The shareholders' liability as transferees was not based on any ordinary business transaction of theirs apart from the liquidation proceedings.

2. DECISION AFFIRMED.

Decision of the United States Court of Appeals, Second Circuit (193 Fed. (2d) 734), reversing decision of The Tax Court of the United States (15 T. C. 876), affirmed.

SUPREME COURT OF THE UNITED STATES

F. Donald Arrowsmith and Ruth R. Bauer, executors of the last will and testament of Frederick R. Bauer, deceased, and Ruth R. Bauer et al., petitioners, v. *Commissioner of Internal Revenue*

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

[November 10, 1952]

OPINION

Mr. Justice BLACK delivered the opinion of the Court.

This is an income tax controversy growing out of the following facts as shown by findings of the Tax Court. In 1937 two taxpayers, petitioners here, decided to liquidate and divide the proceeds of a corporation in which they had equal stock ownership.[1] Partial distributions made in 1937, 1938, and 1939 were followed by a final one in 1940. Petitioners reported the profits obtained from this transaction, classifying them as capital gains. They thereby paid less income tax than would have been required had the income been attributed to ordinary business transactions for profit. About the propriety of these 1937–1940 returns, there is no dispute. But in 1944 a judgment was rendered against the old corporation and against Frederick R. Bauer, individually. The two taxpayers were required to and did pay the judgment for the corporation, of whose assets they were transferees. See *Phillips-Jones Corp.* v. *Parmley*, 302 U. S. 233, 235–236. *Cf.* I. R. C., section 311(a). Classifying the loss as an ordinary business one, each took a tax deduction for 100 percent of the amount paid. Treatment of the loss as a capital one would have allowed deduction of a much smaller amount. See I. R. C., section 117 (b), (d)(2) and (e). The Commissioner viewed the 1944 payment as part of the original liquidation transaction requiring classification as a capital loss, just as the taxpayers had treated the original dividends as capital gains. Disagreeing with the Commissioner the Tax Court classified the 1944 payment as an ordinary business loss. 15 T. C. 876. Disagreeing with the Tax Court the court of appeals reversed, treating the loss as "capital." 193 Fed. (2d) 734. This latter holding conflicts with the Third Circuit's holding in *Commissioner* v. *Switlik*, 184 Fed. (2d) 299. Because of this conflict, we granted certiorari. — U. S. —.

I. R. C. section 23 treats losses from sales or exchanges of capital assets as "capital losses" and I. R. C. section 115 requires that liquidation distributions be treated as exchanges. The losses here fall squarely within the definition of "capital losses" contained in these sections. Taxpayers were required to pay the judgment because of liability imposed on them as transferees of liquidation distribution assets. And it is plain that their liability as transferees was not based on any ordinary business transaction of theirs apart from the liquidation proceedings. It is not even denied that had this judgment been paid after liquidation, but during the year 1940, the losses would have been properly treated as capital ones. For payment during 1940 would simply have reduced the amount of capital gains taxpayers received during that year.

It is contended, however, that this payment which would have been a capital transaction in 1940 was transformed into an ordinary business transaction in 1944 because of the well-established principle that each taxable year is a separate unit for tax accounting purposes. *United States* v. *Lewis*, 340 U. S. 590 [Ct. D. 1738, C. B. 1951–1, 21]; *North American Oil Co.* v. *Burnet*, 286 U. S. 417 [Ct. D. 499, C. B. XI–1, 293 (1932)]. But this principle is not breached by considering all the 1937–1944 liquidation transaction events in order properly to classify the nature of the 1944 loss for tax purposes. Such an examination is not an attempt to reopen and readjust the 1937 to 1940 tax returns, an action that would be inconsistent with the annual tax accounting principle.

The petitioner Bauer's executor presents an argument for reversal which applies to Bauer alone. He was liable not only by reason of being a transferee of the corporate assets. He was also held liable jointly with the original corporation, on findings that he had secretly profited because of a breach of his fiduciary relationship to the judgment creditor. *Trounstine* v. *Bauer, Pogue & Co.*, 44 Fed, Supp. 767, 773; 144 Fed. (2d) 379, 382. The judgment was

[1] At dissolution the corporate stock was owned by Frederick P. Bauer and the executor of Davenport Pogue's estate. The parties here now are Pogue's widow, Bauer's widow, and the executor of Bauer's estate.

against both Bauer and the corporation. For this reason it is contended that the nature of Bauer's tax deduction should be considered on the basis of his liability as an individual who sustained a loss in an ordinary business transaction for profit. We agree with the court of appeals that this contention should not be sustained. While there was a liability against him in both capacities, the individual judgment against him was for the whole amount. His payment of only half the judgment indicates that both he and the other transferee were paying in their capacities as such. We see no reason for giving Bauer a preferred tax position.

Affirmed.

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

SECTION 117.—CAPITAL GAINS AND LOSSES

SECTION 29.117-1: Meaning of terms.

INTERNAL REVENUE CODE

A lump-sum payment received by a grantor of mineral rights in conjunction with his retention of a royalty interest in the mineral. (See G. C. M. 27322, page 62.)

SECTION 29.117-3: Alternative tax in case of net long-term capital gain or loss.

INTERNAL REVENUE CODE

Limitation on the combined normal tax and surtax provided under section 12(f) of the Internal Revenue Code. (See I. T. 4103, page 31, this Bulletin.)

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. (Also Section 112(b), Section 29.112(b)(6)-1.)

1952-24-13968
I. T. 4109

INTERNAL REVENUE CODE

Assets distributed to the parent corporation upon complete liquidation of a wholly-owned subsidiary corporation which is indebted to the parent must first be applied, at their fair market value, against the indebtedness to the parent, and if appreciated assets are so applied the subsidiary realizes taxable gain to the extent of such appreciation. The remaining assets of the subsidiary, if any, distributed to the parent fall within the purview of section 112(b)(6) of the Internal Revenue Code, provided the requirements of that section are met.

Advice is requested whether, upon complete liquidation of a wholly-owned subsidiary corporation and concurrent cancellation of the subsidiary's indebtedness to the parent, the transfer to the parent of the assets of the subsidiary may be effected under section 112(b)(6) of the Internal Revenue Code without recognition of gain.

Section 112(b)(6) of the Code provides in part that, where certain requirements are met, no gain or loss shall be recognized upon the receipt by a corporation of property distributed in complete liquidation of another corporation, and that a distribution shall be con-

sidered to be in complete liquidation only if the distribution by such other corporation is in complete cancellation or redemption of all its stock.

However, where a liquidating subsidiary corporation is indebted to its parent and the assets of the subsidiary are distributed to the parent, so much of the assets of the subsidiary as are equal in value to the indebtedness to the parent may not be considered to be property distributed in cancellation or redemption of stock. The assets are first applicable to a discharge of the subsidiary's indebtedness to the parent. (See *Northern Coal & Dock Co.* v. *Commissioner*, 12 T. C., 42, acquiescence, C. B. 1949–1, 3, and *Houston Natural Gas Corporation* (Texas) v. *Commissioner*, 173 Fed. (2d) 461.)

Accordingly, it is held that upon complete liquidation of a subsidiary corporation and concurrent cancellation of the subsidiary's indebtedness to the parent, the assets of the subsidiary distributed to the parent must first be applied, at their fair market value, against such indebtedness. The subsidiary will realize taxable gain upon the payment of its indebtedness to the parent to the extent that the fair market value of the assets applied against the indebtedness exceeds the adjusted basis of such assets in the hands of the subsidiary. (*Cf.* I. T. 3316, C. B. 1939–2, 186.) The remaining assets of the subsidiary distributed to the parent, if any, fall within the purview of section 112(b)(6) of the Internal Revenue Code, provided the requirements of that section are met.

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. 1952–16–13881 I. T. 4090

INTERNAL REVENUE CODE

The 2 percent tax imposed upon corporations by Canada under section 10(5) of The Old Age Security 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 2 percent tax imposed upon corporations by Canada under section 10(5) of The Old Age Security Act qualifies as an income tax which may be allowed as a credit against United States income tax.

Section 10 of The Old Age Security Act (chapter 18, Statutes of 1951, 2d sess.) reads in part as follows:

(5) CORPORATIONS.—Every corporation liable to pay tax under Part I of *The Income Tax Act*, other than a corporation liable to pay tax under section sixty-three thereof, shall pay an Old Age Security tax for the year equal to two per centum of its taxable income for the year.

(6) INTERPRETATION.—Subsection five shall be read and construed as though the tax imposed thereby were provided for by a provision in Part I of *The Income*

Tax Act; and all the provisions of *The Income Tax Act,* other than section thirty-seven thereof, shall be read and construed as though the tax imposed by subsection five were provided for by a provision in the said Part I as an addition to the tax otherwise payable under that Part.

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 order for a foreign tax to be allowable as a credit against United States income tax under section 131 of the Code, *supra,* it must be shown that the tax imposed by the foreign law is a tax on "income" within the United States concept of that term, or is a tax in lieu of an income tax. (See I. T. 4021, C. B. 1950–2, 48.)

It is held that the 2 percent tax imposed upon corporations by Canada under section 10(5) of The Old Age Security 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.

SECTION 29.131–1: Analysis of credit for taxes. 1952–20–13930 I. T. 4100

INTERNAL REVENUE CODE

The tax imposed by the government of Trinidad and Tobago under Ordinance No. 34 of 1938, as amended, 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 tax imposed by the government of Trinidad and Tobago under Ordinance No. 34 of 1938, as amended by Ordinances No. 25 of 1941, No. 2 of 1944, Nos. 22 and 56 of 1946, Nos. 21, 25, and 27 of 1947, and Nos. 5, 9, and 30 of 1948, qualifies as an income tax which may be allowed as a credit against United States income tax.

Ordinance No. 34 of 1938, as amended, provides in part as follows:

1. This Ordinance may be cited as the Income Tax Ordinance.

* * * * * * *

5. Income tax shall, subject to the provisions of this Ordinance, be payable at the rate or rates specified hereafter for each year of assessment upon the income of any person accruing in or derived from the Colony or elsewhere, and whether received in the Colony or not, in respect of—

(a) gains or profits from any trade, manufacture, adventure or concern in the nature of a trade, business, profession, or vocation, * * *;

(b) gains or profits from any employment, * * *;

(c) the annual value of land and improvements thereon used by or on behalf of the owner or used rent free by the occupier, * * *;

(d) dividends, interest, or discounts;

(e) any pension, charge, or annuity;

(f) rents, royalties, premiums, and any other profits arising from property;

(g) any annual gains or profits not falling under any of the foregoing heads.

6. Tax shall be charged, levied, and collected for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment.

* * * * * * *

10. (1) For the purpose of ascertaining the chargeable income of any person, there shall be deducted all outgoings and expenses wholly and exclusively incurred during the year preceding the year of assessmet (sic) by such person in the production of the income, including * * * [Tabulation of deductible items includes interest, rental of business property, repairs, real estate taxes, etc.]

Provision is also made in sections 14 and 15 of the law for deductions, similar to exemptions under the United States Internal Revenue Code, for the taxpayer, his wife, children, and dependents.

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 * * *

In order for a tax paid or accrued to a foreign country to be allowable as a credit against United States income tax under section 131 of the Code, *supra*, it must be shown that the tax imposed by the foreign law is an income tax within the United States concept of that term, or is a tax in lieu of an income tax.

It is held that the tax imposed by the government of Trinidad and Tobago under Ordinance No. 34 of 1938, as amended, 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.

SECTION 29.131-1: Analysis of credit for taxes.

1952-25-13980
I. T. 4111

INTERNAL REVENUE CODE

The social security tax imposed by Argentine Decree Law No. 6395/46 upon remuneration received by employees covered by such law 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 social security tax imposed by Decree Law No. 6395/46 of the Argentine Republic upon remuneration received by employees covered by such law qualifies as an income tax which may be allowed as a credit against United States income tax.

Article 2 of Argentine Decree Law No. 6395/46 provides in part that there shall be compulsorily included in the pension plan to which the decree relates, with certain exceptions not here pertinent, the staff rendering services for Argentine or foreign air carriers established in that country. Article 12 of such decree provides for the compulsory monthly contribution of 7 percent on the total remuneration received by employees covered by the Decree Law.

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 * * * the amount of any income * * * taxes paid or accrued during the taxable year to any foreign country * * *

In order for a foreign tax to be allowable as a credit against United States income tax under section 131 of the Code, *supra*, it must be shown that the tax imposed by the foreign law is a tax on "income" within the United States concept of that term, or is a tax in lieu of an income tax. (See I. T. 4090, page 139, this Bulletin.)

It is held that the tax imposed by Argentine Decree Law No. 6395/46 upon remuneration received by employees covered by such law 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.

SECTION 29.131-3: Conditions of allowance of credit.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5947, page 145.)

SECTION 29.131-7: Taxes of subsidiary corporation. 1952-15-13872 I. T. 4089

INTERNAL REVENUE CODE

For the purposes of section 131 (b) and (f) of the Internal Revenue Code, all income of a foreign subsidiary of a domestic parent, or of a foreign subsidiary of the foreign subsidiary, as therein contemplated, shall be deemed to have been derived from sources within the foreign country or possession of the United States in which the first subsidiary is incorporated; and all income, war-profits, and excess-profits taxes paid or deemed to have been paid to any foreign country or possession of the United States shall be deemed to have been paid to the government of the country or possession under whose laws the first subsidiary is incorporated.

Advice is requested whether a domestic corporation which is entitled to the benefits of section 131(f) of the Internal Revenue Code may receive a credit, under section 131(a)(1) of the Code, for income taxes paid by its foreign subsidiary to a foreign country other than that in which the subsidiary is incorporated. This inquiry also raises the questions as to what portion of the taxes will be recognized by section 131(f) as having been (or deemed to have been) paid, and to what extent the limitations of section 131(b) will be applied to that portion of the tax recognized for credit.

In the instant case, a domestic corporation has a wholly owned Panamanian subsidiary, which subsidiary owns more than 50 percent of the stock in a Brazilian corporation from which it receives dividends. The Brazilian corporation is subject to the income tax imposed by Brazil upon the profits earned therein, but the dividends

paid by it are taxed to the recipients, such tax being collected by withholding. (See I. T. 4013, C. B. 1950-1, 65.) The Panamanian subsidiary is subject to the tax imposed by Panama upon its operating income, but no tax is imposed by Panama upon its dividend income or upon the dividends paid by it to its parent company.

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, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; * * *

* * * * * * *

(b) LIMIT ON CREDIT.—The amount of the credit taken under this section shall be subject to each of the following limitations:

(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed, * * * in the case of a corporation, the same proportion of the tax against which such credit is taken, which the taxpayer's normal-tax net income from sources within such country bears to its entire normal-tax net income for the same taxable year; and

(2) The total amount of the credit shall not exceed, * * * in the case of a corporation, the same proportion of the tax against which such credit is taken, which the taxpayer's normal-tax net income from sources without the United States bears to its entire normal-tax net income for the same taxable year; * * *

* * * * * * *

(f) TAXES OF FOREIGN CORPORATION.—

(1) TREATMENT OF TAXES PAID BY FOREIGN CORPORATION.—For the purposes of this section, a domestic corporation which owns at least 10 per centum of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of such foreign corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits. * * *

(2) FOREIGN SUBSIDIARY OF FOREIGN CORPORATION.—If such foreign corporation owns 50 per centum or more of the voting stock of another foreign corporation from which it receives dividends in any taxable year it shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid by such other foreign corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of the corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits.

In view of the provisions of section 131(f) of the Code, and in view of the fact that the Brazilian tax in question has been recognized (I. T. 4013, *supra*) as an income tax for the purposes of section 131, the Brazilian income tax is appropriate for the purposes of the credit under section 131.

Section 119(a)(2)(B) of the Code provides in part that: "* * * dividends from a foreign corporation shall, for the purposes of section 131 (relating to foreign tax credit), be treated as income from sources without the United States * * *." In the instant case, the dividends received by the domestic corporation from its Panamanian subsidiary are, therefore, income from sources without the United States. To the extent that the amount of the dividends is

includible in the domestic corporation's normal-tax net income, such amount is also includible in the numerator of the credit-limiting fraction to be applied pursuant to section 131(b)(2) of the Code.

Section 131(b)(1) further limits the amount of the credit in the case of a corporation by providing that the tax paid or accrued to any country shall not exceed the same proportion of the tax against which the credit is taken which the taxpayer's normal-tax net income from sources within such country bears to its entire normal-tax net income for the same taxable year. The question thus presented is whether that portion of the dividends received by the domestic corporation which was paid ultimately out of accumulated profits derived from Brazil should, for the purposes of section 131, be viewed as constituting net income from sources within Panama, or should be considered as from sources within Brazil. It is the position of the Bureau that, for the purposes of section 131 of the Code, the geographical source of the dividends paid by a foreign subsidiary to a domestic parent is the country in which the foreign subsidiary is organized, unless otherwise expressly provided by law. (*Cf.* section 119(a)(2)(B) of the Code.)

Furthermore, since in many instances it would be administratively difficult, if not impossible, to determine the source of the accumulated profits from which dividends were paid by foreign subsidiaries, or foreign subsidiaries of such subsidiaries, the Bureau has adopted a practical rule of treating foreign taxes paid or deemed to have been paid by a foreign subsidiary of a domestic parent as having been paid to the foreign country in which the first subsidiary is incorporated.

Summarizing, it is the position of the Bureau that, for the purposes of section 131 (b) and (f) of the Internal Revenue Code, all income of a foreign subsidiary of a domestic parent, or of a foreign subsidiary of the foreign subsidiary, as therein contemplated, shall be deemed to have been derived from sources within the foreign country or possession of the United States in which the first subsidiary is incorporated; and all income, war-profits, and excess-profits taxes paid or deemed to have been paid to any foreign country or possession of the United States shall be deemed to have been paid to the government of the country or possession under whose laws the first subsidiary is incorporated.

Application of the above-stated conclusion may be illustrated by the following example, which is based on assumed facts:

The domestic corporation and its Panamanian subsidiary keep their accounts and file their returns on the calendar-year basis. On January 1, 1951, the beginning of the subsidiary's taxable year, it had no accumulated profits. During the calendar year 1951, its profits from Panamanian operations were $90,000, and the gross amount of its dividends from the Brazilian corporation was $10,000. With respect to these amounts, the subsidiary paid an income tax of $6,574 to Panama and an income tax of $1,500 to Brazil. During 1951 (including the first 60 days thereafter), it paid a dividend of $91,926 to its parent (that being the amount of its net profits after payment of the foreign income taxes thereon). The taxes assumed to have been paid to Panama with respect to this dividend would be $8,074 ($6,574 plus $1,500). Under the formula provided by section 131(f) of the Code, the tax available for credit by the parent (subject, however,

to the additional limitations provided by section 131(b)) would be $7,422.11, i. e., 91,926/100,000×$8,074.

It next becomes necessary to apply the limitations provided by section 131(b)(1) and by section 131(b)(2) to the tax available for credit. In the case of a corporation, the limitation of section 131(b)(1) is the ratio of the taxpayer's normal-tax net income from sources within the country imposing the tax for which credit is claimed to its entire normal-tax net income, whereas the limitation of section 131(b)(1) is the ratio of the taxpayer's normal-tax net income from sources outside the United States to its entire normal-tax net income. The tax available for credit, as thus limited, will be the lesser of the amounts computed under section 131(b)(1) or section 131(b)(2). For the purpose of illustrating these limitations, it will be assumed that the parent's normal-tax net income for 1951 from all sources was $2,000,000, the dividend received from the Panamanian subsidiary was its only income from sources outside the United States, and that the United States tax (without regard to foreign tax credits) on the $2,000,000 was $800,000.

The limitation of section 131(b)(1) of the Code (with respect to taxes paid to Panama) would be expressed by a fraction the numerator of which is 91,926 and the denominator of which is 2,000,000. (The amount of this numerator would also, in this instance, be the numerator of the fraction in the limitation provided by section 131(b)(2), since the dividend received from the Panamanian subsidiary was the only income from sources outside the United States, and the fraction would therefore be the same.) The limitation under section 131(b)(1) is 91,926/2,000,000×$800,000=$36,770.40. This being in excess of $7,422.11, the figure arrived at under the section 131(f) formula, the amount of the credit is limited to $7,422.11.

In view of the foregoing, it is held that the domestic corporation here involved, which is entitled to the benefits of section 131(f) of the Code, may receive a credit, under section 131(a)(1) of the Code, computed in accordance with the foregoing, for income taxes paid by its Panamanian subsidiary to Brazil on dividends received by the Panamanian subsidiary from the Brazilian corporation.

SECTION 29.131–7: Taxes of foreign corporation. 1952–25–13981
(Also Section 29.131–3.) T. D. 5947

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 332 of the Revenue Act of 1951.

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On September 27, 1952, there was published in the Federal Register (17 F. R. 8634) a notice of proposed rule making to conform Regulations 111 [26 CFR, part 29] to section 332 of the Revenue Act of 1951, relating to credit for taxes of foreign corporations, approved

October 20, 1951. No objection to the rules proposed having been received, the amendments set forth below are hereby adopted.

PARAGRAPH 1. There is inserted immediately preceding section 29.131-1 [26 CFR 29.131-1] the following:

SEC. 332. CREDIT FOR TAXES OF FOREIGN CORPORATIONS [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) FOREIGN SUBSIDIARY OF A DOMESTIC CORPORATION.—Effective with respect to dividends received by a domestic corporation from a foreign corporation during taxable years beginning after December 31, 1950, the first sentence of section 131(f)(1) is hereby amended by striking out "a majority" and inserting in lieu thereof "at least 10 per centum".

(b) FOREIGN SUBSIDIARY OF A FOREIGN CORPORATION.—Effective with respect to dividends received by a foreign corporation from another foreign corporation in taxable years beginning after December 31, 1950, section 113(f)(2) is hereby amended by striking out "all the voting stock (except qualifying shares)" and inserting in lieu thereof "50 per centum or more of the voting stock".

(c) CLERICAL AMENDMENT.—So much of section 131(f)(1) as precedes the first sentence thereof is hereby amended to read as follows:

"(f) TAXES OF FOREIGN CORPORATION.—

"(1) TREATMENT OF TAXES PAID BY FOREIGN CORPORATION.—".

PAR. 2. Section 29.131-3, as amended by Treasury Decision 5893 [C. B. 1952-1, 126], approved April 4, 1952 [26 CFR 29.131-3], is further amended by revising the first sentence, which commences with the words "For credit where taxes", of the fourth paragraph thereof to read as follows:

For credit available to a domestic corporation with respect to taxes paid by a foreign corporation, see section 29.131-7.

PAR. 3. Section 29.131-7, as amended by Treasury Decision 5452 [C. B. 1945, 206], approved April 19, 1945 [26 CFR 29.131-7], is further amended as follows:

(A) By revising so much thereof as precedes the words "of the voting stock of a foreign corporation", which appear in the first sentence of (*a*) thereof, to read as follows:

SEC. 29.131-7. TAXES OF FOREIGN CORPORATION.—(*a*) *Domestic corporation owning stock of a foreign corporation.*—In the case of a domestic corporation which owns a majority or, effective with respect to dividends received during a taxable year beginning after December 31, 1950, at least 10 percent.

(B) By striking out of the expression "paid or accrued by such controlled foreign corporation to any foreign country", which appears in the first sentence of (*a*) thereof, the word "controlled" so that such expression will read as follows: "paid or accrued by such foreign corporation to any foreign country".

(C) By revising the second and third sentences of (*a*) thereof, which commence, respectively, with the words "See, however, the limitations" and "if dividends are received", to read as follows:

If dividends are received from more than one such foreign corporation, the limitation is to be computed separately for the dividends received from each. For other limitations upon the amount of credit available under section 131, see section 29.131-8.

(D) By striking out of the last sentence of (*a*) thereof "a controlled" and inserting in lieu thereof "such a", so that such sentence will read as follows:

Taxes paid or accrued by such a foreign corporation are deemed to have been paid by the domestic corporation for purposes of credit only.

(E) By revising the heading and first paragraph of (*b*) thereof to read as follows:

(*b*) *Foreign corporation owning stock of another foreign corporation.*—If any foreign corporation coming within the scope of paragraph (*a*) hereof owns all (except qualifying shares) or, effective with respect to dividends received in a taxable year beginning after December 31, 1950, 50 percent or more of the voting stock of another foreign corporation from which it receives dividends in any taxable year, it shall be deemed to have paid that proportion of any income, war-profits, and excess-profits taxes paid or accrued by the latter corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of such latter corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits. Such tax so deemed to have been paid shall then be taken into consideration in determining the amount of income, war-profits, and excess-profits taxes paid or deemed to have been paid by the former corporation to any possession or foreign country upon or with respect to its own accumulated profits from which the dividends were paid by such corporation to the domestic corporation.

(F) By striking out of the second paragraph of (*b*) thereof the following: "parent".

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

JUSTIN F. WINKLE,
Acting Commissioner of Internal Revenue.

Approved November 19, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 24, 1952, 8:48 a. m.)

SUPPLEMENT D.—RETURNS AND PAYMENT OF TAX

SECTION 141.—CONSOLIDATED RETURNS

SECTION 24.11, REGULATIONS 129: Consolidated returns for subsequent years. 1952–16–13882 I. T. 4091

INTERNAL REVENUE CODE

> Affiliated corporations which filed consolidated Federal income tax returns for taxable years ended prior to April 1, 1951, may, notwithstanding the filing of such returns, file separate Federal income tax returns for the first taxable year ending after March 31, 1951.

Advice is requested whether affiliated corporations which filed consolidated Federal income tax returns for taxable years ended prior to April 1, 1951, may elect to file separate Federal income tax returns for the first taxable year ending after March 31, 1951.

Section 141(a) of the Internal Revenue Code, as amended, provides in part as follows:

(a) PRIVILEGE TO FILE CONSOLIDATED RETURNS.—* * * The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under subsection (b) prior to the last day prescribed by law for the filing of such return. * * *

Section 24.11(a) of Regulations 129, relating to consolidated income and excess profits tax returns of affiliated corporations, provides in part as follows:

(a) *Consolidated returns required for subsequent years.*—If a consolidated return is made under these regulations for any taxable year, a consolidated return must be made for each subsequent taxable year during which the affiliated group remains in existence unless * * * (2) subsequent to the exercise of the election to make consolidated returns, chapter 1 of the Code to the extent applicable to corporations, or these regulations which have been consented to, have been amended and any such amendment is of a character which makes less advantageous to affiliated groups as a class the continued filing of consolidated returns, regardless of the effective date of such amendment, * * *.

It is held that the regulations applicable to the filing of consolidated Federal income tax returns have been so amended by Treasury Decision 5915, below, as to make less advantageous to affiliated groups as a class the continued filing of such returns, within the meaning of section 24.11(a) of Regulations 129, for taxable years ending after March 31, 1951. Accordingly, affiliated corporations which filed consolidated Federal income tax returns for taxable years ended prior to April 1, 1951, may, notwithstanding the filing of such returns, file separate Federal income tax returns for the first taxable year ending after March 31, 1951.

SECTION 24.12, REGULATIONS 129: Making consolidated return and filing other forms. (Also Sections 24.30, 24.31, and 24.45, Regulations 129.) 1952–15–13873 T. D. 5915

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 24.—CONSOLIDATED INCOME AND EXCESS PROFITS TAX RETURNS

Regulations 129 amended to conform to the Revenue Act of 1951

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On May 14, 1952, notice of proposed rule making was published in the Federal Register (17 F. R. 4383) to conform Regulations 129 [26 CFR, part 24] to the Revenue Act of 1951, approved October 20, 1951. After consideration of all relevant matter presented by interested persons regarding the proposed rules, the amendments to Regulations 129 set forth below are hereby adopted.

PARAGRAPH 1. Section 24.12(b) [26 CFR 24.12(b)] is amended by striking the period at the end of subparagraph (4) and inserting in lieu thereof the following:

, except as otherwise provided in section 613 of the Revenue Act of 1951. Section 613 of that Act relates to the withdrawal within 90 days after October 20, 1951 (the date of the enactment of the Act), of consents for the first taxable year ending after June 30, 1950, with respect to corporations described in section 454(f).

PAR. 2. Section 24.30(a) [26 CFR 24.30(a)] is amended by inserting immediately after "the consolidated adjusted normal-tax net in-

come and the consolidated adjusted corporation surtax net income" the following:

"(or, for taxable years beginning in 1951, the consolidated 1951 adjusted normal-tax net income)".

PAR. 3. Section 24.30(b) [26 CFR 24.30(b)] is amended by adding immediately after subparagraph (4) the following:

(5) *In case of mutual savings bank conducting life insurance business.*—If the affiliated group for any taxable year beginning after December 31, 1951, includes a mutual savings bank which, if a separate return were filed, would be subject to the alternative tax of section 110(a) (relating to a mutual savings bank conducting a life insurance business), the provisions of section 110(a) shall apply to each member of the group and the alternative tax of each corporation under section 110(a) shall be computed with reference to the consolidated net income of the group determined without regard to any items of gross income or deductions properly allocable to the business of the life insurance department of the mutual savings bank, and with reference to the net income of such life insurance department determined under the provisions of section 110(a)(2).

PAR. 4. Section 24.30(c) [26 CFR 24.30(c)] is amended to read as follows:

(c) *Limitation on excess profits tax.*—The consolidated excess profits tax liability under section 430(a) shall be whichever of the following amounts is the lesser:

(1) An amount equal to 30 percent of the consolidated adjusted excess profits net income.

(2) Whichever of the following is applicable to the taxable year:

(i) In the case of a taxable year ending before April 1, 1951, an amount equal to the excess of 62 percent of the consolidated section 433(a) excess profits net income for the taxable year over the tax which would be imposed for the taxable year under sections 13, 14, and 15, and supplement G, whichever are applicable to the affiliated group, computed (subject to section 108, if applicable, and to section 141(c)) as if the amount of the consolidated normal-tax net income and the amount of the consolidated corporation surtax net income (or the amount subject to the rate of tax in such supplement) were equal to the amount of the consolidated section 433(a) excess profits net income for such year.

(ii) In the case of the calendar year 1951, an amount equal to the excess of 17¼ percent of the consolidated section 433(a) excess profits net income for the taxable year over an amount which bears the same ratio (but not in excess of 100 percent) to the amount of the increase of 2 percent provided in section 141(c) in the surtax liability as the amount of the consolidated section 433(a) excess profits net income bears to the amount of the consolidated corporation surtax net income.

(iii) In the case of a taxable year beginning after March 31, 1951, an amount equal to the excess of 18 percent of the consolidated section 433(a) excess profits net income for the taxable year over an amount which bears the same ratio (but not in excess of 100 percent) to the increase of 2 percent provided in section 141(c) in the surtax liability as the amount of the consolidated section 433(a) excess profits net income bears to the amount of the consolidated corporation surtax net income.

(3) If the affiliated group commenced business after July 1, 1945, and if the taxable year is the first, second, third, fourth, or fifth taxable year of the group, the amount determined under section 430(e) for such taxable year with reference to the consolidated section 433(a) excess profits net income The following rules shall apply for the purpose of this subparagraph:

(i) The group shall be deemed to have commenced business on the earliest date on which any member commenced business, and the first, second, third, fourth, and fifth taxable year of the group shall be determined under section 430(e)(2)(A) with reference to the taxable

year in which the group is deemed to have commenced business and by applying the rules prescribed in section 24.2(f) for determining the taxable years of the group.

(ii) In determining when any member commenced business, and in applying the rules of section 24.2(f), the existence and commencement of business of each member of the group shall be determined under the provisions of section 430(e)(2)(B).

(iii) The limitation of section 430(e)(3) (relating to income from contracts subject to a renegotiation act) shall be determined with reference to the aggregate of the gross income of the several members of the group and with reference to the aggregate of the gross income of the several members from the contracts and subcontracts described in such section. For the purpose of section 430(e)(3), the gross income of the several members shall be determined without regard to dividends, without regard to gains from the sale or exchange of capital assets (not including gains of the character described in section 117(j)), and without regard to gains of the character described in section 117(j) if the group has a consolidated section 117(j) net gain, and such gross income shall be properly adjusted to avoid duplication by reason of transactions between members of the group.

PAR. 5. Section 24.31(a)(3) [26 CFR 24.31(a)(3)] is amended as follows:

(A) By changing the parenthetical expression "(not including as a third, fourth, or fifth preceding taxable year any taxable year beginning prior to January 1, 1950)" in subdivision (i) to read as follows:

(not including as a third preceding taxable year any taxable year beginning prior to January 1, 1948, unless such preceding taxable year began after December 31, 1946, and unless all members of the group for such preceding taxable year commenced business after December 31, 1945, and not including as a fourth or fifth preceding taxable year any taxable year beginning prior to January 1, 1950)

(B) By changing the parenthetical expression "(not including as a third, fourth, or fifth preceding taxable year any taxable year beginning prior to January 1, 1950)" in subdivision (ii) to read as follows:

(not including as a third preceding taxable year any taxable year beginning prior to January 1, 1948, unless such preceding taxable year began after December 31, 1946, and unless the corporation commenced business after December 31, 1945, and not including as a fourth or fifth preceding taxable year any taxable year beginning prior to January 1, 1950)

PAR. 6. Section 24.31(a)(14) [26 CFR 24.31(a)(14)] is amended to read as follows:

(14) *Consolidated section 26(b) credit.*—The consolidated section 26(b) credit, relating to dividends received, shall be the sum of—

(i) An amount equal to 85 percent of the aggregate dividends, of the class with respect to which credit is allowed by section 26(b), received by the several affiliated corporations, not including dividends on the preferred stock of a public utility subject to the provisions of (ii), and not including dividends from foreign corporations,

(ii) For any taxable year for which a percentage is specified in section 26(b)(2), an amount determined by applying the percentage specified for the taxable year to the aggregate dividends received in such year by the several affiliated corporations on the preferred stock of a public utility described in section 26(h) (including only those dividends with respect to which the credit provided in section 26(h) for dividends paid is allowable), and

(iii) For taxable years beginning after December 31, 1950, the aggregate of the amounts computed under section 26(b)(3) (relating to credit for

dividends received from certain foreign corporations) for the several members of the group,

but in an amount not greater than 85 percent of the consolidated adjusted net income computed without regard to the consolidated net operating loss deduction.

PAR. 7. Section 24.31(a)(15) [26 CFR 24.31(a)(15)] is amended by striking out that part of subdivision (i) which precedes (*a*) and inserting in lieu thereof the following:

(i) With respect to a taxable year beginning after June 30, 1950, and the calendar year 1950, an amount determined by applying the percentage specified for the taxable year in section 26(h)(1) to the lesser of—

PAR. 8. Section 24.31(a)(16) [26 CFR 24.31(a)(16)] is amended to read as follows:

(16) *Consolidated section 26(i) credit.*—For taxable years beginning after June 30, 1950, and the calendar year 1950, the consolidated section 26(i) credit shall be an amount determined by applying the percentage specified for the taxable year in section 26(i) to the portion of the consolidated normal-tax net income, computed without regard to this credit, attributable to those members of the affiliated group which are Western Hemisphere trade corporations.

PAR. 9. Section 24.31(a)(20) [26 CFR 24.31(a)(20)] is amended as follows:

(A) By striking the word "and" at the end of subdivision (ii);

(B) By striking the period at the end of subdivision (iii) and inserting in lieu thereof ", and"; and

(C) By inserting immediately after subdivision (iii) the following:

(iv) The excess of the consolidated net long-term capital gain over the consolidated net short-term capital loss (computed without regard to any capital loss carry-over), but such excess shall be reduced by an amount equal to the excess of the taxes (determined without regard to section 102 and without regard to subchapter A of chapter 2) on the consolidated net income over the taxes so determined without including such excess in the consolidated net income.

PAR. 10. Section 24.31(a)(23) [26 CFR 24.31(a)(23)] is amended as follows:

(A) By striking "and" at the end of subdivision (ii);

(B) By striking the period at the end of subdivision (iii) and inserting in lieu thereof ", and"; and

(C) By adding immediately after subdivision (iii) the following:

(iv) The aggregate of the amounts allowable under section 504(e) for the several members of the group.

PAR. 11. Section 24.31(a)(36) [26 CFR 24.31(a)(36)] is amended as follows:

(A) By striking "and (Q)" from that part of such section preceding (i) and inserting in lieu thereof: "(Q), (R), and (S)"; and

(B) By inserting immediately after "the figure determined and proclaimed under section 202(b)" wherever appearing in subdivision (iv) the following: "(except that the figure 0.87 shall be used for taxable years beginning in 1951)".

PAR. 12. Section 24.31(a)(38)(i) [26 CFR 24.31(a)(38)(i)] is amended to read as follows:

(i) The amount of $25,000 (but no amount shall be allowed if, by reason of section 15(c), no member of the group is entitled to a minimum excess profits credit), or

PAR. 13. Section 24.31(a)(43)(vi) [26 CFR 24.31(a)(43)(vi)] is amended by inserting immediately after "the consolidated net new capital addition" the following:

(or, if the affiliated group is subject to section 438(g), the consolidated net new capital addition or the consolidated net new bank capital addition, whichever is greater)

PAR 13a. Section 24.31(a)(58) [26 CFR 24.31(a)(58)] is amended as follows:

(A) By inserting immediately after "the consolidated net new capital addition for the taxable year" in that part of such section preceding (i) the following:

(or, if the affiliated group is subject to section 438(g), the consolidated net new capital addition or the consolidated net new bank capital addition for the taxable year, whichever is greater)

(B) By inserting immediately after "the consolidated net new capital addition" in subdivision (i) the following: "or the consolidated net new bank capital addition, whichever is applicable".

PAR. 14. Section 24.31(a)(59) [26 CFR 24.31(a)(59)] is amended to read as follows:

(59) *Consolidated excess profits credit based on income.*—The consolidated excess profits credit based on income for any taxable year shall be the sum of—

(i) An amount computed under section 435(a) with respect to the consolidated average base period net income for the taxable year of the group as if such consolidated average base period net income were the average base period net income of a single corporation,

(ii) Twelve percent of the amount of the consolidated base period capital addition, and

(iii) Twelve percent of the consolidated net capital addition for the taxable year (or, if the affiliated group is subject to section 435(g)(8), the consolidated net capital addition or the consolidated net bank capital addition for the taxable year, whichever is greater),

minus 12 percent of the consolidated net capital reduction for the taxable year (or, if the affiliated group is subject to section 435(g)(8), the consolidated net capital reduction or the consolidated net bank capital reduction for the taxable year, whichever is greater).

PAR. 15. Section 24.31(a)(60) [26 CFR 24.31(a)(60)] is amended by inserting immediately after "or 446," the following: "or any subsection of section 459,".

PAR. 16. Section 24.31(a)(62) [26 CFR 24.31(a)(62)] is amended by striking the period at the end thereof and inserting in lieu thereof the following:

; but, for this purpose, in case the group had a taxable year beginning in 1949 and ending after March 31, 1950, there shall be substituted for the consolidated base period the period of 48 consecutive months ending March 31, 1950, if such substitution results in a lower excess profits tax for the taxable year for which the tax is being computed.

PAR. 17. Section 24.31(a)(67) [26 CFR 24.31(a)(67)] is amended by striking "consolidated yearly base period capital for the second preceding taxable year." from subdivision (ii) and inserting in lieu thereof the following:

consolidated yearly base period capital for the second preceding taxable year,

but if the affiliated group is subject to section 435(f)(6), the consolidated yearly base period bank capital shall be used in lieu of the consolidated yearly base

period capital for the purpose of computing the consolidated base period capital addition.

PAR. 18. Section 24.31(a)(68) [26 CFR 24.31(a)(68)] is amended by inserting immediately after the word "reduced" the following: "(but not below zero)".

PAR. 19. Section 24.31(a)(70) [26 CFR 24.31(a)(70)] is amended by changing that part of such section which precedes (i) to read as follows:

(70) *Consolidated net capital addition.*—The consolidated net capital addition for the taxable year shall be the sum of the consolidated section 435(g)(9) adjustment, if any, and the following amount:

PAR. 20. Section 24.31(a)(83) [26 CFR 24.31(a)(83)] is amended to read as follows:

(83) *Consolidated alternative excess profits net income.*—The consolidated alternative excess profits net income for any month shall be an amount equal to the sum of—

(i) The combined excess profits net income for such month determined under section 433(b) for the several affiliated corporations other than the affiliated corporations described in (ii) and other than the affiliated corporations to which (iii) is applicable for such month,

(ii) In the case of any member of the affiliated group to which section 442(d), 443, 444, 445, 446, 459(a), or 459(b)(2)(B) is applicable, one-twelfth of the average base period net income separately computed under such section for such member, and

(iii) In the case of any member of the group (other than a member described in (ii)) to which section 442(c), 442(h), or 459(b)(2)(A) is applicable and for which such month is a month identified under section 442(c)(3), or a month selected under section 442(h)(2)(B), or a month in the taxable year in which the catastrophe described in section 459(b)(1) occurred, as the case may be, the substitute excess profits net income for such month separately computed for such member under section 442(c), section 442(h), or section 459(b)(2)(A), as the case may be,

minus the combined deficits in excess profits net income for such month determined under section 433(c) for the several affiliated corporations other than the corporations described in (ii) and other than the affiliated corporations to which (iii) is applicable for such month.

PAR. 21. Section 24.31(a)(85) [26 CFR 24.31(a)(85)] is amended by striking the parenthetical expression "(determined as if the affiliated group were a single corporation)" and inserting in lieu thereof the following:

(determined in the same manner as if the affiliated group were a single corporation, and, if more than one percentage is applicable, under the rules applicable in the case of a single corporation)

PAR. 22. Section 24.31(a) [26 CFR 24.31(a)] is amended by adding immediately after subparagraph (90) the following:

(91) *Consolidated 1951 adjusted normal tax net income of life insurance companies.*—The consolidated 1951 adjusted normal-tax net income, in the case of an affiliated group consisting of corporations subject to the tax imposed by section 201 for taxable years beginning in 1951, shall be the consolidated normal tax net income plus eight times the consolidated section 202(c) adjustment and minus the consolidated reserve interest credit, if any.

(92) *Consolidated reserve interest credit.*—The consolidated reserve interest credit shall be the aggregate of the reserve interest credits of the several members of the affiliated group.

(93) *Consolidated net new bank capital addition.*—The consolidated net new bank capital addition for the taxable year shall be—

(i) The excess, divided by the number of days in the taxable year, of the aggregate of the consolidated daily new capital addition for each day

of the taxable year over the aggregate of the consolidated daily new capital reduction for each such day, reduced (but not below zero) by

(ii) An amount which bears the same ratio to the consolidated increase in inadmissible assets for the taxable year as the amount computed under (i) above bears to the consolidated increase in total assets for the taxable year.

(94) *Consolidated increase in total assets.*—The consolidated increase in total assets for the taxable year shall be an amount determined under section 24.31(a)(52) by treating all assets of the members of the group as inadmissible assets (except that the rule provided in section 24.31(b)(2)(xviii)(*e*) shall be applicable only for the purpose of computing the consolidated net bank capital addition).

(95) *Consolidated net bank capital addition.*—The consolidated net bank capital addition for the taxable year shall be the sum of the consolidated section 435(g)(9) adjustment, if any, and the following amount:

(i) The excess, divided by the number of days in the taxable year, of the aggregate of the consolidated daily capital addition for each day of the taxable year over the aggregate of the consolidated daily capital reduction for each such day, reduced (but not below zero) by

(ii) An amount which bears the same ratio to the consolidated increase in inadmissible assets for the taxable year as the amount computed under (i) above bears to the consolidated increase in total assets for the taxable year.

(96) *Consolidated net bank capital reduction.*—The consolidated net bank capital reduction for the taxable year shall be—

(i) The excess, divided by the number of days in the taxable year, of the aggregate of the consolidated daily capital reduction for each day of the taxable year over the aggregate of the consolidated daily capital addition for each such day, reduced (but not below zero) by

(ii) An amount which bears the same ratio to the consolidated decrease in inadmissible assets for the taxable year as the amount computed under (i) above bears to the consolidated decrease in total assets for the taxable year.

(97) *Consolidated decrease in total assets.*—The consolidated decrease in total assets shall be an amount determined under section 24.31(a)(75) by treating all assets of the members of the group as inadmissible assets.

(98) *Consolidated yearly base period bank capital.*—The consolidated yearly base period bank capital for a taxable year shall be the sum of—

(i) The consolidated equity capital at the beginning of the first day of such taxable year, and

(ii) An amount equal to 75 percent of the consolidated daily borrowed capital for such first day,

reduced (but not below zero) by the sum of—

(iii) Seventy-five percent of the consolidated controlled group indebtedness for such first day,

(iv) Seventy-five percent of the aggregate of the adjustments for interest on borrowed capital under section 435(f)(5) of the several members of the group for such first day, and

(v) An amount which bears the same ratio to the sum of the amounts computed in (i) and (ii), above, reduced (but not below zero) by the amounts computed in (iii) and (iv), above, as the aggregate inadmissible assets for such first day of the several members of the group bears to the aggregate admissible and inadmissible assets for such first day of such members.

(99) *Consolidated section 435(g)(9) adjustment.*—The consolidated section 435(g)(9) adjustment for the taxable year shall be—

(i) In the case of an affiliated group not subject to section 435(g)(9)(B) (relating to banks), whichever is the lesser of—

(*a*) The excess of the amount computed under section 24.31(a)(71) (ii) over the amount, if any, computed under section 24.31(a)(71)(i), or

(*b*) The excess of the consolidated increase in operating assets over the consolidated net capital addition (computed without regard to the consolidated section 435(g)(9) adjustment);

(ii) In the case of an affiliated group subject to section 435(g)(9)(B) (relating to banks), whichever is the least of—

(*a*) The excess of—

(*1*) An amount which bears the same ratio to the consolidated decrease in inadmissible assets for the taxable year as the sum of

the consolidated equity capital and the consolidated daily borrowed capital, both computed as of the beginning of the first day of the first taxable year of the group ending after June 30, 1950, bears to the aggregate of the admissible and inadmissible assets of the several members of the group as of the beginning of such day, over

(*2*) The amount, if any, computed under section 24.31(a)(71)(i), or

(*b*) If the group is subject to section 435(g)(8) for the purpose of computing the consolidated net bank capital reduction, the excess of the amount computed under section 24.31(a)(96)(ii) over the amount computed under section 24.31(a)(96)(i), or

(*c*) The excess of the consolidated increase in operating assets over whichever is the greater of the consolidated net capital addition or the consolidated net bank capital addition (each computed without regard to the consolidated section 435(g)(9) adjustment).

(100) *Consolidated increase in operating assets.*—The consolidated increase in operating assets shall be the amount which would be determined under section 24.31(a)(52) as the consolidated increase in inadmissible assets if the inadmissible assets of the members of the group consisted only of the operating assets (as defined in section 435(g)(10)(B)) of the several members of the group.

PAR. 23. Section 24.31(b)(1) [26 CFR 24.31(b)(1)] is amended as follows:

(A) By striking "and" at the end of subdivision (vii);

(B) By striking the period at the end of subdivision (viii) and inserting in lieu thereof "; and"; and

(C) By adding immediately after subdivision (viii) the following:

(ix) In the case of the deduction provided in section 23(ff) (relating to mine exploration expenditures), the allowable deduction shall be determined subject to the qualifications prescribed in subparagraph (30) of this paragraph.

PAR. 24. Section 24.31(b)(2)(xxii)(*b*) [26 CFR 24.31(b)(2)(xxii)(b)] is amended by striking the parenthetical expression "(including any component corporation of any such member within the meaning of section 461)" and inserting in lieu thereof the following:

(including any component corporation of any such member within the meaning of section 461, and including any selling corporation with respect to which any such corporation is a purchasing corporation as defined in section 474(a))

PAR. 25. Section 24.31(b)(2)(xxvi) [26 CFR 24.31(b)(2)(xxvi)] is amended as follows:

(A) By striking "*or 446*" from the heading of such section and inserting in lieu thereof the following: "*446, or 459*";

(B) By striking "or 446" from the part of such section preceding (*a*) and inserting in lieu thereof the following: "446, or 459";

(C) By striking "assets; and" at the end of subdivision (*a*)(*1*) and inserting in lieu thereof the following: "assets, and properly adjusted for amounts with respect to other members of the group taken into account under section 442(f)(2); and";

(D) By inserting immediately after "the outstanding indebtedness" in subdivision (*a*)(*2*) the following:

(other than indebtedness described in section 442(f)(2));

(E) By striking "444" wherever it appears in subdivision (*c*) and inserting in lieu thereof the following: "section 444 or 459(a)";

(F) By inserting immediately after "any facility held" in subdivision (*c*) of such section the following: "(or, for the purpose of section 444, considered under section 444(f)(2) to have been held)"; and

(G) By adding immediately after subdivision (*e*) of such section the following:

(*f*) For the purpose of applying section 459(a)(3), the gross income shall be properly adjusted to avoid duplication arising by reason of transactions between members of the group.

(*g*) For the purpose of applying section 459(c) (except for the purpose of determining an amount computed under section 435(d)) deductions and expenses shall be properly adjusted to avoid duplication by reason of transactions between members of the group.

PAR. 26. Section 24.31(b)(2) [26 CFR 24.31(b)(2)] is amended by adding immediately after subdivision (xxvii) the following:

(xxviii) *Mutual savings banks, domestic building and loan associations, and cooperative banks.*—In the case of a mutual savings bank, a domestic building and loan association, and a cooperative bank—

(*a*) In the computation of total deposits or withdrawable accounts at the close of the taxable year for the purpose of section 23(k)(1)(B) (relating to the deduction for bad debts), there shall be excluded the total deposits or withdrawable accounts of other members of the group, and

(*b*) In the computation of the deduction provided in section 23(r)(1) (relating to dividends paid by banking corporations), there shall be excluded amounts paid to, or credited to the accounts of, other members of the group.

PAR. 27. Section 24.31(b)(12)(iv)(*c*)(*2*) [26 CFR 24.31(b)(12)(iv)(c)(2)] is amended by striking out the words "the provisions of section 112(b)(7) of the Internal Revenue Code relating to certain complete liquidations occurring during some one calendar month in 1944 or 1951" and inserting in lieu thereof the following:

the provisions of section 112(b)(7) of the Internal Revenue Code relating to certain complete liquidations occurring during some one calendar month in a year specified in such section

PAR. 28. Section 24.31(b)(13)(viii) [26 CFR 24.31(b)(13)(viii)] is amended by striking "consolidated original section 435(g)(7) indebtedness" from subdivision (*b*) and inserting in lieu thereof the following: "consolidated original controlled group indebtedness".

PAR. 29. Section 24.31(b)(14) [26 CFR 24.31(b)(14)] is amended as follows:

(A) By striking "; and" at the end of subdivision (i) and inserting in lieu thereof a period; and

(B) By adding immediately after subdivision (ii) the following:

(iii) If the consolidated selected base period is determined by substituting for the consolidated base period the period of 48 consecutive months ending March 31, 1950, the consolidated weighted excess profits net income for each of the months January, February, and March of 1950 shall be substituted for the consolidated section 433(b) excess profits net income for each such month.

PAR. 30. Section 24.31(b)(15) [26 CFR 24.31(b)(15)] is amended as follows:

(A) By striking the words "the beginning of the consolidated base period" from subdivision (i), (i)(*b*), (i)(*c*), (ii), (ii)(*a*), (ii)(*b*), and (iii) of such section and inserting in lieu thereof the following: "the end of the consolidated base period"; and

(B) By striking the word "solely" from subdivision (iii) of such section.

PAR. 31. Section 24.31(b)(16) [26 CFR 24.31(b)(16)] is amended as follows:

(A) By striking the words "the beginning of the consolidated base period" from subdivision (i) (*a*), (i) (*b*), and (iii) (*d*) of such section, and inserting in lieu thereof the following: "the end of the consolidated base period";

(B) By inserting in subdivision (iii) (*a*) of such section, immediately after the words "If those members of the affiliated group", in subdivision (iii) (*b*) of such section, immediately after the words "If those members of the group", and in subdivision (iii) (*c*) of such section, immediately after the words "In the case of each member of the affiliated group", the following: "which commenced business before the end of the consolidated base period and"; and

(C) By striking "(i) (B)" from subdivision (iii) (*d*) of such section and inserting in lieu thereof "(i) (*b*)".

PAR. 32. Section 24.31(b) (17) [26 CFR 24.31(b) (17)] is amended as follows:

(A) By striking "section 442(c), 442(d), 443, 444, or 446" from subdivision (i) of such section and inserting in lieu thereof the following: "section 442(c), 442(d), 442(h), 443, 444, 446, 459(a), 459(b), 459(c), or 459(d)"; and

(B) By striking "Section 442, 443, 444, 445, or 446" from subdivision (ii) of such section and inserting in lieu thereof the following: "Section 442(c), 442(d), 442(h), 443, 444, 445, 446, 459(a), 459(b), 459(c), or 459(d)";

(C) By striking "or 446" from subdivision (iv) of such section and inserting in lieu thereof the following: "446, 459(a), 459(b), 459(c), or 459(d)"; and

(D) By adding immediately after subdivision (iv) the following:

> (v) In the case of a member of the group to which section 459(c) is applicable, the excess profits net income determined under section 433(b) or the deficit in excess profits net income determined under section 433(c), as the case may be, for any month shall include as an item of excess profits net income one-twelfth of the amount which, under section 459(c), would be added to the amount computed under section 435(d) for such corporation.
>
> (vi) In the case of a member of the group to which section 459(d) is applicable, the excess profits net income determined under section 433(b) for any month, and the deficit in excess profits net income determined under section 433(c) for any month, shall be computed as follows:
>
> (*a*) Such computation shall be made without regard to income, deductions, losses, or other items attributable to the television broadcasting business of the corporation, and
>
> (*b*) There shall be included, as an item of excess profits net income for the month, an amount equal to one-twelfth of the amount which, under section 459(d), would be added to the amount computed for such corporation under section 459(d)(2)(A).

PAR. 33. Section 24.31(b) (18) (i) [26 CFR 24.31(b) (18) (i)] is amended as follows:

(A) By striking "or 446" and inserting in lieu thereof the following: "446, 459(a), 459(b)(2)(B), or 459(c)";

(B) By striking "section 442(c)" and inserting in lieu thereof the following: "section 442(c) or section 442(h)";

(C) By striking "section 442(c)(1)" and inserting in lieu thereof the following: "section 442(c)(1) or section 442(h)"; and

(D) By adding at the end thereof the following:

> If the affiliated group includes any member for which an amount computed under section 459(d) is included in the consolidated alternative average base period net income, the portion of the consolidated base period capital

addition properly allocable to such member shall be subject to proper adjustment under section 459(d)(5)(A).

PAR. 34. Section 24.31(b)(19) [26 CFR 24.31(b)(19)] is amended as follows:

(A) By striking "*443 or 445*" from the heading of such section and inserting in lieu thereof the following: "*443, 445, or 459(d)*"; and

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

If the affiliated group includes any member for which an amount computed under section 459(d) is included in the consolidated alternative average base period net income, the consolidated net capital addition or reduction shall be subject to proper adjustment under section 459(d)(5)(C) to eliminate the effect thereon of any items involved in the computation of the consolidated alternative average base period net income.

PAR. 35. Section 24.31(b)(20) [26 CFR 24.31(b)(20)] is amended as follows:

(A) By striking "In the computation of the consolidated section 448 excess profits credit, the consolidated section 448 gross credit, and the consolidated section 448 inadmissible asset adjustment, the following rules shall apply in the case of any member of the affiliated group described in section 448 (c)(1)(*a*), (c)(1)(*b*), (c)(2) or (c)(4)" and inserting in lieu thereof the following:

In the computation of the consolidated section 448 excess profits credit, the consolidated section 448(b) gross amount, and the consolidated section 448 inadmissible asset adjustment, the following rules shall apply in the case of any member of the affiliated group described in section 448 (c)(1)(A), (c)(1)(B), (c)(2) or (c)(4).

(B) By striking subdivisions (*a*) and (*b*) of subdivision (i) and inserting in lieu thereof the following:

(*a*) The sum of—

(*1*) The average outstanding common and preferred capital stock accounts for the taxable year and the average capital and earned surplus accounts (or minus any deficits therein) for the taxable year, as properly recorded on the corporate books of account of such member, determined under the rules applicable to the computation of such amounts if a separate return were filed by such member, and

(*2*) The average borrowed capital of such member for the taxable year, minus

(*b*) The average for the taxable year of the amount, as properly recorded on the corporate books of account, of the stock of other members of the group held by such member.

PAR. 36. Section 24.31(b) [26 CFR 24.31(b)] is amended by adding immediately after subparagraph (27) the following:

(28) *Disposal of timber or coal—*

(i) *Intercompany transactions.*—Section 117(k)(2) (relating to the disposal of timber or coal) shall apply to an amount received by a member of the group only to the extent such amount is received by the member of the group as a party to a transaction described in section 117(k)(2) with persons not members of the group.

(ii) *Application of section 102 and subchapter A to coal royalties.*—For the purpose of determining the consolidated section 102 net income, the consolidated subchapter A net income, and the tax under section 117(c)(1) in lieu of the tax imposed by subchapter A, the provisions of section 117(k)(2) shall not apply to any amount received by a member of the group upon the disposal of coal.

(29) *Special rules in case of banks.*—The rules provided in paragraph (b) of this section with respect to the computation of the consolidated net new capital addition, the consolidated yearly base period capital, the consolidated net capital addition, and the consolidated net capital reduction shall also be applicable with

respect to the computation of the consolidated net new bank capital addition, the consolidated yearly base period bank capital, the consolidated net bank capital addition, and the consolidated net bank capital reduction, respectively.

(30) *Mine exploration expenditures*—

(i) *Limitation under section 23(ff)(1).*—If the aggregate of the deductions, computed without regard to this sentence, allowable under section 23(ff)(1) to the several members of the group exceeds $75,000,

(*a*) The deduction under that section allowable to any member of the group shall be an amount which bears the same ratio to $75,000 as its deduction computed without regard to this sentence bears to the aggregate of such deductions so computed for the members of the group, except that,

(*b*) If all members of the group consent in writing (which consent, in the case of a return filed on or after September 15, 1952, shall be filed with the return, or, in the case of a return filed before September 15, 1952, shall be filed not later than September 15, 1952, in the same office in which the return is filed), the deduction under that section allowable to such member shall be the deduction under that section computed without regard to this sentence, or such part thereof as the common parent corporation shall determine at the time the consent is filed, provided, however, that the aggregate of the deductions so allowable for all members of the group shall not exceed $75,000.

(ii) *Limitation under section 23(ff)(3).*—If the limitation provided in section 23(ff)(3) is applicable to any member of the group, such limitation shall be deemed applicable to all members of the group.

(31) *Application of section 433(a)(1)(R) and section 433(b)(16).*—For the purpose of applying section 433(a)(1)(R) and section 433(b)(16) (which relate to payments from foreign sources for technical assistance)—

(i) If any deduction of a member of the group, disallowed under such section, consists of a payment to another member of the group, such payment shall be considered remuneration described in such section to such other member.

(ii) A foreign corporation shall be considered to be a "related foreign corporation" if the members of the group, at the time the service or assistance is rendered, own 10 percent or more of the outstanding stock of such foreign corporation.

(32) *Eligibility requirements for consolidated net new bank capital addition.*—An affiliated group shall be subject to section 438(g) for any taxable year if during such taxable year one or more members of the group are banks (as defined in section 104) and if—

(i) More than one-half of the sum of—

(*a*) The consolidated equity capital for the first day of the first taxable year of the group ending after June 30, 1950, and

(*b*) Seventy-five percent of the consolidated daily borrowed capital for such first day is properly allocable to such banks, and

(ii) The consolidated increase in total assets for the taxable year exceeds the amount determined under section 24.31(a)(47)(i).

(33) *Affiliated groups subject to section 435(f)(6), section 435(g)(8), and section 435(g)(9)(B).*—If during the taxable year one or more members of the group are banks (as defined in section 104), and if more than one-half of the consolidated average base period net income is properly allocable to such banks, then the affiliated group shall be subject to—

(i) Section 435(f)(6) (but, in computing the tax for a taxable year beginning before October 20, 1951, only if all the members of the group so elect);

(ii) Section 435(g)(8), provided that—

(*a*) In the case of the consolidated net bank capital addition, the consolidated increase in total assets for the taxable year exceeds the amount computed under section 24.31(a)(70)(i), and

(*b*) In the case of the consolidated net bank capital reduction, the consolidated decrease in total assets for the taxable year exceeds the amount computed under section 24.31(a)(71)(i); and

(iii) Section 435(g)(9)(B).

(34) *Rules for computation of consolidated section 435(g)(9) adjustment.*—For the purpose of determining the consolidated section 435(g)(9) adjustment, the following rules shall apply:

(i) The consolidated section 435(g)(9) adjustment shall be subject to reduction to the extent that the Commissioner determines that the con-

solidated increase in operating assets is a result, directly or indirectly, of an increase in indebtedness of any member of the group (other than indebtedness which constitutes borrowed capital and other than indebtedness from one member of the group to another member of the group).

(ii) For the purpose of section 24.31(a)(99)(i)(*a*), the amount computed under section 24.31(a)(71)(ii) shall not be less than the consolidated decrease in inadmissible assets for the taxable year reduced by 25 percent of the excess of—

(*a*) The amount computed under section 24.31(a)(71)(i) by using 100 percent, in lieu of 75 percent, of the amounts referred to in section 24.31(a)(73) (iii) and (v) (relating to borrowed capital and loans to members of a controlled group), over

(*b*) The amount computed under section 24.31(a)(71)(i) without regard to the amounts referred to in section 24.31(a)(73) (iii) and (v).

(iii) For the purpose of determining the excess of the consolidated increase in operating assets over the consolidated net capital addition or consolidated net capital bank addition, the consolidated net capital addition and the consolidated net bank capital addition shall be computed by using 100 percent, in lieu of 75 percent, of the amounts referred to in section 24.31(a)(72)(iii) and section 24.31(a)(73) (iii) and (v) (relating to borrowed capital and loans to members of a controlled group).

PAR. 37. The following new section is added immediately after section 24.44 [26 CFR 24.44]:

SEC. 24.45. MINE EXPLORATION EXPENDITURES.—For the purpose of applying the limitation provided in section 23(ff)(3) (whether during a consolidated return period or during a period for which a separate return is made, if during a preceding taxable year for which a consolidated return was made or was required to be made by any member of the affiliated group for such preceding taxable year was allowed the deduction provided in section 23(ff)(1) or made the election provided in section 23(ff)(2), each member of the affiliated group for such preceding taxable year shall be deemed to have been allowed such deduction or to have made such election, as the case may be.

(This Treasury Decision is issued under the authority contained in sections 62, 141, and 3791 of the Internal Revenue Code (53 Stat. 32, 58, 467; 26 U. S. C. 62, 141, 3791).)

A corporation entitled to file with other corporations a consolidated return under section 141 for a taxable year ending after March 31, 1951, and before April 1, 1952, has until July 15, 1952, to file such return. With respect to most of these corporations, this date cannot be extended further in view of statutory restrictions. The rules prescribed in this Treasury Decision are essential to the filing of such consolidated returns; furthermore, many of the rules prescribed in this Treasury Decision with respect to the excess profits tax are retroactive in that they apply to all taxable years ending after June 30, 1950. Therefore, good cause is found for issuing this Treasury Decision without regard to the effective date limitation of section 4(c) of the Administrative Procedure Act, approved June 11, 1946. Hence, this Treasury Decision shall be effective upon its filing with the Federal Register for publication.

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved June 26, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 27, 1952, 11:44 a. m.)

SECTION 24.30, REGULATIONS 129: Computation of tax.

INTERNAL REVENUE CODE

Regulations 129 amended. (See T. D. 5915, page 148.)

SECTION 24.31, REGULATIONS 129: Bases of tax computation.

INTERNAL REVENUE CODE

Regulations 129 amended. (See T. D. 5915, page 148.)

SECTION 24.45, REGULATIONS 129: Mine exploration expenditures.

INTERNAL REVENUE CODE

Regulations 129 amended. (See T. D. 5915, page 148.)

SECTION 29.141–1: Consolidated income and excess profits tax returns of affiliated corporations. 1952–18–13912 T. D. 5925

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

Section 29.141–1 of Regulations 111 amended to conform to the Revenue Act of 1950, the Excess Profits Tax Act of 1950, and the Revenue Act of 1951.

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On June 4, 1952, notice of proposed rule making was published in the Federal Register (17 F. R. 5041) to conform section 29.141–1 of Regulations 111 [26 CFR, part 29] to the Revenue Act of 1950, approved September 23, 1950, to the Excess Profits Tax Act of 1950, approved January 3, 1951, and to the Revenue Act of 1951, approved October 20, 1951. No objection to the rules proposed having been received within the 30 days following such publication, the amendments of Regulations 111 set forth below are hereby adopted.

PARAGRAPH 1. There is inserted immediately preceding section 29.141–1 [26 CFR 29.141–1] the following:

SEC. 121. INCREASE IN RATE OF CORPORATION INCOME TAXES [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(f) TAX UNDER CONSOLIDATED RETURNS.—Section 141(c) (relating to computation and payment of tax on consolidated returns) is hereby amended by inserting after the first sentence the following: "If the affiliated group includes one or more western hemisphere trade corporations (as defined in section 109), the increase of 2 per centum provided

in the preceding sentence shall be applied only on the amount by which the consolidated corporation surtax net income of the affiliated group exceeds the portion (if any) of the consolidated corporation surtax net income attributable to the western hemisphere trade corporations included in such group."

* * * * * * *

SEC. 123. EFFECTIVE DATE OF PART II [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

The amendments made by this part [sections 121, 122, and 123, Revenue Act of 1950] shall be applicable only with respect to taxable years ending after December 31, 1949. * * *

SEC. 301. CONSOLIDATED RETURNS [EXCESS PROFITS TAX ACT OF 1950, APPROVED JANUARY 3, 1951].

Effective with respect to taxable years ending after June 30, 1950, section 141 of the Internal Revenue Code (relating to consolidated returns) is hereby amended to read as follows:

"SEC. 141. CONSOLIDATED RETURNS.

"(a) PRIVILEGE TO FILE CONSOLIDATED RETURNS.—An affiliated group of corporations shall, subject to the provisions of this section, have the privilege of making a consolidated return for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under subsection (b) prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

"(b) REGULATIONS.—The Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income- and excess-profits-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

"(c) COMPUTATION AND PAYMENT OF TAX.—In any case in which a consolidated return is made or is required to be made, the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under subsection (b) prescribed prior to the last day prescribed by law for the filing of such return; except that the tax imposed under section 15 or section 204 shall be increased by 2 per centum of the consolidated corporation surtax net income of the affiliated group of includible corporations. If the affiliated group includes one or more Western Hemisphere trade corporations (as defined in section 109), the increase of 2 per centum provided in the preceding sentence shall be applied only on the amount by which the consolidated corporation surtax net income of the affiliated group exceeds the portion (if any) of the consolidated corporation surtax net income attributable to the Western Hemisphere trade corporations included in such group. For the purposes of the tax imposed by section 430, the sum of the excess profits credit and the unused excess profits credit adjustment of the affiliated group shall not be increased under the last sentence of section 431 to an amount in excess of $25,000 for the entire group.

"(d) DEFINITION OF 'AFFILIATED GROUP'.—As used in this section, an 'affiliated group' means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if—

"(1) Stock possessing at least 95 per centum of the voting power of all classes of stock and at least 95 per centum of each class of the nonvoting stock of each of the includible corporations (except the

common parent corporation) is owned directly by one or more of the other includible corporations; and

"(2) The common parent corporation owns directly stock possessing at least 95 per centum of the voting power of all classes of stock and at least 95 per centum of each class of the nonvoting stock of at least one of the other includible corporations.

As used in this subsection, the term 'stock' does not include nonvoting stock which is limited and preferred as to dividends.

"(e) DEFINITION OF 'INCLUDIBLE CORPORATION'.—As used in this section, the term 'includible corporation' means any corporation except—

"(1) Corporations exempt from taxation under section 101.

"(2) Insurance companies subject to taxation under section 201 or 207.

"(3) Foreign corporations.

"(4) Corporations entitled to the benefits of section 251, by reason of receiving a large percentage of their income from sources within possessions of the United States.

"(5) Corporations organized under the China Trade Act, 1922.

"(6) Regulated investment companies subject to tax under Supplement Q.

"(7) Any corporation described in section 449, or in section 454 (d), (f), and (g) (without regard to the exception in the initial clause of section 454), but not including such a corporation which has made and filed a consent, for the taxable year or any prior taxable year ending after June 30, 1950, to be treated as an includible corporation. Such consent shall be made and filed at such time and in such manner as may be prescribed by the Secretary.

"(8) Regulated public utilities described in section 448(d) which compute their excess profits credit under section 448 but not including any such regulated public utility which has made and filed a consent, applicable to the taxable year, to compute its excess profits credit without regard to section 448. The consent shall be made and filed at such time and in such manner as may be prescribed by the Secretary. The consent shall be applicable to the taxable year for which filed and to each consecutive subsequent taxable year for which a consolidated return is filed.

"(f) INCLUDIBLE INSURANCE COMPANIES.—Despite the provisions of paragraph (2) of subsection (e), two or more domestic insurance companies each of which is subject to taxation under the same section of this chapter shall be considered as includible corporations for the purpose of the application of subsection (d) to such insurance companies alone.

"(g) SUBSIDIARY FORMED TO COMPLY WITH FOREIGN LAW.—In the case of a domestic corporation owning or controlling, directly or indirectly, 100 per centum of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this chapter as a domestic corporation.

"(h) SUSPENSION OF RUNNING OF STATUTE OF LIMITATIONS.—If a notice under section 272(a) in respect of a deficiency for any taxable year is mailed to a corporation, the suspension of the running of the statute of limitations, provided in section 277, shall apply in the case of corporations with which such corporation made a consolidated return for such taxable year.

"(i) ALLOCATION OF INCOME AND DEDUCTIONS.—For allocation of income and deductions of related trades or businesses, see section 45.

"(j) INCLUDIBLE REGULATED PUBLIC UTILITIES.—Despite the provisions of paragraph (8) of subsection (e), two or more regulated public utilities each of which has made and filed a consent, applicable to the taxable year, to compute its excess profits credit under section 448 only, shall be considered as includible corporations for the purpose of the application of subsection (d) to such regulated public utilities alone. The consent shall be made and filed at such time and in such manner as may be prescribed by the Secretary. The consent shall be applicable to the

taxable year for which filed and to each consecutive subsequent taxable year for which a consolidated return is filed."

SEC. 613. CONSOLIDATED RETURNS—INCLUDIBLE CORPORATION [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

If an affiliated group making a consolidated return with respect to the first taxable year of the group ending after June 30, 1950, included a corporation described in section 454(f) of the Internal Revenue Code pursuant to the consent provided in section 141(e)(7) of such Code, such corporation may withdraw such consent at any time within ninety days after the enactment of this Act. If such consent is withdrawn under the preceding sentence, the tax liability of the affiliated group and its several members for the taxable year shall be determined, assessed, and collected as if such corporation had never joined in the making of the consolidated return.

PAR. 2. Section 29.141–1, as amended by Treasury Decision 5441 [C. B. 1945, 214], approved February 28, 1945 [26 CFR 29.141–1], is hereby further amended as follows:

(A) By changing paragraph (*a*) thereof to read as follows:

(*a*) *In general.*—Section 141 prescribes rules for the making of consolidated income and excess profits tax returns by affiliated groups of corporations. Regulations 104 and Regulations 110 are applicable, respectively, to the making of the consolidated income tax return and the consolidated excess profits tax return in the case of a taxable year ending prior to January 1, 1950. Regulations 129 are applicable to the making of the consolidated income and excess profits tax return in the case of a taxable year ending after December 31, 1949. The determination, computation, assessment, collection, and adjustment of income and excess profits tax liabilities of the affiliated group and each member thereof both during and after the period of affiliation shall be made under the applicable provisions of such regulations.

(B) By striking the word "and" which follows the semicolon in subparagraph (6) of paragraph (*c*).

(C) By striking subparagraph (7) from paragraph (*c*) and inserting in lieu thereof the following:

(7) With respect to taxable years beginning after December 31, 1943, and ending before July 1, 1950, a personal service corporation described in section 725(a), or a corporation described in section 727 (e), (g), or (h) which without regard to the exception stated in the initial clause of section 727 would be exempt from the excess profits tax imposed by subchapter E of chapter 2, except as otherwise provided in section 141(e)(7) with respect to such taxable years. As to the exception provided in section 141(e)(7), see the provisions of this subsection set forth below;

(8) With respect to taxable years ending after June 30, 1950, a personal service corporation described in section 449 or a corporation described in section 454 (d), (f), or (g) which without regard to the exception stated in the initial clause of section 454 would be exempt from the excess profits tax imposed by subchapter D of chapter 1, except as otherwise provided in section 141(e)(7). As to the exception provided in section 141(e)(7), see the provisions of this subsection set forth below; and

(9) With respect to taxable years ending after June 30, 1950, a regulated public utility corporation described in section 448(d), except as otherwise provided in section 141(e)(8) and section 141(j). As to the exception provided in section 141(e)(8), see the provisions of this subsection set forth below. As to the exception provided in section 141(j), see (*g*) of this section.

The corporations described in section 727 (e), (g), and (h), and in section 454 (d), (f), and (g), are personal holding companies as defined in section 501, certain domestic corporations which derive a specified part of their gross income from sources outside the United States (section 727(g) and section 454(f)), and certain corporations which receive compensation from the United States for the transportation of mail by aircraft (section 727(h) and section 454(g)).

Any corporation which otherwise would not be an includible corporation under (7) or (8) above and section 141(e)(7) may make and file a consent for any taxable year beginning after December 31, 1943, to be treated as an includible corporation. A corporation which has made and filed such consent for any taxable year ending prior to July 1, 1950, shall be treated as an includible corporation for the taxable year for which such consent is filed and for each subsequent taxable year ending before July 1, 1950. A corporation which has made and filed a consent for any taxable year ending after June 30, 1950, shall be treated as an includible corporation for such taxable year and for each subsequent taxable year. With respect to the subsequent taxable years in either such case, such corporation shall be deemed to be an includible corporation regardless of whether the affiliated group of which such corporation is a member during the subsequent taxable year is the same as the affiliated group of which it was a member when the consent was filed. If such corporation is a common parent corporation, the making and filing of the consolidated income tax return shall constitute the making and filing of its consent under section 141(e)(7). If such corporation is a subsidiary, the filing for a taxable year ending before July 1, 1950, of its authorization and consent on Forms 1122 and 1122E in the manner prescribed by section 23.12(b) of Regulations 104 and section 33.12(b) of Regulations 110 shall constitute the making and filing of such consent; the filing for a taxable year ending after June 30, 1950, of its authorization and consent on Form 1122 in the manner prescribed by section 24.12(b) of Regulations 129 shall constitute the making and filing of such consent. A consent to be treated as an includible corporation under section 141(e)(7) cannot be withdrawn or revoked at any time after the consolidated return is filed for the first taxable year for which the consent is filed, except as otherwise provided in section 613 of the Revenue Act of 1951. Section 613 of that Act relates to the withdrawal within 90 days after October 20, 1951 (the date of enactment of that Act), of consents for the first taxable year ending after June 30, 1950, with respect to corporations described in section 454(f).

Under section 141(e)(8), any regulated public utility corporation may make and file a consent for any taxable year ending after June 30, 1950, to compute its excess profits credit without regard to section 448. A corporation which has made and filed such consent shall be treated as an includible corporation under section 141(e)(8) for the taxable year for which such consent is filed and for each consecutive subsequent taxable year for which a consolidated return is made or is required to be made by the affiliated group of which it was a member at the time such consent was filed unless it has ceased to be a member of such group. If such corporation is a common parent corporation, the making and filing of a consolidated return in which the consolidated excess profits credit is determined under provisions other than those of section 448 shall constitute the making and filing of its consent under section 141(e)(8). If such corporation is a subsidiary, the filing of an authorization and consent on Form 1122, in the manner prescribed by section 24.12(b) of Regulations 129, indicating thereon its consent to compute its excess profits credit without regard to section 448 shall constitute the making and filing of such consent. A consent to be treated as an includible corporation under section 141(e)(8) cannot be withdrawn or revoked at any time after the consolidated return is filed for the first taxable year for which the consent is filed; however, if a separate return is properly filed by such a corporation for a subsequent taxable year, it is not thereafter an includible corporation under section 141(e)(8) unless another consent under such section is made and filed.

(D) By striking the last sentence of (*e*) and inserting in lieu thereof the following:

In the case of taxable years ending before July 1, 1950, see sections 725(b) and 727, and in the case of taxable years ending after June 30, 1950, see section 449 and section 454.

(E) By striking that part of paragraph (*e*) which follows the first sentence and inserting in lieu thereof the following:

The option to treat such foreign corporation as a domestic corporation must be exercised at the time of making the consolidated return, and cannot be exercised at any time thereafter. However, in the case of taxable years ending before January 1, 1950, the option must be exercised at the time of making the first

consolidated return for any taxable year beginning after December 31, 1941, and ending before January 1, 1950. If the foreign corporation is included or is required to be included in the consolidated return of the affiliated group of which it is a member for any taxable year, it must be included in the consolidated return for each consecutive taxable year thereafter for which such group makes or is required to make a consolidated return. Furthermore, if the option is exercised at the time of making the first consolidated return for any taxable year beginning after December 31, 1941, and ending before January 1, 1950, the foreign corporation must be included in the consolidated return of the group for each subsequent taxable year ending before January 1, 1950, for which such group makes or is required to make a consolidated return, whether or not such taxable year is preceded by a taxable year for which separate returns are made.

(F) By striking the last sentence of paragraph (*f*) and inserting in lieu thereof the following:

For example, if the consolidated corporation surtax net income of an affiliated group for a taxable year is $40,000, the increase in the surtax for such taxable year is $800, that is, 2 percent of $40,000. For taxable years ending after December 31, 1949, if the affiliated group includes one or more Western Hemisphere trade corporations (as defined in section 109), the increase shall be applied in the manner provided in section 24.30(b)(1) of Regulations 129.

(G) By inserting immediately after paragraph (*f*) the following:

(*g*) *Consolidated returns of regulated public utilities computing excess profits credit under section 448.*—For taxable years ending after June 30, 1950, a regulated public utility which has made and filed a consent to compute its excess profits credit under section 448 only may be included in an affiliated group (within the meaning of section 141(d)) comprised solely of regulated public utility corporations each of which has made and filed such a consent. If such consent of a regulated public utility corporation is filed for any taxable year ending after June 30, 1950, such corporation shall be an includible corporation within the meaning of section 141(j) for the taxable year for which such consent is filed and for all consecutive subsequent taxable years for which such affiliated group of which such corporation is a member makes or is required to make a consolidated return. If such corporation is a common parent corporation, the making and filing of a consolidated return in which the consolidated excess profits credit is determined under the provisions of section 448 shall constitute the making and filing of its consent under section 141(j). If such corporation is a subsidiary, the filing of its authorization and consent on Form 1122, in the manner prescribed by section 24.12(b) of Regulations 129, indicating thereon its consent to compute its excess profits credit with respect to section 448 only, shall constitute the making and filing of such consent. A consent to be treated as an includible corporation under section 141(j) cannot be withdrawn or revoked at any time after the consolidated return is filed for the first taxable year for which the consent is filed. However, if a separate return is properly filed by such a corporation for a subsequent taxable year, it is not thereafter an includible corporation under section 141(j) unless another consent under such section is made and filed.

(This Treasury Decision is issued under the authority contained in sections 62, 141, and 3791 of the Internal Revenue Code (53 Stat. 32, 58, 467; 26 U. S. C. 62, 141, and 3791).)

NORMAN A. SUGARMAN,
Acting Commisisoner of Internal Revenue.

Approved August 4, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register August 7, 1952, 8:50 a. m.)

SECTION 145.—PENALTIES

SECTION 29.145–1: Penalties. 1952–25–13982
Ct. D. 1751

FEDERAL TAXES—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT

1. PENALTIES—INDICTMENT UNDER SECTION 145(b), INTERNAL REVENUE CODE.

The language of section 145(b) of the Internal Revenue Code, which outlaws willful attempts to evade taxes "in any manner," is clearly broad enough to include false statements made by taxpayers at a hearing before representatives of the Treasury Department for the purpose of concealing unreported income. By enacting section 35(A) of the Criminal Code, which makes it unlawful to knowingly and willfully make any false or fraudulent statements or representations in any matter within the jurisdiction of any department or agency of the United States, Congess did not intend thereby to exclude the making of false statements from the scope of section 145(b) of the Internal Revenue Code, or to require tax enforcement authorities to deal differently with false statements than with other methods of tax evasion. By providing that the sanctions of section 145 should be "in addition to other penalties provided by law" Congress recognized that some methods of attempting to evade taxes would violate other statutes as well.

2. DECISION REVERSED.

Unreported memorandum opinion of the United States District Court, District of Massachusetts, reversed and cause remanded.

SUPREME COURT OF THE UNITED STATES

The United States of America, appellant, v. *The Beacon Brass Co., Inc., and Maurice Feinberg*

On appeal from the United States District Court for the District of Massachusetts

[November 10, 1952]

OPINION

Mr. Justice MINTON delivered the opinion of the Court.

On March 16, 1951, a one-count indictment was returned in the United States District Court for the District of Massachusetts against the appellees, Beacon Brass Company, a corporation, and Maurice Feinberg, its president and treasurer. The indictment charged that in violation of section 145(b) of the Internal Revenue Code, 40 Stat. 1085, as amended, 26 U. S. C. section 145(b), the appellees had willfully attempted to evade taxes by making false statements to Treasury representatives on October 24, 1945, "for the purpose of supporting, ratifying, confirming and concealing the fraudulent and incorrect statements and representations made in the corporate tax return of said Beacon Brass Co., Inc., for the fiscal period ending October 31, 1944, filed on or about January 5, 1945 * * *." Section 145(b) provides in pertinent part:

> "[A]ny 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 * * *." [Emphasis supplied.]

The six-year limitation period, 43 Stat. 341, 342, as amended, 26 U. S. C. section 3748(a)(2), applicable to offenses under this statute, had expired on a charge for filing a false tax return in January 1945, but it had not expired on a charge of making false statements to Treasury employees in October 1945. The district court viewed the indictment as charging the separate crimes of filing a false return and making subsequent false statements to Treasury representatives, and dismissed the indictment as duplicitous.

On September 14, 1951, a second indictment was returned against the appellees which repeated the charge that in violation of section 145(b) they "did wilfully and knowingly attempt to defeat and evade a large part of the taxes due and owing by the said corporation * * * by making certain false and fraudulent statements and representations, at a hearing and conference before representatives and employees of the United States Treasury Department, on or about October 24, 1945 * * *." Reference to the allegedly false return filed in January 1945 was omitted, and instead it was charged that the false statements were made "for the purpose of concealing additional unreported net income * * *."

Section 35(A) of the Criminal Code, 18 U. S. C. section 80 (1946 ed.) (now 18 U. S. C. (supp. V) section 1001) makes it unlawful to "knowingly and willfully * * * make * * * any false or fraudulent statements or representations * * * in any matter within the jurisdiction of any department or agency of the United States * * *." Obviously, at the times of the indictments here, the three-year limitation period, 18 U. S. C. (supp. V) section 3282, for violations of this statute had expired as to statements made in October 1945. The district court concluded that since section 35(A) deals specifically with false statements, Congress must be presumed to have intended that the making of false statements should be punishable *only* under section 35(A). Therefore, in an unreported memorandum opinion, the district court dismissed the indictment on the ground that it failed to charge an offense under 26 U. S. C. section 145(b). We noted probable jurisdiction of the United States' appeal taken under authority of 18 U. S. C. (supp. V) section 3731.

We have before us two statutes, each of which proscribes conduct not covered by the other, but which overlap in a narrow area illustrated by the instant case. At least where different proof is required for each offense, a single act or transaction may violate more than one criminal statute. *United States* v. *Noveck*, 273 U. S. 202, 206; *Gavieres* v. *United States*, 220 U. S. 338. Unlike section 35(A), section 145(b) requires proof that the false statements were made in a willful effort to evade taxes. The purpose to evade taxes is crucial under this section. The language of section 145(b) which outlaws willful attempts to evade taxes "in any manner" is clearly broad enough to include false statements made to Treasury representatives for the purpose of concealing unreported income. *Cf. Spies* v. *United States*, 317 U. S. 492, 499 [Ct. D. 1571, C. B. 1943, 1038]. The question raised by the decision below is whether by enacting a statute specifically outlawing all false statements in matters under the jurisdiction of agencies of the United States, Congress intended thereby to exclude the making of false statements from the scope of section 145(b).

We do not believe that Congress intended to require the tax-enforcement authorities to deal differently with false statements than with other methods of tax evasion. By providing that the sanctions of section 145(b) should be "in addition to other penalties provided by law," Congress recognized that some methods of attempting to exade taxes would violate other statutes as well. See *Taylor* v. *United States*, 179 Fed. (2d) 640, 644. Moreover, since no distinction is made in section 35(A) between written and oral statements, the reasoning of the court below would be equally applicable to false tax returns which are, of course, false *written* statements. But the courts of appeals have uniformly applied section 145(b) to attempts to evade taxes by filing false returns. *E. g.*, *Gaunt* v. *United States*, 184 Fed. (2d) 284, 288; *Taylor* v. *United States*, *supra*, at 643–644. Further support for our conclusion can be found in *United States* v. *Noveck*, *supra*, where this court rejected the contention that the enactment of section 145(b) impliedly repealed the general perjury statute insofar as that statute applied to false tax returns made under oath. *Cf. United States* v. *Gilliland*, 312 U. S. 86, 93, 95–96. Finally, the enactment of other statutes expressly outlawing false statements in particular contexts, *e. g.*, 18 U. S. C. (supp. V) sections 1010, 1014, negates the assumption—which was the foundation of the decision of the court below—that Congress intended the making of false statements to be punishable only under section 35(A).

The appellees contend that the acts charged constitute only one crime of tax evasion which was complete when the allegedly false tax return was filed. On the basis of this contention, appellees seek to sustain the decision below on the grounds that the six-year statute of limitations had run, and that the dismissal of

the first indictment is *res judicata* and a bar to the second indictment for the same offense. We do not consider these questions because our jurisdiction on this appeal is limited to review of the district court's construction of the statute in the light of the facts alleged in the indictment. 18 U. S. C. (supp. V) section 3731; *United States* v. *Borden Co.*, 308, U. S. 188, 206–207.

The judgment of the district court is reversed, and the cause is remanded for further proceedings not inconsistent with this opinion.

Reversed.

Mr. Justice BLACK is of the opinion that the district court reached the right result and would affirm its judgment.

SECTION 148.—INFORMATION BY CORPORATIONS

SECTION 29.148–1: Return of information as to payments of dividends. 1952–14–13868 T. D. 5914

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

Regulations 111 amended with respect to the requirement that information returns be furnished by corporations paying dividends.

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

Section 29.148–1 of Regulations 111, as amended by Treasury Decision 5859 [C. B. 1951–2, 88], approved September 20, 1951 [26 CFR 29.148–1], is further amended by striking "shall render an information return on Forms 1096 and 1099, except that" from the first sentence of paragraph (*a*) and inserting in lieu thereof the following:

amounting to $10 or more during the calendar year, shall render an information return on Forms 1096 and 1099, except that such $10 minimum limitation shall not apply for the calendar year 1951, and except that

(This Treasury Decision is issued under the authority contained in sections 62, 148, and 3791 of the Internal Revenue Code (53 Stat. 32, 65, 467; 26 U. S. C. 62, 148, 3791).)

Because this Treasury Decision relieves taxpayers of a requirement imposed by 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 that Act.

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved June 24, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 26, 1952, 8:55 a. m.)

SECTION 165.—EMPLOYEES' TRUSTS

SECTION 29.165–1: Employees' trusts. (Also Section 29.165–6; Section 22(b), Section 29.22(b)(2)–5; Section 23(p), Section 29.23(p)–9.)

1952–25–13983
IR-Mim. 71

Applicability of sections 165(a) and 23(p)(1)(B) of the Internal Revenue Code to stock bonus, pension, profit-sharing, and annuity plans where nonresident beneficiaries are involved and taxability of distributions under or pursuant to any such plan where the distributions are to a nonresident and are based, wholly or partly, on services rendered outside the United States.

Mimeograph 3283 (C. B. IV–1, 14 (1925)), I. T. 2370 (C. B. VI–2, 28 (1927)), I. T. 2996 (C. B. XV–2, 166 (1936)), and I. T. 3472 (C. B. 1941–1, 252) modified.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 1, 1952.

Officers and Employees of the Internal Revenue Service and Others Concerned:

1. Numerous inquiries have been received from time to time by the Bureau with respect to (1) the qualification under the applicable provisions of sections 165(a) and 23(p)(1)(B) of the Internal Revenue Code, as amended, of stock bonus, pension, profit-sharing, and annuity plans established by employers for their employees where one or more of the interested parties (the employer, some or all of the employees, or the trust or insurance company through which the plan is funded), are nonresidents of the United States as the latter term is defined in section 3797(a)(9) of the Internal Revenue Code, and (2) the taxability of distributions under or pursuant to any such plan where such distributions are to a nonresident and are, in part at least, on account of or with respect to services rendered outside the United States by the employee involved.

2. Exemption from income tax is granted by section 165(a) of the Internal Revenue Code to any stock bonus, pension, or profit-sharing trust established by an employer for his employees if such trust meets all the requirements of section 165(a) of the Code. It will be apparent, however, when subsections (a) and (b) of section 165 of the Code are read together, that income tax on the earnings of an employees' trust which meets all the requirements of section 165(a) of the Code is only deferred, since, instead of being due from and payable by the trust, the tax is imposed by section 165(b) upon the distributees of the trust. In that respect, section 165(b) provides, in part, as follows: "* * * The amount actually distributed or made available to *any* distributee by *any* such trust [a trust qualifying under section 165(a)] *shall be taxable to him*, in the year in which so distributed or made available * * *." [Italics supplied.]

3. Since it would be impossible or impracticable to assert tax against distributees of nonresident trusts with respect to distributions representing in whole or in part income from sources within the United States, section 165(a) of the Code was not intended to afford tax exemption (1) to a nonresident trust set up by a nonresident employer

or (2) to a nonresident trust established by a domestic employer in whole or in part for nonresident alien employees unless the trust instrument in such case expressly prohibits the investment of the trust assets in any manner which will produce "income from sources within the United States", as defined in section 119 (a) and (b) of the Code.

4. It does not seem, however, in view of the provisions of sections 143(b) and 211 of the Code, that a resident stock bonus, pension or profit-sharing trust, whether established by a resident or a nonresident employer, was intended to be denied the right to qualify under section 165(a) for tax exemption because some or all of the beneficiaries under such trust are or may be nonresident alien employees. Section 165(b) was intended to be construed in the light of other provisions of the Code and of pertinent provisions of income tax conventions between the United States and other countries.

5. Tax conventions between the United States and other countries have no application to the taxability of distributions under either a qualified or a nonqualified plan (whether or not funded) to nonresident citizens of the United States, but, in determining the extent to which a nonresident citizen is taxable with respect to *any* such distribution, resort must be had not only to section 165(b) of the Code (*if* a trust is involved) but also to sections 22(b)(2), 116, 117, and 119 thereof. Clearly, none of that portion of the distribution under a pension, profit-sharing, or other such plan to either a resident or a nonresident citizen with respect to or on account of services rendered in the United States (whether the distribution represents contributions made by the employer, or the employee, or both) is "income from sources without the United States" within the meaning of sections 116(a) and 119(c) of the Code. Likewise, that part of any distribution which represents a return of the employee's own contributions may not properly be classed as "earned income" within the meaning of section 116(a)(3) of the Code. With respect to the remainder of the amount distributable under a plan to a United States citizen during years in which he meets the qualifications regarding residence or presence in a foreign country, as provided by section 116(a) of the Code, that portion representing the amount actually contributed under the plan by the employer with respect to services rendered by the employee during a qualified period represents earned income from sources outside of the United States for purposes of section 116(a) of the Code. The balance of the amount distributed does not constitute income from sources without the United States and, accordingly, is not excludable from the gross income of the recipient under section 116(a) of the Code.

6. A distribution pursuant to either a qualified or a nonqualified stock bonus, pension, profit-sharing, or annuity plan (whether or not funded) to a nonresident who is not a citizen of the United States is taxable to such nonresident distributee to the same extent, but in the manner (that is, by withholding) and at the rate provided by sections 143(b) and 211 of the Code, as it would be taxable to a citizen under like circumstances. However, in the case of a distribution to a nonresident alien who at the time of the distribution is a resident of a country with which the United States then has in effect a tax convention, such distribution shall be tax-exempt in the United States if it is so provided by the applicable tax convention. For example, in the

case of either a qualified or a nonqualified stock bonus, pension, profit-sharing, or annuity plan established in the United States for employees resident in Canada, distributions to any such residents (or their beneficiaries if they are likewise Canadian residents) who are not citizens of the United States will be exempt from tax in the United States under the provisions of the Tax Convention and Protocol between the United States and Canada if the distributions are in the form of "pensions" or "life annuities" within the meaning of those terms as used in Article VIA of the Convention and paragraphs 8 and 9 of the Protocol.

7. To the extent that Mimeograph 3283 (C. B. IV-1, 14 (1925)) and I. T. 2370 (C. B. VI-2, 28, (1927)) are inconsistent with the foregoing in that they indicate that the portion of a distribution from or under a stock bonus, pension, profit-sharing, or annuity plan which does not represent employer contributions on behalf of the employee involved constitutes "earned income", such rulings are hereby modified. Likewise, to the extent that I. T. 2996 (C. B. XV-2, 166 (1936)) and I. T. 3472 (C. B. 1941-1, 252) are similarly inconsistent in that they indicate that the part of a pension payment based on services rendered abroad which does not represent contributions by the employer on account of such foreign services constitutes "earned income", those rulings are hereby modified.

8. In view of the foregoing, it is the position of the Bureau that a distribution under or pursuant to a stock bonus, pension, profit-sharing, or annuity plan by a domestic trust or insurance company to a nonresident citizen or nonresident alien is excludable from the gross income of the recipient only to the extent the payment represents (*a*) a return of the employee's own contributions or (*b*) amounts actually contributed by the employer on account of personal services of the alien employee rendered abroad, or on account of personal services of the citizen employee rendered abroad during a period qualifying under section 116(a) of the Code. To the extent such payments represent earnings on and accretions to contributions of either the employer or the employee, they constitute income from sources within the United States and accordingly are includible in gross income unless expressly excludable pursuant to the provisions of an income tax convention. To compute the portion of each of such payments which is thus includible as income from sources within the United States, with respect to amounts taxable under sections 165(b) or 22(b)(2)(B) of the Code, as annuity payments, the "consideration paid" for the annuity for purposes of section 22(b)(2) of the Code may be taken as including not only amounts contributed under the plan by the employee, but in addition, amounts which represent contributions by the employer on account of foreign service of the employee, if a nonresident alien, or foreign service of the employee during a period qualifying under section 116(a) of the Code, if the employee is a citizen. With respect to distributions under pension, profit-sharing, or stock bonus plans which are taxable under section 165(b) of the Code, as long-term capital gains, the amounts contributed under the plan by the employer on account of foreign service of the employee, if a nonresident alien, or on account of foreign service of the employee during a period qualifying under section 116(a) of the Code if the employee is a citizen, may be included in computing the "amounts

contributed by the employee" as that phrase is used in section 165(b) of the Code.

9. Under the authority contained in section 3791(b) of the Internal Revenue Code, the provisions of this mimeograph will not be invoked for purposes of asserting additional taxes with respect to amounts received by taxpayers during taxable years ending prior to January 1, 1952. For purposes of withholding of income tax pursuant to the provisions of section 143(b) of the Code, the provisions of this mimeograph will not be applied so as to impose a penalty for failure to deduct and withhold with respect to amounts paid prior to January 1, 1953. However, amounts deducted and withheld with respect to amounts so paid will be payable to the Government in accordance with section 143(c) of the Code and will not be refundable.

T. C. ATKESON,
Acting Commissioner.

SECTION 29.165–1: Employees' trusts.

INTERNAL REVENUE CODE

Lump-sum payment received under the civil-service retirement and disability fund by a Federal employee on account of separation from the service. (See I. T. 4102, below.)

SECTION 29.165–6: Taxability of beneficiary under a trust which meets the requirements of section 165(a). (Also Section 29.165–1.)

1952–22–13948
I. T. 4102

INTERNAL REVENUE CODE

Since the civil-service retirement and disability fund is treated as a trust fund and meets the requirements of section 165(a) of the Internal Revenue Code, as amended, that portion of a lump-sum payment received by a Federal civil-service employee or his beneficiary, on account of the employee's separation from the service, which exceeds the total amounts withheld from his compensation under the Civil Service Retirement Act of May 29, 1930 (46 Stat. 468), as amended, is considered, under section 165(b) of the Code, as gain from the sale or exchange of a capital asset held for more than 6 months.

Advice is requested whether that portion of a lump-sum payment received on account of an employee's separation from the service of the Federal Government under the Civil Service Retirement Act of May 29, 1930 (46 Stat. 468), as amended, which exceeds the total amounts withheld from his compensation pursuant to the provisions of that Act, is considered as long-term capital gain under section 165(b) of the Internal Revenue Code.

Section 165(b) of the Internal Revenue Code provides in part as follows:

(b) TAXABILITY OF BENEFICIARY.—The amount actually distributed or made available to any distributee by any such trust shall be taxable to him, in the year in which so distributed or made available, under section 22(b)(2) as if it were an annuity the consideration for which is the amount contributed by the employee, except that if the total distributions payable with respect to any

employee are paid to the distributee within one taxable year of the distributee on account of the employee's separation from the service, the amount of such distribution to the extent exceeding the amounts contributed by the employee, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. * * *

Under the provisions of section 8 of the Act of May 22, 1920 (41 Stat. 614), the Secretary of the Treasury of the United States is directed to invest portions of the civil-service retirement and disability fund in certain interest-bearing securities for the production of income which shall constitute a part of such fund for the benefit of employees under the civil-service retirement system. Such provisions qualify the fund as a trust fund within the purview of section 165(a) of the Internal Revenue Code. (*Cf.* G. C. M. 25358, C. B. 1947–2, 90.) Accordingly, it is held that since the civil-service retirement and disability fund is treated as a trust fund and meets the requirements of section 165(a) of the Internal Revenue Code, as amended, that portion of a lump-sum payment received by a Federal civil-service employee or his beneficiary, on account of the employee's separation from the service, which exceeds the total amounts withheld from his compensation (and otherwise paid into the fund by the employee) under the Civil Service Retirement Act of May 29, 1930 (46 Stat. 468), as amended, is considered, under section 165(b) of the Code, as gain from the sale or exchange of a capital asset held for more than 6 months.

SECTION 29.165–6: Taxability of beneficiary under a trust which meets the requirements of section 165(a).

INTERNAL REVENUE CODE

Applicability of sections 165(a) and 23(p)(1)(B) of the Internal Revenue Code to nonresidents of the United States. (See IR-Mim. 71, pages 170.)

SUPPLEMENT M.—INTEREST AND ADDITIONS TO THE TAX

SECTION 294.—ADDITIONS TO THE TAX IN CASE OF NONPAYMENT

SECTION 29.294–1: Additions to the tax. 1952–22–13949
T. D. 5937

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 907 (81st Cong., 2d sess.) [C. B. 1951–1, 177] and to section 103 of the Revenue Act of 1951, relating to inapplicability of certain penalties and additions to tax.

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 order to conform Regulations 111 [26 CFR, part 29] to Public Law 907 (81st Cong., 2d sess.) [C. B. 1951–1, 177], approved January 2, 1951, and to section 103 of the Revenue Act of 1951, approved October 20, 1951, such regulations are hereby amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 29.145–1 [26 CFR 29.145–1] the following:

PUBLIC LAW 907 [81st CONG., 2d SESS., APPROVED JANUARY 2, 1951]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 145 of the Internal Revenue Code (relating to penalties with respect to failure to file returns, pay tax, etc.,) is amended by relettering subsection (e) as subsection (f) and by adding after subsection (d) a new subsection (e) as follows:

"(e) In the case of taxable years beginning prior to October 1, 1950, and ending after September 30, 1950, the penalties prescribed by this section shall not be applicable if the taxpayer failed to meet the requirements of section 294(d)(2) (relating to substantial underestimate of estimated tax), by reason of the increase in normal tax and surtax on individuals imposed by section 101 of the Revenue Act of 1950."

* * * * * * *

SEC. 103. INAPPLICABILITY OF CERTAIN PENALTIES AND ADDITIONS TO TAX [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) PENALTIES FOR FAILURE TO FILE RETURN.—Section 145 (relating to penalties with respect to failure to file returns, pay tax, etc.) is hereby amended by relettering subsection (f) as subsection (g) and by adding after subsection (e) a new subsection (f) as follows:

"(f) In the case of taxable years beginning prior to November 1, 1951, and ending after October 31, 1951, the penalties prescribed by this section for willful failure to make declarations of, or pay, estimated tax shall not be applicable to a failure to take into account the increase in rates of tax imposed on individuals by the Revenue Act of 1951."

* * * * * * *

PAR. 2. There is inserted immediately preceding section 29.294–1 [26 CFR 29.294–1] the following:

PUBLIC LAW 907 [81st CONG., 2d SESS., APPROVED JANUARY 2, 1951]

* * * * * * *

SEC. 2. Paragraph (2) of subsection (d) of section 294 of the Internal Revenue Code is amended by adding at the end of paragraph (2) a new sentence reading as follows: "In the case of taxable years beginning prior to October 1, 1950, and ending after September 30, 1950, the additions to tax prescribed by this subsection shall not be applicable if the taxpayer failed to meet the 80 per centum and 66⅔ per centum requirements of this paragraph by reason of the increase in normal tax and surtax on individuals imposed by section 101 of the Revenue Act of 1950."

SEC. 103. INAPPLICABILITY OF CERTAIN PENALTIES AND ADDITIONS TO TAX [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(b) ADDITIONS TO TAX.—Section 294(d)(2) (relating to additions to tax for substantial underestimates of estimated tax) is hereby amended

by adding at the end thereof a new sentence as follows: "In the case of taxable years beginning prior to November 1, 1951, and ending after October 31, 1951, the additions to tax prescribed by this subsection shall not be applicable if the taxpayer failed to meet the requirements of this paragraph by reason of the increase in rates of tax on individuals imposed by the Revenue Act of 1951."

PAR. 3. Section 29.294–1, as amended by Treasury Decision 5855 [C. B. 1951–2, 141], approved September 13, 1951 [26 CFR 29.294–1], is further amended by adding at the end of paragraph (*b*) the following new undesignated paragraph:

In the case of taxable years beginning before October 1, 1950, and ending after September 30, 1950, or beginning before November 1, 1951, and ending after October 31, 1951, the provisions of this section are subject to the limitations applicable to such years provided in the amendments made to section 294(d)(2) by Public Law 907 (81st Cong.) and section 103 (b) of the Revenue Act of 1951.

Because of the technical nature of the amendments made by this Treasury Decision, 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 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 October 6, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

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

SUPPLEMENT Q.—REGULATED INVESTMENT COMPANIES

SECTION 362.—TAX ON REGULATED INVESTMENT COMPANIES

SECTION 29.362–2: Method of taxation of regulated investment companies. (Also Sections 29.362–5, 29.362–6.) — 1952–26–13993 T. D. 5949

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 121(e) and 222 of the Revenue Act of 1950, to section 201 (c) and (e) of the Excess Profits Tax Act of 1950, and to section 121(d) of the Revenue Act of 1951, relating to regulated investment companies.

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On September 5, 1952, notice of proposed rule making with respect to amendments to conform Regulations 111 to sections 121(e) and 222

of the Revenue Act of 1950 (P. L. 814, 81st Cong., 2d sess.), approved September 23, 1950, to sections 201 (c) and (e) of the Excess Profits Tax Act of 1950 (P. L. 909, 81st Cong., 2d sess.), approved January 3, 1951, and to section 121(d) of the Revenue Act of 1951 (P. L. 183, 82d Cong., 1st sess.), approved October 20, 1951, relating to regulated investment companies, was published in the Federal Register (17 F. R. 8049). After consideration of such relevant suggestions as were presented by interested persons regarding the proposals, the amendments to Regulations 111 [26 CFR, part 29] are hereby adopted.

PARAGRAPH 1. There is inserted immediately preceding section 29.362–1 [26 CFR 29.362–1] the following:

SEC. 121. INCREASE IN RATE OF CORPORATION INCOME TAXES [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(e) REGULATED INVESTMENT COMPANIES.—

(1) Section 362(b)(3) (relating to normal tax on regulated investment companies) is hereby amended to read as follows:

"(3) In the case of taxable years beginning after June 30, 1950, there shall be levied, collected, and paid for each taxable year upon its Supplement Q net income a tax equal to 25 per centum of the amount thereof. In the case of taxable years beginning after December 31, 1949, and before July 1, 1950, there shall be levied, collected, and paid for each taxable year upon its Supplement Q net income a tax equal to 23 per centum of the amount thereof."

(2) Section 362(b)(4) (relating to surtax on regulated investment companies) is hereby amended to read as follows:

"(4) In the case of taxable years beginning after June 30, 1950, there shall be levied, collected, and paid for each taxable year upon its Supplement Q surtax net income a tax equal to 20 per centum of the amount thereof in excess of $25,000. In the case of taxable years beginning after December 31, 1949, and before July 1, 1950, there shall be levied, collected, and paid for each taxable year upon its Supplement Q surtax net income a tax equal to 19 per centum of the amount thereof in excess of $25,000."

(3) The amendments made by this subsection shall be applicable only with respect to taxable years beginning after December 31, 1949.

* * * * * * *

SEC. 222. REGULATED INVESTMENT COMPANIES [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

Effective with respect to taxable years ending after the date of the enactment of this Act, section 362(b) (relating to method of taxation of regulated investment companies and shareholders) is hereby amended by adding at the end thereof the following:

"(8) For the purposes of this subsection, any dividend or portion thereof declared by a company after the close of the taxable year and prior to the time prescribed by law for the filing of its return for the taxable year (including the period of any extension of time granted for filing such return) shall, to the extent the company so elects in such return, be treated as having been paid during such taxable year, but only if distribution of such dividend is actually made to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration."

SEC. 201. SURTAX ON CORPORATIONS [EXCESS PROFITS TAX ACT OF 1950, APPROVED JANUARY 3, 1951].

* * * * * * *

(c) REGULATED INVESTMENT COMPANIES.—Section 362(b)(4) of such Code [Internal Revenue Code] (relating to surtax on regulated invest-

ment companies) is hereby amended by striking out "20 per centum" and inserting in lieu thereof "22 per centum".

* * * * * * *

(e) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning on or after July 1, 1950.

SEC. 121. INCREASE IN RATE OF CORPORATION NORMAL TAX [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(d) REGULATED INVESTMENT COMPANIES.—Section 362(b) (relating to tax on regulated investment companies) is hereby amended by striking out paragraphs (3) and (4) and inserting in lieu thereof the following:

"(3) In the case of taxable years beginning after December 31, 1950, and before April 1, 1951, and ending after March 31, 1951, there shall be levied, collected, and paid for each taxable year upon its Supplement Q net income a tax equal to 28¾ per centum of the amount thereof. In the case of taxable years beginning after March 31, 1951, and before April 1, 1954, there shall be levied, collected, and paid for each taxable year upon its Supplement Q net income a tax equal to 30 per centum of the amount thereof. In the case of taxable years beginning after March 31, 1954, there shall be levied, collected, and paid for each taxable year upon its Supplement Q net income a tax equal to 25 per centum of the amount thereof.

"(4) In the case of taxable years beginning after December 31, 1950, there shall be levied, collected, and paid for each taxable year upon its Supplement Q surtax net income a tax equal to 22 per centum of the amount thereof in excess of $25,000."

* * * * * * *

SEC. 125. EFFECTIVE DATE [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

The amendments made by this part shall be applicable only with respect to taxable years beginning after March 31, 1951, and to taxable years beginning on January 1, 1951, and ending on December 31, 1951, except that the amendments made to sections * * * 362 * * * of the Internal Revenue Code shall be applicable to taxable years beginning after December 31, 1950, and ending after March 31, 1951. * * *

PAR. 2. Section 29.362-2, as amended by Treasury Decision 5517 [C. B. 1946-2, 8], approved June 12, 1946 [26 CFR 29.362-2], is further amended as follows:

(A) By striking out that portion of the first sentence thereof which follows the parenthetical phrase "(relating to records required to be kept for the purpose of ascertaining the actual ownership of its outstanding stock)," and inserting in lieu thereof the following:

it is taxable—

(*a*) Upon its Supplement Q net income (as defined in section 362(b)(1))—

(1) For taxable years beginning before January 1, 1950, at the rate of 24 percent of the amount thereof;

(2) For taxable years beginning after December 31, 1949, and before July 1, 1950, at the rate of 23 percent of the amount thereof;

(3) For taxable years beginning after June 30, 1950, and before January 1, 1951, and for taxable years beginning after December 31, 1950, and ending before April 1, 1950, at the rate of 25 percent of the amount thereof;

(4) For taxable years beginning after December 31, 1950, and before April 1, 1951, and ending after March 31, 1951, at the rate of 28¾ percent of the amount thereof;

(5) For taxable years beginning after March 31, 1951, and before April 1, 1954, at the rate of 30 percent of the amount thereof;

(6) For taxable years beginning after March 31, 1954, at the rate of 25 percent of the amount thereof.

(*b*) Upon its Supplement Q surtax net income (as defined in section 362(b)(2))—

(1) For taxable years beginning before January 1, 1946, at the rate of 16 percent of the amount thereof;

(2) For taxable years beginning after December 31, 1945, and before January 1, 1950, at the rate of 14 percent of the amount thereof;

(3) For taxable years beginning after December 31, 1949, and before July 1, 1950, at the rate of 19 percent of the amount thereof in excess of $25,000;

(4) For taxable years beginning after June 30, 1950, at the rate of 22 percent of the amount thereof in excess of $25,000.

(*c*) Upon the excess of any net long-term capital gain over the sum of the net short-term capital loss and the amount of capital gain dividends (as defined in section 362(b)(7)) paid during the year, at the rate of 25 percent of such excess.

(B) By inserting immediately after the fifth sentence thereof (beginning "See section 29.27(b)-2") the following new sentence:

For certain distributions made after the close of the taxable year which the regulated investment company may elect to treat as paid during the taxable year for purposes of section 362(b), see section 29.362-6.

PAR. 3. Section 29.362-5 [26 CFR 29.362-5] is amended by adding at the end thereof the following new sentence:

For additional rules applicable to certain distributions made after the close of the taxable year which may be designated as capital gain dividends, see section 29.362-6.

PAR. 4. There is inserted immediately after section 29.362-5 [26 CFR 29.362-5] the following new section:

SEC. 29.362-6. DISTRIBUTION OF DIVIDENDS AFTER CLOSE OF TAXABLE YEAR.—Effective with respect to any taxable year ending after September 23, 1950, section 362(b)(8) provides that:

(1) in determining under section 362(b) whether a regulated investment company distributes during the taxable year to its shareholders as taxable dividends (other than capital gain dividends) an amount not less than 90 percent of its net income for the taxable year computed without regard to net long-term and net short-term capital gains,

(2) in computing the Supplement Q net income and the Supplement Q surtax net income, and

(3) in determining the amount of capital gain dividends paid during the taxable year,

any dividend (or portion thereof) declared by the company after the close of such taxable year and prior to the time prescribed by law for the filing of its return for such taxable year (including the period of any extension of time granted for filing such return) shall, to the extent the company so elects in such return, be treated as having been paid during such taxable year. This rule is applicable only if distribution of the entire amount of such dividend is actually made to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular divided payment made after such declaration.

The election must be made in the return filed by the company for the taxable year. The election shall be made by the taxpayer by treating the dividend (or portion thereof) to which such election applies as a dividend paid during the taxable year in computing its Supplement Q net income and its Supplement Q surtax net income, or if the dividend (or portion thereof) to which such election applies is to be designated by the company as a capital gain dividend, in computing the amount of capital gain dividends paid during such taxable year. The election provided in section 362(b)(8) may be made only to the extent that the earnings and profits of the taxable year (computed with the application of section 362(a)) exceed the total amount of distributions out of such earnings and profits actually made during the taxable year (not including distributions with respect to which a prior election has been made under section 362(b)(8)). The dividend or portion thereof, with respect to which the regulated investment

company has made a valid election under section 362(b)(8), shall be considered as paid out of earnings and profits of the taxable year for which such election is made, and not out of earnings and profits of the taxable year in which the distribution is actually made. However, the dividend or portion thereof subject to the election will be includible in the gross income of shareholders of the regulated investment company for the taxable year in which the dividend is received by them.

Example (1). X Company, a regulated investment company, had a net income (and earnings or profits) for the calendar year 1950 of $100,000. During that year the company distributed to shareholders taxable dividends aggregating $88,000. On March 10, 1951, the company declared a dividend of $37,000 payable to shareholders on March 20, 1951. Such dividend consists of the first regular quarterly dividend for 1951 of $25,000 plus an additional $12,000 representing that part of the net income for 1950 which was not distributed in 1950. On March 15, 1951, X Company files its Federal income tax return and elects therein to treat $12,000 of the total dividend of $37,000 to be paid to shareholders on March 20, 1951, as having been paid during the taxable year 1950. Assuming that X Company actually distributes the entire amount of the dividend of $37,000 on March 20, 1951, an amount equal to $12,000 thereof will be treated for the purposes of section 362(b) as having been paid during the taxable year 1950. Such amount ($12,000) will be considered a distribution out of the earnings and profits of the company for the taxable year 1950, and will be treated as a taxable dividend to the shareholders for the taxable year in which such distribution is received by them.

Example (2). Y Company, a regulated investment company, had a net income (and earnings or profits) for the calendar year 1950 of $100,000, and for 1951 a net income (and earnings or profits) of $125,000. On January 1, 1950, the company had a deficit in its earnings and profits accumulated since February 28, 1913, of $115,000. During the year 1950 the company distributed to shareholders taxable dividends aggregating $85,000. On March 5, 1951, the company declared a dividend of $65,000 payable to shareholders on March 31, 1951. On March 15, 1951, Y Company files its Federal income tax return in which it includes $40,000 of the total dividend of $65,000 to be paid to shareholders on March 31, 1951, as a dividend paid by it during the taxable year 1950. On March 31, 1951, Y Company distributes the entire amount of the dividend of $65,000 declared on March 5, 1951. The election under section 362(b)(8) is valid only to the extent of $15,000, the amount of undistributed earnings or profits for 1950. The remainder ($50,000) of the dividend paid on March 31, 1951, may not be the subject of an election, but such amount will be regarded as a distribution by Y Company for the taxable year 1951. Assuming that the only other distribution by the Y Company during 1951 is a distribution of $75,000 paid as a dividend on October 31, 1951, the total amount of the distribution of $65,000 paid to shareholders on March 31, 1951, is to be treated as taxable dividends to the shareholders. Of this amount $15,000 is to be treated as distributed out of the earnings or profits of the company for the taxable year 1950, and the remaining $50,000 as a distribution out of the earnings or profits for the year 1951. The distribution of $75,000 on October 31, 1951, is, of course, a taxable dividend out of the earnings and profits for the year 1951.

A dividend (or portion thereof) with respect to which an election has been made under section 362(b)(8) and which the company desires to designate as a capital gain dividend need not be so designated within 30 days after the close of the taxable year, but will be properly designated as a capital gain dividend if it is designated as such in a written notice mailed to the shareholders at the time of the payment of the dividend. Such designated capital gain dividends are to be aggregated with the designated capital gain dividends actually paid during such taxable year (not including such dividends with respect to which a prior election has been made under section 362(b)(8)) for the purpose of determining whether the aggregate of the designated capital gain dividends with respect to such taxable year of the company is greater than the excess of the net long-term capital gain over the net short-term capital loss of the company.

After the expiration of the time for filing the return for the taxable year for which an election is made under section 362(b)(8), such election shall be irrevocable with respect to the dividend or portion thereof to which it applies.

(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).)

JUSTIN F. WINKLE,
Acting Commissioner of Internal Revenue.

Approved November 28, 1952.

JOHN S. GRAHAM,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 3, 1952, 8:48 a. m.)

SECTION 29.362–5: Method of taxation of shareholders of regulated investment companies.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5949, page 176.)

SECTION 29.362–6: Distribution of dividends after close of taxable year.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5949, page 176.)

SUPPLEMENT U.—TAXATION OF BUSINESS INCOME OF CERTAIN SECTION 101 ORGANIZATIONS

SECTION 421.—IMPOSITION OF TAX

SECTION 29.421–3: Imposition of tax. 1952–19–13923
T. D. 5928

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

Taxation of the business income of certain tax-exempt organizations for taxable years beginning after December 31, 1950.

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

To Collectors of Internal Revenue and Others Concerned:

On January 8, 1952, notice of proposed rule making was published in the Federal Register (17 F. R. 204), in order to conform Regulations 111 [26 CFR, part 29] to part I of title III of the Revenue Act of 1950, approved September 23, 1950, to section 201 (d) and (e) of the Excess Profits Tax Act of 1950, approved January 3, 1951, and to sections 121(e), 125, 339, 347, and 348 of the Revenue Act of 1951, 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. A technical amendment is also made to 26 CFR 601.17(a), respecting forms required of organizations

exempt from taxes imposed under chapter 1 of the Internal Revenue Code.

PARAGRAPH 1. Section 29.52–1, as amended by Treasury Decision 5458 [C. B. 1945, 45], approved June 15, 1945 [26 CFR 29.52–1], is further amended by inserting immediately after the third sentence thereof the following:

For returns of certain corporations, otherwise exempt from tax under section 101 (1), (6), (7), or (14), which are subject to the tax imposed by section 421(a)(1) upon their supplement U net income for any taxable year beginning after December 31, 1950, see section 29.421–5. For returns of certain governmental colleges or universities and corporations wholly owned by such colleges or universities, which are subject to the tax imposed by section 421(a)(1) upon their supplement U net income for any taxable year beginning after December 31, 1951, see section 29.421–5.

PAR. 2. Section 29.54–1, as amended by Treasury Decision 5838 [C. B. 1951–1, 35, 38], approved April 17, 1951 [26 CFR 29.54–1], is further amended by striking the word "Every" at the beginning of the second sentence thereof, and by inserting in lieu of such word the following: "In addition to such permanent books and records as are required under the preceding sentence with respect to the tax imposed by supplement U, every".

PAR. 3. Section 29.101–2, as amended by Treasury Decision 5838 [26 CFR 29.101–2], is further amended by inserting at the end thereof the following:

(k) Supplement U tax returns.—In addition to the foregoing requirements of this section, certain organizations otherwise exempt from tax under section 101 (1), (6), (7), or (14), that are subject to tax on supplement U net income, are also required to file returns on Form 990–T for taxable years beginning after December 31, 1950. See section 29.421–5 for requirements with respect to such returns.

PAR. 4. Section 29.101(1)–1 [26 CFR 29.101(1)–1] and section 29.101(7)–1 [26 CFR 29.101(7)–1] are each amended by adding at the end thereof the following:

For taxable years beginning after December 31, 1950, organizations otherwise exempt from tax under this section are taxable upon their supplement U net income. See sections 421 through 424, and the regulations thereunder.

PAR. 5. Section 29.101(6)–1 [26 CFR 29.101(6)–1] is amended by striking the fourth paragraph and inserting in lieu thereof the following:

Since an organization exempt under section 101(6) must be organized and operated exclusively for one or more of the specified purposes, an organization organized or operated for the primary purpose of carrying on a trade or business for profit is not exempt thereunder. Thus, such an organization is not exempt under section 101(6) even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization. See section 101(18) as to religious or apostolic associations or corporations. For taxable years beginning after December 31, 1950, organizations, including trusts, otherwise exempt from tax under this section (other than a church, or a convention or association of churches) are taxable on supplement U net income. See sections 421 through 424, and the regulations thereunder.

PAR. 6. Paragraph (14) of section 101 is stricken from that portion of section 101 which is set forth immediately after section 29.101(13)–1 [26 CFR 29.101(13)–1], and there is inserted immediately after section 29.101(13)–1 the following:

[SEC. 101. EXEMPTIONS FROM TAX ON CORPORATIONS—AS AMENDED BY SEC. 217(a), REV. ACT 1939; SECS. 137(a), 165(a), REV. ACT 1942.]

[The following organizations shall be exempt from taxation under this chapter—]

(14) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this chapter;

SEC. 29.101(14)–1. CORPORATIONS ORGANIZED TO HOLD TITLE TO PROPERTY FOR EXEMPT ORGANIZATIONS.—For taxable years beginning after December 31, 1950, a corporation otherwise exempt from tax under section 101(14) is taxable upon its supplement U net income if the income is payable to an organization which is itself subject to the tax imposed by supplement U or if the income is payable to a church or to a convention or association of churches. Since a corporation to be exempt under section 101(14) must not engage in any business other than that of holding title to property and collecting income therefrom, it cannot have unrelated business net income as defined in section 422(a) other than supplement U rental income described in section 423.

A corporation exempt under section 101(14) cannot accumulate income and retain its exemption, but it must turn over the entire amount of such income, less expenses, to an organization which is itself exempt from tax under chapter 1 of the Internal Revenue Code.

PAR. 7. There is inserted immediately preceding section 29.117–1 [26 CFR 29.117–1] the following:

SEC. 301. INCOME OF EDUCATIONAL, CHARITABLE, AND CERTAIN OTHER EXEMPT ORGANIZATIONS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(c) TECHNICAL AMENDMENTS.—

* * * * * * *

(2) Section 117(c)(1) is hereby amended by inserting before "and 500" the following: "421,".

(3) Section 117(c)(2) is hereby amended by inserting after "sections 11 and 12" the following: "(or, in the case of certain tax-exempt trusts, in lieu of the tax imposed by section 421)".

* * * * * * *

SEC. 303. EFFECTIVE DATE OF PART I [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

The amendments made by this part [sections 301, 302, and 303 of the Revenue Act of 1950] shall be applicable only with respect to taxable years beginning after December 31, 1950. * * *

PAR. 8. Section 29.117–3 [26 CFR 29.117–3] is amended as follows:

(A) By inserting in the first paragraph thereof immediately after "sections 11 and 12", in each place where those words appear, the following: "(or, in the case of certain tax-exempt trusts, the tax imposed by section 421)".

(B) By inserting in the second paragraph thereof immediately before "and 500", in each place where that phrase appears, the following: "421,".

(C) By inserting immediately after the second paragraph thereof the following:

In applying section 117(c) in the case of tax-exempt trusts or organizations subject to the tax imposed by section 421, the only amount which is taken into account as capital gain or loss is that which is taken into account in computing unrelated business net income under section 422. Under section 422, the only amount taken into account as capital gain or loss is that resulting from the application of section 117(k)(1).

PAR. 9. Section 29.142–1, as amended by Treasury Decision 5687 [C. B. 1949–1, 9, 31], approved February 16, 1949 [26 CFR 29.142–1], is further amended by inserting at the end thereof the following:

(e) *Supplement U tax returns.*—For returns on Form 990–T by certain trusts otherwise exempt from tax under section 101(6), which trusts are subject to the tax imposed by section 421(a)(2) upon supplement U net income, see section 29.421–5.

PAR. 10. There is inserted immediately preceding section 29.143–1 [26 CFR 29.143–1] the following:

SEC. 301. INCOME OF EDUCATIONAL, CHARITABLE, AND CERTAIN OTHER EXEMPT ORGANIZATIONS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(c) TECHNICAL AMENDMENTS.—

* * * * * * *

(4) Section 143 is hereby amended by adding at the end thereof the following new subsection:

"(h) WITHHOLDING ON CERTAIN FOREIGN TAX-EXEMPT ORGANIZATIONS.—In the case of income of a foreign organization subject to the tax imposed by section 421(a), the provisions of this section and section 144 shall apply to rents includible under section 422 in computing its unrelated business net income, but only to the extent and subject to such conditions as may be provided under regulations prescribed by the Secretary."

* * * * * * *

SEC. 303. EFFECTIVE DATE OF PART I [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

The amendments made by this part [sections 301, 302, and 303 of the Revenue Act of 1950] shall be applicable only with respect to taxable years beginning after December 31, 1950. * * *

PAR. 11. Section 29.143–1(*a*), as amended by Treasury Decision 5709 [C. B. 1949–2, 56], approved June 27, 1949 [26 CFR 29.143–1(a)], is further amended by adding immediately after the sixth paragraph thereof the following:

The gross amount of rents paid under a supplement U lease to an organization subject to the tax imposed by section 421(a) with respect to rents includible under section 422 in computing unrelated business net income is subject to withholding.

PAR. 12. Section 29.144–1 [26 CFR 29.144–1] is amended by adding immediately after the fifth paragraph the following:

For withholding in the case of rents under a supplement U lease paid to a foreign corporation subject to the tax imposed by section 421(a), see section 143(h) and section 29.143–1(*a*).

PAR. 13. Section 29.217–2, as amended by Treasury Decision 5687 [26 CFR 29.217–2], and section 29.235–2 [26 CFR 29.235–2] are each amended by inserting at the end thereof the following:

(*c*) *Supplement U tax.*—For returns with respect to the tax imposed by section 421(a) upon supplement U net income for any taxable year beginning after December 31, 1950, see section 29.421–5.

PAR. 14. There is inserted immediately after section 29.220–1, as added by Treasury Decision 5893 [C. B. 1952–1, 126], approved April 4, 1952 [26 CFR 29.220–1], the following:

SEC. 301. INCOME OF EDUCATIONAL, CHARITABLE, AND CERTAIN OTHER EXEMPT ORGANIZATIONS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(c) TECHNICAL AMENDMENTS.—

* * * * * * *

(5) Supplement H is hereby amended by adding at the end thereof the following new section:

"SEC. 221. FOREIGN EDUCATIONAL, CHARITABLE, AND CERTAIN OTHER EXEMPT ORGANIZATIONS.

"For special provisions relating to foreign educational, charitable, and other exempt trusts, see section 421(d)."

* * * * * * *

SEC. 303. EFFECTIVE DATE OF PART I [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

The amendments made by this part [sections 301, 302, and 303 of the Revenue Act of 1950] shall be applicable only with respect to taxable years beginning after December 31, 1950. * * *

PAR. 15. There is inserted immediately after section 237, which section is set forth immediately after section 29.236–1 [26 CFR 29.236–1], the following:

SEC. 301. INCOME OF EDUCATIONAL, CHARITABLE, AND CERTAIN OTHER EXEMPT ORGANIZATIONS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(c) TECHNICAL AMENDMENTS.—

* * * * * * *

(6) Supplement I is hereby amended by adding at the end thereof the following new section:

"SEC. 238. FOREIGN EDUCATIONAL, CHARITABLE, AND CERTAIN OTHER EXEMPT ORGANIZATIONS.

"For special provisions relating to foreign educational, charitable, and certain other exempt organizations, see section 421(d)."

* * * * * * *

SEC. 303. EFFECTIVE DATE OF PART I [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

The amendments made by this part [sections 301, 302, and 303 of the Revenue Act of 1950] shall be applicable only with respect to taxable years beginning after December 31, 1950. * * *

PAR. 16. The title of supplement U, which title is set forth immediately after section 29.404–1 [26 CFR 29.404–1], is amended to read as follows:

SUPPLEMENT U [TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1948]—ABATEMENT OF TAX FOR MEMBERS OF ARMED FORCES ON DEATH

PAR. 17. There is inserted immediately after section 29.421–1 [26 CFR 29.421–1] the following:

SUPPLEMENT U [TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1950]—TAXATION OF BUSINESS INCOME OF CERTAIN SECTION 101 ORGANIZATIONS

SEC. 421. IMPOSITION OF TAX [APPLICABLE TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1950—AS AMENDED BY SEC. 301, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950, BY SEC. 201 (d) AND (e), EXCESS

PROFITS TAX ACT OF 1950, APPROVED JANUARY 3, 1951, AND BY SECS. 121(e) AND 339(a), REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

[NOTE.—For effective date of the last clause of section 421(a)(1), see section 125 of the Revenue Act of 1951, set forth below, and for the effective date of section 421(b)(1)(B), see section 339(c) of the Revenue Act of 1951, set forth below.]

(a) IN GENERAL.—There shall be levied, collected, and paid for each taxable year beginning after December 31, 1950—

(1) upon the supplement U net income (as defined in subsection (c)) of every organization described in subsection (b)(1), a normal tax of 25 per centum of the supplement U net income, and a surtax of 22 per centum of the amount of the supplement U net income in excess of $25,000; except that (A) in the case of taxable years beginning before April 1, 1951, and ending after March 31, 1951, the normal tax shall be 28¾ per centum of the supplement U net income, and (B) in the case of taxable years beginning after March 31, 1951, and before April 1, 1954, the normal tax shall be 30 per centum of the supplement U net income.

(2) upon the supplement U net income of every trust described in subsection (b)(2), a normal tax computed at the rate and in the manner provided in section 11 and a surtax computed at the rates and in the manner provided in section 12(b). In making such computations for the purposes of this section, the term "the amount of the net income in excess of the credits against net income provided in section 25" as used in section 11 shall be read as "the amount of the supplement U net income" and the term "surtax net income" as used in section 12(b) shall be read as "supplement U net income".

(b) ORGANIZATIONS SUBJECT TO TAX.—

(1) ORGANIZATIONS TAXABLE AS CORPORATIONS.—

(A) Organizations Exempt Under Section 101 (1), (6), (7), and (14).—The taxes imposed by subsection (a)(1) shall apply in the case of any organization (other than a church, a convention or association of churches, or a trust described in paragraph (2)) which is exempt, except as provided in this supplement, from taxation under this chapter by reason of paragraph (1), (6), or (7) of section 101. Such taxes shall also apply in the case of a corporation described in section 101(14) if the income is payable to an organization which itself is subject to the tax imposed by subsection (a) or to a church or to a convention or association of churches.

(B) State Colleges and Universities.—The taxes imposed by subsection (a)(1) shall apply in the case of any college or university which is an agency or instrumentality of any government or any political subdivision thereof, or which is owned or operated by a government or any political subdivision thereof or by any agency or instrumentality of any one or more governments or political subdivisions. Such taxes shall also apply in the case of any corporation wholly owned by one or more such colleges or universities.

(2) TRUSTS TAXABLE AT INDIVIDUAL RATES.—The taxes imposed by subsection (a)(2) shall apply in the case of any trust which is exempt, except as provided in this supplement, from taxation under this chapter by reason of paragraph (6) of section 101 and which, if it were not for such exemption, would be subject to the provisions of supplement E.

(c) DEFINITION OF SUPPLEMENT U NET INCOME.—The term "supplement U net income" of an organization means the amount by which its unrelated business net income (as defined in section 422) exceeds $1,000.

(d) FOREIGN ORGANIZATIONS.—The supplement U net income of an organization described in subsection (b) (1) or (2) which is a foreign organization shall be its supplement U net income derived from sources within the United States determined in accordance with the rules of section 119 and sections 212, 213(a), 231 (c) and (d), and 232(a).

SEC. 125. EFFECTIVE DATE [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * the amendments made to sections * * * 421 [by section 121(e) which adds to section 421(a)(1) the clause beginning "; except that * * *"] of the Internal Revenue Code shall be applicable to taxable years beginning after December 31, 1950, and ending after March 31, 1951. * * *

SEC. 339. TAXATION OF BUSINESS INCOME OF STATE COLLEGES AND UNIVERSITIES [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(c) EFFECTIVE DATE.—The amendments made by this section [which adds subparagraph (B) to section 421(b)(1)] shall be applicable only with respect to taxable years beginning after December 31, 1951.

[Section 29.421–1, relating to abatement of tax for members of Armed Forces on death, is set forth above immediately preceding section 421 as amended by the Revenue Act of 1950 and subsequent Acts.]

SEC. 29.421–2. SECTION 421 AS APPLICABLE TO TAXABLE YEARS BEGINNING BEFORE 1948 AND AS APPLICABLE TO TAXABLE YEARS BEGINNING AFTER 1950.—The provisions of supplement U, and section 421 of such supplement, for taxable years beginning before January 1, 1948, are entirely different from those applicable for taxable years beginning after December 31, 1950. For certain taxable years beginning before 1948, supplement U and section 421 relate to the abatement of tax for members of the Armed Forces on death. For taxable years beginning after 1950, supplement U and section 421 relate to the imposition of tax upon income of certain otherwise tax-exempt organizations. In order to avoid confusion as to the regulations applicable under these two different provisions of supplement U and section 421, the regulations under supplement U and section 421 applicable for taxable years beginning before 1948 (that is, the regulations relating to the abatement of tax for members of the Armed Forces on death) are contained in section 29.421–1, and the regulations under supplement U and section 421 for taxable years beginning after 1950 (that is, the regulations relating to the imposition of tax on the income of certain otherwise tax-exempt organizations) are set forth in section 29.421–3 and the sections of the regulations immediately following such section.

SEC. 29.421–3. IMPOSITION OF TAX.—(*a*) *Rates of tax.*—Section 421(a) imposes a tax, applicable only with respect to taxable years beginning after December 31, 1950, upon the supplement U net income of certain organizations otherwise exempt from Federal income tax by reason of section 101 (1), (6), (7), or (14). Effective only with respect to taxable years beginning after December 31, 1951, the taxes imposed by section 421(a) shall also apply in the case of any college or university which is an agency or instrumentality of any government or any political subdivision thereof, or which is owned or operated by a government or any political subdivision thereof or by any agency or instrumentality of any one or more governments or political subdivisions, and to any corporation wholly owned by one or more such colleges or universities. Under section 421(a)(1), organizations described in section 421(b)(1)(A) and in section 29.421–4(*a*)(1) are, for taxable years beginning after December 31, 1950, and organizations described in section 421(b)(1)(B) and in section 29.421–4(*a*)(2) are, for taxable years beginning after December 31, 1951, subject to—

(1) A normal tax of 25 percent on their supplement U net income, except that (A) in the case of taxable years beginning before April 1, 1951, and ending after March 31, 1951, the normal tax shall be 28¾ percent of the supplement U net income, and (B) in the case of taxable years beginning after March 31, 1951, and before April 1, 1954, the normal tax shall be 30 percent of the supplement U net income, and

(2) A surtax of 22 percent on the amount of such income in excess of $25,000.

Under section 421(a)(2), trusts described in section 421(b)(2) and section 29.421–4(*b*) are, for taxable years beginning after December 31, 1950, subject to tax at the individual rates prescribed in sections 11 and 12(b). For the purpose of computing the tax imposed by section 11 and section 12(b), the term "the amount of the net income in excess of the credits against net income provided in section 25", as used in section 11, and the term "surtax net income",

as used in section 12(b), shall each be read as "supplement U net income". The credit of $100 against net income provided in section 163(a)(1) in the case of a trust taxable under supplement E is not allowed as a credit against supplement U net income.

(*b*) *Definition of supplement U net income.*—The term "supplement U net income" means the amount by which the unrelated business net income (as defined in section 422) of an organization exceeds $1,000.

SEC. 29.421–4. ORGANIZATIONS SUBJECT TO TAX.—(*a*) (1) The taxes imposed by section 421(a)(1) apply in the case of any organization (other than a church, a convention or association of churches, or a trust described in section 421(b)(2) and in (*b*) of this section) which is exempt, except as provided in supplement U, from taxation under chapter 1 by reason of paragraph (1), (6), or (7) of section 101. A corporation exempt from taxation under section 101(14), holding property for an organization which itself is subject to the tax or for a church or a convention or association of churches, is also subject to the supplement U tax under section 421(a)(1).

(2) The taxes imposed by section 421(a)(1) apply in the case of any college or university which is an agency or instrumentality of any government or any political subdivision thereof, or which is owned or operated by a government or any political subdivision thereof or by any agency or instrumentality of any one or more governments or political subdivisions. Such taxes also apply in the case of any corporation wholly owned by one or more such colleges or universities. As here used, the word "government" includes any foreign government (to the extent not contrary to any treaty obligation of the United States) and all domestic governments (the United States and any of its Territories or possessions, any State, and the District of Columbia). Elementary and secondary schools operated by such governments are not subject to the supplement U tax.

(3) Churches and associations or conventions of churches are exempt from the supplement U tax. The exemption is applicable only to an organization which itself is a church or an association or convention of churches. Religious organizations, including religious orders, if not themselves churches or associations or conventions of churches, and all other organizations which are organized or operated under church auspices, are subject to the supplement U tax, whether or not they carry out a religious, educational, or charitable function approved by a church. For example, an incorporated university exempt from tax under section 101(6) is subject to the supplement U tax whether or not it was organized by or is operated under the auspices of a church.

(*b*) The taxes imposed by section 421(a)(2) shall apply in the case of any trust which is exempt, except as provided in supplement U, from taxation under chapter 1 by reason of paragraph (6) of section 101 and which, if it were not for such exemption under section 101(6), would be subject to the provisions of supplement E of such chapter.

SEC. 29.421–5. PROVISIONS GENERALLY APPLICABLE TO SUPPLEMENT U TAX.—(*a*) *Assessment and collections.*—Since the taxes imposed by section 421 are taxes imposed by chapter 1 of the Internal Revenue Code, all provisions of law and of these regulations applicable to the taxes imposed by chapter 1 are applicable to the assessment and collection of the taxes imposed by section 421. See (*b*) of this section for the requirement as to the filing of returns. Organizations subject to the tax imposed by section 421(a)(1) are subject to the same provisions, including penalties, as are provided in the case of the income tax of other corporations. In the case of a trust subject to the tax imposed by section 421(a)(2), the fiduciaries for such trust are subject to the same provisions, including penalties, as are applicable to fiduciaries in the case of the income tax of other trusts. See sections 52, 53, 56, and 142, and the regulations prescribed thereunder, with respect to provisions applicable to returns and payment of tax.

(*b*) *Returns.*—The return of supplement U tax shall be on Form 990–T. The return shall be filed for each taxable year beginning after December 31, 1950, by every organization, otherwise exempt from tax under section 101 (1), (6), (7), or (14) and subject to the supplement U tax, which has gross income, included in computing unrelated business net income for such taxable year, of $1,000 or more. A return shall also be filed for each taxable year beginning after December 31, 1951, by every governmental college or university and by every corporation wholly owned by such a college or university, which is subject to the supplement U tax and which has gross income, included in computing unrelated business net income for such taxable year, of $1,000 or more. The filing

of Form 990–T does not relieve the organization of the duty of filing other returns required under chapter 1 of the Internal Revenue Code.

(c) *Taxable years, method of accounting, etc.*—The taxable year (fiscal year or calendar year, as the case may be) of an organization shall be determined without regard to the fact that such organization may have been exempt from tax during any prior period. See sections 41 and 48, and the regulations thereunder. Similarly, in computing unrelated business net income, the determination of the taxable year for which an item of income or expense is taken into account shall be made under the provisions of sections 41, 42, and 43, and the regulations thereunder, whether or not the item arose during a taxable year beginning before, on, or after December 31, 1950. If a method for treating bad debts was selected in a return of income (other than an information return) for a previous taxable year, the taxpayer must follow such method in its returns under supplement U, unless such method is changed in accordance with the provisions of section 29.23(k)–1. A taxpayer which has not previously selected a method for treating bad debts may, in its first return under supplement U, exercise the option granted in section 29.23(k)–1.

(d) *Foreign tax credit.*—See section 424 for provisions applicable to the credit for foreign taxes provided in section 131.

SEC. 422. UNRELATED BUSINESS NET INCOME [APPLICABLE TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1950—AS ADDED BY SEC. 301, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950, AND AS AMENDED BY SECS. 339(b), 347, AND 348, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

[NOTE.—For the provisions of section 422 inserted by the amendments made by sections 339(b), 347, and 348 of the Revenue Act of 1951, and for the effective dates of such amendments, see sections 339(c), 347(b), and 348(b) of the Revenue Act of 1951, set forth below.]

(a) DEFINITION.—The term "unrelated business net income" means the gross income derived by any organization from any unrelated trade or business (as defined in subsection (b)) regularly carried on by it, less the deductions allowed by section 23 which are directly connected with the carrying on of such trade or business, subject to the following exceptions, additions, and limitations:

(1) There shall be excluded all dividends, interest, and annuities, and all deductions directly connected with such income.

(2) There shall be excluded all royalties (including overriding royalties) whether measured by production or by gross or net income from the property, and all deductions directly connected with such income.

(3) There shall be excluded all rents from real property (including personal property leased with the real property), and all deductions directly connected with such rents.

(4) Notwithstanding paragraph (3), in the case of a supplement U lease (as defined in section 423(a)) there shall be included, as an item of gross income derived from an unrelated trade or business, the amount ascertained under section 423(d)(1) and there shall be allowed, as a deduction, the amount ascertained under section 423(d)(2).

(5) There shall be excluded all gains or losses from the sale, exchange, or other disposition of property other than (A) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, or (B) property held primarily for sale to customers in the ordinary course of the trade or business. This paragraph shall not apply with respect to the cutting of timber which is considered, upon the application of section 117(k)(1), as a sale or exchange of such timber.

(6) The net operating loss deduction provided in section 23(s) shall be allowed, except that—

(A) the net operating loss for any taxable year, the amount of the net operating loss carry-back or carry-over to any taxable year, and the net operating loss deduction for any taxable year shall be determined under section 122 without taking into ac-

count any amount of income or deduction which is excluded under this supplement in computing the unrelated business net income; and

(B) the terms "preceding taxable year" and "preceding taxable years" as used in section 122 shall not include any taxable year for which the organization was not subject to the provisions of this supplement.

(7) There shall be excluded all income derived from research for (A) the United States, or any of its agencies or instrumentalities, or (B) any State or political subdivision thereof; and there shall be excluded all deductions directly connected with such income.

(8) (A) In the case of a college, university, or hospital, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(B) In the case of an organization operated primarily for the purposes of carrying on fundamental research the results of which are freely available to the general public, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(9) (A) In the case of any organization described in section 421(b)(1), the so-called "charitable contribution" deduction allowed by section 23(q) shall be allowed (whether or not directly connected with the carrying on of the trade or business), but shall not exceed 5 per centum of the unrelated business net income computed without the benefit of this subparagraph.

(B) In the case of any trust described in section 421(b)(2), the so-called "charitable contribution" deduction allowed by section 23(o) shall be allowed (whether or not directly connected with the carrying on of the trade or business), and for such purpose a distribution made by the trust to a beneficiary described in section 23(o) shall be considered as a gift or contribution. The deduction allowed by this subparagraph shall not exceed 15 per centum of the unrelated business net income computed without the benefit of this subparagraph.

If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business net income shall, subject to the exceptions, additions, and limitations contained in paragraphs (1) through (9) above, include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income. If the taxable year of the organization is different from that of the partnership, the amounts to be so included or deducted in computing the unrelated business net income shall be based upon the income and deductions of the partnership for any taxable year of the partnership (whether beginning on, before, or after January 1, 1951) ending within or with the taxable year of the organization. In the case of an organization described in section 3813(a)(2) which is a member of a partnership all of whose members are organizations described in section 3813(a)(2), if a trade or business regularly carried on by such partnership is an unrelated trade or business with respect to such organization, such organization shall, for taxable years beginning before January 1, 1954, be allowed a deduction in an amount equal to the portion of the gross income of such partnership from such unrelated trade or business which such organization is required (by a provision of a written contract executed by such organization prior to January 1, 1950, which provision expressly deals with the disposition of the gross income of the partnership) to pay within the taxable year in discharge of indebtedness incurred by such organization in acquiring its share of such trade or business, or to irrevocably set aside within the taxable year for the discharge of such indebtedness (to the extent that such amount has been so paid or set aside) if (i) such partnership was formed prior to January 1, 1950, for the purpose of carrying on such trade or business, and (ii) substantially all the assets used in carrying on such trade or business were acquired by it or by its members prior to such date. As used in the preceding sentence,

the word "indebtedness" does not include indebtedness incurred after January 1, 1950.

(b) UNRELATED TRADE OR BUSINESS.—The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 421(a), any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 101 (or, in the case of an organization described in section 421(b)(1)(B), to the exercise or performance of any purpose or function described in section 101(6)), except that such term shall not include any trade or business—

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) which is carried on, in the case of an organization described in section 101(6) or in the case of a college or university described in section 421(b)(1)(B), by the organization primarily for the convenience of its members, students, patients, officers, or employees; or

(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

The term "unrelated trade or business" means, in the case of a trust computing its unrelated business net income under this section for the purposes of section 162(g)(1), any trade or business regularly carried on by such trust or by a partnership of which it is a member. If a publishing business carried on by an organization during a taxable year beginning before January 1, 1953, is, without regard to this sentence, an unrelated trade or business, but before the beginning of the third succeeding taxable year the business is carried on by it (or by a successor who acquired such business in a liquidation which would constitute a tax-free exchange under section 112(b)(6)) in such manner that the conduct thereof is substantially related to the exercise or performance by such organization (or such successor) of its educational or other purpose or function described in section 101(6), such publishing business shall not be considered, for the taxable year, as an unrelated trade or business.

SEC. 339. TAXATION OF BUSINESS INCOME OF STATE COLLEGES AND UNIVERSITIES [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(c) EFFECTIVE DATE.—The amendments made by this section [which adds to section 422(b) the phrase: "(or, in the case of an organization described in section 421(b)(1)(B), to the exercise or performance of any purpose or function described in section 101(6))", and inserts in paragraph (2) thereof the phrase: "or in the case of a college or university described in section 421(b)(1)(B)"] shall be applicable only with respect to taxable years beginning after December 31, 1951.

SEC. 347. PUBLISHING BUSINESS CARRIED ON BY TAX-EXEMPT ORGANIZATIONS [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(b) EFFECTIVE DATE.—The amendment made by this section [which adds to section 422(b) the sentence beginning: "If a publishing business carried on by an organization * * *"] shall be applicable with respect to taxable years beginning after December 31, 1950, and prior to January 1, 1953.

SEC. 348. DEDUCTION WITH RESPECT TO CERTAIN UNRELATED BUSINESS NET INCOME [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(b) EFFECTIVE DATE.—The amendment made by this section [which adds to section 422(a) the sentence beginning: "In the case of an organization described in section 3813(a)(2) * * *" and the sentence following such sentence] shall be applicable with respect to taxable years beginning after December 31, 1950, and prior to January 1, 1954.

SEC. 29.422–1. DEFINITION OF UNRELATED BUSINESS NET INCOME.—(*a*) *General rule.*—The unrelated business net income which is subject to the supplement U tax is the gross income, derived by any organization to which supplement U applies, from any unrelated trade or business regularly carried on by it, less the deductions allowed by section 23 of the Code which are directly connected with the carrying on of such trade or business, subject to certain exceptions, additions, and limitations referred to below. In the case of an organization which regularly carries on two or more unrelated businesses, its unrelated business net income is the aggregate of its gross income from all such unrelated businesses, less the aggregate of the deductions allowed with respect to all such unrelated businesses. For provisions generally applicable to the computation of unrelated business net income, see section 29.421–5, and for rules applicable to the determination of the adjusted basis of property, see section 29.423–3(*a*).

(*b*) *Exceptions, additions, and limitations.*—Whether a particular item of income falls within any of the exceptions, additions, and limitations provided in section 422 shall be determined by all the facts and circumstances of each case. For example, if a payment termed "rent" by the parties is in fact a return of profits by a person operating the property for the benefit of the tax-exempt organization or is a share of the profits retained by such organization as a partner or a joint venturer, such payment is not within the exception for rent. The exceptions, additions, and limitations provided in section 422 are as follows:

(1) *Dividends, interest, and annuities.*—All dividends, interest, and annuities, and the deductions directly connected therewith, shall be excluded in computing unrelated business net income.

(2) *Royalties.*—Royalties, including overriding royalties, and all deductions directly connected with such income shall be excluded in computing unrelated business net income. Mineral royalties shall be excluded whether measured by production or by gross or net income from the mineral property. However, where an organization owns a working interest in a mineral property, and is not relieved of its share of the development costs by the terms of any agreement with an operator, income received from such an interest shall not be excluded. In-oil payments shall be treated in the same manner as royalty payments for the purpose of computing unrelated business net income.

(3) *Rents.*—(i) Rents from real property (including personal property leased with the real property) and the deductions directly connected therewith shall also be excluded in computing unrelated business net income, except that certain rents from, and certain deductions in connection with, a supplement U lease (as defined in section 423(a)) shall be included in computing unrelated business net income. See sections 29.423–3 and 29.423–4.

(ii) Payments for the use or occupancy of rooms or other space where services are also rendered to the occupant, such as for the use or occupancy of rooms or other quarters in hotels, boarding houses, or apartment houses furnishing hotel services, or in tourist camps or tourist homes, or for the use or occupancy of space in parking lots, warehouses, or storage garages, do not constitute rentals from real estate. Generally, services are considered rendered to the occupant if they are primarily for his convenience and are other than those usually or customarily rendered in connection with the rental of rooms or other space for occupancy only. The supplying of maid service, for example, constitutes such service; whereas the furnishing of heat and light, the cleaning of public entrances, exits, stairways and lobbies, the collection of trash, etc., are not considered as services rendered to the occupant. Payments for the use or occupancy of entire private residences or living quarters in duplex or multiple housing units, of offices in an office building, etc., are generally rentals from real estate.

(4) *Gains and losses from the sale, etc., of property.*—There shall also be excluded from the computation of unrelated business net income gains or losses from the sale, exchange, or other disposition of property other than (i) stock in trade or other property of a kind which would properly be included in the inventory of the organization if on hand at the close of the taxable year, or (ii) property held primarily for sale to customers in the ordinary course of the trade or business. This exclusion does not apply with respect to the cutting of timber which is considered, upon the application of section 117(k)(1), as a sale or exchange of such timber. The exclusion under section 422(a)(5) applies with respect to gains and losses from involuntary conversions, casualties, etc.

(5) *Net operating losses.*—The net operating loss deduction provided in section 23(s) shall be allowed in computing unrelated business net income. However, the net operating loss carry-back or carry-over (from a taxable year for which the taxpayer is subject to the provisions of supplement U) shall be determined under section 122 without taking into account any amount of income or deduction which is not included under supplement U in computing unrelated business net income. For example, a loss attributable to an unrelated trade or business shall not be diminished by reason of the receipt of dividend income. For the purpose of computing the net operating loss deduction, the terms "preceding taxable year" and "preceding taxable years" as used in section 122 shall not include any taxable year for which the organization was not subject to the provisions of supplement U. Thus, if the organization was not subject to the provisions of supplement U for the immediately preceding taxable year, the net operating loss is not a carry-back to any preceding taxable year, and the net operating loss carry-over to succeeding taxable years is not reduced by the net income for any preceding taxable year. A net operating loss carry-back or carry-over shall be allowed only from a taxable year for which the taxpayer is subject to the provisions of supplement U.

(6) *Research.*—(i) Income derived from research for the United States or any of its agencies or instrumentalities or a State or political subdivision thereof, and all deductions directly connected with such income, shall be excluded in computing unrelated business net income.

(ii) In the case of a college, university, or hospital, all income derived from research performed for any person and all deductions directly connected with such income shall be excluded in computing unrelated business net income.

(iii) In the case of an organization operated primarily for the purpose of carrying on fundamental research (as distinguished from applied research) the results of which are freely available to the general public, all income derived from research performed for any person and all deductions directly connected with such income shall be excluded in computing unrelated business net income.

(iv) For the purpose of this section, the term "research" does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc. The term "fundamental research" does not include research carried on for the primary purpose of commercial or industrial application.

(7) *Charitable, etc., contributions.*—(i) In computing the unrelated business net income of a trust described in section 421(b)(2) or of an organization described in section 421(b)(1), there shall be deducted from gross income the amount allowed by section 23(o) or 23(q), whichever is applicable, whether or not the contribution is directly connected with the carrying on of the trade or business. This deduction shall be limited to 15 percent, if computed under section 23(o), or 5 percent, if computed under section 23(q), of the unrelated business net income computed without benefit of such deduction. In the case of a trust described in section 421(b)(2), distributions made pursuant to the trust instrument to a beneficiary described in section 23(o) shall be treated in the same manner as gifts or contributions.

(ii) The contribution, whether made by a trust or other exempt organization, must be paid to another organization to be allowable. For example, a university exempt from tax under section 101(6), operating an unrelated business, shall be allowed a deduction, not in excess of 5 percent of its unrelated business net income, for gifts or contributions to another university for edu-

cational work but shall not be allowed any deduction for amounts expended in administering its own educational program.

SEC. 29.422-2. ORGANIZATIONS THAT ARE MEMBERS OF PARTNERSHIPS.—(*a*) *In general.*—In the event an organization to which supplement U applies is a member of a partnership regularly engaged in a trade or business which is an unrelated trade or business with respect to such organization, the organization shall include in computing its unrelated business net income so much of its share (whether or not distributed) of the partnership gross income as is derived from that unrelated business and its share of the deductions attributable thereto. For this purpose, both the gross income and the deductions shall be computed with the necessary adjustments for the exceptions, additions, and limitations referred to in section 422(a) and in section 29.422-1. For example, if an exempt educational institution is a partner in a partnership which operates a factory and if such partnership also holds stock in a corporation, the exempt organization shall include in computing its unrelated business net income its share of the gross income from the operation of the factory, but not its share of any dividends received by the partnership from the corporation. If the taxable year of the organization differs from that of the partnership, the amounts included or deducted in computing unrelated business net income shall be based upon the income and deductions of the partnership for each taxable year of the partnership (whether beginning on, before, or after January 1, 1951) ending within or with the taxable year of the organization.

(*b*) *Special rule.*—For a special rule, applicable only with respect to taxable years beginning after December 31, 1950, and prior to January 1, 1954, with respect to unrelated trades or businesses carried on in partnership by certain educational organizations described in section 3813(a)(2), see the last two sentences of section 422(a) as amended by section 348 of the Revenue Act of 1951.

SEC. 29.422-3. DEFINITION OF UNRELATED TRADE OR BUSINESS.—(*a*) *In general.*—(1) The term "unrelated business net income" as used in section 422(a) includes only income from an unrelated trade or business regularly carried on. As used in section 422(a), the term "trade or business" has the same meaning as it has in section 23(a)(1).

(2) The income of an exempt organization is subject to the supplement U tax only if two conditions are present with respect to such income. The first condition is that the income must be from a trade or business which is regularly carried on by the organization. The second condition is that the trade or business must not be substantially related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 101, or, in the case of an organization described in section 421(b)(1)(B) (governmental colleges, etc.), to the exercise or performance of any purpose or function described in section 101(6). Whether or not an organization is subject to the supplement U tax shall be determined by the application of these tests to the particular circumstances involved in each individual case. See (*b*) of this section for certain exceptions from the term "unrelated trade or business".

(3) A trade or business is regularly carried on when the activity is conducted with sufficient consistency to indicate a continuing purpose of the organization to derive some of its income from such activity. An activity may be regularly carried on even though its performance is infrequent or seasonal.

(4) Ordinarily, a trade or business is substantially related to the activities for which an organization is granted exemption if the principal purpose of such trade or business is to further (other than through the production of income) the purpose for which the organization is granted exemption. In the usual case the nature and size of the trade or business must be compared with the nature and extent of the activities for which the organization is granted exemption in order to determine whether the principal purpose of such trade or business is to further (other than through the production of income) the purpose for which the organization is granted exemption. For example, the operation of a wheat farm is substantially related to the exempt activity of an agricultural college if the wheat farm is operated as a part of the educational program of the college, and is not operated on a scale disproportionately large when compared with the educational program of the college. Similarly, a university radio station or press is considered a related trade or business if operated primarily as an integral part of the educational program of the university, but is con-

sidered an unrelated trade or business if operated in substantially the same manner as a commercial radio station or publishing house. A trade or business not otherwise related does not become substantially related to an organization's exempt purpose merely because incidental use is made of the trade or business in order to further the exempt purpose. For example, the manufacture and sale of a product by an exempt college would not become substantially related merely because students as part of their educational program perform clerical or bookkeeping functions in the business. In some cases, the business may be substantially related because it is a necessary part of the exempt activity. For example, in the case of an organization exempt under section 101(6) and engaged in the rehabilitation of handicapped persons, the business of selling articles made by such persons as a part of their rehabilitation training would not be considered an unrelated business since such business is a necessary part of the rehabilitation program.

(*b*) *Exceptions.*—Section 422(b) specifically states that the term "unrelated trade or business" does not include—

(1) Any trade or business in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) Any trade or business carried on by an organization exempt under section 101(6) or by a governmental college or university described in section 421(b)(1)(B), primarily for the convenience of its members, students, patients, officers, or employees; or

(3) Any trade or business which consists of selling merchandise, substantially all of which has been received by the organization as gifts or contributions.

An example of the operation of the first of the exceptions mentioned above would be an exempt orphanage operating a retail store and selling to the general public, where substantially all the work in carrying on such business is performed for the organization by volunteers without compensation. An example of the second limitation would be a laundry operated by a college for the purpose of laundering dormitory linens and the clothing of students. The third exception applies to so-called "thrift shops" operated by a tax-exempt organization where those desiring to benefit such organization contribute old clothes, books, furniture, etc., to be sold to the general public with the proceeds going to the exempt organization.

(*c*) *Special rule respecting publishing businesses.*—For a special rule, applicable only with respect to taxable years beginning after December 31, 1950, and prior to January 1, 1953, with respect to publishing businesses carried on by an organization, see section 422(b) as amended by section 347 of the Revenue Act of 1951.

SEC. 423. SUPPLEMENT U LEASE [APPLICABLE TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1950—AS ADDED BY SECTION 301, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) DEFINITION OF SUPPLEMENT U LEASE.—The term "supplement U lease" means a lease for a term of more than five years of real property by an organization (or by a partnership of which it is a member), if at the close of the lessor's taxable year there is a supplement U lease indebtedness (as defined in subsection (b)) with respect to such property. In computing the term of a lease which contains an option for renewal or extension, the term of such lease shall be considered as including any period for which such option may be exercised; and the term of any lease made pursuant to an exercise of such option shall include the period during which the prior lease was in effect. If real property is acquired subject to a lease, the term of such lease shall be considered to begin on the date of such acquisition. No lease shall be considered a supplement U lease if (A) such lease is entered into primarily for purposes which are substantially related (aside from the need of such organization for income of funds or the use it makes of the rents derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 101, or (B) the lease is of premises in a building primarily designed for occupancy, and occupied, by the organization. If a lease for more than five years to a tenant is

for only a portion of the real property, and space in the real property is rented during the taxable year under a lease for not more than five years to any other tenant of the organization, leases of the real property for more than five years shall be considered as supplement U leases during the taxable year only if—

(1) the rents derived from the real property during the taxable year under such leases represent 50 per centum or more of the total rents derived during the taxable year from the real property; or the area of the premises occupied under such leases represents, at any time during the taxable year, 50 per centum or more of the total area of the real property rented at such time; or

(2) the rent derived from the real property during the taxable year from any tenant under such a lease, or from a group of tenants (under such leases) who are (A) members of an affiliated group (as defined in section 141) or (B) partners, represents more than 10 per centum of the total rents derived during the taxable year from such property; or the area of the premises occupied by any one such tenant, or by any such group of tenants, represents at any time during the taxable year more than 10 per centum of the total area of the real property rented at such time.

(b) SUPPLEMENT U LEASE INDEBTEDNESS.—The term "supplement U lease indebtedness" means, with respect to any real property leased for a term of more than 5 years, the unpaid amount of—

(1) the indebtedness incurred by the lessor in acquiring or improving such property;

(2) the indebtedness incurred prior to the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and

(3) the indebtedness incurred subsequent to the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

Where real property is acquired subject to a mortgage or other similar lien, the amount of the indebtedness secured by such mortgage or lien shall be considered (whether the acquisition was by gift, devise, or purchase) as an indebtedness of the lessor incurred in acquiring such property even though the lessor did not assume or agree to pay such indebtedness, except that where real property was acquired by gift, bequest, or devise prior to July 1, 1950, subject to a mortgage or other similar lien, the amount of such mortgage or other similar lien shall not be considered as an indebtedness of the lessor incurred in acquiring such property. Where real property was acquired by gift, bequest, or devise prior to July 1, 1950, subject to a lease requiring improvements in such property upon the happening of stated contingencies, indebtedness incurred in improving such property in accordance with the terms of such lease shall not be considered as an indebtedness for purposes of this subsection. In the case of a corporation described in section 101(14), all of the stock of which was acquired prior to July 1, 1950, by an organization described in paragraph (1), (6), or (7) of section 101 (and more than one-third of such stock was acquired by such organization by gift or bequest), any indebtedness incurred by such corporation prior to July 1, 1950, and any indebtedness incurred by such corporation on or after such date in improving real property in accordance with the terms of a lease entered into prior to such date, shall not be considered as an indebtedness with respect to such corporation or such organization for purposes of this subsection. In determining the amount of the supplement U lease indebtedness where only a portion of the real property is subject to a supplement U lease, proper allocation to the premises covered by such lease shall be made of the indebtedness incurred by the lessor with respect to the real property.

(c) PERSONAL PROPERTY LEASED WITH REAL PROPERTY.—For the purposes of this section, the term "real property" and the term "premises" include personal property of the lessor leased by it to a lessee of its real estate if the lease of such personal property is made under, or in connection with, the lease of such real estate.

(d) TREATMENT OF SUPPLEMENT U LEASE RENTS AND DEDUCTIONS.—In computing under section 422(a) the unrelated business net income for any taxable year—

(1) PERCENTAGE OF RENTS TAKEN INTO ACCOUNT.—There shall be included with respect to each supplement U lease, as an item of gross income derived from an unrelated trade or business, an amount which is the same percentage (but not in excess of 100 per centum) of the total rents derived during the taxable year under such lease as (A) the supplement U lease indebtedness, at the close of the taxable year, with respect to the premises covered by such lease is of (B) the adjusted basis, at the close of the taxable year, of such premises.

(2) PERCENTAGE OF DEDUCTIONS TAKEN INTO ACCOUNT.—There shall be allowed with respect to each supplement U lease, as a deduction to be taken into account in computing unrelated business net income, an amount which is the same percentage (but not in excess of 100 per centum) of the sum determined under paragraph (3) as the amount determined under clause (A) of paragraph (1) is of the amount determined under clause (B) of such paragraph.

(3) DEDUCTIONS ALLOWABLE.—The sum referred to in paragraph (2) is the sum of the following deductions allowable under section 23:

(A) Taxes and other expenses paid or accrued during the taxable year upon or with respect to the real property subject to the supplement U lease.

(B) Interest paid or accrued during the taxable year on the supplement U lease indebtedness.

(C) A reasonable allowance for exhaustion, wear and tear (including a reasonable allowance for obsolescence) of the real property subject to such lease.

Where only a portion of the real property is subject to the supplement U lease, there shall be taken into account under subparagraph (A), (B), or (C) only those amounts which are properly allocable to the premises covered by such lease.

SEC. 29.423-1. DEFINITION OF SUPPLEMENT U LEASE.—(*a*) *In general.*—The term "supplement U lease" means any lease, with certain exceptions discussed in (*c*) of this section, for a term of more than 5 years of real property by an organization subject to supplement U (or by a partnership of which it is a member) if at the close of the organization's taxable year there is a supplement U lease indebtedness as defined in section 423(b) and section 29.423-2, with respect to such property. For the purpose of section 423, the term "real property" and the term "premises" include personal property of the lessor tax-exempt organization leased by it to a lessee of its real estate if the lease of such personal property is made under, or in connection with, the lease of such real estate. For amounts of supplement U rents and deductions to be included in computing unrelated business net income, see section 29.423-3.

(*b*) *Special rules.*—(1) In computing the term of the lease, the period for which a lease may be renewed or extended by reason of an option contained therein shall be considered as part of the term. For example, a 3-year lease with an option for renewal for another such period is considered a lease for a term of 6 years. Another example is the case of a 1-year lease with option of renewal for another such term, where the parties at the end of each year renew the arrangement. In this case, during the fifth year (but not during the first 4 years), the lease falls within the 5-year rule, since the lease then involves 5 years and there is an option for the sixth year. In determining the term of the lease, an option for renewal of the lease is taken into account whether or not the exercise of the option depends upon conditions or contingencies.

(2) If the property is acquired subject to a lease, the term of such lease shall be considered to begin on the date of such acquisition. For example, if an exempt organization purchases, in whole or in part with borrowed funds, real property subject to a 10-year lease which has 3 years left to run, and such lease contains no right of renewal or extension, the lease shall be considered a 3-year lease and hence does not meet the definition of a supplement U lease in section 423(a) and (*a*) of this section. However, if this lease contains an option to renew for a period of 3 years or more, it is a supplement U lease.

(*c*) *Exceptions.*—(1) A lease shall not be considered a supplement U lease if such lease is entered into primarily for a purpose which is substantially related (aside from the need of such organization for income or funds, or the use it makes

of the rents derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption. For example, where a tax-exempt hospital leases real property owned by it to an association of doctors for use as a clinic, the rents derived under such lease would not be included in computing unrelated business net income if the clinic is substantially related to the carrying on of hospital functions. See section 29.422–3 for principles applicable in determining whether there is a substantial relationship to the exempt purposes of an organization.

(2) A lease is not a supplement U lease if the lease is of premises in a building primarily designed for occupancy and occupied by the tax-exempt organization.

(3) If a lease for more than 5 years to a tenant is for only a portion of the real property, and space in the real property is rented during the taxable year under a lease for not more than 5 years to any other tenant of the tax-exempt organization, leases of the real property for more than 5 years shall be considered as supplement U leases during the taxable year only if—

(i) The rents derived from the real property during the taxable year under such leases represent 50 percent or more of the total rents derived during the taxable year from the real property; or the area of the premises occupied under such leases represents, at any time during the taxable year, 50 percent or more of the total area of the real property rented at such time; or

(ii) The rent derived from the real property during the taxable year from any tenant under such a lease, or from a group of tenants (under such leases) who are either members of an affiliated group (as defined in section 141) or are partners, represents more than 10 percent of the total rents derived during the taxable year from such property; or the area of the premises occupied by any one such tenant, or by any such group of tenants, represents at any time during the taxable year more than 10 percent of the total area of the real property rented at such time.

(4) The application of (3), above, may be illustrated by the following example: In 1951 an educational organization, which is on the calendar year basis, begins the erection of an 11-story apartment building using funds borrowed for that purpose, and immediately leases for a 10-year term the first floor to a real estate development company to sublet for stores and shops. As fast as the new apartments are completed, they are rented out on an annual basis. At the end of 1956, all except the tenth and eleventh floors are rented. Those two floors are completed during 1957 and rented out. Assume that for 1951 and each subsequent taxable year through 1956, and for the taxable year 1960, the gross rental for the first floor represents more than 10 percent of the total gross rents derived during the taxable year from the building. Under this set of facts the 10-year lease of the first floor would be considered to be a supplement U lease for all except the taxable years 1958, 1959, and 1961.

SEC. 29.423–2. SUPPLEMENT U LEASE INDEBTEDNESS.—(*a*) *Definition.*—The term "supplement U lease indebtedness" means, with respect to any real property leased by a tax-exempt organization for a term of more than 5 years, the unpaid amount of—

(1) The indebtedness incurred by the lessor tax-exempt organization in acquiring or improving such property;

(2) The indebtedness incurred by the lessor tax-exempt organization prior to the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and

(3) The indebtedness incurred by the lessor tax-exempt organization subsequent to the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of the indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

See (*f*) of this section with respect to subsidiary corporations.

(*b*) *Examples.*—The rules of (*a*), above, respecting supplement U leases also cover certain cases where the leased property itself is not subject to an indebtedness. For example, they apply to cases such as the following:

Example (*1*). A university pledges some of its investment securities with a bank for a loan and uses the proceeds of such loan to purchase (either directly or through a subsidiary corporation) a building, which building is subject to a lease that then has more than 5 years to run. This would be an example of a supplement U lease indebtedness incurred prior to the acquisition of the property which would not have been incurred but for such acquisition.

Example (2). If the building itself in example (1), above, is later mortgaged to raise funds to release the pledged securities, the lease would continue to be a supplement U lease.

Example (3). If a scientific organization mortgages its laboratory building to replace working capital used in remodeling another one of its buildings or a building held by its subsidiary corporation, which other building is free of indebtedness and is subject to a lease that then has more than 5 years to run, the lease would be a supplement U lease inasmuch as the indebtedness though incurred subsequent to the improvement of such property would not have been incurred but for such improvement, and the incurrence of the indebtedness was reasonably foreseeable when, to make such improvement, the organization reduced its working capital below the amount necessary to continue current operations.

(c) *Lease of part of property.*—Where only a portion of the real property is subject to a supplement U lease, proper allocation of the indebtedness applicable to the whole property must be made to the premises covered by the lease.

(d) *Property acquired subject to lien.*—Where real property is acquired subject to a mortgage or similar lien, whether the acquisition be by gift, bequest, devise, or purchase, the amount of the indebtedness secured by such mortgage or lien is a supplement U lease indebtedness (unless (e) (1) of this section applies) even though the lessor does not assume or agree to pay the indebtedness. For example, a university pays $100,000 for real estate valued at $300,000 and subject to a $200,000 mortgage. For the purpose of the supplement U tax, the result is the same as if $200,000 of borrowed funds had been used to buy the property.

(e) *Exceptions.*—(1) Where real property was acquired by gift, bequest, or devise, prior to July 1, 1950, subject to a mortgage or other similar lien, the amount of such mortgage or other similar lien shall not be considered as an indebtedness of the lessor tax-exempt organization incurred in acquiring such property. An indebtedness not otherwise covered by this exception is not brought within the exception by reason of a transfer of the property between a parent and its subsidiary corporation.

(2) Where real property was acquired by gift, bequest, or devise, prior to July 1, 1950, subject to a lease requiring improvements in such property upon the happening of stated contingencies, indebtedness incurred in improving such property in accordance with the terms of such lease shall not be considered as indebtedness described in section 423(b) and in this section. An indebtedness not otherwise covered by this exception is not brought within the exception by reason of a transfer of the property between a parent and its subsidiary corporation.

(3) In the case of a corporation described in section 101(14), all of the stock of which was acquired prior to July 1, 1950, by an organization described in paragraph (1), (6), or (7), of section 101 (and more than one-third of such stock was acquired by such organization by gift or bequest), any indebtedness incurred by such corporation prior to July 1, 1950, and any indebtedness incurred by such corporation on or after such date in improving real property in accordance with the terms of a lease entered into prior to such date, with respect to either such section 101(14) corporation or such section 101 (1), (6), or (7) organization, shall not be considered an indebtedness described in section 423(b) and in this section.

(f) *Subsidiary corporations.*—The provisions of section 423 are applicable whether or not a subsidiary corporation of the type exempt under section 101(14) is availed of in making the supplement U lease. For example, assume a parent organization borrows funds to purchase realty and sets up a separate section 101(14) corporation as a subsidiary to hold the property. Such subsidiary corporation leases the property for a period of more than 5 years, collects the rents and pays over all of the income, less expenses, to the parent organization, the parent organization being liable for the indebtedness. Under these assumed facts, the lease by the section 101(14) subsidiary corporation would be a supplement U lease with respect to such subsidiary corporation, and the rental income would be subject to the tax, whether or not the subsidiary itself assumes the indebtedness and whether or not the property is subject to the indebtedness.

SEC. 29.423–3. TREATMENT OF RENT FROM SUPPLEMENT U LEASE.—(a) *General rule.*—There shall be included with respect to each supplement U lease, as an item of gross income derived from an unrelated trade or business, an amount

which is the same percentage (but not in excess of 100 percent) of the total rents derived during the taxable year under such lease as—

(1) The amount of the supplement U lease indebtedness at the close of the taxable year of the lessor tax-exempt organization, with respect to the premises covered by such lease, is of

(2) The adjusted basis of such premises at the close of such taxable year. The basis (unadjusted) of property is determined under section 113(a), and the adjusted basis of property is determined under section 113(b). The determination of the adjusted basis of property is not affected by the fact that the organization was exempt from tax for prior taxable years. Proper adjustment must be made under section 113(b) for the entire period since the acquisition of the property. Thus, adjustment must be made for depreciation for all prior taxable years whether or not the organization was exempt from tax for any of such years. Similarly, for taxable years during which the organization is subject to supplement U, the fact that only a portion of the deduction for depreciation is taken into account under section 423(d) does not affect the amount of the adjustment for depreciation.

(*b*) *Examples.*—In each of the following examples it is assumed that the taxpayer makes its returns under supplement U on the basis of the calendar year, and that the lease is not substantially related to the purpose for which the organization is granted exemption from tax.

Example (1). Assume that a tax-exempt educational organization purchased property in 1941 for $600,000, using borrowed funds, and leased the building for a period of 20 years. Assume further that the adjusted basis of such building at the close of 1951 is $500,000. If, at the close of 1951, $200,000 of the indebtedness incurred to acquire the property remains outstanding, since this is two-fifths of the adjusted basis of the building at the close of 1951, two-fifths of the gross rental received from the building during 1951 shall be included as an item of gross income in computing unrelated business net income. If, at the close of a subsequent taxable year, the outstanding indebtedness is $100,000 and the adjusted basis of the building is $400,000, one-fourth of the gross rental for such taxable year shall be included as an item of gross income in computing unrelated business net income for such taxable year.

Example (2). Assume that a tax-exempt organization owns a 4-story building, that in 1951 it borrows $100,000 which it uses to improve the whole building, and that it thereafter in 1951 rents the first floor of the building under a 6-year lease at a rental of $4,000 a year. The second, third, and fourth floors of the building are leased on a yearly basis during 1951. Assume, also, that the adjusted basis of the real property at the end of 1951 (after reflecting the expenditures for improving the building) is $200,000, allocable equally to each of the 4 stories. Under these facts, only one-fourth of the real property is subject to a supplement U lease. The percentage of the rent under such lease which is taken into account is determined by the ratio which the allocable part of the supplement U lease indebtedness bears to the allocable part of the adjusted basis of the real property, that is, the ratio which one-fourth of the $100,000 of supplement U lease indebtedness outstanding at the close of 1951, or $25,000, bears to one-fourth of the adjusted basis of the supplement U lease premises at the close of 1951, or $50,000. The percentage of rent which is supplement U lease income for 1951 is, therefore, one-half (the ratio of $25,000 to $50,000) of $4,000, or $2,000, and this amount of $2,000 is considered an item of gross income derived from an unrelated trade or business.

SEC. 29.423–4. PERCENTAGE OF DEDUCTIONS TAKEN INTO ACCOUNT.—(*a*) The same percentage is used in determining both the portion of the rent and the portion of the deductions taken into account with respect to the supplement U lease in computing unrelated business net income. See section 29.423–3 for the determination of such percentage. Such percentage is applicable only to the sum of the following deductions allowable under section 23:

(1) Taxes and other expenses paid or accrued during the taxable year upon or with respect to the real property subject to the supplement U lease;

(2) Interest paid or accrued during the taxable year on the supplement U lease indebtedness;

(3) A reasonable allowance for exhaustion, wear and tear (including a reasonable allowance for obsolescence) of the real property subject to such lease.

Where only a portion of the real property is subject to the supplement U lease, there shall be taken into account only those amounts of the above-listed deductions which are properly allocable to the premises covered by such lease.

(*b*) The deductions allowable under section 423(d) and under (*a*) of this section with respect to a supplement U lease are not limited by the amount included in gross income with respect to the rent from such lease, but any excess of such deductions over such gross income shall be applied against other items of gross income in computing unrelated business net income taxable under section 421(a).

Example. Assume the same facts as those in example (1) of section 29.423–3(*b*). Assume also that for 1951 the organization pays taxes of $4,000 on the property, interest of $6,000 on its supplement U lease indebtedness, and that the depreciation allowable for 1951 under section 23(l) is $10,000. Under the facts set forth in example (1) of section 29.423–3(*b*) and in the preceding sentence, the deductions to be taken into account for 1951 in computing unrelated business net income would be two-fifths of the total of the deductions of $20,000, that is, $8,000.

SEC. 424. TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF THE UNITED STATES [APPLICABLE TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1950—AS ADDED BY SECTION 301, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of an organization subject to the tax imposed by section 421(a) to the extent provided in section 131; and in the case of the tax imposed by section 421(a), the term "normal-tax net income" and the term "net income" as used in section 131 shall be read as supplement U net income".

PAR. 18. The statement of procedure contained in F. R. Doc. 46–15357, appearing at page 177A–22, part II, section 1, of the issue for September 11, 1946, as amended (26 CFR, part 601; 14 F. R. 2063, 15 F. R. 6888), is hereby further amended by changing the part of section 601.17 *Forms–(a) Description* relating to *Form 990* to read as follows:

Form 990.—Information return of organizations exempt from income tax (other than under sec. 101(6), I. R. C., for accounting periods beginning after December 31, 1949).

Form 990–A.—Information return of certain organizations exempt from income tax under sec. 101(6), I. R. C., to be used for accounting periods beginning after December 31, 1949.

Form 990–T.—Exempt organization business income tax return, to be filed by organizations subject to tax under supplement U of chapter 1, I. R. C.

(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 August 28, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

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

SECTION 423.—SUPPLEMENT U LEASE

SECTION 29.423–3: Treatment of rent from Supplement U lease.

INTERNAL REVENUE CODE

Basis of property adjusted for depreciation sustained in prior taxable years. (See G. C. M. 27491, page 221, and I. T. 4106, page 130.)

SUBCHAPTER D.—EXCESS PROFITS TAX

PART I.—RATE AND COMPUTATION OF TAX

SECTION 430.—IMPOSITION OF TAX

SECTION 40.430–2, REGULATIONS 130: Rate of tax.

INTERNAL REVENUE CODE

Regulations 130 amended. (See T. D. 5950, page 32.)

SECTION 437.—INVESTED CAPITAL CREDIT

SECTION 40.437–5, REGULATIONS 130: Definition of equity capital. 1952–26–13994 T. D. 5952

TITLE 26—INTERNAL REVENUE.—CHAPTER 1, SUBCHAPTER A, PART 40.—EXCESS PROFITS TAXES; TAXABLE YEARS ENDING AFTER JUNE 30, 1950

Regulations 130 amended to conform to the provisions of Public Law 166, Eighty-second Congress [C. B. 1951–2, 352], approved October 10, 1951, relating to equity capital of section 204 insurance companies.

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On October 1, 1952, notice of proposed rule making with respect to regulations under section 437(c) of the Internal Revenue Code, as amended by Public Law 166, Eighty-second Congress [C. B. 1951–2, 352], approved October 10, 1951, was published in the Federal Register (17 F. R. 8692). No objection to the rules having been received, the amendments of Regulations 130 set forth below are hereby adopted.

PARAGRAPH 1. There is inserted immediately preceding section 40.437–1 the following:

PUBLIC LAW 166 (82d CONG.), APPROVED OCTOBER 10, 1951

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 437(c) of the Internal Revenue Code is amended by striking out "(other than mutual and other than life or marine)" and inserting in lieu thereof "taxable under the provisions of section 204".

SEC. 2. The amendment made by section 1 shall have the same effect as if it had been a part of the said section 437(c) on January 3, 1951.

PAR. 2. The first sentence of (b)(5) of section 40.437–5 of Regulations 130 is amended by deleting the parenthetical phrase "(other than mutual and other than life or marine)" and inserting in lieu thereof "taxable under the provisions of section 204". Such sentence as amended will read as follows:

In the case of an insurance company taxable under the provisions of section 204, the equity capital shall include 50 percent of its reserves required by law, except the reserve for unearned premiums used in computing borrowed capital under section 439 (b)(2).

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

JOHN S. GRAHAM,
Acting Commissioner of Internal Revenue.

Approved December 2, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 5, 1952, 8:50 a. m.)

SECTION 450.—CORPORATIONS ENGAGED IN MINING OF STRATEGIC MINERALS

SECTION 40.450–1, REGULATIONS 130: Corporations which mine strategic minerals. 1952–18–13913 T. D. 5923

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 40.—EXCESS PROFITS TAX; TAXABLE YEARS AFTER JUNE 30, 1950

Regulations 130 amended to reflect allowance of benefits of section 450 of the Internal Revenue Code to income from certain minerals in addition to those listed in section 450(b)(1).

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

To Collectors of Internal Revenue and Others Concerned:

Regulations 130 [26 CFR, part 40] are amended as follows:

PARAGRAPH 1. There is inserted immediately following the words "in section 450(b)" as they appear in the parenthetical clause in the first sentence of section 40.450–1(a) [26 CFR 40.450–1(a)] the following: "and in (e) of this section" so that, as amended, such sentence shall read as follows:

If a domestic corporation is engaged in mining a strategic mineral (as defined in section 450(b) and in (e) of this section) within the United States, the portion of its adjusted excess profits net income attributable to such mining is exempt from excess profits tax.

PAR. 2. Section 40.450–1(e) [26 CFR 40.450–1(e)] is redesignated as section 40.450–1(f), and there is inserted immediately following section 40.450–1(d) [26 CFR 40.450–1(d)] the following:

(e) In addition to the minerals defined in section 450(b) as strategic minerals the following minerals have been certified, on the date indicated, to the Secretary as being within such definition:

(1) On May 23, 1951, block steatite talc;

(2) On November 5, 1951, rare earths (metals of successive atomic numbers beginning with lanthanum 57 and extending through lutecium 71 of the periodic table) conforming to National Stockpile Specification P–35, as revised December 12, 1950.

This Treasury Decision merely sets forth the minerals certified to the Secretary of the Treasury by other Government agencies and the dates of such certifications. Accordingly, it is found 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 62 and 3791 (53 Stat. 32, 467; 26 U. S. C. 62, 3791).)

John B. Dunlap,
Commissioner of Internal Revenue.

Approved August 4, 1952.

Thomas J. Lynch,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register August 7, 1952, 8:51 a. m.)

SECTION 453.—NONTAXABLE INCOME FROM CERTAIN MINING AND TIMBER OPERATIONS, AND FROM NATURAL GAS PROPERTIES

Section 40.453–2, Regulations 130: Definitions. 1952–26–13995
(Also Sections 40.453–3, 40.453–4.) T. D. 5953

TITLE 26—INTERNAL REVENUE.—CHAPTER I. SUBCHAPTER A. PART 40.—EXCESS PROFITS TAX; TAXABLE YEARS ENDING AFTER JUNE 30, 1950

Regulations 130 amended to clarify extent to which mineral properties may be aggregated under section 453(a)(10) of the Internal Revenue Code for purposes of determining nontaxable income from exempt excess output, to clarify regulations relating to section 453(b) (2) and (4) of the Code, and to reflect addition of certain minerals to those listed in section 453 (a)(13), (b)(2), and (b)(4) of the Code by the Revenue Act of 1951.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington 25, D. C.

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On August 26, 1952, notice of rule making, clarifying certain provisions of Regulations 130, relating to nontaxable income from certain mining operations and to reflect certain provisions of the Revenue Act of 1951, approved October 20, 1951, was published in the Federal Register (17 F. R. 7789). After consideration of all relevant matters presented by interested persons regarding the rules proposed, the amendments to Regulations 130 [26 CFR, part 40] set forth below are hereby adopted.

PARAGRAPH 1. There is inserted immediately preceding section 40.453–1 [26 CFR 40.453–1], the following:

SEC. 515. NONTAXABLE INCOME FROM CERTAIN MINING PROPERTIES [TITLE V, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

Section 453 (relating to nontaxable income from exempt excess output) is hereby amended as follows:

(a) By amending the first sentence of subsection (a)(13) thereof to read as follows: "The term 'unit net income' means the amount ascertained by dividing the net income (computed with the allowance for depletion) from the coal, ore, sulphur, potash, metallurgical grade limestone, chemical grade limestone, or timber recovered from the mineral property, or timber block, as the case may be, during the taxable year by the number of units of such mineral or timber recovered from such property in such year."

(b) By inserting immediately after the words "coal mining property" in subsection (b)(2) thereof the following: ", or of a sulphur, potash, metallurgical grade limestone, or chemical grade limestone mineral property,".

(c) By striking out so much of subsection (b)(4) as precedes the second sentence and inserting in lieu thereof the following:

"(4) CERTAIN PROPERTIES NOT IN OPERATION DURING NORMAL PERIOD.—For any taxable year, the nontaxable income from exempt excess output of a metal or coal mining property, of a sulphur, potash, metallurgical grade limestone, or chemical grade limestone mineral property, of a timber block, or of a natural gas property, which was not in operation during the normal period, shall be an amount equal to one-third of the net income for such taxable year (computed with the allowance for depletion) from such property or timber block, as the case may be."

SEC. 523. EFFECTIVE DATE OF TITLE V [TITLE V, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * the amendments made by this title [including section 515] shall be applicable only with respect to taxable years ending after June 30, 1950.

PAR. 2. Section 40.453–2(g) [26 CFR 40.453–2(g)] is amended to read as follows:

(g) *Alternative computation of exempt excess output for more than one mineral property.*—(1) Section 453(a)(10) provides that where more than one mineral property (as defined in (f) of this section) is owned or operated by a producer or lessor (as defined in (a) (1) and (2) of this section), such producer or lessor may elect to treat the mineral properties as one property for the purpose of applying section 453(b)(1). If the taxpayer elects under section 453(a)(10), such properties shall be aggregated and treated as one property to the extent provided under the rules set forth in (m) (2) and (3) of this section. In the case of a taxpayer making the election under section 453(a)(10), a coal or mineral property not in operation during the normal period (see section 453 (a)(4) and (d) of this section) shall be included with such properties which were in operation during the normal period to the extent such property which was not in operation during the normal period may be so included under the rules set forth in (m) (2) and (3) of this section.

(2) In the case of a taxpayer making the election under section 453(a)(10), the net income from the coal or mineral property shall be computed in a manner similar to that described in (j) of this section with respect to a mineral property as if the properties aggregated under (1) above were a mineral property, except that the amount of depletion allowed in the computation of such net income shall be the sum of the amounts computed according to sections 23(m) and 114, and the regulations thereunder.

(3) The election pursuant to section 453(a)(10) shall be made in a statement attached to Schedule EP (Form 1120) accompanying the income tax return, filed on or before the last day required by law for the filing of such return, for the taxable year for which the election is being made. The last day required by

law for filing of such return includes the last day of the period of any extension of time granted for such filing. Such election must be made for each taxable year for which the benefits of section 453(a)(10) are claimed and such an election does not preclude the taxpayer from electing for a subsequent year to compute nontaxable income from exempt excess output by treating the mineral properties as separate properties under the rules set forth in (f) of this section. If the taxpayer has failed so to elect or desires to change its election, such election or change in election may, subject to the approval of the Commissioner, be made by the taxpayer filing with the Commissioner of Internal Revenue, Washington 25, D. C., within the period of limitations for the filing of claims for credit or refund with respect to the year or years involved, a notice of its election or change in election accompanied by a recomputation of its income and excess profits taxes for such years. If the recomputation results in an overpayment for any of such years, the taxpayer should file a claim for refund on Form 843 in accordance with the provisions of section 322.

PAR. 3. Section 40.453–2(m) [26 CFR 40.453–2(m)] is amended as follows:

(A) By striking the word "ore" wherever appearing in subparagraph (1) of such section and by inserting in lieu thereof the following: "mineral".

(B) By adding the following new sentence at the end of subparagraph (2) of such section:

A coal property not in operation during the normal period (see section 453(a)(4) and (d) of this section) shall be included with properties which were in operation during the normal period to the extent such properties which were not in operation during the normal period may be so included under the rules set forth above.

(C) By amending subparagraph (3) of such section to read as follows:

(3) For the purpose of section 453(a)(13) and section 453(b)(2), a mineral property shall include the aggregate of all tracts or parcels of land containing mineral deposits in which economic interests were owned, and from which minerals were extracted, by the taxpayer at any time after the beginning of the normal period (excluding, however, any tract or parcel of land in which an economic interest was acquired, and from which minerals were extracted, by any other person subsequent to the last date of ownership and operation by the taxpayer) to the extent that such tracts or parcels of land were operated by the taxpayer as an operation unit, regardless of whether the economic interest in one tract or parcel of land differed from that in another. The mineral property of a lessor is the tract or parcel of land containing mineral deposits in which an economic interest is owned by the lessor. It need not necessarily be coextensive with the mineral property in the case of the producer. A mineral property not in operation during the normal period (see section 453 (a)(4) and (d) of this section) shall be included with properties which were in operation during the normal period to the extent such properties which were not in operation during the normal period may be so included under the rules set forth above.

(D) By amending subparagraph (4) of such section to read as follows:

(4) The net income (computed with the allowance for depletion) from the coal or the mineral recovered from the mining property during a taxable year for which the benefits of section 453(b)(2) are claimed shall be the net income from the mining property from which such coal or mineral is recovered, computed in a manner similar to that described in (j) of this section with respect to a mineral property as if such mining property were a mineral property, except that the amount of depletion allowed in the computation of such net income shall be the sum of the amounts computed according to sections 23(m) and 114, and the regulations thereunder.

(E) By striking the word "ore" wherever appearing in subparagraph (13) of such section and by inserting in lieu thereof the following: "mineral".

PAR. 4. Section 40.453-3(b) [26 CFR 40.453-3(b)] is amended as follows:

(A) By striking the heading of such section which reads "*Metal and coal mines.*" and inserting in lieu thereof "*Mines in operation during normal period.*".

(B) By inserting immediately after subparagraph (4) of such section the following new subparagraph:

(5) The computation of nontaxable income from exempt excess output in the case of those mineral properties, in addition to metal or coal mining properties, which are referred to in section 453(b)(2) shall be made in a manner consistent with that set forth in (1) through (4) above.

PAR. 5. Section 40.453-4 [26 CFR 40.453-4], is amended as follows:

(A) By striking the heading of such section which reads "MINES, TIMBER PROPERTIES, AND NATURAL GAS PROPERTIES NOT IN OPERATION DURING NORMAL PERIOD." and by inserting in lieu thereof the following: "CERTAIN PROPERTIES NOT IN OPERATION DURING NORMAL PERIOD.".

(B) By inserting immediately after "coal mining property," wherever appearing in such section the following: "certain other mineral properties referred to in section 453(b)(4),".

(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).)

JUSTIN F. WINKLE,
Acting Commissioner of Internal Revenue.

Approved December 2, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 5, 1952, 8:51 a. m.)

SECTION 40.453-3, REGULATIONS 130: Nontaxable income from exempt excess output.

INTERNAL REVENUE CODE

Regulations 130 amended. (See T. D. 5953, page 204.)

SECTION 40.453-4, REGULATIONS 130: Certain properties not in operation during normal period.

INTERNAL REVENUE CODE

Regulations 130 amended. (See T. D. 5953, page 204.)

SUBCHAPTER E.—TAX ON SELF-EMPLOYMENT INCOME

SECTION 481.—DEFINITIONS

SECTION 29.481–2: Self-employment income.

INTERNAL REVENUE CODE

Distributive share of income of a nonprofessional member of a partnership engaged in the practice of dentistry. (See I. T. 4097, below.)

SECTION 29.481–3: Trade or business. (Also Section 29.481–2.) 1952–18–13914 I. T. 4097

INTERNAL REVENUE CODE

The distributive share of income of a member of a partnership which is engaged in the practice of dentistry, even though such member is not a dentist, does not constitute self-employment income within the meaning of section 481(b) of the Internal Revenue Code.

Advice is requested whether the distributive share of income of a nonprofessional member of a partnership which is engaged in the practice of dentistry constitutes 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—

* * * * * * *

(5) The performance of service by an individual in the exercise of his profession as a * * * dentist * * * or the performance of such service by a partnership.

Section 29.481–3(*f*) of Regulations 111 provides in part that in the case of a partnership engaged in the practice of any of the professions excluded from the term "trade or business" by the provisions of section 481(c)(5) of the Code, *supra*, the partnership shall not be considered as carrying on a trade or business for the purpose of the tax on self-employment income, and none of the distributive shares of the ordinary net income or the ordinary net loss of such partnership shall be included in computing net earnings from self-employment of *any member* of the partnership. On the other hand, where a partnership is engaged in a trade or business not within any of the

excluded professions, each partner must include his distributive share of the ordinary net income or the ordinary net loss of such partnership in computing his net earnings from self-employment, irrespective of whether such partner is also engaged in the practice of one or more of such excluded professions and contributes his professional services to the partnership.

From the foregoing, it is apparent that the nature of the services performed by the partnership as such, and not the nature of the services contributed to the partnership by an individual member thereof, determines whether any partner's distributive share of partnership income constitutes self-employment income.

Accordingly, it is held that the distributive share of income of a member of a partnership which is engaged in the practice of dentistry, even though such member is not a dentist, does not constitute self-employment income within the meaning of section 481(b) of the Internal Revenue Code.

CHAPTER 2.—ADDITIONAL INCOME TAXES

SUBCHAPTER A.—PERSONAL HOLDING COMPANIES

SECTION 501.—DEFINITION OF PERSONAL HOLDING COMPANY

SECTION 29.501–1: Definition of personal holding company. (Also Section 502, Section 29.502–1.)

1952–17–13896
T. D. 5921

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 680 (81st Cong., 2d sess.) [C. B. 1950–2, 215], relating to definition of personal holding company, and to section 223 of the Revenue Act of 1950 (81st Cong., 2d sess.), relating to personal holding company income.

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On March 14, 1952, notice of proposed rule making with respect to amendments to conform Regulations 111 to Public Law 680 (81st Cong., 2d sess.) [C. B. 1950–2, 215], approved August 9, 1950, relating to definition of personal holding company, and to section 223 of the Revenue Act of 1950 (81st Cong., 2d sess.), approved September 23, 1950, relating to personal holding company income, was published in the Federal Register (17 F. R. 2231). 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 preceding section 29.501–1 [26 CFR 29.501–1] the following:

PUBLIC LAW 680 (81st CONG., 2d SESS.), APPROVED AUGUST 9, 1950

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 501(b)(6) of the Internal Revenue Code is amended to read as follows:

"(6) (A) A licensed personal finance company under State supervision, 80 per centum or more of the gross income of which is lawful interest received from loans made to individuals in accordance with the provisions of applicable State law if at least 60 per centum of such gross income is lawful interest (i) received from individuals each of whose indebtedness to such company did not at any time during the taxable year exceed in principal amount the limit prescribed for small loans by such law (or, if there is no such limit, $500), and (ii) not payable in advance or compounded and computed only on unpaid balances, and if the loans to a person, who is a shareholder in such company during the taxable year by or for whom 10 per centum or more in value of its outstanding stock is owned directly or indirectly (including in the case of an individual, stock owned by the members of his family as defined in section 503(a)(2)), outstanding at any time during such year do not exceed $5,000 in principal amount; and

"(B) A lending company, not otherwise excepted by section 501(b), authorized to engage in the small loan business under one or more State statutes providing for the direct regulation of such business, 80 per centum or more of the gross income of which is lawful interest, discount or other authorized charges (i) received from loans maturing in not more than thirty-six months made to individuals in accordance with the provisions of applicable State law, and (ii) which do not, in the case of any individual loan, exceed in the aggregate an amount equal to simple interest at the rate of 3 per centum per month not payable in advance and computed only on unpaid balances, if at least 60 per centum of the gross income is lawful interest, discount or other authorized charges received from individuals each of whose indebtedness to such company did not at any time during the taxable year exceed in principal amount the limit prescribed for small loans by such law (or, if there is no such limit, $500), and if the deductions allowed to such company under section 23(a) (relating to expenses), other than for compensation for personal services rendered by shareholders (including members of the shareholder's family as described in section 503(a)(2)) constitute 15 per centum or more of its gross income, and the loans to a person, who is a shareholder in such company during the taxable year by or for whom 10 per centum or more in value of its outstanding stock is owned directly or indirectly (including in the case of an individual, stock owned by the members of his family as defined in section 503(a)(2)), outstanding at any time during such year do not exceed $5,000 in principal amount."

SEC. 2. That section 501(b) of the Internal Revenue Code is amended by adding at the end thereof the following new paragraph:

"(8) A finance company, actively and regularly engaged in the business of purchasing or discounting accounts or notes receivable or installment obligations, or making loans secured by any of the foregoing or by tangible personal property, at least 80 per centum of the gross income of which is derived from such business in accordance with the provisions of applicable State law or does not constitute personal holding company income as defined in section 502, if 60 per centum of the gross income is derived from one or more of the following classes of transactions:

"(A) Purchasing or discounting accounts or notes receivable, or installment obligations evidenced or secured by contracts of conditional sale, chattel mortgages, or chattel lease agreements, arising out of the sale of goods or services in the course of the transferor's trade or business;

"(B) Making loans, maturing in not more than thirty-six months, to, and for the business purposes of, persons engaged in trade or business, secured by—

"(i) accounts or notes receivable, or installment obligations, described in subparagraph (a) above;

"(ii) warehouse receipts, bills of lading, trust receipts, chattel mortgages, bailments, or factor's liens, covering or evidencing the borrower's inventories;

"(iii) a chattel mortgage on property used in the borrower's trade or business;

except loans to any single borrower which for more than ninety days in the taxable year of the company exceed 15 per centum of the average funds employed by the company during such taxable year;

"(C) Making loans, in accordance with the provisions of applicable State law, secured by chattel mortgages on tangible personal property, the original amount of each of which is not less than the limit referred to in, or prescribed by, subsection (b)(6)(A)(i), and the aggregate principal amount of which owing by any one borrower to the company at any time during the taxable year of the company does not exceed $5,000; and

"(D) If 30 per centum or more of the gross income of the company is derived from one or more of the classes of transactions described in subparagraphs (A), (B) and (C) of this paragraph, purchasing, discounting, or lending upon the security of, installment obligations of individuals where the transferor or borrower acquired such obligations either in transactions of the classes described in subparagraphs (A) and (C) of this paragraph or as a result of loans made by such transferor or borrower in accordance with the provisions of clauses (i) and (ii) of paragraph 6(A) or of clauses (i) and (ii) of paragraph (6)(B) of this subsection, if the funds so supplied at all times bear an agreed ratio to the unpaid balance of the assigned installment obligations, and documents evidencing such obligations are held by the company;

provided that the deductions allowable under subsection 23(a) (relating to expenses), other than compensation for personal services rendered by shareholders (including members of the shareholder's family as described in section 503(a)(2)), constitute 15 per centum or more of the gross income, and that loans to a person who is a shareholder in such company during such taxable year by or for whom 10 per centum or more in value of its outstanding stock is owned directly or indirectly (including in the case of an individual, stock owned by members of his family as defined in section 503(a)(2)) outstanding at any time during such year do not exceed $5,000 in principal amount."

PAR. 2. Section 29.501–1 [26 CFR 29.501–1] is amended as follows:

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

Section 501(b) provides that the term "personal holding company" does not include corporations exempt from taxation under section 101, a bank as defined in section 104, a life insurance company, a surety company, a foreign personal holding company as defined in section 331, and a loan or investment corporation as defined in section 501(b)(7). For taxable years ending on or before August 9, 1950, such term also does not include a licensed personal finance company, as defined in section 501(b)(6) prior to amendment by Public Law 680, Eighty-first Congress, second session, approved August 9, 1950. For taxable years ending after August 9, 1950, the term "personal holding company" does not include a licensed personal finance company as defined in section 501(b)(6)(A), a lending company as defined in section 501(b)(6)(B), or a finance company (whether or not previously classified as a personal holding company) as defined in section 501(b)(8).

(B) By striking from the second paragraph the words "such a corporation" (appearing in the sentence beginning "If, for any prior taxable year") and inserting in lieu thereof "a loan or investment corporation as defined in section 501(b)(7)".

PAR. 3. There is inserted immediately preceding section 29.502–1 [26 CFR 29.502–1] the following:

SEC. 223. PERSONAL HOLDING COMPANY INCOME [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

Section 502(f) of the Internal Revenue Code (relating to use of corporation property by a shareholder) shall not apply with respect to rents received during taxable years ending after December 31, 1945, and before January 1, 1950, if such rents were received for the use by the lessee, in the operation of a bona fide commercial, industrial, or mining enterprise, of property of the taxpayer.

PAR. 4. Section 29.502–1(9) [26 CFR 29.502–1(9)] is hereby amended by adding at the end thereof the following new sentence:

See also section 223 of the Revenue Act of 1950, which provides that section 502(f) shall not apply to rents received during taxable years ending after December 31, 1945, and before January 1, 1950, if such rents were received for the use by the lessee, in the operation of a bona fide commercial, industrial, or mining enterprise, of property of the corporation.

(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 July 21, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register July 24, 1952, 8:52 a. m.)

SECTION 502.—PERSONAL HOLDING COMPANY INCOME

SECTION 29.502–1: Personal holding company income.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5921, page 209.)

SUBCHAPTER E.—EXCESS PROFITS TAX

PART I

EXCESS PROFITS TAX COUNCIL

1952–19–13918
IR-Mim. 19

Redelegation of section 722 settlement authority to technical advisors.

U. S. TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., August 18, 1952.

Officers and Employees of the Internal Revenue Service and Others Concerned:

1. *Purpose.*—The purpose of this mimeograph is to prescribe procedure whereby the Coordinator of the Excess Profits Tax Council may

redelegate to Excess Profits Tax Council technical advisors settlement authority in respect to issues arising under section 722 of the Internal Revenue Code in cases docketed in The Tax Court of the United States.

2. *Objective of Redelegation.*—The administration of section 722 of the Code having progressed to the stage where the Excess Profits Tax Council has made determinations in all but a few cases, the principal obligation of the Bureau is now concerned with those claimants who have filed petitions with the Tax Court seeking review of such determinations. Experience with standard-issue cases docketed in the Tax Court has demonstrated that there are substantial benefits to petitioners and to the Bureau in decentralized settlement authority. The objective of the redelegation of settlement authority in section 722 cases, accordingly, is to secure such benefits by providing procedures as similar to those established for standard-issue cases as is practicable.

3. *Assignment of Excess Profits Tax Council Technical Advisors.*—In each Appellate Staff District (and in the Appellate Division of each District established under Reorganization Plan No. 1 of 1952, C. B. 1952–1, 227) in which the Coordinator of the Excess Profits Tax Council finds the volume of docketed section 722 cases warrants such action, the full-time services of one or more Excess Profits Tax Council technical advisors will be available for the purpose of representing the Commissioner in the settlement of the section 722 issues in such cases. In other areas, the coordinator will make available for such purpose, to the extent warranted by the circumstances, the services of one or more technical advisors from the Council's Washington staff.

4. *Redelegation of Authority to Technical Advisors.*—The Coordinator may redelegate to any Excess Profits Tax Council technical advisor his final authority to represent the Commissioner in respect to all issues arising under section 722 of the Code in any case docketed in the Tax Court. Each redelegation to a technical advisor shall be applicable to either: (*a*) a particular class of cases, in which event the class of cases shall be defined to include all cases in which the basis of settlement involves a constructive average base period net income not in excess of a stated amount for any taxable year, the stated amount to be at least $50,000; or (*b*) a particular case, in which event the redelegation may be made irrespective of the amount of the constructive average base period net income involved. Each redelegation shall be in writing, addressed to a named technical advisor, and shall be in whichever of the following forms is appropriate:

(*a*) Redelegation applicable to a particular class of cases:

REDELEGATION OF SECTION 722 SETTLEMENT AUTHORITY TO TECHNICAL ADVISOR

Name _____ Date _____
Title _____
Address _____

Pursuant to the authority vested in me as Coordinator of the Excess Profits Tax Council, and particularly by Mim. 6800 (C. B. 1952–1, 150) dated April 28, 1952:

Effective immediately and until further notice, or so long as you hold your present office as Technical Advisor, Excess Profits Tax Council, you are hereby authorized to exercise, in your own name, the authority to represent the Commissioner in the settlement of all issues arising under section 722 of the Internal Revenue Code in any case, docketed in The Tax Court of the United States,

assigned to you in which the basis of settlement does not involve a constructive average base period net income in excess of $_____ for any taxable year.

This document is the evidence of your authority in the matter.

_____
Coordinator, Excess Profits Tax Council.

(*b*) Redelegation applicable to a particular case:

REDELEGATION OF SECTION 722 SETTLEMENT AUTHORITY TO TECHNICAL ADVISOR

Name _____ Date _____
Title _____
Address _____
In re: Petitioner _____
Docket No. _____

Pursuant to the authority vested in me as Coordinator of the Excess Profits Tax Council, and particularly by Mim. 6800 (C. B. 1952–1, 150) dated April 28, 1952:

Effective immediately and until further notice, or so long as you hold your present office as Technical Advisor, Excess Profits Tax Council, you are hereby authorized to exercise, in your own name, the authority to represent the Commissioner in the settlement of all issues arising under section 722 of the Internal Revenue Code in the designated case.

This document is the evidence of your authority in the matter.

_____
Coordinator, Excess Profits Tax Council.

5. *Council Members.*—Nothing in this mimeograph shall be construed to limit in any manner the authority of the Coordinator to designate a Council member to make the final determination in respect to the section 722 issues in any case. The present practice of designating one or more Council members to represent the Commissioner, in the field, in connection with each Tax Court calendar on which section 722 cases are set for trial will be continued to the extent settlement authority has not been redelegated otherwise.

6. *Settlement Negotiations.*—Settlement negotiations in the field in docketed section 722 cases will be carried on by technical advisors (or Council members, as the case may be) generally in the same manner and subject to the same rules and practices as obtain in similar negotiations by the Appellate Division in standard-issue cases. While consideration may be given to an offer of settlement which fairly reflects the strengths and weaknesses of the opposing views, no settlement will be countenanced based upon nuisance value of the case to either party. The concurrence of the authorized representative of the Chief Counsel in the field will be secured before any settlement is made final.

JOHN B. DUNLAP,
Commissioner.

SECTION 736(a).—RELIEF FOR INSTALLMENT BASIS TAXPAYERS AND TAXPAYERS WITH INCOME FROM LONG-TERM CONTRACTS: ELECTION TO ACCRUE INCOME

REGULATIONS 112, SECTION 35.736(a)–3: Computation of income on straight accrual basis. 1952–19–13919 Ct. D. 1747

EXCESS PROFITS TAX—INTERNAL REVENUE CODE—DECISION OF COURT

1. INSTALLMENT BASIS, TAXPAYER—ELECTION TO REPORT INCOME ON ACCRUAL BASIS—LIMITATION ON DEDUCTION FOR CHARITABLE CONTRIBUTIONS.

Taxpayer, which regularly reported income from installment sales on the installment basis, as provided for in section 44(a), of the Internal Revenue Code, but which elected, under section 736(a) of the Code to report such income on the accrual basis for excess profits tax purposes, is limited in its deduction for charitable contributions under section 23(q) of the Code to 5 percent of its net income as computed under the accrual method of accounting. A consideration of the language of the statute providing for an election by installment sellers to use the accrual method of accounting for excess profits tax purposes, as well as the objectives of the statute, clearly sustain the reasonableness of section 35.736(a)–3 of Regulations 112 here applicable.

2. DECISION AFFIRMED.

Decision of The Tax Court of the United States, 15 T. C. 918 (1950), affirmed.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Leo Kahn Furniture Company, petitioner, v. *Commissioner of Internal Revenue, respondent*

[195 Fed. (2d) 404]

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

Before HICKS, Chief Judge; MCALLISTER and MILLER, Circuit Judges

[April 4, 1952]

OPINION

MCALLISTER, Circuit Judge. This case presents a single issue of law: whether, for excess profits tax purposes, petitioner's deduction for charitable contributions is properly limited to 5 percent of its net income, as finally determined, on the installment basis of accounting, or to 5 percent of its net income, as finally determined, on the accrual basis. The Tax Court held that the amount of such deduction was limited to 5 percent of its net income, computed on the accrual basis; and petitioner seeks review in this court.

Petitioner is engaged in the retail furniture business, regularly making sales on the installment plan. It used the installment method of accounting, in which a proportion of the total profit is reported only in the years when installment payments are actually received. Section 44(a) of the Internal Revenue Code.[1] This was the method of accounting permitted under the statute and adopted by the taxpayer, and which it used during the taxable year in reporting its income for normal and surtax purposes under chapter I.[2]

After Congress had enacted an excess profits tax law in 1940, however, it appeared that a hardship would result to taxpayers on the above-mentioned installment basis, due to the fact, among other considerations, that the Federal Reserve Board had increased the amount of down payments required, while shortening the period on installment contracts; that, on account of the shifting

[1] 26 U. S. C. A., section 44 (1946 ed.)
[2] 26 U. S. C. A., sections 1, et seq.

of business to war contracts, installment sellers using the installment basis of accounting were experiencing an increase of such income during the excess profits tax years, while the selling costs deductible in the year of the sales were not available as offsets against the increased income. Accordingly, Congress afforded a form of relief [3] to such installment basis taxpayers by permitting them, under certain conditions and in accordance with the regulations to be promulgated by the Commissioner of Internal Revenue, to make an election, for purposes of the excess profits tax, to compute income from installment sales on the accrual basis. Such election, when made, was to be irrevocable—except that it could later be abandoned under certain conditions—and taxpayers who made the election were to use the accrual method only for excess profits tax purposes. They were still to report their income on the installment basis for purposes of the taxes imposed by chapter I.

Petitioner elected to compute its income from installment sales on the accrual basis for purposes of the excess profits tax. In order to ascertain the amount of a taxpayer's excess profits tax, it is necessary to compute its "adjusted excess profits net income," as it is upon that item that the tax is imposed. The "adjusted excess profits net income" is the "excess profits net income" minus a specific exemption consisting of the excess profits credit (based either on the base period earnings or invested capital) and any unused excess profits credit.

Petitioner, therefore, had two normal tax net incomes—one, computed under one accounting method, for income tax under chapter I; and the other, computed under a different method, for excess profits tax.

The controversy before us turns on the question whether the taxpayer which regularly reports its income from installment sales on the installment basis, as provided for in section 44(a) of the Internal Revenue Code, but which elected, under section 736(a) of the Internal Revenue Code,[4] to report such income on the accrual basis for purposes of the excess profits tax, is entitled to compute its adjusted excess profits net income by claiming a deduction for charitable contributions under section 23(q) of the Code [5] in an amount in excess of 5 percent of its income, as computed under the accrual method of accounting. The taxpayer, notwithstanding its election to use the accrual method of accounting for excess profits tax purposes, claims the right to compute its adjusted excess profits net income by deducting such charitable contributions to the extent that they would exceed 5 percent of its net income, computed on the installment basis.

Petitioner contends that if Congress intended that, for the purpose of computing excess profits tax, deductions for charitable contributions should be limited to 5 percent of net income, computed in a manner other than that provided for income tax purposes, it would have so provided. It is, therefore, argued by petitioner that since the basis of computation which it uses for income tax purposes is the installment basis, that such basis should be used with respect to deductions for charitable purposes in computing excess profits tax, in spite of the fact that the taxpayer had elected to use the accrual method of accounting for excess profits tax purposes.

We do not agree with petitioner's contention. In the first place, the applicable regulations [section 35.736(a)–3 of Treasury Regulations 112] insofar as here pertinent, provides:

> "Any deductions under section 23 which are limited to a percentage of net income [computed without regard to such deductions, as for example, the deduction for charitable contributions which is allowed by section 23(q)] shall be determined on the basis of such net income with income from installment sales determined upon the straight accrual basis, and not on the basis of such net income for the purposes of the income tax under Chapter 1. * * *"

The foregoing regulations govern the precise question before us, and, if valid, must control determination of the issue.

It is clear that the purpose of the statute which permits a taxpayer, engaged in selling on the installment plan, and reporting its income on the installment basis, to elect to report such income on the accrual basis for purposes of the excess profits tax, was to place such installment sellers on an equal footing with other taxpayers who were on an accrual basis, so far as the determination of the excess profits tax is concerned. *Kimbrell's Home Furnishings, Inc.*, v.

[3] 26 U. S. C. A., section 736(a) (1946 ed.)
[4] 26 U. S. C. A., section 736 (1946 ed.)
[5] 26 U. S. C. A., section 23 (1946 ed.)

Commissioner, 159 Fed. (2d) 608 (C. A. 4); *Commissioner* v. *Hecht Co.*, 163 Fed. (2d) 194 (C. A. 4). The contention advanced by petitioner would contravene the purpose of the statute. For the use of installment accounting, after petitioner had elected the accrual method for excess profits tax purposes, would result in a deduction of more than 5 percent of the amount of its net income on which the excess profits tax is ultimately based; and this would be a greater deduction than allowed to taxpayers on the accrual basis. In order that installment sellers be on an equal footing with other taxpayers on an accrual basis, which was the purpose of the statute, it is necessary that both installment sellers who have elected to use the accrual method as provided by statute, and taxpayers on the accrual basis compute their adjusted excess profits net income by the accrual method of accounting. A consideration of the language of the statute providing for an election by installment sellers to use the accrual method of accounting *for excess profits tax purposes*, as well as the objectives of the statute, clearly sustain the reasonableness of the Treasury regulations here applicable.

In accordance with the foregoing, the decision of the Tax Court is affirmed.

CHAPTER 36.—COLLECTION

SUBCHAPTER A.—GENERAL PROVISIONS

SECTION 3657.—PAYMENT BY UNITED STATES NOTES AND CERTIFICATES OF INDEBTEDNESS

1952–21–13940
T. D. 5934

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 3.—ACCEPTANCE OF CERTAIN TREASURY OBLIGATIONS IN PAYMENT OF INCOME AND PROFITS TAXES

Treasury Decision 4703 [C. B. XV-2, 288 (1936)] amended

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 order to reflect the changes made necessary by paragraph 5 of Department Circular No. 418, as amended May 13, 1952 [31 C. F. R. 309.5; 17 F. R. 4561], relating to acceptance before maturity of Treasury bills in payment of income and profits taxes, Article 1 of Treasury Decision 4703 [C. B. XV-2, 288 (1936)], approved November 3, 1936, as made applicable by Treasury Decision 4885 [C. B. 1939–1 (Part 1), 396], approved February 11, 1939 [26 C. F. R., Cum. Supp., page 5876], codified in 26 C. F. R., part 3 (1938 ed.), as section 3.56–5, is hereby amended to read as follows:

SECTION 1. *Treasury certificates of indebtedness, Treasury notes, and Treasury bills in payment of income and profits taxes.*—(*a*) Treasury certificates of indebtedness and Treasury notes (not including interim receipts issued by Federal Reserve banks in lieu of definitive certificates or definitive notes) the maturity dates of which are the 15th day of any calendar month may be tendered at par or dollar face amount, plus accrued interest, if any, payable with the principal (not represented by coupons attached), in payment of income and profits taxes payable under the provisions of the Internal Revenue Code, but only if (1) such certificates or notes, according to the express terms of their issue, are made

acceptable in payment of such income and profits taxes, and (2) such taxes for which the certificates or notes are tendered in payment become due on the same date as that on which such certificates or notes mature.

All interest coupons attached to Treasury certificates of indebtedness and Treasury notes shall be detached by the taxpayer before such certificates or notes are tendered in payment of taxes.

(*b*) Treasury bills of any series (not including interim receipts issued by Federal Reserve banks in lieu of definitive bills) may be tendered at or before maturity at maturity value in payment of income and profits taxes payable under the provisions of the Internal Revenue Code, due on the date on which the bills mature or a specified prior date, but only if such bills, according to the express terms of their issue, are made acceptable in payment of such income and profits taxes due on that date.

(*c*) Receipts given by the collector or director of Internal Revenue for Treasury certificates of indebtedness, Treasury notes, or Treasury bills received in payment of income or profits taxes as provided in this section shall contain an adequate description of such certificates, notes, or bills, including a statement of the par value or dollar face amount thereof and accrued interest, if any, payable with the principal (not represented by coupons attached), and shall show that they are tendered by the taxpayer and received by the collector or director, subject to no condition, qualification, or reservation whatsoever, in payment of no more than an amount of taxes equal to such par value or dollar face amount and accrued interest, if any, payable with the principal (not represented by coupons attached). Any certificate, note, or bill offered in payment of income or profits taxes under the provisions of the Internal Revenue Code subject to any condition, qualification, or reservation, or for any greater amount than the par value or dollar face amount thereof and accrued interest, if any, payable with the principal (not represented by coupons attached) shall not be deemed to be duly tendered and shall be returned to the taxpayer.

(*d*) For the purpose of saving taxpayers the expense of transmitting such Treasury certificates of indebtedness, Treasury notes, or Treasury bills to the office of the collector or director of Internal Revenue in whose district the taxes are payable, taxpayers desiring to pay income and profits taxes by such certificates, notes, or bills acceptable in payment of taxes may deposit such certificates, notes, or bills with a Federal Reserve bank or branch, subject to the condition that the Federal Reserve bank issue a receipt in the name of the collector or director of Internal Revenue, covering the par or dollar face amount of the certificates, notes, or bills, and accrued interest, if any, payable with the principal (not represented by coupons attached), and stating on the face of the receipt that the securities represented thereby are held by the bank for redemption and application of proceeds in payment of income or profits taxes due on a specified date by the taxpayer named therein.

Because this Treasury Decision extends to taxpayers the privilege of applying specified Treasury bills at maturity value in payment of income or profits taxes due prior to the maturity date of such bills, it is hereby 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 shall be effective upon its filing for publication in the Federal Register.

(This Treasury Decision is issued under the authority contained in 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 September 25, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 30, 1952, 8:48 a. m.)

CHAPTER 37.—ABATEMENTS, CREDITS, AND REFUNDS

SECTION 3779.—EXTENSIONS OF TIME FOR PAYMENT OF TAXES BY CORPORATIONS EXPECTING CARRY-BACKS

(Also Section 3780.)

1952–24–13969
T. D. 5943

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 474.—EXTENSIONS OF TIME FOR PAYMENT OF TAXES BY CORPORATIONS EXPECTING CARRY-BACKS, AND TENTATIVE CARRY-BACK ADJUSTMENTS

Treasury Decision 5498 [C. B. 1946–1, 209] amended to conform to section 304 (a), (b), and (g) of the Excess Profits Tax Act of 1950.

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On September 6, 1952, a notice of proposed rule making was published in the Federal Register [17 F. R. 8078] to conform the regulations prescribed by Treasury Decision 5498 [C. B. 1946–1, 209], approved February 27, 1946 [26 CFR, part 474], to sections 3779 and 3780(a) of the Internal Revenue Code, as amended by section 304 (a), (b), and (g) of the Excess Profits Tax Act of 1950, approved January 3, 1951. No objection to the rules proposed having been received within the 30 days following such publication, the amendments set forth below are hereby adopted.

PARAGRAPH 1. The paragraph which reads "Pursuant to the above-quoted provisions of the Tax Adjustment Act of 1945, the following regulations are hereby prescribed:", which paragraph immediately precedes section 474.0, is stricken and there is inserted in lieu thereof the following:

SEC. 304. TECHNICAL AMENDMENTS [EXCESS PROFITS TAX ACT OF 1950, APPROVED JANUARY 3, 1951].

(a) Section 3779 of the Internal Revenue Code (relating to extensions of time for payment of taxes by corporations expecting carry-backs) is hereby amended by striking "710(c)(3)" where it appears in subsection (b) and inserting in lieu thereof "432(c)", and by striking the words "four equal" where they appear in subsections (c), (g), and (i).

(b) Section 3780(a) of such code (relating to tentative carry-back adjustments) is hereby amended by striking "710(c)(3)" and inserting in lieu thereof "432(c)".

* * * * * * *

(g) The amendments made by this section shall be applicable with respect to taxable years ending after June 30, 1950.

Pursuant to the above-quoted provisions of law, the following regulations are hereby prescribed:

PAR. 2. Section 474.2 is amended by inserting "711(a)(2)(L), and 433(a)(1)(J)" in lieu of "and 711(a)(2)(L)" in the last sentence

of the third paragraph thereof, so that such sentence will read as follows:

In determining the net operating loss deduction, the adjustments required by sections 122(c), 711(a)(1)(J), 711(a)(2)(L), and 433(a)(1)(J) are likewise to be made.

PAR. 3. Section 474.4 is amended by striking "four equal installments." from the first sentence thereof and inserting in lieu thereof "installments as provided in section 56(b).", so that such sentence will read as follows:

If an extension of time relates to only part of the tax, the time for payment of the remainder of the tax shall be considered to be the dates on which payments would have been required if such remainder had been the tax and the taxpayer had elected to pay the tax in installments as provided in section 56(b).

PAR. 4. Section 474.8 is amended by striking from the second sentence thereof the words "four equal", so that such sentence will read as follows:

The time for payment of such amount shall be the dates on which payments would have been required if there had been no extension with respect to such amount and the taxpayer had elected under section 56(b) to pay the tax in installments.

PAR. 5. Section 474.9 is amended by striking the words "four equal" from the second sentence thereof, so that the part of such sentence which precedes (a) thereof will read as follows:

The interest, which is to be collected as part of such amount, is to be computed from the dates on which payments would have been required if there had been no extension, and the taxpayer had elected under section 56(b) to pay the tax in installments, at the following rates:

PAR. 6. Section 474.11 is amended by inserting "711(a)(2)(L), and 433(a)(1)(J)" in lieu of "and 711(a)(2)(L)" in the last sentence of the second paragraph thereof, so that such sentence will read as follows:

In computing the net operating loss deduction for purposes of determining any such increase or decrease, proper adjustments as required by sections 122(c), 711(a)(1)(J), 711(a)(2)(L), and 433(a)(1)(J) are to be made.

(This Treasury Decision is issued under the authority contained in section 3791 of the Internal Revenue Code (53 Stat. 367; 26 U. S. C. 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved October 31, 1952.

JOHN S. GRAHAM,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 5, 1952, 8:54 a. m.)

SECTION 3780.—TENTATIVE CARRY-BACK ADJUSTMENTS

INTERNAL REVENUE CODE

Regulations with respect to tentative carry-back adjustments, Treasury Decision 5498 (C. B. 1946–1, 209) amended. (See T. D. 5943, page 219.)

INCOME TAX RULINGS.—PART II

REVENUE ACT OF 1938 AND PRIOR REVENUE ACTS

SUBTITLE B.—GENERAL PROVISIONS

PART II.—COMPUTATION OF NET INCOME

SECTION 111.—DETERMINATION OF AMOUNT OF GAIN OR LOSS

ARTICLE 561, REGULATIONS 74: Determination of the amount of gain or loss. (Also Section 423, Section 29.423–3.)

1952–23–13956
G. C. M. 27491

REVENUE ACT OF 1928

In the case of an organization which was exempt from tax for a prior period and subsequently became subject to tax, in computing the amount of gain or loss from the sale or exchange of property held during all or part of the period that it was exempt, the basis should be reduced by the amount of depreciation sustained with respect to the property for the period held while the taxpayer was exempt.

G. C. M. 10857 (C. B. XI–2, 105 (1932)) revoked.

Reconsideration has been given to G. C. M. 10857 (C. B. XI–2, 105, (1932)) in the light of the regulations under Supplement U of the Internal Revenue Code (which relate to the imposition of tax for taxable years beginning after December 31, 1950, in respect of income of certain otherwise tax-exempt organizations) particularly section 29.423–3 of Regulations 111, as added by T. D. 5928 (page 181, this Bulletin), approved August 28, 1952.

In G. C. M. 10857, *supra*, it is held that where an organization derives taxable gain from the sale of its property the basis should not be reduced by the amount of depreciation sustained with respect to the property for the period during which the taxpayer occupied the status of an exempt organization. The issue in G. C. M. 10857, *supra*, relating to the allowance of depreciation in the determination of gain or loss upon the sale, exchange, or other disposition of property does not arise in the application of Supplement U, since such gain or loss is excluded by section 422(a)(5) of the Code in computing "unrelated business net income". However, the allowance of depreciation does arise in computing the amount of rental income to be included in "unrelated business net income" derived from a Supplement U lease. In computing such amount it is necessary to determine the adjusted basis of the property subject to the lease and to make a reasonable allowance for depreciation.

Section 29.423–3 of Regulations 111, relating to the treatment of rent from Supplement U lease, provides that the determination of the adjusted basis of property is not affected by the fact that the taxpayer was exempt from tax for prior years. Therefore, the cost or other basis of property of an organization subject to the provisions of Supplement U must be diminished by the amount of depreciation

sustained prior to the beginning of the first taxable year in which it became subject to Supplement U, regardless of whether the organization was exempt from tax during any prior year.

Since G. C. M. 10857, *supra*, is in conflict with section 29.423–3 of Regulations 111, it is hereby revoked. Accordingly, in the case of an organization which was exempt from tax for a prior period and subsequently became subject to tax, in computing the amount of gain or loss from the sale or exchange of property held during all or part of the period that it was exempt, the basis should be reduced by the amount of depreciation sustained with respect to the property for the period held while the taxpayer was exempt. Appropriate adjustments should also be made with respect to depreciation for the period the property was held while the taxpayer was not exempt.

G. C. M. 10857 (C. B. XI–2, 105 (1932)) revoked.

CHARLES W. DAVIS,
Chief Counsel, Bureau of Internal Revenue.

ESTATE AND GIFT TAXES

ESTATE TAX

SECTION 811.—GROSS ESTATE

SECTION 81.13, REGULATIONS 105: Property of decedent at time of death. (Also Section 81.49.) 1952-23-13958 T. D. 5940

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 provisions of section 604(a) of the Revenue Act of 1951, Eighty-second Congress, first session.

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 order to conform Regulations 105 [26 CFR, part 81] to section 604(a) of the Revenue Act of 1951, approved October 20, 1951, such regulations are hereby amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 81.49 [26 CFR 81.49] the following:

SEC. 604. ESTATE AND GIFT TAX TREATMENT OF UNITED STATES BONDS HELD BY CERTAIN NONRESIDENT ALIENS [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) ESTATE TAX.—Effective with respect to estates of decedents dying after February 10, 1939, section 861 (relating to the computation of the net estate of a decedent nonresident not a citizen of the United States) is hereby amended by adding at the end thereof the following new subsection:

"(c) UNITED STATES BONDS.—For the purposes of subsection (a), the value of the gross estate (determined as provided in section 811) of a decedent who was not engaged in business in the United States at the time of his death—

"(1) shall not include obligations issued by the United States prior to March 1, 1941; and

"(2) shall include obligations issued by the United States on or after March 1, 1941, but only if the decedent died after the date of the enactment of the Revenue Act of 1951."

PAR. 2. Section 81.13 [26 CFR 81.13] is amended as follows:

(A) By inserting immediately after "taxation, are" in the first sentence of the fifth paragraph the word "generally", and

(B) By striking the second sentence of such fifth paragraph and inserting in lieu thereof the following:

However, section 861(c), as added by 604(a) of the Revenue Act of 1951, provides that, in case of a decedent who was a nonresident not a citizen of the United

States and not engaged in business in the United States at the time of his death, the value of the gross estate shall not include obligations issued by the United States prior to March 1, 1941. Section 861(c) further provides that the gross estate of such a decedent shall include obligations issued by the United States on or after March 1, 1941, but only if the decedent died after October 20, 1951, the date of the Revenue Act of 1951.

PAR. 3. Section 81.49 [26 CFR 81.49] is amended by inserting immediately following the second sentence thereof the following:

For inclusion in the gross estate of obligations of the United States in the case of nonresidents who are not citizens of and not engaged in business in the United States, see section 81.13.

Because of the technical nature of the amendments made herein, 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 October 14, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 17, 1952, 8:53 a. m.)

SECTION 81.17, REGULATIONS 105: Transfers intended to take effect at or after the decedent's death. (Also Sections 81.18 and 81.19.)

1952–22–13950
T. D. 5936

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 sections 608, 609, and 610 of the Revenue Act of 1951, Eighty-second Congress, first session.

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 order to conform Regulations 105 [26 CFR, part 81] to sections 608, 609, and 610 of the Revenue Act of 1951 (82d Cong., 1st sess.), approved October 20, 1951, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately after section 501 of the Revenue Act of 1950 (81st Cong., 2d sess.) 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. 608. TRANSFERS WITH INCOME RESERVED [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

Section 7(b) of the Act entitled "An Act to amend certain provisions of the Internal Revenue Code", approved October 25, 1949 (63 Stat. 895), is hereby amended by striking out "January 1, 1950" and inserting in lieu thereof "January 1, 1951".

SEC. 609. TRANSFERS TAKING EFFECT AT DEATH [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

Effective with respect to estates of decedents dying after February 10, 1939, section 7(b) of the Act entitled "An Act to amend certain provisions of the Internal Revenue Code", approved October 25, 1949 (63 Stat. 895), is hereby amended by striking out the word "sentence" and inserting in lieu thereof "two sentences" and by inserting immediately preceding the last sentence thereof the following sentence: "The provisions of section 811(c)(1)(C) of such code shall not apply to a transfer made prior to September 8, 1916." The provisions of section 7(c) of such Act, as amended, shall not apply to an overpayment resulting from the application of this section.

PAR. 2. Section 81.17, as amended by Treasury Decision 5906 [C. B. 1952-1, 155], approved May 27, 1952 [26 CFR 81.17], is further amended as follows:

(A) By inserting in the first sentence of (*a*) after "of which he has made a transfer" the following "after September 7, 1916".

(B) By adding at the end of (*a*) the following: "The provisions of section 811(c)(1)(C) are not applicable to a transfer made before September 8, 1916."

(C) By striking from the first sentence of (*c*) "(whether made before or after the enactment of the Revenue Act of 1916)".

PAR. 3. Section 81.18, as amended by Treasury Decision 5834 [C. B. 1951-1, 72], approved March 8, 1951 [26 CFR 81.18], is further amended by striking out "January 1, 1950", wherever it appears therein, and inserting in lieu thereof, "January 1, 1951".

PAR. 4. Section 81.19, as amended by Treasury Decision 5834 [26 CFR 81.19] is further amended by striking therefrom "January 1, 1950", wherever it appears therein, and inserting in lieu thereof "January 1, 1951".

PAR. 5. There is inserted immediately preceding section 81.25 [26 CFR 81.25] the following:

SEC. 610. REVERSIONARY INTERESTS IN CASE OF LIFE INSURANCE [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

If refund or credit of any overpayment resulting from the application of section 503 of the Revenue Act of 1950 was prevented on October 25, 1950, by the operation of any law or rule of law (other than section 3760 of the Internal Revenue Code, relating to closing agreements, and other than section 3761 of such Code, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor was filed after October 25, 1949, and on or before October 25, 1950.

Because of the technical nature of the amendments made herein, it is found 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 October 6, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

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

SECTION 812.—NET ESTATE

SECTION 81.44, REGULATIONS 105: Transfers for public, charitable, religious, etc., uses. (Also Section 81.45.) 1952–26–13996 T. D. 5948

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 certain provisions of parts I, II, and III of title III of the Revenue Act of 1950.

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On September 5, 1952, notice of proposed rule making, regarding certain estate tax provisions of the Revenue Act of 1950, approved September 23, 1950, was published in the Federal Register (17 F. R. 8020). No objections to such rules having been received, the amendments set forth below necessary to conform Regulations 105 to such provisions are hereby adopted.

PARAGRAPH 1. There is inserted immediately preceding section 81.44 [26 CFR 81.44] the following:

SEC. 302. EXEMPTION OF CERTAIN ORGANIZATIONS FOR PAST YEARS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) TRADE OR BUSINESS NOT UNRELATED.—For any taxable year beginning prior to January 1, 1951, no organization shall be denied exemption under paragraph (1), (6), or (7) of section 101 of the Internal Revenue Code on the grounds that it is carrying on a trade or business for profit if the income from such trade or business would not be taxable as unrelated business income under the provisions of Supplement U of the Internal Revenue Code, as amended by this Act, or if such trade or business is the rental by such organization of its real property (including personal property leased with the real property).

(b) PERIOD OF LIMITATIONS.—In the case of an organization which would otherwise be exempt under section 101 of the Internal Revenue Code were it not carrying on a trade or business for profit, the filing of the information return required by section 54(f) of the Internal Revenue Code (relating to returns by tax-exempt organizations) for any taxable year beginning prior to January 1, 1951, shall be deemed to be the filing of a return for the purposes of section 275 of the Internal

Revenue Code (relating to period of limitation upon assessment and collection). In the case of such an organization which was, by the provisions of section 54(f) of the Internal Revenue Code, specifically not required to file such information return, for the purposes of the preceding sentence a return shall be deemed to have been filed at the time when such return should have been filed had it been so required. The provisions of this subsection shall not apply to a taxable year of such an organization with respect to which, prior to September 20, 1950, (1) any amount of tax was assessed or paid, or (2) a notice of deficiency under section 272 of the Internal Revenue Code was sent to the taxpayer.

(c) DENIAL OF DEDUCTIONS.—A gift or bequest to an organization prior to January 1, 1951, for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals) otherwise allowable as a deduction under section * * * 812(d), 861(a)(3), * * * of the Internal Revenue Code, may not be denied under such sections if a denial of exemption to such organization for the taxable year of the organization in which such gift or bequest was made is prevented by the provisions of subsections (a) or (b) of this section.

SEC. 162. NET INCOME [INTERNAL REVENUE CODE AS AMENDED BY SECTION 321, REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(a) Subject to the provisions of subsection (g), there shall be allowed as a deduction (in lieu of the deduction for charitable, etc., contributions authorized by section 23(o)) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust, is during the taxable year paid or permanently set aside for the purposes and in the manner specified in section 23(o), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance or operation of a public cemetery not operated for profit. Where any amount of the income so paid or set aside is attributable to gain from the sale or exchange of capital assets held for more than 6 months, proper adjustment of the deduction otherwise allowable under this subsection shall be made for any deduction allowable to the trust under section 23(ee);

* * * * * * *

(g) RULES FOR APPLICATION OF SUBSECTION (a) IN THE CASE OF TRUSTS.—

* * * * * * *

(2) OPERATIONS OF TRUSTS.—

(A) Limitation on charitable, etc., deduction.—The amount otherwise allowable under subsection (a) as a deduction shall not exceed 15 per centum of the net income of the trust (computed without the benefit of subsection (a)) if the trust has engaged in a prohibited transaction, as defined in subparagraph (B) of this paragraph.

(B) Prohibited transactions.—For the purposes of this paragraph the term "prohibited transaction" means any transaction after July 1, 1950, in which any trust while holding income or corpus which has been permanently set aside or is to be used exclusively for charitable or other purposes described in subsection (a)—

(i) lends any part of such income or corpus, without receipt of adequate security and a reasonable rate of interest, to;

(ii) pays any compensation from such income or corpus, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

(iii) makes any part of its services available on a preferential basis to;

(iv) uses such income or corpus to make any substantial purchase of securities or any other property, for more than an adequate consideration in money or money's worth, from;

(v) sells any substantial part of the securities or other property comprising such income or corpus. for less than an adequate consideration in money or money's worth, to; or

(vi) engages in any other transaction which results in a substantial diversion of such income or corpus to;

the creator of such trust; any person who has made a substantial contribution to such trust; a member of the family (as defined in section 24(b)(2)(D)) of an individual who is the creator of the trust or who has made a substantial contribution to the trust; or a corporation controlled by any such creator or person through the ownership, directly or indirectly, of 50 per centum or more of the total combined voting power of all classes of stock entitled to vote or 50 per centum or more of the total value of shares of all classes of stock of the corporation.

(C) Taxable years affected.—The amount otherwise allowable under subsection (a) as a deduction shall be limited as provided in subparagraph (A) only for taxable years subsequent to the taxable year during which the trust is notified by the Secretary that it has engaged in such transaction, unless such trust entered into such prohibited transaction with the purpose of diverting such corpus or income from the purposes described in subsection (a), and such transaction involved a substantial part of such corpus or income.

(D) Future charitable, etc., deductions of trusts denied deduction under subparagraph (C).—If the deduction of any trust under subsection (a) has been limited as provided in this paragraph, such trust, with respect to any taxable year following the taxable year in which notice is received of limitation of deduction under subsection (a), may, under regulations prescribed by the Secretary, file claim for the allowance of the unlimited deduction under subsection (a), and if the Secretary, pursuant to such regulations, is satisfied that such trust will not knowingly again engage in a prohibited transaction, the limitation provided in subparagraph (A) shall not be applicable with respect to taxable years subsequent to the year in which such claim is filed.

(E) Disallowance of certain charitable, etc., deductions.—No gift or bequest for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), otherwise allowable as a deduction under section * * * 812(d), 861(a)(3), * * * shall be allowed as a deduction if made in trust and; in the taxable year of the trust in which the gift or bequest is made, the deduction allowed the trust under subsection (a) is limited by subparagraph (A). With respect to any taxable year of a trust in which such deduction has been so limited by reason of entering into a prohibited transaction with the purpose of diverting such corpus or income from the purposes described in subsection (a), and such transaction involved a substantial part of such income or corpus, and which taxable year is the same, or prior to the, taxable year of the trust in which such prohibited transaction occurred, such deduction shall be disallowed the donor only if such donor or (if such donor is an individual) any member of his family (as defined in section 24(b)(2)(D)) was a party to such prohibited transaction.

(F) Definition.—For the purposes of this paragraph the term "gift or bequest" means any gift, contribution, bequest, devise, legacy, or transfer.

(3) CROSS REFERENCE.—For disallowance of certain charitable, etc., deductions otherwise allowable under subsection (a), see section 3813.

* * * * * * *

SEC. 322. EFFECTIVE DATE OF PART II [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

The amendments made by this part [section 321, inserting subsection (g) in section 162 of the Internal Revenue Code] shall be applicable only with respect to taxable years beginning after December 31, 1950, except that subsection (g)(2)(E) of section 162 of the Internal Revenue Code, added by section 321(a) of this Act, shall apply only with respect to gifts or bequests (as defined in section 162(g)(2)(F) of the Internal Revenue Code) made on or after January 1, 1951.

* * * * * * *

SEC. 331. EXEMPTION OF CERTAIN ORGANIZATIONS UNDER SECTION 101(6) AND DEDUCTIBILITY OF CONTRIBUTIONS MADE TO SUCH ORGANIZATIONS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

Chapter 38 is hereby amended by inserting at the end thereof the following new sections:

"SEC. 3813. REQUIREMENTS FOR EXEMPTION OF CERTAIN ORGANIZATIONS UNDER SECTION 101(6) AND FOR DEDUCTABILITY OF CONTRIBUTIONS MADE TO SUCH ORGANIZATIONS.

"(a) ORGANIZATIONS TO WHICH SECTION APPLIES.—This section shall apply to any organization described in section 101(6) except—

"(1) a religious organization (other than a trust);

"(2) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on;

"(3) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 101(6)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public;

"(4) an organization which is operated, supervised, controlled, or principally supported by a religious organization (other than a trust) which is itself not subject to the provisions of this section; and

"(5) an organization the principal purposes or functions of which are the providing of medical or hospital care or medical education or medical research.

"(b) PROHIBITED TRANSACTIONS.—For the purposes of this section, the term 'prohibited transaction' means any transaction in which an organization subject to the provisions of this section—

"(1) lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;

"(2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

"(3) makes any part of its services available on a preferential basis to;

"(4) makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth, from;

"(5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth, to; or

"(6) engages in any other transaction which results in a substantial diversion of its income or corpus to;

the creator of such organization (if a trust); a person who has made a substantial contribution to such organization; a member of the family (as defined in section 24(b)(2)(D)) of an individual who is the creator of such trust or who has made a substantial contribution to such organization; or a corporation controlled by such creator or person through the ownership, directly or indirectly, of 50 per centum or more of the total combined voting power of all classes of stock entitled to vote or 50 per centum or more of the total value of shares of all classes of stock of the corporation.

"(c) DENIAL OF EXEMPTION TO ORGANIZATIONS ENGAGED IN PROHIBITED TRANSACTION.—

"(1) GENERAL RULE.—No organization subject to the provisions of this section which has engaged in a prohibited transaction after July 1, 1950, shall be exempt from taxation under section 101(6).

"(2) TAXABLE YEARS AFFECTED.—An organization shall be denied exemption from taxation under section 101(6) by reason of paragraph (1) only for taxable years subsequent to the taxable year during which it is notified by the Secretary that it has engaged in a prohibited transaction, unless such organization entered into such prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purposes, and such transaction involved a substantial part of the corpus or income of such organization.

"(d) FUTURE STATUS OF ORGANIZATION DENIED EXEMPTION.—Any organization denied exemption under section 101(6) by reason of the provisions of subsection (c), with respect to any taxable year following the taxable year in which notice of denial of exemption was received, may, under regulations prescribed by the Secretary, file claim for exemption, and if the Secretary, pursuant to such regulations, is satisfied that such organization will not knowingly again engage in a prohibited transaction, such organization shall be exempt with respect to taxable years subsequent to the year in which such claim is filed.

"(e) DISALLOWANCE OF CERTAIN CHARITABLE, ETC., DEDUCTIONS.—No gift or bequest for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), otherwise allowable as a deduction under section * * * 812(d), 861(a)(3), * * * shall be allowed as a deduction if made to an organization which, in the taxable year of the organization in which the gift or bequest is made, is not exempt under section 101(6) by reason of the provisions of this section. With respect to any taxable year of the organization for which the organization is not exempt pursuant to the provisions of subsection (c) by reason of having engaged in a prohibited transaction with the purpose of diverting the corpus or income of such organization from its exempt purposes and such transaction involved a substantial part of such corpus or income, and which taxable year is the same, or prior to the, taxable year of the organization in which such transaction occurred, such deduction shall be disallowed the donor only if such donor or (if such donor is an individual) any member of his family (as defined in section 24(b)-(2)(D)) was a party to such prohibited transaction.

"(f) DEFINITION.—For the purposes of this section, the term 'gift or bequest' means any gift, contribution, bequest, devise, legacy, or transfer.

* * * * * * *

SEC. 332. TECHNICAL AMENDMENTS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(e) AMENDMENT OF SECTION 812(d).—Section 812(d) is hereby amended by adding at the end thereof the following: "For disallowance of certain charitable, etc., deductions otherwise allowable under this subsection, see sections 3813 and 162(g)(2)."

(f) AMENDMENT OF SECTION 861(a).—Section 861(a)(3) is hereby amended by adding at the end thereof the following: "For disallowance of certain charitable, etc., deductions otherwise allowable under this paragraph, see sections 3813 and 162(g)(2)."

* * * * * * *

SEC. 333. EFFECTIVE DATES [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

Subsections (c) and (d) of section 3813 * * * of the Internal Revenue Code, added by section 331 of this Act, shall apply with respect to taxable years beginning after December 31, 1950, and subsection (e) of section 3813 of the Internal Revenue Code shall apply only with respect to gifts or bequests (as defined in section 3813 of the Internal Revenue Code) made on or after January 1, 1951.

PAR. 2. Section 81.44, as amended by Treasury Decision 5906 [C. B. 1952–1, 155], approved May 27, 1952 [26 CFR 81.44], is further amended as follows:

(A) By changing the heading thereof to read, as follows: "TRANSFERS FOR PUBLIC, CHARITABLE, RELIGIOUS, ETC., USES.—(*a*) *In general.*";

(B) By striking the word "Deduction" at the beginning of the first sentence and inserting in lieu thereof the following: "Except as otherwise provided in (*b*) of this section, deduction"; and

(C) By adding at the end of (*a*) the following:

(*b*) *Disallowance of certain charitable, etc., deductions.*—In the case of a decedent dying on or after January 1, 1951, no deduction which would otherwise be allowable under (*a*) of this section for the value of property transferred by the decedent during his lifetime or by will for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals) shall be allowed if (1) the transfer is made in trust and, for income tax purposes for the taxable year of the trust in which the transfer is made, the deduction otherwise allowable to such trust under section 162(a) is limited by section 162(g)(2)(A) by reason of the trust having engaged in a prohibited transaction described in section 162(g)(2)(B); or (2) the transfer is made to an organization subject to section 3813 which, for its taxable year in which the transfer is made, is not exempt from income tax under section 101(6) by reason of having engaged in a prohibited transaction described in section 3813(b).

For the purpose of section 162(g)(2)(E) and section 3813(e), the term "transfer" includes any gift, contribution, bequest, devise, legacy, or other disposition. In applying such sections for estate tax purposes, a transfer, whether made before, on or after January 1, 1951, and whether made during the decedent's lifetime or by will, shall be considered as having been made at the moment of the decedent's death.

Regulations 111, relating to the income tax, contains the rules for the determination of the taxable year of the trust for which the deduction under section 162(a) is limited by section 162(g)(2) and for the determination of the taxable year of the organization for which an exemption is denied under section 3813(c). See sections 29.162–3(*b*) and 29.3813–1 of Regulations 111. Such taxable year must begin after December 31, 1950. Generally, such taxable year is a taxable year subsequent to the taxable year during which the trust or organization has been notified by the Commissioner that it has engaged in a prohibited transaction. However, if the trust or organization after December 31, 1950, and during or prior to the taxable year entered into the prohibited transaction for the purpose of diverting its corpus or income from the purposes described in section 162(a) or from its exempt purposes, as the case may be, and such transaction involves a substantial part of such income or corpus, then the deduction of the trust under section 162(a) for such taxable year is limited by section 162(g)(2), or the exemption of the organization for such taxable year is denied under section 3813(c), whether or not the organization has previously received notification by the Commissioner that it is engaged in a prohibited transaction. In certain cases, the limitation of section 162(g) may be removed or the

exemption may be reinstated for certain subsequent taxable years under the rules set forth in sections 29.162–3(*b*) and 29.3813–2, of Regulations 111.

In cases in which prior notification by the Commissioner is not required in order to limit the deduction of the trust under section 162(g)(2) or to deny exemption of the organization under section 3813, the deduction otherwise allowable under (*a*) of this section shall not be disallowed in respect to transfers made during the same taxable year of the trust or organization in which such prohibited transaction occurred or in a prior taxable year unless the decedent or a member of his family was a party to the prohibited transaction. For the purpose of the preceding sentence, the members of the decedent's family include only his brothers and sisters, whether by whole or half blood, spouse, ancestors, and lineal descendants.

PAR. 3. Section 81.45 [26 CFR 81.45] is amended by adding at the end thereof the following:

For further limitations in the case of transfers by decedents dying on or after January 1, 1951, see section 81.44(*b*), relating to transfers to trusts and organizations engaged in a prohibited transaction described in sections 162(g)(2)(B) or 3813(b).

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

JUSTIN F. WINKLE,
Acting Commissioner of Internal Revenue.

Approved November 21, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 25, 1952, 8:50 a. m.)

SECTION 863.—PROPERTY WITHOUT THE UNITED STATES

SECTION 81.50, REGULATIONS 105: Situs of property. 1952–15–13874
T. D. 5916

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 Public Law 749 (81st Cong., 2d sess.) [C. B. 1950–2, 247] and section 605 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 105 [26 CFR, part 81] to Public Law 749 (81st Cong., 2d sess.) [C. B. 1950–2, 247], approved September 1, 1950, and to section 605 of the Revenue Act of 1951 (Public Law 183, 82d Cong.), approved October 20, 1951, such regulations are hereby amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 81.49 [26 CFR 81.49] the following:

PUBLIC LAW 749 (81st CONG., 2d SESS.), APPROVED SEPTEMBER 1, 1950

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 863 of the Internal Revenue Code (relating to property without the United States) is amended by adding at the end thereof the following new subsection:

"(c) WORKS OF ART ON LOAN FOR EXHIBITION.—Works of art owned by a nonresident not a citizen of the United States imported into the United States solely for exhibition purposes, loaned to the Trustees of the National Gallery of Art for such purpose, and, at the time of the death of the owner, on exhibition, or en route to or from exhibition, either in the National Gallery of Art or in such other public gallery or museum as the Trustees of the National Gallery of Art may have designated."

* * * * * * *

SEC. 4. The amendments made by section 1 of this joint resolution shall be applicable only with respect to estates of decedents dying after the date of enactment.

* * * * * * *

SEC. 605. ESTATE TAX EXEMPTION FOR WORKS OF ART LOANED BY NONRESIDENT ALIENS [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) AMENDMENT OF SECTION 863(c).—Section 863(c) (relating to exemption of works of art loaned by nonresident aliens) is hereby amended to read as follows:

"(c) WORKS OF ART ON LOAN FOR EXHIBITION.—Works of art owned by a nonresident not a citizen of the United States (1) imported into the United States solely for exhibition purposes, (2) loaned for such purposes to a public gallery or museum, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and (3) at the time of the death of the owner, on exhibition, or en route to or from exhibition, in such a public gallery or museum."

(b) EFFECTIVE DATE.—The amendment 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 81.50 [26 CFR 81.50] is amended as follows:

(A) By striking from the first sentence thereof "tangible personal property" and inserting in lieu thereof "tangible personal property (if not subject to the exception provided in section 863(c))".

(B) By inserting immediately after the first paragraph thereof (ending with "physically located.") the following:

Section 863(c), as added by Public Law 749 (81st Cong., 2d sess.), provides that, with respect to estates of decedents dying after September 1, 1950, and on or before October 20, 1951, works of art owned by a nonresident not a citizen of the United States shall not be deemed to be property situated within the United States if such works of art are (1) imported into the United States solely for exhibition purposes, (2) loaned to the trustees of the National Gallery of Art, Washington, D. C., solely for exhibition purposes, and (3) at the time of the death of the decedent on exhibition (or en route to or from exhibition) either in such National Gallery of Art or in such other public gallery or museum as the trustees of such National Gallery of Art may have designated.

Section 863(c), as amended by section 605 of the Revenue Act of 1951, provides that, with respect to estates of decedents dying after October 20, 1951, works of art owned by a nonresident not a citizen of the United States shall not be deemed property situated within the United States if such works of art are (1) imported into the United States solely for exhibition purposes, (2) loaned for such purposes to a public gallery or museum, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and (3) at the time of the death of the owner, on exhibition, or en route to or from exhibition, in such a public gallery or museum.

Because of the technical nature of the amendments made herein, 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 3791 of the Internal Revenue Code (53 Stat. 467; 26 U. S. C. 3791).)

JUSTIN F. WINKLE,
Acting Commissioner of Internal Revenue.

Approved June 27, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register July 2, 1952, 8:55 a. m.)

SECTION 939.—CERTAIN MEMBERS OF ARMED FORCES

SECTION 81.2, REGULATIONS 105: Description of tax. 1952–24–13970 T. D. 5941

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 provisions of section 606 of the Revenue Act of 1951 (Public Law 183, 82d Cong., 1st sess.).

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 order to conform Regulations 105 [26 CFR, part 81] to section 606 of the Revenue Act of 1951, relating to exemption from additional estate tax of members of the Armed Forces upon death, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately before section 81.2 [26 CFR 81.2] the following:

SEC. 606. EXEMPTION FROM ADDITIONAL ESTATE TAX OF MEMBERS OF ARMED FORCES UPON DEATH [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

Section 939 (relating to the estate tax treatment of certain members of the Armed Forces) is hereby amended as follows:

(1) By inserting before the first sentence thereof the following:

"(a) DEATHS AFTER DECEMBER 6, 1941, AND BEFORE JANUARY 1, 1947.—".

(2) By adding at the end thereof the following:

"(b) DEATHS AFTER JUNE 24, 1950, AND BEFORE JANUARY 1, 1954.—The tax imposed by section 935 shall not apply to the transfer of the net estate of a citizen or resident of the United States dying after June 24, 1950, and before January 1, 1954, while in active service as a member of the Armed Forces of the United States, if such decedent—

"(1) was killed in action while serving in a combat zone, as determined under section 22(b)(13); or

"(2) died as a result of wounds, disease, or injury suffered, while serving in a combat zone (as determined under section 22(b)(13)) and while in line of duty, by reason of a hazard to which he was subjected as an incident of such service."

PAR. 2. Section 81.2, as amended by Treasury Decision 5858 [C. B. 1951–2, 160], approved September 11, 1951 [26 CFR 81.2], is further amended as follows:

(A) By striking "Section 939 of the Internal Revenue Code" from the first sentence of (*b*) and inserting in lieu thereof "Section 939(a) of the Internal Revenue Code",

(B) By inserting immediately after the first paragraph of (*b*) (ending with "incident of military or naval service".) the following:

Section 939(b) of the Internal Revenue Code, as added by section 606 of the Revenue Act of 1951, provides that the additional estate tax does not apply to the transfer of the net estate of a citizen or resident of the United States dying after June 24, 1950, and before January 1, 1954, while in active service as a member of the Armed Forces of the United States if the decedent was

(i) killed in action while serving in a combat zone, as determined under section 22(b)(13) of the Internal Revenue Code, or

(ii) died as a result of wounds, disease, or injury suffered while serving in such combat zone and while in line of duty, by reason of a hazard to which he was subjected as an incident of such service.

For purposes of section 939(b), service is performed in a combat zone only if it is performed in an area which the President of the United States has designated by Executive order for purposes of section 22(b)(13) as an area in which the Armed Forces of the United States are, or have, after June 24, 1950, engaged in combat, and only if it is performed on or after the date designated by the President by Executive order as the date of the commencing of combatant activities in such zone (or on or after June 25, 1950, in the case of the zone designated in Executive Order 10195, C. B. 1951–1, 6) and on or before the date designated by the President by Executive order as the date of termination of combatant activities in such zone.

(C) By amending the first sentence of the third paragraph of (*b*) (beginning "A person was in active service as a member of the military or naval forces") to read as follows:

A person was in active service as a member of the forces described in section 939 (a) or (b) if he was at the time of his death actually serving in such forces, not necessarily in the field or in the theater of war.

(D) By inserting immediately following the third paragraph of (*b*) (ending "periods of active service.") the following:

A member of the Armed Forces in active service in a combat zone who there becomes a prisoner of war or missing in action and occupies such status at death or when the wounds, disease, or injury resulting in death were incurred, is considered for purposes of this section as serving in a combat zone.

(E) By striking therefrom the first sentence of the fourth paragraph of (*b*) and inserting in lieu thereof the following:

For the purposes of this section, the term "military or naval forces of the United States" and the term "Armed Forces of the United States" each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force. The terms also include the Coast Guard. The members of such forces include commissioned officers and the personnel below the grade of commissioned officer in such forces.

Because of the technical nature of the amendments made herein, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Admin-

istrative 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 October 24, 1952.

JOHN S. GRAHAM,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 28, 1952, 8:52 a. m.)

EMPLOYMENT TAX RULINGS

INTERNAL REVENUE CODE

CHAPTER 9, SUBCHAPTER D.—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

SECTION 1627: Other laws applicable. 1952–23–13959
REGULATIONS 116, SECTION 405.601: Return and payment of income tax withheld on wages. T. D. 5938
(Also Section 1633; Regulations 116, Section 405.501.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER D, PART 405.—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

Regulations 116 amended to require corrected Forms W–2 in certain cases, and for other purposes.

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On July 25, 1952, notice of proposed rule making amending Regulations 116 [26 CFR, part 405] to require corrected Forms W–2 in certain cases, and for other purposes, was published in the Federal Register (17 F. R. 6824). After consideration of all relevant matter presented by interested persons regarding the proposed amendments, the amendments set forth below are hereby adopted.

PARAGRAPH 1. Section 405.501(b), as amended by Treasury Decision 5828 [C. B. 1951–1, 111], approved January 22, 1951 [26 CFR 405.501(b)], is further amended to read as follows:

(b) *Wages paid after December 31, 1950.*—With respect to wages paid on or after January 1, 1951, every person required to deduct and withhold from an employee a tax under section 1622, or who would have been required to deduct and withhold a tax under section 1622 if the employee had claimed no more than one withholding exemption, shall furnish to each such employee, in respect of the remuneration paid by such person to such employee during the calendar year, the original and duplicate of a statement on Form W–2 showing the following: (1) the name and address of such person, (2) the name and address of the employee, and, if wages as defined in section 1426(a) have been paid, his social security account number, (3) the total amount of wages as defined in section 1621(a), (4) the total amount deducted and withheld as tax under section 1622, (5) the total amount of wages as defined in section 1426(a), and (6) the total amount of employee tax under section 1400 deducted and withheld (increased by any adjustment in the calendar year for overcollection, or

decreased by any adjustment in such year for undercollection, of such tax during any prior year).

For example, if the table method of withholding is used, a withholding statement must be furnished each employee whose wages during any payroll period are equal to or in excess of the smallest wage for which tax must be withheld from employees claiming one exemption. If the percentage computation method is used, a withholding statement must be furnished each employee whose wages during any payroll period are in excess of one withholding exemption for such payroll period as shown in the percentage method withholding table contained in section 1622(b)(1).

If (i) the amount of employee tax under section 1400 deducted and withheld in the calendar year from the wages as defined in section 1426(a) paid during such year was less or greater than the tax imposed by section 1400 on such wages by reason of the adjustment in such year of an overcollection or undercollection of the tax in any prior year, or (ii) regardless of the reason for the error or the method of its correction, the amount of wages as defined in section 1426(a) or tax under section 1400 entered on a statement furnished to the employee for a prior year was incorrect, a corrected statement for such prior year reflecting the adjustment or the correct data shall be furnished to the employee.

Likewise, a corrected statement on Form W–2 shall be furnished the employee with respect to a prior calendar year (*a*) if the amount of wages as defined in section 1621(a) entered on a statement furnished to the employee for such prior year is incorrect, or (*b*) if the amount deducted and withheld as tax under section 1622 is less or greater than the amount entered on the statement furnished the employee for such prior year.

The statement on Form W–2 for the calendar year and the corrected statement for any prior year shall be furnished to the employee on or before January 31 of the year succeeding such calendar year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of wages is made.

See the applicable regulations under the Federal Insurance Contributions Act for the requirement as to the furnishing of a statement in cases where such statement is required solely by reason of the tax under section 1400 of such act. Also see such regulations with respect to adjustments of that tax.

PAR. 2. Section 405.601, as amended by Treasury Decision 5828 [26 CFR 405.601], is further amended as follows:

(A) By changing the third sentence of the first paragraph to read as follows:

For the purpose of the preceding sentence, the timeliness of the deposit will be determined by the date of the endorsement by a designated commercial bank or by a Federal Reserve bank made on the reverse side of Form 450.

(B) By striking "or if the employer has no principal place of business in the United States" from the penultimate sentence of the first paragraph and inserting in lieu thereof the following: "or, if the employer has no principal place of business in a collection district of the United States,".

(This Treasury Decision is issued under authority contained in sections 1429 and 3791 (53 Stat. 178, 467; 26 U. S. C. 1429, 3791) and section 1627 (57 Stat. 138; 26 U. S. C. 1627) of the Internal Revenue Code.)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved October 14, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 17, 1952, 8:53 a. m.)

CHAPTER 9, SUBCHAPTER E.—GENERAL PROVISIONS FOR EMPLOYMENT TAXES

SECTION 1633: Receipts for employees. 1952-21-13938
REGULATIONS 116, SECTION 405.501: Receipts for tax withheld at source on wages. IR-Mim. 34

Form W-2, Withholding Statements for 1953.—Rules for reproduction.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., September 11, 1952.

Collectors and Directors of Internal Revenue and Others Concerned:

1. Facsimiles of Form W-2 and Form W-2b are attached for the information and guidance of employers and printers who desire to reproduce them. If, because of limitations of his mechanical equipment, an employer is unable to use the forms in the exact reproduction of the format shown in the attached facsimiles, they may be reproduced with slight variations or rearrangement of the face of the forms without specific approval of the Bureau if the following specifications are met:

(*a*) *Color and quality of paper:* The forms for 1953 are required to be printed in dark blue ink on white paper of substantially the same weight and texture, and of quality as good as that used by the Government. The official forms are printed on substance 30 or 32 paper.

(*b*) *Typography:* The reproduction must be printed in type not smaller than the corresponding type on the official form, and, as nearly as possible, of the same font.

(*c*) *Data to be shown:* Reproduced forms must be designed so as to provide for entry by employers of the same data as to wages paid and taxes withheld as required by the official form. Employers are not permitted to show on the original and triplicate copies any payroll deductions other than those indicated herein. (There is no objection to the attachment of a stub or extension to the duplicate portion of the form only to provide additional information not authorized for reproduction on the form itself.) No deviation from the instructions on the reverse side of the forms will be permitted.

(*d*) *Additional copies* may be reproduced for the use of employers. It will be permissible to prepare privately printed forms as carbon impressions of Form W-2, for use in connection with taxes other than Federal income tax and taxes due under the Federal Insurance Contributions Act, provided such forms bear no mention of the Internal Revenue Service or the United States Treasury Department. These forms or additional copies must not be placed ahead of Form W-2a in the assembly, except that in cases where a State will accept a copy of the Form W-2 in lieu of its own information return, the State copy may be placed in the second position in the assembly so as to provide a legible copy for the State. Forms for delivery to State or local taxing authorities should be clearly labeled to indicate the purpose for which they are intended and should not bear any part of the designation "Form W-2".

(*e*) *Dimensions:* The size of the official form is 7 inches wide by 3⅙ inches in depth, but the width may vary from 7 inches to 8 inches and the depth may vary from 3⅙ inches to 3¾ inches.

(*f*) *Carbonized forms or "spot carbons"* are not permissible. Interleaved carbon, if used, must be black and of good quality to preclude smudging.

(*g*) *The Government Printing Office symbol* must be omitted from reproduced forms.

(*h*) *All Forms W–2a* must show the heavy vertical black lines in the upper right corner.

2. In any rearrangement of the spaces for employee and employer name and address, the space for employee's name must be to the left or above the space for employer's name. The block headed "Federal Insurance Contributions Act" must be to the left or above the block headed "U. S. Income Tax Withholding Information". Forms W–2 may also be reproduced in continuous form or in booklet form.

3. Privately printed forms which conform to the specifications stated above may be used without obtaining further permission from the Bureau of Internal Revenue. Other variations from the prescribed forms may be permitted in specific cases, but such permission should be requested by letter. Such requests for permission should be addressed to the Commissioner of Internal Revenue, attention O : C : P, Washington 25, D. C., and must include a sample or rough draft copy of the proposed reproduction.

4. The pages of the form are reproduced in the attached facsimile in the following order: face of original; back of original; face of duplicate; face of triplicate; back of triplicate; and face of Form W–2b.

5. Correspondence relative to the contents of this mimeograph should refer to its number and to the symbols O : C : P.

T. C. ATKESON,
Acting Assistant Commissioner.

SECTION 1633: Receipts for employees. 1952–24–13971
REGULATIONS 116, SECTION 405.501: Receipts for tax withheld at source on wages. IR-Mim. 34 (Amendment 1)

Form W–2, Withholding Statement for 1953.—Rules for reproduction.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., October 14, 1952.

Collectors and Directors of Internal Revenue and Others Concerned:

1. Paragraph 1(h) of IR-Mim. 34 [page 239, this Bulletin], dated September 11, 1952, which reads as follows: "All Forms W–2a must show the heavy vertical black lines in the upper right corner" is hereby amended to read: "All Forms W–2a must show the heavy vertical lines in the upper right corner."

JUSTIN F. WINKLE,
Assistant Commissioner.

SECTION 1633: Receipts for employees.
REGULATIONS 116, SECTION 405.501: Receipts for tax withheld at source on wages.

Regulations 116 amended to require corrected Forms W–2 in certain cases. (See T. D. 5938, page 237.)

Form W-2
U.S. Treasury Department
Internal Revenue Service

WITHHOLDING STATEMENT—1953

Federal Taxes Withheld From Wages

ORIGINAL

FEDERAL INSURANCE CONTRIBUTIONS ACT

(FEDERAL OLD-AGE AND SURVIVORS INSURANCE)

Total F.I.C.A. wages (before payroll deductions) paid in 1953*	F.I.C.A. employee tax withheld, if any
$	$

EMPLOYEE (Print employee's social security account number, name, and full address below)

*If your wages were subject to F.I.C.A. taxes, but are not shown above, your F.I.C.A. wages are the same as wages shown under "U. S. INCOME TAX WITHHOLDING INFORMATION," but not more than $3,600.

U. S. INCOME TAX WITHHOLDING INFORMATION

(TO BE REPORTED ON EMPLOYEE'S INCOME TAX RETURN)

Total wages (before payroll deductions) paid in 1953	Federal income tax withheld, if any
$	$

EMPLOYER (Print employer's identification number, name, and address below)

NOTICE TO EMPLOYEE: This statement is important, and should not be lost or mislaid. It must be attached to your U.S. income tax return for 1953. SEE OTHER SIDE

INSTRUCTIONS FOR FILING U. S. INCOME TAX RETURN

Who Must File.—If your income in 1953 was $600 or more, you must file an income tax return either on Employee's Optional Income Tax Return (Form 1040A) or on Form 1040. Copies of these forms may be obtained from the Director of Internal Revenue, your employer, bank, or post office.

A single person with less than $600 income should file a return to get a refund if tax was withheld. A married person with income less than her (or his) own personal exemption(s) should always file a joint return with husband or wife to get the smaller tax or larger refund for the couple.

Filing on Form 1040A.—Form 1040A (Employee's Optional Income Tax Return) may be used by an individual, or as a joint income tax return of husband and wife, if the total income consists only of (a) wages of less than $5,000 which were subject to income tax withholding and which were reported on Withholding Statements (Forms W–2), or (b) such wages and not more than $100 total of other wages, dividends, and interest.

The Director of Internal Revenue will compute the tax from the table provided by law which allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous items. If tax is overpaid, a refund check will be sent. If tax is underpaid, a bill will be sent.

A joint return of husband and wife on Form 1040A never results in more tax than separate returns, because the tax is computed by the Director of Internal Revenue on the combined incomes or on the separate incomes, whichever results in the smaller tax or larger refund for the couple.

Filing on Form 1040.—If your income cannot be reported on Form 1040A under the tests stated above, or you had income from any other source, such as rents, annuities, etc., you must use Form 1040. Also, it will generally be to your advantage to file Form 1040 if your deductions amount to more than 10 percent of your income, or if you claim traveling or reimbursed expenses. To assure any benefits of the split-income provisions, a married couple should file a joint income tax return.

Employee Having Two Employers During Year.—If an aggregate of more than $54 of F.I.C.A. employee tax was withheld during 1953 because you worked for two or more employers, claim the excess over $54 as Federal income tax withheld on your return for 1953.

Form W-2
U. S. Treasury Department
Internal Revenue Service

WITHHOLDING STATEMENT—1953

Federal Taxes Withheld From Wages

EMPLOYEE'S COPY (DUPLICATE)

FEDERAL INSURANCE CONTRIBUTIONS ACT

(FEDERAL OLD-AGE AND SURVIVORS INSURANCE)

Total F.I.C.A. wages (before payroll deductions) paid in 1953*	F.I.C.A. employee tax withheld, if any
$	$

EMPLOYEE (Print employee's social security account number, name, and full address below)

*If your wages were subject to F.I.C.A. taxes, but are not shown above, your F.I.C.A. wages are the same as wages shown under "U. S. INCOME TAX WITHHOLDING INFORMATION," but not more than $3,600.

U. S. INCOME TAX WITHHOLDING INFORMATION

(TO BE REPORTED ON EMPLOYEE'S INCOME TAX RETURN)

Total wages (before payroll deductions) paid in 1953	Federal income tax withheld, if any
$	$

EMPLOYER (Print employer's identification number, name, and address below)

EMPLOYEE: Detach this copy and keep it as part of your tax records. Do NOT send it to the Director of Internal Revenue with your income tax return.

[Regs. 116, § 405.501.

Form W-2a
U. S. Treasury Department
Internal Revenue Service

WITHHOLDING STATEMENT—1953

Federal Taxes Withheld From Wages

DIRECTOR'S COPY (TRIPLICATE)



FEDERAL INSURANCE CONTRIBUTIONS ACT

(FEDERAL OLD-AGE AND SURVIVORS INSURANCE)

Total F.I.C.A. wages (before payroll deductions) paid in 1953*	F.I.C.A. employee tax withheld, if any
$	$

EMPLOYEE (Print employee's social security account number, name, and full address below)

*If your wages were subject to F.I.C.A. taxes, but are not shown above, your F.I.C.A. wages are the same as wages shown under "U. S. INCOME TAX WITHHOLDING INFORMATION," but not more than $3,600.

U. S. INCOME TAX WITHHOLDING INFORMATION

(TO BE REPORTED ON EMPLOYEE'S INCOME TAX RETURN)

Total wages (before payroll deductions) paid in 1953	Federal income tax withheld, if any
$	$

EMPLOYER (Print employer's identification number, name, and address below)

EMPLOYER: See instructions on other side. If you desire an additional copy of this form for your records, Form W-2b, Employer's Copy, may be obtained from the Director of Internal Revenue.

TO EMPLOYER:

1. Prepare this form in triplicate for each employee (a) from whom income tax has been withheld during the year or (b) whose wages, for purposes of income tax withholding, exceeded the amount of one withholding exemption for any payroll period (even though no income tax was withheld).

2. Fill in:
   (a) total wages paid (before payroll deductions) subject to the Federal Insurance Contributions Act. If not subject to F.I.C.A., enter "None" or "0." No F.I.C.A. wage entry need be made if (1) F.I.C.A. wages exactly equal the total wages for income tax withholding purposes, or (2) F.I.C.A. wages are $3,600 and the total wages for income tax withholding purposes exceed $3,600;
   (b) total amount of F.I.C.A. employee tax deducted and withheld, if any (but if there was an adjustment in 1953 to correct the tax for a prior year, enter the amount withheld in 1953 increased by the adjustment for an over-collection or decreased by the adjustment for an under-collection). If F.I.C.A. wages were paid but no employee tax was deducted, enter "None" or "0";
   (c) total wages, for purposes of income tax withholding, paid before any payroll deductions;
   (d) the amount of income tax deducted and withheld, if any;
   (e) the employee's name, address, and social security account number; and
   (f) your name, address, and identification number.

3. Give the Original and the Employee's Copy to the employee (a) on or before January 31 following the calendar year if the employee is in your employ at the close of such year, or (b) within 30 days after the last payment of wages, if his employment is terminated before the close of such year.

4. Forward this triplicate copy and all other triplicate copies together with your yearly reconciliation statement, Form W-3, to your Director of Internal Revenue with your Employer's Quarterly Federal Tax Return (Form 941) for the fourth quarter of the calendar year (or with your final return).

Form W-2b
U. S. Treasury Department
Internal Revenue Service

WITHHOLDING STATEMENT—1953

Federal Taxes Withheld From Wages

EMPLOYER'S COPY

FEDERAL INSURANCE CONTRIBUTIONS ACT

(FEDERAL OLD-AGE AND SURVIVORS INSURANCE)

Total F.I.C.A. wages (before payroll deductions) paid in 1953*	F.I.C.A. employee tax withheld, if any
$	$

EMPLOYEE (Print employee's social security account number, name, and full address below)

U. S. INCOME TAX WITHHOLDING INFORMATION

(TO BE REPORTED ON EMPLOYEE'S INCOME TAX RETURN)

Total wages (before payroll deductions) paid in 1953	Federal income tax withheld, if any
$	$

EMPLOYER (Print employer's identification number, name, and address below)

*If your wages were subject to F.I.C.A. taxes, but are not shown above, your F.I.C.A. wages are the same as wages shown under "U. S. INCOME TAX WITHHOLDING INFORMATION," but not more than $3,600.

EMPLOYER: You are not required to use Form W-2b. It is provided for your convenience in keeping a copy of Form W-2, and should not be used for any other purpose.

EXCISE TAX RULINGS

INTERNAL REVENUE CODE

STAMP TAXES

REGULATIONS 59, SECTIONS 323.30 AND 323.31. 1952–23–13960
T. D. 5939

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

Exemption from the tax on bowling alleys, billiard tables, or pool tables, used exclusively by members of the Armed Forces.

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 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 Public Law 576 [page 361, this Bulletin], approved July 17, 1952 (82d Cong., 2d sess.), such regulations are hereby amended as follows:

PARAGRAPH 1. Immediately preceding section 323.30 [26 CFR 323.30], there is inserted the following:

PUBLIC LAW 576 (82d CONG., 2d SESS.), APPROVED JULY 17, 1952

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3268(a) of the Internal Revenue Code (relating to tax on bowling alleys and billiard and pool tables) is hereby amended by adding at the end thereof the the following new sentence: "The tax imposed under this section shall not apply for any period beginning after June 30, 1952, with respect to any bowling alley, billiard table, or pool table maintained exclusively for the use of members of the Armed Forces on any property owned, reserved, or used by, or otherwise acquired for the use of, the United States if no charge is made for their use."

* * * * * * *

PAR. 2. Section 323.31, as amended by Treasury Decision 5827 [C. B. 1951–1, 142], approved January 16, 1951 [26 CFR 323.31], is further amended by adding at the end the following:

On and after July 1, 1952, no liability to such special tax is incurred with respect to any bowling alley, billiard table, or pool table maintained exclusively for the use of members of the Armed Forces on any property owned, reserved,

or used by, or otherwise acquired for the use of, the United States if no charge is made for their use. The term "Armed Forces" includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force. The term also includes the Coast Guard.

Because the purpose of this Treasury Decision is merely to conform the regulations to the exemption granted in the case of bowling alleys, billiard or pool tables maintained exclusively for members of the Armed Forces on property owned, reserved, used, or otherwise acquired by the United States, it is unnecessary to issue the 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 October 14, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 17, 1952, 8:53 a. m.)

DOCUMENTARY STAMP TAXES

REGULATIONS 71 (1941), SECTIONS 113.1, ETC. 1952–20–13932
T. D. 5931

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 113.—DOCUMENTARY STAMP TAXES

Regulations 71 (1941 edition) amended to conform to the provisions of the Act approved May 23, 1952, and for other purposes.

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 order to conform Regulations 71 [26 CFR, part 113] to the provisions of the Act approved May 23, 1952 (Public Law 361, 82d Cong., 2d sess.) [C. B. 1952–1, 262], and to provide in such regulations for the sale of new denominations of documentary stamps and the discontinuance of the use of stock transfer stamps, such regulations are hereby amended as follows:

PARAGRAPH 1. Section 113.1 [26 CFR 113.1] is amended by changing (*g*) thereof to read as follows:

The term "documentary stamps" means all documentary stamps issued for use in payment of stamp taxes.

PAR. 2. Section 113.26 [26 CFR 113.26] is amended to read as follows:

SEC. 113.26. STAMPS TO BE AFFIXED TO STOCK BOOK.—The requisite documentary stamps shall be affixed to the stock book or corresponding record of the

organization and not to the certificates issued. For provisions relating to cancellation of stamps, see section 113.133.

PAR. 3. There is inserted immediately preceding section 113.30, as amended by Treasury Decision 5613 [C. B. 1948–1, 133], approved April 27, 1948 [26 CFR 113.30], the following:

PUBLIC LAW 361 (82d CONG., 2d SESS.), APPROVED MAY 23, 1952

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".

* * * * * * *

(c) EFFECTIVE DATE.—The amendments made by this Act shall take effect on the day following the date of the enactment of this Act.

PAR. 4. Section 113.35, as amended by Treasury Decision 5799 [C. B. 1950–2, 133], approved August 2, 1950 [26 CFR 113.35], is further amended as follows:

(A) By striking the heading of (*a*) and inserting in lieu thereof the following:

(*a*) *Stock deposited as collateral security and stock transfers made pursuant to Federal or State law to secure the performance of obligations.*—(1) *Stock deposited as collateral security;*

(B) By striking from the fourth sentence of (*a*)(1), which sentence begins "The person making an exempt transfer", the words "this subsection" and inserting in lieu thereof "this paragraph".

(C) By adding after (*a*)(1) the following:

(2) *Stock transfers made pursuant to Federal or State law to secure the performance of obligations.*—The tax shall not be imposed upon any delivery or transfer to a trustee or public officer, made on and after May 24, 1952, 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. The person making an exempt transfer under this paragraph shall, at the time of such transfer, furnish and attach to the certificate an exemption certificate in substantially the form prescribed in (i) of this section.

PAR. 5. Section 113.40 [26 CFR 113.40] is amended to read as follows:

SEC. 113.40. STAMPS TO BE USED.—Documentary stamps shall be used in connection with all sales or transfers of stock. For provisions relating to cancellation of stamps, see section 113.133.

PAR. 6. Section 113.41(*c*)(4), as added by Treasury Decision 5301 [C. B. 1943, 1167], approved October 2, 1943 [26 CFR 113.41(c)(4)], is amended by deleting the words "stock transfer" wherever appearing therein, and by substituting therefor the word "documentary".

PAR. 7. Section 113.57 [26 CFR 113.57] is amended by deleting the second sentence and amending the first sentence thereof to read as follows:

The requisite documentary stamps shall be affixed either to the bonds or to the indenture under which the bonds are issued.

PAR. 8. There is inserted immediately preceding section 113.60, as amended by Treasury Decision 5613 [26 CFR 113.60], the following:

PUBLIC LAW 361 (82d CONG., 2d SESS.), APPROVED MAY 23, 1952

* * * * * * *

(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.

PAR. 9. The third sentence of section 113.65, as amended by Treasury Decision 5613 [26 CFR 113.65], is further amended to read as follows:

The exempt transactions and the subsections of section 113.35 setting forth the rules applicable thereto are as follows:

Bonds deposited as collateral security, subsection (*a*) (1).
Transfers made on and after May 24, 1952, pursuant to Federal or State law to secure the performance of obligations, subsection (*a*) (2).
Transfers from customer to broker, subsection (*c*).
Transfers from broker to customer, subsection (*d*).
Transfers between fiduciaries and their nominees, subsection (*e*).
Transfers to or by a custodian, subsection (*f*).

PAR. 10. Section 113.70, as amended by Treasury Decision 5301 [26 CFR 113.70], is further amended to read as follows:

SEC. 113.70. STAMPS TO BE USED.—Documentary stamps shall be used in connection with all sales and transfers of bonds. For provisions relating to cancellation of stamps, see section 113.133.

PAR. 11. Section 113.85 [26 CFR 113.85] is amended to read as follows:

SEC. 113.85. WHERE STAMPS SHALL BE AFFIXED.—Requisite documentary stamps shall be affixed to the deed, instrument or other writing by which realty is conveyed. For provisions relative to cancellation of stamps, see section 113.133.

PAR. 12. Section 113.105, as amended by Treasury Decision 5202 [C. B. 1942–2, 258], approved December 17, 1942 [26 CFR 113.105], is further amended by striking from the first sentence the words "Ordinary documentary stamps" and inserting in lieu thereof "Documentary stamps".

PAR. 13. Section 113.130 [26 CFR 113.130] is amended to read as follows:

SEC. 113.130. DENOMINATIONS OF DOCUMENTARY STAMPS.—Documentary stamps are issued in the following denominations: 1 cent, 2 cents, 3 cents, 4 cents, 5 cents, 8 cents, 10 cents, 20 cents, 25 cents, 40 cents, 50 cents, 55 cents, 80 cents, $1, $1.10, $1.65, $2, $2.20, $2.75, $3, $3.30, $4, $5, $10, $20, $30, $50, $60, $100, $500, $1,000, $2,500, $5,000, $10,000.

PAR. 14. Section 113.141 [26 CFR 113.141] is amended to read as follows:

SEC. 113.141. REQUISITIONS.—Requisitions for the purchase of documentary stamps shall be made on Form 427, revised April 1942. Copies of these forms may be procured from any collector.

Because this Treasury Decision merely (1) inserts in the regulations the exemption of certain transfers from the tax imposed by sections 1802(b) and 3481 of the Internal Revenue Code in conformity with the provisions of Public Law 361 (82d Cong.); (2) amends the regulations to provide for the use of "documentary stamps" in lieu of "stock transfer stamps" in the case of certain transactions with respect to which the use of stock transfers tamps is prescribed in existing regulations; and (3) inserts in the regulations an amended list of denominations in which documentary stamps are used, it is found to be 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 limitations 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 September 9, 1952.

E. H. FOLEY,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 12, 1952, 8:50 a. m.)

SECTIONS 3285 AND 3290.—WAGERING TAXES

REGULATIONS 132, SECTION 325.21: Scope of tax. 1952–25–13985
M. T. 44

Application of wagering taxes, imposed by sections 3285 and 3290 of the Internal Revenue Code, to lottery activities of an organization exempt from income tax under section 101 of the Code.

Advice is requested concerning the application of the wagering taxes, imposed by sections 3285 and 3290 of the Internal Revenue Code, under the following circumstances:

"A", who previously operated a baseball pool under the name of "M" Company, sold that business on November 1, 1951, the date on which the wagering taxes first became applicable, for $1 and other valuable consideration to the "X" Club, Inc., an organization exempt from income tax under section 101 of the Code. Under the contract of sale, it was agreed that "A" would be retained by the "X" Club, at a salary of $200 per week, as general manager of the pool; and that he would have exclusive control over the operation thereof, including the hiring of personnel and the determination of their salaries. The "X" Club maintains a separate bank account for operating the pool, but "A" is the only person authorized to issue checks against such account.

During the baseball season, the winner of the pool is determined by the results of the baseball games played each day, and during the off-season period the winner is determined by the daily bank clearings used in conjunction with the results of the prior season's games.

Gross receipts from operating the pool from November 1, 1951, to June 30, 1952, amounted to $375,000. Of that amount, $95,000 was paid to agents as commissions, $20,000 for printing, $230,000 for prizes to customers, and $13,000 as salaries to employees, which resulted in a profit of $17,000 for the period.

Section 3285 of the Code imposes on wagers an excise tax equal to 10 percent of the amount thereof, and defines the term "wager" as including any wager placed in a lottery conducted for profit.

The term "lottery" includes the numbers game, policy, and similar types of wagering but, under the provisions of section 3285(b)(2)(B) of the Code, it does not include any drawing conducted by an organization exempt from income tax under section 101 of the Code, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual. The report of the Senate Committee on Finance (Senate Report No. 781, 82d Cong., 1st sess., C. B. 1951–2, 458, 541), states that it is contemplated that the regulations will require the expenses of such a drawing, such as salaries paid to the actual operators, to be reasonable in amount if the exemption is to be allowed; and that, any agreement to pay as compensation a percentage of the amounts contributed would be a clear indication that the drawing is not within the exempt category.

Section 325.21(f) of Regulations 132 provides that, in general, 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, usually as determined by the numbers or symbols on tickets as drawn from a lottery wheel or other receptacle, or by the outcome of an event, provided such lottery is conducted for profit.

In addition to the 10 percent excise tax imposed on wagers, section 3290 of the Code provides that an occupational tax of $50 per year shall be paid by each person liable for the excise tax and by every person who is engaged in receiving wagers for or on behalf of any person liable for the excise tax.

It is held that the operation here involved constitutes a lottery conducted for profit. The mere fact that the "X" Club has been granted exemption from income tax under section 101 of the Code is not controlling, because the exemption provided by section 3285(b)(2)(B) of the Code, *supra*, does not apply unless the operation involved falls within the category of a "drawing" which is "conducted by" a section 101 organization, and no part of the net proceeds therefrom inures to the benefit of any private shareholder or individual.

Where the winner is determined by the outcome of any designated event or happening, or by bank clearing or similar figures, the operation is not a "drawing" within the contemplation of the statute. It is believed that the term "drawing" refers to a physical drawing of a ticket, or the equivalent thereof, such as the use of a wheel or a similar device, whereby the winner is conclusively determined by a number, letter, legend, or symbol, without reference to any other event the happening of which is beyond the control of the operator.

A drawing, as defined above, which is "conducted by" a section 101 organization must be operated in fact by such organization, in order to be excluded from wagering taxes. There is a basic distinction between mere sponsorship of a drawing and actual conduct thereof. Gener-

ally speaking, "conduct" denotes supervision and control, as distinguished from lending the name of an organization to the activity or endorsing it.

Since the instant lottery is not a "drawing" as defined above, and since it is not operated in fact by the "X" Club, Inc., a section 101 organization, the exemption from wagering taxes provided by section 3285(b)(2)(B) of the Code does not apply.

Based upon the facts outlined above, it is held that the baseball pool is the joint venture of the "X" Club, Inc., and "A." Accordingly, both parties are jointly and severally liable for the 10 percent excise tax and the occupational tax of $50 per year imposed by sections 3285 and 3290 of the Code. Likewise, each person engaged in receiving wagers for or on behalf of such parties is also liable for the occupational tax of $50 per year.

WAGERING TAXES

REGULATIONS 132, SECTION 325.50: Registry, return, and payment of tax. 1952-16-13888 T. D. 5920

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 325.—EXCISE AND SPECIAL TAX ON WAGERING

Regulations 132 amended to require persons liable for special (occupational) wagering tax to file returns and pay tax before commencing taxable activity and to file supplemental returns advising of all agents or employees engaged to receive wagers, or with respect to all persons for whom wagers are received.

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On June 3, 1952, notice of proposed rule making regarding amendment of section 325.50 of Regulations 132 [26 CFR 325.50] was published in the Federal Register [17 F. R. 4988]. No objection to the rules proposed having been received, section 325.50 of Regulations 132 is amended to read as follows:

SEC. 325.50. REGISTRY, RETURN, AND PAYMENT OF TAX.—(a) No person shall engage in the business of accepting wagers subject to the 10 percent excise tax imposed by section 3285 of the Internal Revenue Code (see section 325.24) until he has filed a return on Form 11-C and paid the special tax imposed by section 3290. Likewise, no person shall engage in receiving wagers for or on behalf of any person, engaged in such business until he has filed a return on Form 11-C and paid the special tax imposed by section 3290 of the Internal Revenue Code. Filing of successive applications and payment of tax by such persons are required on or before July 1 of each year thereafter during which taxable activity continues. The return, with remittance, shall be filed with the collector of internal revenue for the district in which is located the taxpayer's office or principal place of business. If such taxpayer resides in the United States, but has no office or principal place of business in the United States, the return shall be filed with the collector of internal revenue for the district in which he resides. If the taxpayer has no office, residence, or principal place of business in the United States, the return shall be filed with the Collector of Internal Revenue, Baltimore, Md. The collector, upon request, will furnish the taxpayer proper forms which shall be filled out and signed as indicated therein.

(b) Each return shall show the taxpayer's full name. A person doing business under an alias, style, or trade name shall give his true name, followed by his alias, style, or trade name. In the case of a partnership, association, firm, or company, other than a corporation, the style or trade name shall be given, also the true name of each member and his place of residence. In the case of a corporation, the true name and title of each officer and his place of residence shall be shown.

(c) Each person engaged in the business of accepting wagers on his own account shall report on Form 11–C the name and address of each place where such business will be conducted and the name, address, and number appearing on the special (occupational) stamp of each agent or employee who may accept wagers on his behalf. Thereafter, a return shall be filed on Form 11–C, marked "supplemental," each time an additional employee or agent is engaged to receive wagers. Such supplemental return shall be filed not later than 10 days after the date such agent or employee is engaged to receive wagers and shall show the name, address, and number appearing on the special (occupational) stamp of each such agent or employee. As to a change of address, see section 325.57.

(d) Each agent or employee of a person accepting wagers shall report on Form 11–C the name and residence address of each person (i. e., individual, partnership, corporation, etc.) on whose behalf wagers are to be accepted. Thereafter, a return shall be filed on Form 11–C, marked "supplemental," each time the agent or employee is engaged or employed to receive wagers for a person or persons other than the person or persons first reported on Form 11–C. Such supplemental return shall be filed not later than 10 days after the date such agent or employee is engaged to receive wagers and shall show the name, business address, or, if none, the residence address of the person or persons by whom he is engaged to receive wagers. As to a change of address, see section 325.57.

The amendments made by this Treasury Decision shall become effective September 1, 1952.

(This Treasury Decision is issued under 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 July 16, 1952.

E. H. FOLEY,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register July 22, 1952, 8:55 a. m.)

MANUFACTURERS' EXCISE TAXES

SECTION 3403, AS AMENDED.—TAX ON AUTOMOBILES, ETC.

REGULATIONS 46 (1940), SECTION 316.55: Definitions of parts or accessories. 1952-17-13906 S. T. 944

Application of the tax, imposed by section 3403(c) of the Internal Revenue Code, as amended, to the sale of automobile seat covers by a manufacturer who furnishes the material therefor and produces them for the consumer thereof according to individual design and measurement.

Section 3403(c) of the Code, as amended, imposes, effective November 1, 1951, a tax of 8 percent on the sale by the manufacturer of parts or accessories for vehicles taxable under subsection (a) and (b) of section 3403 of the Code, as amended, except that on and after April 1, 1954, the rate of tax shall be 5 percent. Seat covers for automobiles are considered to be parts or accessories within the meaning of section 3403(c) of the Code, as amended, and sales thereof by the manufacturer are subject to tax.

The Bureau has issued rulings heretofore that the only circumstances under which the tax does not apply to sales of seat covers by a manufacturer, is where the seat covers are individually designed, cut, tailored, and fitted by the manufacturer to the automobile belonging to the person who contracts for the performance of such operation, and such person is the consumer of the seat covers. Such rulings provided, however, that the sale of seat covers, similarly produced, to a dealer in new or used automobiles is not a sale for consumption but one for resale, and that the tax attaches to the manufacturer's sale thereof.

Upon reconsideration of the matter, the Bureau is now of the opinion that where a manufacturer furnishes the material and produces automobile seat covers for the consumer thereof, according to individual design and measurement, the sale by the manufacturer of such seat covers is taxable under section 3403(c) of the Code, as amended, regardless of whether they are installed by the manufacturer or by other persons.

The Bureau has issued rulings, as stated above, that sales by a manufacturer of seat covers, produced according to individual design and measurements, to a dealer in new or used cars are not considered sales for consumption, and are subject to tax. The taxability of such sales is not affected by the ruling herein, and tax continues to attach, as in the past, to such sales.

Because of the past rulings of the Bureau concerning the nonapplication of the tax to automobile seat covers which are produced according to individual design and measurement for the consumer thereof, it has been concluded that, under the authority contained in section 3791(b) of the Code, the ruling set forth herein relating to seat covers so produced will not be applied retroactively with respect to sales of such seat covers prior to August 18, 1952, the date of this Bulletin, except that any tax which has been paid on the sale of such seat covers will not be refunded, unless in a particular case it is established to the satisfaction of the Commissioner, as required under section 3443(d) of the Code, that the manufacturer, by reason of relying on an existing ruling

that the sale of seat covers so produced 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.

SECTION 3406(a)(3), AS AMENDED.—TAX ON ELECTRIC, GAS, AND OIL APPLIANCES

REGULATIONS 46 (1940), SECTION 316.55: Scope of tax. 1952–24–13972 S. T. 945

Application of the manufacturers' excise tax, imposed by section 3406(a)(3) of the Internal Revenue Code, to the sale of electric air heaters which are not in fact furnaces, even though they take the place of furnaces and are permanently installed in walls, ceilings, or floors of buildings.

Under section 3406(a)(3) of the Internal Revenue Code, as amended, an excise tax is imposed on sales by the manufacturer, producer, or importer of, among other things, electric air heaters (not including furnaces) of the household type. The statute as originally enacted applied to sales of such heaters made prior to November 1, 1951, without regard to whether they were "of the household type."

It has heretofore been the position of the Bureau that electric air heaters designed for permanent installation in walls, ceilings, and floors of buildings which supplant, rather than merely supplement, a heating system are part of a central heating system, or a furnace, and therefore are excluded from the tax imposed by section 3406(a)(3), *supra*.

Upon reconsideration of the matter, the Bureau is now of the opinion that the statute does not warrant the treatment of such electric air heaters as furnaces merely because they are used in lieu of furnaces and are designed for permanent installation. Accordingly, it is held that the manufacturers' excise tax imposed by section 3406(a)(3) of the Code applies to sales of electric air heaters which are not in fact furnaces, even though they take the place of furnaces and are permanently installed in the walls, ceilings, or floors of buildings.

Because of the position which the Bureau has heretofore maintained concerning the nonapplication of the tax to sales of electric air heaters designed for permanent installation and the consequent reliance of manufacturers on such position, it has been concluded that, under the authority contained in section 3791(b) of the Code, the ruling set forth herein will not be applied retroactively with respect to sales of such heaters made prior to November 24, 1952, the date of this Bulletin. However, any tax which has been paid on the sale of such heaters will not be refunded, unless in a particular case it is established to the satisfaction of the Commissioner, as required under section 3443(d) of the Code, that the manufacturer, by reason of relying on an existing ruling that the sale of such a heater 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.

RETAILERS' EXCISE TAXES

REGULATIONS 51 (1941), SECTIONS 320.0, ETC. 1952–17–13897
T. D. 5922

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 320.—RETAILERS' EXCISE TAXES

Regulations 51 (1941 edition) amended to conform to the Revenue Act of 1951.

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 order to conform Regulations 51 [26 CFR, part 320], relating to the retailers' excise taxes on sales of jewelry, furs, toilet preparations, and luggage under the Internal Revenue Code, to sections 431, 432, and 487 of the Revenue Act of 1951, approved October 20, 1951, such regulations are further amended as follows:

PARAGRAPH 1. The first paragraph of section 320.0, as amended by Treasury Decision 5819 [C. B. 1950–2, 142], approved December 7, 1950, [26 CFR 320.0], is further amended as follows:

SECTION 320.0. SCOPE OF REGULATIONS.—The regulations contained in this part deal with excise taxes imposed by chapter 19 and chapter 9A of the Internal Revenue Code, as amended, on sales by the retailer of—

(*a*) Jewelry.
(*b*) Furs.
(*c*) Toilet preparations.
(*d*) Luggage.

PAR. 2. Immediately preceding section 320.2 [26 CFR 320.2], there is inserted the following:

SEC. 432. EFFECTIVE DATE OF PART III [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

The amendments made by this part shall apply only to articles sold on or after the first day of the first month which begins more than ten days after the date of the enactment of this Act.

PAR. 3. Section 320.2, as amended by Treasury Decision 5819 [26 CFR 320.2], is further amended by adding at the end thereof the following:

The provisions of section 431 of the Revenue Act of 1951, relating to sales at retail of lotions, oils, powders, or other articles intended to be used or applied only in the care of babies; sales of taxable articles to persons operating a barber shop, beauty parlor, or similar establishment for use in the operation thereof; and the sale of miniature samples of any such article for demonstration use only to a house-to-house salesman by the manufacturer or distributor became effective November 1, 1951.

PAR. 4. The parenthetical material at the end of section 320.31, as amended by Treasury Decision 5353 [C. B. 1944, 597], approved March 31, 1944 [26 CFR 320.31], is amended by adding after "etc." the following:

See section 320.75a for credit and refund provisions relating to mechanical pencils, fountain and ball point pens, and mechanical lighters for cigarettes, cigars, and pipes.

PAR. 5. Section 320.33, as amended by Treasury Decision 5479 [C. B. 1945, 437], approved September 24, 1945 [26 CFR 320.33], is further amended by adding at the end thereof the following:

(See section 320.75a for credit and refund provisions relating to mechanical pencils, fountain and ball point pens, and mechanical lighters for cigarettes, cigars, and pipes.)

PAR. 6. There is inserted immediately preceding section 320.50 [26 CFR 320.50] the following:

SEC. 431. RETAILERS' EXCISE TAX ON TOILET PREPARATIONS [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) BABY OILS, ETC.—Section 2402(a) is hereby amended by adding at the end thereof the following new sentence: "The tax imposed by this subsection shall not apply to lotion, oil, powder, or other article intended to be used or applied only in the care of babies."

* * * * * * *

PAR. 7. Section 320.50, as amended by Treasury Decision 5353 [26 CFR 320.50], is further amended as follows:

(A) By striking the words "baby oils and baby powders;" in the second sentence of the second paragraph.

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

Under the specific provisions of section 431 of the Revenue Act of 1951 the tax does not apply to the sale on and after November 1, 1951, of lotions, oils, powders, or other articles intended to be used or applied only in the care of babies. The determination of whether toilet articles are intended to be used or applied only in the care of babies will be made only by reference to the advertising with respect to, and the labeling contained on, the article. If an article is advertised and labeled as being for use in the care of babies and is not advertised or labeled as usable by persons other than babies the article is exempt from tax even though the particular purchaser buys it for adult use. On the other hand, an article which is represented by advertising or labeling as fit for adult use, in addition to use in the care of babies, will not be exempt from tax even though sold to a purchaser who intends to use the article only in the care of babies.

PAR. 8. Immediately preceding section 320.52 [26 CFR 320.52], there is inserted the following:

SEC. 431. RETAILERS' EXCISE TAX ON TOILET PREPARATIONS [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(b) SALES TO BARBER SHOPS, ETC.—Section 2402(b) is hereby amended to read as follows:

"(b) BEAUTY PARLORS, ETC.—For the purposes of subsection (a), the sale of any article described in such subsection to any person operating a barber shop, beauty parlor, or similar establishment for use in the operation thereof, or for resale, and the sale of miniature samples of any such article for demonstration use only to a house-to-house salesman by the manufacturer or distributor, shall not be considered as a sale at retail. The resale of such article at retail by such person, or the resale of such sample at retail by such house-to-house salesman, shall be subject to the provisions of subsection (a)."

PAR. 9. Section 320.52, as amended by Treasury Decision 5191 [C. B. 1942-2, 283], approved December 3, 1942 [26 CFR 320.52], is further amended as follows:

(A) By striking out the heading of paragraph (*b*) and inserting in lieu thereof the following:

(*b*) *Sales made during the period November 1, 1942, through October 31, 1951, both dates inclusive.*—

(B) By striking out the words "on and after November 1, 1942" wherever they appear in paragraph (*b*) and inserting in lieu thereof the words "during the period November 1, 1942, through October 31, 1951".

(C) By adding at the end thereof the following:

(*c*) *Sales made on and after November 1, 1951.*—The sale on and after November 1, 1951, of any article taxable under section 2402(a) to another person operating a barber shop, beauty parlor, or similar establishment, whether for use in the operation thereof or for resale purposes, shall not be considered as a sale at retail and the tax imposed by section 2402(a) shall not be applicable to such sale. It will not be necessary for the operator of a barber shop, beauty parlor, or similar establishment to furnish any type of exemption certificate to his vendor with respect to such sale.

In any case where the operator of a barber shop, beauty parlor, or similar establishment sells such article at retail, he is liable for the tax imposed by section 2402(a). See section 320.51.

PAR. 10. Immediately following section 320.52, there is inserted the following new section:

SEC. 320.53. SALES OF MINIATURE SAMPLES.—The sale on and after November 1, 1951, by the manufacturer or distributor of miniature samples of any article taxable under section 2402(a) to a house-to-house salesman for demonstration use only shall not be considered as a sale at retail and the tax imposed by section 2402(a) shall not be applicable to such sale. In any case where the house-to-house salesman sells at retail any of the miniature samples purchased from the manufacturer or distributor for demonstration use, he is liable for the tax imposed by section 2402(a). See section 320.51.

PAR. 11. Immediately preceding section 320.74 [26 CFR 320.74], there is inserted the following:

SEC. 487. IMPOSITION OF TAX ON MECHANICAL PENCILS, FOUNTAIN AND BALL POINT PENS, AND MECHANICAL LIGHTERS FOR CIGARETTES, CIGARS, AND PIPES [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

Chapter 29 (relating to manufacturers' excise and import taxes) is hereby amended by adding after section 3407 the following new section:

"SEC. 3408. TAX ON MECHANICAL PENCILS, FOUNTAIN AND BALL POINT PENS, AND MECHANICAL LIGHTERS FOR CIGARETTES, CIGARS, AND PIPES.

* * * * * * *

"(b) EXEMPTION IF ARTICLE TAXABLE AS JEWELRY.—No tax shall be imposed under this section on any article taxable under section 2400 (relating to jewelry tax). If any article, on the sale of which tax has been paid under this section, is further manufactured or processed resulting in an article taxable under section 2400. the person who sells such article at retail shall, in the computation of the retailers' excise tax due on such sale, be entitled to a credit or refund in an amount equal to the tax paid under this section."

PAR. 12. Immediately following section 320.75, as renumbered by Treasury Decision 5353 [26 CFR 320.75], there is inserted the following new section:

SEC. 320.75a. SALES OF MECHANICAL PENCILS, PENS, AND LIGHTERS.—Section 3408(a) of the Code imposes a tax on the sale on and after November 1, 1951, by the manufacturer, producer, or importer of mechanical pencils, fountain and ball point pens, and mechanical lighters for cigarettes, cigars, and pipes. Under the specific provisions of section 3408(b), the tax on the sale by the manufacturer does not apply if such pencil, pen, or lighter when sold by the manufacturer is subject to the retailers' tax imposed by section 2400. (See sections 320.31 and 320.33.)

Where an article (i. e., mechanical pencil, fountain or ball point pen, or mechanical lighter for cigarettes, cigars, and pipes) subject to tax under section

3408 is sold by the manufacturer thereof and thereafter such article is further manufactured or processed so as to subject it to the tax under section 2400 when sold at retail, the retail dealer upon the sale of the article is entitled to a credit or refund in an amount equal to the tax paid by the original manufacturer of such article.

Where a claim for refund is filed, it shall be supported by evidence showing (1) the name and address of the person who paid to the United States the manufacturers' excise tax refund of which is claimed, (2) the amount of such tax and the date of payment thereof, (3) that the article has been further manufactured or processed subsequent to the sale thereof by the original manufacturer, and (4) that the article has been sold at retail and that the retailers' excise tax has been paid thereon without benefit of any adjustment for the manufacturers' tax paid on such article.

A credit taken on a return shall be supported by the same evidence, except that, if the credit is taken on the return for the month in which the article is sold at retail, the statement under (4) above, shall show that the tax due on such article against which the credit is taken, has been computed without benefit of any adjustment for the manufacturers' tax paid on such article. If it is impossible to furnish all of such evidence with the return, a statement to that effect must be submitted with the return. The evidence supporting such credit shall be filed with the collector within 30 days after the date on which the return is filed. If the required evidence is not so filed the credit will be disallowed and assessment of the tax resulting from the disallowance will be made on the current assessment list.

Because of the short period of time between the date of approval of the Revenue Act of 1951, and November 1, 1951, the date on which, pursuant to such Act, the amendments to chapter 19 and chapter 29 became effective, and because of the technical nature of such amendments, 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 of limitation of section 4(c) of said Act.

(This Treasury Decision is issued pursuant to the authority contained in sections 2410, 3450, and 3791 of the Internal Revenue Code (55 Stat. 720, 53 Stat. 419, 467; 26 U. S. C. 2410, 3450, 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved July 28, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register July 31, 1952, 8:54 a. m.)

TRANSPORTATION TAXES

TAX ON TRANSPORTATION OF PERSONS

REGULATIONS 42 (1942), SECTIONS 130.50, ETC. 1952–20–13931
T. D. 5929

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 130.—TAXES ON SAFE DEPOSIT BOXES AND ON CERTAIN TRANSPORTATION AND COMMUNICATIONS SERVICES

Tax on transportation which begins and ends in the United States

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

To Officers and Employees of the Internal Revenue Service and Others Concerned:

On March 4, 1952, notice of proposed rule making was published in the Federal Register (17 F. R. 1900), in order to conform Regulations 42 (1942 edition) [26 CFR, part 130], to section 607 of the Revenue Act of 1950 (Public Law 814, 81st Cong., 2d sess.), approved September 23, 1950. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments to Regulations 42 [26 CFR, part 130] set forth below are hereby adopted.

PARAGRAPH 1. There is inserted immediately preceding section 130.50 [26 CFR 130.50] the following:

SEC. 607. TRANSPORTATION WHICH BEGINS AND ENDS WITHIN THE UNITED STATES [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) TRANSPORTATION OF PERSONS.—

(1) AMENDMENT OF SECTION 3469(a).—So much of section 3469(a) (relating to tax on transportation of persons) as precedes "10 per centum of the amount so paid" is hereby amended to read as follows:

"(a) TRANSPORTATION.—There shall be imposed—

"(1) upon the amount paid within the United States for the transportation of persons by rail, motor vehicle, water, or air within or without the United States, and

"(2) upon the amount paid without the United States for the transportation of persons by rail, motor vehicle, water, or air which begins and ends in the United States,

a tax equal to".

* * * * * * *

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid on or after the first day of the first month which begins more than ten days after the date of the enactment of this Act for transportation which begins on or after such first day.

PAR. 2. Section 130.51, as amended by Treasury Decision 5559 [C. B. 1947–1, 160], approved April 18, 1947 [26 CFR 130.51], is further amended as follows:

(A) By substituting the following new paragraphs for the first and second paragraphs thereof:

Section 3469(a) imposes a tax upon payments of more than 35 cents (*a*) made within the United States on or after October 10, 1941, for the transportation of persons, on or after such date, by rail, motor vehicle, water, or air, and (*b*)

made without the United States on or after November 1, 1950, for the transportation of persons on or after such date, by rail, motor vehicle, water, or air, where such transportation begins and ends in the United States.

The taxability of a payment for transportation made within the United States is determined by whether the transportation service is furnished within or without the northern portion of the Western Hemisphere as provided in section 130.64.

With respect to a payment for transportation made without the United States, the application of the tax is determined not only by whether the transportation service is furnished within or without the northern portion of the Western Hemisphere as provided in section 130.64, but also by whether the transportation service begins and ends within the United States. The tax does not apply to a payment made without the United States for one-way or round-trip transportation between a point within the United States and a point outside the United States.

(B) By changing the period at the end of the first sentence of the sixth paragraph to a comma and adding the words:

except that, where the payment is made outside the United States for a prepaid order, exchange order, or similar order for transportation of persons which begins and ends within the United States, the tax is collectible by the person furnishing the initial transportation pursuant to such order.

PAR. 3. Section 130.53, as amended by Treasury Decision 5559 [26 CFR 130.53], is further amended as follows:

(A) By substituting the following new paragraphs for paragraphs (*f*) and (*g*) thereof:

(*f*) *Prepaid orders, exchange orders, or similar orders.*—The tax applies to the amount paid in the United States for a prepaid order, exchange order, or similar order for transportation whether within or without the United States. The tax also applies to the amount paid without the United States for a prepaid order, exchange order, or similar order for transportation which begins and ends in the United States. An additional amount paid in the United States in procuring transportation in connection with the use of a prepaid order, exchange order, or similar order, is likewise subject to tax, regardless of whether the original payment for the order is made within or without the United States. (See section 130.54(*b*).)

(*g*) *Tickets.*—The tax applies to an amount paid within or without the United States for a ticket for transportation which begins and ends in the United States regardless of where such ticket is issued. (See section 130.54(*b*).)

(B) By striking out the words "in the United States" in the first sentence of paragraph (*i*) thereof.

(C) By revising paragraph (*j*) thereof to read as follows:

(*j*) *All-expense tours.*—An amount paid for an all-expense tour is subject to tax with respect to that portion representing taxable transportation. (See section 130.54(*h*).)

(D) By inserting the following new paragraphs immediately after paragraph (*j*) thereof:

(*k*) *Payments remitted to foreign countries by persons in the United States.*—Payments for transportation tickets, prepaid orders, exchange orders, or similar orders are subject to the tax where the payment for such tickets or orders is accomplished by the purchaser either (1) by transmission from within the United States via telegraph or mail of cash, checks, postal or telegraphic money orders, and similar drafts to ticket offices or travel agencies, etc., located in any place without the United States, or (2) the delivery of the funds to an agency located in the United States for transmission to ticket offices, or travel agencies, etc., without the United States. Such payments are considered to be payments made within the United States.

(*l*) *Payments outside the United States.*—The tax applies to a payment made outside the United States for transportation which begins and ends within the United States. For purposes of the preceding sentence, a payment made outside the United States for transportation between two or more points in the United States is a payment for transportation which begins

and ends in the United States, even though additional transportation to or from a point outside the United States is involved in the entire journey, where at the time of making payment for the transportation between two or more points in the United States it is not definitely established that such transportation is purchased for use in making the journey from or to a point outside the United States, as required by and under the rules set forth in section 130.54(*b*). In such case, the fact that the entire journey includes transportation from or to a point outside the United States is not in itself determinative of the liability for tax.

The following examples illustrate the application of this paragraph.

Example (1). W travels from Havana to New York by way of Miami. He purchases in Havana a steamship ticket for his transportation from Havana to Miami and an exchange order for air transportation from Miami to New York. The ticket for the connecting transportation from Havana to Miami, and the order for the transportation from Miami to New York were not appropriately inscribed by the agency or carrier which received the payment for the air transportation involved, at the time such payment was received, so as to clearly show that the ticket and order were purchased for use in conjunction with each other. Therefore, the agency or carrier which accepts the exchange order and issues the ticket for the transportation from Miami to New York is required to collect the tax which applied to the amount paid outside the United States for such transportation.

Example (2). X travels on a round trip from Montreal to Los Angeles by way of New York. He purchases in Montreal air transportation for the round trip between New York and Los Angeles, and uses a private automobile for transportation from Montreal to New York and return to Montreal. The amount paid in Montreal for the round-trip transportation between New York and Los Angeles is a payment for transportation which begins and ends in the United States, and is therefore subject to tax.

PAR. 4. Section 130.54 [26 CFR 130.54] is amended by substituting the following new paragraph for paragraph (*b*) thereof:

(*b*) *Payments outside the United States.*—(1) The tax does not apply to a payment made outside the United States for transportation which begins or ends outside the United States. For purposes of the preceding sentence, a payment made outside the United States for transportation between two or more points within the United States (such transportation being referred to hereinafter in this section as "the United States portion"), which is part of transportation from or to a point outside the United States is a payment for transportation which begins or ends outside the United States, where it is definitely established at the time of making payment for the United States portion that such portion is purchased for use in making the journey from or to a point outside the United States. The nontaxable character of the payment made outside the United States for the United States portion shall be established under the rules set forth in the following subparagraphs (2) through (5).

(2) Where one ticket (such as one commonly known as a "through ticket") is issued to cover all of the United States portion of a journey which begins or ends outside the United States and to cover also the connecting transportation from or to a point outside the United States, no further evidence of the nontaxable character of the transportation covered by such ticket will be required.

(3) Where separate tickets or orders are issued for the United States portion of a journey which begins or ends outside the United States, the agency or carrier which receives payment for such tickets or orders shall definitely determine at the time of receiving the payment that the United States portion is being purchased for use in conjunction with connecting transportation from or to a point outside the United States, and shall appropriately inscribe the tickets or orders issued outside the United States for the United States portion and for the connecting transportation from or to a point outside the United States to show clearly that such tickets or orders are purchased for use in conjunction with each other. Such tickets or orders shall be inscribed in the following manner:

(i) The ticket or order for the connecting transportation from or to a point outside the United States shall be inscribed or stamped with an appropriate legend (for example, "Not To Be Used Again for Purchase of Tax-Free United States Transportation") to show that the United States portion has been purchased tax-free for use in conjunction therewith.

(ii) Where the ticket for the United States portion is issued outside the United States, it shall be inscribed to show (*a*) the identity of the agency or carrier

which received payment therefor (unless otherwise shown on the ticket), (*b*) the origin and destination of the connecting transportation, (*c*) the identity of the carrier furnishing the connecting transportation, and (*d*) the serial number of the ticket or order covering such connecting transportation. If the ticket is not large enough to accommodate the prescribed inscription, a statement setting forth the required information shall be attached to such ticket.

(iii) Where an order for the United States portion is issued outside the United States, it shall be inscribed to show (*a*) the origin and destination of the connecting transportation, (*b*) the identity of the carrier furnishing the connecting transportation, and (*c*) the serial number of the ticket or order covering such connecting transportation.

(4) Where the ticket for the United States portion is issued in the United States pursuant to an order which was purchased and properly inscribed outside the United States under the rules set forth in subparagraph (3) (iii) above, liability for payment or collection of tax will not be incurred upon the issuance of the ticket provided the agency or carrier issuing such ticket stamps or inscribes thereon an appropriate legend, for example, "Tax Not Paid—Furnished on Order", or "Exempt—Order".

(5) In any case where a payment for the United States portion is not subject to tax under the rules set forth herein, the carrier furnishing transportation for the United States portion shall procure and maintain appropriate evidence which will clearly show that the tickets or orders for such transportation were purchased for use in conjunction with connecting transportation from or to a point outside the United States.

(6) The following are examples of nontaxable transportation.

Example (*1*). Y travels from London to San Francisco by way of New York. He purchases from an agency or carrier in England all of the transportation involved in such journey, which includes air transportation from London to New York and from New York to San Francisco, for which separate tickets are issued. The agency or carrier which receives the payment for Y's transportation from New York to San Francisco will not be required to collect tax with respect to the payment, provided it determines at the time such payment is received that the transportation in question is being purchased for use in conjunction with the connecting transportation from London to New York and it appropriately inscribes both of the tickets for the journey.

Example (*2*). Z travels from Havana to New York by way of Miami. He purchases in Havana a ticket for his transportation by water from Havana to Miami, and later purchases from a travel agency in Havana air transportation from Miami to New York for which the travel agency issues an exchange order. To establish the nontaxable character of the payment for Z's transportation from Miami to New York it will be necessary for the travel agency which receives the payment for such transportation to determine at the time the payment is received that the transportation in question is being purchased for use in conjunction with the connecting transportation from Havana to Miami, and to make the appropriate inscriptions on the ticket and the order. The carrier which accepts the exchange order and issues the ticket for the transportation from Miami to New York will not be required to collect tax with respect to the ticket so issued if it appropriately inscribes the ticket as provided in subparagraph (4).

PAR. 5. Immediately preceding section 130.55 [26 CFR 130.55], there is inserted the following:

SEC. 607. TRANSPORTATION WHICH BEGINS AND ENDS WITHIN THE UNITED STATES [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) TRANSPORTATION OF PERSONS.—

* * * * * * *

(2) SEATS, BERTHS, ETC.—Section 3469(c) (relating to tax with respect to seating and sleeping accommodations) is hereby amended by striking out "within the United States".

* * * * * * *

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid on or after the first day of the first month which begins more than ten days after the date of the enactment of this Act for transportation which begins on or after such first day.

PAR. 6. Section 130.56 [26 CFR 130.56] is amended to read as follows:

SEC. 130.56. SCOPE OF TAX.—Section 3469(c) imposes a tax upon payments of any amount made within the United States on or after October 10, 1941, and made without the United States on or after November 1, 1950, for seating or sleeping accommodations in connection with transportation with respect to which a tax is imposed by section 3469(a).

PAR. 7. Immediately after section 3469(d) in subpart G, there is inserted the following:

SEC. 607. TRANSPORTATION WHICH BEGINS AND ENDS WITHIN THE UNITED STATES [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) TRANSPORTATION OF PERSONS.—

* * * * * * *

(3) COLLECTION OF TAX.—So much of the second sentence of section 3469(d) (relating to returns and payment of tax) as precedes "on or before the last day of each month" is hereby amended to read as follows: "Each person receiving any payment specified in subsection (a) or (c) shall collect the amount of the tax imposed from the person making such payment; except that, if the payment is made outside the United States for a prepaid order, exchange order, or similar order, the person furnishing the initial transportation pursuant to such order shall collect the amount of the tax. Any person required to collect the tax imposed by this section shall,".

* * * * * * *

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid on or after the first day of the first month which begins more than ten days after the date of the enactment of this Act for transportation which begins on or after such first day.

PAR. 8. Section 130.64, as amended by Treasury Decision 5708 [C. B. 1949–2, 130], approved June 27, 1949 [26 CFR 130.64], is further amended by inserting at the end thereof the following:

The rules set forth in the first paragraph of this section for determining the taxable portion of a payment made within the United States for transportation any part of which is outside the northern portion of the Western Hemisphere also apply to payments made without the United States for transportation which begins and ends in the United States but part of which is outside the northern portion of the Western Hemisphere.

PAR. 9. Section 130.70 [26 CFR 130.70] is amended by changing the period at the end thereof to a comma, and adding the words:

except that (with respect to (*e*) and (*f*) above) if the payment is made outside the United States for a prepaid order, exchange order, or similar order valid for transportation of persons which begins and ends within the United States, or for seating or sleeping accommodations in connection with such transportation, the person furnishing the initial transportation pursuant to such order must collect the amount of the tax.

PAR. 10. Section 130.72, as amended by Treasury Decision 5672 [C. B. 1948–2, 178], approved November 23, 1948 [26 CFR 130.72], is further amended as follows:

(A) By revising the third paragraph of (*d*) to read as follows:

Every person receiving payment in the United States for a prepaid order, exchange order, or similar order, for transportation or seating or sleeping accommodations to be furnished by any carrier within the United States shall collect all of the tax applicable to such transportation or accommodations and remit such tax in the proper amount to those carriers located within the United States furnishing such transportation or accommodations to be included in monthly returns on Form 727, revised.

(B) By inserting the following new paragraph immediately following the fourth paragraph of (*d*):

Every person furnishing the initial transportation pursuant to a prepaid order, exchange order, or similar order for transportation which begins and ends in the United States, or for seating or sleeping accommodations in connection therewith, and for which payment is made outside the United States shall collect all of the tax applicable to such transportation or accommodations and include the amount in monthly return on Form 727, revised.

This Treasury Decision shall be effective upon the thirty-first day after the date of its publication in the Federal Register.

(This Treasury Decision is issued under the authority contained in sections 3472 and 3791 of the Internal Revenue Code (53 Stat. 423, 467, 55 Stat. 722; 26 U. S. C. 3472, 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved September 2, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register September 5, 1952)

SECTION 3475.—TAX ON TRANSPORTATION OF PROPERTY

REGULATIONS 113, SECTION 143.1: Meaning of terms. 1952–19–13920 Ct. D. 1748

TAX ON TRANSPORTATION OF PROPERTY—INTERNAL REVENUE CODE—DECISION OF COURT

1. CONTRACT FOR TOWING BARGES.

Amounts received by a company engaged in the business of owning, operating, and renting fully manned tugboats, which company was under contract with a cement company for the operation of a tugboat for towing barges, loaded and unloaded, used by the cement company in transporting raw materials used in its business, are amounts paid for the transportation of property and are subject to the tax imposed by section 3475 of the Internal Revenue Code. The tug was hired at a fixed daily rate, and the towing company assumed all liability for insurance on the tug and for personal and property damage to third parties or to members of the crew, or both.

2. DECISION AFFIRMED.

Decision of the United States District Court for the Eastern District of Louisiana, 98 Fed. Supp. 994 (1951), affirmed.

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Gulf Coast Towing Company, Inc., appellant, v. *United States of America, appellee*

[196 Fed. (2d) 944]

Appeal from the United States District Court for the Eastern District of Louisiana

Before HOLMES, RUSSELL, and RIVES, Circuit Judges

[May 16, 1952]

OPINION

RUSSELL, Circuit Judge: Gulf Coast Towing Company, Inc., sued the United States seeking to recover alleged overpayment of Federal transportation taxes which it claimed to have paid through error. The United States denied that there had been an overpayment. The issue was submitted to the trial court

upon a stipulation of facts, to some of which we will refer hereinafter. The trial court, by its memorandum opinion, reported at 98 Fed. Supp. 994, held that there had been no overpayment of taxes and entered judgment for the Government. This appeal followed.

Appellant, during the periods involved, was engaged in the business of owning, operating and renting to others fully manned tugboats. On April 27, 1942, it entered into a "Towage Contract" with Lone Star Cement Corporation under the terms of which it agreed to furnish a tug and to tow loaded and unloaded raw material barges between Mobile, Alabama, and New Orleans, Louisiana, for a period of 6 months.[1] In consideration thereof Lone Star Cement Corporation was to pay a fixed daily rate, subject to adjustment upward in the event the wages of the crew should be increased, and was responsible for any increase in the unit cost of fuel or war risk insurance above the rates existing at the time of the agreement. Appellant, referred to as "Transportation Company" in the contract, agreed to maintain a complete crew on the tug and to furnish all stores, fuels, oils, tow lines "and take care of all other expenses connected with the operation of the tug." In the event the tug should be taken out of service for repairs, Lone Star Cement Corporation was to be relieved of the payment of the daily "towing charge" for the period necessary to make such repairs. Appellant was to carry marine insurance on the tug at its expense and agreed to assume all liability for damages to property of third parties or injuries to third persons or members of the crew of the tug or tow, or both. Two similar contracts were entered into by the parties covering subsequent periods. Neither of these contracts provided for an adjustment of the daily rate to be paid by Lone Star Cement Corporation, but fixed a rate greater than the rate charged under the original contract. Except for this, the term of the contract and the name of the tug to be used, these contracts were identical with the contract of April 27, 1942.

At all times during the performance of these contracts Lone Star Cement Corporation furnished all sailing directions and paid the daily charge for the use of the tug. The crew of the tug assisted in making connections and tying barges up for loading and discharging cargoes. The detailed navigation of the tug and tow was under the control and direction of the captain of the tug, who was in the employ of appellant.

Appellant collected from Lone Star Cement Corporation and paid to the collector of internal revenue the 3 percent transportation tax provided for by section 3475(a) of the Internal Revenue Code (26 U. S. C. A. 3475(a)) on the amount paid to it under the terms of the contracts. The total sum collected as tax and remitted to the collector, $3,080.77, is the amount in controversy.

Section 3475(a) of the Internal Revenue Code, *supra*, insofar as is relevant here, imposes upon the amount paid for transportation of property by rail, motor vehicle, water or air from one point in the United States to another, a tax equal to 3 per centum of the amount so paid. This tax applies only to amounts paid to a person engaged in the business of transporting property for hire. "Transportation", as used in this section, is defined by Treasury Regulations 113, section 143.1(d) as the movement of property by a person engaged in the business of transporting property for hire and includes towing and accessorial services furnished in connection with a transportation movement. "Property", as defined by subsection (e) of section 143.1, Treasury Regulations 113, "is any physical matter regardless of value over which the right of ownership or control may be exercised."

Appellant urges that the trial court erred in finding that it was engaged in the transportation of property for hire within the meaning of the statute, insofar as the transactions described are concerned. Although stated variously, the crux of the contention is that the contracts were not contracts for transportation of property, but were contracts for rental, lease or charter or marine equipment under which Lone Star Cement Corporation transported its own property by use of the leased tug. It is contended on behalf of appellee that the question can not be so limited since, under the facts of this case, the contractual agreement was specifically one for towage and otherwise provided a transportation service.

The same question here presented, arising from substantially the same facts, was determined by the district court in *Ohio River Sand Co.* v. *United States*,

[1] "That the said Transportation Company agrees to tow loaded and unloaded raw material barges (capacity not to exceed approximately 1,300 tons) between Mobile, Alabama and Lone Star's Plant located on the Industrial Canal, New Orleans, Louisiana. * * *"

60 Fed. Supp. 563. In that case the court recognized that the towing of barges constituted transportation, but held, as the appellant contends here, that the transaction evidenced a lease of the tugboat on a rental basis so that the lessee could transport its own property, and that the lessor was compensated for rental as the owner of the tug and was not "engaged in the business of transporting property for hire." In *Bridge Auto Renting Corp.* v. *Pedrick*, 174 Fed. (2d) 733, the Court of Appeals for the Second Circuit referred to the *Ohio River Sand Company* case, *supra*, as being "indistinguishable", but expressly declined to follow it. The Bridge Auto Renting Corporation case decision involved a business where the taxpayer leased trucks to business concerns for hauling purposes and, as immediately there involved, the situation where the lessor furnished 42 of the taxpayer's customers drivers as well as trucks. The court found these drivers to be employees of the taxpayer and, one judge dissenting, concluded that the lessor was engaged in the business of transporting property for hire as to such trucks. That decision turned upon the court's answer to the questions stated, that the "lessor" furnished "substantially all the facilities for and perform[ed] substantially all of the functions of, transporting the property of the * * * customers whose payments to it were taxed." This court has recently had occasion to reiterate that the existence of tax liability under the statute now involved "depends upon whether the transaction in question in any case is 'transportation' within the terms of the statute. This is generally a question of fact * * *" *Masonite Corp.* v. *Fly*, No. 13086, 182 Fed. (2d) 934, S. C., *Masonite Corp.* v. *Fly*, No. 13780, * * * Fed. (2d) * * *. In the second appearance of the case it was emphasized that the intent of the statute "was to tax amounts paid to a person 'engaged in the business of transporting property for hire'."

Upon our consideration of the facts presented to us we conclude, contrary to the result reached by the court in the Ohio River Sand Company case, *supra*, that the amounts which the tax was paid were "paid to a person engaged in the business of transporting property for hire." There can be no question that the compensation received by the towing company was that for the operation of a fully manned tugboat for towing barges, loaded and unloaded, used by the cement corporation in transporting raw materials used in its cement manufacturing business. Both the barges and the raw materials loaded thereon and towed by appellant's tug under the towage agreement were the "property" of the cement corporation. Such towage was the transportation of property. As we view the contracts the performance of the towage contract was the obligation of the appellant and its compensation was received by virtue of its engagement in the business of transporting property for hire. Under the terms of the contract, and the means and method of operations thereunder the arrangement did not evidence a transportation by the cement corporation. The terms of the contract and the method of operation thereunder require the conclusion that the appellant was in fact furnishing transportation to the cement corporation, whose payments to it were taxed, and did not merely lease or charter a tug. For the consideration paid appellant furnished the tug and crew and performed the towing service. While the cement corporation furnished the sailing directions, the master of the tug was at all times an employee of appellant and was responsible for the detailed navigation of the tug. Appellant was liable for any damages or injuries inflicted in operating the tug and was also responsible for any injuries sustained by members of the crew of the tug and/or tow. A different result is not required because of the fact that the amount paid for the towage services was fixed at a daily rate, and was to be paid whether the tug and its crew were used on a particular day or not. The statute is not concerned with the method used to compute the amount of the payment. Such amount, however it may be computed, is taxable, if, in legal effect, it is paid for transportation. The obvious purpose of the agreement to pay whether or not the tug was engaged in the towing operation on a particular day was to insure the availability of the tug at all times when towage might be desired.

The contracts in question were contracts for transportation of property for hire and the compensation paid therefor was taxable. We have considered appellant's contention that the Lone Star Cement Corporation, by virtue of the contract, became owner of the tug, *pro hac vice*, under admiralty law, but find it without merit. The judgment of the trial court is

Affirmed.

REGULATIONS 113, SECTION 143.13: Application of tax. 1952–26–13997 M. T. 45

Where a person contracts with a carrier for the transportation of material to be disposed of as waste in the course of business from his plant or premises to a designated place within the boundaries of, or adjacent to, such plant or premises, the amount paid to the carrier is not taxable under section 3475 of the Internal Revenue Code. Moreover, an amount paid to a carrier for the removal of waste material where the carrier is permitted to dispose of the material as it sees fit is not subject to tax under that section.

M. T. 13 (C. B. 1943, 1161) modified.

Section 3475 of the Internal Revenue Code imposes a tax, with certain exceptions, upon amounts paid within or without the United States, to a person engaged in the business of transporting property for hire, for transportation of property by rail, motor vehicle, water, or air from one point in the United States to another.

In M. T. 13 (C. B. 1943, 1161), it was held in part that where a person contracts with a carrier for the transportation of waste material from his plant or premises to a designated place, the amount paid to the carrier for such transportation is taxable under section 3475 of the Code.

Upon reconsideration of M. T. 13, *supra*, it is now held that where a person contracts with a carrier for the transportation of material to be disposed of as waste in the course of business from his plant or premises to a designated place within the boundaries of, or adjacent to, such plant or premises, the amount paid to the carrier is not taxable under section 3475 of the Code. Moreover, an amount paid to a carrier for the removal of waste material where the carrier is permitted to dispose of the material as it sees fit is not subject to tax under that section. The latter type of payment is considered as an amount paid for a disposal service rather than for transportation of property from one point in the United States to another.

Accordingly, M. T. 13, *supra*, is modified to the extent that it is inconsistent with the ruling herein expressed.

REGULATIONS 113 (1943), SECTIONS 143.31, ETC. 1952–19–13921 T. D. 5926

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 143.—TAX WITH RESPECT TO THE TRANSPORTATION OF PROPERTY

Changes in procedure for establishing exemption from the tax in the case of export shipments.

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 order to conform Regulations 113 [26 CFR, part 143], relating to the tax on the amount paid for the transportation of property, to a change in procedure for establishing exemption from the tax in

the case of property shipped for export and actually exported, such regulations are amended as follows:

PARAGRAPH 1. Section 143.31 [26 CFR 143.31] is amended by changing the last sentence of the third paragraph to read as follows:

The amount paid for transportation from the point of diversion or reconsignment to the foreign destination will be considered as exempt from tax provided an export exemption certificate is filed. (See sections 143.33 and 143.34.)

PAR. 2. Section 143.32 [26 CFR 143.32] is amended to read as follows:

SEC. 143.32. EXPORT SHIPMENTS NOT REQUIRING EXEMPTION CERTIFICATE.—An amount paid for the transportation of property shipped direct from a point within the United States to a point outside the United States under a through bill of lading, a through export bill of lading, or a domestic bill of lading showing the name of the foreign consignee and the ultimate foreign destination will be treated as exempt from the transportation tax, without further evidence of actual exportation. In case a through bill of lading is not issued at the point of origin, but the shipper intends to obtain a through bill of lading, there should be stamped across the original shipping papers the words: "To be exchanged for through bill of lading." The original shipping papers in such case must show a consignee and destination outside the United States.

PAR. 3. Section 143.33 [26 CFR 143.33] is amended to read as follows:

SEC. 143.33. EXPORT SHIPMENTS REQUIRING EXEMPTION CERTIFICATE.—An amount paid for an export shipment not made on a through bill of lading, a through export bill of lading, or a domestic bill of lading showing the name of the foreign consignee and the ultimate foreign destination, will be exempt from the transportation tax, provided (1) the shipment is covered by an Export Exemption Certificate, Form 1363, and (2) proof of exportation is obtained as required by section 143.34. The certificate shall be executed, in triplicate, by the shipper or other person who pays the transportation charge. Such person shall retain the triplicate with the shipping papers and file the original and duplicate with the agent of the carrier at the time of payment of the transportation charge. The carrier receiving an Export Exemption Certificate shall retain the duplicate with the paid transportation document, and forward the original with its monthly return, Form 727, Revised, to the collector of internal revenue for the district in which the carrier's principal place of business is located.

If a break for a business purpose occurs in the transportation movement covered by an Export Exemption Certificate, the amount paid for the transportation from the point of origin to the point where the break occurs is taxable and the shipper or other person who paid the transportation charge shall furnish information to the Commissioner similar to that set forth in section 143.34 in order that the tax due may be assessed and collected.

PAR. 4. Section 143.34 [26 CFR 143.34] is amended as follows:

(A) By substituting for the first paragraph thereof the following paragraph:

SEC. 143.34. PROOF OF EXPORTATION.—The Export Exemption Certificate, Form 1363, suspends liability for the payment of the tax for a period of 6 months from the date of shipment from the point of origin. If within such period the shipper or other person who paid the transportation charge has not received evidence of the actual exportation of a shipment, covering which an Export Exemption Certificate, Form 1363, has been filed, then the temporary suspension of the liability for the payment of the tax ceases. Within 30 days after termination of the temporary suspension period the shipper or other person who paid the transportation charge shall forward to the Commissioner of Internal Revenue, Washington 25, D. C., attention: ExT: M, a statement setting forth with respect to each certificate involved (1) the date the shipment covered thereby was made from the point of origin, (2) the amount paid for the transportation, and (3) the date such payment was made, in order that the tax due may be assessed and collected. If proof of exportation is subsequently received, the person who paid the tax may file a claim for refund on Form 843, but such action must be taken within the 4-year period of limitation prescribed by section 3313.

(B) By substituting for the third paragraph thereof the following paragraph:

If the shipper or other person who paid the transportation charge is not the actual exporter and is unable to obtain the documentary evidence of exportation specified in the preceding paragraph, such person shall obtain from the person having custody of the documentary evidence a statement (1) certifying that the property covered by the Export Exemption Certificate, Form 1363, was in fact exported, (2) identifying the evidence of exportation, (3) specifying the foreign destination or the possession of the United States to which the property was shipped, or in lieu thereof, certifying that the property was not shipped to the Territories of Alaska or Hawaii, and (4) showing where the evidence of exportation will be available for inspection by internal revenue officers for a period of 4 years.

PAR. 5. Section 143.35 [26 CFR 143.35] is amended as follows:

(A) By striking from the second paragraph the words "a Temporary Exemption Certificate, Form 798," and inserting in lieu thereof the words "an Export Exemption Certificate, Form 1363,".

(B) By substituting the following new paragraph for the third and fourth paragraphs thereof:

Where a person has been designated to direct the exporting operations of a pool with authority to control its accounting practice, and additional copy of the Export Exemption Certificate, Form 1363, filed with the carrier covering each shipment entering the pool, shall be furnished to such person by the person who pays the transportation charge. The director of the pool may, in behalf of the shipper or other person who paid the transportation charge, make the statement to the Commissioner prescribed in the first paragraph of section 143.34 with respect to any transportation of property entering the pool in excess of the quantity of the same grade and kind actually exported therefrom.

Because this Treasury Decision makes only a procedural change in net effect reducing the burden on persons subject to the regulations, 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.

The amendments made by this Treasury Decision shall be effective on the first day of the first month which begins more than 30 days after the date such Treasury Decision is published in the Federal Register.

(This Treasury Decision is issued under the authority contained in sections 3472 and 3791 of the Internal Revenue Code (53 Stat. 423 and 467, 55 Stat. 722; 26 U. S. C. 3472, 3791).)

NORMAN A. SUGARMAN,
Acting Commissioner of Internal Revenue.

Approved August 19, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 22, 1952)

PROCESSING TAX ON CERTAIN OILS

REGULATIONS 48, ARTICLES 1, ETC. 1952–21–13939
T. D. 5933

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 306.—PROCESSING TAX ON CERTAIN OILS

Elimination of additional tax applicable to coconut oil produced in, or produced from materials grown in, the territory of the Pacific Islands.

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 order to conform Regulations 48 [26 CFR, part 306], relating to the processing tax on certain oils, as made applicable to the Internal Revenue Code by Treasury Decision 4885 [C. B. 1939–1 (part 1), 396], approved February 11, 1939, to Public Law 391 (82d Cong., 2d sess.) [page 355, this Bulletin], approved June 12, 1952, such regulations are hereby amended as follows:

PARAGRAPH 1. Article 1, as amended by Treasury Decision 5179 [C. B. 1942–2, 292], approved November 4, 1942 [26 CFR 306.1], is further amended by adding at the end thereof the following:

(*s*) The trust territory of the Pacific Islands consists of the former Japanese mandated Mariana, Marshall, and Caroline Islands (except Guam).

PAR. 2. Immediately preceding article 2 [26 CFR 306.2], there is inserted the following:

PUBLIC LAW 391, (82d CONG.) [APPROVED JUNE 12, 1952]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2470-(a)(2) of the Internal Revenue Code (relating to the additional tax on domestic processing of coconut oil) is hereby amended to read as follows:

"(2) ADDITIONAL RATE ON COCONUT OIL.—There shall be imposed (in addition to the tax imposed by the preceding paragraph) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing. The additional tax imposed by this paragraph shall not apply when it is established, in accordance with regulations prescribed by the Secretary, that the coconut oil (whether or not contained in a combination or mixture) (A) is wholly the production of the Philippine Islands, any possession of the United States, or the Territory of the Pacific Islands (hereinafter in this paragraph referred to as the 'Trust Territory'), or (B) was produced wholly from materials the growth or production of the Philippine Islands, any possessions of the United States, or the Trust Territory: *Provided, however,* That such additional tax shall apply in respect of coconut oil (whether or not contained in a combination or mixture) so derived from the Trust Territory, to such extent, and at such time after the date of the applicable proclamation, as the President, after taking into account the responsibilities of the United States with respect to the economy of the Trust Territory, shall hereafter determine and proclaim to be justified to prevent substantial injury or the threat thereof to the competitive trade of any country of the free world.

The tax imposed by this paragraph shall not apply to any domestic processing after July 3, 1974."

SEC. 2. The amendment made by this Act shall be effective only after the day on which this Act is enacted.

PAR. 3. Article 6, as amended by Treasury Decision 5179 [26 CFR 306.6], is further amended by adding at the end thereof the following:

(c) For the period beginning 12:01 a. m., eastern standard time, June 13, 1952, the additional tax of 2 cents per pound, imposed by section 2470(a)(2), does not apply to the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil wholly produced in, or wholly produced from materials grown or produced in, the trust territory of the Pacific Islands. However, such additional tax shall apply in respect of coconut oil (whether or not contained in a combination or mixture) so derived from the trust territory to such extent and at such time as the President, after taking into account the responsibilities of the United States with respect to the economy of the trust territory, shall determine and proclaim to be justified to prevent substantial injury or the threat thereof to the competitive trade of any country of the free world.

PAR. 4. The first paragraph of subdivision (c) of article 8, as amended by Treasury Decision 5101 [C. B. 1941-2, 302], approved December 5, 1941 [26 CFR 306.8], is further amended by changing (1) and (2) thereof to read as follows:

(1) Separately, the quantity of coconut oil or combination or mixture containing a substantial quantity of coconut oil, which is wholly the production of (i) the Philippine Islands, (ii) Guam, (iii) American Samoa, (iv) all possessions of the United States, and (v) the trust territory of the Pacific Islands, and

(2) Separately, the quantity of coconut oil, or combination or mixture containing a substantial quantity of coconut oil, produced wholly from materials which are the growth or production of (i) the Philippine Islands, (ii) Guam, (iii) American Samoa, (iv) all possessions of the United States, and (v) the trust territory of the Pacific Islands.

Because this Treasury Decision makes technical amendments to the regulations to provide for the inapplicability of the tax under section 2470(a)(2) to the first domestic processing of coconut oil produced from materials grown or produced in the trust territory of the Pacific Islands, 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).)

JUSTIN F. WINKLE,
Acting Commissioner of Internal Revenue.

Approved September 23, 1952.

E. H. FOLEY,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 26, 1952, 8:54 a. m.)

MISCELLANEOUS RULINGS

COMMITTEE ON PRACTICE

1952–14001
D. C. 230 (Rev.)

LAWS AND REGULATIONS GOVERNING THE RECOGNITION OF AGENTS, ATTORNEYS, AND OTHER PERSONS REPRESENTING CLAIMANTS BEFORE THE TREASURY DEPARTMENT AND OFFICES THEREOF

DEPARTMENT CIRCULAR NO. 230 (AS REVISED TO DECEMBER 7, 1951)

PART 10—PRACTICE OF ATTORNEYS AND AGENTS BEFORE THE TREASURY DEPARTMENT

Section

10.1. Committee established.
10.2. Rules and regulations relating to practice.
10.3. Qualifications for enrollment.
10.4. Application for enrollment.
10.5. Customhouse brokers.
10.6. Roster of enrollees; enrollment cards.
10.7. Proceedings for disbarment, suspension, and reinstatement.
10.8. Authority to prosecute claims.
10.9. Substitution of attorneys or agents; revocation of authority.
10.10. Disreputable conduct.
10.11. Striking names from roll.
10.12. Application and effective date of regulations.
10.13. Withdrawal or amendment of regulations.

AUTHORITY: Sections 10.1 to 10.13, issued under section 3, 23 Stat. 258; 5 U. S. C. 261.

SOURCE: Sections 10.1 to 10.13 appear at 12 F. R. 3656 except that amendments to particular sections are noted at the end thereof.

SECTION 10.1 COMMITTEE ESTABLISHED.—(*a*) *Committee on Practice.*—A Committee on Practice is hereby created consisting of such number of members as shall be appointed by the Secretary of the Treasury. The Secretary shall designate a chairman of the Committee. The Secretary in his discretion may appoint a part-time member or members of the Committee, and, whenever in his judgment such action is necessary, the Secretary may appoint some person to serve temporarily as a substitute for a regular member of the Committee. The Committee shall have such powers to prescribe rules for its own government and procedure as are set forth elsewhere in the regulations in this part. The Committee shall meet at such times as it may designate or at the call of the chairman. Two members of the Committee shall constitute a quorum.

(*b*) *Duties of the Committee.*—The Committee shall receive and act upon applications to be recognized as attorneys or agents before the Treasury Department; receive and act upon applications for reenrollment from attorneys or agents who have been disbarred; conduct hearings; make inquiries; and perform other duties as prescribed in this part.

(*c*) *Secretary of the Committee.*—The Secretary of the Treasury may appoint a person to act as secretary of the Committee or designate a member of the Committee to act as secretary. The secretary of the Committee shall keep and maintain its records, shall have custody of all its papers, records, rolls and files, and shall perform such other duties reasonably incident to his office as the Committee shall direct. If no secretary is appointed or designated, the duties herein enumerated shall devolve upon the chairman of the Committee, or upon such person or persons as he may designate.

(*d*) *Attorney for the Government.*—The Secretary of the Treasury shall appoint an attorney not a member of the Committee as Attorney for the Government to prepare and present all formal statements of charges against enrolled attorneys or agents, to supervise the gathering of evidence in support of such charges, including the taking of depositions, to represent the Government in all proceedings before the Committee, to represent the Government in all proceedings pursuant to section 10.7, and to perform other duties incident to his position.

SEC. 10.2. RULES AND REGULATIONS RELATING TO PRACTICE.—(*a*) *Eligibility to practice.*—(1) No attorney or agent shall be eligible to practice before the Treasury Department unless such attorney or agent is enrolled in accordance with the regulations in this part or prior regulations, except that any individual may appear, without enrollment, on his own behalf or in behalf of a member of his immediate family if such appearance is without compensation; and a member of a partnership, an officer of a corporation, or an authorized regular employee of an individual, partnership, corporation, or estate, may likewise appear, without enrollment, in any matter relating to such individual, partnership, corporation, or estate pending before the Treasury Department if he presents adequate identification to the officials of the Department. Enrollment is not required for appearances by trustees, receivers, guardians, administrators, and executors on behalf of trusts, receiverships, guardianships, or estates of which such persons are the trustees, receivers, guardians, administrators, or executors, if adequate identification is presented to the officials of the Department. This rule also applies to an individual, a partnership, an estate or trust, or a corporation with respect to the liability of the individual, partnership, estate or trust, or corporation as a transferee of property of a taxpayer and to a fiduciary with respect to the liability of the fiduciary under section 518 (a), 48 Stat. 760; 31 U. S. C. 192. No enrolled person or other person authorized to appear before the Treasury Department without enrollment shall represent a claimant before the Treasury Department in any matter to which the enrollee, as officer or employee of the United States, gave personal consideration or as to the facts of which he gained knowledge while in the Government service.

(2) No former officer, clerk, or employee of the Treasury Department shall act as attorney or agent, or as the employee of an attorney or agent within 2 years after the termination of such Treasury employment, in any matter pending in such Department during the period of his employment therein, unless he shall first obtain the written consent thereto of the Secretary of the Treasury or his duly authorized representative. This consent will not be granted unless it appears (i) that the applicant was not, during the period of 2 years immediately preceding the date of application, employed in the particular departmental or field section in which was pending the matter, to handle which consent is sought, provided that this requirement shall not apply to persons employed in an administrative capacity such as head of a unit, division, or section, or employed as a reviewer or conferee or in an advisory capacity; and (ii) that employment as an agent or attorney in not prohibited by section 5, 17 Stat. 202; 5 U. S. C. 99, or other law, or by the regulations of the Treasury Department. Such applicant shall be required to file a declaration to the effect that he gave no personal consideration to such matter and had no knowledge of the facts involved in such matter while he was employed in the Department and that he is not now associated with, and will not be associated with, any former employee who has gained knowledge of the case while employed by the Treasury Department, and that his employment is not prohibited by law, or by the regulations of the Treasury Department. The statements contained in such declaration shall not be sufficient if disproved by an examination of the files and records pertaining to the case. Applications for consent should be directed to the Committee on Practice on Form 901 and should state the former connection with the Department of the applicant and identify the matter in which the applicant desires to appear. The applicant shall be promptly advised as to his privilege to appear in the particular matter, and this notice shall be filed by him in the record of the case.

(3) Nor shall any enrolled person knowingly (i) assist a person who has been employed by a client to represent him before the Treasury Department in connection with any matter to which such person gave personal consideration or as to the facts of which such person gained personal knowledge while in the Government service, or (ii) accept assistance from any such person in connection with any such matter, or (iii) share fees with any such person in connection with any such matter.

(b) *Scope of practice before the Department.*—Practice before the Treasury Department shall be deemed to comprehend all matters connected with the presentation of a client's interests to the Treasury Department, including the preparation and filing of necessary written documents, and correspondence with the Treasury Department relative to such interests. Unless otherwise stated the term "Treasury Department" as used in this paragraph and elsewhere in this part includes any division, branch, bureau, office, or unit of the Treasury Department, whether in Washington or in the field, and any officer or employee of any such division, branch, bureau, office, or unit.

(c) *Knowledge of client's omission.*—Each enrolled attorney or agent who knows that a client has not complied with the law or has made an error in, or an omission from, any return, document, affidavit, or other paper, which the law requires such client to execute, shall advise his client promptly of the fact of such noncompliance, error, or omission.

(d) *Duty of enrollees concerning violations.*—It shall be the duty of an enrolled attorney or agent, when requested by the Committee or the attorney for the Government, to give the Committee or the said attorney any information which he may have concerning violations of the regulations in this part or of the occurrence of any acts or omissions which would be grounds for suspension or disbarment, unless said information is privileged.

(e) *Use of fictitious names.*—Every enrolled attorney or agent practicing as an individual shall use his legal name in the conduct of his legal, accounting, or other professional practice. The term "company," "associates," "accountants," "auditors," "engineers," or other plural forms suggesting a partnership, or language of similar import, used in connection with a name or title, or any fictitious title, or trade name, shall be used only by a bona fide partnership consisting of two or more members, and all stationery, listings, advertisements, and announcements of enrolled persons shall conform to the principles herein stated.

(f) *Rights and duties of agents.*—An agent enrolled before the Treasury Department shall have the same rights, powers, and privileges and be subject to the same duties as an enrolled attorney: *Provided*, That an enrolled agent shall not have the privilege of drafting or preparing any written instrument by which title to real or personal property may be conveyed or transferred for the purpose of affecting Federal taxes, nor shall such enrolled agent advise a client as to the legal sufficiency of such an instrument or its legal effect upon the Federal taxes of such client: *And provided further*, That nothing in the regulations in this part shall be construed as authorizing persons not members of the bar to practice law.

(g) *Certification of documents.*—Every claim, affidavit, written argument, brief, or statement of fact, prepared or filed by an enrolled attorney or agent in any matter pending before the Treasury Department, shall have affixed thereto a statement signed by such attorney or agent showing whether he prepared such document and whether or not he knows of his own knowledge that the statements of fact contained therein are true.

(h) [Revoked.] [Reserved.]

(i) *Enrollees as notaries.*—No enrolled attorney or agent as notary public shall take acknowledgments, administer oaths, certify papers, or perform any official act in connection with matters in which he is employed as counsel, attorney, or agent, or in which he may be in any way interested before the Treasury Department. Under the provisions of this paragraph an enrolled person who is a notary public is prohibited from taking any acknowledgment, oath, or certification as a notary public in connection with any tax return, protest, or other document which he has prepared or in the preparation of which he has assisted (26 Op. Atty. Gen. 236).

(j) *Unimpaired status required.*—It shall be incumbent upon each enrolled person (1) who is authorized to practice as a certified public accountant or as a public accountant to maintain unimpaired his right to practice as a certified public accountant or public accountant; (2) who is admitted to practice before any court to maintain unimpaired his right to practice before such court; and (3) who is enrolled or admitted to practice before another department or agency of the Government to maintain unimpaired his standing before such department or agency.

(k) *Certain partnerships prohibited.*—No enrolled person shall maintain a partnership for the practice of law, accountancy, or other related professional service with a person who is under disbarment from practicing before the

Treasury Department or any other Government department or agency, or with an unenrolled person who is neither an attorney legally practicing law nor a certified public accountant or a public accountant legally practicing accountancy.

(l) *Practice by corporations prohibited.*—No enrolled person shall be connected with an accounting corporation either as officer, employee, or stockholder; nor shall any enrolled person, while employed as an officer, employee, attorney, or agent of any corporation, practice before the Treasury Department on behalf of such corporation as the representative of the officers, employees, directors, stockholders or members, customers or clients, of such corporation, except as permitted by section 10.5. The term "corporation" as used in this paragraph and elsewhere in this part shall be deemed to include associations, joint stock companies, and insurance companies. Nothing contained herein shall prevent an enrolled person from being employed by agricultural cooperative associations, on a nonprofit basis and not subject to Federal income taxes, to represent before the Treasury Department the groups or units constituting membership of such associations: *Provided*, That individuals may not be so represented.

(m) *Clients of unenrolled persons.*—No enrolled person shall represent before the Treasury Department clients of an unenrolled person who is neither an attorney nor an accountant regularly engaged in the practice of accountancy nor a customhouse broker, or who to the knowledge of the enrolled person solicits business, obtains clients, or otherwise conducts his practice in a manner forbidden under the regulations in this part to enrolled persons.

(n) *Assistance from unenrolled persons.*—No enrolled person shall in any Treasury Department matter knowingly and directly or indirectly:

(1) Employ or accept assistance from any unenrolled person whose application for enrollment shall at any time have been denied for a cause involving moral turpitude, or from a person who has been disbarred from practice before any department or agency of the Government or before any court of record, or who is under suspension from practice before any such department, agency, or court, or who has been deprived of his certificate as a certified public accountant or public accountant, or whose name after the effective date hereof has been stricken from the roll of attorneys and agents authorized to represent claimants before the Treasury Department in the course of disbarment proceedings against him, or

(2) Accept employment as associate, correspondent, or sub-agent, from, or share fees with, any such person, or any person who is not an attorney or a public accountant regularly engaged in the practice of accountancy, or who is not a licensed customhouse broker.

(o) *Preparation of financial statements.*—Each enrolled person shall exercise due diligence in preparing financial statements for clients and in certifying to the correctness of the same.

(p) *Diligence as to accuracy.*—Each enrolled person shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any Treasury Department matter, and no enrolled person shall withhold information relative to any such matter from a client who is entitled to the information.

(q) *Moneys received in trust.*—Each enrolled person shall promptly pay over to the Government when due all sums received for the payment of any duty, tax, or other debt or obligation owing to the Government, and shall promptly account to clients for funds received for them from the Government, or received from a client in excess of the charges properly payable in respect of the client's business.

(r) *Endorsement of client's checks.*—No enrolled person shall without authority of his client endorse or accept any Government draft, check, or warrant drawn to the order of such client.

(s) *Use of influence forbidden.*—No enrolled person shall attempt to influence the action of any official or employee of the Treasury Department in any Treasury Department matter by the use of threats, false accusations, duress, or by the offer of any special inducement or promise of advantage, or by the bestowing of any gift or favor or other thing of value.

(t) *Production of records.*—No enrolled person shall neglect or refuse to produce records or evidence in any matter before the Treasury Department upon proper and lawful demand by a duly authorized agent of the Department, unless the attorney or agent has reasonable grounds to believe and does believe that the said demand is of doubtful legality; or shall otherwise interfere, or attempt

to interfere, with any proper and lawful efforts by such Department or agent to procure such information.

(u) *Attempting to obtain information.*—No enrolled person shall procure, or attempt to procure, directly or indirectly, from Government records or other Government sources information of any kind which is not made available by proper authority.

(v) *Solicitation and advertising, direct or indirect, prohibited.*—No enrolled attorney or agent shall in any manner whatsoever solicit, directly or indirectly, or by implication, employment from persons not clients or friends in matters before the Treasury Department or in matters related thereto. Among other things the following shall be deemed to be prohibited by this paragraph:

(1) The publication of articles or the delivery of addresses on Federal tax questions by an enrolled person over the radio or elsewhere in connection with which the name of the firm of which he is a member, associate, or employee, or the address of the writer or speaker is given either by the writer, speaker, announcer, or publisher, provided that nothing herein shall be construed to prohibit the publication, by periodicals admitted to second-class mailing privileges, of such information concerning contributors of articles as is usually published in such periodicals.

(2) The mailing of circulars, letters, pamphlets, or other printed or written matter to persons not clients or friends of such enrolled person which contain no direct solicitation of employment but which do include the name and a description of the practice and address of such enrolled person.

(3) Advertising in one or more of the following forms: (i) Signs, printing, or other advertising matter, indicating previous connection with the Treasury Department; (ii) representation, orally, in writing, or in any other manner, of special influence with the officials or employees of the Treasury Department through acquaintance or otherwise; (iii) the use of any title or other description of the attorney or agent or his practice which tends to suggest some connection with the Treasury Department of the United States, and any title or description containing the words "United States" shall be presumed to carry such suggestion, except that there is no objection to the use of the words "Enrolled to practice before the United States Treasury Department"; (iv) distribution of bulletins, circulars, pamphlets, or so-called "tax services," to persons who are not clients or friends of the attorney or agent containing decisions or rulings of the Treasury Department, the Tax Court of the United States, or courts on Federal tax matters, or comment thereon by the attorney or agent; (v) distribution to persons not clients or friends of the practitioner of circulars or pamphlets advertising any business, educational, or social institution, or organization, which circular or pamphlet contains a card or advertisement of the practice of such attorney or agent.

(4) The following kinds of advertising will not be deemed to constitute a violation of this paragraph:

(i) Letterheads, professional cards, and the customary professional insertions in professional, telephone, and city directories, or in newspapers, trade or professional journals, or other publications admitted to second-class mailing privileges, provided they set forth only the name and address of the attorney or agent or the name of the firm of which he is a member or with which he is associated, a brief description of the nature of his practice, to wit, whether he practices as an attorney or accountant, and, if desired, any field or practice or service in which such attorney or agent may specialize;

(ii) The distribution by former officers or employees of the Government of cards briefly stating the fact of their former official status and announcing their new association: *Provided*, The cards are addressed only to personal or business acquaintances: *And provided further*, That such cards are distributed only once and within a reasonable time after severance of official connection with the Government and within 30 days after the formation of a new association.

(w) *Preparation of documents by enrollees.*—Each enrolled person shall exercise due diligence in preparing or assisting in the preparation of, approving, and filing returns, documents, affidavits, and other papers relating to Treasury Department matters, and in otherwise representing clients before the Treasury Department; and no enrolled person shall unreasonably delay the prompt disposi-

tion of matters before the Treasury Department by neglecting to answer correspondence, by unreasonably delaying the filing of closing agreements, by filing frivolous claims for refunds, or otherwise.

(x) *Duty to request name to be stricken upon accepting employment with the United States.*—It shall be the duty of every enrolled person who becomes a judge of any court of record or an officer or employee (1) of the United States, (2) of any corporation owned wholly by the United States, (3) of the District of Columbia, or (4) of any State or subdivision thereof whose duties disclose facts or information applicable to Federal tax matters, to request the Committee on Practice to place his name on the inactive list of Treasury Department practitioners during the period of such incumbency. Any person who on becoming an officer or employee of the Treasury Department requested that his name be stricken from the roll and surrendered his enrollment card to the Committee for cancellation and whose employment with the Department has been or shall be terminated in good standing shall be entitled upon his written request to have his name restored to the roll and his enrollment card returned to him.

(y) *Fees; agreements.*—(1) No enrolled person shall exact from his client a manifestly unreasonable fee, whether contingent or otherwise, in any matter before the Treasury Department. The reasonableness of a fee in any case is within limits a matter of judgment and depends upon all facts and circumstances thereof, including the complexity and difficulty of the case, the amount of time and labor required for its proper preparation and presentation, the amount involved, and the professional standing and experience of the attorney or agent.

(2) A wholly contingent fee agreement shall not be entered into with a client by an enrolled person unless the financial status of the client is such that he would otherwise be unable to obtain the services of an attorney or agent. Partially contingent fee agreements are permissible where provision is made for the payment of a minimum fee, substantial in relation to the possible maximum fee, which minimum fee is to be paid and retained irrespective of the outcome of the proceeding. Such minimum fee need not be paid in advance, if provision for its payment is made irrespective of the outcome of the case. The payment of or agreement to pay a nominal minimum fee will not satisfy the requirements of this subparagraph.

(3) Whenever an enrolled attorney or agent shall enter into a contract to represent a client before the Treasury Department on a wholly or partially contingent basis, he shall file with the Committee a signed statement to that effect, containing the terms of the contract as they relate to compensation.

(4) When a power of attorney is filed with the Treasury Department it shall be the duty of the attorney or agent filing the same to file therewith a statement as follows:

(Date and place) _____

This is to certify that I (have) (have not) entered into a contingent or partially contingent fee agreement for the representation of_____
(name of client, principal, or taxpayer)

before the Treasury Department in the matter of_____

_____under the terms of power of
(income, estate, gift or other taxes, or other matter)

attorney filed with the Treasury Department on _____, 19____, and (in case a contingent or partially contingent fee agreement has been made) that a report of such fee agreement (has) (has not) been made to the Committee on Practice.

_____
(Signature of attorney or agent)

This requirement shall not be applicable to powers of attorney wherein the authority granted is limited to the filing of tax or information returns. (Secs 3, 23 Stat. 258; 5 U. S. C. 261; 15 F. R. 6548.)

(z) *Duty to observe canons of ethics.*—Each enrolled person shall conduct his practice in an ethical and professional manner and it shall be the duty of each enrolled attorney to observe the canons of ethics as adopted by the American Bar Association and of each enrolled agent to observe the ethical standards of the accounting profession. Among other forms of unethical and unprofessional conduct the following will be deemed to constitute such conduct. The use of intemperate and abusive language, the making of false accusations or statements knowing them to the false, or the circulation of malicious and libelous matter in connection with Treasury practice.

SEC. 10.3. QUALIFICATIONS FOR ENROLLMENT.—(a) (1) Persons of the following classes who are found, upon consideration of their applications, to possess the qualifications required by the regulations in this part may be admitted to practice before the Treasury Department as attorneys or agents respectively:

(i) Attorneys at law who have been admitted to practice before the courts of any State or Territory, or the District of Columbia, and who are lawfully engaged in the active practice of their profession.

(ii) Certified public accountants who have duly qualified to practice as certified public accountants in their own names, under the laws and regulations of any State or Territory, or the District of Columbia, and who are lawfully engaged in active practice as certified public accountants.

(2) Applicants who are employed by corporations on a full-time basis and who do not maintain offices apart from such employment with their services available to the general public will not be considered to be in active practice within the meaning of the term as used above.

(3) Applicants for enrollment to practice before the Treasury Department are required by statute to "show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases" (5 U. S. C. 261). The burden is upon applicants to establish clearly their right to enrollment by showing that they possess (i) a good character and reputation, (ii) an adequate education, and (iii) a knowledge of the laws and regulations relating to tax matters and other subjects which they expect to handle before the Department and of the rules and regulations governing practice before the Department.

(4) Good character and good reputation are not identical requirements. The former is determined by the applicant's actual qualities; the latter depends upon the opinion entertained of the applicant by those who have had the opportunity of knowing him in the community in which he resides or in which he practices his profession. It follows that evidence of any act or omission which tends to establish lack of integrity or untrustworthiness or other qualities reprehensible in a professional man, is material as bearing upon the character of the applicant, notwithstanding there is clear proof that his reputation is good. An applicant must furnish as references the names and addresses of at least six persons who are acquainted with his reputation and with whom the applicant has come in contact in his profession or business.

(b) (1) Among the causes sufficient to justify denial of an application for enrollment are: Any conduct, or practices, or proposed practices, which would constitute a violation of any of the provisions of the regulations in this part if the applicant were enrolled or any other conduct which would be a ground for suspension or disbarment under the applicable law or laws; any conduct which would be deemed grossly unfair in commercial transactions by accepted standards; or a bad reputation imputing to an applicant conduct of a criminal, dishonest, or unethical kind.

(2) The Committee on Practice will endeaver to ascertain all the facts deemed necessary by it to pass upon any application without expense or undue inconvenience to the applicant. In the event, however, that the Committee is not satisfied with the information received, it may require the applicant to appear in person before the Committee or before some person or persons designated by it for the purpose of undergoing additional written or oral examination as to his fitness for enrollment. The Committee may grant a hearing on an application at the applicant's request.

(c) Application for enrollment may be denied in any case in which it appears that the applicant has terminated his employment with the Treasury Department in violation of an obligation assumed as a condition of such employment to remain in the service of the Department for a specified period or for a reasonable time.

(d) Only citizens of the United States over the age of 21 years are eligible for enrollment. A person who is unable for any reason to take the oath of allegiance, and to support the Constitution of the United States, as required of persons prosecuting claims against the United States by Title 31, section 204, United States Code cannot be enrolled.

(e) Corporations and partnerships are ineligible for enrollment.

(f) Officers and employees of any State, or subdivision thereof, whose duties require them to pass upon, investigate, or deal with tax matters of such State or

subdivision, shall be ineligible for enrollment, provided such employment may disclose facts or information applicable to Federal tax matters.

(g) A judge of a court of record shall be ineligible for enrollment except that ineligibility on this account shall not attach to any judge of any court of any state or territory (including any subdivision thereof) the laws of which permit him to practice in cases in which he does not act as judge.

(h) All persons to whom 18 U. S. C. 281 applies, all persons regularly employed by corporations owned wholly by the United States, and all persons regularly employed by the District of Columbia shall be ineligible for enrollment. See also 18 U. S. C. Ch. 15. (Sec. 3, 23 Stat. 258; 5 U. S. C. 261. Interprets or applies sec. 1, 62 Stat. 697, as amended by sec. 6, 63 Stat. 90; 18 U. S. C. 281. 15 F. R. 6548.)

(i) The qualifications for enrollment stated in paragraph (a) (1) (i) and (ii) of this section are prerequisites for general enrollment for practice before the Treasury Department.

(j) *Special enrollment.*—However, special enrollment for the presentation of matters before a particular bureau or division may be effected in the following manner. An applicant for such special enrollment shall present his qualifications to the Committee. The Committee shall prescribe an examination for such applicant. If the Committee is satisfied that the applicant is possessed of the qualifications necessary to enable him to render valuable services to claimants and other persons before the particular bureau or division before which he is seeking authorization to practice, it shall issue to the applicant an appropriate special enrollment card.[1]

(k) *Authority for a particular matter.*—Moreover, authority for the presentation of a particular matter before the Treasury Department may be effected in the following manner. An applicant for such authority shall present his qualifications to the Committee. If the Committee is satisfied that the applicant is possessed of the qualifications necessary to enable him to render valuable services to his principal in the presentation of the particular matter before the Treasury Department, it shall issue to the applicant an appropriate letter of authority. Such a letter of authority shall not be necessary, except in the case of matters before the Bureau of Internal Revenue, if the officer or employee of the bureau or division before whom appearance is made is satisfied that the person appearing is not under orders of suspension or disbarment from the Treasury Department and is so clearly qualified that application to the Committee would be a useless formality.

Nothing in paragraphs (j) and (k) shall authorize any procedure to permit a person to act as a customhouse broker without compliance with the requirements of Part 11 of this subtitle, nor limit the rights granted by such Part 11 of this subtitle to customhouse brokers to represent their clients before the Treasury Department.

SEC. 10.4. APPLICATION FOR ENROLLMENT.—Applicants for enrollment shall submit to the Committee an application in duplicate, properly executed on Form 23. Applications in any other form may not be considered. Members of the bar of an American court of record will apply for enrollment as attorneys; all other applicants will apply for enrollment as agents. All applications for enrollment must be individual. While members of a partnership should apply as individuals and not in the partnership name, an enrolled attorney or agent may represent clients before the Treasury Department in the name of the partnership of which he is a member or with which he is otherwise regularly connected. In case all of the members of a partnership are not enrolled, then the enrolled attorney or agent shall be responsible for any acts or omissions of the unenrolled partner or partners which are in violation of law or of the provisions of the regulations in this part, to the same extent as though the offending partner himself were enrolled.

SEC. 10.5. CUSTOMHOUSE BROKERS.—Section 641 of the Tariff Act of 1930 (46 Stat. 759; 19 U. S. C. 1641), as amended, provides in part that the Secretary of the Treasury may prescribe rules and regulations governing the licensing as customhouse brokers of citizens of the United States of good moral character, and of corporations, associations, and partnerships. The Department's regulations pursuant thereto are published in Part 11 of this subtitle. A customhouse broker so licensed requires no further enrollment under the regulations in this part for the transaction, within the customs districts in which he is licensed,

[1] Standards and Procedures relating to Former Officers and Employees—See page 291.

f any business relating specifically to the importation or exportation of mer-
ıandise under customs or internal-revenue laws. He is also entitled, without
ırther license or enrollment to represent claimants or other persons before the
reasury Department in Washington in any matter in which he acted as a cus-
)mhouse broker in any district in which he is licensed. When serving in such
apacity, a licensed customhouse broker shall, in addition to being subject to
ıe provisions of section 641 of the Tariff Act of 1930, as amended, and the rules
nd regulations thereunder, be subject also to all the provisions of the laws and
egulations set forth in this part, as revised from time to time, and shall be re-
ponsible as specified in section 11.7(d) of this subtitle for violation of any such
ıws or regulations committed by his or its officers, employees, or authorized at-
)rneys or agents, in connection with the prosecution on behalf of the principal
f any business before the Treasury Department in Washington.

SEC. 10.6. ROSTER OF ENROLLEES; ENROLLMENT CARDS.—(a) *Roster of attorneys nd agents.*—A roster of all attorneys and agents who make application for en-
ollment or who are enrolled, or whose applications have been denied, or who
ave been suspended or disbarred, will be kept in the office of the Committee on
'ractice. All bureaus, offices, and divisions of the Treasury Department sub-
ect to the exceptions in section 10.5 in the case of the Bureau of Customs, are
rohibited from recognizing or dealing with any unenrolled attorney or agent
s the representative of any person having a claim pending before the Depart-
ent: *Provided*, That the Committee on Practice may grant, pending action
pon an application, temporary recognition to an applicant not required to take
n examination in connection with his application: *And provided further*, That an
nenrolled person who has not been disbarred or suspended from practice before
he Treasury Department may be permitted to make initial appearance in a
articular case. Such permission shall in no case authorize an unenrolled per-
on to appear before the Treasury Department in Washington, D. C., or to
epresent a claimant in any formal hearing. It shall be the duty of the Gov-
rnment official before whom such person appears to notify him that if he
vishes to appear further in the case, or in any formal hearing, or before the
'reasury Department in Washington, it will be necessary to file an application
or enrollment.

(b) *Information as to enrollment.*—The Committee will furnish upon request
nformation as to whether any individual is enrolled. Other information will
e made available to the various departments and agencies of the Government
nd to any person entitled to receive the same in accordance with the rules and
egulations of the Treasury Department, and, except as prohibited by law,
ccess to the files and records of the Committee will be granted to the Tax Court
f the United States and its representatives.

(c) *Enrollment cards.*—The Committee on Practice shall issue an enrollment
ard to every attorney or agent upon his enrollment. Unless advised to the
ontrary by the Committee on Practice, any officer of the Treasury Department
nay consider the holder of such an enrollment card as duly authorized to prac-
ice before the Department.

(d) *Expiration and renewal of enrollment cards.*—All enrollment cards which
hall have been issued to persons enrolled to practice before the Treasury Depart-
nent prior to January 1, 1952 shall be void after March 31, 1952. An enrollee
olding a void card shall promptly surrender it to the Committee on Practice.
pplication for issuance of a renewal card may be made at any time between
anuary 1, 1952, and June 30, 1952. An application for renewal shall be filed
vith the Committee on Form 23A. The form will call upon the applicant to state
vhether he made an income tax return for each year since the date of his enroll-
nent, with what collector the last return was filed, and the reasons for not filing
ny such return; and whether the applicant has been cited to appear before
ny professional disciplinary body or convicted of a crime other than minor
raffic violation since the date of his enrollment, and, if so, the details. Copies
f Form 23A will be available at the office of the Committee on Practice and
t the offices of all collectors of internal revenue, of all internal revenue agents
n charge and of all special agents in charge. The Committee will issue a new
nrollment card if a timely application is made and if the Committee is satisfied
hat the applicant is eligible to retain enrollment in accordance with 5 U. S. C.
61 and the regulations in this part. The reporting requirements of this para-
raph have been approved by the Bureau of the Budget in accordance with the
'ederal Reports Act of 1942.

(e) ***Period of enrollment card.***—Every enrollment card issued after January
, 1952 (including enrollment cards issued pursuant to paragraph (d) of this

section) shall by its terms become void five years after its date of issue, but it shall be renewable pursuant to procedures of the character prescribed by paragraph (d) of this section.

SEC. 10.7. PROCEEDINGS FOR DISBARMENT, SUSPENSION, AND REINSTATEMENT.—(a) *Proceedings for suspension and disbarment.*—If an officer of employee of the Treasury Department has reason to believe that an enrolled attorney or agent has violated any provision of the laws or regulations governing practice before the Treasury Department, or if a complaint concerning any enrolled attorney or agent is made to any such officer or employee, he shall promptly make a written report thereof to the attorney for the Government. If any other person has information of such violations, he may also make written report thereof to the said attorney. The attorney and the Committee will treat as strictly confidential the identity of the informant in any case in which the informant is other than an officer or employee of the Treasury Department, unless the informant in giving his information states that his identity and connection therewith are not confidential.

(b) *Rules of procedure.*—The Attorney for the Government may, either on the basis of such information or upon his own motion where he has cause to believe that any enrolled attorney or agent has violated any provision of the laws or regulations governing practice before the Treasury Department, institute proceedings for suspension or disbarment against any enrolled attorney or agent, hereinafter called the respondent in this paragraph, by filing with the Committee a statement of charges signed by the Attorney for the Government. Subject to the provisions of the Administrative Procedure Act (60 Stat. 237), such proceedings shall be governed by the following rules:

(1) *Opportunity to avoid proceeding.*—The Attorney for the Government shall, before a proceeding is instituted, give to the respondent notice in writing that:

(i) Transmits a copy of the proposed statement of charges, or a specification of the substance thereof;

(ii) Cites sections 5(b) and 9(b) of the Administrative Procedure Act;

(iii) Calls upon the respondent to show cause why the proceeding should not be instituted;

(iv) Informs the respondent that the notice affords him opportunity to make submissions and demonstrations of the character contemplated by the cited statutory provisions;

(v) Invites any negotiation that the respondent deems it desirable to enter into; and

(vi) Specifies a reasonable time for response to such notice: *Provided,* That, if prior to institution of the proceeding, the Attorney for the Government determines that the case is one in which such notice would be improper and unnecessary, he shall file his findings and his reasons therefor in the record, and such proceeding may be instituted without first giving notice.

(2) *Service.*—(i) *Service of notice and statement of charges.*—Notice of a proceeding for suspension or disbarment, signed by the Secretary or a member of the Committee, shall be served upon the respondent in the following manner:

(*a*) By delivery to the respondent personally, or

(*b*) By registered mail, with demand for a return card signed by the respondent: *Provided,* That, if an enrolled attorney or agent shall have signed and filed with the Committee on Practice his written consent to be served in some other manner it shall be sufficient if service is made in that manner. Where the service is by registered mail, the receipt of the return card duly signed shall be satisfactory evidence of service. The notice shall give the place and time within which the respondent shall file his answer, which time shall be not less than 20 days from the date of service of the notice, and shall contain or be accompanied by a statement of charges, which statement shall be signed by the Attorney for the Government.

(ii) *Service of papers other than notice and statement of charges.*—Papers other than the original notice and statement of charges shall be served on the respondent as follows:

(*a*) By delivering the same to the respondent personally, or by registered mail; or

(*b*) By leaving them at his office with his clerk or with a person in charge thereof; or

(*c*) By depositing them in a United States post office or post office box, enclosed in a sealed envelope, plainly addressed to such respondent at the address under which he is enrolled or at his last address known to the Committee.

(*d*) When the respondent is represented by attorney, by service upon the attorney in the same manner as provided in subdivisions (*a*), (*b*), and (*c*) of this subdivision for service on the respondent.

(3) *Examiner.*—There shall preside at the reception of the evidence an examiner, appointed as provided in the Administrative Procedure Act: *Provided, however,* That until examiners are appointed as provided in said act (but in no case initiated after June 10, 1947), the Committee shall act as examiner, and its action shall be taken by majority vote.

(4) *Filing of papers.*—Whenever under this paragraph the filing of a paper in a proceeding is required or permitted, and the place of filing is not specified either by rule of the examiner in the particular proceeding or pursuant to this paragraph, the paper shall be filed with the Committee on Practice, Treasury Department, Washington, D. C.

(5) *Extension of time.*—In any case in which the time for filing, pleading, making a submittal, or making an appeal, shall have expired or shall be about to expire, to the prejudice of a party, the examiner shall have the power in his discretion and upon appropriate application and showing by the party prejudiced, to extend the time, as justice may be deemed to require.

(6) *Negotiation.*—At any time prior to hearing by the examiner, the Attorney for the Government is authorized, in his sound discretion, to negotiate with the respondent for the purposes contemplated by sections 5(b) and 9(b) of the Administrative Procedure Act. The parties may at any time during the hearing limit the issues by stipulation. Any stipulations resulting from such negotiation shall be entered in the record.

(7) *Resignation to avoid disbarment.*—If pursuant to negotiation (or otherwise) the respondent resigns to avoid possible institution of disbarment proceedings, or to avoid possible disbarment or suspension in a pending proceeding, the Committee may, upon motion of the Attorney for the Government, accept the resignation. If the Committee overrules the motion it shall enter a formal order which shall recite the findings of fact and conclusions of the Committee and which shall be made of record in the proceeding, if any, against the respondent before the examiner.

(8) *Statement of charges.*—The statement of charges shall give a plain and concise description of the facts which it is claimed constitute grounds for suspension or disbarment, without a detailed description of such facts. A statement of charges which fairly informs the respondent of the charges against him so that he is able to prepare his defense shall be deemed sufficient. Different means by which a purpose may have been accomplished or different intents with which acts may have been committed may be alleged in the statement of charges in a single count in the alternative.

(9) *Bill of particulars.*—If, in order to prepare his defense, the respondent desires additional information as to the time and place of the alleged misconduct, or the means by which it was committed, or any other more specific information concerning the alleged misconduct, he may present a motion in writing to the examiner asking that the statement of charges be made more specific, setting forth in such motion in specific manner in what respect the statement of charges leaves him in doubt and describing the particular language of the statement of charges as to which additional information is needed. If in the opinion of the examiner such information is reasonably necessary to enable the respondent to prepare his defense, the examiner shall direct the Attorney for the Government to furnish the respondent with an amended statement of charges giving the needed information.

(10) *Answer.*—The respondent's answer shall be filed in writing within the time specified in the original notice unless on application the time is extended pursuant to subparagraph (5) of this paragraph. The answer shall be made under oath before a notary public or other officer authorized to administer oaths and shall be filed in duplicate with the Committee on Practice.

(11) *Content of answer.*—In his answer the respondent should specifically admit or deny every material allegation of fact in the statement of charges. Every allegation in the statement of charges not denied shall be deemed admitted, unless the respondent shall state in his answer that he has no knowledge thereof sufficient to form a belief, which statement shall be considered a denial. In answer to a statement of charges, no enrolled person shall deny a material allegation of fact which he knows to be true, or state in such answer that he is without sufficient information to form a belief when in fact he possesses such information.

(12) *Affirmative defense.*—In his answer the respondent may also state affirmatively special matters of defense, and shall not give in evidence any matters in avoidance or of defense, consistent with the truth of the allegations of the statement of charges, unless in his answer he states such matters specifically.

(13) *Complaining witness.*—The Attorney for the Government may in his discretion furnish a complaining witness with a copy of the answer if in his opinion such action will aid in ascertaining the truth or falsity of the charges. The term "complaining witness" for the purposes of this provision shall include any officer or employee of the Treasury Department or any enrolled attorney or agent who may have reported the alleged misconduct to the Attorney for the Government, or any other person upon whose information the Attorney for the Government has instituted the proceeding.

(14) *Reply to answer.*—If the answer contains affirmative matter in avoidance, consistent with the truth of the material allegations in the statement of charges, a reply by the Attorney for the Government admitting or denying the new matter set forth in the answer shall be filed and served upon the respondent.

(15) *Supplemental charges.*—If it appears that a denial of a material allegation of fact in the statement of charges, or a statement that the respondent has no knowledge sufficient to form a belief, was made in bad faith in the answer; or that the respondent has knowingly introduced false testimony during proceedings against him for suspension or disbarment, the Attorney for the Government may thereupon file supplemental charges, which charges may be tried with the other charges in the case, provided the respondent shall be given due notice thereof and afforded an opportunity for preparing a defense thereto.

(16) *Sufficiency of the pleadings.*—The examiner shall have authority to pass upon the sufficiency of the statement of charges, the answer, and all other pleadings. The parties may be heard upon the sufficiency of any pleadings whenever in the opinion of the Examiner a hearing thereon is necessary or desirable.

(17) *Immaterial mistakes.*—The Examiner shall disregard an immaterial misnomer of a third person, an immaterial mistake in the description of any person, thing, or place or the ownership of any property, a failure to prove immaterial allegations in the description of the respondent's conduct, or any other immaterial mistake in the pleadings.

(18) *Hearings.*—Subject to this paragraph the examiner may determine the time, place, and manner in which hearings shall be conducted; the form in which evidence shall be received, and may adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of suspension, disbarment, and reinstatement cases. Written notice of the time and place of all hearings shall be given the respondent in the manner provided in this paragraph for the service of papers. No hearing shall be held in less than 10 days from the date of service on the respondent of the notice of such hearing, except that the Examiner may postpone or adjourn hearings when necessary or desirable, on notice to the parties.

(19) *Testimony.*—Unless the examiner shall otherwise direct, the testimony of witnesses at all hearings will be taken under oath and stenographically recorded and transcribed.

(20) *Depositions.*—Depositions for use at a hearing may, with the written approval of the examiner, be taken by either the Attorney for the Government or the respondent, or their duly authorized representatives, upon oral or written interrogatories, before any officer duly authorized to administer an oath for general purposes, or an officer of the Internal Revenue Bureau authorized to administer an oath in internal revenue matters, upon not less than 10 days' written notice to the other party. Such notice shall state the names of the witnesses, and the time and place where such depositions are to be taken: *Provided*, That when depositions are taken as aforesaid, if both parties are present or represented at the time and place specified for the taking of the depositions, either party may, after the examination of the witnesses produced under the order of the Examiner, be entitled to produce and examine other witnesses; but in such case one day's notice must be given to the other party or his duly authorized representative there present, unless such notice is waived: *And provided further*, That the parties or their duly authorized representatives may agree in writing upon a time when and place at which such depositions are to be taken, without formal notice. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served with the notice, and copies of any written cross-interrogatories shall be mailed or delivered to the opposing party or his duly

authorized representative at least 5 days before the time of taking the depositions.

(21) *Documents.*—Whenever any book, document or paper is introduced as an exhibit in a proceeding, the examiner may authorize, upon such conditions as he may deem proper, the withdrawal of such exhibit upon the request of the Attorney for the Government, or of the respondent or his attorney.

(22) *Proof; partial.*—If the examiner finds that a part of the charges in the statement of charges is not sufficiently proved but that the residue thereof is so proved, he may base his findings on any facts established by the evidence which are grounds for suspension or disbarment and which are substantially charged by the said residue of the statement of charges.

(23) *Proof; variance.*—In the case of a variance between the allegations in the statement of charges and the evidence, the examiner shall have power to base his findings on any facts established by the evidence which are grounds for suspension or disbarment, and to order the amendment of the statement of charges to conform to the evidence: *Provided*, That the respondent has had or is given reasonable opportunity to present his defense to such amended charges, with such postponements of the hearing as may be reasonably necessary to permit the respondent to present such defense.

(24) *Submittals.*—After the reception of evidence has been concluded, the Examiner shall by rule afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. In the event that depositions are introduced on behalf of the Government at the hearing or in the event that oral testimony in support of the charges is produced by the Government at the hearing, the Attorney for the Government, as soon as possible after the hearing, shall prepare and file with the examiner proposed findings of fact based upon all the evidence in the case.

(25) *Exceptions to proposed findings.*—Upon receipt of proposed findings and conclusions submitted by a party pursuant to subparagraph (24) of this paragraph, the Examiner shall forward to the other parties in the case or their attorneys a copy thereof together with a copy of the transcript of such oral testimony and depositions as may have been introduced. Such parties shall have not less than 10 days after receipt of such papers in which to submit in writing to the Examiner their exceptions, if any, to such proposed findings and conclusions. Neither such parties nor their attorneys shall have the right to receive any copies of exhibits introduced at the hearing or at the taking of the depositions. Such parties or their attorneys, however, shall have the right to examine all exhibits. Upon receipt of such exceptions, or after the time for filing such exceptions has expired if no such exceptions are filed the Examiner shall make his findings and conclusions as required by subparagraph (26) of this paragraph.

(26) *Decision by the examiner.*—After the parties rest, the examiner shall make his decision in the case, which decision shall include (i) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record and (ii) a recommended order of suspension or disbarment or his order to dismiss the charges, as the case may require. In making his findings and conclusions as to the truth of any charges which are duly put in issue by the papers in any case and upon which a hearing is had, the examiner shall be guided by the preponderance of reliable, probative, and substantial evidence. If at any hearing upon issues of fact raised by the papers in the case the respondent fails to put in any evidence, the examiner may base his findings upon the evidence submitted by the attorney for the Government.

(27) *Effect of initial decision.*—If the decision of the examiner does not contemplate the suspension or disbarment of the respondent, such initial decision in the absence of an appeal pursuant to subparagraph (28) of this paragraph shall without further proceedings become the decision of the Secretary of the Treasury.

(28) *Appeal.*—Any party adversely affected or aggrieved, within 30 days after the decision is filed with the Committee, has the right to appeal from such initial decision of the Examiner by filing notice of appeal and to submit exceptions to the decision and supporting reasons therefor, which submittals shall be included in the record of the case. Upon the expiration of said period, the entire record shall be transmitted to the Secretary of the Treasury.

(29) *Submittals on recommended decision.*—If the recommended decision of the Examiner contemplates the suspension or disbarment of the respondent, any party has the right, within 30 days after the decision is filed with the Committee, to submit exceptions to such recommended decision and supporting reasons therefor, which submittals shall be included in the record of the case. Upon

the expiration of said period, the entire record shall be transmitted to the Secretary of the Treasury.

(30) *Decision by Secretary of the Treasury.*—The Secretary of the Treasury will make the agency decision in each case in which an appeal has been taken from the initial decision of the Examiner as provided in subparagraph (28) of this paragraph and in each case in which the decision of the Examiner contemplates the suspension or disbarment of the respondent. In making such decision, the Secretary of the Treasury, pursuant to the provisions of the Administrative Procedure Act, will review the whole record or such portions thereof as may be cited by any party to permit limiting of the issues.

(31) *Notice of decisions.*—Each decision (initial, recommended, or agency) shall promptly be filed in the record, and the Committee shall thereupon give notice thereof to the parties in the manner prescribed for the service of papers.

(32) *Notice of suspension or disbarment.*—Upon issuance of an order of suspension or disbarment of an attorney or agent by the Secretary of the Treasury notice thereof shall be given by the Committee to the heads of all interested bureaus, offices, and divisions of the Treasury Department and to other interested departments and agencies of the Government in such manner as the Committee may determine. Such person will not thereafter be recognized during the period of suspension or disbarment as an attorney or agent in any matter before the Treasury Department. Notice in such manner as the Committee may determine may be given to the proper authorities in the State from which an enrolled attorney, certified public accountant, or public accountant derives his license to practice in the event that such attorney, certified public accountant, or public accountant is suspended or disbarred.

(33) *Reopening.*—Any attorney or agent who has been suspended or disbarred may make written application to the Committee to have the order of suspension or disbarment vacated or modified upon the ground (i) of newly discovered evidence, or (ii) that important evidence is now available which the applicant was unable to produce at the original hearing by the exercise of due diligence. Every application for reinstatement shall be filed with the Committee in duplicate. Such application must set forth specifically the precise character of the evidence to be relied upon in its support and shall state the reasons why the applicant was unable to produce it when the original charges were heard. If the Examiner after due consideration of the application shall deem it sufficiently meritorious to warrant a hearing, he shall so advise the Committee, who shall set a time and place for such hearing and give due notice thereof to the applicant. Upon the conclusion of the hearing the Committee shall transmit the recommended decision of the Examiner to the Secretary of the Treasury for his approval or disapproval. In the event that the Secretary shall issue an order vacating or modifying the prior order of suspension or disbarment, notice thereof shall be given by the Committee to all those to whom notice of the original order of suspension or disbarment was sent. In all cases not covered by the foregoing provisions, a disbarred attorney or agent who desires to be restored to the roll must file a new application for enrollment and otherwise comply with the requirements of section 10.3.

(34) *Saving provision.*—The regulations governing suspension, disbarment and reinstatement that were in force and effect March 31, 1947, are referred to in this subparagraph as the old rules. This paragraph as amended effective April 1, 1947, is referred to in this subparagraph as the new rules. The old rules shall continue to govern any proceeding that was instituted prior to March 31, 1947: *Provided, however,* That if in the course of the proceeding there is taken any action that is authorized by the old rules but that is not authorized by the new rules, said action shall not constitute grounds for disturbing any order thereafter made in the proceeding: (i) Unless it is shown that the action was in derogation of substantive rights, and not merely procedural rights; and (ii) unless upon occurrence of the action the respondent made timely objection supported by his reasons, and the objection was overruled: *Provided further,* That adherence may be had to the new rules pursuant to stipulation of the parties.

SEC. 10.8. AUTHORITY TO PROSECUTE CLAIMS.—A power of attorney from the principal in proper form may be required of enrolled attorneys or agents in any case by heads of bureaus, offices, and divisions. In the prosecution of claims before the Bureau of Internal Revenue, involving the assertion of demands for payment of money by the United States, proper powers of attorney shall always be filed before an attorney or agent is recognized.

SEC. 10.9. SUBSTITUTION OF ATTORNEYS OR AGENTS; REVOCATION OF AUTHORITY.—(a) *Substitution of attorneys or agents.*—Where the power of attorney under which an enrolled attorney or agent is acting expressly confers the power of substitution, such attorney or agent may, by a duly executed instrument, substitute another enrolled attorney or agent in his stead: *Provided*, That such other attorney or agent will be recognized as such only after due notice in writing has been given the head of the bureau, office, unit, or division before which the matter is pending: *And provided further*, That where the enrolled attorney or agent designated in the power of attorney, with power of substitution has himself by reason of his suspension or disbarment or his subsequent entry into Government service become ineligible further to represent before the Treasury Department the client who executed the power, the Treasury Department shall be under no obligation to recognize any substitute power of attorney executed at any time by such attorney or agent, authorizing some other enrolled attorney or agent to appear before the Department upon behalf of such client, and it will be necessary for such client to retain a new attorney or agent.

(b) *Conflicting powers of attorney.*—Where there is a contest between members of a dissolved firm or between two or more attorneys or agents, acting under the same power of attorney, as to which one is entitled to prosecute a matter pending before the Treasury Department or to receive a draft, warrant, or check, the client only shall thereafter be recognized, unless the members or survivors of the dissolved firm, or the contesting attorneys or agents, file an agreement signed by all designating which of them shall be entitled to prosecute such matter or to receive the said draft, warrant, or check. In no case shall the delivery of a final draft, warrant, or check to the client be delayed more than 60 days by reason of failure to file such agreement.

(c) *Revocation of powers.*—The revocation of an authority to represent a claimant before the Treasury Department shall in no case become effective, so far as the Department is concerned, until due notice in writing has been given the head of the bureau, office, or division before which such matter is pending, and the filing of evidence of notification of the revocation to the attorney whose power has been revoked.

SEC. 10.10. DISREPUTABLE CONDUCT.—(a) The Secretary of the Treasury may after due notice and opportunity for hearing suspend, and disbar from further practice before the Treasury Department any attorney or agent shown to be incompetent, disreputable, or who refuses to comply with the rules and regulations in this part, or who shall with intent to defraud, in any manner wilfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement.

(b) Among other forms of disreputable conduct the following are deemed to constitute such conduct:

(1) Conviction of a crime involving moral turpitude.

(2) Making false answers in the application for enrollment with knowledge that such answers are false.

(3) Preparing or filing for himself or another a false Federal income tax return or other statement on which Federal taxes may be based, knowing the same to be false.

(4) Suggesting to a client or a prospective client an illegal plan for evading payment of Federal taxes, knowing the same to be illegal.

(5) Giving false testimony in any proceeding before the Committee on Practice, or in any other proceeding before the Treasury Department, or before any tribunal authorized to pass upon Federal tax matters, knowing the same to be false.

(6) Filing any false or fraudulently altered document or affidavit in any case or other proceeding before the Treasury Department, or procuring the filing thereof, knowing the same to be false or fraudulently altered.

(7) Using, with intent to deceive, false or misleading representations to procure employment in any case or proceeding before the Treasury Department.

(8) Giving, with intent to deceive false or misleading information relative to a matter pending before the Treasury Department to any officer or agent of the Department.

(9) Preparing a false financial statement for a corporation, partnership, association, or individual, or certifying the correctness of such false statement, knowing the same to be false.

(10) Imparting to a client false information relative to the progress of a case or other proceeding before the Treasury Department, knowing the same to be false.

(11) False representations by an enrolled agent that he is an attorney or a certified public accountant.

(12) Preparing or assisting in the preparation of, or filing, a false claim against the United States, knowing the same to be false.

(13) Approving, for filing, a false income tax return prepared by some other person, knowing the same to be false.

(14) Misappropriation of sums received from clients for the purpose of payment of taxes or other obligations due the Government, or of funds or other property belonging to a client.

(15) Improper retention of a fee for which no services have been rendered.

(16) Obtaining or attempting to obtain money or other thing of value from a claimant by false representations, knowing the same to be false.

(17) Obtaining or attempting to obtain money or other thing of value from a claimant by duress or undue influence.

(18) Concealing or attempting to conceal assets in order to evade the payment of Federal taxes.

(19) Representing to a client or prospective client that the attorney or agent can obtain extraordinary favors from the Treasury Department or an officer or employee thereof or has access to unusual sources of information within the Department.

(20) Soliciting or procuring the giving of false testimony in any proceeding before the Committee on Practice or in any other proceeding before the Treasury Department.

SEC. 10.11. STRIKING NAMES FROM ROLL.—(a) On request of an attorney or agent, the Committee may strike his name from the roll, but before granting the request the Committee shall make inquiries to ascertain whether the request has been made in order to evade proceedings for suspension or disbarment, in which event the request shall be denied unless the Committee shall deem it to the best interest of all parties concerned to grant such request.

(b) The Committee may upon motion of the attorney for the Government or upon its own motion strike from the roll the name of any person who has failed to supply the information required by section 15 of Department Circular 230, revised October 1, 1934, provided that any attorney or agent whose name has been so stricken from the roll may have his name restored thereto by filing with the Committee such information and a statement showing that his failure to supply it within the time specified in such circular was not due to any fault on his part. Upon the receipt of such information and statement, the name of such attorney or agent shall be restored to the roll unless it shall appear that he is ineligible for enrollment, in which event he shall be advised of the fact and given 60 days within which to present to the Committee satisfactory evidence that he is eligible for enrollment.

SEC. 10.12. APPLICATION AND EFFECTIVE DATE OF REGULATIONS.—The regulations in this part supersede the regulations promulgated by Treasury Department Circular No. 230 of October 1, 1934, relating to the recognition of attorneys, agents, and others, as heretofore amended and supplemented. This part shall apply to attorneys, agents, and licensed customhouse brokers representing claimants before any office of the Treasury Department, with such exceptions as to customhouse brokers as are set forth in section 10.5, and shall be effective from and after October 1, 1936. The regulations in this part shall also apply to all unsettled matters then pending in this Department or which may hereafter be presented or referred to the Department or offices thereof for adjudication, and shall be applicable to all those now enrolled to practice before the Treasury Department as attorney or agent, and all proceedings within the purview of section 3 of the act of July 7, 1884, 23 Stat. 258 (5 U. S. C. 261) after October 1, 1936, shall in all procedural matters be governed by the provisions of the regulations in this part and such supplementary rules as may from time to time be adopted pursuant to said regulations: *Provided*, That violations of the regulations committed prior to October 1, 1936, shall in all substantive matters be dealt with according to the provisions of the regulations in force at the time when the act or acts alleged to constitute such violations occurred.

SEC. 10.13. WITHDRAWAL OR AMENDMENT OF REGULATIONS.—The Secretary of the Treasury reserves the power to withdraw or amend or supplement at any

time or from time to time all or any of the regulations in this part, and may make such special orders as he may deem proper in any case.

PART 12—STANDARDS AND PROCEDURES FOR THE SPECIAL ENROLLMENT OF FORMER TREASURY OFFICERS AND EMPLOYEES

The Committee on Practice, pursuant to the provisions of section 10.3(j) of this subtitle, relating to special enrollment, has adopted the following standards and procedures which will govern the enrollment of former officers and employees upon a noncompetitive basis by reason of their education, training, and experience in the Treasury Department:

SECTION 12.1. STANDARDS AND PROCEDURES ADOPTED BY THE COMMITTEE ON PRACTICE.—Former employees of the Treasury Department, upon application for special enrollment for the presentation of a particular class of matters or of matters before a particular bureau, unit, or other division of the Department, may be specially enrolled by the Committee on Practice under section 10.3(j) of this subtitle, in cases where their service in the Department has qualified them for such enrollment, as follows:

(a) Application for special enrollment on account of former service in the Treasury Department shall be made to the Committee on Practice. Each applicant will be supplied a form by the Committee, which shall indicate the information required respecting the applicant's qualifications. In addition to the applicant's name, address, citizenship, age, educational experience, etc., such information shall specifically include a detailed account of the applicant's employment in the Treasury Department, which account shall show (1) positions held, (2) date of each appointment and termination thereof, (3) nature of services rendered in each position, and (4) name of supervisor in such positions, together with such other information regarding the experience and training of the applicant as may be relevant.

(b) Upon receipt of each such application, it shall be transmitted to the appropriate officer of the Treasury Department with the request that a detailed report of the nature and rating of the applicant's services in the Treasury Department, accompanied by the recommendation of the superior officer in the particular bureau or division of the Treasury that such employment does or does not qualify the applicant for the desired authorization, be furnished to the Committee on Practice. (Such report shall be requested in addition to the usual reports requested in cases of application for enrollment.)

(c) In examining the qualifications of an applicant for special enrollment on account of Treasury service, the Committee will be governed by the following policies:

(1) Special enrollment cards will be issued for the presentation of matters only of the particular class or only before the particular bureau, unit, or division of the Treasury Department for which his former Treasury service has qualified the applicant.

(2) In the case of employees separated from employment in the Treasury Department, application for special enrollment on account of such employment must be made within 2 years after the termination thereof: *Provided*, That, in the case of employees separated from employment in the Treasury Department after May 24, 1939, and prior to January 1, 1951, the Committee on Practice will consider applications presented to the Committee on or before December 31, 1952, for special enrollment on account of former service in the Treasury Department.

(3) In the case of applicants who have been employed in the Civil Service, a minimum of 7 years continuous employment in the Treasury Department shall be requisite for Special Enrollment on account of Treasury service, except, however, that 7 years continuous employment shall not be requisite in the case of any applicant who has held in the Bureau of Internal Revenue the office of Commissioner, Assistant Commissioner, Deputy Commissioner, Collector, Head of the Technical Staff, Chief of the Intelligence Unit, Internal Revenue Agent in Charge, Special Agent in Charge, or Head of a Technical Staff Division.

(4) For the purposes of subparagraph (3), an aggregate of 10 or more years of employment, at least three of which occurred within the 5 years preceding the date of application, shall be deemed the equivalent of 7 years continuous employment. (Sec. 3, 23 Stat. 258; 5 U. S. C. 261.)

PART 13—PROCEDURES OF THE COMMITTEE ON PRACTICE—AVAILABILITY OF RECORDS

Section
13.1. Procedures.
13.2. Official records.
13.3. Information, requests, and submittals.

AUTHORITY: Sections 13.1 to 13.3 issued under R. S. 161; 5 U. S. C. 22.

SOURCE: Sections 13.1 to 13.3 appear at 11 F. R. 177A–87, as amended at 11 F. R. 12045; 13 F. R. 8276; 14 F. R. 78; 14 F. R. 3678; and 15 F. R. 6548.

SECTION 13.1. PROCEDURES.—(a) Licensing to practice before the Treasury Department is subject to this procedure:

(1) An applicant is required to file with the Committee on Practice an application on the form prescribed by section 10.4 of Treasury Department Circular No. 230, Revised [section 10.4 of this subtitle]. The application form calls for these items of information regarding the applicant: identification, description and location of his practice, qualifications, references, etc. Copies of the form may be procured from the Committee on Practice.

(2) Upon receipt of the application, the Committee on Practice grants a temporary license, provided the application is regular on its face; provided the averments of fact made therein, if true, would warrant issuance of a license; provided nothing of record before the Committee on Practice indicates the averments to be untrue; and provided there is nothing before the Committee on Practice to indicate that the applicant has not a good character.

(3) If a temporary license is not granted, the Committee on Practice accords the applicant an opportunity by correspondence or conference to correct any deficiency in the application.

(4) Upon the granting of a temporary license the Committee on Practice refers the application to the Intelligence Unit of the Bureau of Internal Revenue, Treasury Department, for investigation as to the truth of the averments made in the application and as to the character of the applicant.

(5) Upon completion of investigation, the Intelligence Unit sends the resultant report to the Committee on Practice for consideration.

(6) If the application and the investigative report are favorable to the applicant, the Committee on Practice recommends to the Secretary of the Treasury that the temporary license be replaced with a permanent license, replacement normally being accomplished in due course without the necessity of special request or petition on the part of the applicant.

(7) If the application and investigative report are not favorable to the applicant, the Committee on Practice by letter notifies the applicant of the apparent deficiencies and accords the applicant opportunity to show cause why a permanent license should be granted, the nature of the opportunity being determined by the character of the questions presented by the deficiencies.

(8) A controverted question is not determined adversely to the applicant by the Committee on Practice without according the applicant the opportunity for a hearing.

(9) Upon determination by the Committee on Practice that an application should be denied, the Committee on Practice so recommends to the Secretary of the Treasury, who thereupon affirms, overrules, or remands the recommendation.

(b) Licensing (i. e., the granting of the consent of the Secretary of the Treasury to) former personnel of the Treasury Department to act as attorney or agent (or as employee of an attorney or agent) within 2 years after the termination of the employment by the Treasury Department is subject to the procedure described in section 10.2(a)(2) of Treasury Department Circular No. 230 Revised [section 10.2(a)(2) of this subtitle]. The application form prescribed by section 10.2(a)(2) of the circular calls for the items of information specified in that section. Copies of the form may be procured from the Committee on Practice.

(c) Proceedings for suspension, disbarment, and reinstatement of licensees to practice before the Treasury Department are subject to the procedure described in section 10.7 of Treasury Department Circular No. 230, Revised [section 10.7 of this subtitle].

(d) Licensing to be a customhouse broker is subject to the procedure described in sections 3 and 4 of Treasury Department Circular No. 559 [sections 11.3 and 11.4 of this subtitle]. The application form prescribed by section 3(a) of the circular calls for these items of information regarding the applicant: identification, description and location of his business, qualifications, references,

etc. Copies of the form may be procured from the Committee on Practice and from the offices of Collectors of Customs.

(e) Proceedings for revocation and suspension of customhouse brokers' licenses are subject to the procedure described in sections 10, 11 and 13 of Treasury Department Circular No. 559 [sections 11.10, 11.11, and 11.13 of this subtitle].

SEC. 13.2. OFFICIAL RECORDS.—(a) There are made available to public inspection at the office of the Committee on Practice:

(1) The roster of all persons admitted to practice before the Treasury Department pursuant to the Act of July 7, 1884, 23 Stat. 258 (5 U. S. C. 261).

(2) The roster of all persons licensed as customhouse brokers pursuant to amended section 641 of the Tariff Act of 1930, 46 Stat. 759 (19 U. S. C. 1641).

(3) The final opinion or order in the adjudication of any case in which there was sought revocation of any license of the character indicated in paragraph (a) (1) and (2) of this section, provided the licensee (or former licensee) expressly consents to publication.

(b) Matters of official record pertaining to the enrollment of persons to practice before the Treasury Department and pertaining to the licensing of customhouse brokers are available at the office of the Committee on Practice to persons properly and directly concerned.

(c) The official records pertaining to the revocation (or the proposed revocation) of licenses of the character indicated in paragraphs (a) (1) and (2) of this section, and to the investigation of applicants therefor, constitute confidential information, except as provided in paragraphs (a) and (b) of this section. These records are held confidential for these good causes:

(1) Publication is capable of injuring licensees and former licensees without furthering the public interest.

(2) Much of the information is elicited without the aid of the subpoena power on the assurance that the sources will be protected.

SEC. 13.3. INFORMATION, REQUESTS, AND SUBMITTALS.—The public may secure information from, or make submittals or requests to, the Committee on Practice, Treasury Department, Washington, D. C., by personal appearance, by telephone, or by written communication.

STATUTES

Section 3 of the Act of July 7, 1884, 23 Stat. 258; 5 U. S. C. 261:

"That the Secretary of the Treasury may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. And such Secretary may after due notice and opportunity for hearing suspend, and disbar from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement."

Amended section 1 of the Act of June 25, 1948, 62 Stat. 697; 18 U. S. C. 281:

"SEC. 281. COMPENSATION TO MEMBERS OF CONGRESS, OFFICERS AND OTHERS IN MATTERS AFFECTING THE GOVERNMENT.

"Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military, or naval commission, shall be fined not more than $10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

"Retired officers of the armed forces of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of

this section. Nothing herein shall be construed to allow any retired officer to represent any person in the sale of anything to the Government through the department in whose service he holds a retired status.

"This section shall not apply to any person because of his membership in the National Guard of the District of Columbia nor to any person specially excepted by Act of Congress."

Amended section 1 of the Act of June 25, 1948, 62 Stat. 697; 18 U. S. C. 283:

"SEC. 283. OFFICERS OR EMPLOYEES INTERESTED IN CLAIMS AGAINST THE GOVERNMENT.

"Whoever, being an officer or employee of the United States or any department or agency thereof, or of the Senate or House of Representatives, acts as an agent or attorney for prosecuting any claim against the United States, or aids or assists in the prosecution or support of any such claim otherwise than in the proper discharge of his official duties, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, shall be fined not more than $10,000 or imprisoned not more than one year, or both.

"Retired officers of the armed forces of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section. Nothing herein shall be construed to allow any such retired officer within two years next after his retirement to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving the department in whose service he holds a retired status, or to allow any such retired officer to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving any subject matter with which he was directly connected while he was in an active-duty status.

"This section shall not apply to any person because of his membership in the National Guard of the District of Columbia nor to any person specially excepted by enactment of Congress."

Amended section 1 of the Act of June 25, 1948, 62 Stat. 698; 18 U. S. C. 284:

"SEC. 284. DISQUALIFICATIONS OF FORMER OFFICERS AND EMPLOYEES IN MATTERS CONNECTED WITH FORMER DUTIES.

"Whoever, having been employed in any agency of the United States, including commissioned officers assigned to duty in such agency, within two years after the time when such employment or service has ceased, prosecutes or acts as counsel, attorney, or agent for prosecuting, any claims against the United States involving any subject matter directly connnected with which such person was so employed or performed duty, shall be fined not more than $10,000 or imprisoned not more than one year, or both."

Section 190 of the Revised Statutes; 5 U. S. C. 99:

"It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employee in any of the departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said departments while he was, such officer, clerk, or employee, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employee."

Section 3478 of the Revised Statutes; 31 U. S. C. 204:

"Any person prosecuting claims, either as attorney or on his own account, before any of the departments or bureaus of the United States, shall be required to take the oath of allegiance, and to support the Constitution of the United States, as required of persons in the civil service."

Sections 5, 7, 8 and 9 of the Administrative Procedure Act, 60 Stat. 239, 241, 242, 242; 5 U. S. C. 1004, 1006, 1007 and 1008:

"ADJUDICATION

"SEC. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or election; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in

which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

"(a) NOTICE.—Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

"(b) PROCEDURE.—The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 7 and 8.

"(c) SEPARATION OF FUNCTIONS.—The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

"(d) DECLARATORY ORDERS.—The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

"HEARINGS

"SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

"(a) PRESIDING OFFICERS.—There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this Act; but nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

"(b) HEARING POWERS.—Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take any other action authorized by agency rule consistent with this Act.

"(c) EVIDENCE.—Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no

sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

"(d) RECORD.—The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

"DECISIONS

"SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

"(a) ACTION BY SUBORDINATES.—In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in the specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires.

"(b) SUBMITTALS AND DECISIONS.—Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

"SANCTIONS AND POWERS

"SEC. 9. In the exercise of any power or authority—

"(a) IN GENERAL.—No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

"(b) LICENSES.—In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this Act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency

proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency."

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Recognition to be accorded unenrolled persons who are not within the exceptions provided in section 10.2(a) of Department Circular 230, Revised (C. B. 1947-2, 288).

U. S. TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., October 28, 1952.

Officers and Employees of the Internal Revenue Service and Others Concerned:

1. The recent adoption of the informal conference procedure under Reorganization Plan No. 1 of 1952 (C. B. 1952–1, 227) has occasioned a number of inquiries concerning the extent to which examining officers and other employees of the Bureau may accord recognition to unenrolled persons employed by taxpayers in connection with Federal tax matters. The purpose of this mimeograph is to outline generally the Bureau's position in this respect, and to set forth principles which may be used as guides by the Internal Revenue Service as a whole, including office audit activities, in determining the extent to which matters may be discussed with unenrolled persons.

2. Generally speaking, any individual who has knowledge of the facts, or who can furnish information which will be of assistance in establishing the facts, is a proper source of information in connection with a determination of tax liability and can be heard in the capacity of a "witness" without regard to whether he is acting at the request of the taxpayer or claims the taxpayer as his client for purposes other than representation before the Bureau. For example, an attorney who represented the taxpayer in a sale of real estate may be a proper person to furnish the facts with respect to the particular transaction involved. Similarly, an accountant who has kept or audited the taxpayer's books and records, or prepared his tax returns, may be a proper person to supply information and assist in the factual development of the case. However, unless properly enrolled and authorized to represent the taxpayer before the Treasury Department with respect to the tax involved in the examination, such lawyer or accountant may not be heard as the taxpayer's representative in advocating, in those cases where issues or controversies have arisen out of the factual development of such cases, the adoption of any particular position with respect to such issues or controversies. In short, the difference may be summarized by distinguishing activities in the capacity of witness—or one who assists in the factual development of a case—and activities in the capacity of advocate—or one who acts on behalf of the taxpayer in urging particular determinations with respect to the issues or controversies arising out of the factual develop-

ment of a case. Thus, during the field examination process a taxpayer has the right to use the services of any person he may elect, whether or not enrolled, for the purpose of explaining his books, records, or returns to the examining agent; and the examining agent, in the factual development of a case, has not only the right but also the duty to receive information from anyone, whether or not enrolled and irrespective of the presence of the taxpayer, who has knowledge of facts pertinent to the case.

3. The foregoing pertains primarily to the furnishing of information during the factual development stage of a case. However, the taxpayer also has the right, in those cases where issues or controversies have resulted from the factual development of such cases, to have any unenrolled person who has knowledge of pertinent facts accompany him or his duly enrolled and authorized representative to conferences, but such unenrolled person may appear at such conferences only when the taxpayer or his duly enrolled and authorized representative is present in person, and then only in the capacity of a witness.

4. Nothing in this mimeograph is to be construed as authorizing "practice" before the Treasury Department by unenrolled persons who are not within the exceptions provided in section 10.2(a) of Department Circular 230, Revised (C. B. 1947-2, 228; 31 CFR 10.2(a)).

5. It is believed that the foregoing statements will be of assistance to field officers and employees in the exercise of their sound administrative discretion in determining the matters that may be discussed with unenrolled persons without violating the provisions of the Department Circular relating to "practice" or section 9 of the Bureau's "Rules of Conduct and Other Instructions for Employees of the Internal Revenue Service".

JOHN B. DUNLAP,
Commissioner.

SECTION 3761.—COMPROMISES

1952-19-13922
T. D. 5927

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

Inspection of accepted offers in compromise under section 3761 of the Internal Revenue Code.

TREASURY DEPARTMENT,
Washington 25, D. C.

To Officers and Employees of the Internal Revenue Service and Others Concerned:

SEC. 458.313. INSPECTION OF RETURNS AND OTHER RELEVANT PAPERS IN COMPROMISE CASES.—(*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 income, excess-profits, declared value excess-profits, capital stock, estate, or gift tax returns for any taxable year shall be open to inspection to the extent necessary to permit the inspection of any accepted offer in compromise under section 3761 of such Code

relative to the liability for any such tax and of any schedules or other papers relevant thereto.

(*b*) The inspection authorized by (*a*) of this section shall be subject to such rules, and shall be made only under such circumstances, as the Secretary of the Treasury, or such official as he may designate, shall determine to be in the public interest.

(*c*) Because this Treasury Decision constitutes a general statement of policy and establishes a rule of Department practice, 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.

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

JOHN W. SNYDER,
Secretary of the Treasury.

Approved August 20, 1952.

HARRY S. TRUMAN,
The White House.

(Filed with the Division of the Federal Register August 20, 1952, 3:29 p. m.)

INSPECTION OF FILES COVERING COMPROMISE SETTLEMENTS OF TAX LIABILITY

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 income, excess-profits, declared value excess-profits, capital stock, estate or gift tax returns for any taxable year shall be open to inspection to the extent necessary to permit the inspection of any accepted offer in compromise under section 3761 of such Code relative to liability for any such tax and of any schedules or other papers relevant thereto. Such inspection shall be subject to the conditions stated in the related Treasury Decision approved by me this date.

HARRY S. TRUMAN.

THE WHITE HOUSE,
August 20, 1952.

(E. O. 10386)

(Filed with the Division of the Federal Register August 20, 1952, 3:29 p. m.)

1952–19–13925
IR-Mim. 26

Inspection of accepted offers in compromise

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., August 27, 1952.

Officers and Employees of the Internal Revenue Service and Others Concerned:

1. The purpose of this mimeograph is to prescribe the rules and circumstances with respect to which inspections may be made of ac-

cepted offers in compromise in accordance with Executive Order 10386, above, dated August 20, 1952, and Treasury Decision 5927 (page 298, this Bulletin), approved the same date.

2. Executive Order 10386 provides that income, excess-profits, declared value excess-profits, capital stock, estate, or gift tax returns for any taxable year shall be open for inspection to the extent necessary to permit the inspection of any accepted offer in compromise under section 3761 of the Internal Revenue Code relative to liability for any such tax and of any schedules or other papers relevant thereto, and that such inspection shall be subject to the conditions stated in Treasury Decision 5927. That Treasury Decision provides that such inspection shall be subject to such rules, and shall be made only under such circumstances, as the Secretary of the Treasury, or such official as he may designate, shall determine to be in the public interest.

3. It has been determined to be in the public interest that the inspection of accepted offers in compromise shall be subject to the rules, and made only under the circumstances set forth below:

(*a*) With respect to offers accepted on and after August 20, 1952, a copy of the summary sheet (abstract) for each such offer will be made available for public inspection in the office of the information officer of the Bureau. This extra copy of the summary sheet will be prepared as part of the compromise file and will be detached and routed to the information officer by the Compromise Branch of the Appellate Division after the offer has been accepted. The summary sheet will include a brief description of the reasons for acceptance of the offer. If information in addition to that shown on the summary sheet is requested, the information officer will direct the request to the Compromise Branch of the Appellate Division which will (1) obtain the information from the statement attached to the original of the summary sheet and forward such information to the information officer for the inspection, or (2) forward the statement itself, or a copy thereof, to the information officer for such purpose, depending on the request.

(*b*) Although, with respect to offers accepted before August 20, 1952, copies of summary sheets will not be on file for public inspection in the office of the information officer, a copy of the summary sheet will be made available for inspection upon request identifying the taxpayer. Such requests will be directed by the information officer to the Compromise Branch of the Appellate Division which will comply with such requests as directed in (*a*), above.

(*c*) Offers will be considered accepted as of the date of the letter notifying the proponent of the acceptance.

4. The rules and conditions stated in this mimeograph for the inspection of accepted offers in compromise may be modified by the Commissioner as he may from time to time determine to be in the public interest.

JOHN B. DUNLAP,
Commissioner.

Approved August 27, 1952.

JOHN W. SNYDER,
Secretary of the Treasury.

INTOXICATING LIQUORS

INTERNAL REVENUE CODE

REGULATIONS NO. 1, ALCOHOL TAX ACT. 1952–20–13933
T. D. 5930

TITLE 27—INTOXICATING LIQUORS.—CHAPTER I, PART 1.—BASIC PERMITS; ISSUANCE AND PROCEEDINGS TO REVOKE, SUSPEND, OR ANNUL

(Regulations No. 1 under the Federal Alcohol Administration Act)

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

To District Supervisors and Others Concerned:

On June 26, 1952, a notice of proposed rule making was published in the Federal Register (17 F. R. 5735) with respect to certain proposed amendments to Federal Alcohol Administration Act Regulations No. 1, "Relating to the Issuance, Revocation, Suspension, and Annulment of Basic Permits" (27 CFR, part 1), affording interested persons an opportunity to submit written data, facts, or arguments thereon.

After consideration of all relevant matter presented, the following amendments to the said regulations are hereby prescribed:

1. Section 1.21 of the Federal Alcohol Administration Act Regulations No. 1, "Relating to the Issuance, Revocation, Suspension and Annulment of Basic Permits" (27 CFR, part 1), is amended by adding at the end thereof a new subsection (*c*) to read as follows:

(*c*) The district supervisor shall cause to be maintained currently in his office for public inspection, until the expiration of 1 year following final action on the application, the following information with respect to each application for basic permit filed:

(1) The name, including trade name or names, if any, and the address of the applicant; the kind of permit applied for and the location of the business; whether the applicant is an individual, a partnership, or a corporation; if a partnership, the name and address of each partner; if a corporation, the name and address of each of the principal officers and of each stockholder owning 10 percent or more of the corporate stock;

(2) The time and place set for any hearing on the application;

(3) The final action taken upon the application. In the event a hearing is held upon an application for a basic permit, the district supervisor shall make available for inspection at his office upon request therefor: The transcript of the hearing, a copy of the hearing examiner's recommended decision, a copy of the district supervisor's decision and of his decision upon reconsideration, if any, and, in the event of an appeal to the Commissioner, the decision on appeal with the reasons given in support thereof.

2. Section 1.33 of the said regulations (27 CFR 1.33) is amended by adding at the end thereof the following new sentence:

Hearings upon applications for basic permits shall be open to the public.

3. The purpose of these amendments is to revise, to the extent indicated, the Bureau's policy with respect to the confidential nature of applications for basic permits under the Federal Alcohol Administration Act (49 Stat. 977 et seq. as amended, 27 U. S. C. 201 et seq.) and administrative proceedings upon such applications and to make cer-

tain information, heretofore treated as confidential, available for public inspection subject to the limitations and in accordance with the procedures set forth above. The provisions of 26 CFR, subchapter F—Records and Procedure, part 600—Records, shall not be construed so as to conflict with the authorization and direction conveyed in paragraphs 1 and 2 above.

4. Because this Treasury Decision constitutes a statement of policy and establishes a rule of Bureau practice, it is found that it is unnecessary to issue this Treasury Decision subject to the effective date limitation of section 4(c) of the Administrative Procedure Act, approved June 11, 1946.

(This Treasury Decision is issued under the authority contained in 49 Stat. 977, 54 Stat. 1232, 53 Stat. 373, and sec. 161 R. S.; 27 U. S. C. 202, 26 U. S. C. 3170, 5 U. S. C. 22.)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved September 2, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 4, 1952, 8:51 a. m.)

INDUSTRIAL ALCOHOL

INTERNAL REVENUE CODE

REGULATIONS 3 (Appendix). 1952-15-13876
T. D. 5917

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 182.—INDUSTRIAL ALCOHOL

Amending appendix to Regulations 3

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

To District Supervisors and Others Concerned:

1. The appendix to Regulations 3, "Industrial Alcohol" (26 CFR, part 182; 7 F. R. 1858), as amended, is hereby amended as follows:

(*a*) Completely Denatured Alcohol Formulae Nos. 12, 13, 14, and 15 are hereby revoked: *Provided*, That proprietors of denaturing plants who, on the effective date of this Treasury Decision, have on hand supplies of denaturants CS–501 or dehydrol-O approved by authorized chemists for use in Formulae Nos. 12, 14, or 15 may, on written application to the Commissioner, in triplicate, be authorized by him to continue the preparation of Completely Denatured Alcohol Formulae Nos. 12, 14, or 15 until such supplies of denaturants CS–501 or dehydrol-O are exhausted.

(*b*) The following formulae are authorized for the manufacture of completely denatured alcohol:

FORMULA NO. 16

To every 100 gallons of ethyl alcohol of not less than 160° proof add:
4.0 gallons of ST–115 or a compound similar thereto,
.25 gallon of pyronate or a compound similar thereto,
.25 gallon of acetaldol (hydroxy-butyraldehyde).
1.0 gallon of kerosene.

FORMULA NO. 17

To every 100 gallons of ethyl alcohol of not less than 160° proof add:
3.5 gallons of ST–115 or a compound similar thereto,
1.5 gallons of methyl isobutyl ketone,
1.0 gallon of kerosene.

FORMULA NO. 18

To every 100 gallons of ethyl alcohol of not less than 160° proof add:
2.50 gallons of methyl isobutyl ketone,
.25 gallon of pyronate or a compound similar thereto,
.50 gallon of acetaldol (hydroxy-butyraldehyde).
1.50 gallons of kerosene.

(*c*) The specifications for denaturant dehydrol-O, listed immediately following the specifications for acetaldol in "The Specifications for Denaturants in Completely Denatured Alcohol," are revoked.

(*d*) The following specifications for pyronate are inserted in "The Specifications for Denaturants in Completely Denatured Alcohol," immediately following the specifications for methyl isobutyl ketone:

PYRONATE

Pyronate is a product of the destructive distillation of hardwood meeting the following requirements:

Color.—The color shall not be darker than the color produced by 2.0 grams of potassium dichromate in 1 liter of water. The comparison shall be made in 4 oz. oil sample bottles, viewed crosswise.

Acidity.—Not over 0.1 percent as acetic acid, determined as follows: Add 5.0 ml. sample to 100 ml. distilled water in an Erlenmeyer flask and titrate with N/10 NaOH to a bromothymol blue end-point.

Boiling range.—One hundred ml. shall be distilled according to the A. S. T. M. method for lacquer solvents (D268–49). Not over 5 ml. shall boil below 70° C., not less than 50 ml. below 160° C. and not less than 90 ml. below 205° C.

NOTE.—Any material submitted as pyronate must agree in color, odor, taste, and denaturing value with a standard sample as furnished by the Alcohol and Tobacco Tax Division, Bureau of Internal Revenue, to chemists authorized to examine samples of denaturants.

(*e*) The list, "Denaturants Authorized for Completely and Specially Denatured Alcohol," is amended (1) by deleting therefrom the following:

Acetaldol	C. D. 12; 13
Dehydrol-O	C. D. 12; 14
Kerosene	C. D. 12; 13; 14
Methyl isobutyl ketone	C. D. 12; 13; 14; S. D. 23–G; 23–H
ST–115	C. D. 12; 13

and (2) by inserting therein the following:

Acetaldol	C. D. 16; 18
Kerosene	C. D. 16; 17; 18
Methyl isobutyl ketone	C. D. 17; 18; S. D. 23–G; S. D. 23–H
Pyronate	C. D. 16; 18
ST–115	C. D. 16; 17

2. The purposes of these amendments are (*a*) to revoke Formulae Nos. 12, 13, 14, and 15 authorized for the manufacture of completely denatured alcohol; (*b*) to authorize three new formulae, Nos. 16, 17, and 18, for the preparation of completely denatured alcohol; (*c*) to revoke specifications for denaturant dehydrol-O; (*d*) to prescribe specifications for the denaturant pyronate; and (*e*) to revise the list of authorized denaturants, and the formulae in which they may be used, to conform with the changes made in authorized formulae.

3. Due to discontinuance of the manufacture of denaturants dehydrol-O and CS–501, required by current regulations for use in the manufacture of completely denatured alcohol, it has been found necessary to revoke existing formulae and to prescribe new formulae requiring different denaturants. Since this is the season when manufacturers produce antifreeze preparations, it is vital that these regulations be made effective immediately. It is, therefore, found contrary to the public interest to comply with the notice, public rule-making procedure, and effective date requirements of the Administrative Procedure Act (5 U. S. C. 1001 et seq.).

4. This Treasury Decision shall be effective upon its publication in the Federal Register.

(This Treasury Decision is issued under the authority contained in 52 Stat. 355, 358, 375; 26 U. S. C. 3070, 3105, 3176.)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved July 2, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register July 9, 1952)

INDUSTRIAL ALCOHOL AND DISTILLED SPIRITS

INTERNAL REVENUE CODE

REGULATIONS 3, 4, 5, 10, 11, 15, AND 29. 1952–16–13883
T. D. 5919

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PARTS 182, 183, 184, 185, 189, 190, AND 197

Extending use of distilled spirits excise tax stamps for removals of distilled spirits and alcohol.

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

To District Supervisors and Others Concerned:

1. In order to facilitate the taxpayment of distilled spirits removed in tank cars and tank trucks from registered distilleries, fruit distilleries and internal revenue bonded warehouses, and of alcohol removed by pipeline and in tank cars and tank trucks from industrial alcohol plants and industrial alcohol bonded warehouses, the regulations are amended to authorize the use of distilled spirits excise tax stamps, in lieu of certificates of taxpayment, Form 1595. The amendments provide that where distilled spirits excise tax stamps are used for the taxpayment of distilled spirits and alcohol removed in tank cars and tank trucks, a wholesale liquor dealer's stamp shall be affixed to the conveyance (in lieu of Form 1595) as evidence of taxpayment. The distilled spirits excise tax stamps can be purchased in advance and wholesale liquor dealer's stamps can be obtained from the storekeeper-gauger at the plant. Taxpayment can thus be accomplished immediately following the gauging of the distilled spirits or alcohol and the delay incident to obtaining a certificate of taxpayment from the collector after the distilled spirits or alcohol are gauged will be obviated. Distilled spirits excise tax stamps were originally prescribed by Regulations 10 (26 CFR, part 185), effective September 1, 1950, for the taxpayment of distilled spirits bottled in bond. Subsequently, their use was extended by Treasury Decision 5806 [C. B. 1950–2, 180] (15 F. R. 174), effective September 8, 1950, for the taxpayment of distilled spirits transferred by pipeline from registered and fruit distilleries and internal revenue bonded warehouses to contiguous rectifying plants and taxpaid bottling houses, and for distilled spirits taxpaid in bulk gauging tanks in internal revenue bonded warehouses and drawn into packages to which wholesale liquor dealer's stamps are to be affixed; and by Treasury Decision 5809 [C. B. 1950–2, 189] (15 F. R. 198), effective October 12, 1950, for the taxpayment of spirits contained in rinsings from packages dumped at rectifying plants and taxpaid bottling houses.

2. Other purposes of the amendments are as follows:

(*a*) to authorize an optional method, to be followed by the proprietor, of canceling distilled spirits excise tax stamps, and rectified spirits stamps used for the payment of rectification tax on distilled spirits in bottling tanks in a rectifying plant, by perforating, in lieu

of stamping, the data required by regulations, and to permit partial advance cancellation of such stamps for identification in the event of subsequent loss, by theft or otherwise;

(*b*) to provide for the issuance of wholesale liquor dealer's stamps by storekeeper-gaugers, in lieu of collectors of internal revenue, for affixing to tank cars and tank trucks where taxpayment is by use of distilled spirits excise tax stamps, and for affixing to wholesale liquor dealer packages of unrectified spirits filled at rectifying plants, (the issuance by storekeeper-gaugers (in lieu of collectors) of wholesale liquor dealer's stamps for affixing to packages filled from bulk gauging tanks in internal revenue bonded warehouses was authorized by Regulations 10 (26 CFR, part 185)); and

(*c*) to authorize the retention of the registry number when a registered distillery, fruit distillery, internal revenue bonded warehouse, taxpaid bottling house or rectifying plant is moved to another location within the same State or when an industrial alcohol plant, industrial alcohol bonded warehouse or denaturing plant is moved to another location within the United States.

3. Regulations 3 (26 CFR, part 182; 7 F. R. 1858), "Industrial Alcohol," as amended, are amended as follows:

(*a*) Sections 182.305, 182.569, 182.570, 182.571, 182.572, 182.574, 182.574e, 182.574g, and 182.643a are amended; and

(*b*) Sections 182.566a, 182.568a, 182.574a–1, 182.574d–1, 182.574h, 182.574i, 182.574j, 182.574k, 182.574l, 182.574m, 182.574n, 182.574o, 182.574p, 182.574q, 182.574r, 182.574s, 182.574t, and 182.648c are added.

ACTION BY COMMISSIONER

ORIGINAL ESTABLISHMENT

* * * * * * *

SEC. 182.305. REGISTRY AND PERMIT NUMBERS.—Upon request therefor by district supervisors the Commissioner will assign registry and permit numbers to industrial alcohol plants, bonded warehouses and denaturing plants. Such plants will be numbered serially, irrespective of states or districts. Symbols and numbers for basic permits will be assigned as provided in section 182.291. Registry and permit numbers previously assigned to discontinued alcohol plants, bonded warehouses, and denaturing plants will not be reassigned to other such plants. The same registry number will be continued whenever there is a change of proprietorship. In the case of a change in location of the premises, the same registry number may be retained. A new basic permit number will be assigned when there is a change of proprietorship. The same registry and permit number will be assigned to an industrial alcohol plant, bonded warehouse, and denaturing plant, or any combination of such plants on the same premises. (53 Stat. 358, 360, 364, 375; 26 U. S. C. 3105, 3114, 3124, 3176.)

OPERATION OF INDUSTRIAL ALCOHOL BONDED WAREHOUSES

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TAXPAID WITHDRAWALS IN TANK CARS OR TANK TRUCKS

* * * * * * *

SEC. 182.566a. METHODS OF TAXPAYMENT.—The tax on alcohol to be removed in a tank car or tank truck will be paid by the proprietor (*a*) by use of a certificate of taxpayment, Form 1595, issued pursuant to application on Form 1594, or (*b*) by use of distilled spirits stamps prescribed by section 182.574h. Where alcohol which is to be removed by tank car or tank truck is taxpaid by use of distilled spirits stamps, a wholesale liquor dealer's stamp will be affixed to the tank car or tank truck. Where taxpayment is by use of a certificate of taxpayment, Form 1595, the certificate will be procured and used in accordance

with sections 182.567, 182.568, and 182.569-182.571. Where taxpayment is by use of distilled spirits stamps, such stamps will be procured in accordance with sections 182.574h-182.574j and used in accordance with section 182.568a. Where distilled spirits stamps are used for taxpayment of alcohol removed by tank car or tank truck, a wholesale liquor dealer's stamp will be procured in accordance with section 182.574o. (53 Stat. 298 as amended, 358, 360, 364, 374; 26 U. S. C. 2800, 3105, 3112, 3124, 3172, 3176.)

SEC. 182.568a. USE OF DISTILLED SPIRITS STAMPS.—Where alcohol is to be taxpaid by use of distilled spirits stamps, the proprietor, upon receipt of the copies of Form 1440 from the storekeeper-gauger pursuant to section 182.566, will cancel the necessary number of stamps in the exact amount of the tax due by perforation as prescribed herein, or by legibly writing or stamping on each stamp with indelible (india) ink, his name, the registry number of the warehouse, and the date of Form 1440; for example, "John Doe Industries, Incorporated, Industrial Alcohol Bonded Warehouse No. 63, New Jersey, Form 1440 June 1, 1952." Prior to use in taxpayment, the proprietor, if he so desires, may partially precancel the stamps to the extent of showing his name and registry number only. The date of Form 1440 must not be entered on the stamp in advance of actual use in taxpayment. The district supervisor may, in his discretion, approve a suitable abbreviation of the required information for cancellation, including the initials for the name of the proprietor, if adequate for identification; for example, "J. D. Ind. Inc. IABW63-NJ-1440-6-1-52." The proprietor's cancellation must be made on the lower portion of the stamp below the figures and words indicating the denomination of the stamp. If the proprietor's cancellation is made by perforation, each letter and figure of the cancellation must be not less than one-fourth of an inch in height and of proportionate width and suitably spaced for legibility and distinctness, and must be clearly and sharply outlined either (*a*) by perforation through the substance of the stamp, and not merely puncturing it, each perforation to be not less than one thirty-second of an inch in width or diameter; or (*b*) by perforations in the form of incisions through the stamp of at least one thirty-second of an inch in width, cutting out the form of the letters and figures from the substance of the stamp, which letters and figures must be of the size, spacing, and distinctness as above specified. The proprietor will then attach the canceled distilled spirits stamps to one copy of Form 1440 and return all copies of that form to the Government officer. The Government officer, after determining that the cancelled stamps are in the proper amount of the tax shown due on the Form 1440, will then further cancel and deface the stamps by cutting a hole one-half inch square in the upper right-hand corner, and wholly within the border, of each stamp and will execute a certificate on all copies of Form 1440 (using the certificate of the collector, properly modified) certifying to the receipt and further cancellation of stamps in the amount of tax due. The cancelled distilled spirits stamps will be securely attached to a copy of Form 1440 by means of a staple, eyelet, or similar device. Such copy of Form 1440 will be attached to the board on the weighing tank and remain thereon until the alcohol covered by such stamps has been removed. A wholesale liquor dealer's stamp for attachment to the conveyance will be procured by the proprietor in accordance with sections 182.574o and 182.574p. Form 1440 will be disposed of in accordance with section 182.571. (53 Stat. 298 as amended, 358, 360, 364, 374, 375, 375, 398; 26 U. S. C. 2800, 3105, 3112, 3124, 3172, 3175, 3176, 3300.)

SEC. 182.569. BILL OF LADING.—The proprietor shall incorporate in the bill of lading, if any, a description of Form 1595 as follows:

Form 1595, Serial Number _____, Owner and Number of Car (or truck) _____, Vendor _____, Address _____, Vendee _____, Address _____.

Where a wholesale liquor dealer's stamp is used in lieu of Form 1595, the proprietor shall incorporate in the bill of lading, if any, a description of the stamp showing the kind of stamp and its serial number. (53 Stat. 357, 358, 360, 364, 375; 26 U. S. C. 3101, 3105, 3112, 3124, 3176.)

SEC. 182.570. STOREKEEPER-GAUGER'S VERIFICATION.—If taxpayment is by means of a certificate of taxpayment (Form 1595), the proprietor shall give the certificate, the bill of lading, if any, and all copies of Form 1440 to the storekeeper-gauger. The storekeeper-gauger will verify the contents of the tank car or tank truck and the description of Form 1595 in the bill of lading, if any, determine the security of the route board, and, if no discrepancies are found, he will note

the serial number of the certificate on Form 1440, and date and sign the certificate in the space provided therefor. The proprietor shall then affix the certificate to the route board in the presence of the storekeeper-gauger. The certificate must be securely affixed to the route board with a good adhesive and with a tack in each corner, whereupon it will be canceled in the same manner as a taxpaid stamp after attachment to a package. The certificate will then be covered with a coating of transparent shellac, lacquer or varnish to prevent its easy removal or alteration. If taxpayment is by means of distilled spirits stamps and evidenced by a wholesale liquor dealer's stamp, the proprietor shall give the bill of lading, if any, to the storekeeper-gauger who shall verify the contents of the tank car or tank truck, the description of the wholesale liquor dealer's stamp on the bill of lading, if any, and determine the security of the route board. If no discrepancies are found, the proprietor shall affix the wholesale liquor dealer's stamp to the route board in the presence of the storekeeper-gauger. The wholesale liquor dealer's stamp shall be affixed, canceled and protected in the same manner as a certificate of taxpayment, Form 1595. (53 Stat. 357, 358, 360, 364, 375; 26 U. S. C. 3101, 3105, 3112, 3124, 3176.)

SEC. 182.571. RELEASE OF TANK CAR OR TANK TRUCK.—When the certificate of taxpayment (Form 1595), or wholesale liquor dealer's stamp, has been affixed to the route board and canceled, and the conveyance locked or sealed by the proprietor (who shall furnish the necessary locks or seals), the storekeeper-gauger will return the bill of lading, if any, to the proprietor and release the tank car or tank truck for shipment. The storekeeper-gauger will forward one copy of Form 1440 to the district supervisor and deliver two copies to the proprietor, who will forward one copy to the vendee, and retain the remaining copy as a permanent record in accordance with section 182.643h. Where distilled spirits stamps have been used to taxpay the alcohol, the copy of Form 1440 to which canceled stamps are attached will be forwarded to the district supervisor. (53 Stat. 357, 358, 360, 364, 375; 26 U. S. C. 3101, 3105, 3112, 3124, 3176.)

SEC. 182.572. PROCEDURE WHEN TANK CAR OR TANK TRUCK IS EMPTIED.—When the vendee receives taxpaid alcohol in a tank car or tank truck he shall, at the time the car or truck is emptied, dispose of the certificate of taxpayment, Form 1595, or wholesale liquor dealer's stamp, as the case may be, in accordance with the procedure prescribed by Regulations 11 (26 CFR, part 189), Regulations 15 (26 CFR, part 190) or Regulations 29 (26 CFR, part 197). The district supervisor will investigate any discrepancy which may be found respecting the shipment in accordance with such regulations. (53 Stat. 358, 360, 364, 375; 26 U. S. C. 3105, 3112, 3124, 3176.)

SEC. 182.574. COMPARISON OF SCALPED CERTIFICATE OR WHOLESALE LIQUOR DEALER'S STAMP WITH APPLICATION.—The district supervisor will compare the cut out portion of the certificate or wholesale liquor dealer's stamp with the copy of the application, Form 1594 or Form 92, as the case may be, and investigate any discrepancy. (53 Stat. 358, 360, 364, 375; 26 U. S. C. 3105, 3112, 3124, 3176.)

TAXPAID WITHDRAWALS BY PIPELINE TO RECTIFYING PLANT OR TAXPAID BOTTLING HOUSE

* * * * * * *

SEC. 182.574a–1. METHODS OF TAXPAYMENT.—The tax on alcohol to be removed by pipeline to a contiguous rectifying plant or taxpaid bottling house will be paid by the proprietor (*a*) by use of a certificate of taxpayment, Form 1595, issued pursuant to application on Form 1594, or (*b*) by use of distilled spirits stamps prescribed by section 182.574h. Where taxpayment is by use of a certificate of taxpayment, Form 1595, the certificate will be procured and used in accordance with section 182.574b–182.574d and 182.574e. Where taxpayment is by use of distilled spirits stamps, they will be procured in accordance with sections 182.574h–182.574j. (53 Stat. 298 as amended, 358, 360, 364, 374, 375; 26 U. S. C. 2800, 3105, 3112, 3124, 3172, 3176.)

SEC. 182.574d–1. USE OF DISTILLED SPIRITS STAMPS.—Where taxpayment is to be by use of distilled spirits stamps, the proprietor, upon receipt of the copies of Form 1440 from the storekeeper-gauger pursuant to section 182.574a, will cancel the necessary number of stamps, in the exact amount of the tax due, in the manner prescribed by section 182.568a. The proprietor will attach the canceled distilled spirits stamps to one copy of Form 1440 and return all copies of that form to the Government officer. The Government officer will determine that

the canceled stamps are in the full amount of the tax shown due on the Form 1440, and will then further cancel and deface the stamps in the manner prescribed by section 182.568a and will execute a certificate on all copies of Form 1440 (using the certificate of the collector, properly modified) certifying to the receipt and further cancellation of stamps for the amount of tax due. The canceled distilled spirits stamps will be securely attached to the copy of Form 1440 by means of a staple, eyelet, or similar device. Such copy of Form 1440 will be attached to the board on the weighing tank and remain thereon until the alcohol covered by such stamps has been removed. Form 1440 will be disposed of in accordance with section 182.574e. (53 Stat. 298 as amended, 358, 360, 364, 374, 375, 375, 398; 26 U. S. C. 2800, 3105, 3112, 3124, 3172, 3175, 3176, 3300.)

SEC. 182.574e. TRANSFER OF ALCOHOL.—When a certificate of taxpayment has been affixed to the weighing tank and canceled, or when the Form 1440 to which the canceled distilled spirits stamps are attached has been attached to the weighing tank, the storekeeper-gauger will unlock the outlet valve and permit the proprietor to transfer the alcohol by pipeline to the rectifying plant or taxpaid bottling house. The alcohol shall be transferred only under the immediate supervision of the storekeeper-gauger at the industrial alcohol plant or bonded warehouse and the storekeeper-gauger at the rectifying plant or taxpaid bottling house who shall verify by weight or measure the quantity received. After the alcohol has been transferred, the storekeeper-gauger will forward one copy of Form 1440 with the canceled Form 1595, or the canceled distilled spirits stamps, as the case may be, to the district supervisor and deliver two copies of Form 1440 to the proprietor who will deliver one copy of such form to the rectifier or bottler. (53 Stat. 357, 358, 360, 364, 374, 375; 26 U. S. C. 3101, 3105, 3112, 3124, 3172, 3176.)

SEC. 182.574g. COMPARISON OF CANCELED CERTIFICATE WITH APPLICATION.—The district supervisor will compare the canceled certificate with the copy of the application, Form 1594, and the report of gauge, Form 1440, as to the number of gallons of alcohol, the amount of tax, etc., and investigate any discrepancy. (53 Stat. 358, 360, 364, 375; 26 U. S. C. 3105, 3112, 3124, 3176.)

DISTILLED SPIRITS STAMPS FOR REMOVALS BY PIPELINES, TANK CARS, AND TANK TRUCKS

SEC. 182.574h. DISTILLED SPIRITS EXCISE TAX STAMPS.—The tax on alcohol removed in tank cars or tank trucks, or by pipeline, may be paid by Distilled Spirits Excise Tax stamps (Series of 1950). Such stamps may be purchased in various denominations by the proprietor from the collector of internal revenue of the district in which the industrial alcohol plant or industrial alcohol bonded warehouse is located. The stamps may be purchased in advance of actual needs, in order to be readily available when needed. The stamps may not be purchased by one proprietor from another, nor may they, except in cases of emergency, be purchased from collectors of other districts. Proprietors shall not sell or transfer stamps, except that they may (*a*) transfer such stamps to other premises operated by themselves as provided in section 182.574k pursuant to the prior approval of the district supervisor, or (*b*) return such stamps for redemption in accordance with section 182.574l. Distilled spirits stamps for taxpayment of alcohol as authorized by this part, used or unused, may not be purchased, sold, or possessed, except as specifically authorized by this part. (53 Stat. 298 as amended, 358, 360, 364, 374, 375, 398, 399; 26 U. S. C. 2800, 3105, 3112, 3124, 3172, 3176, 3300, 3304.)

SEC. 182.574i. FORM 427-D.—With each purchase of stamps the proprietor will submit to the collector Form 427-D, in triplicate, properly filled out. The collector will stamp the date of sale on all copies of Form 427-D, return one copy to the proprietor with the stamps and send one copy to the appropriate district supervisor. The remaining copy of Form 427-D will be filed in the collector's office so that all purchases of stamps may be verified at any time. The collector will refuse to sell stamps when such form is not submitted. (53 Stat. 298 as amended, 358, 364, 374, 375; 26 U. S. C. 2800, 3105, 3124, 3172, 3176.)

SEC. 182.574j. REMITTANCE: DELIVERY.—All orders for stamps must be accompanied by proper remittance in a sum equal to the value of the stamps. Unless the stamps are called for by the proprietor or his agent in person, they will be sent to him by ordinary mail, registered mail, or express, at the expense of the proprietor. When the stamps are not called for in person the proprietor will specify on Form 427-D the means (ordinary mail, registered mail, or express) by which he desires the stamps sent to him. If the stamps are ordered

sent by ordinary mail, the proprietor shall enclose with his order sufficient postage stamps, or a separate remittance to cover the postage. If the stamps are ordered sent by registered mail, the proprietor shall include the postage and registry fee and any required registry surcharge, as provided by the postal laws and regulations. If the remittance is other than cash, the sum to cover the postage, registry fee, or surcharge must not be included in the remittance covering the cost of the stamps. The local postmaster should be consulted relative to the amount of the registry fee and surcharge required. Stamps forwarded by express will be sent "collect." (53 Stat. 298 as amended, 358, 364, 374, 375, 447 as amended; 26 U. S. C. 2800, 3105, 3124, 3172, 3176, 3656.)

SEC. 182.574k. TRANSFER TO OTHER PREMISES.—A proprietor operating other plants on the same or contiguous premises may transfer stamps to such plants from time to time pursuant to prior approval of the district supervisor. When the alcohol plant or bonded warehouse is permanently discontinued, or the proprietor has no use for the stamps thereat and the proprietor operates other premises in which the stamps could be used, he may transfer such stamps to such other premises for use thereat pursuant to prior approval of the district supervisor. If the premises to which the stamps are to be transferred is located in another supervisory district, the supervisor granting authority to transfer the stamps will advise the district supervisor of the other district so that he may know that the receiving premises is entitled to receive the stamps. The latter district supervisor will also inform the Government officer assigned to the receiving premises of the authority to receive the stamps. A report of all transfers of stamps must be made on Form 1697, as provided in section 182.648c. (53 Stat. 298, as amended, 358, 364, 374, 375, 375; 26 U. S. C. 2800, 3105, 3124, 3172, 3175, 3176.)

SEC. 182.574l. REDEMPTION OF DISTILLED SPIRITS STAMPS.—Distilled spirits stamps, for taxpayment of alcohol to be removed in a tank car or tank truck or by pipeline, may be redeemed pursuant to section 3304, Internal Revenue Code, which reads as follows:

"REDEMPTION OF STAMPS. (a) AUTHORIZATION.—The Commissioner, subject to regulations prescribed by the Secretary, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of law, to denote the payment of any internal revenue tax, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected.

"(b) METHOD AND CONDITIONS OF ALLOWANCE.—Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Commissioner, or until satisfactory proof has been made showing the reason why the same cannot be returned; or, if so required by the said Commissioner, when the person presenting the same cannot satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

"(c) TIME FOR FILING CLAIMS.—No claims for the redemption of or allowance for stamps shall be allowed unless presented within four years after the purchase of such stamps from the Government.

"(d) FINALITY OF COMMISSIONER'S DECISION.—The findings of facts in and the decision of the Commissioner upon the merits of any claim presented under or authorized by this section shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer." (53 Stat. 358, 364, 375, 399; 26 U. S. C. 3105, 3124, 3176, 3304.)

SEC. 182.574m. CLAIM TO COLLECTOR.—Proprietors desiring to have distilled spirits stamps, described in section 182.5741, redeemed under the provisions of section 3304, I. R. C., must make claim on Form 843 to the collector of internal revenue. The stamps, for which redemption is claimed, must be attached to the claim, and the number and denominations thereof must be listed on the claim or on a sheet of paper attached thereto. Where the stamps have been destroyed, evidence satisfactory to the Commissioner establishing such destruction must accompany the claim. (53 Stat. 298 as amended, 358, 364, 374, 375, 399; 26 U. S. C. 2800, 3105, 3124, 3172, 3176, 3304.)

SEC. 182.574n. UNREDEEMABLE STAMPS.—Distilled spirits stamps may not be redeemed while alcohol on which the stamps can be used in taxpayment, remains on hand and while the alcohol plant or bonded warehouse remains in a qualified status unless it is shown that the manner of taxpaying alcohol thereat is such that the stamps may not be used. When an alcohol plant or bonded warehouse is discontinued and stamps remain on hand, such stamps are not redeemable if the proprietor operates other premises at which the stamps could be used. In such cases the stamps will be transferred to the other premises for use thereat in accordance with section 182.574k. Notation of the transfer must be made on Form 1697 for both premises. (53 Stat. 298 as amended, 358, 364, 374, 375, 399; 26 U. S. C. 2800, 3105, 3124, 3172, 3176, 3304.)

WHOLESALE LIQUOR DEALER'S STAMPS FOR TANK CARS AND TANK TRUCKS

SEC. 182.574o. APPLICATION FOR STAMPS, FORM 92.—Where alcohol, taxpaid by use of distilled spirits stamps authorized by section 182.566a, is to be removed by tank car or tank truck, the proprietor will make application to the storekeeper-gauger on Form 92, properly modified, for a wholesale liquor dealer's stamp to be affixed to such container. Form 92 will be prepared in quadruplicate for intradistrict shipments and in quintuplicate for interdistrict shipments. All information indicated by the headings of the various columns and lines on the form and the instructions printed thereon or issued in respect thereto, and as required by this part, shall be furnished. All copies of the Form 92 will be submitted to the storekeeper-gauger in charge of the premises. If the alcohol is correctly described on Form 92 and has been properly taxpaid, the storekeeper-gauger will sign all copies and return the Form 92 to the proprietor. The proprietor will execute his certificate on Form 92, entering therein, in appropriate columns, the name of the owner of the car or truck and the car or truck number, the net weight, proof, and proof gallons of the alcohol as shown on the Form 1440 covering taxpayment, and the statement "Consigned to:" followed by the name and address of the consignee. When application is being made for a wholesale liquor dealer's stamp for alcohol which will be shipped to a taxpaid bottling house or rectifying plant, there shall also be entered on the Form 92 a notation showing the material from which the alcohol was produced, such as, "Alcohol—grain," "Alcohol—cane," "Alcohol—fruit," "Alcohol—distilled from grain," "Alcohol—distilled from cane," or "Alcohol—distilled from fruit." All copies of Form 92 will be given to the storekeeper-gauger in charge. (53 Stat. 298 as amended, 357, 358, 360, 364, 374, 375, 375; 26 U. S. C. 2800, 3101, 3105, 3112, 3124, 3172, 3175, 3176.)

SEC. 182.574p. ISSUANCE OF WHOLESALE LIQUOR DEALER'S STAMPS.—Upon receipt of Form 92 with the application for the wholesale liquor dealer's stamps duly executed, the storekeeper-gauger will issue a wholesale liquor dealer's stamp, and enter the serial number thereof on all copies of Form 1440 and in part 4 on all copies of Form 92. When issuing the stamps, the storekeeper-gauger will enter on each all the information called for and sign each stamp in the space provided therefor, using only such ink as will neither fade nor blur. (53 Stat. 357, 358, 360, 364, 375; 26 U. S. C. 3101, 3105, 3112, 3124, 3176.)

SEC. 182.574q. DISPOSITION OF FORM 92.—When the wholesale liquor dealer's stamp has been issued and the serial number thereof recorded on Form 92, the storekeeper-gauger shall return two copies of Form 92 to the proprietor with the stamp, forward one copy of the form to the district supervisor and retain one copy. The storekeeper-guager shall place his retained copy of Form 92 in a permanent file as authority for issuance of the stamp. The proprietor will forward one copy of Form 92 to the vendee. Where the vendee is located in a different supervisory district, the storekeeper-gauger will send the remaining copy of Form 92 to the supervisor of the district in which the vendee is located. (53 Stat. 357, 358, 360, 364, 375; 26 U. S C. 3101, 3105, 3112, 3124, 3176.)

SEC. 182.574r. STAMP STUB.—The storekeeper-gauger shall enter on the stub connected with each wholesale liquor dealer's stamp data similar to that entered on the stamp, to preserve a perfect record of the detached stamp. (53 Stat. 357, 358, 360, 364, 375; 26 U. S. C. 3101, 3105, 3112, 3124, 3176.)

SEC. 182.574s. WHOLESALE LIQUOR DEALER'S STAMP BOOKS.—Wholesale liquor dealer's stamps will be furnished by collectors to district supervisors upon request. District supervisors will supply storekeeper-gaugers in charge of industrial alcohol plants or bonded warehouses where such stamps are used with such quantities of stamps as may be required. When all the stamps in a book have been issued the storekeeper-gauger in charge will return the stub

book to the district supervisor. (53 Stat. 357, 358, 360, 364, 375; 26 U. S. C. 3101, 3105, 3112, 3124, 3176.)

SEC. 182.574t. RECORD AND REPORT OF WHOLESALE LIQUOR DEALER'S STAMPS.—Storekeeper-gaugers having custody of wholesale liquor dealer's stamps at industrial alcohol plants or bonded warehouses will keep a record of such stamps received and used on part 1 of Form 118, properly modified for the purpose, and as required by instructions on the form or as issued in respect thereto. The record will be kept in bound form available for inspection by other Government officers. The storekeeper-gauger will prepare his monthly report on part 2 of Form 118, properly modified and in duplicate, retain one copy and furnish one copy to the district supervisor. (53 Stat. 357, 358, 360, 364, 375; 26 U. S. C. 3101, 3105, 3112, 3124, 3176.)

FORM 1440

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SEC. 182.643a. APPLICATION FOR WITHDRAWAL.—When the proprietor desires to withdraw alcohol from the bonded warehouse for any lawful purpose and has complied with all the requirements of the law and the regulations in this part respecting the particular withdrawal, he will make application on the back of each copy of Form 1440, covering the withdrawal, to the storekeeper-gauger in charge for permission to withdraw the alcohol. If withdrawal is to be made upon taxpayment, the proprietor shall present to the storekeeper-gauger the prescribed taxpaid stamps, distilled spirits stamps, or certificate of taxpayment covering the alcohol to be withdrawn. If the alcohol is to be transferred in bond to another bonded warehouse or shipped to a denaturing plant or withdrawn for export or other lawful tax-free purpose, the proprietor will present to the storekeeper-gauger the necessary permit authorizing such withdrawal. The storekeeper-gauger will examine the taxpaid stamps, distilled spirits stamps, certificate of taxpayment, or the permit authorizing transfer in bond or tax-free withdrawal, and if he finds that the tax has been paid or, in the case of transfer in bond or tax-free withdrawal, that proper withdrawal permit is held by the proprietor, the storekeeper-gauger will sign the authorization on Form 1440 for the withdrawal of the alcohol. (53 Stat. 357, 358, 360, 364, 373, 374, 375; 26 U. S. C. 3101, 3105, 3112, 3124, 3171, 3172, 3176.)

RECORDS AND REPORTS OF PROPRIETOR

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SEC. 182.648c. DISTILLED SPIRITS STAMP REPORT, FORM 1697.—Every proprietor of an industrial alcohol plant or bonded warehouse who taxpays alcohol by use of distilled spirits stamps shall make a report on Form 1697, properly modified, of all distilled spirits stamps received and used at his alcohol plant or bonded warehouse. Entries will be made thereon and the report submitted in accordance with the headings of the various lines and columns on the form and the instructions printed thereon or issued in respect thereto and as required by this part. When distilled spirits stamps are surrendered for redemption, in accordance with sections 182.574l and 182.574m, or are transferred to, or received from other premises operated by the proprietor, as authorized by section 182.574k, a report thereof must be made on Form 1697, giving the reason for such surrender, transfer, or receipt, the date thereof, and the denominations of the stamps surrendered, transferred, or received, and, in cases of transfer or receipt, the name, registry number, and location of the premises to which the stamps were transferred or from which they were received. (53 Stat. 298 as amended, 358, 360, 364, 374, 375; 26 U. S. C. 2800, 3105, 3112, 3124, 3172, 3176.)

4. Regulations 4 (26 CFR, part 183; 15 F. R. 5334), "Production of Distilled Spirits," as amended, are amended as follows:

(*a*) Sections 183.301, 183.546, 183.549, 183.550, 183.551, 183.552, 183.553 and 183.554 are amended;

(*b*) Sections 183.546a, 183.548a, 183.554a, 183.554b, 183.554c, 183.554d, 183.554e, 183.554f, 183.554g, 183.554h, 183.554i, 183.554j, 183.554k, 183.554l, 183.554m and 183.554n are added; and

(*c*) Section 183.552a is revoked.

SUBPART N—ACTION BY DISTRICT SUPERVISOR

ORIGINAL ESTABLISHMENT

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SEC. 183.301. REGISTRY NUMBERS.—Registered distilleries will be numbered serially in the order of their establishment. A separate series will be used for each State. Registry numbers heretofore assigned will be retained, and new distilleries will be assigned numbers in sequence thereto. Registry numbers previously assigned to discontinued distilleries will not be reassigned to other distilleries. In the case of a successor taking over the distillery, the same registry number will be retained. In the case of a change in location of the distillery within the same State, the same registry number may be retained. (53 Stat. 375; 26 U. S. C. 3176.)

SUBPART W—TAXPAYMENT, REMOVAL, AND TRANSFER OF DISTILLED SPIRITS FROM CISTERN ROOM

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TAXPAYMENT FOR REMOVAL BY PIPELINE OR IN TANK CARS OR TANK TRUCKS

SEC. 183.546. APPLICATION, FORM 179.—Whenever the distiller desires to taxpay and remove distilled spirits direct from the cistern room by approved pipelines to contiguous premises, or in tank cars or tank trucks, he shall execute application therefor on Form 179, in quadruplicate. The distiller shall state, in addition to other applicable data on the form, the approximate quantity to be withdrawn and whether such removal will be by pipeline, or by tank car or tank truck. If the spirits are to be removed in a tank car or tank truck, the number thereof, and the name or symbols of the owner, shall also be stated on the Form 179. All copies of Form 179 shall be delivered to the storekeeper-gauger, whereupon such spirits will be run into a weighing tank and gauged for removal. The storekeeper-gauger shall enter the details of the gauge on Form 1520, in quintuplicate. The proof at which the spirits were distilled, and in the case of tank car or tank truck shipments, the number and name or symbols of the owner of the tank car or tank truck, shall be noted on Form 1520 by the storekeeper-gauger. The storekeeper-gauger will execute his report on each copy of Form 179 and will return all copies thereof, with four copies of Form 1520 attached, to the distiller, who will enter in the space provided therefor on each copy of Form 179, the description of the spirits gauged. (53 Stat. 298 as amended, 335 as amended, 375, 492; 26 U. S. C. 2800, 2883, 3176, 4017.)

SEC. 183.546a. METHODS OF TAXPAYMENT.—The tax on distilled spirits to be removed by pipeline to a contiguous rectifying plant or taxpaid bottling house or to be removed in a tank car or tank truck will be paid by the distiller (*a*) by use of a certificate of taxpayment, Form 1595, issued pursuant to application on Form 1594, or (*b*) by use of distilled spirits stamps prescribed by section 183.554a. Where distilled spirits which are to be removed by tank car or tank truck are taxpaid by use of distilled spirits stamps, a wholesale liquor dealer's stamp will be affixed to the tank car or tank truck. Where taxpayment is by use of a certificate of taxpayment, Form 1595, the certificate will be procured and used in accordance with sections 183.547 and 183.548 and sections 183.549–183.553. Where taxpayment is by use of distilled spirits stamps, they will be procured in accordance with sections 183.554a–183.554c and used in accordance with section 183.548a. Where distilled spirits stamps are used for taxpayment of distilled spirits removed by tank car or tank truck, a wholesale liquor dealer's stamp for affixing thereto will be procured in accordance with sections 183.554i and 183.554j. (53 Stat. 298 as amended, 335 as amended, 374, 375; 26 U. S. C. 2800, 2883, 3172, 3176.)

SEC. 183.548a. USE OF DISTILLED SPIRITS STAMPS.—Where spirits are to be taxpaid by use of distilled spirits stamps, the distiller, upon receipt of the copies of Forms 179 and 1520 from the storekeeper-gauger pursuant to section 183.546, will cancel the necessary number of stamps in the exact amount of the tax due by perforation, as prescribed herein, or by legibly writing or stamping on each stamp with indelible (india) ink, his name, the registry number of the distillery, and the serial number of Form 179; for example, "John Doe Distilling Company, Registered Distillery No. 63, New Jersey, Form 179 Serial Number _____."

Prior to use in taxpayment, the distiller, if he so desires, may partially precancel the stamps to the extent of showing his name and registry number only. The serial number of the Form 179 must not be entered on the stamp in advance of actual use in taxpayment. The district supervisor may, in his discretion, approve a suitable abbreviation of the required information for cancellation, including the initials for the name of the distiller, if adequate for identification; for example, "J. D. Dist. Co. RD 63–NJ–179 S/N ------." The distiller's cancellation must be made on the lower portion of the stamp below the figures and words indicating the denomination of the stamp. If the distiller's cancellation is made by perforation, each letter and figure of the cancellation must be not less than one-fourth of an inch in height and of proportionate width and suitably spaced for legibility and distinctness, and must be clearly and sharply outlined either (*a*) by perforation through the substance of the stamp, and not merely puncturing it, each perforation to be not less than one thirty-second of an inch in width or diameter; or (*b*) by perforations in the form of incisions through the stamp of at least one thirty-second of an inch in width, cutting out the form of the letters and figures from the substance of the stamp, which letters and figures must be of the size, spacing, and distinctness as above specified. The distiller will then attach the cancelled distilled spirits stamps to one copy of Form 179 and submit all copies of Forms 179 and 1520 to the Government officer. The Government officer, after determining that the canceled stamps are in the proper amount of the tax shown due on the Form 179, will then further cancel and deface the stamps by cutting a hole one-half inch square in the upper right-hand corner, and wholly within the border of each stamp and will execute a certificate on all copies of Form 179 (using the certificate of the collector, properly modified) certifying to the receipt and further cancellation of stamps in the amount of tax due. The serial number of the Form 179 will be entered on Form 1520 in the column provided for the kind and serial number of the stamp as an indication that taxpayment was by use of distilled spirits stamps. The canceled distilled spirits stamps will be securely attached to a copy of Form 179 by means of a staple, eyelet, or similar device. Such copy of Form 179, and the accompanying copy of Form 1520, will be attached to the board on the weighing tank and remain thereon until the spirits covered by such stamps have been removed. Where removal is to be by tank car or tank truck, the distiller will procure a wholesale liquor dealer's stamp to be affixed thereto in accordance with sections 183.554i and 183.554j. Forms 179 and 1520 will be disposed of in accordance with section 183.552 or section 183.553, as the case may be. (53 Stat. 298 as amended, 335 as amended, 374, 375, 375, 398; 26 U. S. C. 2800, 2883, 3172, 3175, 3176, 3300.)

SEC. 183.549. ROUTE BOARD.—Tank cars and tank trucks used for the transportation of taxpaid distilled spirits must be equipped with a route board at least 10 by 12 inches in size, to which Form 1595 or a wholesale liquor dealer's stamp can be attached. Such board shall be of substantial material and shall be affixed permanently and securely to the tank car or tank truck by round-headed or carriage bolts, nutted and riveted, battered or welded. (53 Stat. 335 as amended, 375; 26 U. S. C. 2883, 3176.)

SEC. 183.550. BILL OF LADING.—The distiller shall incorporate in the bill of lading, if any, a description of Form 1595, as follows:

Form 1595, Serial No. ------ Owner and No. of Car (or Truck) ------ Vendor ------
Address ------
Vendee ------ Address ------

Where no bill of lading is issued, as in the case of transfer of a tank car between plants by switching arrangements, the distiller shall incorporate in Form 1520 such description of Form 1595. Where a wholesale liquor dealer's stamp is used in lieu of Form 1595, the distiller shall incorporate in the bill of lading, if any, a description of the stamp, showing the kind of stamp and the serial number. (53 Stat. 335 as amended, 375; 26 U. S. C. 2883, 3176.)

SEC. 183.551. STOREKEEPER-GAUGER'S VERIFICATION.—If taxpayment is by means of a certificate of taxpayment (Form 1595), the distiller shall give the certificate, the bill of lading, if any, and all copies of Form 179 and Form 1520 to the storekeeper-gauger. The storekeeper-gauger will transcribe the serial number of the certificate, Form 1595, to his retained copy of Form 1520 and will verify the contents of the weighing tank and the description of Form 1595 in the bill or lading or on Form 1520, as the case may be, and will date and sign the certificate. Form 1595,

in the space provided therefor. The certificate must be attached to a board or the weighing tank. If taxpayment is by means of distilled spirits stamps and evidenced by a wholesale liquor dealer's stamp (tank car or tank truck removals only), the distiller shall give the bill of lading, if any, to the storekeeper-gauger at the distillery who will verify the description of the wholesale liquor dealer's stamp on the bill of lading, if any. (53 Stat. 298 as amended 335 as amended, 375; 26 U. S. C. 2800, 2883, 3176.)

RELEASE OF SPIRITS FOR TRANSFER

SEC. 183.552. BY PIPELINE TO CONTIGUOUS PREMISES.—When the certificate of taxpayment, Form 1595, has been affixed to the weighing tank, in the case of pipeline transfers to contiguous premises, it will be canceled in the same manner as the taxpaid stamp on a package. If taxpayment has been by means of distilled spirits stamps, in lieu of Form 1595, the copy of Form 179 to which the canceled stamps are attached and the accompanying Form 1520 shall be affixed to the weighing tank. The storekeeper-gauger will unlock the outlet valve and permit the distiller to transfer the spirits by pipeline to the contiguous premises. The spirits shall be transferred only under the immediate supervision of the storekeeper-gauger who, after release of the spirits, will execute his statement of the date of withdrawal on the three copies of Form 179, forward one copy of each of Form 179 and Form 1520 with the canceled Form 1595, or the canceled distilled spirits stamps, as the case may be, attached thereto, to the district supervisor, retain one copy of Form 179 and Form 1520, and deliver one copy of Form 179 and two copies of Form 1520 to the distiller. The distiller will deliver immediately, one copy of Form 1520 to the proprietor of the contiguous establishment. (53 Stat. 298 as amended, 335 as amended, 375; 26 U. S. C. 2800, 2883, 3176.)

SEC. 183.553. BY TANK CAR OR TANK TRUCK.—When spirits are to be transferred to a tank car or tank truck for shipment the storekeeper-gauger, after the certificate of taxpayment, or the Form 179 with the distilled spirits stamps attached thereto, has been affixed to the weighing tank, shall unlock the outlet valve and permit the spirits to be transferred to the tank car or tank truck. The spirits shall be transferred only under the immediate supervision of the storekeeper-gauger. If a certificate of taxpayment, Form 1595, is used, the distiller, upon deposit of the spirits in the tank car or tank truck, will remove the certificate from the weighing tank and affix it securely to the route board on the tank car or tank truck, whereupon it will be canceled in the same manner as the taxpaid stamp on a package and then covered with a coating of transparent shellac, laquer, or varnish. If distilled spirits stamps are used and a wholesale liquor dealer's stamp issued to evidence taxpayment, the wholesale liquor dealer's stamp shall be similarly affixed to the tank car or tank truck, canceled and protected. The storekeeper-gauger will verify the contents of the tank car or tank truck, release same for shipment, execute his statement of the date of withdrawal on the three copies of Form 179, and note on all copies of Form 1520 the date of the release. When the tank car or tank truck is released, the storekeeper-gauger will forward one copy each of Form 179 and Form 1520 to the district supervisor, retain one copy of each form, and deliver one copy of Form 179 and two copies of Form 1520 together with the bill of lading, if any, to the distiller. Where distilled spirits stamps have been used to taxpay the spirits, the copy of Form 179 to which the canceled stamps are attached will be forwarded to the district supervisor. The distiller will forward immediately one copy of Form 1520 to the vendee. (53 Stat. 298 as amended, 335 as amended, 375; 26 U. S. C. 2800, 2883, 3176.)

PROCEDURE WHEN TANK CAR OR TANK TRUCK IS EMPTIED

SEC. 183.554. REQUIREMENTS.—When the vendee receives taxpaid distilled spirits in a tank car or tank truck, he shall, at the time the car or truck is emptied, dispose of the certificate of taxpayment, Form 1595, or wholesale liquor dealer's stamp, as the case may be, in accordance with the procedure prescribed by Regulations 11 (26 CFR, part 189), Regulations 15 (26 CFR, part 190) or Regulations 29 (26 CFR, part 197). The district supervisor will investigate any discrepancy which may be found respecting the shipment in accordance with such regulations. (53 Stat. 335 as amended, 375; 26 U. S. C. 2883, 3176.)

DISTILLED SPIRITS STAMPS FOR REMOVALS BY PIPELINES, TANK CARS, AND TANK TRUCKS

SEC. 183.554a. DISTILLED SPIRITS EXCISE TAX STAMPS.—The tax on distilled spirits removed in tank cars or tank trucks, or by pipeline, may be paid by distilled spirits excise tax stamps (series of 1950). Such stamps may be purchased in various denominations by the proprietor from the collector of internal revenue of the district in which the distillery is located. The stamps may be purchased in advance of actual needs, in order to be readily available when needed. The stamps may not be purchased by one proprietor from another, nor may they, except in cases of emergency, be purchased from collectors of other districts. Distillers shall not sell or transfer stamps except that they may (*a*) transfer such stamps to other premises operated by themselves as provided in section 183.554d pursuant to the prior approval of the district supervisor; or (*b*) return such stamps for redemption in accordance with section 183.554e. Distilled spirits stamps for taxpayment of distilled spirits as authorized by this part, used or unused may not be purchased, sold, or possessed, except as specifically authorized by this part. (53 Stat. 298 as amended, 335 as amended, 374, 375, 375, 398, 399; 26 U. S. C. 2800, 2883, 3172, 3175, 3176, 3300, 3304.)

SEC. 183.554b. FORM 427-D.—With each purchase of stamps the distiller will submit to the collector Form 427-D, in triplicate, properly filled out. The collector will stamp the date of sale on all copies of Form 427-D, return one copy to the distiller with the stamps and send one copy to the appropriate district supervisor. The remaining copy of Form 427-D will be filed in the collector's office so that all purchases of stamps may be verified at any time. The collector will refuse to sell stamps when such form is not submitted. (53 Stat. 298 as amended, 374, 375; 26 U. S. C. 2800, 3172, 3176.)

SEC. 183.554c. REMITTANCE; DELIVERY.—All orders for stamps must be accompanied by proper remittance in a sum equal to the value of the stamps. Unless the stamps are called for by the distiller or his agent in person, they will be sent to him by ordinary mail, registered mail, or express, at the expense of the distiller. When the stamps are not called for in person the distiller will specify on Form 427-D the means (ordinary mail, registered mail, or express) by which he desires the stamps sent to him. If the stamps are ordered sent by ordinary mail, the distiller shall enclose with his order sufficient postage stamps, or a separate remittance to cover the postage. If the stamps are ordered sent by registered mail, the distiller shall include the postage and registry fee and any required registry surcharge, as provided by the postal laws and regulations. If the remittance is other than cash the sum to cover the postage, registry fee, or surcharge must not be included in the remittance covering the cost of the stamps. The local postmaster should be consulted relative to the amount of the registry fee and surcharge required. Stamps forwarded by express will be sent "collect." (53 Stat. 298 as amended, 374, 447 as amended; 26 U. S. C. 2800, 3172, 3656.)

SEC. 183.554d. TRANSFER TO OTHER PREMISES.—A proprietor operating other plants on the same or contiguous premises may transfer stamps to such plants from time to time pursuant to prior approval of the district supervisor. When the distillery is permanently discontinued, or the proprietor has no use for the stamps thereat and the proprietor operates other premises in which the stamps could be used, he may transfer such stamps to such other premises for use thereat pursuant to prior approval of the district supervisor. If the premises to which the stamps are to be transferred is located in another supervisory district, the supervisor granting authority to transfer the stamps will advise the district supervisor of the other district so that he may know that the receiving premises is entitled to receive the stamps. The latter district supervisor will also inform the Government officer assigned to the receiving premises of the authority to receive the stamps. A report of all transfers of stamps must be made on Form 1697, as provided in section 183.554h. (53 Stat. 298 as amended, 374, 375; 26 U. S. C. 2800, 3172, 3176.)

SEC. 183.554e. REDEMPTION OF DISTILLED SPIRITS STAMPS.—Distilled spirits stamps for taxpayment of distilled spirits to be removed by pipeline or in tank cars or tank trucks may be redeemed pursuant to section 3304, Internal Revenue Code, which reads as follows:

"REDEMPTION OF STAMPS. (a) AUTHORIZATION.—The Commissioner, subject to regulations prescribed by the Secretary, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of law, to denote the payment of any internal revenue

tax, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected.

"(b) METHOD AND CONDITIONS OF ALLOWANCE.—Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Commissioner, or until satisfactory proof has been made showing the reason why the same cannot be returned; or, if so required by the said Commissioner, when the person presenting the same cannot satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

"(c) TIME FOR FILING CLAIMS.—No claims for the redemption of or allowance for stamps shall be allowed unless presented within four years after the purchase of such stamps from the Government.

"(d) FINALITY OF COMMISSIONER'S DECISION.—The findings of facts in and the decision of the Commissioner upon the merits of any claim presented under or authorized by this section shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer."
(53 Stat. 375, 399; 26 U. S. C. 3176, 3304.)

SEC. 183.554f. CLAIM TO COLLECTOR.—Distillers desiring to have distilled spirits stamps described in section 183.554e redeemed under the provisions of section 3304, I. R. C., must make claim on Form 843 to the collector of internal revenue. The stamps, for which redemption is claimed, must be attached to the claim, and the number and denominations thereof must be listed on the claim or on a sheet of paper attached thereto. Where the stamps have been destroyed, evidence satisfactory to the Commissioner establishing such destruction must accompany the claim. (53 Stat. 298 as amended, 374, 375, 399; 26 U. S. C. 2800, 3172, 3176, 3304.)

SEC. 183.554g. UNREDEEMABLE STAMPS.—Distilled spirits stamps may not be redeemed while distilled spirits on which the stamps can be used in taxpayment, remain on hand and while the distillery remains in a qualified status unless it is shown that the manner of taxpaying spirits thereat is such that the stamps may not be used. When a distillery is discontinued and stamps remain on hand, such stamps are not redeemable if the proprietor operates other premises at which the stamps could be used. In such cases the stamps will be transferred to the other premises for use thereat in accordance with section 183.554d. Notation of the transfer must be made on Form 1697 for both premises. (53 Stat. 298 as amended, 374, 375, 399; 26 U. S. C. 2800, 3172, 3176, 3304.)

SEC. 183.554h. DISTILLED SPIRITS STAMP REPORT, FORM 1697.—The distiller shall make a report on Form 1697, properly modified, of all distilled spirits stamps received and used at his distillery. Entries will be made thereon and the report submitted in accordance with the headings of the various lines and columns on the form and the instructions printed thereon or issued in respect thereto and as required by this part. When distilled spirits stamps are surrendered for redemption, in accordance with sections 183.554e and 183.554f, or are transferred to, or received from other premises operated by the distiller, as authorized in section 183.554d, a report thereof must be made on Form 1697, giving the reason for such surrender, transfer, or receipt, the date thereof, and the denominations of the stamps surrendered, transferred, or received, and, in cases of transfer or receipt, the name, registry number, and location of the premises to which the stamps were transferred or from which they were received. (53 Stat. 298 as amended, 335 as amended, 374, 375; 26 U. S. C. 2800, 2883, 3172, 3176.)

WHOLESALE LIQUOR DEALER'S STAMPS FOR TANK CARS AND TANK TRUCKS

SEC. 183.554i. APPLICATIONS FOR STAMPS, FORM 92.—Where distilled spirits, tax-paid by use of distilled spirits stamps authorized by section 183.546a, are to be removed by tank car or tank truck, the distiller will make application to the storekeeper-gauger on Form 92, properly modified, for a wholesale liquor dealer's

stamp to be affixed to such container. Form 92 will be prepared in quadruplicate for intradistrict shipments and in quintuplicate for interdistrict shipments. All information indicated by the headings of the various columns and lines on the form and the instructions printed thereon or issued in respect thereto, and as required by this part, shall be furnished. All copies of the Form 92 will be submitted to the storekeeper-gauger in charge of the distillery. If the spirits are correctly described on Form 92 and have been properly taxpaid, the storekeeper-gauger will sign all copies and return the Form 92 to the distiller. The distiller will execute his certificate on Form 92, entering therein, in appropriate columns, the kind of spirits, the name of the owner of the car or truck and the car or truck number, the net weight, proof, and proof gallons of the spirits as shown on the Form 1520 covering taxpayment, and the statement "Consigned to:" followed by the name and address of the consignee. All copies of Form 92 will be given to the storekeeper-gauger in charge. (53 Stat. 298 as amended, 301, 335 as amended, 374, 375; 26 U. S. C. 2800, 2802, 2883, 3172, 3176.)

SEC. 183.554j. ISSUANCE OF STAMPS.—Upon receipt of Form 92 with the application for the wholesale liquor dealer's stamp duly executed, the storekeeper-gauger in charge will issue a wholesale liquor dealer's stamp for the tank car or tank truck, as the case may be, and enter the serial number thereof on all copies of Form 1520 and in part 4 on all copies of Form 92. When issuing the stamps, the storekeeper-gauger will enter on each all the information called for and sign each stamp in the space provided therefor, using only such ink as will neither fade nor blur. (53 Stat. 301, 335 as amended, 375; 26 U. S. C. 2802, 2883, 3176.)

SEC. 183.554k. DISPOSITION OF FORM 92.—When the wholesale liquor dealer's stamp has been issued and the serial number thereof recorded on Form 92, the storekeeper-gauger shall return two copies of Form 92 to the distiller with the stamp, forward one copy of the form to the district supervisor and retain one copy. The storekeeper-gauger shall place his retained copy in a permanent file as authority for issuance of the stamp. The distiller will forward one copy of Form 92 to the vendee. Where the vendee is located in a different supervisory district, the storekeeper-gauger will send the remaining copy of Form 92 to the supervisor of the district in which the vendee is located. (53 Stat. 301, 335 as amended, 375; 26 U. S. C. 2802, 2883, 3176.)

SEC. 183.554l. STAMP STUB.—The storekeeper-gauger shall enter on the stub connected with each wholesale liquor dealer's stamp data similar to that entered on the stamp, to preserve a perfect record of the detached stamp. (53 Stat. 301, 335 as amended, 375; 26 U. S. C. 2802, 2883, 3176.)

SEC. 183.554m. WHOLESALE LIQUOR DEALER'S STAMP BOOKS.—Wholesale liquor dealer's stamps will be furnished by collectors to district supervisors upon request. District supervisors will supply storekeeper-gaugers in charge of registered distilleries where such stamps are used with such quantities of stamps as may be required. When all the stamps in a book have been issued the storekeeper-gauger in charge will return the stub book to the district supervisor. (53 Stat. 301, 335 as amended, 375; 26 U. S. C. 2802, 2883, 3176.)

SEC. 183.554n. RECORD AND REPORT OF WHOLESALE LIQUOR DEALER'S STAMPS.—Storekeeper-gaugers having custody of wholesale liquor dealer's stamps at registered distilleries will keep a record of such stamps received and used on part 1 of Form 118, properly modified for the purpose, and as required by instructions on the form and as issued in respect thereto. The record will be kept in bound form available for inspection by other Government officers. The storekeeper-gauger will prepare his monthly report on part 2 of Form 118, properly modified and in duplicate, retain one copy and furnish one copy to the district supervisor. (53 Stat. 301, 335 as amended, 375; 26 U. S. C. 2802, 2883, 3176.)

5. Regulations 5 (26 CFR, part 184; 15 F. R. 5552), "Production of Brandy," as amended, are amended as follows:

(*a*) Sections 184.51, 184.334, 184.587, 184.590, 184.591, 184.592, 184.593 and 184.594 are amended;

(*b*) Sections 184.587a, 184.589a, 184.594a, 184.594b, 184.594c, 184.594d, 184.594e, 184.594f, 184.594g, 184.594h, 184.594i, 184.594j, 184.594k, 184.594l, 184.594m and 184.594n, are added; and

(*c*) Section 184.593a is revoked.

SUBPART C—EXEMPTION OF FRUIT DISTILLERS FROM CERTAIN PROVISIONS OF LAW

EXEMPTIONS

* * * * * * *

SEC. 184.51. SECTIONS 2878(a) AND 2883, I. R. C.—Fruit distillers are exempted from the provisions of sections 2878(a) and 2883, I. R. C., to the extent that brandy of any desired proof may be drawn from receiving tanks and (a) removed from the distillery in packages or by pipe line or in tank cars or tank trucks in the manner prescribed in this part, or (b) stored in the brandy deposit room of the distillery temporarily as provided in this part. (53 Stat. 316 as amended, 375; 26 U. S. C. 2825, 3176.)

SUBPART O—ACTION BY DISTRICT SUPERVISOR

ORIGINAL ESTABLISHMENT

* * * * * * *

SEC. 184.334. REGISTRY NUMBERS.—Fruit distilleries will be numbered serially in the order of their establishment. A separate series will be used for each State. Registry numbers heretofore assigned will be retained, and new distilleries will be assigned numbers in sequence thereto. Registry numbers previously assigned to discontinued distilleries will not be reassigned to other distilleries. In the case of a successor taking over the distillery, the same registry number will be retained. In the case of a change in location of the distillery within the same State, the same registry number may be retained. (53 Stat. 375; 26 U. S. C. 3176.)

SUBPART X—TAXPAYMENT, REMOVAL AND TRANSFER OF BRANDY FROM DISTILLERY

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TAXPAYMENT FOR REMOVAL BY PIPELINE OR IN TANK CARS OR TANK TRUCKS

SEC. 184.587. APPLICATION FORM 179.—Whenever the distiller desires to taxpay and remove brandy from the distillery by approved pipelines to contiguous premises, or in tank cars or tank trucks, he shall execute application therefor on Form 179, in quadruplicate. The distiller shall state, in addition to other applicable data on the form, the approximate quantity to be withdrawn and whether such removal will be by pipeline, tank car or tank truck. If the brandy is to be removed in a tank car or tank truck, the number thereof, and the name or symbols of the owner, shall also be stated on the Form 179. All copies of Form 179 shall be delivered to the storekeeper-gauger, whereupon such brandy will be run into a weighing tank and gauged for removal. The storekeeper-gauger shall enter the details of the gauge on Form 1520, in quintuplicate. The proof at which the brandy was distilled, and in the case of tank car or tank truck shipments, the number and name or symbols of the owner of the tank car or tank truck, shall be noted on Form 1520 by the storekeeper-gauger. The storekeeper-gauger will execute his report on each copy of Form 179 and will return all copies thereof, with four copies of Form 1520 attached, to the distiller, who will enter in the space provided therefor on each copy of Form 179, the description of the brandy gauged. (53 Stat. 298 as amended, 333, 335 as amended, 375, 492; 26 U. S. C. 2800, 2878, 2883, 3176, 4017.)

SEC. 184.587a. METHODS OF TAXPAYMENT.—The tax on brandy to be removed by pipeline to a contiguous rectifying plant or taxpaid bottling house or to be removed in a tank car or tank truck will be paid by the distiller (*a*) by use of a certificate of taxpayment, Form 1595, issued pursuant to application on Form 1594, or (*b*) by use of distilled spirits stamps prescribed by section 184.594a. Where brandy which is to be removed by tank car or tank truck is taxpaid by use of distilled spirits stamps, a wholesale liquor dealer's stamp will be affixed to the tank car or tank truck. Where taxpayment is by use of a certificate of taxpayment, Form 1595, the certificate will be procured and used in accordance with sections 184.588, 184.589 and 184.590–184.594. Where taxpayment is by use of distilled spirits stamps, they will be procured in accordance with sections 184.594a–184.594c and used in accordance with section 184.589a. Where distilled spirits stamps are used for taxpayment of brandy removed by tank car or tank truck, a wholesale liquor dealer's stamp will be procured in accordance with

sections 184.594i and 184.594j. (53 Stat. 298 as amended, 335 as amended, 374, 375; 26 U. S. C. 2800, 2883, 3172, 3176.)

SEC. 184.589a. USE OF DISTILLED SPIRITS STAMPS.—Where brandy is to be taxpaid by use of distilled spirits stamps, the distiller, upon receipt of the copies of Forms 179 and 1520 from the storekeeper-gauger, pursuant to section 184.587, will cancel the necessary number of stamps in the exact amount of the tax due by perforation as prescribed herein, or by legibly writing or stamping on each stamp with indelible (india) ink, his name, the registry number of the distillery, and the serial number of Form 179; for example, "John Doe Distilling Company, Fruit Distillery No. 63, New Jersey, Form 169 Serial Number _____." Prior to use in taxpayment, the distiller, if he so desires, may partially precancel the stamps to the extent of showing his name and registry number only. The serial number of the Form 179 must not be entered on the stamp in advance of actual use in taxpayment. The district supervisor may, in his discretion, approve a suitable abbreviation of the required information for cancellation, including the initials for the name of the distiller if adequate for identification; for example, "J. D. Dist. Co. FD 63–NJ–179 S/N _____." The distiller's cancellation must be made on the lower portion of the stamp below the figures and words indicating the denomination of the stamp. If the distiller's cancellation is made by perforation, each letter and figure of the cancellation must be not less than one-fourth of an inch in height and of proportionate width and suitably spaced for legibility and distinctness, and must be clearly and sharply outlined either (*a*) by perforation through the substance of the stamp, and not merely puncturing it, each perforation to be not less than one thirty-second of an inch in width or diameter; or (*b*) by perforations in the form of incisions through the stamp of at least one thirty-second of an inch in width, cutting out the form of the letters and figures from the substance of the stamp, which letters and figures must be of the size, spacing, and distinctness as above specified. The distiller will then attach the stamps to one copy of Form 179 and 1520 to the Government officer. The Government officer, after determining that the canceled stamps are in the proper amount of the tax shown due on the Form 179, will then further cancel and deface the stamps by cutting a hole one-half inch square in the upper right-hand corner, and wholly within the border, of each stamp and will execute a certificate on all copies of Form 179 (using the certificate of the collector, properly modified) certifying to the receipt and further cancellation of stamps in the amount of tax due. The serial number of the Form 179 will be entered on Form 1520 in the column provided for the kind and serial number of the stamp as an indication that taxpayment was by use of distilled spirits stamps. The canceled distilled spirits stamps will be securely attached to a copy of Form 179 by means of a staple, eyelet, or similar device. Such copy of Form 179, and the accompanying copy of Form 1520, will be attached to the board on the weighing tank and remain thereof until the brandy covered by such stamps has been removed. Where removal is to be by tank car or tank truck, the distiller will procure a wholesale liquor dealer's stamp to be affixed thereto in accordance with sections 184.594i and 184.594j. Forms 179 and 1520 will be disposed of in accordance with section 184.593 or section 184.594, as the case may be. (53 Stat. 298 as amended, 335 as amended, 374, 375, 375, 398; 26 U. S. C. 2800, 2883, 3172, 3175, 3176, 3300.)

SEC. 184.590. ROUTE BOARD.—Tank cars and tank trucks used for the transportation of taxpaid brandy must be equipped with a route board at least 10 by 12 inches in size, to which Form 1595 or a wholesale liquor dealer's stamp can be attached. Such board shall be of substantial material and shall be affixed permanently and securely to the tank car or tank truck by roundheaded or carriage bolts, nutted and riveted, battered, or welded. (53 Stat. 335 as amended, 375; 26 U. S. C. 2883, 3176.)

SEC. 184.591. BILL OF LADING.—The distiller shall incorporate in the bill of lading, if any, a description of Form 1595 as follows:

Form 1595, Serial No._____ Owner and No. of Car (or Truck)_____
_____ Vendor _____
Address _____ Vendee _____
_____ Address _____

Where no bill of lading is issued, as in the case of transfer of a tank car between plants by switching arrangements, the distiller shall incorporate in Form 1520 such description of Form 1595. Where a wholesale liquor dealer's stamp is used in lieu of Form 1595, the distiller shall incorporate in the bill of lading,

if any, a description of the stamp, showing the kind of stamp and its serial number. (53 Stat. 335 as amended, 375; 26 U. S. C. 2883, 3176.)

SEC. 184.592. STOREKEEPER-GAUGER'S VERIFICATION.—If taxpayment is by means of a certificate of taxpayment (Form 1595), the distiller shall give the certificate, the bill of lading, if any, and all copies of Form 179 and Form 1520 to the storekeeper-gauger at the distillery. The storekeeper-gauger will transcribe the serial number of the certificate, Form 1595, to his retained copy of Form 1520 and will verify the contents of the weighing tank and the description of Form 1595 in the bill of lading or on Form 1520, as the case may be, and will date and sign the certificate, Form 1595, in the space provided therefor. The certificate must be attached to a board on the weighing tank. If taxpayment is by means of distilled spirits stamps and evidenced by a wholesale liquor dealer's stamp (tank car or tank truck removals only), the distiller shall give the bill of lading, if any, to the storekeeper-gauger at the distillery who will verify the description of the wholesale liquor dealer's stamp on the bill of lading, if any. (53 Stat. 298 as amended, 335 as amended, 375; 26 U. S. C. 2800, 2883, 3176.)

RELEASE OF BRANDY FOR TRANSFER

SEC. 184.593. BY PIPELINE TO CONTIGUOUS PREMISES.—When the certificate of taxpayment, Form 1595, has been affixed to the weighing tank, in the case of pipeline transfers to contiguous premises, it will be canceled in the same manner as the taxpaid stamp on a package. If taxpayment has been by means of distilled spirits stamps, in lieu of Form 1595, the copy of Form 179 to which the canceled stamps are attached and the accompanying Form 1520 shall be affixed to the weighing tank. The storekeeper-gauger will unlock the outlet valve and permit the distiller to transfer the brandy by pipeline to the contiguous premises. The brandy shall be transferred only under the immediate supervision of the storekeeper-gauger who, after release of the brandy will execute his statement of the date of withdrawal on the three copies of Form 179, forward one copy each of Form 179 and Form 1520 with the canceled Form 1595, or the canceled distilled spirits stamp, as the case may be, attached thereto, to the district supervisor, retain one copy of Form 179 and Form 1520, and deliver one copy of Form 179 and two copies of Form 1520 to the distiller. The distiller will deliver immediately one copy of Form 1520 to the proprietor of the contiguous establishment. (53 Stat. 298 as amended, 335 as amended, 375; 26 U. S. C. 2800, 2883, 3176.)

SEC. 184.594. BY TANK CAR OR TANK TRUCK.—When brandy is to be transferred to a tank car or tank truck for shipment the storekeeper-gauger, after the certificate of taxpayment or the Form 179 with the distilled spirits stamps attached thereto, has been affixed to the weighing tank, shall unlock the outlet valve and permit the brandy to be transferred to the tank car or tank truck. The brandy shall be transferred only under the immediately supervision of the storekeeper-gauger. If a certificate of taxpayment, Form 1595, is used, the distiller, upon deposit of the brandy in the tank car or tank truck, will remove the certificate from the weighing tank and affix it securely to the route board of the tank car or tank truck whereupon it will be canceled in the same manner as the taxpaid stamp on a package and then covered with a coating of transparent shellac, lacquer, or varnish. If distilled spirits stamps are used and a wholesale liquor dealer's stamp issued to evidence taxpayment, the wholesale liquor dealer's stamp shall be similarly affixed to the tank car or tank truck, canceled and protected. The storekeeper-gauger will verify the contents of the tank car or tank truck, release same for shipment, execute his statement of the date of withdrawal on the three copies of Form 179, and note on all copies of Form 1520 the date of the release. When the tank car or tank truck is released, the storekeeper-gauger will forward one copy each of Form 179 and Form 1520 to the district supervisor, retain one copy of each form, and deliver one copy of Form 179 and two copies of Form 1520 together with the bill of lading, if any, to the distiller. Where distilled spirits stamps have been used to taxpay the brandy, the copy of Form 179 to which the canceled stamps are attached will be forwarded to the district supervisor. The distiller will forward immediately one copy of Form 1520 to the vendee. When the vendee receives taxpaid brandy in a tank car or tank truck, he shall, at the time the car or truck is emptied, dispose of the certificate of taxpayment, Form 1595, or wholesale liquor dealer's stamp, as the case may be, in accordance with the procedure prescribed by Regulations 11 (26 CFR, part 189), Regulations 15 (26 CFR, part 190), or Regulations 29 (26 CFR, part 197). The district supervisor will investigate any

discrepancy which may be found respecting the shipment in accordance with such regulations. (53 Stat. 298 as amended, 335 as amended, 375; 26 U. S. C. 2800, 2883, 3176.)

DISTILLED SPIRITS STAMPS FOR REMOVALS BY PIPELINES, TANK CARS AND TANK TRUCKS

SEC. 184.594a. DISTILLED SPIRITS EXCISE TAX STAMPS.—The tax on brandy removed in tank cars or tank trucks, or by pipeline, may be paid by distilled spirits excise tax stamps (Series of 1950). Such stamps may be purchased in various denominations by the proprietor from the collector of internal revenue of the district in which the distillery is located. The stamps may be purchased in advance of actual needs, in order to be readily available when needed. The stamps may not be purchased by one proprietor from another, nor may they, except in cases of emergency, be purchased from collectors of other districts. Distillers shall not sell or transfer stamps, except that they may (*a*) transfer such stamps to other premises operated by themselves as provided in section 184.594d pursuant to the prior approval of the district supervisor; or (*b*) return such stamps for redemption in accordance with section 184.594e. Distilled spirits stamps for tax payment of brandy as authorized by this part, used or unused, may not be purchased, sold, or possessed, except as specifically authorized by this part. (53 Stat. 298 as amended, 335 as amended, 374, 375, 375, 398, 399; 26 U. S. C. 2800, 2883, 3172, 3175, 3176, 3300, 3304.)

SEC. 184.594b. FORM 427–D.—With each purchase of stamps the distiller will submit to the collector Form 427–D, in triplicate, properly filled out. The collector will stamp the date of sale on all copies of Form 427–D, return one copy to the distiller with the stamps and send one copy to the appropriate district supervisor. The remaining copy of Form 427–D will be filed in the collector's office so that all purchases of stamps may be verified at any time. The collector will refuse to sell stamps when such form is not submitted. (53 Stat. 298 as amended, 374, 375; 26 U. S. C. 2800; 3172, 3176.)

SEC. 184.594c. REMITTANCE: DELIVERY.—All orders for stamps must be accompanied by proper remittance in a sum equal to the value of the stamps. Unless the stamps are called for by the distiller or his agent in person, they will be sent to him by ordinary mail, registered mail, or express, at the expense of the distiller. When the stamps are not called for in person the distiller will specify on Form 427–D the means (ordinary mail, registered mail, or express) by which he desires the stamps sent to him. If the stamps are ordered sent by ordinary mail, the distiller shall enclose with his order sufficient postage stamps, or a separate remittance to cover the postage. If the stamps are ordered sent by registered mail, the distiller shall include the postage and registry fee and any required registry surcharge, as provided by the postal laws and regulations. If the remittance is other than cash the sum to cover the postage, registry fee, or surcharge must not be included in the remittance covering the cost of the stamps. The local postmaster should be consulted relative to the amount of the registry fee and surcharge required. Stamps forwarded by express will be sent "collect." (53 Stat. 298 as amended, 374, 447 as amended; 26 U. S. C. 2800, 3172, 3656.)

SEC. 184.594d. TRANSFER TO OTHER PREMISES.—A proprietor operating other plants on the same or contiguous premises may transfer stamps to such plants from time to time pursuant to prior approval of the district supervisor. When the distillery is permanently discontinued, or the proprietor has no use for the stamps thereat and the proprietor operates other premises in which the stamps could be used, he may transfer such stamps to such other premises for use thereat pursuant to prior approval of the district supervisor. If the premises to which the stamps are to be transferred is located in another supervisory district, the supervisor granting authority to transfer the stamps will advise the district supervisor of the other district so that he may know that the receiving premises is entitled to receive the stamps. The latter district supervisor will also inform the Government officer assigned to the receiving premises of the authority to receive the stamps. A report of all transfers of stamps must be made on Form 1697, as provided in section 184.594h. (53 Stat. 298 as amended, 374, 375; 26 U. S. C. 2800, 3172, 3176.)

SEC. 184.594e. REDEMPTION OF DISTILLED SPIRITS STAMPS.—Distilled spirits for taxpayment of brandy to be removed by pipeline or in tank cars or tank trucks may be redeemed pursuant to section 3304, Internal Revenue Code, which reads as follows:

"REDEMPTION OF STAMPS. (a) AUTHORIZATION.—The Commissioner, subject to regulation prescribed by the Secretary, may, upon receipt of satisfactory

evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of law, to denote the payment of any internal revenue tax, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected.

"(b) METHOD AND CONDITIONS OF ALLOWANCE.—Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Commissioner, or until satisfactory proof has been made showing the reason why the same cannot be returned; or, if so required by the said Commissioner, when the person presenting the same cannot satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

"(c) TIME FOR FILING CLAIMS.—No claims for the redemption of or allowance for stamps shall be allowed unless presented within four years after the purchase of such stamps from the Government.

"(d) FINALITY OF COMMISSIONER'S DECISION.—The findings of facts in and the decision of the Commissioner upon the merits of any claim presented under or authorized by this section shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer."

(53 Stat. 375, 399; 26 U. S. C. 3176, 3304.)

SEC. 184.594f. CLAIM TO COLLECTOR.—Distillers desiring to have distilled spirits stamps, described in section 184.594e, redeemed under the provisions of section 3304, I. R. C., must make claim on Form 843 to the collector of internal revenue. The stamps, for which redemption is claimed, must be attached to the claim, and the number and denominations thereof must be listed on the claim or on a sheet of paper attached thereto. Where the stamps have been destroyed, evidence satisfactory to the Commissioner establishing such destruction must accompany the claim. (53 Stat. 298 as amended, 374, 375, 399; 26 U. S. C. 2800, 3172, 3176, 3304.)

SEC. 184.594g. UNREDEEMABLE STAMPS.—Distilled spirits stamps may not be redeemed while brandy on which the stamps can be used in taxpayment, remains on hand and while the distillery remains in a qualified status unless it is shown that the manner of taxpaying brandy thereat is such that the stamps may not be used. When a distillery is discontinued and stamps remain on hand, such stamps are not redeemable if the proprietor operates other premises at which the stamps could be used. In such cases the stamps will be transferred to the other premises for use thereat in accordance with section 184.594d. Notation of the transfer must be made on Form 1697 for both premises. (53 Stat. 298 as amended, 374, 375, 399; 26 U. S. C. 2800, 3172, 3176, 3304.)

SEC. 184.594h. DISTILLED SPIRITS STAMP REPORT, FORM 1697.—The distiller shall make a report on Form 1697, properly modified, of all distilled spirits stamps received and used at his distillery. Entries will be made thereon and the report submitted in accordance with the headings of the various lines and columns on form and the instructions printed thereon or issued in respect thereto and as required by this part. When distilled spirits stamps are surrendered for redemption in accordance with sections 184.594e and 184.594f, or are transferred to, or received from other premises operated by the distiller, as authorized in section 184.594d, a report thereof must be made on Form 1697, giving the reason for such surrender, transfer, or receipt, the date thereof, and the denominations of the stamps surrendered, transferred, or received, and, in cases of transfer or receipt, the name, registry number, and location of the premises to which the stamps were transferred or from which they were received. (53 Stat. 298 as amended, 374, 375; 26 U. S. C. 2800, 3172, 3176.)

WHOLESALE LIQUOR DEALER'S STAMPS FOR TANK CARS AND TANK TRUCKS

SEC. 184.594i. APPLICATION FOR STAMPS, FORM 92.—Where brandy, taxpaid by use of distilled spirits stamps authorized by section 184.587a, is to be removed

by tank car or tank truck, the distiller will make application to the storekeeper-gauger on Form 92, properly modified, for a wholesale liquor dealer's stamp to be affixed to such container. Form 92 will be prepared in quadruplicate for intradistrict shipments and in quintuplicate for interdistrict shipments. All information indicated by the headings of the various columns and lines on the form and the instructions printed thereon or issued in respect thereto, and as required by this part, shall be furnished. All copies of the Form 92 will be submitted to the storekeeper-gauger in charge of the distillery. If the brandy is correctly described on Form 92 and has been properly taxpaid, the storekeeper-gauger will sign all copies and return the Form 92 to the distiller. The distiller will execute his certificate on Form 92, entering therein, in appropriate columns, the kind of brandy, the name of the owner of the car or truck and the car or truck number, the net weight, proof, and proof gallons of the brandy as shown on the Form 1520 covering taxpayment, and the statement "Consigned to:" followed by the name and address of the consignee. All copies of Form 92 will be given to the storekeeper-gauger in charge. (53 Stat. 298 as amended, 301, 335 as amended, 374, 375; 26 U. S. C. 2800, 2802, 2883, 3172, 3176.)

SEC. 184.594j. WHOLESALE LIQUOR DEALER'S STAMPS.—Upon receipt of Form 92 with the application for the wholesale liquor dealer's stamp duly executed, the storekeeper-gauger will issue a wholesale liquor dealer's stamp for the tank car or tank truck, as the case may be, and enter the serial number thereof on all copies of Form 1520 and in part 4 on all copies of Form 92. When issuing the stamps, the storekeeper-gauger will enter on each all the information called for and sign each stamp in the space provided therefor, using only such ink as will neither fade nor blur. (53 Stat. 301, 335 as amended, 375; 26 U. S. C. 2802, 2883, 3176.)

SEC. 184.594k. DISPOSITION OF FORM 92.—When the wholesale liquor dealer's stamp has been issued and the serial number thereof recorded on Form 92, the storekeeper-gauger shall return two copies of Form 92 to the distiller with the stamp, forward one copy of the form to the district supervisor and retain one copy. The storekeeper-gauger shall place his retained copy in a permanent file as authority for issuance of the stamp. The distiller will forward one copy of Form 92 to the vendee. Where the vendee is located in a different supervisory district, the storekeeper-gauger will send the remaining copy of Form 92 to the supervisor of the district in which the vendee is located. (53 Stat. 301, 335 as amended, 375; 26 U. S. C. 2802, 2883, 3176.)

SEC. 184.594l. STAMP STUB.—The storekeeper-gauger shall enter on the stub connected with each wholesale liquor dealer's stamp data similar to that entered on the stamp, to preserve a perfect record of the detached stamp. (53 Stat. 301, 335 as amended, 375; 26 U. S. C. 2802, 2883, 3176.)

SEC. 184.594m. WHOLESALE LIQUOR DEALER'S STAMP BOOKS.—Wholesale liquor dealer's stamps will be furnished by collectors to district supervisors upon request. District supervisors will supply storekeeper-gaugers in charge of plants where such stamps are used with such quantities of stamps as may be required. When all the stamps in a book have been issued the storekeeper-gauger in charge will return the stub book to the district supervisor. (53 Stat. 301, 335 as amended, 375; 26 U. S. C. 2802, 2883, 3176.)

SEC. 184.594n. RECORD AND REPORT OF WHOLESALE LIQUOR DEALER'S STAMPS.—Storekeeper-gaugers having custody of wholesale liquor dealer's stamps at fruit distilleries will keep a record of such stamps received and used on part 1 of Form 118, properly modified for the purpose, and as required by the instructions on the form and as issued in respect thereto. The record will be kept in bound form available for inspection by other Government officers. The storekeeper-gauger will prepare his monthly report on part 2 of Form 118, properly modified, and in duplicate, retain one copy and furnish one copy to the district supervisor. (53 Stat. 301, 335 as amended, 375; 26 U. S. C. 2802, 2883, 3176.)

6. Regulations 10 (26 CFR, part 185; 15 F. R. 5233), "Warehousing of Distilled Spirits," as amended, are amended as follows:

(*a*) Sections 185.311, 185.626, 185.626a, 185.631, 185.633, 185.654, 185.655, 185.656, 185.657, 185.658, 185.670, 185.672, 185.675, 185.676, 185.677, 185.678, 185.679, and 185.680 are amended; and

(*b*) Sections 185.653a, 185.653b, 185.653c and 185.675a are added.

SUBPART O—ACTION BY DISTRICT SUPERVISOR

ORIGINAL ESTABLISHMENT

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SEC. 185.311. REGISTRY NUMBERS.—Internal revenue bonded warehouses will be numbered serially in the order of their establishment. A separate series will be used for each State. Registry numbers heretofore assigned will be retained, and new warehouses will be assigned numbers in sequence thereto. Registry numbers previously assigned to discontinued warehouses will not be reassigned to other warehouses. In the case of a successor taking over the warehouse, the same registry number will be retained. In the case of a change in location of the warehouse within the same State, the same registry number may be retained. (53 Stat. 332, 375; 26 U. S. C. 2873, 3176.)

SUBPART CC—TAXPAID WITHDRAWALS BY GAUGE TANK

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SEC. 185.626. RELEASE OF SPIRITS FROM GAUGING TANK.—When the certificate of taxpayment has been affixed to the gauging tank, and canceled when required, the storekeeper-gauger will unlock the outlet valve to permit the removal of the spirits. The removal of spirits from the gauging tank must be under the immediate supervision of the storekeeper-gauger. When the spirits have been removed, the storekeeper-gauger will execute his statement of the date of withdrawal on the three copies of Form 179. If the spirits are transferred by pipeline, the storekeeper-gauger will forward one copy each of Forms 179 and 1520 and the canceled Form 1595 to the district supervisor, retain one copy each of Forms 179 and 1520 and deliver one copy of Form 179 and two copies of Form 1520 to the warehouseman, who will immediately deliver one copy of Form 1520 to the vendee. If the spirits are to be drawn into packages from the gauging tank for transfer to bottling premises, the procedure prescribed in sections 185.627–185.636 will be followed and when all spirits have been drawn into packages, the storekeeper-gauger will dispose of Forms 179, 1520, and 1595 in the manner provided in this section for removals by pipeline. If the spirits are to be removed by tank car or tank truck the procedure will be in accordance with the applicable provisions of sections 185.653a–185.659. (53 Stat. 298 as amended, 375; 26 U. S. C. 2800, 3176.)

SEC. 185.626a. TAXPAYMENT BY STAMPS.—Distilled spirits stamps prescribed by section 185.672 may be used, in lieu of a certificate of taxpayment (Form 1595), to taxpay spirits to be removed by pipeline to a contiguous rectifying plant or taxpaid bottling house, or to be drawn into packages, tank cars, or tank trucks, to which wholesale liquor dealer's stamps will be affixed. When spirits are to be so taxpaid, the proprietor, upon receipt of the copies of Forms 179 and 1520 from the storekeeper-gauger pursuant to section 185.622, will cancel the necessary number of stamps in the exact amount of the tax due by perforation (as prescribed by section 185.675a), or by legibly writing or stamping on each stamp with indelible (india) ink, his name, the registry number of the warehouse, and the serial number of Form 179; for example, "John Doe Distilling Company, Internal Revenue Bonded Warehouse 63, New Jersey, Form 179, Serial Number ------." Prior to use in taxpayment, the proprietor, if he so desires, may partially precancel the stamps to the extent of showing his name and registry number only as authorized by section 185.675. The district supervisor may, in his discretion, approve a suitable abbreviation of the required information for cancellation, including the initials for the name of the proprietor if adequate for identification; for example, "J. D. Dist. Co. IRBW 63–NJ–179 S/N ------." The proprietor's cancellation must be made on the lower portion of the stamp below the figures and words indicating the denomination of the stamp. The proprietor will then attach the canceled distilled spirits stamps to one copy of Form 179 and submit all copies of Forms 179 and 1520 to the Government officer. The Government officer will determine that the canceled stamps are in the full amount of the tax shown due on the Form 179 and will then further cancel and deface the stamps by cutting a hole one-half inch square in the upper right-hand corner, and wholly within the border, of each stamp, and will execute a certificate on all copies of Form 179 (using the certificate of the collector, properly modified) certifying to the receipt and further can-

cellation of stamps in the amount of tax due. The serial number of the Form 179 will be entered on Form 1520 in the column provided for the kind and serial number of the stamp, as an indication that taxpayment was by use of distilled spirits stamps. The canceled distilled spirits stamps will be securely attached to a copy of Form 179 by means of a staple, eyelet, or similar device. Such copy of Form 179 and the accompanying copy of Form 1520 will be attached to the board on the gauging tank and remain thereon until the spirits covered by the stamps have been removed. The release of the spirits from the tank and the disposition of the forms will be in accordance with the provisions of section 185.626. (53 Stat. 298 as amended, 335 as amended, 374, 375, 375, 398; 26 U. S. C. 2800, 2883, 3172, 3175, 3176, 3300.)

SEC. 185.631. ISSUANCE OF WHOLESALE LIQUOR DEALER'S STAMPS.—Upon receipt of Form 92 with the application for wholesale liquor dealer's stamps duly executed, the storekeeper-gauger in charge will issue a wholesale liquor dealer's stamp for each package listed on the form. When issuing the stamps, the storekeeper-gauger will enter on each stamp all the information called for and sign the stamps in the space provided therefor. The storekeeper-gauger may enter his signature by means of a facsimile stamp, provided care is taken to use only such ink as will neither fade nor blur. Where an appreciable number of wholesale liquor dealer's packages will be filled, the warehouseman must provide the storekeeper-gauger in charge with suitable rubber stamps for the insertion of information common to all wholesale liquor dealer's stamps to be used by him. The total gallonage for which wholesale liquor dealer's stamps are issued shall in no case exceed the taxable gallons shown on Form 179 unless due to normal variations in gauge. (53 Stat. 301, 329, 375; 26 U. S. C. 2082, 2863, 3176.)

SEC. 185.633. WHOLESALE LIQUOR DEALER'S STAMP BOOKS.—Wholesale liquor dealer's stamps will be furnished by collectors to district supervisors upon request. District supervisors will supply storekeeper-gaugers in charge of bonded warehouses where such stamps are used with such quantities of stamps as may be required. When all the stamps in a book have been issued, the storekeeper-gauger in charge will return the stub book to the district supervisor. (53 Stat. 301, 329, 375; 26 U. S. C. 2802, 2863, 3176.)

SUBPART DD—TAXPAID WITHDRAWALS IN TANK CARS AND TANK TRUCKS

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SEC. 185.653a. TAXPAYMENT BY STAMPS.—Distilled spirits stamps prescribed by section 185.672 may be used, in lieu of a certificate of taxpayment (Form 1595), to taxpay spirits to be removed by tank car or tank truck to which a wholesale liquor dealer's stamp will be affixed. When spirits are to be so taxpaid, the proprietor, upon receipt of the copies of Forms 179 and 1520 from the storekeeper-gauger pursuant to section 185.651, will cancel the necessary number of stamps in the exact amount of the tax due by perforation (as prescribed by section 185.675a) or by legibly writing or stamping on each stamp with indelible (india) ink, his name, the registry number of the warehouse, and the serial number of Form 179; for example, "John Doe Distilling Company, Internal Revenue Bonded Warehouse 63, New Jersey, Form 179, Serial Number ------." Prior to use in taxpayment, the proprietor, if he so desires, may partially precancel the stamps to the extent of showing his name and registry number only as authorized by section 185.675. The district supervisor may, in his discretion, approve a suitable abbreviation of the required information for cancellation, including the initials for the name of the proprietor, if adequate for identification; for example, "J. D. Dist. Co. IRBW 63-NJ-179 S/N------." The proprietor's cancellation must be made on the lower portion of the stamp below the figures and words indicating the denomination of the stamp. The proprietor will then attach the canceled distilled spirits stamps to one copy of Form 179 and submit all copies of Forms 179 and 1520 to the Government officer. The Government officer will determine that the canceled stamps are in the full amount of the tax shown due on the Form 179 and will then further cancel and deface the stamps by cutting a hole one-half inch square in the upper right-hand corner, and wholly within the border, of each stamp, and will execute a certificate on Form 179 (using the certificate of the collector, properly modified) certifying to the receipt and further cancellation of stamps in the amount of the tax due. The serial number of the Form 179 will be entered on Form 1520 in the column

provided for the kind and serial number of the stamp, as an indication that tax-payment was by use of distilled spirits stamps. The canceled distilled spirits stamps will be securely attached to a copy of Form 179 by means of a staple, eyelet, or similar device. Such copy of Form 179, and the accompanying Form 1520, will be attached to the board on the gauging tank and remain thereon until the spirits covered by the stamps have been removed. Forms 179 and 1520 will be disposed of in accordance with section 185.657. (53 Stat. 298 as amended, 335 as amended, 374, 375, 375, 398; 26 U. S. C. 2800, 2883, 3172, 3175, 3176, 3300.)

SEC. 185.653b. FORM 92.—When the Form 179 to which the canceled stamps are attached, and Form 1520 have been attached to the board on the gauging tank, the proprietor will make application to the storekeeper-gauger on Form 92, properly modified, for a wholesale liquor dealer's stamp to be affixed to the tank car or tank truck. Form 92 will be prepared in quadruplicate for intra-district shipments and in quintuplicate for interdistrict shipments. All information indicated by the headings of the various columns and lines on the form and the instructions printed thereon or issued in respect thereto, and as required by this part, shall be furnished. All copies of the Form 92 will be submitted to the storekeeper-gauger in charge of the warehouse. If the spirits are correctly described on Form 92 and have been properly taxpaid, the storekeeper-gauger will sign all copies and return the Form 92 to the warehouseman. He will then release the spirits for transfer to the tank car or tank truck. The warehouseman will execute his certificate on Form 92, entering therein in appropriate columns, the kind of spirits, the name of the owner of the car or truck and the car or truck number, the net weight, proof, and proof gallons of the spirits as shown on the Form 1520 covering taxpayment, and the statement "Consigned to:" followed by the name and address of the consignee. All copies of Form 92 will be given to the storekeeper-gauger in charge of the warehouse. (53 Stat. 301, 335 as amended, 375; 26 U. S. C. 2802, 2883, 3176.)

SEC. 185.653c. WHOLESALE LIQUOR DEALER'S STAMP.—Upon receipt of Form 92 with the application for the wholesale liquor dealer's stamp duly executed the storekeeper-gauger in charge will issue a wholesale liquor dealer's stamp for the tank car or tank truck, as the case may be, in accordance with the applicable provisions of sections 185.631 and 185.632 except that a facsimile signature will not be placed on the wholesale liquor dealer's stamp issued for such tank car or tank truck. He will enter the number of the wholesale liquor dealer's stamp on all copies of Form 1520 and part 4 of Form 92, and return two copies on Form 92 and the wholesale liquor dealer's stamp to the warehouseman. (53 Stat. 301, 335 as amended, 375; 26 U. S. C. 2802, 2883, 3176.)

SEC. 185.654. ROUTE BOARD.—Tank cars and tank trucks used for the transportation of taxpaid distilled spirits must be equipped with a route board at least 10 by 12 inches in size, to which Form 1595 or wholesale liquor dealer's stamp can be attached. Such board shall be of substantial material and shall be affixed permanently and securely to the tank car or tank truck by round-headed or carriage bolts, nutted and riveted, battered, or welded. (53 Stat. 335 as amended, 375; 26 U. S. C. 2883, 3176.)

SEC. 185.655. BILL OF LADING.—The proprietor shall incorporate in the bill of lading, if any, a description of Form 1595 as follows:

Form 1595, Serial Number _____, Owner and Number of Car (or Truck) _____, Vendor _____, Address _____, Vendee _____, Address _____.

Where no bill of lading is issued, as in the case of transfer of a tank car between plants by switching arrangement, the warehouseman shall incorporate in Form 1520 such description of Form 1595. Where a wholesale liquor dealer's stamp is used in lieu of Form 1595, the proprietor shall incorporate in the bill of lading, if any, a description of the stamp, showing the kind of stamp and its serial number. (53 Stat. 335 as amended, 375; 26 U. S. C. 2883, 3176.)

SEC. 185.656. STOREKEEPER-GAUGER'S VERIFICATION.—If taxpayment is by means of a certificate of taxpayment (Form 1595), the proprietor shall give the certificate, the bill of lading, if any, and all copies of Form 179 and Form 1520, to the storekeeper-gauger. The storekeeper-gauger will verify the contents of the tank car or tank truck, and the description of Form 1595 on the bill of lading or Form 1520, as the case may be, determine the security of the route board, and, if no discrepancies are found he will note the serial number of the certificate, on his retained copy of Form 1520, and date and sign the certificate in the

space provided therefor. The proprietor shall then affix the certificate to the route board in the presence of the storekeeper-gauger. The certificate must be securely affixed to the route board with a good adhesive and with a tack in each corner, whereupon it will be canceled in the same manner as a taxpaid stamp after attachment to a package. The certificate will then be covered with a coating of transparent shellac, lacquer, or varnish, to prevent its easy removal or alteration. If taxpayment is by means of distilled spirits stamps and evidenced by a wholesale liquor dealer's stamp, the proprietor shall give the bill of lading, if any, to the storekeeper-gauger who shall verify the contents of the tank car or tank truck, the description of the wholesale liquor dealer's stamp on the bill of lading, if any, and determine the security of the route board. If no discrepancies are found, the proprietor shall affix the wholesale liquor dealer's stamp to the route board in the presence of the storekeeper-gauger. The wholesale liquor dealer's stamp shall be affixed, canceled, and protected in the same manner as a certificate of taxpayment, Form 1595. (53 Stat. 335 as amended, 375; 26 U. S. C. 2883, 3176.)

SEC. 185.657. RELEASE OF TANK CAR OR TANK TRUCK.—When the certificate of taxpayment (Form 1595) or wholesale liquor dealer's stamp has been affixed to the route board and canceled, and the tank car or tank truck sealed by the proprietor, the storekeeper-gauger will return the bill of lading, if any, to the proprietor, release the tank car or tank truck for shipment, execute his statement of withdrawal on the three copies of Form 179, and note on all copies of Form 1520 the date of the release of the tank car or tank truck. The storekeeper-gauger will forward one copy of Form 179 and Form 1520 to the district supervisor, retain one copy of each form, and deliver one copy of Form 179 and two copies of Form 1520 to the proprietor, who will forward one copy of Form 1520 to the vendee and retain the remaining copy. Where taxpayment is by means of distilled spirits stamps, the storekeeper-gauger will forward to the district supervisor the Form 179 with the stamps attached and the accompanying Form 1520 and one copy of Form 92. The storekeeper-gauger will retain one copy of Form 92 in a permanent file as authority for issuance of the wholesale liquor dealer's stamp. Where the vendee is located in a different supervisory district, the storekeeper-gauger will send the extra copy of Form 92, prepared in accordance with section 185.653b, to the supervisor of the district in which the vendee is located. (53 Stat. 335 as amended, 373 as amended, 375; 26 U. S. C. 2883, 3170, 3176.)

PROCEDURE WHEN TANK CAR OR TANK TRUCK IS EMPTIED

SEC. 185.658. SCALPING CERTIFICATE OR WHOLESALE LIQUOR DEALER'S STAMP.—When the vendee receives taxpaid distilled spirits in a tank car or tank truck he shall, at the time the car or truck is emptied, dispose of the certificate of taxpayment, Form 1595, or wholesale liquor dealer's stamp, as the case may be, in accordance with the procedure prescribed by Regulations 11 (26 CFR, part 189), Regulations 15 (26 CFR, part 190) or Regulations 29 (26 CFR, part 197). The district supervisor will investigate any discrepancy which may be found respecting the shipment in accordance with such regulations. (53 Stat. 335 as amended, 375; 26 U. S. C. 2883, 3176.)

SUBPART EE—TAXPAID WITHDRAWALS IN CASES

SEC. 185.670. APPLICATION, FORM 1519.—Application for taxpayment and withdrawal of distilled spirits in cases bottled in bond shall be made by the warehouseman on Form 1519, in triplicate. Each withdrawal will be made on a separate Form 1519, except that two or more withdrawals on the same day of spirits produced by the same distiller at the same distillery may be made on one form. The storekeeper-gauger will inspect the cases to be removed, and if any case bears evidence of unusual loss that cannot be satisfactorily explained, or of tampering, such case will be detained by him pending further investigation in accordance with the applicable provisions of sections 185.480–185.496. The warehouseman will cancel the necessary stamps in the exact amount of the tax due in the manner provided by section 185.675. He will then attach the stamps to Form 1519 and submit all copies to the Government officer. The Government officer will determine that the canceled stamps are in the full amount of the tax shown due on the Form 1519 and will then complete the cancellation of the stamps as provided by section 185.675 and execute the certificate on Form 1519 certifying to the receipt and cancellation of stamps for the amount of taxes due. (53 Stat. 298 as amended, 375; 26 U. S. C. 2800, 3176.)

DISTILLED SPIRITS STAMPS FOR REMOVALS IN CASES, TANK CARS, TANK TRUCKS AND BY PIPELINE

SEC. 185.672. DISTILLED SPIRITS EXCISE TAX STAMPS.—The tax on distilled spirits removed in cases, tank cars, tank trucks and by pipelines may be paid by distilled spirits excise tax stamps (series of 1950). Such stamps may be purchased in various denominations by the warehouseman from the collector of internal revenue of the district in which the internal revenue bonded warehouse is located. The stamps may be purchased in advance of actual needs, in order to be readily available when needed. The stamps may not be purchased by one warehouseman from another, nor may they, except in cases of emergency, be purchased from collectors of other districts. Warehousemen shall not sell or transfer stamps, except that they may (*a*) transfer such stamps to other premises operated by themselves as provided in section 185.676 pursuant to the prior approval of the district supervisor; or (*b*) return such stamps for redemption in accordance with section 185.677. Distilled spirits stamps for taxpayment of distilled spirits as authorized by this part, used or unused may not be purchased, sold, or possessed, except as specifically authorized by this part. (53 Stat. 298 as amended, 335 as amended, 374, 375, 398, 399; 26 U. S. C. 2880, 2883, 3172, 3175, 3176, 3300, 3304.)

SEC. 185.675. MANNER OF CANCELING STAMPS.—At the time of delivery of the stamps to the Government officer for payment of the distilled spirits tax on distilled spirits bottled-in-bond, the warehouseman shall cancel the stamps by perforation (as prescribed by section 185.675a) or by legibly writing or stamping on each stamp with indelible (india) ink, his name, registry number, and the serial number of Form 1519; for example, "John Doe Distilling Company, Internal Revenue Bonded Warehouse No. 63, New Jersey, Form 1519, Serial Number _____." Prior to use in taxpayment, the proprietor, if he so desires, may partially precancel the stamps to the extent of showing his name and registry number only. The serial number of the withdrawal form must not be entered on the stamp in advance of actual use in taxpayment. The district supervisor may, in his discretion, approve a suitable abbreviation of the required information for cancellation, including the initials for the name of the proprietor, if adequate for identification; for example, "J. D. Dist. Co. IRBW 63-NJ-1519 S/N _____." The proprietor's cancellation must be made on the lower portion of the stamp below the figures and words indicating the denomination of the stamp. The Government officer, after determining that the canceled stamps are in the proper amount, will further cancel and deface the stamps by cutting a hole one-half inch square in the upper right-hand corner, and wholly within the border of each stamp. (53 Stat. 298 as amended, 335 as amended, 374, 375, 375, 398; 26 U. S. C. 2800, 2883, 3172, 3175, 3176, 3300.)

SEC. 185.675a. MANNER OF PERFORATING STAMPS.—If the proprietor's cancellation is made by perforation, each letter and figure of the cancellation must be not less than one-fourth of an inch in height and of proportionate width and suitably spaced for legibility and distinctness, and must be clearly and sharply outlined, either (*a*) by perforation through the substance of the stamp, and not merely puncturing it, each perforation to be not less than one thirty-second of an inch in width or diameter; or (*b*) by perforations in the form of incisions through the stamp of at least one thirty-second of an inch in width, cutting out the form of the letters and figures from the substance of the stamp, which letters and figures must be of the size, spacing, and distinctness as above specified. (53 Stat. 298 as amended, 375, 399; 26 U. S. C. 2800, 3176, 3303.)

SEC. 185.676. TRANSFER TO OTHER PREMISES.—A proprietor operating other plants on the same or contiguous premises may transfer stamps to such plants from time to time pursuant to prior approval of the district supervisor. When the internal revenue bonded warehouse is permanently discontinued, or the proprietor has no use for the stamps thereat and the proprietor operates other premises in which the stamps could be used, he may transfer such stamps to such other premises for use thereat pursuant to prior approval of the district supervisor. If the premises to which the stamps are to be transferred is located in another supervisory district, the district supervisor granting authority to transfer the stamps will advise the district supervisor of the other district so that he may know that the receiving premises is entitled to receive the stamps. The latter district supervisor will also inform the Government officer assigned to the receiving premises of the authority to receive the stamps. A report of all transfers of stamps must be made on Form 1697, as provided in section 185.680. (53 Stat. 298 as amended, 374, 375; 26 U. S. C. 2800, 3172, 3176.)

SEC. 185.677. REDEMPTION OF DISTILLED SPIRITS STAMPS.—Distilled spirits stamps for taxpayment of distilled spirits bottled in bond or to be removed by pipeline or in tank cars or tank trucks, may be redeemed pursuant to section 3304, Internal Revenue Code, which reads as follows:

"REDEMPTION OF STAMPS. (a) AUTHORIZATION.—The Commissioner, subject to regulations prescribed by the Secretary, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of law, to denote the payment of any internal revenue tax, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected.

"(b) METHOD AND CONDITIONS OF ALLOWANCE.—Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Commissioner, or until satisfactory proof has been made showing the reason why the same cannot be returned; or, if so required by the said Commissioner, when the person presenting the same cannot satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

"(c) TIME FOR FILING CLAIMS.—No claims for the redemption of or allowance for stamps shall be allowed unless presented within four years after the purchase of such stamps from the Government.

"(d) FINALITY OF COMMISSIONER'S DECISION.—The findings of facts in and the decision of the Commissioner upon the merits of any claim presented under or authorized by this section shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer."

(53 Stat. 375, 399; 26 U. S. C. 3176, 3304.)

SEC. 185.678. CLAIM TO COLLECTOR.—Proprietors of internal revenue bonded warehouses desiring to have distilled spirits stamps, described in section 185.677, redeemed under the provisions of section 3304, I. R. C., must make claim on Form 843 to the collector of internal revenue. The stamps, for which redemption is claimed, must be attached to the claim, and the number and denominations thereof must be listed on the claim or on a sheet of paper attached thereto. Where the stamps have been destroyed, evidence satisfactory to the Commissioner establishing such destruction must accompany the claim. (53 Stat. 298 as amended, 374, 375, 399; 26 U. S. C. 2800, 3172, 3176, 3304.)

SEC. 185.679. UNREDEEMABLE STAMPS.—Distilled spirits stamps may not be redeemed while distilled spirits on which the stamps can be used in taxpayment remain on hand and while the internal revenue bonded warehouse remains in a qualified status unless it is shown that the manner of taxpaying spirits thereat is such that the stamps may not be used. When an internal revenue bonded warehouse is discontinued and stamps remain on hand, such stamps are not redeemable if the proprietor operates other premises at which the stamps could be used. In such cases the stamps will be transferred to the other premises for use thereat in accordance with section 185.676. Notation of the transfer must be made on Form 1697 for both premises. (53 Stat. 298 as amended, 374, 375, 399; 26 U. S. C. 2800, 3172, 3176, 3304.)

SEC. 185.680. STAMP REPORT.—The proprietor of the internal revenue bonded warehouse shall make a report on Form 1697 of all distilled spirits stamps received and used at his warehouse. Entries will be made thereon and the report submitted in accordance with the headings of the various lines and columns on the form and the instructions printed thereon or issued in respect thereto and as required by this part. When distilled spirits stamps are surrendered for redemption, in accordance with sections 185.677 and 185.678, or are transferred to, or received from, other premises operated by the proprietor, as authorized in section 185.676, a report thereof must be made on Form 1697, giving the reason for such surrender, transfer, or receipt, the date thereof, and the denominations of the stamps surrendered, transferred, or received, and, in cases of transfer or receipt, the name, registry number, and location of the premises to which the stamps were transferred or from which they were received. (53 Stat. 298 as amended, 374, 375; 26 U. S. C. 2800, 3172, 3176.)

7. Regulations 11 (26 CFR, part 189; 15 F. R. 4581), "Bottling of Taxpaid Distilled Spirits," as amended, are hereby amended as follows:

(*a*) Sections 189.132, 189.167, 189.168, 189.169, 189.186, 189.189, 189.203, 189.204a, and 189.376 are amended; and

(*b*) Section 189.204b is added.

SUBPART M—ACTION BY DISTRICT SUPERVISOR

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SEC. 189.132. REGISTRY NUMBERS.—Taxpaid bottling houses will be numbered serially in the order of their establishment. A separate series will be used for each State. Registry numbers heretofore assigned will be retained, and new taxpaid bottling houses will be assigned numbers in sequence thereto. Registry numbers previously assigned to discontinued taxpaid bottling houses will not be reassigned to other taxpaid bottling houses. In the case of a successor taking over the taxpaid bottling house, the same registry number will be retained. In the case of a change in location of the taxpaid bottling house within the same State, the registry number may be retained. (53 Stat. 303 as amended, 331, 375; 26 U. S. C. 2803, 2871, 3176.)

SUBPART R—RECEIPT OF DISTILLED SPIRITS

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FROM PREMISES OTHER THAN RECTIFYING PLANTS

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SEC. 189.167.—CERTIFICATE OF TAXPAYMENT, FORM 1595, OR WHOLESALE LIQUOR DEALER'S STAMP.—When distilled spirits are received in a tank car or tank truck at a taxpaid bottling house, the proprietor shall at the time the car or truck is emptied scalp the certificate of taxpayment, Form 1595, or the wholesale liquor dealer's stamp, as the case may be, by cutting out all of that portion of the certificate or stamp within the border. The proprietor shall then send the cut-out portion of the certificate or stamp to the supervisor of the district in which the proprietor is located, and shall obliterate the remainder of the certificate or stamp. (53 Stat. 303 as amended, 331, 335 as amended, 375; 26 U. S. C. 2803, 2871, 2883, 3176.)

SEC. 189.168. ABSENCE OF FORM 1595 OR WHOLESALE LIQUOR DEALER'S STAMP TO BE REPORTED.—If the tank car or tank truck is received without the certificate or wholesale liquor dealer's stamp attached thereto, the proprietor shall note such fact on the bill of lading, if any, or on Form 1520 or 1440, as the case may be, covering such tank car or tank truck and immediately notify the district supervisor, who will cause such inquiry to be made respecting the shipment and receipt of the car or truck as he may deem appropriate. Where a tank car or tank truck with the certificate or wholesale liquor dealer stamp missing is received at a taxpaid bottling house, the storekeeper-gauger will furnish a complete report to the district supervisor. (53 Stat. 303 as amended, 331, 335 as amended, 375; 26 U. S. C. 2803, 2871, 2883, 3176.)

SEC. 189.169. COMPARISON OF SCALPED CERTIFICATE OR WHOLESALE LIQUOR DEALER'S STAMP WITH APPLICATION.—The district supervisor will compare the cut-out portion of the certificate of tax-payment, Form 1595, with the copy of the application therefor, Form 1594, forwarded to him by the collector at the time Form 1595 was issued. The certificate and the application will be compared as to serial number, names of vendor and vendee, number of gallons, amount of tax, etc., and any discrepancy will be investigated. If a wholesale liquor dealer's stamp has been used in lieu of a certificate, Form 1595, the district supervisor will compare the cut-out portion of the stamp with the copy of the application, Form 92, forwarded to him at the time the stamp was issued. The stamp and the application will be compared as to serial number, consignor, number of gallons, etc., and any discrepancy will be investigated. (53 Stat. 303 as amended, 331, 335 as amended, 375; 26 U. S. C. 2803, 2871, 2883, 3176.)

SUBPART S—DUMPING AND BOTTLING

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SEC. 189.186. DISTILLER'S ORIGINAL OR WHOLESALE LIQUOR DEALER'S PACKAGES.—Where the spirits to be dumped are contained in distiller's original packages, the proprietor will cut out with a sharp instrument that portion of each taxpaid stamp upon which is shown the serial number of the stamp, the date, the name of the distiller or warehouseman, the proof gallons, and the serial number of the package. In the case of wholesale liquor dealer's packages, that portion of each stamp extending from the top to the bottom and embracing the entire width between the borders of the stamp will be cut out. The cut-out portions of the stamps will be securely attached by means of a staple, eyelet, or similar device, to a slip of paper in such manner that the data thereon may be readily examined, and such slip of paper bearing the cut-out portions of the stamps will be securely attached to the original Form 230. (53 Stat. 303 as amended, 329, 331, 375; 26 U. S. C. 2803, 2863, 2871, 3176.)

SEC. 189.189. UNSTAMPED SPIRITS.—When a stamp has been lost or mutilated so that the required portion thereof cannot be returned, an affidavit setting forth all the facts in the case will be made by the proprietor and attached to each copy of Form 230. When spirits are received in a tank car or tank truck bearing a certificate of taxpayment, Form 1595, or a wholesale liquor dealer's stamp, or when spirits are received by pipeline, or where spirits in stamped bottles are to be dumped, an explanatory statement will be made in the columns provided for the description of stamps on Form 230, as "Form 1595, Serial No_____, dated_____, heretofore submitted," or "wholesale liquor dealer's stamp, Serial No_____, dated_____, heretofore submitted," or "Form 1520, dated_____, pipeline transfer on Form 1595, Serial No_____," or "Form 1440, dated_____, pipeline transfer on Form 1595, Serial No_____," or "See Form 230, Serial No_____, date_____," or "See Form 237, Serial No_____, dated _____," or "In Stamped Bottles," as the case may be. If the spirits received by pipeline were taxpaid by the use of distilled spirits stamps, an explanatory statement will be made in the columns provided for the description of stamps on Form 230, as, "Distilled spirits stamps, Form 1520 dated_____," or "Distilled spirits stamps, Form 1440 dated _____," as the case may be. (53 Stat. 303 as amended, 329, 331, 335 as amended, 375; 26 U. S. C. 2803, 2863, 2871, 2883, 3176.)

SEC. 189.203. DESTRUCTION OF STAMPS, MARKS, AND BRANDS.—When packages of spirits are dumped for bottling, all stamps, except the cut-out portions attached to Form 230, and all marks and brands which such packages are required by law to bear, must be completely effaced and obliterated. This should be done immediately upon completion of the dumping, draining, and rinsing of the packages. Certificates of tax-payment or wholesale liquor dealer's stamps affixed to tank cars or tank trucks of distilled spirits, except the portion thereof scalped for submission to the district supervisor, must likewise be immediately destroyed when such cars or trucks are emptied. When packages of wines are emptied by any person, all stamps and marks which such packages are required by law and regulations to bear must be destroyed by scraping or obliterating immediately the packages are emptied. All labels and stamps affixed to tank cars, tanks, tank trucks, or similar containers of wine indicating taxpayment of the contents must also be scraped or obliterated immediately such containers are emptied. (53 Stat. 329, 330, 331, 335 as amended, 375, 398; 26 U. S. C. 2863, 2866, 2871, 2883, 3176, 3301.)

SEC. 189.204a. TAXPAYMENT OF RINSINGS.—In lieu of the procedure prescribed in section 189.204 concerning the rinsings of packages, the proprietor may rinse and save the rinsings from packages, to any extent desired, which were not rinsed in the internal revenue bonded warehouse at the time of taxpayment and are so marked in accordance with the provisions of Regulations 10 (26 CFR, part 185): *Provided*, That the rinsings are run into a closed, locked tank for taxpayment of the proof gallon contents. Such rinsings may be used for reduction purposes in the taxpaid bottling house, or in a contiguous rectifying plant in the manufacture of rectified spirits or products subject to the rectification tax. When used for reduction, the rinsings must be used in similar spirits. When used in the manufacture of rectified spirits or products, the rinsings may be used with any other appropriate spirits. The tank into which the rinsings

are run will be mounted on accurate scales, or equipped with a suitable measuring device whereby the contents can be accurately determined. Upon completion of the rinsing of the packages, the contents of the tank will be gauged by the Government officer and the proof gallon contents determined. The gauge of the tank will be made by weight (where the tank is mounted on scales) or by measure. The Government officer will prepare Form 1520, in triplicate, governing the gauge of the tank showing the proof gallons, and the kind and age of the spirits from which the rinsings were obtained and will deliver all copies to the proprietor. The proprietor will cancel the necessary number of distilled spirits stamps prescribed by Regulations 10 (26 CFR, part 185) for the taxpayment of distilled spirits bottled-in-bond, in the exact amount of the tax due, in the manner prescribed by section 189.204b. The proprietor will then attach the stamps to the original copy of Form 1520 and submit it with all copies of Form 1520 to the Government officer. The Government officer, after determining that the canceled stamps are in the proper amount of the tax due, will then further cancel the stamps in the manner prescribed by section 189.204b, and will execute a certificate on the back of Form 1520, certifying to the receipt and further cancellation of stamps for the amount of tax due. The canceled distilled spirits stamps will be securely attached to the copy of Form 1520 by means of a staple, eyelet, or similar device. The storekeeper-gauger will attach the copy of Form 1520 to which the canceled stamps are attached to the tank, and then release the rinsings for reduction purposes or for transfer by pipeline to a contiguous rectifying plant for use in rectification, as authorized herein. The Government officer will give one copy of Form 1520 to the proprietor and retain the remaining copy. To identify properly the spirits in the tank, Form 1520 to which the stamps are attached will continue to remain on the tank until all the rinsings covered by such stamps have been removed, at which time such form, with the stamps attached, will be forwarded to the district supervisor. Where the rinsings are transferred by pipeline to a contiguous rectifying plant, an additional copy of Form 1520 will be forwarded to the Government officer assigned to such plant. When so transferred, the rinsings will be accounted for in the rectifying plant in the same manner as other spirits received for rectification. Packages of imported spirits may similarly be rinsed and the rinsings saved if taxpaid in accordance with this procedure. The proprietor shall make a report on Form 1697, properly modified, of all distilled spirits stamps received and used at the taxpaid bottling house for taxpayment of rinsings authorized by this section. The form shall be disposed of in accordance with the instructions printed thereon. (53 Stat. 298 as amended, 303 as amended, 331, 335 as amended, 375; 26 U. S. C. 2800, 2803, 2871, 2883, 3176.)

SEC. 189.204b. MANNER OF CANCELING STAMPS USED TO TAXPAY RINSINGS.—At the time of delivery of the stamps to the Government officer for payment of the distilled spirits tax, the proprietor shall cancel the stamps by perforation as prescribed herein, or by legibly writing or stamping on each stamp with indelible (india) ink, his name, the registry number of the taxpaid bottling house, and the date of the Form 1520; for example, "John Doe Distilling Company, Taxpaid Bottling House No. 63, New Jersey, Form 1520, dated June 1, 1952." Prior to use in taxpayment, the proprietor, if he so desires, may partially precancel the stamps to the extent of showing his name and registry number only. The date of the Form 1520 must not be entered on the stamp in advance of actual use in taxpayment. The district supervisor may, in his discretion, approve a suitable abbreviation of the required information for cancellation, including the initials for the name of the proprietor, if adequate for identification; for example, "J. D. Dist. Co. TPBH 63-NJ-1520-6-1-52." The proprietor's cancellation must be made on the lower portion of the stamp below the figures and words indicating the denomination of the stamp. If the proprietor's cancellation is made by perforation, each letter and figure of the cancellation must be not less than one-fourth of an inch in height and of proportionate width and suitably spaced for legibility and distinctness, and must be clearly and sharply outlined either (*a*) by perforation through the substance of the stamp, and not merely puncturing it, each perforation to be not less than one thirty-second of an inch in width or diameter; or (*b*) by perforations in the form of incisions through the stamp of at least one thirty-second of an inch in width, cutting out the form of the letters and the figures from the substance of the stamp, which letters and figures must be of the size, spacing, and distinctness as above specified. The Government officer, after determining that the canceled stamps are in the full amount of the tax due, will further cancel and deface the stamps by cutting a

hole one-half inch square in the upper right-hand corner, and wholly within the border of each stamp. (53 Stat. 298 as amended, 375, 399; U. S. C. 2800, 3176, 3303.)

SUBPART GG—DUTIES OF STOREKEEPER-GAUGERS

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SEC. 189.376. DEGREE OF SUPERVISION.—The storekeeper-gauger, who supervises the operations of a taxpaid bottling house in addition to his other duties, will maintain such supervision as will enable him to know that no unauthorized mingling of spirits occurs; that only lawfully taxpaid spirits are bottled; and that the requirements of this part in other respects are being observed by the proprietor. He will, insofar as his other duties permit, examine tank cars or tank trucks of spirits before they are unloaded to determine that the seals are intact and that each bears a collector's certificate of taxpayment or wholesale liquor dealer's stamp, as the case may be; supervise the receipt of spirits by pipeline; examine packages of spirits to be dumped for bottling to determine whether they bear proper evidence of taxpayment; examine storage tanks from which spirits are to be removed for bottling to determine whether the contents correspond with the record on Form 703–A, 1440 or Form 1520 attached to the tank; verify cases filled; supervise the bottling and storing of distilled spirits and wines especially for export, with benefit of drawback, in accordance with Regulations 28 (26 CFR, part 176); inspect bottles used for packaging spirits to determine whether the provisions of Regulations 13 (26 CFR, part 175) are being complied with; inspect labels to determine whether the provisions of Subpart U are being observed; determine whether proper use is made of strip stamps; and determine whether proper records are kept by the proprietor of the receipt, dumping, bottling, and disposition of spirits. The required supervision may be accomplished by observations made at such times as the storekeeper-gauger must necessarily visit the bottling house for the examination of packages of spirits to be dumped for bottling, the verification of cases filled, the issuance of stamps, etc., and by inspection made at irregular intervals from time to time as his duties at the distillery, bonded warehouse, or rectifying plant permit. (53 Stat. 303 as amended, 331, 375; 26 U. S. C. 2803, 2871, 3176.)

8. Regulations 15 (26 CFR, part 190; 15 F. R. 4790), "Rectification of Spirits and Wines," as amended, are amended as follows:

(*a*) Sections 190.312, 190.409, 190.410, 190.429, 190.432, 190.441, 190.443a, 190.687, 190.718, 190.735, 190.740, 190.742, 190.743, 190.744, 190.745 and 190.746 are amended:

(*b*) Sections 190.443b, 190.718a, 190.734a and 190.747a are added; and

(*c*) Sections 190.734 and 190.741 are revoked.

SUBPART O—ACTION BY DISTRICT SUPERVISOR

ORIGINAL ESTABLISHMENT

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SEC. 190.312. REGISTRY NUMBERS.—Rectifying plants will be numbered serially in the order of their establishment. A separate series will be used for each State. Registry numbers heretofore assigned will be retained, and new rectifying plants will be assigned numbers in sequence thereto. Registry numbers previously assigned to discontinued rectifying plants will not be reassigned to other rectifying plants. In the case of a successor taking over the rectifying plant, the same registry number may be retained. In the case of a change in location of the rectifying plant within the same State, the same registry number may be retained. (53 Stat. 300 as amended, 375; 26 U. S. C. 2801, 3176.)

SUBPART W—RECEIPT OF SPIRITS

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SEC. 190.409. CERTIFICATE OF TAXPAYMENT OR WHOLESALE LIQUOR DEALER'S STAMP.—When distilled spirits are received in a tank car or tank truck at a

rectifying plant, the rectifier shall at the time the car or truck is emptied scalp the certificate of taxpayment, Form 1595, or the wholesale liquor dealer's stamp, as the case may be, by cutting out all of that portion of the certificate or stamp within the border. The rectifier shall then send the cut-out portion of the certificate or stamp to the supervisor of the district in which the rectifier is located, and shall obliterate the remainder of the certificate or stamp. If the tank car or tank truck is received without the certificate or wholesale liquor dealer's stamp attached thereto, the rectifier shall note such fact on the bill of lading (if any) or on Form 1520 or 1440, as the case may be, covering such tank car or tank truck and immediately notify the district supervisor, who will cause such inquiry to be made respecting the shipment and receipt of the car or truck as he may deem appropriate. Where a tank car or tank truck with the certificate or wholesale liquor dealer stamp missing is received at a rectifying plant, the storekeeper-gauger will furnish a complete report to the district supervisor. (53 Stat. 300 as amended, 335 as amended, 375; 26 U. S. C. 2801, 2883. 3176.)

SEC. 190.410. COMPARISON OF SCALPED CERTIFICATE OR WHOLESALE LIQUOR DEALER'S STAMP WITH APPLICATION.—The district supervisor will compare the cut-out portion of the certificate of taxpayment, Form 1595, with the copy of the application therefor, Form 1594, forwarded to him by the collector at the time Form 1595 was issued. The certificate and the application will be compared as to serial number, names of vendor and vendee, number of gallons, amount of tax, etc., and any discrepancy will be investigated. If a wholesale liquor dealer's stamp has been used in lieu of a certificate, Form 1595, the district supervisor will compare the cut-out portion of the stamp with the copy of the application, Form 92, forwarded to him at the time the stamp was issued. The stamp and the application will be compared as to serial number, consignor, number of gallons, etc., and any discrepancy will be investigated. (53 Stat. 300 as amended, 335 as amended, 375; 26 U. S. C. 2801, 2883, 3176.)

SUBPART X—GAUGING AND DUMPING SPIRITS FOR RECTIFICATION

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SEC. 190.429. WHOLESALE LIQUOR DEALER'S PACKAGES.—Where spirits contained in wholesale liquor dealer's packages are to be dumped, that portion of each wholesale liquor dealer's stamp extending from the top to the bottom and embracing the entire width between the borders of the stamp will be cut out and attached to Form 122 in the same manner as tax-paid stamps. (53 Stat. 300 as amended, 310, 329, 375; 26 U. S. C. 2801, 2813, 2863, 3176.)

SEC. 190.432. NOTATION ON FORM 122.—When spirits are received in a tank car or tank truck bearing a certificate of taxpayment, Form 1595, or a wholesale liquor dealer's stamp, or where spirits are received by pipeline, or where spirits in stamped bottles are to be dumped, an explanatory statement will be made in the columns provided for the descriptions of stamps on Form 122, as "Form 1595, Serial No_____, dated_____, heretofore submitted," or "Wholesale liquor dealer's stamp, Serial No_____, dated_____, heretofore submitted," or "Form 1520, dated_____, pipeline transfer on Form 1595, Serial No_____," or "Form 1440, dated_____, pipeline transfer on Form 1595, Serial No_____," or "In stamped bottles," as the case may be. If the spirits received by pipeline were taxpaid by the use of distilled spirits stamps, an explanatory statement will be made in the columns provided for the description of stamps on Form 122, as "Distilled spirits stamps, Form 1520 dated _____," or "Distilled spirits stamps, Form 1440 dated _____," as the case may be. (53 Stat. 310, 335 as amended, 375; 26 U. S. C. 2813, 2883, 3176.)

SEC. 190.441. DESTRUCTION OF CERTIFICATE OR WHOLESALE LIQUOR DEALER'S STAMP.—Certificates of taxpayment, or wholesale liquor dealer's stamps, affixed to tank cars or tank trucks of distilled spirits, except the portion thereof scalped for submission to the district supervisor, must likewise be immediately destroyed when such cars or trucks are emptied. (53 Stat. 300, 335 as amended, 375; 26 U. S. C. 2801, 2883, 3176.)

SEC. 190.443a. TAXPAYMENT OF RINSINGS.—In lieu of the procedure prescribed in section 190.443 concerning the rinsing of packages, the proprietor may rinse and save the rinsings from packages, to any extent desired, which were not rinsed in the internal revenue bonded warehouse at the time of taxpayment and are so marked in accordance with the provisions of Regulations 10 (26 CFR, part 185): *Provided*, That the rinsings are run into a closed, locked tank

for taxpayment of the proof gallon contents. Such rinsings may be used for reduction purposes, or in the manufacture of rectified spirits or products subject to the rectification tax. When used for reduction, the rinsings must be used in similar spirits. When used in the manufacture of rectified spirits or products, the rinsings may be used with any other appropriate spirits. The tank into which the rinsings are run will be mounted on accurate scales, or equipped with a suitable measuring device whereby the contents can be accurately determined. Upon completion of the rinsing of the packages, the contents of the tank will be gauged by the Government officer and the proof gallon contents determined. The gauge of the tank will be made by weight (where the tank is mounted on scales) or by measure. The Government officer will prepare Form 1520, in triplicate, covering the gauge of the tank showing the proof gallons, and the kind and age of the spirits from which the rinsings were obtained and will deliver all copies to the proprietor. The proprietor will cancel the necessary number of distilled spirits stamps prescribed by Regulations 10 (26 CFR, part 185) for the taxpayment of distilled spirits bottled in bond, in the exact amount of the tax due, in the manner prescribed by section 190.443b. The proprietor will then attach the stamps to the original copy of Form 1520 and submit it with all copies of Form 1520 to the Government officer. The Government officer will determine that the canceled stamps are in the full amount of the tax due, and will then further cancel the stamps in the manner prescribed by section 190.443b, and will execute a certificate on the back of Form 1520 certifying to the receipt and further cancellation of stamps for the amount of tax due. The canceled distilled spirits stamps will be securely attached to the copy of Form 1520 by means of a staple, eyelet, or similar device. The storekeeper-gauger will attach the copy of Form 1520 to which the canceled stamps are attached to the tank, and then release the rinsings for reduction purposes or for use in rectification, as authorized herein. The Government officer will give one copy of Form 1520 to the proprietor and retain the remaining copy. To identify properly the spirits in the tank, Form 1520 to which the stamps are attached will continue to remain on the tank until all rinsings covered by such stamps have been removed, at which time such form, with the stamps attached, will be forwarded to the district supervisor. Packages of imported spirits may similarly be rinsed and the rinsings saved if taxpaid in accordance with this procedure. The proprietor shall make a report on Form 1697, properly modified, of all distilled spirits stamps received and used at the rectifying plant for taxpayment of rinsings authorized by this section. The form shall be disposed of in accordance with the instructions printed thereon. (53 Stat. 298 as amended, 300, 335 as amended, 375; 26 U. S. C. 2800, 2801, 2883, 3176.)

SEC. 190.443b. MANNER OF CANCELING STAMPS.—At the time of delivery of the stamps to the Government officer for payment of the distilled spirits tax, the rectifier shall cancel the stamps by perforation as prescribed herein, or by legibly writing or stamping on each stamp with indelible (india) ink, his name, the registry number of the rectifying plant, and the date of the Form 1520; for example, "John Doe Company, Rectifying Plant No. 63, New Jersey, Form 1520, dated June 1, 1952." Prior to use in taxpayment, the proprietor, if he so desires, may partially precancel the stamps to the extent of showing his name and registry number only. The date of the Form 1520 must not be entered on the stamp in advance of actual use in taxpayment. The district supervisor may, in his discretion, approve a suitable abbreviation of the required information for cancellation, including the initials for the name of the proprietor, if adequate for identification; for example, "J. D. Co. R. P. 63–NJ–1520–6–1–52." The proprietor's cancellation must be made on the lower portion of the stamp below the figures and words indicating the denomination of the stamp. If the proprietor's cancellation is made by perforation, each letter and figure of the cancellation must be not less than one-fourth of an inch in height and of proportionate width and suitably spaced for legibility and distinctness, and must be clearly and sharply outlined either (*a*) by perforation through the substance of the stamp, and not merely puncturing it, each perforation to be not less than one thirty-second of an inch in width or diameter; or (*b*) by perforations in the form of incisions through the stamp of at least one thirty-second of an inch in width, cutting out the form of the letters and figures from the substance of the stamp, which letters and figures must be of the size, spacing, and distinctness as above specified. The Government officer, after determining that the canceled stamps are in the full amount of the tax due, will further cancel and deface the stamps by cutting a hole one-half inch square in the upper

right-hand corner, and wholly within the border, of each stamp. (53 Stat. 298 as amended, 300, 375, 399; 26 U. S. C. 2800, 2801, 3176, 3303.)

SUBPART FF—BOTTLING OF UNRECTIFIED SPIRITS AND WINES

* * * * * * *

SEC. 190.687. UNSTAMPED SPIRITS.—Where the stamp on a package of spirits to be dumped for bottling without rectification has been lost or mutilated, so that the required portion thereof cannot be returned, or where spirits received in tank cars or tank trucks bearing certificate of tax-payment, Form 1595, or a wholesale liquor dealer's stamp, or where spirits are received by pipeline from premises other than a rectifying plant, or where spirits in stamped bottles, or wines, are to be dumped for bottling without rectification, the same procedure will be followed as that prescribed in sections 190.430–190.433 in the case of the dumping of spirits or wines from such containers for rectification. When spirits are received by pipeline from a rectifying plant, an explanatory statement will be made in the column provided for the description of stamps on Form 230, as "see Form 230, Serial No_____, dated_____." (53 Stat. 300 as amended, 329, 335 as amended, 375; 26 U. S. C. 2801, 2863, 2883, 3176.)

SUBPART GG—STAMPS

RECTIFIED SPIRITS STAMPS (FOR BOTTLING TANKS)

* * * * * * *

SEC. 190.718. MANNER OF CANCELING STAMPS.—At the time of delivery of the stamps to the Government officer for payment of the rectified spirits tax, the rectifier shall cancel the stamps by perforation (as prescribed by section 190.718a) or by legibly writing or stamping on each stamp with indelible (india) ink, his name, registry number, and the serial number of Form 237; for example, "John Doe Company, Rectifying Plant No. 63, New Jersey, Form 237, Serial No_____." Prior to use in taxpayment, the proprietor, if he so desires, may partially precancel the stamps to the extent of showing his name and registry number only. The serial number of the Form 237 must not be entered on the stamp in advance of actual use in payment of the rectification tax. The district supervisor may, in his discretion, approve a suitable abbreviation of the required information for cancellation, including the initials for the name of the proprietor, if adequate for identification; for example, "J. D. Co. RP 63–NJ–237–S/N _____." The proprietor's cancellation must be made on the lower portion of the stamp below the figures and words indicating the denomination of the stamp. The Government officer, after determining that the canceled stamps are in the proper amount of the tax due, will then further cancel and deface the stamps by cutting a hole one-half inch square in the upper right-hand corner, and wholly within the border, of each stamp. (53 Stat. 300 as amended, 375; 26 U. S. C. 2801, 3176.)

SEC. 190.718a. MANNER OF PERFORATING STAMPS.—If the rectifier's cancellation is made by perforation, each letter and figure of the cancellation must be not less than one-fourth of an inch in height and of proportionate width and suitably spaced for legibility and distinctness, and must be clearly and sharply outlined either (*a*) by perforation through the substance of the stamp, and not merely puncturing it, each perforation to be not less than one thirty-second of an inch in width or diameter; or (*b*) by perforations in the form of incisions through the stamp of at least one thirty-second of an inch in width, cutting out the form of the letters and the figures from the substance of the stamp, which letters and figures must be of the size, spacing, and distinctness as above specified. (53 Stat. 300 as amended, 375, 399; 26 U. S. C. 2801, 3176, 3303.)

WHOLESALE LIQUOR DEALER'S STAMPS

* * * * * * *

SEC. 190.734a. WHOLESALE LIQUOR DEALER'S STAMP BOOKS.—Wholesale liquor dealer's stamps will be furnished by collectors to district supervisors upon request. District supervisors will supply storekeeper-gaugers in charge of rectifying plants where such stamps are used with such quantities as may be required. When all the stamps in a book have been issued, the storekeeper-gauger in charge will return the stub book to the district supervisor. (53 Stat. 300 as amended, 301, 329, 375; 26 U. S. C. 2801, 2802, 2863, 3176.)

SEC. 190.735. APPLICATION TO PACKAGE.—Rectifiers desiring to draw distilled spirits into wholesale liquor dealer's packages of 5 wine gallons or more, as authorized in section 190.733, will make application therefor on Form 92, in quadruplicate, giving all of the information called for by the form. Where the spirits to be so packaged have been dumped from the stamped containers in which received, the application shall show, in addition to other applicable data, the date and number (122 or 230) of the form pursuant to which the spirits were dumped. If the spirits were received in a tank car or tank truck, the application shall show, in addition to other applicable data, the date the certificate of taxpayment (Form 1595) or wholesale liquor dealer's stamp, as the case may be, was submitted to the district supervisors. Should the spirits, which it is permissible to transfer to wholesale liquor dealer's packages under section 190.733, be contained in stamped packages, the stamps thereon must be cut out and the cut-out portion securely attached by means of a staple, eyelet, or similar device, to a slip of paper in such manner that the data thereon may be readily examined, and such slip of paper bearing the cut-out portions of the stamps will be securely attached to one copy of the application. (53 Stat. 300 as amended, 329, 375; 26 U. S. C. 2801, 2863, 3176.)

SEC. 190.740. APPLICATION FOR STAMPS.—When the spirits have been properly packaged and the details of the gauge thereof entered on Form 92, the rectifier will make application on such form for the issuance of wholesale liquor dealer's stamps for the packages and deliver all copies of the form to the storekeeper-gauger. (53 Stat. 300 as amended, 301, 329, 375; 26 U. S. C. 2801, 2802, 2863, 3176.)

SEC. 190.742. ISSUANCE OF STAMPS.—Upon receipt of Form 92 with application for wholesale liquor dealer's stamps duly executed, the storekeeper-gauger in charge will issue a wholesale liquor dealer's stamp for each package listed on the form. When issuing the stamps, the storekeeper-gauger will enter on each stamp all the information called for and sign the stamps in the space provided therefor. The storekeeper-gauger may enter his signature by means of a facsimile stamp, provided care is taken to use only such ink as will neither fade nor blur. Where an appreciable number of wholesale liquor dealer's packages will be filled, the rectifier must provide the storekeeper-gauger in charge with suitable rubber stamps for the insertion of information common to all wholesale liquor dealer's stamps to be used by him. (53 Stat. 300 as amended, 301, 329, 375; 26 U. S. C. 2801, 2802, 2863, 3176.)

SEC. 190.743. STAMP STUB.—The storekeeper-gauger in charge shall enter on the stub connected with each wholesale liquor dealer's stamp data similar to that entered on the stamp, to preserve a perfect record of the detached stamp. (53 Stat. 300 as amended, 301, 329, 375; 26 U. S. C. 2801, 2802, 2863, 3176.)

SEC. 190.744. DISPOSITION OF FORM 92.—The storekeeper-gauger in charge will enter the serial numbers of the wholesale liquor dealer's stamps in the proper column on each Form 92, opposite the description of the package for which the stamp is issued. He will then return two copies of Form 92 to the rectifier with the stamps, forward one copy of the form to the district supervisor and retain the remaining copy. The storekeeper-gauger in charge shall place his retained copy in a permanent file as authority for issuance of the stamps. The rectifier will forward one copy of Form 92 to the vendee. (53 Stat. 300 as amended, 301, 329, 375; 26 U. S. C. 2801, 2802, 2863, 3176.)

SEC. 190.745. WHOLESALE LIQUOR DEALER'S STAMPS FOR RECTIFIED SPIRITS.—Storekeeper-gaugers may not furnish wholesale liquor dealer's stamps in lieu of and in exchange for stamps for rectified spirits, unless the package covered by the stamp for rectified spirits is to be broken into smaller packages. (53 Stat. 300 as amended, 301, 329, 375; 26 U. S. C. 2801, 2802, 2863, 3176.)

SEC. 190.746. AFFIXING AND CANCELING OF STAMPS.—Upon receipt from the storekeeper-gauger in charge of Form 92 and the accompanying stamps, the rectifier will affix the stamps to the packages and cancel the same under the supervision of the Government officer. The stamps will be affixed and canceled in the same manner as rectified spirits stamps are required in this subpart to be affixed and canceled. (53 Stat. 300 as amended, 375, 398; 26 U. S. C. 2801, 3176, 3301.)

SEC. 190.747a. RECORD AND REPORT OF WHOLESALE LIQUOR DEALER'S STAMPS.—Storekeeper-gaugers having custody of wholesale liquor dealer's stamps at rectifying plants will keep a record of such stamps received and used on part 1 of Form 118, properly modified for the purpose, and as required by instructions on the form or as issued in respect thereto. The record will be kept in bound form available for inspection by other Government officers. The storekeeper-

gauger will prepare his monthly report on part 2 of Form 118, properly modified and in duplicate, retain one copy and furnish one copy to the district supervisor. (53 Stat. 300 as amended, 301, 375; 26 U. S. C. 2801, 2802, 3176.)

9. Section 197.24(*b*) and 197.24(*c*) of Regulations 29 (26 CFR, part 197; 7 F. R. 9111), "Drawback of Tax on Distilled Spirits Used in the Manufacture of Nonbeverage Products," as amended, are amended as follows:

CLAIMS FOR DRAWBACK

* * * * * * *

SEC. 197.24. SUPPORTING DATA.—Each claim will be accompanied by statements of supporting data which shall be prepared in duplicate. One copy shall be attached to the original and one copy shall be attached to the duplicate of the claim.

(*a*) Data with respect to payment of special tax: A statement showing (1) serial number of special tax stamp, (2) denomination, (3) fiscal year for which issued, (4) date of issuance, and (5) collection district where issued.

(*b*) Data with respect to taxpayment and receipt of the distilled spirits on which the drawback is claimed:

(1) If the distilled spirits were received in tank cars, a statement showing date of receipt, the name and address of the vendor, whether taxpayment was evidenced by a certificate of taxpayment, Form 1595, or a wholesale liquor dealer's stamp, the serial number of the certificate of taxpayment (Form 1595), or the wholesale liquor dealer's stamp, the date of issuance of the certificate or wholesale liquor dealer's stamp, and the name of the producer, kind, quantity, and proof of the spirits. (When a tank car or tank truck is emptied, the certificate of taxpayment, Form 1595, or the wholesale liquor dealer's stamp, as the case may be, affixed thereto shall be scalped by cutting out all of the portion of the certificate or stamp within the borders and the cut-out portion of the certificate or stamp shall be immediately forwarded to the district supervisor. If the tank car or tank truck is received without the certificate or stamp attached thereto, the vendee shall note such fact on the bill of lading, if any, or on Form 1440 or 1520, as the case may be, and immediately notify the district supervisor who will cause such inquiry to be made respecting the shipment and receipt of the conveyance as he may deem appropriate.)

(2) If the distilled spirits were received in containers, such as barrels, drums, cans, or cases, bearing taxpaid or wholesale liquor dealer's stamps, a statement showing the date of receipt, the name and address of the vendor, the serial number of the taxpaid or wholesale liquor dealer's stamp affixed to the container, the date of issuance appearing on the stamp, the serial number, if any, of the container, and the name of the producer, kind, quantity, and proof of the spirits. (When the package is emptied, the stamp shall be scalped and attached to the next claim filed for drawback on the spirits which were in such package. The scalped stamp will be retained by the district supervisor with the claims record of the claimant.)

(3) If the distilled spirits were received in bottles, a statement showing the date of receipt, the name and address of the vendor, the serial number of the strip stamp affixed over the mouth and neck of the bottle, and the name of the bottler, kind, quantity, and proof of the spirits.

(c) Data with respect to use of distilled spirits upon which drawback is claimed in the manufacture of nonbeverage products:

(1) A statement showing the name, description, and formula number, if any, of each nonbeverage product in the manufacture of which distilled spirits were used, the alcoholic content by volume of each such product, the number of proof gallons and kind of distilled spirits used in manufacture thereof, and the quantity produced.

(2) [Revoked by Treasury Decision 5572, effective August 23, 1947; 12 F. R. 4882.]

(3) Manufacturers intending to file drawback claims covering distilled spirits used in the manufacture of nonbeverage products shall submit quantitative formulas covering all such preparations direct to the Deputy Commissioner, Alcohol and Tobacco Tax Division, Washington 25, D. C., on Form No. 1678, in triplicate; except that quantitative formulas need not be submitted if the products are medicinal preparations, tinctures, or fluid extracts produced under

formulas prescribed by the United States Pharmacopoeia, the National Formulary, or the American Institute of Homeopathy, and such products are identified in the supporting data by name and followed by the letters "U. S. P.," "N. F.," or "A. I. H.," as the case may be. In the case of food products, such as preserved fruits, cakes, buns, soups, etc., it will be sufficient if the formulas therefor show the quantity of proof gallons of distilled spirits used in the production of a given quantity of finished product. A series of numbers will be given the formulas commencing with number 1 and continuing thereafter in numerical sequence. Amended or revised formulas will be considered as new formulas and serially numbered accordingly.

(4) Formulas for nonbeverage products shall be submitted to the Deputy Commissioner, Alcohol and Tobacco Tax Division, Washington 25, D. C., before or at the time of manufacture of the products. Upon receipt by the Deputy Commissioner, the formulas will be examined and if found to be medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes, they will be approved. If the formulas do not meet the requirements of the law for drawback products, they will be disapproved. No drawback will be allowed on distilled spirits used in a disapproved product, unless such product is later used in the manufacture of an approved nonbeverage product. One copy of each formula will be retained by the Deputy Commissioner, one copy returned to the manufacturer, and one copy will be sent to the district supervisor for filing. The formulas returned to manufacturers shall be filed in serial order by the manufacturer and made available for examination by internal revenue officers in the investigation of drawback claims. The copies sent to district supervisors shall likewise be filed in serial order, available for examination by drawback clerks and laboratory chemists.

* * * * * * *

(53 Stat. 467; 26 U. S. C. 3791.)

10. It is found that compliance with the notice and 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 amendments for the reason that the changes made are of a liberalizing character.

11. These regulations shall be effective upon publication in the Federal Register.

(This Treasury Decision is issued under the authority contained in 53 Stat. 298 as amended, 300 as amended, 301, 303 as amended, 310, 316 as amended, 329, 330, 331, 332, 333, 335 as amended, 357, 358, 360, 364, 373 as amended, 373, 374, 375, 398, 399, 447 as amended, 467, 492; 26 U. S. C. 2800, 2801, 2802, 2803, 2813, 2825, 2863, 2866, 2871, 2873, 2878, 2883, 3101, 3105, 3112, 3114, 3124, 3170, 3171, 3172, 3175, 3176, 3300, 3301, 3303, 3304, 3656, 3791, 4017.)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved July 16, 1952.

E. H. FOLEY,
Acting Secretary of the Treasury.

(Published in the Federal Register July 19, 1952)

DISTILLED SPIRITS

INTERNAL REVENUE CODE

REGULATIONS 15, SECTIONS 190.122, ETC. 1952–14–13864
T. D. 5912

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 190.—RECTIFICATION OF SPIRITS AND WINES

Production of vodka

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

To District Supervisors and Others Concerned:

1. Section 2800(a)(5) of the Internal Revenue Code was amended by Public Law 355 (82d Cong.) [C. B. 1952–1, 262], effective July 1, 1952, 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." The section now reads:

INTERNAL REVENUE CODE

SUBCHAPTER A—DISTILLED SPIRITS

Part I—Provisions Relating to Tax

SEC. 2800. TAX.
(a) RATE.—
(1) * * *

* * * * * * *

(5) RECTIFIED SPIRITS AND WINES.—In addition to the tax imposed by this chapter on distilled spirits and wines, there shall be levied, assessed, collected, and paid, a tax of 30 cents on each proof gallon and a proportionate tax at a like rate on all fractional parts of such proof gallon on all distilled spirits or wines rectified, purified, or refined in such manner, and on all mixtures produced in such manner, that the person so rectifying, purifying, refining, or mixing the same is a rectifier within the meaning of section 3254(g): *Provided*, That this tax shall not apply to gin produced by the redistillation of a pure spirit over juniper berries and other aromatics or to vodka produced from pure spirits in the manner authorized at registered distilleries.

* * * * * * *

2. In order to conform Regulations 15 (26 CFR, part 190) to such amendment, the regulations are hereby amended as follows:

(*a*) Section 190.122 is amended; and

(*b*) Sections 190.468a, 190.468b, 190.468c, 190.468d, 190.468e, 190.468f, and 190.468g are added.

SUBPART I—EQUIPMENT

* * * * * * *

SEC. 190.122. RECEIVING TANKS.—Where rectified products are produced by redistillation, such as gin or cordials, or where spirits are redistilled, or where vodka is produced, the rectifier must provide a requisite number of receiving tanks. Each tank shall be constructed of metal or other suitable material and equipped with a suitable device whereby the contents can be accurately determined. Manheads, inlets, and outlets of such tanks must be provided with

facilities for locking with Government locks. Each tank shall have plainly and legibly painted thereon words indicating its use, as "Gin Receiving Tank," "Cordial Receiving Tank," "Heads and Tails Receiving Tank," "Vodka Receiving Tank," etc., followed by its serial number and capacity in gallons. Receiving tanks must be located in the rectifying room. (53 Stat. 300 as amended, 318, 375; 26 U. S. C. 2801, 2829, 3176.)

SUBPART Y—RECTIFICATION

* * * * * * *

TAX-EXEMPT VODKA

SEC. 190.468a. PRODUCTION.—Vodka may be produced exempt from the rectification tax in accordance with the procedure prescribed by section 190.468b. Vodka so produced must be run into a receiving tank from which it must be promptly (a) drawn into metal, porcelain or glass containers or paraffin-lined containers, gauged, stamped, and removed to the finished products room or (b) transferred to a bottling tank, gauged, and bottled and removed to the finished products room or conveyed by pipeline to a contiguous tax-paid bottling house or rectifying plant for bottling. (See sections 190.615 to 190.672.) (53 Stat. 298 as amended, 300 as amended, 375; 26 U. S. C. 2800, 2801, 3176.)

SEC. 190.468b. METHODS OF PRODUCTION.—Vodka may be produced, exempt from the rectification tax, from pure spirits which are reduced to not more than 110° of proof and not less than 80° of proof and which, after such reduction in proof, are so treated by one of the following methods as to be without distinctive character, aroma, or taste:

(a) By causing the spirits to flow continuously through a tank or a series of tanks containing at least 1½ pounds of charcoal for each gallon of spirits contained therein at any one time so that the spirits are in intimate contact with the charcoal for a period of not less than 8 hours, not less than 10 percent of the charcoal being replaced by new charcoal at the expiration of each 40 hours of operation, at a rate which will replace at least 6 pounds of charcoal for every 100 gallons of spirits treated;

(b) By keeping the spirits in constant movement by mechanical means in contact for not less than 8 hours with at least 6 pounds of new charcoal for every 100 gallons of spirits;

(c) By purifying or refining the spirits by any other method which the Deputy Commissioner finds will result in a product equally without distinctive character, aroma, or taste, and which method has been approved by him.

(53 Stat. 298 as amended, 300 as amended, 375; 26 U. S. C. 2800, 2801, 3176.)

SEC. 190.468c. DEFINITION OF PURE SPIRIT.—The term "pure spirit" as used in section 190.468b is held to mean alcohol or neutral spirits, distilled at or above 190° of proof (whether or not such proof is subsequently reduced), and free from impurities. (53 Stat. 300 as amended, 375; 26 U. S. C. 2801, 3176.)

SEC. 190.468d. MIXING WITH OTHER SPIRITS OR MATERIALS PROHIBITED.—Vodka produced in accordance with section 190.468b, under exemption from the rectification tax cannot be mixed with other spirits or treated by the addition or abstraction of any substance or material other than pure water after production, nor can any substance or material other than pure water and that specified in section 190.468b be added to the spirits prior to or during production. (53 Stat. 298 as amended, 300 as amended, 375, 391; 26 U. S. C. 2800, 2801, 3176, 3254.)

SEC. 190.468e. REDUCTION AND FILTERING.—Vodka exempt from the rectification tax may be reduced with water in the receiving or bottling tanks and may be filtered when necessary to remove materials held in suspension. The subsequent use of filters or filter-aids which change the composition and character of the vodka will subject the product to the rectification tax. Whether such subsequent filtering changes the composition of the vodka is a question of fact determinable by chemical analysis of samples of the vodka before and after filtration. (53 Stat. 298 as amended, 300 as amended, 375, 391; 26 U. S. C. 2800, 2801, 3176, 3254.)

TAXABLE VODKA

SEC. 190.468f. PRODUCTION.—Vodka produced at a rectifying plant in any manner or by any means, other than that specified in section 190.468b, is subject to the rectification tax. (53 Stat. 298 as amended, 300 as amended, 375, 391; 26 U. S. C. 2800, 2801, 3176, 3254.)

SEC. 190.468g. TREATMENT OF VODKA.—The treatment of vodka, after its production in accordance with section 190.468b, with any materials or process which changes its composition, subjects the product to the rectification tax. Such treatment includes the flavoring of vodka in any manner, and the manipulation of vodka by a physical or chemical process, such as redistillation, filtration, or treatment with activated carbon or other materials, which changes its composition or character. (53 Stat. 298 as amended, 300 as amended, 375, 391; 26 U. S. C. 2800, 2801, 3176, 3254.)

3. The purpose of these amendments is to give effect to the Public Law 355, Eighty-second Congress, which amends section 2800(a)(5) of the Internal Revenue Code, to relieve from the rectification tax of 30 cents a proof gallon imposed by that section vodka produced by rectifiers by treating pure spirits in the same manner as such spirits are authorized to be treated in producing vodka at registered distilleries.

4. Because the amendments made by this Treasury Decision merely conform Regulations 15 to the amendment 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 (5 U. S. C. 1001 et seq.), or subject to the effective date limitation of section 4(c) of that Act.

5. This Treasury Decision shall be effective July 1, 1952, and shall apply only to vodka produced on or after such date.

(This Treasury Decision is issued under the authority contained in 53 Stat. 298 as amended, 300 as amended, 318, 375, 391; 26 U. S. C. 2800, 2801, 2829, 3176, 3254.)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved June 17, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 18, 1952, 8:56 a. m.)

TOBACCO, SNUFF, CIGARS, CIGARETTES, ETC.

INTERNAL REVENUE CODE

REGULATIONS 8, ARTICLES 20, ETC.

1952–15–13875
T. D. 5913

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

Annual registration by dealers in leaf tobacco, manufacturers of tobacco, snuff, cigars, and cigarettes, and peddlers of tobacco, eliminated.

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 order to eliminate requirements in Regulations 8 [26 CFR, part 140], pertaining to annual registration by dealers in leaf tobacco, manufacturers of tobacco, snuff, cigars, and cigarettes, and peddlers of tobacco, 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., page 5876], are amended as follows:

PARAGRAPH 1. Section 26, Act of October 1, 1899, set forth immediately preceding article 12 [26 CFR 140.12], and articles 12 and 13 [26 CFR 140.12, 140.13] are stricken out.

PAR. 2. There is inserted immediately preceding article 20 [26 CFR 140.20], the following:

SEC. 2051. REGISTRATION [INTERNAL REVENUE CODE].

Every dealer in leaf tobacco shall register with the collector of the district his name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on.

SEC. 2150. FAILURE TO REGISTER, PENALTY [INTERNAL REVENUE CODE].

Every dealer in leaf tobacco * * * who fails to register with the collector as required under sections 2051, * * * shall be subject to a penalty of $50.

PAR. 3. Article 20 [26 CFR 140.20] is amended to read as follows:

ART. 20. REGISTRY.—(*a*) Every person, before commencing business as a dealer in leaf tobacco, shall register with the district supervisor his name or style, place of residence, and place where the business is to be carried on. Such registration will be required with respect to each establishment or warehouse where leaf tobacco is received—

(1) for sale or shipment,
(2) for packing, rehandling, redrying, or stemming, or
(3) solely for storage, if such warehouse constitutes the dealer's only place of business.

Where a person operates or controls a group of warehouses solely for the storage of leaf tobacco, registration of each warehouse will not be required, provided a consolidated record covering all leaf tobacco received into and shipped from all such places is maintained at the warehouse or establishment having direction

and control of such places. However, the warehouse or establishment having direction and control of a group of storage warehouses must be registered.

(*b*) In order to register, the dealer in leaf tobacco shall file with the district supervisor a properly completed return for registry, Form 277, showing all the information called for on the form and the instructions printed thereon.

(*c*) Every dealer in leaf tobacco shall also file a return for registry, Form 277, whenever he furnishes a new bond.

(*d*) When a properly completed return for registry, Form 277, supported by satisfactory bond and statement, is received by the district supervisor from a dealer in leaf tobacco, he will issue to the dealer a certificate of registry, Form 282, which certificate shall be conspicuously posted by the dealer in his place of business.

(*e*) The loss or destruction of a certificate should be reported to the district supervisor at once for the purpose of obtaining from him a duplicate certificate to be posted as required.

PAR. 4. There is inserted immediately preceding article 34 [26 CFR 140.34], the following:

SEC. 2011. REGISTRATION [INTERNAL REVENUE CODE].

Every manufacturer of tobacco shall register with the collector of the district his name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on.

SEC. 2150. FAILURE TO REGISTER, PENALTY [INTERNAL REVENUE CODE].

Every * * * manufacturer of tobacco * * * who fails to register with the collector as required under sections * * * 2011, * * * shall be subject to a penalty of $50.

PAR. 5. Article 34 [26 CFR 140.34] is amended to read as follows:

ART. 34. REGISTRY.—(*a*) Every person, before commencing business as a manufacturer of tobacco or snuff, shall register with the district supervisor his name or style, place of residence, and place where the business is to be carried on. Separate registration shall be required in respect to each place where such a business is to be carried on.

(*b*) In order to register, the manufacturer of tobacco or snuff shall file with the district supervisor a properly completed return for registry, Form 277, showing all the information called for on the form and the instructions printed thereon.

(*c*) Every manufacturer of tobacco or snuff shall also file a return for registry, Form 277, whenever he furnishes a new bond.

(*d*) When a properly completed return for registry, Form 277, supported by satisfactory bond and statement, is received by the district supervisor from a manufacturer of tobacco or snuff, he will issue to the manufacturer a certificate of registry, Form 284, which certificate shall be conspicuously posted by the manufacturer in his factory.

(*e*) The loss or destruction of a certificate should be reported to the district supervisor at once for the purpose of obtaining from him a duplicate certificate to be posted as required.

PAR. 6. There is inserted immediately preceding article 63 [26 CFR 140.63], the following:

SEC. 2031. REGISTRATION [INTERNAL REVENUE CODE].

Every manufacturer of cigars or cigarettes shall register with the collector of the district his name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on.

SEC. 2150. FAILURE TO REGISTER, PENALTY [INTERNAL REVENUE CODE].

Every * * * manufacturer of cigars or cigarettes * * * who fails to register with the collector as required under sections * * * 2031, * * * shall be subject to a penalty of $50.

PAR. 7. Article 63 [26 CFR 140.63] is amended to read as follows:

ART. 63. REGISTRY.—(*a*) Every person, before commencing business as a manufacturer of cigars or cigarettes, shall register with the district supervisor his name or style, place of residence, and place where the business is to be carried on. Separate registration shall be required in respect to each place where such a business is to be carried on.

(*b*) In order to register, the manufacturer of cigars or cigarettes shall file with the district supervisor a properly completed return for registry, Form 277, showing all the information called for on the form and the instructions printed thereon.

(*c*) Every manufacturer of cigars or cigarettes shall also file a return for registry, Form 277, whenever he furnishes a new bond.

(*d*) When a properly completed return for registry, Form 277, supported by satisfactory bond and statement, is received by the district supervisor from a manufacturer of cigars or cigarettes, he will issue to the manufacturer a certificate of registry, Form 283, which certificate shall be conspicuously posted by the manufacturer in his factory.

(*e*) The loss or destruction of a certificate should be reported to the district supervisor at once for the purpose of obtaining from him a duplicate certificate to be posted as required.

PAR. 8. There is inserted immediately preceding article 178 [26 CFR 140.178], the following:

SEC. 2071. REGISTRATION [INTERNAL REVENUE CODE].

Every peddler of tobacco shall register with the collector of the district his name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on.

SEC. 2150. FAILURE TO REGISTER, PENALTY [INTERNAL REVENUE CODE].

Every * * * peddler of tobacco who fails to register with the collector as required under sections * * * 2071, * * * shall be subject to a penalty of $50.

SEC. 2074. CERTIFICATE [INTERNAL REVENUE CODE].

Every peddler of tobacco shall obtain a certificate from the collector of his collection district, who is authorized and directed to issue the same, giving the name of the peddler, his residence, and the fact of his having filed the required bond; and shall on demand of any officer of internal revenue produce and exhibit his certificate.

SEC. 2192. INSPECTION OF PEDDLER'S CERTIFICATE [INTERNAL REVENUE CODE].

Any internal revenue agent may demand production of and inspect the collector's certificate for peddlers.

SEC. 2153. PEDDLER'S CERTIFICATE, REFUSAL TO PERMIT INSPECTION, PENALTY [INTERNAL REVENUE CODE].

Refusal or failure to produce for inspection the collector's certificate for peddlers, when demanded by any internal revenue agent, shall subject the party guilty thereof to a fine of not more than $500 and to imprisonment not more than twelve months.

SEC. 2154. PEDDLERS, FORFEITURES RELATING TO [INTERNAL REVENUE CODE].

* * * * * * *

(*b*) REFUSAL TO PERMIT INSPECTION OF CERTIFICATE.—Whenever any peddler refuses to exhibit the collector's certificate for peddlers on demand of any officer of internal revenue, said officer may seize the horse or mule, wagon, and contents, or pack, bundle, or basket, of any person so refusing; and the collector of the district in which the seizure occurs **may,** on ten days' notice, published in any newspaper in the district **or served personally on the peddler, or** at his dwelling house,

require such peddler to show cause, if any he has, why the horses or mules, wagons, and contents, pack, bundle, or basket so seized shall not be forfeited. In case no sufficient cause is shown, proceedings for the forfeiture of the property seized shall be taken under the general provisions of the internal revenue laws relating to forfeitures.

PAR. 9. Article 178 [26 CFR 140.178] is amended to read as follows:

ART. 178. REGISTRY.—(*a*) Every person, before commencing business as a peddler of tobacco, shall register with the district supervisor his name or style, place of residence, and the area in which he will operate as indicated in the statement required by article 179.

(*b*) In order to register, the peddler of tobacco shall file with the district supervisor a properly completed return for registry, Form 277, showing all the information called for on the form and the instructions printed thereon.

(*c*) Every peddler of tobacco shall also file a return for registry, Form 277, whenever he furnishes a new bond.

(*d*) When a properly completed return for registry, Form 277, supported by satisfactory bond and statement, is received by the district supervisor from a peddler of tobacco, he will issue to the peddler a certificate of registry, Form 285, which certificate shall be carried by the peddler and produced and exhibited upon demand of any internal revenue officer. If the peddler operates a number of trucks or other vehicles in his business, the supervisor shall issue a certificate to be carried in connection with each such vehicle.

(*e*) New certificates shall be issued by the district supervisor whenever a peddler of tobacco files an amended statement covering any change in his residence address within the same collection district.

(*f*) The loss or destruction of a certificate should be reported to the district supervisor at once for the purpose of obtaining from him a duplicate certificate.

PAR. 10. Section 3383, Revised Statutes, set forth immediately preceding article 181 [26 CFR 140.181] and such article 181 are stricken out.

Because the sole purpose of this Treasury Decision is to relieve dealers in leaf tobacco, manufacturers of tobacco, snuff, cigars, and cigarettes, and peddlers of tobacco from requirements pertaining to annual registration, it is hereby 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 under section 4(c) of said Act.

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

(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 June 23, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register June 27, 1952)

TOBACCO AND SNUFF [a]

1952–14–13867
Tob. 337

Tobacco and snuff manufactured in and removed from domestic factories during the month of May 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	3,346,881	3,541,914	3,426,797	3,588,311	94,919	53,680
Twist	413,602	409,968	338,718	371,335	39,441	33,609
Fine-cut chewing	247,922	256,242	248,175	250,298		
Scrap chewing	3,319,171	3,333,006	3,368,625	3,337,639	3,640	3,048
Smoking	8,456,059	9,102,618	8,320,782	8,703,176	736,969	491,893
Snuff	3,108,801	3,501,147	3,112,271	3,531,602	2,114	2,508
Total	18,892,436	20,144,895	18,815,368	19,782,361	377,083	584,738

1952–16–13890
Tob. 341

Tobacco and snuff manufactured in and removed from domestic factories during the month of June 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	3,292,112	3,380,666	3,034,670	3,267,888	144,330	70,547
Twist	400,697	372,655	310,256	346,714	116,281	75,473
Fine-cut chewing	242,519	256,126	234,490	255,502		
Scrap chewing	3,388,843	3,465,881	3,395,679	3,408,582	2,662	15,464
Smoking	7,994,642	8,896,551	7,759,783	8,324,492	209,339	373,581
Snuff	3,125,674	3,208,773	3,135,022	3,160,019	1,059	4,184
Total	18,444,487	19,580,652	17,869,900	18,763,197	473,671	539,249

1952–19–13924
Tob. 345

Tobacco and snuff manufactured in and removed from domestic factories during the month of July 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	3,308,342	3,195,867	3,385,828	3,093,203	53,101	50,258
Twist	378,993	327,806	332,701	317,074	22,905	53,102
Fine-cut chewing	231,346	216,911	228,911	223,522		
Scrap chewing	2,907,834	2,967,598	2,995,162	3,229,651	5,411	18,532
Smoking	7,229,764	6,818,850	6,961,401	6,668,301	232,759	283,691
Snuff	2,263,114	2,249,590	2,334,882	2,270,735	1,198	2,137
Total	16,319,393	15,776,622	16,238,885	15,802,186	315,374	407,720

[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.

1952–21–13941
Tob. 347

Tobacco and snuff manufactured in and removed from domestic factories during the month of August 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	3,366,346	3,762,751	3,330,971	3,757,986	40,527	114,436
Twist	396,580	412,284	313,374	363,889	145,901	28,395
Fine-cut chewing	231,244	262,658	234,799	255,723		
Scrap chewing	3,017,122	3,802,081	3,357,027	3,719,965	1,072	18,605
Smoking	8,373,139	9,741,053	8,016,264	9,524,332	240,649	312,550
Snuff	3,170,055	3,684,333	3,202,876	3,610,601	3,712	1,720
Total	18,554,486	21,665,160	18,455,311	21,232,496	431,861	475,706

1952–23–13962
Tob. 350

Tobacco and snuff manufactured in and removed from domestic factories during the month of September 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	3,412,577	3,214,079	3,253,043	3,154,092	38,257	118,470
Twist	419,086	368,744	345,605	274,016	76,487	63,044
Fine-cut chewing	227,843	233,006	241,804	229,541		
Scrap chewing	3,306,797	3,292,891	3,315,271	3,198,482	17,718	56,571
Smoking	9,405,763	9,669,035	8,890,730	9,291,258	366,273	257,714
Snuff	3,279,424	3,059,707	3,266,906	2,913,341	3,615	2,373
Total	20,051,490	19,777,462	19,313,359	19,060,730	502,350	498,172

1952–25–13986
Tob. 353

Tobacco and snuff manufactured in and removed from domestic factories during the month of October 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	3,661,871	3,292,860	3,560,813	2,922,219	103,613	44,854
Twist	445,669	325,884	354,553	277,420	87,417	38,105
Fine-cut chewing	261,217	227,278	252,903	243,939		
Scrap chewing	3,567,010	3,274,309	3,498,148	3,409,927	1,619	4,998
Smoking	9,781,060	8,017,084	9,480,230	7,717,428	316,646	256,579
Snuff	3,625,159	3,154,397	3,644,040	3,237,839	4,511	3,790
Total	21,341,986	18,291,812	20,790,687	17,808,772	513,806	348,326

CIGARETTES AND SMALL CIGARS [a]

1952–14–13869
Tob. 338

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of May 1952, compared with the same month of 1951

	Small cigarettes		Large cigarettes		Small cigars	
	1952	1951	1952	195'	1952	1951
Manufactured	36, 135, 407, 598	36, 668, 644, 944	238, 350	58, 700	6, 089, 950	6, 684, 240
Removed tax-paid	32, 919, 578, 060	32, 776, 466, 009	237, 850	59, 000	5, 965, 750	6, 941, 620
Removed tax-free	3, 348, 377, 519	3, 995, 736, 266	1, 200	300	48, 000	197, 000

1952–16–13891
Tob. 342

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of June 1952, compared with the same month of 1951

	Small cigarettes		Large cigarettes		Small cigars	
	1952	1951	1952	1951	1952	1951
Manufactured	36, 872, 781, 843	35, 968, 434, 378	115, 640	49, 590	5, 717, 970	5, 440, 830
Removed tax-paid	34, 510, 628, 110	32, 474, 209, 070	116, 340	50, 390	5, 948, 240	5, 613, 060
Removed tax-free	2, 364, 583, 496	3, 462, 793, 922	300	300	33, 000	----------

1952–18–13915
Tob. 344

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of July 1952, compared with the same month of 1951

	Small cigarettes		Large cigarettes		Small cigars	
	1952	1951	1952	1951	1952	1951
Manufactured	36, 666, 922, 220	32, 077, 869, 364	73, 660	47, 550	5, 164, 450	4, 354, 560
Removed tax-paid	33, 836, 558, 440	29, 738, 832, 570	72, 360	41, 050	4, 826, 940	5, 580, 400
Removed tax-free	2, 832, 513, 413	2, 443, 768, 342	300	600	48, 000	----------

1952–21–13942
Tob. 348

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of August 1952, compared with the same month of 1951

	Small cigarettes		Large cigarettes		Small cigars	
	1952	1951	1952	1951	1952	1951
Manufactured	40, 213, 482, 336	40, 003, 779, 113	83, 980	65, 700	5, 742, 140	6, 537, 900
Removed tax-paid	35, 972, 266, 470	36, 601, 400, 680	84, 580	65, 700	6, 108, 640	6, 972, 620
Removed tax-free	4, 365, 844, 399	3, 499, 136, 870	----------	5, 000	21, 000	12, 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.

1952–23–13963
Tob. 351

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of September 1952, compared with the same month of 1951

	Small cigarettes		Large cigarettes		Small cigars	
	1952	1951	1952	1951	1952	1951
Manufactured	39,693,479,151	33,551,540,003	116,400	51,800	6,042,250	5,727,190
Removed tax-paid	34,950,437,068	30,799,532,592	104,700	46,900	5,642,700	5,949,600
Removed tax-free	4,325,020,216	2,773,407,931	300	6,000	6,000	24,000

1952–25–13987
Tob. 354

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of October 1952, compared with the same month of 1951

	Small cigarettes		Large cigarettes		Small cigars	
	1952	1951	1952	1951	1952	1951
Manufactured	41,744,553,944	40,957,573,668	147,020	114,000	6,563,430	7,031,990
Removed tax-paid	37,372,185,674	37,477,119,346	103,320	114,600	6,357,520	6,503,220
Removed tax-free	4,294,300,515	3,415,795,404	15,300	300	3,000	48,000

LARGE CIGARS [a]

1952–15–13877
Tob. 339

Large cigars manufactured in and removed from domestic factories during the month of April 1952, compared with the same month of 1951

	1952	1951
Manufactured	480, 533, 435	456, 064, 660
Removed:		
Tax-paid—		
Class A	2, 112, 555	1, 195, 939
Class B	16, 549, 326	13, 689, 322
Class C	178, 591, 402	150, 756, 924
Class D	50, 432, 818	43, 751, 626
Class E	200, 219, 562	194, 285, 300
Class F	10, 595, 948	9, 166, 484
Class G	5, 969, 748	5, 218, 656
Total tax-paid	464, 471, 359	418, 064, 251
Tax-free	6, 573, 751	10, 381, 656

1952–16–13887
Tob. 340

Large cigars manufactured in and removed from domestic factories during the month of May 1952, compared with the same month of 1951

	1952	1951
Manufactured	497, 917, 057	456, 913, 209
Removed:		
Tax-paid—		
Class A	2, 192, 835	1, 304, 351
Class B	17, 702, 578	15, 700, 472
Class C	186, 331, 882	178, 766, 210
Class D	50, 525, 055	50, 396, 519
Class E	208, 940, 951	219, 535, 654
Class F	11, 441, 321	10, 953, 099
Class G	6, 339, 510	6, 886, 635
Total tax-paid	483, 474, 632	483, 542, 940
Tax-free	4, 649, 107	6, 210, 322

1952–17–13907
Tob. 343

Large cigars manufactured in and removed from domestic factories during the month of June 1952, compared with the same month of 1951

	1952	1951
Manufactured	470, 989, 675	456, 919, 291
Removed:		
Tax-paid—		
Class A	2, 073, 625	1, 410, 983
Class B	22, 592, 101	17, 211, 402
Class C	179, 412, 947	176, 692, 961
Class D	49, 581, 537	51, 297, 663
Class E	220, 118, 368	220, 540, 020
Class F	11, 715, 714	10, 316, 213
Class G	6, 703, 195	5, 556, 034
Total tax-paid	492, 197, 487	483, 025, 276
Tax-free	3, 933, 250	6, 360, 777

[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.

1952–19–13926
Tob. 346

Large cigars manufactured in and removed from domestic factories during the month of July 1952, compared with the same month of 1951

	1952	1951
Manufactured	429, 742, 534	369, 528, 824
Removed:		
Tax-paid—		
Class A	2, 261, 940	1, 334, 779
Class B	16, 426, 288	16, 735, 928
Class C	183, 090, 766	161, 334, 763
Class D	51, 742, 647	48, 507, 398
Class E	197, 483, 143	182, 043, 898
Class F	10, 507, 439	8, 119, 742
Class G	6, 525, 206	5, 189, 411
Total tax-paid	468, 037, 429	423, 265, 919
Tax-free	3, 647, 689	5, 314, 428

1952–21–13943
Tob. 349

Large cigars manufactured in and removed from domestic factories during the month of August 1952, compared with the same month of 1951

	1952	1951
Manufactured	478, 921, 724	502, 998, 970
Removed:		
Tax-paid—		
Class A	2, 865, 980	2, 024, 396
Class B	16, 119, 353	21, 082, 357
Class C	184, 971, 873	184, 746, 477
Class D	51, 522, 173	54, 527, 336
Class E	220, 486, 939	222, 845, 068
Class F	10, 107, 829	10, 396, 597
Class G	6, 539, 090	5, 851, 132
Total tax-paid	492, 613, 237	501, 473, 363
Tax-free	11, 720, 164	6, 218, 486

1952–24–13973
Tob. 352

Large cigars manufactured in and removed from domestic factories during the month of September 1952, compared with the same month of 1951

	1952	1951
Manufactured	513, 887, 574	456, 255, 123
Removed:		
Tax-paid—		
Class A	1, 721, 295	1, 854, 915
Class B	18, 870, 838	18, 865, 443
Class C	194, 030, 767	165, 152, 905
Class D	53, 573, 584	51, 978, 659
Class E	212, 145, 094	201, 520, 327
Class F	11, 343, 688	9, 667, 983
Class G	6, 832, 720	5, 705, 962
Total tax-paid	498, 517, 986	454, 746, 194
Tax-free	11, 686, 110	5, 374, 320

LEGISLATION

1952-14-13865

H. R. 156. PUBLIC LAW 386, EIGHTY-SECOND CONGRESS
[CHAPTER 390, SECOND SESSION]

An Act To repeal the Alaska railroads tax

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, effective with respect to taxable years ending after the date of the enactment of this Act, chapter 8 of the Internal Revenue Code (imposing the Alaska railroads tax) is hereby repealed.

Approved June 10, 1952.

1952-14-13866

H. R. 7188. PUBLIC LAW 391, EIGHTY-SECOND CONGRESS
[CHAPTER 420, SECOND SESSION]

An Act To provide that the additional tax imposed by section 2470(a)(2) of the Internal Revenue Code shall not apply in respect of coconut oil produced in, or produced from materials grown in, the Territory of the Pacific Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2470(a)(2) of the Internal Revenue Code (relating to the additional tax on domestic processing of coconut oil) is hereby amended to read as follows:

(2) ADDITIONAL RATE ON COCONUT OIL.—There shall be imposed (in addition to the tax imposed by the preceding paragraph) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing. The additional tax imposed by this paragraph shall not apply when it is established, in accordance with regulations prescribed by the Secretary, that the coconut oil (whether or not contained in a combination or mixture) (A) is wholly the production of the Philippine Islands, any possession of the United States, or the Territory of the Pacific Islands (hereinafter in this paragraph referred to as the "Trust Territory"), or (B) was produced wholly from materials the growth or production of the Philippine Islands, any possessions of the United States, or the Trust Territory: *Provided, however*, That such additional tax shall apply in respect of coconut oil (whether or not contained in a combination or mixture) so derived from the Trust Territory, to such extent, and at such time after the date of the applicable proclamation, as the President, after taking into account the responsibilities of the United States with respect to the economy of the Trust Territory, shall hereafter determine and proclaim to be justified to prevent substantial injury or the threat thereof to the competitive trade of any country of the free world. The tax imposed by this paragraph shall not apply to any domestic processing after July 3, 1974.

SEC. 2. The amendment made by this Act shall be effective only after the day on which this Act is enacted.

Approved June 12, 1952.

1952–15–13878

H. R. 7345. PUBLIC LAW 465, EIGHTY-SECOND CONGRESS
[CHAPTER 588, SECOND SESSION]

An Act To exclude from gross income the proceeds of certain sports programs conducted for the benefit of the American National Red Cross, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22(b) of the Internal Revenue Code (relating to exclusions from gross income) is amended by adding at the end thereof the following new paragraph:

(16) SPORTS PROGRAMS CONDUCTED FOR THE AMERICAN NATIONAL RED CROSS.—In the case of a taxpayer which is a corporation primarily engaged in the furnishing of sports programs, amounts received as proceeds from a sports program conducted by the taxpayer if—

(A) the taxpayer agrees in writing with the American National Red Cross to conduct such sports program exclusively for the benefit of the American National Red Cross;

(B) the taxpayer turns over to the American National Red Cross the proceeds from such sports program, minus the expenses paid or incurred by the taxpayer (i) which would not have been so paid or incurred but for such sports program, and (ii) which would be allowable as deductions under section 23(a)(1)(A) but for the last sentence thereof; and

(C) the facilities used for such program are not regularly used during the taxable year for the conduct of sports programs to which this paragraph applies.

As used in this paragraph, the term "proceeds from such sports program" includes all amounts paid for admission to the sports program, plus all proceeds received by the taxpayer from such program or activities carried on in connection therewith.

SEC. 2. Section 23(a)(1)(A) of the Internal Revenue Code (relating to the deduction of trade or business expenses from gross income) is amended by adding at the end thereof the following new sentence:

In the case of any sports program conducted for the benefit of the American National Red Cross, expenses described in section 22(b)(16)(B) shall be allowable under this subparagraph only to the extent that such expenses exceed the amount excluded from gross income by section 22(b)(16).

SEC. 3. The amendments made by the first section and section 2 of this Act shall apply only with respect to sports programs conducted after the date of the enactment of this Act under agreements entered into after such date.

SEC. 4. (a) Section 23(o) of the Internal Revenue Code (relating to deductions by individuals for charitable contributions) is hereby amended by striking out "15 per centum" and inserting in lieu thereof "20 per centum".

(b) Section 120 of the Internal Revenue Code (relating to unlimited deduction for charitable and other contributions) is hereby amended by striking out "15 per centum" and inserting in lieu thereof "20 per centum".

(c) The amendments made by this section shall apply only with respect to taxable years beginning after December 31, 1951.

Approved July 8, 1952.

1952–16–13884

H. R. 7876. PUBLIC LAW 468, EIGHTY-SECOND CONGRESS
[CHAPTER 592, SECOND SESSION]

An Act Relating to the taxation of life insurance companies

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 201 (a) (1) (relating to imposition of tax on life-insurance companies) of the Internal Revenue Code is hereby amended by adding after "1951" wherever it appears, "and 1952".

(b) Section 203A (relating to adjusted normal-tax net income of life-insurance companies) of the Internal Revenue Code is hereby amended by adding after "1951", wherever it appears, "and 1952".

(c) Section 433(a)(1)(H) (relating to excess profits net income of life-insurance companies) of the Internal Revenue Code is hereby amended by adding after "1951", wherever it appears, "and 1952".

SEC. 2. The provisions of section 201(f) of the Internal Revenue Code and sections 201(a)(1), 203A, and 433(a)(1)(H) of the Internal Revenue Code as amended by this Act shall be applicable to taxable years beginning in 1952.

Approved July 8, 1952.

1952–16–13885

H. R. 7313. PUBLIC LAW 471, EIGHTY-SECOND CONGRESS
[CHAPTER 598, SECOND SESSION]

An Act Making appropriations for the Legislative Branch for the fiscal year ending June 30, 1953, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Legislative Branch for the fiscal year ending June 30, 1953, namely:

* * * * * * *

HOUSE OF REPRESENTATIVES

SALARIES, MILEAGE, AND EXPENSES OF MEMBERS

* * * * * * *

For mileage and expense allowance of Members of the House of Representatives, Delegates from Territories, and the Resident Commissioner from Puerto Rico, as authorized by law, $1,273,500: *Provided*, That for the two taxable years beginning after December 31, 1952, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, Territory, or possession which he represents in Congress shall be considered to be his home for the purposes of section 23(a)(1)(A) of the Internal Revenue Code, but amounts expended by such Member within each such taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000.

AMENDMENT TO INTERNAL REVENUE CODE

Section 23(k) of the Internal Revenue Code (relating to deductions for bad debts) is amended by adding at the end thereof a new paragraph as follows:

(6) EXCEPTION.—This subsection shall not apply in the case of a taxpayer, other than a bank, as defined in section 104, with respect to debts owed by (A) any political party, (B) any national, state, or local committee of any political party, or (C) any committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of Presidential or Vice Presidential electors or of any individual whose name is presented for election to any Federal, State, or local elective public office, whether or not such individual is elected. For the purpose of this paragraph, the terms "contributions" and "expenditure" shall have the meanings prescribed for such terms in section 591 of title 18 of the United States Code.

The amendment made by this paragraph shall be applicable with respect to taxable years beginning after December 31, 1951.

* * * * * * *

This Act may be cited as the "Legislative Branch Appropriation Act, 1953".

Approved July 9, 1952.

1952–16–13886

S. 3276. PUBLIC LAW 473, EIGHTY-SECOND CONGRESS
[CHAPTER 600, SECOND SESSION]

An Act To amend the Act entitled "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 section 2 of the Act of May 15, 1952 (Public Law 342, Eighty-second Congress [C. B. 1952–1, 259]), relating to the rehabilitation of Federal prisoners is hereby amended by striking out the words "Federal income, State, and gift taxes" and inserting in lieu thereof "Federal income, estate, and gift taxes".

Approved July 9, 1952.

1952–16–13889

H. R. 3168. PUBLIC LAW 539, EIGHTY-SECOND CONGRESS
[CHAPTER 741, SECOND SESSION]

An Act To amend section 113(b)(1)(B) of the Internal Revenue Code with respect to the adjustment of the basis of property for depreciation, obsolescence, amortization, and depletion.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of section 113(b)(1)(B) of the Internal Revenue Code (relating to adjustments to basis of property for depreciation, etc.) as precedes the word "Where" is hereby amended to read as follows:

(B) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent of the amount—

(i) allowed as deductions in computing net income under this chapter or prior income tax laws, and

(ii) resulting (by reason of the deductions so allowed) in a reduction for any taxable year of the taxpayer's taxes under this chapter (other than subchapter E) subchapter E of chapter 2, or prior income, war-profits, or excess-profits tax laws,

but not less than the amount allowable under this chapter or prior income tax laws. Clause (ii) of this subparagraph shall not apply in respect of any period since February 28, 1913, and before January 1, 1952, unless an election has been made under subsection (d).

SEC. 2. Section 113 of the Internal Revenue Code (relating to basis of property) is hereby amended by adding at the end thereof the following new subsection:

(d) ELECTION IN RESPECT OF DEPRECIATION, ETC., ALLOWED BEFORE 1952.—Any person may elect to have clause (ii) of subsection (b)(1)(B apply in respect of periods since February 28, 1913, and before January 1, 1952. Such an election shall be made in such manner as the Secretary may by regulations prescribe, shall be irrevocable, and shall apply in respect of all property held by the person making the election at any time on or before the date on which the election was made and in respect of all periods since February 28, 1913, and before January 1, 1952, during which such person held such property or for which adjustments must be made under subsection (b)(2). An election by a transferor, donor, or grantor made after the date of the transfer, gift, or grant of property shall not affect the basis of such property in the hands of the transferee, donee, or grantee. No such election may be made after December 31, 1952.

SEC. 3. The amendments made by this Act shall apply in respect of taxable years beginning after December 31, 1938. Provisions having the effect of such amendments shall be deemed to have been included in the revenue laws respectively applicable to taxable years ending after December 31, 1931, and beginning before January 1, 1939.

Approved July 14, 1952.

1952–17–13898

H. R. 7656. PUBLIC LAW 550, EIGHTY-SECOND CONGRESS
[CHAPTER 875, SECOND SESSION]

An Act To provide vocational readjustment and to restore lost educational opportunities to certain persons who served in the Armed Forces on or after June 27, 1950, and prior to such date as shall be fixed by the President or the Congress, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—SHORT TITLE AND STATEMENT OF POLICY

SHORT TITLE

SEC. 101. This Act may be cited as the "Veterans' Readjustment Assistance Act of 1952".

* * * * * * *

ADMINISTRATION OF TITLE

SEC. 505. (a) Mustering-out payments due or to become due under this title shall not be assignable and any payments made to or on account of a veteran hereunder shall be exempt from taxation, shall be exempt from the claims of creditors, including any claim of the

United States, and shall not be subject to attachment, levy, or seizure by or under any legal or equitable process whatever either before or after receipt by the payee.

(b) The Secretaries of the Army, Navy, Air Force, and Treasury shall make such regulations not inconsistent with this title as may be necessary effectively to carry out the provisions thereof, and their decisions shall be final and not subject to review by any court or other Government official.

* * * * * * *

Approved July 16, 1952.

1952–17–13899

H. R. 8270. PUBLIC LAW 567, EIGHTY-SECOND CONGRESS
[CHAPTER 892, SECOND SESSION]

An Act To amend section 112(n) of the Internal Revenue Code (relating to nonrecognition of gain from sale or exchange of residence) with respect to persons serving on active duty with the Armed Forces of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 112(n) of the Internal Revenue Code (relating to nonrecognition of gain from sale or exchange of residence) is hereby amended by adding at the end thereof the following new paragraph:

"(8) MEMBERS OF ARMED FORCES.—The running of any period of time specified in paragraph (1) or (2) (other than the one year referred to in paragraph (2)(F)) of this subsection shall be suspended during any time that the taxpayer (or his spouse if the old residence and the new residence are each used by the taxpayer and his spouse as their principal residence) serves on extended active duty with the Armed Forces of the United States after the date of the sale of the old residence and before January 1, 1954, except that any such period as so suspended shall not extend beyond the date four years after the date of the sale of the old residence. For the purpose of this paragraph, the term 'extended active duty' means any period of active duty pursuant to a call or order to such duty for a period in excess of ninety days or for an indefinite period."

SEC. 2. The amendment made by the first section of this Act shall be applicable to taxable years ending after December 31, 1950, with respect to residences sold (within the meaning of section 112(n) of the Internal Revenue Code) after such date.

CLARIFICATION OF EXISTING LAW AS TO JURY TRIAL IN ACTIONS FOR RECOVERY OF INTERNAL REVENUE TAXES

SEC. 3. (a) Nothing in Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of 1952 shall be construed to impair any right or remedy, including trial by jury, to recover any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.

(b) For the purpose of any action to recover any such tax, penalty, or sums, all statutes, rules, and regulations referring to the collector of internal revenue shall be deemed to refer to the officer whose act or acts referred to in subsection (a) gave rise to such action. The venue of any such action shall be the same as under existing law.

Approved July 16, 1952.

1952–17–13900

H. J. RES. 480. PUBLIC LAW 571, EIGHTY-SECOND CONGRESS
[CHAPTER 913, SECOND SESSION]

Joint Resolution Extending the time for use of construction reserve funds established under section 511 of the Merchant Marine Act, 1936, as amended.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of an Act approved August 8, 1947 (Public Law 384, Eightieth Congress) [C. B. 1947–2, 348], relating to merchant-marine construction reserve funds established under section 511 of the Merchant Marine Act, 1936, as amended, is hereby amended by striking out "March 31, 1952" and inserting in lieu thereof "March 31, 1953".

Approved July 16, 1952.

1952–17–13901

H. R. 5734. PUBLIC LAW 576, EIGHTY-SECOND CONGRESS
[CHAPTER 924, SECOND SESSION]

An Act To amend section 3268 of the Internal Revenue Code so as to exempt certain recreational facilities from the tax prescribed therein, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3268(a) of the Internal Revenue Code (relating to tax on bowling alleys and billiard and pool tables) is hereby amended by adding at the end thereof the following new sentence: "The tax imposed under this section shall not apply for any period beginning after June 30, 1952, with respect to any bowling alley, billiard table, or pool table maintained exclusively for the use of members of the Armed Forces on any property owned, reserved, or used by, or otherwise acquired for the use of, the United States if no charge is made for their use."

SEC. 2. Subsection (a)(4)(D) of the Renegotiation Act, as amended by section 201(c) of the Renegotiation Act of 1951 [C. B. 1951–1, 181] and by section 617 of the Revenue Act of 1951, is hereby amended by striking out "October 31, 1951" and inserting in lieu thereof "December 31, 1952".

* * * * * * *

Approved July 17, 1952.

1952–17–13902

S. 241. PUBLIC LAW 586, EIGHTY-SECOND CONGRESS [CHAPTER 939, SECOND SESSION]

An Act To amend the Merchant Marine Act, 1936, as amended, to further promote the development and maintenance of the American merchant marine, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 501(a) of the Merchant Marine Act, 1936, as amended, is amended to read as follows:

* * * * * * *

SEC. 9. Section 511(b) of such Act is amended to read as follows:

(b) For the purposes of promoting the construction, reconstruction, reconditioning, or acquisition of vessels, or for other purposes authorized in this section, necessary to carrying out the policy set forth in title I of this Act, any citizen of the United States who is operating a vessel or vessels in the foreign or domestic commerce of the United States or in the fisheries or owns in whole or in part a vessel or vessels being so operated, or who, at the time of purchase or requisition of the vessel by the Government, was operating a vessel or vessels so engaged or owned in whole or in part a vessel or vessels being so operated or had acquired or was having constructed a vessel or vessels for the purpose of operation in such commerce or in the fisheries, may establish a construction reserve fund, for the construction, reconstruction, reconditioning, or acquisition of new vessels, or for other purposes authorized in this section, to be composed of deposits of proceeds from sales of vessels, indemnities on account of losses of vessels, earnings from the operation of vessels documented under the laws of the United States and from services incident thereto, and receipts, in the form of interest or otherwise, with respect to amounts previously deposited. Such construction reserve fund shall be established, maintained, expended, and used in accordance with the provisions of this section and rules or regulations to be prescribed jointly by the Commission and the Secretary of the Treasury.

SEC. 10. Section 511(c) of such Act is amended to read as follows:

(c) In the case of the sale or actual or constructive total loss of a vessel, if the taxpayer deposits an amount equal to the net proceeds of the sale or to the net indemnity with respect to the loss in a construction reserve fund established under subsection (b), then—

(1) if the taxpayer so elects in his income-tax return for the taxable year in which the gain was realized, or

(2) in case a vessel is purchased or requisitioned by the United States, or is lost, in any taxable year beginning after December 31, 1939, and the taxpayer receives payment for the vessel so purchased or requisitioned, or receives from the United States indemnity on account of such loss, subsequent to the end of such taxable year, if the taxpayer so elects prior to the expiration of sixty days after the receipt of the payment or indemnity, and in accordance with a form of election to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury,

no gain shall be recognized to the taxpayer in respect of such sale or indemnification in the computation of net income for the purposes of Federal income or excess-profits taxes. If an election is made under subdivision (2) and if computation or recomputation in accordance with this subsection is otherwise allowable but is prevented, on the date of making such election or within six months thereafter, by any statute of limitation, such computation or recomputation nevertheless shall be made notwithstanding such statute if a claim therefor is filed within six months after the date of making such election.

For the purposes of this subsection no amount shall be considered as deposited in a construction reserve fund unless it is deposited within sixty days after it is received by the taxpayer.

As used in this subsection the term "net proceeds" and the term "net indemnity" mean the sum of (1) the adjusted basis of the vessel and (2) the amount of gain which would be recognized to the taxpayer without regard to this subsection.

SEC. 11. Section 511(d) of such Act is amended to read as follows:

(d) The basis for determining gain or loss and for depreciation, for the purposes of Federal income or excess profits taxes, of any new vessel constructed, reconstructed, reconditioned, or acquired by the taxpayer, or with respect to which purchase-money indebtedness is liquidated as provided in subsection (g), in whole or in part out of the construction reserve fund shall be reduced by that portion of the deposits in the fund expended in the construction, reconstruction, reconditioning, acquisition, or liquidation of purchase-money indebtedness of the new vessel which represents gain not recognized for tax purposes under subsection (c).

SEC. 12. Section 511(g) of such Act is amended to read as follows:

(g) The provisions of subsections (c) and (f) shall apply to any deposit in the construction reserve fund only to the extent that such deposit is expended or obligated for expenditure, in accordance with rules and regulations to be prescribed jointly by the Commission and the Secretary of the Treasury—

(1) under a contract for the construction or acquisition of a new vessel or vessels (or in the discretion of the Commission, for a part interest therein), or, with the approval of the Commission, for the reconstruction or reconditioning of a new vessel or vessels, entered into within (i) two years from the date of deposit or the date of any extension thereof which may be granted by the Commission pursuant to the provisions of section 511(h), in the case of deposits made prior to the date on which these amendatory provisions become effective, or (ii) three years from the date of such deposit in the case of a deposit made after such effective date, only if under such rules and regulations—

(A) within such period not less than 12½ per centum of the construction or contract price of the vessel or vessels is paid or irrevocably committed on account thereof and the plans and specifications therefor are approved by the Commission to the extent by it deemed necessary; and

(B) in case of a vessel or vessels not constructed under the provisions of this title or not purchased from the Commission, (i) said construction is completed, within six months from the date of the construction contract, to the extent of not less than 5 per centum thereof (or in case the contract covers more than one vessel, the construction of the first vessel so contracted for is so completed to the extent of not less than 5 per centum) as estimated by the Commission and certified by it to the Secretary of the Treasury, and (ii) all construction under such contract is completed with reasonable dispatch thereafter;

(2) for the liquidation of existing or subsequently incurred purchase-money indebtedness to persons other than a parent company of, or a company affiliated or associated with, the mortgagor on a new vessel or vessels within (i) two years from the date of deposit or the date of any extension thereof which may be granted by the Commission pursuant to the provisions of section 511(h), in the case of deposits made prior to the date on which these amendatory provisions become effective, or (ii) three years from the date of such deposit in the case of a deposit made after such effective date.

* * * * * * *

SEC. 19. Section 607(g) of such Act is amended by adding at the end thereof the following new sentence: "If a voluntary deposit of earnings approved by the Commission under this subsection after December 31, 1950, results in an overpayment of Federal taxes for any year, interest shall not be allowed on such overpayment for any period prior to the date of approval of the deposit by the Commission."

* * * * * * *

Approved July 17, 1952.

1952–17–13903

S. 1999. PUBLIC LAW 587, EIGHTY-SECOND CONGRESS
[CHAPTER 940, SECOND SESSION]

An Act Relating to withholding, for State income tax purposes, on the compensation of Federal employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where—

(1) the law of any State or Territory provides for the collection of a tax by imposing upon employers generally the duty of withholding sums from the compensation of employees and making returns of such sums to the authorities of such State or Territory, and

(2) such duty to withhold is imposed generally with respect to the compensation of employees who are residents of such State or Territory,

then the Secretary of the Treasury, pursuant to regulations promulgated by the President, is authorized and directed to enter into an agreement with such State or Territory within one hundred and twenty days of the request for agreement from the proper official of such State or Territory. Such agreement shall provide that the head of each department or agency of the United States shall comply with the requirements of such law in the case of employees of such agency or department who are subject to such tax and whose regular place of Federal employment is within the State or Territory with which such agreement is entered into. No such agreement shall apply with respect to compensation for service as a member of the Armed Forces of the United States.

SEC. 2. Nothing in this Act shall be deemed to consent to the application of any provision of law which has the effect of imposing more burdensome requirements upon the United States than it imposes upon other employers, or which has the effect of subjecting the United States or any of its officers or employees to any penalty or liability by reason of the provisions of this Act.

Approved July 17, 1952.

1952–17–13904

H. R. 7255. PUBLIC LAW 589, EIGHTY-SECOND CONGRESS
[CHAPTER 942, SECOND SESSION]

An Act To amend section 165(b) of the Internal Revenue Code (relating to employee stock purchase plans).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 165(b) of the Internal Revenue Code (relating to employee stock purchase plans) is hereby amended by adding at the end thereof the following:

In no event shall the amount actually distributed or made available to any distributee include net unrealized appreciation in securities of the employer corporation attributable to the amount contributed by the employee. Such net unrealized appreciation and the resulting adjustments to basis of such securities shall also be determined in accordance with regulations which shall be prescribed by the Secretary.

SEC. 2. The amendment made by this Act shall be applicable with respect to taxable years beginning after December 31, 1951.

Approved July 17, 1952.

1952–17–13905

H. R. 8271. PUBLIC LAW 594, EIGHTY-SECOND CONGRESS
[CHAPTER 951, SECOND SESSION]

An Act To amend sections 433(b), 457, and 459 of the Internal Revenue Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, effective with respect to taxable years ending after June 30, 1950, section 457 of the Internal Revenue Code, as added by section 101 of the Excess Profits Tax Act of 1950, is hereby amended by changing its heading to read "CORPORATIONS COMPLETING CONTRACTS OR MAKING DEPOSITS UNDER MERCHANT MARINE ACT" and by adding to said section 457 the following new subsection:

(c) BASE PERIOD EARNINGS CREDIT FOR DEPOSITS UNDER MERCHANT MARINE ACT, 1936.—The excess profits net income computed under section 433(b) for any base period year shall be increased by the amount, if any, by which (1) the taxpayer's tax-deferred deposits of earnings, made in or accrued to reserve funds under section 607 of the Merchant Marine Act, 1936, in respect of such base period year, exceeds (2) the amount of such deposits of earnings for the taxable year. The Secretary shall provide, by regulation, for proper adjustment of the deposits made in or accrued to the reserve funds for any taxable year so as to exclude therefrom any amount payable for such year as reimbursement of operating-differential subsidy.

SEC. 2. Section 459 of the Internal Revenue Code (miscellaneous provisions relating to the computation of average base period net income) is hereby amended by adding at the end thereof the following new subsection:

(f) COMPANIES PRESERVING DEFENSE CAPACITY AND INCREASING CAPACITY FOR MANUFACTURING PERISHABLE PRODUCTS FROM CERTAIN STRATEGIC AND CRITICAL METALS.—

(1) ELIGIBILITY REQUIREMENT.—In the case of a taxpayer which commenced business on or prior to January 1, 1936, and since such date has been primarily engaged in manufacturing, if—

(A) The percentage of the taxpayer's purchases of raw materials which were strategic and critical metals (as defined in paragraph (3)) was 80 per centum or more for each of the taxable years beginning with or within the taxpayer's base period;

(B) The taxpayer's average monthly excess profits net income (computed in the manner provided in section 443(e)) for the period comprising all taxable years ending with or within the first twenty-four months of its base period was 250 per centum or more of the average monthly excess profits net income (so computed) of the taxpayer for the period comprising all taxable years ending with or within the last twenty-four months of its base period;

(C) The adjusted basis of the taxpayer's total facilities (as defined in section 444(d)) as of the beginning of its base period (when added to the total facilities at such time of all corporations with which the taxpayer has the privilege under section 141 of filing a consolidated return for its first taxable year under this subchapter) did not exceed $10,000,000; and

(D) The adjusted basis of the taxpayer's total facilities (as defined in section 444(d)) on the last day of its base period was 180 per centum

or more of the adjusted basis of its total facilities on the first day of its base period.

the taxpayer's average base period net income determined under this subsection shall be the amount computed under paragraph (2).

(2) COMPUTATION.—The average base period net income determined under this subsection for a taxpayer entitled to the benefits of this subsection shall be the amount computed under section 435(e)(2) (E) and (F) except that there shall be substituted for the aggregate of the excess profits net income for each of the six months in the period beginning July 1, 1949, and ending December 31, 1949, an amount computed by multiplying the aggregate of the excess profits net income for each of the six months in the period beginning July 1, 1946, and ending December 31, 1946, by the per centum determined by dividing the adjusted basis of taxpayer's total facilities (as defined in section 444(d)) on December 31, 1948, by the adjusted basis of its total facilities on the first day of its base period. The average base period net income computed under the preceding sentence shall not exceed 80 per centum of the excess profits tax net income for the taxpayer's first taxable year under this subchapter.

(3) DEFINITION OF STRATEGIC AND CRITICAL METALS.—As used in this subsection, the term "strategic and critical metals" means copper and zinc which on January 1, 1945, had been determined by proper authority to be strategic and critical under the provisions of the Strategic and Critical Stock Piling Act and shall include scrap containing such metals.

SEC. 3. The amendment made by section 2 shall be applicable with respect to all taxable years ending after June 30, 1950.

SEC. 4. Effective with respect to taxable years ending after June 30, 1950, section 433(b) of the Internal Revenue Code (relating to the computation of average base period net income) is hereby amended by inserting at the end thereof two new paragraphs reading as follows:

(18) ADJUSTMENT FOR BASE PERIOD LOSSES FROM BRANCH OPERATIONS.—In the case of a taxpayer which during two or more such taxable years operated a branch at a loss, the excess profits net income for each such taxable year (determined without regard to this paragraph) shall be increased by the amount of the excess of such loss above the loss, if any, incurred by such branch during the taxable year for which the tax under this subchapter is being computed. As used in this paragraph, the term "branch" means a unit or subdivision of the taxpayer's business which was operated in a separate place from its other business and differed substantially from its other business with respect to character of products or services. A unit or subdivision of the taxpayer's business shall not be considered to differ substantially from the taxpayer's other business unless it is of a type classifiable by the Standard Industrial Classification Manual in a different major industry group or in a different subgroup of the taxpayer's major industry group than that in which its other business is so classifiable: *Provided, however,* That this paragraph shall not apply unless the sum of the net losses of such branch during the base period exceeded 15 per centum of the aggregate excess profits net income of the taxpayer during the base period. For the purposes of this paragraph, the aggregate excess profits net income of the taxpayer during the base period shall be the sum of its excess profits net income for all years in the base period, increased by the sum of the net losses of such branch during the base period

(19) RULES FOR APPLICATION OF PARAGRAPH (18).—For the purposes of paragraph (18)—

(A) A branch shall be deemed to have been operated at a loss during a taxable year if the portion of the deductions under section 23 for such year which is determined, under regulations prescribed by the Secretary, to be the portion thereof properly allocable to the operation of such branch exceeds the portion of the gross income during the taxable year which is determined under such regulations to be the portion thereof properly allocable to the operation of such branch; and the amount of the loss shall be an amount equal to such excess.

(B) If the portion of the gross income determined to be properly allocable to the operation of the branch is a minus quantity, the amount of such excess shall be the sum of the deductions under section 23 determined to be properly allocable to the operation of the branch plus an amount equal to such minus quantity.

SEC. 5. Section 319(c) of the Revenue Act of 1951 is amended to read as follows:

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective on and after January 1, 1951.

Approved July 21, 1952.

COMMITTEE REPORTS

1952–13998

AMENDING SECTION 113(b)(1)(B) OF THE INTERNAL REVENUE CODE

[House of Representatives Report No. 312, Eighty-second Congress, First Session]

[April 11, 1951]

Mr. Camp, from the Committee on Ways and Means, submitted the following report [to accompany H. R. 3168]:

The Committee on Ways and Means to whom was referred the bill (H. R. 3168) to amend section 113(b)(1)(B) of the Internal Revenue Code with respect to the adjustment of the basis of property for depreciation, obsolescence, amortization, and depletion, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 1, line 6, strike out "taxable".

On page 2, line 2, strike out "taxable".

On page 2, line 5, strike out "Act" and insert in lieu thereof "chapter".

On page 2, line 6, strike out "amendments" and insert in lieu thereof "amendment."

On page 2, line 8, strike out "1938" and insert in lieu thereof "1947".

On page 2, lines 9 through 13, strike out subsection (c).

GENERAL STATEMENT

H. R. 3168 amends section 113(b)(1)(B) of the Internal Revenue Code (relating to the adjustment of the basis of property for depreciation, obsolescence, amortization, and depletion) to provide that the basis of property shall be adjusted by the amount of depreciation allowable but not less than the amount of depreciation allowed in computing net income and which has resulted in a reduction of the taxpayer's taxes.

This amendment is intended to correct the situation created by the decision of the Supreme Court in *Virginian Hotel Corp.* v. *Helvering* (319 U. S. 523 (1943)), which has been followed by three recent court-of-appeals decisions in which certiorari was denied by the Supreme Court.[1] The rule in the Virginian Hotel case construes the 1932 amendment to what is now section 113(b)(1)(B) of the Internal Revenue Code.

In the law prior to the Revenue Act of 1932, it was provided[2] that basis should be reduced by the "depreciation allowable" over the previous life of the property; that is, the depreciation properly deductible each year in computing taxable income. The law was amended in 1932 to add another provision requiring that, where depreciation in excess of that allowable had been actually allowed, the excess allowed over that properly allowable should also reduce the basis of the property. The purpose of that amendment was to provide that, where taxes had been reduced by excessive depreciation erroneously claimed and the statute of limitations had barred the collection of the correct tax, the taxpayer could not then claim that he could restore to basis the amount of the excess depreciation. If this latter result had been permitted, the taxpayer in effect would have been allowed a double deduction.

[1] *Commerce Company* v. *United States* (171 Fed. (2d) 189, cert. den. 336 U. S. 972); *Piedmont Cotton Mills* v. *Commissioner* (177 Fed. (2d) 148, cert. den. 339 U. S. 919); and *Blackhawk-Perry Corp.* v. *Commissioner* (182 Fed. (2d) 319, cert. den. 340 U. S. 875).

[2] Sec. 111(b)(2) of the Revenue Act of 1928.

In the Virginian Hotel case the Supreme Court construed the 1932 amendment to mean that, where a taxpayer had claimed excessive amounts for depreciation in his returns for earlier years now closed, such excessive amounts were properly deductible from cost in readjusting the depreciation basis of the property in question, even though in those years the taxpayer had received no tax benefit from the depreciation deduction. In that case the taxpayer underestimated the useful life of the property under the facts known at the time the depreciation was claimed. Thus, the taxpayer would be penalized because of his error in claiming excessive depreciation in an earlier year during which he had a net loss even without the deduction of the excessive depreciation. Under those conditions the excess depreciation claimed by the taxpayer could have resulted in no tax advantage to him and in no tax prejudice to the Government. Mr. Chief Justice Stone, in his dissent to the Virginian Hotel decision in which he was joined by three other members of the Court, termed the above rule an "incongruous" result which was contrary to the statute.

The effect of H. R. 3168 is to provide that the adjusted basis of property is to be reduced by excessive depreciation shown in a return only to the extent that such excessive depreciation resulted in a reduction in the taxpayer's taxes.

The committee has amended the bill so as to provide that the amendment shall be applicable with respect to taxable years beginning after December 31, 1947, rather than December 31, 1938, as the bill originally provided. The committee has also made several amendments to the bill which are clerical in nature.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

SECTION 113 (b)(1)(B) OF THE INTERNAL REVENUE CODE

(B) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescense, amortization, and depletion, to the extent allowed *as deductions in computing taxable net income and resulting in a reduction of the taxpayer's taxes* (but not less than the amount allowable) under this [chapter] *Act* or prior income tax laws. Where for any taxable year prior to the taxable year 1932 the depletion allowance was based on discovery value or a percentage of income, then the adjustment for depletion for such year shall be based on the depletion which would have been allowable for such year if computed without reference to discovery value or a percentage of income;

1952-13999

ADJUSTMENTS TO BASIS ON ACCOUNT OF EXCESSIVE DEPRECIATION

[Senate Report No. 1160, Eighty-second Congress, Second Session. Calendar No. 1091]

[February 6 (legislative day, January 10), 1952]

Mr. George, from the Committee on Finance, submitted the following report [to accompany H. R. 3168]:

The Committee on Finance, to whom was referred the bill (H. R. 3168) to amend section 113(b)(1)(B) of the Internal Revenue Code with respect to the adjustment of the basis of property for depreciation, obsolescence, amortization, and depletion, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

GENERAL STATEMENT

H. R. 3168 amends section 113(b)(1)(B) of the Internal Revenue Code (relating to the adjustment of the basis of property for depreciation, obsolescence, amortization, and depletion) to provide, in general, that the basis of property shall be adjusted by the amount of depreciation previously allowable, or by

depreciation previously allowed, if that was more than the amount allowable, but only to the extent that the deduction of the excess amount reduced income or excess profits taxes for any year.

This amendment is intended to correct the situation created by the decision of the Supreme Court in *Virginian Hotel Corp.* v. *Helvering* (319 U. S. 523 (1943)), which has been followed by three court of appeals decisions in which certiorari was denied by the Supreme Court.[1] The rule in the Virginian Hotel case construed those provisions of the Revenue Act of 1932 which are equivalent to what is now section 113(b)(1)(B) of the Internal Revenue Code.

The law prior to the Revenue Act of 1932 provided that the basis of property should be reduced by the depreciation allowable over the previous life of the property. The law was amended in 1932 to add another provision requiring that, where depreciation in excess of that allowable had been actually allowed, the excess allowed over that properly allowable should also reduce the basis of the property. The purpose of that amendment was to provide that, where taxes had been reduced by excessive depreciation erroneously claimed and the statute of limitations had barred the collection of the correct tax, the taxpayer could not then claim that he could restore to basis the amount of the excess depreciation. If this latter result had been permitted, the taxpayer in effect would have been allowed a double deduction.

In the Virginian Hotel case the Supreme Court construed the 1932 amendment to mean that, where a taxpayer had claimed excessive amounts for depreciation in his returns for earlier years now closed, such excessive amounts were properly deductible from cost in readjusting the basis of the property in question, even though in those years the taxpayer had received no tax benefit from the depreciation deduction. Thus, the taxpayer would be penalized because of his error in claiming excessive depreciation in an earlier year, even though for that year he had a net loss (not capable of being offset against income of a preceding or succeeding year) even without the deduction of the excessive depreciation. Under those conditions the excess depreciation claimed by the taxpayer could have resulted in no tax advantage to him and in no tax prejudice to the Government. Mr. Chief Justice Stone, in his dissent to the Virginian Hotel decision in which he was joined by three other members of the Court, termed the above rule an "incongruous" result which was contrary to the statute. This legislation is intended to correct the inequitable tax effects which resulted, or which would in the future result, from the application of the rule of the Virginian Hotel decision.

The bill as passed by the House would have corrected the effects of the Virginian Hotel decision only with respect to the computation of tax liabilities for taxable years beginning after December 31, 1947.

Your committee has amended the bill so as to provide that the amendment may be applicable to taxable years beginning after December 31, 1931, rather than December 31, 1947, as the House version provides. This will reinstate the intent of Congress with respect to section 113(b)(1)(B) of the Revenue Acts of 1932, 1934, 1936, and 1938 and the Internal Revenue Code. Since the principle embodied in the bill has been endorsed by the House and by this committee, it seemed desirable to extend that principle to all open years to which it is applicable. Retroactive application to these years will remedy the injustice of the Virginian Hotel decision as fully as is possible without lifting the bar of the statute of limitations. If the amendment were made applicable in all cases for all taxable years ending after December 31, 1931, however, the effect might have been to reduce the excess profits credits of certain taxpayers without providing for a proportionate reduction of their excess profits net income; and in other cases the effect might have been to prevent taxpayers from taking advantage of some of the relief provisions of the present excess profits tax law, without affording them corresponding advantages. For those reasons the application of the amendment to periods before January 1, 1952, is made elective, so that no taxpayer need be hurt by retroactive legislation.

The Treasury Department has now concluded that the additional revenue loss resulting from making the amendment applicable to the taxable years beginning prior to January 1, 1948, will be in the neighborhood of $7 million. The staff of the Joint Committee on Internal Revenue Taxation agrees. The revenue loss resulting from the application of the bill only to tax liabilities for 1948 and sub-

[1] *Commerce Company* v. *United States* (171 Fed. (2d) 189, certiorari denied 336 U. S. 972); *Piedmont Cotton Mills* v. *Commissioner* (177 Fed. (2d) 148, certiorari denied 339 U. S. 919); and *Blackhawk-Perry Corp.* v. *Commissioner* (182 Fed. (2d) 319, certiorari denied 340 U. S. 875).

sequent years, as in the House bill, is now estimated to be in the neighborhood of $56 million. Thus the total revenue loss resulting from your committee's bill (excluding interest of approximately $7 million) is estimated as about $63 million.

TECHNICAL ANALYSIS

As passed by the House, H. R. 3168 amended section 113(b)(1)(B) of the Code to provide that the unadjusted basis of property shall be reduced by depreciation, etc., to the extent allowed "as deductions in computing net income and resulting in a reduction of the taxpayer's taxes," but not less than the amount allowable, under chapter 1 of the Internal Revenue Code or prior income tax laws.

Your committee has amended H. R. 3168 to provide in greater detail certain rules for determining the amount of the excessive deduction for depreciation, etc., which may be ignored in the adjustment to the basis of property, and to provide that the disregard of depreciation, etc., allowed by reason of this bill shall be elective for periods prior to January 1, 1952. Under your committee's amendment, the rules for determining adjustments to basis where deductions have been allowed are set forth in two new clauses, (i) and (ii), added to section 113(b)(1)(B) of the Code.

Under clause (i), the basis of property shall be reduced to the extent of the amount allowed as deductions in computing net income under chapter 1 of the Internal Revenue Code or under prior income tax laws. Clause (ii) provides that the basis shall be so reduced, however, only to the extent the deductions so allowed resulted in a reduction for any taxable year of the taxpayer's taxes under chapter 1 of the Code (other than subchapter E thereof, relating to self-employment taxes), subchapter E of chapter 2 (the World War II excess-profits tax), or under prior income, war-profits, or excess-profits tax laws. The determination under clause (ii) of whether a deduction resulted in a tax benefit for any taxable year shall be made by ascertaining whether the tax for such year would have been greater but for such deduction having been allowed. In making such determination any reduction in tax for the taxable year for which the deduction was allowed and also any reduction in tax for a preceding or succeeding taxable year (for example, by reason of any carry-over or carry-back of net operating loss or unused excess-profits credit) must be taken into account.

Your committee continues the provisions of existing law, also included in the House bill, which require that the basis of property shall be reduced in any case by amounts allowable whether or not any tax benefit is derived therefrom.

The tax-benefit rule set forth in clause (ii) of section 113(b)(1)(B) shall apply in respect of depreciation, etc., for all periods after December 31, 1951. However, in respect of the depreciation, etc., for any period after February 28, 1913, and before January 1, 1952, the requirement of clause (ii) that the deduction shall operate to reduce taxes (as distinguished from the requirement of clause (i) that the deduction be allowed) shall be applicable only if an election has been made under new subsection (d) added to section 113 of the Code by your committee. If the election is not made, the bill does not change the rule under existing law with respect to the adjustment to basis for depreciation, etc., for the period before January 1, 1952.

The new subsection (d) provides that any person may elect to have clause (ii) of section 113(b)(1)(B) apply and that such election shall apply with respect to all periods after February 28, 1913, and before January 1, 1952, with the period during which such person held the property and the period, if any, for which adjustments must be made as provided in section 113(b)(2) of the Code, relating to substituted basis. The election must be made on or before December 31, 1952, shall be irrevocable, and shall be made in such manner as the Secretary may prescribe by regulations. An election may not be made with respect to a particular property but shall apply to all properties held by the person making the election at any time on or before the date of such election. In the case of a partnership or trust, an election as to property held by such partnership or trust shall be made by the partnership or trust rather than by the individual partners or beneficiaries.

Subsection (d) further provides that an election by a transferor, donor, or grantor after the date of the transfer, gift, or grant of the property shall not affect the basis of such property in the hands of the transferee, donee, or grantee. Where a transferor, donor, or grantor makes an election on or before the date of the transfer of the property, proper adjustments under section 113(b)(2) giving effect to the election shall be made to the basis of the property in the hands of

the transferee, donee, or grantee in respect of the period during which the property was held by the transferor, donor, or grantor. If the transferee, donee, or grantee makes the election on or after the date of the transfer, gift, or grant, the election is applicable in making the adjustment to the basis of property in respect of the period during which such property was held by the transferor, donor, or grantor, whether or not the transferor, donor, or grantor made an election under section 113(d). An election by a transferee, donee, or grantee will not affect the tax liability of the transferor, donor, or grantor.

The determination of the amount of depreciation, etc., which is allowable in any taxable year to which section 113(b)(1)(B)(ii) is applicable shall be made in a manner consistent with such section. If prior to the enactment of this bill there was a final decision of a court determining the amount of depreciation allowable for a particular taxable year, the determination (but only for the purposes of this amendment) of the amount allowable for that year, or for subsequent taxable years, by reason of the application of section 113(b)(1)(B)(ii) must be adjusted to reflect this change in the law.

A taxpayer seeking to limit his adjustment of basis with respect to excessive deductions for depreciation, etc., must establish that such excessive deductions did not produce a tax benefit. Certain taxpayers may not have available adequate records to establish such lack of tax benefit. For example, a corporate transferee may have available adequate records with respect to the tax effect of the deduction for the taxable years 1946 and 1947 of excessive depreciation, but may not have available adequate records with respect to the deduction of excessive depreciation for a prior period during which the property was held by its transferor. In such case, the corporate transferee shall not be denied the right to apply section 113(b)(1)(B)(ii) with respect to the excessive depreciation for the period for which adequate proof is available.

Your committee contemplates that the Secretary shall prescribe regulations setting forth rules for the determination of tax benefit in cases involving depreciation, etc., with respect to more than one property in the same taxable year; in cases involving priority between the tax-benefit rule of section 113(b)(1)(B) and other sections, such as section 22(b)(12) or section 127; in cases involving partnerships or trusts (in which cases the tax benefit of the partners and the beneficiaries must be taken into account); and in cases involving adjustments required under section 113(b)(2) (in which cases the tax benefit of the transferor, donor, or grantor must be taken into account, as well as any tax benefit attributable to a carry-over from such persons, as under Public Law 189, 80th Cong., approved July 15, 1947).

The bill as passed by the House provided that the amendment made to section 113(b)(1)(B) of the Code shall be applicable to taxable years beginning after December 31, 1947. Your committee has provided that the amendments to the Code shall apply in respect of taxable years beginning after December 31, 1938 (that is, the taxable years to which the Code is applicable), and that provisions having the effect of such amendments shall be deemed to have been included in the revenue laws respectively applicable to taxable years ending after December 31, 1931, and beginning before January 1, 1939. However, this retroactive amendment does not open for refund or credit, or assessment of a deficiency, any taxable year for which such refund or credit, or such assessment, is barred by any law or rule of law.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, H. R. 3168, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE

SECTION 113. ADJUSTED BASIS FOR DETERMINING GAIN OR LOSS

* * * * * * *

(b) ADJUSTED BASIS.—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 subsection (a), adjusted as hereinafter provided.

(1) GENERAL RULE.—Proper adjustment in respect of the property shall in all cases be made—

(A) * * *

(B) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent [allowed (but not less than the amount allowable) under this chapter or prior income tax laws] *of the amount—*

(i) allowed as deductions in computing net income under this chapter or prior income tax laws, and

(ii) resulting (by reason of the deductions so allowed) in a reduction for any taxable year of the taxpayer's taxes under this chapter (other than subchapter E), subchapter E of chapter 2, or prior income, war-profits, or excess-profits tax laws,

but not less than the amount allowable under this chapter or prior income tax laws. Clause (ii) of this subparagraph shall not apply in respect of any period since February 28, 1913, and before January 1, 1952, unless an election has been made under subsection (d). Where for any taxable year prior to the taxable year 1932 the depletion allowance was based on discovery value or a percentage of income, then the adjustment for depletion for such year shall be based on the depletion which would have been allowable for such year if computed without reference to discovery value or a percentage of income;

* * * * * * *

(d) ELECTION IN RESPECT OF DEPRECIATION, ETC., ALLOWED BEFORE 1952.—*Any person may elect to have clause (ii) of subsection (b)(1)(B) apply in respect of periods since February 28, 1913, and before January 1, 1952. Such an election shall be made in such manner as the Secretary may by regulations prescribe, shall be irrevocable, and shall apply in respect of all property held by the person making the election at any time on or before the date on which the election was made and in respect of all periods since February 28, 1913, and before January 1, 1952, during which such person held such property or for which adjustments must be made under subsection (b)(2). An election by a transferor, donor, or grantor, made after the date of the transfer, gift, or grant of property shall not affect the basis of such property in the hands of the transferee, donee, or grantee. No such election may be made after December 31, 1952.*

1952–14000

LEGISLATIVE BRANCH APPROPRIATION BILL, 1953

[Senate Report No. 1828. Eighty-second Congress, Second Session. Calendar No. 1757]

[June 26 (legislative day, June 21), 1952]

Mr. Ellender, from the Committee on Appropriations, submitted the following report [to accompany H. R. 7313]:

* * * * * * *

TAX DEDUCTION FOR LIVING EXPENSES

The bill as passed the House contained the following provision with reference to the place of residence of Members of Congress for tax purposes:

": *Provided, however,* That in the case of taxable years beginning after December 31, 1952, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, Territory, or possession which he represents in Congress shall be considered to be his home for the purposes of section 23(a)(1)(A) of the Internal Revenue Code."

Title 26, section 23(a)(1)(A) of the Internal Revenue Code provides:

"All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling

expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity."

The committee approves the language as passed the House with the following amendment:

", but amounts expended by such member within such taxable year for living expenses shall not be deductible for income tax purposes if in excess of $2,400"

The effect of the House amendment would be to permit the Members of Congress to claim deductions for tax purposes to the same extent as other persons whose business or profession requires absence from "home" for varying periods of time. The Senate amendment places a limit of $2,400 on the amount that may be deductible for living expenses in any one taxable year after December 31, 1952.

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