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Internal Revenue Bulletin

Cumulative Bulletin 1948–1

JANUARY–JUNE 1948

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

U.S. Treasury Department : : : : Bureau of Internal Revenue

Internal Revenue Bulletin

Cumulative Bulletin 1948–1

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JANUARY–JUNE 1948

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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. No unpublished ruling or decision will be cited or relied upon by any officer or employee of the Bureau of Internal Revenue as a precedent in the disposition of other cases. 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.

IBRA

UNITED STATES GOVERNMENT PRINTING OFFICE : WASHINGTON 1948

For sale by Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C.
See back of title for prices

The Internal Revenue Bulletin service for 1948 will consist of bulletins issued every other week and semiannual cumulative bulletins.

The bulletins will contain the rulings and decisions to be made public and all Treasury Department decisions (known as Treasury Decisions) pertaining to Internal Revenue matters. The semiannual cumulative bulletins will contain all rulings and decisions (including Treasury Decisions) published during the previous 6 months.

The complete Bulletin service may be obtained, on a subscription basis, from the Superintendent of Documents, Government Printing Office, Washington 25, D. C., for $2.50 per year; foreign, $3.75. Single copies of the Bulletin, 10 cents each.

New subscribers and others desiring to obtain the 1919, 1920, and 1921 Income Tax Service may do so from the Superintendent of Documents at prices as follows: Digest of Income Tax Rulings No. 19 (containing digests of all rulings appearing in Cumulative Bulletins 1 to 5, inclusive), 50 cents per copy; Cumulative Bulletins Nos. 1 to 5, containing in full all rulings published since April, 1919, to and including December, 1921, as follows: No. 1, 30 cents; No. 2, 25 cents; No. 3, 30 cents; No. 4, 30 cents; No. 5, 25 cents.

Persons desiring to obtain Sales Tax Cumulative Bulletins for July-December, 1921, may procure them from the Superintendent of Documents at 5 cents per copy.

Persons desiring to obtain the Internal Revenue Bulletin service for the years 1922 to 1947, inclusive, may do so at prices as follows:

Year.	Cumulative Bulletin.		Price (cents).
	First 6 months.	Second 6 months.	
1922	*I–1	*I–2	40, 30
1923	*II–1	*II–2	30, 40
1924	*III–1	*III–2	50, 50
1925	*IV–1	*IV–2	40, 35
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1940	1940–1	1940–2	30, 60
1941	1941–1	1941–2	45, 60
1942	1942–1	1942–2	40, 60
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1947	1947–1	1947–2	40, 75
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*The asterisk (*) indicates the supply of that publication is exhausted.

[1] House, Senate, and conference reports on revenue bills from October 3, 1913, to Revenue Act of 1938, inclusive; and on amendments thereto.

Persons desiring to obtain the service in digest form may do so at prices as follows: Digest No. 13 (1922–1924), 60 cents; Digest No. 17 (1925), 25 cents; Digest No. 21 (1926), 15 cents; Digest No. 22 (1925–1927), 35 cents; and Digest A (income tax rulings only, April, 1919, to December, 1930, inclusive), $1.50.

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

INTRODUCTORY NOTES.

The Internal Revenue Cumulative Bulletin 1948–1, in addition to all decisions of the Treasury Department (called Treasury Decisions) pertaining to Internal Revenue matters, contains opinions of the Chief Counsel, and rulings and decisions pertaining to income, estate, gift, sales, capital stock, 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 the Bulletins (1948, Nos. 1 to 13, inclusive) for the period January 1 to June 30, 1948. It also contains a cumulative list of announcements relating to decisions of The Tax Court of the United States, formerly United States Board of Tax Appeals, published in the Internal Revenue Bulletin Service from January 1 to June 30, 1948.

Income Tax rulings are printed in three parts. The rulings in Part I are printed as Part I, "A" (Internal Revenue Code) and "B" (Revenue Act of 1938), the law headings corresponding with the sections of the Code, as amended, and the 1938 Act, respectively, and the regulations headings corresponding with the section headings of Regulations 111 or 103 and the article headings of Regulations 101. Rulings under the Revenue Acts of 1937 and 1936 are printed as Part II, the law headings corresponding with the section headings of those Acts and the regulations headings corresponding with the article headings of Regulations 94. Rulings under the Revenue Acts of 1935 and 1934 or prior Acts are printed as Part III, the law headings corresponding with the section headings of the Revenue Act of 1934 and the regulations headings corresponding with the article headings of Regulations 86.

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, are published under the article headings of Regulations 100; and rulings under Title III of the Revenue Act of 1936—Tax on unjust enrichment—are coded under the sections of that Act and the article headings of Regulations 95.

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 Tax Unit.

B. T. A.—Board of Tax Appeals.
C. B.—Cumulative Bulletin.
Ct. D.—Court decision.
C. S. T.—Capital Stock Tax Division.
C. T.—Taxes on Employment by Carriers.
D. C.—Treasury Department circular.
Em. T.—Taxes imposed by the Social Security Act, the Carriers Taxing Act of 1937, and Subchapters A, B, and C of the Internal Revenue Code.
E. P. C.—Excess Profits Tax Council ruling or memorandum.
E. T.—Estate Tax Division.
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 Unit.
M, N, X, Y, Z, etc.—The names of corporations, places, or businesses, according to context.
Mim.—Mimeographed letter.
MS. or M. T.—Miscellaneous Division.
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 Division.
Sil.—Silver Tax Division.
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.
T.—Tobacco Division.
T. B. M.—Advisory Tax Board memorandum.
T. B. R.—Advisory Tax Board recommendation.
T. C.—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, FORMERLY KNOWN AS THE UNITED STATES BOARD OF TAX APPEALS.

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, formerly known as the United States Board of Tax Appeals, disallowing a deficiency in tax determined by the Commissioner to be due, announcement will be made in the bi-weekly Internal Revenue Bulletin at the earliest practicable date. Notice that the Commissioner has acquiesced or nonacquiesced in a decision of The Tax Court relates only to the issue or issues decided adversely to the Government. Decisions so acquiesced in should be relied upon by officers and employees of the Bureau of Internal Revenue as precedents in the disposition of other cases.

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THE TAX COURT OF THE UNITED STATES.

CUMULATIVE LIST OF ANNOUNCEMENTS RELATING TO DECISIONS OF THE TAX COURT OF THE UNITED STATES PUBLISHED IN THE INTERNAL REVENUE BULLETIN SERVICE FROM JANUARY 1, 1948, TO JUNE 30, 1948, INCLUSIVE.

1948–13–12825

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[1] Acquiescence relates only to the issue involving the deductibility of unreimbursed expenses incurred in entertaining clients of the company of which the taxpayer was a director and vice president.
[2] Acquiescence relates to all issues except the issue with respect to the deduction for charitable contributions for excess profits tax purposes.
[3] Estate tax decision.
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Ford, Clarence B	1052	7	1250
Forsythe, Sinne B	10920	10	417
Foster, L. Mae	8939	9	930
Foster, William H., estate of	8936	9	930
G.			
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Grace, William E	11352	10	1
H.			
Hart, Inc., J. J	9154	9	135
Harvey, Audio Gray	10318	10	183
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Hollywood, Inc., a Florida Corporation	5641	10	175
Houston Natural Gas Corporation (Texas), successor to Houston Natural Gas Corporation (Delaware)	10995	9	570
Howard, Josephine M., executrix of estate of Ralph Owen Howard[2]	10287	9	1192
Howard, Ralph Owen, estate of[2]	10287	9	1192
Hurd, George F., estate of[2]	11556	9	681
Hurd et al., Patricia Kendall, executrix and executors of estate of George F. Hurd[2]	11556	9	681
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J.			
Jeffers, William H., administrator c. t. a. of estate of Walter Thiele[2]	8366	9	473
Jennings, David L	11972	10	505
K.			
Kimbell-Diamond Milling Co	10982	10	7
L.			
Lanteen Medical Laboratories, Inc	12986	10	279
Luckenbach Steamship Co., Inc	9781	9	662
M.			
Meinig Co., The E. Richard	10698	9	976
Merrick, Eleanor D.[1]	4883, 6875	9	276
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Moore, Wade E	1050	7	1250

[1] Gift tax decision.
[2] Estate tax decision.

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P.			
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R.			
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W.			
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Whitman & Sons, Inc., Clarence	9436	10	264
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a Board of Tax Appeals.

[1] Estate tax decision.
[2] Nonacquiescence published in Cumulative Bulletin 1941-2, page 23, withdrawn.
[3] Partial nonacquiescence published in Cumulative Bulletin 1946-2, page 7, withdrawn.

The Commissioner does NOT acquiesce in the following decisions:

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C.			
Carroll, Elizabeth Sherman, executrix of estate of Clayton William Sherman [3]	10175	9	594
Carter, Susan J	11523	9	364
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Edmont Hotel Co	12327	10	260
F.			
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Goldwyn, Samuel	8770	9	510
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Hooker, Roland M.[4]	13485	10	388
M.			
McKay, Products Corporation, The	9846	9	1082
Moore, Albert V.[4]	7648	10	393
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Oden, Margaret T.[4]	7649	10	393
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P.			
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Ransohoffs Inc	8930	9	376
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S.			
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W.			
Wells Fargo Bank & Union Trust Co., trustee of Margaret T. Oden Trust [4]	7647	10	393
Whittelsey, Inc., H. Newton	8642	9	700

[1] Nonacquiescence relates only to the issue involving the deductibility of a war loss under section 127(a)(2) of the Internal Revenue Code.
[2] Nonacquiescence relates only to the issue with respect to the deduction for charitable contributions for excess profits tax purposes.
[3] Estate tax decision.
[4] Gift tax decision.

INCOME TAX RULINGS.—PART I.

INTERNAL REVENUE CODE.

CHAPTER 1.—INCOME TAX.

SUBCHAPTER B.—GENERAL PROVISIONS.

PART II.—COMPUTATION OF NET INCOME.

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

SECTION 29.22(a)–1: What included in gross income. 1948–3–12746
T. D. 5600

(Also Section 22(k), Section 29.22(k)–1; Section 51, Section 29.51–1; Section 101, Section 29.101(18)–1; Section 113(c), Section 29.113(c)–1; Section 122, Section 29.122–4; Section 165, Section 29.165–7; Section 207, Section 29.207–1; Section 212, Section 29.212–1; Section 127(a), Section 19.127(a)–1, Regulations 103.)

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

Minor miscellaneous errors corrected.

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

To Collectors of Internal Revenue and Others Concerned:

In order to correct certain minor miscellaneous errors in Regulations 103 and Regulations 111 [26 CFR, Parts 19 and 29], such regulations are amended as follows:

REGULATIONS 103 [26 CFR, PART 19].

PARAGRAPH 1. Section 19.127(a)–1, added by Treasury Decision 5258, approved April 13, 1943 [C. B. 1943, 415] [26 CFR, 19.127(a)–1], is amended by striking out, in the second undesignated paragraph thereof, the fourth, fifth, sixth, and seventh sentences and inserting in lieu thereof the following:

This loss is deductible for taxable years beginning after December 31, 1940, and before January 1, 1942, as an ordinary loss under the provisions of section 23(f) in the case of a corporation and section 23(e)(3) in the case of an individual.

PAR. 2. Section 29.22(a)–1, as amended by Treasury Decision 5507, approved April 12, 1946 [C. B. 1946–1, 18] [26 CFR, 29.22(a)–1], is further amended by striking out in the last sentence of the second undesignated paragraph thereof the phrase " article 22(a)–8 " and inserting in lieu thereof " section 29.22(a)–8."

PAR. 3. Section 29.22(k)–1, as amended by Treasury Decision 5425, approved December 29, 1944 [C. B. 1945, 10] [26 CFR, 29.22(k)–1], is further amended by striking out in paragraph (*c*) in example 3 the first sentence of the third undesignated paragraph and inserting in lieu thereof the following:

For the taxable year ended June 30, 1942, H paid $3,000, all of which is deductible by H since it was paid in the wife's first taxable year beginning after December 31, 1941.

PAR. 4. Section 29.51–1, as amended by Treasury Decision 5425 [26 CFR, 29.51–1], is further amended as follows:

(A) By inserting before the period in the heading in subparagraph (2), which is now entitled " *Taxable years beginning after December 31, 1943.*", of paragraph (*a*) the words " *and before January 1, 1946.*"

(B) By inserting in the first sentence of subparagraph (2) after " December 31, 1943," the following: " and before January 1, 1946,".

(C) By inserting after subparagraph (2) of such section as amended above a new subparagraph (3) as follows:

(3) *Taxable years beginning after December 31, 1945.*—For each taxable year beginning after December 31, 1945, a return of income shall be made by each citizen of the United States, whether residing at home or abroad, and every individual residing within the United States though not a citizen thereof, regardless of family or marital status, if such citizen or resident has for such taxable year a gross income of $500 or more, or a gross income in excess of the credit allowed by section 25(b) prorated as provided in section 47(e).

PAR. 5. Section 29.101(18)–1, as amended by Treasury Decision 5458, approved June 15, 1945 [C. B. 1945, 45] [26 CFR, 29.101(18)–1], is further amended by striking out in the first sentence of the second undesignated paragraph thereof " Form 1120 " and inserting in lieu thereof " Form 1065 (except for taxable years beginning before January 1, 1947, with respect to which returns were made on Form 1120)."

PAR. 6. Section 29.113(c)–1 [26 CFR, 29.113(c)–1] is amended by striking out in the third sentence thereof the word " from " and inserting in lieu thereof the word " to."

PAR. 7. Section 29.122–4 [26 CFR, 29.122–4] is amended as follows:

(A) By inserting in paragraph (*c*) in the first sentence of subparagraph (3) thereof after " net income " the following: ", and adjusted gross income for taxable years beginning after December 31, 1943,".

(B) By striking out in paragraph (*c*) all of subparagraph (4) and inserting in lieu thereof the following:

(4) Any deduction which is limited in amount to a percentage of the taxpayer's net income, or adjusted gross income for taxable years beginning after December 31, 1943, shall be recomputed upon the basis of the net income or adjusted gross income, as the case may be, determined with the adjustments prescribed in the preceding paragraph.

PAR. 8. Section 29.165–7 [26 CFR, 29.165–7] is amended by striking out in the last sentence thereof the word " employee's " where it first occurs and inserting in lieu thereof the word " employer's."

PAR. 9. Section 29.207–1, as amended by Treasury Decision 5497, approved February 27, 1946 [C. B. 1946–1, 130] [26 CFR, 29.207–1], is further amended by striking out in paragraph (*c*) in the second sentence of the second undesignated paragraph thereof the words " equal to the excess of 2 per cent of that portion in excess of $75,000 " and inserting in lieu thereof " equal to 2 per cent of that portion in excess of $75,000."

PAR. 10. Section 29.212–1, as amended by Treasury Decision 5425 [26 CFR, 29.212–1], is further amended by adding in paragraph (*b*) in the last sentence of the second undesignated paragraph thereof after " governments " the words " or of international organizations."

(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).)

The amendments made herein correct minor miscellaneous technical and clerical errors, and it is therefore 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.

WM. T. SHERWOOD,
Acting Commissioner of Internal Revenue.

Approved February 2, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register February 6, 1948, 8.48 a. m.)

SECTION 29.22(a)–1: What included in gross income. 1948–10–12803 Ct. D. 1698

INCOME TAX—REVENUE ACTS OF 1936 AND 1938—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT.

1. INCOME—ROYALTIES UNDER PATENT LICENSE AGREEMENTS—ASSIGNMENT OF ROYALTIES TO WIFE.

The taxpayer, owner of certain patented inventions, licensed a corporation in which he owned 1,780 and his wife 200 of its 2,000 shares of outstanding stock to manufacture and sell the devices under agreements to pay a royalty equal to 10 per cent of the gross sales price. The license agreements were for a limited period and were mutually subject to cancellation without liability on giving a prescribed notice. Two of the agreements were in effect throughout the taxable years 1937 to 1941, while the other two were in existence at all pertinent times after June 20, 1939. The taxpayer at various times assigned to his wife, without consideration, all his right, title, and interest in the contracts, giving her exclusive title and power over the royalties accruing. *Held:* The taxpayer was the recipient of the income from the contracts. The assignments merely involved a transfer of the right to receive income rather than a complete disposition of all his interest in the contracts and royalties. The transactions were simply a reallocation of income within the family group, a reallocation which did not shift the incidence of income tax liability.

2. RES JUDICATA.

In a proceeding in 1935 before the Board of Tax Appeals, covering the years 1929 to 1931, the Board had held the taxpayer not taxable on royalties paid to his wife during those years under the 1928 license agreement. The Tax Court in the instant proceeding, covering the years 1937 to 1941, held that all the royalties paid to the wife from

1937 to 1941 were part of the taxable income of the taxpayer with the exception of the royalties paid in 1937 under the 1928 agreement, applying the principle of *res judicata* to bar a different result as to the royalties paid pursuant to the same agreement during 1937. *Held:* Collateral estoppel should not have been used by The Tax Court in the instant proceeding to perpetuate the 1935 viewpoint of the assignment, in the light of the Clifford-Horst line of cases. The principles which have been recognized and developed by the Clifford and Horst cases, and those following them, are directly applicable to the transfer of patent license contracts between members of the same family.

3. DECISION REVERSED.

Decision of the United States Circuit Court of Appeals, Eighth Circuit (161 Fed. (2d), 171), affirming in part and reversing in part the decision of The Tax Court (6 T. C., 431), reversed.

SUPREME COURT OF THE UNITED STATES.

Commissioner of Internal Revenue, petitioner, v. *Joseph Sunnen.*

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

[April 5, 1948.]

OPINION.

Mr. Justice MURPHY delivered the opinion of the Court.

The problem of the Federal income tax consequences of intrafamily assignments of income is brought into focus again by this case.

The stipulated facts concern the taxable years 1937 to 1941, inclusive, and may be summarized as follows:

The respondent taxpayer was an inventor-patentee and the president of the Sunnen Products Co., a corporation engaged in the manufacture and sale of patented grinding machines and other tools. He held 89 per cent or 1,780 out of a total of 2,000 shares of the outstanding stock of the corporation. His wife held 200 shares, the vice president held 18 shares and two others connected with the corporation held 1 share each. The corporation's board of directors consisted of five members, including the taxpayer and his wife. This board was elected annually by the stockholders. A vote of three directors was required to take binding action.

The taxpayer had entered into several nonexclusive agreements whereby the corporation was licensed to manufacture and sell various devices on which he had applied for patents.[1] In return, the corporation agreed to pay to the taxpayer a royalty equal to 10 per cent of the gross sales price of the devices. These agreements did not require the corporation to manufacture and sell any particular number of devices; nor did they specify a minimum amount of royalties. Each party had the right to cancel the licenses, without liability, by giving the other party written notice of either six months or a year.[2] In the absence of cancellation, the agreements were to continue in force for 10 years. The board of directors authorized the corporation to execute each of these contracts. No

[1] The various devices involved were as follows:
(1) A cylinder grinder. The taxpayer applied for a patent on November 17, 1927, and was issued one on December 4, 1934. The royalty agreement to manufacture and sell this device was dated January 10, 1928. This agreement expired on January 10, 1938; a renewal agreement in substantially the same terms was then executed for the balance of the life of the patent, which ends on December 4, 1951.
(2) A pinhole grinder. The taxpayer applied for a patent on December 4, 1931, and was issued one on June 13, 1933. The royalty agreement to manufacture and sell this device was dated December 5, 1931.
(3) A crankshaft grinder. The taxpayer applied for a patent on May 22, 1939, and was issued one on May 6, 1941. The royalty agreement to manufacture and sell this device was dated June 20, 1939.
(4) Another crankshaft grinder. The taxpayer applied for a patent on December 29, 1939. He assigned this application to his wife on December 29, 1942, and she was issued a patent on January 26, 1943. The royalty agreement to manufacture and sell this device was dated June 20, 1939.
The taxpayer remained the owner of the first three patents throughout the year 1941, and he remained the owner of the patent application on the fourth device throughout that year.

[2] Six months' notice was provided in the agreement dated January 10, 1928, covering the cylinder grinder. The other three agreements provided for one year's notice of cancellation.

notices of cancellation were given. Two of the agreements were in effect throughout the taxable years 1937–1941, while the other two were in existence at all pertinent times after June 20, 1939.

The taxpayer at various times assigned to his wife all his right, title and interest in the various license contracts.[3] She was given exclusive title and power over the royalties accruing under these contracts. All the assignments were without consideration and were made as gifts to the wife, those occurring after 1932 being reported by the taxpayer for gift tax purposes. The corporation was notified of each assignment.

In 1937 the corporation, pursuant to this arrangement, paid the wife royalties in the amount of $4,881.35 on the license contract made in 1928; no other royalties on that contract were paid during the taxable years in question. The wife received royalties from other contracts totaling $15,518.68 in 1937, $17,318.80 in 1938, $25,243.77 in 1939, $50,492.50 in 1940, and $149,002.78 in 1941. She included all these payments in her income tax returns for those years, and the taxes she paid thereon have not been refunded.

Relying upon its own prior decision in *Estate of Dodson* v. *Commissioner* (1 T. C., 416),[4] The Tax Court held that, with one exception, all the royalties paid to the wife from 1937 to 1941 were part of the taxable income of the taxpayer. (6 T. C., 431.) The one exception concerned the royalties of $4,881.35 paid in 1937 under the 1928 agreement. In an earlier proceeding in 1935, the Board of Tax Appeals dealt with the taxpayer's income tax liability for the years 1929–1931; it concluded that he was not taxable on the royalties paid to his wife during those years under the 1928 license agreement. This prior determination by the Board caused The Tax Court to apply the principle of *res judicata* to bar a different result as to the royalties paid pursuant to the same agreement during 1937.

The Tax Court's decision was affirmed in part and reversed in part by the Eighth Circuit Court of Appeals. (161 Fed. (2d), 171.) Approval was given to The Tax Court's application of the *res judicata* doctrine to exclude from the taxpayer's income the $4,881.35 in royalties paid in 1937 under the 1928 agreement. But to the extent that the taxpayer had been held taxable on royalties paid to his wife during the taxable years of 1937–1941, the decision was reversed on the theory that such payments were not income to him. Because of that conclusion, the Circuit Court of Appeals found it unnecessary to decide the taxpayer's additional claim that the *res judicata* doctrine applied as well to the other royalties (those accruing apart from the 1928 agreement) paid in the taxable years. We then brought the case here on certiorari, the Commissioner alleging that the result below conflicts with prior decisions of this Court.

If the doctrine of *res judicata* is properly applicable so that all the royalty payments made during 1937–1941 are governed by the prior decision of the Board of Tax Appeals, the case may be disposed of without reaching the merits of the controversy. We accordingly cast our attention initially on that possibility, one that has been explored by The Tax Court and that has been fully argued by the parties before us.

It is first necessary to understand something of the recognized meaning and scope of *res judicata*, a doctrine judicial in origin. The general rule of *res judicata* applies to repetitious suits involving the same cause of action. It rests upon con-

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[3] On January 8, 1929, the taxpayer assigned to his wife "all my rights, title and interest in and to the royalty which shall accrue hereafter to me" upon the royalty contract of January 10, 1928, with respect to the cylinder grinder device. Since the Commissioner of Internal Revenue raised some question as to the sufficiency and completeness of this assignment, the taxpayer executed a further assignment on December 21, 1931. This second assignment confirmed the first one and stated further that his wife was assigned "all of my right, title and interest in and to said royalty contract of January 10, 1928 * * *. And I hereby state that the royalties accruing under said royalty contract have heretofore been and are hereafter the sole and exclusive property of the said Cornelia Sunnen [his wife], and hereby declare that said royalties shall be paid to the said Cornelia Sunnen or to her order, and that she shall have the sole right to collect, receive, receipt for, retain or sue for said royalties."

Assignments similar in form and substance to the assignment of December 21, 1931, were made as to the other three royalty contracts.

[4] In the Dodson case, Dodson owned 51 per cent of the stock of a corporation and his wife owned the other 49 per cent. He was the owner of a formula and trade-mark. Pursuant to a contract which he made with the corporation, the corporation was given the exclusive use of the formula and trade-mark for five years, renewable for a like period. Dodson was to receive in return a royalty measured by a certain percentage of the net sales. He then assigned a one-half interest in the contract to his wife, retaining his full interest in the formula and trade-mark. The Tax Court held that his dominant stock position permitted him to cancel or modify the contract at any time, thus rendering him taxable on the income flowing from his wife's share in the contract.

siderations of economy of judicial time and public policy favoring the establishment of certainty in legal relations. The rule provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound " not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." (*Cromwell* v. *County of Sac*, 94 U. S., 351, 352.) The judgment puts an end to the cause of action, which can not again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment. (See von Moschzisker, " Res Judicata," 38 Yale L. J., 299; Restatement of the Law of Judgments, sections 47, 48.)

But where the second action between the same parties is upon a different cause or demand, the principle of *res judicata* is applied much more narrowly. In this situation, the judgment in the prior action operates as an estoppel, not as to matters which might have been litigated and determined, but " only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered." (*Cromwell* v. *County of Sac*, supra, 353. And see *Russell* v. *Place*, 94 U. S., 606; *Southern Pacific R. Co.* v. *United States*, 168 U. S., 1, 48; *Mercoid Corp.* v. *Mid-Continent Co.*, 320 U. S., 661, 671.) Since the cause of action involved in the second proceeding is not swallowed by the judgment in the prior suit, the parties are free to litigate points which were not at issue in the first proceeding, even though such points might have been tendered and decided at that time. But matters which were actually litigated and determined in the first proceeding can not later be relitigated. Once a party has fought out a matter in litigation with the other party, he can not later renew that duel. In this sense, *res judicata* is usually and more accurately referred to as estoppel by judgment, or collateral estoppel. (See Restatement of the Law of Judgments, sections 68, 69, 70; Scott, " Collateral Estoppel by Judgment," 56 Harv. L. Rev., 1.)

These same concepts are applicable in the Federal income tax field. Income taxes are levied on an annual basis. Each year is the origin of a new liability and of a separate cause of action. Thus if a claim of liability or nonliability relating to a particular tax year is litigated, a judgment on the merits is *res judicata* as to any subsequent proceeding involving the same claim and the same tax year. But if the later proceeding is concerned with a similar or unlike claim relating to a different tax year, the prior judgment acts as a collateral estoppel only as to those matters in the second proceeding which were actually presented and determined in the first suit. Collateral estoppel operates, in other words, to relieve the Government and the taxpayer of " redundant litigation of the identical question of the statute's application to the taxpayer's status." (*Tait* v. *Western Md. R. Co.*, 289 U. S., 620, 624 [Ct. D. 683, C. B. XII–1, 351, 352 (1933)].)

But collateral estoppel is a doctrine capable of being applied so as to avoid an undue disparity in the impact of income tax liability. A taxpayer may secure a judicial determination of a particular tax matter, a matter which may recur without substantial variation for some years thereafter. But a subsequent modification of the significant facts or a change or development in the controlling legal principles may make that determination obsolete or erroneous, at least for future purposes. If such a determination is then perpetuated each succeeding year as to the taxpayer involved in the original litigation, he is accorded a tax treatment different from that given to other taxpayers of the same class. As a result, there are inequalities in the administration of the revenue laws, discriminatory distinctions in tax liability, and a fertile basis for litigious confusion. (Compare *United States* v. *Stone & Downer Co.*, 274 U. S., 225, 235–236.) Such consequences, however, are neither necessitated nor justified by the principle of collateral estoppel. That principle is designed to prevent repetitious lawsuits over matters which have once been decided and which have remained substantially static, factually and legally. It is not meant to create vested rights in decisions that have become obsolete or erroneous with time, thereby causing inequities among taxpayers.

And so where two cases involve income taxes in different taxable years, collateral estoppel must be used with its limitations carefully in mind so as to avoid injustice. It must be confined to situations where the matter raised in the second suit is identical in all respects with that decided in the first proceeding and where the controlling facts and applicable legal rules remain unchanged. (*Tait* v. *Western Md. R. Co.*, supra.) If the legal matters determined in the earlier case differ from those raised in the second case, collateral

estoppel has no bearing on the situation. (See *Travelers Ins. Co.* v. *Commissioner*, 161 Fed. (2d), 93.) And where the situation is vitally altered between the time of the first judgment and the second, the prior determination is not conclusive. (See *State Farm Ins. Co.* v. *Duel*, 324 U. S., 154, 162; 2 Freeman on Judgments (fifth edition 1925), section 713.) As demonstrated by *Blair* v. *Commissioner* (300 U. S., 5, 9 [Ct. D. 1205, C. B. 1937–1, 175, 176]), a judicial declaration intervening between the two proceedings may so change the legal atmosphere as to render the rule of collateral estoppel inapplicable.[6] But the intervening decision need not necessarily be that of a State court, as it was in the Blair case. While such a State court decision may be considered as having changed the facts for Federal tax litigation purposes, a modification or growth in legal principles as enunciated in intervening decisions of this Court may also effect a significant change in the situation. Tax inequality can result as readily from neglecting legal modulations by this Court as from disregarding factual changes wrought by State courts. In either event, the supervening decision can not justly be ignored by blind reliance upon the rule of collateral estoppel. (*Henricksen* v. *Seward*, 135 Fed. (2d), 986, 988–989 [Ct. D. 1590, C. B. 1943, 1147, 1149–1150]; *Pelham Hall Co.* v. *Hassett*, 147 Fed. (2d), 63, 68–69; *Commissioner* v. *Arundel-Brooks Concrete Corp.*, 152 Fed. (2d), 225, 227; *Corrigan* v. *Commissioner*, 155 Fed. (2d), 164, 165; and see *West Coast Life Ins. Co.* v. *Merced Irr. Dist.*, 114 Fed. (2d), 654, 661–662; contra: *Commissioner* v. *Western Union Tel. Co.*, 141 Fed. (2d), 774, 778.) It naturally follows that an interposed alteration in the pertinent statutory provisions or Treasury regulations can make the use of that rule unwarranted. (*Tait* v. *Western Md. R. Co.*, supra, 625 [C. B. XII–1, 352–353 (1933)].[6])

Of course, where a question of fact essential to the judgment is actually litigated and determined in the first tax proceeding, the parties are bound by that determination in a subsequent proceeding even though the cause of action is different. (See *The Evergreens* v. *Nunan*, 141 Fed. (2d), 927.) And if the very same facts and no others are involved in the second case, a case relating to a different tax year, the prior judgment will be conclusive as to the same legal issues which appear, assuming no intervening doctrinal change. But if the relevant facts in the two cases are separable, even though they be similar or identical, collateral estoppel does not govern the legal issues which recur in the second case.[7] Thus the second proceeding may involve an instrument or transaction identical with, but in a form separable from, the one dealt with in the first proceeding. In that situation, a court is free in the second proceeding to make an independent examination of the legal matters at issue. It may then reach a different result or, if consistency in decision is considered just and desirable, reliance may be placed upon the ordinary rule of *stare decisis*. Before a party can invoke the collateral estoppel doctrine in these circumstances, the legal matter raised in the second proceeding must involve the same set of events or documents and the same bundle of legal principles that contributed to the rendering of the first judgment. (*Tait* v. *Western Md. R. Co.*, supra.) And see Griswold, "Res Judicata in Federal Tax Cases," 46 Yale L. J., 1320; Paul and Zimet, "Res Judicata in Federal Taxation," appearing in Paul, Selected Studies in Federal Taxation (second series, 1938), page 104.)

It is readily apparent in this case that the royalty payments growing out of the license contracts which were not involved in the earlier action before the Board of Tax Appeals and which concerned different tax years are free from the effects of the collateral estoppel doctrine. That is true even though those contracts are identical in all important respects with the 1928 contract, the only one that was before the Board, and even though the issue as to those contracts is the same as that raised by the 1928 contract. For income tax purposes, what is decided as to one contract is not conclusive as to any other contract which is not then in issue, however similar or identical it may be. In this respect, the instant case thus differs vitally from *Tait* v. *Western Md. R. Co.*, supra, where the two proceedings involved the same instruments and the same surrounding facts.

A more difficult problem is posed as to the $4,881.35 in royalties paid to the taxpayer's wife in 1937 under the 1928 contract. Here there is complete identity of facts, issues and parties as between the earlier Board proceeding and the

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[5] See also *Henricksen* v. *Seward* (135 Fed. (2d), 986); *Monteith Bros. Co.* v. *United States* (142 Fed. (2d), 139); *Pelham Hall Co.* v. *Hassett* (147 Fed. (2d), 63); *Commissioner* v. *Arundel-Brooks Concrete Corp.* (152 Fed. (2d), 225); *Corrigan* v. *Commissioner* (155 Fed. (2d), 164). Compare *Grandview Dairy* v. *Jones* (157 Fed. (2d), 5).

[6] And see *Commissioner* v. *Security-First Nat. Bank* (148 Fed. (2d), 937).

[7] *Stoddard* v. *Commissioner* (141 Fed. (2d), 76, 80); *Campana Corporation* v. *Harrison* (135 Fed. (2d), 334); *Engineer's Club of Philadelphia* v. *United States* (42 Fed. Supp., 182).

instant one. The Commissioner claims, however, that legal principles developed in various intervening decisions of this Court have made plain the error of the Board's conclusion in the earlier proceeding, thus creating a situation like that involved in *Blair* v. *Commissioner*, supra. This change in the legal picture is said to have been brought about by such cases as *Helvering* v. *Clifford* (309 U. S., 331 [Ct. D. 1444, C. B. 1940–1, 105]); *Helvering* v. *Horst* (311 U. S., 112 [Ct. D. 1472, C. B. 1940–2, 206]); *Helvering* v. *Eubank* (311 U. S., 122 [Ct. D. 1473, C. B. 1940–2, 209]); *Harrison* v. *Schaffner* (312 U. S., 579 [Ct. D. 1503, C. B. 1941–1, 321]); *Commissioner* v. *Tower* (327 U. S., 280 [Ct. D. 1670, C. B. 1946–1, 11]); and *Lusthaus* v. *Commissioner* (327 U. S., 293 [Ct. D. 1669, C. B. 1946–1, 9]). These cases all imposed income tax liability on transferors who had assigned or transferred various forms of income to others within their family groups, although none specifically related to the assignment of patent license contracts between members of the same family. It must therefore be determined whether this Clifford-Horst line of cases represents an intervening legal development which is pertinent to the problem raised by the assignment of the 1928 agreement and which makes manifest the error of the result reached in 1935 by the Board. If that is the situation, the doctrine of collateral estoppel becomes inapplicable. A different result is then permissible as to the royalties paid in 1937 under the agreement in question. But to determine whether the Clifford-Horst series of cases has such an effect on the instant proceeding necessarily requires inquiry into the merits of the controversy growing out of the various contract assignments from the taxpayer to his wife. To that controversy we now turn.[8]

Had the taxpayer retained the various license contracts and assigned to his wife the right to receive the royalty payments accruing thereunder, such payments would clearly have been taxable income to him. It has long been established that the mere assignment of the right to receive income is not enough to insulate the assignor from income tax liability. (*Lucas* v. *Earl*, 281 U. S., 111; *Burnet* v. *Leininger*, 285 U. S., 136.) As long as the assignor actually earns the income or is otherwise the source of the right to receive and enjoy the income, he remains taxable. The problem here is whether any different result follows because the taxpayer assigned the underlying contracts to his wife in addition to giving her the right to receive the royalty payments.

It is the taxpayer's contention that the license contracts rather than the patents and the patent applications were the ultimate source of the royalty payments and constituted income-producing property, the assignment of which freed the taxpayer from further income tax liability. We deem it unnecessary, however, to meet that contention in this case. It is not enough to trace income to the property which is its true source, a matter which may become more metaphysical than legal. Nor is the tax problem with which we are concerned necessarily answered by the fact that such property, if it can be properly identified, has been assigned. The crucial question remains whether the assignor retains sufficient power and control over the assigned property or over receipt of the income to make it reasonable to treat him as the recipient of the income for tax purposes. As was said in *Corliss* v. *Bowers* (281 U. S., 376, 378 [Ct. D. 188, C. B. IX–1, 254, 255 (1930)]), "taxation is not so much concerned with the refinements of title as it is with actual command over the property taxed—the actual benefit for which the tax is paid."

It is in the realm of intrafamily assignments and transfers that the Clifford-Horst line of cases has peculiar applicability. While specifically relating to short-term family trusts, the Clifford case makes clear that where the parties to a transfer are members of the same family group, special scrutiny is necessary "lest what is in reality but one economic unit be multiplied into two or more by devices which, though valid under State law, are not conclusive so far as section 22(a) is concerned." (309 U. S. at 335 [C. B. 1940–1, 107].) That decision points out various kinds of documented and direct benefits which, if

[8] The pertinent statutory provisions are of little help to the matter in issue. Section 22(a) of the Revenue Act of 1936 (49 Stat., 1648) and section 22(a) of the Revenue Act of 1938 (52 Stat., 447) cover the taxable years in question. Those sections, which are identical with the current section 22(a) of the Internal Revenue Code, define "gross income" to include "gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or for gains or profits and income derived from any source whatever." See also article 22(a)–1 of Treasury Regulations 94, promulgated under the 1936 Act; article 22(a)–1 of Treasury Regulations 101, promulgated under the 1938 Act; and section 19.22(a)–1 of Treasury Regulations 103, promulgated under the Internal Revenue Code.

retained by the transferor of property, may cause him to remain taxable on the income therefrom. And it also recognizes that the fact that the parties are intimately related, causing the income to remain within the family group, may make the transfer give rise to informal and indirect benefits to the transferor so as to make it even more clear that it is just to tax him. Even more directly pertinent, however, is the Horst case, together with the accompanying Eubank case. (See 2 Mertens, Law of Federal Income Taxation (1942), sections 18.02, 18.14.) It was there held that the control of the receipt of income, which causes an assignor of property to remain taxable, is not limited to situations where the assignee's realization of income depends upon the future rendition of services by the assignor. (See *Lucas* v. *Earl*, supra; *Burnet* v. *Leininger*, supra.) Such may also be the case where the assignor controls the receipt of income through acts or services preceding the transfer. Or it may be evidenced by the possibility of some subsequent act by the assignor, or some failure to act, causing the income or property to revert to him. Moreover, the Horst case recognizes that the assignor may realize income if he controls the disposition of that which he could have received himself and diverts payment from himself to the assignee as a means of procuring the satisfaction of his wants, the receipt of income by the assignee merely being the fruition of the assignor's economic gain.

In *Harrison* v. *Schaffner*, supra, 582 [C. B. 1941–1, 323], it was again emphasized that "one vested with the right to receive income did not escape the tax by any kind of anticipatory arrangement, however skillfully devised, by which he procures payment of it to another, since, by the exercise of his power to command the income, he enjoys the benefit of the income on which the tax is laid." And it was also noted that "Even though the gift of income be in form accomplished by the temporary disposition of the donor's property which produces the income, the donor retaining every other substantial interest in it, we have not allowed the form to obscure the reality." (312 U. S., at 583 [C. B. 1941–1, 323].) *Commissioner* v. *Tower*, supra, and its companion case, *Lusthaus* v. *Commissioner*, supra, reiterated the various principles laid down in the earlier decisions and applied them to income arising from family partnerships.

The principles which have thus been recognized and developed by the Clifford and Horst cases, and those following them, are directly applicable to the transfer of patent license contracts between members of the same family. They are guideposts for those who seek to determine in a particular instance whether such an assignor retains sufficient control over the assigned contracts or over the receipt of income by the assignee to make it fair to impose income tax liability on him.

Moreover, the clarification and growth of these principles through the Clifford-Horst line of cases constitute, in our opinion, a sufficient change in the legal climate to render inapplicable, in the instant proceeding, the doctrine of collateral estoppel relative to the assignment of the 1928 contract. True, these cases did not originate the concept that an assignor is taxable if he retains control over the assigned property or power to defeat the receipt of income by the assignee. But they gave much added emphasis and substance to that concept, making it more suited to meet the "attenuated subtleties" created by taxpayers. So substantial was the amplification of this concept as to justify a reconsideration of earlier Tax Court decisions reached without the benefit of the expanded notions, decisions which are now sought to be perpetuated regardless of their present correctness. Thus in the earlier litigation in 1935, the Board of Tax Appeals was unable to bring to bear on the assignment of the 1928 contract the full breadth of the ideas enunciated in the Clifford-Horst series of cases. And, as we shall see, a proper application of the principles as there developed might well have produced a different result, such as was reached by The Tax Court in this case in regard to the assignments of the other contracts. Under those circumstances collateral estoppel should not have been used by The Tax Court in the instant proceeding to perpetuate the 1935 viewpoint of the assignment.

The initial determination of whether the assignment of the various contracts rendered the taxpayer immune from income tax liability was one to be made by The Tax Court. That is the agency designated by law to find and examine the facts and to draw conclusions as to whether a particular assignment left the assignor with substantial control over the assigned property or the income which accrues to the assignee. And it is well established that its decision is to be respected on appeal if firmly grounded in the evidence and if consistent with the law. (*Commissioner* v. *Scottish American Co.*, 323 U. S., 119 [Ct. D. 1619, C. B. 1944, 340]; *Dobson* v. *Commissioner*, 320 U. S., 489 [Ct. D. 1597, C. B. 1944,

56].) That is the standard, therefore, for measuring the propriety of The Tax Court's decision on the merits of the controversy in this case.

The facts relative to the asignments of the contracts are undisputed. As to the legal foundation of The Tax Court's judgment on the tax consequences of the assignments, we are unable to say that its inferences and conclusions from those facts are unreasonable in the light of the pertinent statutory or administrative provisions or that they are inconsistent with any of the principles enunciated in the Clifford-Horst line of cases. Indeed, due regard for those principles leads one inescapably to The Tax Court's result. The taxpayer's purported assignment to his wife of the various license contracts may properly be said to have left him with something more than a memory. He retained very substantial interests in the contracts themselves, as well as power to control the payment of royalties to his wife, thereby satisfying the various criteria of taxability set forth in the Clifford-Horst group of cases. That fact is demonstrated by the following considerations:

(1) As president, director and owner of 89 per cent of the stock of the corporation, the taxpayer remained in a position to exercise extensive control over the license contracts after assigning them to his wife. The contracts all provided that either party might cancel without liability upon giving the required notice. This gave the taxpayer, in his dominant position in the corporation, power to procure the cancellation of the contracts in their entirety. That power was nonetheless substantial because the taxpayer had but one of the three directors' votes necessary to sanction such action by the corporation. Should a majority of the directors prove unamenable to his desires, the frustration would last no longer than the date of the next annual election of directors by the stockholders, an election which the taxpayer could control by reason of his extensive stock holdings. The wife, as assignee, and as a party to contracts expressly terminable by the corporation without liability, could not prevent cancellation provided that the necessary notice was given.

And it is not necessary to assume that such cancellation would amount to a fraud on the corporation, a fraud which could be enjoined or otherwise prevented. Cancellation conceivably could occur because the taxpayer and his corporation were ready to make new license contracts on terms more favorable to the corporation, in which case no fraud would necessarily be present. All that we are concerned with here is the power to procure cancellation, not with the possibility that such power might be abused. And once it is evident that such power exists, the conclusion is unavoidable that the taxpayer retained a substantial interest in the license contracts which he assigned.

(2) The taxpayer's controlling position in the corporation also permitted him to regulate the amount of royalties payable to his wife. The contracts specified no minimum royalties and did not bind the corporation to manufacture and sell any particular number of devices. Hence, by controlling the production and sales policies of the corporation, the taxpayer was able to increase or lower the royalties; or he could stop those royalties completely by eliminating the manufacture of the devices covered by the royalties without canceling the contracts.

(3) The taxpayer remained the owner of the patents and the patent applications. Since the licenses which he gave the corporation were nonexclusive in nature, there was nothing to prevent him from licensing other firms to exploit his patents, thereby diverting some or all of the royalties from his wife.

(4) There is absent any indication that the transfer of the contracts effected any substantial change in the taxpayer's economic status. Despite the assignments, the license contracts and the royalty payments accruing thereunder remained within the taxpayer's intimate family group. He was able to enjoy, at least indirectly, the benefits received by his wife. And when that fact is added to the legal controls which he retained over the contracts and the royalties, it can fairly be said that the taxpayer retained the substance of all the rights which he had prior to the assignments. (See *Helvering* v. *Clifford*, supra, 335–336 [C. B. 1940–1, 107].)

These factors make reasonable The Tax Court's conclusion that the assignments of the license contracts merely involved a transfer of the right to receive income rather than a complete disposition of all the taxpayer's interest in the contracts and the royalties. The existence of the taxpayer's power to terminate those contracts and to regulate the amount of the royalties rendered ineffective for tax purposes his attempt to dispose of the contracts and royalties. The transactions were simply a reallocation of income within the family group, a reallocation which did not shift the incidence of income tax liability.

The judgment below must therefore be reversed and the case remanded for such further proceedings as may be necessary in light of this opinion.
Reversed.

Mr. Justice FRANKFURTER and Mr. Justice JACKSON believe the judgment of The Tax Court is based on substantial evidence and is consistent with the law, and would affirm that judgment for reasons stated in *Dobson* v. *Commissioner* (320 U. S., 489 [Ct. D. 1597, C. B. 1944, 56]), and *Commissioner* v. *Scottish American Co.* (323 U. S., 119 [Ct. D. 1619, C. B. 1944, 340]).

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

INTERNAL REVENUE CODE.

Tennessee tobacco tax collected by dealers and distributors from purchasers. (See I. T. 3906, page 33.)

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

INTERNAL REVENUE CODE.

Rhode Island sales tax collected by retailer from purchaser. (See I. T. 3909, page 34.)

SECTION 29.22(a)–7: Gross income of farmers. (Also Section 23(a), Section 29.23(a)–11; Section 23(o), Section 29.23(o)–1; and Section 23(q), Section 29.23(q)–1.)

1948–13–12826
I. T. 3910

INTERNAL REVENUE CODE.

The fair market value of agricultural products contributed by a farmer or other producer to an organization described in section 23(o) or section 23(q) of the Internal Revenue Code is includible in the gross income of the donor. Such fair market value may be deducted from gross income, subject to the limitations contained in section 23(o) and section 23(q) of the Code. Expenses of production are deductible under section 23(a)(1)(A) of the Code as ordinary and necessary business expenses.

Advice is requested whether the fair market value of agricultural products contributed by a farmer or other producer to an organization described in section 23(o) or section 23(q) of the Internal Revenue Code is includible in gross income for Federal income tax purposes, and whether the donor is entitled to a deduction under section 23(o) or section 23(q) of the Code with respect to such contribution.

In the instant case, a farmer who had on hand a quantity of wheat raised on his farm contributed part of such wheat to an organization described in section 23(o) of the Code, such wheat to be used for relief purposes. The organization, which has been held exempt from Federal income tax under section 101(6) of the Code, will process the wheat and distribute it where it is needed. Expenses incurred by the farmer in raising the wheat were deducted from gross income in computing net income for Federal income tax purposes.

In *Helvering* v. *Paul R. G. Horst* (311 U. S., 112, Ct. D. 1472, C. B. 1940–2, 206), the owner of negotiable bonds detached interest coupons therefrom shortly before their due date and delivered them as a gift

to his son, who procured their payment. In support of the conclusion that the interest was includible in the gross income of the owner of the bonds, the Court said in part:

> Although the donor here, by the transfer of the coupons, has precluded any possibility of his collecting them himself he has nevertheless, by his act, procured payment of the interest, as a valuable gift to a member of his family. Such a use of his economic gain, the right to receive income, to procure a satisfaction which can be obtained only by the expenditure of money or property, would seem to be the enjoyment of the income whether the satisfaction is the purchase of goods at the corner grocery, the payment of his debt there, or such nonmaterial satisfactions as may result from the payment of a campaign or community chest contribution, or a gift to his favorite son. Even though he never receives the money he derives money's worth from the disposition of the coupons which he has used as money or money's worth in the procuring of a satisfaction which is procurable only by the expenditure of money or money's worth. The enjoyment of the economic benefit accruing to him by virtue of his acquisition of the coupons is realized as completely as it would have been if he had collected the interest in dollars and expended them for any of the purposes named.

The products of a farm are, from the beginning, in the nature of income (cf. I. T. 3815, C. B. 1946–2, 30, in which it is held in part that where citrus groves are sold with fruit on the trees, a portion of the selling price must, for Federal income tax purposes, be allocated to the fruit and the gain from the sale of the fruit treated as ordinary income), and it is believed that the satisfaction derived from a contribution of such property to an organization described in section 23(o) or section 23(q) of the Code results in the enjoyment of income within the rule established in *Helvering* v. *Paul R. G. Horst*, supra. Expenses incurred in the production of farm products are allowed as deductions from gross income on the theory that they are incurred in the production of taxable income. It would not appear to be proper to allow a taxpayer a deduction for the expense of producing income, permit him to exclude such income from gross income, and, at the same time, permit him to enjoy the benefit of a contribution deduction under section 23(o) of the Code with respect to the same income.

Section 29.23(o)–1 of Regulations 111, relating to contributions or gifts by individuals, provides in part that if the contribution or gift is other than money, the basis for calculation of the amount thereof shall be the fair market value of the property at the time of the contribution or gift.

In view of the foregoing, it is held that the fair market value of agricultural products contributed by a farmer or other producer to an organization described in section 23(o) or section 23(q) of the Internal Revenue Code is includible in the gross income of the donor. Such fair market value may be deducted from gross income, subject to the limitations contained in section 23(o) and section 23(q) of the Code. Expenses of production are deductible under section 23(a)(1)(A) of the Code as ordinary and necessary business expenses.

SECTION 22(c).—GROSS INCOME: INVENTORIES.

SECTION 29.22(c)–8: Inventories of retail merchants. 1948–6–12766
T. D. 5605

(Also Section 19.22(c)–8; Section 22(d), Sections 29.22(d)–1, 19.22(d)–1, 29.22(d)–2, and 19.22(d)–2.)

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

Regulations 103 and Regulations 111 amended with respect to elective inventory computations.

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

To Collectors of Internal Revenue and Others Concerned:

On December 23, 1947, notice of proposed rule making regarding elective inventory computations in the case of retailers was published in the Federal Register (12 F. R., 8726). After consideration of all such relevant matter as was presented by interested persons regarding the proposal, the amendments to Regulations 103 [26 CFR, Part 19] and to Regulations 111 [26 CFR, Part 29] set forth below are hereby adopted. The amendments are made in order to adapt the retail inventory requirements of the regulations to the elective inventory principle of section 22(d) of the Internal Revenue Code as enunciated by The Tax Court of the United States in *Hutzler Bros. Co.* (8 T. C., No. 3 [page 14]).

PARAGRAPH 1. Section 29.22(c)–8 of Regulations 111 [26 CFR, 29.22(c)–8] and section 19.22(c)–8 of Regulations 103 as amended by Treasury Decision 5048, approved June 2, 1941 [C. B. 1941–1, 200] [26 CFR, 19.22(c)–8], are further amended as follows:

(A) By inserting after the second paragraph in each case the following (except that, in Regulations 103, the cross-reference shall be made to section 19.22(d)–1):

For further adjustments to be made in the case of a retail merchant using the elective inventory method authorized by section 22(d), see section 29.22(d)–1.

(B) By striking from the beginning of the fourth paragraph in each case the words "A taxpayer," and by inserting in lieu thereof the following:

A taxpayer (other than one using the elective inventory method)

(C) By striking from the beginning of the last paragraph in each case the words "A taxpayer," and by inserting in lieu thereof the following:

A taxpayer (other than one using the elective inventory method)

(D) By inserting at the end thereof in each case the following:

A taxpayer using the elective inventory method in conjunction with retail computations must adjust retail selling prices for mark-downs as well as mark-ups, in order that there may be reflected the approximate cost of the goods on hand at the end of the year, regardless of market values.

PAR. 2. Section 29.22(d)–1 of Regulations 111, as amended by Treasury Decision 5407, approved October 9, 1944 [C. B. 1944, 83] [26 CFR, 29.22(d)–1], and section 19.22(d)–1 of Regulations 103 [26 CFR, 19.22(d)–1] are further amended by inserting at the end thereof in each case the following (except that, in Regulations 103, the cross-reference shall be made to section 19.22(c)–8):

If a taxpayer using the retail method of pricing inventories, authorized by section 29.22(c)–8, elects to use in connection therewith the elective inventory method authorized by section 22(d) of the Code, the apparent cost of the goods on hand at the end of the year, determined pursuant to section 29.22(c)–8, shall be adjusted

to the extent of price changes therein taking place subsequent to the close of the preceding taxable year. The amount of any apparent inventory increase or decrease to be eliminated in this adjustment shall be determined by reference to acceptable price indices established to the satisfaction of the Commissioner. Price indices prepared by the United States Bureau of Labor Statistics which are applicable to the goods in question will be considered acceptable to the Commissioner. Price indices which are based upon inadequate records, or which are not subject to complete and detailed audit within the Bureau, will not be approved.

PAR. 3. Section 29.22(d)-2 of Regulations 111, as amended by Treasury Decision 5504, approved March 20, 1946 [C. B. 1946-1, 52] [26 CFR, 29.22(d)-2], is further amended by revising that portion thereof preceding the numbered paragraphs to read as follows:

SEC. 29.22(d)-2. REQUIREMENTS INCIDENT TO ADOPTION AND USE OF ELECTIVE METHOD.—Except as otherwise provided in section 29.22(d)-1 with respect to raw material computations and with respect to retail inventory computations, the adoption and use of the elective inventory method is, by section 22(d) and regulations thereunder, made subject to the following requirements:

PAR. 4. Section 19.22(d)-2 of Regulations 103, as amended by Treasury Decision 5199, approved December 10, 1942 [C. B. 1942-2, 8] [26 CFR, 19.22(d)-2], is further amended by revising that portion thereof preceding the numbered paragraphs to read as follows:

SEC. 19.22(d)-2. REQUIREMENTS INCIDENT TO ADOPTION AND USE OF ELECTIVE METHOD.—Except as otherwise provided in section 19.22(d)-1 with respect to retail inventory computations, the adoption and use of the elective inventory method is, by section 22(d) and regulations thereunder, made subject to the following requirements:

PAR. 5. The amendments made by this Treasury decision shall be applicable to all taxable years beginning after December 31, 1938.

(This Treasury decision is issued under the authority contained in sections 62 and 22(d) of the Internal Revenue Code (53 Stat., 32, 11; 26 U. S. C., 62, 22(d)).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved March 4, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 9, 1948, 8.55 a. m.)

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

SECTION 29.22(d)-1: Inventories under elective method. 1948-9-12791
I. T. 3904
(Also Section 19.22(d)-1, Regulations 103.)

INTERNAL REVENUE CODE.

Price indices and data published by the Bureau of Labor Statistics under dates of February 3, 1948, and March 3, 1948, for use by department stores employing the retail and elective inventory methods.

The following price indices and data, published by the Bureau of Labor Statistics as shown in Tables I, IA, II, and III for use by department stores employing the retail and elective inventory methods, are accepted by the Bureau of Internal Revenue pursuant to Treasury Decision 5605 (page 16, this Bulletin), approved March 4, 1948, and

Mimeograph 6244 (page 21, this Bulletin), dated March 9, 1948, for appropriate application to inventories for taxable years of 12 months ended on June 30, July 31, and December 31, for the years 1941 to 1947, inclusive, and January 31, for the years 1942 to 1948, inclusive.

TABLE I.—*Bureau of Labor Statistics, department store inventory price indexes, by department groups.*

[January, 1941=100.]

Group.	1941.		1942.		1943.		1944.	
	January.	July.	January.	July.	January.	July.	January.	July.
I. Piece goods	100.0	103.2	120.3	131.3	136.8	136.9	144.1	147.2
II. Shoes	100.0	100.7	108.7	115.4	119.2	119.7	122.2	122.7
III. Underwear	100.0	100.5	116.7	127.6	131.3	133.8	136.3	143.7
IV. Outerwear	100.0	107.6	117.9	127.9	128.7	136.1	141.3	147.6
V. Men's wear	100.0	102.1	112.9	124.3	129.8	131.6	139.4	140.9
VI. Furniture	100.0	107.2	121.0	125.3	126.2	127.7	128.7	142.9
VII. Home furnishings	100.0	105.0	109.0	112.6	113.7	114.2	118.2	118.4
VIII. Electrical equipment	100.0	102.0	118.1	118.4	121.8	123.0	127.5	131.8
IX. Notions	100.0	100.3	110.2	111.8	112.7	113.2	113.7	120.6
Total, Groups I, II, III, IV, V, IX	100.0	102.5	115.0	123.6	127.5	129.6	134.8	138.7
Total, Groups VI, VII, VIII	100.0	105.1	114.4	117.6	119.1	119.9	123.0	128.1
Store total	100.0	103.2	114.8	121.5	124.9	126.3	131.5	135.1

Group.	1945.		1946.		1947.		1948.
	January.	July.	January.	July.	January.	July.	January.
I. Piece goods	151.0	153.9	166.7	167.6	196.4	196.6	218.6
II. Shoes	124.6	125.1	131.1	135.5	160.6	174.8	190.3
III. Underwear	145.0	149.0	147.0	151.3	158.8	169.2	178.2
IV. Outerwear	147.7	155.1	155.8	162.7	164.7	174.9	181.3
V. Men's wear	144.7	146.1	151.1	161.5	178.9	188.3	190.0
VI. Furniture	143.0	148.6	150.2	162.3	168.9	183.2	184.9
VII. Home furnishings	123.2	123.3	131.6	134.2	148.4	150.3	162.5
VIII. Electrical equipment	134.6	136.1	139.6	147.9	157.9	166.9	170.1
IX. Notions	121.2	120.8	120.5	120.6	124.6	129.3	140.5
Total, Groups I, II, III, IV, V, IX	141.9	143.8	148.6	151.8	166.7	172.6	184.5
Total, Groups VI, VII, VIII	131.4	133.3	138.9	145.2	156.7	163.3	171.0
Store total	138.9	140.1	145.7	149.2	163.6	169.1	180.5

NOTE:
I. Piece goods, domestics, and draperies.
II. Shoes.
III. Ladies' underwear.
IV. Ladies' and girls' outerwear.
V. Men's and boys' wear.
VI. Furniture and bedding.
VII. Home furnishings.
VIII. Major appliances and electrical goods.
IX. Notions and toilet articles.

TABLE IA.—*Bureau of Labor Statistics, department store inventory price indexes, by department groups.*

[July, 1941=100.]

Group.	July, 1941.	July, 1942.	July, 1943.	July, 1944.	July, 1945.	July, 1946.	July, 1947.
I. Piece goods, domestics, draperies	100.0	127.2	132.7	142.6	149.2	162.5	190.6
II. Shoes	100.0	114.6	118.8	121.8	124.2	134.6	173.6
III. Ladies' underwear	100.0	127.0	133.1	142.9	148.2	150.6	168.4
IV. Ladies' and girls' outerwear	100.0	118.9	126.5	137.1	144.1	151.2	162.5
V. Men's and boys' wear	100.0	121.7	128.9	138.0	143.1	158.2	184.4
VI. Furniture and bedding	100.0	116.9	119.1	133.3	138.6	151.4	170.9
VII. Home furnishings	100.0	107.2	108.8	112.7	117.5	127.8	143.1
VIII. Major appliances and electrical goods	100.0	116.1	120.6	129.2	133.5	145.1	163.6
IX. Notions and toilet articles	100.0	111.5	112.8	120.3	120.4	120.3	129.0
Total, Groups I, II, III, IV, V, IX	100.0	120.6	126.5	135.3	140.2	148.1	168.3
Total, Groups VI, VII, VIII	100.0	111.9	114.1	121.9	126.8	138.1	155.3
Store total	100.0	117.7	122.4	131.0	135.8	144.6	164.0

TABLE II.—*Bureau of Labor Statistics, annual percent increase in department store inventory price indexes, by department groups.*

Group.	January to January.						
	1941 to 1942.	1942 to 1943.	1943 to 1944.	1944 to 1945.	1945 to 1946.	1946 to 1947.	1947 to 1948.
I. Piece goods, domestics, and draperies	20.3	13.7	5.3	4.8	10.4	17.8	11.3
II. Shoes	8.7	9.7	2.5	2.0	5.2	22.5	18.5
III. Ladies' underwear	16.7	12.5	3.8	6.4	1.4	8.0	12.2
IV. Ladies' outerwear and girls' wear	17.9	9.2	9.8	4.5	5.5	5.7	10.1
V. Men's and boys' wear	12.9	15.0	7.4	3.8	4.4	[1] 18.4	6.2
VI. Furniture and bedding	21.0	4.3	2.0	11.1	5.0	12.5	9.5
VII. Home furnishings	9.0	4.3	4.0	4.2	6.8	12.8	9.5
VIII. Major appliances and electrical goods	18.1	3.1	4.7	5.6	3.7	13.1	7.7
IX. Notions and toilet articles	10.2	2.3	.9	6.6	−.6	3.4	12.8
Total, Groups I, II, III, IV, V, IX	15.0	10.9	5.7	5.3	4.7	12.2	10.7
Total, Groups VI, VII, VIII	14.4	4.1	3.3	6.8	5.7	12.8	9.1
Store total	14.8	8.8	5.3	5.6	4.9	12.3	10.3

Group.	July to July.					
	1941 to 1942.	1942 to 1943.	1943 to 1944.	1944 to 1945.	1945 to 1946.	1946 to 1947.
I. Piece goods, domestics, and draperies	27.2	4.3	7.5	4.6	8.9	17.3
II. Shoes	14.6	3.7	2.5	2.0	8.3	29.0
III. Ladies' underwear	27.0	4.8	7.4	3.7	1.6	11.8
IV. Ladies' outerwear and girls' wear	18.9	6.4	8.4	5.1	4.9	7.5
V. Men's and boys' wear	21.7	5.9	7.1	3.7	10.5	16.6
VI. Furniture and bedding	16.9	1.9	11.9	4.0	9.2	12.9
VII. Home furnishings	7.2	1.5	3.6	4.2	8.8	12.0
VIII. Major appliances and electrical goods	16.1	3.9	7.1	3.3	8.7	12.8
IX. Notions and toilet articles	11.5	1.2	6.6	.1	−.1	7.2
Total, Groups I, II, III, IV, V, IX	20.6	4.9	7.0	3.6	5.6	13.7
Total, Groups VI, VII, VIII	11.9	2.0	6.8	4.0	8.9	12.5
Store total	17.7	4.0	7.0	3.7	6.5	13.4

[1] Incorrectly printed as 8.4 in release of January 7, 1948.

TABLE III.—*Bureau of Labor Statistics, department store inventory price indexes, grouping of Controllers Congress Departments.*

BLS group.	Controllers Congress Department.	
Number and name.	Number.	Name.
I. Piece goods, domestics, and draperies	11	Silks, velvets, and synthetics.
	12	Woolen dress goods.
	13	Wash goods and linings.
	14	Linens.
	15	Domestics—Muslins, sheetings, etc.
	18	Blankets, comfortables, and spreads.
	74	Draperies, curtains, and upholstery.
II. Shoes	47	Women's and children's shoes.
	67	Men's and boys' shoes.
III. Ladies' underwear	36	Corsets and brassieres.
	37	Women's and children's hosiery.
	38	Knit underwear.
	39	Silk and muslin underwear and slips.
	42	Negligees and robes.
	43	Infants' wear.
IV. Ladies' outerwear and girls' wear	34	Millinery.
	51	Women's and misses' coats and suits.
	52	Junior miss coats, suits, and dresses.
	53	Women's and misses' dresses.
	54	Blouses, skirts, and sportswear.
	55	Girls' wear.
	57	Aprons, house dresses, and uniforms.
	59	Furs.

TABLE III.—*Bureau of Labor Statistics, department store inventory price indexes, grouping of Controllers Congress Departments*—Continued.

BLS group.	Controllers Congress Department.	
Number and name.	Number.	Name.
V. Men's and boys' wear	61	Men's clothing.
	62	Men's furnishings.
	65	Men's hats.
	66–C	Boys' clothing.
	66–F	Boys' furnishings.
VI. Furniture and bedding	71–M	Mattresses, springs, and studio beds.
	71–U	Upholstered furniture.
	71–O	Other furniture.
VII. Home furnishings	72	Oriental rugs.
	73	Domestic floor coverings.
	76	China and glassware.
	78	Housewares.
	79	Gift shop.
	81	Pictures, frames, and mirrors.
VIII. Major appliances and electrical goods	75	Lamps and shades.
	77	Major appliances.
	84	Radios, phonographs, and records.
IX. Notions	21	Laces, trimmings, and ribbons.
	23	Notions.
	24	Toilet articles, and drug sundries.
	25–S	Silverware and clocks.
	25–C	Costume jewelry.
	25–F	Fine jewelry and watches.
	26	Umbrellas.
	27	Art needlework.
X. No index computed	28	Books and stationery.
	31	Neckwear and scarfs.
	33	Handkerchiefs.
	35	Women's and children's gloves.
	46	Handbags and small leather goods.
	91	Toys and games.
	92–S	Sporting goods.
	92–C	Cameras and photographic equipment.
	93	Luggage.

SECTION 29.22(d)–1: Inventories under elective method.
(Also Section 19.22(d)–1.)

INTERNAL REVENUE CODE.

Regulations 103 and 111 amended. (See T. D. 5605, page 16.)

SECTION 29.22(d)–2: Requirements incident to adoption and use of elective method. 1948–7–12770 Mim. 6244

Use of elective inventory method by taxpayers using retail inventory method.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., March 9, 1948.

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

1. Section 22(d)(1) of the Internal Revenue Code provides an elective method for inventorying goods, commonly referred to as the last-in, first-out, or LIFO, inventory method. Section 22(d)(2)(A) of the Code provides that the elective method shall be applied

only with respect to the goods specified by the taxpayer in an application filed with the Commissioner. The Commissioner's regulations with respect to the elective inventory method have heretofore made no provision for retailers to group such goods into classes. The Bureau has held that the use of the elective inventory method was not available to taxpayers whose inventory records are kept on the basis of the retail inventory method permitted under section 29.22(c)-8 of Regulations 111 and section 19.22(c)-8 of Regulations 103.

2. The Tax Court held in the case of *Hutzler Bros. Co.* v. *Commissioner* (8 T. C., 14) that a taxpayer using the retail inventory method is entitled to use the elective inventory method. The grouping of goods by classes under the retail inventory method necessarily involves the use of some type of index numbers for measuring the extent of price changes in the various classes of goods concerned. The decision laid down no rule concerning the nature or type of index numbers which might be proper, nor did it prescribe other details of methods for applying the LIFO method in the case of retail merchants.

3. Treasury Decision 5605, approved March 4, 1948 [page 16, this Bulletin], amends Regulations 103 and 111 to expressly permit the use of the elective inventory method by taxpayers using the retail inventory method. Certain principles are laid down for the application of the elective inventory method by such taxpayers. First, since the elective method requires the use of cost, the retail selling prices of goods included in the opening inventory and purchased during the year must be adjusted for mark-downs as well as mark-ups during the year without regard to the taxpayer's previous practice with respect to mark-downs under the retail method. This requirement does not apply to retailers employing the retail inventory method without the use of the elective method. Second, the price indices employed in the adjustment of the apparent cost of goods in the closing inventory for price changes taking place during the year must be shown, to the satisfaction of the Commissioner, to be acceptable. Any price indices must be based upon sound statistical principles of construction and upon adequate records to be kept available for examination by the Bureau.

4. Arrangements have been made between representatives of the retail trade and the United States Bureau of Labor Statistics for that agency to compute and publish a series of group index numbers of retail prices, on a country-wide basis, suitable for use by individual department stores, which will be acceptable to the Commissioner. These index numbers will cover the period from 1941 to the present on a semiannual basis, and will appear semiannually in the future. The use of such indices of the Bureau of Labor Statistics is not mandatory; indices may be prepared by an individual taxpayer based upon his own data on prices and inventory quantities, if adequate, and if proof is submitted that sound statistical methods have been employed that assure reliable indices, not only for the particular year in question, but for subsequent years. Retailers who have filed, on the basis of the elective method, returns for past years which are still open, and who used indices that are not acceptable to the Commissioner, may file amended returns employing acceptable indices.

5. Index numbers for the years ended January, 1941 to 1947, inclusive, were published by the Bureau of Labor Statistics on January 7, 1948, and similar data for July of those years was published on February 3, 1948. Semiannual indices for January 15 and July 15 will be

published, in the future, in March and September of each year. Indices as of the 15th of a month will be deemed to be representative of prices at either the beginning or end of such month. These releases of the Bureau of Labor Statistics will also be published in the Internal Revenue Bulletin.

6. The following groups have been used by the Bureau of Labor Statistics as the basis for the preparation of the indices for past years for use by department stores:

I. Piece goods, domestics, and draperies.
II. Shoes.
III. Ladies' underwear.
IV. Ladies' outerwear and girls' wear.
V. Men's and boys' wear.
VI. Furniture and bedding.
VII. Home furnishings.
VIII. Major appliances and electrical goods.
IX. Notions and toilet articles.

Beginning with January, 1948, price data will be gathered on additional commodities that may allow the segregation of additional groups. The Bureau of Labor Statistics shows in Table III of its release of January 7, 1948, the coverage of each of the above groups, by naming the departments of a typical department store, as described by the Controller's Congress of the National Retail Dry Goods Association, which are included in each group.

7. In using such group indices, a department store taxpayer will apply to the inventory data for each of his departments separately, in the manner described below, the index for the group in which the department logically belongs. A given group index may be applicable to a number of departments in a store.

8. The problem arises of what indices are to be employed for a department which does not fit into any one of the nine groups named above. In this case an index should be employed which represents an average for the whole of the remainder of the store. For example, this index may be the store total, as shown by the Bureau of Labor Statistics, or that shown for apparel, piece goods, and notions combined (groups I, II, III, IV, V, and IX), whichever of these combinations more closely represents the coverage of the inventory stock carried by the store.

9. The method of making the first-year price adjustments to the closing inventory values under the retail inventory method, combined with the elective (LIFO) method, is illustrated in Exhibits A and B, hereafter set forth, for three hypothetical departments. In the first two departments there was an increase in the physical quantity of inventory during the year in question, as shown by the comparison of the adjusted retail value at the end of the year and the retail value at the beginning of the year. In the first department prices rose during the year, as shown by the index, while in the second, prices fell. In the third department there was a decline in the physical quantity of inventory.

10. To illustrate further the principles involved, Exhibits C and D show the adjustments for two additional years for department 1, the data for the first year being repeated to show the continuity. It is assumed that the physical quantity of inventory increased in the first two years, but decreased in the third year, as indicated by the adjusted

retail values. It is to be noted that the decrease in the third year eliminated all of the second year increase, and part of the first year's increase, *in that order*, retaining in the closing inventory the merchandise appearing in the opening inventory "in the order of acquisition." Thus, it is necessary under the elective method to retain the identity of each annual increment to the inventory of each department. The price changes are measured by reference to the fixed prices at the beginning of the first LIFO year and the retail inventory value on each inventory date is adjusted to the price level on that date.

11. These illustrations are intended to show the main principles involved in the LIFO adjustments to retail inventories, and are not intended to cover all accounting details of computations which may be required, particularly in later years, under the elective method.

12. Correspondence regarding this mimeograph should refer to its number and the symbols indicated for the appropriate Bureau office concerned: Collectors of internal revenue, A&C: Col; internal revenue agents in charge, IT: EIM; and heads of field divisions of the Technical Staff, TS: ARM.

GEO. J. SCHOENEMAN,
Commissioner.

EXHIBIT A.

Method of computing LIFO, retail inventory, three departments, first year.

Step No.	Item or computation.	Department No. 1. Women's shoes.	2. Men's furnishings.	3. Linens.
	I. DATA FROM TAXPAYER'S BOOKS.			
1	Opening inventory—retail value	$25,000	$40,000	$10,000
2	Opening inventory—mark-on per cent per cent	43.6	45.2	44.1
3	Opening inventory—cost (1 reduced by 2)	$14,100	$21,920	$5,590
4	Mark-on on year's purchases (see step 12*a*) per cent	44.7	44.8	44.6
5	Closing inventory—retail value	$36,000	$39,400	$10,400
6	Closing inventory—mark-on per cent per cent	44.4	44.9	44.4
7	Closing inventory—cost (FIFO) (5 reduced by 6)	$20,016	$21,709	$5,782
	II. PRICE INDEX DATA.			
8	Price index, close of year relative to prices at beginning of first LIFO year as 100 per cent per cent	108.4	96.3	113.7
	III. LIFO COMPUTATIONS.			
9	Closing inventory—adjusted retail value (5÷8)	$33,210	$40,914	$9,147
10	Increase (decrease) in year (9—1)	$8,210	$914	($853)
11	Increase at current prices (10×8)	$8,900	$880	
12*a*	Cost of increase (11 reduced by 4)	$4,922	$486	
12*b*	Cost of decrease (10 reduced by 2)			($477)
13	LIFO closing inventory (3+12*a* or 3—12*b*)	$19,022	$22,406	$5,113

NOTES.—(*a*) The mark-ons in steps 2 and 4 must be computed taking account of mark-downs as well as mark-ups.

(*b*) In succeeding years the data to be used in steps 1, 2, and 3, to the extent applicable, will be taken from the taxpayer's books as of the beginning of the first year of the use of the LIFO method, and will be identical with those shown in the first year's computation.

(*c*) Steps 6 and 7 are shown to allow comparison of LIFO and FIFO inventories.

(*d*) The index in step 8 is the index of retail prices applicable to the goods in each department, showing the level of prices at the end of the year (108.4 per cent in department 1) relative to the beginning of the year (100 per cent).

EXHIBIT B.

Method of computing LIFO, retail inventory, three departments, first year.

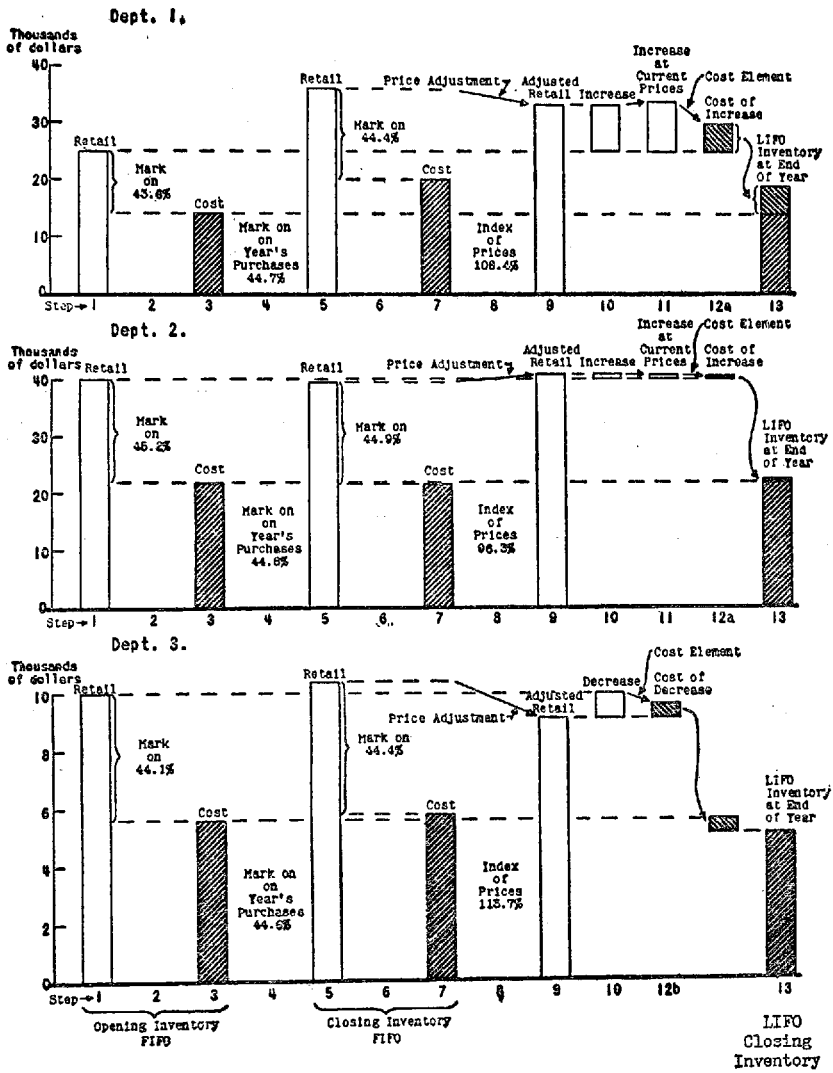


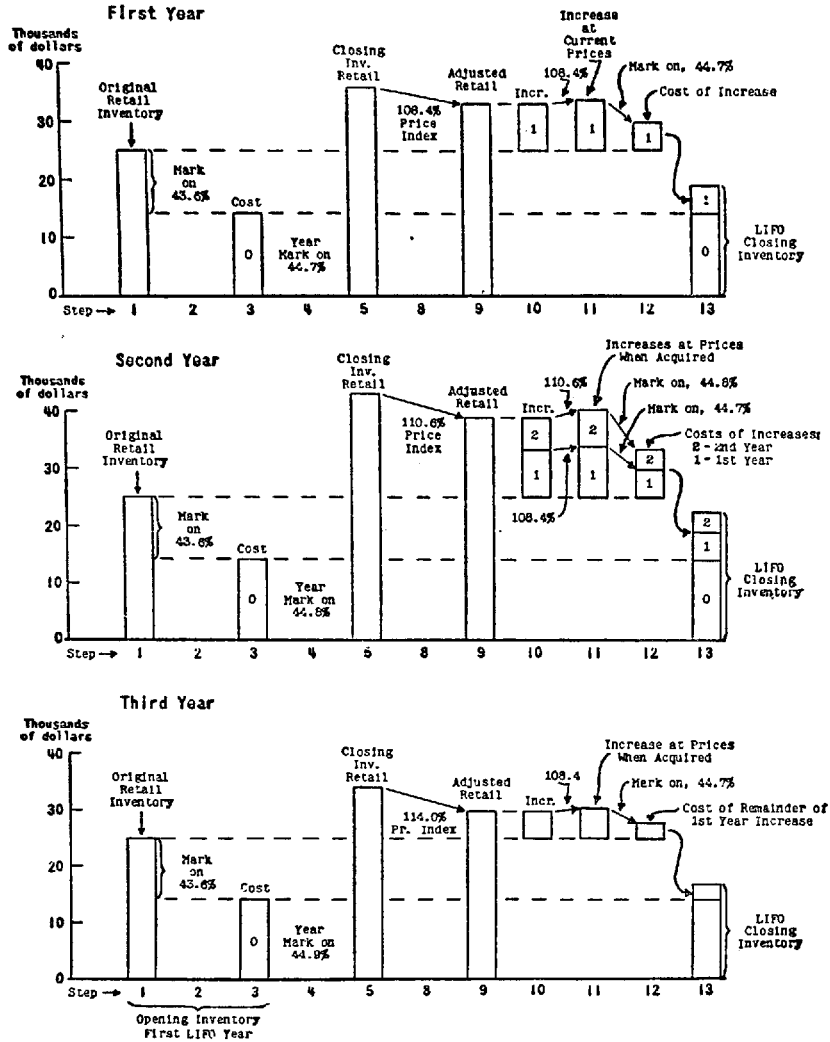
EXHIBIT C.

Method of computing LIFO, retail inventory, department No. 1, first three years.

Step No.	Item or computation.	First year.	Second year.	Third year.
	I. DATA FROM TAXPAYER'S BOOKS.			
1	Opening inventory—first LIFO year, retail	$25,000	$25,000	$25,000
2	Opening inventory—first LIFO year, mark-on per cent—per cent	43.6	43.6	43.6
3	Opening inventory—first LIFO year, cost (1 reduced by 2)	$14,100	$14,100	$14,100
4	Mark-on on year's purchases—per cent	44.7	44.8	44.9
5	Closing inventory given year—retail value	$36,000	$43,000	$34,000
	II. PRICE INDEX DATA.			
8	Price index, close of given year relative to prices at beginning of first LIFO year as 100 per cent—per cent	108.4	110.6	114.0
	III. LIFO COMPUTATIONS.			
9	Closing inventory—adjusted retail value at price level of opening inventory for first LIFO year (5÷8)	$33,210	$38,879	$29,825
10	Increase over opening inventory for first LIFO year (9—1)	$8,210	$13,879	$4,825
	a. Amount of increase attributable to first year	$8,210	$8,210	$4,825
	b. Amount of increase attributable to second year		$5,669	
11	Increase at prices existing when acquired:			
	a. First year's increase (10*a*×108.4 per cent)	$8,900	$8,900	$5,230
	b. Second year's increase (10*b*×110.6 per cent)		$6,270	
12	Cost of increases:			
	a. First year's increase (11*a* reduced by 44.7 per cent)	$4,922	$4,922	$2,892
	b. Second year's increase (11*b* reduced by 44.8 per cent)		$3,461	
	Add (3) above	$14,100	$14,100	$14,100
13	LIFO closing inventory (sum of 12 and 3)	$19,022	$22,483	$16,992

EXHIBIT D.

Method of computing LIFO, retail inventory, department No. 1, first three years.



SECTION 29.22(d)–2: Requirements incident to adoption and use of elective method. (Also Section 19.22(d)–2.)

INTERNAL REVENUE CODE.

Regulations 103 and 111 amended. (See T. D. 5605, page 16.)

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

SECTION 29.22(n)–1: Adjusted gross income.

INTERNAL REVENUE CODE.

Tennessee use tax paid by consumers with respect to property used in trade or business. (See I. T. 3905, page 32.)

SECTION 29.22(n)–1: Adjusted gross income.

INTERNAL REVENUE CODE.

Tennessee tobacco tax paid by individual in connection with tobacco products used in trade or business. (See I. T. 3906, page 33.)

SECTION 29.22(n)–1: Adjusted gross income.

INTERNAL REVENUE CODE.

Rhode Island sales and use taxes paid by retailers or purchasers and attributable to a trade or business. (See I. T. 3909, page 34.)

SECTION 29.22(n)–1: Adjusted gross income.

INTERNAL REVENUE CODE.

Mississippi gasoline tax paid by individuals who use gasoline in trade or business. (See G. C. M. 25579, page 36.)

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

SECTION 29.23(a)–1: Business expenses. 1948–6–12760
I. T. 3894

INTERNAL REVENUE CODE.

Amounts paid as liquidated damages by an employer to the United States under the Walsh-Healey Public Contracts Act (49 Stat., 2036) are deductible for Federal income tax purposes to the extent that such amounts represent damages for minimum wage and overtime violations.

Amounts paid as liquidated damages by an employer to the United States on account of violations of the child labor provisions of the Walsh-Healey Public Contracts Act are not deductible for Federal income tax purposes.

Advice is requested as to the deductibility for Federal income tax purposes of amounts paid as liquidated damages by an employer to the United States under the Walsh-Healey Public Contracts Act (49 Stat., 2036) with respect to (1) minimum wage and overtime violations and (2) child labor violations.

Section 1 of the Walsh-Healey Public Contracts Act provides that any contracts made by any agency or executive department of the United States shall include, *inter alia*, certain stipulations relative to wages and hours and employment of minors under specified ages. Sec-

tion 2 provides that any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in section 1 shall render the party responsible therefor liable to the United States for liquidated damages, in addition to damages for any other breach of contract, in the sum of $10 per day for each child labor violation and in a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to employees engaged in performance of the contract. Such sums may be withheld by the Government from any amounts due on the contract or may be recovered in suits brought in the name of the United States of America by the Attorney General. Section 2 of the Act further provides that all sums withheld or recovered as deductions, rebates, refunds, or underpayment of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered, subject to a time limitation for the filing of claims.

Section 23(a)(1)(A) of the Internal Revenue Code provides in part 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 * * *"

Amounts paid as liquidated damages by an employer to the United States under the Walsh-Healey Public Contracts Act are deductible for Federal income tax purposes to the extent that such amounts represent damages for minimum wage and overtime violations.

Fines or penalties, however, do not constitute items of ordinary and necessary business expense, and where a taxpayer has violated a Federal or State statute and incurred a fine or penalty, he has not been permitted a tax deduction for its payment. (See *Great Northern Railway Co.* v. *Commissioner*, 40 Fed. (2d), 372, certiorari denied, 282 U. S., 855, and *Burroughs Building Material Co.* v. *Commissioner*, 47 Fed. (2d), 178, Ct. D. 297, C. B. X–1, 397 (1931).) In *Commissioner* v. *Heininger* (320 U. S., 467, 473, Ct. D. 1596, C. B. 1944, 484, 486), the Supreme Court of the United States pointed out that the Federal courts from time to time have "narrowed the generally accepted meaning of the language used in section 23(a) [of the Code] in order that tax deduction consequences might not frustrate sharply defined National or State policies proscribing particular types of conduct." (See *Scioto Provision Co.* v. *Commissioner*, 9 T. C., 439.)

In view of the clearly defined national policy underlying the child labor provisions of the Walsh-Healey Public Contracts Act and the fact that sums paid on account of violations thereof are penalties for "an offense against the public justice of the State" (cf. *Huntington* v. *Attrill*, 146 U. S., 657, 674), it is held that amounts paid as liquidated damages by an employer to the United States on account of violations of the child labor provisions of the Act are not deductible for Federal income tax purposes.

SECTION 29.23(a)–1: Business expenses.

INTERNAL REVENUE CODE.

Cost of Tennessee tobacco tax stamps purchased by dealers and distributors. (See I. T. 3906, page 33.)

SECTION 29.23(a)–1: Business expenses.

INTERNAL REVENUE CODE.

Rhode Island sales tax paid by purchaser with respect to property purchased for use in trade or business. (See I. T. 3909, page 34.)

SECTION 29.23(a)–10: Rentals. 1948–8–12784
I. T. 3901

INTERNAL REVENUE CODE.

A fair amount of rent paid by a husband to his wife for the use of Wisconsin real estate owned by them as joint tenants is deductible as a business expense by the husband in his separate Federal income tax return where the husband uses the property in connection with his business.

Advice is requested as to the deductibility of rent paid by a husband to his wife for the use in his business of Wisconsin real estate owned by them as joint tenants.

A husband and wife holding Wisconsin real estate as joint tenants may each report one-half of the net income from such property in separate Federal income tax returns. (See I. T. 3754, C. B. 1945, 143.) That conclusion was based primarily on the provisions of sections 234.21, 246.01, and 246.03 of the Wisconsin Statutes, 1941. Those provisions, which are also contained in the Wisconsin Statutes, 1945, provide as follows:

234.21. ACTIONS BETWEEN COTENANTS.—One joint tenant or tenant in common and his executors or administrators may maintain an action for money had and received against his cotenant for receiving more than his just proportion of the rents or profits of the estate owned by them as joint tenants or tenants in common.

246.01. REALTY OF.—The real estate of every description, including all held in joint tenancy with her husband, and the rents, issues and profits thereof of any female now married shall not be subject to the disposal of her husband, but shall be her sole and separate property as if she were unmarried.

246.03. MAY RECEIVE, HOLD AND CONVEY PROPERTY.—Any married female may receive by inheritance or by gift, grant, devise or bequest from any person, hold to her sole and separate use, convey and devise real and personal property and any interest or estate therein of any description, including all held in joint tenancy with her husband, and the rents, issues and profits thereof in the same manner and with like effect as if she were unmarried, and the same shall not be subject to the disposal of her husband nor be liable for his debts. Any conveyance, transfer or lien executed by either husband or wife to or in favor of the other shall be valid to the same extent as between other persons.

It appears from the quoted provisions of law that there is a definite obligation on the part of the taxpayer to pay to his wife at least one-half of the fair rental value of the real estate held by them as joint tenants which is used by him in his business. To deny the taxpayer the right to deduct fair rent paid to his wife would, in effect, disregard the wife's right of participation in possession and use of the property, and would conflict with the position of the Bureau that income from property held in joint tenancy is taxable to the tenants in proportion to their respective interests in the property.

In view of the foregoing, it is held that a fair amount of rent paid by a husband to his wife for the use of Wisconsin real estate owned by them as joint tenants is deductible as a business expense by the husband in his separate Federal income tax return where the husband uses the property in connection with his business.

SECTION 29.23(a)-11: Expenses of farmers.

INTERNAL REVENUE CODE.

Amounts expended in development of farms, orchards, and ranches. (See Mim. 6030, Supplement 1, page 42.)

SECTION 29.23(a)-11: Expenses of farmers.

INTERNAL REVENUE CODE.

Expenses of production of agricultural products contributed by a farmer or other producer to organizations described in section 23(o) or section 23(q) of the Internal Revenue Code. (See I. T. 3910, page 15.)

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

SECTION 29.23(c)-1: Taxes. 1948-5-12755
I. T. 3892

INTERNAL REVENUE CODE AND REVENUE ACT OF 1928.

The 3-cent tax imposed by the State of North Dakota on motor vehicle fuel under the initiated measure approved on June 30, 1926, as amended, is deductible for Federal income tax purposes under section 23(c)(1) of the Internal Revenue Code by the dealer upon whom it is imposed, and not by the consumer. I. T. 2519 (C. B. IX-1, 92 (1930)) revoked.

The additional 1-cent tax imposed by the State of North Dakota on motor vehicle fuel by chapter 170, Laws of North Dakota, 1939, and subsequent legislation is also deductible under section 23(c)(1) of the Code by the dealer upon whom it is imposed.

The North Dakota motor vehicle fuel taxes are not retail sales taxes and are not deductible by the consumer under section 23(c)(3) of the Code.

Reconsideration has been given to I. T. 2519 (C. B. IX-1, 92 (1930)), in which it was held that the motor vehicle fuel (3-cent) tax imposed by the State of North Dakota under the initiated measure approved on June 30, 1926, as amended, is deductible in the income tax return of the consumer who pays it and to whom it is not refunded.

I. T. 2519, supra, was predicated on the provisions of the law of the State of North Dakota quoted therein, which provisions seemed to impose the motor vehicle fuel tax upon the purchaser of fuels used for the purpose of operating motor vehicles in whole or in part upon any of the public highways of the State of North Dakota. An additional 1-cent tax has been imposed by the State of North Dakota on motor vehicle fuel from April 1, 1939, to the present date. (Laws of North Dakota, 1939, chapter 170; Laws of North Dakota, 1941, chapter 191; Laws of North Dakota, 1943, chapter 263 (see North Dakota Revised Code of 1943, chapter 57-43); Laws of North Dakota, 1944-45, chapter 339, initiated measure approved November 7, 1944.)

The Supreme Court of North Dakota held in *Federal Land Bank of St. Paul* v. *DeRochford et al.* (69 N. D., 382; 287 N. W., 522) that the legal incidence of the tax imposed by the terms of the North Dakota initiated measure approved June 30, 1926, as amended, is upon the dealer. Such being the legal incidence of the tax, it is not to be re-

garded as being passed on, as such, to the purchaser merely because the price to the purchaser is increased because of the tax. The Supreme Court of North Dakota also held in *King et al.* v. *Baker, State Auditor* (69 N. D., 581; 288 N. W., 565), following the reasoning in *Federal Land Bank of St. Paul* v. *DeRochford et al.*, that the additional license tax of 1 cent per gallon is not a tax upon a user of motor vehicle fuel. The Supreme Court of the United States held in *Federal Land Bank of St. Paul* v. *Bismarck Lumber Co. et al.* (314 U. S., 95) that the determination of the incidence of the tax by the Supreme Court of North Dakota is controlling with respect to the question whether a tax levied by the State is imposed upon the vendor or the vendee.

In view of the foregoing, it is held that the 3-cent tax imposed by the State of North Dakota on motor vehicle fuel under the initiated measure approved on June 30, 1926, as amended, is deductible for Federal income tax purposes under section 23(c)(1) of the Internal Revenue Code by the dealer upon whom it is imposed, and not by the consumer. I. T. 2519, supra, is revoked.

It is also held that the additional 1-cent tax imposed by the State of North Dakota on motor vehicle fuel by chapter 170, Laws of North Dakota, 1939, and subsequent legislation is deductible under section 23(c)(1) of the Code by the dealer upon whom it is imposed.

It is held further that the North Dakota motor vehicle fuel taxes are not retail sales taxes and are not deductible by the consumer under section 23(c)(3) of the Code.

SECTION 29.23(c)–1: Taxes. 1948–9–12792
(Also Section 22(n), Section 29.22(n)–1.) I. T. 3905

INTERNAL REVENUE CODE.

Deductibility for Federal income tax purposes of the use tax imposed by the Tennessee Retailers' Sales Tax Act approved January 24, 1947.

I. T. 3865 (C. B. 1947–2, 20) supplemented.

Further consideration has been given to the treatment for Federal income tax purposes of the taxes imposed by the Tennessee Retailers' Sales Tax Act, approved January 24, 1947.

I. T. 3865 (C. B. 1947–2, 20) deals with the deductibility of the sales tax imposed by the Tennessee law. The same question has also arisen with respect to the use tax which is levied by the same Tennessee law.

Section 3 of the Tennessee Retailers' Sales Tax Act provides that every person is exercising a taxable privilege who stores for use or consumption in the State any item or article of tangible property and imposes a tax for the exercise of that privilege. Under the provisions of rule 208 of the Tennessee retail sales and use tax regulations, the purchaser is required to pay the use tax to the seller if the seller is registered with the Department of Finance and Taxation and authorized to collect the tax, but if the seller is not so registered and authorized, or fails to collect and remit the use tax to the State, the purchaser must report and remit the use tax to the Commissioner of Finance and Taxation.

It is apparent from the Tennessee law and the regulations thereunder that the use tax is imposed upon the consumer. Accordingly, it is held that the use tax imposed by the Tennessee Retailers' Sales Tax Act constitutes an allowable deduction to the purchaser under

section 23(c)(1) of the Code, except that in the case of an individual who elects the optional standard deduction, no deduction is allowable if the use tax is not attributable to a trade or business carried on by him. Where the use tax is attributable to a trade or business carried on by an individual, the amount of such tax is deductible from gross income in computing adjusted gross income. In the case of all other taxpayers, the use tax is deductible from gross income in determining net income. The amount of use tax collected by a retailer from a purchaser should not be included in the retailer's gross income, and no deduction is allowable to the retailer with respect to the amount of use tax remitted by him to the State.

SECTION 29.23(c)–1: Taxes. 1948–9–12793
(Also Section 22(a), Section 29.22(a)–5; Section 22(n), Section 29.22(n)–1; Section 23(a), Section 29.23(a)–1.) I. T. 3906

INTERNAL REVENUE CODE.

Treatment for Federal income tax purposes of the Tennessee tobacco tax from and after March 11, 1947.

Advice is requested with respect to the deductibility of the Tennessee tobacco tax in view of section 2 of Chapter No. 168, Public Acts of Tennessee, 1947, reading as follows:

SEC. 2. *Be it further enacted*, That the liability for, or the incidence of, the tobacco tax is hereby declared to be a levy on the consumer. The distributors shall add the amount of tobacco taxes presently levied to the price of cigarettes or other tobacco products and the distributor may state the amount of the taxes separately from the price of such cigarettes or other tobacco products on all price display signs, sales or delivery slips, bills and statements which advertise or indicate the price of such cigarettes or tobacco products. The provisions of this section shall in no way affect the method of collection of said cigarette or tobacco taxes as now provided by existing law.

Section 1213.2 of the Tennessee Code provides for the annual licensing of every person engaged in the business of selling, distributing, or handling tobacco products in the State, and it also empowers the Commissioner of Finance and Taxation to require the license applicants to execute a bond in favor of the State of Tennessee conditioned upon the licensee paying the tax and affixing tax stamps to all packages or parcels of tobacco products used, sold, distributed, or handled by him. Section 1213.4 provides that every retailer or distributor of tobacco products is required to pay a special privilege tax at rates therein specified. Section 1213.5 provides that the tax shall be paid by the purchase, from the Commissioner of Finance and Taxation, of stamps of such design and denomination as may be prescribed by him. Section 1213.6 requires each distributor or dealer to affix a stamp, purchased from the Commissioner of Finance and Taxation, to each package or parcel of tobacco products.

It is held in I. T. 3616 (C. B. 1943, 136) that the Tennessee tobacco tax imposed by section 1213.4 of the Tennessee Code is not a retail sales tax which is deductible by the purchaser of tobacco products under section 23(c)(3) of the Internal Revenue Code, but that it is deductible by the first seller within the State of tobacco products to which he has affixed tax stamps as required by State law.

Pursuant to the provisions of section 4 of Chapter No. 168, Public Acts of Tennessee, 1947, section 2, supra, is effective from and after March 11, 1947. Accordingly, from and after March 11, 1947, the Tennessee tobacco tax, being a levy upon the consumer, is deductible under section 23(c)(1) of the Code by the consumer in computing net income, except that in the case of an individual who elects the optional standard deduction (see section 23(aa) of the Code), the tax is not deductible unless paid in connection with tobacco products used in a trade or business. In that event, the tax is deductible from gross income in computing adjusted gross income (see section 22(n)(1) of the Code).

From and after March 11, 1947, no deduction is allowable to dealers and distributors on account of the purchase of tobacco tax stamps from the Commissioner of Finance and Taxation and, accordingly, the portion of the price paid by purchasers to dealers and distributors for tobacco products which represents the Tennessee tobacco tax is not includible in the gross income of the dealers and distributors.

SECTION 29.23(c)–1: Taxes. 1948–10–12804
(Also Section 22(a), Section 29.22(a)–5; Section 22(n), Section 29.22(n)–1; Section 23(a), Section 29.23(a)–1; Section 24, Section 29.24–2.) I. T. 3909

INTERNAL REVENUE CODE.

Deductibility for Federal income tax purposes of the sales tax and the use tax imposed by sections 17 and 23, respectively, of the Rhode Island Sales and Use Tax Act, effective July 1, 1947.

Advice is requested as to the treatment for Federal income tax purposes of the taxes levied by the Rhode Island Sales and Use Tax Act, effective July 1, 1947.

The pertinent provisions of the act are as follows:

SEC. 17. A tax is hereby imposed upon sales at retail in this State, as herein defined, at the rate of 1 per cent of the gross receipts of the retailer from such sales. The tax shall be paid to the tax administrator by the retailer at the time and in the manner hereinafter provided. The retailer shall add the tax hereby imposed to the sale price or charge, and when added such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to the retailer, and shall be recoverable at law in the same manner as other debts. * * *

* * * * * * *

SEC. 23. An excise tax is hereby imposed on the storage, use, or other consumption in this State of tangible personal property purchased from any retailer at the rate of 1 per cent of the sale price of the property. Every person storing, using, or otherwise consuming in this State tangible personal property purchased from a retailer is liable for the tax. His liability is not extinguished until the tax has been paid to this State except that a receipt from a retailer maintaining a place of business in this State or from a retailer who is authorized by the tax administrator to collect the tax under such rules and regulations as he may prescribe, given to the purchaser pursuant to the provisions of this section, is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers. Every retailer maintaining a place of business in this State and making sales of tangible personal property for storage, use, or other consumption in this State, not exempted hereunder shall, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the tax administrator.

* * * * * * *

SEC. 34. The storage, use, or other consumption in this State of property, the gross receipts from the sale of which are required to be included in the measure of the sales tax, shall be exempted from the use tax.

* * * * * * *

SEC. 37. * * * For purposes of the sales tax a return shall be filed by every person engaged in the business of making retail sales, the gross receipts from which are required to be included in the measure of the sales tax. * * * For purposes of the use tax a return shall be filed by every retailer maintaining a place of business in the State and by every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. * * *

The Rhode Island statute imposes two distinct taxes, viz, a sales tax (section 17) and a use tax (section 23). The sales tax is imposed upon the retailer and is measured by his gross receipts from retail sales. It is unlawful for the retailer to advertise, hold out, or state to the public or any customer, either directly or indirectly, that the sales tax or any part thereof is assumed or absorbed by him or that he will not add the tax to the selling price or that the tax, if added, will be refunded. The term "sales tax," as used in section 29.23(c)-1(*b*) of Regulations 111, relating to State and local sales taxes, means 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, 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. The term also includes a tax imposed by such authorities upon persons engaged in furnishing services at retail, which is measured by the gross receipts for furnishing such services.

The sales tax imposed by the Rhode Island Sales and Use Tax Act is a "retail sales tax" within the meaning of section 23(c)(3) of the Code and the related regulations. To the extent that the sales tax is paid by the purchaser (otherwise than in connection with his trade or business), it is deductible under section 23(c)(3) of the Code except in the case of an individual who elects to take the optional standard deduction. Where the sales tax is paid with respect to property purchased for use in the purchaser's trade or business, it is deductible by him as a business expense if the cost of the property acquired is properly chargeable to expense, or it is to be treated as a capital item where the cost of the property is properly capitalized. Where the purchaser is an individual and the sales tax is deductible as a business expense, the deduction must be taken in arriving at his adjusted gross income. (See section 22(n)(1) of the Code.) In the case of all other purchasers, the deduction is allowable as a business expense in determining net income. Since the sales tax is imposed upon the retailer, it is deductible by him under section 23(c)(1) of the Code. If the retailer is an individual, the deduction must be taken in arriving at adjusted gross income. (See section 22(n)(1) of the Code.) In the case of all other retailers, the deduction is allowable in determining net income. The sales tax collected by a retailer from a purchaser must be included in the retailer's gross income for Federal income tax purposes.

The use tax is imposed upon the person storing, using, or otherwise consuming in the State tangible personal property purchased from a retailer. His liability is not extinguished until the use tax has been

paid to the State except that a receipt from a retailer maintaining a place of business within the State, or from a retailer duly authorized by the tax administrator to collect the tax, given to the purchaser is sufficient to relieve the purchaser from further liability for the use tax to which the receipt refers. Persons purchasing tangible personal property which is subject to the use tax but who have not paid the use tax due to a retailer required to collect the tax must file a return with the tax administrator.

The use tax imposed by the Rhode Island Sales and Use Tax Act constitutes an allowable deduction to the purchaser under section 23(c)(1) of the Code, except that in the case of an individual who elects the optional standard deduction, no deduction is allowable if the use tax is not attributable to a trade or business carried on by him. Where the use tax is attributable to a trade or business carried on by an individual, the amount of such tax is deductible from gross income in computing adjusted gross income. In the case of all other taxpayers, the use tax is deductible from gross income in determining net income. The amount of use tax collected by a retailer from a purchaser should not be included in the retailer's gross income, and no deduction is allowable to the retailer with respect to the amount of use tax remitted by him to the State.

SECTION 29.23(c)-1: Taxes. 1948-12-12818
(Also Section 22(n), Section 29.22(n)-1.) G. C. M. 25579

INTERNAL REVENUE CODE.

The gasoline tax imposed by the State of Mississippi under the provisions of section 6, chapter 264, Mississippi Laws, 1946, is deductible under section 23(c)(1) of the Internal Revenue Code by the consumer, in computing his net income, except that in the case of an individual who elects the optional standard deduction, no deduction is allowable unless the gasoline tax is attributable to a trade or business carried on by him, in which event the amount of such tax is deductible from gross income in computing adjusted gross income.

An opinion is requested whether the gasoline tax paid to the State of Mississippi under the present State law (section 6, chapter 264, Mississippi Laws, 1946; section 10013-06, 1946 Cumulative Supplement to Mississippi Code 1942, Annotated) may be deducted by the consumer in his Federal income tax return.

The Mississippi statute referred to above provides that distributors of gasoline shall pay, for the privilege of engaging in such business, an excise tax of six cents per gallon on all gasoline "stored, sold, distributed, manufactured, refined, distilled, blended or compounded in this State, or received in this State for sale, use on the highways, storage, distribution, use in internal combustion engines, or for any purposes." The statute further provides that the tax levied thereby "may be passed on to the ultimate consumer and such consumer in ascertaining his net income for income tax purposes may deduct any such taxes he has actually paid, upon proof satisfactory to the income tax administrator during the year from his gross income * * *" Section 10013-07, 1946 Cumulative Supplement to Mississippi Code 1942, Annotated, provides for monthly reports of purchases of gasoline by distributors, which reports serve as the basis for computation of the tax payable by the distributor to the State. Section

10013–45, id., states the purpose and intention of the act to be the imposition of "an excise tax on all persons engaged in the business of importing, receiving, purchasing, acquiring, using, storing, manufacturing, refining, distilling, blending, compounding, selling or distributing gasoline * * * in the State of Mississippi * * *" The same section further provides that it will be "prima facie presumed that all gasoline * * * imported, received, purchased, * * * in this State is intended for use in propelling motor vehicles on the public roads and highways * * *" and that it is the purpose of the act to provide for the "refunding to the consumer of all tax actually paid, less one cent (1c) per gallon, on gasoline not used in propelling motor vehicles on the public highways and roads * * *" Section 10013–11, id., provides for the refund to consumers of five cents per gallon on gasoline used for agricultural, maritime, industrial, domestic, or nonhighway purposes.

The foregoing provisions, particularly the declaration of purpose and the provision relating to refund to the consumer of taxes paid on gasoline used for specified purposes, are strong indications of legislative intent to impose the gasoline tax upon the ultimate consumer.

In *State ex rel. Rice* v. *Republic Oil Refining Co.* (32 So. (2d), 290), the Supreme Court of Mississippi had under consideration the provisions of chapter 144, Mississippi Laws, 1938, codified as sections 10013–10066, Mississippi Code 1942, Annotated. That statute was repealed and replaced by the present statute. The only variance between the tax-levying provision of the old statute and that of the new, which is here material, is the added language authorizing the distributor to pass the tax on to the ultimate consumer, and authorizing the consumer to deduct, for State income tax purposes, taxes paid thereunder. This added language strengthens the conclusion that the tax is intended by the legislature to be imposed upon the ultimate consumer, and the decision in the Republic Oil Refining Co. case, supra, would apply *a fortiori* to the new statute. In that case, decided October 27, 1947, the court said:

> The six cents a gallon tax is not upon appellee or other distributors either at wholesale or retail, but is upon the ultimate consumer; is a use tax for the use of the public highways by the consumer and is not to be collected for uses other than upon the public highways. The retail dealer in selling to the consumer adds the six cents to that which would otherwise be the price of the gasoline provided the gasoline is to be used on the public highways, and the retailer remits the six cents to the State, which, in turn, reimburses the wholesaler, such as appellee, who has already paid the tax in advance to the State.
>
> * * * Thus the tax is paid by the consumer as a use tax, the previous payment by the wholesaler being in the nature of an advancement and to guarantee the State against any black market maneuvers between the time the gasoline is received by the wholesaler and then and there measured by the State's agent on the ground and the time it is received and paid for by the legitimate consumer at the pumps of the retailer. * * *

In view of the foregoing interpretation of a substantially similar prior statute by the Supreme Court of Mississippi, and in view of the apparent intent of the Mississippi State Legislature to impose the gasoline tax upon the consumer of gasoline in the State of Mississippi, it is the opinion of this office that the gasoline tax imposed by the State of Mississippi under the provisions of section 6, chapter 264, Mississippi Laws, 1946, is deductible under section 23(c)(1) of the Internal Revenue Code by the consumer, in computing his net income, except

that in the case of an individual who elects the optional standard deduction, no deduction is allowable unless the gasoline tax is attributable to a trade or business carried on by him, in which event the amount of such tax is deductible from gross income in computing adjusted gross income.

The amount of the Mississippi gasoline tax collected by the distributor or dealer should not be included in his gross income, and no deduction is allowable with respect to the amount of the tax remitted to the State.

G. C. M. 15101 (C. B. XIV–2, 65 (1935)) relates to a gasoline tax imposed by an earlier Mississippi statute and has no present application.

CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue.

SECTION 23(k).—DEDUCTIONS FROM GROSS INCOME: BAD DEBTS.

SECTION 29.23(k)–1: Bad debts. 1948–8–12785
G. C. M. 25605

INTERNAL REVENUE CODE AND REVENUE ACTS OF 1921, 1924, AND 1926.

The reserve method of accounting for bad debts in the case of banks as provided in Mimeograph 6209 (C. B. 1947–2, 26) does not apply to "securities" as defined in section 23(k)(3) of the Internal Revenue Code. Deductions with respect to "securities" may be taken either for specific bad debt losses written off and claimed or through the establishment of a separate reserve for bad debts without regard to Mimeograph 6209, supra.

G. C. M. 1887 (C. B. VI–2. 61 (1927)) modified.

Reconsideration has been given to G. C. M. 1887 (C. B. VI–2, 61 (1927)) in connection with the provisions of Mimeograph 6209 (C. B. 1947–2, 26) which mimeograph relates to the reserve method of accounting for bad debts in the case of banks.

In G. C. M. 1887, supra, it was held that a taxpayer using the reserve method of deducting bad debts could secure an allowance on account of debts evidenced by bonds only by way of an addition to a reserve for bad debts. Mim. 6209, supra, authorizes banks using the reserve method of accounting for bad debts to establish a reserve for bad debt losses with respect to loans on a moving average percentage based on 20 years.

It is the opinion of this office that the reserve method of accounting for bad debts in the case of banks as provided in Mimeograph 6209 (C. B. 1947–2, 26) does not apply to "securities" as defined in section 23(k)(3) of the Internal Revenue Code. Deductions with respect to "securities" may be taken either for specific bad debt losses written off and claimed or through the establishment of a separate reserve for bad debts without regard to Mimeograph 6209, supra.

G. C. M. 1887 (C. B. VI–2, 61 (1927)), in its application to banks, is modified accordingly.

CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue.

SECTION 29.23(k)–5: Reserve for bad debts. 1948–7–12771
Mim. 6247

Permission granted to certain banks to use reserve method of accounting for bad debts.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., March 16, 1948.

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

1. Paragraph 7 of Mimeograph 6209, dated December 8, 1947 [C. B. 1947–2, 26], relating to reserve method of accounting for bad debts in the case of banks, provides as follows:

> 7. Where a bank making its return on the basis of the calendar year 1947 wishes to avail itself of the provisions of this mimeograph and to change from the specific charge-off to the reserve method of accounting for bad debts, the time for making application for such change under section 29.23(k)–1, Regulations 111, has been extended to March 15, 1948 (T. D. 5594, approved December 8, 1947 [C. B. 1947–2, 25]). If such bank files its return on or before March 15, 1948, on the reserve method, and the return is accompanied by a written statement setting forth the election to use such method and explaining in detail the computations of the bad debt deduction shown in the return, such return will be accepted as a timely application.

2. Every bank which, in making and filing its income tax return for the calendar year 1947 on or before March 15, 1948, elected the reserve method in accordance with the above-quoted provisions of paragraph 7 of Mimeograph 6209 is hereby granted permission to employ the reserve method of accounting for bad debts for Federal income tax purposes, beginning with the taxable year ended December 31, 1947.

3. Correspondence in regard to this mimeograph should refer to its number and to the symbols IT: EIM.

GEO. J. SCHOENEMAN,
Commissioner.

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

SECTION 29.23(m)–1: Depletion of mines, oil and gas wells, other natural deposits, and timber; depreciation of improvements. 1948–6–12761
I. T. 3895

INTERNAL REVENUE CODE.

Application of G. C. M. 24849 (C. B. 1946–1, 66).

G. C. M. 24849 (C. B. 1946–1, 66) holds (syllabus) that consideration received for the assignment of a short-lived in-oil payment right carved out of any type of depletable interest in oil and gas in place is ordinary income subject to the depletion allowance where such consideration is not pledged for use in further development.

Pursuant to authority contained in section 3791(b) of the Internal Revenue Code, G. C. M. 24849, supra, will be applied only to such assignments made on or after April 1, 1946.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved February 24, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

SECTION 23(o).—DEDUCTIONS FROM GROSS INCOME: CHARITABLE AND OTHER CONTRIBUTIONS.

SECTION 29.23(o)-1: Contributions or gifts by individuals.

INTERNAL REVENUE CODE.

Contributions of agricultural products to organizations described in section 23(o) of the Internal Revenue Code. (See I. T. 3910, page 15.)

SECTION 23(q).—DEDUCTIONS FROM GROSS INCOME: CONTRIBUTIONS BY CORPORATIONS.

SECTION 29.23(q)-1: Contributions or gifts by corporations.

INTERNAL REVENUE CODE.

Contributions of agricultural products to organizations described in section 23(q) of the Internal Revenue Code. (See I. T. 3910, page 15.)

SECTION 24.—ITEMS NOT DEDUCTIBLE.

SECTION 29.24-2: Capital expenditures. 1948-2-12730
G. C. M. 25503

INTERNAL REVENUE CODE.

The entire cost paid or incurred by a mine operator for construction of a private siding or spur track to its mine is an exhaustible capital expenditure even though title to all or a portion of such siding or track immediately upon construction vests in a railway company. No part of such cost is deductible as a business expense or as a loss when paid or incurred, but the entire cost is depreciable or amortizable by the mine operator over the estimated useful life to it of the siding or spur track.

Recommended that O. D. 1019 (C. B. 5, 151 (1921)) and A. R. R. 1008 (C. B. I-2, 120 (1922)) be modified.

An opinion is requested with respect to the proper treatment for Federal income tax purposes of the cost paid or incurred by a coal mine operator for construction of a private siding or spur track to its mine where title to a portion of such track immediately upon construction vests in a railway company.

In the instant case a corporation operating a coal mine desired direct rail service to and from its mine and entered into contracts with a railway company for construction of private sidings or spur tracks from the latter's main tracks to the mine. Under one of the contracts, the mine operator agreed to pay for construction of the portion of the spur track beyond the railway company's main track right-of-way and the railway company agreed to pay for construction of the portion of the spur track on its right-of-way. Under another contract, although the entire siding or spur track would be on the railway company's right-of-way, the mine operator agreed to pay for construction of the portion of such track extending beyond the point of clearance of traffic on the main track. In other words, under such contract the mine operator incurred the cost of constructing the

latter portion of the siding or spur track even though title thereto immediately upon construction vested in the railway company.

In O. D. 1019 (C. B. 5, 151 (1921)), involving a similar case, it was held that depreciation determinable in accordance with the facts of the case was allowable to the taxpayer with respect to the cost to it of the portion of a siding owned by it, but that the cost to it of portions of the siding owned by a railroad company was deductible by the taxpayer as a business expense in the year incurred, and no depreciation was allowable to it with respect to that cost. In A. R. R. 1008 (C. B. I–2, 120 (1922)), it was similarly held that the cost to the taxpayer, a quarry operator, of the portion of a spur track owned by it should be treated as a deferred charge and written off pro rata over the estimated remaining life of the quarry from the date of construction of the spur track, but that the cost to it of the portion of the spur track owned by a railway company should be deducted as expense when incurred.

In view, however, of the decisions in *Gauley Mountain Coal Co.* v. *Commissioner* (23 Fed. (2d), 574), *Colony Coal & Coke Corporation* v. *Commissioner* (52 Fed. (2d), 923, Ct. D. 439, C. B. XI–1, 278 (1932)), *Cripple Creek Coal Co.* v. *Commissioner* (63 Fed. (2d), 829, Ct. D. 731, C. B. XII–2, 192 (1934)), and *The Louisville Fire Brick Works, Inc.*, v. *Commissioner* (43 B. T. A., 178, acquiescence, C. B. 1941–1, 7), this office is of the opinion that the entire cost paid or incurred by a mine operator for construction of a private siding or spur track to its mine is an exhaustible capital expenditure even though title to all or a portion of such siding or track immediately upon construction vests in a railway company. Accordingly, no part of such cost is deductible as a business expense or as a loss when paid or incurred, but the entire cost is depreciable or amortizable by the mine operator over the estimated useful life to it of the siding or spur track.

It is recommended that O. D. 1019 and A. R. R. 1008, supra, be modified to accord with the foregoing conclusion. Such modification is consistent with the position taken by the Bureau and the court in *Colony Coal & Coke Corporation* v. *Commissioner*, supra. That opinion was published in the Internal Revenue Bulletin (C. B. XI–1, 278 (1932)). In that case the court held that payments made by corporations, owners of coal properties, to a railroad company for the construction of a branch line to the properties are capital expenditures amortizable over the estimated productive life of the coal properties and not deductible as business expenses or as a loss when made, even though the branch line would be owned by the railroad company when built.

Modification of O. D. 1019 and A. R. R. 1008, supra, will not mean, however, that a mine operator who, consistent with those rulings, has deducted, in a taxable year which has become barred from adjustment of tax liability, any contribution for or cost of constructing a siding or spur track title to which vested in a railway company, may *also* capitalize the amount of such contribution or cost as a basis for deductions for depreciation or amortization or gain or loss. "A construction of a taxing statute permitting a duplication of deductions is not favored by the courts." (*Reliable Incubator & Brooder Co.* v. *Commissioner*, 6 T. C., 919; *Bank of Newberry* v. *Commissioner*, 1 T. C.,

374; and *Keystone Automobile Club Casualty Co. et al.* v. *Commissioner*, 40 B. T. A., 291.)

CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue.

SECTION 29.24–2: Capital expenditures. 1948–2–12731
I. T. 3886

INTERNAL REVENUE CODE AND REVENUE ACT OF 1918.

In accordance with the recommendation in G. C. M. 25503 (page 40, this Bulletin), O. D. 1019 (C. B. 5, 151 (1921)) and A. R. R. 1008 (C. B. I–2, 120 (1922)) are modified to accord with the conclusions reached in that memorandum.

SECTION 29.24–2: Capital expenditures. 1948–3–12740
(Also Section 23(a), Section Mim. 6030
29.23(a)–11.) (Supplement 1)

Amounts expended in development of farms, orchards, and ranches.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., January 8, 1948.

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

1. Reference is made to that portion of Mimeograph 6030 (C. B. 1946–2, 45), dated June 20, 1946, which announced the rule that where, with respect to taxable years beginning prior to July 1, 1946 (including the calendar year 1946), taxpayers have, in their returns, treated preparatory expenditures incident to the development of farms, orchards, and ranches as ordinary and necessary expenses, such treatment would not be disturbed, and the rule that such preparatory expenditures must be capitalized would be applied only for taxable years beginning on or after July 1, 1946.

2. In the case of a taxpayer who, for the first time, in a taxable year beginning prior to July 1, 1946, for which no return had been filed prior to the release of Mimeograph 6030 (as, for example, the calendar year 1946), was engaged in the development of a farm, orchard, or ranch, amounts expended for preparatory items of the type contemplated by the provisions of the mimeograph will be permitted as allowable deductions for such year.

3. In the case of a taxpayer who, in a taxable year beginning prior to July 1, 1946, for which no return had been filed prior to the release of Mimeograph 6030, engaged in a new project of the type contemplated by the provisions of that mimeograph, it is the position of the Bureau that the deduction of preparatory costs will be permitted for such year provided it had been the taxpayer's practice, in his returns filed for preceding taxable years, to treat such preparatory expenditures with respect to old or continuing projects as ordinary and necessary expenses.

4. Where taxpayers, in returns filed prior to the release of Mimeograph 6030, did not claim deductions for preparatory costs representing capital items, the method of accounting for preparatory costs in such prior years must be adhered to for all years.

5. It is emphasized, however, that the rule provided in Mimeograph 6030, that all preparatory expenditures of the type contemplated by that mimeograph must be capitalized, will apply to amounts expended in all taxable years beginning on or after July 1, 1946, whether or not applicable to so-called "old" or "new" projects and regardless of whether preparatory expenditures in taxable years beginning prior to July 1, 1946, have been capitalized or expensed.

6. Correspondence from the following regarding this mimeograph should refer to the number hereof and to the symbols indicated: Collectors of internal revenue, A&C:Col; internal revenue agents in charge, IT:EIM; heads of field divisions of the Technical Staff, TS:ARM.

GEO. J. SCHOENEMAN,
Commissioner.

SECTION 29.24–2: Capital expenditures.

INTERNAL REVENUE CODE.

Rhode Island sales tax paid by purchaser with respect to property purchased for use in trade or business. (See I. T. 3909, page 34.)

SECTION 25.—CREDITS OF INDIVIDUAL AGAINST NET INCOME.

SECTION 29.25–3: Personal exemption, surtax exemptions, and exemptions for both normal tax and surtax. 1948-3-12741 I. T. 3888

INTERNAL REVENUE CODE.

Where a widow remarried within the same calendar year in which her husband died and she had no gross income and was not the dependent of another taxpayer during such year, the full marital exemption ($1,000) is allowable on the final separate Federal income tax return filed on behalf of the deceased husband and also on the separate calendar year return filed by the second husband.

Advice is requested as to the status of a wife's "exemption" for Federal income tax purposes where she remarried within the same calendar year in which her first husband died, and she had no gross income and was not the dependent of another taxpayer during such year.

In the instant case the first husband died in the early part of 1946, and his taxable year covered the period January 1, 1946, to the date of his death. On the final separate Federal income tax return filed on behalf of the deceased husband, an exemption was claimed for his widow who had no gross income during the entire calendar year 1946. The widow, who remarried in the latter part of 1946, was living with the first husband on the last day of his taxable year (the date of his

death), and with the second husband on the last day of his taxable year. The second husband filed a separate return for the calendar year 1946, claiming an exemption for his wife.

Section 25(b) of the Internal Revenue Code provides in part as follows:

> (1) CREDITS.—There shall be allowed for the purposes of both the normal tax and the surtax, the following credits against net income:
> (A) An exemption of $500 for the taxpayer;
> (B) An exemption of $500 for the spouse of the taxpayer if—
> * * * * * * *
> (ii) 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;
> * * * * * * *
> (2) DETERMINATION OF STATUS.—The determination of whether an individual is married shall be made as of the last day of the taxable year, unless his spouse dies during the taxable year, in which case such determination shall be made as of the date of his spouse's death.

In the case under consideration, the facts disclose that the spouse of the deceased taxpayer had no gross income during the entire calendar year 1946 and was not the dependent of another taxpayer during such year. In such a case, the determination of whether the deceased taxpayer was married must be made as of the date of his death, and the marital exemption of $1,000 is allowable on the final separate return filed on behalf of the decedent. The second husband of the decedent's widow is also entitled to the full marital exemption on his separate return filed for the calendar year 1946 for the reason that his status as a married individual must be determined as of December 31, 1946.

It is accordingly held that where a widow remarried within the same calendar year in which her husband died, and she had no gross income and was not the dependent of another taxpayer during such year, the full marital exemption ($1,000) is allowable on the final separate Federal income tax return filed on behalf of the deceased husband and also on the separate calendar year return filed by the second husband. (Cf. I. T. 3832, C. B. 1947–1, 28.)

PART IV.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING.

SECTION 41.—GENERAL RULE.

SECTION 29.41–1: Computation of net income. (Also Section 112(a), Section 29.112(a)–1; Section 117, Section 29.117–1.) 1948–7–12772 Mim. 6243

Futures trading and the Federal income tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., March 8, 1948.

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

1. Wide publicity has been given to the statement of the Secretary of Agriculture, released to the press on December 4, 1947, to the effect that

certain futures transactions in commodities " appear fictitious in nature and should be eliminated." Specifically, the Secretary referred to offsetting purchases and sales in the same futures contract as a device used by speculators to postpone, reduce, or avoid Federal income taxes.

2. Immediately upon release of Secretary Anderson's statement, the Bureau undertook to determine what steps, if any, should be taken to protect the revenue. The factual basis for the Secretary's statement was the existence of a large number of traders' accounts having equal offsetting purchases and sales of the same commodity in the same market, which transactions were being held open rather than balanced off against each other and closed out. These so-called " open positions " were thus, as a matter of fact, closed, except that the offset, as a bookkeeping matter, had not been made. For example, after a purchase and later sale at a gain of a commodity future (short-term capital gain) a trader may instruct his broker to leave the entries open on the broker's books and to postpone the sending of a statement until a date six months after the purchase (thus closing the transaction as a long-term capital gain) or until a date after the start of a succeeding taxable year. Or, again, after such an original purchase and sale, the transaction may be held open until a later simultaneous purchase and sale are made. If the market has risen, the later purchase will be offset against the early sale and the later sale against the early purchase. Thus, without involving any risk whatever, a short-term capital gain appears to be converted into one long-term capital gain and one short-term capital loss frequently resulting in a net capital loss. The only transactions having any substance in either case are the first purchase and the first sale. At the time of the first sale, the transaction is closed and gain or loss is realized at that time; all that remains of the transaction is the understanding of broker and trader as to when the trades are to be offset and the transaction said to be formally closed. The later simultaneous purchase and sale (in the second case) also add nothing of substance to the entire transaction. By making the purchases and sales through different brokers, a similar result may be obtained without the assistance of an understanding with a broker but it is not believed that this circumstance affects the tax consequence of the transactions.

3. It is well established that fictitious or sham transactions may be disregarded in the determination of true tax liabilities and that if, upon an analysis of a transaction, it appears that substance rather than form should govern, the form of the transaction may be disregarded. (See *Gregory* v. *Helvering*, 293 U. S., 465, Ct. D. 911, C. B. XIV–1, 193 (1935); *Helvering* v. *Clifford*, 309 U. S., 331, Ct. D. 1444, C. B. 1940–1, 105; *Commissioner* v. *Tower*, 327 U. S., 280, Ct. D. 1670, C. B. 1946–1, 11; *Bazley* v. *Commissioner*, 155 Fed. (2d), 237, affirmed, 331 U. S., 737, Ct. D. 1687, C. B. 1947–2, 79.)

4. In its audit of returns of taxpayers trading in commodity contracts, the Bureau will consider that offsetting trades in the same commodity in the same market for delivery in the same contract period are closed as of the moment the offsetting trade was made, and that the gain is realized or the loss is sustained at that time since such holding accurately reflects the realities of commodity trading. Field officers of the Bureau will be furnished such information as is available which may facilitate the audit of the Federal income tax returns of traders in commodity futures.

5. Correspondence in regard to this mimeograph should refer to its number and to the symbols indicated: Internal revenue agents in charge, IT:EIM; heads of field divisions of the Technical Staff, TS:ARM.

GEO. J. SCHOENEMAN,
Commissioner.

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

SECTION 29.42–2: Income not reduced to possession. 1948–9–12794 I. T. 3907

INTERNAL REVENUE CODE.

Dividends which were determined and credited with respect to certain shares in the M Cooperative Building Association at their maturity in February, 1947, and were then or thereafter available to the shareholder without any substantial limitation, restriction, or condition although only upon withdrawal of the shares, are includible, for Federal income tax purposes, in the shareholder's gross income for the calendar taxable year 1947, even though he makes returns regularly on the basis of cash receipts and disbursements and elected not to withdraw the shares and actually receive the dividends in that year.

Advice is requested whether dividends which were determined and credited with respect to certain shares in the M Cooperative Building Association at their maturity in February, 1947, and were then or thereafter available to the shareholder but only upon withdrawal of the shares, are includible, for Federal income tax purposes, in the shareholder's gross income for the calendar taxable year 1947, although he makes returns regularly on the basis of cash receipts and disbursements and elected not to withdraw the shares and actually receive the dividends in that year.

In February, 1937, the taxpayer subscribed for shares of stock in the association, and for a period of 10 years paid in $4x$ dollars each month thereon, or an aggregate of $480x$ dollars. Under its constitution—"At the expiration of 10 years from the date of issue of each series of stock, shares therein shall be considered as matured and may be withdrawn or the shareholder may elect to retain the shares, continuing regular monthly payments thereon until withdrawn"; "When withdrawn at maturity or thereafter the principal shall be paid with the earnings to date as determined by the board of directors * * *"; upon withdrawal before maturity, "Any shareholder * * * shall be entitled to repayment * * * with 4 per centum per annum thereon or such other rate of interest as the board of directors may determine * * *," i. e., to considerably less than normally expected earnings; and "On shares withdrawn within six months from date of issue no interest shall be allowed." In view of the provisions for payment of a substantially lesser rate of earnings upon withdrawal of the shares before their maturity than at or after their maturity, it is clear that, in the absence of actual withdrawal of the shares before their maturity, there was no "interest" or earnings thereon taxable to the taxpayer before their maturity. (G. C. M. 15565, C. B. XIV–2, 105 (1935); G. C. M. 17025, C. B. XV–2, 155 (1936); and

I. T. 3103, C. B. 1937-2, 114.) The association has stated that "at the end of each year the board of directors determines the amount of dividend to be paid to the series then maturing"; that "The amount set at maturity would not be reduced or increased by any changes in earnings after maturity"; and that "the association sets up a gross liability of the earnings on all shares."

In February, 1947, the association notified the taxpayer that the issue of its stock held by him was then 10 years old; that the matured shares might be withdrawn then or thereafter with earnings to date of withdrawal; and that it was then "paying 5 per cent on matured stock, calculated on the amount of principal to the credit of the shareholder." Accordingly, the taxpayer was entitled at the maturity of his shares to withdraw the aggregate amount which he had paid in thereon ($480x$ dollars) plus earnings of $120x$ dollars, or a total of $600x$ dollars; but, if he did not then thus withdraw the shares, he would become entitled to further earnings with respect thereto at the current rate (then 5 per cent) until and when he ultimately withdraws the shares, calculated, however, only on the principal amount paid in thereon, although none of the earnings could ever be withdrawn without withdrawal of the shares in entirety (principal paid in and all earnings thereon). At the time of the maturity of the taxpayer's shares, new shares in the association of like kind could have been freely purchased, although, as previously, on an installment investment plan.

It is contended by the taxpayer that, since the earnings of $120x$ dollars were not withdrawable at the maturity of the shares unless the aggregate principal amount paid in thereon up to that time ($480x$ dollars) was also then withdrawn, and if he had then made such entire withdrawal (of $600x$ dollars) the association would have accepted only relatively small monthly payments on new shares, the earnings of $120x$ dollars were not, in the absence of such entire withdrawal, credited or available to him without such restriction as would prevent the amount from being taxable as income at the maturity of the shares though not actually received by him in his taxable year in which the shares matured. However, the entire amount of $600x$ dollars (including the earnings of $120x$ dollars) was, at the maturity of the shares, available to the taxpayer without any limitation thereon or restriction on its use or investment, including investment in the same and/or any other association, or just as fully and freely as any cash funds or their equivalent. Also, at the maturity of the shares, the ultimate primary objective of the stock investment contract had been attained together with the maximum rate of yield provided for therein on the investment, and the amount of dividends earned thereon at such time was definite and fixed as well as fully and immediately collectible. Therefore, the fact that the shareholder, in order to obtain continued earnings on the shares, voluntarily elects to retain them at maturity, instead of then withdrawing them and the earnings then credited with respect thereto, can not be permitted to postpone taxability of such available earnings, even though the election is made under an option in the investment contract. (G. C. M. 15565, supra.) Once tax incidence has been thus reached it can not be changed or deferred by the taxpayer's choice influenced largely by such extraneous and fluctuating factors as the current investment market and his need for funds.

Section 29.42–2 of such regulations provides (in part):

INCOME NOT REDUCED TO POSSESSION.—Income which is credited to the account of or set apart for a taxpayer and which may be drawn upon by him at any time is subject to tax for the year during which so credited or set apart, although not then actually reduced to possession. To constitute receipt in such a case the income must be credited or set apart to the taxpayer *without any substantial limitation or restriction* as to the time or manner of payment *or condition* upon which payment is to be made, and must be made available to him so that it may be drawn at any time, and its receipt brought within his own control and disposition. [Italics supplied.]

Section 29.42–3 of such regulations provides (in part):

EXAMPLES OF CONSTRUCTIVE RECEIPT.—* * * Interest credited on savings bank deposits, even though the bank nominally has a rule, seldom or never enforced, that it may require so many days' notice before withdrawals are permitted, is income to the depositor when credited. An amount credited to shareholders of a building and loan association, when such credit passes without restriction to the shareholder, has a taxable status as income for the year of the credit. If the amount of such accumulations does not become available to the shareholder until the maturity of a share, the amount of any share in excess of the aggregate amount paid in by the shareholder is income for the year of the maturity of the share.

The above-quoted sections, both dealing with what constitutes sufficient crediting or setting apart of income in a particular taxable year to subject it to tax for that year, even though it is not reduced to possession in such year and the taxpayer accounts and makes returns on the basis of cash receipts and disbursements, are in *pari materia* and must be construed together. Hence, thereunder, the crediting or setting apart of income need not be absolutely unlimited, unrestricted, or unconditional in order for it to be taxable though not actually received, but it is sufficient that the income is available without any substantial limitation, restriction, or condition.

In view of the foregoing, it is held that the earnings (of $120x$ dollars) which were determined and credited with respect to the taxpayer's shares at their maturity in February, 1947, and were then available to him without any substantial limitation, restriction, or condition, although only upon withdrawal of the shares, are includible in his gross income for the calendar taxable year 1947, even though he elected not to withdraw the shares and actually receive such dividends in that year.

SECTION 43.—PERIOD FOR WHICH DEDUCTIONS AND CREDITS TAKEN.

SECTION 29.43–2: When charges deductible. 1948–2–12732
I. T. 3887

INTERNAL REVENUE CODE.

The New Jersey corporation business tax imposed upon corporations by the Corporation Business Tax Act of 1945 (chapter 162, Laws of New Jersey, 1945), as amended and supplemented by the act of April 15, 1947, for the privilege of having or exercising a corporate franchise in the State of New Jersey, or for the privilege of doing business, employing or owning capital or property, or maintaining an office in the State of New Jersey, accrues, for Federal income tax purposes, on January 1 of the "privilege year," i. e., the calendar year in and for which the tax is payable if the corporation is or was engaged in business on that date.

Advice is requested as to the date upon which the New Jersey corporation business tax imposed by the Corporation Business Tax Act

of 1945 (chapter 162, Laws of New Jersey, 1945), as amended and supplemented by the act of April 15, 1947, accrues for Federal income tax purposes.

Under the provisions of the Corporation Business Tax Act of 1945, as amended, every domestic or foreign corporation which is not specifically exempted is required to pay an annual franchise tax for the "privilege year" 1946 and each "privilege year" thereafter, for the privilege of having or exercising its corporate franchise in the State, or for the privilege of doing business, employing or owning capital or property, or maintaining an office in the State. In general, the tax for each "privilege year" is based on the net worth of the taxpayer at the close of its preceding Federal income tax taxable year. The "privilege year" is defined as "the calendar year in and for which a tax is payable."

Section 15 of the act, as amended, provides as follows:

> The tax imposed by this act shall be due and payable with respect to the calendar year one thousand nine hundred and forty-six, and each year thereafter, measured by the taxpayer's net worth as of the close of the calendar year or of its fiscal year next preceding the privilege year, except that in the case of a taxpayer whose fiscal year ends not later than June thirtieth in the privilege year such measure shall be as of the close of such fiscal year. For the purpose of this section every taxpayer shall use the same calendar or fiscal year upon which it reports to the United States Treasury Department for Federal income tax purposes.

A taxpayer reporting on the calendar year basis is required to file a return and pay the tax for each "privilege year" on or before April 15 of the "privilege year." A taxpayer reporting on a fiscal year basis must file a return and pay the tax on or before April 15 or the 15th day of the fourth month following the close of its fiscal year, whichever is later. The filing date of returns for the "privilege year" 1947 which were due on or before April 15, 1947, or May 15, 1947, is postponed until May 31, 1947.

Generally, it is the exercise of the privilege of doing business in the State of New Jersey which makes the taxpayer liable for the franchise tax. In *United States* v. *Anderson et al.* (269 U. S., 422, T. D. 3839, C. B. V-1, 179 (1926)), one of the leading cases on the question of accrual of taxes, it is stated that in advance of the due date of a tax all the events may occur which determine the taxpayer's liability for the tax. The event which gives rise to the liability for the New Jersey franchise tax is the exercise of the designated functions during the "privilege year." It was held in I. T. 2726 (C. B. XII-2, 42 (1933)) that inasmuch as the Federal capital stock tax is an excise tax levied "with respect to (and is contingent upon) carrying on or doing business," the tax for the capital stock tax year ended June 30, 1934, accrued on July 1, 1933, the beginning of that fiscal year, in the case of a corporation doing business on that date. (See also I. T. 2827, C. B. XIII-2, 130 (1934).)

It is the opinion of this office that the "contingency" here is whether the corporation is or was engaged in business in the State of New Jersey at the beginning of the "privilege year," which is the calendar year, although the tax is measured by the net worth of the corporation for its previous Federal income tax taxable year, calendar or fiscal, except that in the case of a taxpayer whose fiscal year ends not later than June 30 in the "privilege year," such measure is as of the close of such fiscal year. In other words, if the

corporation is or was engaged in business on January 1 of the "privilege year," that fact fixes the liability within the rule laid down in *United States* v. *Anderson et al.*, supra, even though, in the case of a fiscal year ending after January 1 of the "privilege year" and not later than June 30, the exact amount of tax can not be ascertained until the corporation closes its books at the end of its fiscal year. The latter date is not controlling as to accrual of the tax; it is merely the date as of which the net worth is computed and used as the measure of the tax.

Accordingly, it is held that the New Jersey corporation business tax in question accrues, for Federal income tax purposes, on January 1 of the "privilege year," i. e., the calendar year in and for which the tax is payable if the corporation is or was engaged in business on that date.

SECTION 46.—CHANGE OF ACCOUNTING PERIOD.

SECTION 29.46-1: Change of accounting period. 1948-11-12812 T. D. 5614

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

Regulations under Revenue Act of 1948—change of accounting period of spouses where necessary to the making of a joint return; extension of time in certain cases.

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

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH 1. Section 29.46-1 of Regulations 111 [26 CFR, 29.46-1] provides that a taxpayer shall, before using a new accounting period for income tax purposes, secure the consent of the Commissioner, and shall make application for permission to change the accounting period direct to the Commissioner on Form 1128 at least 60 days prior to the close of the fractional part of the year for which a return would be required to effect the change. If a change of accounting period of an individual is necessary in order that such individual and his spouse may make a joint return for a taxable year ending in 1948, and the application under section 29.46-1 for such change is required to be made before July 15, 1948, such individual may, nevertheless, make an application for permission to begin his accounting period on the same day as that of his spouse by furnishing the information required on Form 1128 on or before July 15, 1948, where—

(*a*) such application is for permission to change to a calendar year beginning on January 1, 1948, or to a fiscal year beginning in 1948; or

(*b*) such application is for permission to change to an accounting period beginning on a day, other than January 1, in 1947, on which begins the last accounting period of the taxpayer's spouse beginning in 1947.

If such individual and his spouse each make an application described in (*a*) to change to a new accounting period, such applications shall

be submitted together. If only one spouse makes an application described in (*a*) or (*b*), such spouse shall furnish, in addition to the information required on Form 1128 with respect to his application, the information called for on Form 1128 with respect to the nature, source and amount of income, accounting periods, taxable years, and returns of his spouse. If an application described in (*a*) or (*b*) is made and the return for the fractional part of the year resulting from the change of accounting period would, without regard to this paragraph, be due before July 15, 1948, then—

(1) the time for filing such return shall, nevertheless, be July 15, 1948, and

(2) the time for payment of the tax for such fractional part of the year shall (notwithstanding the provisions of section 29.56–1 of Regulations 111) be (i) the last day prescribed for payment of the tax for the taxable year which begins on the same day as the beginning of the fractional part of the year and which, if permission to change the accounting period of the taxpayer is not granted, is his taxable year, or (ii) July 15, 1948, whichever is the earlier.

If on or before July 15, 1948, any amount has been paid on account of the tax for a taxable year beginning on the same day as the beginning of the fractional part of the year, or credited against such tax, and has not been refunded, the application described in (*a*) or (*b*) will be granted only if the taxpayer submits a statement consenting to the treatment of such amount as payment on account of the tax (to the extent thereof) for such fractional part of the year, and to the treatment of the balance, if any, of such amount as payment on account of the estimated tax for the next taxable year. Such a consent will not be required nor applied with respect to an amount deducted and withheld on wages under Subchapter D of Chapter 9 during the calendar year 1948. Interest will be charged at the rate of 6 per cent per annum on the unpaid tax for the fractional part of the year from the due date determined under this paragraph until the tax is paid. The provisions of clause (*d*) of subpart H of Regulations 111, limiting the authority of the Commissioner to grant an extension of time in the case of an application for permission to change an accounting period, shall not be applicable to an application described in (*a*) or (*b*) of this paragraph.

PAR. 2. Section 29.46–1 of Regulations 111 [26 CFR, 29.46–1] is amended by inserting immediately following the fourth sentence thereof the following new sentence:

Where a timely application is made to compute the net income of an individual taxpayer upon the basis of the same accounting period as that of such individual's spouse, permission so to compute net income will be granted even though such permission will allow the individual and his spouse to reduce their taxes by taking advantage of section 12(d) (the so-called "income splitting" provision) through the filing of a joint return, so long as no other reason appears which is considered sufficient by the Commissioner for denying such permission.

PAR. 3. Because of the application of section 51(b), as amended by the Revenue Act of 1948, to taxable years beginning prior to the enactment of the Act, delay in the application of the above regulations will adversely affect the opportunity of certain taxpayers to avail themselves of the privilege of filing joint returns. It is therefore found impracticable to issue this Treasury decision with notice and public

procedure thereon under section 4 (a) and (b) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

PAR. 4. 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 46, 62, and 3791 of the Internal Revenue Code (53 Stat., 26, 32, 467; 26 U. S. C., 46, 62, 3791).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved May 11, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register May 14, 1948, 8.54 a. m.)

PART V.—RETURNS AND PAYMENT OF TAX.

SECTION 51.—INDIVIDUAL RETURNS.

SECTION 29.51–1: Individual returns. 1948–1–12723
I. T. 3884

INTERNAL REVENUE CODE.

Revocation of I. T. 3870 (C. B. 1947–2, 57) and I. T. 3879 (C. B. 1947–2, 58).

In view of the decision of the Supreme Court of Pennsylvania, Western District, rendered November 26, 1947, in *Willcox* v. *The Penn Mutual Life Insurance Co.*, holding that the Pennsylvania community property law is wholly invalid, I. T. 3870 (C. B. 1947–2, 57) and I. T. 3879 (C. B. 1947–2, 58), relating to the treatment for Federal income tax purposes of income derived on and after September 1, 1947, by a husband and wife domiciled in the State of Pennsylvania, are revoked.

SECTION 29.51–1: Individual returns. 1948–4–12748
I. T. 3890

INTERNAL REVENUE CODE.

Treatment for Federal income tax purposes of various types of income under the Michigan Community Property Act (Act No. 317 of the 1947 Public Acts of the State of Michigan), effective July 1, 1947.

I. T. 3867 (C. B. 1947–2, 49) applied and amplified.

Advice is requested as to the treatment for Federal income tax purposes of (1) income received on and after July 1, 1947, the effective date of the Michigan Community Property Act, for services rendered prior to that date in the case of a husband and wife who are domiciled in the State of Michigan; (2) income derived on and after July 1, 1947, from a partnership or individual proprietorship in which capital and personal services are material income-producing factors; and (3) earned income received on and after July 1, 1947, where a husband and wife domiciled in Michigan agree that the earnings of either shall be the separate income of the spouse whose labor produced such income.

The Bureau held in I. T. 3867 (C. B. 1947–2, 49) that a husband and wife who are domiciled in Michigan are entitled to include in their separate Federal income tax returns one-half of their community income received or accrued on and after July 1, 1947, the effective date of the Michigan Community Property Act.

The Michigan Community Property Act provides in part as follows:

SECTION 1. (a) All property of the husband, real and personal, owned by him before marriage or before the effective date of this act, whichever is later, and that afterwards acquired by him by gift, inheritance, devise, or bequest, or received by him as damages or compensation for personal injuries, and all property of every kind, character, or description derived originally from property so owned or acquired, shall be his separate property, subject however to the right of dower.

* * * * * * *

SEC. 2. (a) All property of the wife, real and personal, owned by her before marriage, or before the effective date of this act, whichever is later, and that afterwards acquired by her by gift, inheritance, devise, or bequest, or received by her as damages or compensation for personal injuries, and all property of every kind, character, or description derived originally from property so owned or acquired, shall be her separate property.

* * * * * * *

SEC. 3. (a) All property owned by the husband and wife before the effective date of this act as tenants by the entirety or in any other manner recognized by law whereby neither the husband nor the wife individually has a separate property interest therein as defined in sections 1 and 2 of this act, as well as that afterwards owned by the husband and wife in any such manner which has been acquired by gift, devise, or bequest or by the transfer of the separate property of either the husband or the wife as defined in sections 1 and 2 of this act or of the interest of the husband and the wife, or of either of them, in community property as permitted by section 8 of this act, and all property of every kind, character, or description derived originally from property so owned or acquired, shall be the separate property of the husband and wife.

* * * * * * *

SEC. 4. All property of every kind, character, or description acquired by either the husband or the wife, or both, after marriage, or on or after the effective date of this act, whichever is later, except that which is defined as the separate property of either or the separate property of both in sections 1, 2, and 3 of this act, shall be deemed the community property of the husband and wife, and each shall be vested with an undivided one-half interest therein. The respective interests of the husband and the wife in such community property shall be present, existing, and equal interests and shall arise as an incident of marriage.

Generally, the determination of property and income rights of husband and wife under the community property law of a State is governed by the decisions of the courts of that State. In the absence of any such court decisions in the State of Michigan, and in view of the above-quoted provisions of Michigan law, all income, regardless of the source from which derived, and all compensation earned by either spouse prior to July 1, 1947, constitutes noncommunity income for Federal income tax purposes regardless of when such income was or is received or reduced to possession. (See I. T. 3792, C. B. 1946–1, 86, and cases cited therein.)

It is, therefore, held that income received on and after July 1, 1947, the effective date of the Michigan Community Property Act, by a husband or wife domiciled in the State of Michigan constitutes community income for Federal income tax purposes only to the extent that such income can be traced and identified as derived from personal services rendered on and after the effective date of the act or from community property as defined in the act.

In the case of income derived on and after the effective date of the Michigan Community Property Act from a partnership or individual proprietorship in which both capital and personal services are material income-producing factors, the portion of the total income which represents a return on the separate investment of the partners or proprietor and the portion which represents compensation for personal services must be determined in order to arrive at the noncommunity and community income of the partners or proprietor.

With respect to income derived from a partnership in which both capital and personal services are material income-producing factors, G. C. M. 9825 (C. B. X–2, 146 (1931)) sets forth a formula in which the return on investment and compensation for personal services, respectively, are evaluated and the resulting ratios applied in determining the allocable portion of income which represents separate income and the allocable portion of income which represents community income in the case of a husband and wife domiciled in the community property State of California. G. C. M. 9825 has been recognized and approved by The Tax Court of the United States. (See *Clara B. Parker, Executrix*, v. *Commissioner*, 31 B. T. A., 644, and *J. Z. Todd et al.* v. *Commissioner*, 3 T. C., 643, remanded 153 Fed. (2d), 553, and, on remand, 7 T. C., 399, affirmed by the United States Circuit Court of Appeals for the Ninth Circuit on January 22, 1948.) On the other hand, resort to the formula set forth in G. C. M. 9825 has been held unnecessary where the partners had agreed among themselves as to amounts allowable to active partners as compensation for services. (See *George W. Van Vorst* v. *Commissioner*, 7 T. C., 826, acquiescence, C. B. 1947–1, 4, and *Hugh B. Tinling* v. *Commissioner*, 7 T. C., 1393, acquiescence, C. B. 1947–1, 4.)

Section 26.161, Michigan Statutes Annotated (Act 168, 1855, An act relative to the rights of married women) provides as follows:

Property of female acquired before or after marriage; separate estate, liability for debt of husband, right of disposal.—Section 1. The people of the State of Michigan enact, That the real and personal estate of every female, acquired before marriage, and all property real and personal, to which she may afterwards become entitled by gift, grant, inheritance, devise, or in any other manner, shall be and remain the estate and property of such female, and shall not be liable for the debts, obligations and engagements of her husband and may be contracted, sold, transferred, mortgaged, conveyed, devised or bequeathed by her in the same manner and with the like effect as if she were unmarried.

In Michigan a husband and wife may contract with each other when the contract is not precluded by public policy. (*Randall* v. *Randall*, 37 Mich., 563.)

Section 8 of the Michigan Community Property Act provides as follows:

SEC. 8. The husband may give, grant, bargain, sell, or convey directly to his wife, and the wife may give, grant, bargain, sell, or convey directly to her husband or the husband and wife may give, grant, bargain, sell, or convey directly to themselves, his, her, or their community right, title, interest, or estate in all or any community property, real or personal. Every such transfer shall operate to divest the property therein described of every claim or demand as community property, and shall vest the same in the transferee or transferees as his, her, or their separate property, as the case may be. No such transfer shall affect any equity in favor of creditors existing at the time thereof.

Where a husband and wife domiciled in the State of Michigan file separate Federal income tax returns, the husband is required to in-

clude his share of community income in the gross income reported in his separate return, and the wife must include her share of the community income in her separate return. However, in view of the provisions of section 26.161, Michigan Statutes Annotated, supra, and section 8 of the Michigan Community Property Act, supra, an agreement between such a husband and wife which provides that the earnings of either shall be the separate income of the spouse whose labor produced the income will be recognized for Federal income tax purposes. (See G. C. M. 18884, C. B. 1937–2, 58; *Helvering* v. *Howard C. Hickman*, 70 Fed. (2d), 985, Ct. D. 866, C. B. XIII–2, 274 (1934); *Dale Van Every* v. *Commissioner*, 108 Fed. (2d), 650, certiorari denied, 309 U. S., 689; and *Edward A. Sparkman* v. *Commissioner*, 112 Fed. (2d), 774.) The cited cases involve the law of California which is similar to the law of Michigan in so far as it relates to assignments of community property interests between husband and wife. (See also the third issue in I. T. 3792, supra, relative to the same question under the community property law of Hawaii.)

SECTION 29.51–1: Individual returns. 1948–7–12773
I. T. 3898

INTERNAL REVENUE CODE.

Husband and wife holding real property as tenants by the entirety or as joint tenants in the State of Indiana should each report one-half of the income from such property, as well as one-half of the gains or losses from the sale thereof, if separate Federal income tax returns are filed.

Advice is requested whether income from property held by husband and wife as tenants by the entirety or as joint tenants in the State of Indiana may be divided and reported equally in separate Federal income tax returns. Advice is also requested whether gains or losses from the sale of such property may be so divided and reported.

Sections 56–111 and 56–112 of Burns' Indiana Statutes Annotated 1933 (1943 replacement) provide as follows:

56–111 [13383]. ESTATES IN COMMON.—All conveyances and devises of lands, or of any interest therein, made to two [2] or more persons, except as provided in the next following section, shall be construed to create estates in common and not in joint tenancy, unless it shall be expressed therein that the grantees or devisees should hold the same in joint tenancy and to the survivor of them, or it shall manifestly appear, from the tenor of the instrument, that it was intended to create an estate in joint tenancy. [1 R. S., 1852, ch. 23, sec. 7, p. 232.]

56–112 [13384]. MORTGAGES—CONVEYANCES IN TRUST—ESTATES BY THE ENTIRETY.—The preceding sections shall not apply to mortgages, nor to conveyances in trust, *nor when made to husband and wife;* and every estate vested in executors or trustees, as such, shall be held by them in joint tenancy. [1 R. S. 1852, ch. 23, sec. 8, p. 232.] [Italics supplied.]

It has been held in numerous cases by the courts of Indiana that the above-quoted sections of law expressly indicate the purpose of the legislature not to abolish estates by the entirety in land, and that where real property is conveyed to a husband and wife, the deed containing no qualifying words limiting the estate taken, an estate by the entirety is created. (See *Le Roy* v. *Wood*, 113 Ind. App., 397, 47 N. E. (2d), 604; *Finney* v. *Brandon et al.*, 78 Ind. App., 450, 135 N. E., 10; *Dotson* v. *Faulkenburg et al.*, 186 Ind., 417, 116 N. E., 577; *Simons et al.* v. *Bollinger*, 154 Ind., 83, 56 N. E., 23; *Hadlock and Others* v. *Gray*, 104 Ind., 596, 4 N. E., 167.) It has also been held by the Indiana courts that

the statutes extending the rights of married women did not abolish estates by the entirety with respect to real estate. (See *Carver* v. *Smith*, 90 Ind., 222, 46 Am. Rep., 210; *Thornburg et al.* v. *Wiggins et ux.*, 135 Ind., 178, 34 N. E., 999; *Baker* v. *Cailor et al.*, 176 N. E., 854, superseded on other grounds, 206 Ind., 440, 186 N. E., 769.) However, the Indiana courts have also construed the above-quoted sections of law to mean that where there are words in the deed which so qualify or define the estate conveyed as to make it apparent that the parties intended the grantees to hold as tenants in common or as joint tenants, such intention will prevail and must be given effect even though the grantees are husband and wife. (See *Brown et al.* v. *Brown*, 133 Ind., 476, 32 N. E., 1128; *Dodds et al.* v. *Winslow*, 26 Ind. App., 652, 60 N. E., 458; *Thornburg et al.* v. *Wiggins et ux.*, supra; *Wilken et al.* v. *Young et al.*, 144 Ind., 1, 41 N. E., 68; *Richards et al.* v. *Richards*, 60 Ind. App., 34, 110 N. E., 103.) Thus, it is clear that Indiana real property may be held by husband and wife as tenants by the entirety or as joint tenants.

Under the common law the husband was entitled during the marital relationship to all of the income derived from property held with his wife as tenants by the entirety. Where the common-law rule still prevails, the husband alone has been held taxable with respect to such income. (See *Cooley* v. *Commissioner*, 75 Fed. (2d), 188, certiorari denied, 295 U. S., 747; I. T. 3878, C. B. 1947–2, 57.) It appears that this common-law rule has been abrogated in the State of Indiana. In *Sharp et al.* v. *Baker et al.* (51 Ind. App., 547, 96 N. E., 627), involving the question whether an estate in land held by husband and wife as tenants by the entirety was subject to execution for their joint debt, the court, during the course of its opinion, stated:

> * * * Before the married woman's act, the husband during coverture had the right to the possession and control of the real estate owned by his wife, and this right was held to extend to land by entireties. (*Beach* v. *Hollister*, 3 Hun (N. Y.), 519; *Hall* v. *Stephens*, 65 Mo., 670, 27 Am. Rep., 302; *Davis* v. *Clark*, 26 Ind., 424, 89 Am. Dec., 471.) As he was, before the married woman's act, the absolute owner of the rents and profits of such estates during the joint lives of himself and his wife, this right, according to the weight of authority, could be sold on execution for his debts. (*Ames* v. *Norman*, 4 Sneed (Tenn.), 683, 70 Am. Dec., 269; *Bennett* v. *Child*, 19 Wis., 362, 88 Am. Dec., 692; *Fleek* v. *Zillhaver*, 117 Pa., 215, 12 Atl., 420; *Beach* v. *Hollister*, 3 Hun (N. Y.), 519; *Snyder* v. *Sponable*, 1 Hill (N. Y.), 567; *Farmers', etc., Bank* v. *Gregory*, 49 Barb. (N. Y.), 155.)
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> * * * * * * *
>
> By statutory enactment in this State, married women have been emancipated from most of the common-law disabilities. As a result of such statutes, the husband is no longer entitled to the possession and control of the separate real estate of his wife; and therefore he has no right to the rents and profits thereof during coverture. By force of the same reasoning, it must be true that the husband, under our statute, is not the owner of the rents and profits of estates held by himself and wife as tenants by the entireties, and that he has no right to the exclusive possession and control thereof during coverture. It has therefore been correctly held in this State, since the enactment of the statutes referred to, that the husband has no separate right to the possession and proceeds of entirety property which he can individually dispose of or incumber, or which can be sold on execution for his debts. (*Chandler* v. *Chency*, 37 Ind., 391; *Jones* v. *Chandler*, 40 Ind., 588.) It is accordingly held that a crop raised on land held by husband and wife as tenants by entireties is owned by them in the same manner as the land itself, and that such crop is not subject to levy and sale on an execution against the husband. * * *

The foregoing statement with respect to the effect of the married woman's act on the ownership of the rents and profits derived from

estates by the entirety appears equally applicable to an estate held by husband and wife as joint tenants. Furthermore, in *Thornburg et al.* v. *Wiggins et ux.*, supra, involving a joint tenancy between husband and wife, the statement is made that "A joint tenancy is an estate held by two or more persons jointly, so that during the lives of all they are equally entitled to the enjoyment of the land, or its equivalent, in rents and profits; * * *"

Accordingly, it is held that husband and wife holding real property as tenants by the entirety or as joint tenants in the State of Indiana should each report one-half of the income from such property, as well as one-half of the gains or losses from the sale thereof, if separate Federal income tax returns are filed.

SECTION 29.51–1: Individual returns. 1948–11–12813
G. C. M. 25642

INTERNAL REVENUE CODE AND REVENUE ACT OF 1928.

Where a husband and wife domiciled in the State of California are members of a partnership in which capital is an income-producing factor, the amount of profits attributable to community property contributed to the partnership by either spouse constitutes community income unless it appears from all the facts and surrounding circumstances that the spouses intended to change the community property into separate property. A partnership agreement, in and of itself, is insufficient to effect a transmutation of California community property invested in the partnership into separate property. G. C. M. 9825 (C. B. X–2, 146 (1931)) modified.

Reference is made to the decision in *George W. Van Vorst* v. *Commissioner* (7 T. C., 826, acquiescence, C. B. 1947–1, 4). That decision is contrary to the portion of G. C. M. 9825 (C. B. X–2, 146 (1931)) holding that where a husband and wife domiciled in California are members of the same partnership, they are taxable in their individual capacities, the same as other members of a partnership, and no attempt should be made to apportion the partnership profits on any basis except on the basis of the percentage of interest in the partnership owned by each member.

In the Van Vorst case, the taxpayer and his wife, residents of California, were, with several other individuals, members of a partnership. The taxpayer owned a 28.80086 per cent interest and his wife owned a 2.46253 per cent interest. The assets contributed to the partnership by the taxpayer consisted of both separate and community property. Pursuant to the agreement of all the partners, the taxpayer and another partner acted as managing partners and drew fixed amounts as compensation for their services. The profits remaining after deduction of such distributions were allocated to the various members of the partnership in proportion to their interests. The taxpayer and his wife made no agreement prior to or during the taxable year to change any of their community property invested in the business to separate property of one or the other, or to change separate property to community property. The Tax Court held that the partnership arrangement did not transmute into separate property that part of the taxpayer's (husband's) investment which was previously community property, that the amount withdrawn by the taxpayer for services, as well as profits attributable to his community

investment acquired after July 29, 1927, constituted divisible community income, and that profits attributable to the remainder of his investment were taxable to the taxpayer (husband).

Under the law of California, a husband and wife may, by agreement, change community property to separate property. But an agreement dealing with the distribution of partnership profits is insufficient, in and of itself, to effect such a transmutation. (See *McCall* v. *McCall*, 2 Cal. App. (2d), 92; 37 Pac. (2d), 496.) Therefore, where a husband and wife domiciled in the State of California are members of a partnership in which capital is an income-producing factor, the amount of profits attributable to community property contributed to the partnership by either spouse constitutes community income unless it appears from all the facts and surrounding circumstances that the spouses intended to change the community property into separate property.

G. C. M. 9825, supra, is modified in so far as it is inconsistent with the conclusion reached herein.

CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue.

SECTION 53.—TIME AND PLACE FOR FILING RETURNS.

SECTION 29.53–1: Time for filing returns. (Also Section 29.53–2; Section 56, Section 29.56–2.) — 1948–11–12816 T. D. 5616

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

Regulations under Revenue Act of 1948—time for filing final return and paying tax of deceased spouse for whom joint return made; extension of time for making returns and paying taxes for certain taxable years ending in 1948.

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

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH 1. Section 29.53–1 of Regulations 111, as amended by Treasury Decision 5396, approved August 11, 1944 [C. B. 1944, 169] [26 CFR, 29.53–1] is further amended by striking out subdivisions (4) and (5) and inserting in lieu thereof the following:

(4) In the case of a final return of a decedent for a fractional part of a year, on or before March 15 next following the close of the calendar year in which occurred the death of the decedent, except as provided in (5).

(5) In the case of a final return for a fractional part of a year of a decedent who, at the moment preceding his death, was on a fiscal year basis and for whom for such year a joint return with his spouse is, on the basis of the facts appearing at the time of the decedent's death, permitted under section 51(b), on or before the 15th day of the third month following the close of the 12-month period with which such fiscal year would have closed.

(6) In the case of any return for a fractional part of a year, the Commissioner may, upon a showing by the taxpayer of unusual circumstances, prescribe a later time for the filing of the return.

The operation of subdivisions (4) and (5) in cases where joint returns are filed is illustrated by the examples set forth below. In these examples, "H" and "W" are individuals having the status of husband and wife under section 51(b) (5) and neither (at any time during the taxable year) is a nonresident alien.

Example (*1*). H and W make their returns on the calendar year basis. H dies in 1948. Under the rule in subdivision (4), the return of H for his short taxable period ending with the date of his death in 1948 is due on or before March 15, 1949. The return of W for the calendar year 1948 is, under section 53(a)(1), due on the same date. A joint return for such taxable years of H and W may be made as provided in section 51(b).

Example (*2*). H and W make their returns on the basis of a fiscal year ending June 30. H dies on December 1, 1947. Under the facts at the time of the death of H, it would appear that a joint return could be filed under section 51(b), as amended by the Revenue Act of 1948, for the fractional year of H and the fiscal year of W (ending on June 30, 1948). Accordingly, under the rule in subdivision (5), the return of H for his short taxable period ending December 1, 1947, is due on or before September 15, 1948. The return of W for her fiscal year is, under section 53(a)(1), due on or before September 15, 1948.

Example (*3*). The facts in this example are the same as in example (2), except that H died in January, 1948 (instead of on December 1, 1947). In such a case, the due date for the return of H and W, or their joint return, will be the same as in example (2).

Example (*4*). The facts are the same as in example (2), except that W, the surviving spouse, remarries (or changes her accounting period) in 1948, prior to June 30. For this reason a joint return can not be made for H and W under section 51(b). On the basis of the facts existing at the date of the death of H, however, it would appear that under section 51 (b), as amended by the Revenue Act of 1948, a joint return could be filed for H and W for the taxable year of each beginning on July 1, 1947. Accordingly, under the rule in subdivision (5), the time for filing the return of H is on or before September 15, 1948.

PAR. 2. An extension of time to July 15, 1948, is granted for the filing of a joint return under section 51(b) for a taxable year ending in 1948 where the tax based on such return is determined in whole or in part under the law applicable to a taxable year beginning on January 1, 1948, if, without regard to this paragraph, the time for filing the return of either spouse (for whom the joint return is made) would expire before July 15, 1948. In such cases an extension of time to the date the joint return is filed or July 15, 1948, whichever is the earlier, is also granted for paying the tax on the basis of such joint return for the period for which the return is made. Taxpayers who take advantage of this extension of time will be charged with interest at the rate of 6 per cent per annum on the amount of tax due from the original due date until the tax is paid.

PAR. 3. Because of the application of section 51(b), as amended by the Revenue Act of 1948, to taxable years beginning prior to the enactment of the Act, delay in the application of the above regulations will adversely affect the opportunity of certain taxpayers to avail themselves of the privilege of filing joint returns. It is therefore found impracticable to issue this Treasury decision with notice and public procedure thereon under section 4 (a) and (b) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

PAR. 4. 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 62 and 3791 of the Internal Revenue Code (53 Stat., 32, 467; 26 U. S. C., 62, 3791).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved May 20, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register May 26, 1948, 8.48 a. m.)

SECTION 29.53-2: Extensions of time for filing returns.

INTERNAL REVENUE CODE.

Joint returns for certain taxable years ending in 1948. (See T. D. 5616, page 58.)

SECTION 56.—PAYMENT OF TAX.

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

INTERNAL REVENUE CODE.

Tax shown on joint returns for certain taxable years ending in 1948. (See T. D. 5616, page 58.)

SUBCHAPTER C.—SUPPLEMENTAL PROVISIONS.

SUPPLEMENT A.—RATES OF TAX.

SECTION 101.—EXEMPTIONS FROM TAX ON CORPORATIONS.

SECTION 29.101(11)-1: Mutual insurance companies or associations. 1948-1-12724 G. C. M. 25497

INTERNAL REVENUE CODE.

The M Insurance Co. is organized without capital stock to write fire, lightning, windstorm, cyclone or high wind, tornado, explosion, and hail insurance. Policyholders are members entitled to vote at meetings, and management is in a board of directors elected by the members. Prior to 1940 all policies were written on the assessment plan, but beginning with the year 1940 all policies have been written on the nonassessment plan. The company's rates are about 30 per cent less than those used by stock companies, are established by the company on the basis of its experience, and are subject to approval by the State commissioner of insurance. Unearned premiums have been retained for the payment of losses and expenses, but portions of such premiums may be returned to the policyholders. Upon dissolution, remaining assets would be distributed to members in proportion to premiums paid. Gross income each year is less than $75,000. *Held*, the issuance of nonassessable policies does not of itself affect the mutuality of the company, and it is entitled to exemption from Federal income tax under section 101(11) of the Internal Revenue Code.

Recommended that I. T. 3131 (C. B. 1937-2, 129) be modified.

An opinion is requested as to the status for Federal income tax purposes of the M Insurance Co., which writes policies on a nonassessable plan.

The M Insurance Co. was incorporated under the laws of the State of R as a mutual insurance company for the purpose of writing fire, lightning, windstorm, cyclone or high wind, tornado, explosion, and hail insurance. The company has no capital stock, and each policyholder is a member entitled to one vote at company meetings. The management of the company is in the board of directors elected by the members.

Under the laws of the State of R relating to mutual insurance companies, the company is permitted to write either assessable or nonassessable policies. Prior to 1940 the company wrote all of its policies on the assessment plan. Beginning with the year 1940 all of its business has been written on the nonassessment plan, that is, by the issuance of nonassessable fixed premium policies. Subject to the approval of the commissioner of insurance of the State of R, the company makes its own rates on the basis of its experience. These rates are about 30 per cent less than the rates used by the stock companies.

The company has paid no dividends to its policyholders since it began issuing nonassessable policies, unearned premiums having been retained for the payment of losses and expenses. Although no provision is made in the charter of the company or its by-laws for the payment of dividends, the company may return portions of the premiums to the policyholders if its experience under the rates used warrants such action. Upon dissolution, the assets of the company would be distributed to the members pro rata on the basis of the total amount which each member paid to the company during his membership.

As required by the laws of the State of R, the company maintains a reserve fund for the payment of losses and expenses. All of the assets of the company, and the income therefrom, are used or held solely for the benefit and protection of its members through the payment of losses and expenses, and it appears that the assets accumulated for that purpose are not unreasonable in amount. Financial statements filed by the company show that the gross income of the company for each year is less than $75,000.

Section 101(11) of the Internal Revenue Code, prior to its amendment by section 165(a) of the Revenue Act of 1942, provided for the exemption from taxation of:

> Farmers' or other mutual hail, cyclone, casualty, or fire insurance companies or associations (including interinsurers and reciprocal underwriters) the income of which is used or held for the purpose of paying losses or expenses;

Section 101(11) of the Code, as amended by section 165(a) of the Revenue Act of 1942, provides for the exemption of:

> Mutual insurance companies or associations other than life or marine (including interinsurers and reciprocal underwriters) if the gross amount received during the taxable year from interest, dividends, rents, and premiums (including deposits and assessments) does not exceed $75,000;

In I. T. 3131 (C. B. 1937-2, 129), the rule was laid down that in order for an insurance company to qualify as a mutual insurance company exempt from taxation under sections 101(11) of the Revenue Acts of 1934 and 1936 (which sections were identical with section 101(11) of the Internal Revenue Code prior to the amendment made by section 165(a) of the Revenue Act of 1942) there must be both mutuality of liability and participation in profits by the policyholders, and that mutuality of liability existed only when the insurance company issued its policies on an assessable basis.

I. T. 3131, supra, is based on the decision in *Baltimore Equitable Society* v. *United States* (3 Fed. Supp., 427, Ct. D. 709, C. B. XII-2, 121 (1933), certiorari denied, 290 U. S., 662), a case involving a fire insurance company organized to issue policies of insurance to its members on an assessable basis but which issued term insurance at a fixed premium to nonmembers of the company. In holding that

the company was not entitled to exemption from tax as a mutual insurance company under the provisions of sections 101(11) of the Revenue Acts of 1926 and 1928, corresponding to section 101(11) of the Internal Revenue Code, the court stated as follows:

* * * As to those who received this term insurance at a fixed premium, there was no mutuality. They paid in advance for their insurance, and that was the end of all payments and liabilities so far as they were concerned. * * * * * * They were not members, were not entitled to any refund of premiums paid upon the surrender or cancellation of their policies, or to share in the distribution of the earnings and profits of the company. In short, so far as those who held policies for term insurance were concerned, there was no mutuality.

Upon consideration of *Baltimore Equitable Society* v. *United States*, supra, in the light of subsequent decisions, this office is now of the opinion that the decision in that case does not warrant the conclusion that the issuance of nonassessable policies automatically disqualifies an insurance company from claiming the exemption privilege granted mutual insurance companies by section 101(11) of the Internal Revenue Code and corresponding provisions of prior Revenue Acts. It is believed that the case stands for the proposition that an insurance company, otherwise exempt from Federal income tax as a mutual insurance company, loses its mutuality when it issues policies to nonmembers. (See, in this connection, *Order of Railway Employees* v. *Commissioner*, 2 T. C., 607, acquiescence, C. B. 1944, 22; *Keystone Automobile Club Casualty Co.* v. *Commissioner*, 122 Fed. (2d), 886, certiorari denied, 315 U. S., 814.)

In *Mutual Fire Insurance Co. of Germantown* v. *United States* (142 Fed. (2d), 344, certiorari denied, 323 U. S., 729), the court stated:

* * * The earliest mutual insurance companies were of the assessment type in which each member was assessed for losses and expenses either immediately upon the happening of the loss or at the end of the year. * * * At first it was thought that all mutual companies had to operate upon the assessment principle. The courts, however, soon accepted the view that an insurance company could be a mutual even though it received the premium in cash in advance and even though the policyholder was not subject to assessment. * * *

In *Ohio Farmers Indemnity Co.* v. *Commissioner* (36 B. T. A., 1152, affirmed, 108 Fed. (2d), 665), it was held that an insurance company which issued policies of insurance only in consideration of cash premiums ascertained and payable in advance was a mutual insurance company even though the policies were nonassessable and carried no contingent liability for additional premiums.

In view of the foregoing, it is the opinion of this office that an insurance company may qualify as a mutual insurance company within the meaning of section 101(11) of the Internal Revenue Code and corresponding provisions of prior revenue laws although it issues nonassessable policies to its members. Accordingly, it is recommended that I. T. 3131, supra, be modified to conform with the views stated herein.

The question remains whether the M Insurance Co. is, under the facts presented here, a mutual insurance company within the meaning of section 101(11) of the Internal Revenue Code both before and after the amendment of the statute by section 165(a) of the Revenue Act of 1942. In *Mutual Fire Insurance Co. of Germantown* v. *United States*, supra, the court stated that one of the essential characteristics of a mutual insurance company is that it provides insurance to its

members substantially at cost. See, in this connection, *Penn Mutual Life Insurance Co.* v. *Lederer* (252 U. S., 523, T. D. 3046, C. B. 3, 249 (1920)), in which the Court stated that "It is of the essence of mutual insurance that the excess in the premium over the actual cost as later ascertained shall be returned to the policyholder."

A second essential characteristic of a mutual insurance company was set out by the court in the Mutual Fire Insurance Co. of Germantown case, viz, the common equitable ownership by the members of the assets of the company which, at their option, may be transformed into a legal title and reduced to possession by the dissolution of the company. Thus, the court points out that, in a true mutual insurance company, the members, if they vote to wind up and dissolve the company, are entitled to receive its net assets upon dissolution. See also *American Insurance Co. of Texas* v. *Thomas* (146 Fed. (2d), 434), in which it is stated as a characteristic of mutual insurance companies that "there is no group except the policyholders who have an interest in it who have power over it." Membership by all policyholders in the company or association is, as indicated above, a requisite for exemption as a mutual insurance company under section 101(11) of the Code. (See *Keystone Automobile Club Casualty Co.* v. *Commissioner*, supra; *Driscoll* v. *Washington County Fire Insurance Co.*, 110 Fed. (2d), 485, Ct. D. 1474, C. B. 1940–2, 184, certiorari denied, 311 U. S., 658.)

In *Keystone Automobile Club Casualty Co.* v. *Commissioner*, supra, the court, in holding that all policyholders in a mutual insurance company must have a right to vote in order for the company to be entitled to treatment as a mutual insurance company for income tax purposes, stated that democratic ownership and control by the members is another fundamental characteristic of a mutual insurance company. In *Keystone Mutual Casualty Co.* v. *Driscoll* (137 Fed. (2d), 907), the court pointed out that while a mutual insurance company may maintain a reasonable reserve, that reserve must be for the one purpose of paying losses and expenses with ultimate return of any excess to the members. (See also *MacLaughlin* v. *Philadelphia Contributionship for Insurance of Houses from Loss by Fire*, 73 Fed. (2d), 582, certiorari denied, 294 U. S., 718.)

Although in the present case no dividends have been paid to policyholders since 1940, the information submitted reveals that the company is authorized to return portions of the premiums to the policyholders if its experience under the rates used warrants such action. In *Penn Mutual Life Insurance Co.* v. *Lederer*, supra, the Court, in speaking of a mutual insurance company, stated: "Dividends may be made, and by many of the companies have been made largely by way of abating or reducing the amount of the renewal premium." And, in the recent decision of The Tax Court in *The Mutual Fire, Marine and Inland Insurance Co.* v. *Commissioner* (8 T. C., 1212, acquiescence, C. B. 1947–2, 3) it is stated (page 1220):

* * * The making of a distribution, or the omission to distribute, is not conclusive, as there may be good reasons for refraining for a time to distribute, as in Order of Railway Employees, 2 T. C., 607 (petition to review dismissed, 143 Fed. (2d), 597), or the payment may take the character of a distribution of profits rather than a rebate of premiums, as in the case of the Philadelphia Contributionship, etc., supra. Also, the use of high premium rates would enable a company to make rebates, while the use of low rates might make this impracticable, in either case the insurance being furnished at cost.

All assets of the M Insurance Co. are equitably owned by the policyholders, and upon dissolution of the company, the assets would be distributed among the policyholders. The mere fact that former members of the company may not share in the assets on dissolution does not affect its status as a mutual insurance company. (See *Mutual Fire, Marine and Inland Insurance Co.* v. *Commissioner*, supra.) The reserve funds of the company are held or used solely for the payment of losses and expenses, and are not unreasonable in amount. It appears that the company is operating exclusively for the purpose of furnishing insurance at cost to its policyholders, all policyholders are members of the company, and each member is entitled to vote at company meetings.

In view of the foregoing, it is the opinion of this office that the M Insurance Co. is entitled to exemption from Federal income tax under the provisions of section 101(11) of the Internal Revenue Code.

CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue.

SECTION 29.101(11)–1: Mutual insurance companies or associations. 1948–1–12725 I. T. 3885

INTERNAL REVENUE CODE.

In accordance with the recommendation in G. C. M. 25497 (page 60, this Bulletin), I. T. 3131 (C. B. 1937–2, 129) is modified to accord with the conclusions reached in that G. C. M.

SECTION 109.—WESTERN HEMISPHERE TRADE CORPORATIONS.

SECTION 29.109–1: Western Hemisphere trade corporations. 1948–8–12786 I. T. 3902
(Also Section 119, Section 29.119–1.)

INTERNAL REVENUE CODE.

Gain included in insurance proceeds received by a Western Hemisphere trade corporation as a result of the loss of goods in transit from the United States to Cuba constitutes income from sources within the United States. Costs directly attributable to the goods lost may be taken into account in determining the net insurance proceeds, provided such costs are readily identifiable and are eliminated from the cost of goods sold or inventoried.

Advice is requested whether gain which is included in insurance proceeds received by a Western Hemisphere trade corporation as a result of the loss of goods in transit from the United States to Cuba constitutes income from sources within the United States.

In the instant case, the taxpayer, a Western Hemisphere trade corporation, shipped pharmaceuticals to its consignment agent in Cuba. Due to pilferage, a part of such shipment was lost in transit outside the United States and on the high seas. As a result of such loss and pursuant to the terms of an insurance contract entered into with a domestic insurance company, the taxpayer received insurance proceeds

which included an amount equal to the anticipated profit and selling costs.

Under section 15 of the Internal Revenue Code, a Western Hemisphere trade corporation is exempt from the surtax generally imposed on corporations. To qualify as a Western Hemisphere trade corporation, a domestic corporation must meet several tests, including the test that 95 per cent or more of its gross income for the 3-year period immediately preceding the close of the taxable year (or for such part of such period during which the corporation was in existence) was derived from sources without the United States. (Section 109 of the Code.) The source of income for this purpose is determined pursuant to the provisions of section 119 of the Code and the regulations prescribed thereunder. (See section 29.109-1 of Regulations 111.)

Insurance proceeds are not mentioned in section 119 of the Code nor in the regulations relating thereto. The source of the gain included in the insurance proceeds received by the taxpayer in the instant case must, therefore, be determined by resort to general principles of law.

For the purpose of taxation of personal property, it is well established that the situs of goods in transit remains at their original situs until such time as they have acquired a permanent situs elsewhere. (See Cooley, The Law of Taxation, fourth edition, volume 2, sections 452, 453, and 454; *General Oil Co.* v. *Crain*, 209 U. S., 211; *Kelley* v. *Rhoads*, 188 U. S., 1.) It is believed that this rule offers a useful guide for the determination of problems arising under Federal income tax laws. Under the rule, it is clear that in the instant case the situs of the lost pharmaceuticals was still in the United States at the time they were lost. The situs of the property determines the source of the gain included in the insurance proceeds received as a result of the loss.

In view of the foregoing, it is held that gain included in insurance proceeds received by a Western Hemisphere trade corporation as a result of the loss of goods in transit from the United States to Cuba constitutes income from sources within the United States. Costs directly attributable to the goods lost may be taken into account in determining the net insurance proceeds, provided such costs are readily identifiable and are eliminated from the cost of goods sold or inventoried.

SUPPLEMENT B.—COMPUTATION OF NET INCOME.

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

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

INTERNAL REVENUE CODE.

Futures trading and the Federal income tax. (See Mim. 6243, page 44.)

SECTION 113(a).—ADJUSTED BASIS FOR DETERMINING GAIN OR LOSS: BASIS (UNADJUSTED) OF PROPERTY.

SECTION 29.113(a)(5)-1: Basis of property acquired by bequest, devise, or inheritance. 1948-13-12827 I. T. 3911

INTERNAL REVENUE CODE.

Determination of gain realized upon the sale of real property by life tenant and remainderman.

Advice is requested as to the manner in which gain resulting from the sale of real property by the life tenant and the remainderman should be determined.

In the case under consideration, real property was devised to the decedent's widow for life with remainder over to his son. Eleven years after decedent's death, the life tenant and the remainderman sold their respective interests for a lump sum, the price being in excess of the fair market value of the property as of the date of the decedent's death. From and after the death of the decedent and up to the date of sale, the property was rented by the life tenant who received the income.

The general rule for determining basis at the time of the sale of a life interest, a remainder interest, or both, in property transmitted at death is provided in section 29.113(a)(5)-1 of Regulations 111. The purpose of that section of the regulations is clear and may be briefly stated. First, it is contemplated that the basis of the full property of which the life estate and the remainder are parts shall be determined in accordance with section 113(a)(5) of the Internal Revenue Code and that such basis shall be the "uniform basis" on which all subsequent computations and adjustments are made. Secondly, the regulation contemplates that the proportionate parts of the "uniform basis" represented by the respective interests of the life tenant and the remainderman are not forever fixed as of the time those interests are created, but are adjustable to the date of sale so as to reflect the change in the relative values of such interests on account of the passage of time. Finally, the regulations expressly provide that the general adjustments to basis on account of capital improvements, depreciation, and similar items, provided for in section 113(b) of the Internal Revenue Code, must be taken into account.

I. T. 2076 (C. B. III-2, 18 (1924)) sets forth the method of determining the values of the life and remainder interests at the time of their creation for the purpose of ascertaining gain or loss from the sale of land. There is first computed a hypothetical annuity at the rate of 4 per cent of the value of the fee on the date the interests of the life tenant and remainderman came into being. The worth or cash value of such annuity at the life tenant's age is then computed. For this purpose, Table A appearing on page 18 of Regulations 63, revised, which table is identical to Table A set forth in section 81.10(*i*) of Regulations 105, is utilized. The amount of the hypothetical annuity is multiplied by the figure appearing in column 2 of Table A opposite the life tenant's age; the product is the present worth or cash value of the life tenant's interest in the fee. Although I. T. 2076 establishes the method for allocation of the uniform basis between the remainder and the life interests at the time of the creation of those in-

terests, it does not provide for adjustment of that allocation as of the time of their sale or transfer. As pointed out above, section 29.113 (a)(5)-1 of Regulations 111 contemplates such adjustment in order to reflect the change in the relative values of the interests on account of the passage of time. In making such adjustment, however, the method of computation outlined in I. T. 2076 should be used.

Subsection (*f*) of section 29.113(a)(5)-1 of Regulations 111 gives an illustration of the general rule, summarized in the preceding paragraphs, in the case of the sale of a remainder interest, although the rule is equally applicable to the sale of a life interest. The purpose of the formula stated in the last sentence of subsection (*f*) is merely to apportion between the life tenant and the remainderman the subsequent adjustments to the uniform basis on account of capital improvements, depreciation, or other items provided for in section 113(b) of the Code. That formula is expressed, in the case of a sale of a life interest, by the following equation:

$$\frac{\text{Basis of life tenant's interest at date of sale, i. e., the item to be determined.}}{\text{Basis of entire property determined in accordance with section 113(a)(5) of I. R. C. (uniform basis), adjusted to the time of sale for items required by section 113(b) of I. R. C.}} = \frac{\text{Part of the uniform basis attributable to the life tenant's interest as of the date of sale.}}{\text{Unadjusted basis of entire property determined in accordance with section 113(a)(5) of I. R. C. (uniform basis).}}$$

As indicated above, the basis of the remainderman's interest at the time of sale is computed by the same formula. If a life interest or a remainder interest in a divided or undivided fraction of the entire property is sold, it is necessary, as a preliminary step, to allocate the proper portion of the uniform basis (adjusted and unadjusted) to the fractional interest being sold, in order to obtain the denominators in the above illustrative equation.

A specific example may be helpful. Suppose improved realty worth $20,000 at the date of decedent's death on January 1, 1942, is devised to A for life, with remainder over to B. Four years later, on January 1, 1946, A sells his life estate for $12,000. During each of the four years 1942 to 1945, inclusive, A was allowed a deduction of $300 for depreciation. A's age was 35 at the date of decedent's death. To compute A's basis, it should first be noted that the uniform basis of the property is $20,000, which is adjusted to $18,800 at the date of the sale by reason of $1,200 allowed depreciation. The part of the uniform basis attributable to A's life interest as of January 1, 1946, is computed by multiplying $20,000 by 4 per cent, giving a hypothetical annuity of $800. By reference to Table A in section 81.10(*i*) of Regulations 105, the annuity factor at age 39 is found to be 15.31722. That factor, multiplied by $800, gives $12,253.78 as the part of the uniform basis attributable to A's interest as of the date of sale. Those figures may be conveniently arranged in the form of the following illustrative equation:

$$\frac{\text{A's basis}}{\$18{,}800\ (\$20{,}000 \text{ less } \$1{,}200 \text{ depreciation})} = \frac{\$12{,}253.78}{\$20{,}000}$$

A's basis, $11,518.55 (the adjusted basis of the property ($18,800) multiplied by .612689, which is the quotient of $12,253.78 (the part of the uniform basis attributable to A's life estate at age 39) divided by

$20,000 (the uniform basis of the property)), when subtracted from $12,000 (the proceeds of the sale of his life interest) shows a taxable gain to A of $481.45. A separate sale of the remainder interest would be computed by the same method.

Where the life tenant and the remainderman join in a sale and transfer of their entire interest in real property, each will realize gain or sustain loss measured by the difference between the basis of his respective interest at the time of the sale and the portion of the entire proceeds of sale attributable to such interest. The part of the proceeds attributable to each interest shall be in the same proportion to the entire proceeds of sale as the basis of each such interest at the time of sale bears to the adjusted uniform basis.

A specific example may also be helpful here. Suppose, as in the first example, that improved realty worth $20,000 at the date of decedent's death on January 1, 1942, is devised to A, whose age is 35, for life, with remainder over to B, and that four years later, on January 1, 1946, A and B by joint conveyance sell the entire property for $30,000. During each of the four years 1942 to 1945, inclusive, the allowable deduction for depreciation amounted to $300, which deduction was taken by A in his Federal income tax returns under the authority of section 23(l) of the Code. The part of the uniform basis attributable to A's life estate on the date of sale, January 1, 1946, for a person 39 years of age is $12,253.78. (See the method of computation set forth in the first example.) The part of the uniform basis attributable to B's remainder on the date of sale, January 1, 1946, is obtained by multiplying $20,000 (the value of the property at the time of decedent's death) by .37241 (the figure opposite the number of years nearest the actual age of A, the life tenant, in column 3, Table A, of section 81.10(*i*) of Regulations 105). The part of the uniform basis attributable to B's remainder interest on January 1, 1946, is, therefore, $7,448.20 ($20,000×.37241). The aggregate value of the uniform basis attributable to the life and remainder interests is $19,701.98 ($12,253.78+ $7,448.20), $298.02 less than the value of the property at the time of decedent's death. This difference is due to the fact (as shown by the respective headings for column 2 and for column 3 of Table A) that the life interest value extends only to the end of the last year survived (which corresponds to the beginning of the year of death) and the remainder value commences at the end of the year of death.

Although the use of bases computed from factors appearing in Table A is justified in the case of a sale of a single interest (life or remainder) in the property, where both interests are being sold by joint conveyance it is necessary to eliminate the gap by finding the exact portion of the uniform basis of the property ($20,000) which is attributable to each interest. The exact part attributable to A's life interest ($12,439.20) is obtained by dividing $12,253.78 (the part of the uniform basis attributable to the life estate) by $19,701.98 (the aggregate value of the uniform basis attributable to the two interests) and multiplying the quotient obtained (.62196) by $20,000. The exact part attributable to B's remainder interest is obtained by use of the same method ($7,448.20÷$19,701.98=.37804, which, when multiplied by $20,000, equals $7,560.80).

Using the same equation as in the first example, the respective bases of A's life interest and B's remainder interest at the date of sale are $11,692.85 ($18,800×the quotient of $12,439.20÷$20,000) and $7,107.15

($18,800×the quotient of $7,560.80÷$20,000), respectively. The entire proceeds of sale amounted to $30,000. The exact portion of such proceeds attributable to each interest is obtained by multiplying the sale price by the percentage of interest owned by each in the property at the date of the sale. Thus, A's proportionate share of the proceeds of sale is $18,658.80 ($30,000× 62196) and B's proportionate share of the proceeds of sale is $11,341.20 ($30,000×.37804). The realized gain attributable to each interest is obtained by subtracting the basis attributable to each interest from the part of the sale proceeds attributable to each interest. Therefore, A's realized gain is $6,965.95 ($18,658.80−$11,692.85) and B's realized gain is $4,234.05 ($11,341.20—$7,107.15).

SECTION 115.—DISTRIBUTIONS BY CORPORATIONS.

SECTION 29.115–3: Earnings or profits.

INTERNAL REVENUE CODE.

Installment transactions; validity of the regulations. (See Ct. D. 1697, page 82.)

SECTION 117.—CAPITAL GAINS AND LOSSES.

SECTION 29.117–1: Meaning of terms. 1948–4–12749
I. T. 3891

INTERNAL REVENUE CODE.

Where securities are acquired and held by a dealer in securities solely for investment purposes, such securities will be recognized as capital assets, as defined in section 117(a)(1) of the Internal Revenue Code, even though such securities are of the same type or of a similar nature as those ordinarily sold to the dealer's customers.
I. T. 3828 (C. B. 1946–2, 68) modified.

Reconsideration of I. T. 3828 (C. B. 1946–2, 68) has been requested. In that ruling the question presented was whether a dealer in securities may treat as capital assets, as defined in section 117(a)(1) of the Internal Revenue Code, securities acquired solely for investment purposes.

In the case involved in I. T. 3828, supra, a partnership doing business as a dealer in securities invests its surplus funds in securities solely for the purpose of making an investment of such funds. The securities thus acquired are segregated physically and in the partnership accounts from securities held for sale to customers. They are not included in the partnership inventory, are never sold to customers, and are not of a type ordinarily sold to customers. The conclusion was reached (syllabus) that:

A dealer in securities may treat as capital assets, as defined in section 117(a)(1) of the Internal Revenue Code, securities acquired for investment purposes, provided it is established that (1) such securities are acquired and held for investment and are not part of those held for sale to customers, and (2) they are not of a type ordinarily sold to the dealer's customers.

It is contended that the position taken in I. T. 3828, supra, particularly requirement (2)—that the investment securities may not be of a type ordinarily sold to the dealer's customers—is unwarranted and

results in *bona fide* investment transactions not being properly recognized as such for Federal income tax purposes.

After careful reconsideration of the position adopted in I. T. 3828, supra, the last two paragraphs of that ruling are withdrawn and the following substituted therefor:

Securities held for sale to customers in the ordinary course of business are not capital assets as defined above, and gains and losses on sales of such securities by dealers in securities are not subject to the limitations of section 117 (b), (c), and (d) of the Code. However, securities owned by a dealer in securities, if acquired and held for investment rather than for sale in the ordinary course of business, are capital assets subject to the limitations of section 117 of the Code. (See I. T. 2502, C. B. VIII–2, 128 (1929).)

The securities in the instant case are originally acquired solely for investment, are segregated physically and in the partnership accounts, are not included in the partnership inventory, are never sold to the partnership's customers, and are not of a type ordinarily sold to its customers. They clearly qualify as capital assets under the definition contained in section 117(a)(1) of the Code and will be recognized as such for Federal income tax purposes. The same rule is applicable even though the securities acquired for investment are of the same type or of a similar nature as those ordinarily sold to the dealer's customers.

SECTION 29.117–1: Meaning of terms.

INTERNAL REVENUE CODE.

Futures trading and the Federal income tax. (See Mim. 6243, page 44.)

SECTION 119.—INCOME FROM SOURCES WITHIN UNITED STATES.

SECTION 29.119–1: Income from sources within the United States.

INTERNAL REVENUE CODE.

Gain included in insurance proceeds covering loss of goods in transit. (See I. T. 3902, page 64.)

SUPPLEMENT C.—CREDITS AGAINST TAX.

SECTION 131.—TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES.

SECTION 29.131–2: Meaning of terms. 1948–8–12787
I. T. 3903

INTERNAL REVENUE CODE.

The 3 per cent tax imposed by Article III(b) of Cuban Military Order 463 of 1900, as amended by Article XV of Cuban tax law approved July 6, 1928, and the 20 per cent additional tax imposed by law No. 28 dated September 8, 1941, on gross revenues received for freight and passengers taken aboard in Cuban ports by foreign (as to Cuba) shipping companies engaged in handling freight and passengers between Cuban ports and foreign (as to Cuba) ports, are taxes imposed in lieu of an income tax within the meaning of section 131(h) of the Internal Revenue Code, and such taxes may be claimed as a credit against Federal income tax for taxable years beginning after December 31, 1941.

Advice is requested whether the 3 per cent tax imposed by Article III(b) of Cuban Military Order 463 of 1900, as amended by Article

XV of the Cuban tax law approved July 6, 1928, and the 20 per cent additional tax imposed by law No. 28 dated September 8, 1941, are taxes imposed in lieu of an income tax within the meaning of section 131(h) of the Internal Revenue Code and may be claimed as a credit against Federal income tax.

Article XV of the Cuban tax law approved July 6, 1928, provides as follows:

ART. XV. Article III of Military Order 463 of 1900 shall be drawn as follows:

"ART. III. The following shall pay taxes to the State at the rate of 6 per centum of their net profits:

"(*a*) Railroads of general service, or namely, those destined to public exploitation for the transportation of passengers and the traffic of merchandise, either belonging to companies or to private parties conformably to legislation in force on the matter.

"(*b*) Domestic shipping companies and foreign shipping companies authorized to do a coastwise business.

"Foreign shipping companies engaged in handling freight and passengers between domestic and foreign ports shall be exempt from the tax on profits, and shall pay, in lieu thereof, 3 per cent on the gross revenues received for freight and passengers taken aboard in domestic ports, continuing to be subject to the payment of taxes of other nature, in accordance with the legislation in force.

"The tax shall be paid precisely by said shipping companies or their agents, and can not be collected from shippers or passengers."

Condonation is granted of the tax due according to section (*b*) of Article III of Order No. 463 of 1900, by the companies which are subjected by the present article of the tax on their revenues.

Law No. 28, dated September 8, 1941, imposes a 20 per cent additional tax, thereby increasing the effective rate of the tax on gross income imposed under the law of July 6, 1928, to 3.6 per cent.

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, except the tax imposed under section 102, 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; and

* * * * * * *

(h) CREDIT FOR TAXES IN LIEU OF INCOME, ETC., TAXES.—For the purposes of this section and section 23(c)(1), the term "income, war-profits, and excess-profits taxes" shall include a tax paid in lieu of a tax upon income, war-profits, or excess-profits otherwise generally imposed by any foreign country or by any possession of the United States.

Section 131(h) of the Code was added by section 158(f) of the Revenue Act of 1942, and is applicable for taxable years beginning after December 31, 1941.

In view of the foregoing, it is held that the 3 per cent tax imposed by Article III(b) of Cuban Military Order 463 of 1900, as amended by Article XV of Cuban tax law approved July 6, 1928, and the 20 per cent additional tax imposed by law No. 28 dated September 8, 1941, on gross revenues received for freight and passengers taken aboard in Cuban ports by foreign (as to Cuba) shipping companies engaged in handling freight and passengers between Cuban ports and foreign (as to Cuba) ports, are taxes imposed in lieu of an income tax within the meaning of section 131(h) of the Internal Revenue Code, and such taxes may be claimed as a credit against Federal income tax for taxable years beginning after December 31, 1941.

SECTION 29.131-5: Countries which do or do not satisfy the similar credit requirement. 1948-7-12774 I. T. 3899

INTERNAL REVENUE CODE.

Egypt does not satisfy the similar credit requirement of section 131(a)(3) of the Internal Revenue Code.

SECTION 29.131-5: Countries which do or do not satisfy the similar credit requirement. 1948-7-12775 I. T. 3900

INTERNAL REVENUE CODE.

Switzerland and the Canton of Geneva, Switzerland, satisfy the similar credit requirement of section 131(a)(3) of the Internal Revenue Code.

SUPPLEMENT D.—RETURNS AND PAYMENT OF TAX.

SECTION 141.—CONSOLIDATED RETURNS.

SECTION 29.141-1: Consolidated income and excess profits tax returns of affiliated corporations. (Also Section 23.2, Regulations 104.) 1948-6-12762 I. T. 3896

INTERNAL REVENUE CODE.

Participation in the management of a corporation through election of directors is considered the criterion of "voting power," as that term is used in section 141(d) of the Internal Revenue Code. Where a parent corporation's ownership in a subsidiary consists of 100 per cent of the common stock which possesses power to elect six of the seven directors and 55.5 per cent of the preferred stock which possesses power to elect one director, these being the only classes of stock, the parent corporation owns stock in the subsidiary possessing less than 95 per cent of the "voting power," and the subsidiary is not a member of the affiliated group within the meaning of section 141(d) of the Code.

Advice is requested whether certain corporations are affiliated within the meaning of section 141(d) of the Internal Revenue Code under the circumstances hereinafter set forth.

The parent corporation owns 100 per cent of the common stock and 55.5 per cent of the preferred stock of one of its subsidiaries. The common stock holders have the right to elect six of seven directors and have all other voting powers exclusively, except that the preferred stock holders may elect (as a class) one director and must approve (1) any change in the certificate of incorporation except an increase in common stock; (2) the disposition of the company's property by sale, merger, etc.; (3) the creation of a mortgage or lien (not including the acquisition of property subject to a lien or a renewal of an existing mortgage); (4) the issuance of bonds in excess of a certain amount; and (5) the authorization or issuance of any stock outranking the preferred stock or of any security convertible into such stock. The question has been raised whether the preferred stock is nonvoting stock which is limited and preferred as to dividends and, as such, to be disregarded in determining whether the corporations

are affiliated within the meaning of section 141(d) of the Code, and if it is not such nonvoting stock, how the voting power of the preferred stock is to be determined.

Section 141(d) of the Internal Revenue Code provides in part as follows:

> (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—
>
> * * * * * * *
>
> (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.

Since the preferred stock is clearly limited and preferred as to dividends, the first question to be determined is whether the stock is nonvoting stock as that term is defined in section 141(d) of the Code.

There are numerous court decisions with respect to what constitutes voting stock, as that term is used in section 141(d) of the Code. It is well established that if preferred stock carries with it the right to vote only with respect to matters pertaining to the rights of preferred stockholders, or if full voting rights are conditioned upon the happening of some event which has not occurred, such stock is nonvoting stock for the purposes of section 141(d) of the Code. (See *Erie Lighting Co.* v. *Commissioner*, 93 Fed. (2d), 883; *Vermont Hydro-Electric Corporation* v. *Commissioner*, 29 B. T. A., 1006, acquiescence, C. B. XIII–1, 16 (1934).) On the other hand, if preferred stock, because of dividend arrearages or the happening of some other condition, has obtained full voting rights, it has been held to be voting stock. (See *Atlantic City Electric Co. et al.* v. *Commissioner*, 288 U. S., 152, Ct. D. 637, C. B. XII–1, 281 (1933), and *Pantlind Hotel Co.* v. *Commissioner*, 23 B. T. A., 1207.) Likewise, it has been held that where, by State law, preferred stock has the privilege of voting for directors (but no other voting rights), the stock is voting stock within the meaning of section 141(d) of the Code. (See *Rudolph Wurlitzer Co. et al.* v. *Commissioner*, 29 B. T. A., 443, affirmed, 81 Fed. (2d), 971, certiorari denied, 298 U. S., 676.)

It remains to be determined whether the preferred stock in the instant case is voting stock because of its right as a class to elect only one of the seven directors. One possible holding is that stock is nonvoting unless it has the right to participate in the election of all directors. Such a rule must be rejected since it would require, in a case such as the instant one, a holding that both the common and preferred stocks are nonvoting if the common stock participates in the election of only six of the seven directors. Another possible conclusion is that even though the right to participate in the election of all directors is not necessary, the right to elect only one director of a total of seven directors is not sufficient to give the preferred stock any real participation in the management of the corporation, and that such preferred stock should be considered nonvoting stock for the purposes of section 141(d) of the Code. Such a conclusion would be based on the fact that

the six directors elected by the common stock holders would so dominate the board of directors that the one director elected by the preferred stock holders would have no substantial authority. If such a theory were followed, however, it would be extremely difficult to determine when such stock becomes voting stock. If the preferred stock carried with it the right to elect three directors and the common stock four, the directors elected by the common would still be able to dominate the board, but it would not be reasonable to hold that in such a case the preferred is nonvoting stock. Likewise, it seems clear that if the preferred stock had one vote in the election of all directors and the common stock had six votes, the preferred would be considered voting stock having one-seventh of the voting power. Although those situations can be distinguished from the instant case, the basic concept, which requires a holding that the preferred stock in those situations is voting stock, is applicable here. It is the opinion of this office, therefore, that any stock which participates in the election of directors is voting stock within the intendment of section 141(d) of the Code.

Since, in the instant case, the preferred stock of the subsidiary company is considered voting stock for the purposes of section 141(d) of the Code, it is necessary to determine what percentage of such stock must be owned by the parent in order for the subsidiary to be a member of the affiliated group. The Revenue Act of 1924 provided that two or more corporations would be deemed to be affiliated if one corporation owned at least 95 per cent of the voting stock of the others. In the Revenue Act of 1926, the word "voting" was deleted and ownership of "at least 95 per centum of the stock" was required for affiliation. It was provided that the term "stock" did not include nonvoting stock which was limited and preferred as to dividends. Section 141(d) of the Revenue Act of 1928 contained similar provisions. In *Anderson-Clayton Securities Corporation* v. *Commissioner* (35 B. T. A., 795, acquiescence, C. B. 1937–2, 2), the Board of Tax Appeals (now The Tax Court of the United States), in construing section 141(d) of the Revenue Act of 1928, held that ownership of 95 per cent of the *shares* of stock of another corporation was not required for affiliation, but rather ownership of 95 per cent of the capital stock of the corporation (excluding nonvoting preferred), taking into consideration the combined *voting power* of the stock owned. In that case, the parent corporation owned 100 per cent of the preferred stock and 64 per cent of the common stock of a subsidiary. The preferred stock at that time had a voting power of 50 votes per share and the common stock had a voting power of 1 vote per share. The Board held that, since the preferred stock had a voting power of 240,000 votes and the common stock a voting power of 6,400 votes, the parent corporation owned 98.56 per cent of the voting power of the subsidiary's stock and the two corporations were affiliated. The Board said (page 800):

* * * Anderson-Clayton Industries, Inc., held legal title to stock possessing more than 95 per centum of the total voting power and enjoyed a beneficial ownership of more than 95 per centum of the capital stock. * * *

* * * * * * *

* * * it is clearly apparent that Anderson-Clayton Industries, Inc., *owned* more than 95 percent of *the six companies*. Our conclusion is that they were affiliated with the petitioner during the taxable period.

In the Revenue Act of 1932, the right to file consolidated returns was restricted to certain railroad corporations, but the stock ownership requirements remained unchanged. The Second Revenue Act of 1940, which enacted the excess profits tax, added section 730 to the Internal Revenue Code, which section granted the privilege of filing consolidated excess profits tax returns to affiliated groups as defined therein. Section 730(d) of the Code, as so added, defined "affiliated group" as one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if "At least 95 per centum of each class of the stock of each of the includible corporations (except the common parent corporation) is owned directly by one or more of the other includible corporations." Nonvoting stock which was limited and preferred as to dividends was specifically excluded from the term "stock," as used therein. It would appear that Congress, in requiring ownership of 95 per cent of *each class* of the stock, intended to modify the holding in *Anderson-Clayton Securities Corporation* v. *Commissioner*, supra, that ownership of 95 per cent of the "capital stock" taken as a whole was sufficient.

The Revenue Act of 1942 made section 730 of the Code inapplicable to years beginning after December 31, 1941, and amended section 141 of the Code so as to extend the privilege of filing consolidated returns, for income as well as excess profits tax purposes, to any "affiliated group of corporations." The definition of an "affiliated group" in section 141(d) of the Code was amended to require the ownership of 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," excluding nonvoting stock which is limited and preferred as to dividends. It would seem that Congress, in so altering the language of section 141(d) of the Code, intended to abandon the requirement of section 730(d) of the Code that ownership of 95 per cent of *each class* of stock was necessary for affiliation and to follow the decision in the Anderson-Clayton Securities Corporation case which required merely the ownership of 95 per cent of the voting stock taken as a whole. However, section 141(d) of the Code, as amended, made explicit the requirement that 95 per cent of *each class* of nonvoting stock (which is not limited and preferred as to dividends) must be owned by the parent or one of the other includible corporations. Under the present law, therefore, it is not necessary for the parent to own 95 per cent of each class of voting stock of the subsidiary in order for the latter to be a member of the affiliated group, but it is sufficient if the parent owns 95 per cent of the voting power of all classes of voting stock taken together.

The next question, therefore, is to determine the percentage of the voting power of the stock owned by the parent corporation in the instant case. Since participation in the management of the subsidiary corporation through election of the board of directors is considered the criterion of voting power, it is believed that the common stock of the subsidiary should be held to have six-sevenths, or 85.714 per cent, of the voting power and the preferred one-seventh, or 14.286 per cent. The parent corporation owns 100 per cent of the common stock but only 55.5 per cent of the preferred stock of the subsidiary. Thus, it

owns stock possessing 85.714 per cent plus 7.929 per cent (55.5 per cent of 14.286 per cent), or 93.643 per cent of the voting power of all classes of stock. In order for the subsidiary to become an includible corporation of the affiliated group, the parent corporation must own 65.01 per cent of its preferred stock, which would represent 9.287 per cent of the voting power and which, when added to 85.714 per cent of the voting power held by virtue of the common stock ownership, would give the parent " at least 95 per centum of the voting power of all classes of stock " required by section 141 (d) of the Code.

REGULATIONS 104, SECTION 23.11: Consolidated returns for subsequent years. 1948–5–12756 I. T. 3893

INTERNAL REVENUE CODE.

Election with respect to filing separate Federal income tax returns for fiscal years ending in 1948 by affiliated corporations which filed consolidated Federal income tax returns for fiscal years ended in 1947.

Advice is requested whether affiliated corporations which filed consolidated Federal income tax returns for fiscal years ended in 1947 may elect to file separate Federal income tax returns for fiscal years ending in 1948.

Section 141 (a) of the Internal Revenue Code, as amended, provides in part as follows:

(a) PRIVILEGE TO FILE CONSOLIDATED INCOME AND EXCESS-PROFITS-TAX RETURNS.—* * * The making of consolidated returns shall be upon the condition that the affiliated group shall make both a consolidated income-tax return and a consolidated excess-profits-tax return for the taxable year, and that all corporations which at any time during the taxable year have been members of the affiliated group making a consolidated income-tax return consent to all the consolidated income- and excess-profits-tax regulations prescribed under subsection (b) prior to the last day prescribed by law for the filing of such return. * * *

Section 23.11 (*a*) of Regulations 104, as amended, relating to consolidated income 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) 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, * * *

It is held that the law applicable to the filing of consolidated Federal income tax returns has been so amended as to make less advantageous to affiliated groups as a class the continued filing of such returns, within the meaning of section 23.11 (*a*) of Regulations 104, as amended, for fiscal years ending in 1948. Accordingly, affiliated corporations which filed consolidated Federal income tax returns for fiscal years ended in 1947 may, notwithstanding the filing of such returns, file separate Federal income tax returns for fiscal years ending in 1948.

REGULATIONS 110, SECTION 33.31: Bases of tax computation. 1948-11-12814 T. D. 5615

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 33.—CONSOLIDATED EXCESS PROFITS TAX RETURNS.

Section 33.31(*b*)(2) of Regulations 110 amended with respect to consolidated net operating loss deduction.

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

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH 1. In order to eliminate a technical defect appearing in Regulations 110 [26 CFR, Part 33], section 33.31(*b*)(2) of such regulations, as added by Treasury Decision 5245, approved March 13, 1943 [C. B. 1943, 801], is amended by revising that portion thereof following the second parenthetical expression to read as follows:

but shall not exceed the amount of the consolidated normal-tax net income computed without the benefit of such deduction and without the credit provided in section 26(e), relating to income subject to excess profits tax;

PAR. 2. Inasmuch as the sole purpose of this Treasury decision is to eliminate a technical defect in the Treasury decision conforming Regulations 110 to the provisions of the Revenue Act of 1942, it is found unnecessary to give prior general notice or to conduct public rule making procedure in connection with this revision. The issuance of this Treasury decision is accordingly found not to be subject to the provisions of section 4(a) or 4(c) of the Administrative Procedure Act, approved June 11, 1946.

PAR. 3. The amendment made by this Treasury decision shall be effective for taxable years beginning after December 31, 1941.

(This Treasury decision is issued under the authority contained in section 141(b) of the Internal Revenue Code (53 Stat., 58, 56 Stat., 858; 26 U. S. C. and Sup., 141(b)).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved May 11, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register May 17, 1948, 8.45 a. m.)

SECTION 143.—WITHHOLDING OF TAX AT SOURCE.

SECTION 29.143-1: Withholding tax at source. (Also Section 144, Section 29.144-1.) 1948-6-12763 I. T. 3897

INTERNAL REVENUE CODE.

Withholding agents in the United States are authorized to release directly to the French Government, or to the Bank of France as agent of that Government, Federal income taxes withheld at the source from interest and dividends which became due and payable on or after July 6, 1947, the effective date of French Decree No. 46-1698, on dollar securities owned by certain French nationals and others, title to which was taken by the French Government pursuant to that decree.

Advice is requested relative to the release to the French Government of Federal income taxes withheld at the source from interest and dividends on dollar securities owned by certain French nationals and others, title to which was taken by the French Government by French Decree No. 46–1698 of July 26, 1946, which became effective on July 6, 1947, by publication on that date of Notice No. 140 of the French Foreign Exchange Control Board.

Due to formalities involved in the procedure under the requisition, delivery of some of the securities by the former owners to the French authorities was delayed so that in many cases amounts of interest and dividends which became due and payable on or after July 6, 1947, were remitted to the former owners after the Federal income tax had been withheld therefrom. Upon delivery of the requisitioned securities, the former owners received an indemnity corresponding to the value of the securities as of July 6, 1947, the date of vesting. In those cases in which amounts of interest and dividends were collected by such former owners after the date of vesting and prior to delivery, the amount actually collected by them (the Federal income tax having been withheld) was deducted from the indemnity. Under such circumstances, Federal income tax was withheld on income derived by the French Government from the requisitioned securities.

Under section 116(c) of the Internal Revenue Code, the income of a foreign government from stocks, bonds, or other domestic securities is exempt from Federal income tax. It follows that income which accrued to the French Government on or after July 6, 1947, from securities requisitioned as of that date is not subject to withholding under section 143 or 144 of the Code. Withholding agents in the United States are, therefore, authorized to release to the French Government, or to the Bank of France as agent of that Government, amounts of income tax withheld from interest and dividends which became due and payable on or after July 6, 1947, on such securities, provided the withholding agents are satisfied that the securities belonged to the French Government at the time the tax was withheld and that the interest and dividends forming the basis for the tax were turned over to the French Government by the former owners of the securities.

SECTION 29.143–2: Fixed or determinable annual or periodical income. 1948–3–12742
I. T. 3889
(Also Section 144, Section 29.144–1.)

INTERNAL REVENUE CODE.

Increment on Treasury bills issued at a discount constitutes interest which, when paid to a nonresident alien individual or a nonresident foreign corporation, is subject to withholding of income tax at the source under sections 143(b) and 144 of the Internal Revenue Code. The principles set forth in O. 1024 (C. B. 2, 189 (1920)) and I. T. 1398 (C. B. I–2, 149 (1922)), relating to the treatment of discount on bank acceptances, do not apply to such increment.

Advice is requested whether the increment on Treasury bills issued at a discount constitutes interest which, when paid to a nonresident alien individual or a nonresident foreign corporation, is subject to withholding of income tax at the source under sections 143(b) and 144 of the Internal Revenue Code.

It is contended that the provision in section 754(b) of Title 31, United States Code Annotated, to the effect that discount on Treasury bills is to be treated as interest, is solely for the purposes of the exemption granted by that section, that such exemption has been nullified by section 742a of the same title in the case of Treasury bills issued on or after March 28, 1942, and that, since no other statute requires that the original discount on Treasury bills should be treated as interest, the principles laid down in O. 1024 (C. B. 2, 189 (1920)) and I. T. 1398 (C. B. I–2, 149 (1922)), relating to gain realized from bank acceptances purchased at a discount, are applicable, and the increment on Treasury bills is not interest, nor is it annual or periodical income. It is further contended that this viewpoint is confirmed by section 42(c) of the Internal Revenue Code, relating to accrual of discount on short-term obligations issued on a discount basis.

As explained in section 29.117–1 of Regulations 111, the Second Liberty Bond Act (40 Stat., 288) provides that Treasury bills shall be issued on a discount basis, and this is at all times considered as the basis of their issue, although, by reason of competitive bidding, the issue price of a particular bill may exceed its face amount. The authorizing Act requires that these bills shall mature within one year, but their maturity is customarily 91 days after the date of issue.

The terms of section 754(b) of Title 31, United States Code Annotated, referred to above, are found in several Acts. Section 742a of the same title provides that interest upon obligations of the United States, with exceptions not hereto relevant, issued on or after March 28, 1942, shall not have any exemption, as such, under Federal tax Acts then or thereafter enacted, and that loss from the sale or other disposition of such obligations shall not have any special treatment under such Acts. It also states that its provisions shall, with respect to such obligations, be considered as amendatory of and supplementary to the respective Acts or parts of Acts authorizing the issuance of such obligations, as amended and supplemented. Although the Public Debt Act of 1942 (56 Stat., 189, C. B. 1942–1, 397) is cited as the basis of section 742a of the United States Code Annotated, its general provisions, fully applicable to Treasury bills, were first enacted as a part of the Public Debt Act of 1941 (55 Stat., 7, C. B. 1941–1, 546).

It should be noted that section 757c(d) of Title 31, United States Code Annotated, provides, as to savings bonds and savings certificates, that, for purposes of taxation, any increment in value represented by the difference between the price paid and the redemption value received (whether at or before maturity) shall be considered as interest. When sections 754(b) and 757c(d) are read together with section 742a, a general legislative scheme is revealed, the purpose of which is, as regards taxation, to treat as interest the increment on all types of Government obligations which are issued at a discount. Section 42(c) of the Internal Revenue Code does not indicate anything to the contrary, for that section, which was added by section 115(a) of the Revenue Act of 1941, was adopted solely for the purpose of facilitating the bookkeeping procedure of the holders of short-term Government obligations. (See Senate Report No. 673, Part 1, Seventy-seventh Congress, first session (C. B. 1941–2, 466, 490).)

In view of the foregoing, it is held that increment on Treasury bills issued at a discount constitutes interest which, when paid to a nonresident alien individual or a nonresident foreign corporation, is sub-

ject to withholding of income tax at the source under sections 143(b) and 144 of the Internal Revenue Code. The principles set forth in O. 1024, supra, and I. T. 1398, supra, relating to the treatment of discount on bank acceptances, do not apply to such increment.

SECTION 29.143–3: Exemption from withholding. 1948–6–12768
T. D. 5607

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

Amending section 29.143–3 of Regulations 111, relating to exemption from withholding.

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

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH 1. Section 29.143–3 of Regulations 111, as amended by Treasury Decision 5580, approved November 13, 1947 [C. B. 1947–2, 88] [26 CFR, 29.143–3], is further amended by striking out the fifth paragraph and inserting in lieu thereof the following:

The salary or other compensation for personal services of a nonresident alien individual who enters or leaves the United States at frequent intervals, shall not be subject to deduction and withholding of income tax at the source if—

(1) such nonresident alien is a resident of Canada or Mexico, or

(2) such nonresident alien is engaged in agricultural labor as defined in section 1426(h) of the Internal Revenue Code.

PAR. 2. Because the purpose of this Treasury decision is to relieve restriction 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.

PAR. 3. 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 section 62 of the Internal Revenue Code (53 Stat., 32; 26 U. S. C., 62).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved March 12, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 18, 1948, 9.03 a. m.)

SECTION 144.—PAYMENT OF CORPORATION INCOME TAX AT SOURCE.

SECTION 29.144–1: Withholding in the case of nonresident foreign corporations.

INTERNAL REVENUE CODE.

Increment on Treasury bills issued at a discount. (See I. T. 3889, page 78.)

SECTION 29.144–1: Withholding in the case of nonresident foreign corporations.

INTERNAL REVENUE CODE.

Release of amounts withheld from interest and dividends on securities requisitioned by the French Government. (See I. T. 3897, page 77.)

CHAPTER 2.—ADDITIONAL TAXES.

SUBCHAPTER E.—EXCESS PROFITS TAX.

PART I.

SECTION 718.—EQUITY INVESTED CAPITAL.

REGULATIONS 112, SECTION 35.718–2: Determination of daily equity invested capital—Accumulated earnings and profits. 1948–9–12795 I. T. 3908

INTERNAL REVENUE CODE.

The post-war credit allowed under section 780 of the Internal Revenue Code accrued at the same time as the excess profits tax upon which it was based, and in the case of a taxpayer which kept its books and filed its Federal income and excess profits tax returns on the accrual basis, the credit, for the purpose of section 718(a)(4) of the Code, is includible in earnings and profits as of the beginning of the taxable year following the taxable year for which the tax was imposed.

I. T. 3720 (C. B. 1945, 267) modified.

In view of the decision in *Altschul's Incorporated* v. *Commissioner* (9 T. C., 697, acquiescence, page 1, this Bulletin), the ruling published as I. T. 3720 (C. B. 1945, 267), in so far as it relates to the time of accrual of the post-war credit provided by section 780 of the Internal Revenue Code, has been reconsidered.

The question in *Altschul's Incorporated* v. *Commissioner*, supra, was whether the post-war credit allowable in respect of the excess profits tax for the taxable year of the petitioner ended January 31, 1943, accrued as of January 31, 1943, or as of the time the tax was paid. The court concluded that the credit accrued as of January 31, 1943. That conclusion is contrary to I. T. 3720, supra.

In view of the foregoing, it is held that the post-war credit allowed under section 780 of the Internal Revenue Code accrued at the same time as the excess profits tax upon which it was based, and in the case of a taxpayer which kept its books and filed its Federal income and excess profits tax returns on the accrual basis, the credit, for the purpose of section 718(a)(4) of the Code, is includible in earnings and profits as of the beginning of the taxable year following the taxable year for which the tax was imposed.

I. T. 3720, supra, is modified accordingly.

REGULATIONS 112, SECTION 35.718-2: Determination of daily equity invested capital—Accumulated earnings and profits. (Also Section 115, Section 29.115-3.)

1948-9-12796
Ct. D. 1697

EXCESS PROFITS TAX—INTERNAL REVENUE CODE, AS AMENDED—OPINION OF SUPREME COURT.

EQUITY INVESTED CAPITAL—ACCUMULATED EARNINGS AND PROFITS—INSTALLMENT SALES—VALIDITY OF REGULATIONS.

For the purpose of the excess profits tax for the taxable year 1943, a corporation which computed its taxable income from installment sales on the "installment" basis, as provided by section 44 of the Internal Revenue Code, but computed its accumulated earnings and profits from these same sales on the accrual basis, can include in its equity invested capital only that portion of its profits from installment payments which it had actually received and on which it had already paid income taxes in the year of receipt. Section 29.115-3 of Regulations 111, which is applicable to both the normal income tax and the excess profits tax and specifically provides that "a corporation computing income on the installment basis as provided in section 44 shall, with respect to the installment transactions, compute earnings and profits on such basis," is valid.

SUPREME COURT OF THE UNITED STATES.

Commissioner of Internal Revenue, petitioner, v. *South Texas Lumber Co.*

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

[March 29, 1948.]

OPINION.

Mr. Justice BLACK delivered the opinion of the Court.

This case raises a question as to respondent's liability for the taxable year 1943 under the Excess Profits Tax [Act] of 1940 as amended. (54 Stat., 975, 26 U. S. C., section 710, et seq.) The law was passed to tax abnormally high profits due to large governmental expenditures about to be made from appropriations for national defense.[1] The excess profits tax was a graduated surtax upon a portion of corporate income, and was imposed in addition to the regular income tax. It applied to all corporate profits and gains over and above what Congress deemed to be a fair and normal return for the corporate business taxed.

Under the controlling 1943 law the amount of income subject to this excess profits tax is computed by subtracting from the net income subject to regular income tax the amount of earnings Congress deemed to be a taxpayer's normal and fair return.[2] This deductible amount, called the excess profits credit, was to be computed in one of two ways, whichever resulted in the lesser tax. (Section 712.) The first, not used here, permits a deduction of an amount equal to the company's average net income for the taxable years 1936 to 1939 inclusive. (Section 713.) The second, used here, permits a deduction of an amount equal to 8 per centum of the taxpayer's invested capital for the taxable year.[3] (Section 714.) An includible element of the "invested capital" is the "accumulated earnings and profits as of the beginning of such taxable year." It thus appears that by this method Congress intended, with minor exceptions not here relevant, to impose the excess profits tax on all annual net income in excess of 8 per cent of a corporation's working capital, including its accumulated profits. The controversy here is over the taxpayer's claim that in computing its 1943 tax the statute allows it to include in this 8 per cent deduction its "accumulated profits" from certain installment sales, which profits the taxpayer, in accordance with an option conferred upon him, had elected not to report as a part of its taxable income in prior years.

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[1] H. R. No. 2894, Seventy-sixth Congress, third session, 1-2 [C. B. 1940-2, 496].

[2] Other adjustments not here material are provided, but the chief deduction or "adjustment" is the one noted above.

[3] The straight 8 per cent figure of 1940 was modified in several respects not here material in 1941 and subsequent years. (55 Stat., 699; 56 Stat., 911; 58 Stat., 55.)

Beginning in 1937 and extending over a 4-year period, respondent sold parcels of real estate, gave deeds, and took installment notes, which were secured by mortgages and vendors liens. It kept its books generally on a calendar year accrual basis of accounting, a basis under which all obligations of a company applicable to a year are listed as expenditures, whether paid that year or not, and all obligations to it incurred by others applicable to the year are set up as income on the same basis. Under 26 U. S. C., section 41, an income taxpayer may report income and expenditures either on an accrual basis, or on a cash basis—under which latter method annual net income is measured by the difference between actual cash received and paid out within the taxable year. In any event, the basis used must, in the language of section 41, "clearly reflect the income."

Respondent did not report the value of its land installment notes as income on the accrual basis as it could have done under section 41. Instead, from 1937 up to and including 1943, it has consistently reported its annual income from the installment sales on a third, or "installment" basis, expressly authorized for certain types of installment sales by 26 U. S. C., section 44. That section permits a taxpayer to return as taxable income for a given year only "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." Thus respondent's installment income has actually been reported for taxes all along substantially on a modified cash receipts basis, and the taxpayer's net income, which is subjected both to the normal income tax and to the excess profits tax, has not in any of these years reflected the unpaid balances on the installment notes, or any part of them. On the contrary, these balances were listed on respondent's tax returns during these years as "Unrealized profit installment sales."

On its 1943 excess profits tax return respondent nevertheless reported as "accumulated earnings and profits" the amount of "Unrealized profit installment sales" shown on its books at the end of 1942,[4] and included this amount in "invested capital." It thus sought to deduct 8 per cent of its theretofore designated "unrealized profit" in computing its excess profits tax. The Commissioner redetermined the tax for 1943 after eliminating this item from "invested capital." The Tax Court sustained the Commissioner's redetermination (7 T. C., 669), relying on its opinion in Kimbrell's Home Furnishings Inc. (7 T. C., 339).[5] The Circuit Court of Appeals, with one justice dissenting, reversed on the authority of its decision in *Commissioner* v. *Shenandoah Co.* (138 Fed. (2d), 792). The Government's petition for certiorari alleged that the result reached by the Circuit Court of Appeals was counter to the Commissioner's regulations and to long-standing tax practices recognized by statutes and judicial opinions, under which practices a taxpayer normally can not report taxable income on one accounting basis and adjustments of that income on another. The questions thereby raised are of importance in tax administration and we granted certiorari to consider them.

A Treasury regulation, set out in part below,[6] applicable to both the normal income tax and the excess profits tax,[7] specifically provides that "a corporation computing income on the installment basis as provided in section 44 shall, with respect to the installment transactions, compute earnings and profits on such basis."[8] Since respondent computed its taxable income from installment sales

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[4] In its 1943 return respondent also reported the amount of such unrealized profits shown on its books as of the end of the two preceding years for purposes of calculating the excess profits credit carryover authorized by section 710(c).

[5] The Kimbrell case was subsequently reversed but not on the contention here urged. (159 Fed. (2d), 608.)

[6] Section 29.115–3 of Regulations 111: "EARNINGS OR PROFITS.—In determining the amount of earnings or profits (whether of the taxable year, or accumulated prior to March 1, 1913) due consideration must be given to the facts, and while mere bookkeeping entries increasing or decreasing surplus will not be conclusive, the amount of the earnings or profits in any case will be dependent upon the method of accounting properly employed in computing net income. For instance, a corporation keeping its books and filing its income tax return under sections 41, 42, and 43 on the cash receipts and disbursements basis may not use the accrual basis in determining earnings and profits; a corporation computing income on the installment basis as provided in section 44 shall, with respect to the installment transactions, compute earnings and profits on such basis; * * *."

[7] The meaning of all terms used in the subchapter dealing with the income tax was expressly made applicable to terms used in the excess profits subchapter. (Section 728.) Treasury Regulations 112 provided: "* * * In general, the concept of 'accumulated earnings and profits' for the purpose of the excess profits tax is the same as for the purpose of the income tax." (Section 35.718–2. See also H. R. No. 2894, Seventy-sixth Congress, third session, 41 [C. B. 1940–2, 526].)

[8] This part of the regulations was added as an amendment to Regulations 103, section 19.115–3, now section 29.115–3 of Regulations 111, after adoption of the 1940 Excess Profits Tax Law. (T. D. 5059, July 8, 1941 [C. B. 1941–2, 125].)

on the installment or modified cash receipts basis, but computed its earnings and profits from these same sales on another basis, the accrual, it contends that the regulation is invalid because inconsistent with the governing Code provisions. Validity of the regulation is therefore the crucial question.

This Court has many times declared that Treasury regulations must be sustained unless unreasonable and plainly inconsistent with the revenue statutes and that they constitute contemporaneous constructions by those charged with administration of these statutes which should not be overruled except for weighty reasons. (See, e. g., *Fawcus Machine Co.* v. *United States*, 282 U. S., 375, 378 [Ct. D. 278, C. B. X–1, 424, 425 (1931)].)

This regulation is in harmony with the long-established congressional policy that a taxpayer generally can not compute income taxes by reporting annual income on a cash basis and deductions on an accrual basis. Such a practice has been uniformly held inadmissible because it results in a distorted picture which makes a tax return fail truly to reflect net income. This has been the construction given income, estate, and previous excess profits tax laws by administrative officials, the Board of Tax Appeals, and the courts.[9]

The regulation's reasonableness and consistency with the statutes which impose the excess profits tax on incomes is also supported by prior legislative and administrative history. The present "invested capital" deduction is patterned after a similar provision in section 326(a) of the Revenue Act of 1918 (40 Stat., 1057, 1088, 1092). That section imposed a "War profits and excess profits tax." Invested capital there included "paid in or earned surplus and undivided profits." Under that law the administration, the Board of Tax Appeals, and the courts have uniformly held that a taxpayer, having elected to adopt the installment basis of accounting, could not thereafter distort his true excess profits tax income by including uncollected installment obligations in his "invested capital" deduction base.[10] A taxpayer, having chosen to report his taxable income from installment sales on the installment cash receipts plan, thereby spreading its gross earnings and profits from such sales over a number of years and avoiding high tax rates, was not permitted to obtain a further reduction by shifting to an accrual plan and treating uncollected balances on these installment sales as though they had actually been received in the year of the sale.

The history of the congressional adoption of the optional installment basis also supports the power of the Commissioner to adopt the regulation here involved. Prior to 1926 the right of a taxpayer to report on the installment plan rested only on Treasury regulations.[11] In 1925, the Board of Tax Appeals held these regulations were without statutory support.[12] Congress promptly, in section 212(d) of the 1926 Revenue Act, adopted the present statutory authority for an elective installment basis for reporting income, the Senate committee report on the measure designating it as a "third basis, the installment basis."[13] This new statutory provision was strikingly similar to the Treasury regulations previously held unauthorized by the Board of Tax Appeals. That the Commissioner was particularly intended by Congress to have broad rule-making power under the regulation was manifested by the first words in the new installment basis section which only permitted taxpayers to take advantage of it "Under regulations prescribed by the Commissioner with the approval of the Secretary * * *." The clause is still contained in section 44 of the Code. This gives added reasons why interpretations of the Act and regulations under it should not be overruled by the courts unless clearly contrary to

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[9] G. C. M. 2951 (C. B. VII–1, 160 (1928); I. T. 3253 (C. B. 1939–1, 178); *Consolidated Asphalt Co.* (1 B. T. A., 79, 82); *Henry Reubel Executor* (1 B. T. A., 676, 678–680); *B. B. Todd, Inc.* (1 B. T. A., 762, 766); *Bank of Hartsville* (1 B. T. A., 920, 921); *Atlantic Coast Line R. Co.* (2 B. T. A., 892, 894–895); *United States* v. *Anderson* (269 U. S., 422, 440 [T. D. 3839, C. B. V–1, 179, 182 (1926)]); *Jacob Bros.* v. *Commissioner* (50 Fed. (2d), 394, 396); *Jenkins* v. *Bitgood* (22 Fed. Supp., 16, 17–18, affirmed, 101 Fed. (2d), 17).

[10] *Schmoller & Mueller Piano Co.* v. *United States* (67 C. Cls., 428); *John M. Brant Co.* v. *United States* (40 Fed. (2d), 126 [Ct. D. 222, C. B. IX–2, 192 (1930)]); *Standard Computing Scale Co.* v. *United States* (52 Fed. (2d), 1018); *Jacob Bros.* v. *Commissioner* (50 Fed. (2d), 394); *Tull & Gibbs* v. *United States* (48 Fed. (2d), 148); *Blum's Inc.* v. *Commissioner* (7 B. T. A., 737, 771); *New England Furniture & Carpet Co.* v. *Commissioner* (9 B. T. A., 334); *Green Furniture Co.* v. *Commissioner* (14 B. T. A., 508); *S. Davidson & Bros.* v. *Commissioner* (21 B. T. A., 638, 644); *Federal St. & Pleasant Valley Passenger R. Co.* v. *Commissioner* (24 B. T. A., 262, 266).

[11] Article 117 of Regulations 33 (Revised), promulgated January 2, 1918, and article 42 of Regulations 45, promulgated April 17, 1919.

[12] *B. B. Todd Inc.* (1 B. T. A., 762); *H. B. Graves Co.* (1 B. T. A., 859); *Hoover Bond Co.* (1 B. T. A., 929); *Six Hundred and Fifty West End Avenue Co.* (2 B. T. A., 958).

[13] S. Rept. No. 52, Sixty-ninth Congress, first session, 19, the Senate Finance Committee's report on Revenue Act of 1926 (44 Stat., 9, 23).

the will of Congress. (See *Burnet* v. *S. & L. Bldg. Corp.*, 288 U. S., 406, 415 [Ct. D. 651, C. B. XII–1, 195, 198 (1933)].)

The installment basis of reporting was enacted, as shown by its history, to relieve taxpayers who adopted it from having to pay an income tax in the year of sale based on the full amount of anticipated profits when in fact they had received in cash only a small portion of the sales price. Another reason was the difficult and time-consuming effort of appraising the uncertain market value of installment obligations.[14] There is no indication in any of the congressional history, however, that by passage of this law Congress contemplated that those taxpayers who elected to adopt this accounting method for their own advantage could by this means obtain a further tax advantage denied all other taxpayers, whereby they could, as to the same taxable transaction, report in part on a cash receipts basis and in part on an accrual basis.

We find nothing unreasonable in the regulations here. (See *Commissioner* v. *Wheeler*, 324 U. S., 542 [Ct. D. 1637, C. B. 1945, 349].)

It is argued that notwithstanding what has been said, Congress by enacting section 501 of the 1940 Second Revenue Act (54 Stat., 974, 1004, 26 U. S. C., section 115(1)) had provided a definition of "earnings and profits" which includes these unpaid installment obligations and that the regulation here conflicts with section 115(1),[15] which is applicable alike to both the income and the excess profits taxes. There are at least two reasons why we can not accept this argument. In the first place, neither section 115(1) nor any other purports to alter the Commissioner's power to promulgate reasonable regulations which require taxpayers who adopt the installment basis of accounting to use an accounting method that reflects true income. The hybrid method here urged would not accomplish that result.

In the second place, we can not agree with the respondent's interpretation of section 115(1). He argues that "earnings and profits" derived from a sale of property are defined in section 115(1) considered in the light of sections 111, 112, and 113; that these sections together define such earnings and profits as all gain "realized" in the year of sale and "recognized" under the law applicable to the year of sale; that all the anticipated profits from these installment sales were "realized" when the sales were made because the installment obligations of the purchasers were received by respondent in the year of sale and they must be assumed to have been worth their face value; that they were "recognized" as taxable by section 111(c), the law applicable to the year of sale; and that consequently, the Commissioner was compelled to accept these lawfully "realized" and "recognized" accumulated profits as "invested capital" for excess profits tax purposes, even though not previously reported as taxable income for either income tax or excess profits tax purposes. Finally respondent contends that section 44 merely conferred upon it a privilege to defer payment of income tax on its tax "recognized" profits realized from installment sales until the unpaid installment obligations were collected.

The congressional reports on section 115(1) do not provide support for the idea that gains not included in taxable income under the taxpayer's method of accounting may nevertheless be considered "realized" and "recognized" for computing tax adjustments or deductions so long as they might have entered into such computations under a different method of accounting.[16] Furthermore, neither sections 111, 112, nor 113, require a "recognition" of the full face value of installment paper. It is true that section 111(b) does provide that gain or

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[14] S. Rept. No. 52, Sixty-ninth Congress, first session, 19 [C. B. 1939–1 (Part 2), 346]; *Willcuts* v. *Gradwohl* (58 Fed. (2d), 587, 589–590 [Ct. D. 524, C. B. XI–2, 155, 158 (1932)]).

[15] Section 115(1) provides: "The gain or loss realized from the sale or other disposition of property by a corporation—* * *

"(2) for the purpose of the computation of earnings and profits of the corporation for any period beginning after February 28, 1913, shall be determined by using as the adjusted basis [the adjusted basis] (under the law applicable to the year in which the sale or other disposition was made) for determining gain.

"Gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing net income under the law applicable to the year in which such sale or disposition was made."

[16] The conference committee report [C. B. 1940–2, 548] on the Second Revenue Act of 1940 (54 Stat., 974), said with reference to section 115(1): "The provisions in the House and Senate bills, that gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent *recognized* in computing net income under the law applicable to the year in which such sale or disposition was made, are retained. As used in this subsection the term 'recognized' relates to a realized gain or loss which is recognized pursuant to the provisions of law, for example, see section 112 of the Internal Revenue Code. It does not relate to losses disallowed or not taken into account." (Conference Report No. 3002, Seventy-sixth Congress, third session, 60 [C. B. 1940–2, 563].)

loss "realized" from the sale of property shall be measured by the "sum of any money received plus the fair market value of the property (other than money) received" and section 111(c) provides that the extent of gain or loss shall be "recognized" as determined "under the provisions of section 112." But section 111(d) provides that nothing in section 111 "shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment representing gain or profit in the year in which such payment is received." This means that where a taxpayer has validly reported its income from installment sales on the installment basis provided by section 44, that section, not sections 111, 112, and 113 prescribes the extent to which receipts from such sales are "recognized" as taxable and the year in which such receipts are "recognized" in computing taxable income. Section 44 provides for the return as income "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." Unlike section 111, section 44 does not recognize as subject to income tax liability the "market value" of deferred installment obligations. They may never be recognized by a taxpayer on the installment basis for tax purposes under section 44 or any other section, for they may never be paid, or may be paid only in part. The anticipated profits from these deferred obligations are recognized and taxable under section 44 only if the obligations are paid and when they are paid, unless they are sold or transferred before payment. Thus whatever meaning is given to the words "realized" and "recognized" the regulation here considered is not in conflict with sections 115(1), 111, 112, and 113.

The regulation is valid. The respondent can include in its equity invested capital only that portion of its profits from installment payments which it has actually received and on which it has already paid income taxes in the years of receipt.

Reversed.

Mr. Justice DOUGLAS and Mr. Justice BURTON dissent.

EXCESS PROFITS TAX COUNCIL.

1948–13–12828
E. P. C. 24

Constructive events and conditions under the push-back rule.

1. In E. P. C. 21 [C. B. 1947–2, 136] the Council modified those provisions of the Bulletin on Section 722 dealing with the push-back rule which were commonly referred to as the "capacity limitation." Somewhat similar questions have arisen in cases, not involving any limitation on capacity, where taxpayers have requested relief under section 722(b)(4) and the push-back rule is involved.

2. In connection with the application of the push-back rule, the Bulletin on Section 722 (e. g., page 88, G. P. O. printing) states that changes, innovations, additions, new processes, new products, new facilities, or any other factor which was not present actually—or constructively under the commitment rule—by December 31, 1939, can not be brought into the picture in determining what constitutes the changed business for which normal earnings are to be established.

3. It is the opinion of the Council that such statements are not proper interpretations of section 722. Where the push-back rule is invoked and it results in a constructive increase in the level of earnings as of December 31, 1939, it necessarily involves the assumption of the existence or occurrence of certain events or conditions. The Council holds that any such event or condition which is an essential part of, or integral factor in, the developments which clearly would

have been expected to result from the commencement or change in the character of a business, by the end of the base period, in the ordinary course of the business, under base period conditions, had the commencement or change been made two years earlier, may be recognized in establishing the constructive earnings level at the end of the base period. The fact that such event or condition, had it occurred prior to January 1, 1940, might have served as a qualification for relief, is not material. The taxpayer must clearly demonstrate that such change or other circumstance would have resulted in the usual course of business under base period conditions had the qualifying event occurred two years earlier. There are no grounds for looking beyond December 31, 1939, in a noncommitment situation, and the question of whether the constructive events or conditions did or did not actually occur or exist after December 31, 1939, is irrelevant.

4. In the opinion of the Council the push-back rule can not be used to establish as a qualifying factor a change in the character of the business not made or committed for until after December 31, 1939. Thus, if the basis upon which relief is claimed is a change in the character of the business made in January, 1940, which was not committed for prior to January 1, 1940, the taxpayer can not qualify for the benefits of section 722 and the push-back rule may not be used to bring a post-1939 event or condition into the base period to serve as a qualifying factor. (See E. P. C. 9 [C. B. 1947–1, 76].)

HENRY J. MERRY,
Chairman, Excess Profits Tax Council.

JUNE 9, 1948.

1948–13–12829
E. P. C. 25

Under the facts given, the Council applies the principles set forth in E. P. C. 24 [page 86, this Bulletin], and it is *held* that the constructive level of earnings as of December 31, 1939, may contemplate earnings from constructive sales of a by-product not actually sold prior to January 1, 1940.

1. The A Corporation was organized in 1925 and filed income tax returns on the calendar year basis. It operated a manufacturing plant in New England. In 1939, taxpayer constructed a plant in a Southern State. This new plant began operations on November 1, 1939, producing goods of the same general type as those produced by the Northern mill. An application for relief under the provisions of section 722 has been filed alleging that average base period net income is an inadequate standard of normal earnings because of a change in the capacity for production occurring in 1939.

2. The technique of recovering by-product "X" was known to the A Corporation's management and had been standard practice at its New England plant and throughout the industry. However, no attempt was made to recover and commercialize this by-product at the new plant until after December 31, 1939, because of the fact that taxpayer was primarily engaged in training its labor force there. The taxpayer has established that, if it had commenced operations at its Southern plant two years before it actually did so (i. e., on November 1, 1937), it would have achieved a level of earnings as of December 31, 1939, attributable to the recovery and sale of by-product "X," equal to $10,000 a year.

3. In accordance with the principles set forth in E. P. C. 24 [page 86, this Bulletin], it is the opinion of the Council that the taxpayer is entitled under the push-back rule to include in its constructive level of earnings as of December 31, 1939, net income of $10,000 attributable to constructive sales of by-product "X." Such net income is a clearly foreseeable result flowing directly from the opening of the new plant. It is an essential part of the developments which would be expected to result from the change, by the end of the base period, in the ordinary course of business, under base period conditions, had the change been made two years earlier.

HENRY J. MERRY,
Chairman, Excess Profits Tax Council.

JUNE 9, 1948.

1948–13–12830
E. P. C. 26

Under the facts given, the Council applies the principles stated in E. P. C. 24 [page 86, this Bulletin], and it is *held* that in determining the constructive level of earnings as of December 31, 1939, the push-back rule may not be extended to include earnings attributable to by-product "Y."

1. The B Corporation, which was organized in 1930 and filed income tax returns on the calendar year basis, has established that it changed the character of its business in 1937 by acquiring a license to manufacture product "W" by a patented process. It constructed a new plant and began operations under this license in August, 1939.

2. In June, 1940, the B Corporation's research department, in attempting to devise means to increase the purity of the product "W" which was being produced, discovered that, by making certain modifications in the process, by-product "Y" could be recovered in commercial quantities from the operation of the new plant. Prior to 1940 neither the B Corporation nor any other licensee for product "W" knew that the recovery of by-product "Y" was commercially feasible.

3. It has been urged that, in determining the constructive level of earnings for the B Corporation under the push-back rule, provision should be made for constructive earnings attributable to sales of by-product "Y." In support of this view it has been established that "but for" the change in the character of the business in 1937 this discovery would not have been made and, further, that substantial earnings did result from the discovery within two years after December 31, 1939.

4. It is the view of the Council that, under the principles set forth in E. P. C. 24 [page 86, this Bulletin], the push-back rule can not be extended to embrace earnings from the sale of by-product "Y." Upon the facts presented, it appears that this discovery was neither an essential part of, nor an integral factor in, the developments which clearly might be expected to result from the change in character made in 1937. It can not be classed as an expected consequence of procuring the license to produce product "W." It depended upon an entirely separate event which would not, under base period conditions, be an anticipated result flowing from the qualifying change in the ordinary course of business. The fact that substantial earnings did result from the sale

of by-product "Y" within two years after December 31, 1939, is irrelevant.

HENRY J. MERRY,
Chairman, Excess Profits Tax Council.

JUNE 9, 1948.

1948–13–12831
E. P. C. 27

In applying the push-back rule under section 722(b)(4) to a taxpayer that commenced business during the base period, the constructive level of earnings as of December 31, 1939, may contemplate constructive sales in territories not actually served prior to January 1, 1940. (E. P. C. 24 [page 86, this Bulletin] applied.)

1. The C Corporation was organized January 1, 1937, for the purpose of manufacturing and selling a compound for household use in the laundering of clothes. The product was sold from door-to-door and was received favorably. Initial selling operations were confined to a single State, but during the remainder of the base period additional sales forces were organized on a State-by-State basis. As of December 31, 1939, the end of the base period, the C Corporation was doing business in 12 States, having expanded its sales territory by one additional State every few months.

2. The taxpayer presented evidence which established that if the C Corporation had commenced business two years before it actually did so, it would have been doing business in 18 States by the end of the base period.

3. In applying the push-back rule, operations in a sales territory comprising 18 States should be considered in determining the constructive level of earnings at the end of the base period, as one of the steps in the ascertainment of normal earnings. (See E. P. C. 24 [page 86, this Bulletin].)

HENRY J. MERRY,
Chairman, Excess Profits Tax Council.

JUNE 9, 1948.

1948–13–12832
E. P. C. 28

Under the facts given, the Council applies the principles stated in E. P. C. 24 [page 86, this Bulletin] and the constructive level of earnings as of December 31, 1939, determined under the push-back rule, contemplates cost savings attributable to rebuilt machines not actually in production line as of the end of the base period.

1. The D Corporation was organized in 1912 and filed its income tax returns on the calendar year basis. As of the beginning of the base period, technological improvements in its industry had placed the taxpayer at a competitive disadvantage which became increasingly serious in 1937 and 1938. Late in 1938 the board of directors decided that modernization was imperative and that new management was necessary in order to effectuate the proposed improvement program.

2. On January 1, 1939, the president and treasurer of the corporation were replaced; a new general manager and a new factory superintendent were appointed. A comprehensive survey of the plant was

made by the new management group and a plan of renovation and replacement drawn up by them was approved by the board of directors on March 1, 1939. This plan, among other things, recommended that 100 of the taxpayer's semiobsolete machines be torn down, rebuilt, and improved in its own machine shop. This change was to be made at the rate of about 4 machines a month, so as to minimize interference with production, and it had as its primary objectives the improvement of quality and the reduction of labor costs. Actual capacity for production would not have been increased.

3. As of December 31, 1939, taxpayer had rebuilt and reinstalled 32 machines and was in process of rebuilding 5 others. It is admitted that no commitment is involved and taxpayer has established that, had the change in management occurred two years earlier (i. e., on January 1, 1937), the entire 100 machines would have been rebuilt and reinstalled by December 31, 1939.

4. It is the view of the Council that, under the push-back rule, operation of the plant with 100 rebuilt machines is to be considered in determining the constructive level of earnings as of December 31, 1939. (See E. P. C. 24 [page 86, this Bulletin].)

HENRY J. MERRY,
Chairman, Excess Profits Tax Council.

JUNE 9, 1948.

1948–13–12833
E. P. C. 29

The E Corporation was organized and commenced business in January, 1939, and, therefore, is qualified for consideration under section 722(b)(4). For the taxable year ended December 31, 1939, it sustained an operating loss giving rise to a net operating loss deduction applicable to 1940, its first excess profits tax taxable year. *Held*, that constructive average base period net income applicable to 1940 must be determined in a manner that will compensate for the effect of the net operating loss deduction on net income for 1940. An acceptable method is illustrated herein.

1. The E Corporation was organized and commenced business in January, 1939, and filed returns on the basis of the calendar year. For the year 1939 the corporation sustained a net operating loss which gave rise to a $19,000 net operating loss deduction for 1940. Its net income for 1940, computed without regard to the net operating loss deduction, was $100,000.

2. The taxpayer filed application for relief under section 722 for 1940 and established that its constructive average base period net income applicable to 1940 would be $40,000 if the net operating loss deduction for 1940 properly could be ignored.

3. If the amount of relief were computed without regard to the net operating loss deduction, duplication in tax benefits would arise. The operating loss would, in effect, be restored twice in the computation of the excess profits tax for the year 1940; first, by reducing the excess profits net income for 1940 and, second, by substituting net income for this loss in computing constructive base period net income to form part of the excess profits credit. Such double counting would be contrary to the terms of section 722(a), which prescribes that the constructive average base period net income shall be a fair and just amount for the purpose of comparing normal earnings with earnings during an excess profits tax period.

4. In the circumstances of this case, the constructive average base period net income for 1940 is obtained by reducing the amount which would be used in the absence of a net operating loss deduction by a sum equal to 100 ninety-fifths of the excess of the net operating loss deduction for 1940 over additional 1940 income tax that would have been payable had no such deduction been allowable. In short, the object of the adjustment is to subject to excess profits tax an amount of adjusted excess profits net income equal to the amount that would have been taxed had there been no net operating loss deduction.[1]

5. An acceptable method of determining the correct constructive average base period net income applicable to 1940 for the E Corporation may be illustrated as follows:

Net income for 1940 computed without regard to net operating loss deduction			$100,000
Net operating loss deduction			19,000
Net income			81,000
Income and defense tax (24 per cent)			19,440
Excess profits net income			61,560
Constructive average base period net income (unadjusted)		$40,000	
Net operating loss deduction	$19,000		
Income and defense tax (24 per cent)	4,560		
Excess	14,440		
100/95×$14,440		15,200	
Constructive average base period net income (adjusted)		24,800	
95 per cent of adjusted constructive average base period net income		$23,560	
Specific exemption		5,000	
			28,560
Adjusted excess profits net income			33,000

Proof:

Net income for 1940 computed without regard to net operating loss deduction			$100,000
Income and defense tax (24 per cent)			24,000
Excess profits net income			76,000
Constructive average base period net income		$40,000	
95 per cent of constructive average base period net income		$38,000	
Specific exemption		5,000	
			43,000
Adjusted excess profits net income			33,000

HENRY J. MERRY,
Chairman, Excess Profits Tax Council.

JUNE 9, 1948.

[1] This example involves only the carry-over to 1940 of a net operating loss for 1939. A similar adjustment is required in determining constructive average base period net income applicable to 1941 where a net operating loss deduction for 1941 originates in a base period taxable year.

1948–13–12834
E. P. C. 30

Illustration of factors to be considered in determining constructive average base period net income.

1. The F Corporation filed an application for relief under the provisions of section 722 in which it alleged that its average base period net income was an inadequate standard of normal earnings because operations for 1937 were interrupted by a fire.

2. Since its organization in 1925 the taxpayer has been engaged in the operation of retail stores. At the beginning of the base period it operated four separate stores located in different sections of a large city in such a manner as to be noncompetitive. In 1937 Store No. 1 was seriously damaged by a fire and it has been established that the earnings of that store for 1937 were thereby depressed.

3. As of December 31, 1937, taxpayer sold Store No. 2 and as of October 31, 1938, it sold Store No. 3. The proceeds of both sales were distributed to the shareholders and these stores were thereafter operated by entirely different interests. It is stated by the taxpayer that it at no time intended to replace either of the discontinued units.

4. The arithmetic average of taxpayer's actual base period net income was $45,000, which was increased under the provisions of the 75 per cent rule of section 713(e)(1) to $48,750. The actual base period net income, by stores, was as follows:

	Store No. 1	Store No. 2	Store No. 3	Store No. 4	Total
1936	$17,000	$13,000	$15,000	$17,000	$62,000
1937	3,000	15,000	17,000	19,000	54,000
1938	6,000		8,000	10,000	24,000
1939	18,000			22,000	40,000
Total					180,000
Arithmetic average					45,000
Average under section 713(e)(1)					48,750

5. It is the contention of the F Corporation that reconstructed 1937 net income for Store No. 1 should be $23,000 and that it is entitled to use as its constructive average base period net income the resulting general average net income of $50,000 in lieu of average base period net income of $48,750. The question has arisen as to the effect, if any, of the discontinuance of Stores Nos. 2 and 3.

6. Based upon the facts stated, it is the opinion of the Council that constructive average base period net income for the F Corporation can not be reconstructed simply by correcting for the effects of the fire in 1937. All the circumstances indicate that the discontinuance of Stores Nos. 2 and 3 has resulted in a relatively permanent change in the level of earnings for this taxpayer at the end of the base period. It is the view of the Council that constructive average base period net income for the F Corporation must represent normal earnings for the taxpayer as it existed at December 31, 1939, based on the operation of Stores Nos. 1 and 4 only.

HENRY J. MERRY,
Chairman, Excess Profits Tax Council.

JUNE 9, 1948.

1948–13–12835
E. P. C. 31

In the case of a taxpayer entitled to the push-back rule under section 722(b)(4), the constructive level of earnings attained at the end of 1939 should be backcast over the entire base period.

1. The G Corporation filed applications for relief under section 722 which alleged that its average base period net income is an inadequate standard of normal earnings because of certain changes in management during the base period.

2. The taxpayer was incorporated in 1920 by P and filed income tax returns on the calendar year basis. P served as its president and general manager from the date of its organization until his death on February 1, 1937. Under P's management the G Corporation attained a prominent position in the industry, earned substantial profits, and achieved a wide reputation for fair dealing and quality performance.

3. Following the death of P, the position of general manager was occupied by Q, who had been plant superintendent. Q proved to be incapable. He was unable to maintain the standard of performance set by P and it has been established that he instituted certain unsuccessful policies which resulted in serious loss of sales and profits. By 1939 working capital became seriously depleted as the result of Q's failures and receivership was avoided only because one of the stockholders advanced substantial funds in the form of a long-term loan. This stockholder demanded Q's removal and he was discharged in March, 1939. On April 1, 1939, R was appointed general manager and under his guidance the taxpayer's business began to improve.

4. For the entire year 1939 the G Corporation had actual net income of $30,000, reflecting operations under the leadership of R for the last nine months only. It is demonstrated that the taxpayer's actual level of earnings as of December 31, 1939, may reasonably be considered as $40,000 per annum. It is further established that by employing the push-back rule (and assuming that R had been engaged as general manager on April 1, 1937, instead of on April 1, 1939) the constructive level of earnings as of December 31, 1939, would be $50,000 per annum. The $50,000 constructive level of earnings as of December 31, 1939, has been converted to $47,000 constructive net income for the year 1939 by properly compensating for seasonal and other factors.

5. Reconstruction has been continued by determining constructive earnings for 1938 and for 11 months of 1937 under the assumption that R was general manager during those periods. The actual net income earned under the management of P has been used for the year 1936 and for the month of January, 1937, to complete the 4-year base period.

6. In the opinion of the Council, this method of reconstruction is not correct. The objective of the reconstruction is to establish, for the entire base period, constructive earnings for the taxpayer based on the level attained at the end of 1939 under the management of R. It is for this reason that a constructive level of earnings as of December 31, 1939, has been established under the push-back rule as the first step in reconstruction. The second step requires backcasting over the entire base period on the constructive level thus ascertained. This necessitates that reconstructed earnings for the first 13 months of the base period shall be used, and not the actual net earnings for that period.

While actual earnings for the first 13 months of the base period will furnish the most reliable guide in determining the economic fluctuations that would have been encountered and may also, on a comparative basis, assist in evaluating the constructive earnings attributed to the management of R, they are not, as such, a proper element to be included in normal earnings for the G Corporation.

HENRY J. MERRY,
Chairman, Excess Profits Tax Council.

JUNE 9, 1948.

1948–13–12836
E. P. C. 32

Under the facts given, the taxpayer is entitled to use the 2-year push-back rule and the Council applies the principles expressed in E. P. C. 5 [C. B. 1946–2, 122] in determining the constructive level of earnings as of December 31, 1939.

1. The H Corporation, a manufacturer of office furniture, filed application for relief under section 722, alleging its average base period net income to be an inadequate standard of normal earnings because of a change in the character of its business evidenced by the opening, on October 1, 1938, of a new unit for the manufacture of a different line of products.

2. The good will and trade name of the H Corporation were firmly established in the industry before the beginning of the base period, and its outlets for distribution of its products also were well established. Operation of the new unit involved no different types of machinery or manufacturing processes from those employed in the units already in service, and taxpayer had sufficient trained personnel to operate the new unit from the outset with a very short period of initial development difficulties. Sales of the product of the new unit were made in the same manner and through the same outlets as the original products and the taxpayer has demonstrated that the introduction of the new line had no depressing effect upon sales of the original products.

3. By the end of 1938 the product of the new unit was selling relatively as well as the original products of the H Corporation, but sales of this new line continued to increase throughout 1939 more rapidly than the sales of its other products. It is clearly shown that, had the supply of this particular line of products been available as early as October, 1936, taxpayer would, by the end of 1939, have increased the sales of this line by x more articles per annum than it was actually selling at that date, and that its level of earnings would have been y dollars higher.

4. The question involved in applying the push-back rule to this case may, therefore, be summarized as follows: Where the taxpayer had by December 31, 1939, overcome its initial development difficulties in the operation of the new unit from the standpoint of production, and where there were no significant developmental difficulties from the standpoint of sales, other than the promotion of consumer acceptance, is the taxpayer precluded from showing that the actual level of sales and the actual level of earnings as of December 31, 1939, are lower than they would have been had the new unit been placed in operation two years earlier than it actually was?

5. In the opinion of the Council, the applicability of the push-back rule can not be thus limited. Whenever the taxpayer establishes that a higher level of earnings would have been reached by the end of the base period if the qualifying event had occurred two years earlier than it actually occurred, the push-back rule should be applied. The length of the actual initial development period is immaterial in as much as the Statute provides that in all cases under the push-back rule the commencement or change will be assumed to have occurred two years earlier.

6. The Council in this situation applies the principle expressed in E. P. C. 5 [C. B. 1946–2, 122] and approves a reconstruction which gives recognition to the constructive level of earnings attained at December 31, 1939, with the aid of the push-back and, in computing this level, approves the inclusion in constructive sales of the x additional articles per annum which would have been sold if the new unit had been opened October 1, 1936.

HENRY J. MERRY,
Chairman, Excess Profits Tax Council.

JUNE 9, 1948.

CHAPTER 9.—EMPLOYMENT TAXES.

SUBCHAPTER D.—COLLECTION OF INCOME TAX AT SOURCE ON WAGES.

SECTION 1622.—INCOME TAX COLLECTED AT SOURCE.

REGULATIONS 116, SECTION 405.201: Requirement of withholding. 1948–10–12805 Mim. 6259

Withholding tax tables for payroll periods of 10 days and payroll periods of 28 days.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., April 21, 1948.

Collectors of Internal Revenue and Others Concerned:

1. The withholding tables published herewith, covering payroll periods of 10 days and 28 days, have been constructed on the basis of the Revenue Act of 1948. The percentage method of withholding and the regular tables covering weekly, biweekly, semimonthly, monthly, and daily or miscellaneous payroll periods are found in Circular WT–Revised 1948.

2. Collectors may reproduce the 10-day and 28-day payroll period withholding tables for distribution to employers requesting them. As indicated on page 21 of Circular WT–Revised 1948, this will be the only plan of distribution of these tables.

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

WM. T. SHERWOOD,
Acting Commissioner.

If the payroll period with respect to an employee is a 10-day period—

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$20.00	15% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$20.00	$22.50	$3.00	.50	0	0	0	0	0	0	0	0	0
$22.50	$25.00	3.50	1.00	0	0	0	0	0	0	0	0	0
$25.00	$27.50	4.00	1.00	0	0	0	0	0	0	0	0	0
$27.50	$30.00	4.50	1.50	0	0	0	0	0	0	0	0	0
$30.00	$32.50	4.50	2.00	0	0	0	0	0	0	0	0	0
$32.50	$35.00	5.00	2.50	0	0	0	0	0	0	0	0	0
$35.00	$37.50	5.50	2.50	0	0	0	0	0	0	0	0	0
$37.50	$40.00	6.00	3.00	.50	0	0	0	0	0	0	0	0
$40.00	$42.50	6.00	3.50	.50	0	0	0	0	0	0	0	0
$42.50	$45.00	6.50	4.00	1.00	0	0	0	0	0	0	0	0
$45.00	$47.50	7.00	4.00	1.50	0	0	0	0	0	0	0	0
$47.50	$50.00	7.50	4.50	2.00	0	0	0	0	0	0	0	0
$50.00	$52.50	7.50	5.00	2.00	0	0	0	0	0	0	0	0
$52.50	$55.00	8.00	5.50	2.50	0	0	0	0	0	0	0	0
$55.00	$57.50	8.50	5.50	3.00	0	0	0	0	0	0	0	0
$57.50	$60.00	9.00	6.00	3.50	.50	0	0	0	0	0	0	0
$60.00	$62.50	9.00	6.50	3.50	1.00	0	0	0	0	0	0	0
$62.50	$65.00	9.50	7.00	4.00	1.50	0	0	0	0	0	0	0
$65.00	$67.50	10.00	7.00	4.50	1.50	0	0	0	0	0	0	0
$67.50	$70.00	10.50	7.50	5.00	2.00	0	0	0	0	0	0	0
$70.00	$72.50	10.50	8.00	5.00	2.50	0	0	0	0	0	0	0
$72.50	$75.00	11.00	8.50	5.50	3.00	0	0	0	0	0	0	0
$75.00	$77.50	11.50	8.50	6.00	3.00	.50	0	0	0	0	0	0
$77.50	$80.00	12.00	9.00	6.50	3.50	1.00	0	0	0	0	0	0
$80.00	$82.50	12.00	9.50	6.50	4.00	1.00	0	0	0	0	0	0
$82.50	$85.00	12.50	10.00	7.00	4.50	1.50	0	0	0	0	0	0
$85.00	$87.50	13.00	10.00	7.50	4.50	2.00	0	0	0	0	0	0
$87.50	$90.00	13.50	10.50	8.00	5.00	2.50	0	0	0	0	0	0
$90.00	$92.50	13.50	11.00	8.00	5.50	2.50	0	0	0	0	0	0
$92.50	$95.00	14.00	11.50	8.50	6.00	3.00	.50	0	0	0	0	0
$95.00	$97.50	14.50	11.50	9.00	6.00	3.50	.50	0	0	0	0	0
$97.50	$100.00	15.00	12.00	9.50	6.50	4.00	1.00	0	0	0	0	0
$100.00	$105.00	15.50	12.50	10.00	7.00	4.50	1.50	0	0	0	0	0
$105.00	$110.00	16.00	13.50	10.50	8.00	5.00	2.50	0	0	0	0	0
$110.00	$115.00	17.00	14.00	11.50	8.50	6.00	3.00	.50	0	0	0	0
$115.00	$120.00	17.50	15.00	12.00	9.50	6.50	4.00	1.00	0	0	0	0
$120.00	$125.00	18.50	15.50	13.00	10.00	7.50	4.50	2.00	0	0	0	0
$125.00	$130.00	19.00	16.50	13.50	11.00	8.00	5.50	2.50	0	0	0	0
$130.00	$135.00	20.00	17.00	14.50	11.50	9.00	6.00	3.50	.50	0	0	0
$135.00	$140.00	20.50	18.00	15.00	12.50	9.50	7.00	4.00	1.50	0	0	0
$140.00	$145.00	21.50	18.50	16.00	13.00	10.50	7.50	5.00	2.00	0	0	0
$145.00	$150.00	22.00	19.50	16.50	14.00	11.00	8.50	5.50	3.00	0	0	0
$150.00	$155.00	23.00	20.00	17.50	14.50	12.00	9.00	6.50	3.50	1.00	0	0
$155.00	$160.00	23.50	21.00	18.00	15.50	12.50	10.00	7.00	4.50	1.50	0	0
$160.00	$165.00	24.50	21.50	19.00	16.00	13.50	10.50	8.00	5.00	2.50	0	0
$165.00	$170.00	25.00	22.50	19.50	17.00	14.00	11.50	8.50	6.00	3.00	.50	0
$170.00	$175.00	26.00	23.00	20.50	17.50	15.00	12.00	9.50	6.50	4.00	1.00	0
$175.00	$180.00	26.50	24.00	21.00	18.50	15.50	13.00	10.00	7.50	4.50	2.00	0
$180.00	$185.00	27.50	24.50	22.00	19.00	16.50	13.50	11.00	8.00	5.50	2.50	0
$185.00	$190.00	28.00	25.50	22.50	20.00	17.00	14.50	11.50	9.00	6.00	3.50	.50
$190.00	$195.00	29.00	26.00	23.50	20.50	18.00	15.00	12.50	9.50	7.00	4.00	1.50
$195.00	$200.00	29.50	27.00	24.00	21.50	18.50	16.00	13.00	10.50	7.50	5.00	2.00
$200.00	$210.00	30.50	28.00	25.00	22.50	19.50	17.00	14.50	11.50	9.00	6.00	3.50
$210.00	$220.00	32.00	29.50	26.50	24.00	21.00	18.50	15.50	13.00	10.50	7.50	5.00
$220.00	$230.00	33.50	31.00	28.00	25.50	22.50	20.00	17.00	14.50	12.00	9.00	6.50
$230.00	$240.00	35.00	32.50	29.50	27.00	24.00	21.50	18.50	16.00	13.50	10.50	8.00
$240.00	$250.00	36.50	34.00	31.00	28.50	25.50	23.00	20.00	17.50	15.00	12.00	9.50
$250.00	$260.00	38.00	35.50	32.50	30.00	27.00	24.50	21.50	19.00	16.50	13.50	11.00
$260.00	$270.00	39.50	37.00	34.00	31.50	28.50	26.00	23.00	20.50	18.00	15.00	12.50
$270.00	$280.00	41.00	38.50	35.50	33.00	30.00	27.50	24.50	22.00	19.50	16.50	14.00
$280.00	$290.00	42.50	40.00	37.00	34.50	31.50	29.00	26.00	23.50	20.50	18.00	15.50
$290.00	$300.00	44.00	41.50	38.50	36.00	33.00	30.50	27.50	25.00	22.00	19.50	17.00
		15 per cent of the excess over $300 plus—										
$300.00 and over		45.00	42.00	39.50	36.50	34.00	31.00	28.50	25.50	23.00	20.50	17.50

If the payroll period with respect to an employee is a 28-day period

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$56.00	15% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$56.00	$63.00	$8.40	1.40	0	0	0	0	0	0	0	0	0
$63.00	$70.00	9.80	2.80	0	0	0	0	0	0	0	0	0
$70.00	$77.00	11.20	2.80	0	0	0	0	0	0	0	0	0
$77.00	$84.00	12.60	4.20	0	0	0	0	0	0	0	0	0
$84.00	$91.00	12.60	5.60	0	0	0	0	0	0	0	0	0
$91.00	$98.00	14.00	7.00	0	0	0	0	0	0	0	0	0
$98.00	$105.00	15.40	7.00	0	0	0	0	0	0	0	0	0
$105.00	$112.00	16.80	8.40	1.40	0	0	0	0	0	0	0	0
$112.00	$119.00	16.80	9.80	1.40	0	0	0	0	0	0	0	0
$119.00	$126.00	18.20	11.20	2.80	0	0	0	0	0	0	0	0
$126.00	$133.00	19.60	11.20	4.20	0	0	0	0	0	0	0	0
$133.00	$140.00	21.00	12.60	5.60	0	0	0	0	0	0	0	0
$140.00	$147.00	21.00	14.00	5.60	0	0	0	0	0	0	0	0
$147.00	$154.00	22.40	15.40	7.00	0	0	0	0	0	0	0	0
$154.00	$161.00	23.80	15.40	8.40	0	0	0	0	0	0	0	0
$161.00	$168.00	25.20	16.80	9.80	1.40	0	0	0	0	0	0	0
$168.00	$175.00	25.20	18.20	9.80	2.80	0	0	0	0	0	0	0
$175.00	$182.00	26.60	19.60	11.20	4.20	0	0	0	0	0	0	0
$182.00	$189.00	28.00	19.60	12.60	4.20	0	0	0	0	0	0	0
$189.00	$196.00	29.40	21.00	14.00	5.60	0	0	0	0	0	0	0
$196.00	$203.00	29.40	22.40	14.00	7.00	0	0	0	0	0	0	0
$203.00	$210.00	30.80	23.80	15.40	8.40	0	0	0	0	0	0	0
$210.00	$217.00	32.20	23.80	16.80	8.40	1.40	0	0	0	0	0	0
$217.00	$224.00	33.60	25.20	18.20	9.80	2.80	0	0	0	0	0	0
$224.00	$231.00	33.60	26.60	18.20	11.20	2.80	0	0	0	0	0	0
$231.00	$238.00	35.00	28.00	19.60	12.60	4.20	0	0	0	0	0	0
$238.00	$245.00	36.40	28.00	21.00	12.60	5.60	0	0	0	0	0	0
$245.00	$252.00	37.80	29.40	22.40	14.00	7.00	0	0	0	0	0	0
$252.00	$259.00	37.80	30.80	22.40	15.40	7.00	0	0	0	0	0	0
$259.00	$266.00	39.20	32.20	23.80	16.80	8.40	1.40	0	0	0	0	0
$266.00	$273.00	40.60	32.20	25.20	16.80	9.80	1.40	0	0	0	0	0
$273.00	$280.00	42.00	33.60	26.60	18.20	11.20	2.80	0	0	0	0	0
$280.00	$294.00	43.40	35.00	28.00	19.60	12.60	4.20	0	0	0	0	0
$294.00	$308.00	44.80	37.80	29.40	22.40	14.00	7.00	0	0	0	0	0
$308.00	$322.00	47.60	39.20	32.20	23.80	16.80	8.40	1.40	0	0	0	0
$322.00	$336.00	49.00	42.00	33.60	26.60	18.20	11.20	2.80	0	0	0	0
$336.00	$350.00	51.80	43.40	36.40	28.00	21.00	12.60	5.60	0	0	0	0
$350.00	$364.00	53.20	46.20	37.80	30.80	22.40	15.40	7.00	0	0	0	0
$364.00	$378.00	56.00	47.60	40.60	32.20	25.20	16.80	9.80	1.40	0	0	0
$378.00	$392.00	57.40	50.40	42.00	35.00	26.60	19.60	11.20	4.20	0	0	0
$392.00	$406.00	60.20	51.80	44.80	36.40	29.40	21.00	14.00	5.60	0	0	0
$406.00	$420.00	61.60	54.60	46.20	39.20	30.80	23.80	15.40	8.40	0	0	0
$420.00	$434.00	64.40	56.00	49.00	40.60	33.60	25.20	18.20	9.80	2.80	0	0
$434.00	$448.00	65.80	58.80	50.40	43.40	35.00	28.00	19.60	12.60	4.20	0	0
$448.00	$462.00	68.60	60.20	53.20	44.80	37.80	29.40	22.40	14.00	7.00	0	0
$462.00	$476.00	70.00	63.00	54.60	47.60	39.20	32.20	23.80	16.80	8.40	1.40	0
$476.00	$490.00	72.80	64.40	57.40	49.00	42.00	33.60	26.60	18.20	11.20	2.80	0
$490.00	$504.00	74.20	67.20	58.80	51.80	43.40	36.40	28.00	21.00	12.60	5.60	0
$504.00	$518.00	77.00	68.60	61.60	53.20	46.20	37.80	30.80	22.40	15.40	7.00	0
$518.00	$532.00	78.40	71.40	63.00	56.00	47.60	40.60	32.20	25.20	16.80	9.80	1.40
$532.00	$546.00	81.20	72.80	65.80	57.40	50.40	42.00	35.00	26.60	19.60	11.20	4.20
$546.00	$560.00	82.60	75.60	67.20	60.20	51.80	44.80	36.40	29.40	21.00	14.00	5.60
$560.00	$588.00	85.40	78.40	70.00	63.00	54.60	47.60	40.60	32.20	25.20	16.80	9.80
$588.00	$616.00	89.60	82.60	74.20	67.20	58.80	51.80	43.40	36.40	29.40	21.00	14.00
$616.00	$644.00	93.80	86.80	78.40	71.40	63.00	56.00	47.60	40.60	33.60	25.20	18.20
$644.00	$672.00	98.00	91.00	82.60	75.60	67.20	60.20	51.80	44.80	37.80	29.40	22.40
$672.00	$700.00	102.20	95.20	86.80	79.80	71.40	64.40	56.00	49.00	42.00	33.60	26.60
$700.00	$728.00	106.40	99.40	91.00	84.00	75.60	68.60	60.20	53.20	46.20	37.80	30.80
$728.00	$756.00	110.60	103.60	95.20	88.20	79.80	72.80	64.40	57.40	50.40	42.00	35.00
$756.00	$784.00	114.80	107.80	99.40	92.40	84.00	77.00	68.60	61.60	54.60	46.20	39.20
$784.00	$812.00	119.00	112.00	103.60	96.60	88.20	81.20	72.80	65.80	57.40	50.40	43.40
$812.00	$840.00	123.20	116.20	107.80	100.80	92.40	85.40	77.00	70.00	61.60	54.60	47.60
		15 per cent of the excess over $840 plus—										
$840 and over		126.00	117.60	110.60	102.20	95.20	86.80	79.80	71.40	64.40	57.40	49.00

CHAPTER 38.—MISCELLANEOUS PROVISIONS.

SECTION 3804.—TIME FOR PERFORMING CERTAIN ACTS POSTPONED BY REASON OF WAR.

1948–7–12776
T. D. 5610

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 472.—REGULATIONS UNDER SECTION 3804 OF THE INTERNAL REVNUE CODE.

Treasury Decision 5279 [C. B. 1943, 952], relating to period of time disregarded under section 3804 of the Internal Revenue Code in determining whether certain acts are timely performed, amended to conform to sections 6, 13, and 14 of the Act approved August 8, 1947 (Public Law 384, Eighteith Congress [C. B. 1947–2, 348]).

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

To Collectors of Internal Revenue and Others Concerned:

On December 5, 1947, notice of proposed rule making, regarding amendments to the regulations relating to the postponement by reason of the war of the time for performing certain acts, made necessary by certain provisions of the Act approved August 8, 1947 (Public Law 384, Eightieth Congress [C. B. 1947–2, 348]), was published in the Federal Register (12 F. R., 8172). After consideration of all such relevant matter as was presented by interested persons regarding the proposal, the amendments set forth below are hereby adopted. The amendments are made in order to conform Treasury Decision 5279, approved July 10, 1943 [C. B. 1943, 952] [26 CFR, Part 472], relating to the period of time disregarded under section 3804 of the Internal Revenue Code in determining whether certain acts are timely performed, to sections 6, 13, and 14 of the Act approved August 8, 1947 (Public Law 384, Eightieth Congress). Such Treasury decision is amended as follows:

PARAGRAPH 1. Immediately following the provisions of law under the caption "SEC. 507. TIME FOR PERFORMING CERTAIN ACTS POSTPONED BY REASON OF WAR. (REVENUE ACT OF 1942.)" preceding section 472.0 [26 CFR, 472.0], the following is inserted:

SECTIONS 13 AND 14 OF THE ACT APPROVED AUGUST 8, 1947 (PUBLIC LAW 384, EIGHTIETH CONGRESS).

SEC. 13. TIME FOR PERFORMING CERTAIN ACTS POSTPONED BY REASON OF WAR.

Section 3804(c) of the Internal Revenue Code is hereby amended to read as follows:

"(c) LIMITATION ON TIME TO BE DISREGARDED.—The period of time disregarded under this section shall not extend beyond the date specified in clause (1) or clause (2) of this subsection, whichever is the earlier:

"(1) December 31, 1947, or such date later than December 31, 1947, as the Commissioner may fix in any case in which he makes a determination under subsection (b) if such determination is made after the date this subsection as amended takes effect and is based on the existence prior to January 1, 1948, of one or more of the circumstances specified in paragraph (1), (2), or (3) of subsection (b); or

"(2) in the case of an individual with respect to whom a period of time is disregarded under this section, the fifteenth day of the third month following the month in which an executor, administrator, or a conservator of the estate of such individual qualifies."

SEC. 14. CHINA TRADE ACT CORPORATIONS.

Section 3805 of the Internal Revenue Code is hereby amended by striking out "the fifteenth day of the sixth month following the month in which the present war with Germany, Italy, and Japan is terminated, as proclaimed by the President" and inserting in lieu thereof: "December 31, 1947."

PAR. 2. Immediately preceding the caption "SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940, AS AMENDED BY SECTION 19 OF PUBLIC LAW 554 (SEVENTY-SEVENTH CONGRESS), APPROVED MAY 14, 1942, AND SECTION 18 OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AMENDMENTS OF 1942," which precedes section 472.0 [26 CFR, 472.0], the following is inserted:

ACT APPROVED JULY 1, 1944 (58 STAT., 679).

That the Act * * * approved March 7, 1942 (56 Stat. 143) [Public Law 490, 77th Congress], * * * is amended by changing subsection (a) (3) of section 1, thereof to read as follows: "(3) civilian officers and employees of departments during such time as they may be assigned for duty or serving outside the continental limits of the United States or in Alaska, exclusive of part-time or intermittent employees or native labor casually hired on an hourly or per diem basis;" * * *

* * * * * * *

SEC. 7. That such Act is amended by adding at the end thereof a new section to read as follows:

"SEC. 19. This Act may be cited as the 'Missing Persons Act'."

* * * * * * *

[The foregoing amendments made by the Act approved July 1, 1944, are effective as if they had been enacted as a part of Public Law 490, 77th Congress, approved March 7, 1942.]

SECTION 1 OF THE ACT APPROVED MAY 16, 1947 (PUBLIC LAW 64, EIGHTIETH CONGRESS).

That subsection (a) (3) of section 1 of Public Law 490 of the Seventy-seventh Congress approved March 7, 1942 (56 Stat. 143), as amended by Public Law 408 of the Seventy-eighth Congress approved July 1, 1944 (58 Stat. 679), is hereby further amended to read as follows:

"(3) civilian officers and employees of departments and civilian officers and employees of the United States Naval Government of Guam, during such time as they may be assigned for duty or serving outside the continental limits of the United States or in Alaska, exclusive of part-time or intermittent employees or native labor casually hired on an hourly or per diem basis;".

SECTION 6 OF THE ACT APPROVED AUGUST 8, 1947 (PUBLIC LAW 384, EIGHTIETH CONGRESS).

SEC. 6. TAX DEFERMENTS OF SERVICE PERSONNEL.

Section 13(c) (2) of the Missing Persons Act (Public Law 490, Seventy-seventh Congress; 56 Stat. 146) is hereby amended to read as follows:

"(2) December 31, 1947; or".

PAR. 3. Section 472.1(*c*) [26 CFR, 472.1(c)] is amended by striking out the second sentence of the third paragraph and inserting in lieu thereof the following:

Section 3804(c), as amended by section 13 of the Act approved August 8, 1947 (Public Law 384, Eightieth Congress), provides that the period of time dis-

regarded under section 3804 in respect of any tax liability shall in no event extend beyond the date specified in clause (1) or (2), below, whichever is the earlier:

(1) December 31, 1947, or such date later than December 31, 1947, as the Commissioner of Internal Revenue may fix in any case in which he makes a determination under section 3804(b), if such determination is made after August 8, 1947, and is based on the existence prior to January 1, 1948, of one or more of the circumstances specified in paragraph (1), (2), or (3) of section 3804(b); or

(2) in the case of an individual with respect to whom a period of time is disregarded under section 3804, the 15th day of the third month following the month in which an executor, administrator, or a conservator of the estate of such individual qualifies.

PAR. 4. Section 472.101(*b*) [26 CFR, 472.101(b)] is amended by inserting after "the Women's Army Auxiliary Corps," the following: "the Women's Army Corps,".

PAR. 5. Section 472.202, as amended by Treasury Decision 5456, approved June 9, 1945 [C. B. 1945, 333] [26 CFR, 472.202], is further amended as follows:

(A) By striking out that portion of the first sentence of paragraph (*b*) which precedes clause (1) and inserting in lieu thereof the following:

The due date for any income tax return and for any payment (including any installment payment) of income tax is, subject to the limitations prescribed in paragraph (*c*), below, postponed in the case of any individual in the military or naval forces of the United States serving on sea duty or outside the continental United States after December 6, 1941, and prior to January 1, 1948, in case—

(B) By inserting after "become due" in clause (1) of paragraph (*b*) the following: "(such day being after December 6, 1941, and prior to January 1, 1948)."

(C) By inserting after "December 31, 1944" in clause (3) of paragraph (*b*) a comma and the following: "and such ninety-first day occurs prior to January 1, 1948."

(D) By inserting after "sea duty" in clause (4) of paragraph (*b*) the following: "after December 6, 1941, and prior to January 1, 1948."

(E) By striking out clause (2) of paragraph (*c*) and inserting in lieu thereof the following:

(2) June 15, 1948; or

PAR. 6. Section 472.203, as amended by Treasury Decision 5456 [26 CFR, 472.203], is further amended as follows:

(A) By inserting after "December 6, 1941," in paragraph (*b*) the following: "and prior to January 1, 1948."

(B) By striking out clause (2) of paragraph (*c*) and inserting in lieu thereof the following:

(2) June 15, 1948; or

PAR. 7. Section 472.502 is amended by inserting after "December 6, 1941," in the first sentence thereof the following: "and prior to January 1, 1948,".

PAR. 8. Section 472.503 is amended as follows:

(A) By inserting after "Americas" in clause (1) of paragraph (*a*) the following "prior to January 1, 1948."

(B) By striking out clause (2) of paragraph (*a*) and inserting in lieu thereof the following:

(2) the next 90 days after the period referred to in clause (1); or, if the last day of such 90-day period falls after December 30, 1947, the period beginning immediately after the period referred to in clause (1) and ending on the 15th day of the sixth month following the month in which the period referred to in clause (1) terminates.

(C) By adding the following sentence at the end of paragraph (*a*):

In the application of the preceding sentence, if the 15th day of the fourth month following the month in which the employee returns to the continental United States falls after December 30, 1947, the 15th day of the sixth month shall be substituted for the 15th day of the fourth month in such sentence.

(D) By striking out "(subject to the limitations prescribed in section 3804(c) (see paragraph (*c*), below))" in clause (1) of paragraph (*b*).

(E) By striking out ", if any," in clause (2) of paragraph (*b*); and by striking out " section 3804(c) " in such clause and inserting in lieu thereof the following: " paragraph (*c*), below."

(F) By striking out "As provided in section 3804(c), the " in paragraph (*c*) and inserting in lieu thereof " The."

(G) By striking out clause (1) of paragraph (*c*) and inserting in lieu thereof the following:

(1) June 15, 1948; or

PAR. 9. Section 472.803 [26 CFR, 472.803] is amended by striking out the third sentence and inserting in lieu thereof the following:

No period prior to December 7, 1941, shall be disregarded, nor, in case the Commissioner's determination was made on or before August 8, 1947 (the date of the enactment of Public Law 384, Eightieth Congress), shall a period after December 31, 1947, be disregarded. Such period after December 31, 1947, as the Commissioner may fix shall be disregarded in any case in which the Commissioner makes a determination under this subpart after August 8, 1947, provided such determination is based on the existence prior to January 1, 1948, of one or more of the circumstances specified in clause (1), (2), or (3) of section 472.802.

PAR. 10. Section 472.805 [26 CFR, 472.805] is amended by striking out " the 15th day of the third month following the month in which the present war with Germany, Italy, and Japan is terminated, as proclaimed by the President " and inserting in lieu thereof the following: " December 31, 1947."

PAR. 11. Section 472.806 [26 CFR, 472.806] is amended as follows:

(A) By striking out in paragraph (*a*) " the 15th day of the sixth month following the month in which the present war with Germany, Italy, and Japan is terminated, as proclaimed by the President " and inserting in lieu thereof the following: " December 31, 1947."

(B) By striking out in paragraph (*b*) " the 15th day of the third month following the month in which the present war with Germany, Italy, and Japan is terminated, as proclaimed by the President " and inserting in lieu thereof the following: " December 31, 1947."

PAR. 12. Section 472.903 [26 CFR, 472.903] is amended by striking out the third sentence and inserting in lieu thereof the following:

No period prior to December 7, 1941, shall be disregarded, nor, in case the Commissioner's determination was made on or before August 8, 1947 (the date of the enactment of Public Law 384, Eightieth Congress), shall a period after December 31, 1947, be disregarded. Such period after December 31, 1947, as the Commissioner may fix shall be disregarded in any case in which the Commissioner makes a determination under this subpart after August 8, 1947, provided such determination is based on the existence prior to January 1, 1948, of one or more of the circumstances specified in clause (1), (2), or (3) of section 472.902. In no event,

however, shall the period disregarded extend beyond the 15th day of the third month following the month in which an executor, administrator, or a conservator of the estate of the individual qualifies as such.

(This Treasury decision is issued under the authority contained in sections 3791, 3804, and 3805 of the Internal Revenue Code (53 Stat., 467, 56 Stat., 961, 963; 26 U. S. C., 1940 ed., 3791, 26 U. S. C., 1940 ed., Sup. V, 3804, 3805) and sections 6, 13, and 14 of the Act approved August 8, 1947 (Public Law 384, Eightieth Congress).)

Because sections 6, 13, and 14 of the Act approved August 8, 1947 (Public Law 384, Eightieth Congress), being the sections interpreted or applied by this Treasury decision, became effective on that date, it is hereby found that it is impracticable and 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.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved March 15, 1948.

E. H. FOLEY, Jr.,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 19, 1948, 8.56 a. m.)

B. REVENUE ACT OF 1938.

SUBTITLE B.—GENERAL PROVISIONS.

PART II.—COMPUTATION OF NET INCOME.

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

ARTICLE 22(a)-1: What included in gross income.

REVENUE ACT OF 1938.

Royalty payments under patent license contracts assigned to wife. (See Ct. D. 1698, page 7.)

SUBTITLE C.—SUPPLEMENTAL PROVISIONS.

SUPPLEMENT O.—OVERPAYMENTS.

SECTION 322.—REFUNDS AND CREDITS.

ARTICLE 322-7: Limitations upon the crediting and refunding of taxes paid. 1948-2-12733 Ct. D. 1695

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT.

1. CLAIM FOR REFUND—PERIOD OF LIMITATION.

All income tax refund claims, whatever the reasons giving rise to the claims, must be filed within three years from the time the return was filed or within two years from the time the tax was

paid, as provided in section 322(b)(1) of the Internal Revenue Code. The 4-year period prescribed by section 3313 of the Code is inapplicable to such claims. Since respondent filed its income tax refund claim more than three years after filing the return and more than two years after payment of the tax, its claim was out of time. That is true even though the claim arose out of an income tax alleged to have been "erroneously or illegally assessed or collected."

2. DECISION REVERSED.

Decision of the United States Circuit Court of Appeals, Tenth Circuit (159 Fed. (2d), 316), affirming decision of the District Court, W. D. Oklahoma (66 Fed. Supp., 254), reversed.

SUPREME COURT OF THE UNITED STATES.

H. C. Jones, Collector of Internal Revenue, petitioner, v. *The Liberty Glass Co.*

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

[December 22, 1947.]

OPINION.

Mr. Justice MURPHY delivered the opinion of the Court.

Our concern here is with the period of limitations applicable to the filing of claims for refund of Federal income taxes. Must such claims be filed within two years after payment of the tax, as provided by section 322(b)(1) of the Internal Revenue Code, or within four years after payment of the tax, as provided by section 3313 of the Code?

The corporate taxpayer, respondent herein, filed its income and excess profits tax return for 1938, a return which indicated a tax liability of $1,193.25. This sum, plus a small additional assessment, was paid in 1939. A revenue agent later investigated the taxpayer's liability again, resulting in an additional assessment of $6,640.81. Payment of this amount was made on March 8, 1941. Over three years later, on March 30, 1944, the taxpayer filed a claim for refund of $1,053.49. It was stated that the revenue agent erroneously had failed to allow certain credits for sums used by the taxpayer in 1938 to reduce its indebtedness. Reliance was placed by the taxpayer on the 4-year limitation period specified in section 3313. The Commissioner of Internal Revenue rejected this claim, pointing out that section 3313 specifically exempts from its application income, war profits, excess profits, estate and gift taxes.

This suit was then brought by the taxpayer in the district court to recover the amount alleged by the refund claim to be due. That court held that section 3313 was applicable and gave judgment for the taxpayer. (66 Fed. Supp., 254.) The Tenth Circuit Court of Appeals, one judge dissenting, affirmed the judgment. (159 Fed. (2d), 316.) The problem being one of importance in the administration of the revenue laws, we granted certiorari.

Section 322(b)(1) is to be found in Subtitle A of the Internal Revenue Code, a subtitle dealing with those taxes over which The Tax Court has jurisdiction. Such jurisdiction includes income, excess profits, estate and gift taxes. More specifically, section 322(b)(1) appears under Chapter 1 of the Code, pertaining to income taxes. It is concerned with overpayments of income taxes and provides quite simply that no refund shall be allowed unless a claim for refund "is filed by the taxpayer within three years from the time the return was filed by the taxpayer or within two years from the time the tax was paid."[1]

Section 3313, on the other hand, is located under Subtitle B of the Code, a subtitle devoted to miscellaneous taxes. It is in Chapter 28, which contains various provisions common to such taxes. And it is among those provisions dealing with the assessment, collection and refund of the taxes. It reads as follows: "All claims for the refunding or crediting of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as otherwise provided by law in the case of income, war profits, excess profits, estate, and gift taxes, be

[1] The return in this case was filed in June, 1939. Since the claim was filed on March 30, 1944, no contention could be made that it was within the 3-year period from the date the return was filed.

presented to the Commissioner within four years next after the payment of such tax, penalty, or sum. The amount of the refund (in the case of taxes other than income, war profits, excess profits, estate, and gift taxes) shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund."

The substance of section 3313 of the Code has long been a part of Federal statutory law. Its ancestry can be traced back to 1872, when section 3228 of the Revised Statutes was enacted.[2] Section 3228 established a procedure for filing claims for refund of any internal revenue tax alleged to have been "erroneously or illegally assessed or collected" and created a limitation period of two years from the time the cause of action accrued, later extended in 1921 to four years from the date of payment of the tax.[3] But soon after the entry of the income tax into the Federal scene in 1913, separate provision was made for the filing of claims for the refund of income taxes "paid in excess of those properly due." Section 14(a) of the Revenue Act of 1916[4] was the first such provision and it made clear that section 3228 was inapplicable to claims of this nature. Section 252 of the Revenue Act of 1918,[5] followed by section 252 of the 1921 Act,[6] continued this scheme of separate treatment. These later provisions were written so as to include refund claims relating to war profits and excess profits taxes as well as those involving income taxes; and a limitation of five years from the date the return was due was placed on the filing of such claims. It was further specified that the procedure therein detailed was to be followed "notwithstanding the provisions" of section 3228.

Section 252, as it appeared in the 1921 Act, was then changed in 1923[7] so as to permit claims for refund of income and profits taxes "paid in excess of that properly due" to be filed within two years after the tax was paid, in addition to the 5-year period after the due date of the return. This change was made "so that the taxpayer who has, by agreement with the Treasury, permitted the time for the final assessment of the taxes due from him to be made after the expiration of the 5-year period, will not be barred from making a claim for a refund when such assessment is made and the taxpayer *alleges that the assessment is illegal.*"[8] Amending section 252 rather than section 3228 of the Revised Statutes to accomplish this purpose was significant. It was an unequivocal indication that section 252, in speaking of claims for refund of "excess" payments of income and profits taxes, was designed by its framers to include not only those payments growing out of errors in the preparation of returns but also those payments resulting from illegal or erroneous assessments. (See *Graham* v. *duPont*, 262 U. S., 234, 258 [T. D. 3486 (Ct. D. 33), C. B. II-1, 226, 228 (1923)].)

The Revenue Act of 1924[9] transferred the substance of the former section 252 to a new section 281. A 4-year period of limitations from the date of the payment of the tax was established, a period coinciding in length with that prescribed by section 3228. The reference to the type of payments involved was recast; in place of speaking of payments "in excess of that properly due," sec-

[2] Section 3228 was in the nature of a revision of section 44 of the Act of June 6, 1872 (17 Stat., 230, 257).

[3] Revenue Act of 1921, section 1316 (42 Stat., 227, 314).

[4] 39 Stat., 756, 772. This provided that the claim for refund might be presented "notwithstanding the provisions of section 3228 of the Revised Statutes."

[5] 40 Stat., 1057, 1085.

[6] 42 Stat., 227, 268.

[7] Act of March 4, 1923 (42 Stat., 1504, 1505). In amending section 252, the Act of March 4, 1923, made mention of refunds of income taxes to withholding agents which might be made under the provisions of "section 3228 of the Revised Statutes." This was an obvious reference to the practice of the Treasury Department, admitted to be of "very doubtful legality" (H. Rept. No. 1424, Sixty-seventh Congress, fourth session, page 2 [C. B. 1939-1 (Part 2), 848, 850]), of allowing a taxpayer who had permitted an additional assessment after the 5-year period from the due date of the return (specified by section 252 of the 1921 Act) to file a claim for refund within four years after payment of the tax (pursuant to section 3228), even though the 5-year period had elapsed. The Treasury had instituted this practice to prevent inequities which might otherwise ensue to such taxpayers, but it was without legislative sanction. It was to take care of the taxpayers who had taken advantage of the Treasury practice that the reference in question in the Act of March 4, 1923, was made. As to claims pending on March 4, 1923, which were timely filed under section 3228, but not timely under section 252, refunds to withholding agents were necessarily to be made under section 3228. This provision was not repeated in subsequent legislation and it was not indicative of a legislative intent to permit income tax refund claims to be governed by section 3228 in the future.

[8] Emphasis added. (H. Rept. No. 1424, Sixty-seventh Congress, fourth session, page 2; S. Rept. No. 1137, Sixty-seventh Congress, fourth session, page 2 [C. B. 1939-1 (Part 2), 848, 850].)

[9] 43 Stat., 253. 301.

tion 281 used the simple term "overpayments."[10] And instead of stating in section 281 that its provisions should apply "notwithstanding the provisions" of section 3228 of the Revised Statutes, section 3228 itself was amended[11] to make it applicable to all claims for the refunding or crediting of any internal revenue tax "except as provided in section 281 of the Revenue Act of 1924." This placing of an exceptive clause in section 3228 was done "to remove the doubt which now exists as to whether or not the provisions of section 3228, Revised Statutes, apply in any event to income taxes."[12] In other words, the statutory drafters intended to make certain that section 3228 was in no event to apply to income tax refund claims. Such claims were to be governed exclusively by section 281.

The essence of section 281 of the 1924 Act has been carried through to the present section 322 of the Internal Revenue Code.[13] The only significant change in the interval, for our purposes, was a reduction in the period of limitations, as measured from the payment of the tax, from four years to three years and finally to two years. And section 3228 of the Revised Statutes, as amended to state that it applies "except as otherwise provided by law in the case of income, war profits, excess profits, estate, and gift taxes," has become the current section 3313 of the Code.

With this background in mind, we find the pattern of limitation periods for tax refund claims to be clear. Section 3313 of the Code establishes a 4-year period for all internal revenue taxes, except as otherwise provided by law in the case of specified taxes. Among the latter is the income tax, as to which section 322(b)(1) makes provision "otherwise" by requiring that refund claims be presented within two years of payment or within three years from the filing of the return. Provisions are also made "otherwise" in the case of the estate tax (section 910 of the Code) and the gift tax (section 1027 of the Code).

The argument is made, however, that section 322(b)(1) deals only with income tax "overpayments" and not with income taxes "erroneously or illegally assessed or collected." Overpayments are said to refer solely to excess payments resulting from errors by taxpayers in the preparation of their returns or in related activities, while erroneous or illegal assessments and collections are claimed to relate to various kinds of errors on the part of revenue agents. Since there is no provision "otherwise" for income tax refund claims involving the latter type of errors, the conclusion is reached that the 4-year limitation period of section 3313 remains applicable. We can not agree.

In the absence of some contrary indication, we must assume that the framers of these statutory provisions intended to convey the ordinary meaning which is attached to the language they used. (See *Rosenman* v. *United States*, 323 U. S., 658, 661 [Ct. D. 1628, C. B. 1945, 410, 411].) Hence we read the word "overpayment" in its usual sense, as meaning any payment in excess of that which is properly due. Such an excess payment may be traced to an error in mathematics or in judgment or in interpretation of facts or law. And the error may be committed by the taxpayer or by the revenue agents. Whatever the reason, the payment of more than is rightfully due is what characterizes an overpayment.

That this ordinary meaning is the one intended by the authors of section 322(b)(1) is quite evident from the legislative history which we have detailed. The word "overpayment" first appeared in section 281 of the 1924 Revenue Act, one of the direct ancestors of section 322(b)(1). The word was there used as a substitute for the previous reference to payments "in excess of that properly due," a phrase that is a perfect definition of an overpayment and that is not necessarily confined to overpayments occasioned by errors made by taxpayers. The immediate predecessor of section 281 had employed that phrase and had been enacted in 1923 with the expressed intention of including claims growing out of illegal assessments. There was not the slightest indication that the sub-

[10] The Revenue Act of 1924 (43 Stat. 253, 296) also created a new section 272, dealing with "overpayments" of income tax installments. This spoke of overpayments in the sense of payments of "more than the amount determined to be the correct amount of such installment." This provision now exists as section 321 of the Internal Revenue Code.

[11] 43 Stat., 253, 342.

[12] H. Rept. No. 179, Sixty-eighth Congress, first session, page 71 [C. B. 1939-1 (Part 2), 241, 265]; S. Rept. No. 398, Sixty-eighth Congress, first session, page 44 [C. B. 1939-1 (Part 2), 266, 296]. This quotation was taken verbatim by the congressional committees from the statement of A. W. Gregg of the Treasury Department, Statement of the Changes Made in the Revenue Act of 1921 by H. R. 6715 and the Reasons Therefor (Senate committee print, Sixty-eighth Congress, first session, March 6, 1924, page 37).

[13] See Revenue Act of 1926, section 284 (44 Stat., 9, 66); Revenue Act of 1928, section 322 (45 Stat., 791, 861); Revenue Act of 1932, section 322 (47 Stat., 169, 242); Revenue Act of 1934, section 322 (48 Stat., 680, 750).

stitution of the word "overpayment" was designed to narrow the scope of section 281. It apparently was a mere simplification in phraseology. But it does make clear the sense in which the word was first used in this context. The generic character of the word was emphasized from the start.[14] And we see no basis for making it over into a word of art at this late date.

The legislative history further reveals a consistent intention to make a separate and complete limitation provision for income tax refund claims, whatever might be the underlying basis of the claims. Section 322 and its predecessors were devised in order to provide such an exclusive scheme. Claims relating to the income tax have at all times been explicitly excluded from section 3313.[15] This arrangement is but part of the general plan evident in the Internal Revenue Code of providing separate treatment for the income, profits, estate and gift taxes, as distinct from the miscellaneous taxes and the excise, import and temporary taxes. We would be doing unwarranted violence to this clear demarcation were we to read the word "overpayment" so as to place certain types of income tax refund claims within the scope of section 3313, a section that has always been divorced from the income tax portion of the revenue laws.

It is pointed out, however, that various lower Federal courts, beginning in 1939, have reached a contrary result.[16] They have held that section 3313 rather than section 322(b)(1) governs refund claims for income taxes alleged to have been "erroneously or illegally assessed or collected." Since Congress has subsequently convened from time to time and has amended section 322 in other respects without expressly disapproving this interpretation, the contention is advanced that legislative acquiescence in the interpretation must be assumed. But the doctrine of legislative acquiescence is at best only an auxiliary tool for use in interpreting ambiguous statutory provisions. (See *Helvering* v. *Reynolds*, 313 U. S., 428, 432 [Ct. D. 1516, C. B. 1941-1, 371, 372].) Here the language and the purpose of Congress seem clear to us. The arrangement whereby all income tax refund claims are to be governed by what is now section 322(b)(1) was established in an unmistakable manner nearly a quarter of a century ago, an arrangement that has been continued through various reenactments and changes in the revenue laws. And that arrangement had been consistently recognized and followed by the Treasury Department.[17] Under those circumstances, it would take more than legislative silence in the face of rather recent contrary decisions by lower Federal courts to overcome the factors upon which we have placed reliance. (Cf. *Electric Battery Co.* v. *Shimadzu*, 307 U. S., 5, 14; *Missouri* v. *Ross*, 299 U. S., 72, 75; *United States* v. *Elgin, J. & E. R. Co.*, 298 U. S., 492, 500.) We do not expect Congress to make an affirmative move every time a lower court indulges in an erroneous interpretation. In short, the original legislative language speaks louder than such judicial action.

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[14] Section 272 of the 1924 Act (now section 321 of the Code) referred to "overpayments" of income tax installments as payments of "more than the amount determined to be the correct amount of such installment." (See note 10, supra.) Such a definition admits of no distinction between errors by the taxpayer and errors by the revenue agents.

[15] Reference should also be made to the second sentence of section 3313, providing that the amount of refund may not exceed the amount of tax paid during the 4-year period. There is a parenthetical phrase in this sentence which specifically excludes income, war profits, excess profits, estate and gift taxes. If the first sentence of section 3313, establishing the 4-year limitation period, applied to income tax refund claims arising out of illegal assessments, there would be no limit on the amount of refund by reason of this second sentence. Such a result is without support in the purpose or history of the provisions dealing with these refund claims.

[16] *Huntley* v. *Southern Oregon Sales* (102 Fed. (2d), 538) was the first case so holding. Subsequent decisions of the same tenor have relied in large part upon the Huntley case. (*Olsen* v. *United States*, 32 Fed. Supp., 276; *United States* v. *Lederer Terminal W. Co.*, 139 Fed. (2d), 679); *In re Tindle's Estate*, 59 Fed. Supp., 667; affirmed per curiam sub nom. *Pennsylvania Co. for Insurances on Lives* v. *United States*, 152 Fed. (2d), 757; *Godfrey* v. *United States*, 61 Fed. Supp., 240; *Noble* v. *Kavanagh*, 66 Fed. Supp., 258, affirmed per curiam, 160 Fed. (2d), 104; *Sbarbaro* v. *United States*, 73 Fed. Supp., 213.) See also *Fawcett* v. *United States* (70 Fed. Supp., 742). Compare *Central Hanover Bank & Trust Co.* v. *United States* (67 Fed. Supp., 920). In many cases, however, the applicability of section 322(b)(1) to claims of the type here involved was assumed without question and without an explicit holding on the point. See, for example, *United States* v. *Garbutt Oil Co.* (302 U. S., 528 [Ct. D. 1301, C. B. 1938-1, 370]).

[17] See I. T. 1447 (C. B. I-2, 220 (1922)); T. D. 3457 (C. B. II-1, 177 (1923)) and T. D. 3462, amending Regulations 62 (C. B. II-1, 180 (1923)); S. M. 1712 (C. B. III-1, 345 (1924)); S. M. 2293 (C. B. III-2, 310 (1924)); G. C. M. 3152 (C. B. VII-1, 153 (1928)); G. C. M. 13759 (C. B. XIII-2, 102 (1934)); Mim. 4814 (C. B. 1938-2, 96); I. T. 3483 (C. B. 1941-1, 397).

The present Treasury viewpoint is codified in Treasury Regulations 111, promulgated under the Internal Revenue Code, section 29.322-3 and section 29.322-7. See also Treasury Regulations 103, promulgated under the Code, section 19.322-3 and section 19.322-7, as amended by T. D. 5256 (C. B. 1943, 550); and Treasury Regulations 101, promulgated under the Revenue Act of 1938, articles 322-3 and 322-7.

We accordingly conclude that all income tax refund claims, whatever the reasons giving rise to the claims, must be filed within three years from the time the return was filed or within two years from the time the tax was paid, as provided in section 322(b)(1). The 4-year period prescribed by section 3313 is inapplicable to such claims. Since respondent filed its income tax refund claim more than three years after filing the return and more than two years after payment of the tax, its claim was out of time. That is true even though the claim arose out of an income tax alleged to have been "erroneously or illegally assessed or collected."

Reversed.

Mr. Justice DOUGLAS dissents.

INCOME TAX RULINGS.—PART II.

REVENUE ACTS OF 1937 AND 1936.

SUBTITLE B.—GENERAL PROVISIONS.

PART II.—COMPUTATION OF NET INCOME.

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

ARTICLE 22(a)-1: What included in gross income.

REVENUE ACT OF 1936.

Royalty payments under patent license contracts assigned to wife. (See Ct. D. 1698, page 7.)

INCOME TAX RULINGS.—PART III.

REVENUE ACTS OF 1935 AND 1934 OR PRIOR ACTS.

SUBTITLE B.—GENERAL PROVISIONS.

PART V.—RETURNS AND PAYMENT OF TAX.

SECTION 51.—INDIVIDUAL RETURNS.

ARTICLE 51-1: Individual returns.

REVENUE ACT OF 1928.

Profits from California community property invested in a partnership in which both spouses are members. G. C. M. 9825 (C. B. X-2, 146 (1931)) modified. (See G. C. M. 25642, page 57.)

SUBTITLE C.—SUPPLEMENTAL PROVISIONS.

SUPPLEMENT O.—OVERPAYMENTS.

SECTION 322.—REFUNDS AND CREDITS.

ARTICLE 322-7: Limitations upon the crediting and refunding of taxes paid. 1948-2-12734 Ct. D. 1696

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT.

1. CLAIM FOR REFUND—PERIOD OF LIMITATION.

The 2-year period of limitation provided by section 322(b)(1) of the Internal Revenue Code, rather than the 4-year period prescribed by section 3313 of the Code, governs income tax refund claims. The overpayment which brings section 322(b)(1) into operation occurs whenever the taxpayer has paid an amount over and above his true liability. Hence, assuming that the deficiency assessment and collection in this case were without legal authority, the taxpayer's payment of that illegal assessment was an overpayment within the meaning of section 322(b)(1), and he had two years from the date of that payment within which to file a claim for refund. Since he did not file his claim until three and a half years after payment, the claim was out of time.

2. DECISION REVERSED.

Decision of the United States Circuit Court of Appeals, Sixth Circuit (160 Fed. (2d), 104), affirming, per curiam, decision of the District Court, E. D. Mich., S. D. (66 Fed. Supp., 258), reversed.

SUPREME COURT OF THE UNITED STATES.

Giles Kavanagh, Collector of Internal Revenue, petitioner, v. *J. H. Noble.*

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

[December 22, 1947.]

OPINION.

Mr. Justice MURPHY delivered the opinion of the Court.

This case is a companion to *Jones* v. *Liberty Glass Co.*, *ante* [Ct. D. 1695, page 102, this Bulletin].

The stipulated facts show that on March 16, 1936, the respondent taxpayer filed with the collector of internal revenue a joint individual income tax return for himself and his wife for the calendar year 1935. This disclosed a tax liability of $8,017.01, which was duly paid. In the return the losses and gains from sales of capital assets by the taxpayer and his wife were reported together, the losses of the wife being deducted from the gains of the husband, resulting in a net loss in excess of $2,000. This amount (the allowable limit of loss) was deducted on the return.

On June 7, 1937, the taxpayer was advised at a conference with revenue agents that there was additional income tax due for the year 1935, aggregating $421.80. The taxpayer's check, which was tendered for that amount, was later returned to him. Then by a letter dated June 11, 1937, a revenue agent notified the taxpayer that instead of a deficiency of $421.80 on the 1935 income tax return there was a deficiency of $19,973.93 and the taxpayer was furnished a computation showing the basis for such determination. The agent relied upon article 117–5, Regulations 86, later declared void by this Court in *Helvering* v. *Janey* (311 U. S., 189 [Ct. D. 1479, C. B. 1940–2, 220]). After protest and further conference the taxpayer gave the agent a check for $21,527.70, covering the then proposed deficiency assessment of $19,973.93, plus interest of $1,553.77. This check was remitted to the United States Treasury, after having been received by the collector on July 21, 1937.

On July 14, 1937, the taxpayer and his wife executed an agreement waiving certain statutory restrictions in their favor and consenting to the immediate assessment and collection against them of 1935 income tax in the principal sum of $19,973.93, plus deficiency interest of $1,553.77, which the Commissioner thereafter assessed. The agreement specified in a footnote that it was not a final closing agreement under section 606 of the Revenue Act of 1928 and that it did not therefore preclude the assertion of a further deficiency if one should be determined, nor did it extend the statutory period of limitation for refund assessment or collection of the tax.

On January 28, 1941, the taxpayer and his wife filed a claim for refund of $21,105.90, plus interest, on the ground that there had been an illegal assessment and collection since the revenue agents had "refused to allow the losses of one spouse against the gains of the other spouse in the joint return of husband and wife." Reference was made to section 3313 of the Internal Revenue Code, specifying a 4-year period of limitations. The Commissioner of Internal Revenue rejected this claim in reliance upon section 322(b)(1) of the Revenue Act of 1934 (the same as section 322(b)(1) of the Code), establishing a 2-year period of limitations; it was pointed out that section 3313 specifically excludes income taxes from those for which a claim may be filed within four years after payment.

On July 12, 1941, the taxpayer filed his individual claim for refund of $21,527.70 paid with respect to the year 1935. The claim was on the same grounds as the claim previously filed by the taxpayer and his wife. This claim was returned with the request that the wife join in the execution of the claim; this request was refused and the claim was returned to the collector; once again the claim was returned to the taxpayer.

The taxpayer then brought this suit against the collector to recover the amount alleged to be due in the refund claim. The district court held that the decision of the Sixth Circuit Court of Appeals in *United States* v. *Lederer Terminal W. Co.* (139 Fed. (2d), 679), controlled the case and made it clear that the 4-year period of section 3313 was applicable. Summary judgment was therefore entered for the taxpayer. (66 Fed. Supp., 258.) The Sixth Circuit Court of Appeals affirmed per curiam (160 Fed. (2d), 104), citing its previous decision in the Lederer Terminal case.

For reasons which we have set forth in *Jones* v. *Liberty Glass Co.*, *ante* [Ct. D. 1695, page 102, this Bulletin], the decision can not stand. The 2-year period provided by section 322(b)(1), rather than the 4-year period of section 3313, governs income tax refund claims. The overpayment which brings section 322(b)(1) into operation occurs whenever the taxpayer has paid an amount over and above his true liability. Hence, if we assume that the deficiency assessment and collection in this case were without legal authority, the taxpayer's payment of that illegal assessment was an overpayment within the meaning of section 322(b)(1). And he had two years from the date of that payment within which to file a claim for refund. Since he did not file his claim until three and a half years after payment, the claim was out of time.

It may well be that the taxpayer's refund claim was prompted by this Court's decision in *Helvering* v. *Janney*, supra, which set aside the Treasury regulation upon which the deficiency assessment was based. That decision was rendered on December 9, 1940, and the taxpayer filed his first refund claim on January 28, 1941. But assuming that the Janney decision makes clear that the taxpayer here made an overpayment, the loss which he now suffers from an application of section 322(b)(1) is a loss which is inherent in the application of any period of limitations. Such periods are established to cut off rights, justifiable or not, that might otherwise be asserted and they must be strictly adhered to by the judiciary. (*Rosenman* v. *United States*, 323 U. S., 658, 661 [Ct. D. 1628, C. B. 1945, 410, 411].) Remedies for resulting inequities are to be provided by Congress, not the courts.

Moreover, it is not our province to speculate as to why Congress established a shorter period of limitations relative to the income tax than is the case of those taxes governed by section 3313. It is enough that section 322(b)(1) creates a 2-year period applicable to all income tax refund claims and that the claim in this case is of that type.

Reversed.

Mr. Justice DOUGLAS dissents.

EMPLOYMENT TAX RULINGS.

INTERNAL REVENUE CODE.

CHAPTER 9, SUBCHAPTER A.—FEDERAL INSURANCE CONTRIBUTIONS ACT.

SECTION 1426: Definitions. 1948-2-12735
REGULATIONS 106, SECTION 402.208: Agricultural labor. Mim. 6219
(Also Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Section 403.208.)

Status, for Federal employment tax purposes, of services performed in the commercial handling of fruits and vegetables.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 31, 1947.

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

1. It has been the position of the Bureau generally that services performed after December 31, 1939, in the employ of any person in the handling, drying, packing, packaging, processing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market of fruits and vegetables constitute "agricultural labor" within the meaning of sections 1426(h)(4) and 1607(l)(4) of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, respectively. No distinction has been made as to the character of the employer, such as a producer, a producers' cooperative organization or group or a commercial handler who obtains fruits and vegetables, by purchase or otherwise, from the producer thereof.

CASE OF WATSON B. MILLER, FEDERAL SECURITY ADMINISTRATOR, APPELLANT, v. JAMES F. BURGER AND MAUDE L. BURGER, HUSBAND AND WIFE, APPELLEES (161 FED. (2D), 992).

2. In the above-captioned case, decided June 5, 1947, the Circuit Court of Appeals for the Ninth Circuit held that services performed after 1939 for a packing plant in connection with processing fruit which the plant purchased from farmers do not constitute "agricultural labor" within the meaning of the Social Security Act. Such decision affirmed the decision of the District Court of the United States, Southern District of California, Northern Division, of May 15, 1946, in *James F. Burger and Maude L. Burger, Husband and Wife, plaintiffs*, v. *Social Security Board, an Agency of the United States, Arthur J. Altmeyer, George E. Bigge, and Ellen S. Woodward,*

Members of and Constituting Said Social Security Board, defendants. The factual situation ruled upon discloses that James F. Burger was employed both prior and subsequent to January 1, 1940, in the Fresno, Calif., packing plant operated by Rosenberg Bros. & Co. His principal duty was to empty boxes or sacks of dried apricots or peaches into the hoppers of grading and processing machines. The company does not own or operate any farms or orchards but buys, sells, and processes dried fruit. While the company's largest business is in raisins, it also handles apricots, peaches, nectarines, figs, and prunes. Most sales are through brokers to wholesalers and jobbers, but numerous sales are made directly to the Government, and to various chain stores and bakeries. After an order is received at the packing plant, the dried fruit is processed, packed, and shipped to the buyer. Fruit is not processed ahead of order, but is stored in the packing plant and in various receiving stations until sales orders call for processing and packaging. The company's function is to receive, grade, clean, wash, sulphur, fumigate, package, and sell dried fruit.

3. The question presented was whether the services of James F. Burger were excepted from "employment" as "agricultural labor" within the meaning of section 209(1)(4) of the Social Security Act, as amended.

4. In its decision the court stated, in part, as follows:

> We agree with that court that under the admitted facts in this case, Rosenberg Bros. plant was a "terminal market" for the farmer producers who sold and delivered their dried fruit to that concern; that it was "the market" of such farmer producers, or to state it in another way, "the growers' market" since this commercial plant was the place where the farmer producer of dried fruit customarily parted with all of his economic interest in the fruit, its future form or destiny. The facts make abundantly clear that it was only *after* the farmer producer sold and delivered the fruit to Rosenberg Bros. that Burger's services (described in the opinion of the district court) were performed for that commercial concern. In this state of the record we regard his services as being performed after all "agricultural labor" in connection with such dried fruit had ceased. Accordingly, the questioned 1940 payments for Burger's services should be treated as "wages" within the coverage of the Act.
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> Speaking through Judge Stephens, this court made plain its views about some of the practical aspects of the problem we here confront. In *North Whittier Heights Citrus Assn.* v. *National Labor Relations Board* (109 Fed. (2d), 76), we discussed the nature and functions of commercial packing houses and gave full recognition to the principle that the nature of the work modified by the custom of doing it determines whether the worker is or is not an agricultural laborer. We pointed out that "when the product of the soil leaves the farmer, as such, and enters a factory for processing and marketing *it has entered upon the status of industry.* * * * The packing house activity is much more than mere treatment of the fruit. When it reaches the packing house it is then in the practical control of a great selling organization which accounts to the individual farmer under the terms of the statute law and its own by-laws." [Italics supplied.]
>
> The emphasis is even greater in the case of wage earners employed in the Rosenberg plant since it was not (like the petitioner in the North Whittier case) a plant owned by an association of member fruit growers operating under corporate form. Rosenberg was a private business corporation organized under the laws of California to conduct a purely commercial operation in the business of buying from farmers and thereafter selling the purchased product for its private profit after processing it. All aspects of a "cooperative" venture are missing in the relations of the Rosenberg plant to its employees and the farmer producers from whom it purchased the fruit it processed in its plant.

5. In view of the opinion of the United States Circuit Court of Appeals for the Ninth Circuit in the Burger case, it appears necessary to adopt a new position with respect to services of the type in question. Accordingly, it will be the position of the Bureau generally that services performed on and after January 1, 1940, in the employ of a commercial handler in the handling, drying, packing, packaging, processing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market of dried fruits purchased by such handler from the producer thereof, do not constitute "agricultural labor" within the meaning of sections 1426(h)(4) and 1607(l)(4) of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, respectively. The conclusion of the court coincides with the conclusion reached by the Bureau relative to the status of services performed in the handling, drying, packing, packaging, processing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market of dried vegetables. Accordingly, this mimeograph does not modify or change such conclusion and the relief granted in paragraph 8 is not applicable with respect to these services.

6. The ruling contained herein relative to the status of services performed in the handling, etc., of dried fruits also is applicable to services performed in the employ of a commercial handler of fresh fruits and vegetables. Accordingly, it will be the position of the Bureau generally that services performed on and after January 1, 1940, in the employ of a commercial handler in the handling, packing, packaging, processing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market of fresh fruits and vegetables purchased by such handler from the producer thereof, do not constitute "agricultural labor" for Federal employment tax purposes.

7. No change is made in the Bureau's position relative to services performed in the employ of a farmer or of a farmers' cooperative organization or group in the handling, etc., of fruits and vegetables produced by such farmer or members of such farmers' organization or group, or in the handling, etc., of fruits and vegetables for the account of the producer thereof.

8. Under the authority granted in section 3791(b) of the Internal Revenue Code, the above ruling will be applied without retroactive effect to the extent that an employer will not be required to file returns or pay taxes under the Federal Insurance Contributions Act or under section 1622 of the Internal Revenue Code with respect to wages paid to employees prior to October 1, 1947, or to file returns or pay the tax under the Federal Unemployment Tax Act with respect to wages paid to such employees prior to January 1, 1947. Any such taxes which have been paid by an employer, however, will not be refunded.

9. As a condition to the relief granted in paragraph 8 above, it is necessary for an employer to file with the collector of internal revenue for his district returns or supplemental returns on Form SS–1a, or statements on Form SS–1c to correct wage information, reporting each employee's account number, name, and wages paid prior to October 1, 1947. The Forms SS–1a or Form SS–1c must show the amount of such wages paid during each return period ended prior to October 1, 1947, with respect to which taxes otherwise would be assessed. An employer is not required to prepare Forms SS–1a or a

Form SS–1c, however, for any period with respect to which the statutory period of limitation has expired. An employee who does not have an account number should file an application therefor on Form SS–5 with the field office of the Social Security Administration nearest his place of employment. Copies of the necessary Forms SS–1a or Form SS–1c, and such further information as may be desired relative to the preparation thereof, may be obtained upon request from the collector of internal revenue.

10. Correspondence relating to this mimeograph should refer to its number and to the symbols EmT:RR.

GEO. J. SCHOENEMAN,
Commissioner.

Approved December 31, 1947.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

SECTION 1426: Definitions. 1948–6–12764
REGULATIONS 106, SECTION 402.208: Agricultural labor. Mim. 6239
(Also Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Section 403.208.)

Status, for Federal employment tax purposes, of services performed in the commercial handling of fresh fruits and vegetables. Mimeograph 6219 [page 113, this Bulletin] modified.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., March 1, 1948.

Collectors of Internal Revenue and Others Concerned:

1. In Mimeograph 6219, dated December 31, 1947 [page 113, this Bulletin], rulings were made concerning the status generally of services performed in the commercial handling of fruits and vegetables. Paragraph 6 of such mimeograph stated, in part, that services performed on and after January 1, 1940, in the employ of a commercial handler in the handling, packing, packaging, processing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market of fresh fruits and vegetables purchased by such handler from the producer thereof, do not constitute "agricultural labor" for Federal employment tax purposes.

2. The Bureau has had occasion to give further consideration to the ruling made in paragraph 6 of the aforementioned mimeograph. As the result thereof, it is now the opinion of the Bureau that such ruling is too broad in scope and that a limitation thereof is desirable. For this purpose paragraph 6 of Mimeograph 6219 is hereby modified to read as follows:

6. The ruling contained herein relative to the status of services performed in the handling, etc., of dried fruits also is applicable to services performed in the employ of a commercial handler of fresh fruits and vegetables, except to such services as are performed in the handling, packing, packaging, grading, and preparing of such fruits and vegetables in their raw or natural state prior to the sale thereof, or delivery thereof for shipment or sale, to a wholesaler or dealer therein.

3. Correspondence relating to this mimeograph should refer to the number thereof and to the symbols EmT: RR.

GEO. J. SCHOENEMAN,
Commissioner.

CHAPTER 9, SUBCHAPTER C.—FEDERAL UNEMPLOYMENT TAX ACT.

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.208: Agricultural labor.

Commercial handling of fruits and vegetables. (See Mim. 6219, page 113.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.208: Agricultural labor.

Commercial handling of fresh fruits and vegetables. (See Mim. 6239, page 116.)

SECTION 3466 OF THE REVISED STATUTES.

1948–11–12815
Ct. D. 1699

FEDERAL TAXES—SOCIAL SECURITY ACT—REVISED STATUTES—DECISION OF SUPREME COURT.

1. SOCIAL SECURITY TAXES—CAPITAL STOCK TAX—PRIORITY OF CLAIM OF UNITED STATES OVER STATE'S CLAIM.

The United States has full priority, by virtue of section 3466, Revised Statutes, for payment from an insolvent debtor's estate of capital stock taxes, Federal insurance contribution taxes under Title 8 and unemployment compensation taxes under Title 9 of the Social Security Act, where the fund available for distribution is more than sufficient to pay in full either the Title 8 tax or the Title 9 tax, though inadequate to pay both, as against a State's claim for unemployment compensation taxes imposed by its statute conforming to the Federal Act's requirements. The Title 9 priority is not limited to 10 per cent of the claim.

2. DECISION AFFIRMED.

Decision of the United States Circuit Court of Appeals, First Circuit (160 Fed. (2d), 614), affirming in part and reversing in part decision of the District Court, District of Massachusetts (65 Fed. Supp., 763), affirmed.

SUPREME COURT OF THE UNITED STATES.

Commonwealth of Massachusetts et al., petitioners, v. *The United States of America.*

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

[April 19, 1948.]

OPINION.

Mr. Justice RUTLEDGE delivered the opinion of the Court.

This case is for all practical purposes a renewal of the litigation recently here in *Illinois* v. *United States,* 328 U. S., 8 [Ct. D. 1673, C. B. 1946–1, 230], and the companion case of *Illinois* v. *Campbell,* 329 U. S., 362 [Ct. D. 1680, C. B. 1947–1, 118]. The former unanimously held that the United States has priority, by virtue of Revised Statutes section 3466 (31 U. S. C., section 191), for payment from an insolvent debtor's estate of Federal insurance contribution taxes

under Title 8 and unemployment compensation taxes under Title 9 of the Social Security Act (49 Stat., 620), as against a State's claim for unemployment compensation taxes imposed by its statute conforming to the Federal Act's requirements. The Campbell case, which was reargued on other issues, rested on this ruling for disposition of the common issue concerning the effect of section 3466.

The facts are substantially identical with those in *Illinois* v. *United States*,[1] except in two respects. One is that the fund available here for distribution is more than sufficient to pay either the Title 8 or the Title 9 taxes, though inadequate to pay both, while in *Illinois* v. *United States* the fund was not large enough to satisfy either tax in full. Here too the debtor's assignee has paid to the Commonwealth the full amount of its claim,[2] while in Illinois cases the fund remained in the assignee's hands for distribution.

The district court sustained the Federal priority for capital stock and Title 8 taxes in full, and for 10 per cent of the Title 9 claim. It therefore deferred payment of any part of the State's claim until those claims were fully paid. But the court held the United States not entitled to priority for the remaining 90 per cent of the Title 9 claim, on the ground that Title 9, section 902,[3] gives the assignee "the alternative right" to pay that amount to an approved State unemployment fund. Accordingly the judgment ordered Massachusetts to pay over to the United States, from the $803.72 received from the assignee, sufficient funds to satisfy in full the Federal priorities sustained, and to retain the small balance remaining after making those payments to apply on its claim for 90 per cent of the Title 9 taxes. (65 Fed. Supp., 763.) This action was taken in the view that, while our previous decisions had sustained the Federal priority for the capital stock and Title 8 taxes, they had not determined the question for Title 9 claims.[4]

However, on appeal by both parties, the Circuit Court of Appeals held the United States entitled, under the Illinois rulings, to priority for the full amount of all its claims, including the Title 9 taxes. That court therefore affirmed the district court's judgment except in so far as it denied the Government's Title 9 claim. As to this it reversed the district court's ruling. (160 Fed. (2d), 614.)

Because of the obvious confusion concerning the effects of our prior decisions and the asserted differences between this case and the Illinois cases, certiorari was granted. (332 U. S., 754.)

I.

Massachusetts seeks to retain the entire $803.72 she has received, in priority to all the Federal claims. She agrees with the district court that section 902 gives the taxpayer an "optional right" of payment, but does not accept its allocation creating priorities for all Federal claims except 90 per cent of the Title 9 taxes. To sustain this broad claim would require reversal of both of the Illinois decisions. In no other way, on the facts, could Massachusetts retain the whole amount she was paid.[5]

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[1] Here, as in that case, the debtor made a common-law assignment for the benefit of creditors. The assignee here realized $1,135.11 from sale of the assets. The claim of the United States for Title 9 taxes amounted to $963.08; for Title 8 taxes, $690.05; and for capital stock taxes, $21. The Commonwealth's claim was for $803.72 in unemployment taxes. Within the time allowed, but for intervention of the insolvency, the assignee paid the State's claim in full and then paid the remaining assets of $331.39 to the collector. He applied this sum on account of the Title 8 taxes, thus leaving unpaid the Federal claims for capital stock and Title 9 taxes as well as $358.66 plus interest on the Title 8 claim.

[2] The Commonwealth in effect has undertaken to indemnify the assignee, by paying over to the United States the $803.72, if the payment to the State should turn out to have been erroneously made. The United States has agreed that if it prevails the judgment shall be limited to $803.72.

[3] The original section 902 (49 Stat., 639) provided that the taxpayer might credit against Title 9 taxes 90 per cent of his contributions under an approved State program. Subsequent amendments did not alter the conception of a basic 90 per cent credit. (See, e. g., notes 13, 15.) The present "credit against tax" section is incorporated in the Internal Revenue Code (26 U. S. C., section 1601).

[4] The district court thought that in *Illinois* v. *United States*, the Title 9 issue had become moot either before or as of the time the case reached this Court, and that therefore we "had no occasion to consider the problem whether as to 90 per cent of the amount due for Title IX taxes the United States [by section 902] had not given the taxpayer the option to make payment to Illinois instead of to the United States." (65 Fed. Supp., 763, 765.) The court thus regarded the Title 9 question as left open and "nicely analyzed * * * to be one not of priority but of alternative obligation." (Id. at 764.)

[5] Since the insolvent's assets are not large enough to pay either the Title 8 or the Title 9 claim and leave enough to pay the State claim in full. See note 1.

In the brief Massachusetts states the Federal question as being whether the assignee may "make payment of the State unemployment tax to the exclusion of the Federal Government claim for Title IX taxes *or any other taxes due the Federal Government* from the taxpayer?" [Italics for emphasis.]

Illinois as *amicus curiae* takes a narrower position, conceding that the Illinois cases stand as decisive adjudications of priority for Title 8 taxes but disputing that effect for Title 9 claims.[6] This position seeks an allocation paying the State's claim after the Title 8 and other Federal claims, including 10 per cent of the Title 9 taxes, but before or rather in "satisfaction" of the remaining 90 per cent of them.[7]

Notwithstanding their substantial differences, the two States rest their respective positions on the same basic arguments, which upon examination turn out to be identical with those vigorously presented by Illinois in the earlier cases, except for wording and detail. Much is made of the fact that here the debtor's assignee has paid to the Commonwealth the full amount of its claim, while in *Illinois* v. *United States*, the fund remained in the assignee's hands. Both States urge that section 902 gives the taxpayer, and here his assignee, the "optional right" of payment to the State. Moreover, with respect to the requirement of Revised Statutes section 3466 that "the debts due the United States shall be first satisfied," it is said that payment to the State with resulting credit to the United States for 90 per cent of the Title 9 claim "satisfies" the Government's debt as much as payment to it in cash.

In the Illinois cases the foundation for the State's claim to be paid in preference to any of the Federal claims lay in the credit provision of section 902, which is the identical provision for "optional payment." There was no question whatever that section 902 gave the taxpayer the "alternate right." But the precise issue in both cases was whether that right had been cut off by Revised Statutes section 3466 when he became insolvent.

Obviously there could have been but little point or effect to our decisions if, despite them, the assignee could have turned around immediately and deprived the Government of the priorities established simply by exercising a right to make the optional payment to the State. Nor would the decisions have been much more sensible or effective, had they purported to sustain the Federal priorities when the assignee has retained the fund, but to disallow them if he has paid the State before the Federal claims are filed. We made no such ineffective or capricious rulings. The decision was broadly that by intervention of the insolvency and the consequent bringing of Revised Statutes section 3466 into play, the taxpayer's right to pay the State and take Federal credit had been cut off.[8]

Our decisions went to the merits of that right and not merely to rule that the State was not a proper party to enforce its exercise. The taxes due the United States were held to be debts; and by virtue of section 3466 the debtor's prior obligation attaching as of the date of his insolvency was to the Government, not to the State. It followed necessarily that the assignee could not "satisfy" it by paying the State and giving the Government "credit." This was the very question at issue and the one adjudicated. The "alternate right" contention and the one that "satisfied" in section 3466 means "credit" are only verbal redressings of the basic issue decided in the Illinois cases.

II.

This is as true of the argument's bearing on Illinois' narrower position as it is for Massachusetts' broader one. But Illinois, apparently with Massachusetts' support, brings forward to sustain the less sweeping attack the additional contention that the Illinois decisions did not adjudicate Title 9 priority, although purporting to do so. Moreover, the facts present this narrower issue of distinguishing between Title 9 and other Federal claims in sharper factual focus than did the Illinois cases. For if the capital stock and Title 8 claims are first paid in full, as the district court required, a small balance of the fund will

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[6] Illinois has appeared with leave, both by brief and in oral argument. It neither expressly disclaims nor expressly supports Massachusetts' broad position for reversal.

[7] On the facts, see note 1, after paying the capital stock claim, the Title 8 claim and 10 per cent of the Title 9 claim, this would leave $327.75 to apply on the State's claim; and hence require Massachusetts to pay over to the United States $475.97 plus interest from the $803.72 she has received, in order to complete the payment in full of the Title 8 claim.

Actually this represents the district court's specific allocation, not exactly that of either Massachusetts or Illinois. Each would apply a somewhat different method of allocation. (See note 20.)

[8] See Part III. The Federal priority under section 3466 attaches from the time the insolvent debtor transfers or loses control over his property. (*Illinois* v. *Campbell*, 329 U. S., 362, 370; *United States* v. *Waddill Co.*, 323 U. S., 353, 355–358 [Ct. D. 1624, C. B. 1945, 459]; *United States* v. *Oklahoma*, 261 U. S., 253, 260.)

remain, to be applied either in part payment of the Federal Title 9 claim or in some form of allocation between it and Massachusetts' claim. This was not true of *Illinois* v. *United States*, or indeed of *Illinois* v. *Campbell*, in the posture in which that case was brought here.

The principal argument is that the Title 9 taxes, though litigated in the Illinois courts, were not involved on the facts in the Illinois cases as they came to and were decided by this Court. Hence it is said we did not acquire jurisdiction over the Title 9 claims. The argument is correct concerning *Illinois* v. *Campbell*.[9] But it is surprising as applied to *Illinois* v. *United States*, in view of the State supreme court's adverse decision on the Title 9 issue; Illinois' explicit application for certiorari on that issue and argument on the merits here to reverse it;[10] the necessity on the facts for the State to bring the question up and secure reversal in order to establish its claim;[11] and finally our opinion's clear and explicit terms, indeed emphasis, in deciding the Title 9 issue, together with the Title 8 one, against Illinois.[12]

The idea that the State court decided only the Title 8 issue completely misconceives its action, and serves only to confuse the judgment in that case with the one in *Illinois* v. *Campbell*. Indeed it seeks to infuse into the former the latter's denial of Title 9 priority. Not only is this wholly incompatible with Illinois' earlier position; it ignores the fact that the State court disposed of the Title 9 issue in both cases, but in opposite ways on entirely different facts and legal issues.

In *Illinois* v. *Campbell*, the State court did not reach the basic question of the force of Revised Statutes section 3466 to create priority for Federal Title 9 claims; rather, it expressly avoided deciding that question. (391 Ill., 29, 32.) This was because the insolvent's assets were in the hands of a court-appointed receiver (id., 31) and in that situation section 602(b) of the Revenue Act of 1943 (58 Stat., 77)[13] expressly allowed the receiver to pay the State and take credit up to 90 per cent of the Title 9 tax. The Illinois Supreme Court expressly so held, and on this ground alone denied the Federal Title 9 claim. (391 Ill., 29, 34.) The effect was to rule that section 602(b) created a legislative exception to section 3466,

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[9] The State supreme court's judgment had sustained the Federal priority for Title 8 taxes, ordering them paid first and the small remaining balance of about $150 to be paid to the State. This left the Title 9 taxes unpaid. The court denied priority for that claim because it fell within the explicit exception of section 602(b) of the Revenue Act of 1943. (See text *infra* at notes 13, 14.) The Government's failure to apply for certiorari as to the $150 eliminated the Title 9 issue from the case in this Court.

[10] Illinois almost uniformly put the issues as involving Title 8 and Title 9 taxes indiscriminately. Thus, in stating "The Questions Presented," the petition for certiorari spoke of priority for "Social security excise taxes and capital stock taxes," necessarily encompassing Title 8 and Title 9 levies. This was repeatedly true of the State's brief. Further, the petition at one point said: "In holding that the claim of the petitioner was subordinate to the claims of the United States for capital stock tax and for taxes arising under Titles VIII and IX of the Social Security Act, the Supreme Court of Illinois looked to form, not substance, and disregarded the character and significance of petitioner's claim." The Government's briefs were equally positive in seeking disposition of the Title 9 claim.

[11] The Federal claims asserted were as follows: Capital stock taxes, $58.73; Title 8 taxes, $1,065.52; Title 9 taxes, $1,284.36; all plus interest from the date due. The Illinois claim for State unemployment compensation contributions was $721.29. And the fund available to satisfy all these claims was $1,010.81.

Since the assets were insufficient to pay in full either the Title 8 or the Title 9 claim, Illinois had to override both to establish her claim. Illinois recognized this both by her application for review and by the broad argument that the State claim was tantamount to a Federal tax and the credit provisions of section 902 exempted it completely from the priority of Revised Statutes, section 3466 for all Federal taxes, not simply one.

[12] The opinion in *Illinois* v. *United States* explicitly stated: "The claim of the United States is for Federal unemployment compensation taxes under Title 9 and Federal insurance contributions taxes under Title 8 of the Social Security Act (49 Stat., 620)." (328 U. S., 8, 9.) The opinion throughout treated Title 9 taxes on a parity with those under Title 8. We accepted fully the State's view that the credit or "optional payment" provision of section 902 was designed to stimulate the creation of sound State systems. (328 U. S., 8, 10.) See *Illinois* v. *Campbell* (329 U. S., 362, 367, n. 5). But we rejected the argument that the State claim was tantamount to a Federal one and said: "But we can not agree that Congress thereby intended in effect to amend section 3466, by making its priority provisions inapplicable to State unemployment tax claims." (328 U. S., 8, 11.) The ruling applied to both types of tax without distinction.

[13] This section was one of the relaxing amendments (see Part IV, to Title 9, section 902, of the Social Security Act). For Title 9 taxes due for the years 1939, 1940, 1941 and 1942 it allowed credit up to 90 per cent, without regard to previous failure to pay as required, if the assets of the debtor had been, during the period specified, "in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction."

Section 602(a) of the 1943 Act (58 Stat., 77) also created a similar relaxation of section 902, for Title 9 taxes due for the years 1936, 1937 and 1938, with credit limited however to 81 per cent, when the State payments for those years were made after December 6, 1940. This section formed the basis for a claim to credit in *Illinois* v. *United States* rejected by the Illinois court. (See note 15.)

limited to payments by such receivers, within the times and for the tax periods specified, up to 90 per cent of the Title 9 taxes.[14]

But section 602(b) did not apply in *Illinois* v. *United States*, because the insolvent's assets were held by a common-law assignee, not a court-appointed official.[15] So holding (391 Ill., at 37), the Illinois court went on to rule that the Federal claims for Title 8 and Title 9 taxes were debts within the meaning of section 3466 and were therefore entitled to priority over the State's claim. It not only rejected the argument that the credit provision of Title 9, section 902, made that claim "in reality a claim of the Nation * * * tantamount to a claim of the United States,"[16] but also carefully guarded the wording of the opinion's dispositive paragraphs[17] and the directions given the trial court for entering the judgments on remand so as to differentiate the two cases and to avoid any direction that the fund in *Illinois* v. *United States* apply on only one of the Federal claims.[18] The judgment thus left the United States free to apply it in partial satisfaction of either claim or both.

This was also the effect of our own decision and judgment. It generally and without distinction between the Title 8 and Title 9 claims adjudicated priority for both. As in the Illinois court's decision, no restriction was placed upon allocation of the fund, nor is any hint to be found in the opinion that such an allocation was intended. Indeed we were not asked to make one and to have done so would have disregarded the basic position of both parties, each of which sought a full and favorable disposition of the controversy including decision upon all the issues presented.[19]

It is true that, as in the Illinois Supreme Court, the decision and judgment could have been made on the narrower basis that the Title 8 claim was more than sufficient to exhaust the fund, and therefore to sustain the priority for that claim alone would dispose of the case. But this would have been equally true of the Title 9 claim. Neither claim was either more or less essential to decision than the other, indeed decision upon both was necessary to a judgment favorable to Illinois. To have eliminated either would have required some indication of that purpose. Since none was given, it can not be said that the judgment rested on the one ground or claim more than the other.

While therefore the case is one which might have been decided on either of two independent grounds favorably to the Government, it is neither one in which that course was followed nor one which could have been determined the opposite way in that manner. Instead, as we were asked to do and rightly could do on the record and the issues, we decided both issues, and the judgment rested as much

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[14] See also Part IV. The court, however, in giving directions for the decree to be entered by the trial court ordered the Federal Title 8 claim paid first in full "and any balance remaining" to the State. (391 Ill., at 46; see also id., 42.) Thus apparently it inadvertently lost sight of the fact, earlier expressly noted, id. 34, 39, that section 602(b) allowed the receiver to take credit only up to 90 per cent of the Title 9 taxes.

This oversight seemingly was responsible for the court's failure to award priority to the United States for 10 per cent of its Title 9 claim, from the small balance remaining after paying the Title 8 taxes. (Cf. note 9.) Had this amount, some $128, also been awarded to the United States, roughly only $22 would have been left for the State. The opinion gave no consideration to this question, and by the Government's failure to apply for certiorari regarding it we were prevented from considering it.

[15] An additional reason was that the taxes against which credit was claimed were not taxes for the years to which section 602(b) expressly limited the credit it allowed. Instead section 602(a) of the 1943 Act (see note 13) allowed conditional credit for the tax years involved in *Illinois* v. *United States* and the State sought to secure it. But the Illinois court held section 602(a) also inapplicable on the facts and denied the 81 per cent credit because the assets were in the hands of a common-law assignee, not in the custody or control of a court-appointed receiver or other official as the section required for the credit to be available. (391 Ill., at 37.)

[16] 391 Ill., at 39, 40; cf. 328 U. S., at 11. The Illinois court held "the full amount" of the payroll (Title 9) taxes to be "taxes due the Federal Government." In the first instance, it said, this was true of "100 per cent of the taxes levied," which "continues to be taxes due the Federal Government either until it is all paid to the Federal Government, or 90 per cent is paid to the State and the balance to the Federal Government." The provisions for credit, the opinion continued, "do not change the character of the taxes imposed. They are still taxes due the Federal Government and constitute a debt due to the United States within the purview of section 3466 of the Revised Statutes." (Id., 40, 41.)

[17] 391 Ill., 42, 46.

[18] Ibid. The order for judgment in *Illinois* v. *United States* merely reversed the trial court's judgment and remanded the cause "with directions to enter a decree finding that the United States is entitled to priority of payment to the extent of the funds on deposit, and ordering distribution accordingly." (391 Ill., at 46.) See note 14 for the directions in the Campbell case.

[19] See notes 10, 11. The cases were obviously test cases designed to settle the question of priority generally, i. e., not merely for one but for all Federal taxes and thus provide a certain basis for administration of the Social Security Act in both its insurance and unemployment compensaton features.

upon the one determination as the other. In such a case the adjudication is effective for both. (*United States* v. *Title Ins. Co.*, 265 U. S., 472; *Union Pacific Co.* v. *Mason City Co.*, 199 U. S., 160; see *Richmond Co.* v. *United States*, 275 U. S., 331, 340.)

III.

Finally, it is urged that in *Illinois* v. *United States* we had no occasion to consider and hence our opinion did not discuss whether in a case like this, where the fund is more than sufficient to pay all Federal claims except 100 per cent of the Title 9 claim, the balance remaining after paying those other claims must go first to pay the Federal Title 9 claim in full, or may be allocated between that claim and the State claim to pay 10 per cent of the Federal claim first and then to apply what remains on the State claim.[20]

Closely related to this, though not involved on the facts in *Illinois* v. *United States* or here,[21] is the Government's apparent concession that if all the Federal claims are paid in full, including 100 per cent of the Title 9 claim, and any balance then remains in the fund, the insolvent taxpayer is nevertheless given the right by section 902 to pay that balance to the State and receive credit on his Federal Title 9 tax. In such a case, it is said, the Government would be overpaid on Title 9 taxes and obligated to refund the excess. Then the taxpayer could apply the amount received in further payment of the State claim, with corresponding Federal credit, overpayment and refund, only to start the cycle again and repeat it until he had paid the State its claim in full and received the entire 90 per cent credit.[22] Hence in this situation, it is said, short-cut distribution might well be made to the State in the first place, to eliminate the cycle.

The effect of the concession, if it is valid, goes far toward cutting the ground from beneath the Government's basic position.[23] That effect is heightened by the further surprising statement in its brief that in a case like this, not covered by the concession, compliance with the credit conditions of section 902 becomes impossible "not because section 3466 operates to exclude section 902 or to nullify it, but because the terms of section 902 itself deny it [credit] where no payment can be made." The statement would be understandable, if it had been that section 3466 and section 902 both work to deny the credit in this situation. But to say that section 3466 has no effect to cut off the right to credit either in the present situation or in the different hypothetical one stated is to take away the basic grounding of all Federal priority as against the State's claim.

The concessions can not be accepted. In the first place, the effect of section 3466 depends on the fact of insolvency, not on the degree of it as the first concession seems to contemplate. And it is only by force of section 3466 that the Government has any priority at all. Section 902 may work to deny credit, if its conditions for credit are not fulfilled. But it does not give Federal priority over valid State claims. Moreover, both concessions are altogether inconsistent with the basic decisions in the Illinois cases and the grounds on which they rested. The matter requires brief restatement. It is one which goes fundamentally to the effect of Revised Statute section 3466, as distinguished from, though not unrelated to, section 902 of the Social Security Act. These of course are entirely distinct statutes, with different functions.

Revised Statutes section 3466 gives priority explicitly for "*debts* due to the United States" and the priority given is in terms absolute, not conditional. Once attaching, it is final and conclusive. A long line of decisions has held that taxes due the Government are "debts" within the meaning of the section.[24] In the

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[20] Cf. the district court's view, note 4, supra; and note 7. Illinois and Massachusetts in fact urge different methods of allocation, each differing from the one applied by the district court. From the funds available for Title 9 distribution, Massachusetts would pay the State claim first and correspondingly reduce the Federal claim. Illinois would make a pro rata distribution of 10 per cent of the available funds to the Federal Government and 90 per cent to the State, while the district court would pay the Federal 10 per cent first and apply the balance remaining on the State claim.

[21] Since the fund was not large enough in either case to pay all the Federal claims in full.

[22] Hypothetical examples are stated in the district court's opinion (65 Fed. Supp., 763) and in the briefs filed here.

[23] Possibly the concession was intended as an argumentative alternative to other and broader positions. In any event, we are not bound to accept it as either sound or conclusive of the litigation. It is not, even in terms, a confession of error.

These observations apply equally to the Government's further damaging statement set forth in the sentence following the one to which this footnote is appended.

[24] The Federal priority has been uniformly sustained for tax claims. *United States* v. *Waddill Co.*, 323 U. S., 353 (unemployment compensation taxes and a debt arising out of a Federal Housing Administration transaction); *United States* v. *Texas*, 314 U. S., 480 [Ct. D. 1534, C. B. 1942–1, 345] (gasoline taxes); *New York* v. *Maclay*, 288 U. S., 290 [Ct. D. 635, C. B. XII–1, 150 (1933)] (income taxes and a claim for expenses incurred in

Illinois cases we applied this ruling to Title 8 and Title 9 taxes as against the State's claim for "contributions." Prior decisions also have held that the priority attaches as of the time of the insolvency,[25] a ruling also applied in the Illinois cases.

But if credit can be taken after section 3466 attaches, i. e., after insolvency, effective to set aside the Federal priority up to 90 per cent of the Title 9 claim, the priority to that extent becomes conditional, not absolute. Its effectiveness then becomes contingent upon the happening of subsequent events, namely, the concurrence of the conditions of section 902 for paying the State and taking the credit together with the taxpayer's election to do this. In short, section 3466 never conclusively attached and section 902 works retroactively on occurrence of those contingencies to upset the priority.

A further effect might be to make the statute applicable beyond the scope of the term "debts due to the United States." For if the taxpayer's subsequent election can destroy the priority retroactively, not only the priority but the "debt" itself becomes contingent. And it is at least doubtful on the statute's wording that obligations wholly contingent for ultimate maturity and obligation upon the happening of events after insolvency can be said to fall within the reach of "debts due" as of the time of insolvency.[26]

However this may be, we know of no previous application of section 3466 creating such a conditional priority.[27] Nor do we see how one could be made consistently with the section's terms or purposes. The only such consistent application would seem to be one giving the Government the prior and indefeasible right to take the fund available, up to the amount necessary to pay its claim as of the date the priority attaches, not as it may be affected by later contingencies other than payment.[28] In enacting section 3466 Congress gave no indication whatever of intent to create defeasible priorities.

The defeasance conceded possible by the Government, therefore, together with the further conceded ineffectiveness of section 3466 [though not of section 902] in circumstances like these to deny the right to credit, destroys the fundamental character of the priority created by section 3466 and thereby removes the foundation from the Government's basic position, which is that section 3466 applies as of the time of insolvency to create the priority it contemplates. Through these concessions the section is made, by virtue of the effect of section 902, to create only a defeasible Federal priority as against claims for credit. This actually is but another way of making section 902 effective as an exception to Revised Statutes section 3466, like section 602 (a) and (b) of the Revenue Act of 1943, noted above in Part II.

This of course was Illinois' earlier position, rejected by this Court. If that position is now to be accepted, we do not see how section 3466 can be regarded as applying to Title 9 taxes or, indeed, how the effect of treating section 902 as

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the replacement of a buoy damaged by the insolvent); *Spokane County* v. *United States*, 279 U. S., 80 (income taxes and penalties); *Price* v. *United States*, 269 U. S., 492 (income taxes and customs duties); *Stripe* v. *United States*, 269 U. S., 503 (income, excess profits, and capital stock taxes).

Judgments recovered by the United States also are debts entitled to priority. *United States* v. *Knott*, 298 U. S., 544 (against surety on estreated bail bonds); *Hunter* v. *United States*, 5 Pet., 173 (against surety).

Other debts for which the Government has been held to have priority under section 3466 are: *United States* v. *Remund*, 330 U. S., 539 (emergency loans made by Farm Credit Administration); *United States* v. *Emory*, 314 U. S., 423 (sum due on note held under the National Housing Act); *Bramwell* v. *U. S. Fidelity Co.*, 269 U. S., 483 (Indian funds deposited in bank); *United States* v. *National Surety Co.*, 254 U. S., 73 (losses where contractor defaulted); *Bayne* v. *United States*, 93 U. S., 642 (misappropriated Army paymaster funds); *Lewis* v. *United States*, 92 U. S., 618 (funds held by Navy disbursing agents); *United States* v. *State Bank of North Carolina*, 6 Pet., 29 (bonds for customs duties); *United States* v. *Fisher*, 2 Cranch, 358 (claim against endorser of protested bill of exchange).

[25] See note 8 supra.

[26] It has been held that the term "debts due to the United States" should be construed with some liberality. (See e. g., *Price* v. *United States*, 269 U. S., 492, 500; *United States* v. *Emory*, 314 U. S., 423, 426.) And there is apparently no decision expressly ruling the matters of contingency of the obligation or of the priority upon subsequent events not certain. (Cf. *United States* v. *Marxen*, 307 U. S., 200.) But the fact that the problem has not squarely arisen in the the long history of section 3466 and that all of the decisions sustaining the priority were for debts clearly due and owing, adds force to the clear inferences implicit in the statute's wording, viz, that Congress not only created a conclusive priority attaching as of the time of insolvency but in doing so drew the line for its operation close to, if not at, the commonly accepted meaning of "debt" as distinguished from other forms of obligation.

[27] See notes 24, 26.

[28] Again the distinction between "payment" and "satisfaction" becomes pertinent. To construe the term "satisfied" in section 3466 as being fulfilled by taking subsequent credit, as the States urge, would be to qualify the word "debts" so as to make it include conditional obligations.

an exception can be limited to Title 9 taxes. For if section 902 works as an exception to section 3466, then Illinois was right in the first place, and the exception would seem to apply to all Federal taxes, not just the one.[29]

Accordingly, the Government's concessions can not be accepted as consistent either with our prior decisions or with its own basic position in the Illinois cases and this one. That position, apart from the concessions, rests ultimately on section 3466 and its applicability to these claims. This necessarily denies that section 902 creates an exception to section 3466 or a qualification inconsistent with its terms. The qualifications now conceded are not consistent with those terms, for they do not contemplate the tenuous, destructible sort of "priority" the concessions involve.

Moreover, the fact that in *Illinois* v. *United States* we did not discuss expressly the 10–90 per cent distribution of Title 9 taxes now suggested does not mean that our decision did not encompass that possibility. It extended generally to all cases where credit is sought after insolvency. It was Federal *priority* attaching as of the time of insolvency that we adjudicated, not something less. As we have indicated, in making the adjudication we neither were nor could have been ignorant of section 902's allowance of the taxpayer's election. Our decision held that right cut off by the incidence of section 3466 at the time of insolvency. Any other would have been wholly inconsistent with the ruling that section 3466 applies as against the State's claim for "contributions" or the taxpayer's right to make them after the incidence of his insolvency.

IV.

We have taken pains to state the effect of our previous decisions, because of the confusion concerning them and the fact that two States have earnestly presented the questions. Ordinarily this would end the matter. But, again for those reasons, we turn briefly to the merits and to the question whether the Illinois decisions should now be reversed.

Apart from the arguments already discussed, two stand out as reasons for the change sought. Both reiterate contentions rejected in the Illinois cases. The primary one is that the objects of the legislation will be defeated unless the change is made, namely, the encouragement of the State systems and correspondingly of taxpayers to make "contributions" to State funds, thereby insuring that the moneys so paid in will go out for unemployment benefits rather than into the Treasury as revenue. The second is a heightened emphasis on the subsequent amendments to section 902 as showing Congress' intent to waive, in progressively broadening scope though still only in specified situations, the original limitations of section 902 upon securing credit.[30]

From the second contention is drawn the conclusion that Congress, by its carefully, even meticulously drawn relaxations, meant credit to be given not only in the circumstances so carefully prescribed but also in other situations not within those prescriptions. This conclusion when added to the first argument amounts in sum to reiterating that the State exaction is "tantamount to a claim of the United States," and that not to disregard the tax and credit structure in which Congress molded the Act would be to "observe the form and ignore the substance of the legislation."

We shall not repeat the answers made in *Illinois* v. *United States*, except to say that "while the State and Federal Governments were to cooperate, the underlying philosophy of the Federal Act was to keep the State and Federal systems separately administered." (328 U. S., 8, 11.) To the considerations there stated, however, we now add the following ones, not expressly mentioned in the earlier opinion, prefaced however with the observation that the grounding of each plea for reversal affords basis for conclusion against that action as well as in its favor.

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[29] Congress, of course, could provide for Federal priority as to all taxes except Title 9 claims. But, apart from the explicit exceptions created by section 602 (a) and (b) of the Revenue Act of 1943 with reference to funds of insolvents in the hands of court-appointed officials (see Part II, notes 13, 15), Congress has not done so either by any wording or intent of Revised Statutes section 3466, nor in our view by section 902 of the Social Security Act. We do not think that it intended to make the State's claim subject to all other Federal taxes, but prior to all but 10 per cent of the Title 9 taxes. (See text, infra, Part IV.) No instance has been found where section 3466 has been applied to create such a selective priority as among Federal claims qualifying as "debts" within the meaning of section 3466.

[30] Of the several amendments, none is applicable to this case. The only ones relating expressly to insolvents' estates are those noted in Part II (see notes 13, 15 and text, 31), applying to payments by court-appointed receivers, etc.

Thus the many relaxations which Congress has made respecting the conditions permitted for taking credit, by force of their very number and careful limitation, show that Congress was not offering a broadside exemption to be applied in situations, such as this case, other than those specifically defined.[31] Rather the intention disclosed is to limit the credit to the precise situations specified for allowing it. That view accords with Congress' deliberate choice of the tax and conditional credit devices for framing the Act's structure. These are well-known techniques, adopted apparently in this instance for constitutional as well as administrative reasons.[32] But those very motivations warn us to be wary of disregarding the form which Congress has chosen advisedly, in order to substitute a substance we can only be doubtful it may have intended.[33]

But it is said that if payment to the State is not allowed and the right to receive credit is cut off, the money will not be paid out in unemployment benefits but will go into the Treasury as general revenue; the States will be compelled to make payments to the insolvent's employees; and thus the primary purposes of the Act will be defeated. There are several answers.

One is that Congress has guaranteed the solvency of the State funds and, if need be, the revenues thus paid into the Treasury will be available for that purpose.[34] Moreover, but especially in view of this guaranty, it may be more likely that the funds, if paid into the Treasury rather than to the State, will be saved for application to the Act's purposes. For there is no assurance, if the State's prior right to them is once established, that they will go for the payment of unemployment benefits.

It must be remembered that we are dealing with an insolvent's assets. And the States have statutes by which such assets are distributed according to local priorities whenever section 3466 is not operative. Only a few of them place unemployment benefits at the top.[35] Depending therefore upon the number and the amounts of claims standing ahead of the unemployment benefit claims in the particular State would be the certainty or probability of payment of the latter. In short, reversing our decisions and conceding the validity of the State's position, either as to Title 9 taxes alone or as to all Federal taxes, would give no definite and certain assurance that the funds thus acquired by the States would go to satisfy the Act's purposes.[36] In many cases payment to the State would be the means of diverting them to wholly extraneous objects. Especially would this be true when smaller employers within the Act's terms are involved, as they seem to be much more often than others.[37] In the absence of any explicit or implied

[31] Thus, as has been noted, the provision for payment and credit given by the Revenue Act of 1943, sections 602 (a)(3) and (b) (58 Stat., 77), is limited to situations where an insolvent's assets were under the control of a court or its appointed official, not where they were in the hands of a common-law assignee. Congress quite obviously had the insolvent taxpayer in mind. But even so it excluded nonjudicial custodians of his assets by its failure to extend the relaxation to them. The omission can not be taken to have been unintentional. The necessary effect in the one case was to create a legislative exception to section 3466, in the other to deny it by the withholding of the like privilege. So also with the other easing amendments.

[32] Cf. *Steward Machine Co.* v. *Davis* (301 U. S., 548) [Ct. D. 1236, C. B. 1937–1, 444].

[33] It is precisely in matters where Congress has used the tax and credit technique that disregarding the form chosen offers the gravest dangers of perverting a statute's purposes. We think that possibility is equally as great here from ignoring Congress' expressed intent, both in limiting the right of credit to defined situations and in its failure expressly to qualify the broad policy of section 3466, as would be the other one of reaching its purpose by giving effect to its explicit limitations.

[34] Sections 904 and 1201 of the Social Security Act (58 Stat., 789; 50 U. S. C. App. Supp. V, sections 1666–1667, as amended, Public Law No. 379, Eightieth Congress, first session, sections 4–5). Section 904 established a Federal employment account in the United States Treasury, and appropriated the excess of Title 9 taxes over unemployment administrative expenses to such account. Section 1201 authorized loans from such account to the States for unemployment insurance payments when a State's unemployment insurance fund becomes dangerously low, repayment of such advances not being required unless the State fund regains stable condition. (See S. Rept. No. 477, Eightieth Congress, first session, 9–10.)

[35] See, e. g., Mass. Ann. Laws, c. 151A, section 17 (1942); Cal. Gen. Laws, Act 8780d, section 46 (1944); Iowa Code, section 96.14(3) (1946); Okla. Stat., tit. 40, section 224(c) (1941).

[36] Unless in this case we should undertake to say, as we have not been asked or authorized to do, that by implied force of section 902, State priorities are relegated to a position inferior to the taxpayer's right to pay the State and take Federal credit. Nothing in the statute suggests that Congress intended to give the taxpayer or this Court the power thus to disorder the State's schemes of priorities.

[37] If the litigated cases, of which the ones that have come here seem to be typical, and common observation may be taken as fairly accurate bases for judgment.

It is true that in some cases of insolvency the business continues without being wound up. But this perhaps is much more often the case when operation is continued under judicial control than otherwise. And when that is the situation, in so far as the 1943 amendment applies the payment may be made and credit obtained. In so far as it does not apply the amendment is a clear mandate against allowing that to be done.

direction we do not believe that Congress intended to require that the State's claim for unemployment contributions take precedence over all other debts of the insolvent or to authorize us to make this a condition of allowing payment to the State to be made from his estate. There was no evident purpose thus broadly to upset State schemes of priority.

These examples are enough to show that the premises of the States' contentions are capable of supporting other conclusions than they draw from them. Other examples might be stated. But in each instance the inferences drawn by the States are counterbalanced with opposing ones quite or nearly as tenable. In some they are of greater weight.

It follows that Massachusetts and Illinois have not shown the clear inconsistency between the Act's explicit terms and our previous decisions, on the one hand, and achieving the Act's purposes, on the other, which is necessary to make out a case for reversal and thus for negating the force of Revised Statutes section 3466 as creating Federal priorities for Title 9 or other Federal tax claims. The Illinois decisions were advisedly made, after full deliberation. There was no dissent on the basic question of priority, even though the issue seemed close. No substantially new argument or consideration of policy has been put forward. The case for reversal is no more clear or convincing than Illinois' position on the merits in the earlier litigation.

Nor are we persuaded that our former decisions were erroneous. For the strict policy of section 3466 had permitted few exceptions [38] and, as we repeated in *Illinois* v. *United States*, quoting *United States* v. *Emory* (314 U. S., 423, 433), "only the plainest inconsistency would warrant our finding an implied exception to the operation of so clear a command as that of section 3466." (328 U. S., 8, 12. See also *United States* v. *Remund*, 330 U. S., 539, 544.) There is no such inconsistency here.

Until the Federal claims for taxes, whether under Title 8, Title 9 or other taxing provision are paid in full, the States are not entitled either to collect or to retain any part of the insolvent's debtor's assets. We do not anticipate that any of the State unemployment insurance programs will fail or be seriously impaired by reason of this decision, or their consequent failure to secure the small sums characteristically at stake in this extended litigation and, apparently, in other cases most likely to produce similar controversy. Nor would the Federal Treasury have been rendered bankrupt by a contrary result.

The judgment of the Circuit Court of Appeals is

Affirmed.

Dissenting opinion by Mr. Justice JACKSON, with whom Mr. Justice FRANKFURTER, Mr. Justice DOUGLAS, and Mr. Justice BURTON join.

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[38] The original departures indeed did not contemplate that exceptions were being made. They conceived that the funds or property affected, being covered by mortgage, belonged in fact to third persons, not to the insolvent debtor. (*Thelusson* v. *Smith*, 2 Wheat., 396, 426; *Conard* v. *Atlantic Ins. Co.*, 1 Pet., 386; *Brent* v. *Bank of Washington*, 10 Pet., 596, 611; see *Savings Society* v. *Multnomah County*, 169 U. S., 421, 428; cf. *United States* v. *Fisher*, 2 Cranch, 358; *United States* v. *Hooe*, 3 Cranch, 73.) The Court has been loath to expand these exceptions (cf. *Illinois* v. *Campbell*, 329 U. S., 362, 370) to include other types of lien. The claims of Massachusetts and Illinois do not fall within the scope of those exceptions or of others as to which the Court has felt that subsequent legislation authorized them. (Cf. *Cook County National Bank* v. *United States*, 107 U. S., 445; *United States* v. *Guaranty Trust Co.*, 280 U. S., 478.)

MISCELLANEOUS TAX RULINGS.

ESTATE TAX.

INTERNAL REVENUE CODE.

REGULATIONS 105, SECTIONS 81.34, 81.73, AND 81.96. 1948–1–12726
T. D. 5596

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 81.—REGULATIONS RELATING TO ESTATE TAX.

Regulations 105 amended—Deduction of attorneys' fees incurred in contesting an asserted deficiency or in prosecuting a claim for refund.

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

To Collectors of Internal Revenue and Others Concerned:

On August 6, 1947, notice of proposed rule making, regarding the deduction for estate tax purposes of attorneys' fees incurred in contesting an asserted deficiency or in prosecuting a claim for refund, was published in the Federal Register (12 F. R., 5343). After consideration of all such relevant matter as was presented by interested persons regarding the proposal, the following amendments to Regulations 105 (26 CFR, Part 81) are hereby adopted. These amendments are designed to clarify the regulations as to the time for claiming a deduction for attorneys' fees incurred in contesting an asserted deficiency or in prosecuting a claim for refund.

PARAGRAPH 1. Section 81.34 of Regulations 105 [26 CFR, 81.34] is amended by inserting immediately after the first paragraph thereof the following new paragraph:

A deduction for attorneys' fees incurred in contesting an asserted deficiency or in prosecuting a claim for refund should be claimed at the time such deficiency is contested or such refund claim is prosecuted. A deduction for such fees shall not be denied, and the sufficiency of a claim for refund shall not be questioned, solely by reason of the fact that the amount of the fees to be paid was not established at the time that the right to the deduction was claimed.

PAR. 2. Section 81.73 of Regulations 105, as amended by Treasury Decision 5503, approved March 20, 1946 [C. B. 1946–1, 156] [26 CFR, 81.73], is further amended by inserting the following sentence at the end of the fourth paragraph thereof:

For deduction of attorneys' fees incurred in contesting an asserted deficiency, see section 81.34.

PAR. 3. Section 81.96 of Regulations 105, as amended by Treasury Decision 5239, approved March 10, 1943 [C. B. 1943, 1081] [26 CFR,

81.96], is further amended by inserting the following sentence at the end of the first paragraph thereof:

For deduction of attorneys' fees incurred in prosecuting a claim for refund, see section 81.34.

PAR. 4. The amendments made in paragraphs 1, 2, and 3 to Regulations 105 merely clarify the application of certain provisions of such regulations. This is found to be good cause for making such amendments effective for the entire period covered by such regulations, and they are hereby made so effective, in accordance with the exception applicable under section 4(c) of the Administrative Procedure Act.

(This Treasury decision is issued under the authority of section 3791 of the Internal Revenue Code (153 Stat., 467, 26 U. S. C., 3791).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved December 22, 1947.

E. H. FOLEY, Jr.,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 29, 1947, 8.47 a. m.)

GIFT TAX.

REGULATIONS 108, SECTIONS 86.1, 86.2, and 86.3. 1948–6–12767
T. D. 5606

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 86.—GIFT TAX UNDER CHAPTER 4 OF THE INTERNAL REVENUE CODE, AS AMENDED.

Regulations 108 amended to conform to Public Law 112 (Eightieth Congress) [C. B. 1947–2, 334], relating to release of powers of appointment and relinquishment of power or control under certain discretionary trusts.

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

To Collectors of Internal Revenue and Others Concerned:

On November 6, 1947, notice of proposed rule making, regarding the gift tax provisions of Public Law 112 (Eightieth Congress, first session; 61 Stat., 178), approved June 25, 1947 [C. B. 1947–2, 334], was published in the Federal Register (12 F. R., 7265). No objection to the rules proposed having been received, the following amendments are hereby adopted. Such amendments are necessary in order to conform Regulations 108 [26 CFR, Part 86] to the gift tax provisions of Public Law 112, relating to release of powers of appointment and relinquishment of power or control under certain discretionary trusts, and are as follows:

PARAGRAPH 1. There is inserted immediately following section 502 of the Revenue Act of 1943, which was inserted in such regulations by Treasury Decision 5366, approved May 5, 1944 [C. B. 1944, 583], and preceding section 86.1, the following:

PUBLIC LAW 112 (EIGHTIETH CONGRESS, FIRST SESSION), APPROVED JUNE 25, 1947.

* * * * * * *

SEC. 2. (a) Section 1000(e) of the Internal Revenue Code (relating to certain discretionary trusts) is hereby amended by striking out "prior to January 1, 1945," and inserting in lieu thereof "on or before December 31, 1947 (or on a later date in any case where it is shown to the satisfaction of the Commissioner, in accordance with regulations prescribed by him with the approval of the Secretary, that failure to relinquish prior to such later date was for reasonable cause)".

(b) If any amount paid prior to the date of the enactment of this joint resolution constitutes an overpayment of gift tax solely by reason of the amendment made by this section, no interest shall be allowed or paid with respect to the amount of such overpayment.

PAR. 2. There is inserted immediately following Public Law 393 (Seventy-ninth Congress, second session) [C. B. 1946–2, 266], which was inserted in such regulations by Treasury Decision 5524, approved July 2, 1946 [C. B. 1946–2, 165], and immediately preceding section 86.1, the following:

PUBLIC LAW 112 (EIGHTIETH CONGRESS, FIRST SESSION), APPROVED JUNE 25, 1947.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That * * * section 452(c) of the Revenue Act of 1942 is hereby amended to read as follows:

"(c) RELEASE BEFORE JULY 1, 1948.—

"(1) A release of a power to appoint before July 1, 1948, shall not be deemed a transfer of property by the individual possessing such power.

"(2) This subsection shall apply to all calendar years prior to 1948 and to that part of the calendar year 1948 prior to July 1, 1948."

PAR. 3. Section 86.1 is amended by striking from the second sentence "March 1, 1944" and inserting in lieu thereof "July 1, 1948."

PAR. 4. Section 86.2(b), as amended by Treasury Decision 5524, approved July 2, 1946, is further amended as follows:

(A) By striking out "July 1, 1947" wherever it appears and inserting in lieu thereof "July 1, 1948."

(B) By striking out "as amended by Public Law 393 (Seventy-ninth Congress), approved May 29, 1946" wherever it appears and inserting in lieu thereof "as amended by Public Law 112 (Eightieth Congress), approved June 25, 1947."

PAR. 5. Section 86.3, as amended by Treasury Decision 5366, approved May 5, 1944, is further amended by changing the last paragraph to read as follows:

Section 1000(e), as added by section 502 of the Revenue Act of 1943 and amended by Public Law 112, Eightieth Congress, provides in the case of property transferred in trust before January 1, 1939, under which the grantor, on and after such date, retained no power to revest title to such property in himself, exercisable by the grantor alone or in conjunction with any other person not having a substantial adverse interest in the disposition of such property or the income therefrom, that the relinquishment by the grantor on or after January 1, 1940, and prior to January 1, 1948 (or on a later date if it is shown to the satisfaction of the Commissioner, whose determination therein shall be conclusive, that failure to relinquish prior to such later date was for reasonable cause), by an exercise or other termination, of a power to change the disposition of the trust property, which completes the gift thereof, shall not be treated as a gift for the purposes of the gift tax statute. However, if the property had been transferred in trust without the grantor retaining power to revest title to the property in himself, or if such power previously retained had been relinquished, while a Federal gift tax statute was in effect, the exemption provided by section 1000(e) shall apply only if (1) gift tax had been paid with respect to such prior transfer or relinquishment, and not credited or refunded, or a gift tax return had been filed within the time prescribed on account of such prior transfer or relinquishment but no gift tax paid because of deductions or exclusions claimed on such return, and (2) the grantor agrees in writing to continue to treat such prior transfer or relinquishment as completing the gift for all purposes of the gift tax statute except as hereinafter indicated with respect to income. Upon submission of such written agreement, the Commissioner may make any necessary redetermination of the amount of the net gifts for such prior year, and, unless assessment is barred by statutory limitations or rule of law, assert any resulting deficiency tax. The exemption provided by section 1000(e) shall not apply to any payment or other disposition of income while the grantor retains the power of disposition of the future income from the trust property. For example, if a donor created a trust in 1930, reserving a power to change the beneficiaries and their proportionate interests with respect to principal and income, but without retaining the power to revest the property in himself, and terminates his reserved power in 1947, so that he is no longer able to change the beneficiaries or their respective interests, the interim payment of income to any beneficiary or other surrender by the donor of control over such income prior to such termination is nevertheless a taxable gift and to be treated accordingly. The same result follows if a similar trust was created while a gift tax law was in effect and the donor, prior to January 1, 1948, terminated the aforesaid reserved power, consenting to treat the original transfer in trust in the calendar year in which effected and for all periods thereafter as having been a transfer subject to gift tax. In case a power of disposition is relinquished after December 31, 1947, the question whether failure to relinquish at an earlier date was for reasonable cause must necessarily depend upon all relevant facts and circumstances. Reasonable cause, for example, may consist

of a disability which seriously limits the opportunity for effecting a relinquishment prior to January 1, 1948. It may also consist of an excusable lack of knowledge of the existence of the power or of its significance in relation to the gift tax law, or of a lack of knowledge of the provisions of section 1000(e) excepting from gift tax consequences a relinquishment of the power prior to January 1, 1948. However, a failure to relinquish due to neglect or to unwillingness to abandon the advantages of the power until some later date would not be for reasonable cause. No interest shall be allowed or paid on any overpayment resulting from the application of the exemption provided by section 1000(e).

PAR. 6. This Treasury decision shall be effective on the thirty-first day after the date of its publication in the Federal Register.

(This Treasury decision is issued under authority contained in sections 1000 (c), (e), 1029, and 3791 of the Internal Revenue Code (56 Stat., 952, 58 Stat., 71, 53 Stat., 157, 467; 26 U. S. C. and Sup., 1000 (c), (e), 1029, 3791) and Public Law 112 (Eightieth Congress), approved June 25, 1947.)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved March 4, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Published in the Federal Register March 10, 1948.)

REGULATIONS 108, SECTION 86.21: Donees and trustees required to file notice of gifts. 1948–7–12778 T. D. 5608

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 86.—GIFT TAX UNDER CHAPTER 4 OF THE INTERNAL REVENUE CODE, AS AMENDED.

Place of filing notice of gifts by donees and trustees.—Section 86.21, Regulations 108, amended.

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

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH 1. Section 86.21 of Regulations 108 [26 CFR, Part 86] is amended by striking out the seventh sentence and inserting in lieu thereof the following:

The notice shall be filed in duplicate, on or before the 15th day of March following the close of the calendar year in which the transfer was made, with the collector of internal revenue for the district in which is located the legal residence of the donor, or, if he has no legal residence in the United States, then, unless the Commissioner otherwise designates, with the collector of internal revenue at Baltimore, Md.

PAR. 2. Because the purpose of this Treasury decision is merely to effect uniformity with respect to the place of filing of all returns relating to a particular gift by requiring that information returns of donees and trustees be filed with the collector for the district in which the donor resides, 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.

PAR. 3. This Treasury decision shall be effective upon its filing for publication in the Federal Register.

(This Treasury decision is issued under authority of sections 1029 and 3791 of the Internal Revenue Code (53 Stat., 157, 467; 26 U. S. C., 1029, 3791).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved March 15, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 19, 1948, 8.57 a. m.)

MISCELLANEOUS EXCISE TAXES.

STAMP TAXES.

REGULATIONS 71 (1941), SECTIONS 113.20, etc. 1948–10–12806
T. D. 5613

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 113.—DOCUMENTARY STAMP TAXES.

Regulations 71 (1941 Edition) amended to conform to Public Law 387 (Eighteth Congress, first session), approved August 8, 1947 [C. B. 1947–2, 351].

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

To Collectors of Internal Revenue and Others Concerned:

On February 6, 1948, notice of proposed rule making regarding Public Law 387 (Eighteth Congress, first session), approved August 8, 1947 [C. B. 1947–2, 351], was published in the Federal Register (13 F. R., 559). No objection to the rules proposed having been received, the following amendments are hereby adopted. Such amendments are necessary in order to conform Regulations 71 (1941 Edition) [26 CFR, Part 113] to Public Law 387.

PARAGRAPH 1. There is inserted immediately preceding section 113.20 [26 CFR, 113.20] the following:

PUBLIC LAW 387 (EIGHTIETH CONGRESS, FIRST SESSION), APPROVED AUGUST 8, 1947.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1802(a) of the Internal Revenue Code is amended by deleting the period at the end of the next to the last sentence and inserting in lieu thereof the following: ": *Provided further,* That where such certificates (or shares, where no certificates are issued) are issued in a recapitalization, the tax payable shall be that proportion of the tax computed on such certificates or shares issued in the recapitalization that the amount dedicated as capital for the first time by the recapitalization, whether by a transfer of earned surplus or otherwise, bears to the total par value (or actual value if no par stock) of such certificates or shares issued in the recapitalization."

* * * * * * *

PAR. 2. Section 113.20 [26 CFR, 113.20] is amended by adding at the end thereof the following:

The tax also applies to shares or certificates issued in a recapitalization where the recapitalization results in the dedication of an amount as capital for the first time. However, in the case of shares or certificates so issued on or after August 8, 1947, the tax is subject to the limitation set forth in section 113.23(e).

PAR. 3. Section 113.23 [26 CFR, 113.23] is amended by adding at the end thereof a new subsection as follows:

(e) *Stock issued on or after August 8, 1947, in a recapitalization.*—Where stock is issued on or after August 8, 1947, in a recapitalization, the tax payable is that proportion of the total tax computed with respect to all the shares or certificates so issued that the amount dedicated as capital for the first time by the recapitalization, whether by a transfer of earned surplus or otherwise, bears to the total par value (or actual value if no par stock) of the shares or certificates so issued.

A tax is not payable with respect to stock issued in a recapitalization unless the recapitalization results in the dedication of an amount as capital which amount is so dedicated for the first time. Thus, where a corporation transferred

an amount from capital to capital surplus in a prior recapitalization, and such corporation in a subsequent or second recapitalization transfers such amount from capital surplus to capital under such circumstances that the amount so restored to capital is clearly identifiable, a tax is not payable with respect to the amount so rededicated as capital. However, the tax is payable with respect to a transfer of capital surplus to capital by way of a recapitalization where the amount so transferred had not been previously dedicated as capital.

Where a recapitalization is effected in connection with, or as part of, some other transaction, for example—an original or an additional issue of stock; a merger; etc.—the limitation of the tax payable to the proportion specified in this subsection applies only to the stock issued in that part of the transaction which constitutes a recapitalization. Thus, where a corporation makes a change in its capital structure by replacing an issue of stock with another issue of stock and at the same time disposes of part of the new stock by sale to underwriters, the tax limitation is applicable only to that portion of the new stock which is issued in exchange for the old stock retired thereby. In such case, the portion of the new stock sold to the underwriters is taxable in its entirety without any adjustment on account of the recapitalization. Similarly, where a corporation retires its preferred stock by issuing common stock in exchange therefor, and such exchange is made in connection with a merger in which the corporation issues common stock also to the former stockholders of the merged company, the tax limitation is applicable only to the common stock issued in exchange for the preferred stock, and the shares or certificates of common stock issued to the former stockholders of the merged company are subject to tax without any adjustment on account of the recapitalization.

PAR. 4. There is inserted immediately preceding section 113.30 [26 CFR, 113.30] the following:

PUBLIC LAW 387 (EIGHTIETH CONGRESS, FIRST SESSION), APPROVED AUGUST 8, 1947.

* * * * * * *

Section 1802(b) of the Internal Revenue Code is amended by inserting after the first proviso the following: "*Provided further*, That upon any transfer of an interest in a partnership owning shares or certificates of stock, the tax shall be limited to an amount equal to that percentage of a tax computed on the transfer of all of such shares or certificates of stock owned by the partnership as the interest transferred bears to the total interests in the partnership of all the partners:".

Section 1802(b) of the Internal Revenue Code is amended by inserting in the second proviso following the word "deposited" a comma and the words "nor upon mere loans of stock".

* * * * * * *

PAR. 5. Section 113.30 [26 CFR, 113.30] is amended by adding at the end thereof the following:

The tax also applies upon any transfer of an interest in a partnership owning shares or certificates of stock. However, in the case of the transfer of any such interest on or after August 8, 1947, the tax is subject to the limitation set forth in section 113.32(*d*). The tax does not apply to the return of stock loaned nor, on or after August 8, 1947, upon mere loans of stock.

PAR. 6. Section 113.32 [26 CFR, 113.32] is amended by adding at the end thereof a new subsection as follows:

(*d*) *Interest in a partnership transferred on and after August 8, 1947.*—The tax on the transfer on and after August 8, 1947, of an interest in a partnership owning shares or certificates of stock is limited to an amount equal to that percentage of a tax computed on the transfer of all of such shares or certificates of stock owned by the partnership as the interest transferred bears to the total interests in the partnership of all the partners.

A tax would be payable upon the transfer by one or more of the partners of his or their interest or interests, either in whole or in part, in the partnership, to one or more of the remaining partners or to one or more new partners admitted to the partnership. However, the changing or variable interests of the partners as reflected in their respective partnership accounts, resulting from periodic or varying withdrawals of earnings, do not constitute a transfer of an interest in a partnership and no tax accrues as a result of such changes.

PAR. 7. Section 113.33, as amended by Treasury Decision 5202, approved December 17, 1942 [C. B. 1942-2, 258] [26 CFR, 113.33], is further amended by deleting therefrom subparagraph (*b*) and by changing the designations of subparagraphs (*c*) to (*n*), inclusive, to subparagraphs (*b*) to (*m*), respectively.

PAR. 8. Section 113.35, as amended by Treasury Decision 5578, approved September 30, 1947 [C. B. 1947-2, 213] [26 CFR, 113.35], is further amended by deleting therefrom subsection (*b*) and inserting in lieu thereof a new subsection (*b*) as follows:

(*b*) *Loans of stock and the return of stock loaned.*—The tax does not apply to the return of stock loaned nor, on or after August 8, 1947, upon mere loans of stock; but the person making the loan of stock or returning such stock shall furnish and attach to the certificate an exemption certificate in substantially the form prescribed in subsection (*h*).

PAR. 9. There is inserted immediately preceding section 113.60 [26 CFR, 113.60] the following:

PUBLIC LAW 387 (EIGHTIETH CONGRESS, FIRST SESSION), APPROVED AUGUST 8, 1947.

* * * * * * *

Section 3481(a) of the Internal Revenue Code is amended by inserting after "*Provided*" the following: "That upon any transfer of an interest in a partnership owning such instruments, the tax shall be limited to an amount equal to that percentage of a tax computed on the transfer of all of such instruments owned by the partnership as the interest transferred bears to the total interests in the partnership of all the partners: *Provided further*,".

PAR. 10. Section 113.60 [26 CFR, 113.60] is amended by adding at the end thereof the following:

The tax also applies upon any transfer of an interest in a partnership owning bonds. However, in the case of the transfer of any such interest on or after August 8, 1947, the tax is subject to the limitation set forth in section 113.62.

PAR. 11. Section 113.62 [26 CFR, 113.62] is amended by adding at the end thereof two new paragraphs as follows:

The tax on the transfer on and after August 8, 1947, of an interest in a partnership owning bonds is limited to an amount equal to that percentage of a tax computed on the transfer of all of such bonds owned by the partnership as the interest transferred bears to the total interests in the partnership of all the partners.

A tax would be payable upon the transfer by one or more of the partners of his or their interest or interests, either in whole or in part, in the partnership, to one or more of the remaining partners or to one or more new partners admitted to the partnership. However, the changing or variable interests of the partners as reflected in their respective partnership accounts, resulting from periodic or varying withdrawals of earnings, do not constitute a transfer of an interest in a partnership and no tax accrues as a result of such changes.

PAR. 12. Section 113.63, as amended by Treasury Decision 5202 [26 CFR, 113.63], is further amended by deleting therefrom the second sentence in the second paragraph and inserting in lieu thereof the following:

Loans of bonds including intraoffice borrowings and the return of bonds loaned are subject to the tax imposed under section 3481.

PAR. 13. Section 113.65, as amended by Treasury Decision 5202 [26 CFR, 113.65], is further amended by changing the second paragraph thereof to read as follows:

The mere loan of bonds and the return of bonds loaned are not exempt from the bond transfer tax. Hence, subsection (*b*) of section 113.35 does not apply to bond transactions.

(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).)

Because the amendments to the Internal Revenue Code made by Public Law 387 became effective on August 8, 1947, the date of enactment of such public law, 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.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved April 27, 1948.

E. H. FOLEY, Jr.,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register May 3, 1948, 8.50 a. m.)

SECTIONS 1802(b) AND 3481(a), AS AMENDED.—CAPITAL STOCK (AND SIMILAR INTERESTS)—SALES AND TRANSFERS.

REGULATIONS 71 (1941), SECTION 113.33: Sales and transfers subject to tax. 1948–13–12837 M. T. 27

Applicability of documentary stamp tax under section 1802(b), Internal Revenue Code, on transfers of rights to subscribe for, or rights to receive, stock in connection with convertible securities.

Advice is requested with respect to the applicability of the documentary stamp tax under section 1802(b) of the Internal Revenue Code on transfers of rights to subscribe for, or rights to receive, stock in the case of securities which are convertible into stock.

Section 1802(b) of the Internal Revenue Code imposes a transfer tax "On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the shares or certificates mentioned or described in subsection (a), or to rights to subscribe for or to receive such shares or certificates. * * *."

The questions presented and the answers thereto are as follows:

Question 1. In the transfer of a convertible debenture, i. e., a debenture which, under certain specified conditions, may be converted into stock at the option of the holder, are there two transfer taxes payable, namely, the tax under section 3481(a) of the Internal Revenue Code on the transfer of the debenture itself, and a tax under section 1802(b) of the Code on the transfer of a right to subscribe for, or a right to receive, the stock into which the debenture is convertible? In such case, does it make any difference whether the stock available for such conversion is issued or unissued stock?

Answer 1. While the holder of a convertible debenture may acquire stock upon conversion of the debenture, the privilege of making such conversion is not a right to subscribe for, or to receive, the stock. Rather, the conversion privilege gives the debenture holder the right to acquire a right to subscribe for or to receive stock by an election to exercise the privilege of converting the debenture into stock. In other words, the right to subscribe for or to receive the stock does not come into existence unless and until the debenture holder elects to exercise his right of converting the debenture into stock. Accordingly, the transfer of a convertible debenture is subject only to the tax imposed under

section 3481(a) of the Code upon the transfer of the debenture itself. In the application of this ruling, it is immaterial whether the stock into which the debenture is convertible is issued or unissued stock.

Question 2. In the transfer of convertible preferred stock, i. e., preferred stock which under certain specified conditions may be converted into common stock at the option of the holder, are there two transfer taxes payable, namely, the tax under section 1802(b) of the Code on the transfer of the preferred stock itself, and another tax under the same section of the Code on the transfer of a right to subscribe for, or a right to receive, the common stock into which the preferred stock is convertible? In such case, does it make any difference whether the common stock available for such conversion is issued or unissued stock?

Answer 2. Whether the privilege of converting one class of security into another class is contained in a debenture or in preferred stock is not a distinguishing factor, since the conversion privilege is essentially the same in both cases. Hence the principles expressed in the answer to the preceding question apply with equal force to the instant question. Accordingly, the transfer of convertible preferred stock is subject only to the transfer tax on the preferred stock itself, and does not involve a taxable transfer of a right to subscribe for or to receive the common stock into which the preferred stock is convertible. In the application of this ruling, it is immaterial whether the common stock into which the preferred stock is convertible is issued or unissued stock.

ADMISSIONS TAX.

REGULATIONS 43 (1941), SECTIONS 101.5, 101.15, and 101.18. 1948–7–12780 T. D. 5611

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 101.—TAXES ON ADMISSIONS, DUES, AND INITIATION FEES.

Regulations 43 (1941 edition) amended to conform to section 11 of Public Law 384 (Eightieth Congress) [C. B. 1947–1, 348], An Act To terminate certain tax provisions before the end of World War II.

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 43 (1941 edition) [26 CFR, Part 101], to section 11 of Public Law 384 (Eightieth Congress), approved August 8, 1947 [C. B. 1947–2, 348], such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 101.2 the following:

PUBLIC LAW 384 (EIGHTIETH CONGRESS), APPROVED AUGUST 8, 1947.

SEC. 11. TAX ON ADMISSIONS.

(a) Section 1700(a)(1) of the Internal Revenue Code is hereby amended by striking out "(except bona fide employees, municipal officers on official business, children under twelve years of age, members of the

military or naval forces of the United States when in uniform, members of military or naval forces of any of the United Nations, when in uniform, and members of the Civilian Conservation Corps when in uniform)", and inserting in lieu thereof: "(except bona fide employees, municipal officers on official business, and children under twelve years of age)", and by striking out the last sentence.

(b) The amendments made by subsection (a), insofar as applicable with respect to amounts paid for admission, shall be applicable to amounts paid after December 31, 1947, and, insofar as applicable to free admissions, shall be applicable with respect to such admissions after December 31, 1947.

PAR. 2. Section 101.5, as amended by Treasury Decision 5170, approved September 25, 1942 [C. B. 1942–2, 246] [26 CFR, 101.5], is further amended by adding at the end of the second paragraph of subdivision (*b*), the following sentence:

These exemptions do not apply to admissions after December 31, 1947. (See section 11 of Public Law 384, Eightieth Congress.)

PAR. 3. The following is inserted immediately preceding section 101.15:

PUBLIC LAW 384 (EIGHTIETH CONGRESS), APPROVED AUGUST 8, 1947.

SEC. 11. TAX ON ADMISSIONS.

(a) Section 1700(a)(1) of the Internal Revenue Code is hereby amended * * * by striking out the last sentence.

(b) The amendments made by subsection (a), insofar as applicable with respect to amounts paid for admission, shall be applicable to amounts paid after December 31, 1947, and, insofar as applicable to free admissions, shall be applicable with respect to such admissions after December 31, 1947.

PAR. 4. Section 101.15, as amended by Treasury Decision 5170 [26 CFR, 101.15], is further amended by adding at the end of subdivision (*b*) the following sentence:

These exceptions are not applicable to amounts paid after December 31, 1947. (See section 11 of Public Law 384, Eightieth Congress.)

PAR. 5. Section 101.18, as amended by Treasury Decision 5349, approved March 17, 1944 [C. B. 1944, 639] [26 CFR, 101.18], is further amended by adding at the end of the second paragraph of subdivision (1), the following sentence:

After December 31, 1947, the foregoing provisions are applicable only in the case of children under 12 years of age. (See section 11 of Public Law 384, Eightieth Congress.)

(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).)

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.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved March 16, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 19, 1948, 8.58 a. m.)

SECTION 1700(a), AS AMENDED.—TAX ON ADMISSIONS.

REGULATIONS 43 (1941), as amended. 1948–12–12819
M. T. 25

Exemption with respect to an amount of less than 10 cents paid for the admission of a child under 12 years of age is not affected by the amendment of section 1700(a)(1) of the Internal Revenue Code by Public Law 384 [C. B. 1947–2, 348].

Advice is requested whether the amendment of section 1700(a)(1) of the Internal Revenue Code by section 11 of Public Law 384 (Eightieth Congress), approved August 8, 1947 [C. B. 1947–2, 348], terminated the exemption with respect to amounts of less than 10 cents paid for the admission of a child under 12 years of age.

Public Law 384 amended the provisions of section 1700(a)(1) of the Internal Revenue Code by striking out "(except bona fide employees, municipal officers on official business, children under 12 years of age, members of the military or naval forces of the United States when in uniform, members of the military or naval forces of any of the United Nations, when in uniform, and members of the Civilian Conservation Corps when in uniform)," and inserting in lieu thereof "(except bona fide employees, municipal officers on official business, and children under 12 years of age)."

The foregoing amendment merely terminated the exemption previously afforded members of the military or naval forces of the United States when in uniform, members of the military or naval forces of any of the United Nations when in uniform, and members of the Civilian Conservation Corps when in uniform, and did not otherwise affect any of the other exemptions authorized by the law.

Public Law 384 further amended section 1700(a)(1) of the Code by striking out the last sentence thereof. The sentence thus stricken out is the one that was added to section 1700(a)(1) by Public Law 676 (Seventy-seventh Congress), approved July 23, 1942 [C. B. 1942–2, 331], to provide an exemption with respect to admissions to theatres and other activities operated by or under the control of the War Department or the Navy Department, which read as follows:

Amounts paid on and after October 1, 1941, for admission to theatres and other activities operated by or under the control of the War Department or the Navy Department within posts, camps, reservations, and other areas maintained by the Military or Naval Establishment shall be exempt from the tax imposed by this section: *Provided*, That the net proceeds from said admission charges are used exclusively for the welfare of the military or naval forces of the United States.

Such further amendment simply eliminated the exemption with respect to admissions to theatres and other activities conducted at military posts, reservations, etc., which exemption had been added to the law in 1942. Hence, the further amendment similarly did not otherwise affect any of the other exemptions authorized by the law.

Accordingly, it is to be noted that the amendments made by Public Law 384 do not affect the exemption applicable to amounts of less than 10 cents paid for the admission of a child under 12 years of age, and that such exemption is, therefore, still in force.

TRANSPORTATION OF PERSONS.

REGULATIONS 42 (1942), SECTION 130.63: Members of military and naval service. 1948–5–12758 T. D. 5604

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 130.—TAXES ON SAFE DEPOSIT BOXES AND ON CERTAIN TRANSPORTATION AND COMMUNICATIONS SERVICES.

Regulations 42 (1942 edition) amended to conform to section 12 of Public Law 384 (Eightieth Congress) [C. B. 1947–2, 348], An Act to terminate certain tax provisions before the end of World War II.

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 42 (1942 edition) [26 CFR, Part 130] to section 12 of Public Law 384, Eightieth Congress, approved August 8, 1947 [C. B. 1947–2, 348], such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 130.63 [26 CFR, 130.63] the following:

PUBLIC LAW 384 (EIGHTIETH CONGRESS), APPROVED AUGUST 8, 1947.

SEC. 12. TRANSPORTATION TAX EXEMPTION OF MILITARY AND NAVAL PERSONNEL.

Section 3469(f)(2) of the Internal Revenue Code shall not be applicable to amounts paid after December 31, 1947.

PAR. 2. Section 130.63, as amended by Treasury Decision 5190, approved November 30, 1942 [C. B. 1942–2, 237] [26 CFR, 130.63], is further amended by inserting at the end thereof the following paragraph:

By virtue of the amendment of the Internal Revenue Code made by section 12 of Public Law 384 (Eightieth Congress), the exemptions under section 3469(f)(2) as amended, do not apply to amounts paid after December 31, 1947.

(This Treasury decision is issued pursuant to the authority contained in sections 3472 and 3791 of the Internal Revenue Code (53 Stat., 423, 467, 55 Stat., 722; 26 U. S. C. and Sup., 3472, 3791).)

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.

WM. T. SHERWOOD,
Acting Commissioner of Internal Revenue.

Approved February 25, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 1, 1948, 8.52 a. m.)

TRANSPORTATION OF PROPERTY.

SECTION 3475, AS AMENDED.—TRANSPORTATION OF PROPERTY.

REGULATIONS 113, SECTION 143.13: Application of tax. 1948–12–12820 M. T. 26

Application of tax imposed by section 3475 of the Internal Revenue Code to amounts paid for the transportation of vehicles by ferry.

Advice is requested whether amounts paid for the transportation of vehicles by ferry are subject to tax under section 3475 of the Internal Revenue Code, as amended.

Section 3475 of the Code imposes a tax equivalent to 3 per cent upon amounts paid within the United States, to a person engaged in the business of transporting property for hire, for the transportation of property by rail, motor vehicle, water, or air, from one point in the United States to another, except that, in the case of coal, the rate of tax is 4 cents per short ton.

Section 143.1 of Regulations 113 provides, in part, that the term "transportation" means the movement of property by a person engaged in the business of transporting property for hire, including interstate, intrastate, and intracity or other local movements, as well as towing, ferrying, switching, etc. However, under the provisions of section 143.13 of such regulations, the tax does not apply to an amount paid by a carrier, a freight forwarder, express company, or similar person for transportation with respect to which a tax is payable to such person.

It is held that the transportation of vehicles by ferry constitutes transportation of property by water within the meaning of section 3475 of the Code and that an operator of a ferry is regarded as a "person engaged in the business of transporting property for hire." Accordingly, amounts paid for the transportation of vehicles by ferry are properly subject to the tax.

It is further held, however, that amounts paid by a carrier for the transportation of loaded trucks by ferry are not subject to the tax when such transportation service is part of a continuous transportation movement with respect to which tax has been paid by the shipper or is payable by the consignee at destination. Likewise, the tax does not apply to ferry charges paid by a carrier for the transportation of an empty truck if the truck is proceeding to a loading point or returning from an unloading point and such ferry charges are included in an amount paid to the carrier by the consignor or consignee for a preceding or subsequent movement of the property.

FEDERAL FIREARMS ACT. (1938).

1948–7–12779
T. D. 5609

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 315.—LICENSING UNDER THE FEDERAL FIREARMS ACT OF MANUFACTURERS OF, AND DEALERS IN, FIREARMS OR AMMUNITION.

Regulations amended [requirement of oath eliminated].

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., March 15, 1948.

To Collectors of Internal Revenue and Others Concerned:

Treasury Decision 4898, approved May 1, 1939 [C. B. 1939–1 (Part 1), 364], as amended by Treasury Decision 5564, approved May 23, 1947 [C. B. 1947–1, 180] (26 CFR, Part 315), is hereby further amended by changing section 315.4 thereof to read as follows:

SEC. 315.4. APPLICATION FOR A LICENSE.—The application for a license shall be made on Form 7 (Firearms), copies of which may be procured from collectors. The application shall be filed with the collector for the district within which the principal place of business of the applicant is located. The application must contain all the information required by the form.

(This Treasury decision is issued under the authority contained in section 7 of the Federal Firearms Act (52 Stat., 1252; 15 U. S. C., 907).)

Because the purpose of this Treasury decision is to relieve restriction, it is found that it is unnecessary to issue such Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

This Treasury decision shall be effective upon its filing for publication in the Federal Register.

E. H. FOLEY, Jr.,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 19, 1948, 8.57 a. m.)

MISCELLANEOUS RULINGS.

SECTION 3 OF THE VINSON ACT (48 STAT., 503, 505), AS AMENDED.

1948–7–12777
Mim. 6185
(Amended)

Reports required under profit-limiting provisions of the Vinson Act.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., March 8, 1948.

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

The first sentence of the fourth paragraph of Mimeograph 6185, dated September 15, 1947 [C. B. 1947–2, 217], is hereby amended to read:

However, a general extension of time is hereby granted to contractors and subcontractors to and including July 15, 1948, for filing annual reports of profit under the profit-limiting provisions of the Vinson Act, as amended, for the calendar year 1946 and for fiscal years ended in 1947 prior to October 1, 1947.

GEO. J. SCHOENEMAN,
Commissioner.

MISCELLANEOUS.

SECTION 36 OF THE TRADING WITH THE ENEMY ACT.

1948–9–12797
T. D. 5612

TITLE 26—INTERNAL REVENUE.—SUBCHAPTER E—ADMINISTRATIVE PROVISIONS COMMON TO VARIOUS TAXES.—PART 452a—TAXES UNDER THE TRADING WITH THE ENEMY ACT, AS AMENDED AUGUST 8, 1946.

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

To Collectors of Internal Revenue and Others Concerned:

On December 30, 1947, notice of proposed rule making regarding the application to internal revenue of section 36, added to the Trading With the Enemy Act by the Act approved August 8, 1946 (60 Stat., 925 [Public Law 671, C. B. 1946–2, 286]), was published in the Federal Register (12 F. R., 8869). No objection to the rules proposed having been received, this Treasury decision, designed to establish a procedure relative to the application of section 36 to the internal revenue, is hereby adopted.

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452a.25. Payment of taxes.
452a.26. Interest and penalties.
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SECTION 452a.20. INTRODUCTORY.—Section 36, added to the Trading With the Enemy Act by the Act approved August 8, 1946 (Public Law 671, Seventy-ninth Congress [C. B. 1946–2, 286]), provides as follows:

> SEC. 36. (a) The vesting in or transfer to the Alien Property Custodian of any property or interest (other than any property or interest acquired by the United States prior to December 18, 1941), or the receipt by him of any earnings, increment, or proceeds thereof shall not render inapplicable any Federal, State, Territorial, or local tax for any period prior or subsequent to the date of such vesting or transfer, nor render applicable the exemptions provided in title II of the Social Security Act with respect to service performed in the employ of the United States Government or of any instrumentality of the United States.
>
> (b) The Alien Property Custodian shall, notwithstanding the filing of any claim or the institution of any suit under this Act, pay any tax incident to any such property or interest, or the earnings, increment, or proceeds thereof, at the earliest time appearing to him to be not contrary to the interest of the United States. The former owner shall not be liable for any such tax accruing while such property, interest, earnings, increment, or proceeds are held by the Alien Property Custodian, unless they are returned pursuant to this Act without payment of such tax by the Alien Property Custodian. Every such tax shall be paid by the Alien Property Custodian to the same extent, as nearly as may be deemed practicable, as though the property or interest had not been vested in or transferred to the Alien Property Custodian, and shall be paid only out of the property or interest, or earnings, increment, or proceeds thereof, to which they are incident or out of other property or interests

acquired from the same former owner, or earnings, increment, or proceeds thereof. No tax liability may be enforced from any property or interest or the earnings, increment, or proceeds thereof while held by the Alien Property Custodian except with his consent. Where any property or interest is transferred, otherwise than pursuant to section 9(a) or 32 hereof, the Alien Property Custodian may transfer the property or interest free and clear of any tax, except to the extent of any lien for a tax existing and perfected at the date of vesting, and the proceeds of such transfer shall, for tax purposes, replace the property or interest in the hands of the Alien Property Custodian.

(c) Subject to the provisions of subsection (b) hereof, the manner of computing any Federal taxes, including without limitation by reason of this enumeration, the applicability in such computation of credits, deductions, and exemptions to which the former owner is or would be entitled, and the time and manner of any payment of such taxes and the extent of any compliance by the Custodian with provisions of Federal Law and regulations applicable with respect to Federal taxes, shall be in accordance with regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury to effectuate this section. Statutes of limitations on assessment, collection, refund, or credit of Federal taxes shall be suspended, with respect to any vested property or interest, or the earnings, increment or proceeds thereof, while vested and for six months thereafter; but no interest shall be paid upon any refund with respect to any period during which the statute of limitations is so suspended.

(d) The word "tax" as used in this section shall include, without limitation by reason of this enumeration, any property, income, excess-profits, war-profits, excise, estate and employment tax, import duty, and special assessment; and also any interest, penalty, additional amount, or addition thereto not arising from any act, omission, neglect, failure, or delay on the part of the Custodian.

(e) Any tax exemption accorded to the Alien Property Custodian by specific provision of existing law shall not be affected by this section.

Executive Order 9788, approved October 14, 1946 (11 F. R., 11981), provides as follows:

By virtue of the authority vested in me by the Constitution and statutes, including the Trading With the Enemy Act of October 6, 1917 (40 Stat., 411), as amended, and the First War Powers Act, 1941 (55 Stat., 838), as amended, and as President of the United States, it is hereby ordered, in the interest of the internal management of the Government, as follows:

1. The Office of Alien Property Custodian in the Office for Emergency Management of the Executive Office of the President, established by Executive Order No. 9095 of March 11, 1942, is hereby terminated; and all authority, rights, privileges, powers, duties, and functions vested in such Office or in the Alien Property Custodian or transferred or delegated thereto are hereby vested in or transferred or delegated to the Attorney General, as the case may be, and shall be administered by him or under his direction and control by such officers and agencies of the Department of Justice as he may designate.

2. All property or interests vested in or transferred to the Alien Property Custodian or seized by him, and all proceeds thereof, which are held or administered by him on the effective date of this order are hereby transferred to the Attorney General.

3. All personnel, property, records, and funds of the Office of Alien Property Custodian are hereby transferred to the Department of Justice.

4. This order supersedes all prior Executive orders to the extent that they are in conflict with this order.

5. This order shall become effective on October 15, 1946.

Pursuant to the above-quoted provisions and section 3791 of the Internal Revenue Code and other provisions of such Code, the following regulations are hereby prescribed:

SEC. 452a.21. DEFINITIONS.—When used in this part—(*a*) The term "Attorney General" includes the Alien Property Custodian whose functions were transferred to the Attorney General pursuant to Executive Order 9788 (11 F. R., 11981),

and any other officers and agencies to which such functions are transferred or assigned pursuant to such Executive order, or otherwise.

(*b*) The term "Commissioner" means the Commissioner of Internal Revenue.

(*c*) The term "person" includes an individual, a trust, estate, partnership, company, or corporation, and any entity having or claiming an interest in vested property or liable or charged with liability to internal revenue tax in connection with such property.

(*d*) The term "former owner" means the owner immediately prior to vesting and any successor in interest by inheritance, devise, bequest, or operation of law, of such owner.

(*e*) The term "Trading With the Enemy Act" includes all amendments of such Act, and all orders, rules, and regulations issued or prescribed under such Act or any such amendment.

(*f*) The term "property" includes money, the proceeds of property, income, dividends, interest, annuities, and other earnings, but does not include any property or interest or any of the foregoing which vested in the Attorney General or was otherwise acquired by the United States prior to December 18, 1941.

(*g*) The terms "property vested by the Attorney General" and "property vested in the Attorney General" include property conveyed, transferred, assigned, delivered, or paid to or held or controlled by or vested in the Attorney General, under the Trading With the Enemy Act.

(*h*) The term "engaged in trade or business in the United States" includes the managing and renting of real estate in the United States by an agent of the Custodian or of the former owner duly authorized to execute rental agreements and to pay all taxes and charges incident to the repair and maintenance of such property, but does not include the mere renting or leasing of property under agreement requiring the lessee or occupant to pay taxes and to make repairs or improvements.

(*i*) The term "tax" has the meaning stated in section 36(d) of the Trading With the Enemy Act as added by the Act of August 8, 1946. (See section 452a.20.)

(*j*) A term not defined herein shall have the meaning, if compatible with the context, imputed thereto under the Internal Revenue Code.

SEC. 452a.22. APPLICATION OF PART.—(*a*) *Property covered.*—This part (that is, this Treasury decision) is applicable in connection with property vested in the Attorney General on and after December 18, 1941. It is not applicable in connection with property or interest in property so vested or acquired by the United States prior to December 18, 1941, which property or interest is governed by Treasury Decision 4168 [C. B. VII–2 (1928), 413], as amended by Treasury Decision 4514, approved January 18, 1935 [C. B. XIV–1 (1935), 543] (26 CFR, 452.1–452.10).

(*b*) *Taxes covered.*—Except as otherwise provided by specific exemption applicable with respect to the Alien Property Custodian, this part applies, in the circumstances therein indicated, to any internal revenue tax applicable in respect of (1) property vested in the Attorney General or any action or transaction incidental to such property, or (2) any person whose property is so vested or any action or transaction of such person, whether the tax is applicable in respect of the period of vesting or any other period. Federal employment taxes are applicable with respect to wages paid to a person not a regular Government employee, permanent or temporary, for services immediately connected with the operation of an enterprise under control of the Attorney General such as might be rendered to a private operator.

SEC. 452a.23. PROTECTION OF INTERNAL REVENUE PRIOR TO TAX DETERMINATION.—(*a*) *Suits and claims for return of vested property.*—(1) *General.*—The provisions of this paragraph (*a*) apply in cases where there has been no final or tentative determination of internal revenue tax liability. In such cases vested property shall not be returned except in accordance with this paragraph.

(2) *Notice to Commissioner.*—(i) *Suits for recovery.*—Where suit for the return of vested property has been instituted under section 9 of the Act, within a reasonable time after answer has been filed or after beginning of the trial of the case, the Attorney General shall in writing notify the Commissioner of the property involved and the name, address, citizenship, residence, and business organization of the claimant, and any other pertinent information.

(ii) *Return without suit.*—At least ninety (90) days prior to any return of vested property pursuant to section 32 of the Act the Attorney General shall in writing notify the Commissioner in the manner prescribed in (i).

(3) *Return of property.*—(i) *Without security.*—Vested property, the subject of a suit or proceeding pursuant to the Trading With the Enemy Act, may be

returned without security prior to determination of applicable internal revenue taxes and prior to the judgment of the court or publication of the order of the Attorney General directing such return, to the following described claimants under the conditions hereinafter stated:

(A) *Residents and domestic enterprises.*—In the case of claimants who at the time of return are (1) individuals permanently resident in the United States since December 7, 1941, or (2) corporations or other business enterprises organized under the laws of the United States, or any State, Territory, or possession thereof, or the District of Columbia, or doing business in the United States, the Attorney General may return the property at any time without notice to the Commissioner of such return.

(B) *Nonresidents, etc.*—In the case of claimants who at the time of return are (1) individuals not permanently resident in the United States since December 7, 1941, or (2) nondomestic corporations or other nondomestic business enterprises not doing business within the United States, the property may be returned not less than ninety (90) days after notice by the Attorney General to the Commissioner in a case within (2)(i), or not less than sixty (60) days after notice in a case within (2)(ii), unless within such time the Attorney General is advised otherwise by the Commissioner.

(ii) *When security required.*—Except as provided in (i), vested property shall not be released prior to determination of tax liability without security satisfactory to the Commissioner, but determination of tax liability will be expedited in order that release of the property or of the security shall not be unnecessarily delayed.

(4) *Security.*—Security when required shall be such of the following as shall, in the judgment of the Commissioner, be appropriate:

(i) *Bond.*—A bond of the claimant conditioned upon payment of the full amount of internal revenue taxes determined to be due, filed with the collector in such amount, and with such sureties, as the Commissioner deems necessary. The sureties may be only surety companies certified by the Secretary of the Treasury as acceptable.

(ii) *Collateral security.*—Collateral authorized by law deposited by the claimant in lieu of surety conditioned upon the payment of the full amount of internal revenue tax determined to be due.

(iii) *Reservation of assets.*—Moneys, or if the moneys are insufficient, so much of the other property involved, to be reserved by the Attorney General, as will be sufficient in the judgment of the Attorney General to cover any internal revenue tax liability determined by the Commissioner.

(*b*) *Vested property subject to debt claims.*—(1) *Notice to Commissioner.*—With respect to vested property available for the payment of debt claims under section 34 of the Act, and with respect to which debt claims have been filed, prior to the allowance of any such claims the Attorney General shall, in writing, notify the Commissioner of the property involved, the citizenship, residence, business organization, and other necessary information concerning the debtor and the aggregate of debt claims filed in respect thereof.

(2) *Action by Commissioner.*—Upon receipt of the notice provided in (1) the Commissioner shall, as soon as practicable and not later than 120 days after receipt of notice, unless the time is extended by the Commissioner after notice to the Attorney General: (i) Determine the taxes payable by the Attorney General in respect of the debtor, or (ii) advise the Attorney General of the provision, if any, to be made by him for payment of taxes in respect of the debtor.

SEC. 452a.24. COMPUTATION OF TAXES.—(*a*) *Detail of employees of the Bureau of Internal Revenue.*—The Commissioner will detail for the assistance of the Attorney General such employees of the Bureau of Internal Revenue as may be necessary to make the computations under this part promptly and accurately.

(*b*) *Relationship of Attorney General and former owner.*—In the computation of tax liability under this part, except as otherwise provided herein, the vesting of property shall be considered as not affecting the ownership thereof; and any act of the Attorney General in respect of such property (including the collection or operation thereof and any investment, sale, or other disposition and any payment or other expenditure) shall be considered as the act of the owner. Nevertheless, except as otherwise provided in the Act or this part, in so far as taxes are incident to vested property during the period of vesting, they shall be payable by the Attorney General, except that to the extent of the value of any of the property returned to the former owner the latter shall be liable for such tax not paid by the Attorney General. While tax incident to nonvested property is collectible out of both vested and nonvested property, the nonvested property will be regarded

as the primary source of collection of such tax. In determining the amount of the liability to be paid out of property not vested by the Attorney General a computation shall be made covering the taxpayer's full period of liability, but without regard to the vested property, or the income received by, or the operations of, the Attorney General. The amount so computed shall be first asserted against and collected so far as practicable from the taxpayer or out of his property which is not vested. Such part of the total tax liability as is not paid by the taxpayer or collected out of property not vested shall be asserted against the vested property. (See section 452a.25 and section 452a.27(*b*).)

(*c*) *Laws applicable to computation.*—Except as otherwise specifically provided in this part, the computation under this part of any internal revenue tax liability shall be in accordance with the internal revenue law and regulations applicable thereto, including all amendments of such law or regulations enacted or promulgated prior to determination of the tax.

(*d*) *Periods for which computations made.*—The amount of income, declared value excess profits, excess profits, capital stock, employment, and excise taxes under the internal revenue laws will be computed for each taxable year or period during all or part of which property is vested prior to the return of the property. (As to return of property prior to computation of tax, see section 452.23.) Where vesting occurs during a taxable year or taxable period, any return filed or computation made covering vested or nonvested property should nevertheless be for the entire year or period. (See paragraph (*b*).) Unless facts are available indicating a liability for taxes for a taxable year or period occurring wholly prior or subsequent to the period of vesting of the property by the Attorney General, the computations under this part, both tentative and final, will be made only in respect of years and periods during all or part of which the property is held by the Attorney General.

(*e*) *Tentative computation.*—In order that the return of property or other appropriate action may not be delayed until the amount of taxes payable is finally computed and paid, a tentative computation of such amount will be made in every case, unless there are circumstances appearing to make such action inappropriate. Such circumstances would include (1) return of the property in accordance with section 452a.23, (2) notice to the Commissioner of Internal Revenue by the person to whom the property is returnable or by the Attorney General that such person or the Attorney General, as the case may be, prefers that the return of the property be postponed until the amount of such taxes can be finally computed, or (3) belief on the part of the Commissioner that a final computation will not unduly delay the return of the property or other appropriate action. In making any such tentative computation of income, profits, or estate tax, the gross income or the gross estate, as the case may be, as shown by the records of the Attorney General (excluding therefrom items exempt from taxation) shall be considered as the net income or net estate, respectively, unless a tax return has been filed or facts are available upon which a more accurate computation can be made. In any case in which a duly authorized officer or employee of the Bureau of Internal Revenue has otherwise computed the amount of taxes payable in respect of any period, such computation will be accepted as a tentative computation, unless the facts clearly indicate that a more accurate computation can be made.

(*f*) *Final computation.*—(1) *General.*—A final computation of the amount of taxes payable by the person to whom property is returnable, or out of property to be returned, will be made as soon as practicable in every case. In any case in which the amount shown by a tentative computation has been paid, refund or credit of any amount paid in excess of the amount properly due will be made in accordance with the final computation, even though a claim therefor has not been filed, if the period of limitation applicable to the filing of such claim has not expired. However, if it is desired to protect the right to any credit or refund determined to be due, a claim for credit or refund should be filed. (See section 452a.27.) The sufficiency of any such claim in respect of an amount paid in accordance with a tentative computation under this part will not be questioned solely because facts upon which a more accurate computation could be made are not available or can not be established at the time such claim is filed. Any such claim in respect of an amount paid in accordance with a final computation must, however, clearly set forth in detail under oath all the facts relied upon in support of the claim and must conform to the regulations applicable to an ordinary claim for refund or credit. See, for example, section 29.322–2, Regulations 111 (26 CFR, 29.322–2). (And see section 452a.27.)

(2) *Information required.*—(i) *Income and profits taxes.*—The following information submitted under oath by or for the taxpayer is necessary in each case

for a final computation, for each taxable year for which the computation is to be made:

(A) All income (other than income received by the Attorney General) from sources within the United States, or if no such income has been received, then a statement to that effect, except that in the case of a citizen or resident of the United States, income from sources without as well as within the United States must be shown.

(B) If a return of such income has been made, then the following data in respect of such return:

(1) The taxable year for which the return was made and the tax (whether income, declared value excess profits, or excess profits tax) paid;

(2) The name of the taxpayer for whom the return was made;

(3) The name of the agent or other person (if any) by whom such return was made;

(4) The office of the collector in which such return was filed.

(C) Such other facts as may be required, from time to time, by the Commissioner of Internal Revenue.

(ii) *Other taxes.*—Except as otherwise provided in (i), in order to make a final computation of the amount of any internal revenue tax payable by return in any case, the usual return should be filed, together with the supporting documents required by the regulations pertaining to the tax.

(*g*) *Tax returns.*—(1) *General.*—In many cases allowance of deductions and credits is contingent upon the making of a return in accordance with the applicable internal revenue law. The submission of evidence relative to income or profits tax in accordance with paragraphs (*f*)(2)(i) (A) and (C) will be considered as the making of the return required by any such law, only (i) for any taxable period, ending on or before December 31, 1946, during all or part of which all or part of the property of the taxpayer was held by the Attorney General, or (ii) for any taxable period ending within one year from the date of the first return to the taxpayer, of any part of the property held by the Attorney General, whichever period ends later. In all other cases a return will be required in accordance with the applicable internal revenue law and regulations. (As to returns where property is vested during a taxable year or period, see section 452a.24(*d*).)

(2) *Estates and trusts.*—In the case of estates and trusts the fiduciaries shall file returns, including information returns as required by section 147 of the Internal Revenue Code.

(3) *Income tax forms to be used.*—In the case of taxpayers engaged in trade or business in the United States, Forms 1040B and 1120, as may be appropriate, shall be used. Where the taxpayer is not engaged in trade or business in the United States, Form 797M may be used in lieu of Forms 1040NB and 1120NB.

SEC. 452a.25. PAYMENT OF TAXES.—(*a*) *Pursuant to tentative computations.*—The amount of taxes shown by a tentative computation shall be paid by the Attorney General or the taxpayer, as the case may be, to the collector of internal revenue as soon as practicable after the tentative computation has been made. It will not be necessary, however, for the payment by the Attorney General to be made prior to the return of property if an amount sufficient to cover all internal revenue taxes is retained therefrom by the Attorney General.

(*b*) *Pursuant to final computations.*—Upon a final computation of internal revenue taxes properly payable, the amount thereof remaining unpaid shall be paid by the Attorney General to the collector of internal revenue as soon as practicable after the final computation has been made, or, in case the property has been returned to the former owner, by such owner. If the final computation shows that the full amount of internal revenue taxes properly payable is less than the amount previously paid, the difference shall be credited or refunded in accordance with the provisions of these and other applicable regulations. A final computation will not prohibit a subsequent recomputation if it is determined that the amount shown by the final computation is erroneous.

(*c*) *Deficiency procedure.*—The Attorney General shall pay internal revenue taxes without regard to the provisions of law relating to the sending of a deficiency notice by registered mail, or to notice and demand.

SEC. 452a.26. INTEREST AND PENALTIES.—(*a*) *Liability for interest and civil penalties.*—Under subsection (d) of section 36 of the Trading With the Enemy Act there is no liability for interest or penalty on account of any act or failure of the Attorney General. Such subsection is not applicable to interest or penal-

ties payable in respect of any act or failure during the period prior to the vesting of the property by the Attorney General, or after the return of the property, or during the period during which the property was vested by the Attorney General on account of an act or omission of any person other than the Attorney General.

(*b*) In case of any assessment or collection, or credit or refund of interest or a civil penalty contrary to the provisions of section 36 (c) or (d), proper adjustment shall be made.

SEC. 452a.27. CLAIMS FOR REFUND OR CREDIT.—(*a*) Claims for refund or credit must be filed within the period prescribed by section 322 of the Internal Revenue Code as modified by section 36(c) of the Trading With the Enemy Act. Any such claim must contain a detailed statement under oath of all the facts relied upon in support of the claim and should be filed with the collector of internal revenue of the district in which the tax was paid. (See section 452a.24(*f*)(1).)

(*b*) Any act of the Attorney General for, or on behalf of, a taxpayer in respect of any claim under this part will be considered as the act of such taxpayer, unless such taxpayer notifies the Commissioner of Internal Revenue in writing, by the filing of a claim for refund or credit or otherwise, that he does not ratify such act. (See also section 452a.24(*b*).)

(*c*) All refund of taxes paid by the Attorney General shall be made directly to that official.

(This Treasury decision is issued under the authority contained in section 3791(a) of the Internal Revenue Code (53 Stat., 467; 26 U. S. C., 3791), and section 36, added to the Trading With the Enemy Act approved August 8, 1946 (Public Law 671, Seventy-ninth Congress, 60 Stat., 925).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved April 9, 1948.

E. H. FOLEY, Jr.,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register April 15, 1948, 8.57 a. m.)

DISTILLED SPIRITS.

INTERNAL REVENUE CODE.

REGULATIONS 4, SECTIONS 183.310, 183.312, 183.313, ETC. 1948–4–12750
T. D. 5601

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 183.—PRODUCTION OF DISTILLED SPIRITS.

Amending Regulations 4.

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

To District Supervisors and Others Concerned:

1. On October 7, 1947, a notice of proposed rule making regarding production of distilled spirits was published in the Federal Register (12 F. R., 6598).

2. After consideration of such relevant matter as was presented by interested persons, the following added sections 183.314a and 183.328a, and amendments of sections 183.310, 183.312, 183.313, 183.314, 183.315, 183.322, 183.323, 183.326, 183.327, 183.328, 183.329, 183.331, 183.332, 183.333, 183.429, and 183.430 of Regulations 4, approved February 28, 1940 (26 CFR, Part 183), are hereby adopted.

3. These amendments are designed to simplify the procedure governing the transfer in bond of distilled spirits from registered distilleries to internal revenue bonded warehouses.

ARTICLE XXIV.—TAX-PAYMENT, REMOVAL, AND TRANSFER OF DISTILLED SPIRITS FROM CISTERN ROOM.

DEPOSIT IN WAREHOUSE OPERATED ON DISTILLERY PREMISES BY THE DISTILLER.

SEC. 183.310. SUFFICIENCY OF WAREHOUSE BOND.—Where the bond covering the operation of an internal revenue bonded warehouse on the distillery premises is given in less than the maximum penal sum of $200,000, as shown by the record furnished by the district supervisor pursuant to Regulations 10 (26 CFR, Part 185), the storekeeper-gauger in charge of the warehouse will see that the tax liability on the quantity of spirits deposited in the warehouse, plus the tax liability on spirits represented by all outstanding approved Forms 236 (sections 183.314 and 183.328) is within the limits of the penal sum of the bond. (Sec. 3176, I. R. C.)

DEPOSIT IN WAREHOUSE OPERATED BY DISTILLER ON CONTIGUOUS PREMISES.

SEC. 183.312. SUFFICIENCY OF WAREHOUSE BOND.—Where the bond covering the operation of an internal revenue bonded warehouse on premises contiguous to the distillery premises is given in less than the maximum penal sum of $200,000, as shown by the record furnished by the district supervisor pursuant to Regulations 10 (26 CFR, Part 185), and distilled spirits produced at the distillery are deposited in such warehouse in accordance with the procedure prescribed in the preceding section, the storekeeper-gauger in charge of the warehouse will see that the tax liability on the quantity of spirits deposited in the warehouse, plus the tax liability on spirits represented by all outstanding approved Forms 236 (sections 183.314 and 183.328) is within the limits of the penal sum of the bond. (Sec. 3176, I. R. C.)

TRANSFER TO WAREHOUSE OFF DISTILLERY PREMISES IN SAME DISTRICT, EXCEPT WAREHOUSE OPERATED BY DISTILLER ON CONTIGUOUS PREMISES.

SEC. 183.313. APPLICATION, FORM 236.—Where spirits are to be transferred to and entered for deposit in an internal revenue bonded warehouse located off the distillery premises in the same supervisory district, and such warehouse is not operated by the distiller on premises contiguous to the distillery premises, the proprietor of the receiving warehouse shall execute an application for the transfer of the spirits on Form 236. The applicant shall enter all applicable data indicated by the form including the maximum quantity in tax gallons to be transferred in any one truck, railroad car, or other vehicle. He shall prepare an original and five copies of Form 236 and give them to the storekeeper-gauger in charge of the receiving warehouse. (Secs. 2878, 2883, 3176, I. R. C.)

SEC. 183.314. STOREKEEPER-GAUGER'S CERTIFICATE OF SUFFICIENCY OF WAREHOUSE BOND.—Upon receipt of Form 236 by the storekeeper-gauger in charge of the warehouse, he will compare the penal sum of the bond as stated in the application with his record furnished by the district supervisor pursuant to Regulations 10 (26 CFR, Part 185). If the bond is given in the maximum penal sum of $200,000, he will certify to the sufficiency thereof on Form 236 and forward all six copies of the form direct to the storekeeper-gauger in charge at the distillery. If the bond is given in less than the maximum penal sum, the storekeeper-gauger in charge will determine from his records whether the tax liability on the quantity of distilled spirits represented by the Form 236, plus the quantity of distilled spirits stored in the warehouse, plus the quantity represented by all outstanding approved Forms 236, is within the limits of the penal sum of the transportation and warehousing bond. If so, he will certify to the sufficiency of the bond on Form 236, record such certification in his records, and forward all six copies of the form direct to the storekeeper-gauger in charge at the distillery. If the transportation and warehousing bond is not sufficient, he will certify to that fact on Form 236 and return all six copies to the proprietor. All applications on Form 236 will expire 90 days (three calendar months) from the date of the execution of the storekeeper-gauger's certificate of bond coverage, provided that the district supervisor may authorize an extension of 10 days if the proprietor furnishes a sufficient basis for such extension and the definite assurance that shipment will be made within such time. (Sec. 3176, I. R. C.)

SEC. 183.314a. SPIRITS TO BE TRANSFERRED.—Upon receipt of Form 236, the storekeeper-gauger in charge at the distillery will mark one copy "proprietor's copy" and give it to the proprietor. He will file the remaining five copies in his pending file. When the proprietor desires to make shipment, he will return his copy of Form 236 to the storekeeper-gauger in charge and furnish him a complete description of the spirits to be shipped. Where shipment is not made within the 90-day period, the distiller will return his copy of Form 236 to the storekeeper-gauger in charge unless otherwise directed by the district supervisor. In the event he fails to do so, the storekeeper-gauger in charge will advise the proprietor that Form 236 has expired and request the return of the proprietor's copy, unless otherwise directed by the district supervisor. The storekeeper-gauger in charge will then send all six copies of Form 236 to the district supervisor for cancellation and return to the storekeeper-gauger in charge at the receiving warehouse for adjustment of his record and return to the applicant. (Sec. 3176, I. R. C.)

SEC. 183.315. REPORT OF GAUGE.—Unless previously packaged, the spirits designated by the proprietor to be transferred will be drawn from the receiving cisterns into casks or packages, gauged, marked, and branded, or into a weighing tank, gauged, and run by pipe line into a properly equipped railroad tank car. Only spirits produced at a proof in excess of 159 degrees and reduced in the receiving cisterns to not more than 159 and not less than 100 degrees of proof may be transported in railroad tank cars. The quantity transferred shall not exceed the maximum stated in the application. The details of the gauge will be entered by the storekeeper-gauger on six copies of Form 1520. (Secs. 2878, 2883, 3176, 4017, I. R. C.)

SEC. 183.322. DISTILLER'S ENTRY FOR DEPOSIT.—When the spirits have been packaged, or run into a railroad tank car and such tank car seal-locked, the storekeeper-gauger in charge will deliver all six copies of Forms 236 and 1520 to the distiller. The distiller shall, on the same date that the spirits are to be removed from the distillery, execute on Form 236 the description of the packages or tank car to be transferred and on Form 1520 the entry for deposit. He shall immediately return all copies of such forms to the storekeeper-gauger in charge, who will release the spirits for shipment. (Secs. 2879(a), 3176, I. R. C.)

SEC. 183.323. STOREKEEPER-GAUGER'S CERTIFICATE OF REMOVAL.—Upon removal of the spirits, the storekeeper-gauger will execute his certificate of gauge and removal on Form 236. The storekeeper-gauger in charge at the distillery will attach one copy of Form 1520 to each copy of Form 236. He will retain one copy of each form, furnish one copy of each to the distiller, forward one copy of each to the supervisor-consignor, and forward one copy of each to the proprietor of the receiving warehouse and two copies of each to the storekeeper-gauger in charge at the receiving warehouse. When shipment is made by truck, one of the two sets of forms for the storekeeper-gauger in charge at the receiving warehouse will be sealed in an envelope addressed to such storekeeper-gauger in charge and handed to the person in charge of the truck for delivery to him. (Secs. 2878, 2883, 3170, 3176, I. R. C.)

SEC. 183.326. STOREKEEPER-GAUGER'S RECEIPT OF SPIRITS AT WAREHOUSE.—After the spirits have been deposited in the receiving warehouse, the storekeeper-gauger will execute his receipt on both copies of Form 236. The storekeeper-gauger in charge will retain one copy each of Forms 236 and 1520 and forward one copy of each form to the district supervisor. No withdrawal or transfer in bond of spirits received at the warehouse will be made until the two sets of Forms 236 and 1520 have been received by the storekeeper-gauger in charge. (Secs. 2878, 2883, 3176, I. R. C.)

TRANSFER TO WAREHOUSE OFF DISTILLERY PREMISES, IN DIFFERENT DISTRICT.

SEC. 183.327. APPLICATION, FORM 236.—Where spirits are to be transferred to and entered for deposit in an internal revenue bonded warehouse located in a different supervisory district than the distillery, the proprietor of the receiving warehouse shall execute an application for the transfer of the spirits on Form 236. The applicant shall enter all applicable data indicated by the form, including the maximum quantity in tax gallons to be transferred in any one truck, railroad car, or other vehicle. He shall prepare an original and six copies of Form 236 and give them to the storekeeper-gauger in charge of the receiving warehouse. (Secs. 2878, 2883, 3176, I. R. C.)

SEC. 183.328. STOREKEEPER-GAUGER'S CERTIFICATE OF SUFFICIENCY OF WAREHOUSE BOND.—Upon receipt of Form 236 by the storekeeper-gauger in charge at the warehouse, he will compare the penal sum of the bond as stated in the application with his record furnished by the district supervisor pursuant to Regulations 10 (26 CFR, Part 185). If the bond is given in the maximum penal sum of $200,000, he will certify to the sufficiency thereof on Form 236 and forward all seven copies of the form direct to the storekeeper-gauger in charge at the distillery. If the bond is given in less than the maximum penal sum, the storekeeper-gauger in charge will determine from his records whether the tax liability on the quantity of spirits represented by the Form 236, plus the quantity of spirits stored in the warehouse, plus the quantity represented by all outstanding approved Forms 236, is within the limits of the penal sum of the transportation and warehousing bond. If so, he will certify to the sufficiency of the bond on Form 236, record such certification in his records, and forward all seven copies of the form direct to the storekeeper-gauger in charge at the distillery. If the transportation and warehousing bond is not sufficient, he will certify to that fact on Form 236 and return all seven copies to the proprietor. All applications on Form 236 will expire 90 days (three calendar months) from the date of the execution of the storekeeper-gauger's certificate of bond coverage, provided that the supervisor-consignor may authorize an extension of 10 days if the proprietor furnishes a sufficient basis for such extension and the definite assurance that shipment will be made within such time. (Sec. 3176, I. R. C.)

SEC. 183.328a. SPIRITS TO BE TRANSFERRED.—Upon receipt of Form 236, the storekeeper-gauger in charge at the distillery will mark one copy "proprietor's copy" and give it to the proprietor. He will file the remaining six copies in his pending file. When the proprietor desires to make shipment, he will return his copy of Form 236 to the storekeeper-gauger in charge and furnish him a complete description of the spirits to be shipped. Where shipment is not made within the 90-day period, the distiller will return his copy of Form 236 to the storekeeper-gauger in charge unless otherwise directed by the supervisor-consignor. In the event he fails to do so, the storekeeper-gauger in charge will advise the proprietor that Form 236 has expired and request the return of the proprietor's copy, unless otherwise directed by the supervisor-consignor. The storekeeper-gauger in charge will then send all seven copies of Form 236 to the supervisor-consignor

for cancellation and return to the storekeeper-gauger in charge at the receiving warehouse for adjustment of his record and return to the applicant. (Sec. 3176, I. R. C.)

SEC. 183.329. REPORT OF GAUGE.—Unless previously packaged, the spirits designated by the proprietor to be transferred will be drawn from the receiving cisterns into casks or packages, gauged, marked, and branded, or into a weighing tank, gauged, and run by pipe line into a properly equipped railroad tank car. Only spirits produced at a proof in excess of 159 degrees and reduced in the receiving cisterns to not more than 159 and not less than 100 degrees of proof may be transported in railroad tank cars. The quantity transferred shall not exceed the maximum stated in the application. The details of the gauge will be entered by the storekeeper-gauger on seven copies of Form 1520. (Secs. 2878, 2883, 3176, 4017, I. R. C.)

SEC. 183.331. DISTILLER'S ENTRY FOR DEPOSIT.—When the spirits have been packaged, or run into a railroad tank car and such tank car seal-locked, the storekeeper-gauger in charge will deliver all seven copies of Forms 236 and 1520 to the distiller. The distiller shall, on the same date that the spirits are to be removed from the distillery, execute on Form 236 the description of the packages or tank car to be transferred and on Form 1520 the entry for deposit. He shall immediately return all copies of such forms to the storekeeper-gauger in charge, who will release the spirits for shipment. (Secs. 2879(a), 3176, I. R. C.)

SEC. 183.332. STOREKEEPER-GAUGER'S CERTIFICATE OF REMOVAL.—Upon removal of the spirits, the storekeeper-gauger will execute his certificate of gauge and removal on Form 236. The storekeeper-gauger in charge at the distillery will attach one copy of Form 1520 to each copy of Form 236. He will retain one copy of each form, furnish one copy of each to the distiller, forward one copy of each to the supervisor-consignor, and forward one copy of each to the proprietor of the receiving warehouse and three copies of each to the storekeeper-gauger in charge at the receiving warehouse. When shipment is made by truck, one of the three sets of forms for the storekeeper-gauger in charge at the receiving warehouse will be sealed in an envelope addressed to such storekeeper-gauger in charge and handed to the person in charge of the truck for delivery to him. (Secs. 2878, 2883, 3170, 3176, 4017, I. R. C.)

SEC. 183.333. STOREKEEPER-GAUGER'S RECEIPT OF SPIRITS AT WAREHOUSE.—The storekeeper-gauger at the receiving warehouse will examine the shipment upon its arrival and ascertain and note any losses or discrepancies as provided in sections 183.324 and 183.325. After the spirits have been deposited, the storekeeper-gauger will execute his receipt on the three copies of Form 236. The storekeeper-gauger in charge will retain one copy each of Forms 236 and 1520, and forward two copies of each form to the supervisor of his district. The district supervisor will retain one copy of each form and forward the remaining copy of each to the supervisor of the district from which the spirits were transferred. No withdrawal or transfer in bond of spirits received at the warehouse will be made until the three sets of Forms 236 and 1520 have been received by the storekeeper-gauger in charge. (Secs. 2878, 2883, 3176, I. R. C.)

ARTICLE XXXIX.—CONCERNING LOCKS AND SEALS.

SEC. 183.429. STOREKEEPER-GAUGER'S RECORD OF CAP AND LOCK SEALS.—A record of cap and lock seals received and used at each registered distillery will be kept by storekeeper-gaugers on Form 289, "Storekeeper-gauger's Record and Report of Government Property," in accordance with the titles of the columns and lines and the instructions on the form. Form 289 will be kept in the Government cabinet when not in use. (Sec. 3176, I. R. C.)

SEC. 183.430. STOREKEEPER-GAUGER'S REPORT OF GOVERNMENT PROPERTY.—On or before the 5th day of the month succeeding that for which the transactions are reported, the storekeeper-gauger will prepare a monthly report on Form 289, "Storekeeper-gauger's Record and Report of Government Property," of all Government property at the registered distillery. Form 289 will be prepared, in duplicate, in accordance with the titles of the columns and lines and the instructions on the form. He will forward the original to the district supervisor and retain the copy for his files. (Sec. 3176, I. R. C.)

4. This Treasury decision shall be effective on 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 2878, 2879(a), 2883. 3170, 3176, and 4017 of the Internal Revenue Code (U. S. C., Title 26, sections 2878, 2879(a), 2883, 3170, 3176, and 4017).)

GEO. J. SCHOENEMAN,
Commissioner.

Approved February 4, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Published in the Federal Register February 10, 1948.)

REGULATIONS 5, SECTIONS 184.311, 184.313, 184.314, ETC. 1948–4–12751 T. D. 5602

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 184.—PRODUCTION OF BRANDY.

Amending Regulations 5.

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

To District Supervisors and Others Concerned:

1. On October 7, 1947, a notice of proposed rule making regarding production of brandy was published in the Federal Register (12 F. R., 6600).

2. After consideration of such relevant matter as was presented by interested persons, the following added sections 184.315a and 184.329a, and amendments of sections 184.311, 184.313, 184.314, 184.315, 184.316, 184.323, 184.324, 184.327, 184.328, 184.329, 184.330, 184.332, 184.333, 184.334, 184.446, and 184.447 of Regulations 5, approved February 28, 1940 (26 CFR, Part 184), are hereby adopted.

3. These amendments are designed to simplify the procedure governing the transfer in bond of distilled spirits from fruit distilleries to internal revenue bonded warehouses.

ARTICLE XXV.—TAX-PAYMENT, REMOVAL, AND TRANSFER OF BRANDY FROM DISTILLERY.

DEPOSIT IN WAREHOUSE OPERATED ON DISTILLERY PREMISES BY THE DISTILLER.

SEC. 184.311. SUFFICIENCY OF WAREHOUSE BOND.—Where the bond covering the operation of an internal revenue bonded warehouse on the distillery premises is given in less than the maximum penal sum of $200,000, as shown by the record furnished by the district supervisor pursuant to Regulations 10 (26 CFR, Part 185), the storekeeper-gauger in charge of the warehouse will see that the tax liability on the quantity of distilled spirits deposited in the warehouse, plus the tax liability on distilled spirits represented by all outstanding approved Forms 236 (sections 184.315 and 184.329) is within the limits of the penal sum of the bond. (Sec. 3176, I. R. C.)

DEPOSIT IN WAREHOUSE OPERATED BY THE DISTILLER ON CONTIGUOUS PREMISES.

SEC. 184.313. SUFFICIENCY OF WAREHOUSE BOND.—Where the bond covering the operation of an internal revenue bonded warehouse on premises contiguous to the distillery premises is given in less than the maximum penal sum of $200,000, as shown by the record furnished by the district supervisor pursuant to Regulations

10 (26 CFR, Part 185), and brandy produced at the distillery is deposited in such warehouse in accordance with the procedure prescribed in the preceding section, the storekeeper-gauger in charge of the warehouse will see that the tax liability on the quantity of distilled spirits deposited in the warehouse, plus the tax liability on distilled spirits represented by all outstanding approved Forms 236 (sections 184.315 and 184.329) is within the limits of the penal sum of the bond. (Sec. 3176, I. R. C.)

TRANSFER TO WAREHOUSE OFF DISTILLERY PREMISES IN SAME DISTRICT, EXCEPT WAREHOUSE OPERATED BY DISTILLER ON CONTIGUOUS PREMISES.

SEC. 184.314. APPLICATION, FORM 236.—Where brandy is to be transferred to and entered for deposit in an internal revenue bonded warehouse located off the distillery premises in the same supervisory district, and such warehouse is not operated by the distiller on premises contiguous to the distillery premises, the proprietor of the receiving warehouse shall execute an application for the transfer of the brandy on Form 236. The applicant shall enter all applicable data indicated by the form including the maximum quantity in tax gallons to be transferred in any one truck, railroad car, or other vehicle. He shall prepare an original and five copies of Form 236 and give them to the storekeeper-gauger in charge of receiving warehouse. (Secs. 2878, 2883, 3176, I. R. C.)

SEC. 184.315. STOREKEEPER-GAUGER'S CERTIFICATE OF SUFFICIENCY OF WAREHOUSE BOND.—Upon receipt of Form 236 by the storekeeper-gauger in charge of the warehouse, he will compare the penal sum of the bond as stated in the application with his record furnished by the district supervisor pursuant to Regulations 10 (26 CFR, Part 185). If the bond is given in the maximum penal sum of $200,000, he will certify to the sufficiency thereof on Form 236 and forward all six copies of the form direct to the storekeeper-gauger in charge at the distillery. If the bond is given in less than the maximum penal sum, the storekeeper-gauger in charge will determine from his records whether the tax liability on the quantity of brandy represented by the Form 236, plus the quantity of distilled spirits stored in the warehouse, plus the quantity represented by all outstanding approved Forms 236, is within the limits of the penal sum of the transportation and warehousing bond. If so, he will certify to the sufficiency of the bond on Form 236, record such certification in his records, and forward all six copies of the form direct to the storekeeper-gauger in charge at the distillery. If the transportation and warehousing bond is not sufficient, he will certify to that fact on Form 236 and return all six copies to the proprietor. All applications on Form 236 will expire 90 days (three calendar months) from the date of the execution of the storekeeper-gauger's certificate of bond coverage, provided that the district supervisor may authorize an extension of 10 days if the proprietor furnishes a sufficient basis for such extension and the definite assurance that shipment will be made within such time. (Sec. 3176, I. R. C.)

SEC. 184.315a. BRANDY TO BE TRANSFERRED.—Upon receipt of Form 236, the storekeeper-gauger in charge at the distillery will mark one copy "proprietor's copy" and give it to the proprietor. He will file the remaining five copies in his pending file. When the proprietor desires to make shipment, he will return his copy of Form 236 to the storekeeper-gauger in charge and furnish him a complete description of the brandy to be shipped. Where shipment is not made within the 90-day period, the distiller will return his copy of Form 236 to the storekeeper-gauger in charge unless otherwise directed by the district supervisor. In the event he fails to do so, the storekeeper-gauger in charge will advise the proprietor that Form 236 has expired and request the return of the proprietor's copy, unless otherwise directed by the district supervisor. The storekeeper-gauger in charge will then send all six copies of Form 236 to the district supervisor for cancellation and return to the storekeeper-gauger in charge at the receiving warehouse for adjustment of his record and return to the applicant. (Sec. 3176, I. R. C.)

SEC. 184.316. REPORT OF GAUGE.—Unless previously packaged, the brandy will be drawn from the receiving or storage tanks into packages, gauged, marked, and branded, or into a weighing tank, gauged, and run by pipe line into a properly equipped railroad tank car. The quantity transferred shall not exceed the maximum stated in the application. The details of the gauge will be entered by the storekeeper-gauger on six copies of Form 1520. If the packages to be transferred were previously filled, the storekeeper-gauger will inspect them but will not regauge the same, unless the circumstances are such as to make a regauge advisable. Where packages previously filled are removed on the filling gauge, the storekeeper-

gauger will prepare six copies of Form 1520, copying the details from the report of the filling gauge. (Secs. 2878, 2883, 3176, 4017, I. R. C.)

SEC. 184.323. DISTILLER'S ENTRY FOR DEPOSIT.—When the brandy has been packaged, or run into a railroad tank car and such tank car seal-locked, the storekeeper-gauger in charge will deliver all six copies of Forms 236 and 1520 to the distiller. The distiller shall, on the same date that the brandy is to be removed from the distillery, execute on Form 236 the description of the packages or tank car to be transferred and on Form 1520 the entry for deposit. He shall immediately return all copies of such forms to the storekeeper-gauger in charge, who will release the brandy for shipment. (Secs. 2879(a), 3176, I. R. C.)

SEC. 184.324. STOREKEEPER-GAUGER'S CERTIFICATE OF REMOVAL.—Upon removal of the brandy, the storekeeper-gauger will execute his certificate of gauge and removal on Form 236. The storekeeper-gauger in charge will attach one copy of Form 1520 to each copy of Form 236. He will retain one copy of each form, furnish one copy of each to the distiller, forward one copy of each to the supervisor-consignor, and forward one copy of each to the proprietor of the receiving warehouse and two copies of each to the storekeeper-gauger in charge at the receiving warehouse. When shipment is made by truck, one of the two sets of forms for the storekeeper-gauger in charge at the receiving warehouse will be sealed in an envelope addressed to such storekeeper-gauger in charge and handed to the person in charge of the truck for delivery to him. (Secs. 2878, 2883, 3170, 3176, I. R. C.)

SEC. 184.327. STOREKEEPER-GAUGER'S RECEIPT OF BRANDY AT WAREHOUSE.—After the brandy has been deposited in the receiving warehouse, the storekeeper-gauger will execute his receipt on both copies of Form 236. The storekeeper-gauger in charge will retain one copy each of Forms 236 and 1520 and forward one copy of each form to the district supervisor. No withdrawal or transfer in bond of brandy received at the warehouse will be made until the two sets of Forms 236 and 1520 have been received by the storekeeper-gauger in charge. (Secs. 2878, 2883, 3176, I. R. C.)

TRANSFER TO WAREHOUSE OFF DISTILLERY PREMISES IN DIFFERENT DISTRICT.

SEC. 184.328. APPLICATION, FORM 236.—Where brandy is to be entered for deposit in an internal revenue bonded warehouse located in a different supervisory district than the distillery, the proprietor of the receiving warehouse shall execute an application for the transfer of the brandy on Form 236. The applicant shall enter all applicable data indicated by the form, including the maximum quantity in tax gallons to be transferred in any one truck, railroad car, or other vehicle. He shall prepare an original and six copies of Form 236 and give them to the storekeeper-gauger in charge of the receiving warehouse. (Secs. 2878, 2883, 3176, I. R. C.)

SEC. 184.329. STOREKEEPER-GAUGER'S CERTIFICATE OF SUFFICIENCY OF WAREHOUSE BOND.—Upon receipt of Form 236 by the storekeeper-gauger in charge of the warehouse, he will compare the penal sum of the bond as stated in the application with his record furnished by the district supervisor pursuant to Regulations 10 (26 CFR, Part 185). If the bond is given in the maximum penal sum of $200,000, he will certify to the sufficiency thereof on Form 236 and forward all seven copies of the form direct to the storekeeper-gauger in charge at the distillery. If the bond is given in less than the maximum penal sum, the storekeeper-gauger in charge will determine from his records whether the tax liability on the quantity of brandy represented by the Form 236, plus the quantity of spirits stored in the warehouse, plus the quantity represented by all outstanding approved Forms 236, is within the limits of the penal sum of the transportation and warehousing bond. If so, he will certify to the sufficiency of the bond on Form 236, record such certification in his records, and forward all seven copies of the form direct to the storekeeper-gauger in charge at the distillery. If the transportation and warehousing bond is not sufficient, he will certify to that fact on Form 236 and return all seven copies to the proprietor. All applications on Form 236 will expire 90 days (three calendar months) from the date of the execution of the storekeeper-gauger's certificate of bond coverage, provided that the supervisor-consignor may authorize an extension of 10 days if the proprietor furnishes a sufficient basis for such extension and the definite assurance that shipment will be made within such time. (Sec. 3176, I. R. C.)

SEC. 184.329a. BRANDY TO BE TRANSFERRED.—Upon receipt of Form 236, the storekeeper-gauger in charge at the distillery will mark one copy "proprietor's copy" and give it to the proprietor. He will file the remaining six copies in his pending file. When the proprietor desires to make shipment, he will return his

copy of Form 236 to the storekeeper-gauger in charge and furnish him a complete description of the brandy to be shipped. Where shipment is not made within the 90-day period, the distiller will return his copy of Form 236 to the storekeeper-gauger in charge unless otherwise directed by the supervisor-consignor. In the event he fails to do so, the storekeeper-gauger in charge will advise the proprietor that Form 236 has expired and request the return of the proprietor's copy, unless otherwise directed by the supervisor-consignor. The storekeeper-gauger in charge will then send all seven copies of Form 236 to the supervisor-consignor for cancellation and return to the storekeeper-gauger in charge at the receiving warehouse for adjustment of his record and return to the applicant. (Sec. 3176, I. R. C.)

SEC. 184.330. REPORT OF GAUGE.—Unless previously packaged, the brandy will be drawn from the receiving or storage tanks into casks or packages, gauged, marked, and branded, or into a weighing tank, gauged, and run by pipe line into a properly equipped railroad tank car. The quantity transferred shall not exceed the quantity stated in the application. The details of the gauge will be entered by the storekeeper-gauger on seven copies of Form 1520. If the packages to be transferred were previously filled, the storekeeper-gauger will inspect them but will not regauge the same, unless the circumstances are such as to make a regauge advisable. Where previously filled packages are removed on the filling gauge, the storekeeper-gauger will prepare seven copies of Form 1520, copying the details from the report of the filling gauge. (Secs. 2878, 2883, 3176, 4017, I. R. C.)

SEC. 184.332. DISTILLER'S ENTRY FOR DEPOSIT.—When the brandy has been packaged, or run into a railroad tank car and such tank car seal-locked, the storekeeper-gauger in charge will deliver all seven copies of Forms 236 and 1520 to the distiller. The distiller shall, on the same date that the brandy is to be removed from the distillery, execute on Form 236 the description of the packages or tank car to be transferred and on Form 1520 the entry for deposit. He shall immediately return all copies of such forms to the storekeeper-gauger in charge, who will release the brandy for shipment. (Secs. 2879(a), 3176, I. R. C.)

SEC. 184.333. STOREKEEPER-GAUGER'S CERTIFICATE OF REMOVAL.—Upon removal of the brandy, the storekeeper-gauger will execute his certificate of gauge and removal on Form 236. The storekeeper-gauger in charge will attach one copy of Form 1520 to each copy of Form 236. He will retain one copy of each form, furnish one copy of each to the distiller, forward one copy of each to the supervisor-consignor, and forward one copy of each to the proprietor of the receiving warehouse and three copies of each to the storekeeper-gauger in charge at the receiving warehouse. When shipment is made by truck, one of the three sets of forms for the storekeeper-gauger in charge at the receiving warehouse will be sealed in an envelope addressed to such storekeeper-gauger in charge and handed to the person in charge of the truck for delivery to him. (Secs. 2878, 2883, 3176, I. R. C.)

SEC. 184.334. STOREKEEPER-GAUGER'S RECEIPT OF BRANDY AT WAREHOUSE.—The storekeeper-gauger at the receiving warehouse will examine the shipment upon its arrival and ascertain and note any losses or discrepancies as provided in sections 184.325 and 184.326. After the brandy has been deposited, the storekeeper-gauger will execute his receipt on the three copies of Form 236. The storekeeper-gauger in charge will retain one copy each of Forms 236 and 1520, and forward two copies of each form to the supervisor of his district. The district supervisor will retain one copy of each form and forward the remaining copy of each to the supervisor of the district from which the brandy was transferred. No withdrawal or transfer in bond of brandy received at the warehouse will be made until the three sets of Forms 236 and 1520 have been received by the storekeeper-gauger in charge. (Secs. 2878, 2883, 3170, 3176, I. R. C.)

ARTICLE XLI.—CONCERNING LOCKS AND SEALS.

SEC. 184.446. STOREKEEPER-GAUGER'S RECORD OF CAP AND LOCK SEALS.—A record of cap and lock seals received and used at each fruit distillery will be kept by storekeeper-gaugers on Form 289, "Storekeeper-gauger's Record and Report of Government Property," in accordance with the titles of the columns and lines and the instructions on the form. Form 289 will be kept in the Government cabinet when not in use. (Sec. 3176, I. R. C.)

SEC. 184.447. STOREKEEPER-GAUGER'S REPORT OF GOVERNMENT PROPERTY.—On or before the 5th day of the month succeeding that for which the transactions are reported, the storekeeper-gauger will prepare a monthly report on Form 289.

"Storekeeper-gauger's Record and Report of Government Property" of all Government property at the fruit distillery. Form 289 will be prepared, in duplicate, in accordance with the titles of the columns and lines and the instructions on the form. He will forward the original to the district supervisor and retain the copy for his files. (Sec. 3176, I. R. C.)

4. This Treasury decision shall be effective on 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 2878, 2879(a), 2883, 3170, 3176, and 4017 of the Internal Revenue Code (U. S. C., Title 26, sections 2878, 2879(a), 2883, 3170, 3176, and 4017).)

GEO. J. SCHOENEMAN,
Commissioner.

Approved February 4, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Published in the Federal Register February 10, 1948.)

REGULATIONS 10, SECTIONS 185.154, 185.155, 185.215, ETC. 1948–4–12752
T. D. 5603

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 185.—WAREHOUSING OF DISTILLED SPIRITS.

Amending Regulations 10.

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

To District Supervisors and Others Concerned:

1. On October 7, 1947, a notice of proposed rule making regarding warehousing of distilled spirits was published in the Federal Register (12 F. R., 6602).

2. After consideration of such relevant matter as was presented by interested persons, the following added sections 185.112a, 185.298a, 185.298b, 185.312a, 185.312b, and 185.312c, and amendments of sections 185.154, 185.155, 185.215, 185.272, 185.298, 185.299, 185.300, 185.301, 185.302, 185.310, 185.311, 185.312, 185.313, 185.314, 185.366, 185.471, 185.494, and 185.495 of Regulations 10, approved May 20, 1940 (26 CFR, Part 185), are hereby adopted.

3. These amendments are designed to simplify the procedure governing the transfer in bond of distilled spirits from registered and fruit distilleries to internal revenue bonded warehouses and transfers in bond between internal revenue bonded warehouses.

ARTICLE XV.—ACTION BY DISTRICT SUPERVISOR.

ORIGINAL ESTABLISHMENT.

SEC. 185.112a. NOTICE OF PENAL SUM OF BOND.—The district supervisor will inform the storekeeper-gauger in charge of each internal revenue bonded warehouse in his district of the penal sum of the approved transportation and warehousing bond. The district supervisor will advise the storekeeper-gauger currently of any change in the penal sum of such bond. (Sec. 3176, I. R. C.)

ARTICLE XIX.—DEPOSIT OF SPIRITS IN WAREHOUSE.

SPIRITS RECEIVED IN CASKS OR OTHER APPROVED CONTAINERS.

SEC. 185.154. DISPOSITION OF DEPOSIT FORMS.—Where spirits are received from a distillery operated by the proprietor on the same or contiguous premises, the storekeeper-gauger in charge at the receiving warehouse will retain the copy of Form 1520 covering the deposit of the spirits. Upon the deposit of spirits received from a distillery not operated by the proprietor of the warehouse on the same or contiguous premises, or from another bonded warehouse, the storekeeper-gauger at the receiving warehouse will, after ascertaining and noting losses or discrepancies as provided in sections 185.151, 185.152, and 185.153, execute his certificate of receipt on each copy of Form 236 received from the storekeeper-gauger in charge at the distillery or shipping warehouse. The storekeeper-gauger in charge will retain one copy of such form, with Form 1520, 1619, or 1620 attached, and forward the remaining copies of each form, one in the case of spirits received from distilleries and warehouses in the same district and two in the case of spirits received from distilleries and warehouses in other districts, to the supervisor of his district. The district supervisor will retain one copy of each form, and, where the distillery or warehouse from which the spirits were received is located in another district, will transmit one copy of each form to the supervisor of such district. Where cases of bottled-in-bond spirits are received from the bottling-in-bond department, the storekeeper-gauger in charge will retain Form 1620. (Sec. 3176, I. R. C.)

SUFFICIENCY OF BOND.

SEC. 185.155. STOREKEEPER-GAUGER TO BE INFORMED.—Where spirits are received for deposit from a distillery operated by the proprietor of the warehouse on the same or contiguous premises, and the penal sum of the transportation and warehousing bond is less than the maximum of $200,000, as shown by the record furnished by the district supervisor pursuant to section 185.112a, the storekeeper-gauger in charge of the warehouse will see that the tax liability on the quantity of spirits deposited in the warehouse, plus the tax liability on the spirits represented by all outstanding approved Forms 236 (sections 185.298a and 185.312a) is within the limits of the penal sum of the bond. Such information shall also be furnished where brandies are blended under the provisions of section 2801(e)(5), I. R. C. (when the penal sum of the bond is less than the maximum), and the storekeeper-gauger shall see that the penal sum of the bond is sufficient to cover the additional tax of 30 cents a proof gallon on all blended brandy on hand or in transit to the warehouse at any one time as well as the tax under section 2800(a)(1), I. R. C., on all brandy on hand at any one time. (Secs. 2801(e)(5), 2879, 3176, I. R. C.)

ARTICLE XXII.—LOSSES OF DISTILLED SPIRITS BY THEFT, ACCIDENT, OR OTHERWISE THAN BY LEAKAGE OR EVAPORATION, IN WAREHOUSE OR IN TRANSIT THERETO, EXCEPT LOSSES FROM STORAGE TANKS OR STEEL DRUMS FILLED THEREFROM OF BRANDY OR FRUIT SPIRITS INTENDED FOR FORTIFICATION OF WINE.

SEC. 185.215. EXAMINATION OF CLAIM.—When an application for remission of tax is received by the district supervisor, he will carefully examine the same to see that all the required information has been furnished, and will cause such investigation to be made or require such additional evidence to be submitted as he may deem necessary. Upon completion of his investigation, if any, the district supervisor will forward one complete copy of the claim and accompanying papers, together with any pertinent reports and documentary evidence, including, in the case of losses in transit to a bonded warehouse, a copy of the Form 1520, 1619, 1620 or a transcript of the storekeeper-gauger's notation thereon, or other report, to the Commissioner with his recommendation in respect to the allowance or disallowance of the claim. (Sec. 3176, I. R. C.)

ARTICLE XXVI.—WITHDRAWAL OF DISTILLED SPIRITS FROM WAREHOUSE.

RECORDS AND REPORTS.

SEC. 185.272. FILING OF WITHDRAWAL PAPERS.—All copies of the withdrawal papers, Forms 179, 206, 236, 257, 543, 573, 655, 1518, 1519, 1520, 1619, and 1620,

retained by the storekeeper-gauger upon the withdrawal of distilled spirits from the warehouse and the copy of Form 1685 retained by him upon completion of brandy-blending operations, as hereinafter provided, shall be filed by him in the manner prescribed in sections 185.465 to 185.471, inclusive. (Secs. 2801(e)(5), 3176, I. R. C.)

ARTICLE XXXII.—TRANSFERS IN BOND BETWEEN INTERNAL REVENUE BONDED WAREHOUSES.

TRANSFERS BETWEEN WAREHOUSES IN SAME DISTRICT.

SEC. 185.298. APPLICATION, FORM 236.—Where the transfer is to be made between bonded warehouses in the same supervisory district, the proprietor of the receiving warehouse shall execute an application for the transfer of the spirits on Form 236. The applicant shall enter all applicable data indicated by the form, including the maximum quantity in tax gallons to be transferred in any one truck, railroad car, or other vehicle. He shall prepare an original and five copies of Form 236 and give them to the storekeeper-gauger in charge of the receiving warehouse. (Secs. 2875, 3176, I. R. C.)

SEC. 185.298a. STOREKEEPER-GAUGER'S CERTIFICATE OF SUFFICIENCY OF BOND.—Upon receipt of Form 236 by the storekeeper-gauger in charge, he will compare the penal sum of the bond as stated in the application with his record furnished by the district supervisor pursuant to section 185.112a. If the warehouse bond is given in the maximum penal sum of $200,000, he will certify to the sufficiency thereof on Form 236, and forward all six copies of the form direct to the storekeeper-gauger in charge at the shipping warehouse. If the warehouse bond is given in less than the maximum penal sum, the storekeeper-gauger in charge will determine from his records whether the tax liability on the quantity of distilled spirits represented by the Form 236, plus the quantity of distilled spirits stored in the warehouse, plus the quantity represented by all outstanding approved Forms 236, is within the limits of the penal sum of the transportation and warehousing bond. If so, he will certify to the sufficiency of the bond on Form 236, record such certification in his records, and forward all six copies of the form direct to the storekeeper-gauger in charge at the shipping warehouse. If the transportation and warehousing bond is not sufficient, he will certify to that fact on Form 236 and return all six copies to the proprietor. All applications on Form 236 will expire 90 days (three calendar months) from the date of the execution of the storekeeper-gauger's certificate of bond coverage, provided that the district supervisor may authorize an extension of 10 days if the proprietor furnishes a sufficient basis for such extension and the definite assurance that the shipment will be made within such time. (Secs. 2875, 3176, I. R. C.)

SEC. 185.298b. SPIRITS TO BE TRANSFERRED.—Upon receipt of Form 236, the storekeeper-gauger in charge at the shipping warehouse will mark one copy "proprietor's copy" and give it to the proprietor. He will file the remaining five copies in his pending file. When the proprietor desires to make shipment, he will return his copy of Form 236 to the storekeeper-gauger in charge and furnish him a complete description of the spirits to be shipped. Where shipment is not made within the 90-day period, the proprietor will return his copy of Form 236 to the storekeeper-gauger in charge unless otherwise directed by the district supervisor. In the event he fails to do so, the storekeeper-gauger in charge will advise the proprietor that Form 236 has expired and request the return of the proprietor's copy, unless otherwise directed by the district supervisor. The storekeeper-gauger in charge will then send all six copies of Form 236 to the district supervisor for cancellation and return to the storekeeper-gauger in charge at the receiving warehouse for adjustment of his record and return to the applicant. (Secs. 2875, 3176, I. R. C.)

SEC. 185.299. TRANSFERS IN PACKAGES.—If the spirits to be transferred are in original packages or in packages filled from warehouse storage tanks, or are blended brandies in packages filled in the brandy-blending department, the storekeeper-gauger shall inspect the packages designated by the proprietor to be transferred and supervise the weighing thereof as provided in the Gauging Manual. He will prepare an original and five copies of Form 1619 covering only the packages to be shipped. The quantity to be transferred shall not exceed the maximum stated in the application. In the case of blended brandies the storekeeper-gauger shall also show on Form 1619 the date and serial number of the Form 1685 covering the blending of the brandies, the date of original entry of the oldest brandy in the blend, and the date of original entry of the youngest brandy in the blend. The storekeeper-gauger in charge will give all six copies

of Forms 236 and 1619 to the proprietor, who shall, on the same date that the spirits are to be transferred, execute on the six copies of Form 236 the description of the packages to be transferred. He will then return the six copies of the forms to the storekeeper-gauger in charge. Immediately after the packages are weighed for transfer in bond, the proprietor may, if he so desires, take the proof of the spirits, provided such is done expeditiously and additional storekeeper-gaugers will not be required to supervise the operation. The taking of average of actual tare will not be permitted. If the warehouseman prepares a record of such commercial gauge, two copies thereof will be given to the storekeeper-gauger, who will retain one copy and forward the other to the storekeeper-gauger at the receiving warehouse, as hereinafter provided, for reference if claim is filed for loss by theft, accident, or otherwise than by leakage or evaporation, or where claim is filed under section 2801(e)(5), I. R. C., for losses from packages of blended brandies. Upon withdrawal for transfer the packages will be marked as provided in the Gauging Manual. Forms 236 and 1619 will be disposed of in accordance with section 185.310. (Secs. 2801(e)(5), 2875, 3176, I. R. C.)

SEC. 185.300. TRANSFERS IN CASES.—If the spirits to be transferred were bottled in bond before tax-payment, the storekeeper-gauger will inspect the cases designated by the proprietor to be transferred. He will prepare an original and five copies of Form 1620 covering only the cases to be shipped. The quantity to be transferred shall not exceed the maximum stated in the application. The storekeeper-gauger in charge will give all six copies of Forms 236 and 1620 to the proprietor, who shall, on the same date that the spirits are to be transferred, execute on the six copies of Form 236 the description of the cases to be transferred. He will then return the six copies of the forms to the storekeeper-gauger in charge. Upon withdrawal for transfer, the word "Transferred" followed by the date of transfer, the word "To," the number of the receiving warehouse, and the State in which such warehouse is located, will be plainly and durably stenciled or stamped upon the Government side of each case in letters and figures not less than three-eighths inch in height. These marks may be abbreviated as follows:

Trans. 3-29-1938

To I. R. B. W. 25 N. Y.

Where there is insufficient space on the Government side of the case, these marks may be placed upon another side of the case. Forms 236 and 1620 will be disposed of in accordance with section 185.310. (Secs. 2875, 3176, I. R. C.)

SEC. 185.301. TRANSFER IN TANK CARS.—If the spirits to be transferred are in a previously filled tank car designated by the proprietor to be transferred, the storekeeper-gauger will inspect the car and prepare an original and five copies of Form 1520, copying the details from the entry Form 1520, except that if the contents of the tank car were previously regauged owing to evidence of loss of spirits therefrom by theft, accident, or otherwise than by leaking or evaporation, the transfer Form 1520 will show both the original contents and the contents disclosed by the regauge. The quantity to be transferred shall not exceed the maximum stated in the application. The storekeeper-gauger in charge will give all six copies of Forms 236 and 1520 to the proprietor, who shall, on the same date that the spirits are to be transferred, execute on the six copies of Form 236 the description of the tank car to be transferred. He will then return the six copies of the forms to the storekeeper-gauger in charge. When the tank car is released, the key of each seal lock thereon will be forwarded on the day of shipment by the storekeeper-gauger in charge at the transferring warehouse to the storekeeper-gauger in charge at the receiving warehouse. Forms 236 and 1520 will be disposed of in accordance with section 185.310. (Secs. 2875, 3176, I. R. C.)

SEC. 185.302. TRANSFERS FROM STORAGE TANKS, IN PACKAGES OR TANK CARS.—If the spirits designated by the proprietor to be transferred are in storage tanks they will be drawn into packages, gauged, marked, and branded, or run into a weighing tank, gauged, and conveyed by pipe line into a railroad tank car, constructed and marked as hereinafter provided. The storekeeper-gauger will prepare a report of the gauge on an original and five copies of Form 1520, and note on each copy of the form the proof at which the spirits were distilled. The quantity to be transferred shall not exceed the maximum stated in the application. The storekeeper-gauger in charge will give all six copies of Forms 236 and 1520 to the proprietor, who shall, on the same date that the spirits are to be transferred, execute on the six copies of Form 236 the description of the packages or tank car to be transferred. He will then return the six copies of the forms to

the storekeeper-gauger in charge. Forms 236 and 1520 will be disposed of in accordance with section 185.310. (Secs. 2875, 3176, I. R. C.)

SEC. 185.310. STOREKEEPER-GAUGER'S CERTIFICATE OF REMOVAL.—Upon removal of the spirits, the storekeeper-gauger will execute his report of inspection or gauge and removal on the six copies of Form 236. Where the application, Form 236, covers spirits in packages or tank car, the storekeeper-gauger will attach one copy of Form 1520 or Form 1619, as the case may be, to each copy of Form 236. Where the application covers spirits in cases, the storekeeper-gauger will attach one copy of Form 1620 to each copy of Form 236. The storekeeper-gauger in charge will retain one copy of each form, furnish one copy of each form to the proprietor of the shipping warehouse, forward one copy of each form to the supervisor-consignor, forward one copy of each form to the proprietor of the receiving warehouse and two copies of each form to the storekeeper-gauger in charge at such warehouse, with a copy of the proprietor's commercial gauge (if any) of packages. Where shipment of packages or cases is made by truck, one of the sets of Forms 236 and 1619, or 1620, for the storekeeper-gauger in charge at the receiving warehouse will be sealed in an envelope addressed to such storekeeper-gauger in charge and handed to the person in charge of the truck for delivery to him. (Secs. 2875, 3170, 3176, I. R. C.)

SEC. 185.311. STOREKEEPER-GAUGER'S RECEIPT OF SPIRITS AT WAREHOUSE.—Upon receipt of the spirits at the receiving warehouse, the storekeeper-gauger will examine the shipment and will ascertain and report losses or discrepancies, as provided in sections 185.151, 185.152, and 185.153. The proprietor may weigh and take the proof of the spirits, if desired, under the conditions specified in section 185.150. The storekeeper-gauger will execute his certificate of receipt on each copy of Form 236, retain one copy each of Form 236 and Form 1520, Form 1619, or Form 1620, attached thereto, and forward one copy of each form to the district supervisor. No withdrawal or transfer in bond of spirits received at the warehouse will be made until the two sets of Form 236 and Form 1520, Form 1319, or Form 1620, as the case may be, have been received by the storekeeper-gauger in charge. The storekeeper-gauger will report on Form 1513 the original tax gallons contained in all packages received regardless of any losses in transit. However, any package lost in transit will not be reported on Form 1513 but will be reported by the district supervisor in the warehouse account, Form 1514, for the State in which the receiving warehouse is located, in the manner indicated by the form. (Secs. 2875, 3176, I. R. C.)

TRANSFERS IN BOND BETWEEN INTERNAL REVENUE BONDED WAREHOUSES IN DIFFERENT DISTRICTS.

SEC. 185.312. APPLICATION, FORM 236.—Where the transfer is to be made between warehouses in different districts, the proprietor of the receiving warehouse shall execute an application for the transfer of the spirits on Form 236. The applicant shall enter all applicable data indicated by the form, including the maximum quantity in tax gallons to be transferred in any one truck, railroad car, or other vehicle. He shall prepare an original and six copies of Form 236 and give them to the storekeeper-gauger in charge of the receiving warehouse. (Secs. 2875, 3176, I. R. C.)

SEC. 185.312a. CERTIFICATE OF SUFFICIENCY OF BOND.—Upon receipt of Form 236 by the storekeeper-gauger in charge, he will compare the penal sum of the bond as stated in the application with his record furnished by the district supervisor pursuant to section 185.112a. If the warehouse bond is given in the maximum penal sum of $200,000, he will certify to the sufficiency thereof on Form 236, and forward all seven copies of the form direct to the storekeeper-gauger in charge at the shipping warehouse. If the warehouse bond is given in less than the maximum penal sum, the storekeeper-gauger in charge will determine from his records whether the tax liability on the quantity of distilled spirits represented by the Form 236, plus the quantity of distilled spirits stored in the warehouse, plus the quantity represented by all outstanding approved Forms 236, is within the limits of the penal sum of the transportation and warehousing bond. If so, he will certify to the sufficiency of the bond on Form 236, record such certification in his records, and forward all seven copies of the form direct to the storekeeper-gauger in charge at the shipping warehouse. If the transportation and warehousing bond is not sufficient, he will certify to that fact on Form 236 and return all seven copies to the proprietor. All applications on Form 236 will expire 90 days (three calendar months) from the date of the execution of the storekeeper-gauger's certificate of bond coverage, provided that the supervisor-consignor may authorize an extension of 10 days if the proprietor

furnishes a sufficient basis for such extension and the definite assurance that shipment will be made within such time. (Secs. 2875, 3176, I. R. C.)

SEC. 185.312b. SPIRITS TO BE TRANSFERRED.—Upon receipt of Form 236, the storekeeper-gauger in charge at the shipping warehouse will mark one copy "proprietor's copy" and give it to the proprietor. He will file the remaining six copies in his pending file. When the proprietor desires to make shipment, he will return his copy of Form 236 to the storekeeper-gauger in charge and furnish him a complete description of the spirits to be shipped. Where a shipment is not made within the 90-day period, the proprietor will return his copy of Form 236 to the storekeeper-gauger in charge unless otherwise directed by the supervisor-consignor. In the event he fails to do so, the storekeeper-gauger in charge will advise the proprietor that Form 236 has expired, and request the return of the proprietor's copy, unless otherwise directed by the supervisor-consignor. The storekeeper-gauger in charge will then send all seven copies of Form 236 to the supervisor-consignor for cancellation and return to the storekeeper-gauger in charge at the receiving warehouse for adjustment of his record and return to the applicant. (Secs. 2875, 3176, I. R. C.)

SEC. 185.312c. TRANSFERS IN PACKAGES, CASES, AND TANK CAR.—Spirits in original packages, or in packages filled from warehouse storage tanks, will be transferred in accordance with the provisions of section 185.299, except that an additional copy of Form 1619 will be prepared. Spirits in cases, bottled in bond before tax-payment, will be transferred in accordance with the provisions of section 185.300, except that an additional copy of Form 1620 will be prepared. Spirits in a previously filled tank car will be transferred in accordance with the provisions of section 185.301, except that an additional copy of Form 1520 will be prepared. If spirits to be transferred are in storage tanks, they will be drawn into packages or into a tank car and then transferred in accordance with the provisions of section 185.302, except that an additional copy of Form 1520 will be prepared. Forms 236 and 1520, 1619, or 1620 will be disposed of in accordance with section 185.313. (Secs. 2875, 3176, I. R. C.)

SEC. 185.313. STOREKEEPER-GAUGER'S CERTIFICATE OF REMOVAL.—Upon removal of the spirits, the storekeeper-gauger will execute his report of inspection or gauge and removal on the seven copies of Form 236. Where the application, Form 236, covers spirits in packages or tank cars, the storekeeper-gauger will attach one copy of Form 1520 or Form 1619, as the case may be, to each copy of Form 236. Where the application covers spirits in cases, the storekeeper-gauger will attach one copy of Form 1620 to each copy of Form 236. The storekeeper-gauger in charge will then retain one copy of each form, furnish one copy of each form to the proprietor of the shipping warehouse, forward one copy of each form to the supervisor-consignor, forward one copy of each form to the proprietor of the receiving warehouse, and three copies of each form to the storekeeper-gauger in charge at such warehouse, with a copy of the proprietor's commercial gauge (if any) of packages. Where shipment of packages is made by truck, one of the sets of Forms 236 and 1619 or 1620, for the storekeeper-gauger in charge at the receiving warehouse will be sealed in an envelope addressed to such storekeeper-gauger in charge and handed to the person in charge of the truck for delivery to him. (Secs. 2875, 3176, I. R. C.)

SEC. 185.314. STOREKEEPER-GAUGER'S RECEIPT OF SPIRITS AT RECEIVING WAREHOUSE.—Upon receipt of the spirits at the receiving warehouse, the storekeeper-gauger will examine the shipment and will ascertain and report losses or discrepancies, as provided in sections 185.151, 185.152, and 185.153. The proprietor may weigh and take the proof of the spirits, if desired, under the conditions specified in section 185.150. The storekeeper-gauger will execute his certificate of receipt on each copy of Form 236, retain one copy of each Form 236 and Form 1520, Form 1619, or Form 1620 attached thereto and forward two copies of each form to the supervisor of his district. The district supervisor will retain one copy of each form and will forward one copy of each to the supervisor of the district from which the shipment was made. No withdrawal or transfer in bond of spirits received at the warehouse will be made until the three sets of Forms 236 and 1520, 1619, or 1620, as the case may be, have been received by the storekeeper-gauger in charge. The storekeeper-gauger will report on Form 1513 the original tax gallons contained in all packages received regardless of any losses in transit. However, any package lost in transit will not be reported on Form 1513 but will be reported by the supervisor-consignee in the warehouse account, Form 1514, for the State in which the receiving warehouse is located in the manner indicated by the form. (Secs. 2875, 3176, I. R. C.)

ARTICLE XXXIII.—EXPORTATION OF DISTILLED SPIRITS FREE OF TAX.

BOTTLING FOR TEMPORARY STORAGE BEFORE EXPORTATION.

SEC. 185.366. TRANSFER BETWEEN WAREHOUSES.—Whenever it is desired to transfer distilled spirits, which have been bottled in bond for export and which are stored in a bonded warehouse, to another internal revenue bonded warehouse for storage, prior to direct exportation or transportation for export, the proprietor of the receiving warehouse shall execute an application for transfer of the spirits on Form 236. If the transfer is to be made between bonded warehouses in the same district, an original and five copies of Form 236 will be prepared, and if the transfer is to be made between bonded warehouses in different districts, an original and six copies of Form 236 will be prepared. The applicant will enter all applicable data indicated by the form, and will also enter thereon the statement, "To be received and deposited for storage for export." The Forms 236 will be filed and disposed of in accordance with section 185.298 or 185.312, as the case may be. The cases will be inspected, transferred, received, examined, and reported in the manner provided by sections 185.297 to 185.314, inclusive, in so far as they relate to the transfer of spirits bottled in bond before taxpayment. (Secs. 2875, 3176, I. R. C.)

ARTICLE XL.—STOREKEEPER-GAUGER'S FILES AND RECORDS.

SEC. 185.471. FILING OF WITHDRAWAL FORMS AND APPLICATIONS.—The copies of the reports of the withdrawal gauge, Form 1520, or the reports of removal for transfer in bond, Form 1619 or Form 1620, as the case may be, retained by the storekeeper-gauger will be filed separately, in chronological order, according to the date of withdrawal noted at the bottom of the forms. The storekeeper-gauger's copies of withdrawal applications, Forms 179, 206, 236, 257, 543, 573, 655, 1518, 1519, and 1685, may be filed together or separately by form number, in chronological order in the same manner as the withdrawal forms. The withdrawal reports and applications for each month will be separated in the file by proper markers, and each file will be appropriately marked to show the kind of forms contained therein and the period covered thereby. (Secs. 2801(e)(5), 3176, I. R. C.)

ARTICLE XLV.—CONCERNING LOCKS AND SEALS.

SEC. 185.494. STOREKEEPER-GAUGER'S RECORD OF CAP AND LOCK SEALS.—A record of cap and lock seals received and used at each internal revenue bonded warehouse will be kept by storekeeper-gaugers on Form 289, "Storekeeper-gauger's Record and Report of Government Property," in accordance with the titles of the columns and lines and the instructions on the form. Form 289 will be kept in the Government cabinet when not in use. (Sec. 3176, I. R. C.)

SEC. 185.495. STOREKEEPER-GAUGER'S REPORT OF GOVERNMENT PROPERTY.—On or before the 5th day of the month succeeding that for which the transactions are reported, the storekeeper-gauger will prepare a monthly report on Form 289, "Storekeeper-gauger's Record and Report of Government Property," of all Government property at the warehouse. Form 289 will be prepared, in duplicate, in accordance with the titles of the columns and lines and the instructions on the form. He will forward the original to the district supervisor and retain the copy for his files. (Sec. 3176, I. R. C.)

2. This Treasury decision shall be effective on 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 2801(e)(5), 2875, 2879, 3170, and 3176 of the Internal Revenue Code (U. S. C., Title 26, sections 2801(e)(5), 2875, 2879, 3170, and 3176).)

GEO. J. SCHOENEMAN,
Commissioner.

Approved February 4, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Published in the Federal Register February 10, 1948.)

REGULATIONS 11, SECTIONS 189.11, 189.18a, 189.128, and 189.129. 1948–2–12736 T. D. 5597

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 189.—BOTTLING OF TAX-PAID SPIRITS.

Amending Regulations 11.

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

To District Supervisors and Others Concerned:

1. The Act of July 14, 1947 (Public Law 185, Eightieth Congress [C. B. 1947–2, 336]), amends subsection (b) of section 3179 of the Internal Revenue Code to read as follows:

> (b) DRAWBACK.—Upon the exportation of distilled spirits and wines manufactured or produced in the United States on which an internal-revenue tax has been paid, and which are contained in any cask or package or in bottles packed in cases or other containers, there shall be allowed, under regulations to be prescribed by the Commissioner, with the approval of the Secretary, a drawback equal in amount to the tax found to have been paid on such distilled spirits and wines: *Provided*, That such distilled spirits and wines have been packaged or bottled especially for export, under regulations prescribed by the Commissioner, with the approval of the Secretary. The Commissioner, with the approval of the Secretary, is authorized to prescribe regulations governing the determination and payment of drawback of internal-revenue tax on distilled spirits and wines, including the requirement of such notices, bonds, bills of lading, and other evidence of payment of tax and exportation as shall be deemed necessary.

2. On October 10, 1947, notice of proposed rule-making regarding drawback on distilled spirits and wines was published in the Federal Register (12 F. R., 6695).

3. After consideration of such relevant matter as was presented by interested persons Regulations 11, approved May 20, 1940 (26 CFR, Part 189) are amended by adding section 189.18a and amending sections 189.11, 189.128, and 189.129.

4. These amendments are designed to extend the provisions of the regulations to cover the packaging as well as the bottling of distilled spirits and wines especially for export with benefit of drawback.

SEC. 189.11. EXPORT STORAGE ROOM.—If the proprietor intends to bottle or package distilled spirits or wines for export with benefit of drawback, a separate room for the storage of such products exclusively must be provided and a sign must be placed over the entrance door bearing the words "Export Storage Room." The room must be constructed of substantial, solid materials: *Provided*, That the partitions separating such room from other parts of the tax-paid bottling house may be constructed of expanded metal or woven wire of not less than 9-gauge nor more than 2-inch mesh, extending from the floor to the ceiling or roof. All windows, doors or other openings must be so constructed that they may be securely locked or fastened from the inside, except the entrance door, which must be so constructed that it may be securely locked from the outside of the room with a Government seal lock. (Secs. 2803, 2871, 3176, 3179(b), as amended, I. R. C.)

SEC. 189.18a. PACKAGE FILLING TANKS.—Where distilled spirits or wines are to be packaged especially for export with benefit of drawback, tanks suitable for the purpose, and constructed and equipped in accordance with the provisions and requirements of section 189.18 governing the construction and equipment of bottling tanks shall be provided by the bottler. The bottling tank may be used as the package filling tank, provided it is equipped with an approved outlet for filling packages and such outlet is equipped for locking with a Government seal lock when not in use. (Secs. 2803, 2871, 3176, 3179(b), as amended, I. R. C.)

ARTICLE XXIII.—BOTTLING AND PACKAGING OF DISTILLED SPIRITS AND WINES ESPECIALLY FOR EXPORT WITH BENEFIT OF DRAWBACK.

SEC. 189.128. GENERAL.—Under the law, distilled spirits and wines manufactured or produced in the United States and on which the internal revenue tax has been paid may be bottled or packaged especially for export at a tax-paid bottling house, and upon the exportation of the spirits or wines there may be allowed a drawback equal in amount to the tax found to have been paid thereon. (Secs. 2803, 2871, 3176, 3179(b), as amended, I. R. C.)

SEC. 189.129. PROCEDURE.—The bottling and packaging of distilled spirits and wines especially for export at a tax-paid bottling house, the storage of the spirits and wines pending exportation, the exportation of the spirits or wines, including the lading thereof on vessels for use as ship's supplies and on aircraft for use as aircraft's supplies, and the allowance of drawback thereon, shall be in accordance with the provisions of Regulations 28 (26 CFR, Part 176). (Secs. 2803, 2871, 3176, 3179(b), as amended, I. R. C.)

5. This Treasury decision shall be effective upon publication in the Federal Register. (Secs. 2803, 2871, 3176, and 3179(b), as amended, I. R. C. (U. S. C., Title 26, 2803, 2871, 3176, and 3179(b)).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved January 13, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Published in the Federal Register January 20, 1948.)

REGULATIONS 11, SECTIONS 189.131 and 189.135. 1948–13–12838
T. D. 5619

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 189.—BOTTLING OF TAX-PAID DISTILLED SPIRITS.

Amending Regulations 11.

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

To District Supervisors and Others Concerned:

1. On March 24, 1948, notice of proposed rule making, regarding bottling of tax-paid distilled spirits, was published in the Federal Register (12 F. R., 1564). No objections to the rules proposed having been received, the following amendments of sections 189.131 and 189.135 of Regulations 11 are hereby adopted. Such amendments are necessary in order to provide the Commissioner with a copy of Form 52–D, "Monthly Record and Report of Tax-Paid Bottling House Operations," as a necessary aid in the control of operations of tax-paid bottling houses and to make available required statistical information.

2. Sections 189.131 and 189.135 of Regulations 11, "Bottling of Tax-Paid Distilled Spirits," approved May 20, 1940 (26 CFR, Part 189) are hereby amended to read as follows:

ARTICLE XXV.—PROPRIETOR'S RECORDS AND REPORTS.

SEC. 189.131. RECORD, FORM 52–D.—Every proprietor of a tax-paid bottling house shall keep a record and render a monthly report, in duplicate, on Form 52–D, "Monthly Record and Report of Tax-Paid Bottling House Operations," of all distilled spirits received, dumped for bottling, bottled, and disposed of at his bottling house. (Secs. 2803, 2871, 3176, I. R. C.)

SEC. 189.135. REPORTS.—Except as otherwise provided herein, the proprietor shall file, daily, full and complete transcripts, in duplicate, of Form 52–D (Part 3) on Form 52–D (Part 3) and full and complete transcripts of Record 52 on Forms 52–A and 52–B (one copy of each) with the district supervisor, by delivering or mailing them to such officer on the date the transactions entered therein occurred: *Provided*, That in any case in which the district supervisor shall direct, the transcripts shall be so filed with the investigator in charge instead of with the district supervisor. The transcripts shall bear the following certification signed by the person or officer authorized to execute Form 338 or 52–D:

"I hereby certify that these transcripts, consisting of ------ pages, disclose all the transactions which occurred during the period covered thereby, and that each entry is correct."

If in any case the district supervisor shall so authorize, the transcripts, in lieu of being filed daily, may be filed with him on or before the 10th day of the month succeeding the month in which the transactions occurred. In such event, transactions will be entered on Form 52–D and Record 52 in accordance with the provisions of section 189.133. A full and complete transcript, in duplicate, of Form 52–D (except Part 3 where such part is filed daily) shall be prepared and forwarded to the district supervisor on or before the 10th day of the month succeeding the month in which the transactions occurred. Where Record 52 is kept, a monthly summary report on Form 338 shall be prepared in duplicate, one copy of which will be retained on file and the original forwarded to the district supervisor on or before the 10th day of the month succeeding the month in which the transactions occurred. Records kept on Form 52–D and Record 52 shall be preserved for a period of four years, and during such period shall be available during business hours for inspection and the taking of abstracts by the Commissioner or any internal revenue officer. (Secs. 2803, 2857, 2871, 3176, I. R. C.)

3. This Treasury decision shall be effective on 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 2803, 2857, 2871, and 3176 of the Internal Revenue Code (U. S. C., title 26, sections 2803, 2857, 2871, and 3176).)

WM. T. SHERWOOD,
Acting Commissioner.

Approved May 28, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Published in the Federal Register June 9, 1948.)

REGULATIONS 15, SECTIONS 190.26, 190.40a, 190.292, 190.294a, 190.337, 190.338, AND 190.339.

1948–2–12737
T. D. 5598

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 190.—RECTIFICATION OF SPIRITS AND WINES.

Amending Regulations 15.

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

To District Supervisors and Others Concerned:

1. The Act of July 14, 1947 (Public Law 185, Eightieth Congress [C. B. 1947–2, 336]), amends subsection (b) of section 3179 of the Internal Revenue Code to read as follows:

(b) DRAWBACK.—Upon the exportation of distilled spirits and wines manufactured or produced in the United States on which an internal-

revenue tax has been paid, and which are contained in any cask or package or in bottles packed in cases or other containers, there shall be allowed, under regulations to be prescribed by the Commissioner, with the approval of the Secretary, a drawback equal in amount to the tax found to have been paid on such distilled spirits and wines: *Provided*, That such distilled spirits and wines have been packaged or bottled especially for export, under regulations prescribed by the Commissioner, with the approval of the Secretary. The Commissioner, with the approval of the Secretary, is authorized to prescribe regulations governing the determination and payment of drawback of internal revenue tax on domestic distilled spirits and wines, including the requirement of such notices, bonds, bills of lading, and other evidence of payment of tax and exportation as shall be deemed necessary.

2. On October 10, 1947, notice of proposed rule-making regarding drawback on distilled spirits and wines was published in the Federal Register (12 F. R., 6696).

3. After consideration of such relevant matter as was presented by interested persons, Regulations 15, approved May 20, 1940 (26 CFR, Part 190), are hereby amended by adding sections 190.40a and 190.294a and amending sections 190.26, 190.292, 190.337, 190.338, and 190.339.

4. These amendments are designed to extend the provisions of the regulations to cover the packaging as well as the bottling of distilled spirits and wines especially for export with benefit of drawback.

SEC. 190.26. EXPORT STORAGE ROOM.—If the rectifier intends to bottle or package distilled spirits or wines for export, a separate room for the storage of such products exclusively must be provided and designated "Export Storage Room." The room must be constructed of substantial, solid materials: *Provided*, That the partitions separating such room from other parts of the rectifying plant may be constructed of expanded metal or woven wire of not less than 9-gauge nor more than 2-inch mesh, extending from the floor to the ceiling or roof. All windows, doors, or other openings must be so constructed that they may be securely locked or fastened from the inside, except the entrance door, which must be so constructed that it may be securely locked from the outside of the room with a Government seal lock. (Secs. 2801(e)(1), 3176, 3179(b), as amended, I. R. C.)

SEC. 190.40a. PACKAGE FILLING TANKS.—Where distilled spirits or wines are to be packaged especially for export with benefit of drawback, tanks suitable for the purpose, and constructed and equipped in accordance with the provisions and requirements of section 190.39 governing the construction and equipment of bottling tanks, shall be provided by the rectifier. The bottling tank may be used as the package filling tank, provided it is equipped with an approved outlet for filling packages and such outlet is equipped for locking with a Government lock when not in use. (Secs. 2801(e)(1), 2829, 3176, 3179(b), as amended, I. R. C.)

SEC. 190.292. REMITTANCE OF TAX FOR PACKAGES.—Except as provided in section 190.294a, for the tax-payment of spirits and wines in packages filled especially for export with benefit of drawback, if the rectified spirits are to be tax-paid in packages, the rectifier shall, upon receipt of Form 237, duly approved, forward all copies to the collector with remittance for the tax due on the spirits. The remittance shall be in the form set forth in section 190.361c. (Secs. 2801(e)(1), 3176, 3179(b), as amended, I. R. C.)

SEC. 190.294a. SPIRITS PACKAGED ESPECIALLY FOR EXPORT WITH BENEFIT OF DRAWBACK.—If Form 237 covers spirits, wines, cordials, or liqueurs drawn into barrels, casks, drums, or other approved containers, containing not less than 5 wine gallons, especially for export with benefit of drawback, the rectifier shall, upon receipt of Form 237, duly approved, cancel the necessary stamps in the exact amount of the tax due in the manner provided by section 190.361d. He shall then attach the stamps to Form 237 and return all copies to the Government officer. The Government officer shall complete the cancellation of the stamps as provided by section 190.361d and shall execute the certificate on Form 237 evidencing the receipt and cancellation of stamps for the amount of taxes due. He shall then return all copies of the Form 237 and the canceled stamps to the rectifier who shall stencil the words "rectification tax paid" on each

package, attach the canceled stamps to the original of the Form 237 by means of staple, eyelet, or similar device and forward the original and the additional copy of the Form 237 to the district supervisor. (Secs. 2801(e)(1), 3176, 3179(b), as amended, I. R. C.)

SEC. 190.337. GENERAL.—Under the law (1) any distilled spirits and wines on which the internal revenue tax has been paid may be rectified and bottled or packaged especially for export at a rectifying plant or rectified at a rectifying plant for bottling or packaging especially for export by a qualified bottler or packer other than the rectifier, and (2) unrectified domestic distilled spirits and wines on which the internal revenue tax has been paid may be bottled or packaged especially for export in a rectifying plant. (Secs. 2801(e)(1), 3176, 3179(b), as amended, I. R. C.)

SEC. 190.338. EXTENT OF DRAWBACK ALLOWANCE.—Upon the exportation of distilled spirits and wines so manufactured or produced and tax-paid in the United States and bottled or packaged especially for export, there may be allowed a drawback equal in amount to the tax found to have been paid thereon. (Secs. 2801(e)(1), 3176, 3179(b), as amended, I. R. C.)

SEC. 190.339. PROCEDURE.—The rectification, bottling, and packaging of distilled spirits and wines especially for export, the rectification of distilled spirits and wines to be bottled or packaged especially for export by a qualified bottler or packer other than the rectifier, the bottling and packaging of unrectified domestic distilled spirits and wines especially for export, the storage pending exportation of distilled spirits and wines bottled or packaged especially for export, the exportation of the spirits or wines, including the lading thereof on vessels for use as ship's supplies and on aircraft for use as aircraft's supplies, and the allowance of drawback thereon shall be in accordance with the provisions of Regulations 28 (26 CFR, Part 176). (Secs. 2801(e)(1), 3176, 3179(b), as amended, I. R. C.)

5. This Treasury decision shall be effective upon publication in the Federal Register. (Secs. 2801(e)(1), 3176, and 3179(b), as amended, I. R. C. (U. S. C., Title 26, Secs. 2801(e)(1), 3176, and 3179(b)).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved January 13, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Published in the Federal Register January 20, 1948.)

REGULATIONS 28, SECTIONS 176.3(h)a, ETC. 1948-2-12738
T. D. 5599

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 176.—DRAWBACK ON DISTILLED SPIRITS AND WINES.

Amending Regulations 28.

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

To District Supervisors and Others Concerned:

1. The Act of July 14, 1947 (Public Law 185, Eightieth Congress [C. B. 1947-2, 336]), amends subsection (b) of section 3179 of the Internal Revenue Code to read as follows:

(b) DRAWBACK.—Upon the exportation of distilled spirits and wines manufactured or produced in the United States on which an internal-revenue tax has been paid, and which are contained in any cask or package or in bottles packed in cases or other containers, there shall be allowed, under regulations to be prescribed by the Commissioner, with the approval of the Secretary, a drawback equal in amount to the tax

found to have been paid on such distilled spirits and wines: *Provided*, that such distilled spirits and wines have been packaged or bottled especially for export, under regulations prescribed by the Commissioner, with the approval of the Secretary. The Commissioner, with the approval of the Secretary, is authorized to prescribe regulations governing the determination and payment of drawback of internal-revenue tax on domestic distilled spirits and wines, including the requirement of such notices, bonds, bills of lading, and other evidence of payment of tax and exportation as shall be deemed necessary.

2. On October 10, 1947, notice of proposed rule-making regarding drawback on distilled spirits and wines was published in the Federal Register (12 F. R., 6689).

3. After consideration of such relevant matter as was presented by interested persons, Regulations 28, approved August 29, 1940 (26 CFR, Part 176), are hereby amended in these respects:

(*a*) Subsections 176.16(*b*)(2) and 176.19(*b*) are revoked;

(*b*) Subsection 176.3(*h*)a and sections 176.17a, 176.17b, 176.17c, 176.17d, 176.17e, 176.17f, 176.17g. 176.17h, 176.17i, 176.17j, 176.17k, 176.17m, 176.17n, 176.17o, and 176.17p are added; and sections 176.1, 176.11(*a*), 176.12, 176.13, 176.14, 176.15, 176.16(*b*), 176.18, 176.19, 176.20, 176.21, 176.24, 176.31, 176.32, 176.34, 176.35(*a*), 176.36, 176.37, 176.39, 176.41, 176.42(*a*), 176.46, 176.48, 176.49, 176.52(*a*), 176.53, 176.56, 176.57, and 176.58 are amended.

4. These amendments are designed to extend the provisions of the regulations to cover the packaging as well as the bottling of distilled spirits and wines especially for export with benefit of drawback.

ARTICLE I.—SCOPE OF REGULATIONS.

SEC. 176.1. DRAWBACK ON DISTILLED SPIRITS AND WINES.—These regulations are prescribed pursuant to the provisions of law governing the allowance of drawback of internal revenue tax on (1) domestic alcohol used in the manufacture or production of flavoring extracts, and medicinal or toilet preparations (including perfumery), upon the exportation of such products, (2) distilled spirits and wines packaged, or bottled, especially for export, upon the exportation thereof, and (3) distilled spirits exported in distillers' original packages containing not less than 20 wine gallons each. (Secs. 2887, 3170, 3176, 3179, as amended, 3351(c), 3361(c), as amended, 3791, 4041, I. R. C., and Secs. 309 (a), (b), (c), (d) and 313 (d), (i) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d) and 1313 (d), (i)).)

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ARTICLE III.—DEFINITIONS.

SEC. 176.3. DEFINITIONS.—

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(*h*)a "Package" shall mean any cask, barrel, drum or other approved container, containing 5 wine gallons or more.

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ARTICLE V.—DRAWBACK ON DISTILLED SPIRITS AND WINES BOTTLED OR PACKAGED ESPECIALLY FOR EXPORT.

SEC. 176.11. DRAWBACK AUTHORIZED.—(*a*) *Allowance upon exportation.*—The regulations in sections 176.11 to 176.67, inclusive, are prescribed for the packaging and bottling, especially for export, of distilled spirits and wines manufactured or produced in the United States on which an internal revenue tax has been paid, and for the allowance, upon the exportation thereof, of a drawback equal in amount to the tax found to have been paid thereon.

* * * * * * *

SEC. 176.12. EXPORTATION.—An exportation is an act defined by section 176.3(*g*). The provisions of sections 176.11 to 176.67, inclusive, relating to the packaging

and bottling of distilled spirits and wines especially for export, and the exportation thereof with benefit of drawback, and the forms prescribed for use in connection therewith, shall apply to like packaging, bottling, removal, and shipment to American Samoa, Guam, Puerto Rico, the Virgin Islands, and the Panama Canal Zone. There is no authority of law for the packaging or bottling of distilled spirits and wines especially for export, with benefit of drawback, for shipment to Alaska, Hawaii, Kingman's Reef, the Midway Islands, or Wake Island. (Secs. 3179(b), as amended, 3351(c), 3361(c), as amended, I. R. C., and secs. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

BOTTLING AND PACKAGING ESPECIALLY FOR EXPORT.

SEC. 176.13. PERSONS AUTHORIZED TO BOTTLE OR PACKAGE.—(*a*) *Distilled spirits and wines.*—Persons who are authorized to bottle distilled spirits under the provisions of the Federal Alcohol Administration Act, and who have qualified either as a rectifier or proprietor of a tax-paid bottling house under internal revenue laws and regulations, may bottle or package, especially for export with benefit of drawback, distilled spirits or wines, or both, manufactured or produced in the United States on which an internal revenue tax has been paid.

(*b*) *Wines.*—Duly qualified winemakers and proprietors of bonded storerooms operating tax-paid premises may bottle or package, especially for export with benefit of drawback, at their tax-paid premises, wines manufactured or produced in the United States on which an internal revenue tax has been paid. (Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEC. 176.14. OTHER REGULATIONS APPLICABLE.—The provisions of Regulations 11 (26 CFR, Part 189) and Regulations 15 (26 CFR, Part 190) in so far as they are applicable and not inconsistent with the provisions of these regulations, shall govern the bottling and packaging of distilled spirits and wines to be exported with benefit of drawback by proprietors of tax-paid bottling houses and rectifiers.

SEC. 176.15. EXPORT STORAGE ROOM.—(*a*) *Construction.*—Winemakers and proprietors of bonded storerooms, intending to bottle or package tax-paid wines especially for export with benefit of drawback, shall provide, at their tax-paid premises, an export storage room suitable for the storage of such wines pending their removal for export. The room must be so situated and constructed that the wines will be properly protected pending their removal for exportation. Such room shall be equipped for locking with a Government seal lock, the key of which shall be kept by the storekeeper-gauger or designated officer, and shall be locked and kept locked except when necessarily open for the proper conduct of the export business.

(*b*) *Notice of intention to bottle or package.*—When an export storage room has been provided in accordance with the preceding paragraph, the winemaker or proprietor of a bonded storeroom, either before or at the time of filing application to dump wines for bottling or packaging especially for export, as hereinafter provided, shall file with the district supervisor a written notice of his intention to bottle or package wines especially for export at his tax-paid premises. Such notice shall also show the location and nature of construction of the export storage room. (Sec. 3179(b), I. R. C., as amended, and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

BOTTLING OR PACKAGING WITHOUT RECTIFICATION.

SEC. 176.16. BOTTLING OF DISTILLED SPIRITS OR WINES WITHOUT RECTIFICATION BY RECTIFIERS AND PROPRIETORS OF TAX-PAID BOTTLING HOUSES.—

* * * * * * *

(*b*) *Approval of Form 230.*—The bottler shall submit all copies of the application (Form 230) to the storekeeper-gauger. The officer shall examine the packages described in the application and the scalped portions of tax-paid stamps, or the affidavit or statement in lieu thereof attached to the original of the form, and if he finds that the spirits or wines to be bottled especially for export are as described and have been lawfully tax-paid, and all copies of the form are properly prepared, he shall execute his certificate and the authorization for bottling, and return all copies to the bottler.

* * * * * * *

PACKAGING OF DISTILLED SPIRITS AND WINES WITHOUT RECTIFICATION.

SEC. 176.17a. PACKAGING OF DISTILLED SPIRITS AND WINES.—(a) *Application, Form 1684.*—Where unrectified spirits or wines, or spirits and wines which have been previously rectified, are to be dumped for packaging especially for export by a rectifier or proprietor of a tax-paid bottling house, or where unrectified wines or wines which have been previously rectified are to be dumped for packaging especially for export by a winemaker, the packer shall prepare a separate application on Form 1684, in triplicate, for each lot of spirits or wines to be packaged, giving all the data called for by the headings of the columns and lines and instructions printed on the form. Each Form 1684 shall be given a serial number, beginning with "1" for the 1st day of January of each year and running consecutively thereafter to December 31, inclusive.

(b) *Spirits or wines previously rectified.*—Where spirits or wines to be dumped have been rectified, there must be attached to the Form 1684 Forms 122 and 237 covering the dumping, rectification, and original packaging of the liquors. In the event imported spirits or wines entered into the original production of the liquors, Form 1583, procured from the collector of customs at the port of entry and showing internal revenue tax had been collected thereon, must be attached to the Form 1684. The Form 1684 shall make reference to the Forms 122 and 237 covering the original dumping and rectification of the spirits or wines. (Sec. 3179(b), I. R. C., as amended, and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEC. 176.17b. EVIDENCE OF TAX-PAYMENT TO BE ATTACHED TO FORM.—(a) *Stamps.*—If distilled spirits to be dumped are contained in stamped packages, the stamps thereon must be scalped and securely attached to the application.

(b) *Lost or mutilated stamps.*—Where a stamp has been lost or mutilated so that the required portion thereof can not be returned, an affidavit, setting forth all the facts in the case, shall be made by the applicant and attached to the original copy of the application.

(c) *Form 1595.*—If spirits to be packaged were received in a tank car, or by pipe line, the application shall show, in addition to other required data, the serial number of the certificate of tax-payment (Form 1595) and the date it was submitted to the district supervisor.

(d) *Form 230.*—Where the spirits or wines to be packaged have been dumped from the stamped container in which received, the application shall show, in addition to other required data, the date and serial number of the Form 230 pursuant to which the spirits or wines were dumped.

(e) *Wine stamps.*—Since it is impracticable to cut out or scalp wine stamps, the applicant shall, whenever wines are to be dumped from properly stamped containers, certify to such fact by writing the words "wine stamps attached to the containers" in the column provided for the description of stamps on the Form 1684. If the wine to be dumped is in an unstamped container, the applicant shall attach to each copy of the Form 1684 a statement explaining the absence of wine stamps.

(f) *Distilled spirits or wines in stamped bottles.*—Domestically produced spirits and wines may be dumped from bottles for packaging only when they are contained in cases as originally packed and the tax-paid status is properly shown. In the case of rectified products there must be attached to the Form 1684 Forms 122 and 237 covering the dumping, rectification, and original bottling of the liquors. In the case of tax-paid distilled spirits or wines, which have been bottled without rectification, Form 230 covering the original bottling of the liquors must be attached to the Form 1684. In the event imported spirits or wines entered into the original production of the liquors, Form 1583, procured from the collector of customs at the port of entry and showing internal revenue tax had been collected thereon, must be attached to the Form 1684. The Form 1684 shall make reference to the Forms 122, 230, and 237 covering the original dumping and rectification or bottling of the spirits or wines.

(g) *Action by storekeeper-gauger.*—Where scalped portions of stamps denoting payment of internal revenue tax are not attached by reason of facts or circumstances described in paragraphs (b), (c), (d), (e), and (f) of this section, the distilled spirits or wines must be inspected by the storekeeper-gauger before being dumped. The officer must satisfy himself that the distilled spirits or wines have been lawfully tax-paid, and shall attach to each copy of the Form 1684 a statement, over his signature, setting forth (1) the reason why the scalped portions of the stamps are not attached and (2) the facts upon which he based his findings. (Sec. 3179(b), I. R. C., as amended, and sec. 309 (a), (b), (c), (d)

of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEC. 176.17c. APPROVAL OF FORM 1684.—The packer shall submit all copies of the application (Form 1684) to the storekeeper-gauger. The officer shall examine the containers described on the form and the scalped portions of the tax-paid stamps or the affidavit or statement in lieu thereof, attached to each copy of the form. If he finds the distilled spirits or wines to be lawfully tax-paid and not subjected to any act of rectification after dumping by the packer and finds the entries on the application are properly and correctly given, he shall execute his certificate and the authorization for packaging and return all copies of the form to the rectifier. (Sec. 3179(b), I. R. C., as amended, and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEC. 176.17d. TRANSFER OF SPIRITS OR WINES TO PACKAGE FILLING TANK.—Upon approval of the Form 1684 by the storekeeper-gauger, as provided in section 176.17c, the distilled spirits or wines shall be transferred to a package filling tank where, after reduction to the desired proof (if reduced in proof) the packer shall gauge the distilled spirits or wines in accordance with the applicable provisions of section 176.17j and enter the details of his gauge (corrected to volume in accordance with Table 7 of the Gauging Manual (26 CFR, Part 186)) on all copies of the Form 1684 and attach one copy of the form to the tank: *Provided*, That (1) where the dumping and reducing tank is constructed in accordance with the provisions of section 190.40a of Regulations 15 (26 CFR, Part 190) or section 189.18a of Regulations 11 (26 CFR, Part 189), as the case may be, and is equipped for locking with Government locks, or (2) where the bottling tank is equipped with an approved outlet for filling packages and such outlet is equipped for locking with a Government lock when not in use, such tank may be used as the package filling tank. The proof determined by gauging the contents of the tank shall be regarded as the proof of the spirits run into all packages filled from the tank. Except as provided in section 176.17f, all unrectified spirits and wines packaged especially for export shall be packaged from an approved package filling tank, dumping and reducing or bottling tank. (Sec. 3179(b), I. R. C., as amended, and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEC. 176.17e. REDUCTION IN PROOF OF SPIRITS.—Unrectified distilled spirits may be reduced in proof prior to being drawn into packages. The reduction in proof or the increase in volume of rectified spirits on which the rectification tax has been paid is prohibited by law, unless the spirits are again rectified and the rectification tax again paid thereon. However, a restoration of the proof and volume of rectified spirits upon which the rectification tax has been paid, by the addition of water, preparatory to being drawn into packages, shall not be deemed a reduction in proof or an increase in volume within the meaning of section 2801(b) of the Internal Revenue Code. Section 2801(b) of the Internal Revenue Code is not applicable to the reduction in proof of domestically rectified spirits exempt from rectification tax. (Secs. 2801 (b), (e)(1), 3176, 3179(b), as amended, I. R. C.)

SEC. 176.17f. PACKAGING FROM ORIGINAL CONTAINER.—Where authorized by the district supervisor, wines, cordials, and liqueurs that require packaging from the original container may be so packaged. A packer desiring to package such liquors from the original containers must request approval of the district supervisor, in writing, describing the liquors and showing the necessity for packaging the same from the original container. The district supervisor will authorize the packaging from the original container of any wines, cordials, and liqueurs which it is impracticable to package from an approved filling tank. (Secs. 3176, 3179(b), as amended, I. R. C.)

SEC. 176.17g. LOCKING OF THE FILLING TANK.—At the time of opening the inlet to the filling tank, the dumping and reducing tank, or bottling tank, as the case may be, the storekeeper-gauger shall lock the outlet thereof. The outlet must remain closed and locked until the spirits or wines have been transferred to the tank, the inlet closed and locked, and the quantity of spirits or wines in the tank determined. The inlet of the tank must remain locked until all spirits or wines within the tank have been drawn into packages and the outlet has been closed and locked. (Secs. 2801(e)(1), 3176, 3179(b), as amended, I. R. C.)

SEC. 176.17h. RINSING OF BARRELS, DESTRUCTION OF STAMPS, MARKS, ETC.—When spirits or wines are dumped for packaging without rectification the provisions of sections 190.192, 190.194, 190.195, and 190.238 of Regulations 15 (26 CFR, Part 190) and sections 189.85, 189.86, and 189.87 of Regulations 11 (26 CFR,

Part 189), respecting the destruction of stamps and marks and brands, the rinsing of barrels and woodchips contained therein, and disposition of woodchips, when packages are dumped, shall be applicable. (Secs. 3176, 3179(b), as amended, I. R. C.)

SEC. 176.17i. FILLING OF PACKAGES.—Packages of distilled spirits or wines, for exportation with benefit of drawback, may be filled only under the immediate personal supervision of the storekeeper-gauger. The packages shall be filled pursuant to the rules prescribed in the Gauging Manual (26 CFR, Part 186) and shall be filled to capacity, except (1) where the Commissioner authorizes a certain wantage in each package for expansion and (2) where there are insufficient spirits or wines at the end of the operation to fill the last package, in which case the remaining liquor may be removed for domestic purposes or drawn into a remnant package containing not less than 5 wine gallons for exportation. Proper notation shall be made on Form 1684 of the disposition of any spirits or wines not drawn into packages for exportation. (Secs. 3176, 3179(b), as amended, I. R. C.)

SEC. 176.17j. GAUGING OF SPIRITS AND WINES.—(*a*) *Determining proof of unsweetened spirits.*—The proof of distilled spirits and rectified spirits to which saccharine or other solid matter has not been added shall be determined by the use of a standard hydrometer.

(*b*) *Determining alcoholic content of wines and proof of sweetened spirits.*—The alcoholic content (1) of blended whiskies containing more than 0.6 gram or 600 milligrams of solids per 100 milliliters derived from blending materials such as sherry wine, prune juice, caramel, glycerine, etc., and (2) of wines, cordials, liqueurs, and other products containing saccharine or other solid matter will be determined by the use of an approved ebulliometer or a small laboratory still provided by the packer. When using such instruments the packer must follow closely the instructions furnished therewith in order that accurate determinations may be made. Instructions relative to the use of small laboratory stills (or wine sets) and the following ebulliometers: Arnaldo-Sala (with shield), Braun, Juerst, Lefco, L'Ebulliometer Levesque (with shield), Malligand (with shield), Salleron-Dujardin, "TAG" (with shield), and E. B. Torino (with shield), are also set forth in the Appendix to Regulations 7, Wine—1945 (26 CFR, Part 178). The alcoholic content of blended spirits containing not more than 0.6 gram or 600 milligrams of solids per 100 milliliters derived from blending materials will be determined by the use of a standard hydrometer or a small still. If determined by a standard hydrometer an obscuration correction factor may be added to the apparent proof in order to obtain the true proof of the blended spirits. Experience has shown that 0.1 gram or 100 milligrams of solids per 100 milliliters will obscure the true proof 0.4 of 1° of proof. For example, if a blended whisky contains 0.25 grams or 250 milligrams of solids per 100 milliliters and the apparent proof corrected to 60° Fahrenheit is found to be 89° proof by a standard hydrometer, a correction factor of 1° of proof (2.5 times 0.4) due to the solids may be added to the apparent proof, hence the true proof would be 90°. The solids in blended spirits due to blending materials will be determined by evaporating 25 milliliters of the blended spirits in a weighed dish on a steam bath and then heating for 30 minutes at the temperature of boiling water in a drying oven. The solids thus determined, multiplied by 4, will give the solids in 100 milliliters of blended spirits. The correction factor to be used then will be determined on the basis that every 100 milligrams of solids will obscure the proof 0.4 of 1° of proof. The ebulliometer should not be used in determining the alcoholic content of blended spirits containing not more than 0.6 gram or 600 milligrams of solids per 100 milliliters.

(*c*) *Determining contents by weight.*—Unrectified spirits and rectified spirits containing not more than 0.6 gram or 600 milligrams of saccharine or other solid matter per 100 milliliters which are drawn into packages may be gauged by weight in accordance with the official Gauging Manual. To this end accurate scales must be provided. Government officers shall frequently test, by means of the test weights provided by the rectifier or proprietor of the tax-paid bottling house, the accuracy of the scales used for weighing packages.

(*d*) *Determining contents by measure.*—Packages of rectified spirits, wines, cordials, liqueurs, and other products containing saccharine and other solid matter shall be gauged by measure to determine the wine-gallon content (corrected to volume in accordance with Table 7 of the Gauging Manual); the proof-gallon content shall then be determined by multiplying the wine-gallon content by the proof (pointed off in two decimal places) of the spirits. The capacity of each

package must be ascertained before the liquors are placed therein, or the quantity to be placed in each package must first be ascertained by actual measure in another vessel provided for that purpose: *Provided, however,* That the quantity in wine gallons of any liquor placed in packages may be determined by weight if the specific gravity of the liquor is ascertained and used in calculating the volume. (Secs. 3170, 3176, 3179(b), as amended, I. R. C.)

SEC. 176.17k. STAMPS NOT REQUIRED ON PACKAGES.—No rectifier's stamps or wholesale liquor dealer's stamps shall be affixed to packages of distilled spirits or wines filled especially for export with benefit of drawback. (Sec. 3179(b), I. R. C., as amended.)

SEC. 176.17m. VERIFICATION BY STOREKEEPER-GAUGER.—The storekeeper-gauger shall, upon completion of the process of filling of packages, including the marking and branding of the packages, complete his verification of the packer's certificate on Form 1684 and supervise the removal of the spirits or wines to the export storage room. (Sec. 3179(b), as amended, I. R. C., and secs. 309 (a), (b), (c), (d) and 313 (d), (i) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEC. 176.17n. DISPOSITION OF FORM 1684.—Immediately after the completion of the packaging and the proper completion of Form 1684, the packer shall forward two copies of the Form 1684 (one, the original with the tax-paid stamps or other evidence of tax-payment attached) to the district supervisor and shall retain the remaining copy. (Sec. 3179(b), as amended, I. R. C., and secs. 309 (a), (b), (c), (d) and 313 (d), (i) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEC. 176.17o. ACTION BY THE DISTRICT SUPERVISOR.—Upon receipt of the Form 1684 the district supervisor shall prepare Form 1600 using as a basis therefor the dumping and packaging record, Form 1684. He shall then forward the Form 1600 to the Commissioner with a copy of the Form 1684. The Forms 1684 and 1600 will be retained by the Commissioner for use in connection with examination and certification of the claims for drawback on such spirits or wines. (Sec. 3179(b), as amended, I. R. C., and secs. 309 (a), (b), (c), (d) and 313 (d), (i) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d) and 1313 (d), (i)).)

SEC. 176.17p. TRANSFER AND STORAGE PENDING EXPORTATION.—Spirits or wines packaged especially for export under the provisions of the regulations in this part may be transferred from the export storage room pursuant to Form 1656 to another export storage room at the port of exportation, for storage pending release for direct exportation or use as supplies on vessels or aircraft. Such export storage room at the port of exportation may be established by the proprietor of a tax-paid bottling house or a rectifying plant, under the provisions of Regulations 11 (26 CFR, Part 189) or Regulations 15 (26 CFR, Part 190) whether or not the proprietor intends to package distilled spirits or wines especially for export. Form 1656 shall be executed in quadruplicate (or quintuplicate, if the spirits or wines are to be transferred to another supervisory district) by the packer or exporter after appropriate arrangements have been made by him with the proprietor of the export storage room at the port of exportation for such storage. All copies of the form will then be submitted to the district supervisor, or designated officer, for approval. On approval thereof, the spirits or wines may be released by the Government officer for transfer. The officer shall retail one copy for his files, furnish one copy to the packer, forward one copy to the district supervisor, and forward one copy to the consignee. If the spirits or wines are transferred to another district, the storekeeper-gauger shall forward one copy to the district supervisor of such district. Spirits or wines so transferred and stored will be entered for drawback and marked and released for exportation, etc., in accordance with the procedure prescribed in sections 176.35 and 176.38, inclusive. (Sec. 3179(b), as amended, I. R. C., and secs. 309 (a), (b), (c), (d) and 313 (d), (i) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d) and 1313 (d), (i)).)

RECTIFICATION AND BOTTLING OR PACKAGING.

SEC. 176.18. APPLICATION, FORM 122.—Rectifiers shall prepare a separate application on Form 122, "Rectifier's Application to Dump Spirits, Wines, or other Liquors, and Return of Gauge," in triplicate, for each lot of spirits or wines to be rectified before being bottled or packaged for exportation with benefit of draw-

back. The rectifier shall insert in each copy of the form, after the description of the packages to be dumped for rectification, a notice of intention as follows:

> "The above-described spirits (or wines) will, after rectification, be bottled (or packaged) pursuant to approval of Form 237 especially for export with benefit of drawback."

(Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEC. 176.19. APPROVAL OF FORM 122.—All copies of the Form 122 shall be submitted for approval of the storekeeper-gauger assigned to supervise rectifying operations. The storekeeper-gauger shall examine the packages described in the application and the scalped portions of the tax-paid stamps or the affidavit or statements in lieu thereof, attached to the original of the form, and, if he finds that the spirits or wines to be dumped for rectification and bottling or packaging especially for export are as described, and have been lawfully tax-paid, and the forms are properly prepared, he shall execute his certificate and authorize the rectifier to dump the packages described in the application and return all copies of the form to the rectifier. Immediately after dumping the spirits or wines, the rectifier shall forward two copies of the Form 122 (one, the original, with the cut-out portions of the tax-paid stamps, or other prescribed evidence of tax-payment, attached) to the district supervisor, and retain the remaining copy of such form on file at the rectifying plant. (Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEC. 176.20. MIXING OF DISTILLED SPIRITS OR WINES TAX-PAID AT DIFFERENT RATES.—When a rectifier manufactures distilled spirits to be bottled or packaged especially for export with benefit of drawback by a process of rectification involving the mixing of distilled spirits and wines upon which basic taxes were paid at different rates (i. e., alcohol and wine, brandy and wine, etc.), he shall note on Form 122 the number of proof gallons of each kind of spirits and the number of wine gallons, and percentage of alcohol, of the wine mixed together in the processing receptacle, and no further mixing of such spirits or wines with spirits or wines contained in any other receptacle shall be made unless a similar notation is made on Form 122. (Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEC. 176.21. APPLICATION, FORM 237.—(*a*) *Procedure.*—The rectifier shall make application on Form 237 to bottle or package rectified spirits especially for export or package such spirits for subsequent bottling especially for export in accordance with the applicable provisions of sections 190.276 to 190.309, inclusive, of Regulations 15 (26 CFR, Part 190), and an additional copy of such form shall be prepared in each case. A notice of intention shall be inserted by the rectifier in each copy of Form 237, after the description of the spirits or wines, as follows:

> "The above-described spirits (or wines), rectified pursuant to Form 122, serial number ____, dated _____, 19__, are to be bottled (or were packaged) especially for export with benefit of drawback."

When the process of manufacturing spirits or wines in accordance with the provisions of section 176.20 has been completed, the rectifier shall note on Form 237 the quantities of distilled spirits, or wines, or both (calculated on a proof-gallon basis as to spirits and on a wine-gallon basis as to wines) used in manufacturing the spirits or wines. If commercial flavoring extracts, containing alcohol, not prepared by the rectifier on his rectifying premises, are used in manufacturing the spirits or wines, the rectifier shall also show on Form 237, as to each kind of flavoring material, the quantity thereof in wine gallons, the percentage of alcohol by volume in such flavoring extracts, and whether drawback under section 3250(1), Internal Revenue Code, has been or will be claimed on the alcohol contained therein. The rectification tax and wine tax, if due, will then be paid and Form 237 disposed of in accordance with the applicable provisions of sections 190.276 to 190.309, inclusive, of Regulations 15 (26 CFR, Part 190). The additional copy of Form 237 will be forwarded to the district supervisor with the original copy of Form 237. Upon completion of the bottling or packaging operations, the storekeeper-gauger shall supervise the deposit of the spirits or wines in the export storage room, except as provided by section 176.22.

(1) Each package of distilled spirits or wines filled by rectifiers for export with benefit of drawback shall be marked and branded in accordance with the

provisions of section 176.31 and in addition shall bear the words "For export from U. S. A." If the spirits or wines are to be exported by a person other than the rectifier, the name and address of the exporter, preceded by the words "For" or "Packaged for," may also be marked upon the package.

(b) *Tax-paid certificate.*—Upon receipt of Form 122, as provided by section 176.19, and the Form 237, as herein provided, the district supervisor shall prepare Form 1600, using as a basis therefor the dumping and bottling or packaging records, Forms 122 and 237. He will then forward the Form 1600 to the Commissioner with a copy each of the Forms 122 and 237, and Form 1583, if any. Forms 122, 237, 1583, and 1600 will be retained by the Commissioner for use in connection with the examination and certification of the claim for drawback on such spirits or wines.

(c) *Transfer and storage pending exportation.*—Spirits and wines bottled or packaged especially for export under the provisions of this section may be transferred from the export storage room of the bottler or rectifier, pursuant to Form 1656, to another export storage room at the port of exportation for storage pending release for direct exportation or use as supplies on vessels or aircraft, in accordance with the procedure prescribed in section 176.16(f). Such export storage room at the port of exportation may be established by the proprietor of a tax-paid bottling house or a rectifier, under the provisions of Regulations 11 (26 CFR, Part 189) or 15 (26 CFR, Part 190) whether or not the proprietor of the tax-paid bottling house or the rectifier intends to bottle or package distilled spirits or wines especially for export. (Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEPARATE BOTTLING AND PACKAGING.

SEC. 176.24. SEPARATE BOTTLING AND PACKAGING.—The bottling or packaging of distilled spirits or wines especially for export with benefit of drawback at rectifying plants and at tax-paid bottling premises, and such packaging or bottling of wines at tax-paid premises of winemakers and proprietors of bonded storerooms, shall be conducted separately from the bottling or packaging of spirits or wines for domestic purposes: *Provided*, That where small lots are packaged or bottled, necessitating the dumping of not less than the contents of one or more full barrels, in the case of unrectified spirits or wines, or the minimum number of full barrels which may be dumped in the case of spirits which are to be rectified, the remaining portions of such lots not removed for export may be removed for domestic purposes. In the case of rectified spirits or wines, rectified and bottled or packaged by rectifiers, the remnant may be further rectified, if desired, for domestic purposes subject to payment of the rectification tax on the finished product resulting from such additional rectification. Any spirits or wines to be so removed for domestic purposes must be reported as a separate item on Forms 122, 230, 237, or 1684, as the case may be.

(a) *Claim required on Form 1582.*—Where distilled spirits and wines are mixed in the process of rectification, for bottling or packaging especially for export with benefit of drawback, claim for drawback of the distilled spirits tax, the rectification tax, and the tax under section 3030(a), Internal Revenue Code, as amended, shall be made on Form 1582.

Separate claim on Form 1582–A will not be required in such cases. (Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

MARKING OF CASES AND PACKAGES.

SEC. 176.31. REQUIRED MARKS BY RECTIFIERS AND PROPRIETORS OF TAX-PAID BOTTLING HOUSES.—(a) *Cases.*—Each case of distilled spirits or wines filled by rectifiers for export with benefit of drawback shall bear on one side the markings required by Regulations 15 (26 CFR, Part 190); and each case filled for the same purpose by proprietors of tax-paid bottling houses shall bear on one side the markings required by Regulations 11 (26 CFR, Part 189). Each case shall also bear on the same side the words "For export from U. S. A." If the spirits or wines are to exported by a person other than the bottler, the name and address of the exporter, preceded by the words "For," "Bottled for," or "Bottled expressly for," may also be marked upon the case. The method of marking the cases shall be in accordance with the applicable provisions of Regulations 15 or 11, as the case may be.

(b) *Packages of distilled spirits.*—Each package of distilled spirits filled for export with benefit of drawback shall be numbered serially beginning with "1" for the first package filled: *Provided*, That such serial numbers shall be in sequence to the series in current use at existing plants for the numbering of cases or other packages: *And provided further*, That, where cases and packages are filled simultaneously and it is impracticable to number the cases and packages consecutively, separate series of numbers followed by an identifying letter may be used for the packages. In addition to the serial number, there shall be plainly and durably burned, cut, imprinted, or stenciled on the Government head of each barrel or similar container of distilled spirits (1) the kind of spirits; (2) the wine gallon content; (3) the proof of spirits; (4) the proof gallon content; (5) the tare of the container; (6) the date of filling; (7) the name of the packer; (8) the location (city or town and State) of the plant where packaged; and (9) the words "For export from U. S. A." If the spirits are to be exported by a person other than the packer the name and address of the exporter, preceded by the words "For," "Packaged for," or "Packaged expressly for," may also be marked upon the package.

(c) *Packages of wines.*—The packer shall place marks upon packages of wine similar to the marks required by the foregoing paragraph to be placed upon packages of distilled spirits, except: The tare need not be marked on the packages; the alcoholic content of the wine shall be shown in percentage by volume in lieu of the proof, and, in the case of unrectified wine, the proof gallons may be omitted. (Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEC. 176.32. REQUIRED MARKS BY WINEMAKERS AND PROPRIETORS OF BONDED STOREROOMS.—(a) *Cases.*—Each case of wines filled by winemakers and proprietors of bonded storerooms for export with benefit of drawback shall be numbered serially, beginning with number 1 for the first case filled, and shall be marked with the name of the bottler, the location of the bottling establishment (by city or town and State), the kind and alcoholic content (taxable grade) of the wine, the contents of the case in wine gallons, and the words "For export from U. S. A.": *Provided*, That the bottler may in lieu of his name, and the location of the bottling establishment, place upon the case the registry number of his bonded winery or bonded storeroom, preceded by the letters "B. W." or "B. S.," respectively, and followed by symbols indicating the State in which the bonded winery or bonded storeroom is located, as "B. W. No. 2–NY," for the name and address of the proprietor of Bonded Winery No. 2 located in New York State. If the wines are to be exported by a person other than the bottler, the name and address of the exporter, preceded by the words "For," "Bottled for," or "Bottled expressly for," may also be placed upon the case. The required marks will be durably and plainly printed, stamped, or stenciled on one side of the case in a color contrasting with the background of the case, and in letters and figures not less than one-half inch in height.

(b) *Packages.*—Packages of wines filled by winemakers or proprietors of bonded storerooms for export with benefit of drawback shall be marked in accordance with the provisions of section 176.31(c). (Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

BOTTLING AND PACKING RECORDS.

SEC. 176.34. RECORD OF SPIRITS AND WINES BOTTLED OR PACKAGED ESPECIALLY FOR EXPORT.—(a) *By rectifiers and proprietors of tax-paid bottling houses.*—The receipt, rectification, bottling, packaging, and disposition of distilled spirits and wines bottled or packaged especially for export, with benefit of drawback, shall be entered by the rectifier on Form 45, "Rectifier's Monthly Record and Report." All applicable information indicated by the headings of the columns and lines and the instructions printed on the form will be entered thereon. The receipt, bottling, packaging and disposition of distilled spirits or wines bottled or packaged especially for export with benefit of drawback, by proprietors of tax-paid bottling houses, shall be entered on Form 52–D, "Monthly Record and Report of Tax-Paid Bottling House Operations." All applicable information indicated by the headings of the columns and lines, and the instructions printed on the form, will be entered thereon.

(b) *By winemakers and proprietors of bonded storerooms.*—The receipt, bottling, packaging, and disposition of wine bottled or packaged especially for

export with benefit of drawback shall be entered by winemakers and proprietors of bonded storerooms on Form 52–D, "Monthly Record and Report of Tax-Paid Bottling House Operations." All applicable information called for by the headings of the columns and lines, and instructions printed on the form, shall be entered thereon. Transcripts of Form 52–D shall be forwarded to the district supervisor on or before the 10th day of the succeeding month.

ENTRY FOR DRAWBACK.

SEC. 176.35. CLAIM AND ENTRY.—(*a*) *Form 1582 or Form 1582–A.*—Claim for allowance of drawback of internal revenue taxes on distilled spirits or wines manufactured or produced in the United States and bottled or packaged especially for export, and entry for the exportation of such spirits or wines with benefit of drawback, shall be prepared by the exporter on Form 1582, in quadruplicate, for distilled spirits, and Form 1582–A, in quadruplicate, for wines. All copies of Form 1582 or Form 1582–A, with Part 1 and Part 2, executed, shall be filed by the exporter with the district supervisor of the district wherein is located the export storage room in which the spirits or wines are stored at the time of exportation. All the information called for, as indicated by the headings of the columns, and the lines of the form, and the instructions printed on the form, shall be furnished.

* * * * * * *

SEC. 176.36. AUTHORITY TO RELEASE LIQUORS.—If the district supervisor finds that the claim and entry are properly executed, and the spirits or wines described in the entry have, according to the records of his office, been bottled or packaged especially for export, he shall execute Part 3 of Form 1582, or Part 3 of Form 1582–A, as the case may be, authorizing the Government officer to whom it is addressed to release the spirits or wines for shipment. (Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEC. 176.37. INSPECTION MARKS.—Before the spirits or wines are released, the following marks in plain, durable letters and figures must be stenciled or marked upon the case or package:

Drawback claimed by

_____
(Name of claimant)

Supervisory District No. _____.
Inspected _____, 19____.

_____
(Name of claimant)

S. G.

The first two lines must be filled in by the exporter (or by the packer or bottler for him) and the last two by the Government officer. The name of the Government officer may be placed on the case or package by means of a rubber stamp. (Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

CERTIFICATE OF COLLECTOR OF CUSTOMS OF TAX ON IMPORTED SPIRITS.

SEC. 176.39. CERTIFICATE, FORM 1583.—Where spirits or wines manufactured (rectified) in the United States from imported spirits or wines are bottled or packaged especially for export with benefit of drawback, the collector of customs at the port where the entry or withdrawal for consumption was made shall, upon application in writing by the rectifier, execute a certificate on Form 1583, in triplicate, showing that internal revenue tax has been collected on the imported spirits or wines described in the application. Two copies of the certificate shall be forwarded by the collector of customs to the district supervisor of the Alcohol Tax Unit district in which the spirits were rectified. The remaining copy shall be retained by the collector of customs. Such certificates shall be serially numbered, beginning with number 1 for each customs district. (Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended 19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEC. 176.41. CERTIFICATE REQUIRED BEFORE APPROVAL OF CLAIM.—The Commissioner will not approve a claim for drawback on spirits or wines manufactured from imported spirits or wines and bottled or packaged especially for

export prior to the receipt of the certificate, Form 1583, of the collector of customs, showing that internal revenue tax has been collected on such imported spirits or wines. (Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

DRAWBACK BOND.

SEC. 176.42. DRAWBACK BOND.—(a) Except as provided by section 176.45, the exporter shall, either before or at the time of the execution of his first entry for drawback on Form 1582 or Form 1582–A, file with the district supervisor a drawback bond on Form 1581, in triplicate, for distilled spirits, or Form 1581–A, in triplicate, for wines, to insure bona fide exportation of the spirits or wines on which drawback is claimed, and the procurement and submission of the required evidence of the landing of such spirits or wines at the designated foreign port, or the use thereof as supplies on vessels or aircraft in accordance with section 176.11(b), or the loss of such spirits or wines after shipment outside the jurisdiction of the United States, without fault or negligence on the part of the exporter. The bond must be furnished with acceptable corporate surety or individual sureties or secured by the deposit of proper collateral. Where bond is furnished on Form 1581, revised May, 1942, or Form 1581–A, revised January, 1942, or on prior issues of such forms, to cover spirits or wines in bottles, consent of surety must be furnished to extend the conditions of the bond to cover such spirits or wines in packages.

* * * * * * *

SEC. 176.46. BOND PREREQUISITE TO CLAIM ALLOWANCE.—No claim for allowance of drawback on distilled spirits or wines bottled or packaged especially for export, and exported, will be approved until the claimant has furnished the prescribed bond, except as provided by section 176.45. (Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SHIPMENT OR DELIVERY FOR EXPORT.

SEC. 176.48. CONSIGNMENT.—Every case or package of distilled spirits or wines, intended for export with benefit of drawback shall be consigned to the collector of customs at the port of exportation, except that when the shipment is to a contiguous foreign territory it shall be consigned to the foreign consignee at destination, but stenciled or marked in care of the collector of customs or deputy collector of customs at the port of export. In the case of shipment to contiguous foreign territory, the carrier shall deliver the spirits or wines for customs inspection at the port of export before transporting the same to the foreign destination. (Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEC. 176.49. DIRECT DELIVERY FOR CUSTOMS INSPECTION.—(a) *Bill of lading.*—If the export storage room where the distilled spirits or wines are stored is located at the port of exportation, the exporter shall deliver the shipment directly for customs inspection and supervision of lading. The drawback entry must be filed with the collector of customs at least six hours prior to the lading of the spirits or wines in order to allow opportunity for customs inspection. The exporter must file a copy of the export bill of lading with the district supervisor. The bill of lading must show the exporter as the shipper, the serial numbers of the cases or packages, as the case may be, and the quantity shipped in wine gallons.

* * * * * * *

CUSTOMS PROCEDURE.

SEC. 176.52. CUSTOMS INSPECTION.—(a) The collector of customs, upon receipt of the drawback entry on Form 1582, or Form 1582–A, shall cause the date and hour of receipt to be stamped on each copy of the form and shall execute Part 5, the order for inspection and lading. The customs inspector to whom the order is delivered shall inspect the export containers of spirits or wines. He shall examine the contents of such containers as are found broken, damaged, or tampered with, or which he is led to suspect do not contain the spirits or wines originally packed therein, and shall make a special report thereon. The customs inspector shall note in his report any deficiency in quantity or discrepancy between the merchandise inspected and that described in the entry. After having complied with the order of inspection, and after the spirits or wines have

been duly laden on board the exporting vessel, aircraft, car, or other conveyance, the customs inspector shall complete and sign Part 6, his certificate of inspection and lading on each copy of the form. If the customs inspector has reason to believe that the merchandise is not the same as that originally packed in the containers or discovers any other evidence of fraud, he shall detain the merchandise and notify the collector of customs, who shall inform the district supervisor of the Alcohol Tax Unit district in which the port is located. The district supervisor will take appropriate action and immediately report the facts to the Commissioner.

(1) *Bulk containers to be gauged.*—Packages of distilled spirits must be carefully gauged, and the volume and percentage of alcohol of wine determined, by a customs gauger and a detailed report of such gauge shall be made on Form 696, in duplicate, modified to show the name of the packer in lieu of the name of the distiller. In preparing the report, the customs gauger shall make entry thereon as to each package in accordance with the column headings. A copy of the gauger's report of gauge shall be attached to each copy of the entry for exportation, Form 1582, and delivered to the collector of customs.

* * * * * * *

SEC. 176.53. CERTIFICATION OF NONINSPECTION.—Spirits or wines in casks, barrels, drums, or other approved containers containing not less than 5 wine gallons must be gauged and inspected by customs officers at the port of exportation. In the case of bottled distilled spirits and wines, whenever the inspecting officer is unable to certify to the actual inspection and lading of the spirits or wines, he shall make his return on Part 7 of Form 1582, or Part 7 of Form 1582–A, stating therein the reasons why the spirits or wines were not inspected by him and laden under his supervision. The officer shall, after the vessel, aircraft, car, or other conveyance has cleared, examine the records of the delivering and exporting steamship, or transport lines for the purpose of verifying the particulars stated in the drawback entry, and will make his certification accordingly. If the records examined show that containers of similar description were laden on the exporting vessel, aircraft, car, or other conveyance for the designated port, the officer shall set forth in his certification, in addition to other data indicated by the form, the date and hour of lading. (Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEC. 176.56. ALLOWANCE IN CASES OF NONINSPECTION.—Where spirits or wines in casks, barrels, drums or other approved containers containing not less than 5 wine gallons are not inspected by a customs officer at the port of export and loaded on the exporting vessel, aircraft, railroad car, motor truck, or other conveyance under his supervision, a claim for drawback thereon shall not be allowed. Where bottled spirits or wines were not inspected by a customs officer at the port of export, and loaded on the exporting vessel, aircraft, railroad car, motor truck, or other conveyance under his supervision, the claim for drawback may, nevertheless, be allowed, provided that the law and regulations were complied with in other respects and the exportation without customs inspection and supervision of lading was not the fault of the exporter or carrier or the agent of either. (Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).)

SEC. 176.57. ACTION ON CLAIM.—The Commissioner will, upon receipt of the claim, Form 1582 or Form 1582–A, from the district supervisor, examine the claim and the records of his office, Forms 122, 230, 237, 1583, 1600, and 1684 previously furnished him as provided by sections 176.16 to 176.23, inclusive, to determine whether the spirits or wines described in the claim have been fully tax-paid. If the Commissioner finds that such spirits or wines have been fully tax-paid he will approve the claim and schedule it for payment. If the claim is disallowed, the Commissioner will so notify the claimant and state the reasons therefor. (Sec. 3179(b), as amended, I. R. C., and sec. 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup V, 1309 (a), (b), (c), (d)).)

PROOF OF EXPORTATION, ETC.

SEC. 176.58. LANDING CERTIFICATE.—Each claimant for drawback on distilled spirits or wines exported must agree in the required bond that he will procure and furnish within six months (or such additional extensions of time as may be granted by the district supervisor or Commissioner), evidence satisfactory to the district supervisor or Commissioner that such distilled spirits or wines

have been landed at the designated foreign port or that after shipment the same were lost on land or at sea, outside the jurisdiction of the United States, without fault or negligence on the part of the exporter. Proof of the foreign landing of the spirits or wines shall, in every case, consist of a duly executed landing certificate except as otherwise provided herein. The landing certificate must give such description of the spirits or wines as will readily identify the shipment to which it relates. It will be in substantially the following form:

PORT OF _____

_____, 19____

I, _____, of _____, do hereby certify that the merchandise hereinafter described, shipped by _____, on or about the _____ day of _____, 19____, has been landed at this port on or about the _____ day of _____, 19_____.

Marks and numbers.	Number of cases or packages.	Name of article.	Quantity.	
			Wine gallons.	Proof gallons.[1]

[1] In case of wines, show taxable grade in lieu of proof gallons.

[SEAL] _____

Subscribed and sworn to before me this _____ day of _____, 19____.

[SEAL] _____,
(Name.)

_____
(Title.)

5. This Treasury decision shall be effective upon publication in the Federal Register. (Secs. 2887, 3170, 3176, 3179(b), 3351(c), 3361(c), 3791, and 4041, I. R. C. (U. S. C., Title 26, 2887, 3170, 3176, 3179(b), 3351(c), 3361(c), 3791, and 4041) and secs. 309 (a), (b), (c), (d) and 313 (d), (i) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d) and 1313 (d), (i)).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.
FRANK DOW,
Acting Commissioner of Customs.

Approved January 13, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Published in the Federal Register January 20, 1948.)

MISCELLANEOUS.

INTOXICATING LIQUORS.

REGULATIONS NO. 4, ALCOHOL TAX ACT. 1948–13–12840
T. D. 5618

TITLE 27—INTOXICATING LIQUORS.—CHAPTER 1, PART 4.—LABELING AND ADVERTISING OF WINE.

Amending Regulations No. 4, under the Federal Alcohol Administration Act.

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

To District Supervisors and Others Concerned:

A notice of a public hearing to be held in Washington, D. C., on January 15, 1947, and in San Francisco, Calif., on January 31, 1947, with respect to certain proposals to amend Regulations No. 4, Relating to Labeling and Advertising of Wine, was published in the Federal Register on December 27, 1946 (volume 11, No. 251, page 14694).

Upon the conclusion of the said hearing and after consideration of all relevant material submitted by interested parties in connection therewith regarding proposals numbered 1–4, 6–25, each inclusive, of said notice, the following amendments to Article I (*g*) and (*j*), section 21, classes 1, 4, 5, 6, 7, and 8, section 22 (*b*) and (*c*), section 24(*b*), section 32(*b*)(5), section 34(*a*), section 35 (*a*) and (*b*), section 36, section 38(*b*), section 39 (*a*) and (*b*), section 64 (*c*) and (*i*), section 72(*a*), and section 80 of said Regulations No. 4 are hereby adopted, to become effective as stated.

With respect to paragraphs numbered 3 and 7 hereof, in so far as they authorize an increase in the amount of added sugar and water solution in the production of certain standard loganberry, currant, and gooseberry wines, and permit the omission of the labeling statement "Made with over 35 per cent sugar solution," with respect to such wines, it is found that compliance with the notice, public rule making procedure, and effective date requirements of the Administrative Procedure Act (Public Law 404, Seventy-ninth Congress) is impracticable, unnecessary, and contrary to the public interest for the reason that the Act of July 14, 1947 (Public Law 186, Eightieth Congress, first session [C. B. 1947–2, 336]) specifically authorized such an increase and rendered invalid the former and inconsistent requirements of these regulations.

1. In order to substitute the term "added brandy or alcohol" for the term "fortifying spirits" so that the latter term may be deleted from the standards of identity, subsection (*g*) of Article I (27 CFR, 4.1(g)) is amended to read:

(*g*) As used in the phrase "added brandy or alcohol" the term "brandy" means brandy or wine spirits for use in the fortification of wine as permitted by internal revenue law. The term "alcohol" means ethyl alcohol distilled at or above 190° proof.

This amendment shall become effective on the thirty-first day after the date of its publication in the Federal Register.

2. In order to conform the definition of the term "gallon" as used in these regulations to that used for internal revenue purposes, Article I(*j*) (27 CFR, 4.1(j)) is amended to read:

(*j*) The term "gallon" means United States gallon of 231 cubic inches of alcoholic beverage at 60° F. All other liquid measures used are subdivisions of the gallon as so defined.

This amendment shall become effective on the thirty-first day after its publication in the Federal Register.

3. In order to authorize red, pink (rose), amber, or white wine to be designated as such; to delete the term "fortifying spirits"; to authorize wines containing no added spirits or alcohol to be designated as "natural"; to authorize "light" wines to be also designated as "table" wines; to establish standards of identity for "dessert" wines; to authorize certain dessert wines to be designated as "angelica," "madeira," "muscatel," "sherry," and "port," requiring in some cases such designation to be qualified by the word "light"; and to eliminate the present standards for "red wine," "white wine," "natural wine," "angelica," "madeira," "muscatel," "port," "sherry," "light port," and "light sherry"; to recognize the provisions of section 4 of the Act of July 14, 1947 (Public Law 186, Eightieth Congress, first session), increasing, under certain circumstances, the amount of sugar and water solution which may be added in the case of loganberry, currant, or gooseberry wines; classes 1, 4, 5, and 6 of section 21 (27 CFR, Cum. Supp., 4.21 (a), (d), (e), and (f)) are amended to read as follows:

CLASS 1. *Grape wine.*—(*a*) "Grape wine" is wine produced by the normal alcoholic fermentation of the juice of sound, ripe grapes (including restored or unrestored pure condensed grape must), with or without the addition, after fermentation, of pure condensed grape must, and with or without added grape brandy or alcohol, but without other addition or abstraction except as may occur in cellar treatment: *Provided*, That the product may be ameliorated before, during, or after fermentation by either of the following methods:

(1) By adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 per cent; but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13 per cent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or an unfermented residual sugar content, derived from added sugar, of more than 15 per cent by weight.

(2) By adding, separately or in combination, not more than 15 per cent by weight of dry sugar, or not more than 10 per cent by weight of water.

The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be for natural red wine more than 0.14 gram, and for other grape wine more than 0.12 gram, per 100 cubic centimeters (20° C.).

Grape wine deriving its characteristic color or lack of color from the presence or absence of the red coloring matter of the skins, juice, or pulp of grapes may be designated as "red wine," "pink (or rose) wine," "amber wine," or "white wine," as the case may be.

Any grape wine containing no added grape brandy or alcohol may be further designated as "natural."

(*b*) "Table wine" is grape wine having an alcoholic content not in excess of 14 per cent by volume. Such wine may also be designated as "light wine," "red table wine," "light white wine," "sweet table wine," etc., as the case may be.

(*c*) "Dessert wine" is grape wine having an alcoholic content in excess of 14 per cent but not in excess of 24 per cent by volume. Dessert wine having the taste, aroma, and characteristics generally attributed to sherry and an alcoholic content, derived in part from added grape brandy or alcohol, of not less than 17 per cent by volume, may be designated as "sherry." Dessert wines having the taste, aroma, and characteristics generally attributed to angelica, madeira, musca-

tel, and port and an alcoholic content, derived in part from added grape brandy or alcohol, of not less than 18 per cent by volume, may be designated as "angelica," "madeira," "muscatel," or "port," respectively. Dessert wines having the taste, aroma, and characteristics generally attributed to any of the above products and an alcoholic content, derived in part from added grape brandy or alcohol, in excess of 14 per cent by volume but, in the case of sherry, less than 17 per cent, or, in other cases, less than 18 per cent by volume, may be designated as "light sherry," "light angelica," "light madeira," "light muscatel," or "light port," respectively.

CLASS 4. *Citrus wine.*—(*a*) "Citrus wine" or "citrus fruit wine" is wine produced by the normal alcoholic fermentation of the juice of sound, ripe citrus fruit (including restored or unrestored pure condensed citrus must), with or without the addition, after fermentation, of pure condensed citrus must, and with or without added citrus brandy or alcohol, but without any other addition or abstraction except as may occur in cellar treatment: *Provided*, That the product may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 per cent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13 per cent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or an unfermented residual sugar content, derived from added sugar, of more than 15 per cent by weight.

The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for natural citrus wine, more than 0.14 gram, and for other citrus wine, more than 0.12 gram, per 100 cubic centimeters (20° C.).

Any citrus wine containing no added brandy or alcohol may be further designated as "natural."

(*b*) "Citrus table wine" or "citrus fruit table wine" is citrus wine having an alcoholic content not in excess of 14 per cent by volume. Such wine may also be designated "light citrus wine," "light citrus fruit wine," "light sweet citrus fruit wine," etc., as the case may be.

(*c*) "Citrus dessert wine" or "citrus fruit dessert wine" is citrus wine having an alcoholic content in excess of 14 per cent but not in excess of 24 per cent by volume.

(*d*) Citrus wine derived wholly (except for sugar, water, or added alcohol) from one kind of citrus fruit, shall be designated by the word "wine" qualified by the name of such citrus fruit, e. g., "orange wine," "grapefruit wine." Citrus wine not derived wholly from one kind of citrus fruit shall be designated as "citrus wine" or "citrus fruit wine" qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Citrus wine rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle shall be further designated as "sparkling"; and citrus wine rendered effervescent by carbon dioxide otherwise derived shall be further designated as "carbonated."

CLASS 5. *Fruit wine.*—(*a*) "Fruit wine" is wine (other than grape wine or citrus wine) produced by the normal alcoholic fermentation of the juice of sound, ripe fruit (including restored or unrestored pure condensed fruit must), with or without the addition, after fermentation, of pure condensed fruit must, and with or without added fruit brandy or alcohol, but without other addition or abstraction except as may occur in cellar treatment: *Provided*, That the product may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will increase the volume of the resulting product, in the case of wines produced from loganberries, currants, or gooseberries, having a normal acidity of 20 parts or more per thousand, not more than 60 per cent, and in the case of other fruit wines, not more than 35 per cent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13 per cent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or an unfermented residual sugar content, derived from added sugar, of more than 15 per cent by weight.

The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for natural fruit wine, more than 0.14 gram, and for other fruit wine, more than 0.12 gram, per 100 cubic centimeters (20° C.).

Any fruit wine containing no added brandy or alcohol may be further designated as "natural."

(*b*) "Berry wine" is fruit wine produced from berries.

(c) "Fruit table wine" or "berry table wine" is fruit or berry wine having an alcoholic content not in excess of 14 per cent by volume. Such wine may also be designated "light fruit wine," or "light berry wine."

(d) "Fruit dessert wine" or "berry dessert wine" is fruit or berry wine having an alcoholic content in excess of 14 per cent but not in excess of 24 per cent by volume.

(e) Fruit wine derived wholly (except for sugar, water, or added alcohol) from one kind of fruit shall be designated by the word "wine" qualified by the name of such fruit, e. g., "peach wine," "blackberry wine." Fruit wine not derived wholly from one kind of fruit shall be designated as "fruit wine" or "berry wine," as the case may be, qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Fruit wines which are derived wholly (except for sugar, water, or added alcohol) from apples or pears may be designated "cider" and "perry," respectively, and shall be so designated if lacking in vinous taste, aroma, and characteristics. Fruit wine rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle shall be further designated as "sparkling"; and fruit wine rendered effervescent by carbon dioxide otherwise derived shall be further designated as "carbonated."

CLASS 6. *Wine from other agricultural products.*—(a) Wine of this class is wine (other than grape wine, citrus wine, or fruit wine) made by the normal alcoholic fermentation of sound fermentable agricultural products, either fresh or dried, or of the restored or unrestored pure condensed must thereof, with the addition, before or during fermentation, of a volume of water not greater than the minimum necessary to correct natural moisture deficiencies in such products, with or without the addition, after fermentation, of pure condensed must, and with or without added alcohol or such other spirits as will not alter the character of the product, but without other addition or abstraction except as may occur in cellar treatment: *Provided,* That the product may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 per cent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13 per cent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or an unfermented residual sugar content, derived from added sugar, of more than 15 per cent by weight.

The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for natural wine of this class, more than 0.14 gram, and for other wine of this class, more than 0.12 gram, per 100 cubic centimeters (20° C.).

Wine of this class containing no added alcohol or other spirits may be further designated as "natural."

(b) "Table wine" of this class is wine having an alcoholic content not in excess of 14 per cent by volume. Such wine may also be designated as "light."

(c) "Dessert wine" of this class is wine having an alcoholic content in excess of 14 per cent but not in excess of 24 per cent by volume.

(d) "Raisin wine" is wine of this class made from dried grapes.

(e) "Sake" is wine of this class produced from rice in accordance with the commonly accepted method of manufacture of such product.

(f) Wine of this class derived wholly (except for sugar, water, or added alcohol) from one kind of agricultural product shall, except in the case of "sake," be designated by the word "wine" qualified by the name of such agricultural product, e. g., "honey wine," "raisin wine," "dried blackberry wine." Wine of this class not derived wholly from one kind of agricultural product shall be designated as "wine" qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Wine of this class rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of wine within a closed container, tank, or bottle shall be further designated as "sparkling"; and wine of this class rendered effervescent by carbon dioxide otherwise derived shall be further designated as "carbonated."

This amendment relieves restrictions formerly contained in the regulations and shall become effective on the date of its publication in the Federal Register.

4. In order to establish a standard of identity for aperitif wines as a class of wines and for vermouth as a type of aperitif wine, class 7 of section 21 (27 CFR, Cum. Supp., 4.21(g)) is amended to read:

CLASS 7. *Apertif wine.*—(*a*) "Apertif wine" is wine having an alcoholic content of not less than 15 per cent by volume, compounded from grape wine containing added brandy or alcohol, flavored with herbs and other natural aromatic flavoring materials, with or without the addition of caramel for coloring purposes, and possessing the taste, aroma, and characteristics generally attributed to aperitif wine and shall be so designated unless designated as "vermouth" under subsection (*b*) hereof.

(*b*) "Vermouth" is a type of aperitif wine compounded from grape wine, having the taste, aroma, and characteristics generally attributed to vermouth, and shall be so designated.

This amendment shall become effective on the thirty-first day after its publication in the Federal Register.

5. In order (1) to eliminate the present standard for "concentrate wine" and to include such wines within the standard for "imitation wines," and (2) to include within the standard for "substandard wines" wines to which have been added excessive amounts of sugar and water solution, and to require such wines to be so designated, class 8 of section 21 (27 CFR, Cum. Supp., 4.21(h)) is amended to read:

CLASS 8. *Imitation and substandard wine.*—(*a*) "Imitation wine" shall bear as a part of its designation the word "imitation," and shall include:

(1) Any wine containing synthetic materials.

(2) Any wine made from a mixture of water with residue remaining after thorough pressing of grapes, fruit, or other agricultural products.

(3) Any class or type of wine the taste, aroma, color, or other characteristics of which have been acquired, in whole or in part, by treatment with methods or materials of any kind, if the taste, aroma, color, or other characteristics of normal wines of such class or type are acquired without such treatment.

(4) Any wine made from must concentrated at any time to more than 80° (Balling).

(*b*) "Substandard wine" shall bear as a part of its designation the word "substandard," and shall include:

(1) Any wine having a volatile acidity in excess of the maximum prescribed therefor in this article.

(2) Any wine for which no maximum volatile acidity is prescribed in this article, having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, in excess of 0.14 gram per 100 cubic centimeters (20° C.).

(3) Any wine for which a standard of identity is prescribed in this article, which, through disease, decomposition, or otherwise, fails to have the composition, color, and clean vinous taste and aroma of normal wines conforming to such standard.

(4) Any "grape wine," "citrus wine," "fruit wine," or "wine from other agricultural products" to which has been added sugar and water solution in an amount which is in excess of the limitations prescribed in the standards of identity for these products, unless, in the case of "citrus wine," "fruit wine" and "wine from other agricutural products" the normal acidity of the material from which such wine is produced is 20 parts or more per thousand and the volume of the resulting product has not been increased more than 60 per cent by such addition.

This amendment shall become effective on the thirty-first day after the date of its publication in the Federal Register.

6. In order to eliminate the present requirement of the regulations that, of the total of 350 parts per million of sulphur dioxide or sulphites expressed as sulphur dioxide permitted to be present in finished wine without resulting in an alteration of the class or type thereof, not more than 70 of such parts be in a free state, the proviso in paragraph numbered (1) of subsection (*b*) of section 22 (27

CFR, Cum. Supp., 4.22(b)(1)) is amended by eliminating therefrom the following parenthetical phrase:

(not more than 70 of such parts being in a free state),

This amendment relieves a restriction previously contained in the regulations and shall become effective on the date of its publication in the Federal Register.

7. In order to recognize section 4 of the Act of July 14, 1947 (Public Law 186, Eightieth Congress, first session), authorizing, under certain circumstances, an increase in the amount of sugar and water solution that may be added in the case of loganberry, currant, and gooseberry wines, paragraph numbered (5) of subsection (*b*) of section 22 (27 CFR, Cum. Supp., 4.22(b)(5)) is amended to read:

(5) Treatment of any class or type of wine for which a standard of identity is prescribed in this article with sugar or water in excess of the quantities specifically authorized by such standard: *Provided*, That the class or type thereof shall not be deemed to be altered (1) where such wine (other than grape wine) is derived from fruit, or other agricultural products, having a high normal acidity, if the unfermented residual sugar content, derived from added sugar, is not more than 20 per cent by weight, and the content of natural acid is not less than 7.5 parts per thousand, and (2) where such wine is derived exclusively from fruit, or other agricultural products, the normal acidity of which is 20 parts or more per thousand, if the volume of the resulting product has been increased not more than 60 per cent by the addition of sugar and water solution, for the sole purpose of correcting natural deficiencies due to such acidity, and (except in the case of such wines when produced from loganberries, currants, or gooseberries) there is stated as a part of the class and type designation the phrase "Made with over 35 per cent sugar solution."

This amendment relieves a restriction formerly contained in the regulations and shall become effective on the date of its publication in the Federal Register.

8. In order to clarify the present regulations authorizing, as permitted cellar treatment, normal and customary pasteurization and refrigeration treatments, paragraphs numbered (2) and (3) of subsection (*c*) of section 22 (27 CFR, Cum. Supp., 4.22(c)(2) and (3)) are amended to read:

(2) Treatment with pasteurization as necessary to perfect the wines to commercial standards in accordance with acceptable cellar practice but only in such a manner and to such an extent as not to change the basic composition of the wine nor to eliminate any of its characteristic elements.

(3) Treatment with refrigeration as necessary to perfect the wine to commercial standards in accordance with acceptable cellar practice but only in such a manner and to such an extent as not to change the basic composition of the wine nor to eliminate any of its characteristic elements.

This amendment relieves restrictions contained in, and is interpretative of, present regulations and shall become effective on the date of its publication in the Federal Register.

9. In order to further limit the use of semigeneric class or type names of geographic significance upon wines of an origin different from that indicated by the name by specifically providing that such names may only be used upon wines having the taste, aroma, and characteristics generally attributed to wines of such class or type, subsection (*b*) of section 24 (27 CFR, Cum. Supp., 4.24(b)) is amended to read:

(*b*) A name of geographic significance, which is also the designation of a class or type of wine, shall be deemed to have become semigeneric only if so

found by the Deputy Commissioner. Semigeneric designations may be used to designate wines of an origin other than that indicated by such name only if there appears in direct conjunction therewith an appropriate appellation of origin disclosing the true place of origin of the wine, and if the wine so designated conforms to the standard of identity, if any, for such wine contained in these regulations, or, if there be no such standard, to the trade understanding of such class or type.

This amendment shall become effective on the thirty-first day after the date of its publication in the Federal Register.

10. In order to permit the omission of the type designation "table" or "dessert" from the required designation of these wines and to recognize the elimination of the standards for red, white, and natural wines as types of wine, the first sentence of subsection (*a*) of section 34 (27 CFR, Cum. Supp., 4.34(a)) is amended to read:

(*a*) The class of the wine shall be stated and such statement shall be in conformity with Article II of these regulations if the wine is defined therein, except that "table" ("light") and "dessert" wines need not be designated as such.

This amendment relieves restrictions formerly contained in the regulations and shall become effective on the date of its publication in the Federal Register.

11. In order to require, in conformity with the requirements of present Internal Revenue regulations (Regulations 7, section 178.228, 26 CFR, 1945 Supp., 178.228), that, in the event the place of bottling or packing is not stated upon the labels of domestic wine bottled or packed in internal revenue bonded premises, the internal revenue registry number of such premises be stated, the first paragraph of subsection (*a*) of section 35 (27 CFR, 4.35(a)) is amended to read:

(*a*) *Domestic wine.*—On labels of containers of domestic wine there shall be stated the name of the bottler or packer and the place where bottled or packed (or in lieu of such place, the principal place of business of the bottler or packer if in the same State where the wine was bottled or packed, and, if bottled or packed on internal revenue bonded premises, the internal revenue registry number of such premises) immediately preceded by the words, "Bottled by" or "Packed by" except that—

This amendment shall become effective on the thirty-first day after the date of its publication in the Federal Register.

12. In order to permit bottlers or packers of wine who have also treated the wine in such manner as to change the class thereof (e. g., by making aperitif wine out of grape wine or by carbonating still wine) to describe themselves as producers of the wine in the required name and address statement, paragraph numbered (1) of subsection (*a*) of section 35 (27 CFR, 4.35(a)(1)) is amended to read:

(1) If the bottler or packer is also the person who made not less than 75 per cent of such wine by crushing the grapes or other materials, fermenting the must and clarifying the resulting wine, or if such person treated the wine in such manner as to change the class thereof, there may be stated, in lieu of the words "Bottled by" or "Packed by," the words "Produced and bottled by" or "Produced and packed by."

This amendment relieves restrictions formerly contained in the regulations and shall become effective on the date of its publication in the Federal Register.

13. In order to restrict the use of the word "manufactured" in required or optional name and address statements on the labels of wine to the labels of imitation wine, paragraphs numbered (2) and (3) of subsection (*a*) and the first paragraph of subsection (*b*) of section 35 (27 CFR, 4.35 (a) (2) and (3) and (b)) are amended to read:

(2) If the bottler or packer has also either made or treated the wine, otherwise than as described in (1) above, there may be stated, in lieu of the words "Bottled by" or "Packed by," the phrases "Blended and bottled (packed) by," "Rectified and bottled (packed) by," "Prepared and bottled (packed) by," "Made and bottled (packed) by," as the case may be, or, in the case of imitation wine only, "Manufactured and bottled (packed) by."

(3) In addition to the name of the bottler or packer and the place where bottled or packed (but not in lieu thereof) there may be stated the name and address of any other person for whom such wine is bottled or packed, immediately preceded by the words "Bottled for" or "Packed for" or "Distributed by" or other similar statement; or the name and principal place of business of the rectifier, blender, or maker, immediately preceded by the words "Rectified by," "Blended by," or "Made by," respectively, or, in the case of imitation wine only, "Manufactured by."

(*b*) *Imported wine.*—On labels of containers of imported wine, there shall be stated the words "Imported by" or a similar appropriate phrase, and immediately thereafter the name of the permittee who is the importer, agent, sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person. In addition, but not in lieu thereof, there may be stated the name and principal place of business of the foreign producer, blender, rectifier, maker, bottler, packer, or shipper, preceded by the phrases "Produced by," "Blended by," "Rectified by," "Made by," "Bottled by," "Packed by," "Shipped by," respectively, or, in the case of imitation wine only, "Manufactured by."

This amendment shall become effective on July 1, 1949.

14. In order to permit, in the name and address statement required to appear on the labels of imported wine bottled or packed after importation by the person responsible for the importation, a statement of the address of such person's principal place of business in lieu of the address of the place where such wine was bottled or packed, paragraph numbered (1) of subsection (*b*) of section 35 (27 CFR, 4.35(b)(1)) is amended to read:

(1) If the wine is bottled or packed in the United States, there shall be stated, in addition, the name of the bottler or packer and the place where bottled or packed immediately preceded by the words "Bottled by" or "Packed by." If, however, the wine is bottled or packed in the United States by the person responsible for the importation, there may be stated, in lieu of the above required statements, the name and principal place of business in the United States of such person, immediately preceded by the phrase "Imported and bottled (packed) by" or a similar appropriate phrase.

This amendment relieves restrictions formerly contained in the regulations and shall become effective on the date of its publication in the Federal Register.

15. In order to require that "table" ("light") wines be so designated if they do not bear a statement of alcoholic content, paragraph numbered (5) of section 32 (27 CFR, Cum. Supp., 4.32(b)(1)) and subsection (*a*) of section 36 (27 CFR, 4.36(a)) are amended to read:

(5) Alcoholic content, or type designation in lieu thereof, in accordance with section 36 below.

* * * * * * *

(*a*) Alcoholic content shall be stated in the case of wines containing more than 14 per cent of alcohol by volume, and, in the case of wine containing 14 per cent or less of alcohol by volume, either the type designation "table" wine ("light" wine) or the alcoholic content shall be stated. Any statement of alcoholic content shall be made as prescribed in (*b*) below.

This amendment shall become effective on July 1, 1949.

16. In order to increase the permitted tolerance in statements of alcoholic content for table wine only from 1 to 1.5 per cent by volume, subsection (*b*) of section 36 (27 CFR, 4.36(b)) is amended to read:

(*b*) Alcoholic content shall be stated in terms of percentage of alcohol by volume, and not otherwise, as provided in either subparagraph (1) or (2) below:

(1) "Alcohol _____ per cent by volume." Except as provided in (*c*) below, a tolerance of 1 per cent, in the case of wines containing more than 14 per cent of alcohol by volume, and of 1.5 per cent, in the case of wines containing 14 per cent or less of alcohol by volume, will be permitted either above or below the stated percentage.

(2) "Alcohol _____ per cent to _____ per cent by volume." Except as provided in (*c*) below, a range of not more than 2 per cent, in the case of wines containing more than 14 per cent of alcohol by volume, and of not more than 3 per cent, in the case of wines containing 14 per cent or less of alcohol by volume, will be permitted between the minimum and maximum percentages stated, and no tolerances will be permitted either below such minimum or above such maximum.

This amendment relieves restrictions formerly contained in the regulations and shall become effective on the date of its publication in the Federal Register.

17. In order to prohibit alcoholic content statements on the labels of wine which, because of permitted tolerances or otherwise, indefinitely or incorrectly indicate the class, type, or taxable grade of such wine, section 36 (27 CFR, 4.36) is further amended by adding the following new subsection (*c*) at the end thereof:

(*c*) Regardless of the type of statement used and regardless of tolerances normally permitted in direct statements and ranges normally permitted in maximum and minimum statements, alcoholic content statements, whether required or optional, shall definitely and correctly indicate the class, type, and taxable grade of the wine so labeled and nothing in this section shall be construed as authorizing the appearance upon the labels of any wine of an alcoholic content statement in terms of maximum and minimum percentages which overlaps a prescribed limitation on the alcoholic content of any class, type, or taxable grade of wine, or a direct statement of alcoholic content which indicates that the alcoholic content of the wine is within such a limitation when in fact it is not.

This amendment shall become effective on the thirty-first day after the date of its publication in the Federal Register.

18. In order to require that statements of alcoholic content on the labels of bottled wine appear in script, type, or printing not larger than 8-point Gothic caps, subsection (*b*) of section 38 (27 CFR, 4.38(b)) is amended to read:

(*b*) *Size of type.*—All statements (other than alcoholic content statements upon labels of containers having a capacity of 1 gallon or less) required on labels by this article, shall be in readily legible script, type, or printing not smaller than 8-point GOTHIC CAPS, except that if contained among other descriptive or explanatory reading matter, the script, type, or printing of all required material shall be of a size substantially more conspicuous than such other descriptive or explanatory reading matter: *Provided*, That in the case of labels of containers having a capacity of less than one-half pint, such script, type, or printing thereon need not be in 8-point Gothic caps, but shall be readily legible under ordinary conditions. Alcoholic content statements, whether required or optional, on labels on containers having a capacity of 1 gallon or less shall be readily legible under ordinary conditions, but shall not appear in script, type, or printing larger or more conspicuous than 8-point Gothic caps.

This amendment shall become effective on July 1, 1949.

19. In order to prevent the use on wine labels, in brand name or class and type designations, of any coined word or name which simulates or imitates the name of any class, type, or permitted designation of wine unless the wine so labeled is entitled to such designation, subsection (*a*) of section 39 (27 CFR, 4.39(a)) is amended by adding at the end thereof the following new subparagraph numbered (8):

(8) Any coined word or name in the brand name or class and type designation which simulates, imitates, or which tends to create the impression that the wine so labeled is entitled to bear any class, type, or permitted designation recognized by these regulations unless such wine conforms to the requirements prescribed with respect to such designation and is in fact so designated on its labels.

This amendment shall become effective on July 1, 1949.

20. In order to permit in the labeling and advertising of wine general inconspicuous references to methods of wine production, including aging, of an informative nature—

A. Subsection (*b*) of section 39 (27 CFR, 4.39(b)) is amended by adding at the end thereof, the following new subparagraph (4):

(4) Truthful references of a general and informative nature relating to methods of wine production involving storage or aging, such as "This wine has been mellowed in oak casks," "Stored in small barrels," or "Matured at regulated temperatures in our cellars," may appear, but only in an inconspicuous manner and then only on back labels or on other matter accompanying the container.

B. Subsection (*c*) of section 64 (27 CFR, 4.64(c)) is amended by adding at the end thereof the following new subparagraph numbered (3):

(3) Truthful references of a general and informative nature relating to methods of wine production involving storage or aging, such as "This wine has been mellowed in oak casks," "Stored in small barrels," or "Matured at regulated temperatures in our cellars," may be made.

This amendment relieves restrictions formerly contained in the regulations and shall become effective upon the date of its publication in the Federal Register.

21. In order to clarify any ambiguity in the provision of the regulations limiting the use of the word "importer" or similar words in advertisements of wine by making it clear that the provision relates only to domestic wines, subsection (*i*) of section 64 (27 CFR, 4.64(i)) is amended to read:

(*i*) *Use of the word "importer" or similar words.*—The word "importer" or similar words shall not appear in advertisements of domestic wine except as part of the bona fide name of a permittee by or for whom, or of a retailer for whom, such wine is bottled or packed: *Provided*, That in all cases where such words are used as part of such name, there shall be stated the words "Product of the United States" or similar words to negate any impression that the product is imported, and such negating statements shall appear in the same size and kind of printing as such name.

This amendment is clarifying and interpretative of present regulations and shall become effective on the date of its publication in the Federal Register.

22. In order to authorize, as additional standards of fill, 1 pint for all classes and types of wine, ⅖ gallon for effervescent wines only, and $^{15}/_{16}$ quart for aperitif wines only, subsection (*a*) of section 72 (27 CFR, Cum. Supp., 4.72(a)) is amended to read:

(*a*) The standards of fill for wine shall be the following, subject to the tolerances hereinafter allowed—

(1) For all wines:

4.9 gallons, 1 pint.
3 gallons, ⅘ pint.
1 gallon, ⅖ pint.
½ gallon, 4 ounces.
1 quart, 3 ounces.
⅘ quart, 2 ounces

(2) In addition, for sparkling and carbonated wines only: ⅖ gallon.
(3) In addition, for aperitif wines only: $^{15}/_{16}$ quart.

This amendment relieves restrictions formerly contained in the regulations and shall become effective on the date of its publication in the Federal Register.

(This Treasury decision is issued pursuant to and under the authority contained in section 5 (e) and (f) of the Federal Alcohol Administration Act, as amended (27 U. S. C., 205 (e) and (f)), Reorganization Plan No. III, paragraph 2 (54 Stat., 1232), section 3170 of the Internal Revenue Code (53 Stat., 373) and section 161 of the Revised Statutes (5 U. S. C., 22).

CARROLL E. MEALEY,
Deputy Commissioner of Internal Revenue.

Approved May 28, 1948.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.
A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Published in the Federal Register June 5, 1948.)

REGULATIONS NO. 5 (ALCOHOL TAX ACT). 1948–13–12841
T. D. 5617

TITLE 27—INTOXICATING LIQUORS.—CHAPTER 1, PART 5.—LABELING AND ADVERTISING OF DISTILLED SPIRITS.

Amending Regulations No. 5, under the Federal Alcohol Administration Act.

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

To District Supervisors and Others Concerned:

A notice of a public hearing to be held in Washington, D. C., on January 13, 1947, and in San Francisco, Calif., on January 30, 1947, with respect to certain proposals to amend Regulations No. 5, Relating to Labeling and Advertising of Distilled Spirits, was published in the Federal Register on December 27, 1946 (volume 11, No. 251, page 14696).

Upon the conclusion of the said hearing and after consideration of all relevant material submitted by interested persons in connection therewith regarding proposals numbered 1, 5–9, 14–17, 19–21, each inclusive, and 24 of said notice, the following amendments to Article I(*h*), section 21, class 4, section 34 (*d*) and (*e*), section 35(*c*)(3), section 38(*d*), section 39 (*a*) and (*b*), and section 80 of said Regulations No. 5 are hereby adopted, to become effective as stated.

1. In order to conform the definition of the term " gallon " as used in these regulations to that used for internal revenue purposes, Article I(*h*) (27 CFR, 5.1 (h)) is amended to read:

(*h*) The term "gallon" means United States gallon of 231 cubic inches of alcoholic beverage at 60° F. All other liquid measures used are subdivisions of the gallon as so defined.

This amendment shall become effective on the thirty-first day after the date of its publication in the Federal Register.

2. In order to increase from 20 per cent to 30 per cent the percentages of lees and lees brandy which may be used in the production of "fruit brandy" and, in the case of fruit brandy distilled from juice or wine, to permit the addition of 20 per cent by weight of pomace to such juice or wine, section 21, class 4(*a*) (27 CFR, Cum. Supp., 5.21(d)(1)) is amended to read:

(*a*) "Fruit brandy" is brandy distilled solely from the juice or mash of whole, sound, ripe fruit, or from standard grape, citrus, or other fruit wine, having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, not in excess of 0.20 gram per 100 cubic centimeters (20° C.), with or without the addition of not more than 20 per cent by weight of the pomace of such juice or wine, or 30 per cent by volume of the lees of such wine, or both (calculated prior to the addition of water to facilitate fermentation or distillation), and shall include mixtures of such brandy with not more than 30 per cent (calculated on a proof basis) of lees brandy. Fruit brandy, derived exclusively from grapes, shall be designated as "grape brandy" or "brandy." Fruit brandy, other than grape brandy, derived exclusively from one variety of fruit, shall be designated by the word "brandy" qualified by the name of such fruit (e. g., "peach brandy," "apple brandy," "orange brandy"), except that "apple brandy" may be designated "applejack." Fruit brandy derived from more than one variety of fruit shall be designated as "fruit brandy," qualified by a truthful and adequate statement of composition (e. g., "fruit brandy—a blend of 90 per cent grape brandy and 10 per cent blackberry brandy").

This amendment relieves restrictions formerly contained in the regulations and shall become effective on the date of its publication in the Federal Register.

3. In order to provide an inclusive designation for brandies produced for use in the trade from several different types of distilling material derived from the same fruit, section 21, class 4 (27 CFR, Cum. Supp., 5.21(d)), is further amended by inserting the following new subsection (*ee*) between subsections (*e*) and (*f*) thereof:

(*ee*) "Residue brandy" is brandy distilled wholly or in part from the residue of fruit or wine, and shall be designated as "residue brandy" qualified by the name of the fruit from which derived. Brandy distilled wholly or in part from residue materials which conforms to any of the standards set forth in subsections (*a*), (*c*), (*d*), and (*e*) hereof may, regardless of such fact, be designated "residue brandy" by the distiller thereof; but the use of this designation shall be conclusive, precluding any later change of designation.

This amendment relieves restrictions formerly contained in the regulations and shall become effective on the date of its publication in the Federal Register.

4. In order to permit a standard brandy to be produced from wines having a volatile acidity of 0.20 gram or less per 100 cubic centimeters although such brandy was distilled at not more than 170° proof, clause (1) of subsection (*g*) of section 21, class 4 (27 CFR, Cum. Supp., 5.21(d)(7)(i)) is amended to read:

(1) Any brandy distilled from juice, mash, or wine having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, in excess of 0.20 gram per 100 cubic centimeters (20° C.); measurements of volatile acidity under this paragraph shall be calculated exclusive of water added to facilitate distillation.

This amendment relieves restrictions formerly contained in the regulations and shall become effective on the date of its publication in the Federal Register.

5. In order to include as "substandard," brandy distilled from deteriorated residue material, clause (2) of subsection (*g*) of section 21, class 4 (27 CFR, Cum. Supp., 5.21(d)(7)(ii)) is amended to read:

> (2) Any brandy which has been distilled from unsound, moldy, diseased, or decomposed juice, mash, wine, lees, pomace, or residue, or which shows in the finished product any taste, aroma, or characteristic associated with products distilled from such material.

This amendment shall become effective on the thirty-first day after the date of its publication in the Federal Register.

6. In order to clarify the present regulations by removing any implication that any of the types of "corn whisky" may, regardless of labeling statements, be treated with charred wood chips, section 34(*d*) (27 CFR, Cum. Supp., 5.34(d)) is amended by changing the period at the end thereof to a colon and adding the following proviso:

Provided, That this subsection shall not be construed as authorizing the treatment of any of the types of corn whisky with charred wood chips.

This amendment is interpretative of the present regulations and shall become effective on the date of its publication in the Federal Register.

7. In order to provide that whisky distilled at not exceeding 160° proof from a fermented mash of not less than 80 per cent corn grain, not subjected to treatment with charred wood chips, and stored in reused cooperage, be designated as one of the types of corn whisky and to prevent such products from being designated as "Whisky, distilled from bourbon mash," section 34(*e*) (27 CFR, 5.34(e)) is amended by changing the period at the end thereof to a colon and adding the following proviso thereto:

Provided, however, That any product conforming to the standard of identity prescribed for one of the types of corn whisky (section 21, class 2 (*a*), (*d*)(2), (*h*), and (*i*)) shall, notwithstanding the provisions of this subsection, be designated in accordance with such standard.

This amendment shall become effective on the thirty-first day after the date of its publication in the Federal Register.

8. In order to authorize, on labels of distilled spirits bottled after importation by the importer, a statement of the address of the importer's principal place of business in lieu of the address of the place of bottling, clause (3) of subsection (*c*) of section 35 (27 CFR, 5.35(c)(3)) is amended to read:

> (3) On labels of imported distilled spirits bottled after importation by the person responsible for the importation, there shall be stated the words "Imported and bottled by," "Imported and bottled exclusively by," or a similar appropriate phrase, and immediately thereafter the name of such person and the address of the place where bottled or the address of such person's principal place of business.

This amendment relieves a restriction formerly found in the regulations and shall become effective on the date of its publication in the Federal Register.

9. In order to authorize, in lieu of the statement "artificially colored" where such statement has formerly been required to appear on labels of distilled spirits colored by the addition of caramel alone, the statement "colored with caramel" or some similar statement, section 38(*d*) (27 CFR, Cum. Supp., 5.38(d)) is amended to read:

(*d*) There shall be stated the words "artificially colored" on the label of any distilled spirits containing synthetic coloring materials, or natural materials, other than caramel, the primary contribution of which is color, as well as upon the label of any distilled spirits, the labeling of which is such as to convey the impression that the color of the product is derived from a given source, if such color is, in whole or in part, not so derived. In the case of distilled spirits to which no coloring material other than caramel has been added the words "colored with caramel" or a substantially similar statement may appear in lieu of the words "artificially colored": *Provided*, That no such statement shall be required by reason of the use of caramel in any brandy or rum or in any type of whisky other than straight whisky: *And provided further*, That where such statement would be required by reason of the use of natural flavoring materials solely, there may be stated in lieu of "artificially colored" a truthful and adequate statement of the source of the color, such as "color derived from (name of fruit, plant, etc., the name of which the product bears) and other fruits (plants, herbs, etc., or the name of such other fruits, plants, or herbs)."

This amendment relieves a restriction formerly found in the regulations and shall become effective on the date of its publication in the Federal Register.

10. In order to authorize (1) the omission of age statements from the labels of whiskies four years or more old and to require an age statement to appear on the labels of all whiskies in whole or in part less than four years old, regardless of the country of origin; and (2) the use on the labels of certain whiskies of an age statement substantially the same as, though not identical with, the statement formerly required—

A. Section 39(*a*) (1) and (2) (27 CFR, 5.39(a) (1) and (2)) is amended to read:

(*a*) *Statements of age and percentage for whisky.*—Except in the case of straight whisky bottled under the Bottling in Bond Act of the United States and foreign or domestic whisky (whether or not mixed or blended, but containing no neutral spirits) all of which is four years or more old, there shall be stated the following:

(1) *Whisky, rye whisky, etc., and blended or unblended Scotch, Irish, and Canadian whisky.*—In the case of whisky defined in section 21, class 2 and class 2 (*a*), (*k*), (*l*), and (*m*), if not mixed, the age of the whisky; if mixed, the age of the youngest whisky. The statement of age in both cases under this paragraph shall be substantially as follows: "This whisky is _____ (years and/or months) old."

(2) *Straight whisky.*—In the case of any of the types of straight whisky, the age of the straight whisky. The statement of age in cases under this paragraph shall be substantially as follows: "This whisky is _____ (years and/or months) old."

B. Section 39(*a*) (27 CFR, 5.39(a)) is further amended by adding the following new subparagraph (7) to follow immediately subparagraph (6) thereof:

(7) In the case of straight whisky bottled under the Bottling in Bond Act of the United States and foreign or domestic whisky (whether or not mixed or blended but containing no neutral spirits) all of which is four years or more old, statements of age shall be optional but, if made, shall appear in the form specified for the appropriate class and type.

C. Section 39(*b*) (27 CFR, Cum. Supp., 5.39(b)) is also amended to read:

(*b*) *Statements of age for rum and brandy.*—

(1) Age may, but need not, be stated on labels of rums and brandies: *Provided*, That an appropriate statement with respect to age shall appear on the brand label in the case of any brandy not aged for a period of at least two years.

(2) If age is stated, it shall be substantially as follows: "This rum is ____ years old"; "This brandy is _____ years old"; the blanks to be filled in with the age of the youngest distilled spirits in the product.

These amendments shall become effective on July 1, 1949.

11. In order to permit, on the labels of "spirit whisky," a statement of age and percentage for each of the whiskies contained therein, section 39(*a*)(5) (27 CFR, 5.39(a)(5)) is amended to read:

(5) *Spirit whisky.*—In the case of spirit whisky, the age of the whisky or straight whisky (or, if there be two or more whiskies or straight whiskies, then the age of the youngest whisky or straight whisky, or, if there be both whisky and straight whisky, then the age of the youngest whisky) together with the percentage by volume of the whisky or straight whisky and the percentage by volume of neutral spirits. Such statements shall be as follows: "The whisky (straight whisky) in this product is _____ (years and/or months) old; _____ per cent whisky (or _____ per cent straight whisky and, if there be other whisky or whiskies, _____ per cent whisky) and ____ per cent neutral spirits" (continuing in accordance with the requirements of section 38(*a*) to state the commodity from which the neutral spirits is derived). If there be more than one whisky or (if there be no whisky) more than one straight whisky in the product, the statement of age shall read: "The whiskies (straight whiskies) in this product are _____ (years and/or months) or more old" followed by the statement of percentages and of the commodity from which the neutral spirits is derived. In addition (but not as a substitute for the foregoing required statements) a statement may be made of the ages and percentages of all of the whiskies and straight whiskies in the product. Such statement, if made, shall be in the following form: "_____ per cent straight whisky, _____ years old, _____ per cent straight whisky, _____ years old, _____ per cent whisky, _____ years old and _____ per cent whisky, _____ years old." The age and percentage blanks shall be filled with the respective ages and percentages of each of the straight whiskies and whiskies in the product.

This amendment relieves restrictions formerly found in the regulations and shall become effective on the date of its publication in the Federal Register.

(This Treasury decision is issued pursuant to and under the authority contained in section 5(e) of the Federal Alcohol Administration Act, as amended (27 U. S. C., 205(e)), Reorganization Plan No. III, paragraph 2 (54 Stat., 1232), section 3170 of the Internal Revenue Code (53 Stat., 373) and section 161 of the Revised Statutes (5 U. S. C., 22).

CARROLL E. MEALEY,
Deputy Commissioner of Internal Revenue.

Approved May 28, 1948.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Published in the Federal Register June 5, 1948.)

GAUGING MANUAL, ARTICLES XII AND XIII. 1948–13–12839
T. D. 5620

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 186.—GAUGING MANUAL.

Amending the Gauging Manual.

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

To District Supervisors, Collectors of Internal Revenue, and Others Concerned:

1. The purpose of this amendment is to authorize the storekeeper-gauger, in lieu of the district supervisor, to prepare the label to be affixed to the head of the new package where a change of package is made in the internal revenue bonded warehouse to prevent loss by leakage or to effect a change in the kind of cooperage.

2. Because the provisions of this Treasury decision relate to duties of Bureau personnel, not affecting the warehouseman, 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.

3. Paragraphs 64 and 67 of the Gauging Manual, approved November 21, 1938 (26 CFR, Part 186) are hereby amended to read as follows:

ARTICLE XII.—CHANGE OF PACKAGE IN INTERNAL REVENUE BONDED WAREHOUSE TO PREVENT LOSS BY LEAKAGE.

PAR. 64. The storekeeper-gauger will take the tare of the new package before transfer of the spirits, and upon completion of the transfer will prepare and sign a label to be affixed to the head of the new package in the manner herein prescribed for the affixing of tax-paid stamps. The label shall be in the following form:

"The spirits contained in this package, serial No. _____, were transferred to new barrel under date of _____. Upon withdrawal of this package, the storekeeper-gauger will determine the total tare by adding the soakage allowance to _____ pounds, the weight of this barrel before spirits were placed therein, unless actual tare is taken.

_____.
(Storekeeper-gauger.)

District No. _____."

Allowance for soakage will be made only for the new barrel when withdrawn. No allowance will be made for soakage in the original barrel.

ARTICLE XIII.—CHANGE IN KIND OF COOPERAGE IN INTERNAL REVENUE BONDED WAREHOUSE.

PAR. 67. Each new package will be given the same serial number, marks, and brands as the original package, and will contain only spirits from one package. The storekeeper-gauger will take the tare of the new package before the transfer, and upon completion of the transfer will prepare and sign a label to be affixed by the proprietor to the head of each new package in the manner herein prescribed for the affixing of tax-paid stamps. The label shall be in the following form:

"The spirits contained in this package, serial No. _____, were transferred to new _____ barrel under date of _____
(Kind of cooperage.)
by authority of Department letter dated _____.

"The package from which the spirits herein were transferred was a _____ (Kind of _____ barrel. Upon withdrawal of this package the storekeeper-gauger will determine the total tare by adding the soakage allowance to _____ pounds, the weight of this barrel before spirits were placed therein, unless actual tare is taken.

cooperage.)

_____.
(Storekeeper-gauger.)

District No. _____."

Allowance for soakage will be made only for the new barrel when withdrawn. No allowance will be made for soakage in the original barrel.

4. This Treasury decision shall be effective upon publication in the Federal Register.

(This Treasury decision is issued under the authority contained in sections 2808 and 3176 of the Internal Revenue Code (U. S. C., title 26, sections 2808 and 3176).)

GEO. J. SCHOENEMAN,
Commissioner.

Approved June 4, 1948.

A. L. M. WIGGINS,
Acting Secretary of the Treasury.

(Published in the Federal Register June 10, 1948.)

OLEOMARGARINE.[a]

1948–3–12743
MS. 318

Schedule of oleomargarine produced and materials used during the month of November, 1947, as compared with November, 1946.

	November, 1947.	November, 1946.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 74,097,608	[2] 55,678,603
Total withdrawn tax-paid	74,286,568	54,983,819
Ingredient schedule of uncolored oleomargarine:		
Butter culture		125
Butter flavor	281	220
Citric acid		436
Coconut oil [3]	178,934	
Corn oil	422,890	474,130
Cottonseed oil	41,717,714	26,369,674
Derivative of glycerine	126,459	94,597
Diacetyl	165	99
Lecithin	100,360	67,149
Milk	12,522,033	9,163,770
Monostearine	87,941	63,754
Neutral lard	244,418	198,351
Oleo oil	245,628	322,818
Oleo stearine	335,586	217,990
Oleo stock	57,445	47,975
Peanut oil	125,456	708,515
Salt	2,245,680	1,712,310
Soda (benzoate of)	57,587	39,276
Sodium sulpho acetate	5,620	
Soya bean oil	17,101,183	17,026,175
Vitamin concentrate	11,710	9,964
Total	75,587,090	56,517,328
Total production of colored oleomargarine	7,708,182	7,283,496
Total withdrawn tax-paid	3,962,373	1,866,218
Ingredient schedule of colored oleomargarine:		
Butter flavor	66	11
Coconut oil [3]	1,811,440	4,060,122
Color	4,162	4,357
Corn oil	169	52
Cottonseed flakes	3,013	
Cottonseed oil	2,427,935	731,545
Derivative of glycerine	9,462	6,492
Diacetyl	66	271
Lecithin	6,760	5,696
Milk	1,296,751	1,245,331
Monostearine	4,404	5,187
Neutral lard	3,429	19,296
Oleo oil	1,714	12,199
Peanut oil	6,600	95
Salt	247,209	238,787
Soda (benzoate of)	3,208	3,293
Soya bean oil	1,972,561	1,022,743
Soya bean stearine	10,575	
Vitamin concentrate	921	1,240
Total	7,810,383	7,356,717

[a] All figures are subject to revision until published in the Commissioner's annual report.

[1] Of the amount produced, 2,426 pounds were reworked.

[2] Of the amount produced, 370 pounds were reworked.

[3] 793,963 pounds of this oil used in oleomargarine manufactured for export by, or from, the United States and 1,196,411 pounds used in production of the product for domestic consumption.

1948–4–12753
MS. 319

Schedule of oleomargarine produced and materials used during the month of December, 1947, as compared with December, 1946.

	December, 1947.	December, 1946.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 72, 357, 995	54, 830, 725
Total withdrawn tax-paid	69, 317, 866	55, 810, 422
Ingredient schedule of uncolored oleomargarine:		
Butter flavor	296	391
Citric acid		358
Coconut oil [3]	740	
Corn oil	178	433, 631
Cottonseed flakes		550
Cottonseed oil	40, 185, 133	24, 606, 751
Cottonseed stearine	27	
Derivative of glycerine	117, 811	88, 383
Diacetyl	284	76
Lecithin	96, 645	68, 788
Milk	12, 290, 886	9, 212, 713
Monostearine	76, 369	64, 892
Neutral lard	401, 437	303, 204
Oleo oil	340, 615	527, 101
Oleo stearine	289, 439	309, 365
Oleo stock	71, 100	72, 400
Peanut oil	51	757, 826
Salt	2, 227, 410	1, 696, 567
Soda (benzoate of)	55, 742	39, 204
Sodium sulpho acetate	5, 002	
Soya bean oil	17, 447, 319	17, 556, 515
Tallow		4, 050
Vitamin concentrate	14, 764	9, 396
Total	73, 621, 248	55, 762, 161
Total production of colored oleomargarine	[2] 6, 652, 878	4, 935, 507
Total withdrawn tax-paid	3, 596, 230	1, 872, 172
Ingredient schedule of colored oleomargarine:		
Butter flavor	251	25
Coconut oil [3]	1, 538, 544	2, 199, 872
Color	4, 559	2, 618
Corn oil	147	274
Cottonseed oil	2, 182, 694	672, 039
Derivative of glycerine	9, 458	4, 731
Diacetyl	60	48
Lecithin	5, 914	3, 760
Milk	1, 134, 414	806, 681
Monostearine	3, 387	2, 029
Neutral lard	22, 942	21, 715
Oleo oil	15, 346	15, 957
Oleo stock	2, 400	
Peanut oil	1, 100	1, 200
Salt	215, 250	164, 492
Soda (benzoate of)	3, 322	2, 994
Soya bean oil	1, 591, 384	1, 136, 248
Vitamin concentrate	823	610
Total	6, 731, 995	5, 035, 073

[1] Of the amount produced, 3,789 pounds were reworked.
[2] Of the amount produced, 14,784 pounds were reworked.
[3] 622,800 pounds of this oil used in oleomargarine manufactured for export by, or from, the United States and 846,484 pounds used in production of the product for domestic consumption.

1948–6–12765
MS. 320

Schedule of oleomargarine produced and materials used during the month of January, 1948, as compared with January, 1947.

	January, 1948.	January, 1947.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 80,080,712	[2] 64,766,495
Total withdrawn tax-paid	82,226,398	63,755,619
Ingredient schedule of uncolored oleomargarine:		
Butter flavor	313	515
Citric acid		558
Coconut oil [3]	1,730	[4] 431,363
Corn oil	32,899	396,359
Cottonseed flakes		8,600
Cottonseed oil	44,046,835	29,294,574
Derivative of glycerine	128,314	104,064
Diacetyl	7,230	161
Lecithin	112,553	78,774
Milk	13,632,009	10,844,764
Monostearine	94,395	77,158
Neutral lard	448,673	312,568
Oleo oil	416,810	470,082
Oleo stearine	296,986	262,822
Oleo stock	71,840	67,270
Peanut oil	389,376	989,563
Salt	2,937,200	2,007,743
Soda (benzoate of)	60,038	47,233
Sodium sulpho acetate	4,877	
Soya bean oil	19,214,198	20,391,786
Soya bean stearine		14,995
Vitamin concentrate	12,128	11,379
Total	81,908,404	65,812,331
Total production of colored oleomargarine	7,853,272	[5] 3,175,069
Total withdrawn tax-paid	5,025,877	2,524,405
Ingredient schedule of colored oleomargarine:		
Butter flavor	81	44
Color	5,105	2,052
Corn oil	235	15,597
Coconut oil [3]	2,135,532	[4] 424,040
Cottonseed flakes		365
Cottonseed oil	2,671,170	821,887
Derivative of glycerine	7,988	4,209
Diacetyl	131	5
Lecithin	10,329	1,801
Milk	1,343,432	521,823
Monostearine	4,170	1,109
Neutral lard	33,353	27,477
Oleo oil	28,775	30,228
Oleo stock	5,400	
Peanut oil	15,949	9,828
Salt	252,287	97,307
Soda (benzoate of)	3,947	1,286
Soya bean oil	1,418,434	1,236,692
Vitamin concentrate	986	252
Total	7,937,304	3,196,002

[1] Of the amount produced, 7,317 pounds were reworked.
[2] Of the amount produced, 2,539 pounds were reworked.
[3] 474,703 pounds of this oil used in oleomargarine manufactured for export by, or from, the United States, and 1,662,559 pounds used in production of the product for domestic consumption.
[4] 377,443 pounds of this oil used in oleomargerine manufactured for export by, or from, the United States, and 477,960 pounds used in the production of the product for domestic consumption.
[5] Of the amount produced, 100 pounds were reworked.

1948–8–12788
MS. 321

Schedule of oleomargarine produced and materials used during the month of February, 1948, as compared with February, 1947.

	February, 1948.	February, 1947.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 73,765,284	[2] 64,645,077
Total withdrawn tax-paid	68,298,862	64,154,579
Ingredient schedule of uncolored oleomargarine:		
Butter culture		3
Butter flavor	305	491
Citric acid		391
Coconut oil [3]	224,115	[4] 1,223,575
Corn oil	3,306	485,531
Cottonseed flakes		8,730
Cottonseed oil	39,980,077	27,121,341
Cottonseed stearine	36	108
Derivative of glycerine	126,569	106,933
Diacetyl	362	222
Lecithin	109,729	76,062
Milk	12,280,277	10,876,784
Monostearine	71,286	72,970
Neutral lard	413,342	248,536
Oleo oil	311,217	306,433
Oleo stearine	221,794	341,350
Oleo stock	27,565	37,915
Peanut oil	425,899	1,327,397
Salt	2,241,710	2,030,290
Soda (benzoate of)	56,020	46,359
Soya bean oil	18,404,442	21,508,703
Sodium sulpho acetate	4,679	
Soya bean stearine		23,805
Vitamin concentrate	12,877	10,061
Total	74,915,607	65,854,090
Total production of colored oleomargarine	6,652,892	[5] 3,105,001
Total withdrawn tax-paid	4,687,268	2,315,812
Ingredient schedule of colored oleomargarine:		
Butter flavor	95	48
Coconut oil [3]	1,054,265	[4] 380,647
Color	6,174	1,918
Corn oil	284	14,923
Cottonseed oil	2,799,049	886,276
Derivative of glycerine	8,296	4,010
Diacetyl	20	1
Lecithin	8,627	1,885
Milk	1,109,818	516,533
Monostearine	2,147	1,361
Neutral lard	19,101	18,081
Oleo oil	13,949	17,740
Oleo stock	2,000	50
Peanut oil	16,203	24,233
Salt	210,744	97,129
Soda (benzoate of)	3,995	1,299
Soya bean oil	1,457,754	1,160,362
Vitamin concentrate	827	338
Total	6,713,348	3,126,839

[1] Of the amount produced, 4,495 pounds were reworked.
[2] Of the amount produced, 1,965 pounds were reworked.
[3] 137,299 pounds of this oil used in oleomargarine manufactured for export by, or from, the United States, and 1,141,081 pounds used in production of the product for domestic consumption.
[4] 380,647 pounds of this oil used in oleomargarine manufactured for export by, or from, the United States, and 1,223,575 pounds used in production of the product for domestic consumption.
[5] Of the amount produced 33 pounds were reworked.

1948–10–12807
MS. 322

Schedule of oleomargarine produced and materials used during the month of March, 1948, as compared with March, 1947.

	March, 1948.	March, 1947.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	65,797,195	65,115,590
Total withdrawn tax-paid	68,674,218	64,031,055
Ingredient schedule of uncolored oleomargarine:		
Butter culture		
Butter flavor	208	689
Citric acid		217
Coconut oil	82,985	1,593,365
Corn oil	79,432	605,379
Cottonseed flakes		2,120
Cottonseed oil	35,475,931	23,582,782
Cottonseed stearine		111
Derivative of glycerine	109,235	109,421
Diacetyl	313	237
Lecithin	94,855	79,937
Milk	11,064,605	11,124,365
Monostearine	64,789	69,474
Neutral lard	201,318	239,686
Oleo oil	141,636	306,960
Oleo stearine	252,253	352,549
Oleo stock	16,152	56,265
Peanut oil	873,159	2,692,834
Salt	2,000,696	2,032,170
Soda (benzoate of)	48,314	45,403
Soya bean oil	16,164,918	24,020,869
Sodium sulpho acetate	4,056	
Soya bean stearine		17,460
Vitamin concentrate	10,208	10,471
Total	66,685,063	66,942,764
Total production of colored oleomargarine	6,020,032	4,896,558
Total withdrawn tax-paid	5,640,245	2,635,784
Ingredient schedule of colored oleomargarine:		
Butter flavor	37	106
Coconut oil	234,220	1,493,267
Color	4,149	3,761
Corn oil	4,539	11,655
Cottonseed flakes		735
Cottonseed oil	3,251,946	891,478
Derivative of glycerine	10,498	9,413
Diacetyl	11	8
Lecithin	7,046	4,506
Milk	1,016,059	792,871
Monostearine	2,592	1,316
Neutral lard	18,280	14,246
Oleo oil	10,794	11,798
Oleo stock	300	850
Peanut oil	43,304	95,580
Salt	182,509	157,176
Soda (benzoate of)	3,612	2,325
Soya bean oil	1,289,677	1,446,221
Vitamin concentrate	569	591
Total	6,080,142	4,937,903

1948–12–12823
MS. 323

Schedule of oleomargarine produced and materials used during the month of April, 1948, as compared with April, 1947.

	April, 1948.	April, 1947.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	61,139,509	41,039,080
Total withdrawn tax-paid	62,711,670	37,547,578
Ingredient schedule of uncolored oleomargarine:		
Butter culture		
Butter flavor	220	282
Citric acid		73
Coconut oil	13,879	1,007,730
Corn oil	74,082	287,361
Cottonseed flakes		5,500
Cottonseed oil	30,027,151	13,898,972
Cottonseed stearine		45
Derivative of glycerine	104,932	67,638
Diacetyl	326	142
Lecithin	96,988	53,270
Milk	10,176,670	7,009,095
Monostearine	46,537	45,630
Neutral lard	11,177	103,973
Oleo oil	19,256	97,818
Oleo stearine	175,159	241,404
Oleo stock	600	7,830
Peanut oil	1,138,377	2,162,300
Salt	1,702,029	1,265,553
Soda (benzoate of)	43,860	32,760
Soya bean oil	18,108,323	15,546,218
Sodium sulpho acetate	1,287	
Soya bean stearine		6,280
Vitamin concentrate	9,442	6,474
Total	61,750,295	41,846,328
Total production of colored oleomargarine	12,939,625	5,717,635
Total withdrawn tax-paid	12,351,363	1,799,863
Ingredient schedule of colored oleomargarine:		
Butter flavor	35	63
Coconut oil	193,990	2,828,283
Color	4,444	5,698
Corn oil	4,410	2,525
Cottonseed flakes		50
Cottonseed oil	6,152,566	586,320
Derivative of glycerine	10,784	11,676
Diacetyl	20	11
Lecithin	15,002	6,529
Milk	2,193,706	950,933
Monostearine	19,206	1,600
Neutral lard		12,519
Oleo oil		10,904
Oleo stock		
Peanut oil	260,329	54,064
Salt	391,682	178,017
Soda (benzoate of)	10,310	4,148
Soya bean oil	3,904,718	1,113,934
Vitamin concentrate	1,837	859
Total	13,163,039	5,768,113

TOBACCO.[a]

1948–1–12727
T. 201

Statement of manufactured tobacco produced, by classes, during the month of October, 1947, as compared with October, 1946.

	October, 1947.	October, 1946.
	Pounds.	*Pounds.*
Plug	5,142,711	4,821,026
Twist	532,616	561,304
Fine-cut chewing	365,824	348,311
Scrap chewing	4,426,148	4,626,963
Smoking	11,682,931	11,676,290
Snuff	4,100,581	3,639,658
Total	26,250,811	25,673,552

1948–3–12744
T. 203

Statement of manufactured tobacco produced, by classes, during the month of November, 1947, as compared with November, 1946.

	November, 1947.	November, 1946.
	Pounds.	*Pounds.*
Plug	3,868,411	4,096,451
Twist	413,689	462,615
Fine-cut chewing	297,557	314,978
Scrap chewing	3,465,318	3,794,033
Smoking	7,887,765	11,266,186
Snuff	2,883,105	3,302,793
Total	18,815,845	23,236,456

1948–5–12759
T. 206

Statement of manufactured tobacco produced, by classes, during the month of December, 1947, as compared with December, 1946.

	December, 1947.	December, 1946.
	Pounds.	*Pounds.*
Plug	3,220,933	3,499,698
Twist	403,733	397,999
Fine-cut chewing	329,669	295,851
Scrap chewing	3,200,221	3,424,987
Smoking	6,998,433	7,409,977
Snuff	3,130,241	3,332,136
Total	17,283,230	18,360,648

[a] All figures are subject to revision until published in the Commissioner's annual report.

1948–7–12781
T. 207

Statement of manufactured tobacco produced, by classes, during the month of January, 1948, as compared with January, 1947.

	January, 1948.	January, 1947
	Pounds.	*Pounds.*
Plug	3, 516, 378	4, 330, 356
Twist	464, 117	498, 779
Fine-cut chewing	363, 354	311, 362
Scrap chewing	3, 383, 002	3, 679, 902
Smoking	8, 016, 503	7, 788, 842
Snuff	3, 488, 974	3, 447, 428
Total	19, 232, 328	20, 106, 669

1948–9–12800
T. 209

Statement of manufactured tobacco produced, by classes, during the month of February, 1948, as compared with February, 1947.

	February, 1948.	February, 1947.
	Pounds.	*Pounds.*
Plug	3, 521, 797	3, 762, 103
Twist	453, 913	442, 037
Fine-cut chewing	334, 305	272, 452
Scrap chewing	3, 183, 326	3, 326, 845
Smoking	7, 791, 083	6, 960, 722
Snuff	3, 264, 989	2, 947, 752
Total	18, 549, 413	17, 711, 911

1948–12–12821
T. 211

Statement of manufactured tobaccco produced, by classes, during the month of March, 1948, as compared with March, 1947.

	March, 1948.	March, 1947.
	Pounds.	*Pounds.*
Plug	3, 910, 307	3, 592, 440
Twist	473, 297	433, 863
Fine-cut chewing	322, 188	248, 094
Scrap chewing	3, 560, 150	3, 428, 908
Smoking	8, 910, 408	8, 309, 512
Snuff	3, 878, 937	3, 199, 588
Total	21, 055, 287	19, 212, 395

CIGARETTES.[a]

1948–1–12728
T. 202

Preliminary statement of small cigarettes removed for consumption during the month of November, 1947, as compared with removals for the same month of 1946.

Removals.	November, 1947.	November, 1946.
	Number.	*Number.*
Tax-paid	27,044,062,530	27,360,115,030
Tax-free	2,536,055,510	3,165,329,951
Total	29,580,118,040	30,525,444,981

1948–3–12745
T. 204

Preliminiary statement of small cigarettes removed for consumption during the month of December, 1947, as compared with removals for the same month of 1946.

Removals.	December, 1947.	December, 1946.
	Number.	*Number.*
Tax-paid	24,945,712,201	22,688,232,670
Tax-free	2,997,209,786	2,958,769,035
Total	27,942,921,987	25,647,001,705

1948–5–12757
T. 205

Preliminary statement of small cigarettes removed for consumption during the month of January, 1948, as compared with removals for the same month of 1947.

Removals.	January, 1948.	January, 1947.
	Number.	*Number*
Tax-paid	27,273,180,851	28,470,994,735
Tax-free	3,212,577,867	3,518,703,725
Total	30,485,758,718	31,989,698,460

1948–7–12782
T. 208

Preliminary statement of small cigarettes removed for consumption during the month of February, 1948, as compared with removals for the same month of 1947.

Removals.	February, 1948.	February, 1947.
	Number.	*Number.*
Tax-paid	23,472,484,851	25,594,115,730
Tax-free	3,577,822,404	2,722,912,109
Total	27,050,307,255	28,317,027,839

[a] All figures are subject to revision until published in the Commissioner's annual report.

1948–9–12801
T. 210

Preliminary statement of small cigarettes removed for consumption during the month of March, 1948, as compared with removals for the same month of 1947.

Removals.	March, 1948.	March, 1947.
	Number.	*Number.*
Tax-paid	29, 252, 186, 770	26, 945, 827, 165
Tax-free	3, 196, 672, 680	3, 242, 873, 899
Total	32, 448, 859, 450	30, 188, 701, 064

1948–12–12822
T. 212

Preliminary statement of small cigarettes removed for consumption during the month of April, 1948, as compared with removals for the same month of 1947.

Removals.	April, 1948.	April, 1947.
	Number.	*Number.*
Tax-paid	31, 617, 679, 245	27, 244, 132, 408
Tax-free	2, 422, 121, 631	2, 804, 976, 676
Total	34, 039, 800, 876	30, 049, 109, 084

LEGISLATION.

REVENUE ACT OF 1948.

1948–9–12798

H. R. 4790. PUBLIC LAW 471, EIGHTIETH CONGRESS
[CHAPTER 168, SECOND SESSION].

An Act To reduce individual income tax payments, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles and sections according to the following Table of Contents, may be cited as the "Revenue Act of 1948":

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TITLE I—INCOME TAX REDUCTION.

Sec. 101. Reduction of normal tax and surtax.
Sec. 102. Reduction in Supplement T tax.
Sec. 103. Income of husband and wife.
Sec. 104. Technical amendments.
Sec. 105. Taxable years to which amendments applicable.

TITLE II—CREDITS AGAINST NET INCOME FOR NORMAL TAX AND SURTAX.

Sec. 201. Additional credits against net income for normal tax and surtax.
Sec. 202. Technical amendments.
Sec. 203. Taxable years to which amendments applicable.

TITLE III—HUSBAND AND WIFE.

PART I—INCOME TAX.

Sec. 301. Splitting of income.
Sec. 302. Standard deduction.
Sec. 303. Joint returns of husband and wife.
Sec. 304. Deduction for medical expenses.
Sec. 305. Taxable years to which amendments applicable.

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SUBPART 1—REPEAL OF 1942 COMMUNITY PROPERTY AMENDMENTS.

Sec. 351. Repeal of community property estate tax amendments.

SUBPART 2—MARITAL DEDUCTION FOR BEQUESTS, ETC., TO SPOUSE.

Sec. 361. Marital deduction.
Sec. 362. Property previously taxed.
Sec. 363. Credit for gift tax.
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Sec. 365. Liability of life insurance beneficiaries, etc.
Sec. 366. Basis of surviving spouse's interest in community property.

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Sec. 371. Gifts of community property.
Sec. 372. Marital deduction.
Sec. 373. Technical amendment.
Sec. 374. Gift of husband or wife to third party.

TITLE IV—ADJUSTED GROSS INCOME OF LESS THAN $5,000.

Sec. 401. Individuals with adjusted gross incomes of less than $5,000.

TITLE V—REDUCTION IN WITHHOLDING OF TAX AT SOURCE ON WAGES.

Sec. 501. Percentage method.
Sec. 502. Wage bracket withholding.
Sec. 503. Effective date.

TITLE VI—FISCAL YEAR TAXPAYERS.

Sec. 601. Fiscal year taxpayers.

TITLE I—INCOME TAX REDUCTION.

SEC. 101. REDUCTION OF NORMAL TAX AND SURTAX.

Section 12(c) of the Internal Revenue Code is hereby amended to read as follows:

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

"(1) 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.

"(2) In no event shall the combined normal tax and surtax exceed 77 per centum of the net income."

SEC. 102. REDUCTION IN SUPPLEMENT T TAX.

For reduction in the tax under Supplement T of Chapter 1 of the Internal Revenue Code (tax table which may be used by taxpayer at his election, if his adjusted gross income is less than $5,000), see section 401.

SEC. 103. INCOME OF HUSBAND AND WIFE.

For tax in case of joint return of husband and wife (the so-called "splitting of income"), see section 301.

SEC. 104. TECHNICAL AMENDMENTS.

(a) Section 11 of the Internal Revenue Code (relating to the normal tax on individuals) is hereby amended by striking out "by 5 per centum thereof" and inserting in lieu thereof "as provided in section 12(c)".

(b) Section 12(b) of the Internal Revenue Code (relating to the rate of surtax on individuals) is hereby amended by striking out "by 5 per centum thereof" and inserting in lieu thereof "as provided in subsection (c) of this section".

(c) Subsections (d), (e), (f), (g), and (h) of section 12 of the Internal Revenue Code are amended to read as follows:

"(e) COMPUTATION OF TAX WITHOUT REGARD TO CREDITS AGAINST TAX.—In the application of this section, the combined normal tax and surtax shall be computed without regard to the credits provided in sections 31, 32, and 35.

"(f) ASCERTAINMENT OF NORMAL TAX AND SURTAX SEPARATELY.—Whenever it is necessary to ascertain the normal tax and the surtax separately, 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.

"(g) CROSS REFERENCES.—

"(1) ALTERNATIVE TAX.—For alternative tax which may be elected if adjusted gross income is less than $5,000, see Supplement T.

"(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).

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

"(4) AVOIDANCE OF SURTAXES BY INCORPORATION.—For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102.

"(5) SALE OF OIL OR GAS PROPERTIES.—For limitation of surtax attributable to the sale of oil or gas properties, see section 105."

SEC. 105. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.

The amendments made by this title shall be applicable with respect to taxable years beginning after December 31, 1947. For treatment of taxable years beginning in 1947 and ending in 1948, see section 601.

TITLE II—CREDITS AGAINST NET INCOME FOR NORMAL TAX AND SURTAX.

SEC. 201. ADDITIONAL CREDITS AGAINST NET INCOME FOR NORMAL TAX AND SURTAX.

Paragraphs (1) and (2) of section 25(b) of the Internal Revenue Code are hereby amended to read as follows:

"(1) CREDITS.—There shall be allowed for the purposes of both the normal tax and the surtax, the following credits against net income:

"(A) An exemption of $600 for the taxpayer; and an additional exemption of $600 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer;

"(B) (i) An additional exemption of $600 for the taxpayer if he has attained the age of 65 before the close of his taxable year; and

"(ii) An additional exemption of $600 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse has attained the age of 65 before the close of such taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer;

"(C) (i) An additional exemption of $600 for the taxpayer if he is blind at the close of his taxable year; and

"(ii) An additional exemption of $600 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this clause the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer, unless the spouse dies during such taxable year, in which case such determination shall be made as of the time of such death;

"(iii) For the purposes of this subparagraph an individual is blind only if either: his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees;

"(D) 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 $500, except that the exemption shall not be allowed in respect of a dependent who has made a joint return with his spouse under section 51 for the taxable year beginning in such calendar year.

"(2) DETERMINATIN OF STATUS.—For the purposes of this subsection—

"(A) the determination of whether an individual is married shall be made as of the close of his taxable year, unless his spouse dies during his taxable year, in which case such determination shall be made as of the time of such death; and

"(B) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married."

SEC. 202. TECHNICAL AMENDMENTS.

(a) DECLARATION OF ESTIMATED TAX.—Section 58(a) of the Internal Revenue Code (relating to requirement of declaration of estimated tax) is hereby amended to read as follows:

"(a) REQUIREMENT OF DECLARATION.—Every individual (other than an estate or trust and other than a nonresident alien with respect to whose wages, as defined in section 1621(a), withholding under Subchapter D of Chapter 9 is not

made applicable) shall, at the time prescribed in subsection (d), make a declaration of his estimated tax for the taxable year if—

"(1) his gross income from wages (as defined in section 1621) can reasonably be expected to exceed the sum of $4,500 plus $600 with respect to each exemption provided in section 25(b); or

"(2) his gross income from sources other than wages (as defined in section 1621) can reasonably be expected to exceed $100 for the taxable year and his gross income to be $600 or more."

(b) WITHHOLDING EXEMPTIONS.—

(1) IN GENERAL.—Section 1622(h)(1) of the Internal Revenue Code is hereby amended to read as follows:

"(1) IN GENERAL.—An employee receiving wages shall on any day be entitled to the following withholding exemptions:

"(A) An exemption for himself.

"(B) One additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 25(b)(1)(B)(i) (relating to old age) for the taxable year under Chapter 1 in respect of which amounts deducted and withheld under this subchapter in the calendar year in which such day falls are allowed as a credit.

"(C) One additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 25(b)(1)(C)(i) (relating to the blind) for the taxable year under Chapter 1 in respect of which amounts deducted and withheld under this subchapter in the calendar year in which such day falls are allowed as a credit.

"(D) If the employee is married, any exemption to which his spouse is entitled, or would be entitled if such spouse were an employee receiving wages, under subparagraph (A), (B), or (C), but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption.

"(E) An exemption for each individual with respect to whom, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 25(b)(1)(D) for the taxable year under Chapter 1 in respect of which amounts deducted and withheld under this subchapter in the calendar year in which such day falls are allowed as a credit."

(2) STATUS DETERMINATION DATE.—In the case of an individual entitled to an additional withholding exemption under section 1622(h)(1) of the Internal Revenue Code by reason of the amendment made thereto by paragraph (1) of this subsection, the term "status determination date" as used in section 1622(h)(3)(B) of such Code includes also the ninetieth day after the date of the enactment of this Act.

(c) REQUIREMENT OF RETURNS.—

(1) INDIVIDUAL RETURNS.—Section 51(a) of the Internal Revenue Code (relating to the requirement of individual returns) is hereby amended by striking out "$500" and inserting in lieu thereof "$600".

(2) FIDUCIARY RETURNS.—Section 142(a) of such Code (relating to the requirement of fiduciary returns) is hereby amended by striking out "$500" wherever appearing therein and inserting in lieu thereof "$600".

(3) INFORMATION RETURNS.—Section 147(a) of such Code (relating to returns of information) is hereby amended by striking out "$500" wherever appearing therein and inserting in lieu thereof "$600".

(d) CREDIT OF ESTATE AGAINST NET INCOME.—Section 163(a)(1) of such Code (relating to credits against net income of an estate) is hereby amended by striking out "$500" and inserting in lieu thereof "$600".

(e) REPEAL OF DEDUCTION FOR BLIND INDIVIDUALS.—Effective with respect to taxable years beginning after December 31, 1947, section 23(y) of such Code (relating to special deduction for blind individuals) is repealed.

SEC. 203. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.

The amendments made by this title shall be applicable with respect to taxable years beginning after December 31, 1947. For treatment of taxable years beginning in 1947 and ending in 1948, see section 601.

TITLE III—HUSBAND AND WIFE.

Part I—Income Tax.

SEC. 301. SPLITTING OF INCOME.

Section 12 of the Internal Revenue Code (relating to surtax of individuals) is hereby amended by adding after subsection (c) of such section the following new subsection:

"(d) TAX IN CASE OF JOINT RETURN.—In the case of a joint return of husband and wife under section 51(b), the combined normal tax and surtax under section 11 and subsection (b) of this section shall be twice 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 were reduced by one-half."

SEC. 302. STANDARD DEDUCTION.

(a) INCREASE OF STANDARD DEDUCTION IN CASE OF JOINT RETURN OR RETURN BY UNMARRIED PERSON.—Section 23(aa)(1)(A) of the Internal Revenue Code (relating to the standard deduction) is hereby amended to read as follows:

"(A) Adjusted Gross Income $5,000 or More.—If his adjusted gross income is $5,000 or more, the standard deduction shall be $1,000 or an amount equal to 10 per centum of the adjusted gross income, whichever is the lesser, except that in the case of a separate return by a married individual, the standard deduction shall be $500."

(b) ELECTION BY HUSBAND AND WIFE.—Section 23(aa)(4) of such Code is hereby amended to read as follows:

"(4) HUSBAND AND WIFE.—In the case of husband and wife, the standard deduction shall not be allowed to either if the net income of one of the spouses is determined without regard to the standard deduction."

(c) DETERMINATION OF STATUS.—Section 23(aa) of such Code is hereby amended by adding at the end thereof the following new paragraph:

"(6) DETERMINATION OF STATUS.—For the purposes of this subsection—

"(A) the determination of whether an individual is married shall be made as of the close of his taxable year, unless his spouse dies during his taxable year, in which case such determination shall be made as of the time of such death; and

"(B) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married."

SEC. 303. JOINT RETURNS OF HUSBAND AND WIFE.

Section 51(b) of the Internal Revenue Code (relating to joint returns) is hereby amended to read as follows:

"(b) HUSBAND AND WIFE.—

"(1) IN GENERAL.—A husband and wife may make a single return jointly. Such a return may be made even though one of the spouses has neither gross income nor deductions. If a joint return is made the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

"(2) NONRESIDENT ALIEN.—No joint return may be made if either the husband or wife at any time during the taxable year is a nonresident alien.

"(3) DIFFERENT TAXABLE YEARS.—No joint return shall be made if the husband and wife have different taxable years; except that if such taxable years begin on the same day and end on different days because of the death of either or of both, then the joint return may be made with respect to the taxable year of each. The above exception shall not apply if the surviving spouse remarries before the close of his taxable year, nor if the taxable year of either spouse is a fractional part of a year under section 47(a).

"(4) JOINT RETURN AFTER DEATH.—In the case of the death of one spouse or both spouses the joint return with respect to the decedent may be made only by his executor or administrator; except that in the case of the death of one spouse the joint return may be made by the surviving spouse with respect to both himself and the decedent if (A) no return for the taxable year has been made by the decedent, (B) no executor or administrator has been appointed, and (C) no executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse. If an executor or administrator of the decedent is appointed after the making of the joint

return by the surviving spouse, the executor or administrator may disaffirm such joint return by making, within one year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return.

"(5) DETERMINATION OF STATUS.—For the purposes of this section—

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

"(i) if both have the same taxable year—as of the close of such year; and

"(ii) if one dies before the close of the taxable year of the other—as of the time of such death; and

"(B) an individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

"(6) TAX IN CASE OF JOINT RETURN.—For determination of combined normal tax and surtax under section 11 and section 12(b) in case of joint return under this subsection, see section 12(d). For tax in case of joint return of husband and wife electing to pay the tax under Supplement T, see section 400."

SEC. 304. DEDUCTION FOR MEDICAL EXPENSES.

Section 23(x) of the Internal Revenue Code (relating to deduction of medical, etc., expenses) is hereby amended by striking out the second and third sentences thereof and inserting in lieu thereof the following: "The deduction shall not be in excess of $1,250 multiplied by the number of exemptions allowed under section 25(b) for the taxable year (exclusive of exemptions allowed under section 25(b)(1) (B) or (C)), with a maximum deduction of $2,500, except that the maximum deduction shall be $5,000 in the case of a joint return of husband and wife under section 51(b)."

SEC. 305. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.

The amendments made by sections 301, 302, 303, and 304 shall be applicable with respect to taxable years beginning after December 31, 1947. The amendment made by section 303 shall also be applicable to taxable years of both husband and wife beginning on the same day in 1947 if at least one of such taxable years ends in 1948. For treatment of taxable years beginning in 1947 and ending in 1948, see section 601.

Part II—Estate Tax.

SUBPART 1—REPEAL OF 1942 COMMUNITY PROPERTY AMENDMENTS.

SEC. 351. REPEAL OF COMMUNITY PROPERTY ESTATE TAX AMENDMENTS.

(a) Effective with respect to estates of decedents dying after December 31, 1947, sections 811(d)(5), 811(e)(2) and 811(g)(4) of the Internal Revenue Code (relating to community property) are hereby repealed.

(b) Such section 811(e) is further amended—

(1) by striking out of the heading of such subsection the words "AND COMMUNITY"; and

(2) by striking out of paragraph (1) the following: "JOINT INTERESTS.—"

(c) Notwithstanding the repeal of sections 811(d)(5), 811(e)(2), and 811(g)(4) provided in subsection (a), the taxes imposed under chapter 3 of the Internal Revenue Code upon the transfer of the net estate of any decedent dying after December 31, 1947, and on or before the date of the enactment of this Act shall not exceed the taxes which would have been imposed under such chapter 3 upon such transfer if this section had not been enacted.

SUBPART 2—MARITAL DEDUCTION FOR BEQUESTS, ETC., TO SPOUSE.

SEC. 361. MARITAL DEDUCTION.

(a) Section 812 of the Internal Revenue Code (relating to deductions in computing net estate in the case of a citizen or resident of the United States) is hereby amended by adding at the end thereof a new subsection to read as follows:

"(e) BEQUESTS, ETC., TO SURVIVING SPOUSE.—
"(1) ALLOWANCE OF MARITAL DEDUCTION.—
"(A) In General.—An amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.
"(B) Life Estate or Other Terminal Interest.—Where, upon the lapse of time, upon the occurrence of an event or contingency, or upon the failure of an event or contingency to occur, such interest passing to the surviving spouse will terminate or fail, no deduction shall be allowed with respect to such interest—
"(i) if an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse (or the estate of such spouse); and
"(ii) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse:
and no deduction shall be allowed with respect to such interest (even if such deduction is not disallowed under clauses (i) and (ii))—
"(iii) if such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust.
For the purposes of this subparagraph, an interest shall not be considered as an interest which will terminate or fail merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term.
"(C) Interest In Unidentified Assets.—Where the assets (included in the decedent's gross estate) out of which, or the proceeds of which, an interest passing to the surviving spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets passed from the decedent to such spouse, then the value of such interest passing to such spouse shall, for the purposes of subparagraph (A), be reduced by the aggregate value of such particular assets.
"(D) Interest of Spouse Conditional on Survival For Limited Period.—For the purposes of subparagraph (B) an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail upon the death of such spouse if—
"(i) such death will cause a termination or failure of such interest only if it occurs within a period not exceeding six months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of the decedent and the surviving spouse, or only if it occurs in the case of either such event; and
"(ii) such termination or failure does not in fact occur.
"(E) Valuation Of Interest Passing To Surviving Spouse.—In determining for the purposes of subparagraph (A) the value of any interest in property passing to the surviving spouse for which a deduction is allowed by this subsection—
"(i) there shall be taken into account the effect which a tax imposed by this chapter, or any estate, succession, legacy, or inheritance tax, has upon the net value to the surviving spouse of such interest; and
"(ii) where such interest or property is incumbered in any manner, or where the surviving spouse incurs any obligation imposed by the decedent with respect to the passing of such interest, such incumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to such spouse of such interest were being determined.
"(F) Trust With Power Of Appointment In Surviving Spouse.—In the case of an interest in property passing from the decedent in trust, if under the terms of the trust his surviving spouse is entitled for life to all the income from the corpus of the trust, payable an-

nually or at more frequent intervals, with power in the surviving spouse to appoint the entire corpus free of the trust (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the corpus to any person other than the surviving spouse—

"(i) the interest so passing shall, for the purposes of subparagraph (A), be considered as passing to the surviving spouse; and

"(ii) no part of the interest so passing shall, for the purposes of subparagraph (B)(i), be considered as passing to any person other than the surviving spouse.

This subparagraph shall be applicable only if, under the terms of the trust, such power in the surviving spouse to appoint the corpus, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

"(G) Life Insurance With Power of Appointment in Surviving Spouse.—In the case of proceeds of insurance upon the life of the decedent receivable in annual or more frequent installments commencing within one year after the decedent's death, if under the terms of the policy all amounts payable during the life of the surviving spouse are payable only to such spouse, and if such spouse has the power to appoint all amounts payable after such spouse's death (exercisable in favor of the estate of such spouse, whether or not the power is exercisable in favor of others)—

"(i) such proceeds shall, for the purposes of subparagraph (A), be considered as passing to the surviving spouse, and

"(ii) no part of such proceeds shall, for the purposes of subparagraph (B)(i), be considered as passing to any person other than the surviving spouse.

This subparagraph shall be applicable only if, under the terms of the policy, such power in the surviving spouse to appoint, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

"(H) Limitatiton On Aggregate Of Deducations.—The aggregate amount of the deductions allowed under this paragraph (computed without regard of this subparagraph) shall not exceed 50 per centum of the value of the adjusted gross estate, as defined in paragraph (2).

"(2) COMPUTATION OF ADJUSTED GROSS ESTATE.—

"(A) General Rule.—Except as provided in subparagraph (B) of this paragraph the adjusted gross estate shall, for the purposes of paragraph (1)(H), be computed by subtracting from the entire value of the gross estate the aggregate amount of the deductions allowed by subsection (b) of this section.

"(B) Special Rule In Cases Involving Community Property.—If the decedent and his surviving spouse at any time held property as community property under the law of any State, Territory, or possession of the United States, or of any foreign country, then the adjusted gross estate shall, for the purposes of paragraph (1)(H), be determined by subtracting from the entire value of the gross estate the sum of:

"(i) the value of property which is at the time of the death of the decedent held as such community property; and

"(ii) the value of property transferred by the decedent during his life, if at the time of such transfer the property was held as such community property; and

"(iii) the amount receivable as insurance under policies upon the life of the decedent to the extent purchased with premiums or other consideration paid out of property held as such community property; and

"(iv) an amount which bears the same ratio to the aggregate of the deductions allowed under subsection (b) of this section which the value of the property included in the gross estate, diminished by the amount subtracted under clauses (i), (ii), and (iii) of this subparagraph, bears to the entire value of the gross estate.

For the purposes of clauses (i), (ii), and (iii) community property (except property which is considered as community property solely by reason of the provisions of subparagraph (C) of this paragraph) shall be considered as not 'held as such community property' as of any moment

of time, if, in case of the death of the decedent at such moment, such property (and not merely one-half thereof) would be or would have been includible in determining the value of his gross estate without regard to the provisions of section 811(e)(2). The amount to be subtracted under clause (i), (ii), or (iii) shall not exceed the value of the interest in the property described therein which is included in determining the value of the gross estate.

"(C) Same—Conversion Into Separate Property.—

"(i) If during the calendar year 1942 or after the date of the enactment of the Revenue Act of 1948, property held as such community property (unless considered by reason of subparagraph (B) of this paragraph as not so held) was by the decedent and the surviving spouse converted, by one transaction or a series of transactions, into separate property of the decedent and his spouse (including any form of co-ownership by them), the separate property so acquired by the decedent and any property acquired at any time by the decedent in exchange therefor (by one exchange or a series of exchanges) shall, for the purposes of clauses (i), (ii), and (iii) of subparagraph (B), be considered as 'held as such community property'.

"(ii) Where the value (at the time of such conversion) of the separate property so acquired by the decedent exceeded the value (at such time) of the separate property so acquired by the decedent's spouse, the rule in clause (i) shall be applied only with respect to the same portion of such separate property of the decedent as the portion which the value (as of such time) of such separate property so acquired by the decedent's spouse is of the value (as of such time) of the separate property so acquired by the decedent.

"(3) DEFINITION.—For the purposes of this subsection an interest in property shall be considered as passing from the decedent to any person if and only if—

"(A) such interest is bequeathed or devised to such person by the decedent; or

"(B) such interest is inherited by such person from the decedent; or

"(C) such interest is the dower or curtesy interest (or statutory interest in lieu thereof) of such person as surviving spouse of the decedent; or

"(D) such interest has been transferred to such person by the decedent at any time; or

"(E) such interest was, at the time of the decedent's death held by such person and the decedent (or by them and any other person) in joint ownership with right of survivorship; or

"(F) the decedent had a power (either alone or in conjunction with any person) to appoint such interest and if he appoints or has appointed such interest to such person, or if such person takes such interest in default upon the release or nonexercise of such power; or

"(G) such interest consists of proceeds of insurance upon the life of the decedent receivable by such person.

Except as provided in subparagraph (F) or (G) of paragraph (1), where at the time of the decedent's death it is not possible to ascertain the particular person or persons to whom an interest in property may pass from the decedent, such interest shall, for the purposes of clauses (i) and (ii) of subparagraph (B) of paragraph (1), be considered as passing from the decedent to a person other than the surviving spouse.

"(4) DISCLAIMERS.—

"(A) By Surviving Spouse.—If under this subsection an interest would, in the absence of a disclaimer by the surviving spouse, be considered as passing from the decedent to such spouse, and if a disclaimer of such interest is made by such spouse, then such interest shall, for the purposes of this subsection, be considered as passing to the person or persons entiled to receive such interest as a result of the disclaimer.

"(B) Disclaimer By Any Other Person.—If under this subsection an interest would, in the absence of a disclaimer by any person other than the surviving spouse, be considered as passing from the decedent to such person, and if a disclaimer of such interest is made by such person and as a result of such disclaimer the surviving spouse is entitled

to receive such interest, then such interest shall, for the purposes of this subsection, be considered as passing, not to the surviving spouse, but to the person who made the disclaimer, in the same manner as if the disclaimer had not been made."

(b) The amendment made by subsection (a) of this section shall be applicable only with respect to estates of decedents dying after December 31, 1947.

SEC. 362. PROPERTY PREVIOUSLY TAXED.

(a) Section 812(c) of the Internal Revenue Code (relating to the deduction for property previously taxed) is hereby amended by adding after the first paragraph two new paragraphs to read as follows:

"The following property shall not, for the purposes of this subsection, be considered as property with respect to which a deduction may be allowed: (A) property received from a prior decedent who died after December 31, 1947, and was at the time of such death the decedent's spouse, (B) property received by gift after the date of the enactment of the Revenue Act of 1948 from a donor who at the time of the gift was the decedent's spouse, and (C) property acquired in exchange for property described in clause (A) or (B).

"Where, under the provisions of section 1000(f), a gift received by the decedent was considered as made one-half by the donor and one-half by the donor's spouse, one-half of the gift shall be considered as received by the decedent from each such spouse."

(b) Section 812(c) is further amended by striking out "subsections (a) and (d)" and inserting in lieu thereof "subsections (a), (d), and (e)".

SEC. 363. CREDIT FOR GIFT TAX.

(a) Section 813(a)(2)(A) of the Internal Revenue Code (relating to credit for gift tax) is hereby amended by inserting before the period at the end thereof the following: "reduced by the aggregate amount of the deductions allowed under subsections (d) and (e) of section 812".

(b) Subparagraph (B) of section 813(a)(2) of the Internal Revenue Code (relating to credit for gift tax) is hereby amended to read as follows:

"(B) In applying, with respect to any gift, the ratio stated in subparagraph (A), the value at the time of the gift or at the time of the death, referred to in such ratio, shall be reduced—

"(i) by such amount as will properly reflect the amount of such gift which was excluded in determining (for the purposes of section 1003(a), or of section 504(a) of the Revenue Act of 1932) the total amount of gifts made during the year in which the gift was made;

"(ii) if a deduction with respect to such gift is allowed under section 812(e) (the so-called 'marital deduction')—then by an amount which bears the same ratio to such value (reduced as provided in clause (i) of this subparagraph) as the aggregate amount of the marital deductions allowed under section 812(e) bears to the aggregate amount of such marital deductions computed without regard to subparagraph (H) of section 812(e)(1); and

"(iii) if a deduction with respect to such gift is allowed under section 812(d) (the so-called 'charitable deduction')—then by the amount of such value, reduced as provided in clause (i) of this subparagraph.

"(C) Where the decedent was the donor of the gift but, under the provisions of section 1000(f), the gift was considered as made one-half by his spouse—

"(i) the term 'the amount of the tax paid under chapter 4', as used in subparagraph (A) of this paragraph, includes the amounts paid with respect to each half of such gift, the amount paid with respect to each being computed in the manner provided in subparagraph (D); and

"(ii) in applying, with respect to such gift, the ratio stated in subparagraph (A) of this paragraph, the value at the time of the gift or at the time of the death, referred to in such ratio, includes such value with respect to each half of such gift, each such value being reduced as provided in clause (i) of subparagraph (B) of this paragraph.

"(D) (i) For the purposes of subparagraph (A), the amount of tax paid under chapter 4, or under Title III of the Revenue Act of 1932, with respect to any gift shall be an amount which bears the same ratio to the total tax paid for the year in which the gift was made as the amount of such gift bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

"(ii) For the purposes of clause (i) the 'amount of such gift' shall be the amount included with respect to such gift in determining (for the purposes of section 1003(a), or of section 504(a) of the Revenue Act of 1932) the total amount of gifts made during such year, reduced by the amount of any deduction allowed with respect to such gift under section 1004(a)(2), or under section 505(a)(2) of the Revenue Act of 1932 (the so-called 'charitable deduction'), or under section 1004(a)(3) (the so-called 'marital deduction')."

(c) Section 936(b)(1) of the Internal Revenue Code (relating to credit for gift tax) is hereby amended by inserting after the words "entire gross estate" in clause (A) thereof the following: "reduced by the aggregate amount of the deductions allowed under subsections (d) and (e) of section 812".

(d) Paragraph (2) of section 936(b) of the Internal Revenue Code (relating to credit for gift tax) is hereby amended to read as follows:

"(2) In applying, with respect to any gift, the ratio stated in clause (A) of paragraph (1), the value at the time of the gift or at the time of the death, referred to in such ratio, shall be reduced—

"(A) by such amount as will properly reflect the amount of such gift which was excluded in determining (for the purposes of section 1003(a), or of section 504(a) of the Revenue Act of 1932) the total amount of gifts made during the year in which the gift was made;

"(B) if a deduction with respect to such gift is allowed under section 812(e) (the so-called 'marital deduction')—then by an amount which bears the same ratio to such value (reduced as provided in subparagraph (A) of this paragraph) as the aggregate amount of the marital deductions allowed under section 812(e) bears to the aggregate amount of such marital deductions computed without regard to subparagraph (H) of section 812(e)(1); and

"(C) if a deduction with respect to such gift is allowed under section 812(d) (the so-called 'charitable deduction')—then by the amount of such value, reduced as provided in subparagraph (A) of this paragraph.

"(3) Where the decedent was the donor of the gift but, under the provisions of section 1000(f), the gift was considered as made one-half by his spouse—

"(A) the term 'the amount of the tax paid under chapter 4', as used in paragraph (1) of this subsection, includes the amounts paid with respect to each half of such gift, the amount paid with respect to each being computed in the manner provided in paragraph (4); and

"(B) in applying, with respect to such gift, the ratio stated in clause (A) of paragraph (1), the value at the time of the gift or at the time of the death, referred to in such ratio, includes such value with respect to each half of such gift, each such value being reduced as provided in subparagraph (A) of paragraph (2).

"(4) (A) For the purposes of paragraph (1), the amount of tax paid under chapter 4, or under Title III of the Revenue Act of 1932, with respect to any gift shall be an amount which bears the same ratio to the total tax paid for the year in which the gift was made as the amount of such gift bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

"(B) For the purposes of subparagraph (A) the 'amount of such gift' shall be the amount included with respect to such gift in determining (for the purposes of section 1003(a), or of section 504(a) of the Revenue Act of 1932) the total amount of gifts made during such year, reduced by the amount of any deduction allowed with respect to such gift under section 1004(a)(2), or under section 505(a)(2) of the Revenue Act of 1932 (the so-called 'charitable deduction'), or under section 1004(a)(3) (the so-called 'marital deduction')."

(e) The amendments made by this section shall be applicable only with respect to the estates of decedents dying after December 31, 1947.

SEC. 364. OPTIONAL VALUATION.

(a) The last sentence of section 811(j) of the Internal Revenue Code (relating to optional valuation) is hereby amended to read as follows: "In case of an election made by the executor under this subsection, then—

"(A) for the purposes of the deduction under section 812(d) or section 861(a)(3), any bequest, legacy, devise, or transfer enumerated therein, and

"(B) for the purposes of the deduction under section 812(e), any interest in property passing to the surviving spouse, shall be valued as of the date of the decedent's death with adjustment for any difference in value (not due to mere lapse of time or the occurrence or nonoccurrence of a contingency) of the property as of the date one year after the decedent's death (substituting, in the case of property distributed by the executor or trustee, or sold, exchanged, or otherwise disposed of, during such one-year period, the date thereof)."

(b) The amendment made by this section shall be applicable only with respect to estates of decedents dying after December 31, 1947.

SEC. 365. LIABILITY OF LIFE INSURANCE BENEFICIARIES, ETC.

(a) Section 826(c) of the Internal Revenue Code (relating to liability of life insurance beneficiaries) is hereby amended by adding at the end thereof the following new sentence: "In the case of such proceeds receivable by the surviving spouse of the decedent for which a deduction is allowed under section 812(e) (the so-called 'marital deduction'), this subsection shall not apply to such proceeds except as to the amount thereof in excess of the aggregate amount of the marital deductions allowed under such subsection."

(b) Section 826(d) of the Internal Revenue Code (relating to liability of recipient of property over which decedent had power of appointment) is hereby amended by adding at the end thereof the following new sentence: "In the case of such property received by the surviving spouse of the decedent for which a deduction is allowed under section 812(e) (the so-called 'marital deduction'), this subsection shall not apply to such property except as to the value thereof reduced by an amount equal to the excess of the aggregate amount of the marital deductions allowed under section 812(e) over the amount of proceeds of insurance upon the life of the decedent receivable by the surviving spouse for which proceeds a marital deduction is allowed under such subsection."

(c) The amendments made by this section shall be applicable only with respect to estates of decedents dying after December 31, 1947.

SEC. 366. BASIS OF SURVIVING SPOUSE'S INTEREST IN COMMUNITY PROPERTY.

(a) Section 113(a)(5) of the Internal Revenue Code (relating to basis of property transmitted at death) is hereby amended by adding at the end thereof the following new sentences: "For the purposes of this paragraph the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, Territory or possession of the United States or any foreign country shall be considered to be property 'acquired by bequest, devise, or inheritance' from the decedent, if the death of the decedent was after December 31, 1947, and if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under section 811. In the case of property held by a decedent and his surviving spouse under the community property laws of any State, Territory, or possession of the United States or any foreign country, if the value of any part of the surviving spouse's one-half share of such property was included in determining the value of the gross estate of the decedent and a tax under chapter 3 was payable upon the transfer of the net estate of the decedent, then for the purposes of this paragraph such part of such one-half share of the surviving spouse shall be considered to be property 'acquired by bequest, devise, or inheritance' from the decedent, if the death of the decedent was after the date of the enactment of the Revenue Act of 1942 and on or before December 31, 1947; but nothing in this sentence shall reduce basis below that which would exist if the Revenue Act of 1948 had not been enacted."

(b) If the allowance of a credit or refund of any overpayment of tax resulting from the application of this section is prevented on the date of the enactment of

this Act, or within one year from such date, by the operation of any law or rule of law (other than section 3761 of the Internal Revenue Code, relating to compromises), credit or refund of such overpayment may, nevertheless, be allowed or made if claim therefor is filed within one year from the date of the enactment of this Act. No interest shall be paid on any overpayment resulting from the application of the last sentence of section 113(a)(5) of such code, as amended by this section, if such overpayment is for a taxable year beginning before January 1, 1948.

Part III—Gift Tax.

SEC. 371. GIFTS OF COMMUNITY PROPERTY.

Section 1000(d) of the Internal Revenue Code (relating to gifts of property held as community property) is amended by adding at the end thereof a new sentence to read as follows: "This subsection shall be applicable only to gifts made after the calendar year 1942 and on or before the date of the enactment of the Revenue Act of 1948."

SEC. 372. MARITAL DEDUCTION.

Section 1004(a) of the Internal Revenue Code (relating to deductions in computing net gifts in the case of a citizen or resident of the United States) is hereby amended by adding at the end thereof a new paragraph to read as follows:

"(3) GIFT TO SPOUSE.—

"(A) In General.—Where the donor transfers during the calendar year (and after the date of the enactment of the Revenue Act of 1948) by gift an interest in property to a donee who at the time of the gift is the donor's spouse—an amount with respect to such interest equal to one-half of its value.

"(B) Life Estate or Other Terminable Interest.—Where, upon the lapse of time, upon the occurrence of an event or contingency, or upon the failure of an event or contingency to occur, such interest transferred to the spouse will terminate or fail, no deduction shall be allowed with respect to such interest—

"(i) if the donor retains in himself, or transfers or has transferred (for less than an adequate and full consideration in money or money's worth) to any person other than such donee spouse (or the the estate of such spouse), an interest in such property, and if by reason of such retention or transfer the donor (or his heirs or assigns) or such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse; or

"(ii) if the donor immediately after the transfer to the donee spouse has a power to appoint an interest in such property which he can exercise (either alone or in conjunction with any person) in such manner that the appointee may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse. For the purposes of this clause the donor shall be considered as having immediately after the transfer to the donee spouse such power to appoint even though such power cannot be exercised until after the lapse of time, upon the occurrence of an event or contingency, or upon the failure of an event or contingency to occur.

An exercise or release at any time by the donor, either alone or in conjunction with any person, of a power to appoint an interest in property, even though not otherwise a transfer, shall, for the purposes of clause (i) of this subparagraph, be considered as a transfer by him. Except as provided in subparagraph (E), where at the time of the transfer it is impossible to ascertain the particular person or persons who may receive from the donor an interest in property so transferred by him, such interest shall, for the purposes of clause (i) of this subparagraph, be considered as transferred to a person other than the donee spouse.

"(C) Where the assets out of which, or the proceeds of which, the interest transferred to the donee spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets were transferred from the donor to such spouse, then the value of the interest transferred to such spouse shall,

for the purposes of subparagraph (A), be reduced by the aggregate value of such particular assets.

"(D) Joint Interests.—If the interest is transferred to the donee spouse as sole joint tenant with the donor or as tenant by the entirety, the interest of the donor in the property which exists solely by reason of the possibility that the donor may survive the donee spouse, or that there may occur a severance of the tenancy, shall not be considered for the purposes of subparagraph (B) as an interest retained by the donor in himself.

"(E) Trust With Power Of Appointment In Donee Spouse.—Where the donor transfers in trust an interest in property, if under the terms of the trust his spouse is entitled for life to all the income from the corpus of the trust, payable annually or at more frequent intervals, with power in the donee spouse to appoint the entire corpus free of the trust (exercisable in favor of such donee spouse, or of the estate of such donee spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the corpus to any person other than the donee spouse—

"(i) the interest so transferred in trust shall, for the purposes of subparagraph (A), be considered as transferred to the donee spouse, and

"(ii) no part of the interest so transferred in trust shall, for the purposes of subparagraph (B) (i), be considered as retained in the donor or transferred to any person other than the donee spouse.

This subparagraph shall be applicable only if, under the terms of the trust, such power in the donee spouse to appoint the corpus, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

"(F) Community Property.—

"(i) A deduction otherwise allowable under this paragraph shall be allowed only to the extent that the transfer can be shown to represent a gift of property which is not, at the time of the gift, held as community property under the law of any State, Territory, or possession of the United States, or of any foreign country.

"(ii) For the purposes of clause (i), community property (except property which is considered as community property solely by reason of the provisions of clause (iii)) shall not be considered as 'held as community property' if the entire value of such property (and not merely one-half thereof) is treated as the amount of the gift.

"(iii) If during the calendar year 1942 or after the date of the enactment of the Revenue Act of 1948, property held as such community property (unless considered by reason of clause (ii) as not so held) was by the donor and the donee spouse converted, by one transaction or a series of transactions, into separate property of the donor and such spouse (including any form of co-ownership by them), the separate property so acquired by the donor and any property acquired at any time by the donor in exchange therefor (by one exchange or a series of exchanges) shall, for the purposes of clause (i), be considered as 'held as community property'.

"(iv) Where the value (at the time of such conversion) of the separate property so acquired by the donor exceeded the value (at such time) of the separate property so acquired by such spouse, the rule in clause (iii) shall be applied only with respect to the same portion of such separate property of the donor as the portion which the value (as of such time) of such separate property so acquired by such spouse is of the value (as of such time) of the separate property so acquired by the donor."

SEC. 373. TECHNICAL AMENDMENT.

Section 1004(c) of the Internal Revenue Code is hereby amended to read as follows:

"(c) EXTENT OF DEDUCTIONS.—The deductions provided in subsection (a) (2) or (3) or in subsection (b) shall be allowed only to the extent that the gifts therein

specified are included in the amount of gifts against which such deductions are applied."

SEC. 374. GIFT OF HUSBAND OR WIFE TO THIRD PARTY.

Section 1000 of the Internal Revenue Code (relating to imposition of gift tax) is hereby amended by adding at the end thereof a new subsection to read as follows:

"(f) GIFT OF HUSBAND OR WIFE TO THIRD PARTY.—

"(1) CONSIDERED AS MADE ONE-HALF BY EACH.—

"(A) In General.—A gift made after the date of the enactment of the Revenue Act of 1948 by one spouse to any person other than his spouse shall, for the purposes of this chapter, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. This subparagraph shall not apply with respect to a gift by a spouse of an interest in property if he creates in his spouse a power of appointment, as defined in subsection (c) of this section, over such interest. For the purposes of this subsection an individual shall be considered as the spouse of another individual only if he is married to such individual at the time of the gift and does not remarry during the remainder of the calendar year.

"(B) Consent of Both Spouses.—Subparagraph (A) shall be applicable only if both spouses have signified (in accordance with the regulations provided for in paragraph (2)) their consent to the application of subparagraph (A) in the case of all such gifts made during the calendar year by either while married to the other.

"(2) MANNER AND TIME OF SIGNIFYING CONSENT.—

"(A) Manner.—A consent under this subsection shall be signified in such manner as is provided under regulations prescribed by the Commissioner with the approval of the Secretary.

"(B) Time.—Such consent may be so signified at any time after the close of the calendar year in which the gift was made, subject to the following limitations—

"(i) the consent may not be signified after the 15th day of March following the close of such year, unless before such 15th day no return has been filed for such year by either spouse, in which case the consent may not be signified after a return for such year is filed by either spouse;

"(ii) the consent may not be signified after a notice of deficiency with respect to the tax for such year has been sent to either spouse in accordance with section 1012(a).

"(3) REVOCATION OF CONSENT.—Revocation of a consent previously signified shall be made in such manner as is provided under regulations prescribed by the Commissioner with the approval of the Secretary, but the right to revoke a consent previously signified with respect to a calendar year—

"(A) shall not exist after the 15th day of March following the close of such year if the consent was signified on or before such 15th day; and

"(B) shall not exist if the consent was not signified until after such 15th day.

"(4) JOINT AND SEVERAL LIABILITY FOR TAX.—If the consent required by paragraph (1)(B) is signified with respect to a gift made in any calendar year the liability with respect to the entire tax imposed by this chapter of each spouse for such year shall be joint and several."

TITLE IV—ADJUSTED GROSS INCOME OF LESS THAN $5,000.

SEC. 401. INDIVIDUALS WITH ADJUSTED GROSS INCOMES OF LESS THAN $5,000.

(a) IN GENERAL.—Section 400 of the Internal Revenue Code (relating to optional tax on individuals with adjusted gross incomes of less than $5,000) 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:"

(b) TAXABLE YEARS TO WHICH APPLICABLE.—The amendment made by this section shall be applicable with respect to taxable years beginning after December 31, 1947. For treatment of taxable years beginning in 1947 and ending in 1948, see section 601.

TITLE V—REDUCTION IN WITHHOLDING OF TAX AT SOURCE ON WAGES.

SEC. 501. PERCENTAGE METHOD.

Section 1622(a) and section 1622(b)(1) of the Internal Revenue Code (relating to percentage method of withholding) are hereby amended to read as follows:

"(a) REQUIREMENT OF WITHHOLDING.—Every employer making payment of wages shall deduct and withhold upon such wages a tax equal to 15 per centum of the amount by which the wages exceed the number of withholding exemptions claimed multiplied by the amount of one such exemption as shown in subsection (b)(1).

"(b)(1) The table referred to in subsection (a) is as follows:

"*Percentage method withholding table.*

Pay-roll period.	Amount of one withholding exemption.
Weekly	$13.00
Biweekly	26.00
Semimonthly	28.00
Monthly	56.00
Quarterly	167.00
Semiannual	333.00
Annual	667.00
Daily or miscellaneous (per day of such period)	1.80"

SEC. 502. WAGE BRACKET WITHHOLDING.

The tables contained in section 1622(c)(1) of the Internal Revenue Code (relating to wage bracket withholding) are hereby amended to read as follows:

"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	$250	$150	$150	$50	$50	$0	$0	$0	$0	$0
675	700	3	0	0	0	2,350	2,375	253	154	154	54	54	0	0	0	0	0
700	725	7	0	0	0	2,375	2,400	257	157	157	58	58	0	0	0	0	0
725	750	11	0	0	0	2,400	2,425	261	161	161	62	62	0	0	0	0	0
750	775	14	0	0	0	2,425	2,450	265	165	165	65	65	0	0	0	0	0
775	800	18	0	0	0	2,450	2,475	268	169	169	69	69	0	0	0	0	0
800	825	22	0	0	0	2,475	2,500	272	172	172	73	73	0	0	0	0	0
825	850	26	0	0	0	2,500	2,525	276	176	176	77	77	0	0	0	0	0
850	875	29	0	0	0	2,525	2,550	280	180	180	80	80	0	0	0	0	0
875	900	33	0	0	0	2,550	2,575	283	184	184	84	84	0	0	0	0	0
900	925	37	0	0	0	2,575	2,600	287	187	187	88	88	0	0	0	0	0
925	950	40	0	0	0	2,600	2,625	291	191	191	92	92	0	0	0	0	0
950	975	44	0	0	0	1,625	2,650	294	195	195	95	95	0	0	0	0	0
975	1,000	48	0	0	0	2,650	2,675	298	199	199	99	99	0	0	0	0	0
1,000	1,025	52	0	0	0	2,675	2,700	302	202	202	103	103	3	0	0	0	0
1,025	1,050	55	0	0	0	2,700	2,725	306	206	206	106	106	7	0	0	0	0
1,050	1,075	59	0	0	0	2,725	2,750	309	210	210	110	110	11	0	0	0	0
1,075	1,100	63	0	0	0	2,750	2,775	313	214	214	114	114	14	0	0	0	0
1,100	1,125	67	0	0	0	2,775	2,800	317	217	217	118	118	18	0	0	0	0
1,125	1,150	70	0	0	0	2,800	2,825	321	221	221	121	121	22	0	0	0	0
1,150	1,175	74	0	0	0	2,825	2,850	324	225	225	125	125	26	0	0	0	0
1,175	1,200	78	0	0	0	2,850	2,875	328	228	228	129	129	29	0	0	0	0
1,200	1,225	82	0	0	0	2,875	2,900	332	232	232	133	133	33	0	0	0	0
1,225	1,250	85	0	0	0	2,900	2,925	336	236	236	136	136	37	0	0	0	0
1,250	1,275	89	0	0	0	2,925	2,950	340	240	240	140	140	40	0	0	0	0
1,275	1,300	93	0	0	0	2,950	2,975	345	243	243	144	144	44	0	0	0	0
1,300	1,325	96	0	0	0	2,975	3,000	349	247	247	148	148	48	0	0	0	0
1,325	1,350	100	1	0	0	3,000	3,050	356	253	253	153	153	54	0	0	0	0
1,350	1,375	104	4	0	0	3,050	3,100	364	260	260	161	161	61	0	0	0	0
1,375	1,400	108	8	0	0	3,100	3,150	373	268	268	168	168	68	0	0	0	0
1,400	1,425	111	12	0	0	3,150	3,200	382	275	275	176	176	76	0	0	0	0
1,425	1,450	115	16	0	0	3,200	3,250	391	283	283	183	183	83	0	0	0	0
1,450	1,475	119	19	0	0	3,250	3,300	399	290	290	190	190	91	0	0	0	0
1,475	1,500	123	23	0	0	3,300	3,350	408	298	298	198	198	98	0	0	0	0
1,500	1,525	126	27	0	0	3,350	3,400	417	305	305	205	205	106	6	0	0	0
1,525	1,550	130	31	0	0	3,400	3,450	425	312	312	213	213	113	14	0	0	0
1,550	1,575	134	34	0	0	3,450	3,500	434	320	320	220	220	121	21	0	0	0
1,575	1,600	138	38	0	0	3,500	3,550	443	327	327	228	228	128	29	0	0	0
1,600	1,625	141	42	0	0	3,550	3,600	452	335	335	235	235	136	36	0	0	0
1,625	1,650	145	45	0	0	3,600	3,650	460	344	342	242	243	143	44	0	0	0
1,650	1,675	149	49	0	0	3,650	3,700	469	353	350	250	250	151	51	0	0	0
1,675	1,700	153	53	0	0	3,700	3,750	478	362	357	258	258	158	59	0	0	0
1,700	1,725	156	57	0	0	3,750	3,800	486	370	365	265	265	166	66	0	0	0
1,725	1,750	160	60	0	0	3,800	3,850	495	379	372	273	273	173	73	0	0	0
1,750	1,775	164	64	0	0	3,850	3,900	504	388	380	280	280	181	81	0	0	0
1,775	1,800	167	68	0	0	3,900	3,950	513	396	387	288	288	188	88	0	0	0
1,800	1,825	171	72	0	0	3,950	4,000	521	405	395	295	295	195	96	0	0	0
1,825	1,850	175	75	0	0	4,000	4,050	530	414	402	303	303	203	103	4	0	0
1,850	1,875	179	79	0	0	4,050	4,100	539	423	410	310	310	210	111	11	0	0
1,875	1,900	182	83	0	0	4,100	4,150	547	431	417	317	317	218	118	19	0	0
1,900	1,925	186	87	0	0	4,150	4,200	556	440	425	325	325	225	126	26	0	0
1,925	1,950	190	90	0	0	4,200	4,250	565	449	432	332	332	233	133	34	0	0
1,950	1,975	194	94	0	0	4,250	4,300	574	457	439	341	340	240	141	41	0	0
1,975	2,000	197	98	0	0	4,300	4,350	582	466	447	350	347	248	148	49	0	0
2,000	2,025	201	101	2	0	4,350	4,400	591	475	454	359	355	255	156	56	0	0
2,025	2,050	205	105	6	0	4,400	4,450	600	483	462	367	362	263	163	63	0	0
2,050	2,075	209	109	9	0	4,450	4,500	608	492	469	376	370	270	171	71	0	0
2,075	2,100	212	113	13	0	4,500	4,550	617	501	477	385	377	278	178	78	0	0
2,100	2,125	216	116	17	0	4,550	4,600	626	510	484	393	385	285	186	86	0	0
2,125	2,150	220	120	21	0	4,600	4,650	635	518	492	402	392	293	193	93	0	0
2,150	2,175	223	124	24	0	4,650	4,700	643	527	499	411	400	300	200	101	1	0
2,175	2,200	227	128	28	0	4,700	4,750	652	536	507	420	407	308	208	108	9	0
2,200	2,225	231	131	32	0	4,750	4,800	661	544	514	428	415	315	215	116	16	0
2,225	2,250	235	135	35	0	4,800	4,850	669	553	522	437	422	322	223	123	24	0
2,250	2,275	238	139	39	0	4,850	4,900	678	562	529	446	430	330	230	131	31	0
2,275	2,300	242	143	43	0	4,900	4,950	687	571	537	454	437	337	238	138	39	0
2,300	2,325	246	146	47	0	4,950	5,000	695	579	544	463	444	345	245	146	46	0"

"If the pay-roll period with respect to an employee is weekly—

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$13	15% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$13	$14	$2.00	.10	0	0	0	0	0	0	0	0	0
$14	$15	2.20	.30	0	0	0	0	0	0	0	0	0
$15	$16	2.30	.40	0	0	0	0	0	0	0	0	0
$16	$17	2.50	.50	0	0	0	0	0	0	0	0	0
$17	$18	2.60	.70	0	0	0	0	0	0	0	0	0
$18	$19	2.80	.80	0	0	0	0	0	0	0	0	0
$19	$20	2.90	1.00	0	0	0	0	0	0	0	0	0
$20	$21	3.10	1.10	0	0	0	0	0	0	0	0	0
$21	$22	3.20	1.30	0	0	0	0	0	0	0	0	0
$22	$23	3.40	1.40	0	0	0	0	0	0	0	0	0
$23	$24	3.50	1.60	0	0	0	0	0	0	0	0	0
$24	$25	3.70	1.70	0	0	0	0	0	0	0	0	0
$25	$26	3.80	1.90	0	0	0	0	0	0	0	0	0
$26	$27	4.00	2.00	.10	0	0	0	0	0	0	0	0
$27	$28	4.10	2.20	.30	0	0	0	0	0	0	0	0
$28	$29	4.30	2.30	.40	0	0	0	0	0	0	0	0
$29	$30	4.40	2.50	.60	0	0	0	0	0	0	0	0
$30	$31	4.60	2.60	.70	0	0	0	0	0	0	0	0
$31	$32	4.70	2.80	.90	0	0	0	0	0	0	0	0
$32	$33	4.90	2.90	1.00	0	0	0	0	0	0	0	0
$33	$34	5.00	3.10	1.20	0	0	0	0	0	0	0	0
$34	$35	5.20	3.20	1.30	0	0	0	0	0	0	0	0
$35	$36	5.30	3.40	1.50	0	0	0	0	0	0	0	0
$36	$37	5.50	3.50	1.60	0	0	0	0	0	0	0	0
$37	$38	5.60	3.70	1.80	0	0	0	0	0	0	0	0
$38	$39	5.80	3.80	1.90	0	0	0	0	0	0	0	0
$39	$40	5.90	4.00	2.10	.20	0	0	0	0	0	0	0
$40	$41	6.10	4.10	2.20	.30	0	0	0	0	0	0	0
$41	$42	6.20	4.30	2.40	.50	0	0	0	0	0	0	0
$42	$43	6.30	4.40	2.50	.60	0	0	0	0	0	0	0
$43	$44	6.50	4.60	2.70	.80	0	0	0	0	0	0	0
$44	$45	6.60	4.70	2.80	.90	0	0	0	0	0	0	0
$45	$46	6.80	4.90	3.00	1.10	0	0	0	0	0	0	0
$46	$47	6.90	5.00	3.10	1.20	0	0	0	0	0	0	0
$47	$48	7.10	5.20	3.30	1.40	0	0	0	0	0	0	0
$48	$49	7.20	5.30	3.40	1.50	0	0	0	0	0	0	0
$49	$50	7.40	5.50	3.60	1.60	0	0	0	0	0	0	0
$50	$51	7.50	5.60	3.70	1.80	0	0	0	0	0	0	0
$51	$52	7.70	5.80	3.90	1.90	0	0	0	0	0	0	0
$52	$53	7.80	5.90	4.00	2.10	.20	0	0	0	0	0	0
$53	$54	8.00	6.10	4.20	2.20	.30	0	0	0	0	0	0
$54	$55	8.10	6.20	4.30	2.40	.50	0	0	0	0	0	0
$55	$56	8.30	6.40	4.50	2.50	.60	0	0	0	0	0	0
$56	$57	8.40	6.50	4.60	2.70	.80	0	0	0	0	0	0
$57	$58	8.60	6.70	4.80	2.80	.90	0	0	0	0	0	0
$58	$59	8.70	6.80	4.90	3.00	1.10	0	0	0	0	0	0
$59	$60	8.90	7.00	5.10	3.10	1.20	0	0	0	0	0	0
$60	$62	9.10	7.20	5.30	3.40	1.50	0	0	0	0	0	0
$62	$64	9.40	7.50	5.60	3.70	1.80	0	0	0	0	0	0
$64	$66	9.70	7.80	5.90	4.00	2.00	.10	0	0	0	0	0
$66	$68	10.00	8.10	6.20	4.30	2.30	.40	0	0	0	0	0
$68	$70	10.30	8.40	6.50	4.60	2.60	.70	0	0	0	0	0
$70	$72	10.60	8.70	6.80	4.90	2.90	1.00	0	0	0	0	0
$72	$74	10.90	9.00	7.10	5.20	3.20	1.30	0	0	0	0	0
$74	$76	11.20	9.30	7.40	5.50	3.50	1.60	0	0	0	0	0
$76	$78	11.50	9.60	7.70	5.80	3.80	1.90	0	0	0	0	0
$78	$80	11.80	9.90	8.00	6.10	4.10	2.20	.30	0	0	0	0
$80	$82	12.10	10.20	8.30	6.40	4.40	2.50	.60	0	0	0	0
$82	$84	12.40	10.50	8.60	6.70	4.70	2.80	.90	0	0	0	0
$84	$86	12.70	10.80	8.90	7.00	5.00	3.10	1.20	0	0	0	0
$86	$88	13.00	11.10	9.20	7.30	5.30	3.40	1.50	0	0	0	0
$88	$90	13.30	11.40	9.50	7.60	5.60	3.70	1.80	0	0	0	0
$90	$92	13.60	11.70	9.80	7.80	5.90	4.00	2.10	.20	0	0	0
$92	$94	13.90	12.00	10.10	8.10	6.20	4.30	2.40	.50	0	0	0
$94	$96	14.20	12.30	10.40	8.40	6.50	4.60	2.70	.80	0	0	0
$96	$98	14.50	12.60	10.70	8.70	6.80	4.90	3.00	1.10	0	0	0
$98	$100	14.80	12.90	11.00	9.00	7.10	5.20	3.30	1.40	0	0	0
$100	$105	15.30	13.40	11.50	9.60	7.70	5.70	3.80	1.90	0	0	0
$105	$110	16.10	14.10	12.20	10.30	8.40	6.50	4.60	2.70	.70	0	0
$110	$115	16.80	14.90	13.00	11.10	9.10	7.20	5.30	3.40	1.50	0	0
$115	$120	17.60	15.60	13.70	11.80	9.90	8.00	6.10	4.10	2.20	.30	0
$120	$125	18.30	16.40	14.50	12.60	10.60	8.70	6.80	4.90	3.00	1.10	0
$125	$130	19.00	17.10	15.20	13.30	11.40	9.50	7.60	5.60	3.70	1.80	0
$130	$135	19.80	17.90	16.00	14.00	12.10	10.20	8.30	6.40	4.50	2.60	.60

"If the pay-roll period with respect to an employee is weekly—Continued.

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$135	$140	$20.50	$18.60	$16.70	$14.80	$12.90	$11.00	$9.10	$7.10	$5.20	$3.30	$1.40
$140	$145	21.30	19.40	17.50	15.50	13.60	11.70	9.80	7.90	6.00	4.10	2.10
$145	$150	22.00	20.10	18.20	16.30	14.40	12.50	10.50	8.60	6.70	4.80	2.90
$150	$160	23.20	21.20	19.30	17.40	15.50	13.60	11.70	9.70	7.80	5.90	4.00
$160	$170	24.70	22.70	20.80	18.90	17.00	15.10	13.20	11.20	9.30	7.40	5.50
$170	$180	26.10	24.20	22.30	20.40	18.50	16.60	14.70	12.70	10.80	8.90	7.00
$180	$190	27.60	25.70	23.80	21.90	20.00	18.10	16.10	14.20	12.30	10.40	8.50
$190	$200	29.10	27.20	25.30	23.40	21.50	19.60	17.60	15.70	13.80	11.90	10.00
		15 per cent of the excess over $200 plus—										
$200 and over		29.90	28.00	26.00	24.10	22.20	20.30	18.40	16.50	14.60	12.60	10.70

"If the pay-roll period with respect to an employee is biweekly—

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$26	15% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$26	$28	$4.00	.20	0	0	0	0	0	0	0	0	0
$28	$30	4.30	.50	0	0	0	0	0	0	0	0	0
$30	$32	4.60	.80	0	0	0	0	0	0	0	0	0
$32	$34	4.90	1.10	0	0	0	0	0	0	0	0	0
$34	$36	5.20	1.40	0	0	0	0	0	0	0	0	0
$36	$38	5.50	1.70	0	0	0	0	0	0	0	0	0
$38	$40	5.80	2.00	0	0	0	0	0	3	0	0	0
$40	$42	6.10	2.30	0	0	0	0	0	0	0	0	0
$42	$44	6.40	2.60	0	0	0	0	0	0	0	0	0
$44	$46	6.70	2.90	0	0	0	0	0	0	0	0	0
$46	$48	7.00	3.20	0	0	0	0	0	0	0	0	0
$48	$50	7.30	3.50	0	0	0	0	0	0	0	0	0
$50	$52	7.60	3.80	0	0	0	0	0	0	0	0	0
$52	$54	7.90	4.10	.30	0	0	0	0	0	0	0	0
$54	$56	8.20	4.40	.60	0	0	0	0	0	0	0	0
$56	$58	8.50	4.70	.90	0	0	0	0	0	0	0	0
$58	$60	8.80	5.00	1.20	0	0	0	0	0	0	0	0
$60	$62	9.10	5.30	1.50	0	0	0	0	0	0	0	0
$62	$64	9.40	5.60	1.80	0	0	0	0	0	0	0	0
$64	$66	9.70	5.90	2.00	0	0	0	0	0	0	0	0
$66	$68	10.00	6.20	2.30	0	0	0	0	0	0	0	0
$68	$70	10.30	6.50	2.60	0	0	0	0	0	0	0	0
$70	$72	10.60	6.80	2.90	0	0	0	0	0	0	0	0
$72	$74	10.90	7.10	3.20	0	0	0	0	0	0	0	0
$74	$76	11.20	7.40	3.50	0	0	0	0	0	0	0	0
$76	$78	11.50	7.70	3.80	0	0	0	0	0	0	0	0
$78	$80	11.80	8.00	4.10	.30	0	0	0	0	0	0	0
$80	$82	12.10	8.30	4.40	.60	0	0	0	0	0	0	0
$82	$84	12.40	8.60	4.70	.90	0	0	0	0	0	0	0
$84	$86	12.70	8.90	5.00	1.20	0	0	0	0	0	0	0
$86	$88	13.00	9.20	5.30	1.50	0	0	0	0	0	0	0
$88	$90	13.30	9.50	5.60	1.80	0	0	0	0	0	0	0
$90	$92	13.60	9.80	5.90	2.10	0	0	0	0	0	0	0
$92	$94	13.90	10.10	6.20	2.40	0	0	0	0	0	0	0
$94	$96	14.20	10.40	6.50	2.70	0	0	0	0	0	0	0
$96	$98	14.50	10.70	6.80	3.00	0	0	0	0	0	0	0
$98	$100	14.80	11.00	7.10	3.30	0	0	0	0	0	0	0
$100	$102	15.10	11.30	7.40	3.60	0	0	0	0	0	0	0
$102	$104	15.40	11.60	7.70	3.90	.10	0	0	0	0	0	0
$104	$106	15.70	11.90	8.00	4.20	.40	0	0	0	0	0	0
$106	$108	16.00	12.20	8.30	4.50	.70	0	0	0	0	0	0
$108	$110	16.30	12.50	8.60	4.80	1.00	0	0	0	0	0	0
$110	$112	16.60	12.80	8.90	5.10	1.30	0	0	0	0	0	0
$112	$114	16.90	13.10	9.20	5.40	1.60	0	0	0	0	0	0
$114	$116	17.20	13.40	9.50	5.70	1.90	0	0	0	0	0	0

"If the pay-roll period with respect to an employee is biweekly—Continued.

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$116	$118	$17.50	$13.60	$9.80	$6.00	$2.20	$0	$0	$0	$0	$0	$0
$118	$120	17.80	13.90	10.10	6.30	2.50	0	0	0	0	0	0
$120	$124	18.20	14.40	10.60	6.70	2.90	0	0	0	0	0	0
$124	$128	18.80	15.00	11.20	7.30	3.50	0	0	0	0	0	0
$128	$132	19.40	15.60	11.80	7.90	4.10	.30	0	0	0	0	0
$132	$136	20.00	16.20	12.40	8.50	4.70	.90	0	0	0	0	0
$136	$140	20.60	16.80	13.00	9.10	5.30	1.50	0	0	0	0	0
$140	$144	21.20	17.40	13.60	9.70	5.90	2.10	0	0	0	0	0
$144	$148	21.80	18.00	14.20	10.30	6.50	2.70	0	0	0	0	0
$148	$152	22.40	18.60	14.70	10.90	7.10	3.30	0	0	0	0	0
$152	$156	23.00	19.20	15.30	11.50	7.70	3.90	0	0	0	0	0
$156	$160	23.60	19.80	15.90	12.10	8.30	4.50	.60	0	0	0	0
$160	$164	24.20	20.40	16.50	12.70	8.90	5.00	1.20	0	0	0	0
$164	$168	24.80	21.00	17.10	13.30	9.50	5.60	1.80	0	0	0	0
$168	$172	25.40	21.60	17.70	13.90	10.10	6.20	2.40	0	0	0	0
$172	$176	26.00	22.20	18.30	14.50	10.70	6.80	3.00	0	0	0	0
$176	$180	26.60	22.80	18.90	15.10	11.30	7.40	3.60	0	0	0	0
$180	$184	27.20	23.40	19.50	15.70	11.90	8.00	4.20	.40	0	0	0
$184	$188	27.80	24.00	20.10	16.30	12.50	8.60	4.80	1.00	0	0	0
$188	$192	28.40	24.60	20.70	16.90	13.10	9.20	5.40	1.60	0	0	0
$192	$196	29.00	25.20	21.30	17.50	13.70	9.80	6.00	2.20	0	0	0
$196	$200	29.60	25.80	21.90	18.10	14.30	10.40	6.60	2.80	0	0	0
$200	$210	30.60	26.80	23.00	19.10	15.30	11.50	7.60	3.80	0	0	0
$210	$220	32.10	28.30	24.50	20.60	16.80	13.00	9.10	5.30	1.50	0	0
$220	$230	33.60	29.80	26.00	22.10	18.30	14.50	10.60	6.80	3.00	0	0
$230	$240	35.10	31.30	27.40	23.60	19.80	16.00	12.10	8.30	4.50	.60	0
$240	$250	36.60	32.80	28.90	25.10	21.30	17.40	13.60	9.80	6.00	2.10	0
$250	$260	38.10	34.30	30.40	26.60	22.80	18.90	15.10	11.30	7.50	3.60	0
$260	$270	39.60	35.80	31.90	28.10	24.30	20.40	16.60	12.80	8.90	5.10	1.30
$270	$280	41.10	37.30	33.40	29.60	25.80	21.90	18.10	14.30	10.40	6.60	2.80
$280	$290	42.60	38.70	34.90	31.10	27.30	23.40	19.60	15.80	11.90	8.10	4.30
$290	$300	44.10	40.20	36.40	32.60	28.70	24.90	21.10	17.30	13.40	9.60	5.80
$300	$320	46.30	42.50	38.70	34.80	31.00	27.20	23.30	19.50	15.70	11.80	8.00
$320	$340	49.30	45.50	41.60	37.80	34.00	30.10	26.30	22.50	18.70	14.80	11.00
$340	$360	52.30	48.50	44.60	40.80	37.00	33.10	29.30	25.50	21.60	17.80	14.00
$360	$380	55.30	51.40	47.60	43.80	40.00	36.10	32.30	28.50	24.60	20.80	17.00
$380	$400	58.30	54.40	50.60	46.80	42.90	39.10	35.30	31.50	27.60	23.80	20.00
		15 per cent of the excess over $400 plus—										
$400 and over		59.80	55.90	52.10	48.30	44.40	40.60	36.80	32.90	29.10	25.30	21.50

"If the pay-roll period with respect to an employee is semimonthly—

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$28	15% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$28	$30	$4.30	.20	0	0	0	0	0	0	0	0	0
$30	$32	4.60	.50	0	0	0	0	0	0	0	0	0
$32	$34	4.90	.80	0	0	0	0	0	0	0	0	0
$34	$36	5.20	1.10	0	0	0	0	0	0	0	0	0
$36	$38	5.50	1.40	0	0	0	0	0	0	0	0	0
$38	$40	5.80	1.70	0	0	0	0	0	0	0	0	0
$40	$42	6.10	2.00	0	0	0	0	0	0	0	0	0
$42	$44	6.40	2.30	0	0	0	0	0	0	0	0	0
$44	$46	6.70	2.60	0	0	0	0	0	0	0	0	0
$46	$48	7.00	2.90	0	0	0	0	0	0	0	0	0
$48	$50	7.30	3.20	0	0	0	0	0	0	0	0	0
$50	$52	7.60	3.50	0	0	0	0	0	0	0	0	0
$52	$54	7.90	3.80	0	0	0	0	0	0	0	0	0
$54	$56	8.20	4.10	0	0	0	0	0	0	0	0	0
$56	$58	8.50	4.40	.20	0	0	0	0	0	0	0	0
$58	$60	8.80	4.70	.50	0	0	0	0	0	0	0	0

"If the pay-roll period with respect to an employee is semimonthly—Continued.

And the wages are—		And the number of withholding exemptions claimed is—										
		0	1	2	3	4	5	6	7	8	9	10 or more
At least	But less than	The amount of tax to be withheld shall be—										
$60	$62	$9.10	$5.00	$0.80	$0	$0	$0	$0	$0	$0	$0	$0
$62	$64	9.40	5.30	1.10	0	0	0	0	0	0	0	0
$64	$66	9.70	5.60	1.40	0	0	0	0	0	0	0	0
$66	$68	10.00	5.90	1.70	0	0	0	0	0	0	0	0
$68	$70	10.30	6.20	2.00	0	0	0	0	0	0	0	0
$70	$72	10.60	6.50	2.30	0	0	0	0	0	0	0	0
$72	$74	10.90	6.80	2.60	0	0	0	0	0	0	0	0
$74	$76	11.20	7.10	2.90	0	0	0	0	0	0	0	0
$76	$78	11.50	7.40	3.20	0	0	0	0	0	0	0	0
$78	$80	11.80	7.70	3.50	0	0	0	0	0	0	0	0
$80	$82	12.10	8.00	3.80	0	0	0	0	0	0	0	0
$82	$84	12.40	8.30	4.10	0	0	0	0	0	0	0	0
$84	$86	12.70	8.50	4.40	.20	0	0	0	0	0	0	0
$86	$88	13.00	8.80	4.70	.50	0	0	0	0	0	0	0
$88	$90	13.30	9.10	5.00	.80	0	0	0	0	0	0	0
$90	$92	13.60	9.40	5.30	1.10	0	0	0	0	0	0	0
$92	$94	13.90	9.70	5.60	1.40	0	0	0	0	0	0	0
$94	$96	14.20	10.00	5.90	1.70	0	0	0	0	0	0	0
$96	$98	14.50	10.30	6.20	2.00	0	0	0	0	0	0	0
$98	$100	14.80	10.60	6.50	2.30	0	0	0	0	0	0	0
$100	$102	15.10	10.90	6.80	2.60	0	0	0	0	0	0	0
$102	$104	15.40	11.20	7.10	2.90	0	0	0	0	0	0	0
$104	$106	15.70	11.50	7.40	3.20	0	0	0	0	0	0	0
$106	$108	16.00	11.80	7.70	3.50	0	0	0	0	0	0	0
$108	$110	16.30	12.10	8.00	3.80	0	0	0	0	0	0	0
$110	$112	16.60	12.40	8.30	4.10	0	0	0	0	0	0	0
$112	$114	16.90	12.70	8.60	4.40	.30	0	0	0	0	0	0
$114	$116	17.20	13.00	8.90	4.70	.60	0	0	0	0	0	0
$116	$118	17.50	13.30	9.20	5.00	.90	0	0	0	0	0	0
$118	$120	17.80	13.60	9.50	5.30	1.20	0	0	0	0	0	0
$120	$124	18.20	14.10	9.90	5.80	1.60	0	0	0	0	0	0
$124	$128	18.80	14.70	10.50	6.40	2.20	0	0	0	0	0	0
$128	$132	19.40	15.30	11.10	7.00	2.80	0	0	0	0	0	0
$132	$136	20.00	15.90	11.70	7.60	3.40	0	0	0	0	0	0
$136	$140	20.60	16.50	12.30	8.20	4.00	0	0	0	0	0	0
$140	$144	21.20	17.10	12.90	8.80	4.60	.50	0	0	0	0	0
$144	$148	21.80	17.70	13.50	9.40	5.20	1.10	0	0	0	0	0
$148	$152	22.40	18.30	14.10	10.00	5.80	1.70	0	0	0	0	0
$152	$156	23.00	18.90	14.70	10.60	6.40	2.30	0	0	0	0	0
$156	$160	23.60	19.50	15.30	11.20	7.00	2.90	0	0	0	0	0
$160	$164	24.20	20.10	15.90	11.80	7.60	3.50	0	0	0	0	0
$164	$168	24.80	20.70	16.50	12.40	8.20	4.10	0	0	0	0	0
$168	$172	25.40	21.20	17.10	12.90	8.80	4.60	.50	0	0	0	0
$172	$176	26.00	21.80	17.70	13.50	9.40	5.20	1.10	0	0	0	0
$176	$180	26.60	22.40	18.30	14.10	10.00	5.80	1.70	0	0	0	0
$180	$184	27.20	23.00	18.90	14.70	10.60	6.40	2.30	0	0	0	0
$184	$188	27.80	23.60	19.50	15.30	11.20	7.00	2.90	0	0	0	0
$188	$192	28.40	24.20	20.10	15.90	11.80	7.60	3.50	0	0	0	0
$192	$196	29.00	24.80	20.70	16.50	12.40	8.20	4.10	0	0	0	0
$196	$200	29.60	25.40	21.30	17.10	13.00	8.80	4.70	.50	0	0	0
$200	$210	30.60	26.50	22.30	18.20	14.00	9.90	5.70	1.60	0	0	0
$210	$220	32.10	28.00	23.80	19.70	15.50	11.40	7.20	3.10	0	0	0
$220	$230	33.60	29.50	25.30	21.20	17.00	12.90	8.70	4.60	.40	0	0
$230	$240	35.10	31.00	26.80	22.70	18.50	14.40	10.20	6.10	1.90	0	0
$240	$250	36.60	32.50	28.30	24.20	20.00	15.90	11.70	7.60	3.40	0	0
$250	$260	38.10	33.90	29.80	25.60	21.50	17.30	13.20	9.00	4.90	.70	0
$260	$270	39.60	35.40	31.30	27.10	23.00	18.80	14.70	10.50	6.40	2.20	0
$270	$280	41.10	36.90	32.80	28.60	24.50	20.30	16.20	12.00	7.90	3.70	0
$280	$290	42.60	38.40	34.30	30.10	26.00	21.80	17.70	13.50	9.40	5.20	1.10
$290	$300	44.10	39.90	35.80	31.60	27.50	23.30	19.20	15.00	10.90	6.70	2.60
$300	$320	46.30	42.20	38.00	33.90	29.70	25.60	21.40	17.30	13.10	9.00	4.80
$320	$340	49.30	45.20	41.00	36.90	32.70	28.60	24.40	20.30	16.10	12.00	7.80
$340	$360	52.30	48.10	44.00	39.80	35.70	31.50	27.40	23.20	19.10	14.90	10.80
$360	$380	55.30	51.10	47.00	42.80	38.70	34.50	30.40	26.20	22.10	17.90	13.80
$380	$400	58.30	54.10	50.00	45.80	41.70	37.50	33.40	29.20	25.10	20.90	16.80
$400	$420	61.30	57.10	53.00	48.80	44.70	40.50	36.40	32.20	28.10	23.90	19.80
$420	$440	64.20	60.10	55.90	51.80	47.60	43.50	39.30	35.20	31.00	26.90	22.70
$440	$460	67.20	63.10	58.90	54.80	50.60	46.50	42.30	38.20	34.00	29.90	25.70
$460	$480	70.20	66.10	61.90	57.80	53.60	49.50	45.30	41.20	37.00	32.90	28.70
$480	$500	73.20	69.10	64.90	60.80	56.60	52.50	48.30	44.20	40.00	35.90	31.70
		15 per cent of the excess over $500 plus—										
$500 and over		74.70	70.60	66.40	62.30	58.10	54.00	49.80	45.70	41.50	37.40	33.20

"If the pay-roll period with respect to an employee is monthly—

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$56	15% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$56	$60	$8.70	.40	0	0	0	0	0	0	0	0	0
$60	$64	9.30	1.00	0	0	0	0	0	0	0	0	0
$64	$68	9.90	1.60	0	0	0	0	0	0	0	0	0
$68	$72	10.50	2.20	0	0	0	0	0	0	0	0	0
$72	$76	11.10	2.80	0	0	0	0	0	0	0	0	0
$76	$80	11.70	3.40	0	0	0	0	0	0	0	0	0
$80	$84	12.30	4.00	0	0	0	0	0	0	0	0	0
$84	$88	12.80	4.50	0	0	0	0	0	0	0	0	0
$88	$92	13.40	5.10	0	0	0	0	0	0	0	0	0
$92	$96	14.00	5.70	0	0	0	0	0	0	0	0	0
$96	$100	14.60	6.30	0	0	0	0	0	0	0	0	0
$100	$104	15.20	6.90	0	0	0	0	0	0	0	0	0
$104	$108	15.80	7.50	0	0	0	0	0	0	0	0	0
$108	$112	16.40	8.10	0	0	0	0	0	0	0	0	0
$112	$116	17.00	8.70	.40	0	0	0	0	0	0	0	0
$116	$120	17.60	9.30	1.00	0	0	0	0	0	0	0	0
$120	$124	18.20	9.90	1.60	0	0	0	0	0	0	0	0
$124	$128	18.80	10.50	2.20	0	0	0	0	0	0	0	0
$128	$132	19.40	11.10	2.80	0	0	0	0	0	0	0	0
$132	$136	20.00	11.70	3.40	0	0	0	0	0	0	0	0
$136	$140	20.60	12.30	4.00	0	0	0	0	0	0	0	0
$140	$144	21.20	12.90	4.60	0	0	0	0	0	0	0	0
$144	$148	21.80	13.50	5.20	0	0	0	0	0	0	0	0
$148	$152	22.40	14.10	5.80	0	0	0	0	0	0	0	0
$152	$156	23.00	14.70	6.40	0	0	0	0	0	0	0	0
$156	$160	23.60	15.30	7.00	0	0	0	0	0	0	0	0
$160	$164	24.20	15.90	7.60	0	0	0	0	0	0	0	0
$164	$168	24.80	16.50	8.20	0	0	0	0	0	0	0	0
$168	$172	25.40	17.10	8.80	.50	0	0	0	0	0	0	0
$172	$176	26.00	17.70	9.40	1.10	0	0	0	0	0	0	0
$176	$180	26.60	18.30	10.00	1.70	0	0	0	0	0	0	0
$180	$184	27.20	18.90	10.60	2.30	0	0	0	0	0	0	0
$184	$188	27.80	19.50	11.20	2.90	0	0	0	0	0	0	0
$188	$192	28.40	20.10	11.80	3.50	0	0	0	0	0	0	0
$192	$196	29.00	20.70	12.40	4.10	0	0	0	0	0	0	0
$196	$200	29.60	21.30	13.00	4.70	0	0	0	0	0	0	0
$200	$204	30.20	21.90	13.60	5.30	0	0	0	0	0	0	0
$204	$208	30.80	22.50	14.20	5.90	0	0	0	0	0	0	0
$208	$212	31.40	23.10	14.80	6.50	0	0	0	0	0	0	0
$212	$216	32.00	23.70	15.40	7.10	0	0	0	0	0	0	0
$216	$220	32.60	24.30	16.00	7.70	0	0	0	0	0	0	0
$220	$224	33.20	24.90	16.60	8.30	0	0	0	0	0	0	0
$224	$228	33.80	25.50	17.20	8.90	.60	0	0	0	0	0	0
$228	$232	34.40	26.10	17.80	9.50	1.20	0	0	0	0	0	0
$232	$236	35.00	26.70	18.40	10.10	1.80	0	0	0	0	0	0
$236	$240	35.60	27.30	19.00	10.70	2.40	0	0	0	0	0	0
$240	$248	36.50	28.20	19.90	11.60	3.30	0	0	0	0	0	0
$248	$256	37.60	29.30	21.00	12.70	4.40	0	0	0	0	0	0
$256	$264	38.80	30.50	22.20	13.90	5.60	0	0	0	0	0	0
$264	$272	40.00	31.70	23.40	15.10	6.80	0	0	0	0	0	0
$272	$280	41.20	32.90	24.60	16.30	8.00	0	0	0	0	0	0
$280	$288	42.40	34.10	25.80	17.50	9.20	.90	0	0	0	0	0
$288	$296	43.60	35.30	27.00	18.70	10.40	2.10	0	0	0	0	0
$296	$304	44.80	36.50	28.20	19.90	11.60	3.30	0	0	0	0	0
$304	$312	46.00	37.70	29.40	21.10	12.80	4.50	0	0	0	0	0
$312	$320	47.20	38.90	30.60	22.30	14.00	5.70	0	0	0	0	0
$320	$328	48.40	40.10	31.80	23.50	15.20	6.90	0	0	0	0	0
$328	$336	49.60	41.30	33.00	24.70	16.40	8.10	0	0	0	0	0
$336	$344	50.80	42.50	34.20	25.90	17.60	9.30	1.00	0	0	0	0
$344	$352	52.00	43.70	35.40	27.10	18.80	10.50	2.20	0	0	0	0
$352	$360	53.20	44.90	36.60	28.30	20.00	11.70	3.40	0	0	0	0
$360	$368	54.40	46.10	37.80	29.50	21.20	12.90	4.60	0	0	0	0
$368	$376	55.60	47.30	39.00	30.70	22.40	14.10	5.80	0	0	0	0
$376	$384	56.80	48.50	40.20	31.90	23.60	15.30	7.00	0	0	0	0
$384	$392	58.00	49.70	41.40	33.10	24.80	16.50	8.20	0	0	0	0
$392	$400	59.20	50.90	42.60	34.30	26.00	17.70	9.40	1.10	0	0	0
$400	$420	61.30	53.00	44.70	36.40	28.10	19.80	11.50	3.20	0	0	0
$420	$440	64.20	55.90	47.60	39.30	31.00	22.70	14.40	6.10	0	0	0
$440	$460	67.20	58.90	50.60	42.30	34.00	25.70	17.40	9.10	.80	0	0
$460	$480	70.20	61.90	53.60	45.30	37.00	28.70	20.40	12.10	3.80	0	0
$480	$500	73.20	64.90	56.60	48.30	40.00	31.70	23.40	15.10	6.80	0	0
$500	$520	76.20	67.90	59.60	51.30	43.00	34.70	26.40	18.10	9.80	1.50	0
$520	$540	79.20	70.90	62.60	54.30	46.00	37.70	29.40	21.10	12.80	4.50	0
$540	$560	82.20	73.90	65.60	57.30	49.00	40.70	32.40	24.10	15.80	7.50	0

"If the pay-roll period with respect to an employee is monthly—Continued.

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$560	$580	$85.20	$76.90	$68.60	$60.30	$52.00	$43.70	$35.40	$27.10	$18.80	$10.50	$2.20
$580	$600	88.10	79.80	71.50	63.20	54.90	46.60	38.30	30.00	21.70	13.40	5.10
$600	$640	92.60	84.30	76.00	67.70	59.40	51.10	42.80	34.50	26.20	17.90	9.60
$640	$680	98.60	90.30	82.00	73.70	65.40	57.10	48.80	40.50	32.20	23.90	15.60
$680	$720	104.60	96.30	88.00	79.70	71.40	63.10	54.80	46.50	38.20	29.90	21.60
$720	$760	110.60	102.30	94.00	85.70	77.40	69.10	60.80	52.50	44.20	35.90	27.60
$760	$800	116.50	108.20	99.90	91.60	83.30	75.00	66.70	58.40	50.10	41.80	33.50
$800	$840	122.50	114.20	105.90	97.60	89.30	81.00	72.70	64.40	56.10	47.80	39.50
$840	$880	128.50	120.20	111.90	103.60	95.30	87.00	78.70	70.40	62.10	53.80	45.50
$880	$920	134.50	126.20	117.90	109.60	101.30	93.00	84.70	76.40	68.10	59.80	51.50
$920	$960	140.40	132.10	123.80	115.50	107.20	98.90	90.60	82.30	74.00	65.70	57.40
$960	$1,000	146.40	138.10	129.80	121.50	113.20	104.90	96.60	88.30	80.00	71.70	63.40
		15 per cent of the excess over $1,000 plus—										
$1,000 and over		149.40	141.10	132.80	124.50	116.20	107.90	99.60	91.30	83.00	74.70	66.40

"If the pay-roll period with respect to an employee is a daily pay-roll period or a miscellaneous pay-roll period—

And the wages divided by the number of days in such periods are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be the following amount multiplied by the number of days in such period—										
$0	$2.00	15% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$2.00	$2.25	$0.30	.05	0	0	0	0	0	0	0	0	0
$2.25	$2.50	.35	.10	0	0	0	0	0	0	0	0	0
$2.50	$2.75	.40	.10	0	0	0	0	0	0	0	0	0
$2.75	$3.00	.45	.15	0	0	0	0	0	0	0	0	0
$3.00	$3.25	.45	.20	0	0	0	0	0	0	0	0	0
$3.25	$3.50	.50	.25	0	0	0	0	0	0	0	0	0
$3.50	$3.75	.55	.25	0	0	0	0	0	0	0	0	0
$3.75	$4.00	.60	.30	.05	0	0	0	0	0	0	0	0
$4.00	$4.25	.60	.35	.05	0	0	0	0	0	0	0	0
$4.25	$4.50	.65	.40	.10	0	0	0	0	0	0	0	0
$4.50	$4.75	.70	.40	.15	0	0	0	0	0	0	0	0
$4.75	$5.00	.75	.45	.20	0	0	0	0	0	0	0	0
$5.00	$5.25	.75	.50	.20	0	0	0	0	0	0	0	0
$5.25	$5.50	.80	.55	.25	0	0	0	0	0	0	0	0
$5.50	$5.75	.85	.55	.30	0	0	0	0	0	0	0	0
$5.75	$6.00	.90	.60	.35	.05	0	0	0	0	0	0	0
$6.00	$6.25	.90	.65	.35	.10	0	0	0	0	0	0	0
$6.25	$6.50	.95	.70	.40	.15	0	0	0	0	0	0	0
$6.50	$6.75	1.00	.70	.45	.15	0	0	0	0	0	0	0
$6.75	$7.00	1.05	.75	.50	.20	0	0	0	0	0	0	0
$7.00	$7.25	1.05	.80	.50	.25	0	0	0	0	0	0	0
$7.25	$7.50	1.10	.85	.55	.30	0	0	0	0	0	0	0
$7.50	$7.75	1.15	.85	.60	.30	.05	0	0	0	0	0	0
$7.75	$8.00	1.20	.90	.65	.35	.10	0	0	0	0	0	0
$8.00	$8.25	1.20	.95	.65	.40	.10	0	0	0	0	0	0
$8.25	$8.50	1.25	1.00	.70	.45	.15	0	0	0	0	0	0
$8.50	$8.75	1.30	1.00	.75	.45	.20	0	0	0	0	0	0
$8.75	$9.00	1.35	1.05	.80	.50	.25	0	0	0	0	0	0
$9.00	$9.25	1.35	1.10	.80	.55	.25	0	0	0	0	0	0
$9.25	$9.50	1.40	1.15	.85	.60	.30	.05	0	0	0	0	0
$9.50	$9.75	1.45	1.15	.90	.60	.35	.05	0	0	0	0	0
$9.75	$10.00	1.50	1.20	.95	.65	.40	.10	0	0	0	0	0
$10.00	$10.50	1.55	1.25	1.00	.70	.45	.15	0	0	0	0	0
$10.50	$11.00	1.60	1.35	1.05	.80	.50	.25	0	0	0	0	0
$11.00	$11.50	1.70	1.40	1.15	.85	.60	.30	.05	0	0	0	0
$11.50	$12.00	1.75	1.50	1.20	.95	.65	.40	.10	0	0	0	0
$12.00	$12.50	1.85	1.55	1.30	1.00	.75	.45	.20	0	0	0	0
$12.50	$13.00	1.90	1.65	1.35	1.10	.80	.55	.25	0	0	0	0

"If the pay-roll period with respect to an employee is a daily pay-roll period or a miscellaneous pay-roll period—Continued.

And the wages divided by the number of days in such periods are—		And the number of withholding exemptions claimed is—										
		0	1	2	3	4	5	6	7	8	9	10 or more
At least	But less than	The amount of tax to be withheld shall be the following amount multiplied by the number of days in such period—										
$13.00	$13.50	$2.00	$1.70	$1.45	$1.15	$0.90	$0.60	$0.35	$0.05	$0	$0	$0
$13.50	$14.00	2.05	1.80	1.50	1.25	.95	.70	.40	.15	0	0	0
$14.00	$14.50	2.15	1.85	1.60	1.30	1.05	.75	.50	.20	0	0	0
$14.50	$15.00	2.20	1.95	1.65	1.40	1.10	.85	.55	.30	0	0	0
$15.00	$15.50	2.30	2.00	1.75	1.45	1.20	.90	.65	.35	.10	0	0
$15.50	$16.00	2.35	2.10	1.80	1.55	1.25	1.00	.70	.45	.15	0	0
$16.00	$16.50	2.45	2.15	1.90	1.60	1.35	1.05	.80	.50	.25	0	0
$16.50	$17.00	2.50	2.25	1.95	1.70	1.40	1.15	.85	.60	.30	.05	0
$17.00	$17.50	2.60	2.30	2.05	1.75	1.50	1.20	.95	.65	.40	.10	0
$17.50	$18.00	2.65	2.40	2.10	1.85	1.55	1.30	1.00	.75	.45	.20	0
$18.00	$18.50	2.75	2.45	2.20	1.90	1.65	1.35	1.10	.80	.55	.25	0
$18.50	$19.00	2.80	2.55	2.25	2.00	1.70	1.45	1.15	.90	.60	.35	.05
$19.00	$19.50	2.90	2.60	2.35	2.05	1.80	1.50	1.25	.95	.70	.40	.15
$19.50	$20.00	2.95	2.70	2.40	2.15	1.85	1.60	1.30	1.05	.75	.50	.20
$20.00	$21.00	3.05	2.80	2.50	2.25	1.95	1.70	1.45	1.15	.90	.60	.35
$21.00	$22.00	3.20	2.95	2.65	2.40	2.10	1.85	1.55	1.30	1.05	.75	.50
$22.00	$23.00	3.35	3.10	2.80	2.55	2.25	2.00	1.70	1.45	1.20	.90	.65
$23.00	$24.00	3.50	3.25	2.95	2.70	2.40	2.15	1.85	1.60	1.35	1.05	.80
$24.00	$25.00	3.65	3.40	3.10	2.85	2.55	2.30	2.00	1.75	1.50	1.20	.95
$25.00	$26.00	3.80	3.55	3.25	3.00	2.70	2.45	2.15	1.90	1.65	1.35	1.10
$26.00	$27.00	3.95	3.70	3.40	3.15	2.85	2.60	2.30	2.05	1.80	1.50	1.25
$27.00	$28.00	4.10	3.85	3.55	3.30	3.00	2.75	2.45	2.20	1.95	1.65	1.40
$28.00	$29.00	4.25	4.00	3.70	3.45	3.15	2.90	2.60	2.35	2.05	1.80	1.55
$29.00	$30.00	4.40	4.15	3.85	3.60	3.30	3.05	2.75	2.50	2.20	1.95	1.70
		15 per cent of the excess over $30 plus—										
$30.00 and over		4.50	4.20	3.95	3.65	3.40	3.10	2.85	2.55	2.30	2.05	1.75"

SEC. 503. EFFECTIVE DATE.

The amendments made by this title shall be applicable only with respect to wages paid on or after May 1, 1948.

TITLE VI—FISCAL YEAR TAXPAYERS.

SEC. 601. FISCAL YEAR TAXPAYERS.

Section 108 of the Internal Revenue Code is hereby amended by striking out "(d)" at the beginning of subsection (d) and inserting in lieu thereof "(e)", and by inserting after subsection (c) the following:

"(d) TAXABLE YEARS OF INDIVIDUALS BEGINNING IN 1947 AND ENDING IN 1948.—In the case of a taxable year of an individual beginning in 1947 and ending in 1948, the tax imposed by sections 11, 12, and 400 shall be an amount equal to the sum of—

"(1) that portion of a tax, computed as if the law applicable to taxable years beginning on January 1, 1947, were applicable to such taxable year, which the number of days in such taxable year prior to January 1, 1948, bears to the total number of days in such taxable year, plus

"(2) that portion of a tax, computed as if the law applicable to taxable years beginning on January 1, 1948, were applicable to such taxable year, which the number of days in such taxable year after December 31, 1947, bears to the total number of days in such taxable year."

JOSEPH W. MARTIN, Jr.,
Speaker of the House of Representatives.

A. H. VANDENBERG,
President of the Senate pro tempore.

IN THE HOUSE OF REPRESENTATIVES, U. S.,
April 2, 1948.

The House of Representatives having proceeded to reconsider the bill (H. R. 4790) entitled "An Act to reduce individual income tax payments, and for other purposes," returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

JOHN ANDREWS,
Clerk.

I certify that this Act originated in the House of Representatives.

JOHN ANDREWS,
Clerk.

IN THE SENATE OF THE UNITED STATES,
April 2 (legislative day, March 29), 1948.

The Senate having proceeded to reconsider the bill (H. R. 4790) "An Act to reduce individual income tax payments, and for other purposes", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, and passed by the House of Representatives on reconsideration of the same, it was

Resolved, That the said bill pass, two-thirds of the Senators present having voted in the affirmative.

Attest:

CARL A. LOEFFLER,
Secretary.

1948–10–12808

H. R. 2298. PUBLIC LAW 478, EIGHTIETH CONGRESS
[CHAPTER 180, SECOND SESSION].

An Act To amend the Interstate Commerce Act, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, * * *

* * * * * * *

SEC. 2. Part I of the Interstate Commerce Act, as amended, is amended by adding after section 20a the following new section:

SEC. 20b. (1) * * *

* * * * * * *

(12) The provisions of sections 1801, 1802, 3481, and 3482 of the Internal Revenue Code and any amendments thereto, unless specifically providing to the contrary, shall not apply to the issuance, transfer, or exchange of securities or the making or delivery of conveyances to make effective any alteration or modification effected pursuant to this section.

* * * * * * *

Approved April 9, 1948.

1948–10–12809

H. R. 5052. PUBLIC LAW 492, EIGHTIETH CONGRESS
[CHAPTER 222, SECOND SESSION].

An Act To exclude certain vendors of newspapers or magazines from certain provisions of the Social Security Act and Internal Rev-

209(b)(15) of the Social Security Act, as amended (U. S. C., 1940 edition, Supp. V, title 42, sec. 409(b)(15)), and section 1426(b)(15) of the Internal Revenue Code, as amended, are hereby amended to read as follows:

(15) (A) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back; or.

(b) The amendment made by subsection (a) to section 209(b)(15) of the Social Security Act shall be applicable with respect to services performed after the date of the enactment of this Act, and the amendment made to section 1426(b)(15) of the Internal Revenue Code shall be applicable with respect to services performed after December 31, 1939.

SEC. 2. (a) Section 1607(c)(15) of the Internal Revenue Code, as amended, is hereby amended to read as follows:

(15) (A) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;.

(b) The amendment made by subsection (a) shall be applicable with respect to services performed after December 31, 1939, and, as to services performed before July 1, 1946, shall be applied as if such amendment had been a part of section 1607(c)(15) of the Internal Revenue Code as added to such code by section 614 of the Social Security Act Amendments of 1939.

SEC. 3. If any amount paid prior to the date of the enactment of this Act constitutes an overpayment of tax solely by reason of an amendment made by this Act, no refund or credit shall be made or allowed with respect to the amount of such overpayment.

JOSEPH W. MARTIN, JR.,
Speaker of the House of Representatives.

A. H. VANDENBERG,
President of the Senate pro tempore.

IN THE HOUSE OF REPRESENTATIVES, U. S.,
April 14, 1948.

The House of Representatives having proceeded to reconsider the bill (H. R. 5052) entitled "An Act to exclude certain vendors of newspapers or magazines from certain provisions of the Social Security Act and Internal Revenue Code", returned by the President of the

United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

JOHN ANDREWS,
Clerk.

I certify that this Act originated in the House of Representatives.

JOHN ANDREWS,
Clerk.

IN THE SENATE OF THE UNITED STATES,
April 20 (legislative day, March 29), 1948.

The Senate having proceeded to reconsider the bill (H. R. 5052) "An Act to exclude certain vendors of newspapers or magazines from certain provisions of the Social Security Act and Internal Revenue Code", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, and passed by the House of Representatives on reconsideration of the same, it was

Resolved, That the said bill pass, two-thirds of the Senators present having voted in the affirmative.

Attest:

CARL A. LOEFFLER,
Secretary.

1948–10–12810

H. R. 5448. PUBLIC LAW 514, EIGHTIETH CONGRESS
[CHAPTER 257, SECOND SESSION].

An Act To amend sections 212(b) and 231(d) of the Internal Revenue Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 212(b) of the Internal Revenue Code (relating to income of nonresident alien individuals) is hereby amended to read as follows:

(b) EXCLUSIONS.—The following items shall not be included in gross income of a nonresident alien individual and shall be exempt from taxation under this chapter:

(1) SHIPS UNDER FOREIGN FLAG.—Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States;

(2) AIRCRAFT OF FOREIGN REGISTRY.—Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

(b) Section 231(d) of the Internal Revenue Code (relating to income of foreign corporations) is hereby amended to read as follows:

(d) EXCLUSIONS.—The following items shall not be included in gross income of a foreign corporation and shall be exempt from taxation under this chapter:

(1) SHIPS UNDER FOREIGN FLAG.—Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants

an equivalent exemption to citizens of the United States and to corporations organized in the United States;

(2) AIRCRAFT OF FOREIGN REGISTRY.—Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

SEC. 2. The amendments made by this Act shall be applicable with respect to taxable years beginning after December 31, 1945.

Approved May 4, 1948.

1948–12–12824

H. R. 6226. PUBLIC LAW 547, EIGHTIETH CONGRESS
[CHAPTER 333, SECOND SESSION].

An Act Making supplemental appropriations for the national defense for the fiscal year ending June 30, 1948, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, * * *

* * * * * * *

SEC. 3. (a) All contracts in excess of $1,000 entered into under the authority of this Act, obligating funds appropriated hereby, obligating funds consolidated by this Act with funds appropriated hereby, or entered into through contract authorizations herein granted, and all subcontracts thereunder in excess of $1,000 shall contain the following article:

RENEGOTIATION ARTICLE.—This contract is subject to the Renegotiation Act of 1948 and the contractor hereby agrees to insert a like article in all contracts or purchase orders to make or furnish any article or to perform all or any part of the work required for the performance of this contract.

(b) Whenever in the opinion of the Secretary of Defense excessive profits are reflected under any contract or contracts or subcontract or subcontracts required to contain the Renegotiation Article prescribed in subsection (a), the Secretary is authorized and directed to renegotiate such contracts and subcontracts for the purpose of eliminating excessive profits. He shall endeavor to make an agreement with the contractor or subcontractor with respect to the amount, if any, of such excessive profits and to their elimination. If no such agreement is reached, the Secretary shall issue an order determining the amount, if any, of such excessive profits and shall eliminate them by any of the methods set forth in subsection (c) (2) of the Renegotiation Act of February 25, 1944, as amended. In eliminating excessive profits the Secretary shall allow the contractor or subcontractor credit for Federal income and excess profits taxes as provided in section 3806 of the Internal Revenue Code. The powers hereby conferred upon the Secretary shall be exercised with respect to the aggregate of the amounts received or accrued under all such contracts and subcontracts by the contractor or subcontractor during his fiscal year or upon such other basis as may be mutually agreed upon; except that this section shall not be applicable in the event that the aggregate of the amounts so received or accrued is less than $100,000 during any fiscal year.

(c) For the purpose of administering this section the Secretary of Defense shall have the right to audit the books and records of any contractor or subcontractor subject to this section. In the interest of economy and the avoidance of duplication of inspection and audit, the services of the Bureau of Internal Revenue shall, upon request of the Secretary of Defense and with the approval of the Secretary of the Treasury, be made available to the extent determined by the Secretary of the Treasury for the purpose of making examinations and audits under this section.

(d) The provisions of this section shall not apply to any of the contracts or subcontracts specified in subsection (i) (1) of the Renegotiation Act of February 25, 1944, as amended, and the Secretary of Defense in his discretion may exempt from the provisions of this section any other contract or subcontract both individually and by general classes or types.

(e) Agreements or orders determining excessive profits shall be final and conclusive in accordance with their terms and except upon a showing of fraud or malfeasance or willful misrepresentation of a material fact shall not be annulled, modified, reopened, or disregarded, except that in the case of orders determining excessive profits the amount of the excessive profits, if any, may be redetermined by The Tax Court of the United States in the manner prescribed in subsection (e) (1) of the Renegotiation Act of February 25, 1944, as amended, except that such redetermination shall be subject to review to the extent and in the manner provided by subchapter B of Chapter 5 of the Internal Revenue Code.

(f) The Secretary of Defense shall promulgate and publish in the Federal Register regulations interpreting and applying this section and prescribing standards and procedures for determining and eliminating excessive profits hereunder using so far as he deems practicable the principles and procedures of the Renegotiation Act of February 25, 1944, as amended, having regard for the different economic conditions existing on or after the effective date of this Act from those prevailing during the period 1942 to 1945. In any case in which the contract price of any such contract or subcontract was based upon estimated costs, then the Secretary of Defense shall determine the difference between such estimated costs and actual costs and shall, in eliminating excessive profits, take into consideration as an element the extent to which such difference is the result of the efficiency of the contractor or subcontractor.

(g) The powers and duties hereby conferred upon the Secretary of Defense may be delegated by him to any officer (military or civilian) or agency of the National Military Establishment.

(h) Any person who willfully fails or refuses to furnish any information, records, or data required of him under this section, or who knowingly furnishes any such information, records, or data containing information which is false or misleading in any material respect, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or imprisonment for not more than two years, or both.

(i) This section may be cited as the "Renegotiation Act of 1948".

SEC. 4. This Act may be cited as the "Supplemental National Defense Appropriation Act, 1948".

Approved May 21, 1948.

COMMITTEE REPORTS.

1948–8–12789

REVENUE ACT OF 1948.

[House of Representatives Report No. 1274, Eightieth Congress, Second Session.]

[January 27, 1948.]

Mr. Knutson, from the Committee on Ways and Means, submitted the following report [to accompany H. R. 4790]:

The Committee on Ways and Means, to whom was referred the bill (H. R. 4790) to reduce individual tax payments and for other purposes, having had the same under consideration, reported back to the House with amendments and recommend that the bill, as amended, do pass. The committee amendments are shown in appendix A.

I. General Statement.

H. R. 4790 provides tax reduction, relief, and equalization. It reduces the present extremely high rates of the individual income tax. These rates were a product of wartime conditions, and constitute a serious obstacle to the increase in production needed to relieve current inflationary pressures. The reduction of these rates also is essential to the long-run improvement in the American standard of living.

Relief from the present high cost of living is provided by an increase in exemptions under the individual income tax. This relief is heavily concentrated among taxpayers in the low-income brackets. Such taxpayers also receive preferential treatment in the percentage tax reductions made by this bill. Additional relief is granted to persons 65 and over and to the blind.

Equalization is provided for the tax burdens of married couples in common-law and community-property States. The bill, with committee amendments to be offered on the floor, corrects existing inequalities under the estate and gift taxes, as well as the individual income tax.

As a result of this bill collections in the fiscal year 1949 will be reduced (or refunds increased) by $7.1 billion, leaving a surplus of at least $2½ to $3½ billion. Sufficient funds will remain to provide a debt reduction of between $10 billion and $11 billion during the fiscal years 1948 and 1949.

Table I.—*A comparison of the effective individual-income tax rates under present law and H. R. 4790.*

Combined net income before personal exemption.	Single person, no dependents.		Married person, no dependents, entire income earned by 1 spouse.		Married person, 2 dependents, entire income earned by 1 spouse.		Married person, 2 dependents, with income divided as follows: 50 per cent and 50 per cent.	
	Present law.	H. R. 4790.	Present law.	H. R. 4790.	Present law.	H. R. 4790.	Present law	H. R 4790.
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*
$500								
$600	3.17							
$700	5.43	1.90						
$750	6.33	2.66						
$800	7.12	3.33						

TABLE I.—*A comparison of the effective individual income tax rates under present law and H. R. 4790*—Continued.

Combined net income before personal exemption.	Single person, no dependents.		Married person, no dependents, entire income earned by 1 spouse.		Married person, 2 dependents, entire income earned by 1 spouse.		Married person, 2 dependents, with income divided as follows: 50 per cent and 50 per cent.	
	Present law.	H. R. 4790.	Present law.	H. R. 4790.	Present law.	H. R. 4790.	Present law.	H. R. 4790.
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*
$900	8.44	4.43						
$1,000	9.50	5.32						
$1,200	11.08	6.65	3.17					
$1,500	12.67	7.98	6.33	2.66				
$1,800	13.72	9.61	8.44	4.43				
$2,000	14.25	10.64	9.50	5.32				
$2,500	15.20	11.52	11.40	6.92	3.80	0.53	3.80	0.53
$3,000	16.15	12.36	12.67	7.98	6.33	2.66	6.33	2.66
$4,000	17.34	13.45	14.72	10.64	9.50	5.32	9.50	5.32
$5,000	18.43	14.54	15.96	11.55	11.78	7.72	11.40	7.72
$6,000	19.47	15.83	17.42	12.36	13.30	9.12	12.83	9.12
$7,000	20.49	16.94	18.46	12.99	14.93	10.12	13.84	10.12
$8,000	21.49	18.03	19.71	13.45	16.15	10.94	14.73	10.94
$9,000	22.48	19.03	20.69	13.82	17.52	11.59	15.41	11.59
$10,000	23.47	20.03	21.85	14.55	18.62	12.10	16.15	12.10
$11,000	24.44	20.98	22.80	15.24	19.86	12.82	16.75	12.82
$12,000	25.41	21.94	23.91	15.83	20.90	13.60	17.42	13.60
$13,000	26.42	22.88	24.85	16.32	22.07	14.27	17.98	14.27
$14,000	27.45	23.87	25.99	16.94	23.07	14.84	18.59	14.84
$15,000	28.47	24.82	26.98	17.52	24.26	15.47	19.13	15.47
$20,000	33.23	29.28	31.97	20.03	29.45	18.29	21.85	18.29
$25,000	37.45	33.18	36.33	22.36	34.09	20.80	24.40	20.80
$30,000	40.88	36.35	39.90	24.82	37.94	23.26	27.04	23.26
$40,000	46.06	41.10	45.24	29.28	43.60	27.92	31.97	27.92
$50,000	50.27	44.96	49.59	33.18	48.22	31.97	36.33	31.97
$60,000	53.75	48.13	53.15	36.35	51.96	35.29	39.90	35.29
$70,000	56.63	50.76	56.10	38.91	55.05	37.95	42.78	37.95
$80,000	59.16	53.05	58.67	41.11	57.71	40.22	45.24	40.22
$90,000	61.43	55.12	60.99	43.12	60.10	42.31	47.52	42.31
$100,000	63.54	57.03	63.13	44.96	62.30	44.23	49.59	44.23
$150,000	70.54	63.38	70.26	51.97	69.69	51.42	57.46	51.42
$200,000	74.28	66.77	74.06	57.03	73.63	56.59	63.13	56.59
$250,000	76.71	68.97	76.54	60.84	76.19	60.47	67.40	60.47
$300,000	78.33	70.45	78.19	63.38	77.90	63.08	70.26	63.08
$400,000	80.36	72.29	80.25	66.77	80.04	66.54	74.06	66.54
$500,000	81.58	73.39	81.49	68.97	81.32	68.79	76.54	68.79
$750,000	83.20	74.86	83.15	71.92	83.03	71.79	79.84	71.79
$1,000,000	84.01	75.60	83.97	73.39	83.88	73.30	81.49	73.30
$2,000,000	85.23	76.70	85.21	75.60	85.17	75.55	83.97	75.55
$5,000,000	85.50	77.00	85.50	76.92	85.50	76.90	85.46	76.90

Source: Staff of the Joint Committee on Internal Revenue Taxation.

II. SUMMARY OF CHANGES IN EXISTING LAW.

H. R. 4970 is both a tax-reduction and tax-equalization bill. The tax-reduction features apply solely to the individual income tax. They include a general increase in exemptions, a reduction in all tax rates but with the relief concentrated in the lower income brackets, and special exemptions for those over 65 and the blind. The tax-equalization features of the bill apply to the individual income tax and the estate and gift taxes. They, combined with an amendment which your committee intends to offer on the floor of the House, are designed to produce uniform treatment for residents of common-law and community-property States.

A comparison of the effective individual income tax rates under the bill with those under present law is shown in table I. The changes in the rates and exemptions of the individual income tax under this bill are effective January 1, 1948. The withholding tables will become effective on April 1, 1948. Over-withholding during the first three months of 1948, which is not offset by decreased payments on estimated taxes or final returns, will of course be refunded to the taxpayer. The changes in the estate and gift tax become law on the date of enactment of this bill. A brief description of the changes provided by your committee's bill is given below.

A. INDIVIDUAL INCOME TAXES.

1. Personal and dependency exemptions are increased from $500 per capita to $600 per capita.

2. Tax reductions ranging from 30 per cent to 10 per cent according to the size of the income are provided for all taxpayers. Table II presents these reductions in summary fashion. The distribution of these tax reductions is as follows:

(*a*) Persons with net incomes of $1,000 or less after exemption [1] receive a 30 per cent reduction in their tax.

(*b*) Persons with net incomes of $1,000 to about $1,400 after exemptions receive a reduction of from 30 per cent to 20 per cent in their tax.

(*c*) Persons with net incomes of from about $1,400 to $4,000 after exemptions receive a reduction of 20 per cent in their tax.

(*d*) Persons with net incomes in excess of $4,000 after exemptions receive a reduction of 20 percent on the tax imposed on their first $4,000 of net income after exemptions, and 10 per cent on the tax imposed on any remaining net income after exemptions.

TABLE II.—*Percentage reductions in individual income taxes provided by H. R. 4790.*

Surtax net income.	Tentative normal tax and surtax.	Reductions in tentative normal tax and surtax.	Reductions in present law tax.
$0 to $1,000	$0 to $200	33.5 per cent	30 per cent.
$1,000 to $1,395.83	$200 to $279.17	$67	30 per cent to 20 per cent.
$1,395.83 to $4,000	$279.17 to $840	24 per cent	20 per cent.
$4,000 and over	$840 and over	24 per cent of the tentative tax on the first $4,000 of surtax net income plus 14.5 per cent of excess.	20 per cent of the present law tax on the first $4,000 of income plus 10 per cent of the excess.

Source: Staff of the Joint Committee on Internal Revenue Taxation.

3. Husbands and wives are permitted to split their income for tax purposes. Those who avail themselves of this opportunity file joint returns, divide their net income and exemptions by 2, compute their tax on this basis, and multiply the result by 2. Since in this change the maximum standard deduction for married couples is increased to $1,000, the maximum standard deduction for single persons is also increased to $1,000.

4. An additional exemption is granted to taxpayers who are 65 or over. If both husband and wife have attained the age of 65, the $600 exemption is granted to each spouse.

5. An additional $600 exemption is granted to taxpayers who are blind. If both husband and wife are blind, the $600 exemption is granted to each spouse. A blind person 65 or over may claim this exemption in addition to that based on age.

B. ESTATE AND GIFT TAXES.

1. The 1942 amendments to the estate and gift tax which provided special rules for community-property States are repealed for persons dying after the enactment of this bill. Generally, this restores the rule by which estate and gift tax liabilities are dependent upon the ownership of the property under State law. Thus, in community-property States, irrespective of which spouse dies first, only one-half of the community property is included in the gross estate. Similarly, one-half of a gift made out of community property is taxable to the husband and one-half to the wife, since under State law each owns a one-half interest in the property.

2. A committee amendment will be offered on the floor of the House to provide for estate and gift tax "splitting" in common-law States. This amendment also will apply to persons dying after the enactment of this bill, so that both the community-property States and the common-law States may be placed on an

[1] More accurately, surtax net incomes. For clearer understanding, however, the term "net income after exemptions" will be used hereafter in this report.

equal basis at the same time. Thus, in these States property passing from a decedent to his spouse is excluded from the decedent's estate-tax base up to a limit of 50 per cent of the value of his estate. In a similar fashion husbands and wives may treat gifts made currently as being made one-half by each spouse. Residents of community-property States may also take advantage of this provision. If they do so, the effect will be to extend this "splitting" to their separate property. The repeal of the 1942 amendment already gives them the right to split community property. In effect, these amendments represent the adoption of a new national system for ascertaining Federal estate and gift tax liability. The adoption of these amendments will extend substantial benefits to residents of both community-property and common-law States. The delay in the preparation of this amendment is due to the inherent difficulties of the subject.

III. Summary of Estimated Revenue Effect of Tax Reduction.

A. Effect on Tax Liabilities.

Individual income tax liabilities under your committee's bill are estimated at $14,731 million in a full year of operation assuming a personal income level of $209 billion. This represents a reduction of $6,550 million in the individual income tax liabilities under present law. Under the bill as reported the liability reduction on the account of the estate and gift taxes will be negligible.[2] The effect of H. R. 4790 on individual income tax liabilities is summarized in the following table:

Table III.—*Estimated individual income tax liability under present law and H. R. 4790, assuming personal income level of $209 billion.*

[In millions of dollars.]

Estimated tax liability under—	
Present law	$21,281
H. R. 4790	14,731
Reduction in liability under H. R. 4790	6,550

Source: Staff of the Joint Committee on Internal Revenue Taxation.

A tax reduction expressed on a *liability* basis, such as the one shown in the above table, indicates the decrease in *obligations* incurred by taxpayers during a year. However, for the purposes of determining the effect of H. R. 4790 on the budget, it is necessary to present revenue estimates on a collection basis.

B. Effect on Tax Collections.

A tax reduction expressed on a *collection* basis indicates the actual loss in *receipts* of the Government in a specific year. Usually in the year in which a tax reduction is made, the effect of the reduction in liabilities is not reflected fully in the collections because of the lag in collections behind the incurring of the tax liability. Thus, although the tax reduction under your committee's bill is effective during half of the fiscal year 1948, only about 30 per cent of the reduction in liabilities is reflected in the collections during that year.

Table IV presents the effects of the tax reduction proposed by your committee on collections during the fiscal years 1948 and 1949. A personal income level of $209 billion in the calendar year 1948 has been assumed. On this basis, H. R. 4790 would reduce collections in the fiscal year 1948 by $1 billion, reduce collections and increase refunds in the fiscal 1949 by $7.1 billion. The revenue loss in the fiscal year 1949 is in excess of the estimated reduction in liabilities of $6.5 billion primarily because it was not possible to pass this bill before January 1, 1948. As a result there will be overwithholding of the income tax in January, February, and March of this year, which in the fiscal year 1949 will decrease payments of

[2] Some further reduction in liabilities will occur if the proposed floor amendment relating to the estate and gift taxes is adopted. However, this will have no effect on the budget in the fiscal years 1948 or 1949.

estimated tax and payments with final returns, and will increase the tax refunds required.

TABLE IV.—*Effect of H. R. 4790 on total receipts, assuming personal income of $209 billion in the calendar year 1948.*

[In millions of dollars.]

	Fiscal year.	
	1948.	1949.
Estimated receipts under—		
Present law	46,490	47,317
H. R. 4790	45,450	[1] 40,257
Reduction under H. R. 4790	1,040	[1] 7,060

[1] This includes an allowance for additional refunds.

Source: Staff of the Joint Committee on Internal Revenue Taxation.

IV. THE FISCAL OUTLOOK IN 1948 AND 1949.

A. FISCAL YEAR 1948.

The surplus for the fiscal year 1948 forecast by the President in his Budget message transmitted to Congress on January 12 is $7,483 million. This contrasts with an estimate of $754 million based on the President's Budget message of January, 1947, a year ago,[2] and an estimate of $4.7 billion made by him last August. This increase of nearly tenfold in the estimated size of the surplus during the past year is due to a very substantial underestimate of revenues in the President's Budget message of January, 1947. At that time revenues were estimated at $38,482 million [3] as contrasted with $45,210 million in his recent Budget document. Both the Secretary of the Treasury and the Director of the Bureau of the Budget recently testified before your committee that this underestimate arose from a very conservative assumption as to the level of income. Your committee pointed out in its report on H. R. 1 in March of last year that the administration's revenue estimates were based on too low an income level and stated that the continuance of the then current high level of business might be expected to produce receipts in the fiscal year 1948 of at least $43 billion.

The recent Budget message of the President contains the following statement with respect to the revenue estimates presented in it:

"The estimates assume continuation of the present high levels of business activity and incomes, continued full employment, and stable prices close to the present level."

The Secretary of the Treasury informed your committee that the estimates were based on a personal income level of $200 billion. However, the Economic Report of the President shows that personal income in the fourth quarter of 1947 was running at an annual rate of $205.3 billion and indicates a rising trend. This suggests that the Treasury revenue estimates for the fiscal year 1948 at current levels are about $1 billion too low. Your committee believes that the trend in personal income will continue for at least the first few months of the calendar year 1948, and because of this trend, it is estimated that receipts for the fiscal year 1948 will be $46,490 million. Combined with the President's estimate of expenditures of $37,728 million, these revenues will produce a surplus of $8,762 million for the fiscal year 1948.

It is clear that the tax reduction proposed under your committee's bill leaves an ample surplus in the fiscal year 1948. As indicated in part III, H. R. 4790 is expected to reduce receipts in the fiscal year 1948 by $1,040 million. Thus, there will be a surplus of about $7.8 billion after the tax reduction provided in H. R. 4790. This amount will be available for debt retirement and should be so applied.

[3] After adjustment for continuation of war excise tax rates.

B. FISCAL YEAR 1949.

Table V which follows shows the effect of H. R. 4790 upon the budget of the Federal Government in the fiscal year 1949 with an assumed personal income level of $209 billion [4] under two different assumptions as to the cuts Congress will make in the expenditures proposed by the President:

TABLE V.—*Effect of H. R. 4790 upon the budget for the fiscal year 1949 with varying assumptions as to level of expenditures (assuming personal income in the calendar year 1948 of $209 billion).*

[In billions of dollars.]

A. Assuming a reduction in expenditures of $2 billion:	
Receipts under present law (staff estimate)	47.3
Expenditures (President's budget of $39.7 cut by $2 billion)	37.7
Surplus before tax reduction	9.6
Tax reduction under H. R. 4790	[1]7.1
Surplus after tax reduction	2.5
B. Assuming a reduction in expenditures of $3 billion:	
Receipts under present law (staff estimate)	47.3
Expenditures (President's budget of $39.7 billion cut by $3 billion)	36.7
Surplus before tax reduction	10.6
Tax reduction under H. R. 4790	[1]7.1
Surplus after tax reduction	3.5

[1] Includes refunds due to overwithholding in fiscal year 1948.

With an expenditure reduction of $2 billion, table V indicates that there will be a surplus after the tax reduction of $2.5 billion. With an expenditure reduction of $3 billion, there would be a surplus after the tax reduction of $3.5 billion. For each additional reduction in expenditures of $1 billion there will be an additional $1 billion increase in the surplus.

Thus, on the basis of the tax reduction provided by H. R. 4790 it would be possible to reduce the debt in the two fiscal years 1948 and 1949 by $10 billion to $11 billion.

Your committee has purposely used what it considers to be conservative assumptions both as to the amount by which Congress will reduce the President's proposed expenditures and the level of personal income on which the receipts are based. It believes that the President's expenditures will be cut by at least $3 billion. Nevertheless, to be sure that a conservative view is taken, the effect of the revenue loss under H. R. 4790 is also shown with a cut of only $2 billion in expenditures.

In his review of the Budget last August the President admitted that cuts in the 1948 Budget for which Congress was responsible amounted to $1,520 million. It is believed, however, that this very substantially understates the savings made by Congress. Nevertheless, in view of the larger size of the 1949 Budget, the acknowledged congressional reductions in the 1948 Budget indicate that cuts of $2 billion or $3 billion in 1949 are altogether within reason.

This is especially true in view of the fact that the President's proposals for new legislation in his current Budget message call for expenditures in the fiscal year 1949 of $5,735 million. This contrasts with proposed new legislation in the Budget message of last year calling for a net increase of expenditures in the fiscal year 1948 of only $484 million.[5] It is a well-recognized fact that the possibility of reducing expenditures which require new legislation is much greater than in the case of expenditures based on existing law. The latter represent

[4] The assumed level of personal income shown is for the calendar year 1948 since this is the most important period as far as collections in the fiscal year 1949 are concerned.

[5] If the proposed elimination of the postal deficit is offset against the proposed legislation which called for increased expenditures the proposed legislation of the President in the fiscal year 1948 would have increased expenditures in that year of only $132 million.

programs already accepted by Congress, while on the former Congress has not as yet expressed its views. Thus, since the effect of the proposed legislation included in the current Budget on fiscal year 1949 expenditures is nearly 12 times as large as the effect of the proposed legislation contained in last year's Budget on fiscal year 1948 expenditures, it is apparent that there is a greater opportunity for expenditure cuts in 1949 than in 1948.[6]

The personal income levels, expressed as annual rates, on which your committee based its revenue estimates are:

First half of calendar year 1948	$212 billion.
Second half of calendar year 1948	$205 billion.
First half of calendar year 1949	$195 billion.

The above figures produce an average personal income of $209 billion for the calendar year 1948 and $200 billion for the fiscal year 1949. Of these two figures, that for the calendar year 1948 is the most significant, since a large portion of the collections in the fiscal year 1949 arise from liabilities incurred during the calendar year 1948.

These assumptions represent an attempt to be realistic, yet conservative, in arriving at a basis for the revenue estimates presented in this report. It is now quite generally agreed that for some time at least income levels not only will remain high, but will continue to rise. The President's recent Economic Report gives every expectation of a rising income throughout 1948. Business forecasters are almost unanimously agreed that at least in the first few months of 1948 there will be a continuation of the current rising trend in personal incomes. Hence, it is unrealistic to assume anything other than a rising income level in the fore part of 1948.

Personal income in the last quarter of 1947 was running at an annual rate of $205 billion and preliminary data indicate that it reached a level of $206.5 billion in December.[7] This represents an increase of $11.6 billion in the four months since last August. If this trend continues for only three or four months more, personal income will average well above the $212 billion assumed in this report for the first six months of 1948.

For the purposes of the revenue estimates, it has been assumed that incomes would decline during the second half of 1948 and the first half of 1949. This is not to be taken as a forecast of the most likely course of events, but rather as a cautious assumption well within the limits of reasonableness, and in conformity with your committee's desire to place its tax policy on a conservative basis.

The Secretary of the Treasury in his recent appearance before your committee indicated that the Treasury estimates of revenue lost under H. R. 4790 in the fiscal year 1949, as well as the revenue estimates which appear in the President's Budget recently presented to Congress, assume "current" levels of income. When pressed for the actual figures used, the Secretary indicated that personal incomes were assumed to be $200 billion throughout the 18-month period from January, 1948, to July, 1949. This is not the current level as indicated by the President's Economic Report. There personal income payments for the fourth quarter of 1947 are estimated to be at an annual rate of $205.3 billion. The last Department of Commerce figure published is for November and shows a level of $204.9 billion. As indicated above, the President's Economic Report implies that the level in December is $206.5 billion.

Apart from the fact that the Treasury's assumption as to personal income is considerably below the current level, it does not in the opinion of your committee represent a realistic basis for revenue estimates. Of necessity, the Treasury estimate assumes an abrupt and immediate drop from current income levels. Since personal income in December was at an annual rate of $206.5 billions, and since there is no evidence of an important decline in January, the Treasury must be forecasting a sharp drop below $200 billion in February, or an even sharper fall in March, if personal income is to average $200 billion during the first quarter

[6] Even if proposed expenditures for international affairs and finance are left out of account in both budgets, expenditures based on proposed legislation in 1949 are nearly eight times the size of such items in 1948.

[7] The preliminary figure of personal income for December was indirectly presented in the President's recent Economic Report which estimated personal income in the last quarter of 1947 at an annual rate of $205.3 billion. Since the October and November figures of $204.4 billion and $204.9 billion, respectively, are available in Department of Commerce material, it was possible to compute the estimate used for December.

of 1948, as the Treasury assumes that it will. This appears to be a clear-cut contradiction of the administration's frequently expressed fear of the continuation of inflationary pressures.

The failure of the Treasury to take into account the strong likelihood of a high income level in the first half of calendar year 1948 could of itself result in a serious understatement of collections in the fiscal year 1949. This would be true even if the income level for the entire 18-month period should average no more than $200 billion, since the income level in the fore part of the calendar year 1948 is of particular significance with respect to collections in the fiscal year 1949.

V. Tax Reduction and Inflation.

The question of the effect of a tax cut at this time on existing inflationary pressures has been widely discussed. It appears to be a central issue in much of the discussion over both the President's tax proposal and your committee's bill.

A. The President's Proposal.

The President in his messages to Congress and the Secretary of the Treasury in his recent appearance before your committee have supported individual income tax reduction. They have contended, however, that in order to prevent an increase in inflationary pressures, the loss in individual income taxes should be made up by increasing corporate taxes. In the hearings before your committee the Secretary finally made it clear that the administration, in recommending an increase in corporate taxes, was sponsoring an excess profits tax.

The President's program is inflationary in effect and it is time that this fact be known and generally understood. Contrary to the general impression, the imposition of an excess profits tax would not produce sufficient revenue in the fiscal years 1948 and 1949 to offset the decrease in the individual income tax proposed by the President. The Secretary of the Treasury admitted in the hearings before your committee that the President's tax proposal will reduce collections by $3 billion in the fiscal years 1948 and 1949. This loss occurs because collections lag behind changes in liabilities to a much greater extent in the case of corporation taxes than is true of individual income taxes.[8] Thus the President's tax proposal, despite the camouflage, is a revenue-reduction measure as far as the fiscal years 1948 and 1949 are concerned. By decreasing the budget surpluses it tends to increase the inflationary pressures in those years. Of course, greater collections from corporate taxes would be realized in the fiscal years 1950 and 1951. However, even the President's economic advisers have not as yet so much as intimated that the deflationary pressures, resulting from the increased corporate tax collections in 1950 and 1951, would be desirable.

The type of reduction in individual income taxes proposed by the President, taken alone, would be most inflationary. Almost all of the proposed reduction would be concentrated in the hands of persons who spend nearly all of their current income. A very small part would go to individuals who might save and invest a substantial portion. It is difficult to see how a more explosively inflationary type of individual income tax reduction could be devised. Your committee's bill recognizes the necessity of offering relief to those bearing the brunt of the high cost of living, but your committee's bill also provides incentives for greater production.

The proposal of the President to impose an excess profits tax, taken alone, is also highly inflationary. It discourages productive effort on the part of corporate enterprise and the private investment in corporate stocks which is necessary for business expansion and, therefore, greater production. On this point your committee wishes to quote the words of the former Secretary of the Treasury, and also a former member of the Ways and Means Committee, Chief Justice Vinson, when he appeared before the Senate Finance Committee in 1945 in support of the repeal of the wartime excess profits tax:

"Clearly, the repeal of the excess profits tax will stimulate production. To-day we are starved for new houses, new cars, new radios, and the like. The best

[8] As a result of our withholding tax system a large portion of individual income taxes are collected very shortly after the liability is incurred. Corporate taxes, however, are not due until two and one-half months after the end of the corporation's tax year and even then the payment is usually spread out in four installments which are not completed for nearly another full year.

defense against the use of our wartime savings to bid up prices on these scarce items is to remove the scarcity. Production and more production is the key. To this end elimination of the repressive influence of the excess profits tax will make a real contribution."

The imposition of an excess profits tax would also lead to waste in the use of materials and manpower. This has always been a consequence of excess profits taxation. It was apparent during the war. It would surely appear in an aggravated form if such a tax were imposed in a nonwar period when patriotic motives are not as strong. The result would be a diversion of productive resources into nonessential channels, and an over-all reduction in the volume of output. Both of these factors would increase inflationary pressures.

Since both portions of the President's program, taken alone, are inflationary, the program as a whole is highly undesirable.

B. YOUR COMMITTEE'S BILL.

The positive effect of your committee's bill on the incentives to produce is important in considering its influence on present inflationary pressures. Because of the importance of this subject, it is discussed at length in the next section of this report. It is sufficient to say here that your committee believes that increased production is the most satisfactory answer to the high prices resulting from the pressure of pent-up demand on a limited supply. So far as this method of attacking inflation is available, its use is preferable to the arbitrary reduction of demand to fit a lower level of production. By lowering tax rates in both the lower and upper income brackets, your committee's bill will increase the incentives of labor and management to produce, and will increase investors' willingness to assume business risks. For these reasons H. R. 4790 will increase production. This in turn will decrease inflationary pressures.

Critics of your committee's bill who stress its alleged inflationary effects ignore the fact that sizable reductions in the Federal Government's expenditures may be expected to accompany this tax reduction. Your committee believes that fiscal year 1949 expenditures will be reduced by at least $3 billion. However, even if it is assumed that expenditures will be cut by only $2 billion, there still would be a surplus of $2.5 billion in the fiscal year 1949 after the tax reduction provided by H. R. 4790.

This is a larger surplus than the administration apparently believes is required in the fiscal year 1949. The President's Budget message estimated that on the basis of administration expenditure proposals, the surplus would be $4.8 billion. However, this must be reduced by $2.4 billion, the amount by which, according to the Secretary of the Treasury, the President's tax proposal would reduce fiscal year 1949 collections. This would leave a surplus of only $2.4 billion according to the administration's own calculations.

So far attention has been directed only to the effect of H. R. 4790 on the ordinary budget surplus. The President's recent Economic Report contains a table showing the surplus on a cash basis for the calendar years 1946, 1947, and 1948. As the Economic Report indicates, this presents a better picture of the immediate effect of the Federal budget on consumer and business demand than the ordinary budget. This is true because receipts and expenditures which, from the standpoint of the economy as a whole, are mere accounting entries are eliminated. The table follows:

TABLE VI.—*Federal cash surplus, calendar years 1946, 1947, and 1948.*

[Billions of dollars.]

Receipts or payments.	1946.	1947.[1]	1948.[2]
Receipts	45.5	46.9	49.2
Payments	45.3	41.3	40.4
Cash surplus	+.2	+5.6	+8.8

[1] Based on actual data through mid-December.

[2] Assumes no changes in tax legislation and continued high levels of employment and income, and includes anticipated Presidential recommendations for new legislation.

Source: Economic Report of the President, January, 1948, p. 99.

Apparently the cash surplus in the calendar year 1948 will be much larger than in 1947. This occurs not only because of a large excess of ordinary receipts over ordinary expenditures, but also because large nonrecurrent terminal-leave payments were made in 1947.

It is anticipated that in the calendar year 1948, H. R. 4790 will reduce revenues by $3.6 billion. However, if it is assumed that one-half of a $2 billion to $3 billion cut in fiscal year 1949 expenditures is effective in the first half of the year, there would be a cash surplus after the enactment of H. R. 4970 of $6.2 billion to $6.7 billion as compared to $5.6 billion in 1947. In the opinion of your committee the difference will be even greater because, as indicated elsewhere, there is good reason to believe that the revenue estimates for the fiscal years 1948 and 1949 used in the budget are considerably understated. Thus even after the proposed tax reduction, the cash surplus will be substantially greater in 1948 than in 1947. This means that the 1948 budget after provision for your committee's tax bill will be a stronger curb on inflation than the budget of 1947.

Some will still contend that H. R. 4790, viewed without the accompanying expenditure decrease, will have a temporary inflationary effect. It might even be contended that this will be so despite the bill's stimulating effect on production incentives. To such critics your committee can best reply by quoting a statement from the President's Economic Report which, although intended to apply to the President's proposal, fits your committee's bill much more aptly because it contains some real tax revision:

"Any net change one way or the other in the effect of these tax revisions upon inflation is outweighed by the manifest equity of the revisions proposed."

VI. The Percentage Reduction in Taxes and Incentives.

In the opinion of your committee production must be the ultimate answer both to the immediate inflationary problem and the long-run goal of achieving a higher standard of living. Increased production requires the wholehearted cooperation of all segments of our economy. To accomplish this goal the productivity of labor must be increased, the initiative of our business managers must be stimulated, and profits after taxes must be of sufficient size to attract investors into risk-taking enterprise. Your committee believes that the present high wartime tax rates represent one of the chief obstructions to the achievement of this higher level of production.

A. Production in Immediate Future.

The Secretary of the Treasury in his testimony before your committee, both this year and last, stated his belief that industry was and is running at full capacity. Therefore, he could see no immediate need to remove the high tax rates which obstruct production. Despite his statement last year the output of goods and services did increase in 1947. The recent Economic Report of the President estimates that 1947 production exceeded that of 1946 by nearly 5 per cent, although the increase did not quite reach the goal set a year ago. Moreover, the report sets up the objective of a further 3 per cent rise in the output of goods and services of the nonagricultural parts of our economy in 1948. Thus it is apparent that the Secretary's opinion that we have reached a temporary limit in our productive effort is not well founded.

Increases in the productivity of labor and the removal of bottlenecks in various industrial processes represent the two chief means of increasing production in the immediate future. Our experience after the First World War leads to the conclusion that a large increase in productivity can be expected in such periods. After World War I productivity increased by more than 10 per cent a year for a period of three years.[9] The absence of any such increase following World War II can be accounted for to a considerable extent by such obstructions as the present high tax rates. The absence of adequate monetary incentives is one of the important causes of the bottlenecks and the current low rate of increase in productivity. Your committee refuses to accept the conclusion that we have reached even a temporary limit to our productive effort, and believes that lower tax rates will be beneficial in stimulating production in the immediate future.

[9] Basic Facts on Employment and Production, Senate Committee Print No. 4, 79th Cong., 1st sess., September 1, 1945, p. 6.

The repressive effects of the existing tax rates are felt not only in manufacturing and trade, but in farming as well. Evidence of this can be found in the reports that some farmers have been unwilling to move their crops to market during the closing months of a year in which they had already accrued large tax liabilities. These farmers were holding back their crops until the turn of the year in order to avoid the high repressive surtax rates. Obviously tax reductions in these cases would produce an immediate increase in the supply of farm products.

B. PRODUCTION IN THE LONG RUN AND THE SCARCITY OF RISK CAPITAL.

The availability of sufficient risk capital to meet the needs of business is a significant factor in increasing production in the immediate future, and the paramount consideration for the long run. Because your committee had received reports of shortages of such capital, it asked the Secretary of Commerce to testify on this subject at its recent hearings. The Secretary took the position that ample funds are available to meet current business needs, and found no evidence of a shortage of savings.

However, the Secretary's emphasis was on the over-all needs for business funds, and not on the point with which your committee was primarily concerned, the availability of venture capital. The inadequate supply of this risk capital is abundantly shown by the Secretary's own statement. At the hearings the Secretary presented the 1947 data which appear in tables VII and VIII. The remaining data shown in these tables were supplied on request by the Director of the Office of Business Economics of the Department of Commerce. From these data and other evidence submitted by the Secretary at the hearings on this bill, the following facts emerge:

TABLE VII.—*Changes in corporate securities outstanding and in their ownership, 1946 and 1947.*

[Amounts in billions of dollars.]

	1946.[1]		1947.	
	Amount.	Per cent of new issues.[2]	Amount.	Per cent of new issues.[2]
Net issues [3] by industry group	$2.3	100.0	$3.9	100.0
Industrial and miscellaneous	2.5	108.7	1.9	48.7
Public utility (and telephone)	.3	13.1	2.0	51.3
Railroad	−.5	−21.7	0	0
Net issues [3] by type of security	2.3	100.0	3.9	100.0
Common stock	.9	39.1	.8	20.5
Preferred stock	.4	17.4	.5	12.8
Bonds and notes	1.0	43.5	2.6	66.7
Net purchases [4] by various groups	2.3	100.0	3.9	100.0
Commercial banks	.3	13.0	.2	5.1
Mutual savings banks	.2	8.7	.2	5.1
Life insurance companies	2.0	87.0	2.6	66.7
Foreigners	−.2	−8.7	0	0
Domestic individuals, etc	0	0	.9	23.1

[1] Preliminary data.
[2] Data do not add to totals because of rounding.
[3] New issues less retirements.
[4] Purchases less sales.

Source: The amounts shown for 1947 were taken from the statement of W. Averell Harriman, Secretary of Commerce, before the Committee on Ways and Means of the House of Representatives, Jan. 19, 1948. The amounts shown for 1946 were supplied on request by the Department of Commerce.

TABLE VIII.—*Sources of corporate funds in 1941, 1946, and 1947.*[1]

[Amounts in billions of dollars.]

	1941.[2]		1946.[2]		1947.	
	Amount.	Per cent of total.	Amount.	Per cent of total.	Amount.	Per cent of total.
Total investments	15.3	[3] 100.0	23.6	[3] 100.0	26.0	[3] 100.0
Retained profits	4.7	30.7	6.5	27.5	10.0	38.5
Depreciation, etc	4.3	28.1	4.6	19.5	4.8	18.5
Cash (on hand and in banks)	−.8	−5.2	.3	1.3	−1.0	−3.8
U. S. Government securities	−2.0	−13.1	6.1	25.8	2.0	7.7
Payables (trade)	2.9	19.0	3.0	12.7	1.0	3.8
Federal income tax liabilities	4.6	30.1	−2.5	−10.6	1.6	6.2
Other current liabilities	.1	.7	.0	.0	.4	1.5
Net new issues	.1	.7	2.3	9.7	3.9	15.0
Bank loans	1.4	9.2	3.3	14.0	3.3	12.7

[1] All United States corporations, exclusive of banks and insurance companies.
[2] Data for these years are preliminary.
[3] Data do not add to totals because of rounding.

Source: The amounts shown were supplied on request by the Department of Commerce.

1. The amount of business investment financed by retained profits represented an unusually large proportion of the total in 1947. Specifically, retained profits were 38.5 per cent of total investment in 1947 as compared to 27.5 per cent in 1946 and 30.7 per cent in 1941. It is believed that this heavy dependence on internal financing was not a matter of choice, but was forced on corporations by the difficulty of floating new security issues.

2. The important role played by undistributed profits in 1947 produced a subnormal relationship between dividends and corporate profits. A tabulation made from Department of Commerce data indicates that in 1947 dividends represented about 55 per cent of total profits [10] as compared with the 70 to 75 per cent customarily distributed.[10] This, of course, has the effect of making new stock issues less attractive to prospective investors, which in turn accentuates the need for financing out of undistributed profits.

3. Of the new issues marketed in 1947, an unusually large proportion took the form of fixed-income securities rather than stock. In that year bonds and notes represented 66.7 per cent of the total, as compared to 43.5 per cent in 1946.

4. According to the Secretary the amount of risk-bearing common stocks issued in 1947 was 10 per cent less than in 1946. Table VII shows that in terms of total new securities issued in 1947, common stock represented only 20.5 per cent of the total, as compared to 39.1 per cent in 1946. This reduced emphasis on common stocks, together with the heavy reliance on debt financing, reflects the difficulty experienced by corporations in obtaining risk capital.

5. Life insurance companies are taking a very large proportion of the new securities, and individuals, who must be the chief source of risk capital, are buying a relatively small proportion. In both 1946 and 1947 the life insurance companies and banks, which must place their funds in securities with a low degree of risk, accounted for the great bulk of the net purchases of securities, 76.9 per cent in 1947 and actually 108.7 per cent in 1946.[11] On the other hand, domestic individual buyers accounted for 0.0 per cent of the net purchases in 1946 and only 23.1 per cent in 1947. This is still another indication that those buying securities to-day are for the most part seeking relatively riskless investments.

6. Net securities issues by the risk-taking industrials (primarily manufacturing) in 1947 dropped, while safer net issues of the utilities increased sub-

[10] In these computations profits have been adjusted for inventory revaluation.
[11] In 1946 the net decrease in the holdings of securities by foreigners and the 0 net purchases by individuals, etc., accounts for the fact that the net purchases of the banks and insurance companies represent more than 100 per cent of net purchases.

stantially. In 1947 the industrials accounted for 48.7 per cent of the total and utilities 51.3 per cent. In 1946 the figures were 108.7 per cent[12] and 13.1 per cent, respectively.

If any further evidence is needed of the scarcity of venture capital attention need only be turned to the unprecedented existence of a sluggish stock market in an inflationary period. Here too there is a marked preference for securities with a low degree of risk. The average yield on new securities has been increasing for some time, and the spread between the rates paid on issues involving a greater degree of risk and those of the gilt-edged variety is now substantially larger than it was a year or so ago. This increasing premium which must be paid for risk capital is still another indication of its increasing scarcity.

New and small businesses are finding it particularly difficult to obtain risk capital. Large well-established enterprises with good credit ratings are faced with much less difficulty in floating new securities. This additional advantage, enjoyed by large firms, strengthens the tendency toward monopoly and concentration. Evidence of the increasing financial difficulties encountered by small manufacturers is found in the statistics of business failures. Records of the first 10 months of 1947 show that there were 2,846 failures among small manufacturers as compared with 885 in a like period of 1946.[13]

C. THE EFFECT OF PRESENT TAX RATES ON INCENTIVES.

Your committee believes the present high individual income tax rates deter increases in the productivity of labor, the opening of bottle-necks by management, and the willingness of investors to assume risks. Clearly, this leads to the conclusion that the high wartime individual income tax rates should be lowered substantially in order to alleviate the present inflationary conditions and to assure a rising standard of living for the American people in the years to come. H. R. 4790 is a step in this direction.

The repressive effect of present tax rates can be shown by examining the amount of spendable income remaining after taxes for taxpayers at different income levels. For example, a married couple with two children having a net income of $4,000 under present law has 90 per cent of this income left after paying taxes. Under your committee's bill they would have 95 per cent. If their income were $10,000, they would have 81 per cent left under present law, and 88 per cent under your committee's bill. A married couple with two dependents having $30,000 of income retains only 62 per cent of their income under present law, but 77 per cent under H. R. 4790. If they had an income of $70,000 they would retain only 45 per cent under present law but 62 per cent under the proposed legislation.[14] Table IX shows the spendable income left after taxes at various levels for a married couple with two dependents and the per cent this is of income before taxes under both present law and your committee's bill. Tables XVI A, B, and C in part IX show the same information for taxpayers having a different exemption status.

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[12] In 1946 industrials accounted for more than 100 per cent of the securities issued because of a net decrease in issues by railroads.

[13] The credit house of Dun & Bradstreet in their summary of industrial failures for the first 10 months of 1947 as compared with 1946 prove conclusively that Federal taxes and other discriminating legislative inequities are literally squeezing the lifeblood out of small concerns. Records in the first 10 months prove that small manufacturers suffered failures amounting to 2,846 or an increase of 222 per cent over a like period in 1946 which registered only 885 failures.

The total liabilities of these concerns that failed in the 10-month period of 1947 amounted to $179,204,000 as compared with only $40,733,000 in the same period for 1946, an alarming increase of about 340 per cent, and this is what Washington terms a prosperous year.

With the exception of the solid South, the increase in failures occurred in all sections of the United States but greater through the Northeast Central, the Northwest Central, the Middle Atlantic, and the Pacific States.

Although it is conceded that small businesses are the keystone in the free enterprise system, their destruction continues unabated. It is a 3-way squeeze. They are being bankrupted by competition of tax-free cooperatives, exorbitant Federal taxes, and the straitjacket Government regulations, like the wage-and-hour law.

Providing Congress fails to recognize the urgency, and neglects to take prompt action to eliminate the cause for this crushing misfortune, commercial failures will not decrease but increase, and small manufacturers will in all likelihood be destroyed or obliterated.

[14] All examples assume the entire income was earned by one spouse and that the couple is resident in a common-law State.

TABLE IX.—*Comparison of amount of spendable income after taxes under present law and H. R. 4790 (Knutson bill).*

MARRIED PERSON—TWO DEPENDENTS—ENTIRE INCOME EARNED BY ONE SPOUSE.

Net income before personal exemption.	Amount of spendable income under—		Per cent of income after tax to income before tax.	
	Present law.	H. R. 4790.	Present law.	H. R. 4790.
			Per cent.	*Per cent.*
$2,000	$2,000.00	$2,000.00	100.00	100.00
$2,500	2,405.00	2,486.70	96.20	99.47
$3,000	2,810.00	2,920.20	93.66	97.34
$4,000	3,620.00	3,787.20	90.50	94.68
$5,000	4,411.00	4,614.00	88.22	92.28
$6,000	5,202.00	5,452.80	86.70	90.88
$7,000	5,955.00	6,291.68	85.07	89.88
$8,000	6,708.00	7,124.48	83.85	89.06
$9,000	7,423.00	7,957.28	82.48	88.41
$10,000	8,138.00	8,790.08	81.38	87.90
$11,000	8,815.00	9,589.82	80.14	87.18
$12,000	9,492.00	10,367.52	79.10	86.40
$13,000	10,131.00	11,145.22	77.93	85.73
$14,000	10,770.00	11,922.92	76.93	85.16
$15,000	11,361.50	12,680.10	75.74	84.53
$20,000	14,110.00	16,342.88	70.55	81.71
$25,000	16,478.50	19,800.46	65.91	79.20
$30,000	18,619.00	23,022.06	62.06	76.74
$40,000	22,558.00	28,832.56	56.40	72.08
$50,000	25,889.00	34,613.78	51.78	68.03
$60,000	28,821.00	38,825.64	48.04	64.71
$70,000	31,468.00	43,432.30	44.95	62.05
$80,000	33,830.00	47,820.08	42.29	59.78
$90,000	35,907.00	51,920.58	39.90	57.69
$100,000	37,699.00	55,774.84	37.70	55.77
$150,000	45,462.00	72,871.02	30.31	48.58
$200,000	52,731.00	86,827.64	26.37	43.41
$250,000	59,525.00	98,821.18	23.81	39.53
$300,000	66,309.00	110,773.68	22.10	36.92
$400,000	79,850.00	133,844.20	19.96	33.46
$500,000	93,400.00	156,059.72	18.68	31.21
$750,000	127,275.00	211,547.22	16.97	28.21
$1,000,000	161,150.00	267,034.72	16.12	26.70
$2,000,000	296,650.00	488,984.72	14.83	24.45
$5,000,000	725,000.00	1,154,884.72	14.50	23.10

Source: Staff of the Joint Committee on Internal Revenue Taxation.

Marginal tax rates, that is the tax rate paid in the top dollar of income, ordinarily indicate the incentive which exists under a given tax rate schedule to earn additional income or to realize it through investments. Under H. R. 4790 they do not, however, show the entire increase in incentives brought about by the bill, since they do not reflect the effect of the "income splitting" provision. For example, assume that the husband earns the entire income of a family unit. Because of the "income splitting" provision the marginal rate which would apply in this case is the rate applying to an income of one-half the size of that earned by the husband. Despite the shortcomings of marginal rate tables in reflecting the full reduction under your committee's bill, such rates are presented in table X for both your committee's bill and the President's tax proposal. They reflect clearly the fact that the President's $40 tax credit has practically no effect on incentives. The last two columns of table X show the effect of H. R. 4790 and H. R. 4968 on the marginal tax rates. There is a substantial decrease in the marginal tax rate all down the line under your committee's bill even though the effect of income splitting is not reflected in the rates shown in the table. Under the President's proposal, however, there is no decrease in the marginal rate and, therefore, no incentive provided by the plan.[15]

[15] Technically there is a decrease in the marginal tax rates under the President's proposal for net incomes after exemptions up to the level of about $210 where the $40 tax credit becomes fully effective.

TABLE X.—*Comparison of marginal rates under present law, H. R. 4790 (Knutson bill), and H. R. 4968 (Dingell bill and President's proposal).*

Net income after exemptions.		Marginal rates.			Percentage-point decrease (−) or increase (+) in rates compared with present law.	
Exceeding—	Not exceeding—	Present law.	H. R. 4790.	H. R. 4968.	H. R. 4790.	H. R. 4968.
		Per cent.	*Per cent.*	*Per cent.*	*Per cent.*	
$0	$1,000	19.00	13.300	19.00	−5.700	[4] 0
$1,000 [1]	$1,400 [1]	19.00	[2]	19.00	[2]	0
$1,400	$2,000	19.00	15.200	19.00	−3.800	0
$2,000	$4,000	20.90	16.720	20.90	−4.180	0
$4,000	$6,000	24.70	22.230	24.70	−2.470	0
$6,000	$8,000	28.50	25.650	28.50	−2.850	0
$8,000	$10,000	32.30	29.070	32.30	−3.230	0
$10,000	$12,000	36.10	32.490	36.10	−3.610	0
$12,000	$14,000	40.85	36.765	40.85	−4.085	0
$14,000	$16,000	44.65	40.185	44.65	−4.465	0
$16,000	$18,000	47.50	42.750	47.50	−4.750	0
$18,000	$20,000	50.35	45.315	50.35	−5.035	0
$20,000	$22,000	53.20	47.880	53.20	−5.320	0
$22,000	$26,000	56.05	50.445	56.05	−5.605	0
$26,000	$32,000	58.90	53.010	58.90	−5.890	0
$32,000	$38,000	61.75	55.575	61.75	−6.175	0
$38,000	$44,000	65.55	58.995	65.55	−6.555	0
$44,000	$50,000	68.40	61.560	68.40	−6.840	0
$50,000	$60,000	71.25	64.125	71.25	−7.125	0
$60,000	$70,000	74.10	66.690	74.10	−7.410	0
$70,000	$80,000	76.95	69.255	76.95	−7.695	0
$80,000	$90,000	79.80	71.820	79.80	−7.980	0
$90,000	$100,000	82.65	74.385	82.65	−8.265	0
$100,000	$150,000	84.55	76.095	84.55	−8.455	0
$150,000	$200,000	85.50	76.950	85.50	−8.550	0
$200,000 and over [3]		86.45	77.805	86.45	−8.645	0

[1] Designates notch area under H. R. 4790. The exact upper limit of the notch area is $1,395.83.
[2] Tax is subject to the following maximum effective rate limitations: Under present law, 85.5 per cent; under H. R. 4790, 77 per cent.
[3] Incomes in this bracket receive a flat reduction of $67 in the tentative tax.
[4] There is a decrease in the marginal tax rates under the Dingell bill for net incomes after exemptions up to the level of about $210 where the $40 tax credit becomes fully effective.

Source: Staff of the Joint Committee on Internal Revenue Taxation.

The reason for this lack of incentive effect under the President's proposal is the fact that once a tax of $40 is reached, there is no further reduction of the tax on any additional income. Thus an individual having a net income after exemptions of about $210 obtains the maximum relief. Irrespective of how much income he may earn in excess of that amount, there is no further tax reduction and thus no increase in incentive under this proposal.

It has been shown that the $40 tax credit proposed by the President has no positive effect on production and investment incentives. The reimposition of the excess profits tax under the President's plan actually imposes new restrictions on productive effort and on the willingness of investors to assume business risks.

Even a well-drafted excess profits tax can not distinguish between profits which are the reward for unusual enterprise or the payment for a great risk, on one hand, and profits resulting from a monopoly position or unusual shortages, on the other. In this connection the former Secretary of the Treasury, Chief Justice Vinson, had the following to say at the hearings before the Senate Finance Committee on the Revenue Act of 1945:

"The over-all impact which this tax is likely to have on business planning as well as business profits constitutes a serious threat to our postwar employment objectives. The testimony of businessmen is that they are unable to take the risk of full peacetime business expansion until this tax has been removed. That testimony comes not only from corporations subject to the excess profits tax; indeed, it comes primarily from businessmen contemplating organization and expansion in competition with established corporations."

Unfortunately the excess profits tax proposed by the President can not qualify as a "well-drafted" tax. It is nothing more than the old excess profits tax dressed up with a 35 per cent increase in the credits and an increased specific exemption. The old discriminations which had to be borne during the war would still be there. New discriminations would appear because of the antiquity of the 1936–39 base which represents the primary measure of "excessive" profits. The report on the Revenue Act of 1945 of the Senate Finance Committee of the Seventy-ninth Congress had the following to say concerning the effect of using this base in the excess profits tax on risk-taking:

"The longer the excess profits tax is retained the less the income of 1936–39 base period is a proper measure of 'excessive' profits. This base period will be a particularly poor measure of earnings in the postwar period when many corporations will be entering new fields of enterprise or expanding their businesses."

There are, of course, many firms which do not have any base period experience at all. These will be driven to use the invested capital base, which is less generous for most business, and are therefore apt to receive harsh treatment. A new firm in a business requiring an especially small amount of invested capital may find practically all of its profits above the exemption taxed as "excessive."

Apart from the question of the merits of the particular excess profits tax presented by the administration, the adoption of any such tax in times of peace is undesirable. A precedent for the peacetime use of this tax would be established, and its permanent retention would be a serious risk. This would be most unfortunate since the tax places a special penalty upon the relatively speculative business ventures which are essential to the material progress of our society.

VII. Exemptions and the High Cost of Living.

The cost of living has increased from 156 per cent of the 1935–39 average last March when your committee reported out H. R. 1, to 165 per cent in November, shortly before H. R. 4790 was first introduced. This 9-point increase represents almost a 6 per cent rise in the cost of living. Furthermore, there is evidence that income after taxes, although it has increased very considerably during the past two years, has not kept pace with the cost of living. On a per capita basis and in 1947 dollars, income after taxes has shrunk from an average of $1,285 in the first quarter of 1946 to $1,188 in the fourth quarter of 1947, a drop of nearly $100.

A. The Increase in General Exemptions.

This increase in the cost of living is the reason your committee's bill provides a $100 per capita increase in exemptions from $500 to $600. Of the total reduction in tax liabilities resulting from this increase in the personal exemption, about 90 per cent is received by taxpayers with net income of less than $5,000. It should be remembered that the exemption increase is in addition to the reduction of 30 per cent in the tax of the lowest taxable income group. Higher income groups receive the same increase in exemptions, but receive tax reductions of only 10 to 20 per cent.

B. The Special Exemption for Persons Aged 65 and Over.

Like the tax-reduction bills of the last session, H. R. 4790 provides an additional exemption for persons who have attained the age of 65. This additional exemption of $600 is granted if the taxpayer is 65 or over by the end of the year. This provision will benefit 3,700,000 taxpayers and will remove 1,400,000 persons from the tax rolls.

As a result of the rise in the cost of living the need for a special exemption for persons over 65 is even more pressing now than in the spring of 1947. There is a very heavy concentration of small incomes among persons in this age group reflecting the fact that the group as a whole is handicapped in an economic, if not in a physical sense. Persons in this age group suffered with unusual severity as a result of the rise in the cost of living and the increase in taxes which occurred during the war, as well as the additional price increases of the immediate postwar period. Unlike younger persons, the bulk of those over 65 could not compensate for these changes in prices and taxes by accepting full-time jobs at prevailing high rates of wages.

C. THE SPECIAL EXEMPTION FOR THE BLIND.

Your committee's bill also provides a special exemption of $600 for blind persons. Blind persons 65 or over may claim this exemption in addition to that based on age.

The special exemption of $600 for the blind is a substitute for a $500 deduction allowed under present law. Blind persons receive material benefits from this change. The amount allowed is, of course, larger and, in addition, the substitution of an exemption for a deduction in itself has some very real advantages. Because of this change blind persons do not forfeit the right to use the standard deduction as they do when they claim the special deduction under existing law. This is important because in most cases the itemized deductions of blind persons, other than the special deduction, will aggregate considerably less than the standard deduction. Moreover, an exemption can be taken into account in withholding, while a deduction can not. Thus with an exemption, the relief provided will be effective throughout the year. Blind persons will not have to wait for a refund after the close of the year in order to obtain the relief which the law provides.

VIII. EQUALIZATION OF TAX BURDENS OF RESIDENTS OF COMMUNITY-PROPERTY AND COMMON-LAW STATES.

A major portion of this bill is devoted to the geographic equalization of the income, estate, and gift taxes.

A. INCOME TAXES.

Under existing law the treatment accorded families earning the same amount of income is very different if they happen to live in States using the community-property system or in States which use common law. Chiefly this is due to the fact that under the community-property system the earnings of a married couple are considered to be one-half the property of each. Income arising out of an accumulation which took place during the marriage is divided in the same manner, and in some community-property States the same division is made of income from assets which are the separate property of one of the spouses. No similar division takes place under common law. The earnings of the husband are regarded as his and taxed to him. The income from his property is his income and is taxed as such.

Since the rates applied under the income tax are steeply progressive, the same family income divided in two halves by community property law will be taxed far less severely than in a common-law State where the whole income is apt to be taxed to one spouse. The difference is greatest when the entire earnings of the couple in the common-law State are received by one spouse, and when, under community-property law, none of the income is the "separate" income of either spouse. Table XI compares the tax due under these assumptions in community-property and common-law States under present law with incomes of various sizes.

This table shows that the difference between the tax due in community-property and common-law States appears as soon as the income of the couple rises above the first tax bracket, i. e., as soon as the rates become progressive.[18] On a percentage basis the difference increases as the income grows larger. At $10,000 the couple in the common-law State pays a tax which is nearly 19 per cent greater than that paid in the community-property State. At $25,000 the tax in the common-law State is about 41 per cent larger. Thereafter, the percentage begins to decline as the marginal rate under the tax approaches the 86.5 per cent maximum. However, even on an income of $150,000 the tax in the common-law State is more than 21 per cent larger than that in the community-property State. At the opposite extreme is the case where in the common-law State incomes of the two spouses are approximately equal. Here, the results under common law and community property would be similar. For most couples neither of these extreme assumptions is completely realistic. However, in the great majority of cases the income of one spouse predominates.

One consequence of the substantial difference in the amount of tax due on similar incomes in community-property and common-law States has been an attempt to develop in the common-law States techniques which will divide the

[18] Note that the table assumes that all of the income was earned by the husband.

income of a married couple in approximately the same way that income is divided in the community-property States by the operation of State law. Chief among these devices are gifts, either outright or in trust, joint tenancies and family partnerships. Confusion has resulted from attempts to use trusts, tenancies, and partnerships for such purposes, and the present status of the law and regulations on these points is most unsatisfactory. Your committee has under study now a number of proposals for the revision of the income tax treatment of trusts and family partnerships and is impressed with the difficulties which these problems present.

TABLE XI.—*Difference in amount and percentage of income tax in community-property and common-law States.*

[For a married couple with no dependents.]

Net income before personal exemption.	Tax payable in—		Excess of tax in common-law State over tax in community-property States.	Per cent by which tax in common-law State exceeds that in community property States.
	Community-property States.	Common-law States.[1]		
$1,000				
$1,200	$38.00	$38.00		
$1,500	95.00	95.00		
$2,000	190.00	190.00		
$2,500	285.00	285.00		
$3,000	380.00	380.00		
$4,000	570.00	589.00	$19.00	3.33
$5,000	760.00	798.00	38.00	5.00
$6,000	969.00	1,045.00	76.00	7.84
$7,000	1,178.00	1,292.00	114.00	9.68
$8,000	1,387.00	1,577.00	190.00	13.70
$9,000	1,596.00	1,862.00	266.00	16.67
$10,000	1,843.00	2,185.00	342.00	18.56
$15,000	3,154.00	4,047.00	893.00	28.31
$25,000	6,460.00	9,082.00	2,622.00	40.59
$50,000	18,724.50	24,795.00	6,070.50	32.42
$100,000	50,274.00	63,127.50	12,853.50	25.57
$150,000	86,953.50	105,383.50	18,430.00	21.20
$200,000	127,081.50	148,124.00	21,042.50	16.56
$250,000	169,337.50	191,339.50	22,002.00	12.99
$500,000	383,543.50	407,464.50	23,921.00	6.24
$750,000	599,668.50	623,589.50	23,921.00	3.99
$1,000,000	815,793.50	839,714.50	23,921.00	2.93
$2,000,000	1,680,293.50	1,704,214.50	23,921.00	1.42
$5,000,000	4,273,793.50	4,275,000.00	1,206.50	.03

[1] Entire income reported by husband on joint return.

Source: Staff of the Joint Committee on Internal Revenue Taxation.

While the lack of geographical equalization in the treatment of the income of married couples has been recognized for a long time, circumstances have arisen recently which necessitate immediate action. For a good many years the income tax advantages incident to the community-property system were confined to eight States.[17] In each of these community property antedated the enactment of the Federal income tax. In each, the use of this particular form of law could be traced to Spanish or French antecedents.

Recently, however, a number of States have shifted from the common-law to the community-property system. In these cases benefits under the Federal income tax which residents of the State would obtain under the community-property system were largely responsible for the abandonment of common law. After one false start, Oklahoma joined the community-property group in 1945. Oregon, Michigan, Nebraska, and Pennsylvania were added to the list in 1947. However, the Pennsylvania law has since been found to be unconstitutional.

The geographical differences in the impact of the individual income tax resulting from the fact that 12 States use community property raises a serious problem,

[17] Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington.

but the fact which makes action at the present session imperative is the potential rapid extension of community property to a large number of other common-law States. The adoption of community property has been advocated widely in spite of a growing awareness of the substantial differences between community property and common law which makes a transition from one system to the other extremely difficult. It is now recognized that this transition will be a period of extreme confusion during which the courts, the administrative officials and the legislature will be working out the detailed application of a new and strange system of property law. Nevertheless, many responsible State officials have reached the conclusion that the difference between the impact of the Federal income tax as it applies in community-property and common-law jurisdictions is so great that the use of community property can not be avoided.

This is particularly true in common-law States lying adjacent to community-property jurisdictions. In such common-law States there is a lively fear that the tax advantages of community property will produce a migration of the relatively well-to-do taxpayers. This fear undoubtedly played a major role in the adoption of community property by Oklahoma and Oregon, and is an exceptionally strong factor in States like Arkansas. But even in cases where such migration is less likely, as in Michigan and Pennsylvania, the tax consequences of retaining the common law were sufficient to produce legislation.

Many States are waiting to see what Congress will do about the problem of geographical equalization. If the necessary action is not taken, there will be a flood of ill-advised State legislation intended to produce the same results, but doing so in a manner which has most unfortunate consequences, not only for the taxpayers involved, but also for all the persons who must use or administer the property laws of the States which rush into the community-property system.

Your committee believes that the best answer to the problem of geographical equalization is the splitting of the combined income of the husband and wife. Income splitting is effected under H. R. 4790 by giving husbands and wives in all States the option to file joint returns. In these returns their combined net income and their combined exemptions are divided by 2. A tax is computed on this basis, and multiplied by 2.

Income splitting will produce the same result in common-law States which now obtains in a community-property State when the entire income of both spouses is community income. If, however, spouses in community-property States have separate income, this also can be split by electing to file a joint return. Under existing law, separate income in community-property States is taxed in full to the spouse who receives it. Thus, the type of solution embodied in H. R. 4790 benefits residents of both common-law and community-property States.

Geographical equalization in the taxation of married couples also requires an adjustment in the standard deduction and in the deduction for unusual medical expenses. Under existing law a taxpayer with adjusted gross income of $5,000 may elect a standard deduction of $500, or 10 per cent of his adjusted gross income, whichever is lesser, instead of itemizing his deductions. In community-property States the husband and wife will normally file separate returns. Hence each may be eligible for a $500 standard deduction and the couple may claim an aggregate deduction of $1,000. To make equal treatment available in common-law States, H. R. 4790 of necessity must provide that a couple electing to split their income by filing a joint return is also eligible for a standard deduction of $1,000, or 10 per cent of the adjusted gross income, whichever is lesser.

The fact that married couples in all States may receive a maximum standard deduction of $1,000 presents a problem of equalizing the treatment accorded married persons with single individuals. To provide equality of tax treatment it is necessary to raise the maximum standard deduction for single persons to $1,000. This is done under your committee's bill.

Under existing law a special deduction is allowed for medical expenditures to the extent that they exceed 5 per cent of the taxpayer's adjusted gross income. However, this deduction is subject to a ceiling of $1,250 a year in the case of a taxpayer who claims only one exemption, and $2,500 if he claims more than one. If both parties to a marriage in a community-property State file separate returns, each spouse claiming one dependent, the ceiling on their medical deduction is $5,000. If only one claims a dependent, their maximum medical deduction is $3,750. H. R. 4790 raises the ceiling for a married couple filing a joint return

to $3,750 if they have one dependent, and $5,000 if they have two or more. This equalizes the treatment in common-law and community-property States.

Adoption of these income-splitting provisions will produce substantial geographical equalization in the impact of the tax on individual net incomes. The unfortunate and impetuous enactment of community-property legislation by States that have long used the common law will be forestalled. The incentive for married couples in common-law States to attempt the reduction of their taxes by the division of their income through such devices as trusts, joint tenancies, and family partnerships will be reduced materially. Administrative difficulties stemming from the use of such devices will be diminished, and there will be less need for meticulous legislation on the income tax treatment of trusts and family partnerships.

B. THE ESTATE AND GIFT TAXES.

The basic differences between community and common law interpretations of property rights have also resulted in geographical inequalities in the application of the estate and gift taxes. Prior to 1942 the taxation of transfers made by married persons depended upon the property law of the State in which the transfer took place. In community-property States only half of the community property belonged to one spouse. Hence only half could pass at his death, and only half could be subjected to the estate tax. Similarly, gifts out of community assets were regarded as one-half the gift of the husband and one-half the gift of the wife. No similar division of assets occurred under common law because, in most cases, practically all the property was the husband's under State law. Since both estate and gift taxes have sharply progressive rates and are equipped with large exemptions, the consequence was a substantially lower tax on transfers in community-property States than on transfers of similar size in common-law States.

In 1942 the Congress attempted to produce more nearly equal results. Amendments were passed which provided that in community-property States the entire community property was to be treated as the estate of the first spouse to die, except such portion as could be shown to have been received "as compensation for personal services actually rendered" by the surviving spouse, or derived originally from such compensation, or from the separate property of the surviving spouse. The application of this rule in community-property States was subject to the limitation that the estate of the first of the spouses to die was never to be less than the value of the property over which that spouse had a testamentary power of disposition. This meant that the estate of the spouse who died first could never be less than one-half of the community property.

The Revenue Act of 1942 made a similar amendment in the gift tax. Henceforth all gifts out of community property were to be taxed as though they had been made by the husband, unless it could be established that the assets transferred had been received by the wife as "compensation for personal services actually rendered" or derived from her separate property.

Unfortunately, the 1942 amendments did not produce complete geographical equalization. Cases exist in which transfers of community property are taxed more heavily than transfers under common law. Conversely, there are instances in which transfers in the common-law States are taxed more heavily.

A case in point occurs when the husband dies first, leaving his entire estate to his wife, who in turn on her death leaves her entire estate to a child. Under common law the husband can give his wife a life estate in the property, providing in his will that upon her death the assets go to the child. Here an estate tax would be due upon the death of the husband, but there would be no tax upon the death of the wife. Under community property the husband can place only his half of the community property in a similar life estate for the benefit of his wife. Thus, in the community-property State the whole estate would be subject to tax upon the husband's death, just as in the common-law State, but at the death of the wife there would be an additional tax upon her share of the community property.[18]

Another example is provided by the case in which a wife dies first, leaving her rights in the community assets to her husband, who in turn leaves the entire com-

[18] The assumption is made here that the wife's death occurred more than five years after the death of the husband.

munity to a surviving child. Under the 1942 amendments there would be a tax on one-half the community at the time of the wife's death, and a tax on the entire community at the death of the husband.[18] Under similar circumstances in a common-law State there is apt to be little or no tax due at the death of the wife, since most of the family assets will be the husband's property.

A case in which the transfer in the common-law State is taxed more harshly occurs when the wife dies first, and most of the property belongs to the husband. Under common law there would be no tax due on the wife's death and the entire property would be taxable at the death of the husband. If these same assets were community property, one-half would be taxable at the death of the wife and the other at the death of the husband. Because the rates applied are progressive and the exemption substantial, the result is a larger aggregate tax in the common-law States than in community-property jurisdictions.

Exception also has been taken to the so-called "tracing problem." This arises under the 1942 amendments because of the need for identifying the portions of the community contributed by each spouse. Establishing the fact that particular assets derived from "compensation for personal services actually rendered by the survivor" is particularly difficult. Moreover, the precise interpretation of "compensation" which the Bureau of Internal Revenue will apply in a given situation is by no means clear. Under the 1942 amendment this tracing problem is of far larger dimensions in community-property States than in common-law jurisdictions, where it is limited primarily to joint tenancies, tenancies by the entirety, and joint bank accounts.

Your committee does not believe that a satisfactory solution to the problem of geographical equalization can be reached by the tactics applied in the 1942 amendments. Hence the repeal of these amendments is recommended, effective with the enactment of this bill. Your committee would be unwilling, however, to repeal the amendments without corrective legislation. Repeal alone would reproduce the pre-1942 conditions which are even further from equalization than existing law.

With the repeal of the 1942 amendments your committee recommends an application of the "splitting" technique used under the income tax. This provision is not contained in the bill which is being reported, but will be covered by a floor amendment. In the case of the estate tax, "splitting" means an exemption in common-law States of up to one-half of the decedent's estate if it passes outright to the surviving spouse. No such exemption is needed for community property since, in the absence of the 1942 amendments, the decedent will be taxable on only one-half the community assets. However, the exemption will apply in community-property States to separate property of the decedent which passes to his surviving spouse.

This "splitting" technique is also applied under the gift tax. In the case of gifts between spouses (other than the donor's interest in community property) this technique requires that only one-half the value of the gift be taxed since under the "splitting" technique the donee spouse in effect already owned one-half of the property. When a gift is made to some one other than a spouse, the husband and wife may elect to have the gift treated as though each had made one-half of the gift.

The amendments to the estate and gift taxes contained in H. R. 4790 (including the committee amendment) will produce approximate geographical equality in these taxes just as the income-splitting amendment will in the case of the income tax.

IX. Statistical Data Relating to H. R. 4790.

The reduction in income tax liabilities resulting from the various provisions of H. R. 4790 is shown in table XII. These estimates are based on an assumed personal income of $209 billion. The percentage tax reductions account for 57 per cent of the total, and the increase in exemptions for 31 per cent. It should be borne in mind that a large part of the reduction of $601 million resulting from "income splitting" will occur whether or not H. R. 4790 is enacted. Quite a few of the States, including some of the largest, have indicated their intention to adopt community property if provision for income splitting is not made by the Federal Government.

[18] The assumption is made here that the wife's death occurred more than five years after the death of the husband.

TABLE XII.—*Distribution of the reduction in income tax liabilities resulting from the various provisions of H. R. 4790.*

[Assuming personal income of $209 billion.]

	Reduction.	
	In billions of dollars.	In per cent of total.
Increase in the per capita exemption to $600	$2,010.2	30.7
Additional exemption for persons over 65	164.6	2.5
Special provision for the blind	.1	
Allowing married couples to split their incomes	601.2	9.2
Increase the standard deduction [1]	59.7	.9
Percentage reductions	3,713.5	56.7
Total decrease in tax liabilities under H. R. 4790	6,549.3	100.0

[1] This includes the reduction in tax liabilities for married couples as well as single individuals.

Source: Staff of the Joint Committee on Internal Revenue Taxation.

Table XIII compares the distribution of the individual income tax liability under present law with that under H. R. 4790, and shows the reduction in income tax liability under H. R. 4790. These data are distributed according to the income classes for which H. R. 4790 provides percentage tax reductions, and are calculated on the basis of an assumed income of $209 billion. The table indicates that 72 per cent of the reduction under your committee's bill goes to individuals with net incomes after exemptions of $4,000 or less. About 46 per cent of the reduction goes to individuals with net incomes after exemptions, which are below $1,400.

Table XIV compares the estimated distribution among various income classes of the number of taxpayers and the estimated tax liability under present law and under H. R. 4790, and shows the decrease in tax liability under H. R. 4790. This table, like tables XII and XIII, is based on an assumed personal income of $209 billion.

Table XV presents the tax burdens for various net-income levels (after deductions but before exemptions). It shows the amount of tax payable under present law and under H. R. 4790. There are eight parts to table XV, showing the tax burdens under different assumptions as to marital status, number of dependents, and the distribution of income between the partners to the marriage. All parts of table XV are calculated under the assumption that neither the taxpayer nor his spouse is over 65 years of age.

TABLE XIII.—*Comparison of the individual income tax liability in a full year of operation under present law with that under H. R. 4790 by income classes to which the percentage tax reductions apply.*

[Assuming personal income of $209 billion.]

Net income after personal exemption and credit for dependents.	Tax liability under—		Reduction in liability under H. R. 4790.	
	Present law.	H. R. 4790.	Amount.	Percentage distribution.
	Millions of dollars.	*Millions of dollars.*	*Millions of dollars.*	
$0–$1,000	2,955.9	1,593.0	1,362.9	20.81
$1,000–$1,396	4,030.5	2,397.1	1,633.4	24.94
$1,396–$4,000	5,000.9	3,294.2	1,706.7	26.06
Total under $4,000	11,987.3	7,284.3	4,703.0	71.81
$4,000 and over	9,293.2	7,446.9	1,846.3	28.19
Grand total	21,280.5	14,731.2	6,549.3	100.00

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XIV.—*Comparison of the individual income tax liability in a full year of operation under present law with that under H. R. 4790.*

[Assuming personal incomes of $209 billion.]

Net income class (before personal exemption and credit for dependents).	Estimated number of taxpayers under—		Estimated tax liability under—		Reduction in tax liability under H. R. 4790.	
	Present law.	H. R. 4790.	Present law.	H. R. 4790.	Amount.	Percentage distribution.
	Thousands.	*Thousands.*	*Millions of dollars.*	*Millions of dollars.*	*Millions of dollars.*	
$0–$1,000	2,793.7	2,591.1	244.7	100.0	144.7	2.21
$1,000–$2,000	18,014.8	14,764.9	2,670.7	1,543.4	1,127.3	17.21
$2,000–$3,000	17,199.1	14,836.9	3,987.9	2,355.1	1,632.8	24.93
$3,000–$4,000	9,066.8	7,961.7	2,662.2	1,658.8	1,003.4	15.32
$4,000–$5,000	5,225.3	4,751.0	2,400.4	1,617.6	782.8	11.95
Total under $5,000	52,304.7	44,905.6	11,965.9	7,274.9	4,691.0	71.62
$5,000–$10,000	1,577.9	1,576.9	1,691.8	1,238.5	453.3	6.92
$10,000–$25,000	672.1	672.1	2,606.9	2,029.5	577.4	8.82
$25,000–$50,000	128.3	128.3	2,130.2	1,731.6	398.6	6.09
$50,000–$100,000	36.2	36.2	1,408.8	1,172.1	236.7	3.61
$100,000–$300,000	8.6	8.6	974.6	840.1	134.5	2.05
$300,000–$500,000	.8	.8	227.7	200.4	27.3	.42
$500,000–$1,000,000	.4	.4	149.0	131.5	17.5	.27
$1,000,000 and over	.1	.1	125.6	112.4	13.2	.20
Total over $5,000	2,424.4	2,423.4	9,314.6	7,456.1	1,858.3	28.38
Grand total	54,728.9	47,329.0	21,280.5	14,731.2	6,549.3	100.0

Source: Staff of the Joint Committee on Internal Revenue Taxation.

Since individuals aged 65 and over receive an additional $600 exemption, their tax burdens differ from those shown in table XV. Tables XVI A and B show the tax burdens under exisiting law and H. R. 4790 for a single person 65 years of age and over and a married couple with no dependents. The latter table is calculated on the assumptions that both spouses are over 65 and that all the income is earned by one of them.

TABLE XV–A.—*Comparison of individual income tax under present law and H. R. 4790 (Knutson bill).*

SINGLE PERSON—NO DEPENDENTS.

Net income before personal exemption.	Amount of tax.		Tax reduction under H. R. 4790.	
	Present law.	H. R. 4790.	Amount.	Per cent.
$500				
$600	$19.00		$19.00	100.00
$700	38.00	$13.30	24.70	65.00
$750	47.50	19.95	27.55	58.00
$800	57.00	26.60	30.40	53.33
$900	76.00	39.90	36.10	47.50
$1,000	95.00	53.20	41.80	44.00
$1,200	133.00	79.80	53.20	40.00
$1,500	190.00	119.70	70.30	37.00
$1,800	247.00	173.00	74.00	29.96
$2,000	285.00	212.80	72.20	25.33
$2,500	380.00	288.80	91.20	24.00
$3,000	484.50	370.88	113.62	23.45
$4,000	693.50	538.08	155.42	22.41
$5,000	921.50	727.32	194.18	21.07
$6,000	1,168.50	949.62	218.88	18.73
$7,000	1,434.50	1,185.60	248.90	17.35
$8,000	1,719.50	1,442.10	277.40	16.13
$9,000	2,023.50	1,712.28	311.22	15.38
$10,000	2,346.50	2,002.98	343.52	14.64
$11,000	2,688.50	2,307.36	381.14	14.18
$12,000	3,049.50	2,632.26	417.24	13.68
$13,000	3,434.25	2,974.26	469.99	13.39
$14,000	3,842.75	3,341.91	500.84	13.03
$15,000	4,270.25	3,723.24	547.01	12.81
$20,000	6,645.25	5,855.61	789.64	11.88
$25,000	9,362.25	8,295.78	1,066.47	11.39
$30,000	12,264.50	10,905.24	1,359.26	11.08
$40,000	18,425.25	16,443.93	1,981.32	10.75
$50,000	25,137.00	22,481.94	2,655.06	10.56
$60,000	32,247.75	28,879.05	3,368.70	10.45
$70,000	39,643.50	35,532.66	4,110.84	10.37
$80,000	47,324.25	42,442.77	4,881.48	10.31
$90,000	55,290.00	49,609.38	5,680.62	10.27
$100,000	63,540.75	57,032.49	6,508.26	10.24
$150,000	105,806.25	95,069.73	10,736.52	10.15
$200,000	148,551.50	133,539.60	15,011.90	10.11
$250,000	191,771.75	172,436.97	19,334.78	10.08
$300,000	234,996.75	211,339.47	23,657.28	10.07
$400,000	321,446.75	289,144.47	32,302.28	10.05
$500,000	407,896.75	366,949.47	40,947.28	10.04
$750,000	624,021.75	561,461.97	62,559.78	10.03
$1,000,000	840,146.75	755,974.47	84,172.28	10.02
$2,000,000	1,704,646.75	1,534,024.47	170,622.28	10.01
$5,000,000	4,275,000.00	3,850,000.00	425,000.00	9.94

Source: Staff of the Joint Committee on Internal Revenue Taxation.

Table XVII shows the amount of spendable income remaining after tax under present law and H. R. 4790. The amount of spendable income remaining is shown by net-income classes (after deductions but before exemptions) and is also expressed as a per cent of net income. Table XVII–A relates to a single person with no dependents and XVII–B to a married person with no dependents (it being assumed that the entire income is earned by one spouse). Table IX, which appears in Section VI above, shows the effects of H. R. 4790 on the spendable income of a married person with two dependents (the entire income being earned by one spouse).

TABLE XV–B.—*Comparison of individual income tax under present law and H. R. 4790 (Knutson bill).*

SINGLE PERSON—ONE DEPENDENT.

Net income before personal exemption.	Amount of tax.		Tax reduction under H. R. 4790.	
	Present law.	H. R. 4790.	Amount.	Per cent.
$1,000				
$1,200	$38.00		$38.00	100.00
$1,500	95.00	$39.90	55.10	58.00
$1,800	152.00	79.80	72.20	47.50
$2,000	190.00	106.40	83.60	44.00
$2,500	285.00	193.00	92.00	32.28
$3,000	380.00	273.60	106.40	28.00
$4,000	589.00	437.76	151.24	25.68
$5,000	798.00	604.96	193.04	24.19
$6,000	1,045.00	816.24	228.76	21.89
$7,000	1,292.00	1,038.54	253.46	19.62
$8,000	1,577.00	1,288.20	288.80	18.31
$9,000	1,862.00	1,544.70	317.30	17.04
$10,000	2,185.00	1,828.56	356.44	16.31
$11,000	2,508.00	2,119.26	388.74	15.50
$12,000	2,869.00	2,437.32	431.68	15.05
$13,000	3,230.00	2,762.22	467.78	14.48
$14,000	3,638.50	3,121.32	517.18	14.22
$15,000	4,047.00	3,488.97	558.03	13.79
$20,000	6,393.50	5,583.72	809.78	12.67
$25,000	9,082.00	7,993.11	1,088.89	11.99
$30,000	11,970.00	10,587.18	1,382.82	11.55
$40,000	18,097.50	16,089.96	2,007.54	11.09
$50,000	24,795.00	22,112.58	2,682.42	10.82
$60,000	31,891.50	28,494.30	3,397.20	10.65
$70,000	39,273.00	35,132.52	4,140.48	10.54
$80,000	46,939.50	42,027.24	4,912.26	10.47
$90,000	54,891.00	49,178.46	5,712.54	10.41
$100,000	63,127.50	56,586.18	6,541.32	10.36
$150,000	105,383.50	94,613.16	10,770.34	10.22
$200,000	148,124.00	133,077.90	15,046.10	10.16
$250,000	191,339.50	171,970.14	19,369.36	10.12
$300,000	234,564.50	210,872.64	23,691.86	10.10
$400,000	321,014.50	288,677.64	32,336.86	10.07
$500,000	407,464.50	366,482.64	40,981.86	10.06
$750,000	623,589.50	560,995.14	62,594.36	10.04
$1,000,000	839,714.50	755,507.64	84,206.86	10.03
$2,000,000	1,704,214.50	1,533,557.64	170,656.86	10.01
$5,000,000	4,275,000.00	3,850,000.00	425,000.00	9.94

Source: Staff of the Joint Committee on Internal Revenue Taxation

TABLE XV–C.—*Comparison of inidividual income tax under present law and H. R. 4790 (Knutson bill).*

MARRIED PERSON—NO DEPENDENTS—ENTIRE INCOME EARNED BY ONE SPOUSE.

Combined net income before personal exemption.	Amount of tax.		Tax reduction under H. R. 4790.	
	Present law.	H. R. 4790.	Amount.	Per cent.
$1,000				
$1,200	$38.00		$38.00	100.00
$1,500	95.00	$39.90	55.10	58.00
$1,800	152.00	79.80	72.20	47.50
$2,000	190.00	106.40	83.60	44.00
$2,500	285.00	172.90	112.10	39.33
$3,000	380.00	239.40	140.60	37.00
$4,000	589.00	425.60	163.40	27.74
$5,000	798.00	577.60	220.40	27.62
$6,000	1,045.00	741.76	303.24	29.02
$7,000	1,292.00	908.96	383.04	29.65
$8,000	1,577.00	1,076.16	500.84	31.76
$9,000	1,862.00	1,243.36	618.64	33.22
$10,000	2,185.00	1,454.64	730.36	33.43
$11,000	2,508.00	1,676.94	831.06	33.14
$12,000	2,869.00	1,899.24	969.76	33.80
$13,000	3,230.00	2,121.54	1,108.46	34.32
$14,000	3,638.50	2,371.20	1,267.30	34.83
$15,000	4,047.00	2,627.70	1,419.30	35.07
$20,000	6,393.50	4,005.96	2,387.54	37.34
$25,000	9,082.00	5,589.42	3,492.58	38.46
$30,000	11,970.00	7,446.48	4,523.52	37.79
$40,000	18,097.50	11,711.22	6,386.28	35.29
$50,000	24,795.00	16,591.56	8,203.44	33.09
$60,000	31,891.50	21,810.48	10,081.02	31.61
$70,000	39,273.00	27,234.60	12,038.40	30.65
$80,000	46,939.50	32,887.86	14,051.64	29.94
$90,000	54,891.00	38,807.88	16,083.12	29.30
$100,000	63,127.50	44,963.88	18,163.62	28.77
$150,000	105,383.50	77,960.04	27,423.46	26.02
$200,000	148,124.00	114,064.98	34,059.02	22.99
$250,000	191,339.50	152,091.88	39,247.62	20.51
$300,000	234,564.50	190,139.46	44,425.04	18.94
$400,000	321,014.50	267,079.20	53,935.30	16.80
$500,000	407,464.50	344,873.94	62,590.56	15.36
$750,000	623,589.50	539,386.44	84,203.06	13.50
$1,000,000	839,714.50	733,898.94	105,815.56	12.60
$2,000,000	1,704,214.50	1,511,948.94	192,265.56	11.28
$5,000,000	4,275,000.00	3,846,098.94	428,901.06	10.03

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XV–D.—*Comparison of individual income tax under present law and H. R. 4790 (Knutson bill).*

MARRIED PERSON—NO DEPENDENTS—WITH INCOME DIVIDED AS FOLLOWS: 70 PER CENT AND 30 PER CENT.

Combined net income before personal exemption.	Amount of tax.		Tax reduction under H. R. 4790.	
	Present law.	H. R. 4790.	Amount.	Per cent.
$1,000				
$1,200	$38.00		$38.00	100.00
$1,500	95.00	$39.90	55.10	58.00
$1,800	152.00	79.80	72.20	47.50
$2,000	190.00	106.40	83.60	44.00
$2,500	285.00	172.90	112.10	39.33
$3,000	380.00	239.40	140.60	37.00
$4,000	575.70	425.60	150.10	26.07
$5,000	779.00	577.60	201.40	25.85
$6,000	982.30	741.76	240.54	24.49
$7,000	1,200.80	908.96	291.84	24.30
$8,000	1,430.70	1,076.16	354.54	24.78
$9,000	1,664.40	1,243.36	421.04	25.30
$10,000	1,919.00	1,454.64	464.36	24.20
$11,000	2,181.20	1,676.94	504.26	23.12
$12,000	2,443.40	1,899.24	544.16	22.27
$13,000	2,728.40	2,121.54	606.86	22.24
$14,000	3,017.20	2,371.20	646.00	21.41
$15,000	3,306.00	2,627.70	678.30	20.52
$20,000	5,011.25	4,005.96	1,005.29	20.06
$25,000	6,992.00	5,589.42	1,402.58	20.06
$30,000	9,186.50	7,446.48	1,740.02	18.94
$40,000	14,136.00	11,711.22	2,424.78	17.15
$50,000	19,551.00	16,591.56	2,959.44	15.14
$60,000	25,388.75	21,810.48	3,578.27	14.09
$70,000	31,616.00	27,234.60	4,381.40	13.86
$80,000	38,199.50	32,887.86	5,311.64	13.90
$90,000	44,954.00	38,807.88	6,146.12	13.67
$100,000	51,908.00	44,963.88	6,944.12	13.38
$150,000	89,475.75	77,960.04	11,515.71	12.87
$200,000	129,599.00	114,064.98	15,534.02	11.99
$250,000	170,653.25	152,091.88	18,561,37	10.88
$300,000	212,481.75	190,139.46	22,342.29	10.51
$400,000	298,148.00	267,079.20	31,068.80	10.42
$500,000	384,028.00	344,873.94	39,154.06	10.20
$750,000	599,668.50	539,386.44	60,282.06	10.05
$1,000,000	815,793.50	733,898.94	81,894.56	10.04
$2,000,000	1,680,293.50	1,511,948.94	168,344.56	10.02
$5,000,000	4,264,896.75	3,846,098.94	418,797.81	9.82

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XV–E.—*Comparison of individual income tax under present law and H. R. 4790 (Knutson bill).*

MARRIED PERSON—NO DEPENDENTS—WITH INCOME DIVIDED AS FOLLOWS: 50 PER CENT AND 50 PER CENT.

Combined net income before personal exemption.	Amount of tax.		Tax reduction under H. R. 4790.	
	Present law.	H. R. 4790.	Amount	Per cent
$1,000				
$1,200	$38.00		$38.00	100.00
$1,500	95.00	$39.90	55.10	58.00
$1,800	152.00	79.80	72.20	47.50
$2,000	190.00	106.40	83.60	44.00
$2,500	285.00	172.90	112.10	39.33
$3,000	380.00	239.40	140.60	37.00
$4,000	570.00	425.60	144.40	25.33
$5,000	760.00	577.60	182.40	24.00
$6,000	969.00	741.76	227.24	23.45
$7,000	1,178.00	908.96	269.04	22.84
$8,000	1,387.00	1,076.16	310.84	22.41
$9,000	1,596.00	1,243.36	352.64	22.10
$10,000	1,843.00	1,454.64	388.36	21.07
$11,000	2,090.00	1,676.94	413.06	19.76
$12,000	2,337.00	1,899.24	437.76	18.73
$13,000	2,584.00	2,121.54	462.46	17.90
$14,000	2,869.00	2,371.20	497.80	17.35
$15,000	3,154.00	2,627.70	526.30	16.69
$20,000	4,693.00	4,005.96	687.04	14.64
$25,000	6,460.00	5,589.42	870.58	13.48
$30,000	8,540.50	7,446.48	1,094.02	12.81
$40,000	13,290.50	11,711.22	1,579.28	11.88
$50,000	18,724.50	16,591.56	2,132.94	11.39
$60,000	24,529.00	21,810.48	2,718.52	11.08
$70,000	30,561.50	27,234.60	3,326.90	10.89
$80,000	36,850.50	32,887.86	3,962.64	10.75
$90,000	43,434.00	38,807.88	4,626.12	10.65
$100,000	50,274.00	44,963.88	5,310.12	10.56
$150,000	86,953.50	77,960.04	8,993.46	10.34
$200,000	127,081.50	114,064.98	13,016.52	10.24
$250,000	169,337.50	152,091.88	17,245.62	10.18
$300,000	211,612.50	190,139.46	21,473.04	10.15
$400,000	297,103.00	267,079.20	30,023.80	10.11
$500,000	383,543.50	344,873.94	38,669.56	10.08
$750,000	599,668.50	539,386.44	60,282.06	10.05
$1,000,000	815,793.50	733,898.94	81,894.56	10.04
$2,000,000	1,680,293.50	1,511,948.94	168,344.56	10.02
$5,000,000	4,273,793.50	3,846,098.94	427,694.56	10.01

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XV–F.—*Comparison of individual income tax under present law and H. R. 4790 (Knutson bill).*

MARRIED PERSON—2 DEPENDENTS—ENTIRE INCOME EARNED BY ONE SPOUSE.

Combined net income before personal exemption.	Amount of tax.		Tax reduction under H. R. 4790.	
	Present law.	H. R. 4790.	Amount.	Per cent.
$2,000				
$2,500	$95.00	$13.30	$81.70	86.00
$3,000	190.00	79.80	110.20	58.00
$4,000	380.00	212.80	167.20	44.00
$5,000	589.00	386.00	203.00	34.47
$6,000	798.00	547.20	250.80	31.43
$7,000	1,045.00	708.32	336.68	32.22
$8,000	1,292.00	875.52	416.48	32.24
$9,000	1,577.00	1,042.72	534.28	33.88
$10,000	1,862.00	1,209.92	652.08	35.02
$11,000	2,185.00	1,410.18	774.82	35.46
$12,000	2,508.00	1,632.48	875.52	34.91
$13,000	2,869.00	1,854.78	1,014.22	35.35
$14,000	3,230.00	2,077.08	1,152.92	35.69
$15,000	3,638.50	2,319.90	1,318.60	36.24
$20,000	5,890.00	3,657.12	2,232.88	37.91
$25,000	8,521.50	5,199.54	3,321.96	38.98
$30,000	11,381.00	6,977.94	4,403.06	38.69
$40,000	17,442.00	11,167.44	6,274.56	35.97
$50,000	24,111.00	15,986.22	8,124.78	33.70
$60,000	31,179.00	21,174.36	10,004.64	32.09
$70,000	38,532.00	26,567.70	11,964.30	31.05
$80,000	46,170.00	32,179.92	13,990.08	30.30
$90,000	54,093.00	38,079.42	16,013.58	29.60
$100,000	62,301.00	44,225.16	18,075.84	29.01
$150,000	104,538.00	77,128.98	27,409.02	26.22
$200,000	147,269.00	113,172.36	34,096.64	23.15
$250,000	190,475.00	151,178.82	39,296.18	20.63
$300,000	233,700.00	189,226.32	44,473.68	19.03
$400,000	320,150.00	266,155.80	53,994.20	16.87
$500,000	406,600.00	343,940.28	62,659.72	15.41
$750,000	622,725.00	538,452.78	84,272.22	13.53
$1,000,000	838,850.00	732,965.28	105,884.72	12.62
$2,000,000	1,703,350.00	1,511,015.28	192,334.72	11.29
$5,000,000	4,275,000.00	3,845,165.28	429,834.72	10.05

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XV–G.—*Comparison of individual income tax under present law and H. R. 4790 (Knutson bill).*

MARRIED PERSON—2 DEPENDENTS—WITH INCOME DIVIDED AS FOLLOWS: 70 PER CENT AND 30 PER CENT.

Combined net income before personal exemption.	Amount of tax.		Tax reduction under H. R. 4790.	
	Present law.	H. R. 4790.	Amount.	Per cent.
$2,000				
$2,500	$95.60	$13.30	$81.70	86.00
$3,000	190.00	79.80	110.20	58.00
$4,000	380.00	212.80	167.20	44.00
$5,000	570.00	386.00	184.00	32.28
$6,000	773.30	547.20	226.10	29.24
$7,000	976.60	708.32	268.28	27.47
$8,000	1,183.70	875.52	308.18	26.04
$9,000	1,417.40	1,042.72	374.68	26.43
$10,000	1,653.00	1,209.92	443.08	26.80
$11,000	1,896.20	1,410.18	486.02	25.63
$12,000	2,158.40	1,632.48	525.92	24.37
$13,000	2,420.60	1,854.78	565.82	23.38
$14,000	2,694.20	2,077.08	617.12	22.91
$15,000	2,983.00	2,319.90	663.10	22.23
$20,000	4,602.75	3,657.12	945.63	20.54
$25,000	6,517.00	5,199.54	1,317.46	20.22
$30,000	8,668.75	6,977.94	1,690.81	19.50
$40,000	13,547.00	11,167.44	2,379.56	17.57
$50,000	18,933.50	15,986.22	2,947.28	15.57
$60,000	24,733.25	21,174.36	3,558.89	14.39
$70,000	30,932.00	26,567.70	4,364.30	14.11
$80,000	37,487.00	32,179.92	5,307.08	14.16
$90,000	44,213.00	38,079.42	6,133.58	13.87
$100,000	51,167.00	44,225.16	6,941.84	13.57
$150,000	88,630.25	77,128.98	11,501.27	12.98
$200,000	128,753.50	113,172.36	15,581.14	12.10
$250,000	169,798.25	151,178.82	18,619.43	10.97
$300,000	211,617.25	189,226.32	22,390.93	10.68
$400,000	297,283.50	266,155.80	31,127.70	10.47
$500,000	383,163.50	343,940.28	39,223.22	10.24
$750,000	598,804.00	538,452.78	60,351.22	10.08
$1,000,000	814,929.00	732,965.28	81,963.72	10.06
$2,000,000	1,679,429.00	1,511,015.28	168,413.72	10.03
$5,000,000	4,264,896.75	3,845,165.28	419,731.47	9.84

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XV–H.—*Comparison of individual income tax under present law and H. R. 4790 (Knutson bill).*

MARRIED PERSON—2 DEPENDENTS—WITH INCOME DIVIDED AS FOLLOWS: 50 PER CENT AND 50 PER CENT.

Combined net income before personal exemption.	Amount of tax.		Tax reduction under H. R. 4790.	
	Present law.	H. R. 4790.	Amount.	Per cent
$2,000				
$2,500	$95.00	$13.30	$81.70	86.00
$3,000	190.00	79.80	110.20	58.00
$4,000	380.00	212.80	167.20	44.00
$5,000	570.00	386.00	184.00	32.28
$6,000	769.50	547.20	222.30	28.89
$7,000	969.00	708.32	260.68	26.90
$8,000	1,178.00	875.52	302.48	25.68
$9,000	1,387.00	1,042.72	344.28	24.82
$10,000	1,615.00	1,209.92	405.08	25.08
$11,000	1,843.00	1,410.18	432.82	23.48
$12,000	2,090.00	1,632.48	457.52	21.89
$13,000	2,337.00	1,854.78	482.22	20.63
$14,000	2,603.00	2,077.08	525.92	20.20
$15,000	2,869.00	2,319.90	549.10	19.14
$20,000	4,370.00	3,667.12	712.88	16.31
$25,000	6,099.00	5,199.54	899.46	14.75
$30,000	8,113.00	6,977.94	1,135.06	13.99
$40,000	12,787.00	11,167.44	1,619.56	12.67
$50,000	18,164.00	15,986.22	2,177.78	11.99
$60,000	23,940.00	21,174.36	2,765.64	11.55
$70,000	29,944.00	26,567.70	3,376.30	11.28
$80,000	36,195.00	32,179.92	4,015.08	11.09
$90,000	42,764.25	38,079.42	4,684.83	10.96
$100,000	49,590.00	44,225.16	5,364.84	10.82
$150,000	86,184.00	77,128.98	9,055.02	10.51
$200,000	126,255.00	113,172.36	13,082.64	10.36
$250,000	168,492.00	151,178.82	17,313.18	10.28
$300,000	210,767.00	189,226.32	21,540.68	10.22
$400,000	296,248.00	266,155.80	30,092.20	10.16
$500,000	382,679.00	343,940.28	38,738.72	10.12
$750,000	598,804.00	538,452.78	60,351.22	10.08
$1,000,000	814,929.00	732,965.28	81,963.72	10.06
$2,000,000	1,679,429.00	1,511,015.28	168,413.72	10.03
$5,000,000	4,272,929.00	3,845,165.28	427,763.72	10.01

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XVI–A.—*Comparison of individual income tax under present law and under H. R. 4790 for persons 65 years of age and over.*

SINGLE PERSON—NO DEPENDENTS.

Net income before personal exemption.	Amount of tax.		Amount of tax reduction, H. R. 4790.	Per cent tax reduction, H. R. 4790.
	Present law.	H. R. 4790.		
$500				
$600	$19.00		$19.00	100.00
$700	38.00		38.00	100.00
$800	57.00		57.00	100.00
$900	76.00		76.00	100.00
$1,000	95.00		95.00	100.00
$1,200	133.00		133.00	100.00
$1,500	190.00	$39.90	150.10	79.00
$1,800	247.00	79.80	167.20	67.69
$2,000	285.00	106.40	178.60	62.67
$2,500	380.00	193.00	187.00	49.21
$3,000	484.50	273.60	210.90	43.53
$4,000	693.50	437.76	255.74	36.88
$5,000	921.50	604.96	316.54	34.36
$6,000	1,168.50	816.24	352.26	30.15
$8,000	1,719.50	1,288.20	431.30	25.08
$10,000	2,346.50	1,828.56	517.94	22.07
$12,000	3,049.50	2,437.32	612.18	20.07
$15,000	4,270.25	3,488.97	781.28	18.30
$20,000	6,645.25	5,583.72	1,061.53	15.97
$25,000	9,362.25	7,993.11	1,369.14	14.62
$30,000	12,264.50	10,587.18	1,677.32	13.68
$50,000	25,137.00	22,112.58	3,024.42	12.03
$70,000	39,643.50	35,132.52	4,510.98	11.38
$100,000	63,540.75	56,586.18	6,954.57	10.95
$300,000	234,996.75	210,872.64	24,124.11	10.27
$500,000	407,896.75	366,482.64	41,414.11	10.15
$1,000,000	840,146.75	755,507.64	84,639.11	10.07
$2,000,000	1,704,646.75	1,533,557.64	171,089.11	10.04
$5,000,000	4,275,000.00	3,867,707.64	407,292.36	9.53

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XVI–B.—*Comparison of individual income tax under present law and under H. R. 4790 for persons 65 years of age and over.*

MARRIED PERSONS (BOTH OVER 65)—NO DEPENDENTS.[1]

Net income before personal exemption.	Amount of tax.		Amount of tax reduction, H. R. 4790.	Per cent tax reduction, H. R. 4790.
	Present law.	H. R. 4790.		
$1,000				
$1,200	$38.00		$38.00	100.00
$1,500	95.00		95.00	100.00
$1,800	152.00		152.00	100.00
$2,000	190.00		190.00	100.00
$2,500	285.00	$13.30	271.70	95.33
$3,000	380.00	79.80	300.20	79.00
$4,000	589.00	212.80	376.20	63.87
$5,000	798.00	386.00	412.00	51.63
$6,000	1,045.00	547.20	497.80	47.64
$8,000	1,577.00	875.52	701.48	44.48
$10,000	2,185.00	1,209.92	975.08	44.63
$12,000	2,869.00	1,632.48	1,236.52	43.10
$15,000	4,047.00	2,319.90	1,727.10	42.68
$20,000	6,393.50	3,657.12	2,736.38	42.80
$25,000	9,082.00	5,199.54	3,882.46	42.75
$30,000	11,970.00	6,977.94	4,992.06	41.70
$50,000	24,795.00	15,986.22	8,808.78	35.53
$70,000	39,273.00	26,567.70	12,705.30	32.35
$100,000	63,127.50	44,225.16	18,902.34	29.94
$300,000	234,564.50	189,226.32	45,338.18	19.33
$500,000	407,464.50	343,940.28	63,624.22	15.50
$1,000,000	839,714.50	732,965.28	106,749.22	12.71
$2,000,000	1,704,214.50	1,511,015.28	193,199.22	11.34
$5,000,000	4,275,000.00	3,845,165.28	429,834.72	10.05

[1] Assumes all income earned by one spouse.

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XVII–A.—*Comparison of amount of spendable income after taxes under present law and H. R. 4790 (Knutson bill).*

SINGLE PERSON—NO DEPENDENTS.

Net income before personal exemption.	Amount of spendable income under—		Per cent of income after tax to income before tax—	
	Present law.	H. R. 4790.	Present law.	H. R. 4790
$500	$500.00	$500.00	100.00	100.00
$600	581.00	600.00	96.83	100.00
$700	662.00	686.70	94.57	98.10
$750	702.50	730.05	93.67	97.34
$800	743.00	773.40	92.88	96.68
$900	824.00	860.10	91.56	95.57
$1,000	905.00	946.80	90.50	94.68
$1,200	1,067.00	1,120.20	88.92	93.35
$1,500	1,310.00	1,380.30	87.33	92.02
$1,800	1,553.00	1,627.00	86.28	90.39
$2,000	1,715.00	1,787.20	85.75	89.36
$2,500	2,120.00	2,211.20	84.80	88.45
$3,000	2,515.50	2,629.12	83.50	87.64
$4,000	3,306.50	3,461.92	82.66	86.55
$5,000	4,078.50	4,272.68	81.57	85.45
$6,000	4,831.50	5,050.38	80.53	84.17
$7,000	5,565.50	5,814.40	79.51	83.06
$8,000	6,280.50	6,557.90	78.51	81.97
$9,000	6,976.50	7,287.72	77.52	80.97
$10,000	7,653.50	7,997.02	76.54	79.97
$11,000	8,311.50	8,692.64	75.56	79.02
$12,000	8,950.50	9,367.74	74.59	78.06
$13,000	9,565.75	10,025.74	73.58	77.12
$14,000	10,157.25	10,658.09	72.55	76.13
$15,000	10,729.75	11,276.76	71.53	75.18
$20,000	13,354.75	14,144.39	66.77	70.72
$25,000	15,637.75	16,704.22	62.55	66.82
$30,000	17,735.50	19,094.76	59.12	63.65
$40,000	21,574.75	23,556.07	53.94	58.89
$50,000	24,863.00	27,518.06	49.73	55.04
$60,000	27,752.25	31,120.95	46.25	51.87
$70,000	30,356.50	34,467.34	43.37	49.24
$80,000	32,675.75	37,557.23	40.84	46.95
$90,000	34,710.00	40,390.62	38.57	44.88
$100,000	36,459.25	42,967.51	36.46	42.97
$150,000	44,193.75	54,930.27	29.46	36.62
$200,000	51,448.50	66,460.40	25.72	33.23
$250,000	58,228.25	77,563.03	22.09	31.03
$300,000	65,003.25	88,660.53	21.67	29.55
$400,000	78,553.25	110,855.53	19.64	27.71
$500,000	92,103.25	133,050.53	18.42	26.61
$750,000	125,978.25	188,538.03	16.80	25.14
$1,000,000	159,853.25	244,025.53	15.99	24.40
$2,000,000	295,353.25	465,975.53	14.77	23.30
$5,000,000	725,000.00	1,150,000.00	14.50	23.00

Source: Staff of the Joint Committee on Internal Revenue Taxation

TABLE XVII–B.—*Comparison of amount of spendable income after taxes under present law and H. R. 4790 (Knutson bill).*

MARRIED PERSON—NO DEPENDENTS, ENTIRE INCOME OF ONE SPOUSE.

Net income before personal exemption.	Amount of spendable income under—		Per cent of income after tax to income before tax—	
	Present law.	H. R. 4790.	Present law.	H. R. 4790.
$1,000	$1,000.00	$1,000.00	100.00	100.00
$1,200	1,162.00	1,200.00	96.83	100.00
$1,500	1,405.00	1,460.10	93.67	97.34
$1,800	1,648.00	1,720.20	91.56	95.57
$2,000	1,810.00	1,893.60	90.50	94.68
$2,500	2,215.00	2,327.10	88.60	93.08
$3,000	2,620.00	2,760.60	87.33	92.02
$4,000	3,411.00	3,574.40	85.28	89.36
$5,000	4,202.00	4,422.40	84.04	88.45
$6,000	4,955.00	5,258.24	82.58	87.64
$7,000	5,708.00	6,091.04	81.54	87.01
$8,000	6,423.00	6,923.84	80.29	86.55
$9,000	7,138.00	7,756.64	79.31	86.18
$10,000	7,815.00	8,545.36	78.15	85.45
$11,000	8,492.00	9,323.06	77.20	84.76
$12,000	9,131.00	10,100.76	76.09	84.17
$13,000	9,770.00	10,878.46	75.15	83.68
$14,000	10,361.50	11,628.80	74.01	83.06
$15,000	10,953.00	12,372.30	73.02	82.48
$20,000	13,606.50	15,994.04	68.03	79.97
$25,000	15,918.00	19,410.58	63.67	77.64
$30,000	18,030.00	22,553.52	60.10	75.18
$40,000	21,902.50	28,288.78	54.76	70.72
$50,000	25,205.00	33,408.44	50.41	66.82
$60,000	28,108.50	38,189.52	46.85	63.65
$70,000	30,727.00	42,765.40	43.90	61.09
$80,000	33,060.50	47,112.14	41.33	58.89
$90,000	35,109.00	51,192.12	39.01	56.88
$100,000	36,872.50	55,036.12	36.87	55.04
$150,000	44,616.50	72,039.96	29.74	48.03
$200,000	51,876.00	85,935.02	25.94	42.97
$250,000	58,660.50	97,908.12	23.46	39.16
$300,000	65,435.50	109,860.54	21.81	36.62
$400,000	78,985.50	132,920.80	19.75	33.23
$500,000	92,535.50	155,126.06	18.51	31.03
$750,000	126,410.50	210,613.56	16.85	28.08
$1,000,000	160,285.50	266,101.06	16.03	26.61
$2,000,000	295,785.50	488,051.06	14.76	24.40
$5,000,000	725,060.00	1,153,901.06	14.50	23.08

Source: Staff of the Joint Committee on Internal Revenue Taxation.

DETAILED DISCUSSION OF THE TECHNICAL PROVISIONS OF THE BILL.

TITLE I.—INCOME TAX REDUCTION.

SECTION 101. REDUCTION OF NORMAL TAX AND SURTAX.

Under existing law, the income tax on individuals is determined by first computing a tentative tax at the rates specified in sections 11 and 12 of the Internal Revenue Code and then reducing the tentative taxes by 5 per cent thereof. This section of the bill provides reductions in the normal tax and surtax on individuals by substituting a larger percentage reduction than 5 per cent of the tentative taxes. This section provides for reduction of the aggregate of the tentative normal tax and the tentative surtax as follows:

(1) If the aggregate of the tentative taxes is $200 or less, such aggregate is reduced by 33½ per cent thereof, a reduction of 30 per cent of the tax under existing law;

(2) If the aggregate of the tentative taxes is over $200 but not over $279.17, such aggregate is reduced by $67, a reduction varying from 30 to 20 per cent of the tax under existing law;

(3) If the aggregate of the tentative taxes is over $279.17 but not over $840, such aggregate is reduced by 24 per cent thereof, a reduction of 20 per cent of the tax under existing law;

(4) If the aggregate of the tentative taxes is in excess of $840, the first $840 thereof is reduced by 24 per cent (a 20 per cent reduction of such portion of the aggregate of the tentative taxes after the 5 per cent reduction

under existing law), and the amount of such aggregate in excess of $840 is reduced by 14½ per cent, a reduction of 10 per cent of such portion after the 5 per cent reduction under existing law.

These reductions are provided in section 12(c) of the Code as amended by the bill; the existing provisions of section 12(c) of the Code are amended and set forth in section 12(g)(2) of the Code, as provided in section 104 of the bill.

Existing law (section 12(g) of the Code) provides, as an over-all limitation upon the combined normal tax and surtax in the case of individuals, that such combined tax shall not exceed 85½ per cent of the net income of the taxpayer. The bill inserts such a limitation into section 12(c) of the Code, as amended, substituting 77 per cent for the present percentage figure in order to conform with the reduction in tax above described.

SECTION 102. REDUCTION IN SUPPLEMENT T TAX.

This section is a cross-reference to section 401 of the bill, which amends section 400 of the Code, relating to the tax under Supplement T of individuals with adjusted gross incomes of less than $5,000. Reductions in such tax are provided under Supplement T corresponding to the reductions provided by section 101 of the bill for taxpayers computing their tax under sections 11 and 12 of the Code.

SECTION 103. INCOME OF HUSBAND AND WIFE.

This section is a cross-reference to section 301 of the bill, which provides for the determination of the combined normal tax and surtax in the case of a joint return of husband and wife (the so-called splittting of income provisions).

SECTION 104. TECHNICAL AMENDMENTS.

This section of the bill provides various technical amendments.

In view of the fact that there are certain provisions of the Code, such as sections 105 and 106, which make it necessary to determine the surtax separately from the normal tax, section 12(f) of the Code, as amended by the bill, provides a special rule for making such computations. Under this rule 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.

SECTION 105. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.

This section provides that the amendments made by this title of the bill shall be applicable with respect to taxable years beginning after December 31, 1947. Special provision is made in section 601 of the bill for taxable years beginning in 1947 and ending in 1948.

TITLE II.—CREDITS AGAINST NET INCOME FOR NORMAL TAX AND SURTAX.

SECTION 201. ADDITIONAL CREDITS AGAINST NET INCOME FOR NORMAL TAX AND SURTAX.

This section amends section 25(b) of the Code relating to exemptions allowed as credits for both normal tax and surtax. The amendments deal with the following credits:

(A) The so-called personal exemption.
(B) Old-age exemption.
(C) Exemption for the blind.
(D) The exemption for each dependent.

Subparagraph (A) of section 25(b)(1) of the Code, as amended by this section of the bill, replaces subparagraphs (A) and (B) of section 25(b)(1) of existing law. The existing law provides a personal exemption of $500 for the taxpayer and a personal exemption of $500 for the spouse of the taxpayer. The $500 exemption for the spouse of the taxpayer is allowed if a joint return is made by the taxpayer and his spouse under section 51 (in which case the aggregate exemption of the spouses is $1,000 under existing law) or 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. Section 25(b)(1)(A), as proposed to be amended, provides a personal exemption of $600 for the taxpayer. It also provides an additional exemption to the taxpayer of $600 for his spouse, if a separate return is made by the taxpayer,

and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. Your committee considered it unnecessary to provide specifically for the personal exemptions for husband and wife on a joint return since, in the case of a joint return, there are two taxpayers (although under section 51(b) of the Code, there is only one income for the two taxpayers on the joint return—i. e., their aggregate income). Inasmuch as section 25(b)(1)(A) of the Code, as amended in the bill, provides an exemption of $600 for the taxpayer, on a joint return two exemptions are allowed, one for each taxpayer spouse, just as under existing law. Thus, under the bill, on a joint return the aggregate of the personal exemption for the spouses shall be $1,200.

Section 25(b)(1)(A), as amended by the bill, continues in clarified form the rule of existing law (section 25(b)(1)(B)(ii)) under which the taxpayer is allowed the exemption for his spouse, if a separate return is made by the taxpayer, only if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. Thus, a taxpayer who makes his returns for a fiscal year ending June 30 may, under existing law and under section 25(b)(1)(A), as amended, take an exemption for his spouse only if such spouse has no gross income for the calendar year in which begins the taxable year of the taxpayer beginning on July 1, and is not for such calendar year the dependent of another taxpayer.

Section 25(b)(1)(B) of the Code, as amended by this section of the bill, provides an additional exemption of $600 for the taxpayer if he has attained the age of 65 before the close of his taxable year. An additional exemption of $600 is allowed to the taxpayer for his spouse if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of such taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, the spouse has no gross income and is not the dependent of another taxpayer. If a husband and wife make a joint return an old-age exemption of $600 will be allowed as to each taxpayer spouse who has attained the age of 65 before the close of the taxable year for which the joint return is made. The exemption under section 25(b)(1)(B) is in addition to the personal exemption under section 25(b)(1)(A).

In determining the age of an individual for the purposes of the exemption for old age, the last day of the taxable year of the taxpayer is the controlling date. Thus, in the event of a separate return by a husband no additional exemption for old age may be claimed for his spouse unless such spouse has attained the age of 65 on or before the close of the taxable year of the husband. In no event shall the additional exemption for old age be allowed on a separate return of the taxpayer with respect to a spouse who dies before attaining the age of 65 even though such spouse would have attained the age of 65 before the close of the taxable year of the taxpayer. For the purposes of the old-age exemption, an individual attains the age of 65 on the first moment of the day preceding his sixty-fifth birthday. Accordingly, an individual whose sixty-fifth birthday falls on January 1 in a given year attains the age of 65 on the last day of the calendar year immediately preceding.

Section 25(b)(1)(C) of the Code, as added by the bill, provides an additional exemption of $600 for the blind. This exemption will replace the special deduction for blind individuals now provided in section 23(y) of the Code. The present deduction is $500. The exemption provided for the blind under the bill is $600 for the taxpayer and $600 for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind. Under the bill as introduced the blind exemption was not allowed with respect to a person entitled to the old-age exemption. The committee amendments remove this limitation so that the exemption for the blind under section 25(b)(1)(C) is allowed with respect to a blind person although he has attained the age of 65 (in addition to the old-age exemption with respect to such person). The blind exemption for the spouse of the taxpayer is allowed the taxpayer only if, for the calendar year in which the taxable year of the taxpayer begins, such spouse has no gross income and is not the dependent of another taxpayer. If a husband and wife make a joint return an exemption of $600 for the blind will be allowed as to each taxpayer spouse who is blind at the close of the taxable year for which the joint return is made.

The determination of whether the taxpayer is blind is made as of the close of his taxable year. The determination of whether the spouse of the taxpayer is blind (for the purpose of the taxpayer's taking the blind exemption with respect to such spouse when the taxpayer files a separate return) shall be made as of

the close of the taxable year of the taxpayer, unless the spouse dies during such taxable year, in which case such determination shall be made as of the time of such death. It should be noted that the date for determining whether an individual is blind differs from that prescribed in section 23(y) which now provides the special deduction for blind individuals and which is repealed by section 202(e) of the bill. Under section 23(y) the status of an individual for the purpose of the blind deduction is determined as of July 1 of the taxable year unless the taxable year does not include July 1, in which case such status is determined as of the last day of the taxable year. The definition of an individual who is blind now contained in section 23(y) of the Code is retained for the purposes of the exemption under section 25(b)(1)(C), with only a formal modification in the introductory clause.

Section 25(b)(1)(D) of the Code, as added by the bill, corresponds to section 25(b)(1)(C), under existing law, and relates to the exemption for a dependent of the taxpayer. Section 25(b)(1)(D) increases the exemption for each dependent from $500, under existing law, to $600, but continues to limit the exemption for dependents to dependents whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $500.

Section 25(b)(2) of the Code, as amended by this section of the bill, corresponds to section 25(b)(2) of existing law and relates to the determination of marital status for the purposes of the credits provided with respect to a spouse in section 25(b). Section 25(b)(2) provides two rules. The first rule is that the determination of whether an individual is married is to be made as of the close of his taxable year, unless his spouse dies during the taxable year of such individual, in which case such determination shall be made as of the time of such death. This rule is, in substance, the same as that provided for in existing law for the purposes of section 25(b). The second rule is that an individual legally separated (although not absolutely divorced) from his spouse under a decree of divorce or of separate maintenance shall not be considered as married. Similar rules for the determination of status are provided in section 23(aa)(6) of the Code (as added by section 302(c) of the bill), relating to the standard deduction, and in section 51(b)(5) of the Code (as added by section 303 of the bill) relating to joint returns. A uniform construction of all these provisions is intended. The rule with respect to the marital status of an individual legally separated from his spouse under a decree of divorce or of separate maintenance is derived from a corresponding provision in section 22(k) of the Code, relating to the tax treatment of alimony and like payments.

The new exemptions provided in section 25(b)(1)(B) and (C) of the Code, as amended by section 201 of the bill, do not apply to a nonresident alien who is not a resident of a contiguous country, to a citizen of the United States who is entitled to the benefits of section 251 of the Code relating to income from sources within possessions of the United States, or to a citizen of a possession of the United States (other than the Virgin Islands) not otherwise a citizen of the United States and not a resident of the United States.

SECTION 202. TECHNICAL AMENDMENTS.

This section of the bill contains various technical amendments made necessary by the additional credits provided under section 25(b) of the Code by section 201 of the bill. Section 58(a) of the Code, relating to the requirement of declaration of estimated tax, is amended. Existing law requires a declaration of estimated tax if the taxpayer's gross income from wages subject to withholding may be expected to exceed $5,000, plus $500 for each exemption to which he is entitled, except his own exemption. The bill amends section 58(a)(1) to give effect to the additional exemptions provided in the bill. Under the amendment a declaration will be required if the anticipated wages exceed $4,500, plus $600 for each exemption to which the taxpayer is entitled. Under existing law, a single person who has no dependents and is under 65 years of age and who derives his income solely from wages subject to withholding is required to file a declaration if his anticipated wages for the calendar year exceed $5,000. Under the amendment such a person is required to file a declaration if his anticipated wages for the calendar year exceed $5,100 ($4,500, plus $600 for his own exemption). Under the amendment if the same individual is over the age of 65 the declaration would not be required unless his anticipated wages for the calendar year exceed $5,700 ($4,500, plus $600 for his own exemption plus $600 for his old-age exemption).

Similarly under existing law, a single person under the age of 65 who has one dependent is not required to file a declaration unless his anticipated wages exceed $5,500 ($5,000, plus $500 for the dependent). Under the amendment, such a single person under the age of 65 with one dependent is not required to file a declaration unless his anticipated wages exceed $5,700 ($4,500 plus $600 for his own exemption plus $600 for his dependent).

Section 58(a)(2) of the Code requires a declaration of estimated tax in the case of an individual whose gross income from sources other than wages can reasonably be expected to exceed $100 for the taxable year and his gross income to be $500 or more. In accordance with the increase in exemptions for individuals provided in section 25(b)(1)(A) of the bill, the amount of $500 under this requirement of an estimate is increased to $600.

Subsection (b) of section 202 of the bill provides technical amendments with respect to the withholding exemption necessary by reason of the additional credits provided in section 25(b) of the Code as amended by the bill. Section 1622(h)(1) of the Code, relating to withholding exemptions, is amended. The amendment continues the present provision for an exemption for the employee. The amendment adds in section 1622(h)(1)(B) and (C) additional exemptions corresponding to the exemption under section 25(b)(1)(B)(i), relating to old age, and the exemption under section 25(b)(1)(C)(i), relating to the blind. Each such additional withholding exemption is allowed to the employee if on the basis of facts existing at the beginning of any day for which the exemptions are being determined there may reasonably be expected to be allowable to him the corresponding exemption under section 25(b) for the taxable year under Chapter 1 in respect of which amounts deducted and withheld in the calendar year in which such day falls are allowed as a credit. Section 1622(h)(1)(D) corresponds to section 1622(h)(1)(B) of existing law under the Code. It provides that if the employee is married, the employee is entitled to any exemption to which his spouse is entitled, or would be entitled, if such spouse were an employee receiving wages, under subparagraph (A), (B), or (C) of section 1622(h)(1), but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption. If both husband and wife are employees receiving wages subject to withholding and the wife is over the age of 65 and has in effect a withholding exemption certificate claiming only one exemption, then her husband may claim one exemption for her on his certificate.

Section 1622(h)(1)(E) of the Code, under the bill, relates to the withholding exemption for dependents and is the same, except for a clerical change, as section 1622(h)(1)(C) of the Code under existing law.

Paragraph 2 of section 202(b) of the bill provides a special status-determination date for the purpose of giving effect to the increased exemptions provided under section 1622(h)(1) with respect to withholding by employers. Under existing law (section 1622(h)(3)(B)), a withholding exemption certificate furnished the employer in a case in which a previous such certificate is in effect takes effect with respect to the first payment of wages made on or after the first "status-determination date" which occurs at least 30 days from the date on which such certificate is so furnished (unless the employer elects to make the certification effective at an earlier date after the furnishing of such certificate). Under existing law the "status-determination date" is January 1 or July 1 of each year. In order to make the increased withholding exemptions provided for under the bill effective as soon as possible (consistent with the allowance of sufficient time to provide for the distribution of withholding exemption certificates and the filing thereof by employees) the bill provides in section 202(b)(2) that for the purpose of section 1622(h)(3)(B) the term "status-determination date" includes also the ninetieth day after the date of enactment of the bill.

Section 202(c) of the bill provides technical amendments relating to return requirements in order to conform to the increase in the individual exemption from $500 to $600. Section 51(a)(1) of the Code is amended to increase the amount of gross income for a taxable year necessary before a return is required from $500 to $600. Section 142(a) of the Code is amended to provide a corresponding increase where under existing law a fiduciary return is required to be filed where the gross income is $500 or over. Section 147(a) of the Code is amended to increase from $500 to $600 the minimum amount of payments which will make necessary the filing of an information return. Section 163(a)(1) of the Code is amended so as to increase the credit against net income of an estate (corresponding to the personal exemption) from $500 to $600.

SECTION 203. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.

The amendments made by this title of your committee bill are applicable with respect to taxable years beginning after December 31, 1947. A special rule with respect to taxable years beginning in 1947 and ending in 1948 is provided in section 601 of the bill.

TITLE III.—HUSBAND AND WIFE.

PART I.—INCOME TAX.

SECTION 301. SPLITTING OF INCOME.

This section amends section 12 of the Code, relating to surtax on individuals, by adding a new subsection (d) which provides for computation of tax under the plan for the so-called income splitting between husband and wife. This subsection applies only if a joint return for the taxable year involved is made as provided under section 51(b) of the Code as amended by the bill. Under the provisions of section 12(d), the combined normal tax and surtax under section 11 and section 12(b) of the Code in the case of the husband and wife making the joint return shall be twice the combined normal tax and surtax that would be determined if the net income and the applicable credits provided by section 25 of the Code were reduced by one-half.

It is contemplated that under this provision the gross income and adjusted gross income of husband and wife on the joint return will be computed by the same method as under existing law (that is, in an aggregate amount), and that the deductions allowed and the net income will likewise be computed on an aggregate basis. Deductions limited to a percentage of the adjusted gross income, such as the deduction for charitable contributions under section 23(o), will be allowed with reference to such aggregate adjusted gross income. Similarly, in the case of a joint return, losses of husband and wife from sales or exchanges of capital assets are combined and such combined losses are allowed under section 117(d)(2) only to the extent of the combined gains of the spouses from such sales or exchanges, plus the net income of $1,000 whichever is smaller. The "net income" referred to in section 117(d)(2) is the net income computed before reduction by one-half for the purposes of income splitting and is such net income computed without regard to gains and losses from sales or exchanges of capital assets. Although there are two taxpayers on a joint return, there is only one net income.

The method of computing, under section 12(d), 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 section 11 and section 12(b), 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). 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 were reduced by one-half, is then multiplied by 2, to produce the tax imposed in the case of the joint return.

The limitation (very rarely applicable) under section 12(c) of the combined normal tax and surtax to an amount not in excess of 77 per cent of the net income 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 77 per cent of one-half of the net income (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 is multiplied by 2, as provided in section 12(d).

The application of section 12(d) is illustrated by the following examples in which H is used to refer to the husband and W is used to refer to his wife with whom a joint return is filed for the calendar year 1948. H has a salary of $8,000 for 1948 and pays during 1948 local property taxes on his residence in the amount of $100 and medical expenses for himself and W in the amount of $700. W has income for 1948 from dividends of $2,000 and during 1948 makes gifts to charitable organizations (described in section 23(o) of the Code) in the amount of $1,600. H and W are not entitled to any exemptions other than the personal exemption of each. The tax on the joint return of H and W for 1948 is $1,109.60, determined as follows:

1. Salary		$8,000.00
2. Other income		2,000.00
3. Adjusted gross income		10,000.00
4. Deductions:		
(a) Charitable contributions (limited to 15 per cent of adjusted gross income)	$1,500	
(b) Taxes	100	
(c) Medical expenses (in excess of 5 per cent of adjusted gross income (section 23(x) of the Code); excess of $700 over 5 per cent of $10,000)	200	
		1,800.00
5. Net income		8,200.00
6. Net income reduced by one-half		4,100.00
7. Credits against net income under section 25 (2 personal exemptions under section 25(b)(1)(A) of the Code as amended in this bill)		1,200.00
8. Credits in item 7 reduced by one-half		600.00
9. Net income reduced by one-half (item 6) minus credits reduced by one-half (item 8)		3,500.00
10. Tentative normal tax computed under section 11 of Code on amount in item 9 (3 per cent of $3,500)		105.00
11. Tentative surtax computed under section 12(b) of the Code on amount in item 9 ($340 plus 19 per cent of excess of $3,500 over $2,000)		625.00
12. Aggregate of the tentative normal tax and tentative surtax		730.00
13. Combined normal tax and surtax determined under section 12(c) of the Code ($730 reduced to 24 per cent of $730)		554.80
14. Twice the combined normal tax and surtax determined in item 13		1,109.60

If the alternative tax is computed under section 117(c)(2) of the Code, 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 per cent of such excess as provided in section 117(c)(2).

If the husband and wife making a joint return elect to pay the tax under Supplement T of the Code, the tax on the joint return is computed as provided in section 400 of the Code, as amended in Title IV of this bill. These provisions are discussed hereinafter.

SECTION 302. STANDARD DEDUCTION

This section provides for amendments to section 23(aa) of the Code, relating to the standard deduction. Section 23(aa)(1)(A) of the Code is amended to increase the standard deduction where the adjusted gross income is $5,000 or more in case of a joint return by husband and wife and in the case of a return by an unmarried person. In such cases under the amendment the standard deduction shall be $1,000 or an amount equal to 10 per cent of the adjusted gross income whichever is the lesser. The increase in the standard deduction in the case of a joint return of husband and wife is to accord them the same treatment on a joint return as is provided in effect in the case of spouses with income filing separate returns. The increase in the deduction does not apply in the case of a separate return by a married individual, in which case the maximum standard deduction remains at $500 as under existing law. In the case of a joint return, as under existing law, there is only one adjusted gross income and only one standard deduction. For example, if a husband has an income of $15,000 and the spouse has an income of $12,000 for the taxable year for which they file a joint return, and they have no deductions allowable for the purposes of computing adjusted gross income, the adjusted gross income is $27,000, and the standard deduction allowable on such return is $1,000 (and not $2,000).

Under subsections (b) and (c) of section 302 of the bill section 23(aa)(4) of the Code is separated into two paragraphs, namely (4) and (6). The new paragraph (4) requires both husband and wife to itemize their deductions, rather than to take the standard deduction, if one of them so itemizes. This is the same rule as contained in the first sentence of the present provisions of section 23(aa)(4), except that under the existing law this rule applies only if the husband and wife are living together.

The new paragraph (6) contains provisions substantially the same as those contained in the last sentence of section 23(aa)(4) of existing law relating to the determination of the status of individuals as husband and wife. Under this paragraph the determination of whether an individual is married is made, for the purpose of the allowance of the standard deduction, as of the close of his taxable year, unless his spouse dies during his taxable year, in which case the determination is made as of the time of such death. The new paragraph (6) also provides that for the purpose of the allowance of the standard deduction, an individual legally separated (although not absolutely divorced) from his spouse under a decree of divorce or separate maintenance shall not be considered married. This is the same test as is provided in section 22(k) of the Code, relating to alimony and like payments, where spouses are legally separated or divorced. This provision is also intended to apply the same test as is provided in section 51(b) of the Code, as proposed to be amended by section 303 of the bill, so that the determination of married individuals will be the same for the purpose of the standard deduction as for the purpose of eligibility to make a joint return.

SECTION 303. JOINT RETURNS OF HUSBAND AND WIFE.

This section provides for an extensive revision of section 51(b) of the Code, relating to joint returns by husband and wife, to reflect changes necessary under the so-called split-income plan. As under existing law, 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 and the time for filing the return of such spouse has expired. Similarly, if a joint return was filed, separate returns may not be made by the spouses after the time for filing the return of either has expired. Under the bill, however, in certain circumstances, an executor may make a late separate return for a deceased spouse after the surviving spouse has made a timely joint return for himself and the deceased spouse. This exception to the above general rule is provided in section 51(b)(4) of the Code, as proposed to be added by this section of the bill, and is further discussed hereinafter.

Paragraph (1) of section 51(b), as proposed to be amended, contains the existing general provisions which permit the making of a joint return and provides that on such return the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

Paragraph (2), of section 51(b) as proposed to be amended, provides that no joint return may be made if either the husband or wife at any time during the taxable year is a nonresident alien. This provision is the same as that now contained in section 51(b) of the Code with the addition of the phrase "at any time." The addition is a clarification which represents the uniform construction of the existing law.

Paragraph (3) of section 51(b) continues the existing provision that no joint return shall be made if the husband and wife have different taxable years but makes an important exception in the case of spouses whose taxable years begin on the same day and end on different days because of the death of either or both. Under section 47(g) of the Code, the taxable year of a taxpayer closes as of the date of his death. The exception thus is intended to apply where, but for the death of either or both spouses, the taxable years of the spouses would be the same. In such a case, it is proposed to allow a joint return to be made with respect to the taxable year of each spouse. This provision is designed to prevent spouses being denied the privilege of making a joint return by reason of the death of one spouse during the taxable year. A joint return may not be made for a decedent spouse and the survivor for any taxable year of the survivor beginning after the death of the decedent spouse.

The provision allowing a joint return to be made for the taxable year in which the death of either or both spouses occurs is subject to two exceptions, in the case of each of which the general rule will continue to apply, namely, that the joint return can not be made by the husband and wife because they have different taxable years. The first exception is that if the surviving spouse remarried before the close of his taxable year, he may not make a joint return with the first spouse who died during the taxable year. In such a case, however, the surviving spouse may make a joint return with his new spouse provided that the other requirements of section 51(b) are met. The second exception is that the surviving spouse also may not make a joint return with the deceased spouse if the taxable year of either spouse is a fractional part of a year under section 47(a) of the Code, relating to change of accounting period. For example, if a husband and wife make their returns on the calendar year basis and the wife

dies on March 1, 1948, and thereafter the husband receives permission to change his accounting period to a fiscal year beginning July 1, 1948, no joint return may be made for the short taxable year ending June 30, 1948. Similarly, if a husband and wife who make their returns on a calendar year basis receive permission to change to a fiscal year beginning July 1, 1948, and the wife dies on June 1, 1948, no joint return may be made for the fiscal year ending June 30, 1948.

Paragraph (4), of section 51(b) as proposed to be amended, provides for the method of making a joint return after the death of a spouse. This paragraph applies not only in those cases in which the death of one spouse closes his taxable year but also in those cases in which one spouse dies after the close of his taxable year but before his return is filed. The general rule provided in such paragraph (4) is that, in the case of the death of one spouse, or of both spouses, the joint return with respect to the decedent may be made only by his executor or administrator. By this is meant the person or persons who are actually appointed executor or administrator and not merely a person who may be in charge of the property of the decedent. An exception is made from this general rule whereby, in the case of the death of one spouse, the joint return may be made by the surviving spouse with respect to both himself and the decedent if all the following conditions exist:

(A) No return has been made by the decedent for the taxable year in respect to which the joint return is made.

(B) No executor or administrator has been appointed at or before the time of the making of such joint return.

(C) No executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse.

These conditions are to be applied with respect to the return for each of the taxable years of the decedent for which a joint return may be made if more than one such taxable year is involved. Thus, in the case of husband and wife on the calendar-year basis, if the wife dies in January, 1949, a joint return for the husband and wife for 1948 may be made if the conditions set forth above are satisfied with repsect to such return. A joint return may also be made by the survivor for both himself and the deceased spouse for the calendar year 1949 if it is separately determined that the conditions set forth above are satisfied with respect to the return for such year. In determining whether an executor or administrator is appointed before the last date prescribed by law for filing the return of the surviving spouse, an extension of time for making the return is intended to be included.

The condition set forth in (A) above is designed to prevent a joint return being made by the survivor for himself and the deceased spouse where the deceased spouse had already made a separate return for the taxable year for which the joint return is sought to be made. Thus, if, in the case of a spouse who died in February, 1949, such spouse had made prior to her death a separate return for 1948 (either on a Form W–2 or Form 1040) or had made a joint return with her spouse for 1948, the surviving spouse may not thereafter make a joint return for himself and the deceased spouse for 1948. If, in such case, a joint return for 1948 had been made by such spouses during the life of both spouses, such return is the return of the spouses for 1948. For the purposes of (A) above no return shall be considered as made by the decedent unless it was made before her death by her or her agent or guardian. If an executor or administrator has been appointed within the time provided in (B) and (C) of section 51(b)(4), the surviving spouse can not make a joint return for himself and the deceased spouse whether or not a separate return for the deceased spouse is made by such executor or administrator, for, at that time, the joint return, if one is to be made for the deceased spouse, must be made by the executor or administrator.

If the surviving spouse makes the joint return provided for above, and thereafter an executor or administrator of the decedent is appointed, the executor or administrator (in order to relieve the decedent's estate from joint and several liability for the whole tax, or for any other reason) may disaffirm such joint return. This disaffirmance, in order to be effective, must be made within one year after the last day prescribed by law for filing the return of the surviving spouse (including any extension thereof) and must be made in the form of a separate return for the taxable year of the decedent with respect to which the joint return was made. In the event of such proper disaffirmance, the return made by the survivor shall constitute his separate return, that is, the joint return made by him shall be treated as his return and the tax thereon shall be computed by excluding all items properly includible in the return of

the deceased spouse. The separate return made by the executor or administrator shall constitute the return of the deceased spouse for the taxable year. The time allowed the executor or administrator to disaffirm the joint return by the making of a separate return is not intended to establish a new due date for the return of the deceased spouse. Accordingly, the provisions of sections 291 and 294 of the Code, relating to delinquent returns and delinquency in payment of tax, will be applicable to such return made by the executor in disaffirmance of the joint return.

Paragraph (5), of section 51(b) as amended in the bill, provides for the determination of status of individuals for the purpose of making joint returns. In accordance with the extension of the joint return privilege to cases in which a spouse died during the taxable year, the status determination of individuals as husband and wife in such a case is to be made as of the time of the death of such spouse. In this and in other respects the determination of status for the purposes of section 51 is the same as that provided under section 23(aa)(6), as added by section 302 of the bill with respect to the allowance of the standard deduction, except that the determination of status applies under section 51 only where two individuals have taxable years beginning on the same day.

Paragraph (6), of section 51(b) as amended in the bill, contains cross-references to section 12(d) of the Code and to section 400 of the Code.

SECTION 304. DEDUCTIONS FOR MEDICAL EXPENSES.

This section amends section 23(x) of the Code, relating to deduction for medical expenses. Under existing law the maximum deduction is $1,250 for the taxable year if only one exemption is allowed under section 25(b), and $2,500 if more than one exemption is allowed. Under the proposed amendment these limitations will still be applicable in the case of separate returns. The limitations will also be applicable in the case of joint returns where there are not more than two exemptions, but if, in the case of a joint return, there are three exemptions allowed, the maximum deduction shall be $3,750, and if, in the case of a joint return, there are four or more exemptions allowed, the maximum deduction shall be $5,000. The exemptions referred to do not include exemptions allowed under section 25(b)(1)(B) or (C), relating to the exemptions for individuals who have attained the age of 65 and for blind individuals. As under existing law the deduction is allowed for medical expenses under section 23(x) to the extent that such expenses exceed 5 per cent of the adjusted gross income, or 5 per cent of the aggregate adjusted gross income in the case of a joint return.

SECTION 305. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.

This section provides that the amendments made by this title of the bill, providing for "income splitting," shall be applicable with respect to taxable years beginning after December 31, 1947. The requirements of section 51(b) of the Code as amended by the bill with respect to the filing of a joint return are also made applicable to taxable years of both husband and wife beginning on the same day in 1947 if at least one such taxable year ends in 1948. Thus, a joint return by the husband and wife for a fiscal year beginning in 1947 and ending in 1948 can not be made unless permitted by the provisions of section 51(b) as amended by the bill. If a husband and wife, as of the close of their fiscal year beginning in 1947 and ending in 1948, are legally separated under a decree of separate maintenance, they can not make a joint return for such fiscal year under the provisions of section 51(b) as amended by the bill (although under existing law they could make a joint return). However, in the case of a husband and wife who have been making their returns on the basis of a fiscal year ending June 30, if the wife died before June 30, 1948, and after the beginning of their taxable years beginning July 1, 1947, a joint return may be made, under section 51(b) as amended by the bill, for the deceased spouse and the survivor for the taxable year of each beginning July 1, 1947 (although under existing law a joint return could not be made in such a case).

TITLE III.—HUSBAND AND WIFE.

PART II.—ESTATE AND GIFT TAX.

SECTION 351. ESTATE TAX—TRANSFERS OF COMMUNITY PROPERTY IN CONTEMPLATION OF DEATH, ETC.

This section repeals, effective with respect to estates of decedents dying after the date of enactment of this bill, section 811(d)(5) of the Code, relating to

transfers during life of community property includible in the gross estate under section 811 (c) or (d) of the Internal Revenue Code (such as transfers in contemplation of death, etc.). The extent to which any such transfer of community property is includible in the gross estate of the transferor is determined under the law at the date of his death (that is, with respect to decedents dying after the date of the enactment of this bill, without regard to section 811(d)(5)).

SECTION 352. ESTATE TAX—JOINT AND COMMUNITY INTERESTS.

This section repeals, effective with respect to estates of decedents dying after the date of enactment of this bill, section 811(e)(2) of the Internal Revenue Code, relating to inclusion of community property in the gross estate of the decedent. In the case of decedents dying after the date of enactment of this bill, the extent to which community property held by the decedent and his spouse at the death of the decedent is to be included in his gross estate will be determined without regard to section 811(e)(2). Clerical amendments are also made by this section to reinstate the form of section 811(e) prior to the enactment of the Revenue Act of 1942.

SECTION 353. ESTATE TAX—PROCEEDS OF LIFE INSURANCE.

This section repeals, effective with respect to estates of decedents dying after the date of enactment of this bill, section 811(g)(4) of the Code, relating to community property in the case of life insurance. Since section 811(g) was completely rewritten in the Revenue Act of 1942, the repeal prospectively of section 811(g)(4) makes applicable to decedents dying after the date of enactment of this bill the rules of section 811(g) which would be applicable had paragraph (4) never been contained in section 811(g).

SECTION 354. GIFT TAX—GIFTS OF COMMUNITY PROPERTY.

Section 1000(d) of the Internal Revenue Code provides a special rule for treatment of transfers of community property by gift. This section of the bill provides that section 1000(d) shall be applicable only to gifts made after the calendar year 1942 (when the gift tax provisions of the Revenue Act of 1942 first became effective) and on or before the date of enactment of this bill. Thus, in the case of a gift of community property after the date of enactment of this bill the extent to which the gift is that of the husband and wife shall be determined without regard to section 1000(d) of the Code. However, for the purpose of the computation of tax under section 1001 of the Code, section 1000(d) shall be applicable in determining net gifts with respect to gifts of community property made after the calendar year 1942 and on or before the date of the enactment of this bill. The net gifts for such period are included in the net gifts for preceding calendar years, to which are added the net gifts made for a current calendar year in order to determine the rate at which the net gifts for the current calendar year will be taxed. The above application of section 1000(d) is limited to the purposes of the gift tax and does not apply in determining the extent to which transfers of community property are transfers by the decedent under the estate tax.

TITLE IV.—ADJUSTED GROSS INCOME OF LESS THAN $5,000.

SECTION 401. INDIVIDUALS WITH ADJUSTED GROSS INCOMES OF LESS THAN $5,000.

This section of the bill amends section 400 of the Code, relating to the optional tax on individuals with adjusted gross incomes of less than $5,000. Instead of one tax table for computing the tax in the case of such individuals, as under existing law, the bill amends section 400 of the Code to provide two tax tables. Both tax tables give effect to the reductions in tax and additional exemptions provided in Titles I and II of the bill. However, the first table is applicable only for the purpose of computing the tax other than in the case of a joint return of husband and wife under section 51 of the Code. The second table, which gives effect not only to the provisions of Titles I and II but also to the income-splitting provisions of Title III of the bill, is applicable only for the purpose of computing, under section 400, the tax in the case of a joint return of husband and wife under section 51 of the Code.

The amendments made by this section of the bill are applicable with respect to taxable years beginning after December 31, 1947. Special provision is made in section 601 of the bill for taxable years beginning in 1947 and ending in 1948.

TITLE V.—REDUCTION IN WITHHOLDING OF TAX AT SOURCE ON WAGES.

SECTION 501. PERCENTAGE METHOD.

This section of the bill amends section 1622 (a) and (b) (1) of the Internal Revenue Code, relating to the percentage method of withholding, to reflect the reductions in tax provided in Titles I and II of the bill.

SECTION 502. WAGE BRACKET WITHHOLDING.

This section of the bill amends section 1622(c) (1) of the Code, relating to wage bracket withholding, by changing the tax tables contained in that section of the Code in order to reflect the reduction in tax provided in Titles I and II of the bill.

SECTION 503. EFFECTIVE DATE.

This section provides that the amendments made by this title shall be applicable only with respect to wages paid on or after April 1, 1948.

TITLE VI.—FISCAL YEAR TAXPAYERS.

SECTION 601. FISCAL YEAR TAXPAYERS.

This section of the bill makes the usual special provision for computation of the tax in the case of taxpayers making returns on a fiscal year basis, in this case for fiscal years beginning in 1947 and ending in 1948.

1948–9–12799

REVENUE ACT OF 1948.

[Senate Report No. 1013, Eightieth Congress, Second Session. Calendar No. 1055.]

[March 16, 1948 (legislative day, March 15), 1948.]

Mr. Millikin, from the Committee on Finance, submitted the following report [to accompany H. R. 4790].

The Committee on Finance, to whom was referred the bill (H. R. 4790) to reduce individual tax payments, and for other purposes, having had the same under consideration, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

I. GENERAL STATEMENT.

Your committee's bill is designed to provide a stimulus to labor, management, and venture capital; an adjustment for the increase in the cost of living; and the geographical equalization of the burden of the income, estate, and gift taxes.

The heavy individual income-tax rates now in effect constitute a serious restriction upon new investment, inhibit the incentives of management, and prevent the normal increase in productivity of labor. These rates impede the production which is so necessary in the immediate future in order to stabilize our economy and which in the long run is essential to an increase in the American standard of living. Your committee's bill is a step toward the development of a tax-rate schedule which is consistent with the maintenance of a healthy American economy.

Adjustment for the present high cost of living is made by an increase in exemptions under the individual income tax. This relief is heavily concentrated among taxpayers in the low-income brackets. Such taxpayers also receive preferential treatment in the percentage tax reductions made by this bill. Additional relief is granted to persons 65 and over and to the blind.

Equalization is provided for the tax burdens of married couples in common-law and community-property States. The bill corrects existing inequalities under the estate and gift taxes, as well as the individual income tax.

The reduction in tax liabilities provided by your committee's bill amounts to $4.8 billion in a year of full operation, or about $2 billion less than the House bill. This decrease was deemed advisable in order to place tax reduction on a more conservative basis, and to provide additional assurance of ample surpluses for debt reduction and contingencies in the current year and in years to come.

TABLE I.—*A comparison of the effective individual income tax rates under present law, under the House bill, and the Senate Finance Committee bill.*

Income after deductions but before exemptions.	Single person, no dependents.			Married person, no dependents, entire income earned by 1 spouse.			Married person, 2 dependents, entire income earned by 1 spouse.		
	Present law.	H. R. 4790 (House bill).	H. R. 4790 (Finance Committee bill).	Present law.	H. R. 4790 (House bill).	H. R. 4790 (Finance Committee bill).	Present law.	H. R. 4790 (House bill).	H. R. 4790 (Finance Committee bill).
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*
$500									
$600	3.17								
$700	5.43	1.90	2.37						
$750	6.33	2.66	3.32						
$800	7.12	3.33	4.15						
$900	8.44	4.43	5.53						
$1,000	9.50	5.32	6.64						
$1,200	11.08	6.65	8.30	3.17					
$1,500	12.67	7.98	9.96	6.33	2.66	3.32			
$1,800	13.72	9.61	11.07	8.44	4.43	5.53			
$2,000	14.25	10.64	11.62	9.50	5.32	6.64			
$2,500	15.20	11.52	12.62	11.40	6.92	8.63	3.80	0.53	0.66
$3,000	16.15	12.36	13.65	12.67	7.98	9.96	6.33	2.66	3.32
$4,000	17.34	13.45	15.08	14.72	10.64	11.62	9.50	5.32	6.64
$5,000	18.43	14.54	16.21	15.96	11.55	12.62	11.78	7.72	8.63
$6,000	19.47	15.83	17.33	17.42	12.36	13.65	13.30	9.12	9.96
$7,000	20.49	16.94	18.32	18.46	12.99	14.46	14.93	10.12	11.15
$8,000	21.49	18.03	19.33	19.71	13.45	15.08	16.15	10.94	12.17
$9,000	22.48	19.03	20.27	20.69	13.82	15.55	17.52	11.59	12.97
$10,000	23.47	20.03	21.24	21.85	14.55	16.21	18.62	12.10	13.61
$11,000	24.44	20.98	22.15	22.80	15.24	16.82	19.86	12.82	14.32
$12,000	25.41	21.94	23.09	23.91	15.83	17.33	20.90	13.60	15.04
$13,000	26.42	22.88	24.03	24.85	16.32	17.75	22.07	14.27	15.64
$14,000	27.45	23.87	25.01	25.99	16.94	18.32	23.07	14.84	16.16
$15,000	28.47	24.82	25.96	26.98	17.52	18.86	24.26	15.47	16.75
$20,000	33.23	29.28	30.44	31.97	20.03	21.24	29.45	18.29	19.44
$25,000	37.45	33.18	34.40	36.33	22.36	23.51	34.09	20.80	21.90
$30,000	40.88	36.35	37.62	39.90	24.82	25.96	37.94	23.26	24.35
$40,000	46.06	41.10	42.47	45.24	29.28	30.44	43.60	27.92	29.05
$50,000	50.27	44.96	46.40	49.59	33.18	34.40	48.22	31.97	33.16
$60,000	53.75	48.13	49.64	53.15	36.35	37.62	51.96	35.29	36.53
$70,000	56.63	50.76	52.33	56.10	38.91	40.22	55.05	37.95	39.24
$80,000	59.16	53.05	54.68	58.67	41.11	42.47	57.71	40.22	41.56
$90,000	61.43	55.12	56.80	60.99	43.12	44.52	60.10	42.31	43.69
$100,000	63.54	57.03	58.76	63.13	44.96	46.40	62.30	44.23	45.64
$150,000	70.54	63.38	65.44	70.26	51.97	53.58	69.69	51.42	53.01
$200,000	74.28	66.77	69.39	74.06	57.03	58.76	73.63	56.59	58.30
$250,000	76.71	68.97	71.93	76.54	60.84	62.67	76.19	60.47	62.29
$300,000	78.33	70.45	73.63	78.19	63.38	65.44	77.90	63.08	65.12
$400,000	80.36	72.29	75.76	80.25	66.77	69.39	80.04	66.54	69.14
$500,000	81.58	73.39	77.00	81.49	68.97	71.93	81.32	68.79	71.74
$750,000	83.20	74.86	77.00	83.15	71.92	75.33	83.03	71.79	75.20
$1,000,000	84.01	75.60	77.00	83.97	73.39	77.00	83.88	73.30	76.93

Source: Staff of the Joint Committee on Internal Revenue Taxation.

II. SUMMARY OF CHANGES IN EXISTING LAW.

H. R. 4790, as amended, is both a tax-reduction and tax-equalization bill. The tax-reduction features apply solely to the individual income tax. They include a general increase in exemptions, a reduction in all tax rates, but with the larger part of the relief in the lower income brackets, and special exemptions for those over 65 and the blind. The tax-equalization features of the bill apply to the individual income tax and the estate and gift taxes. They are designed to produce uniform treatment for residents of common-law and community-property States.

A comparison of the effective individual income tax rates under your committee's bill, under the bill as passed by the House, and under present law is shown in table I. The changes in the rates and exemptions of the individual income tax under this bill are effective January 1, 1948. The changes in withholding rates will become effective on May 1, 1948. Overwithholding during the first four months of 1948, which is not offset by decreased payments on estimated taxes or final returns, will of course be refunded to the taxpayer. The changes

in the estate and gift tax become law on the date of enactment of this bill. A brief description of the changes provided by your committee's bill is given below.

A. INDIVIDUAL INCOME TAXES.

1. Personal and dependency exemptions are increased from $500 per capita to $600 per capita.

2. Percentage tax reductions ranging from 12.6 per cent to 5 per cent, according to the size of the income, are provided for all taxpayers. Table II compares these percentage reductions with those in the bill as passed by the House.

While the percentage reduction from the present law tax are carried out to one decimal place in two instances, the reductions in tentative tax are in even percentages as far as the bulk of the taxpayers are concerned. Since these reductions are the percentages which appear on the tax form, your committee believed that it was important to have the reductions in tentative tax expressed as even percentages in the lower brackets. Moreover, your committee's reductions are made in a form which avoids the necessity of using the "notch" rate of $67 appearing in the House bill. This is accomplished by making the reduction in the lowest bracket available to all taxpayers with corresponding adjustment in the reductions allowed with respect to additional income. This change removes the only serious administrative problem raised by the Commissioner of Internal Revenue at your committee's hearings.

The percentage reductions in your committee's bill are as follows:

(*a*) Persons with incomes of $2,000 or less after deductions and exemptions[1] receive a 12.6 per cent reduction in their tax.

(*b*) Persons with incomes of $2,000 to about $136,700 after deductions and exemptions receive a reduction of 12.6 per cent of the tax on the first $2,000 of their net incomes after exemptions and a reduction of 7.4 per cent of the balance of their tax.

(*c*) Persons with incomes in excess of about $136,700 receive a reduction of 12.6 per cent of the tax on the first $2,000 of their incomes after deductions and exemptions, a reduction of 7.4 per cent of the tax on the next $134,700, and a reduction of 5 per cent of the balance of their tax.

TABLE II.—*Percentage reductions in individual income taxes provided under your committee's bill and under the bill as passed by the House.*

Income after deductions and exemptions.	Tentative tax.[1]	Reductions in tentative tax.[1]	Reductions in present law tax.
A. REDUCTIONS UNDER YOUR COMMITTEE'S BILL.			
$0 to $2,000	$0 to $400	17 per cent	12.6 per cent.
$2,000 to $136,719.10	$400 to $100,000	17 per cent of the tentative tax on the first $2,000 of surtax net income plus 12 per cent of the tentative tax on the excess.	12.6 per cent of the present law tax on the first $2,000 of surtax net income, plus 7.4 per cent of the present law tax on the excess.
$136,719.10 and over	$100,000 and over	17 per cent of the tentative tax on the first $2,000 of surtax net income, plus 12 per cent of the tentative tax on about the next $134,700 plus 9.75 per cent of the tentative tax on the excess.	12.6 per cent of the present law tax on the first $2,000 of surtax net income, 7.4 per cent of the present law tax on about the next $134,700, plus 5 per cent of the present law tax on the excess.
B. REDUCTIONS UNDER THE HOUSE BILL.			
$0 to $1,000	$0 to $200	33.5 per cent	30 per cent.
$1,000 to $1,395.83	$200 to $279.17	$67	30 per cent to 20 per cent.
$1,395.83 to $4,000	$279.17 to $840	24 per cent	20 per cent.
$4,000 and over	$840 and over	24 per cent of the tentative tax on the first $4,000 of surtax net income plus 14.5 per cent of the tentative tax on the excess.	20 per cent of the present law tax on the first $4,000 of surtax net income plus 10 per cent of the present law tax on the excess.

[1] More correctly, tentative normal tax and surtax. The term "tentative" refers to the tax computation before the 5 per cent reduction provided by present law or the percentage reductions provided under this bill.

[1] More accurately, surtax net incomes. For clearer understanding, however, the term "incomes after deductions and exemptions" will be used hereafter in this report.

3. Husbands and wives are permitted to split their income for tax purposes. Those who avail themselves of this opportunity file joint returns, divide their net income and exemptions by 2, compute their tax on this basis, and multiply the result by 2. Since in this change the maximum standard deduction for married couples is increased to $1,000, the maximum standard deduction for single persons is also increased to $1,000.[2]

4. An additional exemption is granted to taxpayers who are 65 or over. If both husband and wife have attained the age of 65, the $600 exemption is granted to each spouse.

5. An additional $600 exemption is granted to taxpayers who are blind. If both husband and wife are blind, the $600 exemption is granted to each spouse. A blind person 65 or over may claim this exemption in addition to that based on age.

B. ESTATE AND GIFT TAXES.

1. The 1942 amendments to the estate and gift taxes which provided special rules in the case of community property are repealed for persons dying and as to gifts made after the date of the enactment of this bill. Generally, this restores the rule by which estate- and gift-tax liabilities are dependent upon the ownership of the property under State law. Thus, in community-property States, irrespective of which spouse dies first, only one-half of the community property is included in the gross estate. Similarly, a gift made out of community property is taxable one-half to the husband and one-half to the wife, since under State law each owns a one-half interest in the property.

2. Provision is made for estate and gift tax "splitting" of noncommunity property. This provision also will apply to persons dying after the date of the enactment of this bill, so that community property and noncommunity property may be placed on an equal basis at the same time. Under this provision property passing outright in a common-law State from a decedent to the surviving spouse is deducted from the decedent's gross estate up to a limit of 50 per cent of the value of the decedent's gross estate less deductions for funeral expenses, debts, and other claims against the estate. In a similar fashion husbands and wives, in common-law States, may treat their gifts as being made one-half by each spouse. Residents of community-property States may also take advantage of the estate and gift tax splitting provisions with respect to transfers of their separate property. The same splitting effect is achieved for community property by the repeal of the 1942 amendments.

C. CAPITAL GAINS TAX.

Under your committee's bill property received by the surviving spouse as his interest in the community is given the same basis for gain or loss on a subsequent sale as it would have had if the interest had been acquired by bequest, devise, or inheritance from the decedent spouse. With the repeal of the 1942 amendments this means that the basis for calculating capital gain or loss will be the value as of the date of death, or the optional valuation date, for the entire community interest.

III. SUMMARY OF ESTIMATED REVENUE EFFECT OF TAX REDUCTION.

A. EFFECT OF BILL ON TAX LIABILITIES.

Individual income-tax liabilities under your committee's bill are estimated at $16,884 million in a full year of operation, assuming a personal income level of $208 billion. This compares with liabilities of $14,999 million under the bill as passed by the House and $21,458 million under present law. Thus your com-

[2] Present law provides that a standard deduction may be used by a taxpayer in lieu of itemizing his deductions. A taxpayer with an income before deductions or exemptions of less than $5,000 who uses the Supplement T tax table automatically is allowed a standard deduction equal to about 10 per cent of his income. For an individual whose income before deductions or exemptions is $5,000 or more a standard deduction of $500 is allowed. Your committee's bill will allow a married couple who files a joint return, or a single person, whose income before deductions or exemptions is between $5,000 and $10,000, a standard deduction equal to 10 per cent of income. If the income before deductions or exemptions of such a person is $10,000 or more he is allowed a standard deduction of $1,000.

mittee's bill provides for a reduction of $4,574 million in the individual income-tax liabilities as compared with $6,459 million under the House bill. Under both your committee's bill and the House bill there is also a reduction of $199 million in estate and gift tax liabilities. Hence, the total reduction in liabilities under the committee's bill is $4,773 million as compared with $6,658 million under the House bill.

The effect of your committee's bill and the House bill on individual income tax and estate and gift tax liabilities is summarized in table III, which follows:

TABLE III.—*Estimated tax liabilities under present law, under your committee's bill, and the House bill, assuming a personal income level of $208 billion.*

[In millions of dollars.]

	Present law.	Finance Committee's bill.	House bill.
Individual income tax liabilities	21,458	16,884	14,999
Reduction in individual income tax liabilities under H. R. 4790		4,574	6,459
Estate and gift tax liabilities	820	621	621
Reduction in estate and gift tax liabilities under H. R. 4790		199	199
Total reduction in tax liabilities under H. R. 4790		4,773	6,658

Source: Staff of the Joint Committee on Internal Revenue Taxation.

B. DIFFERENCE BETWEEN LIABILITIES AND COLLECTIONS.

A tax reduction expressed on a *liability* basis, such as the ones shown in the above table, indicates the decrease in *obligations* incurred by taxpayers during a year. However, for the purpose of determining the effect of your committee's bill on the budget, it is necessary to present revenue estimates on a collection basis.

A tax reduction expressed on a *collection* basis indicates the actual loss in *receipts* of the Government in a specific year. Usually in the year in which a tax reduction is made, the effect of the reduction in liabilities is not reflected fully in the collections because of the lag in collections behind the incurring of the tax liability. Thus, although the tax reduction under your committee's bill is effective during half of the fiscal year 1948, only about 23 per cent of the half-year reduction in liabilities is reflected in the collections during that year. Usually, in the year after the tax reduction the loss in collections exceeds the liability reduction. This is because the abnormal lag of collections behind liabilities in the year of the reduction is largely made up in the year after the reduction. In the second year after the reduction, the collections are about the same as the liabilities.

C. EFFECT OF BILL ON TAX COLLECTIONS.

Table IV presents the effects of the tax reduction proposed by your committee and that contained in the House bill on collections during the fiscal years 1948 and 1949. A personal income level of $208 billion in the calendar year 1948 has been assumed. On this basis, your committee's bill would reduce collections in the fiscal year 1948 by $558 million, and reduce collections and increase refunds in the fiscal year 1949 by $5,100 million. On a similar basis the House bill would reduce collections in 1948 by $1,026 million and in 1949 by $6,963 million.

The revenue loss in the fiscal year 1949 is in excess of the estimated reduction in liabilities in both your committee's bill and the House bill, primarily because H. R. 4790 is being acted on after January 1, 1948, the date when the change in liabilities is effective. As a result there will be overwithholding of the income tax in the early months of this year, which in the fiscal year 1949 will decrease payments of estimated tax and payments with final returns, and will increase the tax refunds required.

TABLE IV.—*Effect on total receipts in the fiscal years 1948 and 1949 of your committee's bill and the House bill, assuming personal income of $208 billion in the calendar year 1948.*

[In millions of dollars.]

	Estimated receipts under—	Reduction in receipts under H. R. 4790—
A. For the fiscal year 1948:		
Present law	46,344	
Finance Committee bill	45,786	558
House bill	45,318	1,026
B. For the fiscal year 1949:		
Present law	47,256	
Finance Committee bill	[1] 42,156	[1] 5,100
House bill	[1] 40,293	[1] 6,963

[1] This includes an allowance for additional refunds.

Source: Staff of the Joint Committee on Internal Revenue Taxation.

IV. THE FISCAL OUTLOOK IN 1948 AND 1949.

A. INCOME ASSUMPTIONS USED IN CALCULATING REVENUE ESTIMATES.

The personal income levels, expressed as annual rates, on which your committee based its revenue estimates for the fiscal years 1948 and 1949 are:

	Billions.
First half of calendar year 1947 (actual)	$191
Second half of calendar year 1947 (actual)	203
First half of calendar year 1948 (assumed)	210
Second half of calendar year 1948 (assumed)	205
First half of calendar year 1949 (assumed)	195

The above figures produce an average of $197 billion for the calendar year 1947 and $208 billion for the calendar year 1948. The average for the fiscal year 1948 is $207 billion and for the fiscal year 1949 $200 billion. For the purpose of estimating revenues the calendar year averages are the more significant because a large portion of the collections in the fiscal year is based on liabilities incurred in the preceding calendar year. For instance, the bulk of the collections in the fiscal year 1949 arise from liabilities incurred in the calendar year 1948.

The half-year income levels assumed for 1948 and 1949 are the same as those appearing in the House report on H. R. 4790, with the exception of the assumption for the first half of the calendar year 1948. This was adjusted downward by $2 billion to take into account the recent break in commodity prices. While this appears to represent a liberal allowance for the effects of these price declines, your committee would prefer to understate rather than overstate revenues in considering a tax-reduction bill. It was not necessary to change the House assumptions for the two remaining half-year periods, since liberal adjustments had already been made for a commodity price decline in these two half-year periods.

The assumption of a $210 billion personal income level for the first half of the calendar year 1948 is very conservative. Actual performance may well exceed this level. At the time the House report was prepared, a preliminary estimate for December indicated that personal income in that month was running at an annual rate of $206.5 billion. However, the correct figure for December turned out to be $210.4 billion; and the figure for January, which has just been made available, is $210.8 billion. Since both are slightly above your committee's assumption for the first half of the calendar year 1948, the latter is in fact only a projection of the current income level. It does not take into account any rise which may very well take place during the coming months. The figures of $205 billion for the second half of the calendar year 1948 and $195 billion for the first half of the calendar year 1949 are substantially below current levels. In fact, they assume a recession which it is hoped will not take place. All of these assumptions were purposely made on a conservative basis to demonstrate to even the most pessimistic that there is room in the budget for a tax cut.

The personal income level assumed in the President's Budget presented in January was $200 billion for the calendar year 1948 and the first half of the calendar year 1949. Purported to be the "current" income level, it was in fact more than $10 billion below the levels of December, 1947, and January, 1948, and over $5 billion below the level in the fourth quarter of 1947. Only by going back to the third quarter of 1947 is it possible to find a "current" level in the neighborhood of $200 billion.

It is interesting to note that the Secretary of the Treasury in his statement before your committee no longer called $200 billion the "current" personal income level, but simply said that it would not seem "prudent" to estimate revenues on a higher level. It was not made clear, however, why it is "prudent" to assume an immediate drop in the personal income level of considerably more than $10 billion during the remaining three months of this half year. Your committee finds it most difficult to reconcile this drop in personal incomes, which the Treasury insists on assuming, with the administration's continuing demand for anti-inflationary legislation, and with the Secretary of Commerce's expressed rejection of the need for a stimulus to investment. In this connection it is appropriate to recall that last year the Secretary of the Treasury insisted on using a level of income payments which was some $8 billion below the then current level.

B. OUTLOOK IN FISCAL YEAR 1948.

Table V shows the effect of H. R. 4790, as amended by your committee, upon the Budget of the Federal Government in the fiscal year 1948, assuming the President's estimate of expenditures is increased in 1948 by a $3 billion budgetary expenditure to a trust fund in 1948 which will be available for expenditure for the European Recovery Program in 1949. This $3 billion transaction has already been approved by the Senate. Allowance has also been made for additional foreign aid expenditures not in the budget. Table V follows:

TABLE V.—*Effect of H. R. 4790, as amended by your committee, upon the budget in the fiscal year 1948, assuming a $3 billion expenditure in 1948 to a trust fund available for expenditure under the European Recovery Program in 1949.*[1]

		In millions.
Receipts under present law (staff estimates)		$46,344
Expenditures:		
Budget total	$37,728	
ERP trust fund expenditure	3,000	
Additional foreign aid not in budget	34	
		40,762
Surplus before tax reduction		5,582
Tax reduction under your committee's bill		558
Surplus after tax reduction		5,024

[1] The personal income level in the calendar year 1947 was $197 billion and in the first half of the calendar year 1948 is assumed to run at an annual rate of $210 billion.

Thus there will be a surplus of $5 billion in the fiscal year 1948 after the enactment of your committee's proposed tax reduction and taking into account the $3 billion trust fund expenditure and foreign-aid expenditures not in the Budget. Your committee believes this leaves ample room for adequate debt retirement and contingencies in the current fiscal year.

Your committee's estimate of revenue collections in the current fiscal year of $46.3 billion exceeds the estimate in the President's budget by $1.1 billion almost entirely because of a difference in the assumption used as to the level of personal income in the first half of the calendar year 1948. The Budget assumes that on an annual basis this will be $200 billion and your committee assumes it will remain at the current level of about $210 billion.

C. OUTLOOK IN FISCAL YEAR 1949.

Table VI shows the effect of H. R. 4790, as amended by your committee, upon the Budget of the Federal Government in the fiscal year 1949. A personal income level of $208 billion is assumed in the calendar year 1948. Two different assumptions are made as to congressional cuts in expenditures proposed by the President. Allowance has also been made for additional foreign-aid expenditures not in the Budget. Table VI follows:

TABLE VI.—*Effect of H. R. 4790, as amended by your committee, upon the budget in the fiscal year 1949, under two assumptions as to the level of expenditures.*

[On the basis of a personal income level of $208 billion in calendar year 1948.]

A. Assuming only the $3 billion reduction in budgetary expenditures in 1949 resulting from 1948 trust fund expenditures of this amount available for the ERP in 1949:

		In millions.
Receipts under present law (staff estimates)		$47,256
Expenditures:		
President's Budget	$39,669	
ERP trust fund expenditure in 1948	—3,000	
Additional foreign aid not in Budget	311	
		36,980
Surplus before tax reduction		10,276
Effect of your committee's bill		[1] 5,100
Surplus after tax reduction		5,176

B. Assuming the $3 billion reduction in budgetary expenditures in 1949 resulting from 1948 trust fund expenditures of this amount available for the ERP in 1949 and the $2.5 billion cut recommended by Congress:

Receipts under present law (staff estimates)		$47,256
Expenditures:		
President's Budget	$39,669	
ERP trust fund expenditure in 1948	—3,000	
Recommended congressional cut	—2,500	
Additional foreign aid not in Budget	311	
		34,480
Surplus before tax reduction		12,776
Effect of your committee's bill		[1] 5,100
Surplus after tax reduction		7,676

[1] Includes refunds due to overwithholding in the fiscal year 1948.

Thus there will be a surplus of $5.2 billion under the minimum assumption as to expenditure reduction in the fiscal year 1949, or a surplus of $7.7 billion if the expenditure cut of $2.5 billion recommended by Congress is made. Your committee believes that on either basis there is ample room for adequate debt retirement and other contingencies.

Your committee's estimate of revenue collections in the fiscal year 1949 exceeds the estimate in the President's Budget by $2.8 billion. This is due almost entirely to your committee's assumption of a personal income level of $208 billion in the calendar year 1948 while the Budget assumed a level of $200 billion.

V. TAX REDUCTION AND BUSINESS PROSPECTS.

This tax bill is being presented at a time when the future of business conditions is extremely difficult to predict. On the one hand, the administration appears to be firmly wedded to the conclusion that the economic problem of the year ahead is inflation. On the other hand, there is a growing body of opinion among business economists that there will be a down-turn around the middle of the current calendar year. Your committee has heard expert witnesses who reached this conclusion. However, it is worth noting that in each case it was pointed out that the down-turn would not be of major dimensions.

In order to place its revenue estimates on a conservative basis your committee has taken the more pessimistic alternative and assumed some decline during the last half of 1948 and the first half of 1949. This is not intended to be a forecast of the more likely course of events, but merely represents a desire to avoid the possibility of overstating the probable budget surplus.

On the other hand, it may be argued that inflation will be the problem of the coming year and that some part of the $4.8 billion tax reduction provided by your committee's bill will have inflationary effects. However, it should be borne in mind that the relatively small size of the reduction leaves surpluses which are sufficient in amount to implement a policy of contracting credit through debt retirement should that prove desirable. Also the stimulus to productive effort

provided by your committee's bill will act as a deterrent to inflationary pressures. Additional anti-inflationary effects will be secured by the expenditure reduction recommended by Congress.

From the point of view of the immediate effects of this debt retirement upon the economy, a better picture would be obtained if the Government's budgetary accounts were kept on a strictly cash basis. This is true because on such a basis receipts and expenditures which, from the point of view of the economy as a whole, are mere accounting entries, are eliminated. The President's Budget shows receipts and expenditures on a cash basis for the fiscal years 1947, 1948, and 1949. The resulting cash surpluses are compared with the corresponding budgetary surpluses in table VII which follows:

TABLE VII.—*Comparison of cash and budgetary surpluses of the Federal Government as shown in the President's Budget.*

[In billions of dollars.]

Fiscal year.	Surplus on cash basis.	Budgetary surplus.
1947	6.7	0.8
1948	7.7	7.5
1949	7.1	4.8

Source: Compiled from the Budget of the United States Government for the fiscal year ending June 30, 1949.

It is evident that the surpluses in 1947 and 1949 are very much larger when figured on a cash basis. The fact that the difference in 1948 is smaller is due to the cashing of terminal-leave bonds which increased the cash disbursements but not the budgetary expenditures. It is evident, therefore, that the immediate effects upon the economy of the debt retirement possible under your committee's bill would be very much greater than is indicated by an examination of the budgetary surplus alone. This is particularly true of the fiscal year 1949 when the redemption of terminal-leave bonds is a minor factor.

The large amount of debt retirement which can be made after provision for your committee's bill constitutes a desirable hedge against the possibility of continued inflationary pressure. It will place the fiscal and monetary authorities in a position where they can, if they wish, exert a sharp deflationary pressure upon the economy through properly managed debt retirement. As was pointed out at the hearings before your committee, the deflationary effects of debt retirement depend upon whose bonds are being retired. The least deflationary effect results from the purchase of securities held by individuals; a more deflationary effect is obtained from the purchase of securities held by commercial banks; the maximum effect is obtained when the securities are purchased from the Federal Reserve System.

During 1947 the administration's policy was to retire primarily debt held by commercial banks. While this is clearly deflationary in effect, the same result could have been achieved with a smaller debt reduction by shifting somewhat more of the purchases to securities held by the Federal Reserve System. The large amounts remaining for debt retirement in the fiscal years 1948 and 1949 after provision for your committee's bill, plus the possibility of concentrating a somewhat larger proportion of the purchases upon securities held by the Federal Reserve Banks, provide ample opportunity for increasing deflationary pressures should that policy prove desirable.

In addition to the large debt retirement possible after provision for your committee's bill, the stimulus which the tax cut applies to production must be listed among the factors tending to counteract inflationary pressures. Because of the importance of this subject, not only for the immediate future but also for the long run, it is discussed at length in the next section of this report. It is sufficient here to express your committee's belief that increased production is the most satisfactory answer to high prices resulting from the pressure of pent-up demand on a limited supply. So far as this method of attacking inflation is available, its use is preferable to the arbitrary reduction of demand to fit a lower level of production. By decreasing tax rates in all income brackets, your committee's bill will increase the incentives of labor and management to produce, and the investors' willingness to assume business risks. The resulting increase in production will be a substantial offset against inflationary pressures.

Moreover, Congress has already expressed its intention of reducing the 1949 expenditures by $2.5 billion. Such a reduction in expenditures will also offset inflationary pressure.

If, however, the problem of the immediate future turns out to be not inflation but the avoidance of deflation, immediate tax reduction becomes imperative, and rapid debt retirement extremely dangerous. In the absence of the tax cut, as much as $15.9 billion to $18.4 billion might be available for debt retirement in the fiscal years 1948 and 1949. These amounts are so large that in the event of a downturn the deflationary effects would be extremely serious. Under your committee's bill the amount which might be available for debt retirement would be cut to between $10.2 billion and $12.7 billion. To a large extent the deflationary effect of debt retirement of this size can be offset if the persons in charge of debt management substitute for the purchase of bank-held securities the purchase of securities held by individuals. It would be much more difficult to offset the deflationary effects of a debt reduction of the size resulting from the continuance of the present tax law, even though the debt managers shifted as large a portion of the debt retirement as possible outside the banking system.

Should business begin to taper off, the effects of the tax reduction upon incentives to work and to invest would be extremely important, as would also the additional purchasing power generated by the increase in exemptions.

VI. Tax Reduction and Incentives.

In the opinion of your committee, production must be the ultimate answer both to the immediate problem of business stability and the long-run goal of achieving a higher standard of living. Increased production requires the wholehearted cooperation of all segments of our economy. To accomplish this goal the productivity of labor must be increased, the initiative of our business managers must be stimulated, and profits after taxes must be of sufficient size to attract investors into risk-taking enterprise. Your committee believes that the present high tax rates represent one of the chief obstructions to the achievement of this higher level of production.

A. Production in the Immediate Future.

The Secretary of the Treasury in his testimony before your committee, both this year and last, stated his belief that industry was and is running at "virtual" capacity. Therefore, he could see no immediate need to remove the high tax rates which obstruct production. Despite his statement last year, the output of goods and services did increase in 1947. The recent Economic Report of the President estimates that 1947 production exceeded that of 1946 by nearly 5 per cent. Moreover, the report sets up the objective of a further 3 per cent rise in the output of goods and services of the nonagricultural parts of our economy in 1948. Thus it is apparent that the Secretary's opinion that we have reached a temporary limit in our productive effort is not well-founded.

Increases in productivity and the removal of bottlenecks in various industrial processes represent the two chief means of increasing production in the immediate future. Our experience after the First World War leads to the conclusion that a large increase in productivity can be expected in such postwar periods. After World War I productivity increased by more than 10 per cent a year for a period of three years.[3] The absence of any such increase following World War II can be accounted for to a considerable extent by such obstructions as the present high tax rates. The absence of adequate monetary incentives is one of the important causes of the bottlenecks and the current low rate of increase in productivity. Your committee refuses to accept the conclusion that we have reached even a temporary limit to our productive effort, and believes that lower tax rates will be beneficial in stimulating production in the immediate future.

B. Production in the Long Run and the Scarcity of Risk Capital.

The availability of sufficient risk capital to meet the needs of business is a significant factor in increasing production in the immediate future, and the paramount consideration for the long run. Because your committee had received reports of shortages of such capital, it asked the Secretary of Com-

[3] Basic Facts on Employment and Production, Senate Committee Print No. 4, Seventy-ninth Congress, first session, September 1, 1945, page 6.

merce to testify on this subject at its recent hearings. The Secretary took the position that ample funds are available to meet current business needs, and found no evidence of a shortage of savings.

However, the Secretary's emphasis was on the over-all need for business funds, and not on the point with which your committee was primarily concerned, the availability of venture capital. The inadequate supply of this risk capital is abundantly shown by the Secretary's own statement. At the hearings the Secretary presented the 1946 and 1947 data which appear in table VIII and the 1947 data which appear in table IX. The remaining data shown in these tables were supplied by the Director of the Office of Business Economics of the Department of Commerce.

TABLE VIII.—*Changes in corporate securities outstanding and in their ownership, 1946 and 1947.*

[Amounts in billion of dollars.]

	1946		1947	
	Amount.	Per cent of net issues.[1]	Amount.	Per cent of net issues.[1]
Net issues [2] by industry group	2.3	100.0	4.1	100.0
Industrial and miscellaneous	2.5	108.7	2.0	48.8
Public utility (and telephone)	.3	13.0	2.1	51.2
Railroad	−.5	−21.7	0	0
Net issues [2] by type of security	2.3	100.0	4.1	100.0
Common stock	1.0	43.5	.9	22.0
Preferred stock	.3	13.0	.4	9.8
Bonds and notes	1.0	43.5	2.8	68.3
Net purchases [3] by various groups	2.3	100.0	4.1	100.0
Commercial banks	.3	13.0	.2	4.9
Mutual savings banks	.2	8.7	.2	4.9
Life insurance companies	2.0	87.0	3.0	73.2
Foreigners	−.2	−8.7	0	0
Domestic individuals, etc	0	0	.7	17.1

[1] Data do not add to totals because of rounding.
[2] New issues less retirements.
[3] Purchases less sales.

Source: Department of Commerce.

TABLE IX.—*Sources of corporate funds in 1941, 1946, and 1947.*[1]

[Amounts in billions of dollars.]

	1941 [2]		1946 [2]		1947	
	Amount.	Per cent of total.	Amount.	Per cent of total.	Amount.	Per cent of total.
Total investments	15.3	[3] 100.0	23.6	[3] 100.0	26.7	[3] 100.0
Retained profits	4.7	30.7	6.5	27.5	10.1	37.8
Depreciation, etc	4.3	28.1	4.6	19.5	4.3	16.1
Cash (on hand and in banks)	−.8	−5.2	.3	1.3	−1.0	−3.7
United States Government securities	−2.0	−13.1	6.1	25.8	1.5	5.6
Payables (trade)	2.9	19.0	3.0	12.7	1.0	3.7
Federal income tax liabilities	4.6	30.1	−2.5	−10.6	2.3	8.6
Other current liabilities	.1	.7	.0	.0	.7	2.6
Net new issues	.1	.7	2.3	9.7	4.1	15.4
Bank loans	1.4	9.2	3.3	14.0	3.7	13.9

[1] All United States corporations, exclusive of banks and insurance companies.
[2] Data for these years are preliminary.
[3] Data do not add to totals because of rounding.

Source: Department of Commerce.

From these data and other evidence submitted by the Secretary at the hearings on this bill, the following facts emerge:

1. The amount of business investment financed by retained profits represented an unusually large proportion of the total in 1947. Specifically, retained profits were 37.8 per cent of total investment in 1947, as compared to 27.5 per cent in 1946 and 30.7 per cent in 1941. It is believed that this heavy dependence on internal financing was not a matter of choice, but was forced on corporations by the difficulty of floating new security issues.

2. The important role played by undistributed profits in 1947 produced a subnormal relationship between dividends and corporate profits. A tabulation made from Department of Commerce data indicates that in 1947 dividends represented about 58 per cent of total profits[4] as compared with the 65 to 80 per cent customarily distributed. This, of course, has the effect of making new stock issues less attractive to prospective investors, which in turn accentuates the need for financing out of undistributed profits.

3. Of the new issues marketed in 1947, an unusually large proportion took the form of fixed-income securities rather than stock. In that year bonds and notes represented 68.3 per cent of the total, as compared to 43.5 per cent in 1946.

4. The amount of risk-bearing common stocks issued in 1947 was 10 per cent less than in 1946. Table VIII shows that in terms of total new securities issued in 1947, common stock represented only 22.0 per cent of the total as compared to 43.5 per cent in 1946. This reduced emphasis on common stocks, together with the heavy reliance on debt financing, reflects the difficulty experienced by corporations in obtaining risk capital.

5. Life insurance companies are taking a very large proportion of the new securities, while individuals, who must be the chief source of risk capital, are buying a relatively small proportion. The life insurance companies and banks, which must place their funds in securities with a low degree of risk, accounted for 83 per cent of the net purchases in 1947 and were the only net purchasers in 1946. On the other hand, domestic individual buyers accounted for none of the net purchases in 1946 and only 17.1 per cent in 1947. This is still another indication that those buying securities to-day are for the most part seeking relatively riskless investments.

6. Net securities issued by the risk-taking industrials (primarily manufacturing) in 1947 dropped, while safer net issues of the utilities increased substantially. In 1947 the industrials accounted for 48.8 per cent of the total and utilities 51.2 per cent. In 1946 the retirement of railroad securities more than offset the issues of other utilities. Therefore, the only net issues which occurred in that year were those of the industrial group.

If any further evidence is desired of the scarcity of venture capital attention need only be turned to the unprecedented existence of a sluggish stock market in a period of booming business. Here too there is a marked preference for securities with a low degree of risk. The average yield on new securities has been increasing for some time, and the spread between the rates paid on issues involving a greater degree of risk and those of the gilt-edged variety is now substantially larger than it was a year or so ago. This increasing premium which must be paid for risk capital is still another indication of its increasing scarcity.

C. THE EFFECT OF YOUR COMMITTEE'S BILL ON INCENTIVES.

Your committee believes the present high individual income tax rates deter increases in the productivity of labor, the breaking of bottlenecks by management, and the willingness of investors to assume risks. Clearly, this leads to the conclusion that the high wartime individual income tax rates should be lowered substantially in order to stabilize business conditions now and to assure a rising standard of living for the American people in the years to come. Your committee's bill is a step in this direction.

The repressive effect of present tax rates can be shown by examining the amount of spendable income remaining after taxes for taxpayers at different income levels. For example, a married couple with two children having an income, after deductions but before exemptions, of $4,000 under present law has 90 per cent of this income left after paying taxes. Under your committee's bill they would have 93 per cent. If their income were $10,000, the same couple would have 81 per cent left under present law and 86 per cent under your committee's bill. A married couple with two dependents having $30,000 of income retains only

[4] In these computations profits have been adjusted for inventory revaluation.

62 percent of their income under present law, but 76 per cent under H. R. 4790, as amended. If they had an income of $70,000 they would retain only 45 per cent under present law but 61 per cent under the proposed legislation.[5] Table X shows the spendable income left after taxes at various levels for a married couple with two dependents and the per cent this is of income before taxes under both present law and your committee's bill. Tables XVIII A, B, and C in Part IX show the same information for taxpayers having a different exemption status.

TABLE X.—*Comparison of amount of spendable income after taxes under present law, under the House bill, and the Finance Commitee bill.*

MARRIED PERSON—2 DEPENDENTS—ENTIRE INCOME EARNED BY ONE SPOUSE

Income after deductions but before exemptions.	Amount of spendable income under—			Per cent of income after tax to income before tax.		
	Present law.	House bill.	Finance Committee bill.	Present law.	House bill.	Finance Committee bill.
				Per cent.	*Per cent.*	*Per cent.*
$2,000	$2,000.00	$2,000.00	$2,000.00	100.00	100.00	100.00
$2,500	2,405.00	2,486.70	2,483.40	96.20	99.47	99.34
$3,000	2,810.00	2,920.20	2,900.40	93.66	97.34	96.68
$4,000	3,620.00	3,787.20	3,734.40	90.50	94.68	93.36
$5,000	4,411.00	4,614.00	4,568.40	88.22	92.28	91.37
$6,000	5,202.00	5,452.80	5,402.40	86.70	90.88	90.04
$7,000	5,955.00	6,291.68	6,219.84	85.07	89.88	88.85
$8,000	6,708.00	7,124.48	7,026.24	83.85	89.06	87.83
$9,000	7,423.00	7,957.28	7,832.64	82.48	88.41	87.03
$10,000	8,138.00	8,790.08	8,639.04	81.38	87.90	86.39
$11,000	8,815.00	9,589.82	9,424.32	80.14	87.18	85.68
$12,000	9,492.00	10,367.52	10,195.52	79.10	86.40	84.96
$13,000	10,131.00	11,145.22	10,966.72	77.93	85.73	84.36
$14,000	10,770.00	11,922.92	11,737.92	76.93	85.16	83.84
$15,000	11,361.50	12,680.10	12,488.00	75.74	84.53	83.25
$20,000	14,110.00	16,342.88	16,111.68	70.55	81.71	80.56
$25,000	16,478.50	19,800.46	19,524.16	65.91	79.20	78.10
$30,000	18,619.00	23,022.06	22,693.76	62.06	76.74	75.65
$40,000	22,558.00	28,832.56	28,381.76	56.40	72.08	70.95
$50,000	25,889.00	34,013.78	33,422.08	51.78	68.03	66.84
$60,000	28,821.00	38,825.64	38,082.24	48.04	64.71	63.47
$70,000	31,468.00	43,432.30	42,531.20	44.95	62.05	60.76
$80,000	33,830.00	47,820.08	46,754.88	42.29	59.78	58.44
$90,000	35,907.00	51,920.58	50,682.88	39.90	57.69	56.31
$100,000	37,699.00	55,774.84	54,357.44	37.70	55.77	54.36
$150,000	45,462.00	72,871.02	79,491.52	30.31	48.58	46.99
$200,000	52,731.00	86,827.64	83,394.24	26.37	43.41	41.70
$250,000	59,525.00	98,821.18	94,276.48	23.81	39.53	37.71
$300,000	66,300.00	110,773.68	104,632.64	22.10	36.92	34.88
$400,000	79,850.00	133,844.20	123,429.30	19.96	33.46	30.86
$500,000	93,400.00	156,059.72	141,323.46	18.68	31.21	28.26
$750,000	127,275.00	211,547.22	186,004.72	16.97	28.21	24.80
$1,000,000	161,150.00	267,034.72	230,685.96	16.12	26.70	23.07

Source: Staff of the Joint Committee on Internal Revenue Taxation.

To a large extent the repressive effect of the present tax rates is a product of the war period. It is often overlooked how much less a taxpayer has left after taxes at the present time than he would have under the prewar tax rates. The additional income which it is necessary to have to-day in order to produce the same income after taxes as in 1939 is very substantial. This is shown by the data presented in table XI. For example, a married individual with two children, having an income after deductions but before exemptions of $5,000 in 1939 must have an income of $5,684 to-day to have the same income left after taxes as he had in 1939. To match a $10,000 income in 1939 it is necessary to have a $12,257 income to-day. To match a $25,000 income in 1939 it is necessary to have an income of over $40,000 to-day, and a $50,000 income in 1939 represents the equivalent of an income of nearly $124,000 to-day. A taxpayer receiving a $100,000 income in 1939 must have an income of nearly $313,000 to have the same income left after taxes to-day, and an income of over $1,260,000

[5] All examples assume the entire income was earned by one spouse and that the couple is resident in a common-law State.

would be required to-day to have the same income after taxes as an income of $500,000 would have produced in 1939. These figures do not take into consideration the 70 per cent rise in the cost of living since 1939.

These data demonstrate clearly the extent to which tax burdens increased during the war period. In reality, the repressive effect of the present rates on incentives has only recently been tested under peacetime conditions. It is your committee's belief that the evidence indicates that these rates do not leave sufficient spendable income to induce investors to provide the venture capital needed for our economy to-day.

TABLE XI.—*Comparison of tax burdens in 1939 and 1947: Income after deductions but before exemptions required to give an equivalent income after taxes, in 1939 and 1947.*

MARRIED COUPLE WITH 2 DEPENDENTS.

1939 income before taxes:	*1947 equivalent.*	1939 income before taxes:	*1947 equivalent.*
$2,000	$2,000	$20,000	$29,720
$2,500	2,617	$25,000	40,334
$3,000	3,235	$40,000	81,696
$5,000	5,684	$50,000	123,573
$6,000	6,948	$75,000	228,391
$8,000	9,550	$100,000	312,568
$10,000	12,257	$500,000	1,260,384
$15,000	20,119	$1,000,000	2,183,867

Source: Staff of the Joint Committee on Internal Revenue Taxation.

Marginal tax rates—that is, the tax rate paid on the top dollar of income—ordinarily indicate the incentive which exists under a given tax-rate schedule to earn additional income or to realize it through investments. Under H. R. 4790 as amended the marginal rates do not, however, show the entire increase in incentives brought about by the bill, since they do not indicate the effect of the "income splitting" provision. For example, assume that the husband earns the entire income of a family unit. Because of the "income splitting" provision the marginal rate which would apply in this case is the rate applying to an income of one-half the size of that earned by the husband. Despite the shortcomings of marginal rates in revealing the effect of your committee's bill on incentives, such rates are presented in table XII. This table shows that under your committee's bill there is a net decrease in the marginal rate all down the line, even though the effects of income splitting are not taken into account.

D. THE EFFECT OF THE PRESIDENT'S PROPOSAL ON INCENTIVES.

The Secretary of the Treasury advised your committee to substitute for H. R. 4790 the President's tax program. This consisted of a $40 tax credit under the individual income tax and the reimposition of a modified version of the war-time excess profits tax. The effect of the adoption of the President's program upon incentives would be most unfortunate. Table XII indicates that the tax credit has practically no effect on marginal rates. Hence the effect of the credit on incentives is virtually zero.[6]

The reason the President's proposed tax credit has practically no incentive effect is that once a tax of $40 is reached, there is no further reduction of the tax on any additional income. Thus a single individual having an income after deductions and exemptions of about $210 obtains the maximum relief. Irrespective of how much income he may earn in excess of that amount, there is no further tax reduction and thus no increase in incentive under this proposal.

It has been shown that the $40 tax credit proposed by the President has no positive effect on production and investment incentives. The reimposition of the excess profits tax under the President's plan actually imposes new restrictions on productive effort and on the willingness of investors to assume business risks.

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[6] Technically there is a decrease in the marginal tax rates under the President's proposal for incomes after deductions and exemptions up to the level of about $210 for single persons where the $40 tax credit becomes fully effective.

TABLE XII.—*Comparison of marginal rates under present law, the Senate Finance Committee bill, and the President's tax law proposal.*

Income after deductions and exemptions.		Marginal rates.			Percentage point decrease in rates compared with present law.	
Exceeding—	Not exceeding—	Present law.	Finance Committee bill.	President's proposal.	Finance Committee bill.	President's proposal.
		Per cent.	*Per cent.*	*Per cent.*		
$0	$2,000	19.00	16.606	19.00	2.394	0
$2,000	$4,000	20.90	19.353	20.90	1.547	0
$4,000	$6,000	24.70	22.872	24.70	1.828	0
$6,000	$8,000	28.50	26.391	28.50	2.109	0
$8,000	$10,000	32.30	29.910	32.30	2.390	0
$10,000	$12,000	36.10	33.429	36.10	2.671	0
$12,000	$14,000	40.85	37.827	40.85	3.023	0
$14,000	$16,000	44.65	41.346	44.65	3.304	0
$16,000	$18,000	47.50	43.985	47.50	3.515	0
$18,000	$20,000	50.35	46.624	50.35	3.726	0
$20,000	$22,000	53.20	49.263	53.20	3.937	0
$22,000	$26,000	56.05	51.902	56.05	4.148	0
$26,000	$32,000	58.90	54.541	58.90	4.359	0
$32,000	$38,000	61.75	57.181	61.75	4.569	0
$38,000	$44,000	65.55	60.699	65.55	4.851	0
$44,000	$50,000	68.40	63.338	68.40	5.062	0
$50,000	$60,000	71.25	65.978	71.25	5.272	0
$60,000	$70,000	74.10	68.617	74.10	5.483	0
$70,000	$80,000	76.95	71.256	76.95	5.694	0
$80,000	$90,000	79.80	73.895	79.80	5.905	0
$90,000	$100,000	82.65	76.534	82.65	6.116	0
$100,000	$136,719.10	84.55	78.293	84.55	6.257	0
$136,719.10	$150,000	84.55	80.323	84.55	4.227	0
$150,000	$200,000	85.50	81.225	85.50	4.275	0
$200,000 and over[1]		86.45	82.128	86.45	4.322	0

[1] Tax is subject to the following maximum effective rate limitations: Under present law and the President's proposal, 85.5 per cent; under your committee's bill, 77 per cent.

[2] There is a decrease in the marginal tax rates under the President's proposed bill for net incomes after exemptions up to the level of about $210 where the $40 tax credit becomes fully effective for a single person.

Source: Staff of the Joint Committee on Internal Revenue Taxation.

Even a well-drafted excess profits tax can not distinguish between profits which are the reward for unusual enterprise or the payment for a great risk, on one hand, and profits resulting from a monopoly position or unusual shortages, on the other. In this connection, the former Secretary of the Treasury, Chief Justice Vinson, had the following to say at the hearings before your committee on the Revenue Act of 1945:

"The over-all impact which this tax is likely to have on business planning as well as business profits constitutes a serious threat to our postwar employment objectives. The testimony of businessmen is that they are unable to take the risk of full peacetime business expansion until this tax has been removed. That testimony comes not only from corporations subject to the excess profits tax; indeed, it comes primarily from businessmen contemplating organization and expansion in competition with established corporations."

Unfortunately the excess profits tax proposed by the President can not qualify as a "well drafted" tax. It is nothing more than the old excess profits tax dressed up with a 35 per cent increase in the credits and an increased specific exemption. The old discriminations which had to be borne during the war would still be there. New discriminations would appear because of the antiquity of the 1936–39 base which represents the primary measure of "excessive" profits. The report on the Revenue Act of 1945 of your committee had the following to say concerning the effect on risk-taking of using this base in the excess profits tax:

"The longer the excess profits tax is retained the less the income of 1936–39 base period is a proper measure of 'excessive' profits. This base period will be a particularly poor measure of earnings in the postwar period when many corporations will be entering new fields of enterprise or expanding their businesses."

There are, of course, many firms which do not have any base-period experience at all. These will be driven to use the invested-capital base, which is less gen-

erous for most businesses, and are therefore apt to receive harsh treatment. A new firm in a business requiring an especially small amount of invested capital may find practically all of its profits above the exemption taxed as "excessive." The tendency of the tax to restrict competition was recognized by the late Carter Glass, who, in the Annual Report of the Secretary of the Treasury for 1919, stated that the excess profits tax "discourages new ventures and confirms old ventures in their monopolies."

Apart from the question of the merits of the particular excess profits tax presented by the administration, the adoption of any such tax in times of peace is undesirable. A precedent for the peacetime use of this tax would be established, and its permanent retention would be a serious risk. This would be most unfortunate, since the tax places a special penalty upon the relatively speculative business ventures which are essential to the material progress of our society. Even the adoption of such a tax for a short period would be likely to have a permanent effect on investment incentives. Businessmen in planning their investments could no longer feel confident that such a penalty tax might not subsequently be reimposed under peacetime conditions.

VII. Exemptions and the High Cost of Living.

The cost of living has increased from 156 per cent of the 1935-39 average last May, when your committee reported out H. R. 1, to 169 per cent in January 1948, the latest figure available. This 13-point increase represents an 8 per cent rise in the cost of living. Furthermore, there is evidence that income after taxes, although it has increased very considerably during the past two years, has not kept pace with the cost of living. On a per capita basis and in 1947 dollars, income after taxes has shrunk from an average of $1,285 in the first quarter of 1946 to $1,188 in the fourth quarter of 1947, a drop of nearly $100.

A. The Increase in General Exemptions.

This increase in the cost of living is an important reason why your committee's bill provides a $100 per capita increase in exemptions from $500 to $600. As a result of this general increase in exemptions, about 6,000,000 persons will be exempted from taxation entirely. It should be remembered that the exemption increase is in addition to the reduction of 12.6 per cent in the tax of the lowest taxable income group. Of the total reduction in tax liabilities, about 71 per cent is received by taxpayers with incomes after deductions but before exemptions of less than $5,000.

B. The Special Exemption for Persons Aged 65 and Over.

Like the tax-reduction bills of the last session, H. R. 4790 as amended provides an additional exemption for persons who have attained the age of 65 or over by the end of the taxable year. This provision will benefit 3,700,000 taxpayers and will remove 1,400,000 persons from the tax rolls.

As a result of the rise in the cost of living the need for a special exemption for persons over 65 is even more pressing now than in the spring of 1947. There is a very heavy concentration of small incomes among persons in this age group, reflecting the fact that the group as a whole is handicapped in an economic, if not in a physical sense. Persons in this age group suffered with unusual severity as a result of the rise in the cost of living and the increase in taxes which occurred during the war, as well as the additional price increases of the immediate postwar period. Unlike younger persons, the bulk of those over 65 could not compensate for these changes in prices and taxes by accepting full-time jobs at prevailing high rates of wages.

C. The Special Exemption for the Blind.

Your committee's bill also provides a special exemption of $600 for blind persons. Blind persons 65 or over may claim this exemption in addition to that based on age.

The special exemption of $600 for the blind is a substitute for a $500 deduction allowed under present law. Blind persons receive material benefits from this change. The amount allowed is, of course, larger and, in addition, the substitution of an exemption for a deduction in itself has some very real advantages. Because of this change, blind persons do not forfeit the right to use the standard deduction as they do when they claim the special deduction under existing law.

This is important, because in most cases the itemized deductions of blind persons, other than the special deduction, will aggregate considerably less than the standard deduction. Moreover, an exemption can be taken into account in withholding, while a deduction can not. Thus with an exemption, the relief provided will be effective throughout the year. Blind persons will not have to wait for a refund after the close of the year in order to obtain the relief which the law provides.

VIII. Equalization of Tax Burdens of Residents of Community-Property and Common-Law States.

A major portion of this bill is devoted to the geographic equalization of income, estate, and gift taxes.

A. INCOME TAXES.

Under existing law the treatment accorded families earning the same amount of income is very different if they happen to live in States using the community-property system or in States which use common law. Chiefly this is due to the fact that under the community-property system the earnings of a married couple are considered to be one-half the property of each. Income arising out of an accumulation which took place during the marriage is divided in the same manner, and in some community-property States the same division is made of income from assets which are the separate property of one of the spouses. No similar division takes place under common law. The earnings of the husband are his own and taxed to him. The income from his property is his income and is taxed as such.

Since the rates applied under the income tax are steeply progressive, the same family income divided in two halves by community-property law will be taxed far less severely than in a common-law State where the whole income is apt to be taxed to one spouse. The difference is greatest when the entire earnings of the couple in the common-law State are received by one spouse, and when, under community-property law, none of the income is the "separate" income of either spouse. Table XIII compares the tax due under these assumptions in community-property and common-law States under present law for incomes of various sizes.

Table XIII.—*Difference in amount and percentage of income tax in community-property and common-law States under present law.*

[For a married couple with no dependents.]

Income after deductions, but before exemption.	Tax payable in—		Excess of tax in common-law States over tax in community-property States.	Per cent by which tax in common-law States exceeds that in community-property States.
	Community-property States.	Common-law States.[1]		
				Per cent.
$1,000				
$1,200	$38.00	$38.00		
$1,500	95.00	95.00		
$2,000	190.00	190.00		
$2,500	285.00	285.00		
$3,000	380.00	380.00		
$4,000	570.00	589.00	$19.00	3.33
$5,000	760.00	798.00	38.00	5.00
$6,000	969.00	1,045.00	76.00	7.84
$7,000	1,178.00	1,292.00	114.00	9.68
$8,000	1,387.00	1,577.00	190.00	13.70
$9,000	1,596.00	1,862.00	266.00	16.67
$10,000	1,843.00	2,185.00	342.00	18.56
$15,000	3,154.00	4,047.00	893.00	28.31
$25,000	6,460.00	9,082.00	2,622.00	40.59
$50,000	18,724.50	24,795.00	6,070.50	32.42
$100,000	50,274.00	63,127.50	12,853.50	25.57
$150,000	86,953.50	105,383.50	18,430.00	21.20
$200,000	127,081.50	148,124.00	21,042.50	16.56
$250,000	169,337.50	191,339.50	22,002.00	12.99
$500,000	383,543.50	407,464.50	23,921.00	6.24
$750,000	599,668.50	623,589.50	23,921.00	3.99
$1,000,000	815,793.50	839,714.50	23,921.00	2.93

[1] Entire income reported by husband on joint return.

Source: Staff of the Joint Committee on Internal Revenue Taxation.

This table shows that the difference between the tax due in community-property and common-law States appears as soon as the income of the couple rises above the first tax bracket, i. e., as soon as the rates become progressive.[7] On a percentage basis the difference increases as the income grows larger. At $10,000 the couple in the common-law State pays a tax which is nearly 19 per cent greater than that paid in the community-property State. At $25,000 the tax in the common-law State is about 41 per cent larger. Thereafter, the percentage begins to decline as the marginal rate approaches the 85.5 per cent maximum. However, even on an income of $150,000 the tax in the common-law State is more than 21 per cent larger than that in the community-property State. At the opposite extreme is the case where in the common-law State incomes of the two spouses are approximately equal. Here, the results under common law and community property would be similar. However, in the great majority of cases the income of one spouse predominates.

One consequence of the substantial difference in the amount of tax due on similar incomes in community-property and common-law States has been an attempt to develop in the common-law States techniques which will divide the income of a married couple in approximately the same way that income is divided in the community-property States by the operation of State law. Chief among these devices are gifts, either outright or in trust, joint tenancies, and family partnerships. Confusion has resulted from attempts to use trusts, tenancies, and partnerships for such purposes, and the present status of the law and regulations on these points is most unsatisfactory. A number of proposals for the revision of the income tax treatment of trusts and family partnerships are under study. The difficulties which these problems present are impressive.

While the lack of geographical equalization in the treatment of the income of married couples has been recognized for a long time, circumstances have arisen recently which necessitate immediate action. For a good many years the income tax advantages incident to the community-property system were confined to eight States.[8] In each of these community property antedated the enactment of the Federal income tax. In each, the use of this particular form of law could be traced to Spanish or French antecedents.

Recently, however, a number of States have shifted from the common-law to the community-property system. In these cases benefits under the Federal income tax which residents of the State would obtain under the community-property system were largely responsible for the abandonment of common law. After one false start, Oklahoma joined the community-property group in 1945. Oregon, Michigan, Nebraska, and Pennsylvania were added to the list in 1947. However, the Pennsylvania law has since been found to be unconstitutional.

The geographical differences in the impact of the individual income tax resulting from the fact that 12 States use community property raises a serious problem, but the fact which makes action at the present session imperative is the potential rapid extension of community property to a large number of other common-law States. The adoption of community property has been advocated widely in spite of a growing awareness of the substantial differences between community property and common law which make a transition from one system to the other extremely difficult. It is now recognized that this transition will be a period of extreme confusion during which the courts, the administrative officials, and the legislatures will be working out the detailed application of a new and strange system of property law. Nevertheless, many responsible State officials have reached the conclusion that the difference between the impact of the Federal income tax as it applies in community-property and common-law jurisdictions is so great that the use of community property can not be avoided.

This is particularly true in common-law States lying adjacent to community-property jurisdictions. In such common-law States there is a lively fear that the tax advantages of community property will produce a migration of the relatively well-to-do taxpayers. This fear undoubtedly played a major role in the adoption of community property by Oklahoma and Oregon, and is an exceptionally strong factor in States like Arkansas. But even in cases where such migration is less likely, as in Michigan and Pennsylvania, the tax consequences of retaining the common law were sufficient to produce legislation.

Many States are waiting to see what Congress will do about the problem of geographical equalization. If the necessary action is not taken, there will be a

[7] Note that the table assumes that all of the income was earned by one spouse.
[8] Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington.

flood of State legislation intended to produce the same results, but doing so in a manner which has most unfortunate consequences, not only for the taxpayers involved, but also for all the persons who must use or administer the property laws of the States which rush into the community-property system.

Your committee believes that the best answer to the problem of geographical equalization is the splitting of the combined income of the husband and wife. Income splitting is effected under H. R. 4790, as amended, by giving husbands and wives in all States the option to file joint returns. In these returns their combined net income and their combined exemptions are divided by 2. A tax is computed on this basis, and multiplied by 2.

Income splitting will produce the same result in common-law States which now obtains in a community-property State when the entire income of both spouses is community income. If, however, spouses in community-property States have separate income, they may split their income by electing to file a joint return. Under existing law, separate income in community-property States is taxed in full to the spouse who receives it. Thus, the type of solution embodied in H. R. 4790, as amended, benefits residents of both common-law and community-property States.

It is emphasized that the right of election to use or not to use the joint return prevails in both common-law and community-property States.

Geographical equalization in the taxation of married couples also requires an adjustment in the standard deduction and in the deduction for unusual medical expenses. Under existing law a taxpayer with adjusted gross income of over $5,000 may elect a standard deduction of $500 instead of itemizing his deductions. In community-property States the husband and wife will normally file separate returns. Hence each may be eligible for a $500 standard deduction and the couple may claim an aggregate deduction of $1,000. To make equal treatment available in common-law States, H. R. 4790, as amended, of necessity must provide that a couple with an income of more than $5,000, electing to split their income by filing a joint return is also eligible for a standard deduction of $1,000, or 10 per cent of the adjusted gross income, whichever is lesser.

The fact that married couples in all States may receive a maximum standard deduction of $1,000 presents a problem of equalizing the treatment accorded married persons with single individuals. To provide equality of tax treatment it is necessary to raise the maximum standard deduction for single persons to $1,000. This is done under your committee's bill.

Under existing law a special deduction is allowed for medical expenditures to the extent that they exceed 5 per cent of the taxpayer's adjusted gross income, but subject to a ceiling of $1,250 a year in the case of a taxpayer who claims only one exemption, and $2,500 if he claims more than one. If both parties to a marriage in a community-property State file separate returns, each spouse claiming one dependent, the ceiling on their medical deductions is $5,000. If only one claims a dependent, their maximum medical deduction is $3,750. Your committee's bill raises the ceiling for a married couple filing a joint return to $3,750 if they have one dependent, and $5,000 if they have two or more. This equalizes the treatment in common-law and community-property States.

Adoption of these income-splitting provisions will produce substantial geographical equalization in the impact of the tax on individual incomes. The impetuous enactment of community-property legislation by States that have long used the common law will be forestalled. The incentive for married couples in common-law States to attempt the reduction of their taxes by the division of their income through such devices as trusts, joint tenancies, and family partnerships will be reduced materially. Administrative difficulties stemming from the use of such devices will be diminished, and there will be less need for meticulous legislation on the income tax treatment of trusts and family partnerships. In effect, these amendments represent the adoption of a new national system for ascertaining Federal income tax liability. The adoption of these amendments will extend substantial benefits to residents of both community-property and common-law States.

B. THE ESTATE AND GIFT TAXES.

The basic differences between property rights in community-property and non-community-property States have also resulted in geographical inequalities in the effect of the estate and gift taxes. In community-property States husbands and wives have an undivided one-half interest in the community property. Prior to 1942, upon the death of a spouse his one-half interest in the community

property, over which he had the power of testamentary disposition, was subject to the estate tax. Similarly, a gift of community property was taxable as though one-half of the value was the gift of the husband and one-half the gift of the wife. On the other hand, in common-law States neither spouse had an undivided interest in the property of the other spouse. Since both estate and gift taxes have sharply progressive rates, with large specific exemptions, the consequence was a substantially lower tax on transfers in community-property States than on transfers of similar size in common-law States, where the usual case was that practically all the wealth of the married couple was the property of the husband.

In 1942 the Congress attempted to provide more nearly equal results under the estate and gift taxes. The estate tax amendments of that year provide that the entire community property be included in the decedent's gross estate, except such portion as can be "shown to have been received as compensation for personal services actually rendered by the surviving spouse or derived originally from such compensation or from separate property of the surviving spouse." Under this rule, the entire community property is taxable to the first spouse to die unless some portion of the community is economically attributable to the survivor. However, the 1942 amendments further provide that regardless of which spouse was responsible for the acquisition of the community, at least one-half of the value of the community is includible in the decedent's gross estate. The basis for this rule is the fact that rights to at least one-half the community are transferred on the death of either spouse. The rule is necessary, since the share of the spouse dying first may not be transferred to the surviving spouse and the community assets may not be economically attributable to the decedent spouse. In such a case, if no tax were imposed, the property would avoid the estate tax for one generation.

Similarly the Revenue Act of 1942 amended the gift tax with respect to community property. All gifts of community property were made taxable to the husband, unless it could be established that the property transferred was economically attributable to the other spouse.

Unfortunately, a number of problems have arisen under the 1942 amendments. Most important of these is the fact that geographical equalization has not been realized in a typical situation. Furthermore, the problem of determining the economic contribution of the surviving spouse to the community has resulted in an extremely difficult problem of "tracing." Severe hardship also results where, because the entire community property is includible in his gross estate, the estate tax of the decedent is larger than the community property subject to his power of disposition. For example, if a decedent is economically responsible for the entire community this average tax rate on his estate may exceed 50 per cent. However, only half of the community is subject to his power of disposition. Thus the share of the community already belonging to his spouse may be required to bear part of the tax although the spouse does not inherit any property under State law.

The most obvious instance of the failure to attain equalization results from the widespread use of life tenancies in the common-law States. In this situation, the husband transfers or bequeaths to his wife a life estate, with remainder over to the children. At his death the whole of the estate is taxed, but at the wife's death there is no tax on the cessation of her life estate. On the other hand, in a community-property State, the husband may not by his will dispose of his wife's interest in community property. If he bequeaths his one-half interest in the community to his wife for life with remainder over to the children, the entire community may be included in his gross estate, and on the death of the wife,[9] one-half the community is also included in her estate. Thus the common-law couple is subject only to a single transfer tax, whereas the community-property couple pays two transfer taxes, one on an estate of equal size and one on an estate of half the size of that passing in the common-law State.

The "tracing problem" arises under the 1942 amendments because of the need for identifying portions of the community contributed by each spouse. Establishing the fact that particular assets of the community are derived from "compensation for personal services actually rendered by the survivor * * *," is impossible in a great many situations. Under the 1942 amendments this tracing problem is of far larger dimensions in community-property States than in common-law jurisdictions, where it is limited primarily to joint tenancies, tenancies by the entirety, and joint bank accounts.

[9] Assuming that the deduction for property previously taxed is not applicable.

Your committee does not believe that a satisfactory solution to the problem of geographical equalization or the difficulties of tracing can be found under the 1942 amendments or amendments using a similar theoretical approach. Hence the repeal of these amendments is recommended, effective with respect to gifts made after the date of enactment of this bill and with respect to the estates of decedents dying after the date of such enactment. Your committee would be unwilling, however, merely to repeal the 1942 amendments. Repeal alone would reproduce the pre-1942 results, which are even further from equalization than existing law.

With the repeal of the 1942 amendments your committee recommends estate and gift tax splitting which is similar in its effects to the splitting of the income tax provided for in this bill. It is recognized that complete equalization of the estate and gift taxes can not be achieved because of the inherent differences between community property and noncommunity property. However, the new provisions will result in equality in the important situations.

Under the estate-tax provision of your committe's bill a decedent spouse is allowed a marital deduction from his gross estate in the amount of the value of all interests in property passing outright from the decedent to the surviving spouse by way of bequest, devise, transfer, right of survivorship in jointly held property, etc. The deduction is limited to an amount not in excess of 50 per cent of the adjusted gross estate.[10]

Under the gift-tax provisions of your committee's bill a donor spouse is allowed a deduction for every outright transfer by gift to his spouse, such deduction to be an amount equal to one-half of the value of the interest transferred. In the case of a transfer by gift by a married person to persons other than his spouse, the interest transferred may be considered as made one-half by each, if the spouses so elect.

Under both the estate and gift taxes the marital deduction does not apply to the decedent's or the donor's interest in community property. This exception was necessary because after the repeal of the 1942 amendments the surviving spouse in a community property State will receive one-half of the community property tax-free. Similarly, a donor spouse will be taxable on only one-half the value of any gifts made out of the community property. Although the marital deduction does not apply to community property, it will apply, in general, to the separate property of a decedent or a donor in a community-property State.[11]

In the preceding paragraphs it has been stated that the interest in property must pass outright to the surviving or donee spouse to qualify for the marital deduction. This is intended to restrict the deduction to those cases where the decedent or donor passes to his spouse all of his interest in the property. This will equate the decedent in the common-law State with the decedent in the community-property State who cannot by his will effect in any way the surviving spouse's interest in the community property. Thus, a deduction will not be allowed under the amendments if the only interest given a spouse is in property in which the decedent or donor also gave an interest to some one else who may possess or enjoy the property after the donee spouse dies. However, if the only interest the husband has in the property is a terminable interest, such as a lease, and he gives his wife his entire interest in the property, then the deduction is permitted.

Among the exceptions to this rule is the recognition of one of the customary modes of transfer of property in common-law States. The deduction is applicable where the decedent or donor creates a trust, the income of which the beneficiary or donee spouse is entitled to for his life, with a taxable power of appointment over the corpus of such trust in the spouse. Thus the property subject to the taxable power of appointment will be includible in the gross estate of the beneficiary or donee spouse unless it has been dissipated in the interval.

For the purposes of the estate tax, the same principles underlying the marital deduction as to powers of appointment are also applicable to proceeds of insurance on the life of the decedent. The marital deduction may be obtained if under the terms of the policy the surviving spouse is entitled to receive such proceeds

[10] The adjusted gross estate is determined by subtracting from the gross estate the debts and charges provided for in section 812(b) of the Internal Revenue Code.

[11] There is, however, in California some community property which is not recognized as such for the purposes of the Federal estate and gift taxes. This is property acquired in California before the passage of a California law in 1927 which gave the wife a vested interest in community assets. Under your committee's bill the marital deduction will be applicable to the decedent's or donor's interest in such property. It will be treated in the same manner as separate property.

in annual or more frequent installments, with the right to designate her estate or other persons as the beneficiary of the unpaid balance of such proceeds.

Your committee has long had under study the revision of the present law as to powers of appointment. It is not intended that allowance of the marital deduction with respect to the creation of a power of appointment will preclude such future revision as may be considered advisable.

Adoption of these portions of your committee's bill will establish a new national system for ascertaining Federal estate and gift tax liabilities. This will extend substantial benefits to residents of both community-property and common-law States.

C. THE CAPITAL GAINS TAX.

In order to give persons receiving community property the same basis for determining gain or loss on a sale of property after death as is given to the recipients of property passing under the common law, an amendment is being made to the capital gains provisions of the income tax. Under existing law property acquired "by bequest, devise, or inheritance" has as its basis for capital gains purposes the fair market value of the property at the time of the decedent's death or the fair market value at the optional valuation date. Your committee's bill provides that the surviving spouse in a common-law State may receive up to one-half of the estate of the decedent free of estate tax. In so far as such property passes from the decedent to the surviving spouse "by bequest, devise, or inheritance," the surviving spouse will have as a basis the fair market value at the time of the decedent's death or the fair market value at the optional valuation date. On the other hand, under existing law the one-half interest of the surviving spouse in community property is not property received "by bequest, devise, or inheritance." As a result, under present law the surviving spouse in a community-property State must use as a basis for his share of the community assets the cost to the community. Your committee's bill provides that the surviving spouse's interest in community property shall be deemed to have been acquired "by bequest, devise, or inheritance" from the decedent, thus giving the assets a basis equal to the fair market value as of the date of the first spouse's death or the fair market value at the optional valuation date. This equalizes the taxes on capital gains in common-law and community-property States.

This provision is effective with respect to community property acquired by the surviving spouse from a decedent dying after the date of enactment of this act.

IX. STATISTICAL DATA RELATING TO YOUR COMMITTEE'S BILL.

The reduction in income tax liabilities resulting from the various provisions of your committee's bill is shown in table XIV.

TABLE XIV.—*Distribution of the tax reduction resulting from the various provisions of the House bill and the Finance Committee bill.*

[Assuming personal income of $208 billion.]

	Reduction, House bill.		Reduction, Finance Committee bill.	
	In millions of dollars.	In per cent of total.	In millions of dollars.	In per cent of total.
		Per cent.		*Per cent.*
Increase in the per capita exemption to $600	2,000.1	30.0	2,000.1	41.9
Additional exemption for persons over 65	163.8	2.5	163.8	3.4
Special provision for the blind	0.1	(1)	0.1	(1)
Allowing married couples to split their incomes	598.2	9.0	550.3	11.6
Increase in the standard deduction [2]	59.4	0.9	59.4	1.2
Percentage reductions	3,637.2	54.6	1,799.7	37.7
Decrease in income tax liabilities	6,458.9	97.0	4,573.5	95.8
Effect on estate and gift taxes	199.1	3.0	199.1	4.2
Total decrease in tax liabilities	6,658.0	100.0	4,772.6	100.0

[1] Less than 0.05 per cent.
[2] This includes the reduction in tax liabilities for married couples as well as single individuals.

Source: Staff of the Joint Committee on Internal Revenue Taxation.

This table is based on an assumed personal income of $208 billion. The percentage tax reductions account for 38 per cent of the total, and the increase in exemptions for 42 per cent. It should be borne in mind that a large part of the reduction of $550 million resulting from "income splitting" will occur whether or not your committee's bill is enacted. Quite a few of the States, including some of the largest, have indicated their intention to adopt community property if provision for income splitting is not made by the Federal Government.

Table XV shows the estimated distribution among the various income classes of the change in tax liabilities from present law, under your committee's bill and under the House bill. It also shows the number of taxpayers under present law and under H. R. 4790; the number of taxpayers relieved of tax under H. R. 4790; the income after deductions but before exemptions; and the reduction in tax liability under the House bill and under your committee's bill. The table indicates that 71 per cent of the reduction under your committee's bill goes to individuals with incomes after deductions but before exemptions of $5,000 or less.

TABLE XV.—*Estimated number of taxpayers, their income after deductions but before exemptions, and their tax liability under present law compared with that under the House bill and the Finance Committee bill, in a full year of operation (assuming personal income of $208 billion).*

Income class after deductions but before exemptions.	Taxpayers under—		Taxpayers relieved of tax under H. R. 4790.	Income after deductions but before exemptions.	Tax liability under—[1]			Reduction in tax liability under—	
	Present law.	H. R. 4790.			Present law.	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.
(000)	Number of taxpayers in thousands, money amounts in millions.								
Under $1	3,938.6	3,394.2	544.4	$3,241.9	$243.2	$99.8	$118.9	$143.4	$124.3
$1–$2	17,537.3	15,175.4	2,361.9	25,693.7	2,654.0	1,416.8	1,879.3	1,237.2	774.7
$2–$3	16,784.4	14,305.9	2,478.5	38,969.1	3,962.7	2,439.6	2,908.9	1,523.1	1,053.8
$3–$4	8,993.0	7,761.9	1,231.1	23,990.3	2,645.2	1,709.1	1,942.8	936.1	702.4
$4–$5	4,857.3	4,096.8	760.5	18,000.9	2,384.8	1,638.6	1,814.3	746.2	570.5
Total under $5	52,110.6	44,734.3	7,376.5	109,895.9	11,889.9	7,303.9	8,664.2	4,586.0	3,225.7
$5–$10	1,574.1	1,572.2	1.9	9,714.9	1,681.1	1,200.4	1,362.9	480.7	318.2
$10–$25	668.8	668.8	(2)	9,508.0	2,651.8	2,054.1	2,196.9	597.7	454.9
$25–$50	128.2	128.2	(2)	5,003.5	2,198.5	1,813.4	1,905.9	385.1	292.6
$50–$100	36.1	36.1	(2)	2,508.7	1,462.3	1,242.7	1,298.0	219.6	164.3
$100–$300	8.6	8.6	(2)	1,358.3	1,029.4	897.0	940.5	132.4	88.9
$300–$500	.8	.8	(2)	221.8	201.5	179.4	189.3	22.1	12.2
$500–$1,000	.4	.4	(2)	207.9	187.0	167.3	177.0	19.7	10.0
$1,000 and over	.1	.1	(2)	172.1	156.3	141.0	149.6	15.3	6.7
Total over $5	2,417.2	2,415.3	1.9	28,695.2	9,567.9	7,695.3	8,220.1	1,872.6	1,347.8
Grand total	54,527.9	47,149.6	7,378.4	138,591.1	21,457.5	14,998.6	16,884.0	6,458.9	4,573.5

PERCENTAGE DISTRIBUTION.

(000)									
$0–$1	7.22	7.20	7.38	2.34	1.13	0.67	0.70	2.22	2.72
$1–$2	32.16	32.19	32.02	18.54	12.37	9.44	11.13	19.16	16.94
$2–$3	30.78	30.34	33.58	28.12	18.47	16.27	17.22	23.58	23.04
$3–$4	16.49	16.46	16.69	17.31	12.33	11.39	11.51	14.49	15.36
$4–$5	8.91	8.69	10.30	11.99	11.11	10.93	10.75	11.55	12.47
$5–$10	2.88	3.33	.02	7.00	7.84	8.00	8.07	7.46	6.96
$10–$25	1.23	1.42	(3)	6.87	12.35	13.70	13.01	9.24	9.94
$25–$50	.24	.27	(3)	3.61	10.25	12.09	11.29	5.96	6.40
$50–$100	.06	.08	(3)	1.81	6.82	8.28	7.69	3.40	3.59
$100–$300	.01	.01	(3)	.98	4.79	5.98	5.57	2.05	1.94
$300–$500	(3)	(3)	(3)	.16	.94	1.20	1.12	.34	.27
$500–$1,000	(3)	(3)	(3)	.15	.87	1.11	1.05	.31	.22
$1,000 and over	(3)	(3)	(3)	.12	.73	.94	.89	.24	.15
Total	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

See footnotes at end of table

TABLE XV.—*Estimated number of taxpayers, their income after deductions but before exemptions, and their tax liability under present law compared with that under the House bill and the Finance Committee bill, in a full year of operation (assuming personal income of $208 billion)*—Continued.

PERCENTAGE DISTRIBUTION CUMULATED FROM LOWEST TO HIGHEST NET INCOME CLASS.

Income class after deductions but before exemptions.	Taxpayers under—		Taxpayers relieved of tax under H. R. 4790.	Income after deductions but before exemptions.	Tax liability under—[1]			Reduction in tax liability under—	
	Present law.	H. R. 4790.			Present law.	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.
(000)	Number of taxpayers in thousands, money amounts in millions.								
Under $1	7.22	7.20	7.38	2.34	1.13	0.67	0.70	2.22	2.72
Under $2	39.38	39.39	39.40	20.88	13.50	10.11	11.83	21.38	19.66
Under $3	70.16	69.73	72.98	49.00	31.97	26.38	29.05	44.96	42.70
Under $4	86.65	86.19	89.67	66.31	44.30	37.77	40.56	59.45	58.06
Under $5	95.57	94.88	99.97	79.30	55.41	48.70	51.31	71.00	70.53
Under $10	98.45	98.21	99.99	86.30	63.25	56.70	59.38	78.46	77.49
Under $25	99.68	99.63	(2)	93.17	76.60	70.40	72.39	87.70	87.43
Under $50	99.92	99.90	(2)	96.78	85.85	82.49	83.68	93.66	93.33
Under $100	99.98	99.98	(2)	98.59	92.67	90.77	91.37	97.06	97.42
Under $500	99.99	99.99	(2)	99.57	97.46	96.75	96.94	99.11	99.36
Under $500	(3)	(2)	(2)	99.73	98.40	97.95	98.06	99.45	99.63
Under $1,000	(3)	(2)	(2)	99.88	99.27	99.06	99.11	99.76	99.85
Total	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

[1] Includes normal tax, surtax, and alternative tax on net long-term capital gains.
[2] Less than 50.
[3] Increase less than 0.01 per cent.

NOTE.—Figures are rounded and will not necessarily add to totals.

Source: Staff of the Joint Committee on Internal Revenue Taxation.

Table XVI presents the tax burdens for various income levels after deductions but before exemptions. It shows the amount of tax payable under present law, the House bill, and your committee's bill. There are eight parts to table XVI, showing the tax burdens under different assumptions as to marital status, number of dependents, and the distribution of income between the partners to the marriage. All parts of table XVI are calculated under the assumption that neither the taxpayer nor his spouse is over 65 years of age or blind.

Since individuals aged 65 and over receive an additional $600 exemption under both your committee's bill and the House bill, their tax burdens differ from those shown in table XVI. Table XVII A and B shows the tax burdens under existing law, the House bill and your committee's bill for a single person 65 years of age or over, and for a married couple with no dependents. Part B is calculated under the assumption that both spouses are over 65 and that all of the income is earned by one of them. The figures shown in table XVII also apply to blind persons under 65.

Table XVIII A and B shows the amount of spendable income remaining after tax under present law, the House bill, and your committee's bill. The amount of spendable income remaining is shown by income classes after deductions but before exemptions and is also expressed as a per cent of the income. Part A relates to a single person with no dependents and part B to a married person with no dependents (it being assumed that the entire income is earned by one spouse). Table X, which appears in Section VI above, shows the effects of the House bill and your committee's bill on the spendable income of a married person with two dependents (the entire income being earned by one spouse).

TABLE XVI–A.—*Comparison of individual income tax under present law, and under House bill and the Finance Committee bill.*

SINGLE PERSON—NO DEPENDENTS.

Income after deductions but before exemptions.	Amount of tax.			Amount of tax reduction, H. R. 4790.		Per cent tax reduction, H. R. 4790.	
	Present law.	H. R. 4790.		House bill.	Finance Committee bill.	House bill.	Finance Committee bill.
		House bill.	Finance Committee bill.				
						Per cent.	*Per cent.*
$500							
$600	$19.00			$19.00	$19.00	100.00	100.00
$700	38.00	$13.30	$16.60	24.70	21.40	65.00	56.32
$750	47.50	19.95	24.90	27.55	22.60	58.00	47.58
$800	57.00	26.60	33.20	30.40	23.80	53.33	41.75
$900	76.00	39.90	49.80	36.10	26.20	47.50	34.47
$1,000	95.00	53.20	66.40	41.80	28.60	44.00	30.11
$1,200	133.00	79.80	99.60	53.20	33.40	40.00	25.11
$1,500	190.00	119.70	149.40	70.30	40.60	37.00	21.37
$1,800	247.00	173.00	199.20	74.00	47.80	29.96	19.35
$2,000	285.00	212.80	232.40	72.20	52.60	25.33	18.46
$2,500	380.00	288.80	315.40	91.20	64.60	24.00	17.00
$3,000	484.50	370.88	409.44	113.62	75.06	23.45	15.49
$4,000	693.50	538.08	603.04	155.42	90.46	22.41	13.04
$5,000	921.50	727.32	810.72	194.18	110.78	21.07	12.02
$6,000	1,168.50	949.62	1,039.52	218.88	128.98	18.73	11.04
$7,000	1,434.50	1,185.60	1,282.40	248.90	152.10	17.35	10.60
$8,000	1,719.50	1,442.10	1,546.40	277.40	173.10	16.13	10.07
$9,000	2,023.50	1,712.28	1,824.48	311.22	199.02	15.38	9.84
$10,000	2,346.50	2,002.98	2,123.68	343.52	222.82	14.64	9.50
$11,000	2,688.50	2,307.36	2,436.96	381.14	251.54	14.18	9.36
$12,000	3,049.50	2,632.26	2,771.36	417.24	278.14	13.68	9.12
$13,000	3,434.25	2,974.26	3,123.36	459.99	310.89	13.39	9.05
$14,000	3,842.75	3,341.91	3,501.76	500.84	340.99	13.03	8.87
$15,000	4,270.25	3,723.24	3,894.24	547.01	376.01	12.81	8.81
$20,000	6,645.25	5,855.61	6,088.96	789.64	556.29	11.88	8.37
$25,000	9,362.25	8,295.78	8,600.48	1,066.47	761.77	11.39	8.14
$30,000	12,264.50	10,905.24	11,286.24	1,359.26	978.26	11.08	7.98
$40,000	18,425.25	16,443.93	16,986.88	1,981.32	1,438.37	10.75	7.81
$50,000	25,137.00	22,481.94	23,201.44	2,655.06	1,935.56	10.56	7.70
$60,000	32,247.75	28,879.05	29,785.60	3,368.70	2,462.15	10.45	7.64
$70,000	39,643.50	35,532.66	36,633.76	4,110.84	3,009.74	10.37	7.59
$80,000	47,324.25	42,442.77	43,745.92	4,881.48	3,578.33	10.31	7.56
$90,000	55,290.00	49,609.38	51,122.08	5,680.62	4,167.92	10.27	7.54
$100,000	63,540.75	57,032.49	58,762.24	6,508.26	4,778.51	10.24	7.52
$150,000	105,806.25	95,069.73	98,165.61	10,736.52	7,640.64	10.15	7.22
$200,000	148,551.50	133,539.60	138,772.70	15,011.90	9,778.80	10.11	6.58
$250,000	191,771.75	172,436.97	179,831.03	19,334.78	11,940.72	10.08	6.23
$300,000	234,996.75	211,339.47	220,894.78	23,657.28	14,101.97	10.07	6.00
$400,000	321,446.75	289,144.47	303,022.28	32,302.28	18,424.47	10.05	5.73
$500,000	407,896.75	366,949.47	385,000.00	40,947.28	22,896.75	10.04	5.61
$750,000	624,021.75	561,461.97	577,500.00	62,559.78	46,521.75	10.03	7.46
$1,000,000	840,146.75	755,974.47	770,000.00	84,172.28	70,146.75	10.02	8.35

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XVI–B.—*Comparison of individual income tax under present law, and under House bill and the Finance Committee bill.*

SINGLE PERSON—ONE DEPENDENT.

Income after deductions but before exemptions.	Amount of tax.			Amount of tax reduction, H. R. 4790.		Per cent tax reduction, H. R. 4790.	
	Present law.	H. R. 4790.		House bill.	Finance Committee bill.	House bill.	Finance Committee bill.
		House bill.	Finance Committee bill.				
						Per cent.	*Per cent.*
$1,000							
$1,200	$38.00			$38.00	$38.00	100.00	100.00
$1,500	95.00	$39.90	$49.80	55.10	45.20	58.00	47.58
$1,800	152.00	79.80	99.60	72.20	52.40	47.50	34.47
$2,000	190.00	106.40	132.80	83.60	57.20	44.00	30.11
$2,500	285.00	193.00	215.80	92.00	69.20	32.28	24.28
$3,000	380.00	273.60	293.80	106.40	81.20	28.00	21.37
$4,000	589.00	437.76	486.88	151.24	102.12	25.68	17.34
$5,000	798.00	604.96	680.48	193.04	117.52	24.19	14.73
$6,000	1,045.00	816,24	902.24	228.76	142.76	21.89	13.66
$7,000	1,292.00	1,038.54	1,131.04	253.46	160.96	19.62	12.46
$8,000	1,577.00	1,288.20	1,388.00	288.80	189.00	18.31	11.98
$9,000	1,862.00	1,544.70	1,652.00	317.30	210.00	17.04	11.28
$10,000	2,185.00	1,828.56	1,944.16	356.44	240.84	16.31	11.02
$11,000	2,508.00	2,119.26	2,243.36	388.74	264.64	15.50	10.55
$12,000	2,869.00	2,437.32	2,570.72	431.68	298.28	15.05	10.40
$13,000	3,230.00	2,762.22	2,905.12	467.78	324.88	14.48	10.06
$14,000	3,638.50	3,121.32	3,274.72	517.18	363.78	14.22	10.00
$15,000	4,047.00	3,488.97	3,653.12	558.03	393.88	13.79	9.73
$20,000	6,393.50	5,583.72	5,809.12	809.78	584.38	12.67	9.14
$25,000	9,082.00	7,993.11	8,288.96	1,088.89	793.04	11.99	8.73
$30,000	11,970.00	10,587.18	10,958.88	1,382.82	1,011.12	11.55	8.45
$40,000	18,097.50	16,089.96	16,622.56	2,007.54	1,474.94	11.09	8.15
$50,000	24,795.00	22,112.58	22,821.28	2,682.42	1,973.72	10.82	7.96
$60,000	31,891.50	28,494.30	29,389.60	3,397.20	2,501.90	10.65	7.85
$70,000	39,273.00	35,132.52	36,221.92	4,140.48	3,051.08	10.54	7.77
$80,000	46,939.50	42,027.24	43,318.24	4,912.26	3,621.26	10.47	7.71
$90,000	54,891.00	49,178.46	50,678,56	5,712.54	4,212.44	10.41	7.67
$100,000	63,127.50	56,586.18	58,302.88	6,541.32	4,824.62	10.36	7.64
$150,000	105,383.50	94,613.16	97,683.68	10,770.34	7,699.82	10.22	7.31
$200,000	148,124.00	133,077.90	138,285.35	15,046.10	9,838.65	10.16	6.64
$250,000	191,339.50	171,970.14	179,338.27	19,369.36	12,001.23	10.12	6.27
$300,000	234,564.50	210,872.64	220,402.02	23,691.86	14,162.48	10.10	6.04
$400,000	321,014.50	288,677.64	302,529.52	32,336.86	18,484.98	10.07	5.76
$500,000	407,464.50	366,482.64	384,657.02	40,981.86	22,807.48	10.06	5.60
$750,000	623,589.50	560,995.14	577,500.00	62,594.36	46,089.50	10.04	7.39
$1,000,000	839,714.50	755,507.64	770,000.00	84,206.86	69,714.50	10.03	8.30

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XVI–C.—*Comparison of individual income tax under present law, and under House bill and the Finance Committee bill.*

MARRIED PERSON—NO DEPENDENTS—ENTIRE INCOME EARNED BY ONE SPOUSE.

Income after deductions but before exemptions.	Amount of tax.			Amount of tax reduction, H. R. 4790.		Per cent tax reduction, H. R. 4790.	
	Present law.	H. R. 4790.		House bill.	Finance Committee bill.	House bill.	Finance Committee bill.
		House bill.	Finance Committee bill.				
						Per cent.	*Per cent.*
$1,000							
$1,200	$38.00			$38.00	$38.00	100.00	100.00
$1,500	95.00	$39.90	$49.80	55.10	45.20	58.00	47.58
$1,800	152.00	79.80	99.60	72.20	52.40	47.50	34.47
$2,000	190.00	106.40	132.80	83.60	57.20	44.00	30.11
$2,500	285.00	172.90	215.80	112.10	69.20	39.33	24.28
$3,000	380.00	239.40	298.80	140.60	81.20	37.00	21.37
$4,000	589.00	425.60	464.80	163.40	124.20	27.74	21.09
$5,000	798.00	577.60	630.80	220.40	167.20	27.62	20.95
$6,000	1,045.00	741.76	818.88	303.24	226.12	29.02	21.64
$7,000	1,292.00	908.96	1,012.48	383.04	279.52	29.65	21.63
$8,000	1,577.00	1,076.16	1,206.08	500.84	370.92	31.76	23.52
$9,000	1,862.00	1,243.36	1,399.68	618.64	462.32	33.22	24.83
$10,000	2,185.00	1,454.64	1,621.44	730.36	563.56	33.43	25.79
$11,000	2,508.00	1,676.94	1,850.24	831.06	657.76	33.14	26.23
$12,000	2,869.00	1,899.24	2,079.04	969.76	789.96	33.80	27.53
$13,000	3,230.00	2,121.54	2,307.84	1,108.46	922.16	34.32	28.55
$14,000	3,638.50	2,371.20	2,564.80	1,267.30	1,073.70	34.83	29.51
$15,000	4,047.00	2,627.70	2,828.80	1,419.30	1,218.20	35.07	30.10
$20,000	6,393.50	4,005.97	4,247.36	2,387.54	2,146.14	37.34	33.57
$25,000	9,082.00	5,589.42	5,877.12	3,492.58	3,204.88	38.46	35.29
$30,000	11,970.00	7,446.48	7,788.48	4,523.52	4,181.52	37.79	34.93
$40,000	18,097.50	11,711.22	12,177.92	6,386.28	5,919.58	35.29	32.71
$50,000	24,795.00	16,591.56	17,200.96	8,203.44	7,594.04	33.09	30.63
$60,000	31,891.50	21,810.48	22,572.48	10,081.02	9,319.02	31.61	29.22
$70,000	39,273.00	27,234.60	28,155.20	12,038.40	11,117.80	30.65	28.31
$80,000	46,939.50	32,887.86	33,973.76	14,051.64	12,965.74	29.94	27.62
$90,000	54,891.00	38,807.88	40,066.88	16,083.12	14,824.12	29.30	27.01
$100,000	63,127.50	44,963.88	46,402.88	18,163.62	16,724.62	28.77	26.49
$150,000	105,383.50	77,960.04	80,363.84	27,423.46	25,019.66	26.02	23.74
$200,000	148,124.00	114,064.98	117,524.48	34,059.02	30,599.52	22.99	20.66
$250,000	191,339.50	152,091.88	156,663.36	39,247.62	34,676.14	20.51	18.12
$300,000	234,564.50	190,139.46	196,331.22	44,425.04	38,233.28	18.94	16.30
$400,000	321,014.50	267,079.20	277,545.40	53,935.30	43,469.10	16.80	13.54
$500,000	407,464.50	344,873.94	359,662.06	62,590.56	47,802.44	15.36	11.73
$750,000	623,589.50	539,386.44	564,980.82	84,203.06	58,608.68	13.50	9.40
$1,000,000	839,714.50	733,898.94	770,000.00	105,815.56	69,714.50	12.60	8.30

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XVI-D.—*Comparison of individual income tax under present law, and under House bill and the Finance Committee bill.*

MARRIED PERSON—NO DEPENDENTS—WITH INCOME DIVIDED AS FOLLOWS: 70 PER CENT AND 30 PER CENT.

Income after deductions but before exemptions.	Amount of tax.			Amount of tax reduction, H. R. 4790.		Per cent tax reduction, H. R. 4790.	
	Present law.	H. R. 4790.		House bill.	Finance Committee bill.	House bill.	Finance Committee bill.
		House bill.	Finance Committee bill.				
						Per cent.	*Per cent.*
$1,000							
$1,200	$38.00			$38.00	$38.00	100.00	100.00
$1,500	95.00	$39.90	$49.80	55.10	45.20	58.00	47.58
$1,800	152.00	79.80	99.60	72.20	52.40	47.50	34.47
$2,000	190.00	106.40	132.80	83.60	57.20	44.00	30.11
$2,500	285.00	172.90	215.80	112.10	69.20	39.33	24.28
$3,000	380.00	239.40	298.80	140.60	81.20	37.00	21.37
$4,000	575.70	425.60	464.80	150.10	110.90	26.07	19.26
$5,000	779.00	577.60	630.80	201.40	148.20	25.85	19.02
$6,000	982.30	741.76	818.88	240.54	163.42	24.49	16.64
$7,000	1,200.80	908.96	1,012.48	291.84	188.32	24.30	15.68
$8,000	1,430.70	1,076.16	1,206.08	354.54	224.62	24.78	15.70
$9,000	1,664.40	1,243.36	1,399.68	421.04	264.72	25.30	15.90
$10,000	1,919.00	1,464.64	1,621.44	464.36	297.56	24.20	15.51
$11,000	2,181.20	1,676.94	1,850.24	504.26	330.96	23.12	15.17
$12,000	2,443.40	1,899.24	2,079.04	544.16	364.36	22.27	14.91
$13,000	2,728.40	2,121.54	2,307.84	606.86	420.56	22.24	15.41
$14,000	3,017.20	2,371.20	2,564.80	646.00	452.40	21.41	14.99
$15,000	3,306.00	2,627.70	2,828.80	678.30	477.20	20.52	14.43
$20,000	5,011.25	4,005.96	4,247.36	1,005.29	763.89	20.06	15.23
$25,000	6,992.00	5,589.42	5,877.12	1,402.58	1,114.88	20.06	15.95
$30,000	9,186.50	7,446.48	7,788.48	1,740.02	1,398.02	18.94	15.22
$40,000	14,136.00	11,711.22	12,177.92	2,424.78	1,958.08	17.15	13.85
$50,000	19,551.00	16,591.56	17,200.96	2,959.44	2,350.04	15.14	12.02
$60,000	25,388.75	21,810.48	22,572.48	3,578.27	2,816.27	14.09	11.09
$70,000	31,616.00	27,234.60	28,155.20	4,381.40	3,460.80	13.86	10.95
$80,000	38,199.50	32,887.86	33,973.76	5,311.64	4,225.74	13.90	11.06
$90,000	44,954.00	38,807.88	40,066.88	6,146.12	4,887.12	13.67	10.87
$100,000	51,908.00	44,963.88	46,402.88	6,944.12	5,505.12	13.38	10.61
$150,000	89,475.75	77,960.04	80,363.84	11,515.71	9,111.91	12.87	10.18
$200,000	129,599.00	114,064.98	117,524.48	15,534.02	12,074.52	11.99	9.32
$250,000	170,653.25	152,091.88	156,663.36	18,561.37	13,989.89	10.88	8.20
$300,000	212,481.75	190,139.46	196,331.22	22,342.29	16,150.53	10.51	7.60
$400,000	298,148.00	267,079.20	277,545.40	31,068.80	20,602.60	10.42	6.91
$500,000	384,028.00	344,873.94	359,662.06	39,154.06	24,365.94	10.20	6.34
$750,000	599,668.50	539,386.44	564,980.82	60,282.06	34,687.68	10.05	5.78
$1,000,000	815,793.50	733,898.94	770,000.00	81,894.56	45,793.50	10.04	5.61

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XVI–E.—*Comparison of individual income tax under present law, and under House bill and the Finance Committee bill.*

MARRIED PERSON—NO DEPENDENTS—WITH INCOME DIVIDED AS FOLLOWS: 50 PER CENT AND 50 PER CENT.

Income after deductions but before exemptions.	Amount of tax.			Amount of tax reduction, H. R. 4790.		Per cent tax reduction, H. R. 4790.	
	Present law.	H. R. 4790.		House bill.	Finance Committee bill.	House bill.	Finance Committee bill.
		House bill.	Finance Committee bill.				
						Per cent.	*Per cent.*
$1,000							
$1,200	$38.00			$38.00	$38.00	100.00	100.00
$1,500	95.00	$39.50	$49.80	55.10	45.20	58.00	47.58
$1,800	152.00	79.80	99.60	72.20	52.40	47.50	34.47
$2,000	190.00	106.40	132.80	83.60	57.20	44.00	30.11
$2,500	285.00	172.90	215.80	112.10	69.20	39.33	24.28
$3,000	380.00	239.40	298.80	140.60	81.20	37.00	21.37
$4,000	570.00	425.60	464.80	144.40	105.20	25.33	18.46
$5,000	760.00	577.60	630.80	182.40	129.20	24.00	17.00
$6,000	969.00	741.76	818.88	227.24	150.12	23.45	15.49
$7,000	1,178.00	908.96	1,012.48	269.04	165.52	22.84	14.05
$8,000	1,387.00	1,076.16	1,206.08	310.84	180.92	22.41	13.04
$9,000	1,596.00	1,243.36	1,399.68	352.64	196.32	22.10	12.30
$10,000	1,843.00	1,454.64	1,621.44	388.36	221.56	21.07	12.02
$11,000	2,090.00	1,676.94	1,850.24	413.06	239.76	19.76	11.47
$12,000	2,337.00	1,899.24	2,079.04	437.76	257.96	18.73	11.04
$13,000	2,584.00	2,121.54	2,307.84	462.46	276.16	17.90	10.69
$14,000	2,869.00	2,371.20	2,564.80	497.80	304.20	17.35	10.60
$15,000	3,154.00	2,627.70	2,828.80	526.30	325.20	16.69	10.31
$20,000	4,693.00	4,005.96	4,247.36	687.04	445.64	14.64	9.50
$25,000	6,460.00	5,589.42	5,877.12	870.58	582.88	13.48	9.02
$30,000	8,540.50	7,446.48	7,788.48	1,094.02	752.02	12.81	8.81
$40,000	13,290.50	11,711.22	12,177.92	1,579.28	1,112.58	11.88	8.37
$50,000	18,724.50	16,591.56	17,200.96	2,132.94	1,523.54	11.39	8.14
$60,000	24,529.00	21,810.48	22,572.48	2,718.52	1,956.52	11.08	7.98
$70,000	30,561.50	27,234.60	28,155.20	3,326.90	2,406.30	10.89	7.87
$80,000	36,850.50	32,887.86	33,973.76	3,962.64	2,876.74	10.75	7.81
$90,000	43,434.00	38,807.88	40,066.88	4,626.12	3,367.12	10.65	7.75
$100,000	50,274.00	44,963.88	46,402.88	5,310.12	3,871.12	10.56	7.70
$150,000	86,953.50	77,960.04	80,363.84	8,993.46	6,589.66	10.34	7.58
$200,000	127,081.50	114,064.98	117,524.48	13,016.52	9,557.02	10.24	7.52
$250,000	169,337.50	152,091.88	156,663.36	17,245.62	12,674.14	10.18	7.48
$300,000	211,612.50	190,139.46	196,331.22	21,473.04	15,281.28	10.15	7.22
$400,000	297,103.00	267,079.20	277,545.40	30,023.80	19,557.60	10.11	6.58
$500,000	383,543.50	344,873.94	359,662.06	38,669.56	23,881.44	10.08	6.23
$750,000	599,668.50	539,386.44	564,980.82	60,282.06	34,687.68	10.05	5.79
$1,000,000	815,793.50	733,898.94	770,000.00	81,894.56	45,793.50	10.04	5.61

Source: Staff of the Joint Committee of Internal Revenue Taxation.

TABLE XVI–F.—*Comparison of individual income tax under present law, and under House bill and the Finance Committee bill.*

MARRIED PERSON—2 DEPENDENTS—ENTIRE INCOME EARNED BY ONE SPOUSE.

Income after deductions but before exemptions.	Amount of tax.			Amount of tax reduction, H. R. 4790.		Per cent tax reduction, H. R. 4790.	
	Present law.	H. R. 4790.		House bill.	Finance Committee bill.	House bill.	Finance Committee bill.
		House bill.	Finance Committee bill.				
						Per cent.	*Per cent.*
$2,000							
$2,500	$95.00	$13.30	$16.60	$81.70	$78.40	86.00	82.53
$3,000	190.00	79.80	99.60	110.20	90.40	58.00	47.58
$4,000	380.00	212.80	265.60	167.20	114.40	44.00	30.11
$5,000	589.00	386.00	431.60	203.00	157.40	34.47	26.72
$6,000	798.00	547.20	597.60	250.80	200.40	31.43	25.11
$7,000	1,045.00	708.32	780.16	336.68	264.84	32.22	25.34
$8,000	1,292.00	875.52	973.76	416.48	318.24	32.24	24.63
$9,000	1,577.00	1,042.72	1,167.36	534.28	409.64	33.88	25.98
$10,000	1,862.00	1,209.92	1,360.96	652.08	501.04	35.02	26.91
$11,000	2,185.00	1,410.18	1,575.68	774.82	609.32	35.46	27.89
$12,000	2,508.00	1,632.48	1,804.48	875.52	703.52	34.91	28.05
$13,000	2,869.00	1,854.78	2,033.28	1,014.22	835.72	35.35	29.13
$14,000	3,230.00	2,077.08	2,262.08	1,152.92	967.92	35.69	29.97
$15,000	3,638.50	2,319.90	2,512.00	1,318.60	1,126.50	36.24	30.96
$20,000	5,890.00	3,657.12	3,888.32	2,232.88	2,001.68	37.91	33.98
$25,000	8,521.50	5,199.54	5,475.84	3,321.96	3,045.66	38.98	35.74
$30,000	11,381.00	6,977.94	7,306.24	4,403.06	4,074.76	38.69	35.80
$40,000	17,442.00	11,167.44	11,618.24	6,274.56	5,823.76	35.97	33.39
$50,000	24,111.00	15,986.22	16,577.92	8,124.78	7,533.08	33.70	31.24
$60,000	31,179.00	21,174.36	21,917.76	10,004.64	9,261.24	32.09	29.70
$70,000	38,532.00	26,567.70	27,468.80	11,964.30	11,063.20	31.05	28.71
$80,000	46,170.00	32,179.92	33,245.12	13,990.08	12,924.88	30.30	27.99
$90,000	54,093.00	38,079.42	39,317.12	16,013.58	14,775.88	29.60	27.32
$100,000	62,301.00	44,225.16	45,642.56	18,075.84	16,658.44	29.01	26.74
$150,000	104,538.00	77,128.98	79,508.48	27,409.02	25,029.52	26.22	23.94
$200,000	147,269.00	113,172.36	116,605.76	34,096.64	30,663.24	23.15	20.82
$250,000	190,475.00	151,178.82	155,723.52	39,296.18	34,751.48	20.63	18.24
$300,000	233,700.00	189,226.32	195,367.36	44,473.68	38,332.64	19.03	16.40
$400,000	320,150.00	266,155.80	276,570.70	53,994.20	43,579.30	16.87	13.61
$500,000	406,600.00	343,940.28	358,676.54	62,659.72	47,923.46	15.41	11.79
$750,000	622,725.00	538,452.78	563,995.28	84,272.22	58,729.72	13.53	9.43
$1,000,000	838,850.00	732,965.28	769,314.04	105,884.72	69,535.96	12.62	8.29

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XVI–G.—*Comparison of individual income tax under present law, and under House bill and the Finance Committee bill.*

MARRIED PERSON—2 DEPENDENTS—WITH INCOME DIVIDED AS FOLLOWS: 70 PER CENT AND 30 PER CENT.

Income after deductions but before exemptions.	Amount of tax.			Amount of tax reduction, H. R. 4790.		Per cent tax reduction, H. R. 4790.	
	Present law.	H. R. 4790.		House bill.	Finance Committee bill.	House bill.	Finance Committee bill.
		House bill.	Finance Committee bill.				
						Per cent.	*Per cent.*
$2,000							
$2,500	$95.00	$13.30	$16.60	$81.70	$78.40	86.00	82.53
$3,000	190.00	79.80	99.60	110.20	90.40	58.00	47.58
$4,000	380.00	212.80	265.60	167.20	114.40	44.00	30.11
$5,000	570.00	386.00	431.60	184.00	138.40	32.28	24.28
$6,000	773.30	547.20	597.60	226.10	175.70	29.24	22.72
$7,000	976.60	708.32	780.16	268.28	196.44	27.47	20.11
$8,000	1,183.70	875.52	973.76	308.18	209.94	26.04	17.74
$9,000	1,417.40	1,042.72	1,167.36	374.68	250.04	26.43	17.64
$10,000	1,653.00	1,209.92	1,360.96	443.08	292.04	26.80	17.67
$11,000	1,896.20	1,410.18	1,575.68	486.02	320.52	25.63	16.90
$12,000	2,158.40	1,632.48	1,804.48	525.92	353.92	24.37	16.40
$13,000	2,420.60	1,854.78	2,033.28	565.82	387.32	23.38	16.00
$14,000	2,694.20	2,077.08	2,262.08	617.12	432.12	22.91	16.04
$15,000	2,983.00	2,319.90	2,512.00	663.10	471.00	22.23	15.79
$20,000	4,602.75	3,657.12	3,888.32	945.63	714.43	20.54	15.52
$25,000	6,517.00	5,199.54	5,475.84	1,317.46	1,041.16	20.22	15.98
$30,000	8,668.75	6,977.94	7,306.24	1,690.81	1,362.51	19.50	15.72
$40,000	13,547.00	11,167.44	11,618.24	2,379.56	1,928.76	17.57	14.24
$50,000	18,933.50	15,986.22	16,577.92	2,947.28	2,355.58	15.57	12.44
$60,000	24,733.25	21,174.36	21,917.76	3,558.89	2,815.49	14.39	11.38
$70,000	30,932.00	26,567.70	27,468.80	4,364.30	3,463.20	14.11	11.20
$80,000	37,487.00	32,179.92	33,245.12	5,307.08	4,241.88	14.16	11.32
$90,000	44,213.00	38,079.42	39,317.12	6,133.58	4,895.88	13.87	11.07
$100,000	51,167.00	44,225.16	45,642.56	6,941.84	5,524.44	13.57	10.80
$150,000	88,630.25	77,128.98	79,508.48	11,501.27	9,121.77	12.98	10.29
$200,000	128,753.50	113,172.36	116,605.76	15,581.14	12,147.74	12.10	9.43
$250,000	169,798.25	151,178.82	155,723.52	18,619.43	14,074.73	10.97	8.29
$300,000	211,617.25	189,226.32	195,367.36	22,390.93	16,249.89	10.58	7.68
$400,000	297,283.50	266,155.80	276,570.70	31,127.70	20,712.80	10.47	6.97
$500,000	383,163.50	343,940.28	358,676.54	39,223.22	24,486.96	10.24	6.39
$750,000	598,804.00	538,452.78	563,995.28	60,351.22	34,808.72	10.08	5.81
$1,000,000	814,929.00	732,965.28	769,314.04	81,963.72	45,614.96	10.06	5.60

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XVI–H.—*Comparison of individual income tax under present law, and under House bill and the Finance Committee bill.*

MARRIED PERSON—2 DEPENDENTS—WITH INCOME DIVIDED AS FOLLOWS: 50 PER CENT AND 50 PER CENT.

Income after deductions but before exemptions.	Amount of tax.			Amount of tax reduction, H. R. 4790.		Per cent tax reduction, H. R. 4790.	
	Present law.	H. R. 4790.		House bill.	Finance Committee bill.	House bill.	Finance Committee bill.
		House bill.	Finance Committee bill.				
						Per cent.	*Per cent.*
$2,000							
$2,500	$95.00	$13.30	$16.60	$81.70	$78 40	86.00	82.53
$3,000	190.00	79.80	99.60	110.20	90.40	58.00	47.58
$4,000	380.00	212.80	265.60	167.20	114.40	44.00	30.11
$5,000	570.00	386.00	431.60	184.00	138.40	32.28	24.28
$6,000	769.50	547.20	597.60	222.30	171.90	28.89	22.34
$7,000	969.00	708.32	780.16	260.68	188.84	26.90	19.49
$8,000	1,178.00	875.52	973.76	302.48	204.24	25.68	17.34
$9,000	1,387.00	1,042.72	1,167.36	344.28	219.64	24.82	15.84
$10,000	1,615.00	1,209.92	1,360.96	405.08	254.04	25.08	15.73
$11,000	1,843.00	1,410.18	1,575.68	432.82	267.32	23.48	14.50
$12,000	2,090.00	1,632.48	1,804.48	457.52	285.52	21.89	13.66
$13,000	2,337.00	1,854.78	2,033.28	482.22	303.72	20.63	13.00
$14,000	2,603.00	2,077.08	2,262.08	525.92	340.92	20.20	13.10
$15,000	2,869.00	2,319.90	2,512.00	549.10	357.00	19.14	12.44
$20,000	4,370.00	3,657.12	3,888.32	712.88	481.68	16.31	11.02
$25,000	6,099.00	5,199.54	5,475.84	899.46	623.16	14.75	10.22
$30,000	8,113.00	6,977.94	7,306.24	1,135.06	806.76	13.99	9.94
$40,000	12,787.00	11,167.44	11,618.24	1,619.56	1,168.76	12.67	9.14
$50,000	18,164.00	15,986.22	16,577.92	2,177.78	1,586.08	11.99	8.73
$60,000	23,940.00	21,174.36	21,917.76	2,765.64	2,022.24	11.55	8.45
$70,000	29,944.00	26,567.70	27,468.80	3,376.30	2,475.20	11.28	8.27
$80,000	36,195.00	32,179.92	33,245.12	4,015.08	2,949.88	11.09	8.15
$90,000	42,764.25	38,079.42	39,317.12	4,684.83	3,447.13	10.96	8.06
$100,000	49,590.00	44,225.16	45,642.56	5,364.84	3,947.44	10.82	7.96
$150,000	86,184.00	77,128.98	79,508.48	9,055.02	6,675.52	10.51	7.75
$200,000	126,255.00	113,172.36	116,605.76	13,082.64	9,649.24	10.36	7.64
$250,000	168,492.00	151,178.82	155,723.52	17,313.18	12,768.48	10.28	7.58
$300,000	210,767.00	189,226.32	195,367.36	21,540.68	15,399.64	10.22	7.31
$400,000	296,248.00	266,155.80	276,570.70	30,092.20	19,677.30	10.16	6.64
$500,000	382,679.00	343,940.28	358,676.54	38,738.72	24,002.46	10.12	6.27
$750,000	598,804.00	538,452.78	563,995.28	60,351.22	34,808.72	10.08	5.81
$1,000,000	814,929.00	732,965.28	769,314.04	81,963.72	45,614.96	10.06	5.60

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XVII–A.—*Comparison of individual income tax under present law, under the House bill and the Finance Committee bill for persons 65 years of age and over.*

SINGLE PERSON—NO DEPENDENTS.

Income after deductions but before exemptions.	Amount of tax.			Tax reduction under—			
		H. R. 4790.		Amount.		Per cent.	
	Present law.	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.
						Per cent.	*Per cent.*
$500							
$600	$19.00			$19.00	$19.00	100.00	100.00
$700	38.00			38.00	38.00	100.00	100.00
$800	57.00			57.00	57.00	100.00	100.00
$900	76.00			76.00	76.00	100.00	100.00
$1,000	95.00			95.00	95.00	100.00	100.00
$1,200	133.00			133.00	133.00	100.00	100.00
$1,500	190.00	$39.90	$49.80	150.10	140.20	79.00	73.79
$1,800	247.00	79.80	99.60	167.20	147.40	67.69	59.68
$2,000	285.00	106.40	132.80	178.60	152.20	62.67	53.40
$2,500	380.00	193.00	215.80	187.00	164.20	49.21	43.21
$3,000	484.50	273.60	298.80	210.90	185.70	43.53	38.33
$4,000	693.50	437.76	486.88	255.74	206.62	36.88	29.79
$5,000	921.50	604.96	680.48	316.54	241.02	34.36	26.16
$6,000	1,168.50	816.24	902.24	352.26	266.26	30.15	22.79
$8,000	1,719.50	1,288.20	1,388.00	431.30	331.50	25.08	19.28
$10,000	2,346.50	1,828.56	1,944.16	517.94	402.34	22.07	17.15
$12,000	3,049.50	2,437.32	2,570.72	612.18	478.78	20.07	15.70
$15,000	4,270.25	3,488.97	3,653.12	781.28	617.13	18.30	14.45
$20,000	6,645.25	5,583.72	5,809.12	1,061.53	836.13	15.97	12.58
$25,000	9,362.25	7,993.11	8,288.96	1,369.14	1,073.29	14.62	11.46
$30,000	12,264.50	10,587.18	10,958.88	1,677.32	1,305.62	13.68	10.65
$50,000	25,137.00	22,112.68	22,821.28	3,024.42	2,315.72	12.03	9.21
$70,000	39,643.50	35,132.52	36,221.92	4,510.98	3,421.08	11.38	8.62
$100,000	63,540.75	56,586.18	58,302.88	6,954.57	5,237.87	10.95	8.24
$300,000	234,996.75	210,872.64	220,402.02	24,124.11	14,594.73	10.27	6.21
$500,000	407,896.75	366,482.64	384,657.02	41,414.11	23,239.73	10.15	5.70
$1,000,000	840,146.75	755,507.64	770,000.00	84,639.11	70,146.75	10.07	8.35

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XVII–B.—*Comparison of individual income tax under present law, and under House bill and the Finance Committee bill for persons 65 years of age and over.*

MARRIED PERSONS (BOTH OVER 65)—NO DEPENDENTS.[1]

Income after deductions but before exemptions.	Amount of tax.			Tax reduction under—			
		H. R. 4790.		Amount		Per cent	
	Present law.	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.
						Per cent.	*Per cent.*
$1,000							
$1,200	$38.00			$38.00	$38.00	100.00	100.00
$1,500	95.00			95.00	95.00	100.00	100.00
$1,800	152.00			152.00	152.00	100.00	100.00
$2,000	190.00			190.00	190.00	100.00	100.00
$2,500	285.00	$13.30	$16.60	271.70	268.40	95.33	94.18
$3,000	380.00	79.80	99.60	300.20	280.40	79.00	73.79
$4,000	589.00	212.80	265.60	376.20	323.40	63.87	54.91
$5,000	798.00	386.00	431.60	412.00	366.40	51.63	45.91
$6,000	1,045.00	547.20	597.60	497.80	447.46	47.64	42.81
$8,000	1,577.00	875.52	973.76	701.48	603.24	44.48	38.25
$10,000	2,185.00	1,209.92	1,360.96	975.08	824.04	44.63	37.71
$12,000	2,869.00	1,632.48	1,804.48	1,236.52	1,064.52	43.10	37.10
$15,000	4,047.00	2,319.90	2,512.00	1,727.10	1,535.00	42.68	37.93
$20,000	6,393.50	3,657.12	3,888.32	2,736.38	2,505.18	42.80	39.18
$25,000	9,082.00	5,199.54	5,475.84	3,882.46	3,606.16	42.75	39.71
$30,000	11,970.00	6,977.94	7,306.24	4,992.06	4,663.76	41.70	38.96
$50,000	24,795.00	15,986.22	16,577.92	8,808.78	8,217.08	35.53	33.14
$70,000	39,273.00	26,567.70	27,468.80	12,705.30	11,804.20	32.35	30.06
$100,000	63,127.50	44,225.16	45,642.56	18,902.34	17,484.94	29.94	27.70
$300,000	234,564.50	189,226.32	195,367.36	45,338.18	39,197.14	19.33	16.71
$500,000	407,464.50	343,940.28	358,676.54	63,624.22	48,787.96	15.59	11.97
$1,000,000	839,714.50	732,965.28	769,314.04	106,749.22	70,400.46	12.71	8.38

[1] Assumes all income earned by one spouse.

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XVIII–A.—*Comparison of amount of spendable income after taxes under present law, and under the House bill and the Finance Committee bill.*

SINGLE PERSON—NO DEPENDENTS.

Income after deductions but before exemptions.	Amount of spendable income under—			Per cent of income after tax to income before tax.		
	Present law.	House bill.	Finance Committee bill.	Present law.	House bill.	Finance Committee bill.
				Per cent.	*Per cent.*	*Per cent.*
$500	$500.00	$500.00	$500.00	100.00	100.00	100.00
$600	581.00	600.00	600.00	96.83	100.00	100.00
$700	662.00	686.70	683.40	94.57	98.10	97.63
$750	702.50	730.05	725.10	93.67	97.34	96.68
$800	743.00	773.40	766.80	92.88	96.68	95.85
$900	824.00	860.10	850.20	91.56	95.57	94.47
$1,000	905.00	946.80	933.60	90.50	94.68	93.36
$1,200	1,067.00	1,120.20	1,100.40	88.92	93.35	91.70
$1,500	1,310.00	1,380.30	1,350.60	87.33	92.02	90.04
$1,800	1,553.00	1,627.00	1,600.80	86.28	90.39	88.93
$2,000	1,715.00	1,787.20	1,767.60	85.75	89.36	88.38
$2,500	2,120.00	2,211.20	2,184.60	84.80	88.45	87.38
$3,000	2,515.50	2,629.12	2,590.56	83.50	87.64	86.35
$4,000	3,306.50	3,461.92	3,396.96	82.66	86.55	84.92
$5,000	4,078.50	4,272.08	4,189.28	81.57	85.45	83.79
$6,000	4,831.50	5,050.38	4,960.48	80.53	84.17	82.67
$7,000	5,565.50	5,814.40	5,717.60	79.51	83.06	81.68
$8,000	6,280.50	6,557.90	6,453.60	78.51	81.97	80.67
$9,000	6,976.50	7,287.72	7,175.52	77.52	80.97	79.73
$10,000	7,653.50	7,997.02	7,876.32	76.54	79.97	78.76
$11,000	8,311.50	8,692.64	8,563.04	75.56	79.02	77.85
$12,000	8,950.50	9,367.74	9,228.64	74.59	78.06	76.91
$13,000	9,565.75	10,025.74	9,876.64	73.58	77.12	75.97
$14,000	10,157.25	10,658.09	10,498.24	72.55	76.13	74.99
$15,000	10,729.75	11,276.76	11,105.76	71.53	75.18	74.04
$20,000	13,354.75	14,144.39	13,911.04	66.77	70.72	69.56
$25,000	15,637.75	16,704.22	16,399.52	62.55	66.82	65.60
$30,000	17,735.50	19,094.76	18,713.76	59.12	63.65	62.38
$40,000	21,574.75	23,556.07	23,013.12	53.94	58.89	57.53
$50,000	24,863.00	27,518.06	26,798.56	49.73	55.04	53.60
$60,000	27,752.25	31,120.95	30,214.40	46.25	51.87	50.36
$70,000	30,356.50	34,467.34	33,366.24	43.37	49.24	47.67
$80,000	32,675.75	37,557.23	36,254.08	40.84	46.95	45.32
$90,000	34,710.00	40,390.62	38,877.92	38.57	44.88	43.20
$100,000	36,459.25	42,967.51	41,237.76	36.46	42.97	41.24
$150,000	44,193.75	54,930.27	51,834.39	29.46	36.62	34.56
$200,000	51,448.50	66,460.40	61,227.30	25.72	33.23	30.61
$250,000	58,228.25	77,563.03	70,168.97	22.09	31.03	28.07
$300,000	65,003.25	88,660.53	79,105.22	21.67	29.55	26.37
$400,000	78,553.25	110,855.53	96,977.72	19.64	27.71	24.24
$500,000	92,103.25	133,050.53	115,000.00	18.42	26.61	23.00
$750,000	125,978.25	188,538.03	172,500.00	16.80	25.14	23.00
$1,000,000	159,853.25	244,025.53	230,000.00	15.99	24.40	23.00

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XVIII–B.—*Comparison of amount of spendable income after taxes under present law, and under the House bill and the Finance Committee bill.*

MARRIED PERSON—NO DEPENDENTS, ENTIRE INCOME OF ONE SPOUSE.

Income after deductions but before exemptions.	Amount of spendable income under—			Per cent of income after tax to income before tax.		
	Present law.	House bill.	Finance Committee bill.	Present law.	House bill.	Finance Committee bill.
				Per cent.	*Per cent.*	*Per cent.*
$1,000	$1,000.00	$1,000.00	$1,000.00	100.00	100.00	100.00
$1,200	1,162.00	1,200.00	1,200.00	96.83	100.00	100.00
$1,500	1,405.00	1,460.10	1,450.20	93.67	97.34	96.68
$1,800	1,648.00	1,720.20	1,700.40	91.56	95.57	94.47
$2,000	1,810.00	1,893.60	1,867.20	90.50	94.68	93.36
$2,500	2,215.00	2,327.10	2,284.20	88.60	93.08	91.37
$3,000	2,620.00	2,760.60	2,701.20	87.33	92.02	90.04
$4,000	3,411.00	3,574.40	3,535.20	85.28	89.36	88.38
$5,000	4,202.00	4,422.40	4,369.20	84.04	88.45	87.38
$6,000	4,955.00	5,258.24	5,181.12	82.58	87.64	86.35
$7,000	5,708.00	6,091.04	6,987.52	81.54	87.01	85.54
$8,000	6,423.00	6,923.84	6,793.92	80.29	86.55	84.92
$9,000	7,138.00	7,756.64	7,600.32	79.31	86.18	84.45
$10,000	7,815.00	8,545.36	8,378.56	78.15	85.45	83.79
$11,000	8,492.00	9,323.06	9,149.76	77.20	84.76	83.18
$12,000	9,131.00	10,100.76	9,920.96	76.09	84.17	82.67
$13,000	9,770.00	10,878.46	10,692.16	75.15	83.68	82.25
$14,000	10,361.50	11,628.80	11,435.20	74.01	83.06	81.68
$15,000	10,953.00	12,372.30	12,171.20	73.02	82.48	81.14
$20,000	13,606.50	15,994.04	15,752.64	68.03	79.97	78.76
$25,000	15,918.00	19,410.58	19,122.88	63.67	77.64	76.49
$30,000	18,030.00	22,553.52	22,211.52	60.10	75.18	74.04
$40,000	21,902.50	28,288.78	27,822.08	54.76	70.72	69.56
$50,000	25,205.00	33,408.44	32,799.04	50.41	66.82	65.60
$60,000	28,108.50	38,189.52	37,427.52	46.85	63.65	62.38
$70,000	30,727.00	42,765.40	41,844.80	43.90	61.09	59.78
$80,000	33,060.50	47,112.14	46,026.24	41.33	58.89	57.53
$90,000	35,109.00	51,192.12	49,933.12	39.01	56.88	55.48
$100,000	36,872.50	55,036.12	53,597.12	36.87	55.04	53.60
$150,000	44,616.50	72,039.96	69,636.16	29.74	48.03	46.42
$200,000	51,876.00	85,935.02	82,475.52	25.94	42.97	41.24
$250,000	58,660.50	97,908.12	93,336.64	23.46	39.16	37.33
$300,000	65,435.50	109,860.54	103,668.78	21.81	36.62	34.56
$400,000	78,985.50	132,920.80	122,454.60	19.75	33.23	30.61
$500,000	92,535.50	155,126.06	140,337.94	18.51	31.03	28.07
$750,000	126,410.50	210,613.56	185,019.18	16.85	28.08	24.67
$1,000,000	160,285.50	266,101.06	230,000.00	16.03	26.61	23.00

Source: Staff of the Joint Committee on Internal Revenue Taxation.

TABLE XVIII–C.—*Comparison of amount of spendable income after taxes under present law, and under House bill and the Finance Committee bill.*

MARRIED PERSON—2 DEPENDENTS—ENTIRE INCOME EARNED BY ONE SPOUSE.

Income after deductions but before exemptions.	Amount of spendable income under—			Per cent of income after tax to income before tax.		
	Present law.	House bill.	Finance Committee bill.	Present law.	House bill.	Finance Committee bill.
				Per cent.	*Per cent.*	*Per cent.*
$2,000	$2,000.00	$2,000.00	$2,000.00	100.00	100.00	100.00
$2,500	2,405.00	2,486.70	2,483.40	96.20	99.47	99.34
$3,000	2,810.00	2,920.20	2,900.40	93.66	97.34	96.68
$4,000	3,620.00	3,787.20	3,734.40	90.50	94.68	93.36
$5,000	4,411.00	4,614.00	4,568.40	88.22	92.28	91.37
$6,000	5,202.00	5,452.80	5,402.40	86.70	90.88	90.04
$7,000	5,955.00	6,291.68	6,219.84	85.07	89.88	88.85
$8,000	6,708.00	7,124.48	7,026.24	83.85	89.06	87.83
$9,000	7,423.00	7,957.28	7,832.64	82.48	88.41	87.03
$10,000	8,138.00	8,790.08	8,639.04	81.38	87.90	86.39
$11,000	8,815.00	9,589.82	9,424.32	80.14	87.18	85.68
$12,000	9,492.00	10,367.52	10,195.52	79.10	86.40	84.96
$13,000	10,131.00	11,145.22	10,966.72	77.93	85.73	84.36
$14,000	10,770.00	11,922.92	11,737.92	76.93	85.16	83.84
$15,000	11,361.50	12,680.10	12,488.00	75.74	84.53	83.25
$20,000	14,110.00	16,342.88	16,111.68	70.55	81.71	80.56
$25,000	16,478.50	19,800.46	19,524.16	65.91	79.20	78.10
$30,000	18,619.00	23,022.06	22,693.76	62.06	76.74	75.65
$40,000	22,558.00	28,832.56	28,381.76	56.40	72.08	70.95
$50,000	25,889.00	34,013.78	33,422.08	51.78	68.03	66.84
$60,000	28,821.00	38,825.64	38,082.24	48.04	64.71	63.47
$70,000	31,468.00	43,432.30	42,531.20	44.95	62.05	60.76
$80,000	33,830.00	47,820.08	46,754.88	42.29	59.78	58.44
$90,000	35,907.00	51,920.58	50,682.88	39.90	57.69	56.31
$100,000	37,699.00	55,774.84	54,357.44	37.70	55.77	54.36
$150,000	45,462.00	72,871.02	70,491.52	30.31	48.58	46.99
$200,000	52,731.00	86,827.64	83,394.22	26.37	43.41	41.70
$250,000	59,525.00	98,821.18	94,276.48	23.81	39.53	37.71
$300,000	66,300.00	110,773.68	104,632.64	22.10	36.92	34.88
$400,000	79,850.00	133,844.20	123,429.30	19.96	33.46	30.86
$500,000	93,400.00	156,059.72	141,323.46	18.68	31.21	28.26
$750,000	127,275.00	211,547.22	186,004.72	16.97	28.21	24.80
$1,000,000	161,150.00	267,034.72	230,685.96	16.12	26.70	23.07

Source: Staff of the Joint Committee on Internal Revenue Taxation.

DETAILED DISCUSSION OF THE TECHNICAL PROVISIONS OF THE BILL.

TITLE I.—INCOME TAX REDUCTION.

SECTION 101. REDUCTION OF NORMAL TAX AND SURTAX

Under existing law, the income tax on individuals is determined by first computing a tentative tax at the rates specified in sections 11 and 12 of the Internal Revenue Code and then reducing the tentative taxes by 5 per cent thereof. This section of the bill provides reductions in the normal tax and surtax on individuals by substituting a larger percentage reduction than 5 per cent of the tentative taxes.

The percentage reduction plan under your committee bill differs in the amount of the reduction and in the width of the brackets as compared with the plan of the House bill. Under the bill as amended, three brackets instead of four are provided. The first bracket is $400 of aggregate tentative normal tax and tentative surtax and the "notch" for aggregate tentative taxes between $200 and $279.17 under the House bill is eliminated. The reductions of the aggregate of the tentative normal tax and the tentative surtax provided in this section of the bill as amended are as follow:

(1) If the aggregate of the tentative tax is $400 or less, such aggregate is reduced by 17 per cent thereof, a reduction of 12.6 per cent of the tax after the 5 per cent reduction under existing law;

(2) If the aggregate of the tentative taxes is in excess of $400 but not in excess of $100,000, the first $400 thereof is reduced by 17 per cent (a 12.6 per cent reduction of such portion of the aggregate of the tentative taxes after the 5 per

cent reduction under existing law) and the amount of such aggregate in excess of $400 and not in excess of $100,000 is reduced by 12 per cent, a 7.4 per cent reduction of such portion after the 5 per cent reduction under existing law;

(3) If the aggregate of the tentative taxes is in excess of $100,000, the first $100,000 thereof is reduced by 12.6 per cent (a 7.4 per cent reduction of such portion of the aggregate of the tentative taxes after the 5 per cent reduction under existing law) and the amount of such aggregate in excess of $100,000 is reduced by 9.75 per cent, a 5 per cent reduction of such portion after the 5 per cent reduction under existing law.

These reductions are provided in section 12(c) of the Code as amended by the bill; the existing provisions of section 12(c) of the Code are amended and set forth in section 12(g)(2) of the Code, as provided in section 104 of the bill.

Existing law (section 12(g) of the Code) provides, as an over-all limitation upon the combined normal tax and surtax in the case of individuals, that such combined tax shall not exceed 85½ per cent of the net income of the taxpayer. The bill inserts such a limitation into section 12(c) of the Code, as amended, substituting 77 per cent for the present percentage figure in order to conform with the reduction in tax above described.

SECTION 102. REDUCTION IN SUPPLEMENT T TAX.

This section is a cross-reference to section 401 of the bill, which amends section 400 of the Code, relating to the tax under Supplement T of individuals with adjusted gross incomes of less than $5,000. Reductions in such tax are provided under Supplement T corresponding to the reductions provided by section 101 of the bill for taxpayers computing their tax under sections 11 and 12 of the Code.

SECTION 103. INCOME OF HUSBAND AND WIFE.

This section is a cross-reference to section 301 of the bill, which provides for the determination of the combined normal tax and surtax in the case of a joint return of husband and wife (the so-called splitting of income provisions).

SECTION 104. TECHNICAL AMENDMENTS.

This section of the bill provides various technical amendments.

In view of the fact that there are certain provisions of the Code, such as sections 105 and 106 which make it necessary to determine the surtax separately from the normal tax, section 12(f) of the Code, as amended by the bill, provides a special rule for making such computations. Under this rule 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.

SECTION 105. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.

This section provides that the amendments made by this title of the bill shall be applicable with respect to taxable years beginning after December 31, 1947. Special provision is made in section 601 of the bill for taxable years beginning in 1947 and ending in 1948.

TITLE II.—CREDITS AGAINST NET INCOME FOR NORMAL TAX AND SURTAX.

SECTION 201. ADDITIONAL CREDITS AGAINST NET INCOME FOR NORMAL TAX AND SURTAX.

This section amends section 25(b) of the Code, relating to exemptions allowed as credits for both normal tax and surtax. The amendments deal with the following credits:

(A) The so-called personal exemption.
(B) Old-age exemption.
(C) Exemption for the blind.
(D) The exemption for each dependent.

Subparagraph (A) of section 25(b)(1) of the Code, as amended by this section of the bill, replaces subparagraphs (A) and (B) of section 25(b)(1) of existing law. The existing law provides a personal exemption of $500 for the taxpayer and a personal exemption of $500 for the spouse of the taxpayer. The $500 exemption for the spouse of the taxpayer is allowed if a joint return is made by the taxpayer and his spouse under section 51 (in which case the aggregate exemption

of the spouses is $1,000 under existing law) or 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. Section 25(b)(1)(A), as proposed to be amended, provides a personal exemption of $600 for the taxpayer. It also provides an additional exemption to the taxpayer of $600 for his spouse, if a separate return is made by the taxpayer, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. Your committee considered it unnecessary to provide specifically for the personal exemptions for husband and wife on a joint return since, in the case of a joint return there are two taxpayers (although under section 51(b) of the Code there is only one income for the two taxpayers on the joint return—i. e., their aggregate income). Inasmuch as section 25(b)(1)(A) of the Code, as amended in the bill, provides an exemption of $600 for the taxpayer, on a joint return two exemptions are allowed, one for each taxpayer spouse, just as under existing law. Thus, under the bill, on a joint return the aggregate of the personal exemption for the spouses shall be $1,200.

Section 25(b)(1)(A), as amended by the bill, continues in clarified form the rule of existing law (section 25(b)(1)(B)(ii)) under which the taxpayer is allowed the exemption for his spouse, if a separate return is made by the taxpayer, only if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. Thus, a taxpayer who makes his returns for a fiscal year ending June 30 may, under existing law and under section 25(b)(1)(A), as amended, take an exemption for his spouse only if such spouse has no gross income for the calendar year in which begins the taxable year of the taxpayer beginning on July 1, and is not for such calendar year the dependent of another taxpayer.

Section 25(b)(1)(B) of the Code, as amended by this section of the bill, provides an additional exemption of $600 for the taxpayer if he has attained the age of 65 before the close of his taxable year. An additional exemption of $600 is allowed to the taxpayer for his spouse if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of such taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, the spouse has no gross income and is not the dependent of another taxpayer. If a husband and wife make a joint return an old-age exemption of $600 will be allowed as to each taxpayer spouse who has attained the age of 65 before the close of the taxable year for which the joint return is made. The exemption under section 25(b)(1)(B) is in addition to the personal exemption under section 25(b)(1)(A).

In determining the age of an individual for the purposes of the exemption for old age, the last day of the taxable year of the taxpayer is the controlling date. Thus, in the event of a separate return by a husband no additional exemption for old age may be claimed for his spouse unless such spouse has attained the age of 65 on or before the close of the taxable year of the husband. In no event shall the additional exemption for old age be allowed on a separate return of the taxpayer with respect to a spouse who dies before attaining the age of 65 even though such spouse would have attained the age of 65 before the close of the taxable year of the taxpayer. For the purposes of the old-age exemption, an individual attains the age of 65 on the first moment of the day preceding his sixty-fifth birthday. Accordingly, an individual whose sixty-fifth birthday falls on January 1 in a given year attains the age of 65 on the last day of the calendar year immediately preceding.

Section 25(b)(1)(C) of the Code, as added by the bill, provides an additional exemption of $600 for the blind. This exemption will replace the special deduction for blind individuals now provided in section 23(y) of the Code. The present deduction is $500. The exemption provided for the blind under the bill is $600 for the taxpayer and $600 for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind. Under the bill as introduced the blind exemption was not allowed with respect to a person entitled to the old-age exemption. The committee amendments remove this limitation so that the exemption for the blind under section 25(b)(1)(C) is allowed with respect to a blind person although he has attained the age of 65 (in addition to the old-age exemption with respect to such person). The blind exemption for the spouse of the taxpayer is allowed the taxpayer only if, for the calendar year in which the taxable year of the taxpayer begins, such spouse has no gross income and is not the dependent of another taxpayer. If a husband and wife make a joint

return an exemption of $600 for the blind will be allowed as to each taxpayer spouse who is blind at the close of the taxable year for which the joint return is made.

The determination of whether the taxpayer is blind is made as of the close of his taxable year. The determination of whether the spouse of the taxpayer is blind (for the purpose of the taxpayer's taking the blind exemption with respect to such spouse when the taxpayer files a separate return) shall be made as of the close of the taxable year of the taxpayer, unless the spouse dies during such taxable year, in which case such determination shall be made as of the time of such death. It should be noted that the date for determining whether an individual is blind differs from that prescribed in section 23(y), which now provides the special deduction for blind individuals and which is repealed by section 202(e) of the bill. Under section 23(y) the status of an individual for the purpose of the blind deduction is determined as of July 1 of the taxable year unless the taxable year does not include July 1, in which case such status is determined as of the last day of the taxable year. The definition of an individual who is blind now contained in section 23(y) of the Code is retained for the purposes of the exemption under section 25(b)(1)(C), with only a formal modification in the introductory clause.

Section 25(b)(1)(D) of the Code, as added by the bill, corresponds to section 25(b)(1)(C), under existing law, and relates to the exemption for a dependent of the taxpayer. Section 25(b)(1)(D) increases the exemption for each dependent from $500, under existing law, to $600, but continues to limit the exemption for dependents to dependents whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $500.

Section 25(b)(2) of the Code, as amended by this section of the bill, corresponds to section 25(b)(2) of existing law and relates to the determination of marital status for the purposes of the credits provided with respect to a spouse in section 25(b). Section 25(b)(2) provides two rules. The first rule is that the determination of whether an individual is married is to be made as of the close of his taxable year, unless his spouse dies during the taxable year of such individual, in which case such determination shall be made as of the time of such death. This rule is, in substance, the same as that provided for in existing law for the purposes of section 25(b). The second rule is that an individual legally separated (although not absolutely divorced) from his spouse under a decree of divorce or of separate maintenance shall not be considered as married. Similar rules for the determination of status are provided in section 23(aa)(6) of the Code (as added by section 302(c) of the bill), relating to the standard deduction, and in section 51(b)(5) of the Code (as added by section 303 of the bill) relating to joint returns. A uniform construction of all these provisions is intended. The rule with respect to the marital status of an individual legally separated from his spouse under a decree of divorce or of separate maintenance is derived from a corresponding provision in section 22(k) of the Code, relating to the tax treatment of alimony and like payments.

The new exemptions provided in section 25(b)(1)(B) and (C) of the Code, as amended by section 201 of the bill, do not apply to a nonresident alien who is not a resident of a contiguous country, to a citizen of the United States who is entitled to the benefits of section 251 of the Code relating to income from sources within possessions of the United States, or to a citizen of a possession of the United States (other than the Virgin Islands) not otherwise a citizen of the United States and not a resident of the United States.

SECTION 202. TECHNICAL AMENDMENTS.

This section of the bill contains various technical amendments made necessary by the additional credits provided under section 25(b) of the Code by section 201 of the bill. Section 58(a) of the Code relating to the requirement of declaration of estimated tax is amended. Existing law requires a declaration of estimated tax if the taxpayer's gross income from wages subject to withholding may be expected to exceed $5,000, plus $500 for each exemption to which he is entitled, except his own exemption. The bill amends section 58(a)(1) to give effect to the additional exemptions provided in the bill. Under the amendment a declaration will be required if the anticipated wages exceed $4,500, plus $600 for each exemption to which the taxpayer is entitled. Under existing law, a single person who has no dependents and is under 65 years of age and who derives his income solely from wages subject to withholding is required to file a declaration if his anticipated wages for the calendar year exceed $5,000. Under the

amendment such a person is required to file a declaration if his anticipated wages for the calendar year exceed $5,100 ($4,500, plus $600 for his own exemption). Under the amendment, if the same individual is over the age of 65 the declaration would not be required unless his anticipated wages for the calendar year exceed $5,700 ($4,500, plus $600 for his own exemption plus $600 for his old-age exemption). Similarly, under existing law, a single person under the age of 65 who has one dependent is not required to file a declaration unless his anticipated wages exceed $5,500 ($5,000, plus $500 for the dependent). Under the amendment, such a single person under the age of 65 with one dependent is not required to file a declaration unless his anticipated wages exceed $5,700 ($4,500 plus $600 for his own exemption plus $600 for his dependent).

Section 58(a)(2) of the Code requires a declaration of estimated tax in the case of an individual whose gross income from sources other than wages can reasonably be expected to exceed $100 for the taxable year and his gross income to be $500 or more. In accordance with the increase in exemptions for individuals provided in section 25(b)(1)(A) of the bill, the amount of $500 under this requirement of an estimate is increased to $600.

Subsection (b) of section 202 of the bill provides technical amendments with respect to the withholding exemption necessary by reason of the additional credits provided in section 25(b) of the Code as amended by the bill. Section 1622(h)(1) of the Code, relating to withholding exemptions, is amended. The amendment continues the present provision for an exemption for the employee. The amendment adds in section 1622(h)(1) (B) and (C) additional exemptions corresponding to the exemption under section 25(b)(1)(B)(i), relating to old age, and the exemption under section 25(b)(1)(C)(i), relating to the blind. Each such additional withholding exemption is allowed to the employee if on the basis of facts existing at the beginning of any day for which the exemptions are being determined there may reasonably be expected to be allowable to him the corresponding exemption under section 25(b) for the taxable year under Chapter 1 in respect of which amounts deducted and withheld in the calendar year in which such day falls are allowed as a credit. Section 1622(h)(1)(D) corresponds to section 1622(h)(1)(B) of existing law under the Code. It provides that if the employee is married, the employee is entitled to any exemption to which his spouse is entitled, or would be entitled, if such spouse were an employee, receiving wages, under subparagraph (A), (B), or (C) of section 1622(h)(1), but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption. If both husband and wife are employees receiving wages subject to withholding and the wife is over the age of 65 and has in effect a withholding exemption certificate claiming only one exemption, then her husband may claim one exemption for her on his certificate.

Section 1622(h)(1)(E) of the Code, under the bill, relates to the withholding exemption for dependents and is the same, except for a clerical change, as section 1622(h)(1)(C) of the Code under existing law.

Paragraph 2 of section 202(b) of the bill provides a special status-determination date for the purpose of giving effect to the increased exemptions provided under section 1622(h)(1) with respect to withholding by employers. Under existing law (section 1622(h)(3)(B)), a withholding exemption certificate furnished the employer in a case in which a previous such certificate is in effect takes effect with respect to the first payment of wages made on or after the first "status determination date" which occurs at least 30 days from the date on which such certificate is so furnished (unless the employer elects to make the certification effective at an earlier date after the furnishing of such certificate). Under existing law, the "status determination date" is January 1 or July 1 of each year. In order to make the increased withholding exemptions provided for under the bill effective as soon as possible (consistent with the allowance of sufficient time to provide for the distribution of withholding exemption certificates and the filing thereof by employees), the bill provides in section 202(b)(2) that for the purpose of section 1622(h)(3)(B) the term "status determination date" includes also the ninetieth day after the date of enactment of the bill.

Section 202(c) of the bill provides technical amendments relating to return requirements in order to conform to the increase in the individual exemption from $500 to $600. Section 51(a)(1) of the Code is amended to increase the amount of gross income for a taxable year necessary before a return is required from $500 to $600. Section 142(a) of the Code is amended to provide a corresponding increase where under existing law a fiduciary return is required to be filed where the gross income is $500 or over. Section 147(a) of the Code is amended to

increase from $500 to $600 the minimum amount of payments which will make necessary the filing of an information return. Section 163(a)(1) of the Code is amended so as to increase the credit against net income of an estate (corresponding to the personal exemption) from $500 to $600.

SECTION 203. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.

The amendments made by this title of your committee bill are applicable with respect to taxable years beginning after December 31, 1947. A special rule with respect to taxable years beginning in 1947 and ending in 1948 is provided in section 601 of the bill.

TITLE III.—HUSBAND AND WIFE.

PART I.—INCOME TAX.

SECTION 301. SPLITTING OF INCOME.

This section amends section 12 of the Code, relating to surtax on individuals, by adding a new subsection (d) which provides for computation of tax under the plan for the so-called income splitting between husband and wife. This subsection applies only if a joint return for the taxable year involved is made as provided under section 51(b) of the Code as amended by the bill. Under the provisions of section 12(d), the combined normal tax and surtax under section 11 and section 12(b) of the Code in the case of the husband and wife making the joint return shall be twice the combined normal tax and surtax that would be determined if the net income and the applicable credits provided by section 25 of the Code were reduced by one-half.

It is contemplated that under this provision the gross income and adjusted gross income of husband and wife on the joint return will be computed by the same method as under existing law (that is, in an aggregate amount), and that the deductions allowed and the net income will likewise be computed on an aggregate basis. Deductions limited to a percentage of the adjusted gross income, such as the deduction for charitable contributions under section 23(o), will be allowed with reference to such aggregate adjusted gross income. Similarly, in the case of a joint return, losses of husband and wife from sales or exchanges of capital assets are combined and such combined losses are allowed under section 117(d)(2) only to the extent of the combined gains of the spouses from such sales or exchanges, plus the net income or $1,000 whichever is smaller. The "net income" referred to in section 117(d)(2) is the net income computed before reduction by one-half for the purposes of income splitting and is such net income computed without regard to gains and losses from sales or exchanges of capital assets. Although there are two taxpayers on a joint return, there is only one net income.

The method of computing, under section 12(d), 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 section 11 and section 12(b), 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). 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 were reduced by one-half, is then multiplied by 2, to produce the tax imposed in the case of the joint return.

The limitation (very rarely applicable) under section 12(c) of the combined normal tax and surtax to an amount not in excess of 77 per cent of the net income 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 77 per cent of one-half of the net income (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 is multiplied by 2, as provided in section 12(d).

The application of section 12(d) is illustrated by the following example in which H is used to refer to the husband and W is used to refer to his wife with whom a joint return is filed for the calendar year 1948. H has a salary of $8,000 for 1948 and pays during 1948 local property taxes on his residence in the amount of $100 and medical expenses for himself and W in the amount of $700. W has

income for 1948 from dividends of $2,000 and during 1948 makes gifts to charitable organizations (described in section 23(o) of the Code) in the amount of $1,600. H and W are not entitled to any exemptions other than the personal exemption of each. The tax on the joint return of H and W for 1948 is $1,244.80, determined as follows:

1. Salary		$8,000.00
2. Other income		2,000.00
3. Adjusted gross income		10,000.00
4. Deductions:		
(a) Charitable contributions (limited to 15 per cent of adjusted gross income)	$1,500	
(b) Taxes	100	
(c) Medical expenses (in excess of 5 per cent of adjusted gross income (section 23(x) of the Code); excess of $700 over 5 per cent of $10,000)	200	
		1,800.00
5. Net income		8,200.00
6. Net income reduced by one-half		4,100.00
7. Credits against net income under section 25 (2 personal exemptions under section 25(b)(1)(A) of the Code as amended in this bill)		1,200.00
8. Credits in item 7 reduced by one-half		600.00
9. Net income reduced by one-half (item 6) minus credits reduced by one-half (item 8)		3,500.00
10. Tentative normal tax computed under section 11 of Code on amount in item 9 (3 per cent of $3,500)		105.00
11. Tentative surtax computed under section 12(b) of the Code on amount in item 9 ($340 plus 19 per cent of excess of $3,500 over $2,000)		625.00
12. Aggregate of the tentative normal tax and tentative surtax		730.00
13. Combined normal tax and surtax determined under section 12 (c) of the Code ($730 reduced by $68 plus 12 per cent of the excess of $730 over $400)		622.40
14. Twice the combined normal tax and surtax determined in item 13		1,244.80

If the alternative tax is computed under section 117(c)(2) of the Code, 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 per cent of such excess as provided in section 117(c)(2).

If the husband and wife making a joint return elect to pay the tax under Supplement T of the Code, the tax on the joint return is computed as provided in section 400 of the Code, as amended in Title IV of this bill. These provisions are discussed hereinafter.

SECTION 302. STANDARD DEDUCTION.

This section provides for amendments to section 23(aa) of the Code, relating to the standard deduction. Section 23(aa)(1)(A) of the Code is amended to increase the standard deduction where the adjusted gross income is $5,000 or more in case of a joint return by husband and wife and in the case of a return by an unmarried person. In such cases under the amendment the standard deduction shall be $1,000 or an amount equal to 10 per cent of the adjusted gross income whichever is the lesser. The increase in the deduction does not apply in the case of a separate return by a married individual, in which case the maximum standard deduction remains at $500 as under existing law. In the case of a joint return, as under existing law, there is only one adjusted gross income and only one standard deduction. For example, if a husband has an income of $15,000 and the spouse has an income of $12,000 for the taxable year for which they file a joint return, and they have no deductions allowable for the purposes of computing adjusted gross income, the adjusted gross income is $27,000, and the standard deduction allowable on such return is $1,000 (and not $2,000).

Under subsections (b) and (c) of section 302 of the bill section 23(aa)(4) of the Code is separated into two paragraphs, namely, (4) and (6). The new paragraph (4) requires both husband and wife to itemize their deductions, rather

than to take the standard deduction, if one of them so itemizes. This is the same rule as contained in the first sentence of the present provisions of section 23(aa)(4), except that under the existing law this rule applies only if the husband and wife are living together.

The new paragraph (6) contains provisions substantially the same as those contained in the last sentence of section 23(aa)(4) of existing law relating to the determination of the status of individuals as husband and wife. Under this paragraph the determination of whether an individual is married is made, for the purpose of the allowance of the standard deduction, as of the close of his taxable year, unless his spouse dies during his taxable year, in which case the determination is made as of the time of such death. The new paragraph (6) also provides that for the purpose of the allowance of the standard deduction, an individual legally separated (although not absolutely divorced) from his spouse under a decree of divorce or separate maintenance shall not be considered married. This is the same test as is provided in section 22(k) of the Code, relating to alimony and like payments, where spouses are legally separated or divorced. This provision is also intended to apply the same test as is provided in section 51(b) of the Code, as proposed to be amended by section 303 of the bill, so that the determination of married individuals will be the same for the purpose of the standard deduction as for the purpose of eligibility to make a joint return.

SECTION 303. JOINT RETURNS OF HUSBAND AND WIFE.

This section provides for an extensive revision of section 51(b) of the Code, relating to joint returns by husband and wife, to reflect changes necessary under the so-called split-income plan. As under existing law, 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 and the time for filing the return of such spouse has expired. Similarly, if a joint return was filed, separate returns may not be made by the spouses after the time for filing the return of either has expired. Under the bill, however, in certain circumstances, an executor may make a late separate return for a deceased spouse after the surviving spouse has made a timely joint return for himself and the deceased spouse. This exception to the above general rule is provided in section 51(b)(4) of the Code, as proposed to be added by this section of the bill, and is further discussed hereinafter.

Paragraph (1) of section 51(b), as proposed to be amended, contains the existing general provisions which permit the making of a joint return and provides that on such return the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

Paragraph (2), of section 51(b) as proposed to be amended, provides that no joint return may be made if either the husband or wife at any time during the taxable year is a nonresident alien. This provision is the same as that now contained in section 51(b) of the Code with the addition of the phrase "at any time." The addition is a clarification which represents the uniform construction of the existing law.

Paragraph (3) of section 51(b) continues the existing provision that no joint return shall be made if the husband and wife have different taxable years but makes an important exception in the case of spouses whose taxable years begin on the same day and end on different days because of the death of either or both. Under section 47(g) of the Code the taxable year of a taxpayer closes as of the date of his death. The exception thus is intended to apply where, but for the death of either or both spouses, the taxable years of the spouses would be the same. In such a case, it is proposed to allow a joint return to be made with respect to the taxable year of each spouse. This provision is designed to prevent spouses being denied the privilege of making a joint return by reason of the death of one spouse during the taxable year. A joint return may not be made for a decedent spouse and the survivor for any taxable year of the survivor beginning after the death of the decedent spouse.

The provision allowing a joint return to be made for the taxable year in which the death of either or both spouses occurs is subject to two exceptions, in the case of each of which the general rule will continue to apply, namely, that the joint return can not be made by the husband and wife because they have different taxable years. The first exception is that if the surviving spouse remarried before the close of his taxable year, he may not make a joint return with the first spouse who died during the taxable year. In such a case, however, the surviving spouse may make a joint return with his new spouse provided that the other requirements of section 51(b) are met. The second exception is that the surviv-

ing spouse also may not make a joint return with the deceased spouse if the taxable year of either spouse is a fractional part of a year under section 47(a) of the Code, relating to change of accounting period. For example, if a husband and wife make their returns on the calendar year basis and the wife dies on March 1, 1948, and thereafter the husband receives permission to change his accounting period to a fiscal year beginning July 1, 1948, no joint return may be made for the short taxable year ending June 30, 1948. Similarly, if a husband and wife who make their returns on a calendar year basis receive permission to change to a fiscal year beginning July 1, 1948, and the wife dies on June 1, 1948, no joint return may be made for the fiscal year ending June 30, 1948.

Paragraph (4), of section 51(b) as proposed to be amended, provides for the method of making a joint return after the death of a spouse. This paragraph applies not only in those cases in which the death of one spouse closes his taxable year but also in those cases in which one spouse dies after the close of his taxable year but before his return is filed. The general rule provided in such paragraph (4) is that, in the case of the death of one spouse, or of both spouses, the joint return with respect to the decedent may be made only by his executor or administrator. By this is meant the person or persons who are actually appointed executor or administrator and not merely a person who may be in charge of the property of the decedent. An exception is made from this general rule whereby, in the case of the death of one spouse, the joint return may be made by the surviving spouse with respect to both himself and the decedent if all the following conditions exist:

(A) No return has been made by the decedent for the taxable year in respect of which the joint return is made.

(B) No executor or administrator has been appointed at or before the time of the making of such joint return.

(C) No executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse.

These conditions are to be applied with respect to the return for each of the taxable years of the decedent for which a joint return may be made if more than one such taxable year is involved. Thus, in the case of husband and wife on the calendar year basis, if the wife dies in January, 1949, a joint return for the husband and wife for 1948 may be made if the conditions set forth above are satisfied with respect to such return. A joint return may also be made by the survivor for both himself and the deceased spouse for the calendar year 1949 if it is separately determined that the conditions set forth above are satisfied with respect to the return for such year. In determining whether an executor or administrator is appointed before the last date prescribed by law for filing the return of the surviving spouse, an extension of time for making the return is intended to be included.

The condition set forth in (A) above is designed to prevent a joint return being made by the survivor for himself and the deceased spouse where the deceased spouse had already made a separate return for the taxable year for which the joint return is sought to be made. Thus, if, in the case of a spouse who died in February, 1949, such spouse had made prior to her death a separate return for 1948 (either on a Form W–2 or Form 1040) or had made a joint return with her spouse for 1948, the surviving spouse may not thereafter make a joint return for himself and the deceased spouse for 1948. If an executor or administrator has been appointed within the time provided in (B) and (C) of section 51(b)(4), the surviving spouse can not make a joint return for himself and the deceased spouse whether or not a separate return for the deceased spouse is made by such executor or administrator, for, at that time, the joint return, if one is to be made for the deceased spouse, must be made by the executor or administrator.

If the surviving spouse makes the joint return provided for above, and thereafter an executor or administrator of the decedent is appointed, the executor or administrator (in order to relieve the decedent's estate from joint and several liability for the whole tax, or for any other reason) may disaffirm such joint return. This disaffirmance, in order to be effective, must be made within one year after the last day prescribed by law for filing the return of the surviving spouse including any extension thereof) and must be made in the form of a separate return for the taxable year of the decedent with respect to which the joint return was made. In the event of such proper disaffirmance, the return made by the survivor shall constitute his separate return, that is, the joint return made by him shall be treated as his return and the tax thereon shall be computed by excluding all items properly includible in the return of the

deceased spouse. The separate return made by the executor or administrator shall constitute the return of the deceased spouse for the taxable year. The time allowed the executor or administrator to disaffirm the joint return by the making of a separate return is not intended to establish a new due date for the return of the deceased spouse. Accordingly, the provisions of sections 291 and 294 of the Code relating to delinquent returns and delinquency in payment of tax will be applicable to such return made by the executor in disaffirmance of the joint return.

Paragraph (5), of section 51(b) as amended in the bill, provides for the determination of status of individuals for the purpose of making joint returns. In accordance with the extension of the joint return privilege to cases in which a spouse died during the taxable year, the status determination of individuals as husband and wife in such a case is to be made as of the time of the death of such spouse. In this and in other respects the determination of status for the purpose of section 51 is the same as that provided under section 23(aa) (6), as added by section 302 of the bill with respect to the allowance of the standard deduction, except that the determination of status applies under section 51 only where two individuals have taxable years beginning on the same day.

Paragraph (6), of section 51(b), as amended in the bill, contains cross references to section 12(d) of the Code and to section 400 of the Code.

SECTION 304. DEDUCTIONS FOR MEDICAL EXPENSES.

This section amends section 23 (x) of the Code, relating to deduction for medical expenses. Under existing law the maximum deduction is $1,250 for the taxable year if only one exemption is allowed under section 25(b), and $2,500 if more than one exemption is allowed. Under the proposed amendment these limitations will still be applicable in the case of separate returns. The limitations will also be applicable in the case of joint returns where there are not more than two exemptions, but if, in the case of a joint return, there are three exemptions allowed, the maximum deduction shall be $3,750, and if, in the case of a joint return, there are four or more exemptions allowed, the maximum deduction shall be $5,000. The exemptions referred to do not include exemptions allowed under section 25(b)(1) (B) or (C), relating to the exemptions for individuals who have attained the age of 65 and for blind individuals. As under existing law the deduction is allowed for medical expenses under section 23(x) to the extent that such expenses exceed 5 per cent of the adjusted gross income, or 5 per cent of the aggregate adjusted gross income in the case of a joint return.

SECTION 305. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.

This section provides that the amendments made by this title of the bill, providing for "income splitting," shall be applicable with respect to taxable years beginning after December 31, 1947. The requirements of section 51(b) of the Code as amended by the bill with respect to the filing of a joint return are also made applicable to taxable years of both husband and wife beginning on the same day in 1947 if at least one such taxable year ends in 1948. Thus, a joint return by the husband and wife for a fiscal year beginning in 1947 and ending in 1948 can not be made unless permitted by the provisions of section 51(b) as amended by the bill. If a husband and wife, as of the close of their fiscal year beginning in 1947 and ending in 1948, are legally separated under a decree of separate maintenance, they can not make a joint return for such fiscal year under the provisions of section 51(b) as amended by the bill (although under existing law they could make a joint return). However, in the case of a husband and wife who have been making their returns on the basis of a fiscal year ending June 30, if the wife died before June 30, 1948, and after the beginning of their taxable years beginning July 1, 1947, a joint return may be made, under section 51(b) as amended by the bill, for the deceased spouse and the survivor for the taxable year of each beginning July 1, 1947 (although under existing law a joint return could not be made in such a case).

PART II—ESTATE TAX

AND

PART III—GIFT TAX.

The detailed discussion of these parts of Title III will be found in a supplemental report to be filed later.

TITLE IV.—ADJUSTED GROSS INCOME OF LESS THAN $5,000.

SECTION 401. INDIVIDUALS WITH ADJUSTED GROSS INCOMES OF LESS THAN $5,000.

This section of the bill amends section 400 of the Code, relating to the optional tax on individuals with adjusted gross incomes of less than $5,000. Under existing law, there is only one tax table for computing the tax in the case of such individuals. In the bill as passed by the House, two tables were provided, the first applicable only for the purpose of computing the tax on a separate return and the second applicable only for the purpose of computing the tax on a joint return of husband and wife under section 51(b). The second table was provided to give effect to the "income-splitting" provisions of Title III of the bill. Both tables gave effect to the reduction in tax and increased exemptions provided in Titles I and II of the bill. The bill, as amended, provides the appropriate reductions in only one table, which combines the features of the two tables. The single table gives effect to "income-splitting" by double columns in the general area on the table where the tax on a joint return of husband and wife under section 51(b) is different from that of any person on a separate return with the same number of exemptions.

The amendments made by this section of the bill are applicable with respect to taxable years beginning after December 31, 1947. Special provision is made in section 601 of the bill for taxable years beginning in 1947 and ending in 1948.

TITLE V.—REDUCTION IN WITHHOLDING ON TAX AT SOURCE ON WAGES.

SECTION 501. PERCENTAGE METHOD.

This section of the bill amends section 1622 (a) and (b)(1) of the Internal Revenue Code, relating to the percentage method of withholding, to reflect the reductions in tax provided in Titles I and II of the bill. The bill, as amended, provides only one withholding rate (15 per cent) instead of the graduated rates over three brackets as provided in the House bill.

SECTION 502. WAGE BRACKET WITHHOLDING.

This section of the bill amends section 1622(c)(1) of the Code, relating to wage bracket withholding, by changing the tax tables contained in that section of the Code in order to reflect the reduction in tax provided in Titles I and II of the bill.

SECTION 503. EFFECTIVE DATE.

This section provides that the amendments made by this title shall be applicable only with respect to wages paid on or after May 1, 1948, instead of April 1, as under the House bill.

TITLE VI.—FISCAL YEAR TAXPAYERS.

SECTION 601. FISCAL YEAR TAXPAYERS.

This section of the bill makes the usual special provision for computation of the tax in the case of taxpayers making returns on a fiscal year basis, in this case for fiscal years beginning in 1947 and ending in 1948.

REVENUE ACT OF 1948.

[Senate Report No. 1013 (Part 2), Eightieth Congress, Second Session. Calendar No. 1055.]

[March 17 (legislative day, March 15), 1948.]

Mr. Millikin, from the Committee on Finance, submitted the following supplementary report [to accompany H. R. 4790]:

On page 59 of Report No. 1013, to accompany the bill H. R. 4790 [page 211, this Bulletin], it was stated that a supplemental report would be filed later containing a detailed discussion of the provisions of Parts II and III of Title III of the bill, relating to estate tax and gift tax. Accordingly, this supplemental report is now filed.

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PART II—ESTATE TAX.

SUBPART 1—REPEAL OF 1942 COMMUNITY PROPERTY AMENDMENTS.

SECTION 351. ESTATE TAX—TRANSFERS OF COMMUNITY PROPERTY IN CONTEMPLATION OF DEATH, ETC.

This section, which is unchanged from the bill as passed by the House, repeals, effective with respect to estates of decedents dying after the date of enactment of this bill, section 811(d)(5) of the Code, relating to transfers during life of community property includible in the gross estate under section 811 (c) or (d) of the Internal Revenue Code (such as transfers in contemplation of death, etc.). The extent to which any such transfer of community property is includible in the gross estate of the transferor is determined under the law at the date of his death (that is, with respect to decedents dying after the date of the enactment of this bill, without regard to section 811(d)(5)).

SECTION 352. ESTATE TAX—JOINT AND COMMUNITY INTERESTS.

This section, which is unchanged from the bill as passed by the House, repeals, effective with respect to estates of decedents dying after the date of enactment of this bill, section 811(e)(2) of the Internal Revenue Code, relating to the inclusion of community property in the gross estate of the decedent. In the case of decedents dying after the date of enactment of this bill, the extent to which community property held by the decedent and his spouse at the death of the decedent is to be included in his gross estate will be determined without regard to section 811(e)(2). Clerical amendments are also made by this section to reinstate the form of section 811(e) prior to the enactment of the Revenue Act of 1942.

SECTION 353. ESTATE TAX—PROCEEDS OF LIFE INSURANCE.

This section, which is unchanged from the bill as passed by the House, repeals, effective with respect to estates of decedents dying after the date of enactment of this bill, section 811(g)(4) of the Code, relating to community property in the case of life insurance. Since section 811(g) was completely rewritten in the Revenue Act of 1942, the repeal prospectively of section 811(g)(4) makes applicable to decedents dying after the date of enactment of this bill the rules of section 811(g) which would be applicable had paragraph (4) never been contained in section 811(g).

SUBPART 2—MARITAL DEDUCTION FOR BEQUESTS, ETC., TO SPOUSE

SECTION 361. MARITAL DEDUCTION.

This section amends section 812 of the Code, relating to deductions in computing the net estate of a citizen or resident of the United States, by adding a new subsection, designated (e), providing for a so-called marital deduction, applicable with respect to estates of decedents dying after the date of enactment of the bill. The deduction is not allowed in computing the net estate of a nonresident not a citizen of the United States. In general, under this new subsection a deduction is allowed for an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse but the aggregate amount of such deductions is limited to 50 per cent of the value of the adjusted gross estate. There are, however, certain important qualifications and limitations, which are discussed below.

SECTION 812(e)(1), (3), AND (4), INTEREST IN PROPERTY PASSING FROM THE DECEDENT TO HIS SURVIVING SPOUSE.

Subparagraph (A) of section 812(e)(1) is the basic rule under which the marital deduction is allowed. Under this rule a deduction is allowed for an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the decedent's gross estate.

The concept of the passing of an interest in property from the decedent as used in section 812(e) is expressed in the definition in paragraph (3) of section 812(e). Such paragraph (3) defines as so passing, interests which commonly would be considered as passing from the decedent, namely, interests bequeathed, devised, or transferred by the decedent or inherited from the decedent, or the dower or curtesy interest (or statutory interest in lieu thereof) of the decedent's surviving

spouse. The interest of a surviving wife in property held as community property under the law of California in effect prior to July 29, 1927, is an interest which under the definition in section 812(e)(3) is considered as passing to her from the decedent. In addition, under subparagraph (E) of section 812(e)(3) there is treated as an interest passing from the decedent to his surviving spouse the interest held at the time of the decedent's death by the decedent and his spouse in a joint tenancy, tenancy by the entirety, a joint bank account, or any other coownership with right of survivorship to which section 811(e) of the Code applies. Under subparagraph (F) of section 812(e)(3) an interest is considered as passing to any person from the decedent if the decedent had a power (whether or not exercisable alone) to appoint such interest and if he appoints or has appointed such interest to such person, or if such person takes such interest in default upon the release or nonexercise of such power. Under subparagraph (G) of section 812(e)(3) an interest is considered as passing from the decedent to the person entitled to receive the proceeds of insurance upon the life of the decedent regardless of whether the decedent had previously assigned the policy or paid the premiums by way of gift.

The definition of an interest passing from the decedent is broad enough to cover all the interests included in determining the value of the decedent's gross estate under the various subsections of section 811 of the Code. The definition also applies in the application of all of the provisions of section 812(e) (in addition to its application in paragraph (1)(A)), and because of such application, as will be explained later, may cover interests other than those included in determining the value of the decedent's gross estate.

An interest in property does not pass to the surviving spouse from the decedent within the definition in section 812(e)(3) by reason of a claim against the estate, or any indebtedness, in favor of the surviving spouse for which a deduction is allowed by section 812(b). Neither the payments made in satisfaction of such a claim or debt nor the amounts expended in accordance with the local law for support of such surviving spouse during the settlement of the estate pass to such surviving spouse from the decedent within the meaning of section 812(e)(3).

While the deduction is allowed under subparagraph (A) with respect to any interest in property, certain exceptions are provided under the other subparagraphs of section 812(e)(1) which are explained hereinafter. Generally, a power of appointment is not an "interest in property." Accordingly, no deduction is allowed with respect to a power to appoint given to a surviving spouse, except as provided in the special rules in subparagraphs (F) and (G) of section 812(e)(1), in the case of certain trust and insurance proceeds where the surviving spouse is given a power to appoint.

In order to give rise to the marital deduction with respect to any interest passing to the surviving spouse, the value of such interest must be included in determining the value of the decedent's gross estate. Thus, if the surviving spouse inherits foreign real estate from the decedent (not included in the value of the gross estate under section 811) or acquired property of the decedent by a transfer during the decedent's life for a full and adequate consideration in money or money's worth, no deduction will result from such interests passing to the spouse.

The terms "interest" and "property," as used in section 812(e) have separate and distinct meanings. The term "property" is used in a comprehensive sense and includes all objects or rights which are susceptible of ownership. The term "interest" refers to the extent of ownership, that is, to the estate or the quality and quantum of ownership by the surviving spouse or other person, of particular property. For example, if the surviving spouse is specifically devised an estate for her life in a farm, the "interest" passing to her is the life estate, and the "property" in which such interest exists is the farm. Generally the property in which any person is considered as having an interest is the property out of which, or the proceeds of which, such interest may be satisfied. Thus, in the case of a bequest, devise, or transfer of an interest which may be satisfied out of, or with the proceeds of, any property of the decedent's general estate or of a trust, the interest so bequeathed, devised, or transferred is an interest in any and all of such property. If the decedent's general estate or the trust consists of assets which are themselves interests in property (such as leases), the interest so bequeathed, devised, or transferred is an interest in such property.

The amount of the marital deduction is determined by the value at the date of the decedent's death of the interest in property which passes or has passed to the surviving spouse, unless the value of the gross estate is determined under the optional valuation rule in section 811(j) of the Code, in which case the value

is determined as of such date with adjustment as is provided in section 811(j). (See section 364 of the bill for an amendment to section 811(j) applicable in valuing any interest in property with respect to which a marital deduction is allowed.) Subparagraph (C) of section 812(e)(1), which is discussed subsequently, contains a special rule reducing the amount of the marital deduction in certain cases where the interest passing to the surviving spouse is an interest in unidentified assets.

The following example illustrates the determination of the marital deduction under section 812(e)(1)(A): The decedent's will directs the executor to sell certain described real estate and with the proceeds thereof to purchase stock of the X Corporation and to turn such stock over to the widow. The value of the real estate at the decedent's death was $10,000 but it was sold by the executor prior to one year after the decedent's death for $12,000. The stock was purchased for $12,000 but had a fair market value of $8,000 at the death of the decedent. If the gross estate is valued at the date of the decedent's death, the marital deduction is $10,000 (the value of the real estate at the time of death) since such value was the value of the interest included in determining the value of the gross estate. If the value of the gross estate is determined under the optional valuation rule of section 811(j), the marital deduction is $12,000, the value of the real estate at the time of the sale within the 1-year period.

If the surviving spouse takes under the decedent's will, the interest passing to her is determined from the will. In this connection proper regard should be given to interpretations of the will rendered by a court in a bona fide adversary proceeding. If, as a result of a controversy involving a bequest or devise to the surviving spouse, such spouse assigns or surrenders an interest in property pursuant to a compromise agreement in settlement of such controversy, the amount so assigned or surrendered is not deductible as an interest passing to such spouse. Moreover, any interest received by the surviving spouse under a settlement which does not reflect her rights under the local law does not pass to the surviving spouse from the decedent. However, if the surviving spouse elects to take her share of the decedent's estate under the local law instead of taking an interest under the will, the interest she takes under the local law is by the definition in section 812(e)(3) considered as passing from the decedent to the surviving spouse. The failure of a widow to elect to take under the local law is not considered to any extent as a purchase by her of the interest she takes under the will.

Paragraph (4) of section 812(e) provides a special rule in the case of a disclaimer of an interest passing from the decedent. This paragraph was not in the bill as passed by the House. A disclaimer is a complete and unqualified refusal to accept the rights to which one is entitled. If a person uses these rights for his own purposes as by receiving a consideration for his formal disclaimer he has not refused the right to which he was entitled. There can be no disclaimer after an acceptance of such rights, expressly or impliedly.

In general, for the purpose of section 812(e), an interest disclaimed by the surviving spouse is not considered to pass to her, but an interest disclaimed by a person other than the surviving spouse is considered to pass to such person in the same manner as if the disclaimer had not been made. For example, if the surviving spouse disclaims a bequest of the decedent to her and the property falls into the residue passing to other persons, no marital deduction is permitted with respect to such property. The property is considered as passing from the decedent to the residuary legatees. If, in such a case, however, the surviving spouse is the residuary legatee, the interest which she so disclaimed is considered as passing to her from the decedent (as a result of the disclaimer) for the purposes of the marital deduction.

If an interest in property is received by the surviving spouse as a result of a disclaimer made by any other person, such interest is not considered as passing to the surviving spouse from the decedent. Thus, if a bequest of an interest in property to a person other than the surviving spouse is disclaimed and such interest falls into the residue of the estate bequeathed to the surviving spouse, such interest is not considered as passing to the surviving spouse from the decedent for the purpose of determining the marital deduction. Another example is a case in which there is included in the value of the gross estate property with respect to which the decedent has a power of appointment and in which the surviving spouse is the taker in default of a valid appointment. If the decedent's appointee disclaims any interest under the attempted appointment and the property is received by the surviving spouse, no marital deduction results

because under section 812(e)(4) the property is considered as passing from the decedent to the appointee as if the disclaimer had not been made.

If during the lifetime of the decedent he attempted to make a gift of property to a person who, however, refused any interest in the property so that no gift in fact was made, and, thereafter, the decedent by his will bequeathed the property to his surviving spouse, a marital deduction is not prohibited by the disclaimer provisions of section 812(e)(4). Whether or not the renunciation of a will and the election of a surviving spouse to take under the intestate law is considered as a disclaimer, only the interest taken by the surviving spouse under the law is considered to pass to her from the decedent.

Subparagraph (E) of section 812(e)(1) specifically provides for the application in determining the value of any interest in property passing to the surviving spouse of rules which are generally applicable in determining the net value of any gift or bequest. Clause (i) of such subparagraph requires that there shall be taken into account the effect which the amount of any estate, succession, legacy, or inheritance tax may have upon the net value of any interest in property passing to a surviving spouse. This provision is designed to prevent any implication that such taxes should not be taken into account where such taxes and the marital deduction are mutually interdependent. This provision is substantially the same as that provided in section 812(d) of the Code, relating to bequests, etc., to charity. The rule applies where the burden of a death tax falls upon the surviving spouse or the property in which an interest passes to the surviving spouse.

Clause (ii) of such subparagraph (E) directs that in determining the value of any interest passing from the decedent to the surviving spouse, incumbrances or obligations shall be taken into account in the same manner as if the value of a gift to the spouse of the interest passing were being determined. This is a clarification which was not expressed in the bill as passed by the House. If the decedent by his will leaves to his surviving spouse real estate subject to a mortgage (whether or not such mortgage was a personal liability of the decedent), the value of the interest passing to the surviving spouse does not under this section include the mortgage. If, however, the decedent by his will directs the executor to pay off the mortgage, such payment constitutes an additional interest passing to the surviving spouse. If the decedent bequeaths certain property to his surviving spouse subject, however, to her agreement, or a charge on the property, for payment of $1,000 to X, the value of the bequest (and, accordingly, the value of the interest passing to the surviving spouse) is the value, reduced by $1,000, of such property.

The interest passing to the surviving spouse from the decedent is only such interest as the decedent can give. If the decedent by his will leaves the residue of his estate to the surviving spouse and she pays, or if the estate income is used to pay, claims against the estate so as to increase the residue, such increase in the residue is acquired by purchase and not by bequest. Accordingly, the value of any such additional part of the residue passing to the surviving spouse can not be included in the amount of the marital deduction.

In case there is included in the decedent's gross estate a reversionary or remainder interest in property and the executor elects, as provided in section 925 of the Code, to postpone the payment of the part of the estate tax attributable to such interest, in determining such part it is contemplated that proper effect shall be given to any marital deduction allowed.

The status of an individual as the decedent's surviving spouse is determined at the time of the decedent's death. A legal separation which has not (at the time of the decedent's death) terminated the marriage does not affect such status for the purposes of section 812(e)(1). A transfer by the decedent during his lifetime to an individual to whom he was not married at the time of the transfer but to whom he is married at the time of his death and who survives him is a transfer by the decedent to his surviving spouse. If an interest in property passes from the decedent to a person who was his spouse but is not married to him at the time of his death, the interest is not considered as passing to the decedent's surviving spouse even though such person survives the decedent.

SECTION 812(e)(1) (B) AND (C). NATURE OF INTEREST PASSING; TERMINABLE INTEREST RULE.

Subparagraph (B) of section 812(e)(1) disallows the marital deduction with respect to certain terminable interests. Where, upon the lapse of time, upon the occurrence of an event or contingency, or upon the failure of an event or con-

tingency to occur, the interest passing to the surviving spouse will terminate or fail, the marital deduction will be disallowed under such subparagraph (B) if the conditions of clauses (i) and (ii), or of clause (iii) of such subparagraph are met. It is not necessary under such subparagraph (B) that the contingency or event must occur or fail to occur in order to make the interest terminable. Thus a terminable interest under such subparagraph includes an interest bequeathed to the surviving spouse as long as she resides in Washington, D. C. On the other hand, it includes interests which will in all events terminate, such as an estate for the life of the surviving spouse.

Subparagraph (B) is intended to be all-encompassing with respect to various kinds of contingencies and conditions. Thus, it is immaterial whether the interest passing to the surviving spouse is considered as a vested interest subject to divestment or as a contingent interest. Subparagraph (B) applies whether the terms of the instrument or the theory of their application are conceived as creating a future interest which may fail to ripen or vest or as creating a present interest which may terminate. The occurrence of a contingency includes the ending of a condition. Thus, an interest given to the surviving spouse as long as she remains unmarried is a terminable interest.

However, the interest of the surviving spouse is not considered a terminable interest merely because her possession or enjoyment may be affected by events not provided for by the terms of the bequest. Thus, a fee-simple interest is not a terminable interest merely because the physical possession and enjoyment of the property by the surviving spouse will terminate at her death. Nor is such an interest, or any other interest, considered as a terminable interest merely because the surviving spouse may lose it by a fire or earthquake or it may be taken by condemnation or for nonpayment of taxes. An interest in property is not a terminable interest merely because it may be consumed. Thus, a bequest of $50,000 or of a herd of 50 cattle is not a bequest of a terminable interest.

On the other hand, an interest may be a terminable interest under subparagraph (B), section 812(e), even though such interest is the entire property. Thus, if the property in which the surviving spouse has an interest, or all of the interest, is terminable, the interest of the surviving spouse is a terminable interest. Examples of such terminable interests are patents, copyrights, and annuity contracts.

As previously stated, it is necessary for the purposes of section 812(e)(1) to distinguish between an interest in property and the property in which such interest is an interest. Thus, if the decedent devises Blackacre to his wife for life with remainder to X, then X has an interest in the property (Blackacre) in which the surviving spouse has an interest. If the principal value of Blackacre was a coal mine which may be expected to be exhausted during the surviving spouse's life, nevertheless both the surviving spouse and X have an interest in the property, which is Blackacre. If the decedent devises Blackacre to his son in fee but subject to a charge on the rents of Blackacre in favor of his surviving spouse for her life, the surviving spouse and the son have an interest in the same property (Blackacre). In the case of a trust or fund, the income beneficiaries and the persons who may receive any part of the corpus have an interest in the property represented by the assets of the trust or fund as of the date of the decedent's death.

On the other hand, subparagraph (B) does not apply merely because another person has an interest in property in which the surviving spouse has an interest. There is no need to apply such subparagraph unless the interest passing to the surviving spouse is a terminable interest. Thus, if the decedent by his will devises Blackacre to X for life with the remainder to his surviving spouse, subparagraph (B) is not applicable inasmuch as the interest passing to the surviving spouse is not a terminable interest. Similarly, if the decedent by his will devises Blackacre to his wife and son as tenants in common, the marital deduction is allowed, since the surviving spouse's interest is not a terminable interest.

Clause (i) of subparagraph (B) applies only if an interest in the property (in which the surviving spouse's terminable interest is an interest) passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse or her estate. It is not necessary, however, for the interest so passing to another person to pass at the same time as the interest passing to the surviving spouse. An interest which passes to the estate of the surviving spouse will not cause the disallowance of the deduction, but an interest which passes from the decedent to the heirs of such spouse by purchase, where the State law does not give effect

to the rule in Shelley's case, is an interest passing to persons other than the surviving spouse for the purposes of clauses (i) and (ii).

Clause (ii) of subparagraph (B) applies only if, by reason of the passing of an interest described in clause (i), such other person (or his heirs or assigns) may possess or enjoy any part of the property after the termination or failure of the terminable interest passing to the surviving spouse in the same property. The term "possess or enjoy any part of such property" is intended to be broadly construed. It is immaterial under this provision whether such other person possessed or enjoyed any part of the property prior to the termination of the interest of the surviving spouse. Thus, as long as such other person may possess or enjoy any part of the property after the termination of the surviving spouse's interest, clause (ii) applies even though such possession or enjoyment is a continuation from a time prior to such termination.

It should be noted that both clauses, (i) and (ii), use some form of the term "passing," which is intended to have the technical meaning given to it by the definition in paragraph (3) of section 812(e). As used in such clauses, however, the term "passing" is not confined to the passing of an interest included in determining the value of the decedent's gross estate.

Under subparagraph (C) of section 812(e)(3), the dower or curtesy interest of the surviving spouse (or statutory interest in lieu thereof) is defined as an interest passing from the decedent. If such interest is a terminable interest, such as a life estate, the marital deduction would nevertheless be disallowed under subparagraph (B) of section 812(e)(1).

Under the definition in subparagraph (F) of section 812(e)(3), if the decedent exercises a taxable power of appointment over only a portion of the property subject to the power, all interests in the property subject to the power are nevertheless considered as passing from the decedent. Thus, if the decedent has a taxable power of appointment (under section 811(f) of the Code) over the property, which, to the extent not appointed, is to pass to X, and the decedent by his will appoints only a life estate to his wife, an interest in the same property is nevertheless considered as passing from the decedent to X. The definition of "passing," however, extends to any case in which the decedent possessed a power to appoint (even though not a taxable power of appointment) and extends to exercises and releases of any such power during life. An example is a case in which a decedent in 1940 was given a power of appointment over Blackacre exercisable only in favor of his surviving spouse, his children, and the children of X (a stranger, not the creator of the power); to the extent not appointed Blackacre was to go to Y. The decedent in 1941 released his power except with respect to the power to appoint the income from Blackacre for 20 years; and at his death the decedent appointed such income interest to his surviving spouse. The power at the time of the partial release was not a taxable power. However, under the definition of "passing," an interest in Blackacre passed (upon the release in 1941) from the decedent to Y and accordingly the interest appointed to the surviving spouse does not qualify for a deduction under the terminable interest provisions.

The application of clauses (i) and (ii) is further illustrated by the following examples:

Example (1). The decedent owned the entire interest in Blackacre. He transferred Blackacre by gift to his son but retained a lease for 20 years. At his death the decedent bequeathed the lease to his surviving spouse. No marital deduction is allowed because the interest passing to the surviving spouse is a terminable interest in Blackacre in which an interest also passed from the decedent to his son who can possess or enjoy the property after the expiration of the lease. The facts of this case may be varied, but as long as an interest in Blackacre passed at any time by gift from the decedent to a person other than the surviving spouse, and the lease (whether retained or reacquired by the decedent) was bequeathed or transferred from the decedent to the surviving spouse no marital deduction will be allowed with respect to such lease. If, however, the decedent had sold Blackacre to any person for an adequate and full consideration in money or money's worth and retained or purchased a 20-year lease in Blackacre which he subsequently bequeathed to the surviving spouse, the marital deduction with respect to the lease passing to the surviving spouse is not disallowed under subparagraph (B).

Example (2). The decedent by his will devised Blackacre to his wife and daughter as joint tenants. Both the wife and daughter have terminable interests in the same property, Blackacre. The daughter may (if she survives the wife)

possess or enjoy such property after the termination of the wife's interest. Accordingly, no marital deduction is allowed with respect to the interest passing to the surviving spouse. It is immaterial that the daughter may not possess or enjoy all of Blackacre in the event of a severance of the joint interest. It is sufficient under clause (ii) that any part of the property may (by any possibility) be possessed or enjoyed by the daughter after the termination or failure of the wife's interest. Similarly, if the property were bequeathed in trust for the joint benefit of the wife and daughter with the corpus passing to the survivor, no marital deduction would be allowed. The daughter, by surviving the spouse, may possess or enjoy the property after the termination of the spouse's interest.

In determining whether an interest in property is a terminable interest and whether the conditions of clauses (i) and (ii) are met, the situation is viewed as at the date of the decedent's death, although effect must be given to interests which have passed prior to the decedent's death. Thus, if the decedent transferred Blackacre, in contemplation of death to his wife, Mary, for her life with remainder to X if surviving Mary, if not, to Mary's estate, and X dies prior to the decedent's death and while Mary is still living, the interest passing to Mary (the surviving spouse) is, viewed at the time of the decedent's death, not disqualified for deduction under subparagraph (B). Another example is a case where the decedent during his lifetime transferred property by gift in contemplation of death to his wife for her life and then to her children and where, prior to the decedent's death, the children by sale or gift transferred the remainder interest to the surviving spouse. In this case the only interest passing to the surviving spouse from the decedent is a terminable interest in property in which an interest passed to the children. Viewed as of the date of the decedent's death, no person other than the surviving spouse (or her estate) may possess or enjoy the property. However, such spouse is an assignee of other persons (the children) to whom an interest passed and accordingly the marital deduction is disallowed under clause (ii) of subparagraph (B).

The election of the executor to determine the value of the gross estate as of a date subsequent to the decedent's death, as provided in section 811(j) of the Code, does not extend to such later date the time for determining the character of the interest passing to the surviving spouse and its deductibility under subparagraph (B). Section 811(j) relates only to valuation and applies only with respect to interests at the date of the decedent's death. For example, in the case of a gift, in contemplation of death, of a life estate to the surviving spouse with remainder to the survivor of such spouse and X, the marital deduction is not allowed for any interest passing to such spouse, even though X dies within 12 months after the decedent's death and the executor elects to use section 811(j).

The deduction is determined with respect to interests which the decedent specifically directed the surviving spouse to have out of estate assets or is determined with respect to the interest of the surviving spouse in the property represented by assets in the general estate out of which, or the proceeds of which, the interest passing to her may be satisfied. Therefore, except as provided in clause (iii) of subparagraph (B), conversions of property after the decedent's death are immaterial to the deduction. The following examples serve to illustrate this point.

Example (1). The decedent by his will bequeathed a life estate to his surviving spouse, with remainder to his son, in certain property and thereafter the surviving spouse made a valid sale of her life estate for cash. The marital deduction is disallowed under subparagraph (B) because the interest passing from the decedent was the life estate with remainder to the son in the same property. The result would be the same if the executor gave cash to the surviving spouse instead of the life estate.

Example (2). The decedent by his will devised Blackacre to his wife for life, remainder to his son. The son transferred his remainder interest by gift to the surviving spouse, and by merger of the surviving spouse's interests, she held the fee in the property. No marital deduction is allowed in this case with respect to any part of the property, for the life estate is a terminable interest with respect to which no marital deduction is allowed under subparagraph (B). The remainder interest did not pass to the surviving spouse from the decedent.

If the decedent by his will bequeaths a terminable interest for which a deduction is not allowed and the surviving spouse takes in accordance with the will, the marital deduction is not allowed even though under the local law the interest which such spouse could have taken against the will was a fee interest for which a deduction would be allowed. Any theory that the interest which she could have taken under the local law did pass to her in such a case and was used by

her to purchase the interest under the will is contrary to the intended application of this section.

Where, under a bequest, etc., a future interest may pass to some one other than the surviving spouse, but it is not possible at the time of the decedent's death to ascertain the particular person or persons to whom such interest will pass, a new sentence added at the end of section 812(e)(3) makes it certain that such future interest shall, for the purposes of clauses (i) and (ii) of subparagraph (B), be considered as passing to a person other than the surviving spouse. Accordingly, under such provision an interest is considered to pass to a person other than the surviving spouse and such other person is considered as a person who may possess or enjoy the property after the termination or failure of the surviving spouse's interest. This provision, however, is not applicable to an interest which the surviving spouse may appoint if, by application of subparagraph (F) or (G), such interest is considered as passing to such spouse. The following examples illustrate the application of the special provision relating to such future interests:

Example (1). The decedent by his will devised Blackacre to his wife for life and then to such of his grandchildren as survive the wife but if no grandchildren survive the wife then to the estate of the surviving spouse. No marital deduction is allowable with respect to either the life estate or the contingent remainder to the surviving spouse's estate. An interest in the property is considered to pass to the grandchildren and some of them may possess or enjoy Blackacre upon the death of the spouse. It is immaterial that the grandchildren are not in being at the time of the death of the decedent.

Example (2). The decedent by his will devised Blackacre to his surviving spouse for life and then to such of the surviving spouse's heirs as B appoints, in default of appointment, however, to X. An interest is considered to pass from the decedent to persons other than the surviving spouse. In this case X or the appointees of B may possess or enjoy Blackacre after the death of the spouse.

Clause (ii) of subparagraph (B) applies if any person (other than the surviving spouse) or his heirs or assigns may by any possible circumstances under the terms of the bequest possess or enjoy any part of the property in which the surviving spouse's interest is an interest. Thus, in example (1), set forth immediately above, persons other than the surviving spouse (or her estate) may possess or enjoy the property after her death. This concept, of course, does not extend to the possession or enjoyment which persons may obtain by purchase or gift from the surviving spouse, inasmuch as an interest so obtained does not pass from the decedent. Except as provided in subparagraphs (F) and (G), however, if the surviving spouse is given an interest in property and a power to appoint any part of such interest, the possible appointees and takers in default of appointment are considered as persons to whom an interest passed from the decedent.

In the case of certain property which is terminable, a marital deduction may be allowed, even though clause (i) applies, as long as clause (ii) does not apply. Thus, if the decedent bequeaths all the interest he ever had in a patent to his wife and daughter as tenants in common, the marital deduction is allowed with respect to the interest of the wife in the patent. If, however, the patent were bequeathed to them for their joint lives and then to the survivor, the marital deduction would not be allowed.

The same principles apply in the case of insurance proceeds and annuity contracts, as illustrated by the following examples:

Example (1). The entire proceeds of an insurance policy on the life of the decedent are payable to the surviving spouse and the value of such proceeds is included in determining the value of the gross estate. A marital deduction is allowed with respect to the value of the proceeds because no person other than the surviving spouse has an interest in the proceeds. The result will be the same whether such proceeds are payable in a lump sum; are payable in installments to the surviving spouse, her heirs, or assigns, for a term; or are payable to the surviving spouse for her life with no refund of the undistributed proceeds or with such a refund to her estate. It is also immaterial whether any such mode of payment is determined by an option exercised by the decedent or exercised by the surviving spouse.

Example (2). The decedent during his lifetime purchased an annuity contract under which the annuity was payable during his life and then to his spouse during her life if she survived him. The value of the interest of the decedent's surviving spouse in such contract at the death of the decedent is included in determining the value of his gross estate. A marital deduction is allowed with

respect to the value of such interest so passing to the decedent's surviving spouse inasmuch as no other person has an interest in the contract. If upon the death of the surviving spouse the annuity payments were to continue for a term to her estate, or the undistributed portion thereof was to be paid to her estate, the deduction is nevertheless allowable with respect to such entire interest. If, however, upon the death of the surviving spouse, the payments are to continue to another person (not through her estate) or the undistributed fund is to be paid to such other person, no marital deduction is allowable inasmuch as an interest passed from the decedent to such other person.

A marital deduction is also disallowed for the interest passing to the surviving spouse as an income beneficiary or annuitant under a trust in which other persons have an interest, except as provided in subparagraph (F) of section 812(e)(1).

Clause (iii) disallows the marital deduction in cases where pursuant to the decedent's direction terminable interests are to be acquired for the surviving spouse. Thus, under this provision, if the decedent directs the executor of his estate to purchase an annuity contract for the decedent's surviving spouse for a term of years or for her life, no marital deduction is allowed for the interest so passing to the surviving spouse. In such a case it is immaterial whether or not other persons have, under clauses (i) and (ii), an interest in the contract. It is also immaterial whether the decedent (in addition to directing the purchase of the annuity contract) designated or did not designate the assets to be used for the purchase. Clause (iii) also applies to the acquisition by a trustee, at the direction of the decedent, of a terminable interest for the surviving spouse.

The last sentence of subparagraph (B) contains a special provision with respect to terminable property. Under this provision, an interest is not to be considered a terminable interest merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term. This provision does not prevent the operation of subparagraph (B) upon a partial interest (such as a life estate) of the surviving spouse in bonds or notes, with respect to which the marital deduction may be disallowed under clauses (i) and (ii). This provision, however, has special application in cases under clause (iii). An example of a case in which the interest of the surviving spouse in a note is not taken out of the category of a terminable interest by reason of the last sentence of subparagraph (B), is a case in which the executor is directed to lend money to a trust and acquire its note for the surviving spouse with terms providing for the payment of principal and interest to the surviving spouse in equal installments over a term of years.

If the decedent directs his executor or trustee to purchase bonds or notes for the surviving spouse, the marital deduction is not disallowed under clause (iii), unless the decedent directs the purchase of bonds or notes the discharge of which has the effect of an annuity. However, the marital deduction in such case may also be disallowed if the surviving spouse's interest in such bonds or notes is not the complete interest and clauses (i) and (ii) are applicable by reason of an interest passing to another person.

Subparagraph (C) contains a special rule, which was not in the bill as it passed the House, with respect to the surviving spouse's interest in unidentified assets. This rule is addressed generally to situations in which the surviving spouse is a pecuniary or residuary legatee or is a beneficiary of a trust created by the decedent during life or by will, or is the heir of an intestate decedent. In such cases there has passed to the surviving spouse an interest in property represented by all the assets included in the decedent's general estate (which does not include assets named by the decedent to pass under specific bequests) or included in the trust. However, under the rule of subparagraph (C), if any such assets (in the general estate or trust) would, if specifically passing to the surviving spouse, not be deductible, the value of such asset shall be applied in reduction of the amount otherwise deductible for the general or residuary bequest or transfer in trust.

The application of subparagraph (C) is illustrated by the following examples:

Example (1). The decedent bequeaths $50,000 to his surviving spouse. The general estate includes a term for years (valued at $60,000 in determining the value of the decedent's gross estate) in Blackacre—an interest retained by the decedent after a gift of Blackacre to his son. Accordingly, the marital deduction with respect to the bequest of $50,000 is reduced to zero. It is immaterial whether the surviving spouse actually receives the term for years.

Example (2). The decedent during his life created a trust reserving the income for himself (and his estate). The trust was to terminate upon the death of the survivor of himself and his wife, at which time the corpus was to be paid

to his children. The decedent died with his wife surviving and the income interest fell into the residue of his estate. The decedent bequeathed one-half of the residue to his surviving spouse. The amount of the marital deduction for the value of one-half of the residue is to be decreased by the value at the time of the decedent's death of such income interest in the trust (and for any other terminable interest included in such residue for which a marital deduction would not be allowed if specifically bequeathed or devised to the decedent's surviving spouse).

Subparagraph (C) applies to trusts in which the surviving spouse has the remainder interest and trusts under subparagraph (F) in which the surviving spouse has a power to appoint the corpus. In such cases the marital deduction with respect to the value of the corpus is reduced as provided in subparagraph (C). In the case of a trust created during the decedent's lifetime, subparagraph (C) applies to the trust assets as of the date of the decedent's death.

In determining the assets out of which the interest passing to the surviving spouse may be satisfied, such assets are determined prior to payment of any general claims, but without including named property specifically bequeathed or devised.

The disclaimer provisions of paragraph (4) of section 812(e) are also applicable in conjunction with the terminable interest rule of section 812(e)(1)(B), as illustrated by the following example:

Example. The decedent devises Blackacre to his surviving spouse for life and remainder to his son. The son disclaims the devise to him and the remainder interest falls into the residue of the estate which is also bequeathed to the surviving spouse. No marital deduction is allowed because under section 812(e)(4) the remainder interest is considered as passing to the son as if the disclaimer had not been made.

Although section 812(e)(4) must be applied in determining an interest passing to the surviving spouse and other persons, subparagraph (C) of section 812(e)(1) may reduce the amount of the marital deduction allowed after application of such paragraph (4).

SECTION 812(e)(1) (D), (E), (F), AND (G). EXCEPTIONS TO THE TERMINABLE INTEREST RULE.

Subparagraph (D) of section 812(e)(1) provides an exception to the terminable interest rule under subparagraph (B) of such section. This exception is for the purpose of allowing the marital deduction in certain cases where there is a contingency with respect to the interest passing to the surviving spouse under a common-disaster clause or similar clause in the decedent's will. Under the rule in the bill as it passed the House, a marital deduction is allowed with respect to an interest which does pass to the surviving spouse even though such interest would have terminated or failed upon the death of such spouse, as long as such termination or failure could have resulted only if such death had occurred within a period not exceeding six months after the decedent's death. This provision is amended in your committee bill so as to extend the application of the rule to cases in which the death of the surviving spouse would cause a termination or failure of her interest only if it occurred as a result of a common disaster resulting in the death of the decedent and the surviving spouse. Your committee bill makes subparagraph (D) applicable also in cases in which death either within the 6-month period or as the result of a common disaster would alone deprive the surviving spouse of her interest. In all such cases, subparagraph (D) applies only if such spouse does not in fact die within such period or as a result of such common disaster, as the case may be.

An example of the application of subparagraph (D) is a case in which the decedent's will provides that all his property shall pass to his spouse if she survives him by three months; but if she does not survive him such property shall pass to the X charity. In this case the interest of the surviving spouse will terminate or fail only if she dies within three months following the date of the decedent's death. If in fact she does not die before the expiration of such period (and accordingly the property passes to her under the terms of the decedent's will), the marital deduction is allowable. It should be noted in this case that a contingent interest in the property passed to the X charity and, but for the provisions of subparagraph (D) of section 812(e)(1), the marital deduction would be disallowed under subparagraph (B) of section 812(e)(1).

If the decedent's will provides that the property otherwise bequeathed or devised under his will to his surviving spouse shall pass to other named persons

if such spouse dies as a result of a common disaster in which he meets his death, and if at the moment of his death the possibility exists that such spouse will die as a result of such a common disaster, then subparagraph (D) is applicable. In such a case the deduction will be allowed if under the local law the surviving spouse does take the property, whether because it is determined that in fact she did not or could not die in the disaster in which the decedent met his death or whether under the local law it is presumed that death more than six months after the decedent's death can not result from the disaster in which the decedent met his death. If no possibility exists at the moment of the decedent's death that his surviving spouse will die as a result of a common disaster, the mere fact that there is a clause in his will which would prevent the passing of an interest in property to her if she did so die does not make her interest terminable.

If a clause in the decedent's will provides that the property bequeathed or devised to his spouse shall not pass to her if it can not be determined whether she survived him (whether or not they meet their deaths in a common disaster) such clause does not make the interest of the surviving spouse terminable if she in fact survives.

The rule of such subparagraph (D) does not apply to an ordinary life estate, such as under a devise of Blackacre to the wife for her life with remainder to X. While it is true that death of the wife within the 6-month period will cause a termination or failure of her interest, it is also true that her death at any time will also cause such termination or failure and accordingly the case does not meet the test of clause (i) of subparagraph (D).

Subparagraph (F) of section 812(e)(1) also provides an exception to the terminable interest provisions of subparagraph (B) of such section. This exception is for the purpose of allowing the marital deduction in the case of certain trusts where the surviving spouse has a power of appointment. The other provisions of section 812(e)(1) are still applicable generally to interests passing to the surviving spouse in trust. For example, if the decedent by a transfer in contemplation of death creates a trust providing for all the income thereof to be paid to his spouse for 10 years and upon the end of such 10-year period or the prior death of the spouse the trust is to terminate and the corpus is to be paid to his spouse or her estate, the marital deduction is allowable, even though at the time of death the trust is still in effect. In this case, although the interest of the spouse in the trust for 10 years is a terminable interest, no person other than the surviving spouse has an interest in the trust. The value of the spouse's interest in the corpus is includible in the marital deduction under subparagraph (A) of section 812(e)(1) inasmuch as it is not a terminable interest.

The provisions of subparagraph (F) of section 812(e)(1) under the bill as it passed the House have been expanded in your committee bill. These provisions have the effect of allowing a marital deduction with respect to the value of property transferred in trust by or at the direction of the decedent where the surviving spouse, by reason of her right to the income and a power of appointment, is the virtual owner of the property. This provision is designed to allow the marital deduction for such cases where the value of the property over which the surviving spouse has a power of appointment will (if not consumed) be subject to either the estate tax or the gift tax in the case of such surviving spouse.

In order for the interest in property transferred in trust to qualify for a marital deduction under subparagraph (F), the following conditions must be met:

(1) The trust must be created by a transfer of property by the decedent during his lifetime or by his direction under his will.

(2) Under the terms of the trust the surviving spouse must be entitled for her life to all the income from the corpus of the trust. The term "income" is used here in the same sense as it is used in section 162 of the Code, relating to income of estates and trusts. It is not necessary that the trust shall terminate upon the death of the surviving spouse. The trust may terminate at an earlier date by reason of the exercise of a power of appointment by the surviving spouse in favor of any person or by reason of the appointment by any person of the corpus of the trust to the surviving spouse. The requirement that the surviving spouse be entitled for life to all the income from the corpus refers only to the income from the corpus as long as the trust is in existence. If any person other than the surviving spouse is entitled to any part of the income from the corpus of the trust during the life of such surviving spouse (other than income derived by such person from any part of the corpus appointed by the surviving spouse), the trust does not qualify.

(3) The surviving spouse must be entitled to the income from the corpus of the trust annually, or at more frequent intervals. This requirement disqualifies any

trust the income of which is required to be accumulated or may, in the discretion of the trustee, be accumulated.

(4) The surviving spouse must have power to appoint the entire corpus free of trust, and such power must be exercisable in favor of such surviving spouse or in favor of her estate. A "power to appoint" the corpus includes any power which in substance and effect is such a power regardless of the nomenclature used in creating the power and local property law connotations. If the power is exercisable only at death, the trust is not disqualified merely because the surviving spouse also has the power to invade only part of the corpus during her lifetime. It is also immaterial if, in addition to the power to appoint the entire corpus free of trust, the surviving spouse has a lesser power, such as to appoint any part of the corpus in trust for the benefit of others. However, the surviving spouse must have power to appoint the entire corpus to herself, or if she does not have such a power she must have power to appoint the entire corpus to her estate. If one such power is her only power, the requirement is met. She may also have any combination of additional powers.

(5) If any person other than the surviving spouse had a power to appoint any part of the corpus, such power must be exercisable only in favor of the surviving spouse.

(6) The power possessed by the surviving spouse to appoint the entire corpus free of trust must be exercisable alone and in all events. Nevertheless, the trust is not disqualified merely because the power is exercisable only during life or only by will. An example of a power which does not meet the requirements is a power which (unless sooner exercised or released) will terminate on January 1, 1950, or on the date of death of the surviving spouse, whichever occurs first. An example of a testamentary power not exercisable in all events is a power exercisable by will only if the surviving spouse does not remarry. If the surviving spouse has a power to appoint the corpus of a trust created during the decedent's life, the power must be exercisable, when viewed as of the date of the decedent's death, in all events. The trust does not qualify under subparagraph (F) if the surviving spouse's power to appoint the corpus free of trust is exercisable only in conjunction with, or with the consent of, another person. Either the power possessed by the surviving spouse to appoint during life or her power to appoint at death must meet both tests of being exercisable alone and in all events. If one such power meets the requirements, the limitations or conditions on any other power are immaterial. If the surviving spouse has only the power to invade corpus for her own benefit but such power is exercisable only in conjunction with, or with the consent of another person, the trust does not qualify.

If all the tests of subparagraph (F) are met, then the interest in property transferred upon the creation of the trust shall, for the purpose of the marital deduction, be considered as passing to the surviving spouse, and no part of the interest so passing shall be considered as passing to any person other than the surviving spouse. For example, in the case of a trust to which subparagraph (F) applies, if the corpus of the trust, upon the failure of the surviving spouse to exercise the power of appointment, is to pass to the decedent's children, the entire interest in such corpus is nevertheless considered to pass to the surviving spouse, and no part of the interest in trust is considered as passing to any other person.

Even though a trust meets all the tests of subparagraph (F), the provisions of subparagraph (B) (i) and (ii) may disallow the marital deduction where the trust corpus consists, in whole or in part, of terminable interests. Thus, if the decedent made a gift of Blackacre to X, reserving a term for 20 years, and thereafter created a trust (qualifying under subparagraph (F)) over such term in Blackacre, a marital deduction is not allowed. Similarly, subparagraph (C) may reduce the marital deduction otherwise allowable under subparagraph (F) in cases where the decedent merely directs the creation of a trust, the corpus of which may consist of a terminable interest in the decedent's general estate.

The disclaimer provisions of paragraph (4) of section 812(e) apply to the disclaimer by the surviving spouse of any interest in property which, under subparagraph (F) or (G) of section 812(e)(1), is considered as passing from the decedent to such spouse.

Subparagraph (G) of section 812(e)(1), which was not contained in the bill as passed by the House, also provides an exception to the terminable interest provisions of subparagraph (B) of section 812(e)(1). This exception is for the purpose of allowing the marital deduction in the case of proceeds of life insur-

ance upon the life of the decedent where the surviving spouse is entitled to installments of the proceeds and has the same type of power possessed by the surviving spouse in the case of a trust to which subparagraph (F) applies. Subparagraph (G) applies only if the proceeds of the insurance are receivable in installments, commencing within one year after the decedent's death. The amounts payable to the surviving spouse must be installments which have the effect of reducing during her lifetime the aggregate proceeds of the policy available for future payments.

SECTION 812(e) (1)(H) AND (2). LIMITATION OF 50 PER CENT OF THE ADJUSTED GROSS ESTATE.

Subparagraph (H) of section 812(e)(1) provides that the aggregate amount of the deductions (computed without regard to such subparagraph (H)) shall not exceed 50 per cent of the value of the adjusted gross estate. The term "adjusted gross estate" is a new concept in the estate tax and is defined in paragraph (2) of section 812(e). Its use is confined solely to the computation of the 50 per cent limitation.

Subparagraph (A) of section 812(e)(2) provides the general rule for computation of the adjusted gross estate. This general rule is the only rule which will be applicable in most cases, for it applies except where the decedent and the surviving spouse at any time held property as community property. Under this general rule the adjusted gross estate is computed by subtracting from the entire value of the gross estate the aggregate amount of the deductions allowed under section 812(b) of the Code. The value of the gross estate referred to in this rule is the value at the date of the decedent's death or, if the value of the gross estate for the purpose of the tax is determined under the optional valuation rule of section 811(j), the value so determined.

Under such subparagraph (A), if the value of the decedent's gross estate is $100,000 and the aggregate amount of deductions allowed under section 812(b) is $10,000, the aggregate deduction under section 812(e) is limited to 50 per cent of $90,000. If the aggregate value of the interests passing to the surviving spouse for which deductions are allowed under section 812(e)(1)(A) does not exceed $45,000, the entire value of the interests so passing is deductible in computing the net estate. If the aggregate value of such interests exceeds $45,000, the aggregate amount of deductions under section 812(e) is limited to $45,000. In this and other similar cases by reason of the specific exemption allowed in computing the net estate, no estate tax may be payable. However, it should be noted that wherever the gross estate exceeds the exemption of $60,000 provided in section 935(c) of the Code, an estate tax return must be filed.

Subparagraph (B) of section 812(e)(2) provides a special rule for computing the adjusted gross estate in cases involving community property. This rule applies only if the decedent and his surviving spouse at any time held property as community property under the law of any State, Territory, or possession of the United States, or of any foreign country. The general effect of this special rule is to compute the adjusted gross estate by subtracting from the value of the gross estate the value of community property included in the gross estate and the deductions under section 812(b) which are not allocated to such community property. The property, the value of which is to be subtracted, is specified in clauses (i), (ii), and (iii), relating, respectively, to community property held at death, community property transferred during life, and insurance on the life of the decedent purchased out of community property. If premiums or other consideration paid for insurance on the life of the decedent were paid in part out of property "held as such community property" by the decedent and his surviving spouse and in part out of other property, the amount receivable as such insurance purchased with such community property is such portion of the total amount receivable as the amount of such community property so paid bears to the total amount of the premiums or other consideration paid. The amount to be subtracted on account of deductions under section 812(b) is to be computed by a mathematical calculation as provided in clause (iv).

In this connection, it may be pointed out that section 812(e)(1) applies to an interest in community property (and in property formerly held as community property) and a marital deduction may be allowed with respect to such an interest. However, by means of the 50 per cent limitation, the deduction may be reduced or eliminated. Thus, if a decedent's gross estate includes separate property in addition to his interest in community property, the marital deduction is allowable to the extent of the value of the separate property reduced (as provided in clause

(iv) of such subparagraph (B)) by a portion of the deductions under section 812(b). If the value of a decedent's gross estate is $300,000, consisting of $200,000 for his interest in separate property (which is not for the purpose of section 812(e)(2)(B) considered as community property) and $100,000 for his interest in community property, and the decedent by his will bequeaths $100,000 to his surviving spouse, a marital deduction is allowed in an amount not in excess of 50 per cent of the balance of $200,000 remaining after subtracting the amount computed under clause (iv) for deductions. It is immaterial whether the decedent bequeaths his interest in separate property or community property to the surviving spouse. However, if the only property included in determining the value of the decedent's gross estate is the value of his interest in community property, no marital deduction will be allowed because the adjusted gross estate will be zero.

The property "held as such community property," referred to in clauses (i), (ii), and (iii) of subparagraph (B) is community property with certain exclusions and additions. By reason of the next to the last sentence of subparagraph (B), such community property does not include property held as community property where the interests of the spouses are determined under the law of California in effect prior to July 29, 1927. Such community property also does not include property merely because it was once held as community property by the decedent and a person who is not the decedent's surviving spouse.

However, under subparagraph (C) there is included in the category of property "held as such community property" certain separate property acquired by the decedent as a result of a conversion of community property (not excluded under the rules previously stated). If the decedent and and his surviving spouse at any time held property as community property, it will be necessary to establish such part of the value of any separate property included in the gross estate which is not to be considered "held as such community property." However, only conversions of community property to separate property in the calendar year 1942 and such conversions after the date of enactment of the bill come within the rule. The separate property acquired by the decedent in such a conversion and any property at any time acquired after such conversion by the decedent in exchange for such separate property (by one exchange or a series of exchanges) is considered as "held as such community property." This rule applies to partitions and other conversions of community property, including conversions to a joint tenancy, tenancy by the entirety or any other form of coownership, whether the partition or other conversion is effected by one transaction or a series of transactions. Thus, if in 1949 a husband transfers to his spouse all of his interest in Blackacre held by them as community property and such spouse at the same time (or any other time under an arrangement designed to effect a partition) transfers all of her interest in other community property to her husband, subparagraph (C), upon the death of one spouse, is applicable to the separate property so acquired by the decedent. If in such a case, the value of the separate property each spouse so acquired by such transaction (or series of transactions) is equal at the time of their acquisition, the entire separate property so acquired by the decedent is considered as "held as such community property."

Subparagraph (C)(ii) has a special rule applicable to cases where the value (at the time of the conversion) of the separate property so acquired by the decedent exceeded the value (at such time) of the separate property so acquired by the decedent's spouse. In such a case, only that part of such separate property (acquired by the decedent by such conversion) which is equal to such value of the separate property so acquired by such spouse is considered as "held as such community property." The portion of such separate property so considered is not merely an amount equal to the value of the spouse's separate property but is a fractional part of the property, and the same fractional part of every property acquired by the decedent in exchange (by one exchange or a series of exchanges) for such separate property is to be considered "held as such community property." If the decedent's spouse transfers to the decedent during his lifetime all her interest in community property and such property is included in determining the value of the decedent's gross estate, then no part of the value of such property is considered "held as such community property" and no part of such value is to be subtracted from the value of the gross estate in computing the value of the adjusted gross estate.

The following example will illustrate the application of clause (ii). Blackacre and 100 shares of stock were held by H and W, his spouse, as community property, and in 1942 H received the shares of stock as his separate property and W received Blackacre as her separate property. At the time of the con-

version, the shares of stock were worth $100,000, and Blackacre was worth $30,000. Thereafter H sold the shares of stock and invested the proceeds in Whiteacre, which he owned at the time of his death in 1949. Only 30 per cent of Whiteacre is considered as property "held as such community property," for upon application of clause (ii) such 30 per cent is obtained in dividing $30,000 (value of property received by W) by $100,000 (value of property received by the decedent at the time of the conversion).

Separate property considered under subparagraph (C) as property "held as such community property" is considered so held for the purposes of clauses (i), (ii), and (iii) and the application of the amount subtracted under such clauses in the ratio in clause (iv). This rule for treating certain separate property as community property, however, does not apply to separate property (and separate property acquired in exchange therefor) acquired by a conversion to separate property of community property where the interests of the spouses in such community property is determined under the California law in effect prior to July 29, 1927. On the other hand, the rule does apply (subject to the limitations as to time and the portion of property considered "held as such community property") to separate property acquired by conversion of any other community property held by the decedent and his surviving spouse, no matter how or from whom such other community property was obtained.

SECTION 362. PROPERTY PREVIOUSLY TAXED.

The principal amendment made by this section generally disallows with respect to property passing between spouses the deduction under section 812(c) of the Code for property previously taxed. The deduction will not be allowed with respect to property received by a decedent (for whose estate the deduction under section 812(c) is being computed) from a prior decedent who died after the date of enactment of the bill or from a donor by gift after such enactment, if such prior decedent at the time of death, or donor at the time of the gift, was the spouse of the decedent.

The deduction with respect to any property is disallowed if such property is disqualified under (A), (B), or (C) of the first new paragraph added to section 812(c). A deduction is not prohibited under (B) with respect to property received from the decedent's spouse by a gift made prior to the enactment of the bill. However, the deduction with respect to such property will not be allowed if the property is disqualified as property received from a prior decedent under (A), regardless of whether an estate tax was paid by the estate of the prior decedent. Thus in the case of such a gift the deduction will not be allowed with respect to such property if it is required to be included in the donor's gross estate, where such donor died after the enactment of the bill and prior to the decedent's death, and such donor at the time of the donor's death was the spouse of the subsequent decedent.

The deduction under section 812(c) is disallowed under this amendment regardless of whether a marital deduction was allowed under section 812(e) in computing the net estate of the prior decedent or under section 1004(a)(3) in computing the net gifts of the donor. The amendment is not applicable under section 861(a)(2) in computing the deduction for property previously taxed in the case of estates of nonresidents not citizens of the United States.

The disqualification (for the deduction) extends to property acquired by the decedent in exchange (which includes a series of exchanges) for property disqualified under (A), (B), or (C) of the first new paragraph added to section 812(c). Where property is held at the time of the prior decedent's death in joint ownership with right of survivorship, the interest of the surviving spouse is considered received from such prior decedent to the extent of the part of such property included in determining the value of the prior decedent's gross estate. If property is given by a third party to a husband and wife as joint tenants and upon the death of the husband one-half of such property is included in determining the value of his gross estate, then one-half of such property is received by the surviving spouse from the husband and one-half is received from the donor.

Another provision added in your committee bill identifies the donor in the case of a gift to the decedent where such gift is, by reason of the provisions of section 1000(f) of the Code (as added by section 374 of this bill), considered made one-half by a husband and one-half by his wife. The gift tax rule under section 1000(f) is to be applied and each spouse is considered as the donor to the extent of one-half the gift. Thus, a gift from an individual of $50,000 to the de-

cedent will be considered for purposes of section 812(c) as a gift of $25,000 from such individual and of $25,000 from his spouse if the gift is so considered for gift tax purposes. In such a case, if the husband paid a gift tax with respect to any part of the $25,000 considered as a gift by him but gift tax was not paid with respect to the $25,000 considered as a gift by his spouse (by reason of the $30,000 exemption under the gift tax), the deduction under section 812(c) is allowed only with respect to the $25,000 gift (or property acquired in exchange therefor) from the husband.

Another amendment to section 812(c) of the Code provides that the deduction otherwise allowable for property previously taxed (as in the case of property received from a person not the decedent's spouse) is to be reduced by a proportionate part of the amount of the marital deduction allowed under section 812(e) in computing the decedent's net estate. This reduction is consistent with the reduction under existing law on account of the deductions for claims, etc., under section 812(b) and bequests to charity under section 812(d).

SECTION 363. CREDIT FOR GIFT TAX.

This section, which was not contained in the bill as it passed the House, amends sections 813(a)(2) and 936(b) of the Code, relating to the credit against the estate tax for certain gift taxes paid with respect to property included in determining the value of the gross estate of the decedent. These amendments give effect in computing the credit for the gift tax to the estate and gift tax provisions for a marital deduction under sections 812(e) and 1004(a)(3) of the Code, as added by the bill, and to the gift tax provisions for splitting of gifts of spouses to third parties under section 1000(f) of the Code, as added by the bill.

The credit for the gift tax provided in section 813(a)(2) is subject to two limitations: The first limitation is that now contained in subparagraph (B) of such section, and the second limitation is that now contained in subparagraph (A) of such section. The first limitation is continued, except for clarifying changes in language, in clause (i) of a new subparagraph (D). Under this limitation, the credit for gift tax paid with respect to any gift is the amount which bears the same ratio to the total tax paid for the year in which the gift was made as the amount of such gift bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year. Clause (ii) of the new subparagraph (D) is a new provision which is applicable for the purpose of the rule contained in subparagraph (D)(i). Under this clause (ii), the amount of the gift which is used in the ratio for determining the total tax paid attributable to a gift does not include the amount of the annual exclusion ($3,000 under existing law) allowed with respect to such gift. The amount of the gift also does not include the amount allowed with respect to such gift as a charitable deduction or as a marital deduction. Thus, for the purpose of the computation under new subparagraph (D), if the only gift of the donor to his spouse during a calendar year, and after the enactment of the Revenue Act of 1948, was $10,000, the amount of such gift for the purpose of the computation under subparagraph (D) is $2,000; that is, the $10,000 reduced by the $3,000 annual exclusion and further reduced by the $5,000 marital deduction. The provisions of clause (ii), to the extent that they eliminate from the amount of the gift the annual exclusion and the charitable deduction, represent existing law.

The second limitation on the amount of the credit for gift tax is continued in subparagraph (A) of section 813(a)(2) with certain qualifications. In general, under existing law this provision limits the credit to (1) an amount which bears the same ratio to (2) the basic estate tax as (3) the value of so much of the property which constitutes the gift as is included in the gross estate bears to (4) the value of the entire gross estate. The only change in such subparagraph (A) itself is the elimination from (4), the value of the entire gross estate, of the aggregate amount of the deductions allowed under section 812 (d) and (e) (relating respectively to the charitable deduction and the marital deduction). The effect of this provision is to make the amount in (4) smaller and accordingly to allow, generally, a larger credit for the gift tax where this limitation is applicable than would be allowed if this change were not made.

The amount in (3), the value of so much of the property which constitutes the gift as is included in the gross estate, in the ratio stated in subparagraph (A) is to be reduced as provided in new subparagraph (B). The value (which is the value at the time of the gift or at the time of the death, whichever is lower)

is to be reduced first by such amount as will properly reflect the amount of such gift which was excluded on account of the annual exclusion in determining the total amount of gifts made during the year in which the gift was made. This reduction has long been prescribed by Treasury regulations and represents existing law.

The amount in item (3) in the ratio is also to be reduced if a marital deduction with respect to the gift is allowed under section 812(e). If the 50 per cent limitation on the deduction under 812(e) is not applicable (because the aggregate deductions for the value of the interests passing to the surviving spouse does not exceed 50 per cent of the adjusted gross estate), then the amount in item (3) is zero and consequently no credit for the gift tax with respect to such gift is allowed. If, however, the 50 per cent limitation is applicable, then the amount by which the value in item (3) is to be reduced with respect to each gift for which there is a marital deduction under section 812(e)(1) (without regard to subparagraph (H) thereof) is to be determined by the ratio in clause (ii) of subparagraph (B) of section 813(a)(2). The amount of the reduction in such case is an amount which bears the same ratio to such value in item (3) (before this reduction but after the reduction for the annual exclusion under clause (i)) as the aggregate amount of the marital deductions under section 812(e) (after the 50 per cent limitation) bears to the aggregate amount of such marital deductions computed without regard to such 50 per cent limitation.

The reduction of the value to be used in the ratio where an estate tax marital deduction is allowed with respect to the gift is illustrated by a case in which property with a value of $103,000 (at the time of the gift and at death) is transferred in fee by the decedent by gift in 1949 in contemplation of death to his spouse and included in the decedent's gross estate. If, in addition, bequests to the surviving spouse for which marital deductions are allowable under section 812(e)(1)(A) were made in an amount equal to $297,000, and the value of the adjusted gross is $600,000, the aggregate amount of deductions permitted under section 812(e) is $300,000. In such a case, the value of so much of the property which constituted the gift as is included in the gross estate, before reduction of such value as provided in new subparagraph (B) of section 813(a)(2), is $103,000. It should be noted that this amount is the value of the property without regard to any marital deduction which may have been allowed for gift tax purposes with respect to the gift to the spouse. The amount of $103,000 is, however, reduced (assuming this was the first or only gift by the decedent during the year to his spouse) by $3,000 on account of the exclusion under the gift tax (the value of the property not having changed), as provided in clause (i). The balance of $100,000 is further reduced, as provided in clause (ii), by the portion of such amount for which a marital deduction is allowed. This portion is $75,000, which is that part of $100,000 which $300,000 (the total amount deducted under section 812(e)) bears to $400,000 (the aggregate marital deductions without regard to the 50 per cent limitation).

The gift referred to in clause (ii) with respect to which a marital deduction is allowed is not intended to include gifts of property which, solely by reason of being brought into the gross estate (such as a gift in contemplation of death which is not itself deductible under section 812(e)), increased the adjusted gross estate and hence the aggregate amount of deductions under section 812(e).

If a so-called charitable deduction is allowed with respect to a gift, the amount in item (3) is to be reduced so as to not allow any credit for the gift tax with respect to such gift. A case in which this provision would be applicable is the following: The decedent during his life transferred in contemplation of death property in trust to pay the income to X for his life and, upon the death of X, to terminate the trust and distribute the corpus to the Y Foundation. The Y Foundation at the time of the gift, did not qualify as a charitable institution for which a deduction was allowable under section 1004(a)(2) for the purpose of the gift tax, but at the time of the decedent's death did qualify as a charitable institution under section 812(d) for which a deduction in computing the net estate is allowable. In such a case, in applying the limitation in subparagraph (A) for the purpose of determining the credit with respect to the gift to the Y Foundation, the amount in item (3) of the ratio will be reduced to zero.

In applying clauses (ii) and (iii) of subparagraph (B) "such gift" referred to therein, for which a marital deduction or charitable deduction is allowed, as the case may be, is the gift to the surviving spouse or the gift to the charity and does not include a gift to any other person even though such person and the surviving spouse (or the charity) received an interest in property under the same deed of gift. Thus, in the example given in the preceding paragraph of the

transfer to X for life and then to the Y Foundation, there are two gifts, one to X and the other to Y; and the amount of "such value" to be reduced as provided in clause (iii) is the value which would be included in item (3) of the ratio with respect to the gift to Y.

Under the provisions of the bill the computation of credit for gift tax (under both limitations) is required separately with respect to each gift and the law is intended to operate on the basis of such separate computation.

In the case of a gift to a spouse of an interest as sole joint tenant with the donor or as a tenant by the entirety, a marital deduction equal to one-half of the value of such interest is allowed in computing net gifts by reason of the provisions of section 1004(a)(3)(C) of the Code (as added by section 372 of the bill). In such a case, in computing the credit for the gift tax under the limitation in new subparagraph (D) of section 813(a)(2), the amount of the gift used in the ratio under such limitation does not include the amount of the marital deduction allowed under section 1004(a)(3) with respect to the gift. In computing the credit for the gift tax under the limitation in subparagraph (A) of section 813(a)(2), the value of so much of the property which constituted the gift as is included in the gross estate is (before reduction of such value as provided in subparagraph (B)) the value, at the time of the gift or at the time of the death, whichever is lower, of the interest given as joint tenant or as tenant by the entirety.

The limitations on the credit in the case of a gift of a joint interest is illustrated by a case in which a donor in 1949 purchases Blackacre, having a value of $206,000, for himself and his spouse as joint tenants. He thereby makes a gift of $103,000 for which a gift tax marital deduction of $51,500 is allowed. The amount of the gift for the purposes of the credit for gift tax paid with respect to such gift, computed under new subparagraph (D), is $48,500 (that is, $103,000 reduced by the $3,000 exclusion and $51,500 marital deduction). Assuming that the value of Blackacre remained unchanged at the donor's death, $206,000 is included in his gross estate with respect to Blackacre and a marital deduction is allowed in the amount of $206,000 under section 812(e)(1)(A) (before application of the 50 per cent limitation). However, the value to be used in the ratio for computing the limitation under subparagraph (A) (before reduction under subparagraph (B)) is $103,000, which was the value of the interest transferred by gift. Assume the decedent's adjusted gross estate (including the value of the joint tenancy) was $1,000,000, of which $594,000 (in addition to the survivorship interest) passed to his surviving spouse. The aggregate amount of marital deductions, therefore, is limited to $500,000. In such case, the credit for the gift tax paid, determined under the limitation in subparagraph (A), is that portion of the estate tax used in the ratio which $37,500 bears to $500,000 (the gross estate reduced by the marital deductions allowed). The amount $37,500 is obtained by reducing $103,000 first by the $3,000 exclusion and by reducing the balance, $100,000, by $62,500; that is, that portion of $100,000 which $500,000 (the aggregate amount of marital deductions allowed under section 812(e) bears to $800,000 (the aggregate marital deductions under section 812(e) computed without the 50 per cent limitation).

A new subparagraph (C) is added to section 813(a)(1) for determining the credit for the gift tax in the case of gifts which, for purposes of the gift tax (under section 1000(f) of the Code, as added by section 374 of the bill) are considered made one-half by the decedent and one-half by his spouse. The principal effect of this provision is to allow the estate of a decedent who was the actual donor of the gift a gift tax credit with respect to the entire gift.

It is contemplated under this provision that the credit will be computed with respect to both halves of the gift. Thus, with respect to the half considered a gift by the decedent for gift tax purposes, the credit is computed as provided in new subparagraph (D) for the proportionate part of the gift tax of the decedent paid with respect to such half. A credit is also allowed such decedent's estate for the proportionate part of the gift tax of his spouse paid with respect to the half considered as a gift made by her, also computed by applying new subparagraph (D). In determining the limitation in subparagraph (A) with respect to the portion of the estate tax attributable to the gift actually made by the decedent, such limitation is applied with respect to the combined value of the two halves of such gift, the value of each half being first separately reduced as provided in subparagraph (B).

In the case of property held by the decedent and his spouse jointly a gift of such property by them results, if section 1000(f) of the Code is made applicable by a proper consent, in a gift by each spouse of one-half of his undivided interest and of one-half of his spouse's undivided interest. In such a case, the decedent

is entitled to a credit for the gift tax paid with respect to his interest in the property which can be included in the value of his gross estate. Therefore, the credit is allowed in the case of such a decedent for the gift tax paid with respect to the half of his interest considered a gift by him and for the other half of his interest considered a gift by his spouse.

Thus, if a husband and wife each contribute $20,000 to purchase Blackacre (having a value of $40,000) as joint tenants, and convey Blackacre by gift to their son, and section 1000(f) of the Code is made applicable, each is considered as having made a gift of $20,000. Each spouse has given $10,000 of his half interest in Blackacre, and $10,000 of his spouse's half interest in Blackacre. Assuming $20,000 is included in the husband's gross estate by reason of the transfer, his estate is entitled to credit for the gift tax paid for the gift of $10,000 considered made by him of half of his interest in Blackacre and for the gift of $10,000 considered made by his spouse out of the other half of the decedent's interest in Blackacre. The credit with respect to such $10,000 gift considered made by his spouse is computed under new subparagraph (D) as applied to the gift tax of such spouse. Thus, if by reason of the exemption allowed in computing net gifts, no gift tax is paid with respect to the gift by the spouse of the decedent, the decedent's estate is entitled to a credit only with respect to the gift tax paid with respect to his gift of $10,000 out of his half interest in Blackacre, even though he also pays a gift tax with respect to the $10,000 gift considered made by him out of his spouse's half interest. The effect of the provision, therefore, is to allow the decedent's estate a credit upon the average gift-tax rate as between the spouses with respect to the gift of the jointly held property. If an exemption or an exclusion is allowed, with respect to the transfer of the joint property by gift, in computing net gifts of a spouse, the amount so allowed shall be considered allowed one-half with respect to the gift made by such spouse out of his interest in the property and one-half with respect to the gift considered made by such spouse out of the other spouse's interest in the property.

Amendments corresponding to those made in section 813(a)(1) are also made in section 936(b), relating to the credit against the additional estate tax for gift taxes paid.

The amendments made by this section are applicable with respect to estates of decedents dying after the date of enactment of the bill. These amendments are applicable in computing the credit against the estate tax in the case of estates of nonresidents not citizens of the United States (although the amendments with respect to gifts for which a marital deduction is allowed will have limited effect because such deduction is not allowed in the case of a nonresident alien donor and a nonresident alien decedent).

SECTION 364. OPTIONAL VALUATION.

The amendment made by this section to section 811(j) of the Code, relating to the optional method of determining the value of the gross estate, is made necessary by section 361 of the bill providing for a marital deduction in computing the net estate.

This amendment extends to the valuation of an interest in property for which a marital deduction is allowed substantially the same rule as is applicable under existing law in determining under the optional valuation method the value of any charitable bequest for which a deduction is allowed under section 812(d) of the Code.

SECTION 365. LIABILITY OF LIFE INSURANCE BENEFICIARIES, ETC.

Section 826 (c) and (d) of existing law provides a rule of apportionment with respect to the contribution on account of estate tax paid which the executor may collect from the beneficiaries of insurance policies on the decedent's life and from the recipients of property over which the decedent had a power of appointment. This section of the bill, which was not contained in the bill as it passed the House, is designed to give proper effect, in apportioning any liability under section 826 (c) or (d) in the case of the decedent's surviving spouse, to the marital deduction allowed under section 812(e) of the Code (as added by section 361 of the bill) with respect to such insurance proceeds or property (subject to the power) which passed to her.

If the aggregate amount of marital deductions under section 812(e) is allowed (without limitation under section 812(e)(1)(H) to 50 per cent of the adjusted gross estate) section 826(c) and section 826(d) do not apply to such insurance proceeds or property (subject to the power) for which a marital deduction is allowed. If the 50 per cent limitation is applicable, an order of priority is estab-

lished by the amendment for determining the portion of the insurance proceeds or property (subject to the power) receivable by the surviving spouse for which the marital deduction was allowed. In such a case, the marital deduction is considered allowed first with respect to the insurance proceeds to the extent of the amount of such proceeds so receivable, and second (the balance of the marital deduction) is considered allowed with respect to the property (subject to the power) to the extent of the value of such property. The amendments, however, do not change the apportionment under existing law in the case of insurance proceeds or property (subject to the power) receivable by the surviving spouse (or any other person) for which no marital deduction is allowed.

SECTION 366. BASIS OF SURVIVING SPOUSE'S INTEREST IN COMMUNITY PROPERTY.

This section, not contained in the House bill, amends section 113(a)(5) of the Code, relating to the basis for determining gain or loss for income tax purposes. The amendment prescribes for the surviving spouse, after the death of the decedent, a new basis for her portion of the property held, at the time of such death, by the decedent and his spouse as community property. Under existing law, the surviving spouse's basis for such property is the same after the death of the decedent as before. Under the amendment, the surviving spouse is regarded, after such death, as acquiring such portion of the community property by devise, bequest, or inheritance, with the same basis as if so acquired from the decedent. Except in the case of certain foreign personal holding company stock, this basis is the fair market value of the property at the time of the decedent's death, or in case the executor of the decedent's estate elects the optional valuation date under section 811(j), such value at such date.

The amendment applies only if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under section 811. Thus a husband will not have a new basis for his part of the community property upon the death of his wife in those situations in which her interest in their community property is not subject to the estate tax because of the limited nature of her interest, as is the case with community property under the law of Nevada and New Mexico, and certain community property, under the law of California, acquired by the community prior to April 16, 1923.

The amendment applies only with respect to community property where the decedent died after the date of the enactment of the bill.

PART III—GIFT TAX.

SECTION 371. GIFTS OF COMMUNITY PROPERTY.

Section 1000(d) of the Internal Revenue Code provides a special rule for treatment of transfers of community property by gift. This section of the bill, which is the same as section 354 of the bill passed by the House, provides that section 1000(d) shall be applicable only to gifts made after the calendar year 1942 (when the gift tax provisions of the Revenue Act of 1942 first became effective) and on or before the date of enactment of this bill. Thus, in the case of a gift of community property after the date of enactment of this bill the extent to which the gift is that of the husband and wife shall be determined without regard to section 1000(d) of the Code. However, for the purpose of the computation of tax under section 1001 of the Code, section 1000(d) shall be applicable in determining net gifts with respect to gifts of community property made after the calendar year 1942 and on or before the date of the enactment of this bill. The net gifts for such period are included in the net gifts for preceding calendar years, to which are added the net gifts made for a current calendar year in order to determine the rate at which the net gifts for the current calendar year will be taxed. The above application of section 1000(d) is limited to the purposes of the gift tax and does not apply in determining the extent to which transfers of community property are transfers by the decedent under the estate tax.

SECTION 372. MARITAL DEDUCTIONS.

This section adds a new paragraph (3) to section 1004(a) of the Code so as to provide a marital deduction in computing net gifts of citizens and residents of the United States. This gift tax marital deduction corresponds to the estate tax marital deduction provided under section 812(e) of the Code, as added by section 361 of the bill. The provisions of section 1004(a)(3) are intended to be construed in the same manner as the corresponding estate tax provisions.

The marital deduction with respect to any gift is allowed only for gifts after the date of enactment of the bill. It is not allowed in the case of gifts by nonresident aliens, but is allowed in the case of a gift by a citizen or resident to his nonresident alien spouse.

The general rule for the gift tax marital deduction is set forth in subparagraph (A) of section 1004(a)(3). Under this rule, the marital deduction is an amount equal to one-half the value of any gift of an interest in property to a donee who at the time of the gift is the donor's spouse. This general rule corresponds to the general rule under section 812(e)(1)(A) in the case of the estate tax marital deduction. It should be noted, however, that the gift tax marital deduction is limited to half the value of the gift of an interest in property, while the corresponding estate tax deduction is allowed for the entire value of an interest in property passing, but a limitation of 50 per cent of the value of the adjusted gross estate is placed on the aggregate amount of marital deductions under the estate tax.

The marital deduction allowed under section 1004(a)(3) is determined with respect to each gift to a spouse. The marital deduction with respect to any gift is determined without regard to the annual exclusion ($3,000 under existing law) allowed in computing the total amount of gifts to the donee spouse. Thus, if, after the enactment of the bill, the first gift (in the calendar year) of a donor to his spouse is $10,000, there will be allowed an exclusion of $3,000 and a marital deduction of $5,000 (one-half of $10,000). A limitation on the total marital deductions allowed for each year to the total amount of the gifts for which such deductions are allowable is provided by an amendment made by section 373 of the bill to section 1004(c) of the Code.

The deduction is allowed only with respect to a gift to a donee who at the time of the gift is the donor's spouse. Thus no marital deduction is allowed with respect to a gift to an individual who was not the donor's spouse at the time of the gift even though such individual was the donor's spouse some other time during the calendar year for which the gift was made or any other time.

The general rule of subparagraph (A) is subject to the exceptions provided in the subsequent subparagraphs of section 1004(a)(3). Subparagraph (B) contains an exception with respect to life estates and other terminable interests generally corresponding to the provisions of section 812(e)(1)(B). Clause (i) of subparagraph (B) corresponds to the provisions of clauses (I) and (II) of section 812(e)(1)(B) in disallowing the marital deduction with respect to terminable interests in property in which the donor also transfers or has transferred an interest to a person other than his spouse or her estate.

In addition, clause (i) of section 1004(a)(3)(B) disallows a marital deduction in the case of a gift of a terminable interest if the donor retains in himself an interest in the property and if by reason of such retention the donor (or his heirs or assigns) may possess or enjoy any part of such property after the termination or failure of the interest transferred to the donee spouse. The same concepts are applicable in determining whether the donor has retained an interest in the property in which he gives an interest to his spouse as are applicable in the case of a transfer by him of an interest to any other person. For example, if a donor purchases an annuity contract payable to his wife for her life with refund of any undistributed portion of the fund to the donor or his estate, no marital deduction is allowed. If the donor purchases an annuity contract providing for payments to be made first to the donor for his life and then to his spouse for her life, if surviving the donor, and for no refund of any unpaid portion of the fund, no marital deduction is allowed; for the donor may, if he survives his spouse, possess or enjoy his retained interest after the failure of her interest. If the contract provides for a refund to the spouse's estate of any unpaid portion of the fund, a marital deduction is not allowed; for the right to any refund may terminate prior to the donor's death.

Special rules are also provided in subparagraph (B) in cases in which the donor has or retains a power to appoint an interest in property. For the purposes of clause (i), an exercise or release at any time by the donor, either alone or in conjunction with any person of a power to appoint an interest in property, even though not otherwise a transfer, is considered as a transfer by the donor. This rule is applicable, for example, in a case in which the donor was the sole beneficiary of the income from a trust and had the power to appoint the corpus of the trust upon its termination. If the donor released his power to appoint (his spouse not being the taker in default of appointment) and assigned his entire income interest to his spouse, the marital deduction is not allowed with respect to the gift to the spouse. The release of the power is considered a transfer by the donor to the

taker in default. It is immaterial whether the power so released is a power of appointment within the definition in section 1000(c) of the code or whether such release was for gift tax purposes (other than clause (i)) considered a transfer, or whether the power was released any time before or at the same time as the gift to the spouse. A release of a power includes the failure to exercise a power to the extent such failure has the effect of terminating the power.

Clause (ii) of section 1004(a)(3)(B) has a special rule for treating a power to appoint possessed by the donor immediately after the gift to his spouse as an interest in property retained by the donor. Thus, if the donor has a power of appointment over Blackacre and appoints a life estate in Blackacre to his spouse, retaining the power to appoint the remainder interest, a marital deduction is not allowed with respect to the gift to his spouse. The retained power need not be a taxable power of appointment under section 1000(c) in order to disqualify the interest given to his spouse for the marital deduction.

The donor is considered as having immediately after the transfer to his spouse a retained power to appoint even though such power to appoint can not be exercised until after the lapse of time, upon the occurrence of an event or contingency, or upon the failure of an event or contingency to occur. Under this provision the donor is considered as having immediately a power to appoint where he has a power the exercise of which can be made effectively only in the future. Thus, if the donor is entitled to the income of a trust for 10 years with power to appoint the corpus after such period, a gift of the income interest to his spouse does not qualify for a marital deduction. If a husband gives the entire interest in property to his spouse and, by what is in effect a part of the transaction, she gives him a power to appoint any interest in such property, the marital deduction is not allowed with respect to the gift by the husband.

Subparagraph (C) of section 1004(a)(3) corresponds to subparagraph (C) of section 812(e)(1) under the estate tax. This provision has particular application under the gift tax to gifts in trust under which the donor's spouse has the remainder interest or the trust income and a power to appoint to herself or her estate. In such cases this provision has the effect of reducing the marital deduction on account of the value of assets transferred by the donor in trust for which a marital deduction would not be allowed if such assets were transferred by gift from the donor to such spouse.

Subparagraph (D) of section 1004(a)(3) takes out of the rule for terminable interests a gift by a donor to his spouse as joint tenant with the donor or as tenant by the entirety, and permits a marital deduction. If the spouse is not the sole joint tenant with the donor, the rules of subparagraph (B) operate to disallow entirely the deduction for the gift to the spouse of an interest in the joint tenancy.

Subparagraph (E) of section 1004(a)(3) also contains an exception from the terminable interest rule, applicable in the case of certain gifts in trust with a power of appointment in the donee spouse. This provision corresponds to section 812(e)(1)(F), with respect to the estate tax marital deduction.

Subparagraph (F) of section 1004(a)(3) disallows the marital deduction in the case of gifts of the donor's interest in community property and of his interest in certain separate property which is, for the purposes of this provision, considered as community property. The rules in this subparagraph for determining such separate property which is considered as community property correspond generally to similar provisions contained in section 812(e)(2)(B) and (C) with respect to the estate tax marital deduction. The community property referred to is property held as community property with the person who is the donor's spouse at the time of the gift. Thus the rule is not applicable with respect to separate property which never was held as community property with the donee spouse although it may have been held as community property with a former spouse of the donor.

The gift tax amendments providing for a marital deduction do not contain any provision corresponding to the disclaimer provisions under the estate tax marital deduction (section 812(e)(4) of the Code, as added by section 361 of the bill). Such provisions are unnecessary under the gift tax for the reason that if any person disclaims or refuses an attempted gift a transfer by gift is not considered made.

SECTION 373. TECHNICAL AMENDMENT.

This section amends section 1004(c) of the Code, relating to the extent of deductions allowed in computing net gifts. The amendment has the effect of limiting the marital deduction with respect to gifts to a spouse in any calendar year to the

amount of such gifts included for the purposes of computing net gifts. Thus if the only gift by a donor to his spouse during a calendar year is $5,000, an exclusion of $3,000 is allowed so that the amount included in net gifts is $2,000. A marital deduction is allowed in the amount of $2,500 by section 1004(a)(3) but limited by section 1004(c) to $2,000. Section 1004(c) applies only to the total deductions allowed under any one paragraph of section 1004 in computing net gifts. Its operation is illustrated by the following case: A donor transferred $4,000 by gift to his spouse in January, 1949, and $4,000 by gift to her in July, 1949, and made no other gifts to her during the year. The marital deductions allowed under section 1004(a)(3) in such a case (without regard to section 1004(c)) total $4,000 (that is, two deductions of $2,000 each). Since only one $3,000 annual exclusion is allowed for the gifts to the donee spouse, the extent to which the two gifts (total $8,000) are included in the amount of gifts for the purpose of determining net gifts is $5,000. Accordingly, since the total marital deductions ($4,000) do not exceed $5,000, the marital deductions are allowed in full.

SECTION 374. GIFT BY HUSBAND OR WIFE TO THIRD PARTY.

This section amends section 1000 of the Code, relating to the imposition of the gift tax, by adding a new subsection, designated (f), providing for the so-called "splitting" between spouses of gifts made to third parties. Subparagraph (A) of section 1000(f)(1) provides the general rule whereby a gift by one spouse to any person other than his spouse is considered (if consent has been signified as hereinafter explained) as made one-half by him and one-half by his spouse. This rule applies only to gifts made after the enactment of the bill and only if at the time of the gift each spouse is a citizen or resident of the United States. An individual is considered as the spouse of another individual for the purpose of this rule only if he is married to such individual at the time of the gift and does not remarry during the remainder of the calendar year. Thus, if an individual who is not married makes a gift to X and later in the same calendar year marries Y, the gift to X can not be considered as a gift made one-half by such individual and one-half by Y in their gift tax returns for the calendar year in which the gift was made.

A provision is added in your committee bill which applies in the case of a gift of an interest in property over which the donor creates in his spouse a power of appointment, as defined in section 1000(c) of the Code. An example of a case to which this provision applies is a case in which a husband creates a trust, the income of which is to be accumulated, and provides that his spouse shall have a testamentary power of appointment exercisable in favor of any person, but in the event of a failure to exercise such power the property shall pass free of the trust to X. In such a case, no part of the interest subject to the spouse's power of appointment may for the purposes of section 1000(f) of the Code be considered as a gift to a third party.

The splitting of gifts made by either spouse to third parties is not mandatory but is permitted only if both spouses consent. The consent if made with respect to any gift during the calendar year applies with respect to all gifts made to third parties during such calendar year. A consent signified with respect to gifts made in a calendar year is effective with respect to such gifts in computing the gift tax for all future calendar years in which such gifts enter into the base for computing the tax for such future years.

The consent if made with respect to any gift during the year applies to all gifts to third parties during the calendar year made out of community property, or property held by the spouses as joint tenants or as tenants by the entirety. In such a case each spouse is considered to have made a gift of one-half of his interest in joint property given and one-half of his spouse's interest in the joint property given. A consent signified does not have the effect of "splitting" any gift to the donor's spouse, even though no marital deduction is allowed under section 1004(a)(3) for such gift.

The consent which is signified is effective to split the gifts of a spouse only for the purpose of the gift tax except as expressly provided elsewhere. Thus a consent signified for gift tax purposes does not affect the basis for income tax purposes under section 113(a)(2) of the Code of the third party donee with respect to the property given. Section 812(c) of the Code is amended by section 362 of the bill to provide special rules giving effect to such "splitting" of gifts in determining for the purposes of the estate tax the deduction for property previously taxed under the gift tax. Section 813(a)(2) of the Code is amended by section 363 of the bill to permit the decedent's estate a credit for gift tax

paid with respect to property included in the decedent's gross estate but considered for gift tax purposes as given one-half by his spouse.

Paragraphs (2) and (3) of section 1000(f) provide special rules relating to the time and manner of signifying the consent and the revocation of a consent. These rules are modifications of corresponding provisions in the bill as passed by the House. A consent and the revocation of a consent shall be signified in such manner as is provided under regulations prescribed by the Commissioner with the approval of the Secretary. The time within which such consent or revocation may be signified, however, is subject to certain special rules. Inasmuch as the Commissioner is authorized to provide by regulations the manner in which the consent may be signified, the Commissioner may require the consent to be signified on the returns of the spouses.

Under subparagraph (B) of section 1000(f)(2) the consent may be signified at any time after the close of the calendar year in which the gift was made, subject to limitations of time beyond which the consent may not be signified. The general rule is that the consent may not be signified after the 15th day of March following the close of the calendar year in which the gift was made. An exception to this rule is made in cases where before such date no return was filed for such year by either spouse. In such cases the consent may not be signified after a return for such year is filed by either spouse. Under this rule if an extension of time is obtained for both spouses for filing their returns for the calendar year in which the gift was made, the consent may be signified at any time on or before the day the return of the spouse first to file is filed. A limitation on the exception is provided in cases in which a notice of deficiency with respect to the tax for the year in which the gift was made is, before both spouses have signified the consent, sent to either spouse in accordance with section 1012(a) of the Code. In such cases the consent can not be signified after the deficiency notice is mailed.

The right to revoke a consent previously signified with respect to a calendar year is subject to the time limitations prescribed in paragraph (3) of section 1000(f). The first limitation is that a consent signified on or before the 15th day of March following the close of the calendar year in which the gift was made can not be revoked after such 15th day. The second limitation is that a consent signified after such 15th day can not be revoked. Thus if the spouses obtain an extension of time for filing their returns to a date after March 15 and file the consent after March 15, such consent can not be revoked regardless of when the returns are filed.

Paragraph (4) of section 1000(f) provides that if the consent is signified with respect to a gift in any calendar year the liability with respect to the entire tax imposed by Chaper 4 of the Code of each spouse for such year shall be joint and several. The consent referred to in this provision is a consent which is validly signified and not revoked. It is not contemplated under this provision that where one spouse pays the entire tax liability of both spouses any gift tax will result by reason of payment of the liability of the other spouse. The provision for joint and several liability applies with respect to the entire tax of each spouse for the calendar year and applies, therefore, with respect to gifts made between the spouses and also applies with respect to gifts of community property and property held in other forms of coownership.

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