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Internal Revenue Bulletin

Cumulative Bulletin 1941-2

JULY-DECEMBER 1941

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

Treasury Department : : : : : Bureau of Internal Revenue

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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 no 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.

UNITED STATES GOVERNMENT PRINTING OFFICE : WASHINGTON : 1942

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The Internal Revenue Bulletin service for 1942 will consist of weekly bulletins and semiannual cumulative bulletins.

The weekly 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 six months.

The complete Bulletin service may be obtained, on a subscription basis, from the Superintendent of Documents, Government Printing Office, Washington, D. C., for $3 per year; foreign, $4.25. Single copies of the weekly Bulletin, 5 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 the Sales Tax Cumulative Bulletins for January–June and July–December, 1921, may procure them from the Superintendent of Documents at 5 cents per copy.

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Year	Cumulative Bulletin.		Price. (cents)
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All inquiries in regard to these publications and subscriptions should be sent to the Superintendent of Documents, Government Printing Office, Washington, D. C.

INTRODUCTORY NOTES.

The Internal Revenue Cumulative Bulletin 1941–2, 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, as indicated on the title page of this Bulletin, published in the weekly Bulletins (1941, Nos. 27 to 52, inclusive) for the period July 1 to December 31, 1941. It also contains a cumulative list of announcements relating to decisions of the United States Board of Tax Appeals published in the Internal Revenue Bulletin Service from January 1, 1940, to December 31, 1941.

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 and the 1938 Act, respectively, and the regulations headings corresponding with the section headings of Regulations 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. 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. 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. 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 BOARD OF TAX APPEALS DECISIONS.

Under the provisions of the recent Revenue Acts, relating to appeals to the Board of Tax Appeals, the Commissioner may acquiesce in the decision of the Board or he may, if the appeal was heard by the Board prior to the passage of the 1926 Act, cause to be instituted a proceeding in court for the collection of any part of a tax determined by the Commissioner to be due but disallowed by the Board, provided that such proceeding is commenced within one year after final decision of the Board. As to appeals heard by the Board after the passage of the 1926 Act, the Commissioner may, within six months after the Board's decision is rendered, file a petition for a review of the decision by a Circuit Court of Appeals or by the United States Court of Appeals for the District of Columbia; however, as to decisions rendered on and after June 7, 1932, petitions for review must be filed within three months after the decision is rendered. In order that taxpayers and the general public may be informed as to whether or not the Commissioner has acquiesced in a decision of the Board of Tax Appeals disallowing a tax determined by the Commissioner to be due, announcement will be made in the weekly Bulletin at the earliest practicable date. A notice that the Commissioner has acquiesced or has nonacquiesced in a Board decision relates, however, only to the issue or issues decided in favor of the taxpayer. 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 before the Bureau.

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January–June, 1926 (No. V–1)	2524–2813
July–December, 1926 (No. V–2)	2814–3026
January–June, 1927 (No. VI–1)	3027–3291
July–December, 1927 (No. VI–2)	3292–3557
January–June, 1928 (No. VII–1)	3558–3784
July–December, 1928 (No. VII–2)	3785–4052
January–June, 1929 (No. VIII–1)	4053–4248
July–December, 1929 (No. VIII–2)	4249–4487
January–June, 1930 (No. IX–1)	4488–4683
July–December, 1930 (No. IX–2)	4684–4887
January–June, 1931 (No. X–1)	4888–5124
July–December, 1931 (No. X–2)	5125–5338
January–June, 1932 (No. XI–1)	5339–5531
July–December, 1932 (No. XI–2)	5532–5961
January–June, 1933 (No. XII–1)	5962–6262
July–December, 1933 (No. XII–2)	6263–6581
January–June, 1934 (No. XIII–1)	6582–6871
July–December, 1934 (No. XIII–2)	6872–7224
January–June, 1935 (No. XIV–1)	7225–7563
July–December, 1935 (No. XIV–2)	7564–7884
January–June, 1936 (No. XV–1)	7885–8149
July–December, 1936 (No. XV–2)	8150–8459
January–June, 1937 (1937–1)	8460–8792
July–December, 1937 (1937–2)	8793–9118
January–June, 1938 (1938–1)	9119–9424
July–December, 1938 (1938–2)	9425–9654
January–June, 1939 (1939–1—Part 1 and Part 2)	9655–9896
July–December, 1939 (1939–2)	9897–10126
January–June, 1940 (1940–1)	10127–10304
July–December, 1940 (1940–2)	10305–10548
January–June, 1941 (1941–1)	10549–10761
July–December, 1941 (1941–2)	10762–10943

BOARD OF TAX APPEALS.

CUMULATIVE LIST OF ANNOUNCEMENTS RELATING TO DECISIONS OF THE UNITED STATES BOARD OF TAX APPEALS PUBLISHED IN THE INTERNAL REVENUE BULLETIN SERVICE FROM JANUARY 1, 1940, TO DECEMBER 31, 1941, INCLUSIVE.

[Announcements relating to the acquiescence or nonacquiescence of the Commissioner in decisions of the United States Board of Tax Appeals, as published in the weekly Internal Revenue Bulletins from December 22, 1924, to December 31, 1931, inclusive, are printed in Cumulative Bulletin X-2, pages 1-106. Those printed in weekly Bulletins from January 1, 1932, to December 31, 1939, inclusive, are published in Cumulative Bulletin 1939-2, pages 1-73. The list below, therefore, contains only such announcements published in the weekly Bulletins from January 1, 1940, to December 31, 1941, inclusive.]

[a] 1941—52—10936

The Commissioner acquiesces in the following decisions of the United States Board of Tax Appeals:

Taxpayer.	Docket No.	Board of Tax Appeals.	
		Volume.	Page.
A.			
Abbott, John, executor of estate of Richard E. Traiser [1]	91958	41	228
Acer Realty Co	102119	45	333
Adair, Mrs. Cornelia, estate of	95451	43	384
Adler, E. P	97988	44	112
Affiliated Enterprises, Inc.[2]	96603	42	390
Allen, Laura, estate of [3]	89703	40	721
American Liberty Oil Co.[4]	98487 98488	43	76
American Society of Cinematographers, Inc	96411	42	675
Anderson, John, transferee of estate of Frank O. Burridge	93334	40	944
Apex Brewing Co., Inc	91977	40	1109
Appleby, John S. [5]	94080	41	18
Atlantic Land Co., The	100410	43	74
Augustus, Elizabeth G	96061	40	1200

[1] Acquiescence relates only to the Board's mathematical formula for apportionment of the dividend credit between the estate and the distributees.

[2] Acquiescence relates only to the issue, What amounts constitute reasonable allowance for services performed in 1935 and 1936 by the wives of the two principal officers of the corporation?

[3] Estate tax decision.

[4] Acquiescence relates only to the issue, Did the respondent err in including in petitioner's consolidated income for 1932 and 1933, subject to depletion, the sums of $25,727.65, $27,421.09, and $40,445.27 which petitioner's affiliate, the Wofford Production Co., paid during said years to owners of oil payment contracts on its Pinkston lease?

[5] Acquiescence relates only to the issue, Was the sum of $150 which was added by the Commissioner to John S. Appleby's income, taxable to him?

[a] Ruling No. 10936 includes all acquiescence and nonacquiescence notices published in the Internal Revenue Bulletin service from January 1, 1940, to December 31, 1941.

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Board of Tax Appeals. Volume.	Page.
B.			
Baird et ux., Warner G.[1]	97439	42	970
Baker, Inc., Emerit E	92366 94401	40	554
Baldwin, Frederic E.[2]	101134	44	900
Banfield, T. H.[3]	93313 98688 99999	42	769
Bank of America National Trust & Savings Association, executor of estate of, and trustee of trust executed by, William John McGowan[2 4]	100967	43	695
Bank of America National Trust & Savings Association, trustee of Tonningsen Trust	99280	43	37
Bekins, Katherine, estate of[5]	87675	38	604
Bekins et al., Milo W., executors of estate of Katherine Bekins[5]	87675	38	604
Belcher, Harriet Holbrook	94879	42	633
Benaglia et ux., Arthur[6]	87638	36	838
Berks County Trust Co., alleged successor trustee of Mortgage Trust Certificate Pool	98207	42	1238
Bigelow, Alice A., executrix of estate of Herbert M. Bigelow[2 7]	82659	39	635
Bigelow, Herbert M., estate of[2 7]	82659	39	635
Black, Sr., Charles H	103558 105830	45	204
Black Motor Co., Inc	97232	41	300
Blenheim Co., Ltd	95026	42	1248
Bohn, Charles B.[8]	95953	43	953
Bondholders Committee[9]	90452 90486 90487	40	881
Booth, Warren S	101336 101883	43	846
Briggs-Killian Co	92562	40	894
Brink et al., Virgil C., Trustees of Minnie M Fay Trusts "A," "C," and "S"[10]	98900– 98902 99522– 99524	42	765
Britt, Carl M	95566	43	254
Brookman, Murray	95871	41	557
Buhl et ux., Theodore D	102489	45	274
Butler et ux., Cooley	101760	45	593
C.			
Cain, Emma Weitmuller, executrix of estate of John E. Cain, Sr.[2]	101330	43	1133
Cain, Sr., John E., estate of[2]	101330	43	1133
Cambridge Apartment Building Corporation	102205	44	617

[1] Previous nonacquiescence published in cumulative Bulletin 1941–1, page 12, withdrawn.
[2] Estate tax decision.
[3] Acquiescence relates only to the issue, Is the petitioner entitled to a deduction of $6,546.96 for the year 1937 as and for a debt ascertained to be worthless and charged off during that year?
[4] Acquiescence relates only to the issue, Was the community property agreement of December 29, 1931, effective with respect to personal property standing in the name of the decedent at the time of his death?
[5] Prior nonacquiescence published in Cumulative Bulletin 1939–1 (Part 1), page 40, withdrawn.
[6] Nonacquiescence published in Cumulative Bulletin 1938–1, page 35, withdrawn.
[7] Prior nonacquiescence published in Cumulative Bulletin 1939–2, page 42, withdrawn.
[8] Acquiescence relates only to the issue, Where a taxpayer sells stock to a trust created by him for the benefit of his daughter, does the transaction fal within section 24(a)6 of the Revenue Act of 1934 so that no deductible loss results?
[9] Acquiescence does not relate to issue respecting bases for depreciation of petitioners' assets.
[10] Acquiescence is as to result only.

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Board of Tax Appeals.	
		Volume.	Page.
Canelo, Harry F	66150, 90641	41	713
Carey-Reed Co.[1]	83936	36	36
Carey Trust (Second)	93611	41	800
Carter, Shirley, estate of	93917	40	749
Castner Garage, Limited	98502	43	1
Cavett et al., K., executors of estate of W. T. Hales[2]	93208	40	1244
Center Investment Co	82350	43	46
Chamberlain et ux., Lowell H	96410	43	259
Cherokee Co	93962	41	1212
Childs, Victoria	102578	44	1191
Childs, William, estate of	102578	44	1191
Chrysler Corporation	97305	42	795
Claiborne et al., Austin Leigh, executors of the estate of Laura Allen[3]	89703	40	721
Cohen & Sons Co., B	97939	42	1137
Cohen Testamentary Trust, Joel C	96231	42	1074
Columbia Oil & Gas Co.[4]	90624	41	38
Combs Lumber Co	91543	41	339
Commonwealth, Inc.[5]	88264	36	850
Cook Drilling Co.[6]	82231	38	291
Colledge, Norman	92289	40	1324
Cooper, Eugene B., administrator of the estate of Lewis F. Cooper	94088	40	749
Cooper, Lewis F., estate of	94088	40	749
Cooperative Insurance	95292	41	1151
Cooperative Power Plant	95291	41	1143
Crabb, Dolores	95002	41	686
Crawford Music Corporation	85389, 88290	40	284
Crespi, Pietro	103132	44	670
Cumberland Portland Cement Co	101941	44	1170
Curtis, Lillian D., executrix of estate of Irwin A. Smith[3]	102271	45	59
D.			
Dallas Title & Guaranty Co.[7]	90466	40	1021
Dashiell, C. R.[8]	75056	36	313
Davidson, Clinton[9]	93500, 93503	43	576
Davidson, Jr., Clinton[9]	93504	43	576
Davidson, Flora S.[9]	93502	43	576
Davison-Joseph Campau Realty Co., Inc	97366	41	675

[1] Prior nonacquiescence published in Cumulative Bulletin 1939-2, page 44, withdrawn.

[2] Acquiescence is only as to the issue, Do certain dividends declared and credited on the stock of the Local Building and Loan Association and made available to the petitioners in January, 1935, but applied by them against the purchase of stock in the Local Federal Savings and Loan Association into which the building and loan association was converted, represent income in 1935 subject to normal tax and surtax?

[3] Estate tax decision.

[4] Acquiescence does not relate to issue pertaining to allocation of cost of equipment on the property in question.

[5] Previous nonacquiescence published in Cumulative Bulletin 1938-1, page 38, withdrawn.

[6] Acquiescence relates only to the issue whether the fair market value of future oil payments, under the drilling and sale of lease contracts, should be included in gross income of petitioner for the year 1932. Previous acquiescence published in Cumulative Bulletin 1939-2, page 8, affirmed as to this issue only.

[7] Acquiescence relates only to the issue whether or not petitioner is an insurance company as that term is used in section 701(c)2 of the Revenue Act of 1934.

[8] Nonacquiescence published in Cumulative Bulletin 1937-2, page 36, withdrawn.

[9] Acquiescence with respect to issue involving the taxability of certain commissions on life insurance contracts is as to result only.

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Board of Tax Appeals. Volume.	Page.
Dean, Mason L.[1]	61205, 69832	35	839
Dearing, Roy E., estate of [2]	84195	36	843
Dearing, R. H., estate of, and trust estate [2]	84193, 84194	36	843
Dearing, Mrs. R. H.[2]	84196	36	843
Dearing et ux., Willis R.[2]	84192, 84197	36	843
Dearing, Willis R., executor of estate of Roy E. Dearing [2]	84195	36	843
Dearing, Willis R., executor of estate and trust estate of R. H. Dearing [2]	84193, 84194	36	843
DeLong, David A.[3]	101264	43	1185
Deuble, George H	92055, 95044	42	277
District Bond Co.[4]	88970, 94486	39	739
Dolenz, Anton	93311	41	1091
Dollar, Agnes Barr	97283, 98728	41	869
Dollar, J. Harold, estate of	97282, 98727	41	869
Dollar et al., Robert H, executors of estate of J. Harold Dollar	97282, 98727	41	869
Donahue, Mrs. Jessie W.[5]	92980	44	329
Downing et ux., Richard [6]	99171	43	1147
E.			
Eggerman, Don, executor of estate of Emma Frye	101631	44	835
Einhorn, Max [7]	73893	36	954
Elmore Milling Co., Inc	96520	42	1410
Elverson Corporation [8]	93281	40	615
Equitable Life Assurance Society of the United States, The [9] [10]	31110, 33241, 57867, 89294, 93805	33, 44	708, 293
Estate Planning Corporation [11]	93501	43	576
Eustis, Augustus H.[12]	71637	30	820
Evans, Mary E.[13]	95527	42	246
Ewing, Sherman [14]	93013	40	912

[1] Prior nonacquiescence published in Cumulative Bulletin 1937-2, page 36, withdrawn.

[2] Prior nonacquiescence published in Cumulative Bulletin 1938-1, page 39, withdrawn.

[3] Acquiescence relates only to the issue, is the $14,000 cash received by the petitioner on February 6, 1936, from Francis K. Lapoint a part of the consideration of the petitioner's American Broach & Machine Co. stock?

[4] Prior nonacquiescence published in Cumulative Bulletin 1939-2, page 47, withdrawn.

[5] Acquiescence relates only to the issue whether the Board erred in declining to permit the Commissioner to raise an affirmative issue, in respect of certain amounts allowed as expenses, by amended pleadings subsequent to the decision of the Board.

[6] Acquiescence relates only to the issue involving the deductibility of $95.74 as a bad debt.

[7] Prior nonacquiescence published in Cumulative Bulletin 1938-1, page 40, withdrawn.

[8] Acquiescence relates only to the issue involving the fair market value of certain pledged collateral on the date of its surrender.

[9] Prior nonacquiescence published in Cumulative Bulletin XV-1, page 31 (1936), withdrawn.

[10] Acquiescence relates to all issues except the issue, May the company, on a cash receipts and disbursements basis, deduct guaranteed interest paid in the tax year under settlement options exercised by the beneficiary, when such interest had accrued in prior years?

[11] Acquiescence with respect to issue involving the taxability of certain commissions on life insurance contracts is as to result only.

[12] Prior nonacquiescence published in Cumulative Bulletin XIV-2, page 30 (1935), withdrawn.

[13] Acquiescence relates to all issues except as to the deductibility of attorney's fees and abstract fees incurred incidental to the establishment of forfeiture of a lease and obtaining repossession of the leased premises.

[14] Prior nonacquiescence published in Cumulative Bulletin 1940-2, page 11, withdrawn.

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Board of Tax Appeals. Volume.	Page.
F.			
Farmers Union Cooperative Exchange [1]	100552	42	1200
Farrell, Robert S	100139	44	238
Fay, Minnie M, Trust, "A," "C," and "S" [2]	98900–98902, 99522–99524	42	765
Ferree, C. B.[3]	61542	32	725
Fidelity Savings & Loan Co., The	101236, 101237	44	471
First Mortgage Bonds [4]	90452, 90486, 90487	40	881
First Realty Corporation	101558	45	440
Fish, Isaac, estate of	96527	42	260
Fitch, F. W	93340, 98131	43	773
Fleischmann, Raoul H	90305	40	671
Fleming, Mrs. Anna Maud [5]	92958, 94690	41	940
Fleming-Kimbell Corporation [5]	92959	41	940
Fleming, William [5]	92957, 94689	41	940
Fletcher, Lester L., estate of [6]	101174	44	429
Fletcher, Thomas L., executor of estate of Lester L. Fletcher [6]	101174	44	429
Floyd, Incorporated	99562	43	101
Foreman, Frank C	93915	40	749
Forrester Box Co	93748	43	657
Freedman, Max	99886	43	1181
Friend et al., Milton H., trustees of estate of Henry Friend	90672, 91415	40	767
Friend, Henry, estate of	90672, 91415	40	767
Frost Co., G. & C., a corporation [7]	100444	44	94
Frye, Emma, estate of	101631	44	835
Fulham, John N	103252	44	1183
Funsten, E. M	102068	44	1166
Furlong, John T	104844	45	362
G.			
G. B. R. Oil Corporation	92604	40	737
Gardner, J. Willis [8 9]	92115	41	679

[1] Prior nonacquiescence published in Internal Revenue Bulletin 1941-7, page 1, withdrawn.
[2] Acquiescence is as to result only.
[3] Nonacquiescence published in Cumulative Bulletin XIV-2, page 30 (1935), withdrawn.
[4] Acquiescence does not relate to issue respecting bases for depreciation of petitioners' assets.
[5] Acquiescence relates only to the following issues: (*a*) Did each of the communities of Kay Kimbell and wife and William Fleming and wife constructively receive oil payments of $60,848.65 and $53,401.35, respectively, for 1934 and 1935 from the Fleming-Kimbell Corporation, and (*b*) was a certain $4,000 reservation in connection with the transfer by William Fleming in 1936 of a leasehold interest in the Richter "A" lease, etc., taxable to the petitioners?
[6] Estate tax decision.
[7] Acquiescence relates only to the issue, What was the fair market value of an old building which was situated on the land at the time of execution of the lease, and which was torn down in connection with the construction, by the lessee, of the new building?
[8] Gift tax decision.
[9] Acquiescence relates only to the issue, If the beneficiaries of a certain trust be treated as donees, were the gifts made to them gifts of present interests or future interests?

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Board of Tax Appeals. Volume.	Page.
Garland et ux., William J.[1]	93589	42	324
	95547	43	731
Gaylord, Inc., Robert [2]	96953	41	1119
George Bros. & Co	93248	41	287
Gerber Co., The John [2]	101605	44	26
Germantown Trust Co. et al., trustees u/w of Sarah B. McLean	101688	44	820
Gillespie, Maud	98770	43	399
Gilmore, Helen, estate of, transferee of estate of Frank O. Burridge	93231	40	944
Girard Trust Co., executor of estate of Frederic E. Baldwin [3]	101134	44	900
Graf et ux., Herbert R	104623	45	386
	104624		
Graff, Everett D	92212	40	919
Gravley, Jas. J	100445	44	722
Grim, Clifford D	93919	40	749
Gruy, Joseph, independent executor of estate of Lucile Gruy	95901	42	1279
Gruy, Lucile, estate of	95901	42	1279
Gump, Alfred S., estate of [3]	90656	42	197
Gump et al., Camille R., executors of estate of Alfred S. Gump [3]	90656	42	197
H.			
Haass, Walter F., trustee of Huron River Syndicate	100775	44	859
Hackett, Emma P	99302	44	564
Hales, George A.[4]	93210	40	1244
Hales, Mrs. Oneta [4]	93209	40	1244
Hales, Jr., W. T.[4]	93211	40	1244
Hales, W. T., estate of [4]	93208	40	1244
Harden et ux., Fred M.[2]	98073	44	961
Harris Trust & Savings Bank et al., executors of estate of Isaac Fish	96527	42	260
Harriss, Abbeline C., estate of	99993	44	999
Harriss, Robert M., individually and as administrator of estate of Abbeline C. Harriss	99993	44	999
Hawaiian Trust Co., Ltd., trustee of Joel Cohen Testamentary Trust	96231	42	1074
Heath, Harriet A.[5]	90599	38	1127
Heller, Edward H.[6]	94794	41	1020
	94795		
Higgins, Aldus C.[7]	101542	44	1123
Higgins, Eugene	80052	39	1005
	85961		
Highland Farms Corporation [8]	95690	42	1314

[1] Acquiescence with respect to the decision of June 28, 1940 (42 B. T. A., 324), relates to the issue involving the taxability of interest from municipal bonds issued under the California Municipal Improvement District Act of April 20, 1915. Acquiescence with respect to the decision of February 27, 1941 (43 B. T. A., 731), relates to the issue involving the taxability of the income from a certain trust established by the petitioner for the support of his wife, the only issue presented at the second hearing and decided partly in favor of the petitioner and partly for the respondent.

[2] Acquiescence is as to result only.

[3] Estate tax decision.

[4] Acquiescence is only as to the issue, Do certain dividends declared and credited on the stock of the Local Building and Loan Association and made available to the petitioners in January, 1935, but applied by them against the purchase of stock in the Local Federal Savings and Loan Association, into which the building and loan association was converted, represent income in 1935 subject to normal tax and surtax?

[5] Prior nonacquiescence published in Cumulative Bulletin 1939-1 (Part 1), page 50, withdrawn.

[6] Acquiescence relates to the issue pertaining to the trust for the petitioner's minor son Emanuel.

[7] Gift tax decision.

[8] Acquiescence relates only to the issue, Did the petitioner realize taxable gain as the result of receiving an award for compensatory damages?

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Board of Tax Appeals. Volume.	Page.
Hirsch, L. B	95782	42	566
Honokaa Sugar Co	101358	43	151
Hooper, James P., estate of [1] [2]	85776	41	114
Hooper, Mathilde B., administratrix of estate of James P. Hooper [1] [2]	85776	41	114
Hoover, Herbert W	90974	42	289
Hopkins, William R	91753	41	1292
Hotel Astoria, Inc.[3]	97230	42	759
Howard, Grace Adams, estate of	99851	42	449
Howard et al., George Adams, executors of estate of Grace Adams Howard	99851	42	449
Huey & Philp Hardware Co	92801	40	780
Hummel-Ross Fibre Corporation	93077	40	820
Humphreys, Murray	87899	42	857
Hunter, C. A	99191	44	564
Hurd Millwork Corporation [3]	101956	44	786
Huron River Syndicate	100775	44	859
Hyde, Mildred K., estate of	95182	42	738
Hyde, Suffolk & Berks, Marguerite [4]	81417 93257	40	1120
Hyde, Willis O., administrator of estate of Mildred K. Hyde	95182	42	738
I.			
Ide, John J	101347	43	799
Industrial Cotton Mills Co., Inc	92186	43	107
Interstate Transit Lines, Inc	101693	44	994
Island Securities, Limited	99082	43	1
J.			
Jackman, D. S.[5]	101891	44	704
Jaski, Sophie, trading as White House Bakery [6]	100241	43	321
Jefferson Standard Life Insurance Co	89422	44	314
Joell Co	96535	41	825
Johnston, J. Edward	93768	41	550
Johnston, L. Mimnaugh	99377	44	564
Jones, Carrie L., estate of [1]	91831	41	1279
Jones et al., Cary W	102201 102202	44	1105
Jordan Creek Placers	98057 99210	43	131
Joseph, William H	96036	43	273
Journal Co., The	96682	44	460
K.			
Kahn, Bella [7]	73895	36	954
Kahn, Isidor [7]	73891	36	954
Kahn, Lenora [7]	73894	36	954
Kaufmann, Joel W	95082	41	408
Kaufmann, Mildred B	95083	41	408

[1] Estate tax decision.
[2] Acquiescence relates only to the determination of the value of the stock of William E. Hooper & Sons Co. on August 3, 1933.
[3] Acquiescence is as to result only.
[4] Acquiescence on the following issue is as to result only: In determining the net income of a trust currently distributable to the beneficiaries, should there be included the rent due under a long-term lease, the lessee having improved the premises with an office building which would become the lessor's property on forfeiture, the trust on the accrual basis having accrued the rent but also having charged it to a reserve for uncollected rents?
[5] Gift tax decision.
[6] Unjust enrichment tax decision. Acquiescence is as to result only.
[7] Prior nonacquiescence published in Cumulative Bulletin 1938-1, page 46, withdrawn.

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Board of Tax Appeals.	
		Volume.	Page.
Keller, Charlotte	93026	41	478
Kessler Oil & Gas Co	93041	41	31
Kiesau Petroleum Corporation	95760	42	69
Killian Co. A. L.[1]	98691	44	169
Kimbell, Kay [2]	92956, 94674	41	940
Kimbell, Mrs. Velma [2]	92955, 94673	41	940
Kleberg, Alice G. K.[3]	86178	43	277
Kleberg, Alice G. K., executrix of estate of Robert J. Kleberg, Sr.[3]	86178	43	277
Kleberg, Sr., Robert J., estate of [3]	86179	43	277
Knowles, Edwin C. F	91495	40	860
L.			
Lapsley, James B	102201, 102202	44	1105
Laster, Carolyn Faust, transferee	97714	43	159
Laster, E. C., transferee	97716	43	159
Laster, Edward Carroll, transferee	97713	43	159
Laster Incorporated, E. C	97442	43	159
Lawrence, William Hamilton [4]	100364	44	128
Lawson et ux., Edward C	99300	42	1103
Lawson, Roberta C	99301	42	1103
Leary, Sr., H. B.[5]	76845	34	1206
Leary, Myra L.[5]	76846	34	1206
Legg, Mildred Sheppard, estate of [6]	89942	40	1073
Letts, Jr., Arthur	92857	41	1172
Levy, Ben	96037	43	273
Lipstate et ux., Phillip Harry	93255	43	18
Louisiana Iron & Supply Co., Inc	97107	44	1244
Louisville Fire Brick Works, Inc., The	100482	43	178
Lucas, Henry M	100516	44	212
Lyon, Incorporated	93858, 96546, 99832	42	1094
M.			
MacConaughey, Harry E	92052	41	408
Macon, Dublin & Savannah Railroad Co	90592	40	1265
MacPherson, Mae Recor [7]	92083	39	739
Madigan et ux, E. P	101308, 101309	43	549
Majestic Oil Corporation [8]	96380	42	659
Mallery et ux., Otto T.[4]	92373	42	793
Mallory et al., J. A., executors of estate of L. W. Mallory	95595	44	249

[1] Acquiescence relates only to the issue involving the deductibility of contributions to the Y. M. C. A. and chamber of commerce.

[2] Acquiescence relates only to the following issues: (*a*) Did each of the communities of Kay Kimbell and wife and William Fleming and wife constructively receive oil payments of $60,848.65 and $53,401.35, respectively, for 1934 and 1935 from the Fleming-Kimbell Corporation, and (*b*) was a certain $4,000 reservation in connection with the transfer by William Fleming in 1936 of a leasehold interest in the Richter "A" lease, etc., taxable to the petitioners?

[3] Acquiescence relates to all issues except that involving a bad-debt deduction of $204.50.

[4] Acquiescence is as to result only.

[5] Prior nonacquiescence published in Cumulative Bulletin 1937-1, page 41, withdrawn.

[6] Estate tax decision.

[7] Prior nonacquiescence published in Cumulative Bulletin 1939-2, page 57, withdrawn.

[8] Acquiescence relates to all issues except the issue, Is the petitioner entitled to a 1935 loss deduction for the undepreciated cost of certain casing and other lease equipment which could not be removed from a certain oil well which the petitioner ceased to operate, during that year, because such operation had become unprofitable?

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Board of Tax Appeals. Volume.	Page.
Mallory, L. W., estate of	95595	44	249
Manufacturers Life Insurance Co., The	90845	43	867
Marlborough House, Inc., et al.[1]	90452, 90486, 90487	40	881
Marlborough Investment Co.[1]	90452, 90486, 90487	40	881
Marthe, Louise, transferee of estate of Frank O. Burridge	93333	40	944
Martin, Thomas W	93916	40	749
Maumee Malleable Castings Co., The	100933	44	263
McAlpine Land & Development Co., Ltd., J. K	99599	43	520
McBride, Margaret A	101335	44	273
McCarthy, Emmett J.[2]	101607	44	417
McCormac, Gertrude A., trustee for H. B. McCormac, Jr	93920	40	749
McCormac, Jr., H. B. (trust)	93920	40	749
McDaniel, C. T	99189	44	564
McGowan, William John, estate of, also trust executed by [3] [4]	100967	43	695
McKnight, Alfred, administrator of estate of Thomas Spruance	94784, 94820, 94821	43	221
McLean et ux., Marrs	77419, 77420, 81391, 81392, 86804, 86805, 94402, 94403	41	565
McLean, Sarah B., trust u/w of	101688	44	820
McLeod, Keith	104574	45	289
McLeod, Mary E	104573	45	289
Medical Diagnostic Association	96563	42	610
Midland Cooperative Wholesale, a Cooperative Association	100612	44	824
Milbank, Dunlevy [5]	93050	41	1014
Miller, Julius C	102985	45	292
Mimnaugh, Eugene J	99358	44	564
Moloney Electric Co.[6]	96076	42	78
Monarch Life Insurance Co.[7]	86861, 87441	38	716
Moock Electric Supply Co., The	96284	41	1209
Morris Plan Co. of St. Joseph, The	97814	42	1190
Morrison Bond Co., Ltd	93362	41	669
	95986	42	720
Morristown Trust Co., executor of estate of William Childs	102578	44	1191
Mortgage Trust Certificate Pool	98207	42	1238
Morton, Arthur F	91494	41	742

[1] Acquiescence does not relate to issue respecting bases for depreciation of petitioners' assets.
[2] Acquiescence relates only to the credit of $2,500 as "head of a family."
[3] Estate tax decision.
[4] Acquiescence relates only to the issue, Was the community property agreement of December 29, 1931, effective with respect to personal property standing in the name of the decedent at the time of his death?
[5] Acquiescence is only with respect to the taxability of the income from the wife's trust.
[6] Acquiescence relates only to the deductibility in 1936 of the amount paid to the First National Bank of St. Louis in connection with the liquidation of the Franklin American Trust Co., such acquiescence being only in the result.
[7] Prior nonacquiescence published in Cumulative Bulletin 1939-1 (Part 1), page 56, withdrawn.

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Board of Tax Appeals.	
		Volume.	Page.
Mott, Dee Furey [1]	71903	35	195
Myers, George R	94764	42	640
N.			
Nichols, J. C	89169	42	618
Nicolai, Harry T.[2]	93821 98188	42	899
Norweb, Emery May Holden [3]	92575	41	179
O.			
Orange Securities Corporation	104499	45	24
Ortiz, Alice duPont [4]	93159	42	173
O'Sullivan Rubber Co., Inc. (in dissolution)	97399	42	721
P.			
Pan-American Life Insurance Co.[5]	84638	38	1430
Parker, J. Brooks B	101676	44	369
Parrish, Percival	103406	44	144
Parsons, Reginald B	97908	44	1142
Patton, T. B	93918	40	749
Peck & Peck (New York)	99288	42	651
Peck—Peck Corporation, The	99314	42	651
Perkins, Ralph [6]	96126	41	1225
Peyton, Mrs. Loe M. Randolph, transferee	96759	44	1246
Pfeffer, Earl J	99273	44	564
Phinley Holding Co., Inc	88988	43	215
Pierce, D. W	92278	41	1261
Pieroni Building Trust	103105	45	157
Pinkney Packing Co	88924	42	823
Piper et ux., T. Eugene	101766	45	280
Pittsburg Canners, Inc	93560	41	467
Plunkett, Theodore R	94017	41	700
Pontarelli, Michael [7]	83199	35	872
Porter et al., J. Howard, trustees, identified as Porter Properties Trustees, Ltd	95762	42	681
Porter Properties Trustees, Ltd	95762	42	681
Producers Oil Corporation	93839	43	9
Pupin, Michael I., estate of [8 9]	92177	38	1218
R.			
Ravenscroft, J. F	99192	44	564
Regals Realty Co.[10]	96360	43	194
Retsal Drilling Co	95776 97715	42	1057
Reynolds, Inc., R. C.[11]	98014 98017	44	356

[1] Nonacquiescence published in Cumulative Bulletin 1937-1, page 43, withdrawn.
[2] Acquiescence relates only to the issue, Is the petitioner entitled to a deduction of $13,225 as a bad debt for the year 1935?
[3] Gift tax decision.
[4] Acquiescence relates only to the issue, whether the petitioner is entitled to any deduction as the result of the satisfaction of the deficit existing in her husband's brokerage accounts at the end of the year 1934.
[5] Partial nonacquiescence published in Cumulative Bulletin 1939-1 (Part 1), page 59, withdrawn.
[6] Acquiescence relates only to the issue, Was the petitioner entitled to a loss on an investment of $17,250 in the Fourteenth Carnegie Co. for the year 1926?
[7] Prior nonacquiescence published in Cumulative Bulletin 1939-2, page 63, withdrawn.
[8] Estate tax decision.
[9] Prior nonacquiescence published in Cumulative Bulletin 1939-1 (Part 1), page 60, withdrawn.
[10] Acquiescence is as to result only.
[11] Acquiescence relates to all issues except the issue whether R. C. Reynolds, Inc., realized taxable gain upon the purchase of shares of its own stock and contracts related thereto in 1935.

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Board of Tax Appeals.	
		Volume.	Page.
Reynolds, Rollin C	97718, 98015	44	342
Rice, John Preston [1]	102124	44	749
Ritchie, Montgomery H. W., administrator d. b. n. of estate of Mrs. Cornelia Adair	95451	43	384
Riverside Baking Co. (E. W. Stockton, D. B. A.) [2]	101627	44	514
Robinson, W. C	99038	42	725
Rooke, Robert L	98112	43	275
Roosevelt Investment Corporation	101453	45	440
Rosenau, Harriet W.[3]	86407	37	468
Rosenstock, Anna, individually and as executrix of estate of Isaac M. Rosenstock [4]	91686	41	635
Rosenstock, Isaac M., estate of [4]	91686	41	635
Ross Bros. Horse & Mule Co	94476	43	1151
Ross, Mary Catherine	94475	43	1151
Ross, W. R	94474, 98898	43	1151
Rossi, Andrew E.[2]	96470	41	734
Rotorite Corporation	88606	40	1303
Rowan Drilling Co., transferee [5]	98532	44	189
Rowley, Edward G., transferee of estate of Frank O. Burridge	93332	40	944
S.			
Safe Deposit & Trust Co. of Baltimore, executor of estate of Mildred Sheppard Legg [4]	89942	40	1073
St. Louis Union Trust Co. et al., executors of estate of Carrie L. Jones [4]	91831	41	1279
Scanlon, Robert H.[3]	98020	42	997
Schieffelin, Lucy S., estate of	99961	44	137
Schlesinger, Rosa [6]	73892	36	954
Schley et ux., Julian Larcombe	99404	42	434
Schoellkopf, Jr., Jacob F	76377	35	855
Schultz et ux., Neils	100440, 100441	44	146
Schuman Carriage Co., Ltd	90012	43	880
Scully, John C	101992	44	1279
Seavey & Flarsheim Brokerage Co	91618	41	198
Second Carey Trust	93611	41	800
Seward City Mills	92099	44	173
Shamrock Oil & Gas Co	98588	42	1016
Sharp et ux., H. Cecil	97425, 97426	42	336
Shelden Land Co.[7]	93196	42	498
Shenandoah Valley National Bank (Shirely Carter estate)	93917	40	749
Sherman, Doris Bond [3 8]	95300	41	898
Shoenhair, Martha Locke	102675	45	576
Silver, Max	100186	42	461
Simon, Jose, estate of [4]	91840	40	650
Simon et al., Jose P., executors [4]	91840	40	650

[1] Nonacquiescence published in Internal Revenue Bulletin 1941-32, page 1, withdrawn.
[2] Unjust enrichment tax decision.
[3] Gift tax decision.
[4] Estate tax decision.
[5] Acquiescence relates only to the issue, Is the petitioner's transferor entitled to deductions as ordinary and necessary business expenses amounts expended in 1932 in the drilling of oil wells for cash, completed in 1933?
[6] Prior nonacquiescence published in Cumulative Bulletin 1938-1, page 55, withdrawn.
[7] Acquiescence relates only to the issue, whether certain losses suffered by petitioner as the result of foreclosures of properties owned by the petitioner are deductible in the year of foreclosure or in the year in which the equity of redemption expired.
[8] Acquiescence relates only to the year 1935.

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Board of Tax Appeals.	
		Volume.	Page.
Slavin, Arthur M	94768	43	1100
Smith, Charles G	93914	40	749
Smith, Irwin A., estate of [1]	102271	45	59
Smith, Madeline Welder	95003	41	686
Smith, Varvara Pupin, administratrix of estate of Michael I. Pupin [1 2]	92177	38	1218
Smoak, Elliott B	100036	43	907
Smyth, Jr., Francis G., transferee of estate of Frank O. Burridge	93331	40	944
Smyth, Herbert C., transferee of estate of Frank O. Burridge	93232	40	944
Smyth, Herbert C., administrator of the estate of Helen Gilmore, transferee of estate of Frank O. Burridge	93231	40	944
South Atlantic Steamship Line	98844	42	705
Spiva, George N	98293	43	1174
Sporl, Sr., Cyprian A., estate of [1]	92588	40	924
Spratt, Charles N	97917	43	503
Springford, Herbert H	97247	41	1001
Spruance, Mrs. Hortense	94785 94786	43	221
Spruance, Thomas, estate of	94784 94820 94821	43	221
Staley, Augustus E.[3]	88772	41	752
Staley, Emma L.[3]	88773	41	752
Standard Oil Co. (and affiliated subsidiaries)	86516	43	973
Stanley, William H	96558	41	1233
Stern, Allison L. S.[4]	93134	40	756
Stockton, E. W., D. B. A. Riverside Baking Co.[5]	101627	44	514
Streicker, Louis	96038	43	273
Suffolk & Berks, Marguerite Hyde [6]	81417 93257	40	1120
Sultana Oil Corporation (Delaware)	90078 90079	40	1195
Sunset-Lucille Co	93964	42	246
Sutcliffe Co., The	94235	41	1009
Swan, Sherwood	101190	44	1234
Swastika Oil & Gas Co	90861	40	797
T.			
Talbott, Katherine H., estate of [1]	97128	42	1081
Talbott et al., Harold E., executors of estate of Katherine H. Talbott [1]	97128	42	1081
Taylor et ux., Harden F.[7]	99262	43	563
Terhune, Wesley V. E	93894	40	749
Thatcher, Lester A., transferee of estate of Frank O. Burridge	93335	40	944
Thatcher et ux., Thomas H	103835	45	64

[1] Estate tax decision.
[2] Prior nonacquiescence published in Cumulative Bulletin 1939-1 (Part 1), page 60, withdrawn.
[3] Gift tax decision.
[4] Acquiescence relates only to the issue, Is the petitioner taxable on the income of a trust which was created for the support and maintenance of his wife and minor child?
[5] Unjust enrichment tax decision.
[6] Acquiescence on the following issue is as to result only: In determining the net income of a trust currently distributable to the beneficiaries, should there be included the rent due under a long-term lease, the lessee having improved the premises with an office building which would become the lessor's property on forfeiture, the trust on the accrual basis having accrued the rent but also having charged it to a reserve for uncollected rents?
[7] Acquiescence relates only to the issue whether gains were realized in 1936 or in 1937 from sales made on the last two days of December, 1936.

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Board of Tax Appeals. Volume.	Page.
Tillotson, Frank F., estate of [1] [2]	100563	44	644
Tillotson et al., Isabelle I., executors of estate of Frank F. Tillotson [1] [2]	100563	44	644
Timmerman, Louis F	96317	42	188
Title Guarantee & Trust Co. et al., executors of estate of Lucy S. Schieffelin	99961	44	137
Todd, William R	101312	44	776
Tomfohr, Paulyn E	98037	44	730
Tonningsen Trust, John and Pauline	99280	43	37
Torney, Jeannette Wright, administratrix of estate of Millie Langley Wright [1]	99579	43	551
Traiser, Richard E., estate of [3]	91958	41	228
Trevor, Emily [4]	89820	40	1240
Tulley, Addison L., estate of	99190	44	564
Tulley, Jesse E., trustee of estate of Addison L. Tulley	99190	44	564
U.			
Union Guardian Trust Co	94687	41	1306
Union Shipbuilding Co., alleged transferee	100025	43	1143
United States Fidelity & Guaranty Co	91398	40	1010
Universal Motor Co	98503 99752	43	1
Universal Winding Co	87354	39	962
U. S. Industrial Alcohol Co. (W. Va.) [5]	90713 90714	42	1323
V.			
Valley Lumber Co. of Lodi	100421	43	423
Valley Tractor & Equipment Co	95878	42	311
Valuation Service Co., The	96373	41	811
W.			
Walter, William E	97537 99162	42	941
Warrick, Dupuy G	98689	44	1068
Washington Railway & Electric Co	92435	40	1248
Watkins, Florence H	100640	43	900
Wegeforth, Lillie S	94708	42	633
Weingarten, Inc., J. [6]	99707	44	798
Welder, Jr., James F	95005	41	686
West, James E	101404	44	1159
Wheeler, Helen Evans [7]	95528	42	246
Whitthorne, W. R., estate of	101189	44	1234
Wilcox, Elsie H. [8]	96830	43	931
Wilcox, Gaylord P. [8]	96831	43	931
Wilcox, Mabel I. [8]	96827	43	931

[1] Estate tax decision.

[2] Acquiescence relates only to the deductibility of attorneys' fees from gross estate.

[3] Acquiescence relates only to the Board's mathematical formula for apportionment of the dividend credit between the estate and the distributees.

[4] Gift tax decision.

[5] Acquiescence relates only to questions involving the rates of depreciation allowable during prior years in establishing the bases of certain assets sold or abandoned, and is as to result only.

[6] Acquiescence relates to the issue whether petitioner is entitled to deduct as a loss the sum of $20,413.80 representing its investment in certain license agreements covering the use of a merchandising system.

[7] Acquiescence relates to all issues except as to the deductibility of attorney's fees and abstract fees incurred incidental to the establishment of forfeiture of a lease and obtaining repossession of the leased premises.

[8] Acquiescence relates only to the issue. Are the petitioners taxable in 1934 as beneficiaries under the will of George N. Wilcox upon income earned in 1934 by the estate during administration?

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Board of Tax Appeals. Volume.	Page.
Wilson, John P.[1]	93140	42	1260
Wilson, Morris K	98024	42	1254
Winston Bros. Co.[2]	59270	29	905
Winthrop, Beekman[3]	79850	36	314
Wolcott, Frank E	100008	42	1151
Wolf, Edith A	92429	41	1231
Wood, Elizabeth	95004	41	686
Wood, Orrin G.[4 5]	92489	40	904
Woods Lumber Co.[6]	97474	44	88
Word, Anna	93543	41	965
Word, T. T	93542	41	965
Word Supply Co., T. T	93544	41	965
Wright, Millie Langley, estate of[7]	99579	43	551
Wyman et al., Arthur M., trustees of Wyman Building Trusts No. 1 and No. 2	104238 104239	45	155
Wyman Building Trusts No. 1 and No. 2	104238 104239	45	155
Y.			
Young, Du Bois[8]	78345	34	648

[1] Acquiescence relates only to the issue, Where taxpayer creates a trust for the lifetime of his adult daughter, is the trust income taxable to the grantor under the provisions of section 166 of the Revenue Act of 1934?
[2] Prior nonacquiescence published in Cumulative Bulletin XIII-2, page 38 (1934), withdrawn.
[3] Nonacquiescence published in Cumulative Bulletin 1937-2, page 56, withdrawn.
[4] Gift tax decision.
[5] Acquiescence relates only to the issues involving (1) the valuation of 388 shares of Brown Paper Mill stock, and (2) the question whether the relinquishment of a power to prevent future amendments to a trust instrument constitutes a complete gift.
[6] Acquiescence is as to result only with respect to the issue, Were the operations of the petitioner, the "Woods Lumber Company" of Tennessee, and the "Woods Lumber Company, Inc." of Arkansas, the operations of a single taxable entity, so that the loss sustained by the Arkansas business could be used to reduce taxable income of the Tennessee corporation?
[7] Estate tax decision.
Acquiescence relates only to this issue, Was the exchange of certain certificates of ownership in a trust for underlying portfolio stock represented there by an exchange of different assets, resulting in a capital loss? Previous nonacquiescence published in Cumulative Bulletin XV-2, page 51 (1936), withdrawn with respect to this issue only.

The Commissioner does NOT acquiesce in the following decisions of the United States Board of Tax Appeals:

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A.			
Abbott, John, executor of estate of Richard E. Traiser[1]	91958	41	228
Abelson et ux., Jacob	95102	44	98
Abelson, Lester	95103	44	98
Acme Breweries (transferee)	101296	43	721
Adams, Jennie Arrott	98106	44	408
Adams, Mabel G.[2]	101820	44	1091
Affiliated Enterprises, Inc.[3]	96603	42	390

[1] Nonacquiescence relates only to that part of the Board's opinion which holds, without supporting evidence, that gains on the sale of corpus of the estate constituted income available for distribution to the beneficiaries.
[2] Gift tax decision.
[3] Nonacquiescence relates only to the issue, Is the petitioner subject to surtax as a personal holding company under sections 351 of the Revenue Acts of 1934 and 1936?

NONACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Board of Tax Appeals. Volume.	Page.
Alabama Asphaltic Limestone Co	91793	41	324
Allen, H. Wadleigh, estate of	93811	41	206
Allen, John Q	93812		
Allen, Jr., et al., Bona	93809		
Allen, Jr., et al., Bona, executors	93811		
Allen et al., Victor H	93810		
Alling, Noyes E., estate of [1]	87136	41	191
Ambrose et ux., W. D	95744	42	1405
	95745		
American Liberty Oil Co.[2]	98487	43	76
	98488		
American Light & Traction Co	97234	42	1121
Amsco-Wire Products Corporation, transferee	100098	44	717
Appleby, Edgar S., estate of	93886	41	18
Appleby et al., Edgar T., executors of estate of Edgar S. Appleby	93886	41	18
Appleby, John S.[3]	94080	41	18
Armour, Lolita S	88151	41	777
	93150		
Atkins & Co., E. C	99196	44	441
Atkinson, William G. (also known as Paul Cavanagh)	95500	42	1037
Avalon Paper Co., transferor	101162	43	541
B.			
Baltimore Steam Packet Co	102559	44	629
Banfield, T. H.[4]	93313	42	769
	98688		
	99999		
Bank of America National Trust & Savings Association, executor of estate of, and trustee of trust executed by, William John McGowan [5] [1]	100967	43	695
Barbour, Edith Henry	100714	44	1117
Bateman, Lady Marian	98766	43	69
Beck, Martin [6]	99439	43	147
Bedford Trust, Edward T	97260	42	748
Bell et al., Maude K., executors of estate of Ida A. White	93575	41	525
Bernheimer Co., S. E. & M. E	88978	41	249
Bingham, Mary Lily (Flagler), estate of	94985	40	823
Bishop Trust Co., Ltd., executor of estate of John A. McCandless	97943	42	1309
Blaise, E. F	98294	42	1232
Blake, Joseph M., administrator of estate of Harriet Frances Whiting	92817	44	1306
Bohn, Charles B.[7]	95953	43	953

[1] Estate tax decision.

[2] Nonacquiescence relates to all issues except the issue, Did the respondent err in including in petitioner's consolidated income for 1932 and 1933, subject to depletion, the sums of $25,727.65, $27,421.09, and $40,445.27 which petitioner's affiliate, the Wofford Production Co., paid during said years to owners of oil payment contracts on its Pinkston lease?

[3] Nonacquiescence relates to all issues except the issue with respect to the $150 added by the Commissioner to the petitioner's taxable income.

[4] Nonacquiescence relates only to the issue, Should the taxable income of the petitioner for the year 1935 be increased, for the reason that a certain loss sustained during that year by the partnership, of which he is a member, resulted from the "short sale of property," within the meaning of section 117(e) of the Revenue Act of 1934?

[5] Nonacquiescence relates only to the issue, Did the Commissioner err in including in gross estate the total agreed value of the two parcels of real property involved?

[6] Gift tax decision.

[7] Nonacquiescence relates only to the issue, Did the loss resulting from the exchanges of land contracts for Home Owners Loan Corporation bonds constitute a capital loss?

NONACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Board of Tax Appeals.	
		Volume.	Page.
Bondholders Committee [1]	90452, 90486, 90487	40	881
Bonfils, F. G., estate of [2]	91501	40	1079
Bonfils Trust, F. G.[2]	93148	40	1085
Bonfils et al., Helen G., executors of estate of F. G. Bonfils [2]	91501	40	1079
Branch, Claude R	94248	40	1043
Bridgeport City Trust Co. et al., The, executors of estate of Noyes E., Alling [3]	87136	41	191
Bristol, Bennet B.[4]	96289	42	263
Brown, Antoinette K	97743	42	693
Brown, William Maynard	97836	44	881
Bruckner, Arnold	97507	42	3
Buck, Ellsworth B	93330	41	99
Burnett, O. L	90248	40	604
Burnquist, Bert B	101259	44	484
C.			
California Brewing Association	101295	43	721
Cannon Valley Milling Co	96330	44	763
Carling Holding Co	86776, 87378, 88616	41	493
Carrol et al., John J., executors of estate of Florence L. Tisdale	97842	44	881
Cartex Mills, Inc	97698	42	894
Caspersen, Freda R	92765	40	758
Caughey, Carolyn G., estate of [3]	99655	44	385
Cavanagh, Paul (also known as William G. Atkinson)	95500	42	1037
Cavett et al., K., executors of estate of W. T. Hales [5]	93208	40	1244
Central Hanover Bank & Trust Co., executor of estate of W. M. L. Fiske	102055	44	227
Central Loan & Investment Co.[6]	82565	39	981
Chamberlain, Park	88067	41	10
Chaparral Oil Co	97552	43	457
Chase, Gertrude B	97902	44	39
Chase National Bank of the City of New York, The, trustee under agreements with American Depositor Corporation	93854, 93855, 93856, 93857	41	430
Clary, P. T. (Patrick)	96496	42	1142
Cohen, Moses	98164	44	709
Cole, Rufus S	96589	42	1110
Colonial Trust Co. et al, executors	93648	41	213
Columbia Oil & Gas Co.[7]	90624	41	38
Columbia River Paper Mills	97740	43	263
	97938	43	104
Cook Drilling Co.[8]	82231	38	291

[1] Nonacquiescence relates to issue pertaining to bases for depreciation of petitioner's assets.
[2] Previous acquiescence published in Internal Revenue Bulletin 1940–15, page 1, withdrawn.
[3] Estate tax decision.
[4] Gift tax decision.
[5] Nonacquiescence is only as to the issue, Is the cash received by petitioners in 1935 from the Local Federal Savings and Loan Association, which is admitted to be income, taxable as ordinary income or as capital gain?
[6] Acquiescence published in Cumulative Bulletin 1939–2, page 6, withdrawn.
[7] Nonacquiescence relates to issue pertaining to allocation of cost of equipment on the property in question.
[8] Nonacquiescence relates only to the issue whether the petitioner is entitled to deduct the costs incurred in drilling wells. Prior acquiescences published in Cumulative Bulletin 1939–2, page 8, withdrawn as to this issue only.

NONACQUIESCENCES—Continued.

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Corporate Investment Co	78363	40	1155
Corpus Christi Terminal Co	88103	38	944
Covington et ux., George W	98283	42	601
Credit Alliance Corporation	100561	42	1020
Crichton, Kate J	97025	42	490
Crown Zellerbach Corporation, transferee	101161, 101163, 101166, 101168, 101170	43	541
Cushman, Louise C., transferee of estate of Mary W. Cushman [1]	92881	40	947
Cushman, Mary W., estate of [1]	92882, 92883	40	947
D.			
Dallas Title & Guaranty Co.[2]	90466	40	1021
Dauth et ux., John P	96882, 96883	42	1181
Day, Gertrude Bucknell, estate of [1]	100644, 100645	44	524
Deering, Frank C., estate of	95996	40	983
Deering et al., Joseph Godfrey, executors of the estate of Frank C. Deering	95996	40	983
Delaware Terminal Corporation	86105	40	1179
DeLong, David A.[3]	101264	43	1185
Denholm & McKay Co	89606	39	767
Denver National Bank et al., trustees u/w F. G. Bonfils [4]	93148	40	1085
Donahue, Mrs. Jessie W.[5]	92980	44	329
Downing et ux., Richard [6]	99171	43	1147
Dunning, Henry A. B	92629	41	1101
Durkheimer, S. F	95209	41	585
E.			
Edison Bros. Stores, Inc	104424, 104425	45	472
Edwards Drilling Co.[7]	75931	35	341
Elias, Edna B	90827	41	1109
Elmhirst, Dorothy Whitney	85040, 85880, 95298	41	348
Elston Co., Ltd	96604	42	208
Elverson Corporation [8]	93281	40	615
Ely Trust, Donald	103472	44	370

[1] Estate tax decision.

[2] Nonacquiescence relates only to the issue involving the taxability of an amount of $40,000 transferred from "Premium reserve account" to "Undivided profits account" pursuant to resolution of the board of directors on July 5, 1934.

[3] Nonacquiescence relates only to the issue involving the amount of gain recognizable in 1936 upon the receipt of cash and stock in the Sundstrand Machine Tool Co. for stock in the American Broach & Machine Co.

[4] Previous acquiescence published in Internal Revenue Bulletin 1940-15, page 1, withdrawn.

[5] Nonacquiescence relates only to the issue whether the Commissioner erred in taxing the income of an irrevocable trust to the grantor, the petitioner.

[6] Nonacquiescence relates only to the issue whether Mrs. Irma Downing is liable for any part of the deficiency.

[7] Nonacquiescence relates only to the issue whether the petitioner is entitled to deduct the costs incurred in drilling oil wells. Prior acquiescence published in Cumulative Bulletin 1939-1, page 11, withdrawn as to this issue only.

[8] Nonacquiescence relates only to the issue, Was the income resulting from the receipt of surrendered collateral in extinguishment of a debt personal holding company income?

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Ely, III, Trust, William Newbold	103473	44	370
Equitable Life Assurance Society of the United States, The [1]	89294 93805	44	293
Erb et al., Arthur L., executors of estate of Giles W. Mead [2]	97566	41	424
Estates Administration, Inc., administrator of estate of Zachary Smith Reynolds [3]	86395	42	145
Evans, Mary Boyd	97432	42	851
Evans, Mary E. [4]	95527	42	246
F.			
F. H. E. Oil Co	92960	41	130
Falcon Co	92001	41	1128
Farmers & Ginners Cotton Oil Co	93436	41	1083
Fidelity-Philadelphia Trust Co. et al., trustees and transferees of estate of Gertrude Bucknell Day [3]	100644	44	524
First Mortgage Bonds [5]	90452 90486 90487	40	881
First Trust & Deposit Co. et al., guardians	90749 90750 90751	41	107
Fiske, W. M. L., estate of	102055	44	227
Fleming, Mrs. Anna Maud [6]	92958 94690	41	940
Fleming-Kimbell Corporation [6]	92959	41	940
Fleming, William [6]	92957 94689	41	940
Fowler et ux., John O	91162	40	1293
Frank Trust of 1927, Isaac W	98274	44	934
Frank, Wm. K., trustee of Isaac W. Frank Trust of 1927	98274	44	934
Frazier, Frederic H	91412	41	146
Frost Co., G. & C., a corporation [7]	100444	44	94
G.			
Gadian Co., Ltd	96605	42	208
Gardner, J. Willis [2 8]	92115	41	679
Getz et ux., Oscar	95114	44	98
Giannini et ux., A. P	87127 87128	42	546
Gilmore, Anna V	97835	44	881
Gloss [Glos], Lucy M. [2]	90391	41	1239

[1] Nonacquiescence relates only to the issue, May the company, on a cash receipts and disbursements basis, deduct guaranteed interest paid in the tax year under settlement options exercised by the beneficiary, when such interest had accrued in prior years?

[2] Gift tax decision.

[3] Estate tax decision.

[4] Nonacquiescence relates only to the deductibility of attorney's fees and abstract fees incurred incidental to the establishment of forfeiture of a lease and obtaining repossession of the leased premises.

[5] Nonacquiescence relates to issue pertaining to bases for depreciation of petitioner's assets.

[6] Nonacquiescence is only with respect to the holding that the petitioners would realize no taxable income from the exchange of their oil, equipment, and personal property interest for contingent oil payments until they recovered the cost of the exchanged property from the oil payments received.

[7] Nonacquiescence relates only to the issue, Did the excess of fair market value of the old building at the time of execution of the lease, and the fair market value of the new building at the time of the cancellation of the lease, constitute a proper offset to the cash received? Prior acquiescence published in Internal Revenue Bulletin in 1941-33, page 1, withdrawn.

[8] Nonacquiescence relates only to the issue, In the case of a gift of securities in trust, should the trust be treated as the donee, resulting in only one exclusion, or should the beneficiaries be treated as donees, resulting in one exclusion for each beneficiary?

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Greve, William M	97522	42	142
Grinnell, Francis Browne [2]	105092	44	1286
Grote et ux., Ben	94442 94443	41	247
Guaranty Trust Co. of New York, executor of estate of Henry W. Putnam	102689 102690	45	517
H.			
Hague, Mary Lewis	103355	45	104
Hales, George A.[3]	93210		
Hales, Mrs. Oneta [3]	93209	40	1244
Hales, Jr., W. T.[3]	93211		
Hales, W. T., estate of [3]	93208		
Halliwell, Walter S	102470	44	740
Halsey, Lilian Johnson, executrix of estate of Richard Hemmons Halsey [2]	96404	42	607
Halsey, Richard Hemmons, estate of [2]	96404	42	607
Hardwick Trust, Anita Marjory	103469	44	370
Hardwick Trust, Charles A	103474	44	370
Hardwick, Jr., Trust, Gordon A	103471	44	370
Hardwick Trust, Taylor	103468	44	370
Hartford-Connecticut Trust Co., The, executor of estate of Mary W. Cushman [2]	92882	40	947
Haskelite Manufacturing Corporation	100271	44	636
Heller, Edward H.[4]	94794 94795	41	1020
Hercules Motor Corporation	92225	40	998
Hickman, O. Kenneth	103767	44	1242
Highland, Cecil B., executor of estate of Virgil L. Highland	98726	43	598
Highland Farms Corporation [5]	95690	42	1314
Highland, Virgil L., estate of	98726	43	598
Hill Stores, Inc., H. G	105204	44	1182
Hoffman, Katherine M	96741		
Hoffman, W. W	96742	40	459
Hoffman et ux., W. W	92414		
Hollister, John B	94998	44	851
Hooper, James P., estate of [2 6]	85776	41	114
Hooper, Mathilde B., administratrix of estate of James P. Hooper [2 6]	85776	41	114
Hopkinson, Bessie B	97014	42	580
Horner, Julia C., executrix of estate of William Macpherson Horner [2]	102931	44	1136
Horner, William Macpherson, estate of [2]	102931	44	1136
Hughes Tool Co	90002	40	962

[1] Gift tax decision.
[2] Estate tax decision.
[3] Nonacquiescence is only as to the issue, Is the cash received by petitioners in 1935 from the Local Federal Savings and Loan Association, which is admitted to be income, taxable as ordinary income or as capital gain?
[4] Nonacquiescence relates to the issue whether petitioner was taxable on the income derived from certain securities placed in certain agency accounts with a bank in petitioner's name as trustee for his minor children.
[5] Nonacquiescence relates to all issues except the issue, Did the petitioner realize taxable gain as the result of receiving an award for compensatory damages?
[6] Nonacquiescence relates only to the issue, Was the sum of $132,345.73, representing the net proceeds of certain life insurance policies assigned by the decedent to a certain trust, properly includible in the gross estate; and, if so, may the sum of $40,000 be excluded under the provisions of section 302(g) of the Revenue Act of 1926?

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J.			
Jarvis, Jr., Amilius, guardian of William D. P. Jarvis	99227	43	439
Jarvis, William D. P., an infant	99227	43	439
Jewel Mining Co	99266	43	1123
Johnson County Realty Co	96314	44	121
Johnson, Earle F	97388	43	960
Johnson et al., Thomas M., trustees	86776 87378 88616	41	493
Johnston, Katherine S., estate of [1]	86395	42	145
Jonas, Louise B	91010	40	970
K.			
Kaffie et al., Harold, sole heirs of estate of Leopold Kaffie [1]	100526	44	843
Kaffie, Leopold, estate of [1]	100526	44	843
Kansas City, St. Louis & Chicago R. R. Co	94886	42	1163
Katzinger Co., The Edward	102421	44	533
Kellogg, Cornelia V. W., executrix of estate of Frederick R. Kellogg [1]	89143	40	915
Kellogg, F. W	95135	42	64
Kellogg, Frederick R., estate of [1]	89143	40	915
Kenan et al., William R., Jr., trustees u/w Mary Lily (Flagler) Bingham	94985	40	823
Kennedy Mining & Milling Co	99507	43	617
Kieselbach et ux., Henry A	98897	44	279
Killian Co., A. L.[2]	98691	44	169
Kimbell, Kay [3]	92956 94674	41	940
Kimbell, Mrs. Velma [3]	92955 94673	41	940
Kleberg, Alice G. K.[4]	86178	43	277
Kleberg, Alice G. K., executrix of estate of Robert J. Kleberg, Sr.[4]	86178	43	277
Kleberg, Sr., Robert J., estate of [5]	86179	43	277
Klyce, A. S., estate of	90174	41	194
Klyce, M. P., administrator	90174	41	194
Knapp, George O	91699	40	1144
Kresge Department Stores, Inc	101906	44	1210
L.			
Lamont, Elizabeth K	97407	43	61
Lane-Wells Co	99829	45	175
Lester, Alice H., an incompetent, estate of [5]	93404 96315	41	515
Lipe, Gordon C	90750		
Lipe, Suzanne H	90751	41	107
Lipe, Jr., Willard C	90749		
Little Gem Coal Co	101112	44	755

[1] Estate tax decision.
[2] Nonacquiescence relates only to the issue, Did the petitioner realize taxable income upon the cancellation of a portion of its mortgage indebtedness on certain property?
[3] Nonacquiescence is only with respect to the holding that the petitioners would realize no taxable income from the exchange of their oil, equipment, and personal property interest for contingent oil payments until they recovered the cost of the exchanged property from the oil payments received.
[4] Nonacquiescence relates only to the issue involving a bad-debt deduction of $204.50.
[5] Gift tax decision.

NONACQUIESCENCES—Continued.

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M.			
Majestic Oil Corporation[1]	96380	42	659
Marlborough House, Inc., et al.[2]	90452, 90486, 90487	40	881
Marlborough Investment Co.[2]	90452, 90486, 90487	40	881
Marshall, Herbert	99559	41	1064
Marshall, Margaret White (formerly Margaret White Wood)[3]	96948	43	99
Mason et al., Sam A., coadministrators of estate of Silas B. Mason[4]	100944	43	813
Mason, Silas B., estate of[4]	100944	43	813
Masterson, Anna Eliza[3]	93517	42	419
McCandless, John A., estate of	97943	42	1309
McCarthy, Emmett J.[5]	101607	44	417
McCormack, William J.[3]	96054	43	924
McGlue, G. Percy, estate of	98446	41	1186
McGlue, M. Edith, executrix of estate of G. Percy McGlue	98446	41	1186
McGovern, Inc., Patrick	91846	40	705
McGowan, William John, estate of, also trust executed by[4 6]	100967	43	695
McIntyre, Winifred Wheeler	103221	45	67
McLean et ux., Marrs[3]	91170, 91171	41	1266
Mead, Giles W., estate of[3]	97566	41	424
Meridian & Thirteenth Realty Co	101968	44	865
Mesta, L. W	96531	42	933
Michel, Morris	97311	43	1036
Michigan Silica Co	96786	41	511
Milbank, Dunlevy[7]	93050	41	1014
Moloney Electric Co.[8]	96072	42	78
Morehead, Katharine Boyd	95441	42	851
Morrell, John Edgerly, estate of	103776	43	651
Mueller Co., C. F	85964, 96331	40	195
Mutual Savings & Loan Association, Inc., of Norfolk	101321	44	1204
N.			
National Bank of Commerce of San Antonio, Tex	93164	40	470
National Bank of Commerce of Seattle[9]	89720	40	72

[1] Nonacquiescence relates only to the issue, Is the petitioner entitled to a 1935 loss deduction for the undepreciated cost of certain casing and other lease equipment which could not be removed from a certain oil well which the petitioner ceased to operate during that year, because such operation had become unprofitable?

[2] Nonacquiescence relates to issue pertaining to bases for depreciation of petitioner's assets.

[3] Gift tax decision.

[4] Estate tax decision.

[5] Nonacquiescence relates only to the deductibility of $17,850 under section 23(e) of the Revenue Act of 1936 for alleged loss of the petitioner's interest in certain real property.

[6] Nonacquiescence relates only to the issue, Did the Commissioner err in including in gross estate the total agreed value of the two parcels of real property involved?

[7] Nonacquiescence is only with respect to the taxability of the income from the so-called short term trusts.

[8] Nonacquiescence relates only to the issue, Is the petitioner entitled to a credit under section 26(c)2 of the Revenue Act of 1936 in the amount of $13,810, representing 2 per cent of the largest amount of bonds at any one time outstanding during 1936?

[9] Acquiescence as to one issue published in Cumulative Bulletin 1939-2, page 26, withdrawn.

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National Paper Products Co., transferor	101165	43	541
Nebraska Bridge Supply & Lumber Co	90846	40	40
Neustadt et al., Agnes, trustees u/w Sigmund Neustadt	99935	43	848
Neustadt, Sigmund, Trust under will of	99935	43	848
New McDermott, Inc., The	99360	44	1035
Newport Industries, Inc	92331	40	977
Newton, Jr., James Q	97325	42	473
Newton Trust, James Q	97324	42	473
Nicolai, Harry T.[1]	93821 98188	42	899
O.			
Ortiz, Alice duPont [2]	93159	42	173
P.			
Pacific Grape Products Co	97116	42	914
Page Oil Co	90515 95674 96186	41	952
Palmer, Carleton H	89854	40	1001
Paumgarten, Elsie Biddle [3]	103010	44	701
Perkins, Ralph [4]	96126	41	1225
P-H Group	98835	43	1041
Phoenix State Bank & Trust Co., trustee under deed of trust from Mary W. Cushman, as trustee and transferee [5]	92883	40	947
Piedras Negras Broadcasting Co	97045	43	297
Piermont Corporation	100371	43	770
Price et ux., B. J	101260	44	484
Prouty, Olive H.[3]	96164	41	274
Putnam, Henry W., estate of	102689 102690	45	517
R.			
Realty Operators, Inc	92387	40	1051
Rebsamen Motors, Inc	99532	44	36
Reynolds, Inc., R. C.[6]	98014 98017	44	356
Reynolds, R. J., estate of [5]	86394	42	145
Reynolds, Zachary Smith, estate of [5]	86395	42	145
Rhodes, Mamie D., estate of [5]	91284	41	62
Rhodes et al., Hugh D., administrators of estate of Mamie D. Rhodes [5]	91284	41	62
Richardson, Lunsford [3]	85905	39	927
Robinette, Meta Biddle [3]	103009	44	701
Ronrico Corporation	103859	44	1130

[1] Nonacquiescence relates only to the issue, Is the income of a trust paid to the petitioner's divorced and remarried wife taxable to him, as the grantor?

[2] Nonacquiescence relates to all issues except the issue, whether the petitioner is entitled to any deduction as the result of the satisfaction of the deficit existing in her husband's brokerage accounts at the end of the year 1934.

[3] Gift tax decision.

[4] Nonacquiescence relates only to the issue, Did the petitioner sustain a loss in the amount of $13,963.50 on the sale of second preferred and common stock of the Hill Clutch Machine & Foundry Co.?

[5] Estate tax decision.

[6] Nonacquiescence relates only to the issue whether R. C. Reynolds, Inc., realized taxable gain upon the purchase of shares of its own stock and contracts related thereto in 1935.

NONACQUIESCENCES—Continued.

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Rowan Drilling Co., transferee [1]	98532	44	189
Rubinstein, Wilton [2]	95922	41	220
Rust, Jr., et al., H. L., executors of estate of H. L. Rust	95880	41	832
Rust, H. L., estate of	95880	41	832
S.			
Safe Deposit & Trust Co. of Baltimore, trustee under wills of R. J. Reynolds and Katherine S. Johnston, and deed of Katherine S. Johnston [3]	86394	42	145
Sanford Cotton Mills, Inc.[4]	95218	42	190
Sanitary Products Corporation, The, transferor	101169	43	541
Schmidlapp, Carl J.[2]	98895	43	829
Schwabacher, Albert E	100865	43	1177
Schwabacher, James H	101269	43	1177
Schwabacher, May K	100864	43	1177
Schwabacher, Sophie D	101268	43	1177
Seerley, John J	97673	43	50
Shelden Land Co.[5]	93196	42	498
Sherman, Doris Bond [2 6]	95300	41	898
Sherman, John Q., estate of	103041	44	853
Sherman, Katherine M., surviving wife of John Q. Sherman	103041	44	853
Sherman et al., Katherine M., executors of estate of John Q. Sherman	103041	44	853
Smith, W. Hinckle	93663 102884	44	104
Sobel, Inc., N	93822	40	1262
Solomon, Amelia [2]	97937	43	234
Sporl & Co., Inc., C. A	90354	40	828
Spreckels, Adolph B	94621 95639	41	1204
Springfield Industrial Building Co., The	87300	38	1445
Stacy, Marjorie Lipe	99420	43	91
Stanart Co., Ltd	96606	42	208
State-Planters Bank & Trust Co	105254	45	630
State Street Trust Co. et al., administrators of estate of Francis Browne Grinnell [3]	105092	44	1286
Stein, Nathan	83178	40	847
Stern, Allison L. S.[7]	93134	40	756
Stewart, James R.[8]	89950	39	87
Straus, Friedrich A	83181		
Straus, Meier A	83180	40	847
Straus, Moritz	83179		
Strong Manufacturing Co., The	95626	41	1273
Sun Pipe Line Co	98764	42	1413
Sweet, Florence M	101786	44	871
Swope, Lorenzo W., estate of	93648	41	213

[1] Nonacquiescence relates only to the issue, Is the petitioner's transferor entitled to depletion upon amounts received in 1932 from oil payments acquired in 1931 for drilling wells, the entire cost of which was deducted and allowed in its 1931 income tax return?

[2] Gift tax decision.

[3] Estate tax decision.

[4] See G. C. M. 22404 (page 204, Cumulative Bulletin 1940-2).

[5] Nonacquiescence relates only to the issue whether petitioner is entitled to a deduction for an asserted loss on an alleged sale of certain land to another corporation.

[6] Nonacquiescence relates only to the year 1936.

[7] Nonacquiescence relates only to the issue, Where termination of a trust could occur only at the election of the grantor with concurrence of attorneys who represented two persons interested in the trust, is the interest of the attorneys a substantial adverse interest?

[8] Prior acquiescence published in Cumulative Bulletin 1939-1 (Part 1), page 34, withdrawn.

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Technicraft Engineering Corporation	99830	45	175
Thomas, Martin D	100874	44	735
Thompson, Mary H., executrix of estate of William G. Thompson[2]	96358	41	901
Thompson, William G., estate of[2]	96358	41	901
Tillotson, Frank F., estate of[2 3]	100563	44	644
Tillotson et al., Isabelle I., executors of estate of Frank F. Tillotson[2 3]	100563	44	644
Tisdale, Florence L., estate of	97842	44	881
Title Guarantee & Trust Co., trustee under deed of trust from Edward T. Bedford, dated December 1, 1928	97260	42	748
Tobin Packing Co., Inc., The	99483	43	642
Towne, William Stark	99197	42	1046
Traiser, Richard E., estate of[4]	91958	41	228
Transcalifornia Oil Co., Ltd.[5]	73111	37	119
Trice Securities Corporation	85176	41	306
U.			
Union Trust Co. of the District of Columbia, The executor of estate of Carolyn G. Caughey[2]	99655	44	385
U. S. Industrial Alcohol Co. (W. Va.)[6]	90713-90714	42	1323
W.			
Walker, William T.[7]	92600	40	762
Warner, Jack L.[7]	97401	42	954
Washington Pulp & Paper Corporation, transferor	101164	43	541
Watson, Archibald R	87873-88048-89650	42	52
Weingarten, Inc., J.[8]	99707	44	798
Weinstock, Max E.[7]	97312	43	1036
Wenger, Mary E	92245	42	225
Webster, E. Kessler	97840	44	881
Webster Trust, Fannie S	97841	44	881
Webster Trust No. 1, Warren	97837	44	881

[1] Nonacquiescence relates only to the issue involving the exchange in 1936 of 600 shares of Pressed Steel Car Co. (N. J.) for stock and rights in Pressed Steel Car Co. (Pa.).

[2] Estate tax decision.

[3] Nonacquiescence relates only to the issue: Whether the petitioner has overcome the presumption that certain gifts made by the decedent to the natural objects of his bounty within one year of death were made in contemplation of death.

[4] Nonacquiescence relates only to that part of the Board's opinion which holds, without supporting evidence, that gains on the sale of corpus of the estate constituted income available for distribution to the beneficiaries.

[5] Nonacquiescence relates only to the issue, Did the petitioner incorrectly accrue on its books at the end of 1931 the amount of $1,895.78, representing unpaid landowner's royalties? Prior acquiescence published in Cumulative Bulletin 1938-1, page 31, withdrawn.

[6] Nonacquiescence relates only to the issue, Is the taxpayer entitled to a deduction for rent paid for the use of vessels of a subsidiary which it operated under a contract providing that it should maintain the vessels and make good depreciation?

[7] Gift tax decision.

[8] Nonacquiescence relates to the issue whether petitioner is entitled to a dividends paid credit of $27,180 representing premiums in new preferred stock and cash on old preferred stock retired in connection with a nontaxable reorganization in so far as the issue was decided against the Commissioner.

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Webster, Jr., et al., Warren, trustees of Warren Webster Trust No. 1	97837	44	881
Webster, Jr., et ux., Warren	97838	44	881
Webster, Sr., Warren, estate of	97839	44	881
West Production Co	88997	41	1043
Western Waxed Paper Co. of California, transferor	101167	43	541
Wetherill, Samuel Price, executor of the estate of Gertrude Bucknell Day [1]	100645	44	524
Wheeler, Helen Evans [2]	95528	42	246
Wheeler, Robert T	103222	45	67
White, Ida A., estate of	93575	41	525
Whiting, Harriet Frances, estate of	92817	44	1306
Wilcox, Elsie H.[3]	96830	43	931
Wilcox, Gaylord P.[3]	96831	43	931
Wilcox, Lucian T	80393	44	373
Wilcox, Mabel I.[3]	96827	43	931
Willson, Frances S	99980	44	583
Wilson, John P.[4]	93140	42	1260
Wood, Orrin G.[5 6]	92489	40	904

[1] Estate tax decision.

[2] Nonacquiescence relates only to the deductibility of attorney's fees and abstract fees incurred incidental to the establishment of forfeiture of a lease and obtaining repossession of the leased premises.

[3] Nonacquiescence relates only to the issue, Are the petitioners taxable in 1935 as beneficiaries under the will of Emma Lyman Wilcox upon income earned in 1935 by the estate during administration?

[4] Nonacquiescence relates to the issues, Whether the income of a 2-year trust created for the benefit of the taxpayer's adult son is taxable to the grantor under section 166 of the Revenue Act of 1934, and whether the capital gains of a lifetime trust created for the benefit of an adult daughter are taxable to the grantor under section 167 of the Revenue Act of 1934?

[5] Gift tax decision.

[6] Nonacquiescence relates only to the issue, Is the value of life insurance policies to be determined by the cost to purchase similar contracts as determined by the Commissioner, or is the value limited to the cash surrender value as contended by petitioner?

EXCESS PROFITS TAX REGULATIONS [109], AMENDED.

1941-43-10880
T. D. 5092

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 30.—EXCESS PROFITS TAX.

Regulations 109 amended to conform to Revenue Act of 1941.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 109 [Part 30, Title 26, Code of Federal Regulations, 1941 Sup.] to the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress), approved September 20, 1941, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 30.710-1 the following:

SEC. 201. EXCESS PROFITS TAX RATES AND CREDITS. (Revenue Act of 1941, Title II.)

(a) RATES.—Section 710(a) of the Internal Revenue Code is amended to read as follows:

"(a) IMPOSITION.—

"(1) GENERAL RULE.—There shall be levied, collected, and paid, for each taxable year, on the adjusted excess profits net income, as defined in subsection (b), of every corporation (except a corporation exempt under section 727) the tax shown in the following table:

"If the adjusted excess profits net income is:	The tax shall be:
Not over $20,000	35% of the adjusted excess profits net income.
Over $20,000, but not over $50,000.	$7,000, plus 40% of excess over $20,000.
Over $50,000, but not over $100,000.	$19,000, plus 45% of excess over $50,000.
Over $100,000, but not over $250,000.	$41,500, plus 50% of excess over $100,000.
Over $250,000, but not over $500,000.	$116,500, plus 55% of excess over $250,000.
Over $500,000	$254,000, plus 60% of excess over $500,000.

"(2) APPLICATION OF RATES IN CASE OF CERTAIN EXCHANGES.—If the taxpayer's highest bracket amount for the taxable year computed under section 752 (relating to certain exchanges) is less than $500,000, then in the application of the table in paragraph (1) of this subsection to such taxpayer, in lieu of each amount, other than the percentages, specified in such table, there shall be substituted an amount which bears the same ratio to the amount so specified as the highest bracket amount so computed bears to $500,000."

* * * * * * *

SEC. 202. DEDUCTION OF EXCESS-PROFITS TAX. (Revenue Act of 1941, Title II.)

* * * * * * *

(e) EXCESS-PROFITS CREDIT CARRY-OVER.—Section 710(c)(1) (defining the unused excess-profits credit) is amended by adding at the end thereof a new sentence to read as follows: "For such purpose the excess-profits credit and the excess-profits net income for any taxable year beginning in 1940 shall be computed under the law applicable to taxable years beginning in 1941."

* * * * * * *

SEC. 205. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title II.)

The amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 2. Section 30.710–2, as amended by Treasury Decision 5045, approved May 3, 1941 [C. B. 1941–1, 69], is further amended as follows:

(A) By inserting at the end of that portion of the first paragraph following item (*c*) the following new sentence:

In computing the unused excess profits credit for a taxable year beginning in 1940, the excess profits credit and the excess profits net income for such taxable year shall be determined under the law applicable to taxable years beginning in 1941.

(B) By changing the first sentence of the third paragraph to read as follows:

The following tables show the excess profits tax (1) for taxable years beginning after December 31, 1939, and before January 1, 1941, and (2) for taxable years beginning after December 31, 1940, upon certain specified amounts of adjusted excess profits net income.

(C) By changing the heading of the excess profits tax table following the third paragraph to read as follows:

TABLE I—TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1939, AND BEFORE JANUARY 1, 1941.

(D) By inserting immediately after the existing table the following additional table:

TABLE II—TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1940.

Adjusted excess profits net income.	Per cent.	Total excess profits tax.
$0 to $20,000	35	$7,000
$20,000 to $50,000	40	19,000
$50,000 to $100,000	45	41,500
$100,000 to $250,000	50	116,500
$250,000 to $500,000	55	254,000
$500,000 up	60	

(E) By striking from the first example "1940," "$254,000," "204,000," "50 per cent," "50,000," and "254,000," wherever they appear, and inserting in lieu thereof "1941," "$314,000," "254,000," "60 per cent," "60,000," and "314,000," respectively.

(F) By changing the first paragraph following the first example to read as follows:

Adjustments are required in the above tables in the case of corporations which have been through certain tax-free exchanges or liquidations (after December

31, 1939) described in sections 750 and 752 and which, as a consequence, have a highest bracket amount of less than $500,000. For definition and computation of highest bracket amount, see sections 750(e) and 752. Such adjustments are accomplished by applying to the applicable table the ratio of the corporation's highest bracket amount, adjusted as provided in section 752, to what its highest bracket amount would have been if the adjustments required by section 752 had not been made, that is, $500,000. Thus, if the highest bracket amount of a corporation as computed under section 752 is only $300,000, the dollar amounts in Table I or Table II applicable to such corporation will be only $\frac{300,000}{500,000}$ or 60 per cent, of the amounts therein set forth. The left-hand column (headed "Adjusted Excess Profits Net Income") of Table I or Table II applicable to such a corporation would therefore read $0 to $12,000, $12,000 to $30,000, $30,000 to $60,000, $60,000 to $150,000, $150,000 to $300,000, and $300,000 up. The right-hand column (headed "Total Excess Profits Tax") in Table I would read $3,000, 8,400, 18,900, 54,900, and 122,400; and such column in Table II would read $4,200, 11,400, 24,900, 69,900, and 152,400. The middle, or percentage, column in each table would remain unchanged.

(G) By striking "The table" from the first sentence of the second paragraph following the first example and inserting in lieu thereof "Table I or Table II," and by striking "in the table" from the second and third sentences of such paragraph and inserting in each case in lieu thereof "in the applicable table."

(H) By striking from the third paragraph following the first example "1940," "$272,400," "$122,400," "50 per cent," "150,000," and "272,400," and inserting in lieu thereof "1941," "$332,400," "$152,400," "60 per cent," "180,000," and "332,400," respectively.

(I) By striking from the first sentence of the fourth paragraph following the first example "of the excess profits tax table" and inserting in lieu thereof "of the applicable table."

(J) By striking "$50,000" and "$80,000" from the second column of the table in the last example and inserting in lieu thereof "$50,000"[1] and "80,000,"[1] respectively, and by inserting immediately after such table the following:

[1] This amount is determined under the law applicable to taxable years beginning in 1941.

PAR. 3. There is inserted immediately preceding section 30.711(a)-1 the following:

SEC. 202. DEDUCTION OF EXCESS-PROFITS TAX. (Revenue Act of 1941, Title II.)

* * * * * * *

(c) COMPUTATION OF EXCESS-PROFITS NET INCOME.—

(1) TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1940.—

(a) Section 711(a)(1)(A) (relating to adjustment for income taxes in computing excess-profits net income under income credit) is amended to read as follows:

"(A) Income Taxes.—In computing such normal-tax net income the deduction for the tax imposed by this subchapter shall not be allowed;".

(B) Section 711(a)(2)(C) (relating to adjustment for income taxes in computing excess-profits net income under invested capital credit) is amended to read as follows:

"(C) Income Taxes.—In computing such normal-tax net income the deduction for the tax imposed by this subchapter shall not be allowed;".

* * * * *

(d) COMPUTATION OF CHARITABLE, ETC., DEDUCTIONS.—

(1) Section 711(a)(1) of the Internal Revenue Code is amended by inserting at the end thereof the following new subparagraph:

"(G) Computation of Charitable, Etc., Deductions.—In determining any deduction the amount of which is limited to a percentage of the taxpayer's net income (or net income from the property), such net income (or net income from the property) shall be computed without regard to the deduction on account of the tax imposed by this subchapter."

(2) Section 711(a)(2) of the Internal Revenue Code is amended by adding at the end thereof the following new subparagraph:

"(I) Computation of Charitable, Etc., Deductions.—In determining any deduction the amount of which is limited to a percentage of the taxpayer's net income (or net income from the property), such net income (or net income from the property) shall be computed without regard to the deduction on account of the tax imposed by this subchapter."

* * * * *

SEC. 205. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title II.)

The amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 4. Section 30.711(a)-2 is amended as follows:

(A) By changing the second paragraph to read as follows:

For taxable years beginning before January 1, 1941, section 711(a)(1)(A) prior to its amendment by section 202(c)(1)(A) of the Revenue Act of 1941 provides that the deduction for taxes is to be increased in an amount equal to the tax for the taxable year under Chapter 1 (not including the tax imposed under section 102). The amount of such adjustment is the amount of such tax after the allowance of the credit for foreign taxes as provided by sections 31 and 131. For taxable years beginning after December 31, 1940, no adjustment is to be made on account of the tax under Chapter 1. Furthermore, although the excess profits tax is allowed as a deduction in computing normal-tax net income for the purposes of Chapter 1, such deduction is not allowed under section 711(a)(1)(A) as amended by section 202(c)(1)(A) of the Revenue Act of 1941 in computing excess profits net income.

(B) By striking "1940" from the portion of the example preceding the numbered subdivisions and inserting in lieu thereof "1941."

(C) By inserting immediately after the word "corporation" in subdivision (1) of the example the following: ", computed without regard to the deduction on account of the excess profits tax,".

(D) By striking out subdivision (2) of the example and by changing the numbers of the next five subdivisions from "(3)," "(4)," "(5)," "(6)," and "(7)" to "(2)," "(3)," "(4)," "(5)," and "(6)," respectively.

(E) By striking from subdivision (3) (as renumbered by this paragraph) of the example "1930," "1949," "1940," and "1939," wherever they appear, and inserting in lieu thereof "1931," "1950," "1941," and "1940," respectively.

(F) By striking from subdivision (5) (as renumbered by this paragraph) of the example "1940" and inserting in lieu thereof "1941."

(G) By changing the first paragraph after the last numbered subdivision of the example to read as follows:

If the income credit is used, the excess profits net income of the corporation for the calendar year 1941 is $314,600, computed as follows:

Normal-tax net income (computed without deduction of the excess profits tax)		$400,000
Plus:		
Long-term capital losses		75,000
		475,000
Less:		
Long-term capital gains	$100,000	
Income from retirement of bonds	20,000	
Income from refunds of Agricultural Adjustment Act taxes and interest thereon	400	
Income from recovery of bad debts	5,000	
Additional dividends received credit (100 per cent of total dividends of $120,000 received from domestic corporations including the China Trade Act Corporations, less credit of $85,000 already allowed by section 26(b) for dividends received, or $120,000 minus $85,000	35,000	
		160,400
Excess profits net income		314,600

PAR. 5. Section 30.711(a)-3, as amended by Treasury Decision 5045, is further amended as follows:

(A) By striking "1940" and "(4)" from subdivision (*a*) of the example and inserting in lieu thereof "1941" and "(3)," respectively.

(B) By striking "1940" from subdivision (*b*) of the example, wherever it appears, and inserting in lieu thereof "1941."

(C) By changing the first paragraph after subdivision (*c*) of the example to read as follows:

If the invested capital credit is used, the excess profits net income of the corporation for the calendar year 1941 is $324,600, computed as follows:

Normal-tax net income (computed without deduction of the excess profits tax)		$400,000
Plus:		
Long-term capital losses	$75,000	
50 per cent of interest on indebtedness included in borrowed capital	24,000	
Interest on Government and State obligations	6,000	
		105,000
		505,000
Less:		
Long-term capital gains	$100,000	
Income from retirement of bonds	20,000	
Income from refunds of Agricultural Adjustment Act taxes and interest thereon	400	
Income from recovery of bad debts	5,000	
Additional dividends received credit ($140,000 dividends received from both domestic and foreign corporations less credit of $85,000 already allowed by section 26(b) for dividends received)	55,000	
		180,400
Excess profits net income under section 711(a)(2)		324,600

PAR. 6. There is inserted immediately preceding section 30.711(b)–1 the following:

SEC. 202. DEDUCTION OF EXCESS-PROFITS TAX. (Revenue Act of 1941, Title II.)

* * * * * * *

(c) COMPUTATION OF EXCESS-PROFITS NET INCOME.—

* * * * * * *

(2) TAXABLE YEARS IN THE BASE PERIOD.—Section 711(b)(1)(A) (relating to adjustment for income taxes for taxable years in the base period) is repealed.

* * * * * * *

SEC. 205. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title II.)

The amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 7. Section 30.711(b)–1, as amended by Treasury Decision 5045, is further amended by changing the first paragraph after the first example to read as follows:

In computing the income tax for which an adjustment is required to be made by section 711(b)(1)(A) for the purpose of computing the excess profits tax for a taxable year beginning prior to January 1, 1941, the normal-tax net income or special-class net income for each base period year shall be that used in the determination of the average base period net income. By reason of the repeal of section 711(b)(1)(A), no adjustment on account of income tax for any base period year shall be made in computing the excess profits tax for taxable years beginning after December 31, 1940.

PAR. 8. There is inserted immediately preceding section 30.714–1 the following:

SEC. 201. EXCESS PROFITS TAX RATES AND CREDITS. (Revenue Act of 1941, Title II.)

* * * * * * *

(b) EXCESS PROFITS CREDIT—BASED ON INVESTED CAPITAL.—Section 714 of the Internal Revenue Code, as amended, is amended to read as follows:

"SEC. 714. EXCESS PROFITS CREDIT—BASED ON INVESTED CAPITAL.

"The excess profits credit, for any taxable year, computed under this section, shall be the amount shown in the following table:

"If the invested capital for the taxable year, determined under section 715, is:	The credit shall be:
Not over $5,000,000	8% of the invested capital.
Over $5,000,000	$400,000, plus 7% of the excess over $5,000,000."

SEC. 205. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title II.)

The amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 9. Section 30.714–1, as amended by Treasury Decision 5045, is further amended by changing the second sentence to read as follows:

Regardless of the ratio of earnings to invested capital for previous taxable years, such credit is an amount equal to 6 per cent of the corporation's invested capital for the taxable year, except that, if such invested capital for any taxable year beginning after December 31, 1940, exceeds $5,000,000, the credit for such taxable year is an amount equal to $400,000 plus 7 per cent of the excess over $5,000,000.

PAR. 10. There is inserted immediately preceding section 30.718–1 the following:

SEC. 203. NEW CAPITAL. (Revenue Act of 1941, Title II.)

Section 718(a) of the Internal Revenue Code is amended by striking out "and" at the end of paragraph (4); by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon and the word "and", and by inserting at the end thereof the following:

"(6) NEW CAPITAL.—An amount equal to 25 per centum of the new capital for such day. The term 'new capital' for any day means so much of the amounts of money or property includible for such day under paragraphs (1) and (2) as was previously paid in during a taxable year beginning after December 31, 1940, and so much of the distributions in stock includible for such day under paragraph (3) as was previously made during a taxable year beginning after December 31, 1940, subject to the following limitations:

"(A) There shall not be included money or property paid in by a corporation in an exchange to which section 112(b) (3), (4), or (5), or so much of section 112 (c), (d), or (e) as refers to section 112(b) (3), (4), or (5) is applicable (or would be applicable except for section 371(g)), or would have been applicable if the term 'control' had been defined in section 112(h) to mean the ownership of stock possessing more than 50 per centum of the total combined voting power of all classes of stock entitled to vote or more than 50 per centum of the total value of shares of all classes of stock.

"(B) There shall not be included money or property paid in to the taxpayer by a transferor corporation if immediately after such transaction the transferor and the taxpayer are members of the same controlled group. As used in this subparagraph and subparagraph (C), a controlled group means one or more chains of corporations connected through stock ownership with a common parent corporation if (i) more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock, of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations, and (ii) the common parent corporation owns directly more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock, of at least one of the other corporations.

"(C) There shall not be included a distribution in stock described in paragraph (3) made to another corporation, if immediately after the distribution the taxpayer and the distributee are members of the same controlled group.

"(D) Increase in Inadmissible Assets.—The new capital for any day of the taxable year, computed without the application of subparagraph (E), shall be reduced by the excess, if any, of the amount computed under section 720(b) with respect to inadmissible assets held on such day, over the amount computed under section 720(b) with respect to inadmissible assets held on the first day of the taxpayer's first taxable year beginning after December 31, 1940. For the purposes of this subparagraph, in determining whether obligations which are described in section 22(b)(4) any part of the interest from which is excludible from gross income or allowable as a credit against net income are to be treated as admissible or inadmissible assets, such obligations shall be treated in the same manner as they are treated for the taxable year for which tax under this subchapter is being computed.

"(E) Maximum New Capital Allowable.—The new capital for any day of the taxable year shall not be more than the amount, if any, by which—

"(i) the sum of the equity invested capital (computed without regard to this paragraph) and the borrowed

capital (as defined in section 719(a)) of the taxpayer as of such day, reduced by the amount of money or property paid in which is excluded by reason of the limitation of subparagraph (A) or (B) of this paragraph, exceeds

"(ii) the sum of such equity invested capital and borrowed capital as of the beginning of the first day of such taxpayer's first taxable year beginning after December 31, 1940, reduced by the amount, if any, by which the accumulated earnings and profits as of such first day of such first taxable year exceed the accumulated earnings and profits (computed without regard to distributions made in taxable years beginning after December 31, 1940) as of the beginning of the first day of the taxable year for which the tax under this subchapter is being computed.

"(F) Reduction on Account of Distributions Out of Pre-1941 Accumulated Earnings and Profits.—The new capital for any day of the taxable year, computed without the application of subparagraph (E), shall be reduced by the amount which, after the beginning of the first taxable year which begins after December 31, 1940, has been distributed out of earnings and profits accumulated prior to the beginning of such first taxable year."

PAR. 11. Section 30.718–1 is amended by inserting at the end of the fifth paragraph a new sentence reading as follows:

As to determination of additional amount to be included in daily equity invested capital on account of new capital, see section 30.718–4.

PAR. 12. Section 30.718–2(*a*) is amended by striking "section 30.718–4" from the second sentence and inserting in lieu thereof "section 30.718–5."

PAR. 13. Section 30.718–3 is amended by inserting at the end thereof the following:

For new capital treatment of distributions in stock, see section 30.718–4.

PAR. 14. There is inserted immediately preceding section 30.718–4 the following:

SEC. 30.718–4. *Determination of daily equity invested capital; new capital.*—(*a*) *In general.*—The equity invested capital for any day of a taxable year beginning after December 31, 1940, as partially determined under section 718(a) (1) to (5), shall be increased by an amount equal to 25 per cent of the new capital, if any, for such day. The term "new capital" for any such day means the aggregate amount of money and property paid in for stock, or as paid-in surplus, or as a contribution to capital, and the amount of distributions in stock made, during a taxable year beginning after December 31, 1940, and includible for such day under section 718(a) (1) to (3), subject, however, to the limitations provided in subparagraphs (A) to (F) of section 718(a)(6).

(*b*) *Limitations under subparagraph (A) of section 718(a)(6).*—The limitations provided in subparagraph (A) of section 718(a)(6) exclude from the term "new capital" the amount of any equity invested capital acquired in an exchange occurring during a taxable year beginning after December 31, 1940, to which section 112(b)(3), (4), or (5), or so much of section 112 (c), (d), or (e) as refers to section 112(b) (3), (4), or (5), is applicable. However, in determining whether an exchange is within section 112(b) (3), (4), or (5), or so much of section 112 (c), (d), or (e) as refers to section 112(b) (3), (4), or (5), the control requirement is considered to mean the ownership of stock possessing more than 50 per cent of the total combined voting power of all classes of stock entitled to vote or more than 50 per cent of the total value of shares of all classes of stock. These limitations also apply to all exchanges under Supplement R which would be subject to the statutory provisions referred to in the preceding sentence if it were not for section 371(g). The application of these limitations may be illustrated by the following example:

Example. The A Corporation issues stock during a taxable year beginning after December 31, 1940, to the B Corporation in exchange for the transfer of

certain property by the B Corporation. Immediately after the transfer the stock acquired by the B Corporation has a value of $10,000, the total value of all classes of stock of the A Corporation then outstanding amounting to $18,000. The A Corporation obtains no new capital, since the property for which the new stock was issued was obtained in an exchange to which section 112(b)(5) would be applicable if the term "control" had been defined in section 112(h) so as to include either the ownership of stock possessing more than 50 per cent of the total combined voting power of all classes of stock entitled to vote or more than 50 per cent of the total value of all classes of stock outstanding.

(c) *Limitations under subparagraph (B) of section 718(a)(6).*—The limitations provided in subparagraph (B) of section 718(a)(6) exclude from the term "new capital" any money or property paid in to the taxpayer by a transferor corporation if immediately after such transaction the transferor and the taxpayer are members of the same controlled group as that term is defined in such subparagraph. The application of these limitations may be illustrated by the following example:

Example. The A Corporation owns stock in the B Corporation, and the B Corporation owns stock in the C Corporation. The A Corporation transfers property to the C Corporation in exchange for stock of the C Corporation. Immediately after the transfer the stock owned by the A Corporation in the B Corporation possesses more than 50 per cent of the total combined voting power of all classes of stock entitled to vote. Also immediately after such transfer the stock owned by the B Corporation in the C Corporation has a value equal to more than 50 per cent of the total value of all classes of stock of the C Corporation. The C Corporation obtains no new capital through the acquisition of the property from the A Corporation in exchange for its stock, since immediately after the transfer the A Corporation, the transferor, and the C Corporation, the transferee, are members of the same controlled group.

(d) *Limitations under subparagraph (C) of section 718(a)(6).*—The limitations provided in subparagraph (C) of section 718(a)(6) excludes from the term "new capital" any distribution in stock described in section 718(a)(3) made by the taxpayer to another corporation if immediately after the distribution the taxpayer and the other corporation are members of the same controlled group as that term is defined in subparagraph (B) of section 718(a)(6). The application of these limitations may be illustrated by the following example:

Example. The A Corporation makes a distribution in taxable stock dividends to the B and C Corporations during a taxable year beginning after December 31, 1940. Immediately after the distribution the B and C Corporations own stock in the A Corporation which has a voting power of more than 50 per cent of the combined voting power of all classes of stock entitled to vote. Also immediately after the transfer the B Corporation owns stock in the C Corporation which has a value of more than 50 per cent of the total value of all classes of stock of the C Corporation. The taxable stock dividend distributed by the A Corporation does not constitute new capital to the A Corporation.

(e) *Limitations under subparagraph (D) of section 718(a)(6).*—The limitations provided in subparagraph (D) of sections 718(a)(6) require that the amount of new capital for any day of the taxable year, computed without the application of section 718(a)(6)(E), shall be reduced by the excess of the amount of inadmissible assets held on the beginning of that day over the amount of such assets held on the beginning of the first day of the taxpayer's first taxable year beginning after December 31, 1940. The application of these limitations may be illustrated by the following example:

Example.—The X Corporation makes its excess profits tax return on the calendar-year basis. On July 1, 1941, cash in the amount of $100,000 is paid in for stock. There are no other changes made in either the amount of equity invested capital or the amount of borrowed capital at any time during the year 1941. The adjusted basis of inadmissible assets as of January 1, 1941, amounts to $5,000. The adjusted basis of such assets as of July 2, 1941, is $15,000. Under subparagraph (D) the new capital of $100,000 is reduced to $90,000 as of July 2, 1941, as shown by the following computation:

Money paid in for stock July 1, 1941	$100,000
Less:	
Excess of inadmissible assets as of July 2, 1941, over such assets as of January 1, 1941 ($15,000 minus $5,000)	10,000
New capital as reduced under subparagraph (D)	90,000

(f) *Limitations under subparagraph (E) of section 718(a)(6).*—The limitations provided in subparagraph (E) of section 718(a)(6) prevent new capital as of any day from exceeding the amount by which the total equity invested capital and borrowed capital as of such day (computed without including the 25 per cent increase and reduced as provided in such subparagraph on account of amounts excluded under subparagraph (A) or (B)) exceeds the sum of the equity invested capital and borrowed capital as of the first day of the taxpayer's first taxable year beginning after December 31, 1940 (reduced as provided in such subparagraph on account of reduction in accumulated earnings and profits other than as the result of distributions). The application of these limitations may be illustrated by the following example:

Example. The Y Corporation makes its return on the calendar-year basis. Its equity invested capital as of January 1, 1941, amounts to $30,000, consisting of money paid in for stock, $20,000, and accumulated earnings and profits, $10,000. Its borrowed capital as of January 1, 1941, consists of bonds outstanding in the amount of $15,000. Accordingly, the total of its equity invested capital and borrowed capital as of January 1, 1941, is $45,000. The corporation has no inadmissible assets at any time during the year 1941. On July 1, 1941, the following events occur:

(1) The corporation distributes taxable stock dividends amounting to $5,000 out of earnings and profits accumulated prior to January 1, 1941;

(2) Money amounting to $15,000 is paid in as a contribution to capital;

(3) Property with an unadjusted basis of $20,000 for determining loss is acquired for stock in an exchange to which section 112(b)(4) is applicable; and

(4) Bonds in the amount of $10,000 are retired.

Only $5,000 of the $40,000 of new capital (tentative) arising out of the transactions which took place on July 1, 1941, constitutes new capital as of July 2, 1941, computed as follows:

(1) Sum of equity invested capital and borrowed capital as of July 2, 1941 (computed without regard to 25 per cent increase in new capital)	$70,000
(2) Property paid in for stock excluded under subparagraph (A)	20,000
(3) Item (1) minus item (2)	50,000
(4) Sum of equity invested capital and borrowed capital as of January 1, 1941	45,000
(5) New capital as of July 2, 1941 (item (3) minus item (4))	5,000

If the accumulated earnings and profits of the Y Corporation are reduced to zero as of January 1, 1942, because of the stock dividend distribution of $5,000 made on July 1, 1941, and an operating loss of $5,000 during the taxable year 1941, the new capital includible in equity invested capital as of January 1, 1942, would remain at $5,000 under the application of subparagraph (E), as shown by the following computation:

(1) Sum of equity invested capital and borrowed capital as of January 1, 1942 (computed without regard to 25 per cent increase in new capital)	$65,000
(2) Property paid in for stock excluded under subparagraph (A)	20,000
(3) Item (1) minus item (2)	45,000
(4) Sum of equity invested capital and borrowed capital as of January 1, 1941	45,000
(5) Excess of accumulated earnings and profits as of January 1, 1941, over earnings and profits, computed without regard to distributions, as of January 1, 1942 ($10,000 minus $5,000)	5,000
(6) Item (4) reduced by item (5)	40,000
(7) New capital as of January 1, 1942 (item (3) minus item (6))	[1] 5,000

[1] The application of subparagraph (F) is not shown in the above computation since it does not change the result.

(g) *Limitations under subparagraphs (F) of section 718(a)(6).*—The limitations provided in subparagraph (F) of section 718(a)(6) require that new

capital for any day of the taxable year (computed without the application of subparagraph (E)), shall be reduced by distributions made after the beginning of the first taxable year which begins after December 31, 1940, out of earnings and profits accumulated prior to the beginning of such first taxable year. The application of these limitations may be illustrated by the following examples:

Example (1). The Z Corporation makes its return on the calendar-year basis. Its total equity invested capital and borrowed capital as of January 1, 1941, is $100,000, including $10,000 of accumulated earnings and profits. The only capital acquired during the year amounts to $10,000, resulting from the distribution of a taxable stock dividend on July 1, 1941. The corporation has no earnings and profits for 1941. The capital resulting from the stock dividend is excluded from new capital by subparagraph (F) (as well as by subparagraph (E)), for it is reduced by the amount distributed out of earnings and profits accumulated prior to January 1, 1941.

Example (2). Assume that the facts with respect to the Z Corporation are the same as in example (1), except that the Z Corporation has an operating loss of $10,000 for the year 1941. Although under subparagraph (E), because of the adjustment relative to a reduction in accumulated earnings and profits not resulting from distributions, there would be new capital as of January 1, 1942, in the amount of $10,000, the application of subparagraph (F) prevents the stock dividend distributed on July 1, 1941, from being new capital, inasmuch as the capital from the stock dividend ($10,000) must be reduced by the amount of the distribution out of earnings and profits accumulated prior to January 1, 1941 ($10,000).

Example (3). Assume that the facts with respect to the Z Corporation are the same as in example (1), except that there are no earnings and profits in 1941 and no operating loss for such year and that its earnings and profits for 1942 are $10,000. Although, because of the 1942 earnings and profits, there would be new capital under subparagraph (E) in the amount of $10,000 as of January 1, 1943, subparagraph (F) prevents the stock dividend distributed on July 1, 1941, from being new capital, inasmuch as the capital resulting from such stock dividend ($10,000) is reduced by the amount of the distribution ($10,000) made out of earnings and profits accumulated prior to January 1, 1941.

PAR. 15. There is inserted immediately before section 30.718–1 and immediately after section 203 of the Revenue Act of 1941 the following:

SEC. 202. DEDUCTION OF EXCESS-PROFITS TAX. (Revenue Act of 1941, Title II.)

* * * * * * *

(f) EQUITY INVESTED CAPITAL.—Section 718(c)(3) (relating to the computation of earnings and profits for invested capital purposes) is amended by adding after the word "subchapter" the words "or chapter 1".

* * * * * * *

SEC. 205. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title II.)

The amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 16. Section 30.718–4 is renumbered section 30.718–5 and is further amended as follows:

(A) By inserting immediately after "1940" in the second sentence of the first paragraph the words "or, in the case of taxable years beginning after December 31, 1940, by reason of the tax imposed by Chapter 1."

(B) By striking from the second paragraph "(without diminution by any distributions or the excess profits tax for the taxable year)" and inserting in lieu thereof "(without diminution by any distributions, the excess profits tax for the taxable year, or, in the case of taxable years beginning after December 31, 1940, the income tax for the taxable year)."

PAR. 17. Section 30.718–5 is renumbered section 30.718–6.

PAR. 18. There is inserted immediately preceding section 30.722–1 the following:

SEC. 202. DEDUCTION OF EXCESS-PROFITS TAX. (Revenue Act of 1941, Title II.)

* * * * * * *

(g) ADJUSTMENT OF ABNORMAL BASE PERIOD NET INCOME.—Section 722(c) placing a limit on the amount of relief afforded under section 722) is amended by adding at the end thereof a new sentence to read as follows: "For the purposes of this subsection and subsection (d) the taxpayer's normal-tax net income shall be computed without deduction of the tax imposed by this subchapter.".

* * * * * * *

SEC. 205. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title II.)

The amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 19. Section 30.722–4, as added by Treasury Decision 5045, is amended by inserting immediately after the second paragraph the following new paragraph:

Although in the case of taxable years beginning after December 31, 1940, the excess profits tax is allowed as a deduction in computing normal-tax net income for the purposes of Chapter 1, the normal-tax net income is required to be computed without regard to such deduction for the purposes of the above described 6 per cent limitations.

PAR. 20. There is inserted immediately preceding section 30.731–1 the following:

SEC. 204. CORPORATIONS ENGAGED IN MINING STRATEGIC METALS. (Revenue Act of 1941, Title II.)

Section 731 of the Internal Revenue Code (exempting from excess-profits tax income derived from mining certain metals) shall not apply with respect to any taxable year beginning after December 31, 1940.

PAR. 21. Section 30.731–1(*a*) is amended by striking out the first sentence and inserting in lieu thereof the following:

Section 731 is applicable only to taxable years beginning before January 1, 1941, and provides that, if a domestic corporation is engaged in mining tungsten, quicksilver, manganese, platinum, antimony, chromite, or tin (hereinafter referred to as strategic metals), within the United States, the portion of its adjusted excess profits net income attributable to such mining is exempt from the excess profits tax.

(This Treasury decision is issued under authority contained in section 62 of the Internal Revenue Code (53 Stat., 32; 26 U. S. C., Sup. V, 62), as made applicable by section 729 of the Internal Revenue Code, added by the Second Revenue Act of 1940 (Public, No. 801, Seventy-sixth Congress, third session), and sections 201 to 205 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress).)

NORMAN D. CANN,
Acting Commissioner of Internal Revenue.

Approved October 21, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 23, 1941, 11.17 a. m.)

INCOME TAX RULINGS.—PART I.

A. INTERNAL REVENUE CODE.

1941–42–10866
T. D. 5086

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 19.—INCOME TAX.

Regulations 103 amended to conform to the Revenue Act of 1941.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 103 [Part 19, Title 26, Code of Federal Regulations, 1940 Sup.] to the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress), approved September 20, 1941, and to make certain other changes, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 19.4–1 the following:

SEC. 102. OPTIONAL TAX ON INDIVIDUALS WITH CERTAIN GROSS INCOME OF $3,000 OR LESS. (Revenue Act of 1941, Title I.)

* * * * * * *

(c) AMENDMENT TO SECTION 4.—Section 4 of the Internal Revenue Code is amended by inserting at the end thereof the following:

"(k) SHAREHOLDERS OF PERSONAL SERVICE CORPORATIONS,—Supplement S.

"(l) Individuals with gross income from certain sources of $3,000 or less,—Supplement T."

PAR. 2. Section 19.4–1 is amended by inserting at the end thereof the following:

Shareholders of personal service corporations—sections 391 to 396, inclusive.
Individuals with gross income from certain sources of $3,000 or less—sections 400 to 404, inclusive.

PAR. 3. There is inserted immediately preceding section 19.11–1 the following:

SEC. 102. OPTIONAL TAX ON INDIVIDUALS WITH CERTAIN GROSS INCOME OF $3,000 OR LESS. (Revenue Act of 1941, Title I.)

* * * * * * *

(b) CROSS-REFERENCES.—

(1) Section 11 of the Internal Revenue Code is amended by inserting at the end thereof the following: "(For alternative tax if gross income from certain sources is $3,000 or less, see section 400)".

* * * * * * *

PAR. 4. Section 19.11–1, as amended by Treasury Decision 5011, approved September 24, 1940, [C. B. 1940–2, 15], is further amended by striking out the first sentence of the first paragraph and inserting in lieu thereof the following:

Chapter 1 of the Internal Revenue Code, which applies only to taxable years beginning after December 31, 1938 (see section 1), imposes an income tax on individuals, including a normal tax (section 11), a surtax (section 12), and a defense tax for taxable years beginning after December 31, 1939, and before January 1, 1941 (section 15 added by section 201 of the Revenue Act of 1940). For optional tax in the case of taxpayers with gross income from certain sources of $3,000 or less, see section 400.

PAR. 5. There is inserted immediately preceding section 19.12–1 the following:

SEC. 101. SURTAX ON INDIVIDUALS. (Revenue Act of 1941, Title I.)

Section 12(b) of the Internal Revenue Code is amended to read as follows:

"(b) RATES OF SURTAX.—There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual the surtax shown in the following table:

If the surtax net income is:	The surtax shall be:
Not over $2,000	6% of the surtax net income.
Over $2,000 but not over $4,000	$120, plus 9% of excess over $2,000.
Over $4,000 but not over $6,000	$300, plus 13% of excess over $4,000.
Over $6,000 but not over $8,000	$560, plus 17% of excess over $6,000.
Over $8,000 but not over $10,000	$900, plus 21% of excess over $8,000.
Over $10,000 but not over $12,000	$1,320, plus 25% of excess over $10,000.
Over $12,000 but not over $14,000	$1,820, plus 29% of excess over $12,000.
Over $14,000 but not over $16,000	$2,400, plus 32% of excess over $14,000.
Over $16,000 but not over $18,000	$3,040, plus 35% of excess over $16,000.
Over $18,000 but not over $20,000	$3,740, plus 38% of excess over $18,000.
Over $20,000 but not over $22,000	$4,500, plus 41% of excess over $20,000.
Over $22,000 but not over $26,000	$5,320, plus 44% of excess over $22,000.
Over $26,000 but not over $32,000	$7,080, plus 47% of excess over $26,000.
Over $32,000 but not over $38,000	$9,900, plus 50% of excess over $32,000.
Over $38,000 but not over $44,000	$12,900, plus 53% of excess over $38,000.
Over $44,000 but not over $50,000	$16,080, plus 55% of excess over $44,000.
Over $50,000 but not over $60,000	$19,380, plus 57% of excess over $50,000.
Over $60,000 but not over $70,000	$25,080, plus 59% of excess over $60,000.
Over $70,000 but not over $80,000	$30,980, plus 61% of excess over $70,000.
Over $80,000 but not over $90,000	$37,080, plus 63% of excess over $80,000.

If the surtax net income is:	The surtax shall be:
Over $90,000 but not over $100,000	$43,380, plus 64% of excess over $90,000.
Over $100,000 but not over $150,000	$49,780, plus 65% of excess over $100,000.
Over $150,000 but not over $200,000	$82,280, plus 66% of excess over $150,000.
Over $200,000 but not over $250,000	$115,280, plus 67% of excess over $200,000.
Over $250,000 but not over $300,000	$148,780, plus 69% of excess over $250,000.
Over $300,000 but not over $400,000	$183,280, plus 71% of excess over $300,000.
Over $400,000 but not over $500,000	$254,280, plus 72% of excess over $400,000.
Over $500,000 but not over $750,000	$326,280, plus 73% of excess over $500,000.
Over $750,000 but not over $1,000,000	$508,780, plus 74% of excess over $750,000.
Over $1,000,000 but not over $2,000,000	$693,780, plus 75% of excess over $1,000,000.
Over $2,000,000 but not over $5,000,000	$1,443,780, plus 76% of excess over $2,000,000.
Over $5,000,000	$3,723,780, plus 77% of excess over $5,000,000."

SEC. 102. OPTIONAL TAX ON INDIVIDUALS WITH CERTAIN GROSS INCOME OF $3,000 OR LESS. (Revenue Act of 1941, Title I.)

* * * * * * *

(b) CROSS-REFERENCES.—

* * * * * * *

(2) Section 12 of the Internal Revenue Code is amended by inserting at the end thereof the following:

"(g) For alternative tax if gross income from certain sources is $3,000 or less, see section 400."

* * * * * * *

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 6. Section 19.12–1, as amended by Treasury Decision 5011, is further amended by striking out the last sentence and inserting in lieu thereof the following:

For the defense tax imposed for taxable years beginning after December 31, 1939, and before January 1, 1941, see section 19.15–1.

PAR. 7. Section 19.12–2, as amended by Treasury Decision 5011, is further amended as follows:

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

The following tables show the surtax (1) for taxable years beginning after December 31, 1938, and before January 1, 1940, (2) for taxable years beginning after December 31, 1939, and before January 1, 1941, and (3) for taxable years beginning after December 31, 1940, upon certain specified amounts of surtax net income.

(B) By striking out the heading of the second table and inserting in lieu thereof the following:

TABLE II.—TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1939, AND BEFORE JANUARY 1, 1941

(C) By inserting immediately after the second table the following:

TABLE III.—*Taxable years beginning after December 31, 1940.*

Surtax net income.	Per cent.	Total surtax.
$0 to $2,000	6	$120
$2,000 to $4,000	9	300
$4,000 to $6,000	13	560
$6,000 to $8,000	17	900
$8,000 to $10,000	21	1,320
$10,000 to $12,000	25	1,820
$12,000 to $14,000	29	2,400
$14,000 to $16,000	32	3,040
$16,000 to $18,000	35	3,740
$18,000 to $20,000	38	4,500
$20,000 to $22,000	41	5,320
$22,000 to $26,000	44	7,080
$26,000 to $32,000	47	9,900
$32,000 to $38,000	50	12,900
$38,000 to $44,000	53	16,080
$44,000 to $50,000	55	19,380
$50,000 to $60,000	57	25,080
$60,000 to $70,000	59	30,980
$70,000 to $80,000	61	37,080
$80,000 to $90,000	63	43,380
$90,000 to $100,000	64	49,760
$100,000 to $150,000	65	82,260
$150,000 to $200,000	66	115,280
$200,000 to $250,000	67	148,780
$250,000 to $300,000	69	183,280
$300,000 to $400,000	71	254,280
$100,000 to $500,000	72	326,280
$500,000 to $750,000	73	508,780
$750,000 to $1,000,000	74	693,780
$1,000,000 to $2,000,000	75	1,443,780
$2,000,000 to $5,000,000	76	3,723,780
$5,000,000 up	77	

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

Accordingly, the surtax due for taxable years beginning after December 31, 1940, upon a surtax net income of $63,128 would be $26,925.52 computed as follows:

Surtax on $60,000 from table	$25,080.00
Surtax on $3,128 at 59 per cent	1,845.52
Total	26,925.52

PAR 8. There is inserted immediately preceding section 19.13-1 the following:

SEC. 103. CORPORATION DEFENSE TAX RATES INCORPORATED IN RATE SCHEDULES. (Revenue Act of 1941, Title I.)

(a) TAX ON CORPORATIONS IN GENERAL.—Section 13(b) (1) and (2) of the Internal Revenue Code are amended to read as follows:

"(1) GENERAL RULE.—A tax of 24 per centum of the normal-tax net income; or

"(2) ALTERNATIVE TAX (CORPORATIONS WITH NORMAL-TAX NET INCOME SLIGHTLY MORE THAN $25,000).—A tax of $4,250, plus 37 per centum of the amount of the normal-tax net income in excess of $25,000."

* * * * * * *

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 9. Section 19.13–1 is amended by striking out the parenthetical expression at the end of the first sentence in the first paragraph.

PAR. 10. Section 19.13–5, as amended by Treasury Decision 5038, approved February 8, 1941 [C. B. 1941–1, 187], is further amended as follows:

(A) By inserting immediately after the second sentence of the fourth paragraph the following:

For surtax on corporations generally with respect to taxable years beginning after December 31, 1940, see section 15, as amended by section 104 of the Revenue Act of 1941, and section 19.15–2.

(B) By striking out "$38,565.89" in the last paragraph and inserting in lieu thereof "$38,461.54 ($38,565.89 for taxable years beginning before January 1, 1941)."

(C) By striking out the last sentence in the last paragraph and inserting in lieu thereof the following:

For the defense tax imposed for taxable years beginning after December 31, 1939, and before January 1, 1941, see section 19.15–1.

PAR. 11. Section 19.13–6, as amended by Treasury Decision 5038, is further amended as follows:

(A) By striking out "22½ per cent" in the first paragraph and inserting in lieu thereof "24 per cent (22½ per cent for any such taxable year beginning before January 1, 1941)."

(B) By striking out "$38,565.89" in the first paragraph and inserting in lieu thereof "$38,461.54 ($38,565.89 for any such taxable year beginning before January 1, 1941)."

(C) By striking out the example and inserting in lieu thereof the following:

Example. The A Corporation, a domestic corporation, which is not a bank affiliate referred to in section 26(d), has for the calendar year 1941 a net income of $110,000, including interest on United States obligations (allowable as a credit under section 26(a)) in the amount of $10,000 and dividends received (of a class allowable as a credit under section 26(b)) in the amount of $10,000. The corporation's tax under section 13 for the calendar year 1941 is $21,960, computed as follows:

Net income	$110,000.00
Less credit for interest on United States obligations	10,000.00
Adjusted net income	100,000.00
Less credit for dividends received (85 per cent of $10,000)	8,500.00
Normal-tax net income	91,500.00
Tax under section 13(b)(1) (24 per cent of $91,500)	21,960.00

PAR. 12. Section 19.13–7, as amended by Treasury Decision 5038, is further amended to read as follows:

Alternative tax (corporations with normal-tax net incomes slightly more than $25,000); taxable years beginning after December 31, 1939.—For any taxable year beginning after December 31, 1939, section 13(b)(2), as amended, provides for an alternative tax in the case of corporations having normal-tax net incomes of slightly more than $25,000. With respect to such a taxable year beginning before January 1, 1941, the alternative tax is $3,775 plus 35 per cent of the amount of the normal-tax net income in excess of $25,000, such tax being applicable in the case of corporations having normal-tax net incomes of less than $38,565.89. With respect to such a taxable year beginning after December 31, 1940, the alternative tax is $4,250 plus 37 per cent of the amount of the normal-tax net income

in excess of $25,000, such tax being applicable in the case of corporations having normal-tax net incomes of less than $38,461.54. This provision may be illustrated by the following example:

Example. The A Corporation, a domestic corporation (not a bank affiliate), has for the calendar year 1941 a net income of $30,000, including interest on United States obligations (allowable as a credit under section 26(a)) in the amount of $3,000 and dividends received of a class allowable as a credit under section 26(b) in the amount of $1,000.. Since the alternative tax is less than the tax computed under the general rule, the correct tax is the alternative tax, that is, $4,675.50. The tax is computed as follows:

Alternative tax.

Net income	$30,000.00
Less interest on United States obligations	3,000.00
Adjusted net income	27,000.00
Less credit for dividends received (85 per cent of $1,000)	850.00
Normal-tax net income	26,150.00
Amount of normal-tax net income in excess of $25,000	1,150.00
Tax under section 13(b)(2) ($4,250 plus 37 per cent of $1,150)	4,675.50

Tax under general rule.

Normal-tax net income (computed as above)	$26,150.00
Tax under section 13(b)(1) (24 per cent of $26,150)	6,276.00

PAR. 13. There is inserted immediately preceding section 19.14–1 the following:

SEC. 103. CORPORATION DEFENSE TAX RATES INCORPORATED IN RATE SCHEDULES. (Revenue Act of 1941, Title I.)

* * * * * * *

(b) TAX ON SPECIAL CLASSES OF CORPORATIONS.—Section 14(b) of the Internal Revenue Code is amended to read as follows:

"(b) CORPORATIONS WITH NORMAL-TAX NET INCOMES OF NOT MORE THAN $25,000.—If the normal-tax net income of the corporation is not more than $25,000, and if the corporation does not come within one of the classes specified in subsection (c), (d), or (e) of this section, the tax shall be as follows:

"Upon normal-tax net incomes not in excess of $5,000, 15 per centum.

"$750 upon normal-tax net incomes of $5,000, and upon normal-tax net incomes in excess of $5,000 and not in excess of $20,000, 17 per centum in addition of such excess.

"$3,300 upon normal-tax net incomes of $20,000, and upon normal-tax net incomes in excess of $20,000, 19 per centum in addition of such excess."

(c) FOREIGN CORPORATIONS.—Section 14(c) of the Internal Revenue Code (relating to tax on resident foreign corporations) is amended by striking out "22½ per centum" and inserting "24 per centum".

* * * * * * *

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 14. Section 19.14–1 is amended by striking out the portion of the first sentence in the first paragraph following "January 1, 1940."

PAR. 15. Section 19.14–2, as amended by Treasury Decision 5038, is further amended as follows:

(A) By inserting immediately after the third sentence of the third paragraph the following:

For surtax on corporations generally with respect to taxable years beginning after December 31, 1940, see section 15, as amended by section 104 of the Revenue Act of 1941, and section 19.15–2.

(B) By changing the first sentence of the fifth paragraph to read as follows:

The following tables show the income tax imposed by section 14, as amended, (1) for any taxable year beginning after December 31, 1939, and before January 1, 1941, and (2) for any taxable year beginning after December 31, 1940, from corporations coming within the terms of section 14(b), as amended, upon certain specified amounts of normal-tax net income.

(C) By changing the heading of the table which follows the fifth paragraph to read as follows:

TABLE I.—*Corporation income tax under section 14(b), as amended, for taxable years beginning after December 31, 1939, and before January 1, 1941.*

(D) By inserting immediately after the table which follows the fifth paragraph the following:

TABLE II.—*Corporation income tax under section 14(b), as amended, for taxable years beginning after December 31, 1940.*

Normal-tax net income.	Per cent.	Total tax.
$0 to $5,000	15	$750
$5,000 to $20,000	17	3,300
$20,000 to $25,000	19	4,250

(E) By striking from the example "1940," "$1,537.50," "13½ per cent," "15 per cent," "675," "862.50," and "1,537.50," wherever they appear, and inserting in lieu thereof "1941," "$1,727.50," "15 per cent," "17 per cent," "750," "977.50," and "1,727.50," respectively.

(F) By striking out "22½0 per cent" in the last paragraph and inserting in lieu thereof "24 per cent" (22½0 per cent for taxable years beginning before January 1, 1941)."

PAR. 16. There is inserted immediately preceding section 19.15–1 the following:

SEC. 104. SURTAX ON CORPORATIONS AND TERMINATION OF DEFENSE TAX. (Revenue Act of 1941, Title I.)

(a) GENERAL RULE.—Section 15 of the Internal Revenue Code (relating to defense tax) is amended to read as follows:

"SEC. 15. SURTAX ON CORPORATIONS.

"(a) CORPORATION SURTAX NET INCOME.—For the purposes of this chapter the term 'corporation surtax net income' means the net income minus the credit for dividends received provided in section 26(b), computed by limiting such credit to 85 per centum of the net income in lieu of 85 per centum of the adjusted net income.

"(b) IMPOSITION OF TAX.—There shall be levied, collected, and paid for each taxable year upon the corporation surtax net income of every cor-

poration (except a corporation subject to the tax imposed by section 231(a) or Supplement Q) a surtax as follows:

"Upon corporation surtax net incomes not in excess of $25,000, 6 per centum of the amount thereof;

"Upon corporation surtax net incomes in excess of $25,000, $1,500, plus 7 per centum of the excess over $25,000."

* * * * * * *

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 17. Section 19.15–1, as amended by Treasury Decision 5038, is further amended by striking out "January 1, 1945" in the first sentence and inserting in lieu thereof "January 1, 1941."

PAR. 18. There is inserted immediately after section 19.15–1 the following new section:

SEC. 19.15–2. *Surtax on corporations.*—For taxable years beginning after December 31, 1940, section 15, as amended by section 104(a) of the Revenue Act of 1941, imposes a surtax upon the corporation surtax net income of every corporation, except a nonresident foreign corporation taxable under section 231(a) or a mutual investment company taxable under Supplement Q. The corporation surtax net income of a corporation is its net income minus the credit for dividends received provided in section 26(b). Section 15, as amended by section 104(a) of the Revenue Act of 1941, provides that the credit for dividends received shall be limited to 85 per cent of a corporation's net income, rather than to 85 per cent of its adjusted net income. The credit provided in section 26(a) for interest received upon obligations of the United States or its instrumentalities is not allowable in computing corporation surtax net income.

PAR. 19. There is inserted immediately preceding section 19.23(c)–1 the following:

SEC. 202. DEDUCTION OF EXCESS-PROFITS TAX. (Revenue Act of 1941, Title II.)

(a) AMENDMENT OF SECTION 23(c).—Section 23(c) of the Internal Revenue Code (relating to the deduction of taxes in computing net income) is amended to read as follows:

"(c) TAXES GENERALLY.—

"(1) ALLOWANCE IN GENERAL.—Taxes paid or accrued within the taxable year, except—

"(A) Federal income taxes;

"(B) war-profits and excess-profits taxes imposed by Title II of the Revenue Act of 1917, Title III of the Revenue Act of 1918, Title III of the Revenue Act of 1921, section 216 of the National Industrial Recovery Act, or section 702 of the Revenue Act of 1934, or by any such provisions as amended or supplemented;

"(C) income, war-profits, and excess-profits taxes imposed by the authority of any foreign country or possession of the United States; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of section 131 (relating to credit for taxes of foreign countries and possessions of the United States);

"(D) estate, inheritance, legacy, succession, and gift taxes; and

"(E) taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not exclude the allowance as a deduction of so much of such taxes as is properly allocable to maintenance or interest charges.

"(2) EXCESS-PROFITS TAX UNDER CHAPTER 2E—SPECIAL RULES.—For the purposes of this subsection, in the case of the excess-profits tax imposed by Subchapter E of Chapter 2—

"(A) The deduction shall be limited to the tax imposed for the taxable year, but any portion of such tax paid after the taxable year shall be considered as having been paid within the taxable year;

"(B) No reduction in such tax shall be made by reason of the credit for income, war-profits, or excess-profits taxes paid to any foreign country or possession of the United States;

"(C) Such tax shall be computed without regard to the adjustments provided in section 734; and

"(D) Such tax, in the case of a consolidated return under section 730, shall be allocated to the members of the affiliated group under regulations prescribed by the Commissioner, with the approval of the Secretary."

* * * * *

SEC. 205. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title II.)

The amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 20. Section 19.23(c)–1 is amended by striking out the second sentence and inserting in lieu thereof the following:

Estate, inheritance, legacy, succession, and gift taxes and Federal income taxes are not deductible from gross income. The Federal war-profits and excess-profits taxes imposed by Title II of the Revenue Act of 1917, Title III of the Revenue Act of 1918, Title III of the Revenue Act of 1921, section 216 of the National Industrial Recovery Act, and section 702 of the Revenue Act of 1934 are not deductible from gross income. The excess-profits tax imposed by Subchapter E of Chapter 2 is deductible only for taxable years beginning after December 31, 1940, and its deductibility for such years is subject to the rules set forth in section 19.23(c)–4.

PAR. 21. There is inserted immediately after section 19.23(c)–3 the following:

SEC. 19.23(c)–4. *Excess-profits tax under Subchapter E of Chapter 2 of the Internal Revenue Code.*—The deductibility of the excess-profits tax imposed by Subchapter E of Chapter 2 of the Internal Revenue Code is subject to the following special rules:

(*a*) The deduction is limited to the excess-profits tax imposed for the taxable year. A taxpayer which computes its net income on the cash receipts and disbursements basis may deduct its excess-profits tax for any taxable year in its income tax return for such taxable year, despite the fact that such tax is not actually paid until after such taxable year. The deduction in the case of such a taxpayer, however, will be disallowed upon examination of the return to the extent that the excess-profits tax is not actually paid after such taxable year.

(*b*) The excess-profits tax, for the purposes of this deduction, shall be computed without reduction by reason of the credit for income, war-profits, or excess-profits taxes paid to any foreign country or possession of the United States.

(*c*) For the purposes of this deduction, the excess-profits tax shall not be increased or decreased on account of any adjustment made under section 734, relating to adjustments in case of inconsistent position.

(*d*) The deduction allowable to a taxpayer which is a member of an affiliated group filing a consolidated excess-profits tax return is an amount which bears the same ratio to the excess-profits tax of the group as the normal-tax net income of the taxpayer, computed without a deduction for excess-profits tax, bears to the sum of the normal-tax net incomes of the several members of the group, computed without a deduction for excess-profits tax.

PAR. 22. Section 19.23(e)-1 is amended by changing the last paragraph to read as follows:

Losses from the sale or other disposition of Treasury bills issued after June 17, 1930, and before March 1, 1941, are not deductible.

PAR. 23. Section 19.23(o)-1, as amended by Treasury Decision 5057, approved July 2, 1941, [page 97, this Bulletin], is further amended by striking " January 1, 1939 " from the first paragraph and inserting in lieu thereof " January 1, 1938 ".

PAR. 24. There is inserted immediately preceding section 19.25-1 the following:

SEC. 111. PERSONAL EXEMPTION. (Revenue Act of 1941, Title I.)

(a) Section 25(b)(1) of the Internal Revenue Code is amended to read as follows:

"(1) PERSONAL EXEMPTION.—In the case of a single person or a married person not living with husband or wife, a personal exemption of $750; or in the case of the head of a family or a married person living with husband or wife, a personal exemption of $1,500. A husband and wife living together shall receive but one personal exemption. The amount of such personal exemption shall be $1,500. If such husband and wife make separate returns, the personal exemption may be taken by either or divided between them, except that if one spouse makes a return under Settlement T, the personal exemption of the other spouse shall be $750."

* * * * *

SEC. 113. CREDIT FOR DEPENDENTS. (Revenue Act of 1941, Title I.)

Section 25(b)(2) of the Internal Revenue Code (relating to credit for dependents) is amended to read as follows:

"(2) CREDIT FOR DEPENDENTS.—

"(A) Allowance in General.—$400 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective.

"(B) Exception for Certain Heads of Families.—If the taxpayer would not occupy the status of head of a family except by reason of there being one or more dependents for whom he would be entitled to credit under subparagraph (A), the credit under such subparagraph shall be disallowed with respect to one of such dependents."

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 25. Section 19.25-3, as amended by Treasury Decision 5011, is further amended to read as follows:

Amount of personal exemption allowable.—A single person or a married person not living with husband or wife is entitled to a personal exemption of $750 ($800 for a taxable year beginning after December 31, 1939, and before January 1, 1941, and $1,000 for a taxable year beginning before January 1, 1940), and the head of a family or a married person living with husband or wife, to $1,500 ($2,000 for a taxable year beginning after December 31, 1939, and before January 1, 1941, and $2,500 for a taxable year beginning before January 1, 1940). A husband and wife living together have but one personal exemption, which is $1,500 ($2,000 for a taxable year beginning after December 31, 1939, and before January 1, 1941, and $2,500 for a taxable year beginning before January 1, 1940).

If they make separate returns, each may claim one-half of the personal exemption, or such exemption may, in accordance with an agreement entered into by them, be taken by either or divided between them in any proportion. If, however, one spouse elects to make a return under Supplement T, the personal exemption of the other spouse shall be $750.

PAR. 26. Section 19.25–6 is amended by inserting at the end thereof a new paragraph to read as follows:

If, for any taxable year beginning after December 31, 1940, a taxpayer occupies the status of the head of a family solely by reason of the existence of one or more dependents for whom he would be entitled to credit under section 25(b)(2)(A) were it not for section 25(b)(2)(B), the credit in respect of one of such dependents is disallowed. For example, a widower who occupies the status of the head of a family solely by reason of the fact that he is maintaining a home for two dependent children under 18 years of age is entitled to the credit of $400 allowed for one such dependent, and the credit for the other dependent is disallowed. If, however, in addition to the two dependent children under 18 years of age, the widower also supports and maintains in the home a child who is over 18 years of age and who is not mentally or physically defective, he is entitled to a credit of $400 for each of the two children under 18 years of age, since his support and maintenance of the child over 18 years of age is in itself sufficient to give him the status of head of a family, and therefore he does not occupy such status solely by reason of the existence of dependent children under 18 years of age.

PAR. 27. Section 19.25–7, as amended by Treasury Decision 5011, is further amended to read as follows:

Personal exemption and credit for dependents where status changes.—If the status of the taxpayer changes during the taxable year, the personal exemption allowed by section 25(b)(1) to a single person, a married person not living with husband or wife, a head of a family, or a married person living with husband or wife, and the credit for dependents allowed by section 25(b)(2) will be apportioned according to the number of months during which the taxpayer occupied each status. A taxpayer not having the status of a head of a family or the status of a married person living with husband or wife shall be considered as having the status of a single person. For the purpose of the apportionment of the personal exemption and credit for dependents a fractional part of a month shall be disregarded unless it amounts to more than half a month, in which case it shall be considered as a month. In the event one spouse elects to be taxed under Supplement T, the other spouse, not so electing, will be allowed for that portion of the taxable year during which there existed the status of a married person living with husband or wife one-half of the personal exemption allowed a married person for such portion of the taxable year. In general, the personal exemption and credit for dependents allowable to any taxpayer will be the sum of the amounts apportioned to the several periods of the taxable year during which each status was occupied.

Example (1). A and B, who were heads of families during the first six months of 1941, were married on July 1, 1941, and lived together during the remainder of the year. If a joint return is made by A and B on the calendar year basis for 1941, the personal exemption will be $2,250; that is, ½ of $1,500 for A while the head of a family, plus ½ of $1,500 for B while the head of a family, plus ½ of $1,500 for the period during which they were married and living together. If separate returns are made by A and B on the calendar year basis for 1941 and neither elects to be taxed under Supplement T, each may claim a personal exemption of $1,125; that is, ½ of $1,500, plus ½ of ½ of $1,500. In the latter case, however, the joint exemption of ½ of $1,500 may by agreement be taken either by A or B or divided between them in any proportion.

Example (2). A and B were married and living together until November 30, 1941, when B, the wife, died. They had no dependents. The executor or administrator in making a return for B may claim a personal exemption of $750; that is, ½ of 11/12 of $1,500, or $687.50, for the period from the beginning of the taxable year to the date of the decedent's death, plus 1/12 of $750, or

$62.50, for the period from the date of decedent's death to the close of the taxable year. If A, the surviving spouse, makes a return for 1941 on the calendar year basis, he may claim a personal exemption of $750; that is, ½ of 11/12 of $1,500, or $687.50, plus 1/12 of $750, or $62.50. However, if neither elects to be taxed under Supplement T, the combined personal exemption of A and B for the period during which they were married and living together, that is, 11/12 of $1,500, or $1,575, may by agreement be taken either by A, or by B's executor or administrator in behalf of B, or divided between them in any proportion.

Example (3). A and B were married and living together until June 30, 1941, when A, the husband, died. Prior to the date of death, A was the chief support of a child 10 years of age. B, the surviving spouse, supported and maintained the child in her household during the remainder of the year. The executor or administrator in making a return for A (not under Supplement T) is entitled, in addition to a personal exemption, to a credit for dependents in the amount of $200; that is, 6/12 of $400. However, since B qualifies as head of a family for the last six months solely by reason of the fact that she maintained a home for such dependent child, the credit for such dependent is disallowed.

Example (4). A, a widower having two dependent children under 18 years of age, married B on July 1, 1941. For the calendar year 1941, they file separate returns and B elects to be taxed under Supplement T. B is taxed as a single person and, since she receives the benefit of a $750 exemption, she, in effect, receives the benefit of half the marital exemption of $750 for the second half of the year by reason of her status on the last day of the taxable year. A, who is taxed under sections 11 and 12, is subject to the provisions of section 25(b)(3) requiring an apportionment of the personal exemption and credit for dependents by reason of a change of status during the taxable year. A qualifies as the head of a family for the first six months of the taxable year and as a married person living with husband or wife for the last six months. Accordingly, his personal exemption is 6/12 of $1,500 for the first half of the year plus 6/12 of $750 for the second half, or $1,125. Inasmuch as his status as the head of a family arises from the fact that he maintained a home for two dependent children, the credit for one of such dependents for the first six months of the taxable year is disallowed. He is, therefore, entitled to a credit for dependents in the amount of $600; that is, 6/12 of $400, plus 6/12 of $800.

If the change of status shown by the preceding examples occurs in any taxable year beginning before January 1, 1941, the apportionment of the personal exemptions will be based upon an allowance of—

(*a*) For a taxable year beginning after December 31, 1939, and before January 1, 1941, $800 to a single person or a married person not living with husband or wife, and $2,000 to the head of a family or a married person living with husband or wife; and

(*b*) For a taxable year beginning before January 1, 1940, $1,000 to a single person or a married person not living with husband or wife, and $2,500 to the head of a family or a married person living with husband or wife.

The provisions of section 25(b)(2)(B) requiring the disallowance of the credit for one dependent where the taxpayer's status as the head of a family results solely from the existence of one or more of such dependents are applicable only for taxable years beginning after December 31, 1940. Accordingly, in the application of the preceding examples to taxable years beginning prior to January 1, 1941, the disallowance in such cases of the credit for one dependent should be disregarded.

PAR. 28. Section 19.26–2 is amended by changing the example to read as follows:

Example. For 1939 the X Corporation, which makes its income tax returns on the calendar year basis, has a net income of $50,000, included in which is $10,000 of interest on United States obligations allowed as a credit under section 26(a). For 1938 its gross income was $25,000 and its allowable deductions were $50,000. Included in such deductions was $15,000 for depletion based on discovery value. If depletion had been computed without reference to discovery value or to percentage depletion the amount of such deduction would have been

$5,000. For 1938 the corporation had $15,000 of wholly tax-exempt interest, and paid $10,000 in interest on indebtedness incurred to carry the obligations from which such tax-exempt interest was derived. The net operating loss credit available to such corporation for 1939 is $10,000, computed as follows:

Deductions for 1938		$50,000
Less excess of depletion deduction computed on basis of discovery value over amount allowable for depletion without reference to discovery value or percentage depletion ($15,000—$5,000)		10,000
Deductions as limited by section 26(c)(2)(A)		40,000
Gross income for 1938	$25,000	
Plus tax-exempt interest minus interest paid ($15,000—$10,000)	5,000	
Gross income contemplated by section 26(c)(2)(B)		30,000
Excess of deductions over gross income for 1938		10,000
Net income for 1939		50,000
Less credit under section 26(a) for interest received		10,000
Adjusted net income for 1939		40,000

The net operating loss credit is $10,000, that amount not being in excess of the adjusted net income for 1939.

PAR. 29. There is inserted immediately preceding section 19.42–1 the following:

SEC. 114. NONINTEREST-BEARING OBLIGATIONS ISSUED AT DISCOUNT. (Revenue Act of 1941.)

Section 42 of the Internal Revenue Code (relating to period in which items of gross income are included) is amended by inserting before the first sentence thereof "(a) GENERAL RULE.—", and by inserting at the end of such section a new subsection to read as follows:

"(b) NONINTEREST-BEARING OBLIGATIONS ISSUED AT DISCOUNT.—If, in the case of a taxpayer owning any noninterest-bearing obligation issued at a discount and redeemable for fixed amounts increasing at stated intervals, the increase in the redemption price of such obligation occurring in the taxable year does not (under the method of accounting used in computing his net income) constitute income to him in such year, such taxpayer may, at his election made in his return for any taxable year beginning after December 31, 1940, treat such increase as income received in such taxable year. If any such election is made with respect to any such obligation, it shall apply also to all such obligations owned by the taxpayer at the beginning of the first taxable year to which it applies and to all such obligations thereafter acquired by him and shall be binding for all subsequent taxable years, unless upon application by the taxpayer the Commissioner permits him, subject to such conditions as the Commissioner deems necessary, to change to a different method. In the case of any such obligations owned by the taxpayer at the beginning of the first taxable year to which his election applies, the increase in the redemption price of such obligations occurring between the date of acquisition and the first day of such taxable year shall also be treated as income received in such taxable year.

PAR. 30. Section 19.42–1 is amended by striking out the first three sentences (including the sentence in parentheses) and inserting in lieu thereof the following:

Except as otherwise provided in section 42, gains, profits, and income are to be included in the gross income for the taxable year in which they are received by the taxpayer, unless they are included as of a different period in accordance with the approved method of accounting followed by him. (See sections 19.41–1 to 19.41–3, inclusive.) In the case of the death of a taxpayer, there shall also be included in computing net income for the taxable period

in which he died amounts accrued up to the date of his death if not otherwise properly includible in respect of such period or a prior period, regardless of the fact that the decedent may have kept his books and made his returns on the basis of cash receipts and disbursements. (As to income from noninterest-bearing obligations issued at discount, see section 19.42–6, and as to income from short-term obligations issued on a discount basis, see section 19.42–7.)

PAR. 31. There is inserted immediately after section 19.42–5 the following:

SEC. 19.42–6. *Noninterest-bearing obligations issued at discount.*—If a taxpayer owns any noninterest-bearing obligation issued at a discount and redeemable for fixed amounts increasing at stated intervals, and if the increase in redemption price of such obligation occurring in the taxable year does not constitute income for such year under the method of accounting used in computing his net income, the taxpayer may, at his election, treat such increase as constituting income for the year in which it occurs rather than in the year in which the obligation is disposed of, redeemed, or paid at maturity. The election must be made in the taxpayer's return, and may be made for any taxable year beginning after December 31, 1940. The election shall apply also to all other obligations of the type described in this section owned by the taxpayer at the beginning of the first taxable year to which the election applies and to those thereafter acquired by him. It shall apply to the taxable year for which such return is filed, and shall be binding for all subsequent taxable years unless upon application by the taxpayer the Commissioner permits the taxpayer, subject to such conditions as the Commissioner deems necessary, to change to a different method of reporting income from such obligations. Although the election, once made, is binding upon the taxpayer, it does not apply to a transferee of such taxpayer.

In any case in which an election is made under this section, the amount considered to accrue in any taxable year to which the election applies is measured by the actual increases in the redemption price occurring in that year. Such amount shall not be considered to accrue ratably between the dates on which the redemption price changes. Thus, if two dates on which the redemption price increases fall within a taxable year and if the redemption price increases in the amount of 50 cents on each such date, the amount deemed to accrue in that year would be $1. If at the beginning of the first taxable year to which the election applies the taxpayer owns noninterest-bearing bonds of the prescribed character acquired prior thereto, he is required to report in such year, in addition to the increases in the redemption price actually falling within that year, the total of the increases in such price occurring between the date of his acquisition and the beginning of such year.

Example. Throughout the calendar year 1945, a taxpayer who makes his income tax returns on the calendar year basis and computes his net income on the cash receipts and disbursements basis holds the following United States bonds:

(*a*) United States savings bonds having a maturity value of $10,000, which he purchased on January 1, 1938, for $7,500. The entire increase in the redemption price of these bonds is exempt from normal tax but only such part of the increase as is attributable to $5,000 in principal amount (purchase price) of such bonds is exempt from the surtax.

(*b*) United States Defense savings bonds, Series E, having a maturity value of $5,000, which he purchased on January 1, 1942, for $3,750. The increase in the redemption price of these bonds is subject to both the normal tax and the surtax.

(*c*) United States savings bonds, Defense Series F, having a maturity value of $10,000, which he purchased on January 1, 1944, for $7,400. The increase in the redemption price of these bonds is subject to both the normal tax and the surtax.

The taxpayer holds no other obligations of the type described in this section. In his return for 1945 the taxpayer elects to treat the increases in the redemption prices of such bonds occurring in such year as income to him for such year. Under this section he is required in such return to report with

respect to such bonds $250 as subject to normal tax and $750 as subject to surtax, determined as follows:

	Subject to normal tax.		Subject to surtax.	
	Increases prior to 1945.	Increases in 1945.	Increases prior to 1945.	Increases in 1945.
Bonds acquired January 1, 1938	None	None	$400	$100
Bonds acquired January 1, 1942	$100	$100	100	100
Bonds acquired January 1, 1944	None	50	None	50
Total	$250		$750	

In the case of the United States savings bonds acquired on January 1, 1938, the increases of $400 and $100 in the redemption price are attributable to the principal amount (purchase price) in excess of $5,000.

PAR. 32. There is inserted immediately before section 19.42–1 and immediately after section 114 of the Revenue Act of 1941 the following:

SEC. 115. SHORT-TERM OBLIGATIONS ISSUED ON A DISCOUNT BASIS. (Revenue Act of 1941.)

(a) DISCOUNT ACCRUED AT MATURITY.—Section 42 of the Internal Revenue Code (relating to period in which items of gross income are included) is amended by inserting at the end thereof the following new subsection:

"(c) SHORT-TERM OBLIGATIONS ISSUED ON DISCOUNT BASIS.—In the case of any obligation of the United States or any of its possessions, or of a State or Territory, or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue, the amount of discount at which such obligation is originally sold shall not be considered to accrue until the date on which such obligation is paid at maturity, sold, or otherwise disposed of."

* * * * * * *

(c) EFFECTIVE DATE OF AMENDMENTS.—The amendments made by this section shall be applicable with respect to taxable years ending after February 28, 1941.

PAR. 33. There is inserted immediately after section 19.42–6 (added by paragraph 30 of this Treasury decision) the following:

SEC. 19.42–7. *Short-term obligations issued on discount basis.*—In the case of any obligation of the United States or any of its possessions, or of a State or Territory, or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue, the amount of discount at which such obligation is originally sold shall not be considered to accrue until the date on which such obligation is paid at maturity, sold, or otherwise disposed of. Accordingly, if a taxpayer who computes his net income on the accrual basis purchases upon issuance a United States Treasury bill issued on or after March 1, 1941, and holds it until maturity, the entire amount of the discount at which the bill was originally sold accrues on the date of maturity; and if such a taxpayer holds a United States Treasury bill issued on or after March 1, 1941, for a period less than its life, the portion of the original discount attributable to such period accrues only on the date on which he sells or otherwise disposes of the bill or receives payment at maturity. The original discount or the portion of such discount, as the case may be, is includible only in the gross income for the taxable year in which the taxpayer sells or otherwise disposes of the bill or receives payment at maturity. For examples illustrating rules for computation of income

from sale or other disposition of obligations of the type described in this section, see section 19.117–1.

PAR. 34. There is inserted immediately preceding section 19.51–1 the following:

SEC. 112. RETURNS OF INCOME TAX. (Revenue Act of 1941, Title I.)

(a) INDIVIDUAL RETURNS.—Section 51(a) of the Internal Revenue Code is amended to read as follows:

"(a) REQUIREMENT.—The following individuals shall each make under oath a return stating specifically the items of his gross income and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe—

"(1) Every individual who is single or who is married but not living with husband or wife, if having a gross income for the taxable year of $750 or over.

"(2) Every individual who is married and living with husband or wife, if no joint return is made under subsection (b) and if—

"(A) Such individual has for the taxable year a gross income of $1,500 or over, and the other spouse has no gross income; or

"(B) Such individual and his spouse each has for the taxable year a gross income and the aggregate gross income is $1,500 or over."

* * * * *

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 35. Section 19.51–1, as amended by Treasury Decision 5057, is further amended as follows:

(A) By striking from the paragraph designated as "(b)" the figure "$800" and inserting in lieu thereof the following: "$750 ($800 for a taxable year beginning after December 31, 1939, and before January 1, 1941)."

(B) By striking from the paragraph designated as "(b)" the figure "$2,000" wherever occurring and inserting in lieu thereof the following: "$1,500 ($2,000 for a taxable year beginning after December 31, 1939, and before January 1, 1941)."

PAR. 36. Section 19.51–2, as amended by Treasury Decision 5011, is further amended as follows:

(A) By inserting immediately after the heading the following:

For taxable years beginning after December 31, 1940, the return shall be on Form 1040 except that it shall be on short Form 1040A if (1) the gross income does not exceed $3,000 and consists wholly of salary, wages, compensation for personal services, dividends, interest, rent, annuities, or royalties, and (2) the taxpayer elects to pay the tax imposed by section 400 in lieu of the tax imposed by sections 11 and 12.

(B) By striking out the first two sentences of the section before its amendment by (A) and inserting in lieu thereof the following paragraph:

For taxable years beginning before January 1, 1941, the return shall be on Form 1040 except that it shall be on short Form 1040A if (1) the net income does not exceed $5,000, or for taxable years beginning in 1940, if the gross

income does not exceed $5,000, and is derived from interest, dividends, annuities, income from fiduciaries, and salaries, wages, commissions, bonuses, and other compensation for personal services, and (2) the taxpayer does not own a business or practice a profession on his own account and renders a return on the cash receipts and disbursements basis for the calendar year. The return shall be made on Form 1040 in all cases in which the taxpayer claims any deductions for losses from the renting of, or sale or exchange of, property.

PAR. 37. Section 19.51–3, as amended by Treasury Decision 5011, is further amended by striking out the figure "$800" wherever occurring and inserting in lieu thereof the following: "$750 ($800 for a taxable year beginning after December 31, 1939, and before January 1, 1941)."

PAR. 38. There is inserted immediately preceding section 19.55(b)–1 the following:

SEC. 554. TRANSPORTATION OF PERSONS, ETC. (Revenue Act of 1941, Title V, Part V.)

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(d) TECHNICAL AMENDMENTS.—

(1) Section 55(a)(2) of the Internal Revenue Code is amended by striking out "subchapters A and B of".

* * * * * * *

SEC. 558. EFFECTIVE DATE OF PART V. (Revenue Act of 1941, Title V, Part V.)

This part shall take effect on October 1, 1941.

PAR. 39. There is inserted immediately preceding section 19.102–1 the following:

SEC. 103. CORPORATION DEFENSE TAX RATES INCORPORATED IN RATE SCHEDULES. (Revenue Act of 1941, Title I.)

* * * * * * *

(d) SURTAX ON CORPORATIONS IMPROPERLY ACCUMULATING SURPLUS.—The rate schedule of section 102 of the Internal Revenue Code is amended to read as follows:

"27½ per centum of the amount of the undistributed section 102 net income not in excess of $100,000, plus

"38½ per centum of the undistributed section 102 net income in excess of $100,000."

* * * * * * *

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 40. Section 19.102–1, as amended by Treasury Decision 5011, is further amended by striking out "January 1, 1945" in the last sentence of the last paragraph, and inserting in lieu thereof "January 1, 1941."

PAR. 41. There is inserted immediately preceding section 19.102–1 and immediately after section 118 of the Revenue Act of 1941 the following:

SEC. 202. DEDUCTION OF EXCESS-PROFITS TAX. (Revenue Act of 1941, Title II.)

* * * * * * *

(b) AMENDMENT OF SECTION 102(d).—Section 102(d)(1)(A) of the Internal Revenue Code (relating to the deduction of taxes in computing section 102 net income) is amended to read as follows:

"(A) TAXES.—Federal income, war-profits, and excess-profits taxes (other than the tax imposed by Subchapter E of Chapter 2

for a taxable year beginning after December 31, 1940) paid or accrued during the taxable year, to the extent not allowed as a deduction by section 23, but not including the tax imposed by this section or a corresponding section of a prior income-tax law.

* * * * *

SEC. 205. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title II.)

The amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 42. Section 19.102–4 is amended by inserting immediately after the word "taxes" in (*a*) of the second sentence of the first paragraph the following:

(other than the tax imposed by Subchapter E of Chapter 2 of the Internal Revenue Code for a taxable year beginning after December 31, 1940).

PAR. 43. There is inserted immediately preceding section 19.104–1 the following:

SEC. 104. SURTAX ON CORPORATIONS AND TERMINATION OF DEFENSE TAX. (Revenue Act of 1941, Title I.)

* * * * * * *

(c) SURTAX ON BANKS.—Section 104(b) of the Internal Revenue Code (relating to certain banks and trust companies) is amended to read as follows:

"(b) RATE OF TAX.—Banks shall be subject to tax under section 13 or section 14(b), and under section 15."

* * * * * * *

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 44. Section 19.104–1, as amended by Treasury Decision 5011, is further amended by striking out the last sentence of the second paragraph, and inserting in lieu thereof the following:

For a taxable year beginning after December 31, 1939, and before January 1, 1941, the tax is increased by the amount of the defense tax. For a taxable year beginning after December 31, 1940, such a bank is subject to the surtax imposed by section 15, as amended by section 104 of the Revenue Act of 1941.

PAR. 45. Section 19.112(i)–1 is amended by striking out the last sentence in the first paragraph and inserting in lieu thereof the following:

The term "Federal income taxes" includes (1) the excess profits tax on the net income of a corporation referred to in section 106 of the Revenue Act of 1935, section 402 of the Revenue Act of 1936, and section 602 of the Revenue Act of 1938, (2) the declared value excess-profits tax referred to in section 600 of the Internal Revenue Code, and (3) the excess-profits tax imposed by Subchapter E of Chapter 2 of the Internal Revenue Code.

PAR. 46. Section 19.115–5 is amended by striking "1936" wherever appearing in the example in subsection (*b*) and inserting "1937" in lieu thereof.

PAR. 47. There is inserted immediately preceding section 19.117–1 the following:

SEC. 115. SHORT-TERM OBLIGATIONS ISSUED ON A DISCOUNT BASIS. (Revenue Act of 1941.)

* * * * * * *

(b) CAPITAL GAIN RULE NOT APPLICABLE.—Section 117(a)(1) of the Internal Revenue Code (relating to definition of capital assets) is

amended by striking out the semicolon at the end thereof and inserting in lieu thereof the following: ", or an obligation of the United States or any of its possessions, or of a State or Territory, or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue;".

(c) EFFECTIVE DATE OF AMENDMENTS.—The amendments made by this section shall be applicable with respect to taxable years ending after February 28, 1941.

PAR. 48. Section 19.117–1 is amended by inserting after the second paragraph thereof the following paragraph:

Obligations of the United States or any of its possessions, or of a State or Territory, or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue, are excluded from the term "capital assets." An obligation may be issued on a discount basis even though the price paid exceeds the face amount. Thus, although the Second Liberty Bond Act provides that United States Treasury bills shall be issued on a discount basis, the issuing price paid for a particular bill may, by reason of competitive bidding, actually exceed the face amount of the bill. Since the obligations of the type described in this section are excluded from the term "capital assets," gains or losses from the sale or exchange of such obligations are not subject to the percentage provisions of section 117(b) and losses from such transactions are not subject to the limitation on losses provided in section 117(d). It is, therefore, not necessary for a taxpayer, other than a life insurance company subject to taxation only on interest, dividends, and rents, to segregate the original discount accrued (see section 19.42–7) and the gain or loss realized upon the sale or other disposition of any such obligation.

Example (1). A (not a life insurance company) buys a $100,000 ninety-day Treasury bill upon issuance for $99,998. As of the close of the forty-fifth day of the life of such bill, he sells it to B (not a life insurance company) for $99,999.50. The entire net gain to A of $1.50 may be taken into account as a single item of income, without allocating $1 to interest and $0.50 to gain. If B holds the bill until maturity his net gain of $0.50 may similarly be taken into account as a single item of income, without allocating $1 to interest and $0.50 to loss.

Example (2). The facts in this example are the same as in example (1) except that the selling price to B is $99,998.50. The net gain to A of $0.50 may be taken into account without allocating $1 to interest and $0.50 to loss, and, similarly, if B holds the bill until maturity his entire net gain of $1.50 may be taken into account as a single item of income, without allocating $1 to interest and $0.50 to gain.

PAR. 49. Section 19.122–4, as amended by Treasury Decision 5057, is further amended as follows:

(A) By striking out the fifth paragraph in the second example in subsection (*b*), and inserting in lieu thereof the following:

For 1941 the net income of H is deemed to be $2,000, i. e., $1,000, the portion of the combined net income for 1941 attributable to H, plus $1,000, the excess of the portion of the combined net income for 1941 attributable to W ($3,000) over the net operating loss carry-over of W to 1941 ($2,000). See paragraph (3)(ii) (A) and (B).

(B) By striking out the second "($1,000)" in the next to the last paragraph of the second example in subsection (*b*), and inserting in lieu thereof "($2,000)."

PAR. 50. There is inserted immediately preceding section 19.142–1 the following:

SEC. 112. RETURNS OF INCOME TAX. (Revenue Act of 1941, Title I.)

* * * * * * *

(b) FIDUCIARY RETURNS.—Section 142(a) of the Internal Revenue Code is amended to read as follows:

"(a) REQUIREMENT OF RETURN.—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe—

"(1) Every individual having a gross income for the taxable year of $750 or over, if single, or if married and not living with husband or wife;

"(2) Every individual having a gross income for the taxable year of $1,500 or over, if married and living with husband or wife;

"(3) Every estate the gross income of which for the taxable year is $750 or over;

"(4) Every trust the net income of which for the taxable year is $100 or over, or the gross income of which for the taxable year is $750 or over, regardless of the amount of the net income; and

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

* * * * * * *

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 51. Section 19.142–1, as amended by Treasury Decision 5011, is further amended as follows:

(A) By striking from the paragraphs designated as "(*c*)" and "(*d*)" the figure "$800" wherever occurring and inserting in lieu thereof the following: "$750 ($800 for a taxable year beginning after December 31, 1939, and before January 1, 1941)."

(B) By striking from the paragraph designated as "(*c*)" the figure "$2,000" wherever occurring and inserting in lieu thereof the following: "$1,500 ($2,000 for a taxable year beginning after December 31, 1939, and before January 1, 1941)."

PAR. 52. Section 19.142–5, as amended by Treasury Decision 5011, is further amended as follows:

(A) By striking out the second and third sentences of subsection (*b*) and inserting in lieu thereof the following:

A citizen or resident fiduciary having the distribution of the income of an estate or trust shall make a return on Form 1040NB–a if a beneficiary, other than a resident of Canada with respect to income received prior to April 30, 1941, has gross income for the taxable year of more than $23,000 ($21,600 for a taxable year beginning before January 1, 1940, and $24,000 for a taxable year beginning after December 31, 1939, and before January 1, 1941) from the sources specified in section 211(a), regardless of the amount of tax withheld at the source. If the gross income from such sources is $23,000 or less ($21,600 or less for a taxable year beginning before January 1, 1940, and $24,000 or less for a taxable year beginning after December 31, 1939, and before January 1, 1941), the return (if a return is required to be filed) for the beneficiary shall be on Form 1040NB.

(B) By striking out the next to the last sentence of subsection (*b*) and inserting in lieu thereof the following:

The fiduciary shall make a return on Form 1042 of the tax at 27½ per cent (16½ per cent for a taxable year beginning after December 31, 1939, and before January 1, 1941, and 10 per cent for a taxable year beginning prior to January 1, 1940) on the entire amount of the income payable to the beneficiary, except that in the case of a beneficiary, resident of Canada, the rate shall be 5 per cent with respect to income received prior to April 30, 1941.

PAR. 53. There is inserted immediately preceding section 19.147–1 the following:

SEC. 112. RETURNS OF INCOME TAX. (Revenue Act of 1941, Title I.)

* * * * * * *

(c) INFORMATION RETURNS.—Section 147(a) of the Internal Revenue Code (relating to information at the source) is amended by striking out "$800" wherever occurring therein and inserting in lieu thereof "$750".

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 54. Section 19.147–1, as amended by Treasury Decision 5011, is further amended as follows:

(A) By changing the heading of the section to read as follows: "*Return of information as to payments of $1,000 for 1939, $800 for 1940, and $750 for years thereafter.*"

(B) By changing the first sentence to read as follows:

All persons making payment to another person of fixed or determinable income of $1,000 or more in the calendar year 1939, or of $800 or more in the calendar year 1940, or of $750 or more in any subsequent year, must render a return thereof to the Commissioner for such year on or before February 15 of the following year, except as specified in sections 19.147–3 to 19.147–5, inclusive.

PAR. 55. Section 19.147–2, as amended by Treasury Decision 5011, is further amended by changing the first sentence thereof to read as follows:

The names of all employees to whom payments of $1,000 or over a year are made during the calendar year 1939, or of $800 or over during the calendar year 1940, or of $750 or over during a subsequent calendar year, whether such total sum is made up of wages, salaries, commissions, or compensation in any other form, must be reported.

PAR. 56. Section 19.147–3, as amended by Treasury Decision 5011, is further amended as follows:

(A) By changing the first sentence to read as follows:

Payments of the following character, although over $1,000 during the calendar year 1939, or over $800 during the calendar year 1940, or over $750 during a subsequent calendar year, need not be reported in returns of information on Form 1099:

(B) By changing that part designated as "(*e*)" to read as follows:

(*e*) Payments of rent made to real estate agents (but the agent must report payments to the landlord if the amount paid during the calendar year 1939 was $1,000 or more, or during the calendar year 1940 was $800 or more, or during a subsequent calendar year was $750 or more);

(C) By changing that part designated as "(*h*)" to read as follows:

(*h*) Payments of salaries, or other compensation for personal services aggregating less than $2,500 for the calendar year 1939, or less than $2,000 for the calendar year 1940, or less than $1,500 for subsequent calendar years, made to a married individual (citizen or resident);

PAR. 57. Section 19.147–7, as amended by Treasury Decision 5011, is further amended by striking from the first sentence thereof "within a subsequent year" and by inserting in that sentence immediately after "$800 or more" the following: "within 1940, or $750 or more within a subsequent year."

PAR. 58. Section 19.148–1 is amended as follows:

(A) By striking out "(1) out of its earnings or profits accumulated after February 28, 1913, or (2) out of earnings or profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year) without regard to the amount of the earnings and profits at the time the distribution was made," in the first sentence of subsection (*a*).

(B) By changing subsection (*b*) to read as follows:

(*b*) In the case of a distribution which is made from a depletion or depreciation reserve, or which for any other reason is deemed by the corporation to be nontaxable or partly nontaxable to its shareholders, the corporation will fill in the information on both sides of Form 1096 and forward this form, together with Forms 1099, to the Commissioner of Internal Revenue, Returns Distribution Section, Washington, D. C., not later than February 1 of the following year. Upon receipt of this information the Commissioner will advise the corporation by letter as to any apparent errors made by the corporation in computing the nontaxable portion of the distribution in order that the corporation may, if time permits, furnish such advice to its shareholders before the shareholders file their income tax returns for the year in which the distribution was made.

PAR. 59. Section 19.148–3, as amended by Treasury Decision 5015, approved October 22, 1940 [C. B. 1940–2, 147], is further amended by striking out "$800" in the first paragraph and inserting in lieu thereof "$750."

PAR. 60. Section 19.201(b)–1, as amended by Treasury Decision 5011, is further amended as follows:

(A) By striking out "January 1, 1945" in the last sentence in subsection (*c*), and inserting in lieu thereof "January 1, 1941."

(B) By inserting after the last sentence in subsection (*c*) the following:

For the surtax on corporations, including life insurance companies, imposed for taxable years beginning after December 31, 1940, see section 19.15–2.

PAR. 61. Section 19.204(a)–1, as amended by Treasury Decision 5011, is further amended as follows:

(A) By striking out "January 1, 1945" in the last sentence in subsection (*c*), and inserting in lieu thereof "January 1, 1941."

(B) By inserting after the last sentence in subsection (*c*) the following:

For the surtax on corporations, including insurance companies other than life or mutual, imposed for taxable years beginning after December 31, 1940, see section 19.15–2.

PAR. 62. Section 19.207–1, as amended by Treasury Decision 5011, is further amended as follows:

(A) By striking out "January 1, 1945" in the last sentence in subsection (*c*), and inserting in lieu thereof "January 1, 1941."

(B) By inserting after the last sentence in subsection (*c*) the following:

For the surtax on corporations, including mutual insurance companies, imposed for taxable years beginning after December 31, 1940, see section 19.15–2.

PAR. 63. There is inserted immediately preceding section 19.211–1 the following:

SEC. 105. TAX ON NONRESIDENT ALIEN INDIVIDUALS. (Revenue Act of 1941, Title I.)

(a) TAX IN GENERAL.—Section 211(a)(1)(A) of the Internal Revenue Code (relating to tax on nonresident alien individuals not engaged

in trade or business within the United States and not having an office or place of business therein) is amended by striking out "15 per centum" and inserting in lieu thereof "27½ per centum".

(b) AGGREGATE RECEIPTS MORE THAN $23,000.—Section 211(a)(2) of the Internal Revenue Code is amended to read as follows:

"(2) AGGREGATE MORE THAN $23,000.—The tax imposed by paragraph (1) shall not apply to any individual if the aggregate amount received during the taxable year from the sources therein specified is more than $23,000."

(c) TAX WHERE GROSS INCOME OF MORE THAN $23,000.—Section 211(c) of the Internal Revenue Code (relating to tax on certain nonresident alien individuals) is amended by striking out "$24,000" wherever occurring therein and inserting in lieu thereof "$23,000"; and by striking out "15 per centum" and inserting in lieu thereof "27½ per centum".

SEC. 108. TREATY OBLIGATIONS. (Revenue Act of 1941, Title I.)

No amendment made by this title shall apply to any case where its application would be contrary to any treaty obligation of the United States.

SEC. 109. REDUCTION IN PURSUANCE OF TREATIES OF RATES OF TAX AND WITHHOLDING ON NONRESIDENT ALIEN INDIVIDUALS RESIDENT IN, AND CORPORATIONS ORGANIZED UNDER LAWS OF, WESTERN HEMISPHERE COUNTRIES. (Revenue Act of 1941, Title I.)

(a) Section * * * 211(a)(1) (relating to tax on nonresident alien individuals); * * * of the Internal Revenue Code are amended by striking out "a contiguous country" and inserting in lieu thereof "any country in North, Central, or South America, or in the West Indies, or of Newfoundland".

(b) Section 211(a)(3) of the Internal Revenue Code is amended to read as follows:

"(3) RESIDENTS OF CERTAIN COUNTRIES.—The provisions of paragraph (2) shall not apply to a resident of any country in North, Central, or South America, or in the West Indies, or of Newfoundland, so long as there is in effect with such country a treaty which provides otherwise."

(c) Section 211(c)(4) of the Internal Revenue Code is amended to read as follows:

"(4) This subsection shall not apply to a resident of any country in North, Central, or South America, or in the West Indies, or of Newfoundland, so long as there is in effect with such country a treaty which provides otherwise."

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 64. Section 19.211–7, as amended by Treasury Decision 5011, is further amended as follows:

(A) By striking out "$21,600 ($24,000 during a taxable year beginning after December 31, 1939)" wherever appearing therein and inserting in lieu thereof the following: "$23,000 ($24,000 during a taxable year beginning after December 31, 1939, and before January 1, 1941, and $21,600 during a taxable year beginning before January 1, 1940)."

(B) By striking from the second paragraph of subsection (*a*) "10 per cent for a taxable year beginning prior to January 1, 1940, at the rate of 16½ per cent for a taxable year beginning after December 31, 1939, and before January 1, 1945 (see section 19.15–1),

and at the rate of 15 per cent thereafter," and inserting in lieu thereof the following: "27½ per cent (16½ per cent for a taxable year beginning after December 31, 1939, and before January 1, 1941 (see section 19.15–1), and 10 per cent for a taxable year beginning prior to January 1, 1940),".

(C) By striking from the second paragraph of subsection (*a*) "is reduced to 5 per cent" and inserting in lieu thereof the following: "was reduced to 5 per cent as to items of income received prior to April 30, 1941,".

(D) By striking from the second paragraph of subsection (*a*) "or 15 per cent,".

(E) By inserting in the second paragraph of subsection (*a*) after "a contiguous country," the following: "or (for taxable years beginning after December 31, 1940) any country in North, Central, or South America, or in the West Indies, or of Newfoundland,".

(F) By striking from subsection (*b*) "10 per cent, or 15 per cent for a taxable year beginning after December 31, 1939," and inserting in lieu thereof the following: "27½ per cent (15 per cent for taxable years beginning after December 31, 1939, and before January 1, 1941, and 10 per cent for taxable years beginning prior to January 1, 1940)."

(G) By striking out the last sentence of subsection (*b*) and inserting in lieu thereof the following: "Nonresident alien individuals, residents of Canada, were, with respect to income received prior to April 30, 1941, subject to the terms of the tax convention between the United States and Canada and the special provisions of subsection (*a*) of this section. Such special treatment is not applicable with respect to income of such taxpayers received on or after April 30, 1941."

(H) By striking from the first paragraph of subsection (*c*) "10 per cent, or 15 per cent for a taxable year beginning after December 31, 1939," and inserting in lieu thereof the following: "27½ per cent (16½ per cent, including the defense tax (see section 19.15–1) for a taxable year beginning after December 31, 1939, and before January 1, 1941, and 10 per cent for a taxable year beginning prior to January 1, 1940)."

(I) By striking from the first paragraph of subsection (*c*) "1945" and inserting in lieu thereof "1941."

PAR. 65. Section 19.213–1, as amended by Treasury Decision 5011, is further amended as follows:

(A) By changing the heading of paragraph (2) of subsection (*a*) to read as follows:

(2) *Aggregate more than $23,000 ($24,000 for a taxable year beginning after December 31, 1939, and before January 1, 1941, and $21,600 for a taxable year beginning prior to January 1, 1940).*

(B) By striking from paragraph (2) of subsection (*a*) "$21,600, or more than $24,000 for a taxable year beginning after December 31, 1939," and inserting in lieu thereof the following: "$23,000 ($24,000 for a taxable year beginning after December 31, 1939, and before January 1, 1941, and $21,600 for a taxable year beginning prior to January 1, 1940)."

PAR. 66. There is inserted immediately preceding section 19.214–1 the following:

SEC. 111. PERSONAL EXEMPTION. (Revenue Act of 1941, Title I.)

* * * * * * *

(b) Section 214 of the Internal Revenue Code (relating to personal exemption of nonresident alien individuals) is amended by striking out "$800" and inserting in lieu thereof "$750".

* * * * * * *

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 67. Section 19.214–1, as amended by Treasury Decision 5011, is further amended as follows:

(A) By changing the heading of paragraph (2) of subsection (*a*) to read as follows:

(2) *Aggregate more than $23,000 ($24,000 for a taxable year beginning after December 31, 1939, and before January 1, 1941, and $21,600 for a taxable year beginning prior to January 1, 1940).*

(B) By striking from paragraph (2) of subsection (*a*) "$21,600, or more than $24,000 for a taxable year beginning after December 31, 1939," and inserting in lieu thereof the following: "$23,000 ($24,000 for a taxable year beginning after December 31, 1939, and before January 1, 1941, and $21,600 for a taxable year beginning prior to January 1, 1940),".

(C) By striking from subsection (*b*) "$1,000, or $800 for a taxable year beginning after December 31, 1939," and inserting in lieu thereof the following: "$750 ($800 for a taxable year beginning after December 31, 1939, and before January 1, 1941, and $1,000 for a taxable year beginning prior to January 1, 1940),".

PAR. 68. Section 19.215–1, as amended by Treasury Decision 5011, is further amended as follows:

(A) By changing the heading of paragraph (2) of subsection (*a*) to read as follows:

(2) *Aggregate more than $23,000 ($24,000 for a taxable year beginning after December 31, 1939, and before January 1, 1941, and $21,600 for a taxable year beginning prior to January 1, 1940).*

(B) By striking from paragraph (2) of subsection (*a*) "$21,600, or more than $24,000 for a taxable year beginning after December 31, 1939," wherever appearing therein and inserting in lieu thereof the following: "$23,000 ($24,000 for a taxable year beginning after December 31, 1939, and before January 1, 1941, and $21,600 for a taxable year beginning prior to January 1, 1940),".

PAR. 69. Section 19.217–2, as amended by Treasury Decision 5011, is further amended as follows:

(A) By changing the heading of paragraph (2) of subsection (*a*) to read as follows:

(2) *Aggregate more than $23,000 ($24,000 for a taxable year beginning after December 31, 1939, and before January 1, 1941, and $21,600 for a taxable year beginning prior to January 1, 1940).*

(B) By striking from paragraph (2) of subsection (*a*) "$21,600, or more than $24,000 for a taxable year beginning after December

31, 1939," and inserting in lieu thereof the following: "$23,000 ($24,000 for a taxable year beginning after December 31, 1939, and before January 1, 1941, and $21,600 for a taxable year beginning prior to January 1, 1940)."

(C) By striking from the first paragraph of subsection (*b*) "$1,000 during a taxable year beginning prior to January 1, 1940, or $800 during a taxable year beginning after December 31, 1939" and inserting in lieu thereof the following: "$750 ($800 during a taxable year beginning after December 31, 1939, and prior to January 1, 1941, and $1,000 during a taxable year beginning prior to January 1, 1940)."

PAR. 70. Section 19.219–1, as amended by Treasury Decision 5011, is further amended by striking out "$21,600, or more than $24,000 for a taxable year beginning after December 31, 1939," and inserting in lieu thereof the following: "$23,000 ($24,000 for a taxable year beginning after December 31, 1939, and prior to January 1, 1941, and $21,600 for a taxable year beginning prior to January 1, 1940),".

PAR. 71. There is inserted immediately preceding section 19.231–1 the following:

SEC. 104. SURTAX ON CORPORATIONS AND TERMINATION OF DEFENSE TAX. (Revenue Act of 1941, Title I.)

* * * * * * *

(d) SURTAX ON RESIDENT FOREIGN CORPORATIONS.—Section 231(b) of the Internal Revenue Code (relating to certain foreign corporations) is amended to read as follows:

"(b) RESIDENT CORPORATIONS.—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable as provided in section 14(c)(1) and section 15."

* * * * * * *

SEC. 106. TAX ON FOREIGN CORPORATIONS. (Revenue Act of 1941, Title I.)

Section 231(a) of the Internal Revenue Code (relating to tax on nonresident foreign corporations) is amended by striking out "15 per centum" and inserting in lieu thereof "27½ per centum".

SEC. 108. TREATY OBLIGATIONS. (Revenue Act of 1941, Title I.)

No amendment made by this title shall apply in any case where its application would be contrary to any treaty obligation of the United States.

SEC. 109. REDUCTION IN PURSUANCE OF TREATIES OF RATES OF TAX AND WITHHOLDING ON NONRESIDENT ALIEN INDIVIDUALS RESIDENT IN, AND CORPORATIONS ORGANIZED UNDER LAWS OF, WESTERN HEMISPHERE COUNTRIES. (Revenue Act of 1941, Title I.)

(a) Section * * * 231(a)(1) (relating to tax on nonresident foreign corporations) of the Internal Revenue Code are amended by striking out "a contiguous country" and inserting in lieu thereof "any country in North, Central, or South America, or in the West Indies, or of Newfoundland".

* * * * * * *

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 72. Section 19.231–1, as amended by Treasury Decision 5011, is further amended as follows:

(A) By striking from the second paragraph of subsection (*a*) "15 per cent, except that for taxable years beginning after December

31, 1939, and before January 1, 1945, the rate is 16½ per cent (see section 19.15–1), and except further for a taxable year beginning before January 1, 1940, dividends are taxable at the rate of 10 per cent" and inserting in lieu thereof the following: "27½ per cent (16½ per cent for a taxable year beginning after December 31, 1939, and before January 1, 1941 (see section 19.15–1), and 15 per cent (10 per cent as to dividends) for a taxable year beginning before January 1, 1940)."

(B) By inserting in the second paragraph of subsection (*a*) after "a contiguous country," the following: "or (as to taxable years beginning after December 31, 1940) any country in North, Central, or South America, or in the West Indies, or of Newfoundland,".

(C) By inserting at the end of subsection (*a*) the following: "Under the tax convention between the United States and Canada, effective January 1, 1936, the rate of 5 per cent applied with respect to dividends paid prior to April 30, 1941, to such corporations organized under the laws of Canada."

(D) By striking out the first sentence in subsection (*b*) and inserting in lieu thereof the following:

A resident foreign corporation is not taxable upon the items of fixed or determinable annual or periodical income enumerated in section 231(a) at the rate specified in that section.

(E) By striking out the last three sentences in the first paragraph of subsection (*b*) and inserting in lieu thereof the following:

For any taxable year beginning after December 31, 1939, a resident foreign corporation is, under section 14(c)(1), as amended, liable to a tax of 24 per cent (22⅑ per cent for such a taxable year beginning before January 1, 1941) of its normal-tax net income (regardless of the amount thereof), that is, its net income from sources within the United States (gross income from sources within the United States minus the statutory deductions provided in sections 23 and 232) less the credits allowed against net income by section 26 (a) and (b). For the defense tax imposed for taxable years beginning after December 31, 1939, and before January 1, 1941, see section 19.15–1. For a taxable year beginning after December 31, 1940, a resident foreign corporation is liable to a surtax of 6 per cent of the first $25,000 of its corporation surtax net income and 7 per cent of the remainder thereof. The corporation surtax net income of a resident foreign corporation is its net income from sources within the United States less the credit allowed by section 26(b), which credit is limited in amount to 85 per cent of its net income from sources within the United States.

PAR. 73. Section 19.236–1 is amended as follows:

(A) By striking "section 231(a)" from subsection (*a*) and by inserting in lieu thereof "Chapter 1."

(B) By striking from subsection (*b*) the portion of the first sentence beginning with "provided" and ending with "December 31, 1939)," and by inserting in lieu thereof "imposed by Chapter 1."

PAR. 74. There is inserted immediately preceding section 19.251–1 the following:

SEC. 104. SURTAX ON CORPORATIONS AND TERMINATION OF DEFENSE TAX. (Revenue Act of 1941, Title I.)

* * * * * * *

(e) SURTAX ON CORPORATIONS ENTITLED TO THE BENEFITS OF SECTION 251.—Section 251(c)(1) of the Internal Revenue Code (relating to the tax on corporations entitled to the benefits of section 251) is amended to read as follows:

"(1) CORPORATION TAX.—A domestic corporation entitled to the benefits of this section shall be subject to tax under section 13 or section 14(b), and under section 15."

* * * * *

SEC. 111. PERSONAL EXEMPTION. (Revenue Act of 1941, Title I.)

* * * * * * *

(c) Section 251(f) of the Internal Revenue Code (relating to personal exemption of citizens entitled to benefits of section 251) is amended by striking out "$800" and inserting in lieu thereof "$750".

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 75. Section 19.251–3 is amended by inserting at the end of the second paragraph the following:

For any taxable year beginning after December 31, 1940, a domestic corporation entitled to the benefits of section 251 is subject to the surtax imposed by section 15, as amended by section 104 of the Revenue Act of 1941. For the defense tax imposed for taxable years beginning after December 31, 1939, and before January 1, 1941, see section 19.15–1.

PAR. 76. There is inserted immediately preceding section 19.261–1 the following:

SEC. 104. SURTAX ON CORPORATIONS AND TERMINATION OF DEFENSE TAX. (Revenue Act of 1941, Title I.)

* * * * * * *

(f) SURTAX ON CHINA TRADE ACT CORPORATIONS.—

(1) SURTAX.—Section 261(a) of the Internal Revenue Code (relating to the tax on China Trade Act corporations) is amended to read as follows:

"(a) CORPORATION TAX.—A corporation organized under the China Trade Act, 1922 (42 Stat. 849; U. S. C., 1934 ed., title 15, ch. 4), shall be subject to tax under section 13 or section 14(b), and under section 15."

* * * * * * *

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 77. Section 19.261–1 is amended by inserting at the end of the second paragraph the following:

For a taxable year beginning after December 31, 1940, a China Trade Act corporation is liable to the surtax imposed by section 15 as amended by section 104 of the Revenue Act of 1941. For the defense tax imposed for taxable years beginning after December 31, 1939, and before January 1, 1941, see section 19.15–1.

PAR. 78. There is inserted immediately preceding section 19.262–1 the following:

SEC. 104. SURTAX ON CORPORATIONS AND TERMINATION OF DEFENSE TAX. (Revenue Act of 1941, Title I.)

* * * * * * *

(f) SURTAX ON CHINA TRADE ACT CORPORATIONS.—

* * * * * * *

(2) CREDIT OF CHINA TRADE ACT CORPORATIONS.—Section 262(a) of the Internal Revenue Code (relating to credit against net income of China Trade Act corporations) is amended by striking out "sections 13, 14,

and 600" and inserting in lieu thereof "sections 13, 14, 15, and 600"; and by striking out "section 13 or 14" wherever occurring therein and inserting in lieu thereof "section 13, 14, or 15".

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 79. Section 19.262–2, as amended by Treasury Decision 5011, is further amended as follows:

(A) By striking out the latter part of the first sentence of the first paragraph beginning with "and (2)" and inserting in lieu thereof the following:

(2) for the taxable year 1940, by section 13 or 14, as amended, and by section 600, and (3) for the taxable year 1941 and subsequent years, by section 13 or 14, as amended, by section 15, as amended, and by section 600.

(B) By striking out the third and fourth sentences of the first paragraph and inserting in lieu thereof the following:

The decrease in the tax imposed for 1939 by section 14(d), prior to its amendment, for 1940 by section 13 or 14, as amended, or for 1941 and subsequent years by section 13 or 14, as amended, and by section 15, as amended, by reason of such credit must not, however, exceed the amount of the special dividend referred to in section 262(b), and is not allowable unless the special dividend has been certified to the Commissioner by the Secretary of Commerce. The decrease in the tax imposed by section 600 by reason of such credit must not exceed the amount by which such special dividend exceeds the decrease permitted by section 262 in the tax imposed for 1939 by section 14(d), prior to its amendment, for 1940 by section 13 or 14, as amended, and for 1941 and subsequent years by section 13 or 14, as amended, and section 15, as amended.

(C) By striking out example (2) and inserting in lieu thereof the following:

Example 2. Assume that for the calendar year 1941 the adjusted declared value of the capital stock is the same as for 1939 and that the other facts are the same as in example (1), except that a special dividend of $66,000 is distributed on February 15, 1942. Since, under section 13, as amended, the rate of income tax for 1941 is 24 per cent, and under section 15, as amended, the rate of surtax is 6 per cent on the first $25,000 of corporation surtax net income and 7 per cent on the remainder, the total income tax for such year consists of a normal income tax of $48,000 plus a surtax of $13,750, or $61,750. Since the special dividend ($66,000) exceeds the diminution of the income tax ($61,750) on account of the allowance of the special credit against net income, the entire amount of special credit is allowable and the corporation has no income tax liability for 1941. Since the special dividend exceeds the amount of the income tax by the sum of $4,250, which sum exceeds the amount of the diminution of the declared value excess-profits tax (6⁄10 per cent of $50,000, or $3,300) on account of the allowance of the special credit against net income, the entire amount of the special credit ($200,000) is allowable for declared value excess-profits tax purposes for 1941 and hence the corporation has no declared value excess-profits tax liability for that year.

PAR. 80. There is inserted immediately preceding section 19.362–1 the following:

SEC. 103. CORPORATION DEFENSE TAX RATES INCORPORATED IN RATE SCHEDULES. (Revenue Act of 1941, Title I.)

* * * * * * *

(e) MUTUAL INVESTMENT COMPANIES.—Section 362(b) of the Internal Revenue Code (relating to tax on mutual investment companies) is amended by striking out "22½0 per centum" and inserting "24 per centum".

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 81. Section 19.362–1, as amended by Treasury Decision 5038, is further amended by striking out the first two sentences and by inserting in lieu thereof the following:

If a corporation, as defined in section 3797(a)(3), shows to the satisfaction of the Commissioner that it is entitled to the status of a mutual investment company, as defined in section 361, it is taxable upon its Supplement Q net income, as defined in section 362(a), (1) at the rate of 16½ per cent for any taxable year beginning after December 31, 1938, and before January 1, 1940, (2) at the rate of 22½ per cent for any taxable year beginning after December 31, 1939, and before January 1, 1941, and (3) at the rate of 24 per cent for any taxable year beginning after December 31, 1940. (For the defense tax imposed for taxable years beginning after December 31, 1939, and before January 1, 1941, see section 19.15–1.)

PAR. 82. There is inserted immediately after section 19.362–1 the following:

SEC. 104. SURTAX ON CORPORATIONS AND TERMINATION OF DEFENSE TAX. (Revenue Act of 1941, Title I.)

* * * * * * *

(b) SURTAX ON MUTUAL INVESTMENT COMPANIES.—Supplement Q of the Internal Revenue Code (relating to mutual investment companies) is amended by inserting at the end thereof a new section to read as follows:

"SEC. 363. SURTAX ON MUTUAL INVESTMENT COMPANIES.

"(a) SUPPLEMENT Q SURTAX NET INCOME.—For the purposes of this chapter the term 'Supplement Q surtax net income' means the net income, computed without the net operating loss deduction provided in section 23(s), minus the dividends paid during the taxable year increased by the consent dividends credit provided in section 28. For the purposes of this subsection the amount of dividends paid shall be computed in the same manner as provided in subsections (d), (e), (f), (g), (h), and (i) of section 27 for the purpose of the basic surtax credit provided in section 27.

"(b) IMPOSITION OF TAX.—There shall be levied, collected, and paid for each taxable year upon the Supplement Q surtax net income of every mutual investment company a surtax as follows:

"Upon Supplement Q surtax net incomes not in excess of $25,000, 6 per centum of the amount thereof;

"Upon Supplement Q surtax net incomes in excess of $25,000, $1,500, plus 7 per centum of the excess over $25,000."

* * * * *

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

SEC. 19.363–1. *Surtax on mutual investment companies.*—For taxable years beginning after December 31, 1940, section 363 imposes a surtax upon the Supplement Q surtax net income of every corporation taxable as a mutual investment company. A mutual investment company's Supplement Q surtax net income is its net income (computed without the net operating loss deduction provided in section 23(s)), less the amount of dividends paid during the taxable year increased by the consent dividends credit provided in section 28. For the purpose of computing a mutual investment company's Supplement Q surtax net income, the amount of dividends paid during the taxable year is determined in the same

manner as provided in section 27 (d), (e), (f), (g), (h), and (i) for the purpose of the basic surtax credit provided in section 27.

PAR. 83. There is inserted immediately preceding section 19.373–1 the following:

SEC. 117. EXTENSION OF TIME OF ORDERS OF SECURITIES AND EXCHANGE COMMISSION. (Revenue Act of 1941.)

(a) EXTENSION.—Section 373(a) of the Internal Revenue Code (relating to the definition of orders of the Securities and Exchange Commission with respect to which Supplement R applies) is amended to read as follows:

"(a) The term 'order of the Securities and Exchange Commission' means an order (1) issued after May 28, 1938, and prior to January 1, 1943, by the Securities and Exchange Commission to effectuate the provisions of section 11(b) of the Public Utility Holding Company Act of 1935 (49 Stat. 820; U. S. C., Supp. V, title 15, section 79k(b)), or (2) issued by the Commission subsequent to December 31, 1942, in which it is expressly stated that an order of the character specified in clause (1) is amended or supplemented, and (3) which has become final in accordance with law."

(b) EFFECTIVE DATE OF AMENDMENT.—The amendment made by this section shall be applicable only with respect to taxable years beginning after December 31, 1939.

PAR. 84. There is inserted immediately preceding section 19.500–1 the following:

SEC. 110. DEFENSE TAX RATES ON PERSONAL HOLDING COMPANIES AND TRANSFERS TO AVOID INCOME TAX INCORPORATED IN RATE SCHEDULES. (Revenue Act of 1941, Title I.)

(a) PERSONAL HOLDING COMPANIES.—Section 500 of the Internal Revenue Code (relating to tax on personal holding companies) is amended as follows:

(1) By striking out the heading "(a) GENERAL RULE.—";

(2) By amending the rate schedule to read as follows:

"(1) 71½ per centum of the amount thereof not in excess of $2,000; plus

"(2) 82½ per centum of the amount thereof in excess of $2,000.";

and

(3) By repealing subsection (b) (relating to defense tax for five years).

* * * * * * *

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 85. Section 19.500–1, as amended by Treasury Decision 5011, is further amended by striking out the last sentence of the first paragraph and by inserting in lieu thereof the following:

For taxable years beginning before January 1, 1941, the surtax imposed by section 500 is 65 per cent of the amount of the undistributed Subchapter A net income not in excess of $2,000, and 75 per cent of the amount of the undistributed Subchapter A net income in excess of $2,000, except that for such a taxable year beginning after December 31, 1939, such surtax is increased 10 per cent on account of the defense tax. For taxable years beginning after December 31, 1940, the rate of tax is 71½ per cent of the undistributed Subchapter A net income not in excess of $2,000, and 82½ per cent of the undistributed Subchapter A net income in excess of $2,000.

PAR. 86. Section 19.3801(b)–0 is amended by striking out "and D" in the last paragraph and by inserting in lieu thereof "D, and E."

(This Treasury decision is issued under the authority contained in section 62 of the Internal Revenue Code (53 Stat.. 32; 26 U. S. C., Sup. V, 62) and sections 101 to 118 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved October 10, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 13, 1941, 11.04 a. m.)

CHAPTER 1.—INCOME TAX.

SUBCHAPTER B.—GENERAL PROVISIONS.

PART I.—RATES OF TAX.

SECTION 15.—DEFENSE TAX FOR FIVE YEARS.

SECTION 19.15-1: Defense tax. 1941-33-10806
I. T. 3497

INTERNAL REVENUE CODE.

The "net income" referred to in section 15 of the Internal Revenue Code, as amended, means the gross income computed under section 22 of the Code, less deductions allowed by section 23 of the Code, including deductions for long-term capital losses.

Advice is requested relative to the "net income" to be used in applying the limitation on the defense tax provided in section 15 of the Internal Revenue Code, as amended, in a case where there is a net long-term capital loss and the alternative tax is computed under section 117(c)2 of the Internal Revenue Code in lieu of the tax imposed by sections 11 and 12 of the Code.

It is provided in section 15 of the Code, as amended, that:

In the case of any taxpayer, the amount of tax under this chapter * * * shall be the tax computed without regard to this section, increased by 10 per centum * * *. In no case shall the effect of this section be to increase the tax computed without regard to this section by more than 10 per centum of the amount by which the net income exceeds such tax. * * *

Treasury Decision 5011 (C. B. 1940-2, 15), amending section 19.15-1 of Regulations 103, provides in part as follows:

A further effect of the limitation on the 10 per cent increase is to prevent any increase in the tax of a taxpayer who under existing law, as amended by Title I of the Revenue Act of 1940, has no net income because he has a net long-term capital loss, but is subject to tax under section 117(c)2 of the Internal Revenue Code.

The above-quoted language of Treasury Decision 5011 is in accord with a statement in the report of the Ways and Means Committee on the revenue bill of 1940 (C. B. 1940-2, 566) expressing the intention of Congress in enacting section 15.

In view of this provision of the regulations, which, as stated, is in accord with the committee report, it is held that "net income" referred to in section 15 of the Code, as amended, means the gross

income computed under section 22 of the Code, less deductions allowed by section 23 of the Code, including deductions for long-term capital losses.

The computation of the tax is illustrated by the following example:

INCOME.		
Salary	$225,000.00	
Dividends	15,000.00	
Net short-term gain from sale or exchange of capital assets	17,000.00	
Net long-term loss from sale or exchange of capital assets	(37,500.00)	
Total income		$219,500.00
DEDUCTIONS.		
Contributions paid—$50,000 (deduction limited to 15 per cent of $219,500)		$32,925.00
Net income		186,575.00
COMPUTATION OF TAX—ORDINARY METHOD.		
Net income		$186,575.00
Less:		
Personal exemption		2,000.00
Balance (surtax net income)		184,575.00
Less:		
Earned income credit		1,400.00
Balance subject to normal tax		183,175.00
Normal tax (4 per cent of $183,175)		7,327.00
Surtax on $184,575		86,525.00
Total tax		93,852.00
COMPUTATION OF ALTERNATIVE TAX.		
Net income		$186,575.00
Add:		
Net long-term capital loss		37,500.00
		224,075.00
Contributions—$50,000—allowable to extent of 15 per cent of $257,000 (excluding the net long-term loss)	$38,550.00	
Previously accounted for	32,925.00	
		5,625.00
Ordinary net income		218,450.00
Less:		
Personal exemption		2,000.00
Balance (surtax net income)		216,450.00
Less:		
Earned income credit		1,400.00
Balance subject to normal tax		215,050.00
Normal tax (4 per cent of $215,050)		8,602.00
Surtax on $216,450		105,979.00
Partial tax $8,602+$105,979)		114,581.00
Less:		
30 per cent of net long-term capital loss		11,250.00
Alternative tax		103,331.00

The alternative tax, being greater than the tax computed in the ordinary way, represents the tax liability exclusive of defense tax.

COMPUTATION OF DEFENSE TAX.

Net income	$186,575.00
Income tax (alternative tax)	103,331.00
Excess of net income over income tax (see section 15, supra)	83,244.00
10 per cent of such excess (limitation on defense tax)	8,324.40
10 per cent of income tax	10,333.10

Although 10 per cent of the income tax due is $10,333.10, since the defense tax can not exceed 10 per cent of the difference between the *net income* and the income tax, the defense tax is limited to 10 per cent of $83,244, or $8,324.40.

Accordingly, the total tax liability in this case is the income tax ($103,331) plus the defense tax ($8,324.40), or $111,655.40.

PART II.—COMPUTATION OF NET INCOME.

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

SECTION 19.22(a)-1: What included in gross income. (Also Section 42, Section 19.42-1.) 1941-28-10771 I. T. 3489

INTERNAL REVENUE CODE.

Method to be employed for Federal income tax purposes in reporting interest on property improvement loans made under Title I of the National Housing Act, as amended.

Advice is requested as to the method to be employed in reporting for Federal income tax purposes interest on property improvement loans made under Title I of the National Housing Act, as amended.

According to the "Gross Charge and Discount Tables" issued by the Federal Housing Administration, a person who borrows $100 to be repaid with interest at 5 per cent over a period of three years signs a note in the amount of $114.98 to be paid in 36 equal installments, the excess ($14.98) over the principal amount of the loan representing interest on the principal amount of $100. A person who desires a loan of $100 on the discount basis for a 3-year period receives $86.97 and signs a note for $100 to be paid in 36 equal monthly installments, the difference ($13.03) between the amount received and the face of the note representing (approximately) interest at the rate of 5 per cent per year on the amount received by the borrower.

It is held that when payments are made in accordance with the terms of such notes the aggregate of the interest charged is paid in 36 equal installments. Accordingly, in the case of a loan under either of the plans referred to, one thirty-sixth ($\frac{1}{36}$) of the total amount representing interest ($14.98 under the gross-charge plan and $13.03 under the discount plan) should be regarded as the portion of each monthly payment which represents interest.

SECTION 19.22(a)-1: What included in gross income.

INTERNAL REVENUE CODE.

Interest on United States savings bonds, Defense Series G. (See I. T. 3504, page 93.)

SECTION 19.22(a)-2: Compensation for personal services. 1941-39-10836 I. T. 3505

INTERNAL REVENUE CODE.

Compensation received from the United States Government by members of the military or naval forces of the United States stationed at bases leased by the United States from foreign countries is required to be included in gross income for Federal income tax purposes.

Advice is requested whether compensation received from the United States Government by members of the military or naval forces of the United States stationed at bases leased by the United States from foreign countries is required to be included in gross income for Federal income tax purposes.

Under section 22 of the Internal Revenue Code, gross income includes "gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, * * * or gains or profits and income derived from any source whatever," unless exempt from tax by law. (Section 19.22(a)-1, Regulations 103.)

The only items of income not required to be included in gross income are those which are exempt under the provisions of the Internal Revenue Code or any other Act of Congress still in effect, or those which are, under the Constitution, not taxable by the Federal Government. (Section 19.22(b)-1, Regulations 103.) The compensation received by the members of the military and naval forces of the United States referred to above is not one of such items.

In view of the foregoing, it is held that compensation received from the United States Government by members of the military or naval forces of the United States stationed at bases leased by the United States from foreign countries is required to be included in gross income for Federal income tax purposes.

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

SECTION 19.22(b)-1: Exemptions—Exclusions from gross income. 1941-28-10772 I. T. 3490

INTERNAL REVENUE CODE.

Income (dividends and bonus payments of association profits) from share accounts in Federal savings and loan associations is exempt from all Federal taxes which are or may be imposed upon income or profits, except surtaxes, irrespective of when the share

accounts were issued or payments in purchase thereof were made by their holders. Accordingly, such income is exempt from all Federal normal tax, and also from the Federal declared value excess profits tax and Federal excess profits tax (now imposed in cases of corporations), but is not exempt from any Federal surtaxes which are or may be imposed.

Gain from the sale or other disposition of the share accounts by their holders is not exempt from any Federal taxes upon income or profits, and any such gain or loss is recognized as such, and includible in or deductible from gross income, under and subject to applicable provisions of the Internal Revenue Code, as amended.

Advice is requested relative to the tax-exempt and taxable status and treatment of dividends and bonus payments (of profits) on, and gain or loss from sale or other disposition of, share accounts in Federal savings and loan associations, with particular reference to the effect, if any, thereon of the Public Debt Act of 1941 (approved February 19, 1941, C. B. 1941–1, 546).

Section 5 (a) and (b) of the Home Owners' Loan Act of 1933 (approved June 13, 1933, 48 Stat., 132) provides as follows:

(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the [Federal Home Loan Bank] Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as "Federal Savings and Loan Associations," and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States.

(b) Such associations shall raise their capital only in the form of payments on such shares as are authorized in their charter, which shares may be retired as is therein provided. No deposits shall be accepted and no certificates of indebtedness shall be issued except for such borrowed money as may be authorized by regulations of the Board.

Section 5(h) of such Act, as amended by section 909 of the Social Security Act Amendments of 1939 (approved August 10, 1939, 53 Stat., 1402), provides:

Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of the Internal Revenue Code with respect to wages paid after December 31, 1939, for employment after such date), and *all shares of such associations shall be exempt* both *as to* their value and *the income therefrom from all taxation (except surtaxes*, estate, inheritance, and gift taxes) *now or hereafter imposed by the United States;* and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions. [Italics supplied.]

Section 4 of the Public Debt Act of 1941, which section became effective March 1, 1941, provides (in so far as here concerned) that—

(a) Interest upon, and gain from the sale or other disposition of, obligations issued on or after the effective date of this Act by the United States or any agency or instrumentality thereof shall not have any exemption, as such, and loss from the sale or other disposition of such obligations shall not have any special treatment, as such, under Federal tax Acts now or hereafter enacted; * * *

(b) The provisions of this section 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.

It has been held in previous Federal tax rulings that Federal savings and loan associations are "instrumentalities of the United States." (S. S. T. 62, C. B. 1937–1, 409; I. T. 3360, C. B. 1940–1, 50.)

It is clear, however, from section 5 (a) and (b) of the Home Owners' Loan Act of 1933, supra, and the arrangement (provided for in the charters prescribed thereunder) between these associations and their share account holders, that dividends and bonus payments by the association on the share accounts are distributions of association profits, and that the shares or share accounts constitute an ownership interest in the association in the nature of shares of capital stock. Therefore, it is the opinion of this office that the dividends and bonus payments (of profits) by these associations on such share accounts are not, within the meaning of section 4(a) of the Public Debt Act of 1941, supra, "interest upon * * * obligations" of the associations; and, accordingly, that such Act has no applicability to, or effect upon, the Federal tax status of the income (dividends and bonus payments of association profits) from such share accounts. Since the share accounts are not, within the meaning of section 4(a), supra, "obligations" of these associations, it follows that the Public Debt Act of 1941 also has no applicability to, or effect upon the Federal tax treatment of, gains or losses from the sale or other disposition of the share accounts by their holders.

The arrangement between these associations and their share account holders is set forth quite extensively in Charter K [1] prescribed for the associations in rules and regulations for the Federal Savings and Loan System promulgated by the Federal Home Loan Bank Board, excerpts from which are quoted below:

4. *Members.*—All holders of share accounts of the association * * * shall be deemed and held to be members thereof. In the consideration of all questions requiring action by the members, each holder of a share account shall be permitted to cast 1 vote for each $100, or fraction thereof, of the participation value of his share account. * * * No member, however, shall cast more than 50 votes. * * *

5. *Directors and officers.*—The association shall be under the direction of a board of directors of not less than 5 nor more than 15, as determined and elected by the members. * * *

6. *Share capital.*—The share capital of the association shall consist of the aggregate of payments upon share accounts and dividends credited thereto less redemption and repurchase payments. The participation value in the share capital of each share account held by a member shall be the aggregate of payments upon such share account and dividends credited thereto less redemption and repurchase payments. Share accounts of $100 or multiples thereof may be known as investment share accounts, consisting of full-paid income shares. All other share accounts shall be known as savings share accounts. * * *

7. *Ownership of share accounts.*—All share accounts shall be represented by share account books containing a certificate of membership and evidencing the participation value of the share account, except that investment share accounts may be represented by separate membership certificates. * * *

* * * * * * *

9. *Reserves, undivided profits, and dividends.*—As of June 30 and December 31 of each year, after payment or provision for payment of all expenses and appropriate transfers to the reserve required below, and additional transfers to other reserve accounts, and provision for an undivided profits account, the board of directors shall declare as dividends the remainder of the net earnings of the association for the six months' period. All dividends shall be declared

[1] It is understood that a number of these associations are operating under Charter E, originally prescribed therefor, but such charter is not materially different in so far as here concerned.

as of said dividend dates. The board of directors may declare dividends as of said dividend dates payable out of the amounts remaining from previous periods in the undivided profits account. *Profits to holders of share accounts* shall be termed dividends (except bonus payments) and *shall not be referred to as interest.* * * * Dividends upon investment share accounts shall be promptly paid in cash as of the dividend date. Dividends on savings share accounts shall be credited to such share accounts on the books of the association as of the dividend date. All holders of share accounts shall participate equally in dividends pro rata to the participation value of their share accounts; provided that the association shall not be required to credit dividends on inactive share accounts of $5 or less. * * * All holders of share accounts shall be entitled to equal distribution of net assets, pro rata to the value of their share accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association.

10. *Bonus and bonus reserve.*—In order to stimulate systematic thrift and to provide regular funds for the financing of homes, the members, by by-law provision, may obligate the association to pay a cash bonus as follows:

(*a*) *Short-term bonus.* * * *

(*b*) *Long-term bonus.* * * *

The members, by amendment of the by-laws, may abolish the bonus plan as to savings share accounts opened after the date of such repeal of the bonus plan.

Simultaneously with the declaration of each semiannual dividend after the adoption of the bonus plan, the board of directors shall transfer out of net earnings to an account designated "reserve for bonus" an amount, which, together with existing credits to such reserve, is sufficient to pay the bonus on all savings share accounts then entitled to participation in such reserve in accordance with the provisions of this section. * * * [Italics supplied.]

By virtue of section 5(h) of the Home Owners' Loan Act of 1933, supra, the income (dividends and bonus payments of association profits) from share accounts in these associations is exempt from all Federal taxes which are or may be imposed upon income or profits, except surtaxes. Accordingly, such income is exempt from all Federal normal tax, and also from the Federal declared value excess profits tax and Federal excess profits tax now imposed in cases of corporations (see G. C. M. 18893, C. B. 1937-2, 210), but is not exempt from any Federal surtaxes which are or may be imposed. It is immaterial whether the share accounts were issued, or payments in purchase thereof were made by their holders, before or on or after the effective date of the Public Debt Act of 1941, since, as hereinbefore held, such Act is inapplicable thereto.

Gain from the sale or other disposition of the share accounts by their holders is not exempt, under section 5(h), supra, or otherwise, from any Federal taxes upon income or profits, and any such gain or loss is recognized as such, and includible in or deductible from gross income, under and subject to applicable provisions of the Internal Revenue Code, as amended.

SECTION 19.22(b)(2)-2: Annuities. 1941-44-10883
(Also Section 147, Section 19.147-1.) I. T. 3513

INTERNAL REVENUE CODE.

Where premiums on an annuity contract are discounted because of prepayment, the discounted value of the premiums should be used in determining "the aggregate premiums or consideration paid" under section 22(b)2 of the Internal Revenue Code. The increment represented by the excess of the aggregate premiums

stated in the policy over the discounted value should not be included in the gross income of the premium payor in the years in which the premiums fall due, and the insurance company should not report such excess as income to him on an information return.

Advice is requested whether "the aggregate premiums or consideration paid," as that term is used in section 22(b)2 of the Internal Revenue Code, means, where the premiums on an annuity contract are discounted because of prepayment, the annual premiums stated in the policy or the discounted premiums.

The policy in question is a deferred annuity policy issued on the life of an individual in consideration of an annual premium of $7x$ dollars, with the provision that, upon written request of the annuitant, premium payments will terminate and the annuity income will commence. After the policy was issued, the insurance company accepted a single sum payment representing the discounted value of two advance premiums. The sole agreement as to the prepayment of premiums is embodied in the printed form of receipt which provides, *inter alia*, for the withdrawal of unearned premiums prior to their due date and states that premiums paid in advance are discounted at 3 per cent compound interest but, if withdrawn, the payment is discounted at 4 per cent compound interest.

The specific inquiries presented are (1) whether the discounted value of the premiums should be used in determining the "aggregate premiums or consideration paid"; (2) whether the increment represented by the excess of the total premiums over the discounted value should be included in the gross income of the premium payor in the years in which the premiums fall due; and (3) whether the company should report the excess as income to the premium payor in an information return.

It is held that where premiums on an annuity contract are discounted because of prepayment, the discounted value of the premiums should be used in determining "the aggregate premiums or consideration paid" under section 22(b)2 of the Internal Revenue Code. The increment represented by the excess of the aggregate premiums stated in the policy over the discounted value should not be included in the gross income of the premium payor in the years in which the premiums fall due, and the insurance company should not report such excess as income to him on an information return.

SECTION 19.22(b)(4)–4: Interest upon United States obligations. 1941–27–10763 I. T. 3486

INTERNAL REVENUE CODE.

Status for Federal income tax purposes of interest upon, and gain or loss from the sale or other disposition of, United States Treasury bills issued on or after March 1, 1941, under the Second Liberty Bond Act, as amended and supplemented by the Public Debt Act of 1941, approved February 19, 1941 (C. B. 1941–1, 546).

Inquiry has been made relative to the status for Federal income tax purposes of interest (discount at which issued) upon, and gain or loss from the sale or other disposition of, United States Treasury bills issued on or after March 1, 1941, under the Second Liberty Bond Act, as amended and supplemented by the Public Debt Act of 1941, approved February 19, 1941 (C. B. 1941–1, 546).

The pertinent parts of section 5 of the Second Liberty Bond Act, as amended prior to amendment by the Public Debt Act of 1941, provided as follows:

(b) All * * * Treasury bills issued hereunder (after the date [June 17, 1929] upon which this subdivision becomes law) shall be exempt * * * as to * * * interest, from all taxation * * * now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority; and the amount of discount at which Treasury bills are originally sold by the United States shall be considered to be interest within the meaning of this subdivision.

* * * * * * *

(d) Any gain from the sale or other disposition of Treasury bills issued hereunder (after the date [June 17, 1930] upon which this subdivision becomes law) shall be exempt from all taxation * * * now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority; and no loss from the sale or other disposition of such Treasury bills shall be allowed as a deduction, or otherwise recognized, for the purposes of any tax now or hereafter imposed by the United States or any of its possessions.

The pertinent parts of the Public Debt Act of 1941 provide as follows:

SEC. 4. (a) Interest upon, and gain from the sale or other disposition of, obligations issued on or after the effective date of this Act by the United States * * * shall not have any exemption, as such, and loss from the sale or other disposition of such obligations shall not have any special treatment, as such, under Federal tax Acts now or hereafter enacted; * * *

(b) The provisions of this section 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.

SEC. 5. This Act * * * shall become effective on the first day of the month [March] following the date of its enactment [February 19, 1941].

By virtue of the foregoing statutory provisions, interest upon, and gain from the sale or other disposition of, United States Treasury bills issued on or after March 1, 1941, have no exemption, as such, and loss from the sale or other disposition of such bills may not be specially treated, as such, under Federal tax Acts now or hereafter enacted. In the opinion of this office, under section 5(b) of the Second Liberty Bond Act, as amended by section 4 of the Public Debt Act of 1941, the amount of discount at which the bills are originally sold (issued) by the United States is to be considered as interest for the purpose of determining taxes as well as tax exemptions. Accordingly, the amount of such discount is includible in gross income as interest, separate and apart from gain or loss, if any, from sale or other disposition of the bills, and any gain or loss from sale or other disposition of the bills is recognized as such gain or loss, and is includible in or deductible from gross income under and subject to applicable provisions of the Internal Revenue Code, as amended. Where a bill is held by an original purchaser to maturity, the entire amount of the interest (discount at which issued) is includible as such in his gross income and there is no gain or loss. Following, in principle, Treasury Decision 4276 (C. B. VIII–2, 83 (1929)), where a bill is sold or otherwise disposed of before maturity, the interest (discount at which issued) is to be prorated and apportioned among the original and other holders according to their respective holding periods (computed on an actual calendar-day basis). That Treasury decision also sets forth the proper computation, together with four examples, of gain or loss, if any, realized or sustained by each of the original and other holders in such cases.

SECTION 19.22(b)(4)-4: Interest upon United States obligations. 1941-34-10810 I. T. 3499

INTERNAL REVENUE CODE.

The M Lodge, which has been held to be exempt from Federal income tax under section 101(3) of the Internal Revenue Code, is not subject to Federal income tax on interest received by it on United States savings bonds.

The M Lodge, which has been held to be exempt from Federal income tax under section 101(3) of the Internal Revenue Code, desires to invest its surplus funds in United Stases savings bonds, and has inquired whether the lodge will be required to pay Federal income tax on the interest received by it on such bonds. Similar inquiries have been received from other exempt organizations.

The Public Debt Act of 1941, approved February 19, 1941, provides that the interest upon, and the gain from the sale or other disposition of, obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof shall not have any exemption, as such, and loss from the sale or other disposition of such obligations shall not have any special treatment, as such, under Federal tax Acts now or hereafter enacted, with certain exceptions not here pertinent. The effect of the provisions of the Public Debt Act of 1941 is to subject all interest upon, and gains from the sale or other disposition of, obligations of the United States or any agency or instrumentality thereof to the same Federal taxes as like income derived from obligations of private corporations is subjected. The Act does not affect the exemption with respect to savings bonds issued prior to March 1, 1941.

Section 101 of the Internal Revenue Code provides for the exemption from income taxation of certain organizations, including fraternal organizations specified therein. Section 1.101-1 of Regulations 103, which relates to the income tax under the Internal Revenue Code, provides that when an organization has established its right to exemption it need not thereafter make a return of income or any further showing with respect to its status under the law, unless it changes the character of its organization or operations or the purpose for which it was originally created. Therefore, any organization which has established its exemption from Federal income taxation under the provisions of section 101 of the Internal Revenue Code or corresponding provisions of prior Revenue Acts is not liable to Federal income tax on any of its income, including interest on, and the gain from the sale of, United States bonds issued before, or on or after, March 1, 1941.

The M Lodge, having been held by the Bureau to be exempt from Federal income taxation under the provisions of section 101(3) of the Internal Revenue Code, will not be required to file returns of income so long as the purposes for which it was organized and its method of operation remain unchanged. Accordingly, such organization is not subject to Federal income taxation on any of its income, including interest on United States savings bonds.

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

SECTION 19.23(a)-1: Business expenses. 1941-30-10788
I. T. 3493

INTERNAL REVENUE CODE.

Voluntary payments by employers, under the Vermont unemployment compensation law of 1936, as amended, for the purpose of increasing their reserve account balance to meet the requirements of section 7(e) of such law, constitute ordinary and necessary business expenses and are deductible from gross income for Federal income tax purposes by such employers in the year of payment, whether their accounts are kept on the cash receipts and disbursements basis or on the accrual basis.

Advice is requested whether voluntary payments under the Vermont unemployment compensation law of 1936, as amended, made by employers to their reserve accounts in order to increase such accounts to an amount which will permit the employer to make a lower rate of contribution for the following calendar year, are allowable deductions from gross income for Federal income tax purposes.

The above-mentioned voluntary payments by employers are not required under the Vermont unemployment compensation law of 1936, as amended, and are not allowable as credits against the Federal unemployment compensation tax. Sections 7 and 8 of the Vermont unemployment compensation law of 1936, as amended, provide in part as follows:

SEC. 7 * * *

(b) RATE OF CONTRIBUTIONS.—The contribution regularly payable by each employer except as hereinafter provided shall be an amount equal to 2.7 per cent of the aggregate pay roll for the period covered by the return, except that the contribution payable by each employer for the calendar year 1936 shall be an amount equal to nine-tenths per cent of such pay roll and for the year 1937 shall be an amount equal to 1.8 per cent of such pay roll.

* * * * * * *

(e) MERIT RATING. * * * (2) For the calendar year 1941 no employer's contribution rate shall be reduced unless he has had benefit experience throughout the most recently completed calendar year with the benefits payable from his separate reserve account within such year being paid in full from his separate reserve account and unless his separate reserve account at the start of the given calendar year equals at least five times the largest amount of benefits paid on account of wage credits earned in his employ as aforesaid within any one of the three most recently completed calendar years of compensation experience, and unless said separate reserve account equals 7½ per cent of his pay roll in the preceding calendar year. But if an employer's contributions to his separate reserve account during the preceding calendar year have exceeded the benefits paid from his separate reserve account during such year and his separate reserve account at the start of the given calendar year equals at least 7½ per cent of his pay roll for the last preceding calendar year, and five times the largest amount of benefits paid on account of wage credits earned in his employ as aforesaid during any one of the three preceding years of compensation experience, his contribution rate to his separate reserve account shall be reduced to such per cent on his pay roll throughout the given year as will provide for compensation from such separate reserve account to the extent prescribed in this act without reducing said reserve below either of said standards.

SEC. 8. (g) * * * Any employer may at any time make voluntary payments, additional to the contributions required under this act, to his separate reserve account in the fund, pursuant to regulations of the commission. * * *

The voluntary payments made by employers to their reserve accounts under the Vermont unemployment compensation law of 1936,

as amended, are not recoverable should they be insufficient to increase the employer's reserve account balance to meet the requirements of section 7(e) thereof.

It is held that the voluntary payments by employers, under the Vermont unemployment compensation law of 1936, as amended, for the purpose of increasing their reserve account balance to meet the requirements of section 7(e) of such law, constitute ordinary and necessary business expenses and are deductible for Federal income tax purposes by such employers in the year of payment, whether their accounts are kept on the cash receipts and disbursements basis or on the accrual basis.

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

SECTION 19.23(c)-1: Taxes. 1941-27-10764
Mim. 5200

Internal revenue taxes imposed under the Internal Revenue Code which constitute allowable deductions for Federal income tax purposes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 9, 1941.

Collectors of Internal Revenue, Internal Revenue Agents in Charge, Heads of Field Divisions of the Technical Staff, and Other Officers and Employees of the Bureau of Internal Revenue Concerned:

1. Section 23(c), Chapter 1, of the Internal Revenue Code, as amended, permits the deduction from gross income of all taxes paid or accrued within the taxable year, except—

(1) Federal income, war-profits, and excess-profits taxes (other than the excess-profits tax imposed by section 106 of the Revenue Act of 1935 (49 Stat., 1019) or by section 602 of the Revenue Act of 1938 (52 Stat., 567), and other than the declared value excess-profits tax imposed by section 600);

(2) income, war-profits, and excess-profits taxes imposed by the authority of any foreign country or possession of the United States; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of section 131 (relating to credit for taxes of foreign countries and possessions of the United States);

(3) estate, inheritance, legacy, succession, and gift taxes; and

(4) taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not exclude the allowance as a deduction of so much of such taxes as is properly allocable to maintenance or interest charges.

2. Additional exceptions to the general rule regarding the deductibility of taxes paid or accrued during the taxable year are the Federal employment taxes levied upon employees and employee representatives by the provisions of sections 1400, 1500, and 1510 of the Code. Such taxes are specifically designated as not deductible by the provisions of sections 1402, 1503, and 1512, respectively, of the Code. Neither are these taxes deductible, as such, by the employers who, although

charged by law with responsibility for deducting the amount thereof from wage payments made by them to their employees and the payment of such sums to the collector, are not primarily liable with respect thereto.

3. The taxes hereinafter referred to constitute allowable deductions from the gross income of the person against whom they are levied, for the taxable year in which paid or accrued (dependent upon the accounting method employed by the taxpayer), provided the amounts thereof are not added to or made a part of the business expenses of such person, and/or are not added to or made a part of the cost of the articles or quantities of merchandise, or of services, with respect to which such taxes are paid.

4. The chapters and sections of the Code under which the Federal internal revenue taxes are imposed are treated in this mimeograph in the order in which they appear in the Code. The person who is entitled to deduct the particular tax is designated in each instance; the term "person" as used herein means an individual, a trust, estate, partnership, association, company, or corporation.

CHAPTER 2—ADDITIONAL INCOME TAXES.

5. The declared value excess-profits tax imposed by section 600, Subchapter B, Chapter 2, of the Code, as specifically provided in section 23(c)1, is an allowable deduction from the gross income of the person upon whose income it is imposed. No other tax levied under Chapter 2 of the Code constitutes an allowable deduction.

CHAPTER 6—CAPITAL STOCK TAX.

6. The capital stock tax imposed by section 1200, Chapter 6, of the Code is an allowable deduction from the gross income of the person upon the adjusted declared value of the capital stock of which it is imposed. The capital stock tax for each year ending June 30 accrues in its entirety on July 1 of the preceding year. With exceptions not material here, it is imposed with respect to carrying on or doing business for any part (even one day) of each such year. The result of that situation is that a person subject to the tax will be liable for the same amount if business is carried on or done only on one day during the year as if that status is effective for each and every day throughout the entire year.

CHAPTER 7—TAX ON TRANSFERS TO AVOID INCOME TAX.

7. The tax imposed by section 1250, Chapter 7, of the Code upon citizens or residents of the United States, domestic corporations or partnerships, or trusts not foreign, who transfer stock or securities to a foreign corporation as paid-in surplus or as a contribution to capital, or to a foreign trust, or to a foreign partnership, is an allowable deduction from the gross income of the persons making such transfers.

CHAPTER 9—EMPLOYMENT TAXES.

SUBCHAPTER A—FEDERAL INSURANCE CONTRIBUTIONS ACT.

8. The tax imposed by section 1410, Part II, Subchapter A, Chapter 9, of the Code upon an employer with respect to having individuals

in his employ is an allowable deduction from the gross income of the employer. As stated in paragraph 2 of this mimeograph, the tax imposed by section 1400, Part I, Subchapter A, Chapter 9, is not deductible from gross income for purposes of the Federal income tax either by the employee upon whose income it is imposed or by the employer who collects the amount of the tax from the employee through a deduction from the latter's wages. In those instances where the employer does not deduct the amount of the tax from the employee's wages, but pays such amount out of his own pocket, the amount of such payment is an allowable deduction from the gross income of the employer—not as a tax, but as a business expense—and such amount must be included in gross income by the employee.

SUBCHAPTER B—EMPLOYMENT BY CARRIERS.

9. The tax imposed by section 1520, Part III, Subchapter B, Chapter 9, of the Code upon an employer with respect to having individuals in his employ is an allowable deduction from the gross income of the employer.

SUBCHAPTER C—FEDERAL UNEMPLOYMENT TAX ACT.

10. The tax imposed by section 1600, Subchapter C, Chapter 9, of the Code upon an employer with respect to having individuals in his employ is an allowable deduction from the gross income of the employer. In connection with such tax it is to be remembered that only the net amount remaining after application of the credits provided in section 1601 will be allowable as a deduction inasmuch as the contributions to State unemployment funds constituting the measure of such credits are themselves allowable deductions from the gross income of the employer.

RAILROAD UNEMPLOYMENT INSURANCE ACT.

11. Although contributions imposed upon "employers" and "employee representatives" by the Railroad Unemployment Insurance Act are not imposed under the Internal Revenue Code nor administered by the Bureau of Internal Revenue, and are, therefore, not within the scope of this mimeograph under a strict construction of the defined field, but because the contributions themselves and their incidents and measurements are strikingly similar to the tax imposed by section 1600 of the Code, it is deemed advisable to advert thereto at this point. Such contributions constitute allowable deductions from the gross income of the employers or employee representatives upon which they are imposed.

EMPLOYEES' TAXES UNDER CHAPTER 9.

12. While not deductible, as such, by either the employees or the employers, as pointed out in paragraph 2 of this mimeograph, and to that extent also not germane to the subject of this mimeograph, the amount of the taxes upon the incomes of employees provided for in section 1400, Part I, Subchapter A, Chapter 9, of the Code, and in section 1500, Part I, Subchapter B, Chapter 9, of the Code, may constitute allowable deductions from the gross income of the em-

ployer concerned as "business expenses" under section 23(a)1, Chapter 1, of the Code, in case the employer pays such sums out of his own pocket. In that event the amounts so paid constitute additional compensation to the employees concerned and must be included in their gross incomes for Federal income tax purposes.

CHAPTER 10—ADMISSIONS AND DUES.

SUBCHAPTER A—ADMISSIONS.

13. The tax on admissions imposed by section 1700, Subchapter A, Chapter 10, of the Code, as amended, is, in general, on the amount paid for admission at the established rate or price and is imposed upon and deductible from gross income by the purchaser. In certain instances where admissions are sold for a price in excess of the regular or established rate, an additional tax is imposed upon the seller. In the latter event, the additional tax is deductible only by the seller, while the tax upon the regular rate of admission will be deductible, as usual, by the purchaser.

SUBCHAPTER B—DUES.

14. The tax on membership or initiation dues or fees imposed by section 1710, Subchapter B, Chapter 10, of the Code on members of social, athletic, or sporting clubs or organizations, is imposed upon and is deductible from gross income only by the member.

CHAPTER 11—DOCUMENTS, OTHER INSTRUMENTS, AND PLAYING CARDS.

15. The several documentary stamp taxes imposed under Subchapter A, Chapter 11, of the Code by section 1800 and—

(*a*) Section 1801 on the issue of corporate securities, i. e., bonds, debentures, certificates of indebtedness, etc.;

(*b*) Section 1802(a) on the issue of capital stock and similar interests;

(*c*) Section 1802(b) on sales and transfers of capital stock and similar interests;

(*d*) Section 1804 on certain foreign insurance policies;

(*e*) Section 1805 on transfers of interests in silver bullion; and

(*f*) Section 1806 on certain passage tickets;

apply with respect to any party to the taxable transaction. All such taxes, therefore, are deductible from gross income by the person who as a party to the transaction, whether directly or indirectly through an agent, purchased the stamps from the Government and used them in payment of the tax by affixing them to the document or subject of the tax and canceling them as required by the law and regulations.

16. The parties to a taxable transaction may agree among themselves as to which one shall pay the tax. Such agreement, however, does not affect the tax liability of the parties and does not relieve any one of them from paying the tax. Hence, where such an agreement is made but through default the tax is paid by a party other than the one who had agreed to make the payment, the tax is nevertheless deductible from the gross income of the person who made the payment; and such deduction is allowable notwithstanding that

the person who made the payment may be entitled to claim reimbursement from the party in default. If in such case the person paying the tax is reimbursed by the party in default, the amount of the reimbursement would be includible in his gross income.

17. Where the tax is paid by one of the parties to the transaction but the burden of the tax is shifted to another party to the transaction, for example, where the amount of the tax is included in the sales price of the subject matter of the tax, the other party to the transaction is not the taxpayer entitled to deduct the amount of the tax as such from his gross income. The other party to whom the burden of the tax was shifted is entitled to add the amount thereof to the cost of the subject matter of the tax for purpose of computing his gross income from the sale, use, or other disposition thereof.

18. The tax on playing cards imposed by sections 1800 and 1807, Subchapter A, Chapter 11, of the Code is imposed on the "manufacturer" as that term is defined in section 1831(a) and is deductible from gross income only by such person. A jobber, dealer, or consumer who reimburses the manufacturer for such tax, even though required to do so by terms of the contract under which such articles are acquired, is not entitled to deduct from gross income the amount so reimbursed as a payment of tax, but may add such amount to the cost of the articles for purpose of computing his gross income from the sale, use, or other disposition of the articles.

CHAPTER 12—SAFE DEPOSIT BOXES.

19. The tax on safe deposit boxes imposed by section 1850, Chapter 12, of the Code is imposed on the person paying for the use of the safe deposit box and is deductible from gross income only by such person.

CHAPTER 13—CIRCULATION OTHER THAN OF NATIONAL BANKS.

20. The tax on the amount of circulation issued by any bank, association, corporation, company, or person, imposed by section 1900, Chapter 13, of the Code is imposed on the bank, etc., issuing the circulation and is deductible from gross income only by such bank, etc.

CHAPTER 14—COTTON FUTURES.

21. The tax upon each contract of sale of any cotton for future delivery imposed by section 1920, Chapter 14, of the Code is imposed upon the seller of the cotton involved in the contract of sale and is deductible from gross income only by such person.

CHAPTER 15—TOBACCO, SNUFF, CIGARS, AND CIGARETTES.

22. The taxes imposed by section 2000, Chapter 15, of the Code upon all tobacco, snuff, cigars, cigarettes, and cigarette paper manufactured in or imported into the United States, and sold by the manufacturer or importer, or removed for consumption or sale, are imposed upon the manufacturer or importer and are deductible from gross income only by such person.

CHAPTER 16—OLEOMARGARINE, ADULTERATED BUTTER, AND PROCESS OR RENOVATED BUTTER.

SUBCHAPTER A—OLEOMARGARINE.

23. The taxes imposed by section 2301, Subchapter A, Chapter 16, of the Code upon oleomargarine which is manufactured and sold, or removed for consumption or use, are imposed upon the manufacturer thereof and are deductible from gross income only by such person.

SUBCHAPTER B—ADULTERATED AND PROCESS OR RENOVATED BUTTER.

24. The taxes imposed by section 2321, Subchapter B, Chapter 16, of the Code upon adulterated butter and upon process or renovated butter, which is manufactured or sold, or removed for consumption or use, are imposed upon the manufacturer thereof and are deductible from gross income only by such person.

CHAPTER 17—FILLED CHEESE.

25. The tax imposed by section 2351, Chapter 17, of the Code upon filled cheese which is manufactured is imposed upon the manufacturer thereof and is deductible only by such person.

CHAPTER 18—MIXED FLOUR.

26. The tax imposed by section 2381, Chapter 18, of the Code upon the manufacture and sale of mixed flour is imposed upon the manufacturer or packer thereof and is deductible from gross income only by such person.

27. The tax imposed by section 2384, Chapter 18, of the Code upon all mixed flours, imported from foreign countries, is imposed upon the importer thereof and is deductible from gross income only by such person.

CHAPTER 21—COCONUT AND OTHER VEGETABLE OILS.

28. Except as provided in section 2478 of such chapter, the taxes imposed by section 2470, Chapter 21, of the Code upon the first domestic processing of coconut and the other vegetable oils specified in that section are imposed upon the "first domestic processing" thereof as defined in section 2477 of that chapter, and those taxes are deductible from gross income only by the person performing the "first domestic processing."

29. Section 2478, Chapter 21, of the Code provides that under the circumstances set forth therein the liability for the taxes imposed under the chapter shifts from the person performing the "first domestic processing" to his vendee. In such a case it necessarily follows that the tax is deductible from the gross income of the vendee irrespective of whether the amount of the tax is paid by the vendee to the vendor or direct by the vendee to the collector.

CHAPTER 22—FISH, ANIMAL, AND VEGETABLE OILS.

30. The taxes imposed by section 2490, Chapter 22, of the Code at the rates and upon the substances enumerated in that chapter are imposed upon the importation thereof into the United States after

May 10, 1934, and are a liability of the importer. Accordingly, such taxes are deductible from gross income only by the importer.

CHAPTER 23—NARCOTICS.

SUBCHAPTER A—OPIUM AND COCA LEAVES.

31. The tax imposed by section 2550, Subchapter A, Chapter 23, of the Code upon opium, coca leaves, any compound, salt, derivative, or preparation thereof, produced in or imported into the United States, and sold, or removed for consumption or sale, is imposed upon the importer, manufacturer, producer, or compounder, and is deductible from gross income only by such person.

SUBCHAPTER B—OPIUM FOR SMOKING.

32. The tax imposed by section 2567, Subchapter B, Chapter 23, of the Code upon all opium manufactured in the United States for smoking purposes is imposed upon the manufacturer thereof and is deductible from gross income only by such person.

SUBCHAPTER C—MARIHUANA.

33. The taxes imposed by section 2590, Subchapter C, Chapter 23, of the Code upon the transfers of marihuana described therein are imposed in general upon the transferee and are deductible from gross income only by such person. However, in the event of a transfer in violation of section 2591 without an order form and without payment of the transfer tax imposed upon the transferee, the transferor also is liable for the tax and if paid by such transferor the amount thereof may be deducted from his gross income.

CHAPTER 24—WHITE PHOSPHORUS MATCHES.

34. The tax imposed by section 2651, Chapter 24, of the Code upon white phosphorus matches manufactured, sold, or removed is imposed upon the manufacturer of such matches and is deductible from gross income only by such person.

CHAPTER 25—FIREARMS.

SUBCHAPTER A—PISTOLS AND REVOLVERS.

35. The tax imposed by section 2700, Subchapter A, Chapter 25, of the Code upon pistols and revolvers sold or leased by the manufacturer, producer, or importer is imposed upon the manufacturer, producer, or importer and is deductible from gross income only by such person.

SUBCHAPTER B—MACHINE GUNS AND SHORT-BARRELLED FIREARMS.

36. The taxes imposed by section 2720, Subchapter B, Chapter 25, of the Code upon firearms transferred in the continental United States are imposed upon the transferor and are deductible from gross income only by such person.

CHAPTER 26—LIQUOR.

SUBCHAPTER A—DISTILLED SPIRITS.

37. The taxes imposed by section 2800, Subchapter A, Chapter 26, of the Code upon distilled spirits as defined in such section are imposed upon the distiller or importer or internal revenue bonded warehouseman and are deductible from gross income only by such person.

SUBCHAPTER B—WINES.

38. The taxes imposed by section 3030, Subchapter B, Chapter 26, of the Code upon the various kinds of wines specified therein are imposed upon the sale or the removal for consumption or sale of such wines and are, therefore, a liability of the producer or importer. Consequently, the amount of such taxes may be deducted from gross income only by the producer or importer or proprietor of a bonded storeroom upon whom such liability rests.

39. The tax imposed by section 3031, Subchapter B, Chapter 26, of the Code upon brandy or spirits used in the fortification of wines is imposed upon the producer of such wines and is deductible from gross income only by such person.

SUBCHAPTER D—FERMENTED LIQUORS.

40. The tax imposed by section 3150, Subchapter D, Chapter 26, of the Code upon the fermented liquors designated therein is imposed upon the brewing or manufacture and sale, or removal for consumption or sale, within the United States, and is a liability of the brewer. Accordingly, the amount of such taxes may be deducted from gross income only by the brewer.

CHAPTER 27—OCCUPATIONAL TAXES.

41. The special taxes imposed by sections 3200, 3206, 3210, 3215, 3220, 3230, 3250, and 3260, Subchapter A, Chapter 27, of the Code are imposed upon the persons engaged in the occupations specified in each of those sections and are deductible from gross income only by such persons.

CHAPTER 29—MANUFACTURERS' EXCISE AND IMPORT TAXES.

SUBCHAPTER A—MANUFACTURERS' EXCISE TAXES.

42. The manufacturers' excise taxes imposed by sections 3400, 3401, 3403, 3404, 3405, 3407, 3409, and 3412, Subchapter A, Chapter 29, of the Code are imposed upon the sale of the articles specified therein by the manufacturer, producer, or importer and are deductible from gross income only by such persons.

43. The tax imposed upon electrical energy by section 3411, Subchapter A, Chapter 29, of the Code is imposed upon the vendor of such energy and is deductible from gross income only by such person.

44. The tax imposed by section 3413, Subchapter A, Chapter 29, of the Code upon lubricating oils sold in the United States is imposed upon the manufacturer or producer and is deductible only by such person.

CHAPTER 30—TRANSPORTATION AND COMMUNICATION.

SUBCHAPTER A—TRANSPORTATION OF OIL BY PIPE LINE.

45. The tax imposed by section 3460, Subchapter A, Chapter 30, of the Code upon the transportation of crude petroleum and liquid products thereof by pipe line is imposed upon the persons furnishing such transportation and is deductible from gross income only by such person.

SUBCHAPTER B—TELEGRAPH, TELEPHONE, RADIO, AND CABLE FACILITIES.

46. The taxes imposed by section 3465, Subchapter B, Chapter 30, of the Code upon telegraph, telephone, cable, or radio dispatches is imposed upon the person paying for the services or facilities and is deductible from gross income only by such person.

CHAPTER 31—DOCUMENTS AND OTHER INSTRUMENTS.

47. The taxes imposed by section 3480, Chapter 31, of the Code for and in respect of the documents and other instruments mentioned and described in sections 3481 and 3482 are subject to the same administrative provisions that apply to the stamp taxes imposed under Chapter 11 with respect to documents, other instruments, and playing cards. Accordingly, the rules stated in paragraph 15 relative to the stamp taxes imposed under Chapter 11 also apply to the stamp taxes imposed under Chapter 31.

CHAPTER 32—SUGAR.

SUBCHAPTER A—MANUFACTURE.

48. The taxes imposed by section 3490, Subchapter A, Chapter 32, of the Code upon manufactured sugar manufactured in the United States are imposed upon the manufacturer as defined in section 3492 and are deductible from gross income only by such person.

CHAPTER 33—BITUMINOUS COAL.

49. The tax imposed by section 3520, Chapter 33, of the Code upon the sale or other disposal of bituminous coal produced within the United States when sold or otherwise disposed of by the producer is imposed upon the producer and is deductible from gross income only by such person.

GENERAL.

50. The "defense tax" superimposed upon various of the taxes imposed under the Code is, for purposes of this mimeograph, merely an addition to the tax to which it attaches and is deductible, or not, in the same manner and to the same extent as is the tax to which it is added.

51. Correspondence regarding this mimeograph should refer to the number thereof and to the symbols IT:TM.

GUY T. HELVERING,
Commissioner.

SECTION 19.23(c)-1: Taxes. 1941-36-10818
I. T. 3502

INTERNAL REVENUE CODE.

Under the amendments effected by chapter 440, Oregon Laws, 1941, real and personal property taxes imposed by the State of Oregon accrue as of January 1 of the calendar year 1942 and subsequent years.

Advice is requested with respect to the accrual date of real and personal property taxes in the State of Oregon in view of the laws relating to assessment and taxation enacted during the 1941 session of the State legislature.

The enacting legislation referred to consists of chapters 256, 359, 389, and 440 of the Oregon Laws, 1941. Chapter 440 of the Oregon Laws, 1941, with an exception not here material, becomes effective January 1, 1942, and amends numerous sections of the Oregon Compiled Laws Annotated. Provisions of the law pertinent to the question involved, as amended by chapter 440, read in part as follows:

SEC. 110-335. The assessor shall procure for the county a blank assessment roll, and forthwith proceed each year to assess the value of all taxable property within the county, * * *. Said assessor shall enter in such assessment roll a full and complete assessment of such taxable property, including a definite description of the real property owned by each person therein named, on January 1 of said year, at the hour of 1 o'clock a. m. * * *

* * * * * * *

SEC. 110-348. All personal property not exempt from taxation shall be assessed at its true cash value as of January 1 at the hour of 1 o'clock a. m.; * * *.

Sections 110-344 and 349 of the Oregon Compiled Laws Annotated, as amended by chapter 359, Oregon Laws, 1941, read in part as follows:

SEC. 110-344. At the time prescribed by law the assessor in each county shall ascertain by diligent inquiry the names of all persons in his county who by law are assessable by him, and also all the taxable personal property and all taxable real estate therein which by law is assessable by him, and make out an assessment roll of all such property, and appraise the same according to the provisions of the statutes relating thereto.

* * * * * * *

SEC. 110-349. Every person and the managing agent or officer of any firm, corporation or association owning, or having in possession or under control taxable personal property shall make a return thereof to the assessor of the county in which such property has its situs for taxation. In similar manner every such person, managing agent or officer shall make a return of taxable real property, when so requested by the assessor of the county in which such property is situated.

* * * * * * *

All returns shall be in such form as the assessor, with the approval of the State tax commission, may prescribe, and shall be filed on or before the sixtieth day following the assessment date of each year. * * *

Under the law as amended, taxes on real property in Oregon become a lien thereon from and including the 1st day of July of the year in which they are levied, and taxes on personal property are a lien on all the personal property of the person assessed from and including the 1st day of January of the year of the assessment until paid.

It is held that the accrual date of real and personal property taxes, under the amendments effected by chapter 440, Oregon Laws, 1941, is January 1 of the calendar year 1942 and subsequent years. (See generally G. C. M. 15305, C. B. XIV-2, 80 (1935).)

SECTION 19.23(c)-1: Taxes. 1941-39-10833
(Also Section 41, Section 19.41-3.) I. T. 3506

INTERNAL REVENUE CODE.

Pennsylvania real estate taxes accrue on January 1 of the year for which such taxes are imposed.

Advice is requested as to the date on which Pennsylvania real estate taxes accrue for Federal income tax purposes.

The specific statutory provisions with respect to assessment and collection of real estate taxes in Pennsylvania differ according to the class in which the taxing unit belongs. While there are no general statutory provisions specifying the date on which real estate taxes accrue, the courts of the State have determined the date as of which liability for real estate taxes accrues. The rule enunciated is that the actual owner of property at the time the assessment is made is liable for taxes covering the entire calendar year for which such taxes are imposed, and that liability for such taxes accrues as of January 1 of such tax year. (*Pennsylvania Co. for Insurances on Lives and Granting Annuities* v. *Bergson*, 307 Pa., 44, 159 Atl., 32; *Wood* v. *United States Nat. Bldg. & Loan Ass'n*, 105 Pa. Sup. Ct., 184, 160 Atl., 244; *Provident Trust Co. of Philadelphia* v. *Judicial Bldg. & Loan Ass'n et al.*, 112 Pa. Sup. Ct., 352, 171 Atl., 287.)

I. T. 2908 (C. B. XIV-2, 72 (1935)) involved taxes assessed by Philadelphia, a city of the first class, and I. T. 3414 (C. B. 1940-2, 70) involved taxes assessed by Pittsburgh, a city of the second class, and by Allegheny County, a county of the second class. In those rulings it was held that the taxes assessed by the respective taxing units involved therein accrued for Federal income tax purposes on January 1 of the calendar year for which such taxes were imposed.

The rule enunciated by the Pennsylvania courts, viz, that real estate taxes accrue as of January 1 of the tax year, is equally applicable to real estate taxes assessed by all taxing units in Pennsylvania, irrespective of the class to which the taxing unit belongs.

SECTION 19.23(c)-1: Taxes. 1941-43-10874
I. T. 3511

INTERNAL REVENUE CODE.

Fees paid for dog licenses, automobile inspection, and automobile title registration are not ordinarily allowable deductions as taxes under section 23(c) of the Internal Revenue Code.

Advice is requested with respect to the deductibility for Federal income tax purposes of fees paid for dog licenses, automobile inspection, and automobile title registration, assuming that such fees are not classifiable as business expenses.

As a general rule, dog license fees are collected to defray the expenses of maintaining dog pounds, etc. Automobile inspection fees are collected primarily to cover the cost of periodical inspection of automobiles and for upkeep of inspection stations. Automobile title registration fees generally represent amounts paid for title registration

certificates which are required to be delivered to purchasers upon transfers of automobiles.

The primary question in determining whether the above-mentioned items are deductible from gross income for Federal income tax purposes is whether they are deductible as "taxes" under section 23(c) of the Internal Revenue Code. In general, the term "tax" includes every burden that may lawfully be laid upon the citizen by virtue of the taxing power, but its application in statutory provisions varies with the intent and purpose of the particular provision. A tax is an enforced contribution, exacted pursuant to legislative authority in the exercise of the taxing power, and imposed and collected for the purpose of raising revenue to be used for public or governmental purposes, and not as a payment for some special privilege granted or service rendered. Taxes are, therefore, distinguishable from various other charges imposed for particular purposes under particular powers or functions of government. In view of such distinctions, the question whether a particular charge is to be regarded as a tax depends upon its real nature. If it is in the nature of a tax, it is not material that it may be called by a different name; conversely, if it is not in the nature of a tax, it is not material that it may be so called.

In 26 Ruling Case Law, page 17, the general rule distinguishing taxation from regulation is stated in the following language:

> 4. *Taxation distinguished from regulation.*—Some governments derive a considerable revenue from a judicious exercise of the power of regulation; but since a tax is a charge imposed for the purpose of raising revenue, a charge primarily imposed for the purpose of regulation is not a tax, and is not subject to the constitutional limitations upon the power of taxation. * * * If the primary purpose of the legislature in imposing such a charge is to regulate the occupation or the act, the charge is not a tax, even if it produces revenue for the public. * * *

Generally, the fees here involved are nominal in amount and are collected primarily for regulatory, not for revenue-producing purposes. The funds collected are used to defray expenses of regulation. Since the fees are usually for regulatory as distinguished from revenue-producing purposes and are not collected as "taxes," they are not ordinarily deductible as taxes under section 23(c) of the Internal Revenue Code. This conclusion is in accord with the principles of I. T. 2796 (C. B. XIII-2, 48 (1934)), involving the cost of hunting and fishing licenses in the State of North Dakota; I. T. 2999 (C. B. XV-2, 139 (1936)), involving the cost of Federal migratory bird hunting stamps and hunting licenses in the States of New York, North Carolina, and Pennsylvania; I. T. 3166 (C. B. 1938-1, 133), involving the cost of hunting and fishing licenses in the State of Ohio; and I. T. 3365 (C. B. 1940-1, 31), involving amounts deposited in parking meters in the District of Columbia.

SECTION 19.23(c)-1: Taxes. 1941-45-10888
I. T. 3514

INTERNAL REVENUE CODE.

Contributions required to be made by employers into the Illinois unemployment fund under the Illinois Unemployment Compensation Act are deductible from gross income as taxes under section 23(c) of the Internal Revenue Code.

Advice is requested whether the amounts required to be paid by employers, under the Illinois Unemployment Compensation Act, into the Illinois unemployment fund are deductible as taxes under section 23(c) of the Internal Revenue Code or as ordinary and necessary business expenses under section 23(a) of the Code.

Section 23(a)1 of the Internal Revenue Code provides for the deduction in computing net income of "* * * all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, * * *."

Section 23(c) of the Code provides that in computing net income there shall be allowed as deductions taxes paid or accrued within the taxable year with certain exceptions not here material.

The Bureau holds that employer contributions under State unemployment insurance laws are deductible as business expenses, except that if the State under whose law such contributions are levied classifies them as taxes, they are deductible as taxes and not as business expenses. (Mim. 4595, C. B. 1937-1, 63.)

From a consideration of the statute under which contributions by employers are made into the Illinois unemployment fund, and pursuant to advice received by the Bureau from the State of Illinois, it is held that such contributions under the Illinois Unemployment Compensation Act are deductible as taxes and not as business expenses.

SECTION 19.23(c)-2: Federal duties and excise taxes. 1941-42-10867 I. T. 3510

INTERNAL REVENUE CODE.

Retailers' excise taxes imposed by Chapter 19 of the Internal Revenue Code, added by section 552 of the Revenue Act of 1941, are not deductible from gross income by the vendee for Federal income tax purposes. Such taxes are deductible from gross income only by the vendor (retailer).

Advice is requested whether the retailers' excise taxes imposed by Chapter 19 of the Internal Revenue Code, added by section 552 of the Revenue Act of 1941, are deductible from gross income by the vendee for Federal income tax purposes.

Section 23(c)1 of the Internal Revenue Code, as amended, provides that in computing net income there shall be allowed as deductions taxes paid or accrued within the taxable year with certain exceptions not here material. Section 19.23(c)-1 of Regulations 103, relating to the income tax under the Internal Revenue Code, provides, *inter alia*, that in general taxes are deductible only by the person upon whom they are imposed.

Section 552 of the Revenue Act of 1941, relating to the new retailers' excise taxes, amends the Internal Revenue Code by adding after Chapter 18 a new chapter entitled, "Chapter 19—Retailers' Excise Taxes." Sections 2400, 2401, and 2402 of Chapter 19 of the Code impose taxes upon various articles sold at retail (equivalent to 10 per cent of the price for which so sold), including jewelry, etc., furs, and toilet preparations, respectively. Section 2403(a) of the Code provides in part as follows:

(a) *Every person who sells at retail any article taxable under this chapter shall* make monthly returns under oath in duplicate and *pay the taxes imposed by this chapter* to the collector for the district in which is located his principal place of business * * *. [Italics supplied.]

It is apparent that the retailers' excise taxes imposed by Chapter 19 of the Internal Revenue Code are imposed upon the sale by the retailer of the articles specified therein, and the language of section 2403(a), Chapter 19, of the Code, supra, shows that such taxes are payable by the vendor (retailer), not by the vendee.

In view of the foregoing, it is held that the retailers' excise taxes imposed by Chapter 19 of the Internal Revenue Code, added by section 552 of the Revenue Act of 1941, are not deductible from gross income by the vendee for Federal income tax purposes. Such taxes are deductible from gross income only by the vendor (retailer). (Cf. Mim. 5200, page 80, this Bulletin, and A. R. R. 3041, C. B. II-2, 110 (1923).)

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

SECTION 19.23(e)-1: Losses by individuals. 1941-38-10829
(Also Section 22(a), Section 19.22(a)-1; Section 23(f), Section 19.23(f)-1.) I. T. 3504

INTERNAL REVENUE CODE.

Interest on United States savings bonds, Defense Series G, is includible in gross income when received or accrued, depending upon the taxpayer's method of accounting. Such interest accrues when it becomes payable but not until then.

No adjustment, for Federal income tax purposes, is to be made in any taxable year of such already realized interest on account of the refund by the taxpayer of a portion thereof upon redemption of the bond before maturity, the amount thus refunded being deductible as an ordinary loss, incurred in a transaction entered into for profit, in the taxable year of such redemption and refund.

In so far as the bond itself is concerned, a purchaser thereof has no gain or loss, either ordinary or capital, upon its redemption, whether at or before maturity.

Advice is requested relative to the proper treatment, for Federal income tax purposes, of interest on United States savings bonds, Defense Series G, and also of the refund of a certain portion of such previously realized interest which holders of the bonds are required to make upon redemption thereof before maturity (except in certain cases upon death) in accordance with the terms of issuance of the bonds incorporated therein.

These bonds were placed on sale, beginning May 1, 1941, at par in denominations of $100, $500, $1,000, $5,000, and $10,000, and are issued under the provisions of the Second Liberty Bond Act, as last amended and supplemented by the Public Debt Act of 1941 (approved February 19, 1941, C. B. 1941-1, 546), which became effective, in so far as here applicable, on March 1, 1941.

The bonds provide *inter alia*, as follows:

THE UNITED STATES OF AMERICA for value received promises to pay to _____ dollars twelve years from the date as of which this bond is issued, and to pay interest on said principal sum semiannually from

said issue date at the rate of two and one-half per cent per annum, until the principal hereof shall be payable. This is a United States savings bond of Defense Series G, authorized by the Second Liberty Bond Act, as amended, and *issued pursuant to Treasury Department Circular No. 654, dated April 15, 1941, to which reference is made for a statement of the rights of holders, as fully and with the same effect as though herein set forth.* This bond is redeemable at the option of the owner on one month's notice in writing, on the first day of any month during any period after said issue date (but not within the first six months) in an amount equal to its redemption value during that period as shown by the table of redemption values appearing hereon, or at a higher value under certain specified conditions set forth in said Circular No. 654. In case of redemption before maturity, interest on this bond shall cease at the end of the period preceding that in which the bond is redeemed. [Italics supplied.]

Department Circular No. 654, dated April 15, 1941, provides in part:

II. DESCRIPTION AND TERMS OF BONDS.

* * * * * * *

4. *Bonds of Series G* will be issued at par, and will bear interest at the rate of 2½ per cent per annum, payable semiannually from date of issue. Interest will be paid by check drawn to the order of the registered owner and mailed to his address. Interest will cease at maturity, or, in case of redemption before maturity, at the end of the interest period next preceding the date of redemption. *A table of redemption values for each bond appears on its face, and the difference between the face amount of the bond and the redemption value fixed for any period represents an adjustment (or refund) of interest.* Accordingly, if the owner exercises his option to redeem a bond prior to maturity, the investment yield will be less than the interest rate on the bonds. Bonds of Series G may be redeemed at par (1) upon the death of the owner, or a coowner, if a natural person, or (2), as to bonds held by a trustee or other fiduciary, upon the death of any person which results in termination of the trust, in whole or in part. If the trust is terminated only in part redemption at par will be made only to the extent of the pro rata portion of the trust so terminated, to the next lower multiple of $100. In any case request for redemption at par must be made within four months after the date of death and in accordance with the regulations governing savings bonds.

* * * * * * *

7. *Taxation.*—* * * interest on bonds of Series G, is not exempt from income or profits taxes now or hereafter imposed by the United States. The bonds shall be subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but shall be exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority. [Italics supplied.]

The fixed "redemption value" of a bond if redeemed before its maturity (except in certain cases upon death) is less than its purchase price (par or face amount), but in every case the aggregate of such redemption value and the previously realized interest exceeds the purchase price.

Under the above quoted provisions of the bond and of the circular incorporated therein by reference, the arrangement agreed upon is one whereunder interest at the rate of 2½ per cent per annum on the principal sum (purchase price, face amount) of the bond is payable and paid semiannually by check, without any condition precedent as to its availability or use, during the 12-year term of the bond or until the end of the interest period next preceding redemption if not held to maturity, but with a condition subsequent that if the bond is redeemed before maturity (except in certain cases upon death) the bondholder shall refund a certain portion of the interest already paid to him, and he will receive only the difference between the face amount (purchase price) of the bond and such interest adjustment (refund), the difference being termed, for the sake of simplicity, in

the bond and circular the "redemption value" of the bond as of the time redeemed. In other words, upon such a redemption before maturity, although there is for the sake of convenience paid over to the bondholder only the net difference, he in effect or constructively receives the full face amount of the bond and simultaneously refunds previously realized interest to the extent of the difference between the face amount of the bond and the net amount he actually receives at the time of the redemption. That the arrangement is so regarded by the Treasury Department is confirmed by the facts that the bonds are carried on its books at par as a liability, that upon such a redemption the full par or face amount thereof is reflected as paid, and the interest refunded is reflected as received in a definite item "repayment of interest."

In view of the arrangement under which these bonds are issued and redeemed, it is manifest that the bondholder recovers in every case, even where a bond is redeemed before maturity, the full purchase price thereof. Accordingly, it is held that, in so far as the bond itself is concerned, a purchaser of such a bond has no gain or loss, either ordinary or capital, upon its redemption.

Inasmuch as the interest payments are payable and paid without any condition precedent as to the availability of the amount of interest due or to the use of the amount of interest paid, such payments are includible in gross income in the taxable year or years in which received or accrued, depending upon the method of accounting regularly employed by the taxpayer in keeping his books and making his Federal income tax returns. The payments are considered to accrue in the taxable year or years in which they become payable inasmuch as liability therefor then becomes fixed, but not until then.

No adjustment for Federal income tax purposes should be made in any taxable year of such already realized interest (which is includible in gross income as and when above stated) on account of the refund by the taxpayer of a portion of such interest upon the redemption of a bond before maturity. As already set forth, the interest payments made are payable and paid by check without any condition precedent as to availability or use, and the obligation on the part of the bondholder to refund, in the event of redemption of the bond before maturity (except in certain cases upon death), a certain portion of the interest previously paid to him is a condition subsequent in determining whether he was entitled to receive and use as his own such interest payments. Such obligation or requirement to refund a certain portion of the interest already realized does not become operative until if, as, and when a bond is redeemed before maturity. It is, however, a condition precedent to such redemption. Stated differently, the making of such refund results in a loss then being incurred and sustained of a portion of the previously realized interest, all under provisions incorporated in the bond. Accordingly, it is held that the amount of interest thus refunded by a purchaser of such a bond is deductible for Federal income tax purposes as an ordinary loss, incurred in a transaction entered into for profit, in the taxable year of such redemption and refund. (Section 23 (e) (2) and (f) of the Code.)

SECTION 19.23(e)–1: Losses by individuals. 1941–48–10912
I. T. 3519

INTERNAL REVENUE CODE AND REVENUE ACT OF 1921.

A loss due to destruction of personal property as a result of bombardment constitutes an allowable deduction under section 23(e)3 of the Internal Revenue Code. In determining the amount of deductible loss, consideration must be given to any salvage value and to any insurance or other compensation received.
I. T. 2037 (C. B. III–1, 146 (1924)) modified.

Advice is requested whether a loss due to destruction of personal property as a result of bombardment constitutes an allowable deduction under section 23(e)3 of the Internal Revenue Code. The facts presented show that the taxpayer lost certain personal property located in a residence which was destroyed in 1940 as a result of bombardment of a city in France.

Section 23(e)3 of the Internal Revenue Code provides that in computing net income there shall be allowed as deductions:

(e) LOSSES BY INDIVIDUALS.—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

* * * * * * *

(3) of property not connected with the trade or business, if the loss arises from fires, storms, shipwreck, or *other casualty*, or from theft. * * * [Italics supplied.]

In I. T. 2037 (C. B. III–1, 146 (1924)) it was held that a loss resulting from an explosion of a bomb is not deductible under section 214(a)6 of the Revenue Act of 1921 unless the explosion resulted in a fire which destroyed the taxpayer's home or a part of it, in which case, the loss resulting from the fire would be deductible. In reaching that conclusion, it was said that the term "other casualty" in section 214(a)6 of the Revenue Act of 1921 relates to casualties similar to fires, storms, and shipwreck, that is, to casualties resulting from the action of natural physical forces. Section 214(a)6 of the Revenue Act of 1921 and section 23(e)3 of the Internal Revenue Code, involved in the present inquiry, contain similar language.

In *Shearer* v. *Anderson* (16 Fed. (2d), 995) the Circuit Court of Appeals for the Second Circuit held that a loss resulting from damage to an automobile maintained for personal use and attributed to its overturning while being driven over an icy road and to the subsequent freezing of the motor arose from a casualty which would be embraced within the term "other casualty" as used in section 214(a)6 of the Revenue Act of 1918.

In G. C. M. 1802 (C. B. VI–1, 219 (1927)) it was stated that the Bureau will follow the decision of the Circuit Court of Appeals for the Second Circuit in *Shearer* v. *Anderson*, supra. (See also I. T. 2363, C. B. VI–1, 220 (1927).)

It is held that the loss sustained by the taxpayer in the instant case constitutes a loss arising from "other casualty" under the provisions of section 23(e)3 of the Internal Revenue Code, supra, and is an allowable deduction for the year 1940. In determining the amount of the deductible loss, consideration must be given to any salvage value

and to any insurance or other compensation received. (See section 19.23(e)-1 of Regulations 103.)

I. T. 2637, supra, which is contrary in principle to the above-stated conclusion, is modified accordingly.

SECTION 23(f).—DEDUCTIONS FROM GROSS INCOME: LOSSES BY CORPORATIONS.

SECTION 19.23(f)-1: Losses by corporations.

INTERNAL REVENUE CODE.

Interest "refunded" upon redemption prior to maturity of United States savings bonds, Defense Series G. (See I. T. 3504, page 93.)

SECTION 23(h).—DEDUCTIONS FROM GROSS INCOME: WAGERING LOSSES.

SECTION 19.23(h)-1: Wagering losses. 1941-28-10773
(Also Section 23(o), Section 19.23(o)-1; Section 25, Section 19.25-2; Section 51, Section 19.51-1; Section 117, Section 19.117-5; Section 120, Section 19.120-1; Section 122, Sections 19.122-3, 19.122-4, and 19.122-5; Section 131, Section 19.131-9; Section 251, Section 19.251-1.) T. D. 5057

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PARTS 3, 9, AND 19.—INCOME TAX.

Regulations 103, 101, 94, and 86, amended.—Computation of tax where joint returns filed.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 103 [Part 19, Title 26, Code of Federal Regulations, 1940 Sup.], Regulations 101 [Part 9, Title 26, Code of Federal Regulations, 1939 Sup.], Regulations 94 [Part 3, Title 26, Code of Federal Regulations], and Regulations 86 to the principles set forth in the decisions handed down by the Supreme Court in the cases of *Helvering* v. *Janney et al.* (1940) (311 U. S., 189, 61 S. Ct., 241) and *Taft et ux.* v. *Helvering* (1940) (311 U. S., 195, 61 S. Ct., 244), such regulations are amended as follows:

PARAGRAPH 1. The following is inserted in Regulations 103 immediately following section 23(h) and designated SEC. 19.23(h)-1; in Regulations 101 immediately following section 23(h) and designated ART. 23(h)-1; and in Regulations 94 and 86 immediately following section 23(g) and designated ART. 23(g)-1:

Wagering losses.—Deductions for losses from wagering transactions are allowed only to the extent of gains from such transactions. In the case of a husband and wife making a joint return, the combined losses of the spouses as

a result of wagering transactions shall be allowed to the extent of the combined gains of the spouses from such transactions.

[SEC. 23. DEDUCTIONS FROM GROSS INCOME.]

[In computing net income there shall be allowed as deductions:]

PAR. 2. The fourth paragraph of section 19.23(o)–1 of Regulations 103, the third paragraph of article 23(o)–1 of Regulations 101, and the second paragraph of article 23(o)–1 of Regulations 94, and the second paragraph of article 23(o)–1 of Regulations 86, as amended by Treasury Decision 4626, approved February 18, 1936 [C. B. XV–1, 61 (1936)], are stricken and the following new paragraph is inserted in lieu of each such paragraph:

In the case of a husband and wife making a joint return, the deduction for contributions or gifts is the aggregate of such contributions or gifts made by the spouses, and is limited to 15 per cent of the aggregate net income of the spouses (computed without regard to such contributions or gifts) as shown by the joint return.

PAR. 3. The following new paragraph is inserted immediately following the last paragraph of section 19.25–2 of Regulations 103 and immediately following the last paragraph of article 25–2 of Regulations 101, 94, and 86:

In the case of a husband and wife making a joint return, there is but one earned income credit, computed upon the combined income of the spouses, and the maximum and minimum limitations prescribed with respect to such credit shall be based upon the combined income as if the joint return were the return of one individual.

PAR. 4. The second sentence of section 19.51–1(c) of Regulations 103, as amended by paragraph 18(C) of Treasury Decision 5011, approved September 24, 1940 [C. B. 1940–2, 15], and the second sentence of article 51–1(b) of Regulations 101 are amended to read as follows:

In such a case, the tax shall be computed on the aggregate income.

PAR. 5. The eighth sentence of article 51–1 of Regulations 94 and the eighth sentence of article 51–1 of Regulations 86, as amended by Treasury Decision 4585, approved September 9, 1935 [C. B. XIV–2, 54 (1935)], are amended to read as follows:

If the income of each is included in a single joint return, the tax shall be computed on the aggregate income.

PAR. 6. Section 19.117–5 of Regulations 103 is amended to read as follows:

SEC. 19.117–5. *Application of section 117 in the case of husband and wife.*—(*a*) *Short-term capital gains and losses.*—In the case of a husband and wife making a joint return, the limitation under paragraph (2) of section 117(d), prior to its amendment, and under section 117(d), as amended, relating to the allowance of short-term capital losses, is to be computed with respect to the combined short-term capital gains and losses of the spouses.

If a husband and wife making a joint return for any taxable year beginning after December 31, 1938, did not make a joint return for the preceding taxable year, the individual net short-term capital loss of each spouse for the preceding taxable year (in an amount not in excess of the individual net income of such spouse for such year) shall be treated as a short-term capital loss for the taxable year. If, however, a joint return was made for such preceding taxable year, a net short-term capital loss as shown by such joint return (in an amount not in excess of the aggregate net income for such year as shown by such return) shall be treated as a short-term capital loss for the taxable year. If

a husband and wife making separate returns for any taxable year beginning after December 31, 1938, made a joint return for the preceding taxable year, a net short-term capital loss shown by such joint return shall be allocated to the spouses on the basis of their individual net short-term capital losses for such preceding taxable year, and the net short-term capital loss allocated to each spouse (in an amount not in excess of the portion of the aggregate net income shown by such joint return attributable to such spouse) shall be treated as a short-term capital loss of such spouse for the taxable year.

(*b*) *Long-term capital gains and losses.*—In the case of a husband and wife making a joint return, the long-term capital losses of the spouses are to be deducted from their aggregate gross income in computing the tax imposed by sections 11 and 12. The alternative taxes computed under section 117(c) are in lieu of the tax imposed by sections 11 and 12 and must be compared with the tax imposed by such sections to determine which tax is applicable. In computing the alternative taxes under section 117(c) in the case of a joint return, the determination of the "net long-term capital gain" or the "net long-term capital loss" is to be made by combining the long-term capital gains and the long-term capital losses of the spouses.

PAR. 7. Article 117–5 of Regulations 101 is amended to read as follows:

ART. 117–5. *Application of section 117 in the case of husband and wife.*—(*a*) *Short-term capital gains and losses.*—In the case of a husband and wife making a joint return, the limitation under section 117(d) (2), relating to the allowance of short-term capital losses, is to be computed with respect to the combined short-term capital gains and losses of the spouses.

(*b*) *Long-term capital gains and losses.*—In the case of a husband and wife making a joint return, the long-term capital losses of the spouses are to be deducted from their aggregate gross income in computing the tax imposed by sections 11 and 12. The alternative taxes computed under section 117(c) are in lieu of the tax imposed by sections 11 and 12 and must be compared with the tax imposed by such sections to determine which tax is applicable. In computing the alternative tax under section 117(c) in the case of a joint return, the determination of the "net long-term capital gain" or the "net long-term capital loss" is to be made by combining the long-term capital gains and the long-term capital losses of the spouses.

PAR. 8. Article 117–5 of Regulations 94 and 86 is amended to read as follows:

ART. 117–5. *Application of section 117 in the case of husband and wife.*—In the case of a husband and wife making a joint return, the limitation under section 117(d) on the allowance of losses from sales or exchanges of capital assets is to be computed with respect to the combined gains and losses of the spouses upon such sales or exchanges.

PAR. 9. The following is inserted in Regulations 103 immediately following section 120 and designated SEC. 19.120–1, and also in Regulations 101, 94, and 86 immediately following section 120 and designated ART. 120–1:

Unlimited deduction for charitable and other contributions.—Under the circumstances specified in section 120, the 15 per cent limitation imposed by section 23(o) on the deduction for charitable and other contributions is not applicable.

In the case of a husband and wife making a joint return for any taxable year, the 15 per cent limitation on the deduction for contributions or gifts imposed by section 23(o) shall not be applicable if the aggregate amount of the contributions or gifts described in section 23(o) (or corresponding provisions of prior Revenue Acts) made by the spouses in the taxable year and in each of the 10 preceding years, plus the aggregate amount of income, war-profits, or excess-profits taxes paid by the spouses during such year in respect of preceding taxable years, exceeds 90 per cent of the aggregate net income of the spouses for each such year, as computed without the benefit of any deduction for contributions or gifts.

PAR. 10. The following new paragraph is inserted immediately following the last paragraph of section 19.122–3 of Regulations 103:

(*e*) *Joint return by husband and wife.*—In the case of a husband and wife, the joint net operating loss for any taxable year for which a joint return is filed is to be computed upon the basis of the combined income and deductions of both spouses, and the exceptions and limitations prescribed by section 122(d) are to be computed as if the combined income and deductions of both spouses were the income and deductions of one individual.

PAR. 11. Section 19.122–4 of Regulations 103 is amended as follows:

(A) The following is inserted immediately following the section heading:

(*a*) *In general.*

(B) The following is inserted immediately following the last paragraph:

(*b*) *Joint return by husband and wife.*—(1) if a husband and wife making a joint return for any taxable year did not make a joint return for any of the preceding taxable years involved in the computation of the net operating loss carry-over, the joint net operating loss carry-over to the taxable year is the sum of the separate net operating loss carry-overs of both spouses to such year, computed as set forth in paragraph (*a*) of this section.

(2) If a husband and wife making a joint return for any taxable year made a joint return for each of the preceding taxable years involved in the computation of the net operating loss carry-over, the joint net operating loss carry-over to the taxable year is computed in the same manner as the net operating loss carry-over of an individual under paragraph (*a*) of this section but upon the basis of the joint net operating losses and the combined net income of both spouses.

(3) If a husband and wife making separate returns for any taxable year made a joint return for any or all of the preceding taxable years involved in the computation of the net operating loss carry-over, the separate net operating loss carry-over of each spouse to the taxable year is the net operating loss carry-over computed in the manner set forth in paragraph (*a*) of this section, but with the following exceptions and limitations:

(i) The net operating loss of such spouse for each of such preceding taxable years for which a joint return was made shall be deemed to be the portion of the joint net operating loss (computed in accordance with section 19.122–3(e)) attributable to the gross income and deductions of such spouse, both being taken into account to the same extent that they are taken into account in computing such joint net operating loss.

(ii) The net income (computed with the exceptions and limitations provided in section 122(d) (1) to (4)) of such spouse for any of such preceding taxable years for which a joint return was made shall be deemed to be—

(A) The portion of the combined net income of both spouses for such year (computed with the exceptions and limitations provided in section 122(d) (1) to (4) and as though the combined income and deductions of both spouses were those of one individual) attributable to the gross income and deductions of such spouse, both being taken into account to the same extent that they are taken into account in computing such combined net income.

(B) Plus the excess of the portion of such combined net income attributable to the other spouse over the separate net operating loss carry-over of such other spouse to such year, or

(C) Minus the excess of the portion of the separate net operating loss carry-over of the other spouse to such year attributable to the net operating loss of such other spouse for the second preceding taxable year over the portion of such combined net income attributable to such other spouse.

(4) If a husband and wife making a joint return for any taxable year made a joint return for one or more but not all of the preceding taxable years involved in the computation of the net operating loss carry-over, the joint net

operating loss carry-over to the taxable year is the sum of the separate net operating loss carry-overs of both spouses, computed in the manner set forth in paragraph (3), above.

Paragraph (3), above, may be illustrated by the following examples:

Example (1). H, a husband, and W, his wife, who make their income tax returns on the calendar year basis, made joint returns for 1939 and 1941 and separate returns for 1940 and 1942. For 1939, 1940, and 1941 they had net incomes (adjusted as provided in section 122(d) (1) to (4)) and net operating losses as follows:

	1939	1940	1941
H	$2,000 (income)	$5,000 (loss)	$3,000 (income).
W	$3,000 (loss)	$2,000 (loss)	$4,000 (income).
	$1,000 (joint loss).		$7,000 (combined income).

The net operating loss carry-over of H to 1942 is $1,000, and that of W is zero, computed as follows:

For 1939 H is deemed to have neither a net income nor a net operating loss (there being a joint net operating loss for such year, none of which is attributable to H), and the net operating loss of W is deemed to be $1,000 (the portion of the joint net operating loss for 1939 attributable to W). See paragraph (3) (i).

For 1940 the net operating losses of H and W are $5,000 and $2,000, respectively, no adjustment of such amounts being necessary since separate returns were made for such year.

For 1941 the net income of H is deemed to be $4,000, i. e., $3,000, the portion of the combined net income for 1941 attributable to H, plus $1,000, the excess of the portion of such combined net income attributable to W ($4,000) over the net operating loss carry-over of W to 1941 ($2,000 from 1940 and $1,000 from 1939, or a total of $3,000). See paragraph (3) (ii) (A) and (B).

For 1941 the net income of W is deemed to be $4,000, the portion of the combined net income for 1941 attributable to W. No adjustment of such amount is necessary since there is no excess under paragraph (3) (ii) (B) or (C).

Applying the rule set forth in paragraph (*a*) of this section, the net operating loss carry-over of H to 1942 is $1,000 (H's net operating loss for 1940 ($5,000) reduced by the excess of H's net income for 1941 ($4,000) over H's net operating loss for 1939 (zero)).

Similarly, the net operating loss carry-over of W to 1942 is zero (W's net operating loss for 1940 ($2,000) reduced by the excess of W's net income for 1941 ($4,000) over W's net operating loss for 1939 ($1,000)).

Example (2). Assume the same facts as in example (1) except that H and W had net incomes and net operating losses as follows:

	1939	1940	1941
H	$2,000 (loss)	$1,000 (loss)	$1,000 (income).
W	$4,000 (loss)	$2,000 (income)	$3,000 (income).
	$6,000 (joint loss)		$4,000 (combined income).

The net operating loss carry-over of H to 1942 is $1,000, and that of W is zero, computed as follows:

For 1939 the net operating losses of H and W are deemed to be $2,000 and $4,000, respectively (the portion of the joint net operating loss for 1939 attributable to H and W, respectively).

For 1940 the net operating loss of H is $1,000 and the net income of W is $2,000.

For 1941 the net income of H is deemed to be $1,000, the portion of the combined net income for 1941 attributable to H. No adjustment of such amount is necessary since there is no excess under paragraph (3) (ii) (B) or (C).

For 1941 the net income of W is deemed to be $2,000, i. e., $3,000, the portion of the combined net income for 1941 attributable to W, minus $1,000, the excess of the portion of H's net operating loss carry-over to 1941 attributable to H's net operating loss for 1939 ($2,000) over the portion of such combined net income attributable to H ($1,000). See paragraph (3)(ii) (A) and (C).

Applying the rule set forth in paragraph (*a*) of this section, the net operating loss carry-over of H to 1942 is $1,000 (H's net operating loss for 1940 ($1,000) reduced by zero, H's net income for 1941 ($1,000) not being in excess of his net operating loss for 1939 ($2,000)).

The net operating loss carry-over of W to 1942 is zero, there being no net operating loss for either 1940 or 1941.

PAR. 12. The following new paragraph is inserted immediately following the last paragraph of section 19.122–5 of Regulations 103:

In the case of a husband and wife making a joint return for any taxable year, the computation of the net operating loss deduction (as set forth in the first paragraph of this section) is to be made upon the basis of the combined net operating loss carry-over of the spouses to such year (computed as prescribed in section 19.122–4(b)) and the combined net income of the spouses.

PAR. 13. The following is inserted immediately following section 19.131–8 of Regulations 103, as amended by Treasury Decision 5011, approved September 24, 1940 [supra], and designated SEC. 19.131–9, and also immediately following article 131–8 of Regulations 101, 94, and 86 and designated ART. 131–9:

Joint return by husband and wife.—In case of a husband and wife making a joint return, the credit for taxes paid or accrued to any foreign country or to any possession of the United States shall be computed upon the basis of the total taxes so paid by or accrued against the spouses, and the limitations prescribed by section 131(b) upon such credit shall be applied with respect to the aggregate net income from sources within each such country or possession, the aggregate net income from all sources without the United States, and the aggregate net income from all sources, of the spouses.

PAR. 14. The following new paragraph is inserted immediately following the second paragraph of section 19.251–1 of Regulations 103, immediately following the second paragraph of article 251–1 of Regulations 101 and 94, and immediately following the first paragraph of article 251–1 of Regulations 86:

In the case of a husband and wife making a joint return, the term "gross income," as used in this section, means the combined gross income of the spouses.

(This Treasury decision is issued under the authority contained in sections 23(h), 23(o), 25(a), 51(b), 62, 117, 120, 122, 131, and 251 of the Internal Revenue Code (53 Stat., 13, 14, 17, 27, 32, 50, 56, and 79; 26 U. S. C., Sup. V, 23(h), 23(o), 25(a), 51(b), 62, 117, 120, 122, 131, and 251) and in sections 211(b), 212(a)(b), and 216(b) of the Revenue Act of 1939 (53 Stat., 367, 368, and 876; 26 U. S. C., Sup. V, 117, 122, and 131); sections 23(h), 23(o), 25(a), 51(b), 62, 117, 120, 131, and 251 of the Revenue Act of 1938 (52 Stat., 461, 463, 466, 476, 480, 500, 506, and 532; 26 U. S. C., Sup. IV, 23(h), 23(o), 25(a), 51(b), 62, 117, 120, 131, and 251); sections 23(g), 23(o), 25(a), 51(b), 62, 117. 120, 131, and 251 of the Revenue Act of 1936 (49 Stat., 1659, 1660, 1662, 1670, 1673, 1691, 1695, 1696, and 1718; 26 U. S. C., Sup. II, 23(g), 23(o), 25(a), 51(b), 62, 101, 120, 131, and 251); and sections 23(g), 23(o), 25(a), 51(b), 62, 117, 120, 131, and 251 of the Revenue

Act of 1934 (48 Stat., 689, 690, 692, 697, 700, 714, 718, and 738; 26 U. S. C., 23(g), 23(o), 25(a), 51(b), 62, 101, 120, 131, and 251).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved July 2, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register July 5, 1941, 11.55 a. m.)

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

SECTION 19.23(m)-4: Computation of depletion based on a percentage of income in the case of oil and gas wells. 1941-46-10897 G. C. M. 22956

INTERNAL REVENUE CODE.

"The net income * * * from the property" for purposes of determining the net income limitation on the percentage depletion allowance under section 114(b) (3) and (4) of the Internal Revenue Code must be separately computed for each depletable economic interest or property held by the taxpayer. Deductible items directly attributable to a specific interest or property are deductions only in computing the net income from that interest or property. Overhead or general items of deduction must be fairly allocated between depletable properties and the activities relating thereto and all other properties and activities. The part thereof allocable to depletable properties must then be fairly apportioned to the several specific properties.

G. C. M. 22689 (C. B. 1941-1, 225) superseded.

Reference is made to G. C. M. 22689 (C. B. 1941-1, 225) relative to deductions which enter into the computation of the "net income * * * from the property" for purposes of computing the net income limitation on the percentage depletion allowance under section 114(b) (3) and (4) of the Internal Revenue Code, providing for depletion allowances measured by stated percentages of the gross income derived from oil or mineral property, but not to exceed 50 per cent of the net income of the taxpayer from the property. Further consideration has been given to the questions therein discussed.

In G. C. M. 22106 (C. B. 1941-1, 245), which involved the meaning of the term "property" as used in the depletion provisions, it was said:

The taxpayer's interest, then, in each different tract or parcel of land is a separate "property." The item "tract" or "parcel" of land is used here in the same sense in which it is ordinarily used. Separate "tracts" or "parcels" of land not only exist when two areas or pieces of land are separated geographically, but a single "tract" or "parcel" of land may be divided into two or more separate "tracts" or "parcels" by means of the execution of conveyances or leases carving up the original "tract" or "parcel" If a taxpayer holds several interests in the same tract or parcel, each interest is a "property" within the comprehension of that term as used in the provisions of the Revenue Acts fixing a basis for the computation of depletion. As the basis fixed also governs the computation of gain or loss, it follows that a depletable "property" is also an asset subject to sale or other disposition giving rise to gain or loss. Accordingly, each such interest must be treated as a *separate* "property" for income tax purposes. * * *

Accordingly, the term "property" may be defined as *each separate interest* owned by the taxpayer in each separate tract or parcel of land.

In G. C. M. 22730 (C. B. 1941–1, 214) it was pointed out that the basic concepts of income and the attending depletion allowances apply to depletion provisions basing allowances on percentages of gross income from the properties as well as to the provisions of the earlier Revenue Acts granting allowances based on cost or value at March 1, 1913, or upon discovery value. It was also pointed out that the term "gross income," as used in the phrase "gross income from the property" in the percentage depletion provisions, means the same as "gross income" in the provisions generally defining income, with the qualification that the phrase "gross income from the property" in the depletion provisions is confined to the gross income from the extraction and sale of oil rather than gross income from the tract of land in all its uses.

It thus seems clear that the depletion allowances on each separate property must be separately computed. If, as indicated, gross income from a particular property for percentage depletion purposes is confined to the oil or mineral extracted therefrom and sold, then it follows that the net income from the property for purposes of the limitation on such depletion allowances is the excess of the proceeds derived from the sale of oil or mineral extracted from that property, less the expenses attributable to such property. (See section 19.23 (m)–1(*g*) of Regulations 103.) The cited section of the regulations pertains largely to the separation of the items of income and deductions attributable to the extraction and sale of oil or mineral product, which form the essential factors in the computation of depletion, from such items attributable to the processing or transportation of such product which have no more relation to depletion allowances than do such items attributable to activities and properties in no way related to oil or mineral properties. Aside from provisions separating items essential to the depletion computation from those items foreign to such computation, the rule stated is that the net income of the taxpayer from the property means the gross income from such property less allowable deductions attributable thereto. Deductions (including items of expense) attributable to a specific property are those directly incurred with respect to such property, plus that portion of overhead or general items of deduction allocable to depletable oil or mineral interests which is attributable to such specific property.

The leading cases bearing upon the matter involve questions whether various items of deduction are of a character inherently attributable to depletable properties held and operated during the year rather than to the fairness of the apportionment made. In *Helvering* v. *Wilshire Oil Co., Inc.* (308 U. S., 90, Ct. D. 1424, C. B. 1939–2, 213) it was held that intangible development costs which the taxpayer had elected to treat as deductible items in computing net income were also deductible in computing net income from the property for purposes of computing the net income limitation on percentage depletion. As such costs are directly chargeable to the specific properties developed, there was no question of apportionment among specific properties in that case. Decisions by the Board of Tax Appeals involving overhead or general items of deduction hold such items deductible in computing net income from the property for purposes of determining the net income limitation on percentage de-

pletion. (See *Mirabel Quicksilver Co* v. *Commissioner*, 41 B. T A., 401, involving capital stock taxes and interest paid on money borrowed for development purposes; *Montreal Mining Co.* v. *Commissioner*, 41 B. T. A., 399, involving payments of claims of employees who had contracted silicosis while working in the taxpayer's mine in prior years; *Grison Oil Corporation* v. *Commissioner*, 42 B. T. A., 117, involving State income tax payments; *St. Marys Oil & Gas Co.* v. *Commissioner*, 42 B. T. A., 270, involving interest paid on money borrowed to purchase property producing oil and gas; *Lumachi Coal Co.* v. *Commissioner*, memorandum opinion, June 15, 1940, involving bad debts, dues, assessments, attorneys' fees, capital stock taxes, and interest on money borrowed for development; *Sheridan-Wyoming Coal Co., Inc.*, v. *Commissioner*, memorandum opinion, June 24, 1940, involving interest on bonds, bond discount, and expense amortization; and *Holly Development Co.* v. *Commissioner*, 44 B. T. A., 51, involving interest paid during the taxable year on Federal income tax deficiencies for prior years.) The items involved in each of those cases were at least in part attributable to depletable natural resource properties held and operated during the years in which the items were claimed as deductions in computing net income. In each case the taxpayer questioned the applicability of the items of deduction to the net income limitation provision rather than the apportionment made of such deductions to depletable oil or mineral interests or among the specific properties which comprised such interests.

Thus the result of the decided cases is in accord with the above-stated primary rule that the percentage depletion allowance, as well as the net income limitation thereon, must be separately computed for each depletable economic interest held by the taxpayer. Accordingly, such decisions do not warrant the conclusion that all deductible items allocable to a business of exploiting a natural resource must be attributed to producing properties.

In view of the foregoing, it is the opinion of this office that the "net income * * * from the property" for purposes of determining the net income limitation on the percentage depletion allowance must be separately computed for each depletable economic interest or property held by the taxpayer. Deductible items directly attributable to a specific interest or property are deductions only in computing the net income from that interest or property. Overhead or general items of deduction must be fairly allocated between depletable properties and the activities relating thereto and all other types of properties and activities. The part thereof allocable to depletable properties must then be fairly apportioned to the several specific properties.

This opinion supersedes G. C. M. 22689, supra.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

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

SECTION 19.23(o)-1: Contributions or gifts by individuals.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5057, page 97.)

SECTION 19.23(o)-1: Contributions or gifts by individuals. 1941-41-10852 I. T. 3508

INTERNAL REVENUE CODE.

Contributions made to civil defense committees formed in accordance with the Executive Order of the President of the United States, dated May 20, 1941, constitute allowable deductions under section 23(o)1 of the Internal Revenue Code in the individual returns of the donors.

Advice is requested whether contributions made to the civil defense committees constitute allowable deductions under section 23(o)1 of the Internal Revenue Code in the individual income tax returns of the donors.

The civil defense committees referred to are organized in accordance with the Executive Order of the President of the United States issued on May 20, 1941, "Establishing the Office of Civilian Defense in the Office for Emergency Management of the Executive Office of the President." The Executive Order provides that the President shall appoint a director as the Head of Civilian Defense, who in turn shall, with the approval of the President, appoint such additional advisory committees and subcommittees, with respect to State and local cooperation, national morale, civil defense planning, civilian participation, and related defense activities, as he may find necessary or desirable to assist him in the performance of his duties, and that such advisory committees may include representatives from Federal departments and agencies, State and local governments, private organizations, and the public at large. The Executive Order also provides that within the limitation of such funds as may be appropriated to the Office of Civilian Defense, or as may be allocated to it by the President through the Bureau of the Budget, the Director may employ necessary personnel and make provision for the necessary supplies, facilities, and services.

Section 23(o)1 of the Internal Revenue Code, as amended, provides in the case of an individual for the allowance as a deduction in computing net income of contributions or gifts payment of which is made within the taxable year to or for the use of the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes to an amount which, together with other contributions allowable as a deduction under section 23(o) of the Code, does not exceed 15 per centum of the taxpayer's net income as computed without the benefit of the deduction for contributions.

It is held that contributions made to civil defense committees formed in accordance with the Executive Order of the President of the United States, dated May 20, 1941, referred to above, constitute allowable deductions under section 23(o)1 of the Internal Revenue Code in the individual returns of the donors. (Cf. S. 992, C. B. 1, 145 (1919), relating to contributions to the Council of National Defense.)

SECTION 25.—CREDITS OF INDIVIDUAL AGAINST NET INCOME.

SECTION 19.25–2: Earned income credit.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5057, page 97.)

PART IV.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING.

SECTION 41.—GENERAL RULE.

SECTION 19.41–3: Methods of accounting.

INTERNAL REVENUE CODE.

Pennsylvania real estate taxes—date of accrual. (See I. T. 3506, page 90.)

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

SECTION 19.42–1: When included in gross income.

INTERNAL REVENUE CODE.

Interest on Title I, National Housing Act, property improvement loans. (See I. T. 3489, page 71.)

SECTION 19.42–1: When included in gross income. 1941–32–10802
I. T. 3496

INTERNAL REVENUE CODE.

The M Bank & Trust Co., the taxpayer, acquires, sells, and services mortgages guaranteed by the Federal Housing Administration. It collects each year as a service charge a small percentage of the unpaid principal of the mortgage. The mortgages are amortized over a period of 20 or 25 years, and the service charges are based on the declining balances. The taxpayer's books of account are kept on the accrual basis.

Held, the taxpayer is required to include the service charges in gross income for the taxable year in which such charges are received, even though its books of account are kept on the accrual basis and the amount received on an outstanding mortgage in the later years is less than that received in the earlier years for like services.

Advice is requested as to the proper method of reporting, for Federal income tax purposes, service fees received under a servicing agreement entered into by the M Bank & Trust Co. with purchasers of mortgages guaranteed by the Federal Housing Administration, under the circumstances herein set forth.

The M Bank & Trust Co., which keeps its books of account and files its Federal income tax returns on the accrual basis, conducts a general commercial and trust banking business, in connection with which it acquires for resale mortgages guaranteed by the Federal Housing Administration. These mortgages are amortized over periods of 20 and 25 years. It acquires the mortgages by lending money to the purchasers of houses, sells the mortgages to investors at par, and enters into an agreement with the purchaser of the mortgage to service the mortgage during its lifetime for a small percentage of the unpaid principal. Such servicing includes the collection of principal and interest, payment of taxes and insurance, inspection of the properties, etc. The service charge collected each year is based on the declining balance.

The sale and servicing agreement, among other things, provides:

Continuously from the date hereof until the principal and interest of the mortgage are paid in full, the servicer will proceed diligently to collect all payments due under the mortgage, as and when the same shall become due and payable, and will promptly discharge all of the obligations of the mortgagee named in the mortgage, as well as every obligation arising hereunder and under the contract of insurance with the Federal Housing Administrator. As full compensation for its services, the servicer will retain, from money collected by it each month an amount equal to — per cent of the outstanding balance as shown by the Federal Housing Administration amortization schedule.

It is pointed out by the M Bank & Trust Co. that the expense incurred in servicing a mortgage during the last year the mortgage is outstanding is at least as great as the expense during the first year, and that since the fee is based on the declining balance of the principal of the mortgage, only a very small amount will be received during the last year the mortgage is outstanding. The company desires to compute the service charge which will be received in connection with each mortgage during its entire life and, based upon that amount, then to compute the average annual service charge. It desires to set up a reserve for the amount of the service charges received and report as income for each year during the life of the mortgage only the average amount of the service charge computed over the life of the mortgage.

Section 42 of the Internal Revenue Code provides that all items of gross income shall be reported for the taxable year in which received by the taxpayer, unless under methods of accounting permitted under section 41 any such amounts are to be properly accounted for as of a different period. Section 41 of the Code provides that income shall be reported in accordance with the method of accounting regularly employed in keeping the books of the taxpayer, but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. Section 19.41-2 of Regulations 103, promulgated under the Code, provides in part:

* * * A method of accounting will not, however, be regarded as clearly reflecting income unless all items of gross income and all deductions are treated with reasonable consistency. * * * A taxpayer is deemed to have received items of gross income which have been credited to or set apart for him without restriction.

It has been the general practice of the Bureau not to permit postponement of the taxation of income received without restriction, whether such income is advance rentals, advance bonuses or royalties, compensation paid in advance, membership fees, or other types of income paid in advance, even though the taxpayer keeps its accounts on the accrual basis. The United States Board of Tax Appeals and the courts have consistently upheld the Bureau's position. (*Automobile Underwriters, Inc.*, v. *Commissioner*, 19 B. T. A., 1160 (receipt of membership fees for services to be rendered over a 3-year period); *C. H. Mead Coal Co.* v. *Commissioner*, 31 B. T. A., 190 (advance payments on tonnage royalty); *Malloy & Co.* v. *Commissioner*, 33 B. T. A., 1130 (advance payment for gas to be produced in future years); *Pioneer Automobile Service Co.* v. *Commissioner*, 36 B. T. A., 213 (fees paid for services to be rendered during lives of automobile owners for which reserves were set apart on the books); *Edward A. Renwick et al., Trustees*, v. *United States*, 87 Fed. (2d), 123, Ct. D. 1252, C. B. 1937-2, 334 (advance rentals).) In *Creasy Corporation* v. *Helburn* (57 Fed. (2d), 204) it was held that sums received from, and at the time of, the sale of service contracts were income in the year received, and that the Commissioner was clearly without authority to treat an aliquot part thereof as taxable income for subsequent years, although the taxpayer kept its accounts on the accrual basis and the contracts covered services to be rendered in future years.

The United States Supreme Court in *North American Oil Consolidated* v. *Burnet* (286 U. S., 417, Ct. D. 499, C. B. XI-1, 293 (1932)) stated:

* * * If a taxpayer receives earnings under a claim of right and without restriction as to its disposition, he has received income which he is required to return, even though it may still be claimed that he is not entitled to retain the money, and even though he may still be adjudged liable to restore its equivalent. * * *

In *New York Central Railroad Co.* v. *Commissioner* (79 Fed. (2d), 247, cert. denied, 296 U. S., 653), the Court stated:

* * * The compensation was earned when the services were performed and no uncertainty existed except as to what was a "fair and reasonable" amount. * * * Since the taxpayer reported on the accrual basis, we can see no justification for deferring accrual of the income beyond the year when the precise amount thereof could have been included in the tax return. * * *

The above authorities are regarded as fixing the rule that amounts which are received as income, and which are subject to the unrestricted use and disposition of the recipient, shall be reported not later than the year of receipt, and that the fact that the recipient's accounts are kept on the accrual basis does not alter such conclusion.

In the instant case, the M Bank & Trust Co. enters into an agreement with the purchaser of a mortgage to service the mortgage during its life for a specified per cent of the unpaid principal thereof (declining balance), which amount it receives monthly without restriction as to its disposition. It is accordingly held that the service fees received by the M Bank & Trust Co. are includible in its gross income for the year in which received.

PART V.—RETURNS AND PAYMENT OF TAX.

SECTION 51.—INDIVIDUAL RETURNS.

SECTION 19.51–1: Individual returns.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5057, page 97.)

SECTION 53.—TIME AND PLACE FOR FILING RETURNS.

SECTION 19.53–2: Extensions of time for filing returns. 1941–29–10781 Mim. 5213

Time for filing corporation income tax returns for the calendar year 1940 and fiscal years ending in 1941.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 8, 1941.

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

1. Reference is made to Mimeograph 5204 [C. B. 1941–1, 286], setting forth instructions with regard to granting extensions of time for filing excess profits tax returns for the calendar year 1940 and for fiscal years ending in 1941.

2. In view of that mimeograph, no additional extensions of time will be granted for the filing of corporation income tax returns for the calendar year 1940. In no case, except in most unusual circumstances, will an extension of time for the filing of corporation income tax returns for fiscal years ending in 1941 be granted, and then only after submission to and approval by this office.

3. Correspondence regarding this mimeograph should refer to the number thereof and to the symbols IT: TM.

GUY T. HELVERING,
Commissioner.

SECTION 56.—PAYMENT OF TAX.

1941–32–10804
T. D. 5064

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 19.—INCOME TAX.

Regulations governing the acceptance of Treasury notes of Tax Series A–1943 and Treasury notes of Tax Series B–1943 in payment of income taxes.

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

To Collectors of Internal Revenue and Others Concerned:

SEC. 19.56–5. *Acceptance of Treasury notes of Tax Series A–1943 and Treasury notes of Tax Series B–1943 in payment of income*

taxes.—Collectors of internal revenue are authorized and directed to accept at par and accrued interest notes of the United States designated as Treasury notes of Tax Series A–1943 and Treasury notes of Tax Series B–1943 in payment of income taxes (current and back personal and corporation taxes, and excess-profit taxes). The notes of either series may be received after three months from the month of purchase (as shown by the date of issue on each note), but not before January 1, 1942, and may be accepted only in payment of income taxes (either current or back) due from the purchaser thereof, at the value current in the month in which presented. The notes may be presented for tax payment by the purchaser, his agent, or his estate. In the case of Treasury notes of Tax Series A–1943, not more than $1,200 in principal amount of such notes may be accepted within any period of 12 consecutive months from any one taxpayer in payment of his liability for any one taxable year. Collectors shall not in any case allow credit to a taxpayer on account of notes, or accept notes, for an amount greater than their principal amount plus accrued interest, nor shall notes be accepted in an amount (including accrued interest) greater than the unpaid liability of the taxpayer. (Sections 3657 and 3791 of the Internal Revenue Code (53 Stat., 447, 467, 26 U. S. C., Sup. V, 3657, 3791) and section 18 of the Second Liberty Bond Act of 1917, as amended (40 Stat., 1309, 31 U. S. C., Sup. V, 753).)

SEC. 19.56-6. *Procedure with respect to Treasury notes of Tax Series A–1943 and Treasury notes of Tax Series B–1943.*—Deposits of Treasury notes of Tax Series A–1943 and Treasury notes of Tax Series B–1943 received in payment of income taxes shall be made by the collector in a Federal reserve bank or a branch Federal reserve bank. Prior to deposit the collector will certify on the reverse side of the notes that they were received in payment of income tax and will show in the indorsement stamp the date of deposit. (Sections 3657 and 3791 of the Internal Revenue Code (53 Stat., 447, 467, 26 U. S. C., Sup. V, 3657, 3791) and section 18 of the Second Liberty Bond Act of 1917, as amended (40 Stat., 1309, 31 U. S. C., Sup. V, 753).)

SEC. 19.56–7. *Prior regulations revoked.*—The provisions of any regulations, rules, orders, or instructions inconsistent with this Treasury decision are revoked as of the date of the approval of this Treasury decision. (Sections 3657 and 3791 of the Internal Revenue Code (53 Stat., 447, 467, 26 U. S. C., Sup. V, 3657, 3791) and section 18 of the Second Liberty Bond Act of 1917, as amended (40 Stat., 1309, 31 U. S. C., Sup. V, 753).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved July 31, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register August 2, 1941, 11.45 a. m.)

1941-33-10807
D. C. 667

[1941. Department Circular No. 667.—Fiscal Service. Bureau of the Public Debt.]

The United States of America.—Treasury notes.—Tax Series A-1943.—Tax Series B-1943.—Dated August 1, 1941. Due August 1, 1943. Issued at par and accrued interest; acceptable at par and accrued interest in payment of Federal income taxes.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, July 22, 1941.

I. OFFERING OF NOTES.

1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, offers for sale, to the people of the United States, through the Federal reserve banks, at par and accrued interest, two issues of nontransferable notes of the United States, designated Treasury notes of Tax Series A-1943, and Treasury notes of Tax Series B-1943. As hereinafter provided, the notes of both series will be acceptable at par and accrued interest in payment of Federal income taxes: *Provided, however*, That not exceeding $1,200 principal amount of notes of Tax Series A-1943, and the accrued interest thereon, will be accepted from any one owner in any period of 12 consecutive months in payment of taxes due from such owner. If not presented in payment of taxes, the notes will be redeemable at the purchase price as hereinafter provided.

2. Descriptions of the notes of both series, and their terms are hereinafter fully set forth. The notes will be placed on sale beginning August 1, 1941, and the sale will continue until December 31, 1941, unless earlier terminated, as to either or both series, by the Secretary of the Treasury.

II. DESCRIPTION OF NOTES.

1. *General.*—The notes of both series will be dated August 1, 1941, and will mature August 1, 1943. The owner's name and address, and the date of issue will be entered on each note at the time of its issue by a Federal reserve bank. The month in which payment is received by a Federal reserve bank or branch, or by the Treasurer of the United States, will determine the purchase price and issue date of each note. The notes may not be transferred. No hypothecation of the notes on any account will be recognized by the Treasury Department, and they will not be accepted to secure deposits of public money. Except as herein provided, the notes will be subject to the general regulations of the Treasury Department, now or hereafter prescribed, governing bonds and notes of the United States.

2. *Denominations and interest.*—The notes of Tax Series A-1943 will be issued in denominations of $25, $50, and $100, and interest thereon will accrue during each month after August, 1941, in the amount of 16 cents on each $100 principal amount, that is, 4 cents on each $25, 8 cents on each $50, and 16 cents on each $100 denomination

of note. The notes of Tax Series B–1943 will be issued in denominations of $100, $500, $1,000, $10,000, and $100,000, and interest thereon will accrue each month after August, 1941, in the amount of 4 cents on each $100 principal amount, that is 4 cents on each $100, 20 cents on each $500, 40 cents on each $1,000, $4 on each $10,000, and $40 on each $100,000 denomination of note. In no case, however, shall interest accrue beyond the month in which the note is presented in payment of taxes, or beyond its maturity. Exchanges of authorized denominations of each series from higher to lower, but not from lower to higher, may be arranged at the Federal reserve bank of issue.

3. *Purchase price, and tax-payment value.*—The notes of both series will be sold at par during August, 1941, and will be sold at par and accrued interest during each subsequent month while they remain on sale, the purchase price for a note of any denomination of either series advancing each month after August, 1941, in the amount of one month's interest on that note. Tables, showing for each month from August, 1941, to August, 1943, for each denomination of each series, the principal amount of the notes with accrued interest added, are appended to this circular. The total shown for any denomination for any month—August through December, 1941—while the notes remain on sale, is the purchase price, or cost, of the note during that month. Also, the total shown for any denomination for any month thereafter is the tax-payment value, or the amount at which the note will be acceptable during that month in payment of Federal income taxes as herein provided.

4. *Acceptability in payment of taxes.*—The notes of both series (but not more than $1,200 principal amount of notes of Tax Series A–1943 from any one owner in any period of 12 consecutive months) will be acceptable, at par and accrued interest, in payment of Federal income taxes (current and back personal and corporation taxes, and excess-profits taxes). The conditions of presentation, surrender and acceptance of the notes in payment of such taxes are set forth in Section IV of this circular.

5. *Payment or redemption for cash.*—The notes of either series may not be called by the Secretary of the Treasury for redemption prior to maturity. If such notes are not presented in payment of taxes: (1) they will be payable at maturity, or (2) they will be redeemable prior to maturity, at the owner's option and request, as hereinafter provided in Section V, and in either case payment will be made only at the price paid for the notes.

6. *Taxation.*—Income derived from the notes shall be subject to all Federal taxes, now or hereafter imposed. The notes shall be subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but shall be exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

III. PURCHASE OF NOTES.

1. *Applications and payment.*—Applications will be received by the Federal reserve banks and branches, and by the Treasurer of the United States, Washington, D. C. Banking institutions generally may submit applications for account of customers, but only the

Federal reserve banks and the Treasurer of the United States are authorized to act as official agencies. Every application must be accompanied by payment in full, at par and accrued interest to the month in which payment is received by a Federal reserve bank or branch, or the Treasurer of the United States. Any form of exchange, including personal checks, will be accepted subject to collection, and should be drawn to the order of the Federal reserve bank or of the Treasurer of the United States, as the case may be. Any depositary, qualified pursuant to the provisions of Treasury Department Circular No. 92 (revised February 23, 1932, as supplemented) will be permitted to make payment by credit for notes applied for on behalf of itself or its customers up to any amount for which it shall be qualified in excess of existing deposits.

2. *Reservations.*—The Secretary of the Treasury reserves the right to reject any application in whole or in part, and to refuse to issue or permit to be issued hereunder any notes in any case or in any class or classes of cases if he deems such action to be in the public interest, and his action in any such respect shall be final. If an application is rejected, in whole or in part, any payment received therefor will be refunded. The Secretary of the Treasury, in his discretion, may designate agencies other than those herein provided for the sale of, or for the handling of applications for, Treasury notes to be issued hereunder.

3. *Delivery of notes.*—Upon acceptance of full-paid applications, notes will be duly issued and, unless delivered in person, will be delivered by registered mail within the continental United States, the Territories and insular possessions of the United States, the Canal Zone and the Philippine Islands. No deliveries elsewhere will be made.

4. *Form of application.*—In applying for notes under this circular, care should be exercised to specify whether those of Tax Series A–1943, or Tax Series B–1943 are desired, and there must be furnished the name and address of the individual, corporation, or other entity in which the notes are to be issued; and if address for the delivery of the notes is different, appropriate instructions should be given. The name should be in the same form as that used in the Federal income tax return of the purchaser. The use of an official application form is desirable, but not necessary. Appropriate forms may be obtained on application to any Federal reserve bank or branch, and banking institutions generally will supply such forms.

IV. PRESENTATION IN PAYMENT OF TAXES.

1. After three months from month of purchase (as shown by the date of issue on each note), but not before January 1, 1942, during such time, and under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of Treasury, shall prescribe, notes issued hereunder in the name of a taxpayer (individual, corporation, or other entity) may be presented and surrendered by such taxpayer, his agent, or his estate, to the collector of internal revenue, to whom the tax return is made, and will be receivable by the collector at par and accrued interest from August,

1941, to the month, inclusive (but no accrual beyond August, 1943), in which presented in payment of any Federal income taxes (current and back personal and corporation taxes, and excess-profit taxes) assessed against the original purchaser or his estate, but not more than $1,200 principal amount of notes of Tax Series A–1943, and the accrued interest thereon, may be accepted by the collector in any period of 12 consecutive months in payment of Federal income taxes due from such owner. The notes must be forwarded to the collector at the risk and expense of the owner, and, for his protection, should be forwarded by registered mail, if not presented in person.

V. CASH REDEMPTION AT OR PRIOR TO MATURITY.

1. *General.*—Any Treasury note of Tax Series A–1943 or Tax Series B–1943 will be redeemed for cash at the purchase price at or before maturity. Notes of Tax Series A–1943 may be redeemed before maturity without advance notice, but notes of Tax Series B–1943 may be redeemed before maturity only after 60 days from date of issue and on 30 days' advance notice. The timely surrender of a note of Tax Series B–1943, bearing a properly executed request for payment, will be accepted as constituting the advance notice required hereunder.

2. *Execution of request for payment.*—The owner in whose name the note is inscribed must appear before one of the officers authorized by the Secretary of the Treasury to witness and certify requests for payment, establish his identity, and in the presence of such officer sign the request for payment appearing on the back of the note, adding the address to which check is to be mailed. After the request for payment has been so signed, the witnessing officer should complete and sign the certificate provided for his use.

3. *Officers authorized to witness and certify requests for payment.*—Any officers authorized to witness and certify requests for payment of United States savings bonds, as set forth in Treasury Department Circular No. 530, fourth revision, as amended, are hereby authorized to witness and certify requests for cash redemption of Treasury notes issued under this circular. Such officers include United States postmasters, certain other post office officials, and the executive officers of all banks and trust companies incorporated in the United States or its organized Territories, including officers at branches thereof who are certified to the Treasury Department as executive officers.

4. *Presentation and surrender.*—Notes bearing properly executed requests for payment must be presented and surrendered to the Federal reserve bank of issue, at the expense and risk of the owner. For the owner's protection, notes should be forwarded by registered mail, if not presented in person.

5. *Disability or death.*—In case of the disability or death of the owner, and the notes are not to be presented in payment of Federal income taxes due from his estate, instructions should be obtained from the Federal reserve bank of issue before the request for payment is executed, or the notes presented.

6. *Partial redemption.*—Partial cash redemption of notes of either series, corresponding to an authorized denomination, may be made

in the same manner, appropriate changes being made in the request for payment. In case of partial redemption of a note, the remainder will be reissued with the same date of issue as the note surrendered.

7. *Payment.*—Payment of any note, either at maturity or on redemption before maturity, will be made only by the Federal reserve bank that issued the note, and will be made by check drawn to the order of the owner, and mailed to the address given in his request for payment. In any case, payment will be made at the purchase price of the note, that is, at par and accrued interest (if any) paid at time of purchase.

VI. GENERAL PROVISIONS.

1. Federal reserve banks, as fiscal agents of the United States, are authorized to perform such services or acts as may be appropriate and necessary under the provisions of this circular, and under any instructions given by the Secretary of the Treasury.

2. The Secretary of the Treasury may at any time or from time to time supplement or amend the terms of this circular, or of any amendments or supplements thereto, and may at any time or from time to time prescribe amendatory rules and regulations governing the offering of the notes, information as to which will promptly be furnished to the Federal reserve banks.

HENRY MORGENTHAU, JR.,
Secretary of the Treasury.

(Filed with the Division of the Federal Register July 31, 1941.)

TREASURY NOTES—TAX SERIES A-1943.

PURCHASE PRICE AND TAX-PAYMENT VALUE DURING SUCCESSIVE MONTHS.

Table, showing for each month from August, 1941, to August, 1943, for notes of each denomination, the principal amount with accrued interest added. The total shown for any denomination, for any month—August through December, 1941—while the notes remain on sale, is the purchase price, or cost, of the note during that month. Also, the total shown for any denomination for any month thereafter is the tax-payment value, or the amount at which the note will be acceptable during that month in payment of Federal income taxes.

	$25	$50	$100
	Purchase price.		
August, 1941	$25.00	$50.00	$100.00
September, 1941	25.04	50.08	100.16
October, 1941	25.08	50.16	100.32
November, 1941	25.12	50.24	100.48
December, 1941	25.16	50.32	100.64

	$25	$50	$100
	Tax-payment value.		
January, 1942	$25. 20	$50. 40	$100. 80
February, 1942	25. 24	50. 48	100. 96
MARCH, 1942	25. 28	50. 56	101. 12
April, 1942	25. 32	50. 64	101. 28
May, 1942	25. 36	50. 72	101. 44
JUNE, 1942	25. 40	50. 80	101. 60
July, 1942	25. 44	50. 88	101. 76
August, 1942	25. 48	50. 96	101. 92
SEPTEMBER, 1942	25. 52	51. 04	102. 08
October, 1942	25. 56	51. 12	102. 24
November, 1942	25. 60	51. 20	102. 40
DECEMBER, 1942	25. 64	51. 28	102. 56
January, 1943	25. 68	51. 36	102. 72
February, 1943	25. 72	51. 44	102. 88
MARCH, 1943	25. 76	51. 52	103. 04
April, 1943	25. 80	51. 60	103. 20
May, 1943	25. 84	51. 68	103. 36
JUNE, 1943	25. 88	51. 76	103. 52
July, 1943	25. 92	51. 84	103. 68
August, 1943	25. 96	51. 92	103. 84

TREASURY NOTES—TAX SERIES B–1943.

PURCHASE PRICE AND TAX-PAYMENT VALUE DURING SUCCESSIVE MONTHS.

Table, showing for each month from August, 1941, to August, 1943, for notes of each denomination, the principal amount with accrued interest added. The total shown for any denomination, for any month—August through December, 1941—while the notes remain on sale, is the purchase price, or cost, of the note during that month. Also, the total shown for any denomination for any month thereafter is the tax-payment value, or the amount at which the note will be acceptable during that month in payment of Federal income taxes.

	$100	$500	$1,000	$10,000	$100,000
	Purchase price.				
August, 1941	$100. 00	$500. 00	$1, 000. 00	$10, 000	$100, 000
September, 1941	100. 04	500. 20	1, 000. 40	10, 004	100, 040
October, 1941	100. 08	500. 40	1, 000. 80	10, 008	100, 080
November, 1941	100. 12	500. 60	1, 001. 20	10, 012	100, 120
December, 1941	100. 16	500. 80	1, 001. 60	10, 016	100, 160

	$100	$500	$1,000	$10,000	$100,000
	Tax-payment value.				
January, 1942	$100. 20	$501. 00	$1, 002. 00	$10, 020	$100, 200
February, 1942	100. 24	501. 20	1, 002. 40	10, 024	100, 240
MARCH, 1942	100. 28	501. 40	1, 002. 80	10, 028	100, 280
April, 1942	100. 32	501. 60	1, 003. 20	10, 032	100, 320
May, 1942	100. 36	501. 80	1, 003. 60	10, 036	100, 360
JUNE, 1942	100. 40	502. 00	1, 004. 00	10, 040	100, 400
July, 1942	100. 44	502. 20	1, 004. 40	10, 044	100, 440
August, 1942	100. 48	502. 40	1, 004. 80	10, 048	100, 480
SEPTEMBER, 1942	100. 52	502. 60	1, 005. 20	10, 052	100, 520
October, 1942	100. 56	502. 80	1, 005. 60	10, 056	100, 560
November, 1942	100. 60	503. 00	1, 006. 00	10, 060	100, 600
DECEMBER, 1942	100. 64	503. 20	1, 006. 40	10, 064	100, 640
January, 1943	100. 68	503. 40	1, 006. 80	10, 068	100, 680
February, 1943	100. 72	503. 60	1, 007. 20	10, 072	100, 720
MARCH, 1943	100. 76	503. 80	1, 007. 60	10, 076	100, 760
April, 1943	100. 80	504. 00	1, 008. 00	10, 080	100, 800
May, 1943	100. 84	504. 20	1, 008. 40	10, 084	100, 840
JUNE, 1943	100. 88	504. 40	1, 008. 80	10, 088	100, 880
July, 1943	100. 92	504. 60	1, 009. 20	10, 092	100, 920
August, 1943	100. 96	504. 80	1, 009. 60	10, 096	100, 960

1941–40–10844
I. T. 3507

INTERNAL REVENUE CODE.

Payment of Federal income taxes with Treasury notes of Tax Series A–1943 and Treasury notes of Tax Series B–1943.

Various questions have been presented with respect to the payment of Federal income taxes by means of Treasury notes of Tax Series A–1943 and Tax Series B–1943. These questions and the answers thereto are as follows:

1. Question: May Treasury notes of Tax Series A–1943 and Tax Series B–1943 be inscribed jointly in the names of husband and wife?

Answer: The Treasury Department has requested the Federal reserve banks to issue notes of both series inscribed in one name only, even where they are to be presented in payment of income tax due on a joint return.

2. Question: Are notes inscribed in the name of either spouse acceptable in payment of income tax where a joint return is filed?

Answer: In the case of a joint income tax return, notes inscribed in the name of either spouse may be used to satisfy the joint tax liability.

3. Question: May husband and wife filing a joint income tax return *each* be permitted to tender Treasury notes of Tax Series A–1943 to a maximum of $1,200 principal amount, or would the acceptance of such notes be limited to $1,200 jointly?

Answer: Up to $1,200 (principal amount) in Series A notes in *each* name may be accepted in payment of income tax due from husband and wife on a joint return. Husband and wife filing separate returns

would likewise *each* be permitted to use $1,200 (principal amount) of the Series A notes.

4. Question: May a parent corporation purchase notes in the name of the parent corporation "and subsidiaries"?

Answer: In line with the determination of the Treasury Department that notes should be inscribed in one name only, a parent corporation may not purchase notes in the name of the parent corporation "and subsidiaries." If a consolidated *excess profits tax* return is filed, the *excess profits tax* of a corporation and its subsidiaries would be assessed in the name of the parent corporation together with all of the names of its subsidiaries. Therefore, notes purchased by a parent corporation would be acceptable in payment of its *excess profits tax*, and they would be equally acceptable in payment of the *excess profits tax* of one or more of its subsidiaries; and notes purchased in the name of a subsidiary would be acceptable in payment of its *excess profits tax* and the *excess profits tax* of the parent corporation, as well as the *excess profits tax* of any other subsidiary. Inasmuch as subsidiaries, except in the case of railroads, are required to file separate *income tax* returns, notes in the name of the parent corporation would not be acceptable in payment of the *income tax* of a subsidiary, nor would notes in the name of a subsidiary be acceptable in payment of the *income tax* of the parent or that of any other subsidiary, except, as indicated above, in the case of railroad corporations which are permitted to file consolidated income tax returns as well as consolidated excess profits tax returns.

5. Question: Is a taxpayer limited to the tender within a year of not exceeding $1,200 principal amount of Series A notes in payment of both current and back tax liabilities?

Answer: The limitation imposed on the use of Series A notes is intended to restrict the taxpayer to the tender of not more than $1,200 principal amount of Series A notes in payment of his tax liability for each taxable period. Specifically, a taxpayer will be permitted to tender during the calendar year 1942, for example, a maximum of $1,200 principal amount of Series A notes in payment of his 1941 tax liability, a maximum of $1,200 in payment of his 1940 tax liability, a maximum of $1,200 in payment of his 1939 tax liability, etc. So long as he does not exceed the limit of $1,200 principal amount with respect to his liability for one taxable period, there is no violation of the rules and regulations governing the sale and acceptance of the Series A notes. (See D. C. 667, page 69, this Bulletin; T. D. 5064, page 110, this Bulletin.)

6. Question: In the case of a corporation which is required to deduct and withhold at the source income taxes on the payment of dividends to any nonresident alien individual or foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, may Treasury notes of Tax Series B-1943, purchased currently by the corporation, be accepted by the collector of internal revenue in payment of the taxes withheld from 1941 dividends, which taxes are payable on or before June 15, 1942?

Answer: In such a case, the corporation as withholding agent is required to file a return in its own name and pay the tax withheld to the collector of internal revenue at the times fixed by law and regula-

tions. Under the provisions of Treasury Decision 5064 (page 110, this Bulletin), the collector of internal revenue will accept Treasury notes of Tax Series B–1943 from the withholding agent in payment of tax withheld, if the name of the purchaser inscribed on the notes is the same as the name of the withholding agent on the withholding return.

7. Question: In the case of a trust company acting with certain individuals as coexecutor of a decedent's estate, is the trust company obliged to buy Treasury notes of Tax Series A–1943 or Tax Series B–1943 in the names of all coexecutors where the notes are to be used in payment of income tax due from the estate?

Answer: In such a case, the Treasury notes will be accepted by the collector of internal revenue in payment of income taxes if they are inscribed substantially as follows:

——— Trust Company, Coexecutor,
Estate of John Doe,
New York, N. Y.

In connection with payment by Treasury notes of income tax due from an estate having coexecutors, it is unnecessary that the notes be inscribed in the names of all of the coexecutors. As indicated, the inscription on the notes should be sufficiently specific to enable the collector of internal revenue readily to associate such inscription with the name in which the income tax return of the estate is filed.

1941–43–10875
I. T. 3512

INTERNAL REVENUE CODE.

Where a taxpayer dies during any taxable year, Treasury notes of Tax Series A–1943 may be accepted in the principal amount of $1,200 covering the liability of the decedent prior to his death, and in the additional principal amount of $1,200 covering the liability of the estate for the balance of the same year.

Advice is requested with respect to the acceptance of Treasury notes of Tax Series A–1943 in payment of income taxes where a taxpayer dies during a taxable year. Specifically, the question presented is whether, in such a case, Treasury notes of Tax Series A–1943 may be accepted only in the principal amount of $1,200 covering *both* the liability of the decedent prior to his death and the liability of his estate for the balance of the taxable year.

Section 19.56–5 of Treasury Decision 5064 (page 110, this Bulletin), regulations governing the acceptance of Treasury notes of Tax Series A–1943 and Treasury notes of Tax Series B–1943 in payment of income taxes, provides in part as follows:

* * * In the case of Treasury notes of Tax Series A–1943, not more than $1,200 in principal amount of such notes may be accepted within any period of 12 consecutive months from *any one taxpayer* in payment of *his* liability for *any one taxable year*. * * * [Italics supplied.]

It is well established that the income tax return filed by an executor or administrator on behalf of the decedent for the period of the taxable year during which the decedent was alive and the income tax return filed by an executor or administrator on behalf of the

decedent's estate for the balance of the same year are the returns of two *separate* taxpayers for two *separate* taxable periods.

It is held that where a taxpayer dies during any taxable year, Treasury notes of Tax Series A–1943 may be accepted in the principal amount of $1,200 covering the liability of the decedent prior to his death, and in the additional principal amount of $1,200 covering the liability of the estate for the balance of the same year. It would, therefore, be immaterial whether the taxpayer had purchased Tax Series A–1943 notes to the extent of $1,200 prior to his death or the executor or administrator of the estate purchased similar notes in the amount of $1,200 after the taxpayer's death.

1941–46–10898
D. C. 667 (1st amendt.)

[1941. First amendment to Department Circular No. 667. Fiscal Service. Bureau of the Public Debt.]

The United States of America. Treasury notes. Tax Series A–1943; Tax Series B–1943. Dated August 1, 1941; due August 1, 1943. Issued at par and accrued interest. Acceptable at par and accrued interest in payment of Federal income taxes.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, August 7, 1941.

1. Section II(2) of Department Circular No. 667, dated July 22, 1941, is hereby amended to read as follows:

2. *Denominations and interest.*—The notes of Tax Series A–1943 will be issued in denominations of $25, $50, and $100, and interest thereon will accrue during each month after August, 1941, in the amount of 16 cents on each $100 principal amount, that is, 4 cents on each $25, 8 cents on each $50, and 16 cents on each $100 denomination of note. The notes of Tax Series B–1943 will be issued in denominations of $100, $500, $1,000, $10,000, $100,000, $500,000, and $1,000,000, and interest thereon will accrue each month after August, 1941, in the amount of 4 cents on each $100 principal amount, that is, 4 cents on each $100, 20 cents on each $500, 40 cents on each $1,000, $4 on each $10,000, $40 on each $100,000, $200 on each $500,000, and $400 on each $1,000,000 denomination of note. In no case, however, shall interest accrue beyond the month in which the note is presented in payment of taxes, or beyond its maturity. Exchanges of authorized denominations of each series from higher to lower, but not from lower to higher, may be arranged at the Federal reserve bank of issue.

HENRY MORGENTHAU, JR.,
Secretary of the Treasury.

(Filed with the Division of the Federal Register August 7, 1941.)

1941–46–10899
D. C. 667 (2d amendt.)

[1941. Second amendment to Department Circular No. 667. Fiscal Service. Bureau of the Public Debt.]

The United States of America. Treasury notes. Tax Series A–1943; Tax Series B–1943. Dated August 1, 1941; due August 1, 1943. Issued at par and accrued interest. Acceptable at par and accrued interest in payment of Federal income taxes.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, October 21, 1941.

1. Section II(1) of Department Circular No. 667, dated July 22, 1941, is hereby amended to read as follows:

1. *General.*—The notes of both series will be dated August 1, 1941, and will mature August 1, 1943. The owner's name and address, and the date of issue will be entered on each note at the time of its issue by a Federal reserve bank. The month in which payment is received by a Federal reserve bank or branch, or by the Treasurer of the United States, will determine the purchase price and issue date of each note. The notes may not be transferred except in the case of notes issued in the name of a parent corporation, in which case they may be reissued in the name of a subsidiary of that corporation with the same dating as the notes surrendered, upon presentation to the Federal reserve bank of issue; for the purposes of this paragraph a subsidiary corporation is defined as one more than 50 per cent of whose stock with voting power is held by another corporation. No hypothecation of the notes on any account will be recognized by the Treasury Department, and they will not be accepted to secure deposits of public money. Except as herein provided, the notes will be subject to the general regulations of the Treasury Department, now or hereafter prescribed, governing bonds and notes of the United States.

HENRY MORGENTHAU, JR.,
Secretary of the Treasury.

(Filed with the Division of the Federal Register October 21, 1941.)

1941–48–10913
I. T. 3520

INTERNAL REVENUE CODE.

Treasury notes of Tax Series A–1943 and Tax Series B–1943 may be accepted in payment of income taxes estimated to be due on tentative returns.

Advice is requested whether Treasury notes of Tax Series A–1943 and Tax Series B–1943 may be accepted in payment of income taxes estimated to be due on tentative returns.

In general, it appears that taxpayers who file tentative returns disclosing estimated amounts of income taxes are reasonably certain that they owe the taxes to the Government for the taxable year involved. Accordingly, Treasury notes of Tax Series A–1943 and Tax Series B–1943 may be accepted in payment of income taxes estimated to be due on tentative returns.

(Also Section 143, Section 19.143–7.)

1941–51–10931
I. T. 3521

INTERNAL REVENUE CODE.

Payment of income tax withheld at the source with Treasury notes of Tax Series B–1943.

Advice is requested with respect to the acceptance of Treasury notes of Tax Series B–1943 in payment of certain Federal income taxes withheld at the source.

The collector of internal revenue will accept Treasury notes of Tax Series B–1943 inscribed in the name of a corporation in payment of (1) income tax withheld and shown on Form 1042 filed by or for it as withholding agent in respect of dividends paid on its own stock, and (2) income tax withheld and shown on Form 1013 filed by or for it as withholding agent in respect of interest paid on its own tax-free covenant bonds and/or interest paid on its own obligations to a nonresident alien. The collector will *not* accept in payment of those taxes any such notes inscribed in the name of a person who is the fiscal or other agent of the corporation, even though that person files the returns for the corporation as its fiscal or other agent.

SUBCHAPTER C.—SUPPLEMENTAL PROVISIONS.

SUPPLEMENT A.—RATES OF TAX.

SECTION 101.—EXEMPTIONS FROM TAX ON CORPORATIONS.

SECTION 101(6)-1: Religious, charitable, scientific, literary, and educational organizations and community chests. 1941–27–10765 I. T. 3487

INTERNAL REVENUE CODE.

The United Service Organizations for National Defense, Inc., is exempt from Federal income taxation under section 101(6) of the Internal Revenue Code, and contributions thereto are deductible from gross income in the manner and to the extent provided in section 23 (o) and (q) of the Code.

Advice is requested whether the United Service Organizations for National Defense, Inc., is exempt from Federal income taxation under the provisions of section 101(6) of the Internal Revenue Code, and whether contributions thereto are allowable deductions from gross income in the income tax returns of the donors.

The United Service Organizations for National Defense, Inc., is incorporated to aid in the defense program of the United States by serving the religious, spiritual, welfare, and educational needs of the men and women in the armed forces and defense industries of the United States, and in general to contribute to the maintenance of morale in American communities. The constitution and by-laws of the corporation provide that it is not to be operated for profit, that no part of its net earnings shall inure to the benefit of any member thereof, and that it will not engage in any activities for the purpose of influencing or attempting to influence legislation.

It is held that the United Service Organizations for National Defense, Inc., is exempt from Federal income taxation under the provisions of section 101(6) of the Internal Revenue Code, and that contributions thereto are allowable deductions in the income tax returns of individual donors in the manner and to the extent provided by section 23(o) of the Code, as amended. The deductibility of contributions by corporations is governed by section 23(q) of the Code, as amended.

SUPPLEMENT B.—COMPUTATION OF NET INCOME.

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

SECTION 19.112(a)–1: Sales or exchanges. 1941–52–10937
(Also Section 113(a), Section 19.113(a)–2.) I. T. 3523

INTERNAL REVENUE CODE.

The exchange by the M Company of Reconstruction Finance Corporation ⅞ per cent Series N notes, maturing July 21, 1941, for new Reconstruction Finance Corporation 1 per cent Series W notes, maturing April 15, 1944 (accrued interest on the old notes being paid by check), resulted in a gain for Federal income tax purposes measured by the difference between the cost of the old notes and the fair market value of the new notes. The basis of the new notes is their fair market value at the date of the exchange.

Advice is requested as to the manner in which profit or loss should be computed by the M Company on certain Reconstruction Finance Corporation notes described in 1941 Department Circular No. 664, Fiscal Service, Bureau of the Public Debt, dated June 24, 1941.

Prior to July, 1941, the M Company purchased Reconstruction Finance Corporation ⅞ per cent Series N notes maturing July 21, 1941, in the open market at a cost of $1,003.4375 per $1,000 note. On June 24, 1941, the Secretary of the Treasury issued a circular inviting subscriptions to new Reconstruction Finance Corporation 1 per cent Series W notes maturing April 15, 1944. On July 3, 1941, the date specified in the circular, the M Company surrendered to the Federal Reserve Bank of New York its Series N notes and in return received an equivalent amount of Series W notes together with a check covering the accrued interest on Series N notes for the period January 20, 1941, through July 3, 1941. On the date the new Series W notes were received the market quotation was $1,006.875 per $1,000 note.

The pertinent provisions of Department Circular No. 664 read as follows:

I. OFFERING OF NOTES AND INVITATION FOR TENDERS.

1. The Secretary of the Treasury, on behalf of the Reconstruction Finance Corporation, invites subscriptions, at par and accrued interest, from the people of the United States for notes of the Reconstruction Finance Corporation, designated 1 per cent notes of Series W. The amount of the offering is $500,000,000, or thereabouts.

2. The Secretary of the Treasury, on behalf of the Reconstruction Finance Corporation, offers to purchase on July 3, 1941, at par and accrued interest, the outstanding notes of the Corporation designated Series N, maturing July 20, 1941, to the extent to which the holders thereof subscribe to the issue of Series W notes hereunder. Tenders of Series N notes for that purpose are invited.

* * * * * * *

IV. PAYMENT.

1. Payment at par and accrued interest, if any, for notes allotted hereunder must be made or completed on or before July 3, 1941, or on later allotment. In every case where payment is not so completed, the payment with application up to 10 per cent of the amount of notes applied for shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States. Notes of Series N tendered for purchase must have coupons dated July 20, 1941,

attached, and payment will be made at par and accrued interest to July 3, 1941. The principal proceeds of the Series N notes will be applied in payment of the Series W notes, and accrued interest from January 20, 1941, to July 3, 1941, on Series N notes ($3.96409 per $1,000) will be paid following acceptance of the notes.

The exchange of Reconstruction Finance Corporation 7/8 per cent Series N notes, maturing July 21, 1941, for Reconstruction Finance Corporation 1 per cent Series W notes, maturing April 15, 1944, constitutes a transaction in which gain or loss, subject to the provisions of section 117 of the Internal Revenue Code, if applicable, is recognized for Federal income tax purposes. The gain in the instant case will be the difference between the cost of the Series N notes ($1,003.4375 per $1,000 note) and the fair market value ($1,006.875 per $1,000 note) of the new notes on the date of the exchange.

The new Series W notes will have a basis to the M Company of $1,006.875 per $1,000 note for the purpose of determining gain or loss upon the subsequent sale or exchange of such notes.

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

SECTION 19.113 (a)-2: General rule.

INTERNAL REVENUE CODE.

New notes acquired in exchange for old notes of the Reconstruction Finance Corporation. (See I. T. 3523, page 124.)

SECTION 115.—DISTRIBUTIONS BY CORPORATIONS.

SECTION 19.115-3: Earnings or profits. 1941-28-10778
T. D. 5059

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PARTS 19 AND 30.—INCOME TAX AND EXCESS PROFITS TAX.

Amending section 19.115-3 of Regulations 103, relating to earnings or profits, and sections 30.718-1 and 30.718-2 of Regulations 109, relating to determination of daily equity invested capital.

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

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH 1. Regulations 103 [Part 19, Title 26, Code of Federal Regulations, 1940 Sup.] are amended by striking out the first sentence following the heading of section 19.115-3 as amended by Treasury Decision 5024, approved December 19, 1940 [C. B. 1940-2, 110], and inserting in lieu thereof a new paragraph as follows:

In determining the amount of earnings or profits (whether of the taxable year, or accumulated since February 28, 1913, 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 returns 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; and an insurance company subject to taxation under section 204 shall exclude from earnings and profits that portion of any premium which is unearned under the provisions of section 204(b)(5) and which is segregated accordingly in the unearned premium reserve.

PAR. 2. Regulations 109 [Part 30, Title 26, Code of Federal Regulations, 1941 Sup.] are amended as follows:

(A) Section 30.718–1 is amended by inserting after the second sentence in the first paragraph a new sentence as follows:

The terms "money paid in" and "property paid in" do not include amounts received as premiums by an insurance company subject to taxation under section 204.

(B) Section 30.718–2 is amended by inserting after the third sentence in paragraph (*a*) a new sentence as follows:

See, for instance, section 19.115–3 of Regulations 103, as amended, relating to the computation of earnings and profits in the case of a corporation computing net income on the cash, accrual, or installment basis, or in the case of an insurance company taxable under section 204.

(This Treasury decision is issued under the authority contained in section 62 of the Internal Revenue Code (53 Stat., 32, 26 U. S. C., Sup. V, 62) as made applicable by section 729 of such Code, added by section 201 of the Second Revenue Act of 1940 (Public, No. 801, Seventy-sixth Congress, third session); section 115 of such Code (26 U. S. C., Supp. V, 115); and section 718 of such Code as added by the Second Revenue Act of 1940.)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved July 8, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register July 9, 1941, 4.23 p. m.)

SECTION 19.115–5: Distributions in liquidation. 1941–49–10921
G. C. M. 22822

INTERNAL REVENUE CODE.

The stockholders of the M Company keeping their accounts on the accrual basis should have reported in their returns for 1938 their entire gain or loss from the liquidation of that company in that year, even though a nominal amount of cash was held as a reserve for contingencies and small final distributions of such cash were made in later years. Stockholders keeping their accounts on the cash receipts and disbursements basis who sustained losses should have reported such losses in full in their returns for 1938, but gains derived by such stockholders should have been reported for the year in which such gains were received.

An opinion is requested as to the proper method of reporting the gains derived and losses sustained by the stockholders of the M Company upon final liquidation of that corporation under the circumstances herein set forth.

The M Company liquidated and was dissolved within the year 1938. In that year the total amount of $25 per share in cash and property was distributed to the stockholders of the corporation and all of the

outstanding stock certificates were surrendered. At the close of 1938 all property of the corporation had been distributed except an estimated amount of 30 cents per share in cash, which amount was retained as a reserve for contingencies. Of this reserve, 25 cents per share was distributed during 1940 and it is now estimated that approximately 10 cents per share remains to be distributed. All of the stockholders reported gain or loss in their returns for 1938 without giving consideration to the 30 cents per share which would be distributed subsequently provided no contingency arose to absorb it.

The opinion of this office has been requested relative to four specific questions. Questions (*a*) and (*b*) will be treated together.

(*a*) In the case of a stockholder whose return is filed on the accrual basis, should the nominal amount withheld for contingencies, or an estimated amount to be realized on the disposal of nominal assets, be included in the computation in determining the *loss* realized on final liquidation in the year in which the stock was surrendered and substantially all of the assets were distributed?

(*b*) If the answer to (*a*) above is in the affirmative, would the answer still be in the affirmative if the stockholder filed his return on the cash basis?

Section 115(c) of the Internal Revenue Code provides that distributions in liquidation of a corporation shall be treated for purposes of taxation as a gain or loss from the sale or exchange of stock. Here, there is involved a loss arising out of a sale or exchange of stock where payments are made over a period of more than one taxable year.

Under section 23 of the Internal Revenue Code, it appears that a different treatment is prescribed for deduction of losses under subsection (e) than for deductions prescribed under some of the other subsections. These subsections specifically provide for the deduction of expenses paid or incurred, interest paid or accrued, and taxes paid or accrued, in each instance recognizing a distinction between the cash and accrual basis, while subsection (e) provides for the deduction of losses "sustained during the taxable year."

However, the courts and the Bureau have made a distinction between the cash and accrual basis of accounting relative to the deduction of losses under certain circumstances. (See *Eckert* v. *Burnet*, 283 U. S., 140 (Ct. D. 325, C. B. X–1, 241 (1931)); *Lucas* v. *American Code Co., Inc.*, 280 U. S., 445 (Ct. D. 168, C. B. IX–1, 314 (1930)); *Lucas* v. *Ox Fibre Brush Co.*, 281 U. S., 115 (Ct. D. 265, C. B. IX–2, 384 (1930)); *Burns Manufacturing Co.* v. *Commissioner*, 59 Fed. (2d), 504 (1932).) But in each of these cases the amount of the loss was determinable by a sum to be paid out by the taxpayer. In the Burns Manufacturing Co. case, supra, the taxpayer gave its note to a bank in substitution of a note of an insolvent debtor. The final amount to be paid on the note was determined in 1919, but the note was not paid until 1924. In holding that the loss was deductible in 1919, the court reasoned as follows:

* * * To hold that a corporation, whose books are kept on the accrual system, could claim a deduction in tax only at the time its obligations were actually paid off, would, we think, be simply to allow a taxpayer to manipulate his books so as to take an undue advantage of the privileges allowed him. Such a holding would allow a taxpayer to claim a deduction in taxable income whenever it was most needed to cut down an unduly large income. * * *

Here, however, there is a loss arising from a sale or exchange in which the amount of the loss is determinable by an amount to be paid

to the taxpayer and not by an amount to be paid by him. In *Lucas* v. *American Code Co., Inc.*, supra, it was stated that:

> The general requirement that losses be deducted in the year in which they are sustained calls for a practical, not a legal test.

Furthermore, in the present case the taxpayer had no control over incoming moneys and resultingly could not manipulate his books and tax status relative to the loss to be sustained from the sale or exchange. A closed or completed transaction should determine the year in which a loss from a sale or exchange is sustained.

In *Dresser* v. *United States* (55 Fed. (2d), 499, Ct. D. 503, C. B. XI–1, 267 (1932), certiorari denied, 287 U. S., 635 (1932)) and in *Commissioner* v. *Beekman Winthrop* (98 Fed. (2d), 74), the courts had before them losses of the same nature as that involved in the present case. In both of these cases the year in which the deduction was allowed turned upon the question whether the transaction was completed. In neither case does the opinion reveal whether the taxpayer kept his accounts on a cash or accrual basis, and the courts did not rely upon the basis of accounting in reaching their conclusions.

As it has been determined that the year in which the transaction is closed or completed is the year in which a loss arising from a sale or exchange is " sustained " for purposes of the deduction allowable, it remains to be determined whether, in the present case, a loss was " sustained " in 1938 or some later year.

In *Commissioner* v. *Beekman Winthrop*, supra, which case was adopted as the Bureau's position in G. C. M. 21966 (C. B. 1940–1, 130), the corporation was dissolved in 1932. In that year the petitioner surrendered his stock in the corporation and received a distribution in liquidation consisting of bonds with a definite market value and a liquidation certificate entitling him to a proportionate share in the final liquidation distribution. It was estimated that about 20 cents per share would be the amount of the final distribution. In 1934 the amount of 20 cents per share was paid as a final distribution. The issue before the court was whether petitioner's loss on the exchange should be taken as a deduction in 1932 or 1934. In determining that 1932 was the proper year for the deduction, the Court said:

> * * * When as in the case at bar the shares of stock of a company in liquidation are surrendered, the only remaining asset of the company is money, and the disbursements to be charged against it are known with enough certainty to make sure what the final dividend will be, we think that the liquidation is complete within the intendment of the provisions relating to loss on the investment. * * *

The above requirements were met in the present case in 1938 when the stockholders of the M Company surrendered their stock and it was estimated that a final distribution of 30 cents per share would be paid to the stockholders. Although the stockholders in the present case apparently will receive 35 cents per share instead of the original estimate of 30 cents per share, it is not believed that this fact would change the conclusion. If the court in the Winthrop case based its decision strictly upon the fact that the original estimate of the final distribution turned out to be the exact amount distributed, it would lead to the result that in every case a taxpayer would have to wait until the year of final distribution before it could be determined whether he was entitled to a deduction in the prior year. Such was

obviously not the intention of the court. It seems clear that the court must have intended that the rule apply where the amount of money to be distributed in the future is susceptible of a reasonable estimate. Nor is it believed that the issuance of liquidation certificates is material to that conclusion, such certificates being merely evidences of a right to share in the final distribution.

The rule laid down in the Winthrop case would not apply to those cases mentioned in question (*a*) where an "estimated amount to be realized on disposal of nominal assets" is withheld. The Court in the Winthrop case upheld the distinction drawn by the Board of Tax Appeals between that case (36 B. T. A., 314) and *Dresser* v. *United States*, supra, by saying that in the Dresser case the "corporation * * * had tangible assets which had not been converted into cash and intangible assets the value of which had not been determined." Until such nominal assets have been converted into cash, it is not believed that the transaction is susceptible of being construed as closed or completed.

It is, therefore, the opinion of this office that a nominal amount in money withheld for contingencies, where such amount is susceptible of reasonable estimate, should be included in the computation in determining the loss realized on final liquidation of a corporation in the year in which the stock is surrendered and substantially all of the assets are distributed.

(*c*) If, as in (*a*) above, the stockholder realized a *gain* without taking into consideration the nominal amount withheld for possible contingencies, should such amount be included in the year in which the stock was surrendered and substantially all of the assets were distributed?

Nothing in section 22 of the Internal Revenue Code provides for the year in which income is to be reported, but section 42 provides that items of income shall be included in gross income for the taxable year in which such items are received by the taxpayer unless the method of accounting employed by the taxpayer would allow such items to be accounted for as of a different period. Thus, a taxpayer who employs the accrual method of accounting may include items of income in gross income as of a year other than the taxable year of receipt where such items of income are susceptible of being accrued in a year other than the year of receipt.

The United States Supreme Court in *Spring City Foundry Co.* v. *Commissioner* (292 U. S. 182, Ct. D. 829, C. B. XIII–1, 281 (1934)) said:

Keeping accounts and making returns on the accrual basis, as distinguished from the cash basis, import that it is the *right* to receive and not the actual receipt that determines the inclusion of the amount in gross income. When the right to receive an amount becomes fixed, the right accrues.

The same rule is contained in *Continental Tie & Lumber Co.* v. *United States* (286) U. S. 290, Ct. D. 494, C. B. XI–1, 260 (1932)).

Stockholders of a corporation, upon dissolution, have a right to receive all surplus of corporate assets remaining after corporate debts have been paid (*Bacon* v. *Robertson*, 59 U. S., 480). In the present case, after all known debts of the M Company had been paid there remained a surplus of assets valued at $25 per share plus approximately 30 cents per share. The stockholders had a right to receive and did receive the $25 per share; they also had a right to receive the

approximate sum of 30 cents per share provided no contingencies arose to absorb it. The fact that the sum of 30 cents per share might become uncollectible is not material to its accrual. In the Spring City Foundry Co. case, supra, the Court said:

If such accounts receivable become uncollectible, in whole or in part, the question is one of the deduction which may be taken according to the applicable statute.

Nor is it necessary that the amount to be received be known with absolute accuracy; it is sufficient if the amount can be ascertained with reasonable accuracy (*Continental Tie & Lumber Co.* v. *United States*, supra).

It is, therefore, the opinion of this office that a stockholder whose returns are filed on the accrual basis should report the entire gain from the liquidation, where the amount of such gain is susceptible of ascertainment with reasonable accuracy, in the year in which the stock is surrendered and substantially all of the assets are distributed.

(*d*) If the answer to (*c*) above is in the affirmative, would the answer still be in the affirmative if the stockholder filed its return on the cash basis?

As a taxpayer's books, kept on the cash basis, reflect income as of the actual receipt thereof, it follows that, under section 42 of the Internal Revenue Code, such taxpayer would be required to report a gain from the sale or exchange of stock upon dissolution of the corporation as of the year in which such gain was received. The doctrine of constructive receipt may be applicable in certain instances where the distribution, though not actually received, is available to the taxpayer.

It is the opinion of this office that the answer to question (*c*) would not be in the affirmative in the case of a stockholder whose return is filed on the cash basis.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

SECTION 117.—CAPITAL GAINS AND LOSSES.

SECTION 19.117–5: Application of section 117 in the case of husband and wife.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5057, page 97.)

SECTION 120.—UNLIMITED DEDUCTION FOR CHARITABLE AND OTHER CONTRIBUTIONS.

SECTION 19.120–1: Unlimited deduction for charitable and other contributions.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5057, page 97.)

SECTION 122.—NET OPERATING LOSS DEDUCTION.

SECTION 19.122–3: Computation of net operating loss in case of a taxpayer other than a corporation.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5057, page 97.)

SECTION 19.122–4: Computation of net operating loss carry-over.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5057, page 97.)

SECTION 19.122–5: Conversion of net operating loss carry-over into net operating loss deduction.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5057, page 97.)

SECTION 124.—AMORTIZATION DEDUCTION.

SECTION 19.124–1: Definitions. (Also Sections 19.124–2, 19.124–6, 19.124–7, 19.124–9.) 1941–52–10942 T. D. 5104

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 19.—INCOME TAX.

Regulations 103 amended to conform to Public law 285 (Seventy-seventh Congress), extending time for applications, and changing procedure, for certification of national defense facilities and contracts for amortization purposes.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 103 [Part 19, Title 26, Code of Federal Regulations, 1940 Sup.] to the provisions of Public law 285 (Seventy-seventh Congress), approved October 30, 1941, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 19.124–1, as added by Treasury Decision 5016, approved October 23, 1940 [C. B. 1940–2, 119], and amended by Treasury Decision 5049, approved May 29, 1941 [C. B. 1941–1, 255], the following:

Public law 285, approved October 30, 1941.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 124(f)(1) of the Internal Revenue Code, as amended, is amended to read as follows:

"(1) There shall be included only so much of the amount otherwise constituting such adjusted basis as is properly attributable to such construction, reconstruction, erection, installation, or acquisition after June 10, 1940, as either the Secretary of War or the Secretary of the Navy

has certified as necessary in the interest of national defense during the emergency period, which certification shall be under such regulations as may be prescribed from time to time by the Secretary of War and the Secretary of the Navy, with the approval of the President."

SEC. 2. Section 124(f)(3) of the Internal Revenue Code, as amended, is amended by striking out "sixty days" and inserting in lieu thereof "six months" and by striking out "February 6, 1941" and inserting in lieu thereof "December 1, 1941".

SEC. 3. Section 124(i) of the Internal Revenue Code, as amended, is amended to read as follows:

"PROTECTION OF THE UNITED STATES.—If the taxpayer has been or will be reimbursed by the United States for all or a part of the cost of any emergency facility pursuant to any contract (in excess of $15,000 in amount) with the United States, made on its behalf after December 31, 1939, by the War Department, the Navy Department, the United States Maritime Commission, or such other department or agency as the President may designate, either—

"(1) directly, by a provision therein dealing expressly with such reimbursement, or

"(2) indirectly, because the price paid by the United States (insofar as return of cost of the facility is used by the United States as a factor in the fixing of such price) is recognized by the contract as including a return of cost greater than the normal exhaustion, wear, and tear: *Provided*, That no such greater return of cost shall be deemed to have been used as a factor in the fixing of such price when the negotiating or contracting officer reports that after careful consideration he is satisfied that such greater return was not included in the price,

no amortization deduction with respect to such emergency facility shall be allowed for any month after the end of the month in which such contract is made unless either the Secretary of War or the Secretary of the Navy certifies to the Commissioner that the interest of the United States is adequately protected with reference to the future use and disposition of such emergency facility. A certificate of like effect may also be issued with respect to emergency facilities for which the taxpayer has not been or will not be so reimbursed. A certificate by either the Secretary of War or the Secretary of the Navy made to the Commissioner, to the effect that under any such contract, reimbursement for all or a part of the cost of any emergency facility is not provided for within the meaning of clause (1) or clause (2), shall be conclusive for the purposes of this subsection. Except in cases of applications therefor filed before December 1, 1941, the certificates provided for under this subsection shall have no effect unless an application therefor is filed either before the expiration of six months after the making of such contract or before the expiration of sixty days after the making of a certificate under subsection (f), whichever is later.

"The reports of negotiating and contracting officers and the certificates provided for in this subsection shall be issued under such regulations as may be prescribed from time to time by the Secretary of War and the Secretary of the Navy, with the approval of the President.

"The terms and conditions of contracts with reference to reimbursement of the cost of emergency facilities and the protecting of the United States with reference to the future use and disposition of such emergency facilities shall be made available to the public."

SEC. 4. The amendments made by this joint resolution [sic] to section 124 of the Internal Revenue Code shall be applicable as if they were a part of such section on the date of the enactment of the Second Revenue Act of 1940.

PAR. 2. Section 19.124–1, as added by Treasury Decision 5016 and amended by Treasury Decision 5049, is amended by striking out subdivision (*a*); by redesignating subdivisions (*b*) and (*d*) as (*a*) and (*c*); and by inserting the following in lieu of subdivision (*c*):

(*b*) "*Emergency facility*" means any facility, land, building, machinery, or equipment, or any part thereof,—

(1) the acquisition of which occurred after June 10, 1940, or the construction, reconstruction, erection, or installation of which was completed after such date, and

(2) any part of the construction, reconstruction, erection, installation, or acquisition of which has, under such regulations as may be prescribed by the Secretary of War and the Secretary of the Navy, with the approval of the President, been certified by the Secretary of the Department concerned as necessary in the interest of national defense during the emergency period (such certificate to have no effect unless an application therefor is filed (A) before the expiration of six months after the beginning of such construction, reconstruction, erection, or installation, or the date of such acquisition, or (B) before December 1, 1941, whichever date is the later).

The term "emergency facility," as so defined, may include, among other things, improvements of land, such as the construction of airports and the dredging of channels.

PAR. 3. The first sentence of section 19.124–2, as added by Treasury Decision 5016, is amended by striking out "the Advisory Commission and" and by inserting "makes" in lieu of "have made." There is inserted immediately following the first sentence of section 19.124–2 the following sentence:

No amortization deduction shall be allowed for any taxable year unless a certificate of necessity pursuant to section 124(f)(1) is made prior to the making of the election to take the amortization deduction, or prior to December 1, 1941, whichever is later.

PAR. 4. Section 19.124–6, as added by Treasury Decision 5016, is amended by striking out "the Advisory Commission and" wherever occurring therein; and the first sentence of the third, fourth, and last paragraphs of such section is amended by inserting "certifies" in lieu of "certify."

PAR. 5. The second paragraph of section 19.124–7, as added by Treasury Decision 5016, is amended by striking out "the Advisory Commission and."

PAR. 6. Section 19.124–9, as added by Treasury Decision 5016 and amended by Treasury Decision 5049, is amended to read as follows:

SEC. 19.124–9. *Reimbursement by United States for cost of facility.*—If the taxpayer has been or will be reimbursed by the United States for all or a part of the cost of any emergency facility pursuant to any contract, exceeding $15,000 in amount, with the United States, made on its behalf after December 31, 1939, by the War Department, the Navy Department, the United States Maritime Commission, or such other department or agency as the President may designate, no amortization deductions will be allowed with respect to such facility for any month after the end of the month in which such contract is made, unless the Secretary of the Department concerned certifies to the Commissioner that the interest of the United States is adequately protected with reference to the future use and disposition of such facility. Only one certificate of protection is necessary with respect to a particular emergency facility regardless of the number of contracts entered into. For treatment of reimbursements, see section 19.124–6. If the Secretary of the Department concerned certifies to the Commissioner that under a contract no reimbursement is provided for within the meaning of section 124(i), such certificate shall be conclusive of such fact. Except in the case of applications therefor filed before December 1, 1941, the certificates referred to in this section shall have no effect unless an application therefor is filed before the expiration of six months after the making of such contract or before the expiration of 60 days after the making of a certificate of necessity under section 124(f)(1) (see section 19.124–1(*b*)), whichever is later.

(This Treasury decision is issued under the authority contained in sections 1 to 4, inclusive, of Public law 285 (Seventy-seventh Congress), approved October 30, 1941, and section 62 of the Internal Revenue Code (53 Stat., 32) (26 U. S. C., Sup. V, 62).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved December 23, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 23, 1941, 3.36 p. m.)

SECTION 19.124–2: Amortization deduction— General rule. 1941–49–10923

Treasury, War, and Navy Departments—Notice of procedure for certification under section 124 of the Internal Revenue Code, as amended (Title III, section 302, of the Second Revenue Act of 1940).

Sections 23 and 124 of the Internal Revenue Code, as amended, allow a deduction for income and excess-profits tax purposes for amortization, over a 60-month period, with respect to any emergency facility, the construction, reconstruction, erection, or installation of which was completed, or which was acquired, after June 10, 1940, upon the issuance of the certificate or certificates provided for in the statute. Such certificates are to be issued to the Commissioner of Internal Revenue by the Secretary of War or the Secretary of the Navy.

In all cases, a " Necessity Certificate " is required certifying that the facility is necessary in the interest of national defense during the emergency period.

A taxpayer who has been or will be reimbursed by the United States for all or a part of the cost of any emergency facility pursuant to any contract (in excess of $15,000 in amount) with the United States, made on its behalf after December 31, 1939, by the War Department, the Navy Department, the United States Maritime Commission, or such other department or agency as the President may designate, is not allowed such amortization deduction with respect to such facility unless either the Secretary of War or the Secretary of the Navy issues a " Certificate of Government Protection " to the effect that the interest of the United States is adequately protected with reference to the future use and disposition of such emergency facility.

A " Certificate of Non-Reimbursement " to the effect that under the contract certified reimbursement for all or a part of the cost of any emergency facility is not provided for, shall conclusively establish that fact for the purpose of the law.

In the event that a taxpayer has no contract with the United States it is not considered necessary for the taxpayer, in addition to a " Necessity Certificate," to obtain a " Certificate of Government Protection " or a " Certificate of Non-Reimbursement," unless the taxpayer is the real party in interest under a contract with the United States, as, for example, a case in which some other person is acting in a contract as agent for the taxpayer to obtain payment of the cost of the emergency facilities by the United States.

The Secretary of the Treasury, the Secretary of War, and the Secretary of the Navy hereby give notice (superseding the Notice of Procedure dated November 1, 1940) that the following will be the procedure for applying for certification:

I. *Applications.*—Applications for certificates shall be respectively entitled "Application for a Necessity Certificate," "Application for a Certificate of Non-Reimbursement," "Application for a Certificate of Government Protection." Instructions as to the information to be given in such applications may be obtained from the Office of the Under Secretary of War, Tax Amortization Section, Washington, D. C., or from the Office of the Under Secretary of the Navy, Washington, D. C.

II. *Place of filing applications and copies required.*—The signed and verified original of each application, together with two extra copies which need not be signed, addressed to either the Secretary of War or the Secretary of the Navy, as the case may be, shall be duly prepared in accordance with the applicable instructions, and filed as follows:

Applications addressed to the Secretary of War shall be filed with the Office of the Under Secretary of War, Tax Amortization Section, Washington, D. C.

Applications addressed to the Secretary of the Navy shall be filed with the Office of the Under Secretary of the Navy, Washington, D. C.

III. *Time of filing applications.*—Section 124 of the Internal Revenue Code provides that a "Necessity Certificate" shall have no effect unless application therefor is filed before the expiration of six months after the beginning of the construction, reconstruction, erection, installation, or the date of acquisition of the emergency facility, or before December 1, 1941, whichever is later, and that a "Certificate of Government Protection" and a "Certificate of Non-Reimbursement" shall have no effect unless application therefor is filed before December 1, 1941; or either before the expiration of 6 months after the making of the contract or before the expiration of 60 days after the making of a necessity certificate, whichever is latest.

IV. *Notification.*—The Office of the Under Secretary of War, Tax Amortization Section, or the Office of the Under Secretary of the Navy, as the case may be, will notify the applicant of the action upon its application by the Secretary of War or the Secretary of the Navy.

V. *Definition of terms.*—(1) The term "Necessity Certificate," as used herein, means a certification, issued pursuant to section 124(f) of the Internal Revenue Code, as amended, that the construction or acquisition of the facilities, referred to in the certificate, is necessary in the interest of national defense during the emergency period.

(2) The term "Certificate of Government Protection," as used herein, means a certification, issued pursuant to section 124(i) of the Internal Revenue Code, as amended, that the interest of the United States is adequately protected with reference to the future use and disposition of the emergency facility, referred to in the certificate.

(3) The term "Certificate of Non-Reimbursement," as used herein, means a certification, issued pursuant to section 124(i) of the Internal Revenue Code, as amended, that reimbursement to the taxpayer for all or a part of the cost of any emergency facility is not provided for under a contract.

(4) The term "reimbursement," as used herein, means reimbursement to the taxpayer, pursuant to any contract with the United States, in excess of $15,000 made on its behalf after December 31, 1939, by the War Department, the Navy Department, the United States Maritime Commission, or such other agency or department as the President may designate, either (1) directly, by a provision therein dealing expressly with such reimbursement, or (2) indirectly, because the price paid by the United States (in so far as return of cost of the facility is used by the United States as a factor in the fixing of such price) is recognized by the contract as including a return of cost greater than the normal exhaustion, wear and tear: *Provided*, That no such greater return of cost shall be deemed to have been used as a factor in the fixing of such price when the negotiating or contracting officer reports that after careful consideration he is satisfied that such greater return was not included in the price.

(5) The term "emergency facility" as used herein, means any facility, land, building, machinery, or equipment, or part thereof, the construction, reconstruction, erection, or installation of which was completed after June 10, 1940, or which was acquired after such date, and with respect to which a necessity certificate has been made.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.
ROBERT P. PATTERSON,
Under Secretary of War.
JAMES FORRESTAL,
Under Secretary of the Navy.

OCTOBER 30, 1941.

(Filed with the Division of the Federal Register November 1, 1941, 11.08 a. m.)

SECTION 19.124–2: Amortization deduction—General rule.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5104, page 131.)

SECTION 19.124–6: Adjusted basis of emergency facility.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5104, page 131.)

SECTION 19.124–7: Depreciation of portion of emergency facility not subject to amortization.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5104, page 131.)

SECTION 19.124–9: Reimbursement by United States for cost of facility. 1941–33–10808 I. T. 3498

INTERNAL REVENUE CODE.

The Defense Plant Corporation is an agency of the United States, and a contract with that corporation is a contract with the United States within the intendment of section 124(i) of the Internal Revenue Code, as amended, relating to amortization deductions, where, pursuant to any contract with the United States, a taxpayer is reimbursed for all or a part of the cost of any emergency facility.

The Bureau of Internal Revenue does not require any taxpayer to apply to the statutory certifying agencies for certificates of nonreimbursement prescribed by section 124(i) of the Internal Revenue Code, as amended, and the Bureau is not in a position to advise whether, with respect to a particular contract, such a certificate will be available.

Advice is requested by the M Company with respect to the amortization deduction provided by section 124 of the Internal Revenue Code, as amended, under the circumstances herein stated.

The M Company states that it has received a necessity certificate and that it has filed applications for certificates of nonreimbursement with respect to a list of contracts and outstanding bids which it

had on its records. It further states that it has some orders from manufacturing concerns which claim to be acting for and on behalf of the Defense Plant Corporation. Copies of such orders were submitted for the consideration of the Bureau. Inquiry is made relative to the status of the Defense Plant Corporation, and whether the orders mentioned above should be included in the M Company's applications for certificates of nonreimbursement.

The copies of the orders submitted for consideration relate to machine tool equipment. It is stated that the machine tools "are sold at fixed prices to all customers and the prices charged include only allowed or allowable depreciation." The facilities were furnished by the M Company on orders from the N Company and the O Corporation, "acting for and on behalf of Defense Plant Corporation." The order from the O Corporation directs that the shipment be marked "Property of Defense Plant Corporation, an instrumentality of the United States Government." In the agreement between the Defense Plant Corporation and the N Company, the Defense Plant Corporation is stated to be a corporation created by the Reconstruction Finance Corporation pursuant to section 5(d) of the Reconstruction Finance Corporation Act, as amended, to aid the Government of the United States in its national defense program. The agreement between the Defense Plant Corporation and the O Corporation is called an agreement of lease and contains statements similar to statements in the N Company contract relative to the reasons for the creation of the Defense Plant Corporation and of additional manufacturing capacity.

The Defense Plant Corporation was created on August 22, 1940, with a capital of $5,000,000, and with the following powers:

(*a*) To purchase, lease, or otherwise acquire real estate and interests in real estate, to purchase, lease, or otherwise acquire and to build and expand plants and facilities, and to purchase, lease, produce, or otherwise acquire and to repair, rebuild, and alter equipment, supplies, and machinery for the manufacture of arms, ammunition, and implements of war;

(*b*) to use, lease, license, or otherwise arrange for the use of such real estate, plants, facilities, equipment, supplies, and machinery for the manufacture of arms, ammunition, and implements of war and the production of equipment, supplies, and machinery usable in such manufacture.

It has made commitments for national defense purposes aggregating many millions of dollars. The plants and equipment which it owns are leased to manufacturers, and it is protected either by the rent it receives or by contracts of reimbursement from the War Department or the Navy Department. Ultimately, by contract, the United States acquires title or interest in many of the Defense Plant Corporation defense facilities which, directly or indirectly, are paid for by the United States. It is managed and operated by directors, officers, and employees of the Reconstruction Finance Corporation under the supervision of the Federal Loan Administrator. (Cf. report to the President and the Congress by Jesse H. Jones, Administrator; see Congressional Record dated January 27, 1941, volume 87, No. 14, pages 342–343.) It is understood that the capital stock of the Defense Plant Corporation was purchased by and is held by the Reconstruction Finance Corporation.

It is held that the Defense Plant Corporation is an agency of the United States, and a contract with the Defense Plant Corporation is a contract with the United States within the intendment of section 124(i) of the Internal Revenue Code, as amended.

The Bureau of Internal Revenue does not require any taxpayer to apply to the statutory certifying agencies for certificates of nonreimbursement prescribed by section 124(i) of the Internal Revenue Code, as amended, and the Bureau is not in a position to advise whether, with respect to a particular contract, such a certificate will be available. In cases where a taxpayer prefers not to await the Bureau determination, section 124(i) of the Code, as amended, provides two means whereby the taxpayer may fix immediately, with respect to a particular contract with the United States, the status of the amortization: (1) by providing in the particular contract for adequate protection of the United States with reference to the future use and disposition of the emergency facilities so that a certificate of Government protection may be obtained, or (2) by establishing to the satisfaction of the certifying agencies that the particular contract does not reimburse the taxpayer for all or a part of the cost of any emergency facility so that the certifying agencies may, if they consent, issue a certificate of nonreimbursement.

SECTION 19.124–9; Reimbursement by United States for cost of facility.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5104, page 131.)

SUPPLEMENT C.—CREDIT AGAINST TAX.

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

SECTION 19.131–1: Analysis of credit for taxes. 1941–34–10811 I. T. 3500

INTERNAL REVENUE CODE.

The tax imposed by Guatemalan decree No. 2099 upon profits or net earnings of business enterprises is an income tax and is an allowable credit against Federal income tax under section 131 of the Internal Revenue Code.

Advice is requested whether the tax imposed by Guatemalan decree No. 2099 upon profits or net earnings of business enterprises is allowable under section 131 of the Internal Revenue Code as a credit against the Federal income tax.

Article 1 of Guatemalan decree No. 2099 imposes an annual proportional and progressive tax on the liquid profits or net earnings of business enterprises of all descriptions operating with a working capital or effectively subscribed capital of 5,000 quetzales or more. Under article 3 of the decree, business enterprises are defined as all commercial, banking, industrial, or agricultural entities and all activities organized for the rendering of service to the public. Under article 4, the computation of liquid profits or net earnings of business

enterprises is made by deducting such items as expenses of operation, interest, commissions, losses, etc., incurred during the taxable year. Tax rates range from 5 per cent upon profits of 1,000 quetzales to 10,000 quetzales to 12 per cent upon profits exceeding 100,000 quetzales.

It is held that the tax imposed by Guatemalan decree No. 2059 upon the profits or net earnings of business enterprises is an income tax and is allowable as a credit under section 131 of the Internal Revenue Code.

SECTION 19.131-3: Conditions of allowance of credit. 1941-27-10769 T. D. 5056

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 19.—INCOME TAX.

Foreign tax credit.—Amending section 19.131-3 of Regulations 103; article 131-3, Regulations 101, 94, and 86; article 693, Regulations 77 and 74; and article 383, Regulations 69, 65, 62, and 45.

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

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH 1. Section 19.131-3 of Regulations 103 [Part 19, Title 26, Code of Federal Regulations, 1940 Sup.] is amended as follows:

(A) By substituting for the third and fourth sentences thereof the following sentence:

Except where it is established to the satisfaction of the Commissioner that it is impossible for the taxpayer to furnish such evidence, the form must have attached to it (1) the receipt for each such tax payment if credit is sought for taxes already paid or (2) the return on which each such accrued tax was based if credit is sought for taxes accrued.

(B) By inserting as the second paragraph thereof the following:

Where it has been established to the satisfaction of the Commissioner that it is impossible (1) to furnish a receipt for such foreign tax payment or (2) the foreign tax return, or (3) direct evidence of the amount of tax withheld at the source, secondary evidence of the payment or accrual of the tax or of the withholding of the tax may, in his discretion, and under such rules as he may prescribe, be accepted by the Commissioner.

PAR. 2. Article 131-3, Regulations 101 [section 9.131-3, Title 26, Code of Federal Regulations, 1939 Sup.]; article 131-3, Regulations 94 [section 3.131-3, Title 26, Code of Federal Regulations]; article 131-3, Regulations 86; article 693, Regulations 77 and 74; and article 383, Regulations 69, 65, 62, and 45, are hereby modified to the extent that they are inconsistent with the changes made in Regulations 103 by this Treasury decision.

(This Treasury decision is prescribed pursuant to sections 62 and 131 of the Internal Revenue Code (53 Stat., 32, 56) (26 U. S. C., Sup. V, 62, 131), and the corresponding provisions of prior internal revenue laws.)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved June 28, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register July 1, 1941, 11.47 a. m.)

SECTION 19.131–3: Conditions of allowance of credit. 1941–31–10800 Mim. 5219

Modification in requirements as to basic evidence in substantiation of credit for foreign taxes in certain cases, in conformity with change in regulations provided by Treasury Decision 5056 [page 133, this Bulletin].

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 16, 1941.

Collectors of Internal Revenue, Internal Revenue Agents in Charge, and Other Persons Concerned:

In order to facilitate the uniform application of the revision in the regulations provided by Treasury Decision 5056, approved June 28, 1941 (page 139, this Bulletin), for making more flexible the requirements as to evidence in support of credit for foreign taxes, the following rules are furnished for your guidance in determining the acceptability of secondary evidence within the purview of the revised regulations:

Where it has been established to the satisfaction of the Commissioner that it is impossible to furnish receipts for such foreign tax payments or foreign tax returns, secondary evidence of the payment or accrual of the tax may in his discretion be accepted by the Commissioner. In such case, there shall be submitted a photostatic copy of the check, draft, or other medium of payment showing the amount and date thereof, with certification identifying it with the tax claimed to have been paid, together with evidence establishing that the tax was paid for taxpayer's account as its own tax on its own income. If credit is claimed on the accrual basis, it must be shown that the tax accrued in the taxable year. As to accrual of the tax, if it has not been paid, and the foreign tax return is not available, there shall be submitted a certified statement of the amount claimed to have accrued; excerpts from taxpayer's accounts showing amounts of foreign income and tax thereon accrued on its books; a computation of the foreign tax based on income from the foreign country carried on the books and at current rates of tax to be established by data such as excerpts from the foreign law, assessment notices, or other documentary evidence thereof; a bond, if deemed necessary by the Commissioner, filed in the manner provided in cases where the foreign return is available; and, in case a bond is not required, a specific agreement wherein the taxpayer shall recognize its liability to report the correct amount of tax when ascertained, as required by the provisions of section 131(c). If at any time the foreign tax receipts or foreign tax returns become available to the taxpayer, they shall be promptly submitted to the Commissioner.

In the case of taxes withheld at the source from dividends, interest, royalties, compensation, or other form of income, where evidence of withholding can not be secured from those who have made the payments, the Commissioner may in his discretion accept secondary evidence of such withholding and of the amount of the tax so withheld, having due regard to the taxpayer's books of account and to the rates of taxation prevailing in the particular foreign country during the period involved.

In compliance with the revised regulations, the requirements indicated in Forms 1116 and 1118, and I. T. 2676 (C. B. XII-1. 48 (1933)), are hereby modified to the extent that they conflict with such revision.

Correspondence regarding this mimeograph should refer to the number thereof and to the symbols IT : TM.

GUY T. HELVERING,
Commissioner.

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

SECTION 19.131–9: Joint return by husband and wife.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5057, page 97.)

SUPPLEMENT D.—RETURNS AND PAYMENT OF TAX.

SECTION 141.—CONSOLIDATED RETURNS OF RAILROAD CORPORATIONS.

SECTION 23.11(a), REGULATIONS 104: Consolidated returns required for subsequent years. (Also Section 730, Section 33.11, Regulations 110.) 1941–42–10868 T. D. 5087

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PARTS 23 AND 33.—INCOME TAX AND EXCESS PROFITS TAX.

Amending section 23.11(*a*) of Regulations 104 and section 33.11(*a*) of Regulations 110, relating to the necessity of filing consolidated returns for years following the year in which the election to file a consolidated return has been exercised.

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

To Collectors of Internal Revenue and Others Concerned:

REGULATIONS 104.

PARAGRAPH 1. Effective for taxable years beginning after December 31, 1940, section 23.11(*a*) of Regulations 104 is amended to read 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 (1) a corporation (other than a corporation created or organized, directly or indirectly, by a member of the group) has become a member of the group during such subsequent taxable year, or (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, or (3) the Commissioner, prior to the time of making the return, upon application made by the common parent corporation and for good cause shown, grants permission to change.

REGULATIONS 110.

PAR. 2. Effective for taxable years beginning after December 31, 1939, section 33.11(*a*) of Regulations 110 is amended to read 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 (1) a corporation (other than a corporation created or organized, directly or indirectly, by a member of the group) has become a member of the group during such subsequent taxable year, or (2) Chapter 1 of the Code to the extent applicable to corporations, or Subchapter E of Chapter 2 of the Code, 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, or (3) the Commissioner, prior to the time of making the return, upon application made by the common parent corporation and for good cause shown, grants permission to change.

(This Treasury decision is issued under the authority contained in section 141(b) of the Internal Revenue Code (53 Stat., 58; 26 U. S. C., Sup. V, 141(b)) and section 730(b) of the Internal Revenue Code, added by the Excess Profits Tax Act of 1940 (54 Stat., 989).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved October 10, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 13, 1941, 12.40 p. m.)

SECTION 143—WITHHOLDING OF TAX AT SOURCE.

SECTION 19.143–1: Withholding tax at source. (Also Section 19.143–3; Section 144, Section 19.144–1, Section 19.144–2; Section 262, Section 19.262–4.)

1941–39–10842
T. D. 5071

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 19.—INCOME TAX.

Withholding under sections 143 and 144 of the Internal Revenue Code, as amended by the Revenue Act of 1941—Regulations 103 amended.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 103 [Part 19, Title 26, Code of Federal Regulations, 1940 Sup.], relating to the income tax under the Internal Revenue Code, to sections 107, 108, 109(a), and 118 of the Revenue Act of 1941 (Public Law 250, Seventy-seventh Congress), approved September 20, 1941, amending section 143 and section 144 of the Internal Revenue Code, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 19.143–1 the following:

SEC. 107. WITHHOLDING OF TAX AT SOURCE. (Revenue Act of 1941, Title I.)

(a) Sections 143 (a) and (b) * * * of the Internal Revenue Code are amended by striking out "15 per centum" wherever occurring therein and inserting in lieu thereof "27½ per centum".

(b) Section 143(h) of the Internal Revenue Code is repealed.

(c) Subsections (a) and (b) of this section shall apply only with respect to the period beginning with the tenth day after the date of the enactment of this Act.

SEC. 108. TREATY OBLIGATIONS. (Revenue Act of 1941, Title I.)

No amendment made by this title shall apply in any case where its application would be contrary to any treaty obligation of the United States.

SEC. 109. REDUCTION IN PURSUANCE OF TREATIES OF RATES OF TAX AND WITHHOLDING ON NONRESIDENT ALIEN INDIVIDUALS RESIDENT IN, AND CORPORATIONS ORGANIZED UNDER LAWS OF, WESTERN HEMISPHERE COUNTRIES. (Revenue Act of 1941, Title I.)

(a) Section 143(a)(1) (relating to withholding of tax on tax-free covenant bonds); section 143(b) (relating to withholding of tax on dividends, rents, etc.); * * * of the Internal Revenue Code are amended by striking out "a contiguous country" and inserting in lieu thereof "any country in North, Central, or South America, or in the West Indies, or of Newfoundland".

* * * * * * *

SEC. 118 TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 2. Section 19.143–1, as amended by Treasury Decision 5046, approved May 8, 1941 [C. B. 1941–1, 260], is further amended as follows:

(A) By striking out "10 per cent (15 per cent on and after June 26, 1940, except as otherwise provided herein)" wherever appearing therein and inserting in lieu thereof the following: "27½ per cent (16½ per cent on and after June 26, 1940, and prior to September 30, 1941, and 10 per cent prior to June 26, 1940)."

(B) By inserting in the first paragraph thereof immediately after "a contiguous country," the following: "or (as to taxable years beginning after December 31, 1940) any country in North, Central, or South America, or in the West Indies, or of Newfoundland,"

(C) By striking out subsection (c) thereof.

PAR. 3. Section 19.143–3, as amended by Treasury Decision 4979, approved July 1, 1940 [C. B. 1940–2, 138], is further amended by striking from the last paragraph thereof "$1,000, or $800 for taxable years beginning after December 31, 1939," and inserting in lieu thereof the following: "$750 ($800 for a taxable year beginning after December 31, 1939, but before January 1, 1941, and $1,000 for a taxable year beginning prior to January 1, 1940)."

PAR. 4. There is inserted immediately preceding section 19.144–1 the following:

SEC. 107. WITHHOLDING OF TAX AT SOURCE. (Revenue Act of 1941, Title I.)

(a) Sections * * * 144 of the Internal Revenue Code are amended by striking out "15 per centum" wherever occurring therein and inserting in lieu thereof "27½ per centum".

(b) Section 143(h) of the Internal Revenue Code is repealed.

(c) Subsections (a) and (b) of this section shall apply only with respect to the period beginning with the tenth day after the date of the enactment of this Act.

SEC. 108. TREATY OBLIGATIONS. (Revenue Act of 1941, Title I.)

No amendment made by this title shall apply in any case where its application would be contrary to any treaty obligation of the United States.

SEC. 109. REDUCTION IN PURSUANCE OF TREATIES OF RATES OF TAX AND WITHHOLDING ON NONRESIDENT ALIEN INDIVIDUALS RESIDENT IN, AND CORPORATIONS ORGANIZED UNDER LAWS OF, WESTERN HEMISPHERE COUNTRIES. (Revenue Act of 1941, Title I.)

(a) Section * * * 144 (relating to payment of corporation income tax at source); * * * of the Internal Revenue Code are amended by striking out "a contiguous country" and inserting in lieu thereof "any country in North, Central, or South America, or in the West Indies, or of Newfoundland".

* * * * * * *

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

PAR. 5. Section 19.144–1, as amended by Treasury Decision 5046, is further amended as follows:

(A) By striking from the first paragraph thereof "15 per cent" and inserting in lieu thereof the following: "27½ per cent (16½ per cent on and after June 26, 1940, and prior to September 30, 1941, and 15 per cent prior to June 26, 1940)."

(B) By striking from the third paragraph thereof "10 per cent (15 per cent on and after June 26, 1940, except as otherwise provided herein)" wherever appearing therein and inserting in lieu thereof the following: "27½ per cent (16½ per cent on and after June 26, 1940, and prior to September 30, 1941, and 10 per cent prior to June 26, 1940)."

(C) By inserting in the third paragraph thereof after "a contiguous country," the following: "or (as to taxable years beginning after December 31, 1940) any country in North, Central, or South America, or in the West Indies, or of Newfoundland,".

(D) By striking out the last paragraph thereof.

PAR. 6. Section 19.144–2, as amended by Treasury Decision 5046, is further amended as follows:

(A) By striking out immediately preceding the first table of withholding rates the following: "The following table of withholding rates under the Internal Revenue Code and the tax convention between the United States and Canada has been prepared for the purpose of making a summary of such rates readily available to withholding agents:" and inserting in lieu thereof the following: "The following tables of withholding rates under the Internal Revenue Code, as modified by tax conventions between the United States and other countries, have been prepared for the purpose of making a summary of such rates readily available to withholding agents:".

(B) By striking out immediately preceding the second table of withholding rates the following: "The following table of withholding rates under the Internal Revenue Code as amended and the tax

conventions between the United States and Canada and United States and Sweden has been prepared for the purpose of making a summary of such rates readily available to withholding agents:".

(C) By striking out of the caption of the second table thereof "January 1, 1945," and inserting in lieu thereof "September 30, 1941."

(D) By inserting at the end thereof the following table:

Classes of taxpayers.	For the period on and after September 30, 1941.				
	Corporate bond interest.			Salary or other compensation for personal services.	Other fixed or determinable annual or periodical income, including dividends, from sources within the United States.
	With tax-free covenant and issued before Jan. 1, 1934.		Without tax-free covenant or issued on or after Jan. 1, 1934, with tax-free covenant.		
	If corporation assumes over 2 per cent of the tax.	If corporation assumes not over 2 per cent of the tax.			
1. Citizen or resident individual, fiduciary, or partnership	*Per cent.* 2	*Per cent.* 2	*Per cent.*	*Per cent.*	*Per cent.*
2. Nonresident individual, fiduciary, or partnership	2	27½	27½	[1] 27½	[2] 27½
3. Domestic corporation or resident foreign corporation					
4. Nonresident foreign corporation	2	27½	27½	27½	[2] [3] 27½
5. Unknown owner	2	27½	27½		

[1] Salary or compensation for personal services rendered in the United States is not subject to withholding in the case of nonresident aliens, residents of Canada or Mexico, who enter and leave the United States at frequent intervals.

[2] In the case of a resident of Sweden or a corporation or other entity organized under the laws of Sweden the rate with respect to dividends is 10 per cent for at least two years beginning January 1, 1940.

[3] Interest on any nonecorporate security the owner of which is unknown to the withholding agent s subject to withholding at the rate of 27½ per cent.

PAR. 7. Section 19.262–4, as amended by Treasury Decision 5046, is further amended as follows:

(A) By striking from the first paragraph thereof "10 per cent (15 per cent on and after June 26, 1940, except as otherwise provided herein)" wherever appearing therein and inserting in lieu thereof the following: "27½ per cent (16½ per cent on and after June 26, 1940, and prior to September 30, 1941, and 10 per cent prior to June 26, 1940)."

(B) By inserting after "a contiguous country" wherever appearing therein the following: "or (as to taxable years beginning after December 31, 1940) any country in North, Central, or South America, or in the West Indies, or of Newfoundland,".

(C) By striking out the last paragraph thereof.

(This Treasury decision is issued under the authority contained in section 62 of the Internal Revenue Code (53 Stat., 32; 26 U. S. C., Sup. V, 62) and sections 107, 108, 109(a), and 118 of the Revenue Act of 1941 (Public Law 250, Seventy-seventh Congress).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved September 27, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 27, 1941, 12.37 p. m.)

SECTION 19.143–1: Withholding tax at source. 1941–51–10935
(Also Section 144, Section 19.144–1.) I. T. 3522

INTERNAL REVENUE CODE.

Where, pursuant to the Financial Powers (U. S. A. Securities) Act, 1941, the British Government has obtained American securities from its subjects (nonresidents of the United States), the income from such securities is subject to the withholding provisions of sections 143 and 144 of the Internal Revenue Code, as amended by section 107 of the Revenue Act of 1941.

Advice is requested whether the income from American securities which have been obtained by the British Government from its subjects under the Financial Powers (U. S. A. Securities) Act, 1941, is subject to the withholding provisions of sections 143 and 144 of the Internal Revenue Code, as amended by section 107 of the Revenue Act of 1941.

It appears that the British Government, pursuant to the provisions of the Financial Powers (U. S. A. Securities) Act, 1941, has obtained from certain of its subjects (nonresidents of the United States) various securities of corporations organized and doing business within the United States; that under the provisions of that Act, possession and control of the securities is lodged with the British Treasury; that the beneficial ownership of the securities remains in the hands of the subjects from whom they were obtained; and that the Act contemplates that such owners are entitled to the income of the securities, and ultimately to the securities or cash in lieu thereof.

The provisions of the Act with respect to the transferred securities indicate clearly that it is the conception of the British Government that such securities are for a limited period loaned to or deposited with that Government and not sold to it. The fact that temporary possession and control are lodged with the British Treasury is not inconsistent with this conception of the transaction. Whatever may be the nature of the obligation of the British Government to the former holders, it is clear that such holders are regarded as the beneficial owners of the securities and entitled to the income therefrom, and that the British Government, although deriving benefit from the control which it has over these securities, is a representative of the real owners, the subjects from whom they were obtained.

The provisions of section 116(c) of the Internal Revenue Code exempting "income of foreign governments" from Federal income tax were enacted to insure that the income derived by such governments from investments in the United States should not be subject to an income tax imposed by the United States. Such provisions were, in the opinion of this office, intended to relieve foreign governments and not citizens of foreign countries, and must be so construed as to effectuate that purpose. Whenever a foreign government is acting merely as the representative of individuals or corporations, who are the real owners of the securities and the ultimate recipients of the income, such income is not income of a "foreign government" within the meaning of the exemption, but is subject to Federal income tax as the income of such individuals or corporations.

In view of the foregoing, it is held that income from American securities which are in possession or control of the British Treasury, pursuant to the provisions of the Financial Powers (U. S. A. Securi-

ties) Act, 1941, is not exempt from Federal income tax under section 116(c), supra, and is subject to the withholding provisions of sections 143 and 144 of the Internal Revenue Code, as amended by section 107 of the Revenue Act of 1941.

SECTION 19.143–1: Withholding tax at source. (Also Sections 19.143–4 and 19.143–7; Section 144, Section 19.144–1; Section 147, Sections 19.147–3 and 19.147–4.) 1941–51–10932 T. D. 5103

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 19.—INCOME TAX.

Withholding of the tax under sections 143 and 144, and information at the source under section 147, Internal Revenue Code, as amended by the Revenue Act of 1941.—Regulations 103 amended.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 103 [Part 19, Title 26, Code of Federal Regulations, 1940 Sup.], relating to the income tax under the Internal Revenue Code, to section 116 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress), approved September 20, 1941, amending section 147 of the Internal Revenue Code, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 19.147–1 the following:

SEC. 116. INFORMATION RETURNS WITH RESPECT TO FEDERAL OBLIGATIONS. (Revenue Act of 1941.)

(a) Section 147(d) of the Internal Revenue Code (exempting interest on obligations of the United States from information requirement) is repealed.

(b) Section 147(b) of the Internal Revenue Code is amended by striking out "and (2)" and inserting in lieu thereof "(2) in the case of payments of interest upon obligations of the United States or any agency or instrumentality thereof, and (3)".

(c) Subsections (a) and (b) of this section shall take effect upon the day after the date of the enactment of this Act.

PAR. 2. Section 19.143–1, as amended by Treasury Decision 5071, approved September 27, 1941 [page 142, this Bulletin], is further amended by inserting at the end of the first paragraph the following:

Withholding is required in the case of interest paid on obligations issued by the United States or any agency or instrumentality thereof on or after March 1, 1941. (See sections 19.22(b)(4)–4 and 19.22(b)(4)–6, relating to the taxation of such interest, and section 19.143–4, relating to ownership certificates.)

PAR. 3. Section 19.143–4 is amended as follows:

(A) By inserting at the end of the first paragraph the following:

Ownership certificates shall also be filed in the case of interest paid on or after January 1, 1942, on obligations of the United States or any agency or instrumentality thereof, regardless of the date of issuance of such obligations.

(B) By inserting at the end of the third paragraph the following:

Ownership certificates shall also be filed in the case of interest paid on or after January 1, 1942, on obligations of the United States or any agency or instrumentality thereof, regardless of the date of issuance of such obligations.

(C) By striking from the fourth paragraph " debtor corporation " and inserting in lieu thereof " obligor."

(D) By changing the first sentence of the fifth paragraph to read as follows:

Ownership certificates need not be filed in the case of interest payments on obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or the obligations of possessions of the United States.

(E) By inserting in the sixth paragraph immediately after " corporate bonds " the following: ", or (as to coupons presented on or after January 1, 1942) from obligations of the United States or of any agency or instrumentality thereof," and by striking " on line 3 " from last sentence.

PAR. 4. Section 19.143–7, as amended by Treasury Decision 5046, approved May 8, 1941 [C. B. 1941–1, 260], is further amended as follows:

(A) By inserting at the end of the first sentence " and interest on obligations issued by the United States or any agency or instrumentality thereof on or after March 1, 1941."

(B) By inserting at the end of the first paragraph the following:

In the case of interest on obligations of the United States or of any agency or instrumentality thereof the withholding agents shall be: (1) the Commissioner of the Public Debt for interest paid by checks issued through the Bureau of the Public Debt; (2) the Treasurer of the United States for all interest paid by him, whether by check or otherwise; and (3) each Federal reserve bank for all interest paid by it, whether by check or otherwise.

PAR. 5. Section 19.144–1, as amended by Treasury Decision 5071, approved September 27, 1941, is further amended by inserting immediately after the first paragraph a new paragraph reading as follows:

Withholding is required in the case of interest paid on obligations issued by the United States or any agency or instrumentality thereof on or after March 1, 1941. (See sections 19.22(b)(4)–4 and 19.22(b)(4)–6, relating to the taxation of such interest, and section 19.143–4, relating to ownership certificates.)

PAR. 6. Section 19.147–3 is amended by changing item (*a*) to read as follows:

(*a*) Payments prior to January 1, 1942, of interest on obligations of the United States (as to subsequent payments, see section 19.147–4);

PAR. 7. Section 19.147–4 is amended to read as follows:

SEC. 19.147–4. *Return of information as to certain interest.*—In the case of payments of interest, regardless of amount, upon bonds and similar obligations of corporations, and interest on obligations of the United States or any agency or instrumentality thereof, the ownership certificates, when duly filed, shall constitute and be treated as returns of information and in such cases no return of information on Form 1099 is required. (See section 19.143–5.)

(This Treasury decision is issued under the authority contained in section 62 of the Internal Revenue Code (53 Stat., 32; 26 U. S. C., Sup. V, 62) and section 116 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved December 13, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 15, 1941, 11.09 a. m.)

SECTION 19.143–3: Exemption from withholding.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5071, page 142.)

SECTION 19.143–4: Ownership certificates for bond interest.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5103, page 147.)

SECTION 19.143–7: Return and payment of tax withheld. 1941–32–10803 G. C. M. 22820

INTERNAL REVENUE CODE.

In view of the amendment of section 19.143–7 of Regulations 103, as amended, by Treasury Decision 5046 (C. B. 1941–1, 260), the last information return on Form 1042B (annual return of income tax withheld from Canadian addressees) required to be filed should be filed for the period January 1, 1941, to April 29, 1941, on or before March 15, 1942.

Advice is requested whether, in view of the amendment of section 19.143–7 of Regulations 103, as amended, by Treasury Decision 5046 (C. B. 1941–1, 260), an information return on Form 1042B (annual return of income tax withheld from Canadian addressees) should be filed for the period January 1, 1941, to April 29, 1941, on or before March 15, 1942, and whether this is the last return on Form 1042B required to be filed.

Treasury Decision 5046, supra, amended section 19.143–7 of Regulations 103, as amended by Treasury Decision 4979 (C. B. 1940–2, 138), by striking out the third sentence of the second paragraph thereof and substituting therefor the following sentence:

Every United States withholding agent shall make and file with the collector, in duplicate, an information return on Form 1042B, for the calendar year 1939, the calendar year 1940, and for the period January 1, 1941, to April 29, 1941, both dates inclusive, in addition to the withholding return on Form 1042 with respect to the items of income from which a tax of only 5 per cent was withheld from Canadian addressees.

Treasury Decision 5046, supra, was necessitated by the fact that Canada, effective April 30, 1941, increased to 15 per cent the tax rate of 5 per cent theretofore imposed upon income derived from sources within Canada by nonresidents thereof, including persons resident in the United States. Under the provisions of Article I(*c*) of the reciprocal tax convention between the United States and Canada, effective August 13, 1937 (C. B. 1937–2, 539), an increase in the rate of taxation by one of the contracting parties releases the other contracting party from the requirements of the convention. On May 2, 1941, the Canadian Minister at Washington formally notified the State Department of the increase in the rate of Canadian tax in this respect and of the recognition by Canada of the release of the United States from its obligations under the convention. On May 3, 1941, the State Department and the Treasury Department severally issued

press releases inviting the attention of withholding agents to the increase in the rate of tax to be withheld at the source in the case of residents of Canada. The increase from 5 per cent to 16½ per cent became effective as of April 30, 1941.

It is, therefore, held that in view of the amendment of section 19.143–7 of Regulations 103, as amended, by Treasury Decision 5046, supra, the last information return on Form 1042B required to be filed should be filed for the period January 1, 1941, to April 29, 1941, on or before March 15, 1942.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

SECTION 19.143–7: Return and payment of tax withheld.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5103, page 147.)

SECTION 19.143–7: Return and payment of tax withheld.

INTERNAL REVENUE CODE.

Payment with Treasury notes of Tax Series B–1943. (See I. T. 3521, page 122.)

SECTION 144.—PAYMENT OF CORPORATION INCOME TAX AT SOURCE

SECTION 19.144–1: Withholding in the case of non-resident foreign corporations.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5071, page 142.)

SECTION 19.144–1: Withholding in the case of non-resident foreign corporations.

INTERNAL REVENUE CODE.

Income from American securities held by the British Government under the Financial Powers (U. S. A. Securities) Act, 1941. (See I. T. 3522, page 146.)

SECTION 19.144–1: Withholding in the case of non-resident foreign corporations.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5103, page 147.)

SECTION 19.144–2: Aids to withholding agents in determining liability for withholding of tax.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5071, page 142.)

SECTION 147.—INFORMATION AT SOURCE.

SECTION 19.147–1: Return of information as to payments of $1,000 for 1939, $800 for 1940, and $750 for years thereafter.

INTERNAL REVENUE CODE.

Excess of aggregate premiums stated in an annuity policy over the discounted value of prepaid premiums. (See I. T. 3513, page 75.)

SECTION 19.147–3: Cases where no return of information required.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5103, page 147.)

SECTION 19.147–4: Return of information as to interest on corporate bonds.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5103, page 147.)

SECTION 149.—RETURNS OF BROKERS.

SECTION 19.149–1: Return of information by brokers. 1941–52–10943 T. D. 5105

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 19.—INCOME TAX.

Amending section 19.149–1 of Regulations 103, relating to return of information by brokers.

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

To Collectors of Internal Revenue and Others Concerned:

Section 19.149–1 of Regulations 103 [Part 19, Title 26, Code of Federal Regulations, 1940 Sup.], as amended by Treasury Decision 5015, approved October 22, 1940 [C. B. 1940–2, 147], is amended as follows:

(1) By striking out in the first paragraph the last sentence and that part of the next to the last sentence which reads as follows:

; and, except as provided in the fourth paragraph of this section, the form shall also show the total of the sales, and the total market value of the securities exchanged for the customer or account.

(2) By striking out the third paragraph.

(This Treasury decision is issued under the authority contained in sections 62 and 149 of the Internal Revenue Code (53 Stat., 32 and 65; 26 U. S. C., Sup. V, 62, 149).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved December 23, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 23, 1941, 3.36 p. m.)

SUPPLEMENT H.—NONRESIDENT ALIEN INDIVIDUALS.

SECTION 211.—TAX ON NONRESIDENT ALIEN INDIVIDUALS.

SECTION 19.211–7: Taxation of nonresident alien individuals. 1941–30–10789 I. T. 3494

INTERNAL REVENUE CODE.

If a nonresident alien residing in Canada has no office or place of business in the United States and is not engaged in a trade or business therein, he is taxable on fixed or determinable annual or periodical income received before April 30, 1941, from sources within the United States at the rate of 5 per cent. Such income received on or after that date, if not in excess of $24,000, is taxable at the rate of 16½ per cent. If such income received on or after April 30, 1941, exceeds $24,000, such nonresident alien will be liable for tax at the rate of 16½ per cent on the gross amount of such income, or will be liable for the sum of the normal tax, surtax, and defense tax, whichever method of computing the tax results in the larger amount.

Advice is requested whether Canadians who receive income from the United States during 1941 are liable for a tax at the rate of 5 per cent for the period to April 30, 1941, and at the rate of 16½ per cent thereafter, or whether they are liable to tax at the rate of 16½ per cent for the entire year.

Prior to April 30, 1941, the rate of 5 per cent was fixed by the reciprocal tax convention then existing between the United States and Canada. Under that convention, the fixed or determinable annual or periodical income from sources within the United States of nonresident aliens who were residents of Canada was subject to tax at the rate of 5 per cent, provided such nonresident aliens were not engaged in trade or business within the United States and did not have an office or place of business therein. Since, on April 30, 1941, the Government of the United States was released by the Government of Canada from its obligations under the tax convention, the rate of 5 per cent is applicable only to such income received prior to that date by nonresident aliens residing in Canada. If a nonresident alien residing in Canada has no office or place of business within the United States and is not engaged in trade or business therein, and received fixed or determinable annual or periodical income from sources within the United States on and after April 30, 1941, he will be liable to tax at the rate of 16½ per cent upon

such income, provided it does not exceed $24,000. If such income received on or after April 30, 1941, exceeds $24,000, the nonresident alien will be liable to tax either at the rate of 16½ per cent upon the gross amount of such income, or will be liable for the sum of the normal tax, surtax, and defense tax, whichever method of computing the tax results in the larger amount.

SECTION 212.--GROSS INCOME.

SECTION 19.212-2: Exclusion of earnings of foreign ships from gross income. (Also Section 231, Section 19.231-3.) — 1941-47-10903, I. T. 3517

INTERNAL REVENUE CODE.

Income from sources within the United States derived by nonresident alien individuals and foreign corporations from the operation of ships documented under the laws of the Commonwealth of the Philippines is not exempt from Federal income tax under sections 212(b) and 231(d) of the Internal Revenue Code.

Advice is requested whether the income of nonresident alien individuals and foreign corporations derived from the operation of ships documented under the laws of the Commonwealth of the Philippines is exempt from Federal income taxation under sections 212(b) and 231(d) of the Internal Revenue Code.

Under section 212(b) and section 231(d) of the Code, the income from sources within the United States of nonresident alien individuals and foreign corporations which consists of 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 need not be included in gross income and is exempt from Federal income taxation.

Act No. 637 of the Commonwealth of the Philippines, approved June 10, 1941, entitled "An Act to exempt nonresident citizens of the United States and corporations organized under the laws of the United States from certain taxes," provides in part as follows:

SECTION 1. The income of nonresident citizens of the United States or corporations organized under the laws of the United States or any of its political subdivisions, which consist exclusively of earnings derived from the operation of ships documented under the laws of the United States, except income derived by them from the operation of a ship or ships in the Philippine coastwise trade, shall not be included as a part of the gross income of such citizens or corporations and shall be exempt from the tax established under Title II (Income Tax) of the National Internal Revenue Code.

SEC. 2. The income derived exclusively by nonresident citizens of the United States or by corporations organized under the laws of the United States or any of its political subdivisions from the operation of ships documented under the laws of the United States, except income derived by such citizens or corporations from the operation of ship or ships in the Philippine coastwise trade, shall not be included in the computation of the residence tax collectible under Commonwealth Act numbered 465, entitled "An act to impose a residence tax."

In the application of the provisions of section 212(b) and section 231(d) of the Internal Revenue Code, the Philippine Islands can not be considered a foreign country since they are a possession of the United States for Federal income tax purposes, notwithstanding the

establishment of the Commonwealth of the Philippines under the Act of March 24, 1934 (48 Stat., 456). (See section 19.251–4 of Regulations 103; see also I. T. 2990, C. B. XV–2, 170 (1936).) Furthermore, the above-quoted sections of Commonwealth Act No. 637 specifically exclude from the exemption provisions contained therein income derived from the operation of a ship or ships documented under the laws of the United States engaged in Philippine coastwise trade. Such income is subject to the income tax imposed by the Philippine National Internal Revenue Code and to the residence tax of the Commonwealth of the Philippines.

In view of the foregoing, it is held that income of nonresident alien individuals and foreign corporations derived from the operation of ships documented under the laws of the Commonwealth of the Philippines is not exempt from Federal income tax under sections 212(b) and 231(d) of the Internal Revenue Code if such earnings constitute income from sources within the United States under section 119 of the Internal Revenue Code and the regulations prescribed thereunder.

SUPPLEMENT I.—FOREIGN CORPORATIONS.

SECTION 231.—TAX ON FOREIGN CORPORATIONS.

SECTION 19.231–3: Exclusion of earnings of foreign ships from gross income.

INTERNAL REVENUE CODE.

Ships documented under the laws of the Commonwealth of the Philippines. (See I. T. 3517, page 153.)

SUPPLEMENT J.—POSSESSIONS OF THE UNITED STATES.

SECTION 251.—INCOME FROM SOURCES WITHIN POSSESSIONS OF UNITED STATES.

SECTION 19.251–1: Citizens of the United States and domestic corporations deriving income from sources within a possession of the United States. 1941–27–10766 I. T. 3488

INTERNAL REVENUE CODE.

The benefits of the provisions of section 251 of the Internal Revenue Code, relating to income from sources within possessions of the United States, may be applied to the personnel attached to United States naval vessels only for such periods as the vessels are within the territorial waters of a United States possession.

Advice is requested whether the benefits of section 251 of the Internal Revenue Code may be applied for the full taxable year to personnel attached to United States naval vessels which are based in

territorial waters of a possession of the United States even though such vessels may be away from the territorial limits of the possession.

The pertinent provisions of section 251 read as follows:

(a) GENERAL RULE.—In the case of citizens of the United States or domestic corporations, satisfying the following conditions, gross income means only gross income from sources within the United States—

(1) If 80 per centum or more of the gross income of such citizen or domestic corporation (computed without the benefit of this section), for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States; and

* * * * * * *

(3) If, in case of such citizen, 50 per centum or more of his gross income (computed without the benefit of this section), for such period or such part thereof was derived from the active conduct of a trade or business within a posession of the United States either on his own account or as an employee or agent of another.

When compensation is received for services rendered, the "source" of the income is the place where the services are rendered rather than the place from which payment is made for such services. In other words, the place where the services are rendered is the controlling factor in determining the source of compensation. This principle of the source of compensation is based upon the provisions of section 119 of the Internal Revenue Code and the corresponding sections of prior Revenue Acts. Section 119 of the Code provides in part as follows:

(a) GROSS INCOME FROM SOURCES IN UNITED STATES.—The following items of gross income shall be treated as income from sources within the United States:

* * * * * * *

(3) PERSONAL SERVICES.—Compensation for labor or personal services performed in the United States * * *

* * * * * * *

(c) GROSS INCOME FROM SOURCES WITHOUT UNITED STATES.—The following items of gross income shall be treated as income from sources without the United States:

* * * * * * *

(3) Compensation for labor or personal services performed without the United States * * *.

(See also section 19.119–4 and section 19.119–7 of Regulations 103.)

Accordingly, it is held that the benefits of the provisions of section 251 of the Internal Revenue Code may be applied to the personnel attached to United States naval vessels only for such periods as the vessels are within the territorial waters of a possession of the United States.

SECTION 19.251–1: Citizens of the United States and dimestic corporations deriving income from sources within a possession of the United States.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5057, page 97.)

SUPPLEMENT K.—CHINA TRADE ACT CORPORATIONS.

SECTION 262.—CREDIT AGAINST NET INCOME.

SECTION 19.262–4: Withholding by a China Trade Act Corporation.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5071, page 142.)

SUPPLEMENT M.—INTEREST AND ADDITIONS TO THE TAX.

SECTION 291.—FAILURE TO FILE RETURN.

SECTION 19.291–1: Addition to tax in case of failure to file return. 1941–28–10777 T. D. 5058

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PARTS 3, 9, AND 19.—INCOME TAX.

Amending section 19.291–1 of Regulations 103 and article 291–1 of Regulations 101 and 94, relating to addition to the tax in case of failure to file return.

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

To Collectors of Internal Revenue and Others Concerned:

Section 19.291–1 of Regulations 103 [Part 19, Title 26, Code of Federal Regulations, 1940 Sup.], article 291–1 of Regulations 101 [section 9.291–1, Title 26, Code of Federal Regulations, 1939 Sup.], and article 291–1 of Regulations 94 [section 3.291–1, Title 26, Code of Federal Regulations], are amended as follows:

PARAGRAPH 1. The first sentence of section 19.291–1 of Regulations 103 is amended to read:

In case of failure to make and file a return required by chapter 1 within the prescribed time, a certain per cent of the amount of the tax is added to the tax unless failure to file the return within the prescribed time is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect.

PAR. 2. The first sentence of article 291–1 of Regulations 101 and 94 is amended to read:

In case of failure to make and file a return required by Title I within the prescribed time, a certain per cent of the amount of the tax is added to the tax unless failure to file the return within the prescribed time is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect.

PAR. 3. The third sentence of section 19.291–1 of Regulations 103 and article 291–1 of Regulations 101 and 94 is stricken out.

PAR. 4. The fourth and fifth sentences of section 19.291–1 of Regulations 103 and article 291–1 of Regulations 101 and 94 are stricken out and there is substituted therefor the following:

A taxpayer who wishes to avoid the addition to the tax for delinquency must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the return on time in the form of an affidavit which should be filed with the collector, who, unless otherwise directed by the Commissioner, will

forward the affidavit to the Commissioner, and, if the Commissioner determines that the delinquency was due to a reasonable cause, and not to willful neglect, the addition to the tax will not be assessed.

(This Treasury decision is issued under the authority contained in sections 62 and 291 of the Internal Revenue Code (53 Stat., 32, 88, 26 U. S. C., Sup. V, 62, 291) and sections 62 and 291 of the Revenue Acts of 1938 and 1936 (52 Stat., 480, 540, 26 U. S. C., Sup. V, 62, 291; 49 Stat., 1673, 1727, 26 U. S. C., Sup. II, 62, 291).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved July 8, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register July 9, 1941, 4.23 p. m.)

SUPPLEMENT T.—INDIVIDUALS WITH GROSS INCOME FROM CERTAIN SOURCES OF $3,000 OR LESS.

SECTION 400.—IMPOSITION OF TAX.

SECTION 19.400–1: Scope and application of Supplement T. (Also Section 401, Section 19.401–1; Section 402, Section 19.402–1.) — 1941–40–10851 T. D. 5079

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 19.—INCOME TAX.

Regulations 103 amended.—Optional tax on individuals with gross income from certain sources of $3,000 or less.—Section 102, Revenue Act of 1941 (Public Law 250, Seventy-seventh Congress), approved September 20, 1941.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 103 [Part 19, Title 26, Code of Federal Regulations, 1940 Sup.] to the Revenue Act of 1941 (Public Law 250, Seventy-seventh Congress), approved September 20, 1941, such regulations are amended as follows:

PARAGRAPH 1. The following is inserted immediately after section 19.396–1 (added by T. D. 5036 [C. B. 1942–1, 276]):

SEC. 102. OPTIONAL TAX ON INDIVIDUALS WITH CERTAIN GROSS INCOME OF $3,000 OR LESS. (Revenue Act of 1941, Title I.)

(a) OPTIONAL TAX.—The Internal Revenue Code is amended by inserting after section 396 the following new Supplement:

"SUPPLEMENT T.—INDIVIDUALS WITH GROSS INCOME FROM CERTAIN SOURCES OF $3,000 OF LESS.

"SEC. 400. IMPOSITION OF TAX.

"In lieu of the tax imposed under sections 11 and 12, an individual may elect, for each taxable year, to pay the tax shown in the following table if his gross income for such taxable year is $3,000 or less and

consists wholly of one or more of the following: Salary, wages, compensation for personal services, dividends, interest, rent, annuities, or royalties:

"If the gross income [less $400 for each dependent] is over—	But not over—	The tax shall be—	
		Single person (not head of a family).	Head of family or married person.
$1	$750	$0	$0
$750	775	1	0
$775	800	2	0
$800	825	3	0
$825	850	5	0
$850	875	7	0
$875	900	9	0
$900	925	11	0
$925	950	14	0
$950	975	16	0
$975	1,000	18	0
$1,000	1,025	20	0
$1,025	1,050	22	0
$1,050	1,075	24	0
$1,075	1,100	26	0
$1,100	1,125	29	0
$1,125	1,150	31	0
$1,150	1,175	33	0
$1,175	1,200	35	0
$1,200	1,225	37	0
$1,225	1,250	39	0
$1,250	1,275	42	0
$1,275	1,300	44	0
$1,300	1,325	46	0
$1,325	1,350	48	0
$1,350	1,375	50	0
$1,375	1,400	52	0
$1,400	1,425	55	0
$1,425	1,450	57	0
$1,450	1,475	59	0
$1,475	1,500	61	0
$1,500	1,525	63	1
$1,525	1,550	65	2
$1,550	1,575	68	3
$1,575	1,600	70	5
$1,600	1,625	72	6
$1,625	1,650	74	7
$1,650	1,675	76	9
$1,675	1,700	78	11
$1,700	1,725	80	13
$1,725	1,750	83	15
$1,750	1,775	85	17
$1,775	1,800	87	19
$1,800	1,825	89	22
$1,825	1,850	91	24
$1,850	1,875	93	26
$1,875	1,900	96	28
$1,900	1,925	98	30
$1,925	1,950	100	32
$1,950	1,975	102	35
$1,975	2,000	104	37
$2,000	2,025	106	39
$2,025	2,050	109	41
$2,050	2,075	111	43
$2,075	2,100	113	45
$2,100	2,125	115	48

"If the gross income [less $400 for each dependent] is over—	But not over—	The tax shall be—	
		Single person (not head of a family).	Head of family or married person.
$2,125	$2, 150	$117	$50
$2,150	2, 175	119	52
$2,175	2, 200	122	54
$2,200	2, 225	124	56
$2,225	2, 250	126	58
$2,250	2, 275	128	60
$2,275	2, 300	130	63
$2,300	2, 325	132	65
$2,325	2, 350	134	67
$2,350	2, 375	137	69
$2,375	2, 400	139	71
$2,400	2, 425	141	73
$2,425	2. 450	143	76
$2,450	2, 475	145	78
$2,475	2, 500	147	80
$2,500	2, 525	150	82
$2,525	2, 550	152	84
$2,550	2, 575	154	86
$2,575	2, 600	156	89
$2,600	2, 625	158	91
$2,625	2, 650	160	93
$2,650	2, 675	163	95
$2,675	2. 700	165	97
$2,700	2. 725	167	99
$2,725	2. 750	169	102
$2,750	2. 775	172	104
$2,775	2. 800	174	106
$2,800	2. 825	177	108
$2,825	2, 850	180	110
$2,850	2, 875	183	112
$2,875	2, 900	186	114
$2,900	2, 925	189	117
$2,925	2, 950	191	119
$2,950	2, 975	194	121
$2,975	3, 000	197	123

In applying the above schedule to determine the tax of a taxpayer with one or more dependents there shall be subtracted from his gross income $400 for each such dependent.

* * * * * * *

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE (Revenue Act of 1941, Title I.)

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

SEC. 19.400–1. *Scope and application of Supplement T.*—In lieu of the tax imposed under sections 11 and 12, an individual may elect to pay the tax imposed under section 400, if his gross income does not exceed $3,000, and if his gross income consists wholly of one or more of the following: Salary, wages, compensation for personal services, dividends, interest, rent, annuities, or royalties. For the purpose of the $3,000 limitation, the amount of an individual's gross income shall be determined without subtracting any amount on account of such individual's dependents. For example, A has a gross income, consisting of salary, of $3,200 for 1941. He has two dependents. For the purpose of the $3,000 limitation, his gross income is $3,200, not $2,400, and consequently he may not compute his tax under Supplement T. An individual deriving any

other kind of income such as income from the conduct of a business or from a trust of which he is a beneficiary, or gains from the sale or exchange of property, may not compute his tax under Supplement T. If any individual derives income from a partnership of which he is a member or from a trust of which he is a beneficiary, and the partnership or trust previously derived the income distributed to him from rent, he will be considered to have received income from a partnership or trust, rather than from rent, and consequently will not be entitled to compute his tax under Supplement T. A husband and wife living together on the last day of the taxable year may file separate returns on Form 1040A, if the gross income of each is from the prescribed sources and does not exceed $3,000, or they may file a single joint return, if their combined gross income is from the prescribed sources and does not exceed $3,000. If they file separate returns, the tax liability of each under section 400 is the tax imposed upon a single person. If such husband and wife file separate returns and only one elects to make a return on Form 1040A, the tax liability of the one so electing is the tax imposed upon a single person. If they file a single joint return or if only one spouse makes a return because the other spouse has no gross income, the tax liability is the tax imposed upon a married person.

In order to determine the amount of his tax an individual merely ascertains the amount of his gross income, subtracts $400 for each dependent for whom a credit is allowable (see Example (3) in section 19.401–1), and refers to the schedule set forth in section 400 to find the amount of his tax. If the taxpayer is a single person who is not the head of a family, his tax is set forth in the third column of the schedule. If he is a married person or the head of a family, his tax is set forth in the fourth column. Under the schedule no tax is imposed upon a single person whose gross income less credit for dependents does not exceed $750, or upon a married person or the head of a family whose gross income less credit for dependents does not exceed $1,500.

SEC. 102. OPTIONAL TAX ON INDIVIDUALS WITH CERTAIN GROSS INCOME OF $3,000 OR LESS. (Revenue Act of 1941, Title I.)

(a) OPTIONAL TAX.—The Internal Revenue Code is amended by inserting after section 396 the following new Supplement:

* * * * * * *

"SEC. 401. RULES FOR APPLICATION OF SECTION 400.

"For the purposes of this Supplement—

"(a) DEFINITIONS—

"(1) 'Married person' means a married person living with husband or wife.

"(2) 'Dependent' means a person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective, excluding as a dependent, in the case of a head of a family, one who would be excluded under section 25(b) (2) (B).

"(b) DETERMINATION OF STATUS.—The determination of whether a person is living with husband or wife, is a head of a family, or is a dependent, shall be made as of the last day of the taxpayer's taxable year.

"(c) SEPARATE RETURN OF HUSBAND AND WIFE.—If a husband and wife living together file separate returns, each shall be treated as a single person.

"(d) MARRIED PERSONS NOT LIVING WITH HUSBAND OR WIFE.—A married person not a head of a family and not living with husband or wife shall be treated as a single person.

* * * * * * *

SEC. 19.401–1. *Rules for application of schedule in section 400.*—The determination of whether a taxpayer is a married person or the head of a family, or whether he has a dependent, is to be made as of the last day of such taxpayer's taxable year. The fact that the taxpayer's status changes during such taxable year is not material.

Example (1). A has a gross income of $1,640, derived wholly from wages. He was married on July 1, 1941, and he and his wife were living together on the last day of the taxable year. He has no dependents. His wife has no gross income. In order to ascertain the tax imposed upon him for the calendar year 1941 under

section 400, A refers to column 4 of the schedule (applicable to a married person), and finds that the tax levied upon a taxpayer whose gross income falls within the bracket running from $1,625 to $1,650 is $7. Since $1,640 is within this bracket, A's tax is $7.

Example (2). B, an unmarried person, has a gross income of $2,636 derived wholly from rent and dividends. During the first seven months of 1941, B's status is that of head of a family, but on the last day of the taxable year his status is that of a single person not the head of a family. To determine his tax, B refers to the third column of the schedule (applicable to a single person who is not the head of a family) and finds that the tax levied upon an individual whose gross income falls within the bracket running from $2,625 to $2,650 is $160. Since $2,636 is within this bracket, B's tax is $160.

Example (3). C has a gross income of $2,680 for the calendar year 1941, derived wholly from wages. His wife dies on October 1, and on the last day of the taxable year he is supporting and maintaining a home for two dependent children both of whom are under the age of 18. Since C would not occupy the status of head of a family except for the fact that he maintains a home for such children no amount may be subtracted from gross income on account of one of such children. Accordingly, to ascertain his tax, C subtracts only $400 from $2,680, refers to the fourth column of the schedule (applicable to the head of a family), and finds that the tax in the case of a taxpayer whose gross income falls in the bracket running from $2,275 to $2,300 is $63. Since $2,280 falls within this bracket, C's tax is $63.

SEC. 102. OPTIONAL TAX ON INDIVIDUALS WITH CERTAIN GROSS INCOME OF $3,000 OR LESS. (Revenue Act of 1941, Title I.)

(a) OPTIONAL TAX.—The Internal Revenue Code is amended by inserting after section 396 the following new Supplement:

* * * * * * *

"SEC. 402. MANNER OF ELECTION.

"The election referred to in section 400 shall be considered to have been made if the taxpayer files the return prescribed for this Supplement and such election shall be irrevocable. If the taxpayer for any taxable year has filed a return computing his tax without regard to this Supplement, he may not thereafter elect for such year to compute his tax under this Supplement.

* * * * * * *

SEC. 19.402–1. *Manner of election to compute tax under Supplement T.*—A taxpayer elects to compute his income tax under Supplement T by filing a return of his gross income on Form 1040A, the form prescribed for this Supplement. If a husband and wife both make such an election, they may file a joint return reporting their aggregate gross income or they may file separate returns reporting their respective gross incomes. If they file separate returns, the tax of each shall be computed by reference to the third column of the schedule set forth in section 400.

An election under Supplement T once made for the taxable year may not be revoked by an amended return or otherwise, but a new election is allowed for each subsequent taxable year. If for any taxable year the taxpayer makes a return without regard to Supplement T, he may not thereafter elect to have his tax computed under such supplement for that taxable year.

SEC. 102. OPTIONAL TAX ON INDIVIDUALS WITH CERTAIN GROSS INCOME OF $3,000 OR LESS. (Revenue Act of 1941, Title I.)

(a) OPTIONAL TAX.—The Internal Revenue Code is amended by inserting after section 396 the following new Supplement:

* * * * * * *

"SEC. 403. CREDITS AGAINST TAX NOT ALLOWED.

"Section 31 (relating to foreign tax credit) and section 32 (relating to credit for taxes withheld at source) shall not apply with respect to the tax imposed by this Supplement.

"SEC. 404. CERTAIN TAXPAYERS NOT ELIGIBLE.

"This Supplement shall not apply to a nonresident alien individual, or an estate or trust."

* * * * * * *

(This Treasury decision is issued under the authority contained in section 62 of the Internal Revenue Code (53 Stat., 32; 26 U. S. C., Sup. V, 62) and section 102 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved October 4, 1941.

HERBERT E. GASTON,
Acting Secretary of the Tresaury.

(Filed with the Division of the Federal Register October 6, 1941, 11.22 a. m.)

SECTION 401.—RULES FOR APPLICATION OF SECTION 400.

SECTION 19.401–1: Rules for application of schedule in section 400.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5079, page 157.)

SECTION 402.—MANNER OF ELECTION.

SECTION 19.402–1: Manner of election to compute tax under Supplement T.

INTERNAL REVENUE CODE.

Regulations 103, amended. (See T. D. 5079, page 157.)

SECTION 19.402–1: Manner of election to compute tax under Supplement T. 1941–52–10938 I. T. 3524

INTERNAL REVENUE CODE.

If a taxpayer files an income tax return for any taxable year under the simplified method provided by Supplement T of the Internal Revenue Code, as added by section 102 of the Revenue Act of 1941, he may not thereafter, either before, on, or after March 15, file a return for that year under the general provisions of the income tax law.

Advice is requested whether the first sentence of the second paragraph of section 19.402–1, Regulations 103, as amended by Treasury Decision 5079 (page 157, this Bulletin), relating to the optional tax on individuals with certain gross income of $3,000 or less, which provides that "An election under Supplement T once made for any taxable year may not be revoked by an amended return or otherwise * * *," means that a taxpayer is barred from filing an amended return on or before the due date of the return after he has filed a return under Supplement T of the Internal Revenue Code, or whether only the filing of an amended return after the due date is prohibited.

Section 400 of the Internal Revenue Code, as added by section 102 of the Revenue Act of 1941, provides in part as follows:

SEC. 400. IMPOSITION OF TAX.

In lieu of the tax imposed under sections 11 and 12, an individual may elect, for each taxable year, to pay the tax shown in the following table if his gross income for such taxable year is $3,000 or less and consists wholly of one or more of the following: Salary, wages, compensation for personal services, dividends, interest, rent, annuities, or royalties:

Section 402 of the Code, as added by section 102 of the Revenue Act of 1941, provides that:

SEC. 402. MANNER OF ELECTION.

The election referred to in section 400 shall be considered to have been made if the taxpayer files the return prescribed for this Supplement and such election shall be irrevocable. If the taxpayer for any taxable year has filed a return computing his tax without regard to this Supplement, he may not thereafter elect for such year to compute his tax under this Supplement.

Treasury Department press release dated October 6, 1941 (Press Service No. 27–88), reads in part as follows:

This simplified method of computing the tax [under Supplement T] is at the option of the taxpayer. A new election may be made each year. Once an election has been made for any year, however, it is irrevocable for that year. Therefore, if a taxpayer has filed a return under the simplified method for any taxable year, he may not thereafter (either before, on or after March 15) file a return under the general provisions for that year. Conversely, if he has filed a return under the general provisions for any taxable year, he may not thereafter file a return under the simplified method for that year. (Brackets supplied.)

In view of the foregoing, the inquiry whether the sentence in the regulations above referred to means that a taxpayer, who has filed a return under Supplement T, is barred from filing an amended return on or before the due date of the return is answered in the affirmative.

SUBCHAPTER B.—DECLARED VALUE EXCESS-PROFITS TAX.

SECTION 600.—RATE OF TAX.

1941–50–10926
Mim. 5288

Computation of declared value excess-profits tax prescribed by section 302 of the Revenue Act of 1941, amending section 600 of the Internal Revenue Code—corporation income and declared value excess-profits tax returns for the fiscal years ending July 31, 1941, to November 30, 1941, inclusive.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 22, 1941.

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

1. Section 302 of the Revenue Act of 1941, approved September 20, 1941 (Public law 250, Seventy-seventh Congress, first session), amends section 600 of the Internal Revenue Code (53 Stat., Part I) by incorporating into the rate of the declared value excess-profits

tax the 10 per cent defense tax prescribed in the amendment to the Code effected by section 204 of the Revenue Act of 1940. Section 600, as now amended, reads:

SEC. 600. RATE OF TAX.

If any corporation is taxable under section 1200 with respect to any year ending June 30, there shall be imposed upon its net income for the income-tax taxable year ending after the close of such year, an excess-profits tax equal to the sum of the following:

6⁶⁄₁₀ per centum of such portion of its net income for such income-tax taxable year as is in excess of 10 per centum and not in excess of 15 per centum of the adjusted declared value;

13⅔₁₀ per centum of such portion of its net income for such income-tax taxable year as is in excess of 15 per centum of the adjusted declared value.

2. Corporation income and declared value excess-profits tax return forms for the calendar year 1941 and fiscal years ending in 1942 are in course of preparation and will be printed in due course. New return forms will not be printed for declared value excess-profits tax purposes for the fiscal years July 31, 1941, to November 30, 1941, inclusive. The Form 1120 printed for the calendar year 1940 should be utilized for the declared value excess-profits tax applicable to such fiscal years by altering the rate of tax in column 2 on line 6 in the schedule headed "Declared Value Excess-Profits and Declared Value Excess-Profits Defense Tax Computation," appearing on page 2 of the form, to read "6⁶⁄₁₀%" and the rate in column 2 on line 7 in such schedule to read "13⅔₁₀%," by completing the computation with the altered rates through line 8 of such schedule, and by disregarding completely lines 9 and 10 of such schedule.

3. The amount appearing on line 8 under the foregoing instructions will be the only tax due under the schedule referred to, and such amount should be entered as item 40 on page 1 of the Form 1120.

4. The return on Form 1120 for fiscal years ending July 31, 1941, to November 30, 1941, will be given the usual preliminary examination in the collectors' offices, with particular attention being given to the computation of the declared value excess-profits tax to insure that the correct amount thereof is computed in the schedule mentioned and is carried forward to line 40 on the face of the return.

5. Correspondence relating to the provisions of this mimeograph should refer to its number and the symbols IT:TM.

GUY T. HELVERING,
Commissioner.

CHAPTER 2.—ADDITIONAL INCOME TAXES.

SUBCHAPTER B—EXCESS PROFITS TAX.

1941–43–10879
T. D. 5091

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 21.—DECLARED VALUE EXCESS-PROFITS TAX.

Regulations relating to the declared value excess-profits tax imposed by Subchapter B of Chapter 2 of the Internal Revenue Code, as amended, for income-tax taxable years ending after June 30, 1941.*

*Sections 21.0 to 21.9 issued under the authority contained in sections 62 and 608 of the Internal Revenue Code (53 Stat., 32, 111; 26 U. S. C., Sup. V, 62, 608) and the statutory provisions which such sections of the regulations follow.

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

'o Collectors of Internal Revenue and Others Concerned:

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SECTION 21.0. *Introductory.*—(*a*) Chapter 6 (Capital Stock Tax) f the Internal Revenue Code (53 Stat., Part 1), as amended, and pplicable for capital stock tax years ending June 30, beginning with he year ending June 30, 1941, provides in part as follows:

SEC. 1200. TAX. [As amended by section 205 of the Revenue Act of 1940 and section 301 of the Revenue Act of 1941.]

(a) DOMESTIC CORPORATIONS.—For each year ending June 30, beginning with the year ending June 30, 1939, there shall be imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of $1.25 for each $1,000 of the adjusted declared value of its capital stock.

(b) FOREIGN CORPORATIONS.—For each year ending June 30, beginning with the year ending June 30, 1939, there shall be imposed upon every foreign corporation with respect to carrying on or doing business in the United States for any part of such year an excise tax equivalent to $1.25 for each $1,000 of the adjusted declared value of capital employed in the transaction of its business in the United States.

SEC. 301. CAPITAL STOCK TAX. [Revenue Act of 1941.]

* * * * * * *

(d) EFFECTIVE DATE.—This section shall be effective only with respect to the year ending June 30, 1941, and succeeding years.

SEC. 1201. EXEMPTIONS.

(a) The taxes imposed by section 1200 shall not apply—

(1) CORPORATIONS EXEMPT FROM INCOME TAX.—To any corporation enumerated in section 101;

(2) INSURANCE COMPANIES.—To any insurance company subject to the tax imposed by section 201, 204, or 207.

(b) COMMON TRUST FUNDS.—

For exemption of common trust funds from the capital stock tax, see section 169(b) of Chapter 1.

SEC. 1202. ADJUSTED DECLARED VALUE. [As amended by section 301 of the Revenue Act of 1939 and section 202 of the Revenue Act of 1941.]

(a) DECLARATION YEAR.—

(1) The adjusted declared value shall be determined with respect to three-year periods beginning with the year ending June 30, 1938, and each third year thereafter. The first year of each such three-year period, or, in case of a corporation not subject to the tax imposed for such year, the first year of such three-year period for which the corporation is subject to such tax, shall constitute a "declaration year."

(2) For the declaration year of the first three-year period the adjusted declared value shall be the value as declared by the corporation in its return under section 601 of the Revenue Act of 1938, 52 Stat. 565, for the year ended June 30, 1938, or in the case of a corporation not subject to the tax imposed for such year, the value as declared in its return filed under this chapter for the first year with respect to which it is subject to the tax. For each subsequent three-year period, the adjusted declared value for a declaration year shall be the value as declared by the corporation in its return for such declaration year. The value declared by a corporation in its return for a declaration year (which declaration of value cannot be amended) shall be as of the close of its last income-tax taxable year ending with or prior to the close of such declaration year (or as of the date of organization in the case of a corporation having no income-tax taxable year ending with or prior to the close of such declaration year).

(b) SUBSEQUENT YEARS.—

(1) DOMESTIC CORPORATIONS.—For each year of any three-year period subsequent to the declaration year, the adjusted declared value in the case of a domestic corporation shall be the value declared in the return for the declaration year plus—

(A) the cash, and the fair market value of property, paid in for stock or shares,

(B) paid-in surplus and contributions to capital,

(C) its net income, computed without the deduction of the tax imposed by Subchapter E of Chapter 2,

(D) its income wholly exempt from Federal income tax, and

(E) the amount, if any, by which the deduction for depletion exceeds the amount which would be allowable if computed without regard to discovery value or to percentage depletion, under section 114(b) (2), (3), or (4) of Chapter 1 or a corresponding section of a later Revenue Act;

and minus—

(i) the cash, and the fair market value of property, distributed to shareholders,

(ii) the amount disallowed as a deduction by section 24(a) (5) of chapter 1 or a corresponding provision of a later Revenue Act, and

(iii) the excess of the deductions allowable for income tax purposes (not including the deduction for the tax imposed by Subchapter E of Chapter 2) over its gross income.

The adjustments provided in this paragraph shall be made for each income-tax taxable year included in the three-year period from the date as of which the value was declared in the return for the declaration year to the close of the last income-tax taxable year ending with or prior to the close of the year for which the tax is imposed by this section. The amount of such adjustment for each such year shall be computed (on the basis of a separate return) according to the income tax law applicable to such year.

(2) FOREIGN CORPORATIONS.—For each year of any three-year period subsequent to the declaration year, the adjusted declared value in the case of a foreign corporation shall be the value declared in the return for the declaration year adjusted (for the same income-tax taxable years as in the case of a domestic corporation), in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, to reflect increases or decreases in the capital employed in the transaction of its business in the United States.

(c) CORPORATIONS IN BANKRUPTCY OR RECEIVERSHIP.—The capital-stock tax year beginning with or within an income-tax taxable year within which bankruptcy or receivership, due to insolvency, of a domestic corporation, is terminated shall constitute a declaration year. In such case the adjusted declared value of any subsequent year of the three-year period shall be determined on the basis of the value declared in the return for such declaration year.

(d) CREDIT FOR CHINA TRADE ACT CORPORATIONS.—For the purpose of the tax imposed by section 1200 there shall be allowed in the case of a corporation organized under the China Trade Act, 1922, 42 Stat. 849, (U. S. C., Title 15, c. 4), as a credit against the adjusted declared value of its capital stock, an amount equal to the proportion of such adjusted declared value which the par value of the shares of stock of the corporation, owned on the last day of the taxable year by (1) persons resident in China, the United States, or possessions of the United States, and (2) individual citizens of the United States or China wherever resident, bears to the par value of the whole number of shares of stock of the corporation outstanding on such date. For the purposes of this subsection shares of stock of a corporation shall be considered to be owned by the person in whom the equitable right to the income from such shares is in good faith vested; and as used in this subsection the term "China" shall have the same meaning as when used in the China Trade Act, 1922.

(e) ADDITIONAL DECLARATION YEARS.—In the case of any domestic corporation, the year ending June 30, 1939, and the year ending June 30, 1940, shall each, if not otherwise a declaration year, constitute an additional declaration year if with respect to such year (1) the taxpayer so elects (which election cannot be changed) in its return filed before the expiration of the statutory filing period or any authorized extension thereof, and (2) the value declared by the taxpayer is in excess of the adjusted declared value computed under paragraph (1) of subsection (b). If, under this subsection, the year ending June 30, 1939, is a declaration year, the computation, under paragraph (1) of subsection (b), of the adjusted declared value for the year ending June 30, 1940, shall be made on the basis of the value declared for the year ending June 30, 1939.

* * * * * * *

(b) Subchapter B of Chapter 2 of the Internal Revenue Code, as amended and applicable to income-tax taxable years ending after June 30, 1941, provides as follows:

SEC. 600. RATE OF TAX. [As amended by section 204 of the Revenue Act of 1940, section 506 of the Second Revenue Act of 1940, and section 302 of the Revenue Act of 1941.]

If any corporation is taxable under section 1200 with respect to any year ending June 30, there shall be imposed upon its net income for the income-tax taxable year ending after the close of such year, a declared value excess-profits tax equal to the sum of the following:

6⅘ per centum of such portion of its net income for such income-tax taxable year as is in excess of 10 per centum and not in excess of 15 per centum of the adjusted declared value;

13⅗ per centum of such portion of its net income for such income-tax taxable year as is in excess of 15 per centum of the adjusted declared value.

SEC. 601. ADJUSTED DECLARED VALUE.

The adjusted declared value shall be determined as provided in section 1202 as of the close of the preceding income-tax taxable year (or as of the date of organization if it had no preceding income-tax taxable year). If the income-tax taxable year in respect of which the tax under section 600 is imposed is a period of less than 12 months, such adjusted declared value shall be reduced to an amount which bears the same ratio thereto as the number of months in the period bears to 12 months.

SEC. 602. NET INCOME. [As amended by section 202 of the Revenue Act of 1941.]

For the purposes of this subchapter the net income shall be the same as the net income for income-tax purposes for the year in respect of which the tax under section 600 is imposed, computed without the deduction of the tax imposed by section 600 or the tax imposed by Subchapter E of Chapter 2, but with a credit against net income equal to the credit for dividends received provided in section 26(b) of chapter 1.

SEC. 603. OTHER LAWS APPLICABLE.

All provisions of law (including penalties) applicable in respect of the taxes imposed by chapter 1, shall, insofar as not inconsistent with this subchapter, be applicable in respect of the tax imposed by section 600, except that the provisions of section 131 of that chapter shall not be applicable.

SEC. 604. PUBLICITY OF RETURNS.

For provisions with respect to publicity of returns under this subchapter, see subsection (a) (2) of section 55.

(*c*) Section 53 of Chapter 1 of the Internal Revenue Code provides in part:

SEC. 53. TIME AND PLACE FOR FILING RETURNS.

(a) TIME FOR FILING.—

(1) GENERAL RULE.—Returns made on the basis of the calendar year shall be made on or before the 15th day of March following the close of the calendar year. Returns made on the basis of a fiscal year shall be made on or before the 15th day of the third month following the close of the fiscal year.

(2) EXTENSION OF TIME.—The Commissioner may grant a reasonable extension of time for filing returns, under such rules and regulations as he shall prescribe with the approval of the Secretary. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

(b) TO WHOM RETURN MADE.—

* * * * * * *

(2) CORPORATIONS.—Returns of corporations shall be made to the collector of the district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in the United States, then to the collector at Baltimore, Maryland.

(*d*) Section 145 of Chapter 1 of the Internal Revenue Code provides in part:

SEC. 145. PENALTIES.

(a) FAILURE TO FILE RETURNS, SUBMIT INFORMATION, OR PAY TAX.—Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this chapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) FAILURE TO COLLECT AND PAY OVER TAX, OR ATTEMPT TO DEFEAT OR EVADE TAX.—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) PERSON DEFINED.—The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

* * * * * * *

(*e*) Section 62 of Chapter 1 of the Internal Revenue Code provides:

SEC. 62. RULES AND REGULATIONS.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

(*f*) Pursuant to the above-quoted provisions of the Internal Revenue Code and other provisions of the Code, the following regulations are hereby prescribed with respect to the declared value excess-profits tax imposed by the Internal Revenue Code for income-tax taxable years ending after June 30, 1941: *

SECTION 21.1. *Definitions.*—As used in these regulations, the term—

(*a*) "*Adjusted declared value*" means in the case of a domestic corporation the adjusted declared value of its capital stock as determined under section 1202 of the Internal Revenue Code, as amended, and the regulations issued respecting the capital stock tax imposed by section 1200 of such Code, as amended, and in the case of a foreign corporation the adjusted declared value of capital employed in the transaction of its business in the United States as determined under such section 1202, as amended, and the regulations issued in reference thereto.

(*b*) "*Tax*," except as otherwise indicated, means the declared value excess-profits tax imposed by section 600 of the Internal Revenue Code, as amended.

(*c*) "*Income-tax taxable year*" means the calendar year, the fiscal year ending during such calendar year, or the fractional part of a year, upon the basis of which the corporation's net income is computed and for which its income tax returns are made for Federal income tax purposes.

(*d*) "*Net income*" means "net income" within the contemplation of section 21 of the Internal Revenue Code. Neither the amount of income tax imposed by the Internal Revenue Code or by prior laws, nor the amount of the tax imposed by Subchapters B or E of Chapter 2 of the Internal Revenue Code, shall be deducted from net income in computing the declared value excess-profits tax and none of the credits allowed corporations against net income for income tax purposes are applicable in respect of the declared value excess-profits tax except the credit against net income equal to the credit for dividends received provided in section 26(b) of the Internal Revenue Code.*

SEC. 21.2. *Scope of tax.*—The declared value excess-profits tax, imposed by section 600 of the Internal Revenue Code, as amended, is imposed upon the net income of every corporation for each income-tax taxable year ending after the close of any year ending June 30 in respect of which the corporation is subject to the capital stock tax imposed by section 1200 of the Internal Revenue Code, as amended.*

SEC. 21.3. *Measure and rate of tax.*—(*a*) *Domestic and foreign corporations.*—The tax is imposed in an amount equal to the sum of (1) 6$^{6}/_{10}$ per cent of such portion of the corporation's net income for the income-tax taxable year as is in excess of 10 per cent and not in excess of 15 per cent of the adjusted declared value plus (2) 13$^{2}/_{10}$ per cent of such portion of its net income for the income-tax taxable year as is in excess of 15 per cent of the adjusted declared value, as of the close of the last preceding income-tax taxable year (or as of the date of organization if the corporation had no preceding income-tax taxable year).

(*b*) *Adjusted declared value.*—No variation is permitted between the adjusted declared value set forth in the corporation's capital stock tax return and the adjusted declared value set forth in its declared value excess-profits tax return, except that in the case of a declared value excess-profits tax return for an income-tax taxable year which is a period of less than 12 months the adjusted declared value set forth in its capital stock tax return shall be reduced to an amount which bears the same ratio thereto as the number of months in the period bears to 12 months.*

SEC. 21.4. *Method of computation; example.*—The application of the provisions of section 21.3 of these regulations may be illustrated generally by the following example:

Example. The M Corporation, the income-tax taxable year of which is the calendar year, is subject to the capital stock tax imposed by section 1200, as amended, of the Internal Revenue Code, for the year ending June 30, 1941. The

*For footnote, see p. 164.

value declared in its capital stock tax return for the year ending June 30, 1941, of its capital stock as of the close of its preceding income-tax taxable year (the calendar year 1940), is $100,000. The net income of the corporation for the calendar year 1941, determined under the Internal Revenue Code, is $25,000. During its taxable year the corporation received dividends from corporations subject to taxation under Chapter 1 of the Internal Revenue Code, amounting to $5,000. The declared value excess-profits tax for the calendar year 1941 is $1,089, computed as follows:

Net income for calendar year 1941	$25,000
Less:	
Credit for dividends received (85 per cent of $5,000)	4,250
Balance of net income	20,750
Less:	
10 per cent of the value declared in the capital stock tax return for the year ending June 30, 1941, of the capital stock as of December 31, 1940 (10 per cent of $100,000)	10,000
Net income subject to declared value excess-profits tax	10,750
Less:	
Amount taxable at 6⁹⁄₁₀ per cent, portion of net income in excess of 10 per cent and not in excess of 15 per cent of the adjusted declared value of the capital stock as of December 31, 1940 ($15,000 minus $10,000)	5,000
Amount taxable at 13⁷⁄₁₀ per cent	$5,750
Declared value excess-profits tax at 6⁹⁄₁₀ per cent (6⁹⁄₁₀ per cent of $5,000)	330
Declared value excess-profits tax at 13⁷⁄₁₀ per cent (13⁷⁄₁₀ per cent of $5,750)	759
Total declared value excess-profits tax ($330 plus $759)	1,089

*

SEC. 21.5. *Returns.*—Every corporation which is subject to the capital stock tax imposed by section 1200 of the Internal Revenue Code, as amended, for any year shall make a declared value excess-profits tax return for each income-tax taxable year which ends after the close of the year in respect of which it is subject to such capital stock tax. There is no provision in the Internal Revenue Code which authorizes the making of a consolidated return by an affiliated group of corporations for the purpose of the declared value excess-profits tax imposed by section 600 of the Internal Revenue Code, as amended. Accordingly, every corporation which is liable for the making of a declared value excess-profits tax return under section 600 of the Internal Revenue Code, as amended (for any income-tax taxable year ending after June 30, 1941), whether or not such corporation is a member of an affiliated group of corporations, must make its declared value excess-profits tax return and compute its net income separately, without regard to the provisions of section 141 of the Internal Revenue Code, as amended.

The declared value excess-profits tax return shall be made within the time prescribed for making the corporation's Federal income tax return for the income-tax taxable year, and shall be made to the collector of internal revenue to whom such income tax return is required to be made.*

SEC. 21.6. *Payment of tax.*—The declared value excess-profits tax for any income-tax taxable year shall be paid within the time prescribed for paying the Federal income tax for such taxable year.*

SEC. 21.7. *Credits against tax prohibited.*—Foreign income and profits taxes may not be credited against the declared value excess-profits tax imposed by section 600 of the Code, as amended.*

SEC. 21.8. *Determination of tax, assessment, collection.*—The determination, assessment, and collection of the tax, and the examination of returns and claims in connection therewith, will be made under such procedure as may be prescribed from time to time by the Commissioner.*

*For footnote, see p. 164.

SEC. 21.9. *Taxable years affected.*—These regulations relate solely to income-tax taxable years ending after June 30, 1941, and supersede any previous regulations relative to declared value excess-profits tax for such years.*

NORMAN D. CANN,
Acting Commissioner of Internal Revenue.

Approved October 17, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 21, 1941, 11.34 a. m.)

SUBCHAPTER E.—EXCESS PROFITS TAX.

SECTION 718.—EQUITY INVESTED CAPITAL.

REGULATIONS 109, SECTION 30.718–1: Determination of daily equity invested capital—Money and property paid in.

EXCESS PROFITS TAX ACT OF 1940.

Regulations 109, amended. (See T. D. 5059, page 125.)

REGULATIONS 109, SECTION 30.718–2: Determination of daily equity invested capital—Accumulated earnings and profits.

EXCESS PROFITS TAX ACT OF 1940.

Regulations 109, amended. (See T. D. 5059, page 125.)

SECTION 722.—ADJUSTMENT OF ABNORMAL BASE PERIOD NET INCOME.

REGULATIONS 109, SECTION 30.722–5: Application for relief under section 722. 1941–41–10853 I. T. 3509

INTERNAL REVENUE CODE.

An extension of time for filing Form 991 (Application for relief under section 722 of the Internal Revenue Code) may not be granted where the time for filing an excess profits tax return has not been extended. Where the time for filing an excess profits tax return has been extended, the 6-month period (prescribed by section 722(e) of the Code) for filing Form 991 runs from the date to which such extension was granted.

Advice is requested whether an extension of time may be granted for filing Form 991 (Application for relief under section 722 of the Internal Revenue Code) which is prescribed by section 30.722–5, Regulations 109, relating to the excess profits tax under the Internal Revenue Code, as amended.

Section 722 of the Internal Revenue Code, relating to adjustment of abnormal base period net income, was added (by amendment) to the

*For footnote, see p. 164.

ode by section 6 of the Excess Profits Tax Amendments of 1941 Public law 10, Seventy-seventh Congress), approved March 7, 1941 C. B. 1941–1, 535). Section 722(e) of the Code provides in part s follows:

(e) APPLICATION FOR RELIEF UNDER THIS SECTION.—The taxpayer shall comte its tax and file its return under this subchapter without the application this section. The benefits of this section shall not be allowed unless the taxyer, within six months from the date prescribed by law for the filing of its turn, makes application therefor in accordance with regulations to be preribed by the Commissioner with the approval of the Secretary * * *. If e application is not filed within six months after the date prescribed by law r the filing of the return, the application of this section shall not reduce the x otherwise determined under this subchapter by an amount in excess of the nount of the deficiency finally determined under this subchapter without the plication of this section. * * *

Section 30.722–5 of Regulations 109, relating to the excess profits ix under the Internal Revenue Code, as amended, which section was lded to Regulations 109 by Treasury Decision 5045 (C. B. 1941–1, 69), ads in part as follows:

SEC. 30.722–5. *Application for relief under section 722.*—(*a*) *In general.*—The xpayer is not permitted to claim the benefit of section 722 in computing its cess profits tax upon its return, except as provided in (c) of this section. order to obtain the benefits of section 722 for any taxable year a taxpayer ithin six months after the time prescribed by law for filing its excess profits x return for such year must file under oath an application on Form 991 for the nefit of section 722, unless the provisions of (*b*) or (*c*) of this section are plicable to such taxpayer. *For the purposes of this section, the time prescribed by law for filing the return includes the period of any extension of time anted by the Commissioner.* [Italics supplied.]

Section 30.729–1 of Regulations 109, supra, provides that excess rofits tax returns, Form 1121, revised, shall be filed at the same time id place as the time and place prescribed in sections 53 and 235 id the income tax regulations under such sections for the filing f income tax returns, with an exception not deemed material.

In view of the foregoing, it is held that an extension of time for ling Form 991 (Application for relief under section 722 of the Inrnal Revenue Code) may not be granted where the time for filing excess profits tax return, Form 1121, revised, has not been extended. here the time for filing an excess profits tax return has been extended, e 6-month period (prescribed by section 722(e) of the Code) for ing Form 991 runs from the date to which such extension was anted.

SECTION 730.—CONSOLIDATED RETURNS.

ECTION 33.11 (REGULATIONS 110).

Regulations 110 amended. (See T. D. 5087, page 141.)

EGULATIONS 110, SECTION 33.11(*a*): Consolidated returns required for subsequent years. 1941–45–10889 I. T. 3515

INTERNAL REVENUE CODE.

Affiliated corporations which filed a consolidated excess profits tax return for 1940 may file either separate returns or a consolidated return for 1941.

Advice is requested whether affiliated corporations which filed a consolidated excess profits tax return for the taxable year of the group beginning in 1940 may file separate returns for the taxable year beginning in 1941.

Section 33.11(*a*) of Regulations 110, as amended by Treasury Decision 5087 (page 141, this Bulletin), provides:

(*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 (1) a corporation (other than a corporation created or organized, directly or indirectly, by a member of the group) has become a member of the group during such subsequent taxable year, or (2) Chapter 1 of the Code to the extent applicable to corporations, or Subchapter E of Chapter 2 of the Code, 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, or (3) the Commissioner, prior to the time of making the return, upon application made by the common parent corporation and for good cause shown, grants permission to change.

It is the opinion of this office that Subchapter E of Chapter 2 of the Internal Revenue Code has been so amended by Title II of the Revenue Act of 1941 as to make less advantageous to affiliated groups as a class the continued filing of consolidated excess profits tax returns for taxable years beginning after December 31, 1940, and that, therefore, under the above-quoted regulation, affiliated corporations which filed a consolidated excess profits tax return for the taxable year of the group beginning in 1940 may, notwithstanding the filing of such return, file separate returns for the taxable year beginning in 1941.

MISCELLANEOUS.

SECTION 3670.—PROPERTY SUBJECT TO LIEN.

1941-30-10790
Ct. D. 1524

FEDERAL TAXES—REVISED STATUTES—DECISION OF COURT.

1. LIENS FOR FEDERAL TAXES—LIENS FOR STATE AND LOCAL TAXES AND SPECIAL ASSESSMENTS—PRIORITY.

Liens of the United States for income taxes, which become liens upon property as of the dates when the assessment lists are received in the office of the collector of internal revenue, are effective against the property of the taxpayer notwithstanding the property is not specifically described. Federal tax liens have priority over State, county, and city liens for taxes and special assessments subsequently assessed against specific property. The principle "first in time, first in right" is applicable to Federal and State tax liens. Section 3186 of the Revised Statutes (sections 3670-3672, I. R. C.) does not permit the States to interfere with Federal tax liens by subsequent exercise of their taxing powers.

2. DECISION REVERSED.

Decision of the District Court of the United States for the Western District of South Carolina (1940) (34 Fed. Supp., 281) reversed.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

ited States of America, appellant, v. *City of Greenville, S. C., and County of Greenville, S. C., appellees.* (*In the case of United States of America* v. *Robert I. Woodside et al.*)

ited States of America, appellant, v. *City of Greenville, S. C., and County of Greenville, S. C., appellees.* (*In the case of United States of America* v. *John T. Woodside et al.*)

[118 Fed. (2d), 963.]

peals from the District Court of the United States for the Western District of South Carolina, at Greenville.

[April 7, 1941.]

OPINION.

PARKER, Circuit Judge: This is an appeal in two suits instituted under R. S. 07 (26 U. S. C. A., 3678), to foreclose liens of the United States for income xes due by Robert I. Woodside and John T. Woodside on real estate owned by em. The court below held that tax claims of the State of South Carolina and e county of Greenville and tax and special assessment claims of the city of eenville were liens prior to the liens of the United States and accordingly ected the distribution of funds received in the foreclosure suit to the payment these claims to the exclusion of the claims of the United States. From this lgment the United States has appealed.

The facts are that income taxes due the United States were assessed against bert I. Woodside for the years 1920, 1921, 1924, and 1925 in the aggregate ount of $15,364.03 and against John T. Woodside for the years 1920, 1921, 1925, d 1926 in the amount of $52,182.63. The assessment list, as to each taxpayer, s received by the collector of internal revenue for the district and was filed his office May 20, 1930, and demand upon taxpayer for payment was duly made. bsequently these suits were filed for the foreclosure of the liens so obtained d the lands subject to the liens were sold by the marshal under order of court. e tax claims of the State, city, and county represent taxes assessed against s property subsequent to the year 1930, and the same is true as to the special sessment claims of the city of Greenville, with the exception of an item of 5.75 assessed in 1929, as to which the United States concedes priority of lien the city. The proceeds of the lands sold are not sufficient to satisfy the claims taxes; and the question is squarely presented whether the liens of the United ates have priority over the liens of the State, county, and city for taxes and ecial assessments subsequently assessed or whether these are to be given ority over the antecedent liens acquired by the United States.

The decision of the learned judge below accorded priority to the liens of the ate, county, and city on the ground that they were specific liens against the operty, whereas the liens of the United States were general liens; but we see basis for this distinction. It is true, of course, that the State, county, and y taxes were assessed against the specific property and became liens upon it. C. Code of 1932, sections 2569, 2571, and 7470.) And the same is true of the ring assessments made by the city. (Code section 7376.) (*Beatty* v. *Wiltemp et al.*, 171 S. C., 326, 172 S. E., 122.) But these liens were acquired subsent to the acquisition of the liens of the United States for income taxes, which ame liens upon the property, no less valid than if they had been assessed ainst the property itself, as soon as the assessments were filed in the office of collector of internal revenue. R. S. 3186 (as amended by the Act of May 29, 28, ch. 852, section 613, 45 Stat., 875) (26 U. S. C. A., 3670–3672), provides:

"If any person liable to pay any tax neglects or refuses to pay the same after mand, the amount (including any interest, penalty, additional amount, or dition to such tax, together with any costs that may accrue in addition thereto) all be a lien in favor of the United States upon all property and rights to operty, whether real or personal, belonging to such person. Unless another e is specifically fixed by law, the lien shall arise at the time the assessment s was received by the collector and shall continue until the liability for such ount is satisfied or becomes unenforceable by reason of lapse of time.

"(b) Such lien shall not be valid as against any mortgagee, purchaser, or lgment creditor until notice thereof has been filed by the collector—

"(1) In accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

"(2) in the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

"(3) in the office of the clerk of the Supreme Court of the District of Columbia, if the property subject to the lien is situated in the District of Columbia."

To say that the lien provided by this statute is a general lien on all the property of the taxpayer does not help in the solution of the problem presented; for a lien is not deprived of validity because it attaches to a number of pieces of property instead of to a single piece, nor is it for that reason to be subordinated to a junior lien attaching to a single piece of property. When properly perfected, the lien under the statute constitutes a charge upon specific property of the taxpayer for the satisfaction of which that property may be sold under proceedings instituted for the purpose. As said in *Metropolitan Life Ins. Co.* v. *United States* (6 Cir., 107 Fed. (2d), 311, 313), "The Federal statutes create specific liens for taxes and as a corollary give a specific remedy for their removal and when such liens once attach, they may be lifted only as provided thereunder." Such lien is clearly not a mere inchoate lien, or right to lien, as held in *Gerson et al.* v. *Shubert Theater Corporation* (7 Fed. Supp., 399); for not only was it deemed necessary in the statute itself to provide that the lien should not be valid against any mortgagee, purchaser or judgment creditor until the proper filing of notice, but provision also was made by the Act of June 29, 1939 (53 Stat., 882, 26 U. S. C. A., 3672(b)), that, notwithstanding the filing of such notice, such lien should not be a valid lien upon certain described securities as against mortgagees, pledgees or purchasers, if they were holders for an adequate and full consideration and "without notice or knowledge of the existence of such lien." No such provisions would be necessary if the lien were intended to be a mere inchoate right to a lien which would attach to specific property only after proceedings had been instituted for its enforcement.

After the lien provided by the statute attaches, the property has in a sense two owners, the taxpayer and, to the extent of the lien, the United States. (*Commissioner* v. *Coward*, 3 Cir., 110 Fed. (2d), 725, 727 [Ct. D. 1458, C. B. 1940–1, 123].) The lien can not be affected by State legislation respecting the recording or registering of mortgages or liens. (*United States* v. *Snyder*, 149 U. S., 210; *In re Dartmont Coal Co.*, 4 Cir., 46 Fed. (2d), 455.) Nor can it be affected by homestead, spendthrift trust or stock transfer acts of the States. (*Staley* v. *Vaughn*, — Tex., —, 50 S. W. (2d), 907; *Re Estate of Rosenberg*, 269 N. Y., 247, 199 N. E., 206, 105 A. L. R., 1238; *United States* v. *Rosenfield*, 26 Fed. Supp., 433; *Cannon* v. *Nicholas*, 10 Cir., 80 Fed. (2d), 934.) And we think it equally clear that, without the consent of Congress, it can not be affected by the exercise of State taxing power. (*McCulloch* v. *Maryland*, 4 Wheat., 316, 436; *United States* v. *Wright*, 4 Cir., 53 Fed. (2d), 301.)

Whether viewed as an interest of the Federal Government in the property to which it has attached or as an instrumentality of the Federal Government for the collection of taxes due that Government, it is beyond impairment by the exercise of State power. In the first view, it must be remembered that property of the Federal Government may not be taxed by the States without the consent of Congress, and, in the second, that Congress has power to lay and collect taxes of the sort here involved and to make all laws necessary and proper for that purpose, and that such laws, when made, are the supreme law of the land. (Constitution, Article I, section 8, Article VI; 26 R. C. L., 107–108; *McCulloch* v. *Maryland*, supra; *Florida* v. *Mellon*, 273 U. S., 12, 17.) In the case last cited, which involved the contention that the Federal estate tax interfered with the State's power of taxation, the Court said:

"The Act assailed was passed by Congress in pursuance of its power to lay and collect taxes, and, following the decision of this Court in respect of the preceding Act of 1916 (*New York Trust Co.* v. *Eisner*, 256 U. S., 345), must be held to be constitutional. If the Act interferes with the exercise by the State of its full powers of taxation or has the effect of removing property from its reach which otherwise would be within it, that is a contingency which affords no ground for judicial relief. The Act is a law of the United States made in pursuance of the Constitution and, therefore, the supreme law of the land, the constitution or laws of the States to the contrary notwithstanding. Whenever the constitutional powers of the Federal Government and those of the State come into conflict, the latter must yield."

n *McCulloch* v. *Maryland*, supra, the Court, speaking through Chief Justice rshall, said:

The Court has bestowed on this subject its most deliberate consideration. e result is a conviction that the States have no power, by taxation or otherwise, retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested he General Government. This is, we think, the unavoidable consequence of t supremacy which the Constitution has declared."

Whether the lien provided by the statute is entitled to priority over antecedent s for taxes duly perfected by States or municipalities, is a question which is before us and which we need not decide. It would seem, however, that the was intended to attach to the property of the taxpayer subject to existing umbrances; and this is borne out by the provision that it shall not be valid against mortgagees, purchasers or judgment creditors until notice thereof luly filed as provided by the Act. This interpretation places liens of the eral Government and liens of the States on an equal basis for the application he principle first in time, first in right (*Rankin* v. *Scott*, 12 Wheat., 177, 179), ch is the principle ordinarily applied with respect to priority of liens, and one applied between a tax lien and other liens where the tax lien is not le paramount by statute. (61 C. J., 934.) The contention that priority of it should not be accorded a lien of the Federal Government prior in time use the statute contains no provision that the Federal tax shall be first paid.[1] ores the principle that a State may not burden the taxing power of the Federal ernment without its consent, and that, in the absence of such consent, no upon the property of the Federal Government or any of its instrumentalities be sustained. The thing of significance to be noted is, not that the statute s not give priority to the Federal tax, but that it does not grant permission he States to interfere with a lien of the Federal Government by subsequent rcise of their taxing powers.

'e have noted the cases of *City of Winston-Salem* v. *Powell Paving Co.* (7 Fed. p., 424) and *Berrymont Land Co.* v. *Davis Creek Coal Co.* (119 W. Va., 186, S. E., 577); but, with great respect to the courts by which these decisions e rendered, we are unable to follow them. They fail to take account of the that when the lien created by the Federal statute has once attached to the perty of the taxpayer it is as specific a lien on that property as the lien for a asserted against the property itself; and they ignore the principle that, with- the consent of the Federal Government, no action of the States may affect its perty or any instrumentality which it has created for exercise of its lawful ctions. As pointed out above, the lien for taxes is a property right of the eral Government. At the least, it is an instrumentality created by that ernment for the collection of its revenues. We know of no principle upon ch it may be subordinated or its value impaired by State action, whether ough exercise of the taxing power or otherwise. The error of these cases as to have arisen from considering the statutory lien of the Federal Govern- t as analogous to that of the holder of a lien under mortgage, which is of se subject to the power of the State to tax the mortgaged property. The erence is that the rights of the mortgagee as well as of the mortgagor in the tgaged property are held subject to the power of the State to tax it, whereas rights of the Federal Government are not held subject to that power.

he delay in proceeding with the foreclosure of the liens presents no difficulty. s not contended that the bar of the statute of limitations has fallen; and it is settled that the rights of the Government are not affected by laches of its ers and that it is not estopped by their conduct from asserting its rights. *ited States* v. *Kirkpatrick*, 9 Wheat., 720, 735; *Utah Power & Light Co.* v. *ed States*, 243 U. S., 389, 409; *Chesapeake & Delaware Canal Co.* v. *United es*, 250 U. S., 123, 125.)

'e agree with the court below that, as no distribution in an insolvency pro- ing is involved, the provision of section 3466 of the Revised Statutes (31 . C. A., 191), providing for priority of payment of debts due the United States, no application.

[1] See *In re Mount Jessup Coal Co.* (7 Fed. Supp., 603) and *In re Wyley Co.* (292 Fed., . It is to be noted with respect to the Wyley case, however, that the question fically dealt with was not priority of liens but of distribution under the Bankruptcy

For the reasons stated, the judgments appealed from will be reversed, except so far as the judgment in No. 4748 accords priority to the item of $835.75 for ving assessments ratified in 1929, and the causes will be remanded for further oceedings not inconsistent herewith.
Reversed.

B. REVENUE ACT OF 1938.

SUBTITLE B.—GENERAL PROVISIONS.

PART II.—COMPUTATION OF NET INCOME.

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

RTICLE 23(b)-1: Interest.

REVENUE ACT OF 1938.

Accrual of interest on additional manufacturers' excise taxes for ie period June 1932 to February 1936 not finally determined until 938. (See I. T. 3491, below.)

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

RTICLE 23(c)-1: Taxes. 1941-29-10782
Also Section 23(b), Article 23(b)-1.) I. T. 3491

REVENUE ACTS OF 1932, 1934, 1936, AND 1938.

For Federal income tax purposes, additional manufacturers' excise taxes for the period June, 1932, to February, 1936, which were not finally determined until 1938, should be treated by the M Company, which keeps its accounts and files its Federal income tax returns on the accrual basis, as accrued liabilities in the respective (income tax) taxable years in which the sales giving rise to the taxes were actually made. Interest on the additional excise taxes should be accrued in accordance with G. C. M. 9575 (C. B. X-1, 381 (1931)), which holds that interest on a deficiency in tax should be accrued in the year in which the liability for the deficiency is finally determined, either by an agreement, final order, or judgment.

Advice is requested as to the proper year (or years) of accrual of ertain additional manufacturers' excise taxes and interest thereon nder the circumstances herein stated.

The amount of manufacturers' excise taxes due from the taxpayer, he M Company, under section 603 of Title IV of the Revenue Act of 932 for the period June, 1932, to February, 1936, was not determined ntil the year 1938. In December of that year, the taxpayer agreed o and paid additional excise taxes of $35x$ dollars and interest thereon f $12x$ dollars. The taxpayer, which keeps its accounts and files its ederal income tax returns on the accrual basis, claimed these amounts s deductions in its income and excess profits tax return for the year 938.

Section 603 of Title IV of the Revenue Act of 1932 imposed a tax quivalent to 10 per cent on specified toilet articles or preparations sold

' a manufacturer, producer, or importer, the tax being based upon e sale price. Section 619(b)3 of that Act provides that:

(b) If an article is—

* * * * * * *

(3) sold (otherwise than through an arm's-length transaction) at less than the fair market price;

e tax under this title shall (if based on the price for which the article is sold) computed on the price for which such articles are sold, in the ordinary course trade, by manufacturers or producers thereof, as determined by the Commissioner.

In article 15 of Regulations 46, promulgated under section 619(b) the Revenue Act of 1932, it was provided, in reference to subdivision)(3) thereof, that:

Where, through the existence of special arrangements between a manufacturer d a purchaser (as in the case of intercompany transfers at cost or at a fictitious ce), the price for which articles are sold by the manufacturer does not reflect fair market price, the sale is regarded as one made "otherwise than through arm's-length transaction." In such cases the tax shall be computed upon a r market price, which, under the Act, the Commissioner is empowered to ermine.

The procedure outlined in the foregoing regulations whereby the mmissioner determines a fair market price has been approved in *urjois, Inc.*, v. *McGowan* (85 Fed. (2d), 510, Ct. D. 1242, C. B. 37-2, 502, certiorari denied, 300 U. S., 682).

After the enactment of the Revenue Act of 1932, the taxpayer in the stant case organized three wholly-owned subsidiary corporations to ich it sold its products at prices lower than current market prices. was necessary to adjust the selling price of goods sold by the taxyer to its subsidiaries to a fair market price so that the correct tax e might be determined. This computation was completed and, as eviously stated, the tax was agreed to and paid in December, 1938. ie issue presented is whether the amount of the additional excise xes became an accrued liability for Federal income tax purposes in e years in which the sales were actually made or in the year 1938 ien the amount of the excise tax liability was finally determined.

In *Rawlings Manufacturing Co.* v. *Commissioner* (44 B. T. A., 161), e Board of Tax Appeals considered a case involving facts nilar to those in the instant case. The taxpayer in that case filed cise tax returns, reported sales of sporting goods, and paid a tax ereon in accordance with section 609 of the Revenue Act of 1932. An amination of the taxpayer's returns and records for the period July 1933, to June 30, 1936, disclosed additional excise taxes and interest the amount of $10,605.02, which were proposed against the taxyer in January, 1937. The additional excise taxes were accrued on e taxpayer's books and deducted in its income tax return for the cal year ended February 28, 1937. In September, 1938, after conleration of the taxpayer's protest as to the amount of its liability, ditional excise taxes and interest thereon for the periods in question ere agreed to and paid by the taxpayer in an amount less than that iginally proposed. In the deficiency notice determining the taxable t income for income tax purposes for the fiscal year ended February , 1937, the taxpayer was allowed a deduction of the additional excise x applicable to the fiscal year 1937 in the amount of $489.06, and the

balance was disallowed. The Board upheld the Commissioner's determination for 1937 and stated that the additional excise taxes applicable to sales made in earlier years were deductible only in the years for which the taxes were imposed.

In *Floyd, Incorporated*, v. *Commissioner* (43 B. T. A., 101, acquiescence, C. B. 1941–1, 4), the Board of Tax Appeals had occasion to consider a case involving the accrual of income taxes. In that case, the Board, on October 9, 1935, found a deficiency in income taxes for the taxable year 1930 under section 104 of the Revenue Act of 1928. The taxpayer had, on December 31, 1934, set aside in a specially designated reserve fund the amount of $13,445.25 (all of its 1934 net income) to be applied to the payment of proposed deficiencies for 1930 and 1931, and it claimed this amount as a deduction under section 351(b)2(B) of the Revenue Act of 1934 in its personal holding company tax return for 1934 on the theory that it represented an amount used or set aside to retire indebtedness incurred prior to January 1, 1934. The Bureau disallowed this deduction on the ground that the proposed deficiencies for the years 1930 and 1931 constituted only a contingent liability and did not become a fixed or absolute liability until finally determined by the Board on October 9, 1935. On an appeal to the Board from the disallowance of such deduction, the Board said in its opinion:

> * * * the factual circumstances existing in 1930 * * * and the then applicable statute had already fixed petitioner's tax liability * * *. The deficiency notice proposed the assessment of additional taxes in a certain amount and the Board's decision redetermined the amount by applying the law to the facts as established by events which had occurred in * * * 1930 * * *. The petitioner's correct tax liability, as imposed by law, was ascertainable at the close of * * * 1930 * * * and the controversy between the petitioner and the Commissioner as to the amount thereof did not serve to postpone the time when the liability, if any, became fixed, or to cause the liability to remain contingent upon a future settlement of the controversy. It is well settled that the *liability* for Federal income tax is *incurred* in the year for which the tax is imposed, irrespective of the time the tax may be assessed or may become due and payable, for, all of the events upon which the tax is predicated having occurred in that year, the amount of the tax liability is then fixed by law and ascertainable.

In view of the above decisions, it is clear that the liability for the additional excise taxes in the instant case became fixed in the years in which the sales were made. All of the events necessary for the determination and proper accrual of such taxes occurred in the years the sales were made, and the fact that the specific amount was not finally determined until 1938 does not affect the years in which the liability was properly accruable.

It is, therefore, held that the additional manufacturers' excise taxes for the period June, 1932, to February, 1936, which were finally determined in 1938, represent accrued liabilities in the respective (income tax) taxable years in which the sales giving rise to the taxes were actually made. Interest on the additional excise taxes should be accrued in accordance with G. C. M. 9575 (C. B. X–1, 381 (1931)), which holds that interest on a deficiency in tax should be accrued in the year in which the liability for the deficiency is finally determined, either by an agreement, final order, or judgment.

SECTION 23(h).—DEDUCTIONS FROM GROSS INCOME: WAGERING LOSSES.

RTICLE 23(h)-1: Wagering losses.

REVENUE ACT OF 1938.

Regulations 101, amended. (See T. D. 5057, page 97.)

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

RTICLE 23(o)-1: Contributions or gifts by individuals.

REVENUE ACT OF 1938.

Regulations 101, amended. (See T. D. 5057, page 97.)

SECTION 25.—CREDITS OF INDIVIDUAL AGAINST NET INCOME.

RTICLE 25-2: Earned income credit.

REVENUE ACT OF 1938.

Regulations 101, amended. (See T. D. 5057, page 97.)

PART V.—RETURNS AND PAYMENT OF TAX.

SECTION 51.—INDIVIDUAL RETURNS.

RTICLE 51-1: Individual returns.

REVENUE ACT OF 1938.

Regulations 101, amended. (See T. D. 5057, page 97.)

SUBTITLE C.—SUPPLEMENTAL PROVISIONS.

SUPPLEMENT A.—RATES OF TAX.

SECTION 101.—EXEMPTIONS FROM TAX ON CORPORATIONS.

RTICLE 101(12)-1: Farmers' cooperative marketing and purchasing associations. 1941-45-10890 Ct. D. 1527

NCOME, EXCESS PROFITS, AND CAPITAL STOCK TAXES—REVENUE ACTS OF 1936 AND 1938—DECISION OF COURT.

EXEMPTION—FARMERS' COOPERATIVE MARKETING ASSOCIATION—EQUALITY OF TREATMENT WITH RESPECT TO MEMBERS AND NONMEMBERS—ACCUMULATION OF RESERVE.

A farmers' cooperative marketing association was not conducted in such a manner as to entitle it to tax exemption under section 101 of the Revenue Acts of 1936 and 1938 where it had failed to accord nonmember patrons equal treatment with its members. The provisions of the statute and regulations authorizing a reasonable reserve

to be set up and maintained for the erection of buildings and other facilities, the purchase and installation of machinery and equipment, and the retirement of any indebtedness incurred for such purposes, were not intended as a waiver in any respect of that equality of treatment which is part of the necessary foundation for the tax exemption. If part of the proceeds of nonmembers' products is to be used to create or maintain a surplus and to make additions to the capital assets of the association, without allowing them a proportionate distributive interest in the permanent value contributed by such surplus accumulations or capital assets additions, the association to that extent is being operated for profit to its members as against nonmember patrons. Such profit and the inequality of treatment resulting to nonmembers therefrom must be regarded as having destroyed the association's right to tax exemption.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Fertile Cooperative Dairy Association, appellant, v. *Chas. D. Huston, Collector of Internal Revenue for the District of Iowa, appellee.*

[119 Fed. (2d), 274.]

Appeal from the District Court of the United States for the Northern District of Iowa.

[April 26, 1941.]

OPINION.

JOHNSEN, Circuit Judge, delivered the opinion of the court.

The question presented is whether the business of a farmers' cooperative marketing association was being conducted in such a manner as to entitle it to tax exemption under section 101 of the Revenue Acts of 1936 and 1938 (26 U. S. C. A., section 101).[1]

The Commissioner of Internal Revenue denied the association's claim for exemption and its subsequent claims for refunds, and it then brought suit under 28 U. S. C. A., section 41, to recover the amount of income, excess profits, and capital stock taxes which it had been obliged to pay for the years 1936 to 1939, inclusive. The district court held that the association was not exempt from the payment of such taxes, because it had failed to accord nonmember patrons equal treatment with its members, and dismissed the action. The association has appealed.

The association was engaged in collecting cream from producers, manufacturing it into butter, and marketing the product. In 1936 29 per cent of its cream came from nonmember patrons, in 1937 25 per cent, and in 1938 10 per cent. The association paid its patrons, both members and nonmembers, the same amount in cash per pound for the butterfat received from them, such payments being made monthly by a distribution of the net proceeds derived from the butter sold, after deducting all operating expenses and such sums

[1] This section provided:

"The following organizations shall be exempt from taxation under this chapter [title]—

* * * * * * *

"(12 Farmers' fruit growers', or like associations organized and operated on a cooperative basis (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases. Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this paragraph;"

as the board of directors deemed it advisable to withhold for business needs. During the 3-year period here involved, besides paying operating expenses, the board of directors had withheld and made additions to the association's surplus in the sum of $872.37, and had increased its plant and equipment account in the amount of $2,480.02, by the purchase of a new churn for $1,500 and an expenditure of over $900 on additions to the refrigeration system. There is a suggestion in the testimony that the latter expenditure also included some repairs on the refrigeration system, but since the record before us does not indicate their nature or extent, and since the entire amount was set up on the books of the association as a plant and equipment account augmentation, it must be treated as representing capital assets here.

The Revenue Acts involved provided that such an association should not be denied tax exemption simply "because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose." Article 101(12)–1 of Treasury Regulations 94,[2] promulgated under these Revenue Acts, also provided that "The accumulation and maintenance of a reserve required by State statute, or the accumulation and maintenance of a reasonable reserve or surplus for any necessary purpose, such as to provide for the erection of buildings and facilities required in business or for the purchase and installment of machinery and equipment or to retire indebtedness incurred for such purposes, will not destroy the exemption."

The association contends that the additions which it made to its surplus and its expenditures for plant equipment during the period involved were reasonable and necessary, and under the provisions of the statute and the Treasury regulations would not defeat its right to tax emption. The burden of course would rest on the association to establish, by direct evidence or by evidence from which it was soundly inferable, that any reserve or surplus which it had set up and any expenditures for additional equipment which it had made were reasonable and necessary in the situation. (*Welch* v. *Helvering*, 290 U. S., 111, 54 S. Ct., 8, 78 L. Ed., 212.) The proof before us is not very satisfactory in this respect, but the matter is in any event not controlling here, so it need not be further discussed.

Even if it had been incontrovertibly established that the surplus apportionment and equipment expenditures in question were reasonable and necessary, they would still have to involve an equality of treatment, as between nonmember and member patrons. The provision in the Revenue Act authorizing a reasonable reserve to be set up and maintained for any necessary purpose, and the Treasury regulations construing the term "necessary purpose" to include the erection of buildings and other facilities, the purchase and installation of machinery and equipment, and the retirement of any indebtedness incurred for such purposes, were not intended as a waiver in any respect of that equality of treatment which is part of the necessary foundation for the tax exemption. Unless the business of nonmember patrons is being handled wholly on a nonprofit basis, the equality of treatment necessary for tax exemption obviously does not exist. (*Farmers Union Cooperative Co.* v. *Commissioner of Internal Revenue*, 90 Fed. (2d), 488 (C. C. A. 8).) If part of the proceeds of nonmembers' products is to be used to create or maintain a surplus and to make additions to the capital assets of the association, without allowing them a proportionate distributive interest in the permanent value contributed by such surplus accumulations or capital assets additions, it must be held that the association to that extent is being operated for profit to its members, as against nonmember patrons, and that it is not exempt from taxation.

The business of nonmembers may of course properly be made to carry its just share of operating expenses, actual depreciation of plant and equipment, and dividends on existing capital stock recognized by the Revenue Acts. But, if such business is also to be forced to bear part of the burden of accumulating other permissible surplus, and of making reasonable and necessary additions to what constitute or are equivalent to capital assets of the association, it is clear that this must be done in a manner that will permit no profit to inure to association members therefrom, on dissolution or otherwise, or else the association can not remain exempt from taxation. Provision must at least have been made, by appropriate enabling action on the part of the association and by adequate protective entries on its books and records, for nonmembers in such a situation as is here involved to share ratably with members, in an ultimate liquidation of the association's assets, on the basis of their comparative contributions thereto.

[2] This regulation, which is still in effect, appears in 26 C. F. R., 3.101(12)–1.

It may be assumed here that the association would have power under the statutes of Iowa, pursuant to which it was organized, and under its articles of incorporation, to make such a protective recognition in favor of nonmember patrons, on a partial sale or final distribution of its assets, but whether it has such power or not, is not controlling on the question before us. For informational purposes, it may be stated that the association is a nonstock corporation, issuing certificates of membership for 50 cents each to such producers of dairy products as it chooses to admit to membership. It was the successor of another cooperative corporation, whose capital stock it liquidated at par value out of such corporation's assets, and whose plant and equipment it in practical effect received and held as a gift. On any subsequent liquidation of these assets, in part or in whole, after payment of the charges recognized by the statute (Code of Iowa, 1939, section 8512.48), distribution would naturally be made on some basis among the members of the association. The sums exacted from nonmember patrons for permanent surplus and capital assets additions, during the period here involved, would constitute part of the assets so distributable, and, as we have previously pointed out, would be equivalent to a profit at the expense of nonmember patrons. This profit and the inequality of treatment resulting to nonmembers therefrom must be regarded as having destroyed the association's right to tax exemption. (*Farmers Union Cooperative Co.* v. *Commissioner of Internal Revenue*, 90 Fed. (2d), 488 (C. C. A. 8); *Farmers Cooperative Co.* v. *United States*, 23 Fed. Supp., 123 (Ct. Cl.); *Burr Creamery Corporation* v. *Commissioner of Internal Revenue*, 62 Fed. (2d), 407 (C. C. A. 9).)

The association relies principally upon *Crooks* v. *Kansas City Hay Dealers' Association* (37 Fed. (2d), 83 (C. C. A. 8)), but the basis of the court's decision in that case seems to have been that, under the facts in the record, the possibility of any distribution was regarded as contingently remote and wholly speculative. This was particularly true, perhaps, under the stipulation in the record in that case, commented on in *Northwestern Jobbers' Credit Bureau* v. *Commissioner of Internal Revenue* (37 Fed. (2d), 880 (C. C. A. 8)), that no part of the surplus accumulated could ever inure to the benefit of any member or other individual. Such is not the situation in the present case.

The judgment of the district court must be affirmed.

SECTION 117.—CAPITAL GAINS AND LOSSES.

ARTICLE 117-5: Application of section 117 in the case of husband and wife.

REVENUE ACT OF 1938.

Regulations 101, amended. (See T. D. 5057, page 97.)

SECTION 120.—UNLIMITED DEDUCTION FOR CHARITABLE AND OTHER CONTRIBUTIONS.

ARTICLE 120-1: Unlimited deduction for charitable and other contributions.

REVENUE ACT OF 1938.

Regulations 101, amended. (See T. D. 5057, page 97.)

SUPPLEMENT C.—CREDITS AGAINST TAX.

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

ARTICLE 131-3: Conditions of allowance of credit.

REVENUE ACT OF 1938.

Regulations 101, modified. (See T. D. 5056, page 139.)

RTICLE 131-9: Joint return by husband and wife.

REVENUE ACT OF 1938.

Regulations 101, amended. (See T. D. 5057, page 97.)

SUPPLEMENT J.—POSSESSIONS OF THE UNITED STATES.

SECTION 251.—INCOME FROM SOURCES WITHIN POSSESSIONS OF UNITED STATES.

RTICLE 251-1: Citizens of the United States and domestic corporations deriving income from sources within a possession of the United States.

REVENUE ACT OF 1938.

Regulations 101, amended. (See T. D. 5057, page 97.)

SUPPLEMENT M.—INTEREST AND ADDITIONS TO THE TAX.

SECTION 291.—FAILURE TO FILE RETURN.

RTICLE 291-1: Addition to tax in case of failure to file return.

REVENUE ACT OF 1938.

Regulations 101, amended. (See T. D. 5058, page 156.)

INCOME TAX RULINGS.—PART II.

REVENUE ACTS OF 1937 AND 1936.

SUBTITLE B.—GENERAL PROVISIONS.

PART I.—RATES OF TAX.

SECTION 13.—NORMAL TAX ON CORPORATIONS.

ARTICLE 13-1: Normal income tax on corporations. 1941-37-10824
I. T. 3503

REVENUE ACTS OF 1934 AND 1936.

Revocation of I. T. 3219 (C. B. 1938-2, 124).

In I. T. 3219 (C. B. 1938-2, 124) it was held that the M Company, wholly-owned subsidiary of the N Trust Co., which was entitled to the benefits of section 22 of the Act of March 1, 1879, as amended, relating to assessment and collection of taxes from insolvent banks or trust companies, was not itself entitled to the benefits of that Act, either as originally enacted or as amended by section 818 of the Revenue Act of 1938, notwithstanding its income was payable to the trust company and was to be used ultimately to pay depositors' claims against the trust company.

In *The Valuation Service Co.* v. *Commissioner* (41 B. T. A., 811) was held (syllabus):

Petitioner's sole indirect stockholder being an insolvent bank the real estate holdings of which were carried in petitioner's name, and liquidation of petitioner's assets under supervision of the State superintendent of banks being for the benefit of the bank's depositors, *held*, petitioner is exempt from tax to the same extent as the bank. (Act of Congress of March 1, 1879, section 22 (20 Stat., 351); Revenue Act of 1938, section 818.)

In view of the fact that I. T. 3219, supra, is contrary to the decision in *The Valuation Service Co.* v. *Commissioner*, supra, in which acquiescence has been published (C. B. 1941-1, 11), I. T. 3219 is revoked.

PART II.—COMPUTATION OF NET INCOME.

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

ARTICLE 23(a)-1: Business expenses. 1941-29-10783
Also Section 162, Article 162-1.) G. C. M. 22799

REVENUE ACTS OF 1918, 1921, 1924, AND 1936.

S. M. 2463 (C. B. III-2, 91 (1924)), holding that commissions paid to trustees for receiving and disbursing the income and corpus of a trust are deductible as ordinary and necessary business expenses, is revoked, since it is inconsistent with the decisions of the Supreme Court of the United States in *Higgins* v. *Commissioner* (61 S. Ct., 475, Ct. D. 1486, C. B. 1941-1, 339), *United States* v. *Payne et al., Execu-*

tors (61 S. Ct., 893, Ct. D. 1509, C. B. 1941-342), and *City Bank Farmers Trust Co., Trustee,* v. *Helvering* (61 S. Ct., 896, Ct. D. 1511, C. B. 1941-1, 344).

Recommended that O. D. 537 (C. B. 2, 175 (1920)) and I. T. 2238 (C. B. IV-2, 49 (1925)) be revoked, and that I. T. 1393 (C. B. I-2, 83 (1922)) and I. T. 3163 (C. B. 1938-1, 202) be revoked in so far as they are inconsistent with the above-named Supreme Court decisions.

Reference is made to the decisions of the Supreme Court of the United States in *Higgins* v. *Commissioner* (61 S. Ct., 475, Ct. D. 1486, C. B. 1941-1, 339), *United States* v. *Pyne et al., Executors* (61 S. Ct., 893, Ct. D. 1509, C. B. 1941-1, 342), and *City Bank Farmers Trust Co., Trustee,* v. *Helvering* (61 S. Ct., 896, Ct. D. 1511, C. B. 1941-1, 344).

In the Higgins case, supra, the Supreme Court held that expenditures made in connection with the taxpayer's investments in income-producing securities were not deductible for Federal income tax purposes because the taxpayer was not carrying on a trade or business within the meaning of section 23(a) of the Revenue Act of 1932, providing for the allowance as deductions of the ordinary and necessary expenses incurred during the taxable year in carrying on any trade or business.

In the Pyne case, supra, the Supreme Court held that the executors in that case were not entitled to deduct attorneys' fees from the gross income of the estate because it was not established that the estate was carrying on a trade or business. The judgment of the Court of Claims (35 Fed. Supp., 81) was vacated and the cause was remanded for proceedings in accordance with the views expressed by the Supreme Court in its opinion.

In the City Bank Farmers Trust Co. case, supra, the testamentary trustee of two trusts claimed that commissions paid to and received by it were deductible from the gross income of the trusts. The Board of Tax Appeals disallowed the deduction on the ground that the trusts were not "carrying on any trade or business." (39 B. T. A., 29.) The Circuit Court of Appeals for the Second Circuit affirmed that decision. (112 Fed. (2d), 457.) The Supreme Court affirmed the decision of the Circuit Court of Appeals upon the authority of *Higgins* v. *Commissioner*, supra. The Court pointed out that in computing net income a trust is subject to the same rules as an individual.

Consideration was previously given to the effect on certain rulings of the Bureau of the decision rendered in the Higgins case, supra. As a result of such consideration, O. D. 877 (C. B. 4, 123 (1921)), I. T. 2579 (C. B. X-2, 129 (1931)), and I. T. 2751 (C. B. XIII-1, 43 (1934)), which were inconsistent with the decision in the Higgins case, were revoked by I. T. 3452 (C. B. 1941-1, 205). It was decided, however, to delay reconsideration of several other rulings apparently inconsistent with that decision until the Pyne and City Bank Farmers Trust Co. cases, supra, were decided. The following rulings have now been reconsidered and are clearly inconsistent with the decisions in the Higgins, Pyne, and City Bank Farmers Trust Co. cases:

S. M. 2463 (C. B. III-2, 91 (1924)) holds that where a trust was created under the laws of the State of New York and the trustees were authorized to take possession, control, and management of all the trust fund, to invest and reinvest the same and to keep it invested, to collect and receive the rents, issues, profits, and income thereof during a spe-

fic period, and to hold and dispose of same, after paying out of said come all reasonable and proper charges and expenses of the trust, ıe commissions paid to the trustees for receiving and disbursing both ıe income and the corpus of the trust are allowable deductions from e gross income of the trust estate as a business expense under the prosions of section 214(a)1 of the Revenue Acts of 1918 and 1921.

O. D. 537 (C. B. 2, 175 (1920)) holds that expenses having a reasonıle, proximate relation to the collection of income due an estate are eductible.

I. T. 1393 (C. B. I–2, 83 (1922)) holds, *inter alia*, that trustees' comissions are allowable deductions from the gross income of a trust tate.

I. T. 2238 (C. B. IV–2, 49 (1925)) holds that fees, commissions, and her compensation of committees for incompetent persons, as well s expenses properly incurred by such committees, are allowable deıctions for income tax purposes if paid or incurred with respect to ıe management or conservation of income-producing property or ınds belonging to the incompetent, or with respect to the collection or curing of any income inuring to such incompetent.

I. T. 3163 (C. B. 1938–1, 202) holds that trustee's commissions for the ıllection and disbursement of the income of an irrevocable domestic ust, such income being received partly from sources within and artly from sources without the United States and all of it being curntly distributable to nonresident alien beneficiaries except the trus-e's commissions, constitute allowable deductions in computing the ust's net income in so far as they are allocable on a ratio basis to the ıcome from sources within the United States.

In view of the foregoing, S. M. 2463, supra, is revoked, and it is ecommended that O. D. 537, supra, and I. T. 2238, supra, be revoked, nd that I. T. 1393, supra, and I. T. 3163, supra, be revoked in so far s they are inconsistent with the above-named Supreme Court decisions.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

RTICLE 23(a)–1: Business expenses. 1941–29 10784
(Also Section 162, Article 162–1.) I. T. 3492

REVENUE ACTS OF 1918, 1921, 1924, AND 1936.

In view of G. C. M. 22799 (page 185, this Bulletin), O. D. 537 (C. B. 175 (1920)) and I. T. 2238 (C. B. IV–2, 49 (1925)) are revoked, and T. 1393 (C. B. I–2, 83 (1922)) and I. T. 3163 (C. B. 1938–1, 202) are voked in so far as they are inconsistent with the decisions of the upreme Court of the United States cited in G. C. M. 22799.

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

RTICLE 23(b)–1: Interest.

REVENUE ACT OF 1936.

Accrual of interest on additional manufacturers' excise taxes for the eriod June, 1932, to February, 1936, not finally determined until 1938. (See I. T. 3491, page 177.)

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

ARTICLE 23(c)-1: Taxes.

REVENUE ACT OF 1936.

Accrual of additional manufacturers' excise taxes for the period June, 1932, to February, 1936, not finally determined until 1938. (See I. T. 3491, page 177.)

SECTION 23(g).—DEDUCTIONS FROM GROSS INCOME: WAGERING LOSSES.

ARTICLE 23(g)-1: Wagering losses.

REVENUE ACT OF 1936.

Regulations 94, amended. (See T. D. 5057, page 97.)

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

ARTICLE 23(o)-1: Contributions or gifts by individuals.

REVENUE ACT OF 1936.

Regulations 94, amended. (See T. D. 5057, page 97.)

SECTION 25.—CREDITS OF INDIVIDUAL AGAINST NET INCOME.

ARTICLE 25-2: Earned income credit.

REVENUE ACT OF 1936.

Regulations 94, amended. (See T. D. 5057, page 97.)

SECTION 26.—CREDITS OF CORPORATIONS.

ARTICLE 26-2: Credit in connection with contracts restricting payment of dividends. 1941-52-10939 I. T. 3525

REVENUE ACT OF 1936.

Stock certificates containing or referring to restrictions upon the payment of dividends by the issuing corporation do not constitute a "written contract" within the meaning of section 26(c)1 of the Revenue Act of 1936.

I. T. 3139 (C. B. 1937-2, 111) and I. T. 3152 (C. B. 1938-1, 155) revoked.

In I. T. 3139 (C. B. 1937-2, 111) it was held, in substance, that a provision contained in the preferred stock certificates of the M Company to the effect that no dividends should be declared on the common stock without the written consent of three-fourths of the preferred shares outstanding constituted a written contract entitling the corporation to the credit provided in section 26(c)1 of the Revenue Act of 1936. Similarly, it was held in I. T. 3152 (C. B. 1938-1, 155), in substance,

that a provision in the preferred stock certificates of the M Company to the effect that no dividends should be paid on the common stock while any of the preferred stock remained outstanding and no dividends on the preferred stock should be paid so long as the corporation owed on written evidence of debt in excess of x dollars, constituted a written contract within the purview of section 26(c)1, supra.

In view of the fact that the Bureau is now maintaining the position that, generally speaking, stock certificates containing or referring to restrictions upon the payment of dividends by the issuing corporation do not constitute a written contract within the meaning of section 26(c)1 of the Revenue Act of 1936, I. T. 3139 and I. T. 3152, supra, are revoked.

PART V.—RETURNS AND PAYMENT OF TAX.

SECTION 51.—INDIVIDUAL RETURNS.

SECTION 51-1: Individual returns.

REVENUE ACT OF 1936.

Regulations 94, amended. (See T. D. 5057, page 97.)

SUBTITLE C.—SUPPLEMENTAL PROVISIONS.

SUPPLEMENT A.—RATES OF TAX.

SECTION 101.—EXEMPTIONS FROM TAX ON CORPORATIONS.

ARTICLE 101(12)-1: Farmers' cooperative marketing and purchasing associations.

REVENUE ACT OF 1936.

Equality of treatment with respect to members and nonmembers (See Ct. D. 1527, page 180.)

SUPPLEMENT B.—COMPUTATION OF NET INCOME.

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

ARTICLE 112(g)-2: Definition of terms. 1941-49-10924
Ct. D. 1529

INCOME AND EXCESS PROFITS TAXES—REVENUE ACTS OF 1932 AND 1936—DECISION OF COURT.

1. REORGANIZATION—ACQUISITION OF PROPERTY BY NOTEHOLDERS AT FORECLOSURE SALE AND TRANSFER TO NEW CORPORATION—VALUE FOR PURPOSE OF DEPRECIATION AND PROFIT UPON SALE BY SUCCESSOR CORPORATION TO BE DETERMINED AS OF DATE OF ACQUISITION.

In accordance with a prearranged plan, first mortgage noteholders of a corporate mortgagor in receivership pooled their notes with an

agent, who purchased the property at foreclosure sale at a bid price considerably less than the fair market value on that date, and conveyed title to a new corporation in consideration of the transfer of the capital stock of such corporation to the noteholders in amounts proportionate to the face value of the notes pooled; the agent, with the authority of the pooling noteholders, settled with the nonpooling noteholders by paying them their pro rata part of the sale price of the mortgaged property; the new corporation later sold all of the property, made distribution to its stockholders, ceased doing business, and proceeded to liquidate. *Held:* Under the authority of *LeTulle* v. *Scofield* (1940) (308 U. S., 415) [Ct. D. 1432, C. B. 1940-1, 151], there was no statutory reorganization within the meaning of section 112 (i)(1)(2) and (g)(1)(2) of the Revenue Acts of 1932 and 1936, in the absence of a continuity of the same character of interest between the predecessor owner and the acquiring corporation. Therefore, the value of the property for the purpose of determining depreciation and profit is to be determined as of the date of acquisition by the successor corporation.

2. GAIN OR LOSS—BASIS—VALUATION OF PROPERTY—FAIR MARKET VALUE AT DATE OF FORECLOSURE SALE.

Under the facts stated, the purchase of corporate assets by the agent at foreclosure sale was actually a purchase by the creditors of the predecessor corporation, and under the provisions of article 193 of Regulations 77 and article 23(k)-3 of Regulations 94 the basis for determining gain or loss upon the subsequent sale by the successor corporation is the fair market value of the property on the date of the foreclosure sale.

3. DECISION AFFIRMED.

Memorandum opinion of the United States Board of Tax Appeals (1940) affirmed.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Guy T. Helvering, Commissioner of Internal Revenue, petitioner, v. *The New President Corporation, a Dissolved Corporation, by Walter W. Ainsworth, A. B. Lambert, Peter J. Lane, J. J. Farrell, C. R. Jolley, Michael C. Murnane, and G. Pantaleoni, Trustees in Liquidation, respondents.*

[112 Fed. (2d), 92.]

On petition to review decision of the United States Board of Tax Appeals.

[July 14, 1941.]

OPINION.

Before GARDNER and JOHNSEN, Circuit Judges, and COLLET, District Judge.

COLLET, District Judge, delivered the opinion of the Court.

Two questions are presented for determination on this appeal from the Board of Tax Appeals.

First: Did the transactions involved herein constitute a corporate reorganization within the meaning of that term as applied to corporations under the Revenue Act,[1] with the result that the value of the property acquired by the successor corporation in the reorganization is to be considered at the value applied to that property in the hands of the predecessor corporation for the purpose of determining depreciation and profit or loss, or, is the value of the property to be determined as of the date of acquisition by the successor corporation without regard to the value at which it was held by the predecessor corporation?

Second: If the transactions involved did not amount to such a reorganization, was the market value of that property fixed by the figure at which it was purchased by the successor corporation at a foreclosure sale of the predecessor corporation's interest therein, or should it be fixed at the actual market value on the date of foreclosure?

[1] Sections 112 (a), (b)(3),(4),(5), (i)(1) and 113(a)(7),(8) of the Revenue Act of 1932.

1. The statute defines reorganization as follows:

"(i) DEFINITION OF REORGANIZATION.—As used in this section and sections 113 and 115—

"(1) The term 'reorganization' means (A) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation), or (B) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (C) a recapitalization, or (D) a mere change in identity, form, or place of organization, however effected."

The property involved consists of real estate and a hotel building located thereon in Kansas City, Mo. The building was constructed in 1926 at a total cost of $2,265,144.51. The company which owned and constructed the building was declared a bankrupt in 1926. On the property there was a first mortgage securing real estate gold notes totaling $883,000. Other creditors of the bankrupt company organized a corporation known as the President Hotel Corporation which purchased the property subject to the first lien of $883,000. The President Hotel Corporation paid the principal and interest on the first mortgage indebtedness from time to time so that on December 1, 1931, there was outstanding $682,000 of that indebtedness. The President Hotel Corporation defaulted in the payment of principal and interest on the first mortgage notes on December 1, 1931, and on January 1, 1932, defaulted in the payments due on a second mortgage, the amount of which at that time was $683,400. A receiver was appointed for the President Hotel Corporation at the instance of the second mortgage bondholders. The receiver operated the property until September 15, 1933.

After the default on the first mortgage indebtedness on December 1, 1931, a large majority of the first mortgage noteholders conceived the following plan: A new corporation designated as The New President Corporation was to be created; an agent was to petition the court in which the receivership action was pending for a foreclosure of the property under the first mortgage lien; the agent was to bid in the property for a price up to but not exceeding the amount of all first mortgage notes which should be pooled with the agent by such noteholders and should thereafter convey the title to the property acquired at the foreclosure sale to "The New President Corporation" in consideration of the transfer of the capital stock of that corporation to the noteholders in amounts proportionate to the face value of the notes pooled by each such noteholder. The new corporation was to hold the property until an advantageous sale could be made and then pass out of existence.

The court authorized the foreclosure and the entire arrangement was carried out as planned—the foreclosure occurring on September 7, 1933. The total face amount of the notes pooled with the agent prior to the foreclosure sale was $650,000.

The terms upon which the noteholders deposited their notes with the agent were incorporated in deposit agreements which were signed by the individual noteholders at the time each note was deposited, and contained, among others, the following authorization:

"To purchase or cause to be purchased at any sale either in its name or in the name of the nominee or nominees the mortgaged property and in case of any such purchase, to use the notes deposited hereby in payment or part payment thereof."

The authorization to use the deposited notes in *part payment* for the mortgaged property implies that it was the understanding that the agent might pay more than the total amount of the deposited notes for the property. However, the testimony indicates that the agreements were construed as authorizing the agent to bid only the total amount of all deposited notes and accumulated interest. In view of all the circumstances, that construction appears to be the proper construction of the agreements.

On July 29, 1933, after the date of the foreclosure sale had been set for September 7, the agent's representative wrote a letter[2] to all noteholders advising

[2] There is inclosed herewith a letter from the agent under the deposit agrement, which, among other things, advises you of the fact that the agent has closed the time for regular deposit of notes on September 5, 1933. Unless thereafter the agent determines to accept special deposits, if you have not deposited your notes by that date you will only be entitled to receive your pro rata share of the proceeds from the foreclosure sale of the properties. The amount of this share depends entirely upon the amount bid at the sale and it may be a comparatively small percentage of the face value of your notes.

them that the time for depositing notes under the plan would close September 5, 1933, and advised them that unless they deposited their notes before that date they would only be entitled to receive their pro rata share of the sale price of the property which might be a comparatively small percentage of the face value of the notes.

Although the agent was authorized by those noteholders to pay up to $650,000 plus accumulated interest for the property at the foreclosure sale, his first bid was $350,000 for the real estate and the building. That was the only bid and the property was sold to him at that price. The bid price was paid by the surrender of first mortgage notes in the principal amount of $350,000.

The agent with the authority of the pooling first mortgage noteholders settled with the noteholders who had not pooled their notes by paying them their pro rata part of the sale price of the mortgaged property. He also paid the expense of the foreclosure, the total outlay for both purposes amounting to $25,400.88. In addition, the agent purchased for the pooling noteholders the hotel furnishings for $50,000 and certain miscellaneous hotel equipment for $16,250.

The New President Corporation was created. The agent conveyed the title to the real estate, building, furnishings and miscellaneous hotel equipment to that corporation and the corporation transferred all of its capital stock to the pooling noteholders in amounts proportionate to the amount of notes held by each.

The Board of Tax Appeals found that the market value of the property on the date of the foreclosure, to-wit: September 7, 1933, was $650,000. The evidence is clear, convincing and undisputed that such was its market value on that date.

On March 31, 1937, The New President Corporation sold all of the property purchased by the agent and theretofore conveyed to it by him for a net consideration of $668,846.18, in cash. It made distribution to its stockholders, ceased doing business and proceeded to liquidate.

In its return The New President Corporation reported a net loss of $48,878.96 on the sale of all of its assets on March 30, 1937, but deducted only $2,000 of this amount from income as a loss upon sale of capital assets. The Commissioner determined that there was a profit of $239,785.15 upon such sale, which amount he included in the income of the latter corporation and assessed a deficiency.

The deficiency determined by the Commissioner resulted from the disallowance of the cost basis of the assets for depreciation as claimed by the taxpayer for the taxable periods involved and also the inclusion by the Commissioner as income of the difference between the value as fixed by him and the sale price of $668,846.18. The value for annual depreciation purposes and the acquisition value determined by the Commissioner was fixed at the amount bid for the property at the foreclosure sale, to-wit: $350,000 plus certain additions.

The Board of Tax Appeals found that the acquisition of the property by The New President Corporation was in connection with a reorganization of the Old President Corporation and used the old corporation's value for tax purposes as the basis for determining depreciation and profit.

There was no statutory reorganization. Prior to the decision of the Supreme Court in *LeTulle* v. *Scofield* (308 U. S., 415 [Ct. D. 1432, C. B. 1940-1, 151]), it had frequently been held that under circumstances similar to those involved here, the acquisition by a new corporation organized and owned by bondholders of an old corporation after the equity of the old corporation in the property had been fully extinguished by depreciated values, could be characterized as a reorganization of the old corporation within the meaning of the Revenue Act, with the result that the valuation as fixed by and for the old corporation would be applied to the property in the hands of the new. (*De Blois* v. *Commissioner*, 36 Fed. (2d), 11(1) [Ct. D. 157, C. B. IX-1, 284 (1930)]; *Commissioner* v. *Ketselman* (89 Fed. (2d), 458(7)).) In the latter case the Court said:

"It is clear that the bondholders were the moving spirit and were treated as the owners in fact, and it follows that they must be viewed as a class of 'stockholders' somewhat akin to preferred stockholders with cumulative dividend rights."

Again, in *Commissioner* v. *Newberry L. & C. Co.* (94 Fed. (2d), 447, l. c. 449), quoting *Commissioner* v. *Minnesota Tea Co.* (296 U. S., 378 [Ct. D. 1060, C. B. XV-1, 189 (1936)]), the Court used the following language:

"'that although the relationship of the taxpayer to the assets transferred was substantially changed, that circumstance does not prevent the transaction from constituting a reorganization under the Act' * * *."

(See also, *Commissioner* v. *Tyng*, 106 Fed. (2d), 55 (2 Cir.) (reversed, 308 U. S., 527, in memorandum opinion upon authority of *LeTulle* v. *Scofield*, supra).)

In the LeTulle case the Supreme Court has effectively eliminated the theory followed in the cases noted by holding that no reorganization may be contemplated absent a continuity of the same character of interest between the predecessor owner and the acquiring corporation. Peculiarly applicable to the facts in the present case is the ruling of the Supreme Court in the LeTulle case that the interest of a bondholder was that of a creditor as distinguished from a stockholder, with the result that the two interests were not of like character and could not be joined to create the continuous and continuing similar interest between the predecessor and acquiring owners which is a necessary incident to the theory of reorganization.

In the present case the ownership of the old President Corporation was completely and effectively terminated by the foreclosure sale. That interest was a stockholder's interest. The interest which the noteholders acquired in the name of The New President Corporation was a bondholder's interest prior to the foreclosure sale and an interest of a purchaser at and subsequent to the foreclosure sale, hence under authority of *LeTulle* v. *Scofield*, supra, there was no statutory reorganization. (See also *Commissioner of Internal Revenue* v. *Bondholders Committee*, 118 Fed. (2d), 511.)

On the question of what value should be placed upon the property of the President Hotel Corporation acquired by the agent at the foreclosure sale in September, 1933, it has been heretofore noted that the agent of the pooling first mortgage noteholders purchased the assets of the old corporation at the sale for those noteholders and then conveyed all of the property to the new corporation which in turn transferred all of its stock to those noteholders in accordance with a prearranged plan. The purchase at the foreclosure sale was, therefore, actually a purchase by the pooling noteholders—creditors of the old corporation, since it is of no consequence that the agent was the conduit of the title.[3] The purchase at the foreclosure sale being for all intents and purposes a purchase by the creditors of the former owner, the question is whether its bid of $350,000 at the sale fixes the acquisition cost at that figure or will the fair market value of the property on the date of the sale be used as the cost for the purpose of determining profit or loss at the subsequent sale on March 31, 1937. If the bid price controls, the Commissioner's deficiency assessment was proper. If the market value controls, there was no subsequent profit and the Board's reversal of the Commissioner's assessment was correct for reasons which will be noted.

The method of determining the value of property purchased at foreclosure when the creditor purchases the mortgaged property is set out in article 193 of Regulations 77, promulgated under the 1932 Revenue Act, and article 23(k)-3 of Regulations 94 under the 1936 Act, as follows:

"* * * Where the creditor buys in the mortgaged or pledged property, loss or gain is realized measured by the difference between the amount of those obligations of the debtor which are applied to the purchase or bid price of the property * * * and the fair market value of the property. The fair market value of the property shall be presumed to be the amount for which it is bid in by the taxpayer in the absence of clear and convincing proof to the contrary. If the creditor subsequently sells the property so acquired, the basis for determining gain or loss is the fair market value of the property at the date of acquisition."

The first part of the quoted regulation relates to the measurement of the gain or loss of the acquiring creditor for the year in which the sale occurred resulting from the conversion of his security into the acquired property. Illustrative of its possible application—if the noteholders had only possessed notes having a total face value of $350,000, presumably if they acquired property therefor during the year 1933 having a fair market value of $650,000 they would have been charged with a profit for that year of $300,000. If, however, the creditors held $650,000 of secured notes for which they acquired property having a fair market value of only $350,000 we may assume for illustrative purposes that a loss would have been recognized. But we are not now determining the loss or profit of the noteholders for the year during which the conversion of their interest as noteholders into a fee interest occurred, and there is nothing in this record to indicate that the noteholders placed any value upon the property in 1933 for tax purposes which would preclude them from showing the fair market value of the property on the date of its acquisition in this proceeding. We now seek to ascertain what profit,

[3] *Commissioner of Internal Revenue* v. *Newberry L. & C. Co.* (94 Fed. (2d), l. c. 449).

if any, inured to them in 1937 as a result of the sale of the fee in March of that year. This necessitates the application of the second portion of the quoted regulation, the ascertainment thereunder of the value of the property when acquired in 1933, and the comparison of that value with the sale price of that property in 1937. The Commissioner used the bid price as the fair market value of the property in 1933. The Board found that the fair market value of the mortgaged property at that time was $650,000.

It may be suggested that by bidding $350,000 and settling with nonpooling noteholders upon that basis, the pooling noteholders may not now assert a different amount as the market value. But the amount which the property brought at the foreclosure sale did not determine its market value since the sale price of property at a foreclosure sale is no criterion of market value. (*Weed* v. *Lyons Petroleum Co.*, 294 Fed., 725, l. c., 734; *City of St. Louis* v. *Smith*, 30 S. W. (2d), 729.) And the fact that nonpooling noteholders only received their pro rata share of the bid price did not fix that price as the market value of the property. There was no contractual obligation between the pooling noteholders and those not pooling their notes which required the former to pay the latter their pro rata part of the market value of the mortgaged property in the event the former should be the successful bidder. Both had the same opportunity to bid. If either preferred to buy in the property upon the assumption that the market value was more than the highest bid at the forced sale and take the attending risk of being able to vindicate their judgment by later disposing of it at a price greater than the bid price, that was a right the exercise of which in no manner committed the purchaser to the theory that the bid price was the market value, or estopped him from later showing what the market value actually was at the date of the foreclosure. Nor is the fact that the pooling noteholders settled with the nonpooling noteholders upon the basis of the sale price at the foreclosure sale inconsistent with the former's present contention that the bid price was not the market value. The nonpooling noteholders were only entitled to receive their pro rata part of what the security brought at the forced sale. That is what they received and in no way did the pooling noteholders represent that what was being paid was a pro rata part of the fair market value of the property. The theory upon which the pooling noteholders bought the property was that it was worth more than it brought. That was their theory at the time of the foreclosure and it is their theory now.

Absent the regulation (article 193 of Regulations 77, supra), the bid price at the foreclosure sale would be entitled to slight consideration in the determination of fair market value.[4] Only by the express terms of the regulation is the bid price made determinative of the fair market value at the date of acquisition, for tax purposes. But, as noted, the bid price is not made conclusive evidence of that value. It is only presumed to be the fair market value in the absence of clear and convincing proof of fair market value. Upon such proof the Board found the fair market value on the date of acquisition was $650,000. The regulation provides that when the property was subsequently sold the basis for determining gain or loss resulting from that sale is the "fair market value of the property at the date of acquisition." As the fair market value at the date of acquisition plus the cost of necessary additions to the property subsequent to acquisition and prior to its sale in 1937, exceeded the sale price there was no profit derived from the sale in 1937. The decision of the Board should therefore be, and is, affirmed.

JOHNSEN, Circuit Judge, dissented.

SECTION 117.—CAPITAL GAINS AND LOSSES.

ARTICLE 117–5: Application of section 117 in the case of husband and wife.

REVENUE ACT OF 1936.

Regulations 94, amended. (See T. D. 5057, page 97.)

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[4] *Majestic Securities Corporation* v. *Commissioner of Internal Revenue* (8 Cir.), decided June 5, 1941, but not yet officially reported.

SECTION 120.—UNLIMITED DEDUCTION FOR CHARITABLE AND OTHER CONTRIBUTIONS.

ARTICLE 120-1: Unlimited deduction for charitable and other contributions.

REVENUE ACT OF 1936.

Regulations 94, amended. (See T. D. 5057, page 97.)

SUPPLEMENT C.—CREDITS AGAINST TAX.

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

ARTICLE 131-3: Conditions of allowance of credit.

REVENUE ACT OF 1936.

Regulations 94, modified. (See T. D. 5056, page 139.)

ARTICLE 131-9: Joint return by husband and wife.

REVENUE ACT OF 1936.

Regulations 94, amended. (See T. D. 5057, page 97.)

SUPPLEMENT D.—RETURNS AND PAYMENT OF TAX.

SECTION 143.—WITHHOLDING OF TAX AT SOURCE.

ARTICLE 143-2: Fixed or determinable annual or periodical income. 1941-30-10791 I. T. 3495

REVENUE ACT OF 1936.

A domestic fiduciary is not required to withhold income tax at the source from that portion of the income of a trust consisting of gain from the sale of property in the United States which is distributable currently to a nonresident alien beneficiary, or properly paid or credited to such beneficiary during the taxable year.
I. T. 3160 (C. B. 1938-1, 199) revoked.

Reconsideration has been given to the question as to whether a domestic fiduciary is required to withhold income tax at the source with respect to that part of a trust's net income from sources within the United States which consists of gains from the sale of property, where the net income of the trust is to be distributed currently to a nonresident alien beneficiary or is properly paid or credited to such beneficiary during the taxable year.

I. T. 3160 (C. B. 1938-1, 199) answered the above question in the affirmative, holding that the share of the income of a trust from

sources within the United States (including gains from the sale of property) which is distributable, whether distributed or not, or which has been paid or credited during the taxable year to a nonresident alien beneficiary of the trust, constitutes fixed or determinable annual or periodical income within the meaning of section 143(b) of the Revenue Act of 1936. (See article 143–2 of Regulations 94.)

Certain language in article 143–2 of Regulations 94 is susceptible to the construction adopted in I. T. 3160, supra. It is the view of the Bureau, however, that such construction is not consistent with the specific provision in that article to the effect that income derived from the sale of property in the United States is not fixed or determinable annual or periodical income, since that specific provision is to be read in the light of the principle usually applied by the Bureau that trust income distributable to a nonresident alien beneficiary retains in his hands the same identity (as to source and character) as the income possessed in the hands of the fiduciary. (See *Bence* v. *United States*, 18 Fed. Supp., 848, Ct. D. 1255, C. B. 1937–2, 344; A. R. M. 37, C. B. 2, 172 (1920); I. T. 1642, C. B. II–1, 81 (1923); G. C. M. 11221, C. B. XI–2, 123 (1932); G. C. M. 13366, C. B. XIII–2, 164 (1934); I. T. 3427, C. B. 1940–2, 143. Cf. *Vondermuhll* v. *Helvering*, 75 Fed. (2d), 656, Ct. D. 985, C. B. XIV–2, 292 (1935); G. C. M. 9156, C. B. X–1, 166 (1931).) (See also *Helvering* v. *Falk et al., executors*, 291 U. S., 183, Ct. D. 784, C. B. XIII–1, 247 (1934); I. T. 1622, C. B. II–1, 135 (1923); I. T. 1641, C. B. II–1, 76 (1923).)

In view of the foregoing, I. T. 3160, supra, is revoked. Inasmuch as income consisting of gain from the sale of property in the United States is not fixed or determinable annual or periodical income, a domestic fiduciary is not required to withhold income tax at the source from that portion of the trust income consisting of gain from such sale which is distributable currently to a nonresident alien beneficiary, or properly paid or credited to such beneficiary during the taxable year.

The revocation of I. T. 3160, supra, does not affect the conclusion reached in I. T. 3207 (C. B. 1938–2, 181), in which it was held, *inter alia*, that I. T. 3160 is not applicable to a revocable trust, the income of which is taxable to a nonresident alien grantor.

SUPPLEMENT E.—ESTATES AND TRUSTS.

SECTION 162.—NET INCOME.

ARTICLE 162–1: Income of estates and trusts.

REVENUE ACT OF 1936.

I. T. 3163 (C. B. 1938–1, 202) revoked, in view of G. C. M. 22799 (page 185, this Bulletin), in so far as it is inconsistent with the decisions of the Supreme Court of the United States cited in G. C. M. 22799.

SUPPLEMENT J.—POSSESSIONS OF THE UNITED STATES.

SECTION 251.—INCOME FROM SOURCES WITHIN POSSESSIONS OF UNITED STATES.

ARTICLE 251–1: Citizens of the United States and domestic corporations deriving income from sources within a possession of the United States.

REVENUE ACT OF 1936.

Regulations 94, amended. (See T. D. 5057, page 97.)

SUPPLEMENT M.—INTEREST AND ADDITIONS TO THE TAX.

SECTION 291.—FAILURE TO FILE RETURN.

ARTICLE 291–1: Addition to tax in case of failure to file return.

REVENUE ACT OF 1936.

Regulations 94, amended. (See T. D. 5058, page 156.)

INCOME TAX RULINGS.—PART III.

REVENUE ACTS OF 1935 AND 1934 OR PRIOR ACTS.

SUBTITLE B.—GENERAL PROVISIONS.

PART I.—RATES OF TAX.

SECTION 13.—TAX ON CORPORATIONS.

ARTICLE 13–1: Income tax on corporations.

REVENUE ACT OF 1934.

I. T. 3219 (C. B. 1938–2,124) revoked. (See I. T. 3503, page 185.)

ARTICLE 13–1: Income tax on corporations. 1941–47–10904
I. T. 3518

REVENUE ACT OF 1926.

Modification of I. T. 2431 (C. B. VII–2, 146 (1928)).

In I. T. 2431 (C. B. VII–2, 146 (1928)) it was held in part that section 22 of the Act of March 1, 1879, which provides that no tax shall be assessed or collected, or paid into the Treasury of the United States, on account of a bank which has ceased to do business because of insolvency or bankruptcy, does not exempt a corporation from payment of income tax where the receiver of the insolvent bank foreclosed on the corporation's capital stock held as collateral for a loan and thereafter collected rents as the owner of the capital stock of the corporation.

I. T. 3503 (page 185, this Bulletin) revoked I. T. 3219 (C. B. 1938–2, 124), based on the same principles as I. T. 2431, supra, because it was contrary to the decision in *The Valuation Service Co.* v. *Commissioner* (41 B. T. A., 811), in which acquiescence was announced in Cumulative Bulletin 1941–1, 11.

In C. S. T. 11 (page 253, this Bulletin), revoking C. S. T. 7 (C. B. 1938–1, 520) because the latter was contrary to the principles announced in The Valuation Service Co. case, it was said:

> In view of the acquiescence in *The Valuation Service Co.* v. *Commissioner*, supra, and the amendment of section 464A5(*b*) of Treasury Decision 4958 [C. B. 1940–1, 74] by Treasury Decision 5018 [C. B. 1940–2, 173], a separate corporation is entitled to immunity under section 3798 of the Internal Revenue Code, as amended, and the corresponding provisions of section 22 of the Act of March 1, 1879, as amended, where the separate corporation and the insolvent bank are parts of a single organization, the separate corporation being in substance and effect a department of the bank, and consequently all of the assets of such corporation are directly or indirectly subject to the claims of the bank's depositors. A separate corporation, the stock of which is wholly owned either directly or indirectly by an insolvent bank (thus rendering its operation and activities subject to the direction and control of liquidators of such bank), meets the requirements for such immunity. Under such circumstances, a tax on the subsidiary would, in effect, be a tax "on account of such bank" within the meaning of the statute. It is immaterial that the bank itself would be precluded by law from engaging in the activities carried on by the corporation. Ownership by the bank of *all* of the capital stock of the separate corporation is a condition

precedent to immunity from tax. It must be clearly established that the exaction of the tax would inevitably diminish the assets of the insolvent bank necessary for the full payment of its depositors.

Since the above-stated holding in I. T. 2431, supra, is inconsistent with the decision in *The Valuation Service Co.* v. *Commissioner*, supra, with I. T. 3503, supra, and with C. S. T. 11, supra, I. T. 2431 is modified accordingly.

PART II.—COMPUTATION OF NET INCOME.

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

ARTICLE 23(a)-1: Business expenses.

REVENUE ACTS OF 1918, 1921, AND 1924.

O. D. 537 (C. B. 2, 175 (1920)) and I. T. 2238 (C. B. IV-2, 49 (1925)) revoked, and I. T. 1393 (C. B. I-2, 83 (1922)) revoked in so far as it is inconsistent with the decisions of the Supreme Court of the United States cited in G. C. M. 22799 (page 185, this Bulletin).

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

ARTICLE 23(b)-1: Interest.

REVENUE ACTS OF 1932 AND 1934.

Accrual of interest on additional manufacturers' excise taxes for the period June, 1932, to February, 1936, not finally determined until 1938. (See I. T. 3491, page 177.)

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

ARTICLE 23(c)-1: Taxes.

REVENUE ACTS OF 1932 AND 1934.

Accrual of additional manufacturers' excise taxes for the period June, 1932, to February, 1936, not finally determined until 1938. (See I. T. 3491, page 177.)

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

ARTICLE 23(e)-1: Losses by individuals.

REVENUE ACT OF 1921.

I. T. 2037 (C. B. III-1, 146 (1924)) modified. (See I. T. 3519, page 96.)

SECTION 23(g).—DEDUCTIONS FROM GROSS INCOME: WAGERING LOSSES.

ARTICLE 23(g)-1: Wagering losses.

REVENUE ACT OF 1934.

Regulations 86, amended. (See T. D. 5057, page 97.)

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

ARTICLE 23(o)-1: Contributions or gifts by individuals. 1941-46-10900 I. T. 3516

REVENUE ACT OF 1934.

Revocation of I. T. 2872 (C. B. XIV-1, 71 (1935)).

In I. T. 2872 (C. B. XIV-1, 71 (1935)) it was held that the 15 per cent limitation in section 23(o) of the Revenue Act of 1934 on the amount of contributions deductible from net income relates to the contributions of each individual and is based on the separate net income (before deducting contributions) of the spouse making the contributions, regardless of whether the husband and wife file a joint return or separate returns.

In *Taft et ux.* v. *Helvering* (311 U. S., 195, Ct. D. 1478, C. B. 1940-2, 218) the Supreme Court of the United States held that where a husband and wife file a joint return, their aggregate income is the basis to which the percentage limitation in section 23(o) of the Revenue Act of 1934 is applied in determining the deduction allowable on account of their charitable contributions.

In view of the fact that I. T. 2872, supra, is contrary to the decision in *Taft et ux.* v. *Helvering*, supra, and article 23(o)-1 of Regulations 86, as amended, and as further amended by Treasury Decision 5057 (page 97, this Bulletin), I. T. 2872 is revoked.

ARTICLE 23(o)-1: Contributions or gifts by individuals.

REVENUE ACT OF 1934.

Regulations 86, amended. (See T. D. 5057, page 97.)

ARTICLE 23(o)-2: Donations by corporations. 1941-51-10933 Ct. D. 1532

INCOME TAX—REVENUE ACT OF 1928—JUDICIAL CODE—DECISION OF SUPREME COURT.

1. CIRCUIT COURT OF APPEALS—NUMBER OF JUDGES AUTHORIZED BY LAW—COURT OF MORE THAN THREE JUDGES MAY SIT EN BANC.

A circuit court of appeals may be composed of all the circuit judges of the circuit in active service, more than three in number, sitting *en banc*. The purpose of section 118 of the Judicial Code, as amended, that the size of each circuit court of appeals was not to be less than the number of circuit judges authorized by law was

not defeated by section 117 of the Judicial Code, which provides merely the permissible complement of judges for a circuit court of appeals.

2. EXPENSES INCURRED IN PROCUREMENT AND ENACTMENT OF LEGISLATION—ORDINARY AND NECESSARY BUSINESS EXPENSE—VALIDITY AND APPLICABILITY OF REGULATIONS.

Expenses incurred under contracts in connection with the presentation of claims to Congress on behalf of former enemy aliens for the procurement and enactment of amendatory legislation authorizing the payment of the claims are not deductible as "ordinary and necessary expenses" within the meaning of section 23(a) of the Revenue Act of 1928. Article 262 of Regulations 74 is a valid and applicable regulation.

3. DECISION AFFIRMED.

Decision of the United States Circuit Court of Appeals, Third Circuit (1940) (117 Fed. (2d), 62), reversing decision of the United States Board of Tax Appeals (1938) (38 B. T. A., 623), affirmed.

SUPREME COURT OF THE UNITED STATES.

Textile Mills Securities Corporation, petitioner, v. *Commissioner of Internal Revenue.*

[62 S. Ct., 272.]

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

[December 8, 1941.]

OPINION.

Mr. Justice DOUGLAS delivered the opinion of the Court.

This case presents two problems: (1) whether a circuit court of appeals may be composed of all the circuit judges of the circuit in active service, more than three in number, sitting *en banc;* (2) whether petitioner may deduct under the Revenue Act of 1928 (45 Stat., 791) certain expenses incurred by it under contracts in connection with the presentation of claims to Congress on behalf of former enemy aliens for the procurement and enactment of amendatory legislation authorizing the payment of the claims. We granted the petition for certiorari because of the public importance of the first problem and the contrariety of the views of the court below (117 Fed. (2d), 62) and judges of the Circuit Court of Appeals for the Ninth Circuit (*Lang's Estate* v. *Commissioner*, 97 Fed. (2d), 867) as respects its solution.

First: There are five circuit judges,[1] in active service,[2] of the Circuit Court of Appeals for the Third Circuit. All five heard and decided this case. Though they divided three to two on the deductibility of the expenses in question, they were unanimous in the conclusion that five were authorized to hear and decide the case.[3]

The problem arises because section 117 of the Judicial Code (28 U. S. C., section 212; 36 Stat., 1131) provides that "There shall be in each circuit a circuit court of appeals, which shall consist of three judges, of whom two shall constitute a quorum, which shall be a court of record, with appellate jurisdiction, as hereinafter limited and established." That provision derives from section 2 of the Act of March 3, 1891 (26 Stat., 826), which established the circuit court of appeals.[4] Though Congress by that Act created these new courts, it did not

[1] Judicial Code, section 118 (28 U. S. C., section 213); Act of June 10, 1930 (ch. 438, 46 Stat., 538, 28 U. S. C., section 213d); Act of June 24, 1936 (ch. 753, 49 Stat., 1903, 28 U. S. C., section 213d–1).

[2] As distinguished from judges retired under the provision of section 260 of the Judicial Code (28 U. S. C., section 375).

[3] The Circuit Court of Appeals for the Third Circuit has promulgated rules in accord with that view. Rule 4(1) provides: "The court consists of the circuit justice, when in attendance, and of the circuit judges of the circuit who are in active service. District judges and retired circuit judges of the circuit sit in the court when specially designated or assigned as provided by law. Three judges shall sit in the court to hear all matters, except those which the court by special order directs to be heard by the court en banc."

[4] Section 2 provided in part: "That there is hereby created in each circuit a circuit court of appeals, which shall consist of three judges, of whom two shall constitute a quorum, and which shall be a court of record with appellate jurisdiction, as is hereafter limited and established."

ıake provision for the appointment to them of a new group of judges. It pro-
ided, however, by section 3 of that Act that the Chief Justice and Associate
ustices of the Supreme Court assigned to each circuit and the circuit judges
nd district judges within each circuit "shall be competent to sit as judges of
ıe circuit court of appeals within their respective circuits." Thus it is apparent
ıat the newly created circuit court of appeals was to be composed of only three
ıdges[5] who were to be drawn from the three existing groups of judges—the
rcuit justice, the circuit judges, and the district judges.

That arrangement continued until enactment of the Judicial Code. (Act of
[arch 3, 1911, ch. 231, 36 Stat., 1087.) The Judicial Code abolished the existing
ircuit courts. (Section 297.) It carried over into section 117 without sub-
:antial change the provision of section 2 of the Act of March 3, 1891, that there
ıould be a circuit court of appeals in each circuit "which shall consist of three
ıdges." Though this section was said merely to represent existing law,[6] sec-
on 118 of the Judicial Code provided for four circuit judges in the Second,
eventh, and Eighth Circuits, two in the Fourth Circuit, and three in each of
ıe others. An anomalous situation was presented if section 117 were to be
ıken at that juncture as meaning that the circuit court of appeals would con-
nue to be composed of only three, in face of the fact that there were more
ıan three circuit judges in some circuits. Though section 3 of the Act of March
1891, made the circuit judges "competent to sit as judges of the circuit court
f appeals within their respective circuits," section 120 of the Judicial Code
ıto which the provisions of section 3 were carried eliminated the circuit judges
:om the groups of judges "competent to sit." Yet it retained the provision that
ıe circuit justices and the district judges were so qualified. We agree, however,
ith the view of the court below that the circuit judges became *ex officio* judges
f the respective circuit courts of appeal when the circuit courts were abolished.
hough section 120 did not designate them as "competent to sit," its other pro-
isions made clear that they were intended to sit. Thus, it was provided that
ıe district judges should be drawn upon only in case the court could not be
ıade up by the circuit justices and the circuit judges.[7] Yet if section 117 were
) be read literally, the circuit court of appeals was to "consist" of only three
ıdges in spite of the fact that Congress had already provided in some circuits
)r more than three circuit judges. Clearly where there were four, all could
)t be members of a court of three. Yet there was plainly inferable a Congres-
ional purpose to constitute in some circuits a circuit court of appeals of four
ıdges.[8]

Any doubts on that score[9] were resolved by the Act of January 13, 1912 (ch. 9,
7 Stat., 52), which amended section 118 of the Judicial Code by the addition of
ıe provision that "The circuit judges in each circuit shall be judges of the circuit
)urt of appeals in that circuit, and it shall be the duty of each circuit judge to
t as one of the judges of the circuit court of appeals in that circuit from time
) time according to law." Senator Sutherland who had charge of the bill in the
enate stated on the floor: "It makes no change whatever in the existing law
xcept to make it clear that the circuit judges in the various circuits of the United

[5] Section 3 of that Act provided: "In case the full court at any time shall not be made
) by the attendance of the Chief Justice or an Associate Justice of the Supreme Court
ıd circuit judges, one or more district judges within the circuit shall be competent to
t in the court according to such order or provision among the district judges as either
general or particular assignment shall be designated by the court * * *." And it
ould be noted that after the passage of the Act of March 3, 1891, there were three
rcuit judges in the Second Circuit and two in each of the others. (Act of April 10,
869, ch. 22, section 2, 16 Stat., 44; Act of March 3, 1887, ch. 347, 24 Stat., 492; Act of
arch 3, 1891, ch. 517, section 1, 26 Stat., 826.)

[6] S. Rept. No. 388, Sixty-first Congress, second session, part 1, page 49, part 2, page 310.

[7] "In case the Chief Justice or an associate justice of the Supreme Court shall attend
any session of the circuit court of appeals, he shall preside. In the absence of such
ıief Justice, or associate justice, the circuit judges in attendance upon the court shall
eside in the order of the seniority of their respective commissions. In case the full
urt at any time shall not be made up by the attendance of the Chief Justice or the
ssociate justice, and the circuit judges, one or more district judges within the circuit
all sit in the court according to such order or provision among the district judges as
ther by general or particular assignment shall be designated by the court * * *."

[8] Thus the Senate report, supra, note 6, in speaking of section 118 (section 116 in the
ll) stated, page 50: "* * * the section states in concise language the number of
dges now provided by law for the several judicial circuits."

[9] See the letter by Albert H. Walker in 74 Central L. J., 12.

States shall constitute the circuit court of appeals." [10] The purpose seems plain: the size of each circuit court of appeals was not to be less than the number of circuit judges authorized by law.[11]

And so we reach the question as to whether the avowed purpose of section 118 was defeated by section 117. We do not think it was.

That purpose was not thwarted by the provision in the 1912 amendment to section 118 that "it shall be the duty of each circuit judge in each circuit to sit as one of the judges of the circuit court of appeals in that circuit from time to time according to law." It has been suggested that "according to law" refers to section 117. In our view, however, it is the time of the sitting which is to be "according to law." Hence the reference must be to section 126 of the Judicial Code (28 U. S. C., section 223) which regulates the times when the circuit courts of appeal shall sit.

If section 117 could reasonably be construed to provide that the court, *when sitting*, should consist of three judges drawn from a panel of such larger number as might from time to time be authorized, reconciliation with section 118 would be obvious. Section 117, however, contains no such qualification. And since it establishes the court as a "court of record, with appellate jurisdiction," it can not readily be inferred that the provision for three judges is a limitation only on the number who may hear and decide a case. There are numerous functions of the court, as a "court of record, with appellate jurisdiction," other than hearing and deciding appeals. Under the Judicial Code these embrace prescribing the form of writs and other process and the form and style of its seal (section 122); the making of rules and regulations (section 122); the appointment of a clerk (section 124) and the approval of the appointment and removal of deputy clerks (section 125); and the fixing of the "times" when court shall be held. (Section 126.) Furthermore, those various sections of the Judicial Code provide that each of these functions shall be performed by the "court." In that connection it should be noted that most of them derive, as does section 117, from section 2 of the Act of March 3, 1891. The first sentence of section 2 provided that the court "shall consist of three judges." The next sentence stated that "Such court shall prescribe the form and style of its seal and the form of writs and other process and procedure," etc. In that setting it is difficult to perceive how the word "court" in the second sentence was used in a different sense than in the preceding sentence. And we look in vain for any indication [12] that when those separate sentences were sectionalized in the Code, they acquired a meaning which they did not have in section 2 of the Act of March 3, 1891.

We can not conclude, however, that the word "court" as used in those other provisions of the Judicial Code means only three judges. That would not only produce a most awkward situation; it would on *all* matters disenfranchise some circuit judges against the clear intendment of section 118. Nor can we conclude

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[10] 47 Congressional Record, Part 3, page 2736. Senator Sutherland also said: "It has been thought, as I said, that the existing law did not make it quite clear that the circuit judges shall be the constituent members of the circuit court of appeals, and it is to remove that doubt, and that only, that this bill has been reported from the Judiciary Committee." (*Id.*, page 2736.) H. Rept. No. 199, Sixty-second Congress, second session, stated, "This bill deals with a defect in existing law. It makes it clear that the circuit judges shall constitute the circuit court of appeals." And see the statements on the floor of the House by Representative Clayton, chairman of the House Judiciary Committee (48 Congressional Record, Part 1, page 667) and Representative Moon, chairman of the House Committee on the Revisions of the Laws, who had been in charge of the House bill providing for the Judicial Code. (*Id.*, page 668.)

Possible inferences looking the other way are such statements by Representative Mann that "in those circuits where there were four circuit judges, one of them might be put at work in the district court." (48 Congressional Record, Part 1, page 667.) And see 48 Congressional Record, Part 2, page 1272. Yet such statements are not inconsistent with the conclusion that while the ordinary complement of circuit judges would be three, all might sit.

[11] In this connection it should be noted that section 120 of the Judicial Code makes the "Chief Justice and the associate justices of the Supreme Court assigned to each circuit * * * competent to sit as judges of the circuit court of appeals within their respective circuits." Thus while the circuit court of appeals is composed primarily of circuit judges, the circuit justice is made a "component part" of that court. See statement by Representative Moon, *op cit.*, supra, note 10, page 668.

[12] Section 122 of the Judicial Code (section 120 in the bill) giving the court power to prescribe the form of writs and other process and the form and style of its seal, and the power to make rules and regulations was stated in S. Rept. No. 388, supra, note 6, page 51, to represent "existing law."

hat the word "court" means only three judges when the court is sitting, but all he judges when other functions are performed. Certainly there is no specific uthority for that construction. And it is difficult to reach that conclusion by nference. For to do so would be to imply that Congress prohibited some circuit udges from participation in the most important function of the "court" (the earing and the decision of appeals), though allowing all of them to perform the ther functions. Such a prohibition as respects the ordinary responsibilities of judicial office should be inferred only under compelling necessity, since a court sually will consist of all the judges appointed to it. That necessity is not present ere. The ambiguity in the statute is doubtless the product of inadvertence. Though the problem of construction is beset with difficulties, the conclusion that ection 117 provides merely the permissible complement of judges for a circuit ourt of appeals results in greater harmony in the statutory scheme[13] than if the anguage of section 117 is taken too literally. And any sacrifice of literalness for ommon sense does no violence to the history of section 117. That history is argely negative in the sense that there is no clear statement by sponsors of this egislation that section 118 read in light of section 117 prevents the conclusion which we have reached.[14] Certainly the result reached makes for more effective udicial administration.[15] Conflicts within a circuit will be avoided. Finality of ecision in the circuit courts of appeal will be promoted. Those considerations re especially important in view of the fact that in our Federal judicial system hese courts are the courts of last resort in the run of ordinary cases. Such onsiderations are, of course, not for us to weigh in case Congress has devised a sys- em where the judges of a court are prohibited from sitting *en banc*. But where, s here, the case on the statute is not foreclosed, they aid in tipping the scales in avor of the more practicable interpretation.

[13] It is suggested by respondent that if the circuit court of appeals may sit *en banc*, ifficulties arise in connection with that provision of section 120 of the Judicial Code hich reads: "In case the full court at any time shall not be made up by the attendance f the Chief Justice or the associate justice, and the circuit judges, one or more district udges within the circuit shall sit in the court according to such order or provision among he district judges as either by general or particular assignment shall be designated by he court * * *." The difficulty suggested is that section 120 would imply that, if ll the circuit judges compose the "court," then district judges should be called in when- ver the court was composed of less than that number. And the argument goes further nd suggests that since the circuit justice is "competent to sit" (see note 11, supra) hen a district court judge could be brought in, when the circuit justice is absent, to make p the "full court" even though all circuit judges sat. The answer, however, is that "full court" as used in section 120 refers to the court which contains the permissible omplement of judges as distinguished from a quorum of two. Under our interpretation a ench of three judges is the permissible complement under section 117.

[14] Beginning in 1938 the Judicial Conference of Senior Circuit Judges recommended n amendment to the Code which would enable a majority of the circuit judges in circuits here there were more than three to provide for a court of more than three judges. [Report of the Attorney General (1938), page 23; *id.* (1939), pages 15–16; Report of the udicial Conference of Senior Circuit Judges (1940), page 7.] A bill was introduced dur- ng the present session of Congress in both the House (H. R. 3390) and the Senate (S. 1053) to amend section 117 of the Judicial Code by adding thereto the following: "*Pro- ided*, That, in a circuit where there are more than three circuit judges, the majority of he circuit judges may provide for a court of all the active and available circuit judges f the circuit to sit en banc for the hearing of particular cases, when in their opinion uch action is advisable."

This bill has passed the House. (87 Congressional Record, 8328.) In the House, the ommittee on the Judiciary reported the bill favorably (H. Rept. No. 1246, Seventy-seventh ongress, first session), stating:

"Under existing law provision is made that there shall be in each circuit a circuit court f appeals which shall consist of three judges, of whom two shall constitute a quorum. he bill adds a provision that in a circuit where there are more than three circuit judges, he majority of the circuit judges may provide for a court of all the active and available ircuit judges of the circuit to sit en banc for the hearing of particular cases, when in their pinion such action is advisable.

"If the court can sit in banc the situation where two 3-judge courts may reach conflict- ng conclusions is obviated. It also will obviate the situation where there are seven nembers of the court and as sometimes happens a decision of two judges (there having een a dissent) sets the precedent for the remaining judges. A similar result would be voided with a court of five judges.

"It seems desirable that where the judges feel it advisable they might sit in banc for earing particular cases. Legislation to this effect has been recommended by the judicial onference of senior circuit judges since 1938, and at its January, 1941, session the con- erence approved the form of the present bill."

But we do not deduce that this effort at clarification was or purported to be any defini- ive interpretation that section 117 as it stands prohibits a circuit court of appeals of nore than three judges from sitting *en banc*.

[15] See H. Rept. No. 1246, supra, note 14; 69 Central L. J., 217. And see the testimony f Chief Justice Taft and Mr. Justice Van Devanter, Hearings, Committee on the Judiciary, House of Representatives, Seventieth Congress, second session, Serial 23, Part 2, on I. R. 5690, 13567, 13757, pages 69, 72.

Second: The expenses in question are sought to be deducted as "ordinary and necessary expenses" within the meaning of section 23(a) of the Revenue Act of 1928. Petitioner, a Delaware corporation, was employed to represent certain German textile interests, whose properties in this country had been seized during the World War under the provisions of the Trading with the Enemy Act. (40 Stat., 411.) Petitioner's employment was made with a view towards procuring legislation which would permit ultimate recovery of the properties. The estimated aggregate value of the properties was $60,000,000. Petitioner was to be compensated on a percentage basis in case it was successful. It, however, was to bear all the costs and expenses. Petitioner launched its campaign. A publicist was retained to arrange for speeches, news items, and editorial comment. Two legal experts were retained to prepare propaganda concerning international relations, treaty rights and the policy of this Nation as respects alien property in time of war. The objective of the campaign was accomplished by the passage of the Settlement of War Claims Act of 1928 (45 Stat., 254). Deductions for the amount paid to the publicist and the two lawyers were taken in 1929 and 1930, thereby producing a net loss in each of those years. Pursuant to section 117 of the 1928 Act, the net loss was carried forward two years and applied against income for 1931. The Commissioner disallowed the deductions and determined a deficiency. The Board of Tax Appeals disagreed, holding that there was no deficiency. (38 B. T. A., 623.) The circuit court of appeals reversed the Board.

We agree that the expenses in question were not deductible. Article 262 of Treasury Regulations 74, promulgated under the 1928 Act was entitled "Donations by corporations" and provided:

"Corporations are not entitled to deduct from gross income contributions or gifts which individuals may deduct under section 23(n). Donations made by a corporation for purposes connected with the operation of its business, however, when limited to charitable institutions, hospitals, or educational institutions conducted for the benefit of its employees or their dependents are a proper deduction as ordinary and necessary expenses. Donations which legitimately represent a consideration for a benefit flowing directly to the corporation as an incident of its business are allowable deductions from gross income. For example, a street railway corporation may donate a sum of money to an organization intending to hold a convention in the city in which it operates, with the reasonable expectation that the holding of such convention will augment its income through a greater number of people using the cars. Sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda, including advertising other than trade advertising, and contributions for campaign expenses, are not deductible from gross income."

If this is a valid and applicable regulation, the sums in question were not deductible as "ordinary and necessary expenses" under section 23(a), since they clearly run afoul of the prohibition in the last sentence of the regulation.

Plainly, the regulation was applicable. The ban against deductions of amounts spent for "lobbying" as "ordinary and necessary" expenses of a corporation derived from a Treasury decision in 1915. (T. D. 2137, 17 Treasury Decisions, Internal Revenue, pages 48, 57-58.) That prohibition was carried into article 143 of Treasury Regulations 33 (revised, 1918) under the heading of "Expenses" in the section on "Deductions."[16] Beginning in 1921 the regulation was entitled "Donations." (Article 562, Treasury Regulations 45.) And in the regulations here in question article 262 appeared under section 23(n) which covered "Charitable and other contributions" by individuals. It assumed that form and content in 1921 and appeared since then without change in all successive regulations.[17] Section 23(n) and section 23(a) both deal with deductions; and a "donation" by a corporation though not deductible under the former might be under the latter. Article 262 purports to specify when a certain type of expenditure or donation by a corporation may or may not be deducted as an "ordinary and necessary" expense. The argument that it was not applicable because it was not specifically incorporated under section 23(a) is frivolous.

[16] Article 143 provided: "*Lobbying expenses.*—Sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda, and contributions for campaign expenses are held not to be an ordinary and necessary expense in the operation and maintenance of the business of a corporation, and are therefore not deductible from gross income in arriving at the net income upon which the income tax is computed."

[17] Article 562, Regulations 62, Revenue Act of 1921; article 562, Regulations 65, Revenue Act of 1924; article 562, Regulations 69, Revenue Act of 1926; article 262, Regulations 74, Revenue Act of 1928.

Petitioner's argument that the regulation is invalid likewise lacks substance. The words "ordinary and necessary" are not so clear and unambiguous in their meaning and application as to leave no room for an interpretative regulation. The numerous cases which have come to this Court on that issue bear witness to that. (*Welch* v. *Helvering*, 290 U. S., 111 [Ct. D. 755, C. B. XII-2, 112 (1938)]; *Deputy* v. *du Pont*, 308 U. S., 488, and cases cited [Ct. D. 1435, C. B. 1940-1, 118].) Nor has the administrative agency usurped the legislative function by carving out this special group of expenses and making them nondeductible. We fail to find any indication that such a course contravened any Congressional policy.[18] Contracts to spread such insidious influences through legislative halls have long been condemned. (*Trist* v. *Child*, 21 Wall., 441; *Hazelton* v. *Sheckells*, 202 U. S., 71.) Whether the precise arrangement here in question would violate the rule of those cases is not material. The point is that the general policy indicated by those cases need not be disregarded by the rule-making authority in its segregation of nondeductible expenses. There is no reason why, in absence of clear Congressional action to the contrary, the rule-making authority can not employ that general policy in drawing a line between legitimate business expenses and those arising from that family of contracts to which the law has given no sanction. The exclusion of the latter from "ordinary and necessary" expenses certainly does no violence to the statutory language. The general policy being clear it is not for us to say that the line was too strictly drawn.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or disposition of this case.

SECTION 25.—CREDITS OF INDIVIDUAL AGAINST NET INCOME.

ARTICLE 25-2: Earned income credit.

REVENUE ACT OF 1934.

I. T. 2855 (C. B. XIV-1, 72 (1935)) revoked, in view of G. C. M. 22853 [page 207, this Bulletin], in so far as it is inconsistent with the principles of the decisions of the Supreme Court of the United States and the regulations cited in G. C. M. 22853. (See I. T. 3501, page 209.)

ARTICLE 25-2: Earned income credit.

REVENUE ACT OF 1934.

Regulations 86, amended. (See T. D. 5057, page 97.)

PART V.—RETURNS AND PAYMENT OF TAX.

SECTION 51.—INDIVIDUAL RETURNS.

ARTICLE 51-1: Individual returns.

REVENUE ACT OF 1934.

Regulations 86, amended. (See T. D. 5057, page 97.)

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[18] In the Revenue Act of 1936 (26 U. S. C., section 23(q), 49 Stat., 1648) Congress specifically provided for deductions of certain contributions by corporations to specified corporations, trusts, funds, or foundations, "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation." And see the Revenue Act of 1938 (26 U. S. C., section 23(q), 52 Stat., 447).

ARTICLE 51–1: Individual returns. 1941–35–10813
(Also Section 25, Article 25–2; Section 117, Article 117–5.) G. C. M. 22853

REVENUE ACTS OF 1932 AND 1934.

G. C. M. 15438 (C. B. XIV–2, 156 (1935)), holding that where husband and wife filed a joint return for the year 1932, losses sustained by the wife from sales or exchanges of securities which were not capital assets may not be allowed as an offset against gains derived by the husband from like transactions, and that such losses may not be applied against other income of the husband, is revoked, since it is contrary to the principles of the decisions of the Supreme Court of the United States in *Helvering* v. *Janney et ux.* and *Gaines et ux.* v. *Helvering* (311 U. S., 189, Ct. D. 1479, C. B. 1940–2, 220) and *Taft et ux.* v. *Helvering* (311 U. S., 195, Ct. D. 1478, C. B. 1940–2, 218) and to the regulations as amended by Treasury Decision 5057 (page 97, this Bulletin).

Recommended that I. T. 2868 (C. B. XIV–1, 111 (1935)) be revoked, and that I. T. 2855 (C. B. XIV–1, 72 (1935)) and I. T. 2875 (C. B. XIV–1, 81 (1935)) be revoked in so far as they are inconsistent with the principles of the above-named Supreme Court decisions and the above-mentioned regulations.

Reference is made to the decisions of the Supreme Court of the United States in *Helvering* v. *Janney et ux.* and *Gaines et ux.* v. *Helvering* (311 U. S., 189, Ct. D. 1479, C B. 1940–2, 220) and *Taft et ux.* v. *Helvering* (311 U. S., 195, Ct. D. 1478, C. B. 1940–2, 218).

In the Janney and Gaines cases, supra, the Supreme Court held that where a husband and wife living together file a joint return, gains from the sale of capital assets by one spouse may be offset by losses from the sale of similar assets by the other spouse under the provisions of sections 51(b)2 and 117(d) of the Revenue Act of 1934. In the Taft case, supra, the Supreme Court held that where a husband and wife file a joint return, their aggregate income is the base to which the percentage limitation provided in section 23(o) of the Revenue Act of 1934 is applied in determining the deduction allowable on account of their charitable contributions. In the course of its opinions, the Court cited with approval Sol. Op. 90 (C. B. 4, 236 (1921)), in which it was stated that a joint return of husband and wife is treated as the return of a taxable unit and the tax is to be laid as though the return were that of a single individual.

In order to conform Regulations 103, 101, 94, and 86, relating to income tax under the Internal Revenue Code and the Revenue Acts of 1938, 1936, and 1934, respectively, to the principles set forth in the above-cited decisions, Treasury Decision 5057 (page 97, this Bulletin), approved July 2, 1941, was promulgated.

G. C. M. 15438 (C. B. XIV–2, 156 (1935)) holds that where husband and wife filed a joint return for the year 1932, losses sustained by the wife from sales or exchanges of securities which were not capital assets may not be allowed as an offset against gains derived by the husband from like transactions, and that such losses may not be applied against other income of the husband. G. C. M. 15438 was promulgated under section 23(r) of the Revenue Act of 1932, relating to limitation on stock losses.

I. T. 2855 (C. B. XIV–1, 72 (1935)) holds, *inter alia*, that the earned income credit under section 25(a) of the Revenue Act of 1934

is against the net income of each individual in the case of a husband and wife, and that their earned income credits under that Act may be computed separately even though they file a joint return.

I. T. 2868 (C. B. XIV-1, 111 (1935)) holds that where a joint return is filed and the wife takes into account under section 117(a) of the Revenue Act of 1934 a loss of $7,000 in excess of gains on sales of capital assets, she is limited to a deduction of $2,000 under section 117(d) of that Act, and that where the wife's income from other sources was only $400, the balance of the deductible loss amounting to $1,600 may be applied against the net income of the husband in computing the combined net income of the husband and wife in the joint return.

I. T. 2875 (C. B. XIV-1, 81 (1935)) holds, *inter alia*, that the earned income credit allowable under the Revenue Act of 1934 is against the net income of each individual, that such a credit is based on the earned net income of the respective individual even though a husband and wife file a joint return, and that in the latter case, where only the husband had income but the wife had an allowable deduction or deductions, the husband only is entitled to an earned income credit and it is based on his earned net income.

Inasmuch as the conclusions reached in G. C. M. 15438, supra, are contrary to the principles of the decisions in the Janney, Gaines, and Taft cases, supra, and to the regulations as amended by Treasury Decision 5057, supra, G. C. M. 15438 is revoked. For the same reason, it is recommended that I. T. 2868, supra, be revoked, and that I. T. 2855, supra, and I. T. 2875, supra, be revoked in so far as they are inconsistent with the principles of the above-named Supreme Court decisions and the above-mentioned regulations.

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

ARTICLE 51-1: Individual returns.

REVENUE ACT OF 1934.

I. T. 2875 (C. B. XIV-1, 81 (1935)) revoked, in view of G. C. M. 22853 (page 207, this Bulletin), in so far as it is inconsistent with the principles of the decisions of the Supreme Court of the United States and the regulations cited in G. C. M. 22853. (See I. T. 3501, page 209.)

SUBTITLE C.—SUPPLEMENTAL PROVISIONS.

SUPPLEMENT B.—COMPUTATION OF NET INCOME.

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

ARTICLE 112(g)-2: Definition of terms.

REVENUE ACT OF 1932.

Acquisition of property by noteholders at foreclosure sale and transfer to new corporation. (See Ct. D. 1529, page 189.)

SECTION 117.—CAPITAL GAINS AND LOSSES.

ARTICLE 117–5: Application of section 117 in the case of husband and wife. (Also Section 25, Article 25–2; Section 51, Article 51–1.) 1941–35–10814 I. T. 3501

REVENUE ACT OF 1934.

In view of G. C. M. 22853 (page 207, this Bulletin), I. T. 2868 (C. B. XIV–1, 111 (1935)) is revoked, and I. T. 2855 (C. B. XIV–1, 72 (1935)) and I. T. 2875 (C. B. XIV–1, 81 (1935)) are revoked in so far as they are inconsistent with the principles of the decisions of the Supreme Court of the United States and the regulations cited in G. C. M. 22853.

ARTICLE 117–5: Application of section 117 in the case of husband and wife.

REVENUE ACT OF 1934.

Regulations 86, amended. (See T. D. 5057, page 97.)

SECTION 119.—INCOME FROM SOURCES WITHIN UNITED STATES.

ARTICLE 119–10: Apportionment of deductions. 1941–30–10793 Ct. D. 1525

INCOME TAX—REVENUE ACT OF 1932—DECISION OF COURT.

1. FOREIGN CORPORATION—DEDUCTIONS—NET INCOME FROM SOURCES WITHIN THE UNITED STATES—DETERMINATION OF "RATABLE PART" OF EXPENSES, LOSSES, AND OTHER DEDUCTIONS—INCLUSION OF DIVIDENDS.

The "ratable part" of expenses, losses, or other deductions to which a foreign corporation is entitled in determining its net income from sources within the United States, under the provisions of section 119(b) of the Revenue Act of 1932, is the ratio between its total gross income from sources within the United States, including dividends, and its total gross income from all sources. *London and Lancashire Ins. Co., Ltd.*, v. *Commissioner* (34 B. T. A., 295) distinguished.

2. FOREIGN CORPORATION—DEDUCTIONS—NET INCOME FROM SOURCES WITHIN THE UNITED STATES—RATABLE PART OF HOME OFFICE GENERAL EXPENSE, BRITISH INCOME TAX, AND INTEREST PAID TO DEBENTURE HOLDERS AND DEBENTURE STOCKHOLDERS—PAYMENTS ON DEBENTURES CONSTITUTE INTEREST RATHER THAN DIVIDENDS.

In determining the net income of a foreign corporation from sources within the United States, deduction may be allowed for a ratable part of home office general expenses, British income taxes, and interest paid to debenture holders and debenture stockholders. The returns on the debenture stock certificates were interest payments rather than distributions in the nature of dividends. Interest on such certificates was payable irrespective of the sufficiency of the earnings or surplus of the corporation, and both principal and interest due thereon were entitled to share in the assets of the corporation on liquidation *pari passu* with unsecured creditors.

COURT OF CLAIMS OF THE UNITED STATES.

The Third Scottish American Trust Co., Limited, v. *The United States.*

[37 Fed. Supp., 279.]

[March 3, 1941.]

OPINION.

WHITAKER, Judge, delivered the opinion of the court.

I. The plaintiff is a foreign corporation chartered under the laws of Great Britain. During the year 1933 it derived income from sources within the United States consisting of interest and dividends. It seeks to deduct from such gross income a "ratable part" of its home office expenses, interest, and British income taxes. The first question presented is the proper method of determining this "ratable part."

The plaintiff says that this ratable part is the ratio between all of its gross income in the United States, including dividends, and its total gross income from all sources. The defendant says that the ratable part is the ratio between plaintiff's income from sources within the United States, exclusive of dividends, and its total income from all sources—in the latter of which, strangely enough, it includes the same dividends which it excludes in determining income from sources within the United States.

Section 119(b) of the Revenue Act of 1932 (47 Stat., 209) is the basic section to be considered. It reads:

"(b) NET INCOME FROM SOURCES IN UNITED STATES.—From the items of gross income specified in subsection (a) of this section there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States."

The items of gross income specified in subsection (a) are items to be included in determining "income from sources within the United States." From these items subsection (b) permits the deduction of expenses, etc., "properly apportioned or allocated thereto": that is to say, expenses incurred in the earning of the income specified. Further it was recognized that the taxpayer would incur expenses attributable to the earning of both its United States and its other income, and that it would not be possible to say with any degree of accuracy just how much of it was incurred in the earning of United States income and how much in the earning of other income. So, in such case it was provided that the taxpayer might deduct a "ratable part" thereof. This meant, of course, such part as the ratio of its gross income from United States sources bore to its total gross income. All that it is necessary for us to do, therefore, to decide the issue between the parties is to look to the Act to see if dividends are included in what the statute defines as gross income from sources within the United States. We find they are specifically included.

But the defendant says Congress could not have intended to include dividends because they are not subject to the tax. Be that as it may, Congress nevertheless explicitly did include them. The Act says: "The following items of gross income shall be treated as income from sources within the United States." It first lists interest, and then dividends from two classes of corporations—and it is conceded the corporations from which these dividends were received come within one of the classes named—and then other items with which we are not concerned.

This being true, we have no option but to apply the Act as it is written. If Congress failed to provide for a contingency for which it should have provided, the courts are powerless to supply the omission. If the statute is plain and unambiguous, it must be enforced as written, although the result be illogical.

In support of its position the defendant cites *London and Lancashire Ins. Co., Ltd.*, v. *Commissioner* (34 B. T. A., 295). The question there was the same as the question here, but it arose not under the sections of the Act we have under consideration, but under those sections applicable to insurance companies. Section 204(a) of the Revenue Act of 1928 included dividends within an insurance company's gross income, but subsection (c) permitted the deduction of "the amount received as dividends from corporations as provided in section 23(p)." There is no such provision in section 119(b) of the Revenue Act of 1932; nor was there any such provision in section 119(b) of the Revenue Act of 1928. Furthermore, subsection (e) of section 204 of the Revenue Act of 1928 provided that "Nothing in this section shall be construed to permit the same item to

be twice deducted," and the Board expressly rested its decision on this subsection, holding that to permit dividends to be taken into consideration in determining the ratable part of expenses, etc., to be deducted would be tantamount to permitting them to be deducted twice. This subsection relates alone to insurance companies and has no application to a taxpayer of the character of plaintiff in the case at bar.

The language of the sections before us is so explicit that we have no option but to hold that in determining the ratable part of the deductions to which plaintiff is entitled, we must take that part of them which plaintiff's total gross income from sources within the United States, including dividends, bears to its total income from all sources.

II. The defendant in its brief says that the plaintiff has not shown that the following claimed deductions "are connected with income from sources within the United States," to wit: (1) home office general expenses; (2) British income tax; (3) interest paid to debenture holders and debenture stockholders.

1. It is no doubt true that the general expenses of the home office were incurred primarily in the carrying on of the business of the company outside of the United States, but it can not be said that some part of these expenses were not spent in connection with the making and supervision of the plaintiff's investments in this country, from which it received interest and dividends. Just what part was spent in connection with United States investments it is impossible to say. This contingency was recognized by Congress when provision was made for the deduction of a "ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income." The plaintiff is entitled to this deduction.

2. The defendant concedes that the British income tax was levied on the plaintiff's entire income, including its income from sources within the United States. It is, therefore, manifestly proper that a ratable part of these taxes should be deducted from United States income in determining the tax to be paid the defendant.

3. The defendant concedes in its brief that the interest paid the debenture holders and debenture stockholders were interest payments, rather than distributions in the nature of dividends. We have carefully examined the debenture certificates and the debenture stock certificates and the instrument securing them. We have no doubt that the payments made on the debenture certificates were interest, but the nature of the payments on the debenture stock certificates is not so easy to determine. After careful consideration, however, and upon the authority of the cases cited on this point in the plaintiff's excellent brief, we hold that the returns on the debenture stock were also interest and not dividends.

In so holding we are influenced primarily by the fact that interest on these certificates was payable irrespective of the sufficiency of the earnings or of the surplus of the company, and also by the fact that both the principal and interest due on these certificates were entitled to share in the assets of the company on liquidation *pari passu* with unsecured creditors. It is true that the holders of these certificates could not demand a return of the principal so long as the company was not in default in the payment of interest and so long as it complied with the other conditions of the indenture securing them; but this alone is not sufficient to characterize the transaction as a purchase of shares in the company rather than a loan of money to it. The holder risked neither his capital nor the return thereon on the fortunes of the company. His return was payable whether the company made profits or not, and he secured the return of his principal on a parity with other unsecured creditors of the company. Such are the characteristics of a loan to the company, rather than of a purchase of a proprietary interest in it. See in particular the opinion of the Fourth Circuit Court of Appeals in *Helvering* v. *Richmond, Fredericksburg & Potomac Railroad Co.* (90 Fed. (2d), 971); and also of the Second Circuit Court of Appeals in *Commissioner* v. *O. P. P. Holding Corporation* (76 Fed. (2d), 11); and of the Chancery Division of the Supreme Court of Judicature of Great Britain in *In re Bodman*, L. R. (1891) (3 Ch. Div., 135).

Interest paid on borrowed money, of course, has a connection with all of the company's investments, including its investments in the United States, and, therefore, plaintiff is entitled to deduct a ratable part of this interest.

Entry of judgment will be delayed until the filing of a stipulation by the parties, or, in the absence of a stipulation, until the incoming of a report by a commissioner as to the correct amount due plaintiff, computed in accordance with this opinion. It is so ordered.

MADDEN, Judge; JONES, Judge; LITTLETON, Judge, concur.

WHALEY, Chief Justice, concurs in the conclusion.

SECTION 120.—UNLIMITED DEDUCTION FOR CHARITABLE AND OTHER CONTRIBUTIONS.

ARTICLE 120–1: Unlimited deduction for charitable and other contributions.

REVENUE ACT OF 1934.

Regulations 86, amended. (See T. D. 5057, page 97.)

SUPPLEMENT C.—CREDITS AGAINST TAX.

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

ARTICLE 131–1: Analysis of credit for taxes. 1941–28–10774
Ct. D. 1522

INCOME TAX—REVENUE ACT OF 1934—DECISION OF COURT.

1. CREDIT FOR FOREIGN TAXES—DOMESTIC STOCK INSURANCE COMPANY—CANADIAN EXCISE TAX CREDITED AGAINST CANADIAN INCOME TAX—CREDIT AGAINST UNITED STATES INCOME TAX ONLY IN AMOUNT OF DIFFERENCE BETWEEN CANADIAN EXCISE AND INCOME TAXES.

A domestic stock insurance company doing business in the United States and Canada, and which in 1934 paid Canadian excise tax on premiums (concededly not within the provisions of section 131(a)1 of the Revenue Act of 1934) by crediting such tax against Canadian income tax in accordance with the provisions of the Canadian Income War Tax Act of 1917, is entitled to credit for foreign taxes only in the amount of the difference between the Canadian income and excise taxes, in computing United States income tax for the year 1934.

2. DECISION REVERSED.

Decision of the United States Board of Tax Appeals (1939) (40 B. T. A., 484) reversed.

3. CERTIORARI DENIED.

Petition for certiorari denied March 31, 1941.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Guy T. Helvering, Commissioner of Internal Revenue, petitioner, v. *Queen Insurance Co., respondent.*

[115 Fed. (2d), 341.]

Appeal from an order of the Board of Tax Appeals expunging a deficiency in the respondent's income tax for the year 1934.

Before L. HAND, AUGUSTUS N. HAND, and CHASE, Circuit Judges.

[November 4, 1940.]

OPINION.

Per curiam: The only question in this case is as to the meaning of section 7 of Part III of the Canadian Income War Tax Act of 1917, which reads as follows: "A taxpayer shall be entitled to deduct from the tax that would otherwise be payable by him under this act, the amount paid for corresponding periods under the provisions of Parts II and III of the Special War Revenue Act of 1915." By section 131(a)1 of the United States Revenue Act of 1934, a taxpayer may credit upon his income tax "the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country." The taxpayer at bar, a domestic stock insurance company doing a fire and marine business in the United States and Canada, became liable in the year 1934 for a

Canadian excise upon its Canadian premiums of $5,404.94; and it is conceded that this tax was not within section 131(a)1. It was also liable in the same year for a Canadian income tax of $6,924.05. The difference between this sum and the excise was $1,519.11, which was all that the Commissioner allowed as a credit upon the taxpayer's income tax, on the theory that only so much Canadian income tax had accrued or had been paid. The taxpayer maintained on the other hand that, although the Canadian excise was applied as a credit upon the amount due as Canadian income tax, the whole income tax had nevertheless been paid, and should be credited upon the United States income tax. The Board agreed with this position, and the Commissioner appealed.

The taxpayer's position must be that the same sum paid both the Canadian excise and the Canadian income tax. Theoretically that might be true, but the Canadian act did not say so; on the contrary it said the taxpayer might deduct the excise from the income tax "that would otherwise be payable by him," which meant that as things were the income tax was not payable *pro tanto*. If so, it did not accrue, and he did not pay it. If the Canadian statute had happened to say that the taxpayer might deduct the income tax from what would otherwise be payable as excise, the opposite result would have followed; and that, no doubt, is somewhat capricious, but the caprice, if there is any, is that of our own law, which allows the one credit and not the other. That puts it upon the taxpayer to prove that he has paid an actual income tax, not that an income tax would have been payable, if facts had been "otherwise."

Order reversed.

ARTICLE 131-3: Conditions of allowance of credit.

REVENUE ACTS OF 1918, 1921, 1924, 1926, 1928, 1932, AND 1934.

Regulations 86, 77, 74, 69, 65, 62, and 45, modified. (See T. D. 5056, page 139.)

ARTICLE 131-9: Joint return by husband and wife.

REVENUE ACT OF 1934.

Regulations 86, amended. (See T. D. 5057, page 97.)

SUPPLEMENT D.—RETURNS AND PAYMENT OF TAX.

SECTION 143.—WITHHOLDING OF TAX AT SOURCE.

ARTICLE 143-1: Withholding tax at source. 1941-28-10775
(Also Article 143-10.) G. C. M. 22798

REVENUE ACT OF 1932.

The bondholders' committee, which took over the assets of the M Company but did not assume the company's obligation as to payment of principal and interest on its tax-free covenant bonds, and did not make distributions of interest as agent of the obligor, is not required, under section 143(a) of the Revenue Act of 1932, to withhold the tax on the interest distributions. Accordingly, there is no basis for the credit under section 143(d) to the bondholders of the M Company on account of tax withheld at the source. G. C. M. 14549 (C. B. XIV-1, 154 (1935)) revoked.

This office has reconsidered G. C. M. 14549 (C. B. XIV-1, 154 (1935)) wherein it was held that a bondholders' protective committee, which received rentals from the mortgaged property under an assignment from the corporate mortgagor and distributed sums so received to the holders of tax-free covenant bonds, assumed the corporation's

obligation to pay principal and interest on the bonds, and was, therefor, subject to the withholding provisions of section 143(a) of the Revenue Act of 1932.

Upon reconsideration, it now appears that the bondholders' committee did not assume the payment of the interest and principal of the bonds, and since distributions of interest were not made by the bondholders' committee as agent for the obligor, no withholding by the committee is required.

In cases where a corporation subject to the withholding provisions of section 143(a) of the Internal Revenue Code fails to comply therewith and such obligation is not assumed by an assignee, there exists no basis for the allowance to the bondholders of a credit under section 143(d) on account of tax withheld at the source and such credit should not be allowed.

Accordingly, G. C. M. 14549, supra, is revoked.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

ARTICLE 143–10: Return of income from which tax was withheld.

REVENUE ACT OF 1932.

Interest paid by bondholders' committee. (See G. C. M. 22798, page 213.)

SUPPLEMENT J.—POSSESSIONS OF THE UNITED STATES.

SECTION 251.—INCOME FROM SOURCES WITHIN POSSESSIONS OF UNITED STATES.

ARTICLE 251–1: Citizens of United States and domestic corporations deriving income from sources within a possession of the United States.

REVENUE ACT OF 1934.

Regulations 86, amended. (See T. D. 5057, page 97.)

SUPPLEMENT O.—OVERPAYMENTS.

SECTION 322.—REFUNDS AND CREDITS.

ARTICLE 322–3: Claim for refund by taxpayers. 1941–51–10934
Ct. D. 1531

1. CLAIM FOR REFUND—LETTER OF PROTEST—INFORMAL CLAIM PERFECTED BY FORMAL CLAIM.

A letter dated March 23, 1925, written by the taxpayer to the collector and lodged with the Commissioner, protesting against a jeopardy deficiency assessment on the ground that the Commissioner was without authority in law to reopen and set aside the March 1, 1913, valuation of stock as determined in 1919 by the then Commissioner (on the basis of which valuation she had sold her stock), and stating that, if it should be held that such revaluation may be had, then she "will insist" that the valuation fixed by the Commissioner was less than the fair market value as of March 1, 1913, that the tax paid was correspondingly excessive, and that she "will claim the

right to a refund" to the extent of such excess, constitutes a valid and timely informal claim for refund, since it was filed within five years of the expiration of the time for filing return, as extended, and was subsequently perfected by the filing of an amended formal claim in September, 1928, making more specific the allegations of the earlier informal claim. If the point were doubtful, it would be resolved by the consistent administrative treatment of the letter and the later amendment as a claim for refund. The entire course of departmental action was a waiver of the requirements of the regulations as to the formality and particularity with which the grounds for refund are required to be stated.

2. SUIT—RECOVERY OF OVERPAYMENTS—JUDGMENT REFUNDING TAXES NOT A BAR TO LATER SUIT FOR FURTHER RECOVERY WHERE TAXES PAID TO DIFFERENT COLLECTORS.

A judgment for refund of taxes paid to a collector in 1925 upon profits from the sale in 1919 of certain shares of stock does not bar a later suit for a further recovery of 1919 taxes overpaid in 1920 to a different collector, even though the two collections were for taxes arising out of the same transaction.

3. DECISION AFFIRMED.

Decision of the United States Circuit Court of Appeals, Sixth Circuit (1940) (115 Fed. (2d), 497) affirmed.

SUPREME COURT OF THE UNITED STATES.

United States of America, appellant, v. *Alice Gray Kales.*

[62 S. Ct., 214]

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

[62 S. Ct., 214.]

OPINION.

Mr. Chief Justice STONE delivered the opinion of the Court.

Two questions are presented for decision by the record in this case. First, was a letter written to the tax collector by respondent taxpayer and lodged with the Commissioner a claim for refund of overpaid taxes so as to stop the running of the statute of limitations against the claim? Second, did a judgment refunding taxes paid to the collector in 1925 upon profits from the sale of certain shares of stock in 1919 bar a later suit for a further recovery of 1919 taxes overpaid in 1920 to a different collector upon profits from the same transaction?

In 1919 respondent was the owner of 525 shares of the stock of the Ford Motor Co. which she had acquired before March 1, 1913. In anticipation of the sale of the stock she requested and obtained in 1919 from the Commissioner of Internal Revenue a ruling that the March 1, 1913, value of the stock was $9,489 per share. She then sold the stock for $12,500 a share and reported in her income tax return for 1919 the profit over the March 1, 1913, value thus established. In 1920 she paid the tax so computed, amounting to $1,216,086, to Collector Grogan, since deceased.

In March, 1925, the Commissioner made a jeopardy deficiency assessment against respondent for an increase of profit on the sale of the stock in 1919, on the ground that respondent had overstated the 1913 value of the stock in her 1919 tax return. Respondent paid the additional assessment, amounting to $2,627,309, to Collector Woodworth on March 24, 1925. At the same time she lodged with the collector and the Commissioner a written protest, dated March 23, 1925, against the jeopardy assessment on the ground, among others, that the Commissioner was without authority in law to reopen and set aside the 1913 valuation of the stock as determined in 1919 by the then Commissioner, on the basis of which respondent had sold her stock. By paragraph 9 of the protest respondent also advised the collector, the Commissioner and the Government, that while it was respondent's position that the deficiency assessment was illegal and void for this and other reasons stated, if the Internal Revenue Department, the Board of Tax Appeals or any court having juris-

diction should hold that the assessment of March 1, 1913, value of her stock, made in 1919, should be vacated, set aside, reopened or reversed, then respondent would insist that the valuation fixed by the Commissioner in 1919 was less than the fair market value as of March 1, 1913, that the 1919 tax which she had paid in 1920 was correspondingly excessive and that she should recover the tax to the extent of such excess when the fair value had been determined. She added in paragraph 10 that "if for any reason a revaluation shall be had," she "will insist" that the stock was greatly undervalued by the Department and "will claim the right to a refund" of the excess tax collected.

After a claim duly filed for refund of the amount of the jeopardy assessment, paid in 1925, respondent brought suit in the district court against Collector Woodworth, which resulted in a judgment for the taxpayer for the full amount of the assessment with interest. The Circuit Court of Appeals for the Sixth Circuit affirmed the judgment (*Woodworth* v. *Kales*, 26 Fed. (2d), 178), which was satisfied in November, 1928.

September 24, 1928, respondent filed a formal claim for refund of the taxes paid in 1919, stated to be an amendment of the claim for refund contained in her letter of protest of March 23, 1925. By the amendment respondent sought an additional refund of income taxes, paid for the year 1919, in the amount of $195,710 with interest, upon the ground that the Ford stock, as the Board of Tax Appeals had then determined in *James Couzens* (11 B. T. A., 1040), had a March 1, 1913, value of $10,000 per share, and that she should accordingly have the benefit of this higher basis in computing her profit. At a hearing granted by the General Counsel for the Bureau of Internal Revenue on June 13, 1929, the amended claim was considered on the merits. Again in January, 1933, a member of his staff, at a conference with respondent's attorney, advised the latter that the informal claim was filed in time and was good as an informal claim.

By letter of June 4, 1935, however, the Commissioner declined to act upon it, on the single ground that because respondent's judgment for refund of the jeopardy assessment for 1919 taxes had been satisfied "the Bureau is precluded from giving further consideration in any respect to the matter of your income tax liability for the taxable year 1919." This was followed by the Deputy Commissioner's letter of August 20, 1935, to respondent, stating that "the refund claim filed in 1925 was merged into the judgment * * * and you were, therefore, precluded from filing an amendment to the earlier claim which had been finally adjudicated." The letter added "The adjudication by the court removed this matter from the realm of administrative action other than to make refund as directed by the judgment."

Collector Grogan having retired from office and having died, the present suit for refund of the overpayment of the tax claimed was brought in the district court against the United States under the provisions of section 1122(c) of the Revenue Act of 1926. This section authorizes suits in the district court for the refund of overpayment of revenue taxes even if in excess of $10,000 to be brought against the United States where the collector to whom the overpayment was made is dead or is not in office when the suit is brought. The judgment of the district court dismissing the suit on motion was reversed by the circuit court of appeals (115 Fed. (2d), 497), which held that the letter of March 23, 1925, was a timely informal claim for refund which had been perfected by the formal amended claim filed in September, 1928, that consequently the respondent's cause of action was not barred by limitation and that recovery was not precluded by the previous judgment for recovery of the jeopardy assessment for 1919. We granted certiorari (313 U. S., 553), upon petition of the Government, which urged that any further recovery for overpayment of the 1919 tax was barred by the judgment in the respondent's suit and recovery of the jeopardy assessment for that year, a question of importance in the administration of the revenue laws. The Government urges as grounds for reversal that if respondent's letter of March 23, 1925, be considered a claim for refund any recovery is barred by the 1928 judgment, and that in any event the letter was not a claim for refund and does not support the present suit.

First: Concededly recovery of the 1919 tax, paid in 1920, is not barred by limitation if respondent's letter of March 23, 1925, be treated as a claim for refund. The collector of internal revenue extended the respondent's time to make return of her 1919 income taxes for 30 days from March 15, 1920, and her letter was placed with the Commissioner within five years of the expiration of the extended time. Section 284(h) of the 1926 Revenue Act (44 Stat., 9) provides

that a claim for refund of 1919 taxes shall not be barred by a lapse of time if filed within five years from the date when the return was due. Revised Statutes section 3226 (26 U. S. C., section 1672) makes the filing of a claim for refund in accordance with the law and Treasury regulations a condition precedent to suit to recover it. Article 1306 of Treasury Regulations 65, promulgated under the 1924 Revenue Act and applicable here, provides that claims for refund shall be made upon Form 843, setting forth all the facts relied on under oath. But Treasury Decision 4266, promulgated March 27, 1929 [C. B. VIII–1, 111 (1929)], authorizes the Commissioner to make a refund after the expiration of the statutory period of limitation, even though no formal claim has been filed before that time, in any case in which an informal or defective claim, duly filed prior to the expiration of the period of limitation and stating specifically the grounds for the refund, is perfected by the filing of a claim prior to May 1, 1929.

This Court, applying the statute and regulations, has often held that a notice fairly advising the Commissioner of the nature of the taxpayer's claim, which the Commissioner could reject because too general or because it does not comply with formal requirements of the statute and regulations, will nevertheless be treated as a claim where formal defects and lack of specificity have been remedied by amendment filed after the lapse of the statutory period. (*United States* v. *Memphis Cotton Oil Co.*, 288 U. S., 62 [Ct. D. 626, C. B. XII–1, 307 (1933)]; *United States* v. *Factors & Finance Co.*, 288 U. S., 89 [Ct. D. 628, C. B. XII–1, 315 (1933)]; *Bemis Bro. Bag Co.* v. *United States*, 289 U. S., 28 [Ct. D. 649, C. B. XII–1, 328 (1933)]; *Moore Ice Cream Co.* v. *Rose*, 289 U. S., 373, 384 [Ct. D. 676, C. B. XII–1, 341 (1933)].) This is especially the case where such a claim has not misled the Commissioner and he has accepted and treated it as such. (*Bonwit Teller Co.* v. *United States*, 283 U. S., 258 [Ct. D. 334, C. B X–1, 328 (1931)]; *United States* v. *Memphis Cotton Oil Co.*, supra, 70.)

In applying these guiding principles to the case in hand it is necessary to read the letter of March 23, 1925, in the light of the peculiar circumstances then well known to the Commissioner and referred to in the letter. The letter dealt with two distinct subjects. One was the jeopardy assessment which the taxpayer was about to pay and did in fact pay to the collector on the following day when the letter in duplicate was given to the collector and the Commissioner. The other, stated in paragraphs 9 and 10 of the letter, related to the liability of the Government for overpayments of 1919 taxes made to Collector Grogan in 1920 in the event that the Commissioner's 1919 assessment of the Ford stock should be set aside by the courts or administrative action. In that event the letter recites that the 1919 valuation was too low, the tax paid in 1920 was too high, and asserts the taxpayer's consequent "right to a refund of said tax to the extent of such excess."

The letter states correlative alternative rights on which the taxpayer relied. One was the challenge to the validity of the 1925 jeopardy assessment on the ground that the appraisal in 1919 of the then Commissioner was unalterable. The other was respondent's right to a refund of taxes paid in 1920 in the event that the 1919 appraisement of the stock should be set aside by the Bureau or be determined to be erroneous. Whether the Commissioner would insist upon changing the 1919 appraisal of her stock, and whether in any case the Board of Tax Appeals would find a different 1913 value for the stock, were matters for future determination. When respondent filed her letter the time within which a claim for refund could be filed was about to expire, and the occurrence of the contingencies on which a recovery could be had by respondent remained uncertain. But the Commissioner could have been left in no doubt that she was setting forth her right to a refund in the event of a departmental revision of its 1919 valuation of her stock. Her letter was present notice that if the Department insisted upon changing its original decision as to the 1913 value, she asserted that the stock had been undervalued and in consequence of the undervaluation she had a "right to a refund of said [1919] tax to the extent of such excess." Her concluding paragraph made the like assertion "if for any reason a revaluation shall be had" of the Ford stock. At that time the Commissioner had assessed deficiencies aggregating $31,000,000 against former Ford stockholders who had sold stock which they had acquired before March 1, 1913. (See *James Couzens*, 11 B. T. A., 1043–1044.) Respondent's amended formal claim of September 11, 1928, only made more specific the allegations of her earlier informal claim by stating that the Board of Tax Appeals had found the 1913 value of the stock to be $10,000 per share and by computing the excess tax, the right to which had been asserted in the earlier claim.

The fact that respondent had originally stated her claim in the future tense, saying that in the event of departmental revision of the valuation of the stock she "will insist" on a higher valuation and "will claim the right to a refund," does not in the circumstances of this case lend even grammatical support to the Government's contention. Such a use of the future tense in stating a claim may, with due regard to the circumstances of making it, rightly be taken as an assertion of a present right. (See *Georgia, Florida & Alabama Ry. Co.* v. *Blish Milling Co.*, 241 U. S., 190, 197–198; cf. *Moore Ice Cream Co.* v. *Rose*, supra, 384, reversing 61 Fed. (2d), 605.) Here the claim is alternative and contingent upon future events. The statement that upon the happening of the contingency the claim will be prosecuted is not inconsistent with the present assertion of it. It is indeed an appropriate, if not the necessary phraseology for the present assertion of an alternative claim with respect to which a taxpayer in his presentation of an informal tax refund claim, should be in no less favorable position than the plaintiff in a suit at law who is permitted to plead his cause of action in the alternative. (See rule 8(e) of the Federal Rules of Civil Procedure; *United States* v. *Richards*, 79 Fed. (2d), 797.)

If the point were more doubtful than we think it is, it would be resolved by the consistent administrative treatment of respondent's letter of March 23, 1925, and the later amendment as a claim for refund. Neither the original nor the amended claim has ever been rejected as inadequate by the Commissioner or the Bureau. There has been no objection to the claim on the ground that it was informal, deficient in its content, or untimely. Acknowledgment of the letter of March 23, 1925, by the Commissioner referred to the jeopardy assessment, but made no mention of the asserted right to refund of taxes paid in 1920. After the amendment was filed in September, 1928, the claim was held under advisement by the Bureau for nearly seven years. As we have said, it was consistently treated in correspondence by the Bureau and at hearings during this period as a claim for refund. The Commissioner finally by his letters of June 4, 1935, and August 25, 1935, declined to consider the claim on the sole ground that it was no longer a subject of administrative action because "the refund claim filed in 1925 was merged into the judgment" for refund of the tax paid on the jeopardy assessment. Not only do we think that this entire course of departmental action was an administrative construction of respondent's letter of March 23, 1925, conforming to our own interpretation of its words, but we think it was a waiver of the requirements of the regulations as to the formality and particularity with which the grounds for refund are required to be stated. (*Bonwit Teller & Co.* v. *United States*, supra, 264; *United States* v. *Memphis Cotton Oil Co.*, supra, 70; cf. *Tucker* v. *Alexander*, 275 U. S., 228, 231 [T. D. 3973, C. B. VI–1, 287 (1927)]; *United States* v. *Garber Oil Co.*, 302 U. S., 528, 533.)

Second: The Government argues that the right to recover for overpayment of income taxes in any tax year constitutes a single cause of action against the Government and that the present suit by the respondent, seeking recovery of 1919 taxes, after having recovered the amount of the jeopardy assessment for the same year involved an inadmissible splitting of her cause of action. In any event it insists that no cause of action for recovery of overpayment of 1919 taxes could survive the recovery of the amount of the jeopardy assessment, since the judgment for that recovery merged all claims for overpayment of 1919 taxes and so foreclosed the present suit for additional overpayments of taxes growing out of the same transaction.

But we think these contentions disregard the statutory scheme which has been set up for the recovery from an internal revenue collector, of taxes which he had unlawfully collected. (See *Sage* v. *United States*, 250 U. S., 33.) Originally payment under protest to an internal revenue collector of illegally exacted taxes gave rise to a common law cause of action against the collector for restitution of the overpayment. (*Elliott* v. *Swarthwout*, 10 Pet., 137, 153, 156; *Moore Ice Cream Co.* v. *Rose*, supra, 375, and cases cited.) By the protest the collector was informed of the contention of the taxpayer and was thus precluded from relieving himself, by payment into the Treasury of the moneys collected, from liability to make restitution. (*Elliott* v. *Swarthwout*, supra; *Smietanka* v. *Indiana Steel Co.*, 257 U. S., 1, 4.) By a series of Congressional Acts it was made the duty of the collector to pay to the Government the moneys collected, regardless of a protest. (12 Stat., 442; 13 Stat., 483; R. S., section 3210; 26 U. S. C., section 1761.) But with imposition of this duty on the collector to pay over, the Government undertook to indemnify him upon cer-

tification by the court either that there was probable cause for the act done by the collector or that he acted under directions of the Secretary of the Treasury or other proper officers of the Government. (12 Stat., 741, section 12.) In that event no execution was to issue against him but the amount of recovery was to be paid out of the Treasury. These provisions, carried into Revised Statutes, section 989, are continued as 28 U. S. C., section 842. By section 1014 of the Revenue Act of 1924 (43 Stat., 253, 343), amending Revised Statutes, section 3226, the requirement for protest of the payment was abolished.

While the effect of the certificate in indemnifying the collector has been said to convert the suit against him into a suit against the Government, at least so far as the ultimate incidence of the liability is concerned (*United States* v. *Sherman*, 98 U. S., 565, 567; *Moore Ice Cream Co.* v. *Rose*, supra, 381), the statutory provisions have not altered the nature and extent of the claims which the taxpayer is authorized to prosecute in suits against the collector. Originally it was the payment of the illegally exacted tax which gave rise to the cause of action. It was the payment which designated the person against whom the suit might be brought and which measured the right of recovery. Payments made to one collector could not be recovered from another, and since the causes of action against the two collectors were different recovery upon one could not bar recovery upon the other.

After the enactment of legislation requiring collectors of customs to pay over to the Government duties collected under protest (5 Stat., 348; R. S., section 3010), doubts arose whether suit could, in such circumstances, be maintained against them, since it was thought that the statutory command had relieved the collectors from personal liability. (See *Cary* v. *Curtis*, 3 How., 235.) But those doubts were put at rest by later Acts of Congress establishing the continued right of the taxpayer to maintain a suit against such a collector notwithstanding payment over of his collections to the Treasury. (5 Stat., 727, R. S., section 3011; *Curtis's Administratrix* v. *Fiedler*, 2 Black, 461, 479; *Arnson* v. *Murphy*, 109 U. S., 238, 241.) A like uncertainty as to the effect of the statutes requiring internal revenue collectors to pay moneys collected to the Government was resolved by this Court's decisions in *Philadelphia* v. *Collector* (5 Wall., 720, 731); *Collector* v. *Hubbard* (12 Wall., 1, 13). As Congress had enacted provisions for indemnification of the collector by the Government, the implication necessarily arose that the taxpayer could maintain an action against him. (See 12 Stat., 434, 729, 741; 13 Stat., 239.)

The right of action thus continued is identical with that which existed before Congress had acted. Notwithstanding the provision for indemnifying the collector and protecting him from execution, the nature and extent of the right asserted and the measure of the recovery remain the same. It was payment to the collector which gave rise to the suit against him and limited the amount of the recovery. The judgment against the collector is a personal judgment, to which the United States is a stranger except as it has obligated itself to pay it. (See *Sage* v. *United States*, supra; *Smietanka* v. *Indiana Steel Co.*, supra, 4, 5.)

While the statutes have for most practical purposes reduced the personal liability of the collector to a fiction, the course of the legislation indicates clearly enough that it is a fiction intended to be acted upon to the extent that the right to maintain the suit and its incidents, until judgment rendered, are to be left undisturbed. Among its incidents are the right to a jury trial, which is not available in suits against the United States. (28 U. S. C., section 41(20).)

By no possibility could the respondent in the suit brought against Collector Woodworth in 1925 recover taxes paid to Collector Grogan in 1920, which she demands here. Recovery from one collector of the payment to him does not bar recovery on the different cause of action arising upon payment to the other, even though the two collections are for taxes arising out of the same transaction. (*Sage* v. *United States*, supra; *Bankers Pocahontas Coal Co.* v. *Burnet*, 287 U. S., 308; Cf. *Graham & Foster* v. *Goodcell*, 282 U. S., 409, 430 [Ct. D. 287, C. B. X–1, 191 (1931)]; *Sunshine Coal Co.* v. *Adkins*, 310 U. S., 381, 403.) The right to pursue the common law action against the collector is too deeply imbedded in the statutes and judicial decisions of the United States to admit of so radical a departure from its traditional use and consequences as the Government now urges, without further Congressional action.

Affirmed.

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

EMPLOYMENT TAXES.[a]

INTERNAL REVENUE CODE.

CHAPTER 9, SUBCHAPTER A.—FEDERAL INSURANCE CONTRIBUTIONS ACT.

SECTION 1426: Definitions.
REGULATIONS 91 (as amended), ARTICLE 16: Items included as wages.

Dismissal payments. (See Em. T. 424, page 229.)

SECTION 1426: Definitions. 1941-29-10786
REGULATIONS 106, SECTION 402.204: Who are employees. Mim. 5217
(Also Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Section 403.204.)

Directors of banks performing services on committees of banks are "employees" for social security and employment tax purposes.—Ruling effective January 1, 1941, and does not require payment of taxes with respect to services rendered prior to that date.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 15, 1941.

Collectors of Internal Revenue and Others Concerned:

Inquiry has been made of the Bureau whether directors of banks who serve on various committees, such as executive committees, discount committees, examining committees, etc., are employees within the meaning of Titles VIII and IX of the Social Security Act and Subchapters A and C, Chapter 9, of the Internal Revenue Code, as amended, with respect to the services performed by them in their capacities as committee members.

The by-laws of a bank generally provide that the board of directors may appoint from its own members an executive committee, a discount committee, an examining committee, and such other committees as are deemed necessary for the proper conduct of the business. The executive committee is authorized to exercise the power of the board of directors in the management of the business affairs and property of the bank during intervals between the meetings of the board of directors, and that committee is required to keep minutes and to submit a report of its actions at every regular meeting of the board. The discount committee meets once a week and gives consideration to, and acts upon, recommendations of the officers with respect to the granting of credit. The examining committee is required to make under such direction and supervision as it shall determine an examination of the affairs of the bank at least every six months, or more often if required by the board, and to make a report thereof to the board with such recommendations as may seem desir-

[a] NOTE.—Rulings published in the Internal Revenue Bulletin subsequent to July 1, 1941, with respect to the taxes imposed by the Social Security Act, the Carriers Taxing Act of 1937, and Subchapters A, B, and C of Chapter 9 of the Internal Revenue Code, as amended, bear the symbols "Em. T." S. S. T. 419 (I. R. B. 1941-29) has been changed to Em. T. 419.

able. In some cases members of a committee are compensated for their services.

Section 402.204 of Regulations 106 and section 403.204 of Regulations 107, issued pursuant to Subchapters A and C, respectively, of Chapter 9 of the Internal Revenue Code, as amended, provide that a director of a corporation, as such, is not an employee of the corporation. However, a director who performs services for the corporation other than those required by attendance at and participation in meetings of the board of directors may be an employee of the corporation. Regulations 91 and 90, issued pursuant to Titles VIII and IX, respectively, of the Social Security Act, contain similar provisions.

In January, 1941, the Bureau held that the legal relationship of employer and employee exists between banks and the directors thereof with respect to services performed by them as members of the various committees and, accordingly, that such individuals are employees for social security and employment tax purposes.

Pursuant to the authority granted in section 3791(b) of the Internal Revenue Code, the ruling holding directors of banks to be employees with respect to services performed as members of committees was made applicable only to services performed on or after January 1, 1941, and does not require payment of the taxes imposed under Titles VIII and IX of the Social Security Act and Subchapters A and C, Chapter 9, of the Code, as amended, with respect to services performed prior to such date. However, for the purpose of maintaining proper wage records, every bank which paid wages to directors for services performed as committeemen prior to January 1, 1941, and which did not include such amounts as wages on returns filed pursuant to Title VIII of the Social Security Act and Subchapter A, Chapter 9, of the Internal Revenue Code, will be required to file with the collector of internal revenue for its district statements on Form SS–1c.

The ruling set forth above should not be construed as authorizing refund, credit, or other adjustment of any taxes paid by reason of a bank having considered that directors serving as members of committees were its employees for social security and employment tax purposes.

Correspondence in regard to the contents of this mimeograph should refer to its number and to the symbols A&C:RR:1.

GUY T. HELVERING, *Commissioner.*

SECTION 1426: Definitions. 1941–37–10826
REGULATIONS 106, SECTION 402.204: Who are employees. Em. T. 420
(Also Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Section 403.204.)

> A bar pilot engaged by the M Steamship Co. to pilot a vessel into and out of the port of Y is not an employee of that company for purposes of the taxes imposed by Subchapters A and C, Chapter 9, of the Internal Revenue Code, as amended by the Social Security Act Amendments of 1939.

Advice is requested whether a bar pilot engaged by the M Steamship Co. to pilot a vessel into and out of the port of Y is an employee of that company for employment tax purposes.

The M Steamship Co. engaged a licensed pilot to direct the handling of its vessel upon entering and leaving the port of Y in the State of R. The pilot is a member of an organization of licensed pilots known as the N Pilots Association and is licensed by the State of R and by the Federal Government. Through the medium of such association the pilots own and operate pilot boats which take them to and from the vessels. A pilotage fee of 150x dollars was received by the pilot.

Under the statutes of the State of R, pilotage into the port of Y is compulsory for ships engaged in foreign commerce. Owners of piloted vessels or their representatives in charge have no right of selection of a particular pilot and no right of bargaining as to his compensation. The bar pilot is required to serve a lengthy apprenticeship; he is engaged in a distinct occupation or business; his services are of a highly skilled character; he holds himself out to all shipowners and operators who require such pilotage services; and each engagement is of a limited duration. He renders a specialized type of service not ordinarily performed by an employee. Furthermore, it appears that for all practical purposes the pilot assumes full and exclusive control over the navigation of the vessel and is not subject to the discipline of the master.

It is held that the bar pilot engaged by the M Steamship Co. to pilot its vessel into and out of the port of Y is not an employee of that company for purposes of the taxes imposed by Subchapters A and C, Chapter 9, of the Internal Revenue Code, as amended by the Social Security Act Amendments of 1939.

The above ruling has no bearing upon the status for Federal employment tax purposes of a pilot regularly employed as an officer or member of a crew of a vessel.

SECTION 1426: Definitions. 1941-52-10940
REGULATIONS 106, SECTION 402.204: Who are employees. Em. T. 425
(Also Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Section 403.204)

A pilot engaged by the N Steamship Co. to pilot its vessel on a river is an employee of that company for purposes of the taxes imposed by Subchapter A, Chapter 9, of the Internal Revenue Code, as amended by the Social Security Act Amendments of 1939.

The question is presented whether a pilot engaged by the N Steamship Co. to pilot its vessel on a river is an employee of that company for employment tax purposes.

The N Steamship Co. engaged a pilot, licensed by the Federal Government, to direct the river navigation of its ocean-going vessels. The company engaged the pilot at an agreed fee and he boarded the vessel upon its arrival at the mouth of the river.

In Em. T. 420 (page 221, this Bulletin), it was held, under the facts of that case, that a bar pilot engaged by the M Steamship Co. to pilot a vessel into and out of the port of Y is not an employee of that company for employment tax purposes.

In the present case the N Steamship Co. is not required to engage a particular pilot but may select an individual of its choice. In some instances the pilotage is performed by a regular member of the crew of the vessel who holds a pilot's license. The company bargains with the pilot as to the amount of his compensation and the pilot is subject to the ultimate direction and control of the master of the vessel. The facts in the present case are such as to distinguish it from Em. T. 420, supra. Under the facts of this case, it is held that the pilot is an employee of the company for purposes of the taxes imposed by Subchapter A, Chapter 9, of the Internal Revenue Code, as amended by the Social Security Act Amendments of 1939.

Inasmuch as the pilot here in question is considered to be an "officer or member of the crew of a vessel" while performing his services, compensation received for such services is not subject to the tax imposed by Subchapter C, Chapter 9, of the Code, as amended.

SECTION 1426: Definitions. 1941–29–10785
REGULATIONS 106, SECTION 402.205: Who are employers. [1] Em. T. 419

The Y Beauty Service Co. is the employer for social security and employment tax purposes of the employees performing services in a department leased by it from the X Department Store.

In S. S. T. 409 (C. B. 1941–1, 415) it was held that the N Department Store is the employer for social security and employment tax purposes of the employees in a department leased by it to the M Company. The Y Beauty Service Co. requests to be advised whether S. S. T. 409 is applicable in determining the status of individuals performing services in beauty shops operated by it in various department stores.

The Y Beauty Service Co. leases space in 60 department stores located in various parts of the country. In each of the leased departments, it maintains a beauty shop where, in addition to rendering the customary services to patrons, it sells cosmetics and other beauty aids. Under the lease agreement with the X Department Store, which is typical of the leases entered into with other stores, it is provided that the lessee, in consideration of an agreed percentage of the receipts of the shop, is to be furnished with certain described space in the store and is to receive heat and light, and elevator, delivery, and janitor service. All advertising for the shop, although subject to review by the lessor, is authorized, prepared, and paid for by the lessee. The lessor, as agent of the lessee, pays the wages of employees in the leased department in accordance with pay rolls prepared by the manager of the beauty shop, and pays express, shipping charges, and other incidental expenses. The lessee reimburses the lessor for all charges paid by it, including the cost of paper, packaging material, and other supplies used in the leased department. The lessee owns all equipment initially installed in the shop and furnishes any equipment and supplies thereafter needed. The lessee carries public liability and workmen's com-

[1] Published originally as S. S. T. 419.

pensation insurance in its own name and pays property taxes on equipment located in the shop, as well as franchise taxes.

The Y Beauty Service Co. operates independent beauty shops in many locations other than in those leased from department stores. All operators employed by it are specially trained, so that employees of other departments in the store may not be transferred to the beauty department, nor may the beauty shop employees be transferred to other store departments. The manager of each beauty shop and all operators therein are selected by the lessee through its employment office and are furnished with manuals of instructions governing the conduct of beauty shops. Employees are frequently transferred by the Y Beauty Service Co. from one of its shops to another. All personnel matters, such as transfers, vacations, promotions, leave, commissions, bonuses, and pensions, are determined by the Y Beauty Service Co. without regard to policies governing personnel in effect at the various department stores in which lessee operates. While a department store may object to the conduct of a particular employee and may require his removal from that store, it may not compel the discharge of such employee. Employees in the leased departments consider the Y Beauty Service Co. as their employer and all questions relating to the means and methods of performing services are taken up with the central office of the company either directly or through the manager of the shop.

From the foregoing facts, it is apparent that the employees in the leased department of the X Department Store are subject to the direction and control of the Y Beauty Service Co., and that the conclusion reached in S. S. T. 409, supra, does not apply. It is therefore held that the Y Beauty Service Co. is the "employer" for social security and employment tax purposes of the employees performing services for it in the department leased from the X Department Store.

SECTION 1426: Definitions. 1941-39-10834
REGULATIONS 106, SECTION 402.208: Agricultural labor. Em. T. 421
(Also Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Section 403.208.)

Services performed by employees of B on or after January 1, 1940, in connection with breeding, raising, and caring for dogs do not constitute "agricultural labor" within the meaning of Subchapters A and C, Chapter 9, of the Internal Revenue Code, as amended by the Social Security Act Amendments of 1939.

Advice is requested whether services performed by employees of B on or after January 1, 1940, in connection with the operation of dog kennels constitute "agricultural labor" within the meaning of Subchapters A and C, Chapter 9, of the Internal Revenue Code, as amended by the Social Security Act Amendments of 1939. The services in question include services rendered in connection with the breeding, raising, and caring for the dogs.

Section 1426(h) of Subchapter A and section 1607(l) of Subchapter C, Chapter 9, of the Internal Revenue Code provide in part as follows:

The term "agricultural labor" includes all services performed—
(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horti-

cultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

It is the opinion of the Bureau that dogs do not come within the meaning of any of the words "livestock, bees, poultry, fur-bearing animals, or wildlife," as used in paragraph (1) of sections 1426(h) and 1607(l), supra, when the words are considered separately; nor are dogs properly included within the meaning of the quoted phrase when considered in its entirety.

It is held that services performed by employees of B on or after January 1, 1940, in connection with breeding, raising, and caring for dogs do not constitute "agricultural labor" within the meaning of Subchapters A and C, Chapter 9, of the Internal Revenue Code, as amended by the Social Security Act Amendments of 1939.

SECTION 1426: Definitions. 1941–40–10845
REGULATIONS 106, SECTION 402.209: Domestic service. Em. T. 422
(Also Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Section 403.209.)

Services performed by a housemother for the M Sorority during the summer school term extending from June — to August —, 1940, are not excepted from "employment" under sections 1426(b)2 and 1607(c)2, Subchapters A and C, respectively, of Chapter 9 of the Internal Revenue Code, as amended by the Social Security Act Amendments of 1939.

The question is presented whether services performed during the summer school term from June — to August —, 1940, by a housemother for the M Sorority are excepted from "employment" under sections 1426(b)2 and 1607(c)2, Subchapters A and C, respectively, of Chapter 9 of the Internal Revenue Code, as amended.

The M Sorority house is devoted exclusively to the use of the sorority members during the normal school term. However, during the summer school term the sorority house furnished board and lodging facilities to a number of students attending the N University, only three of whom were members of the M Sorority.

Section 1426(b), Subchapter A, Chapter 9, of the Internal Revenue Code, as amended, provides in part:

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except:

* * * * * * *

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority * * *.

Section 1607(c), Subchapter C, Chapter 9, of the Internal Revenue Code, as amended, contains a similar provision.

Section 402.209 of Regulations 106, issued pursuant to Subchapter A of Chapter 9 of the Code, as amended, provides in part:

Services of a household nature performed by an employee * * * in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority by which he is employed, are included within the above exception.

* * * * * * *

In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, maids, butlers, laundresses, furnacemen, waiters, and housemothers.

Section 403.209 of Regulations 107, issued pursuant to Subchapter C of Chapter 9 of the Code, as amended, contains the same provisions.

The M Sorority house during the summer school term was utilized primarily for the purpose of supplying board and lodging, as a business enterprise, to students attending the N University who were not members of the sorority. It is held, therefore, that services performed by the housemother during the summer school term do not constitute "domestic service in a local chapter of a college sorority" within the meaning of sections 1426(b)2 and 1607(c)2, supra. Accordingly, such services constitute "employment" for Federal employment tax purposes unless excepted therefrom by sections 1426(c) and 1607(d) of Subchapters A and C, respectively, of the Code, as amended, which provide in part as follows:

INCLUDED AND EXCLUDED SERVICE.—If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. * * *

SECTION 1426: Definitions.
REGULATIONS 106, SECTION 402.211: Family employment.

Services performed for family partnership. (See T. D. 5062, page 239.)

SECTION 1426: Definitions. 1941–41–10854
REGULATIONS 106, SECTION 402.225: Fishing. Em. T. 423
(Also Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Section 403.211.)

> Services performed on and after January 1, 1940, in the operation of a vessel of less than 10 net tons engaged in carrying individuals to and from fishing grounds where they fish from the vessel are excepted from "employment" under sections 1426(b)14 and 1607(c)4, Subchapters A and C, respectively, of Chapter 9 of the Internal Revenue Code, as amended by the Social Security Act Amendments of 1939.

The question is presented whether services performed on and after January 1, 1940, in the operation of a registered passenger vessel of less than 10 net tons engaged in carrying individuals to and from fishing grounds where they fish from the vessel are excepted from "employment" under sections 1426(b)14 and 1607(c)4, Subchapters A and C, respectively, of Chapter 9 of the Internal Revenue Code, as amended.

The vessel is licensed as a passenger vessel of 9 net tons and is operated daily to carry individuals for a fee of $2.00 dollars per person to and from certain fishing grounds. The individuals fish from the vessel during the day and keep the fish which they catch. The crew

consists of a master and two deckhands. The master steers the vessel to and from the fishing grounds and the deckhands assist in the general operation of the vessel.

Section 1426(b), Subchapter A, Chapter 9, of the Internal Revenue Code, as amended, provides in part as follows:

> The term "employment" means any service * * * performed after December 31, 1939, by an employee for the person employing him * * * (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—
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> * * * * * * *
>
> (14) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except (A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (B) service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States); * * *.

It is held that services performed on and after January 1, 1940, in the operation of the vessel here in question, which is engaged in the carrying of individuals to and from the fishing grounds where they fish from the vessel, are excepted from "employment" for purposes of Subchapter A, Chapter 9, of the Code, as amended.

Section 1607(c) of Subchapter C, Chapter 9, of the Code, as amended, provides in part as follows:

> The term "employment" means any service * * * performed after December 31, 1939, within the United States by an employee for the person employing him, * * * except—
>
> * * * * * * *
>
> (4) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States; * * *.

Since the services of the master and deckhands are performed as an officer and as members of the crew of the vessel either on the navigable waters of the United States or outside the United States, such services do not constitute "employment" for purposes of Subchapter C of Chapter 9 of the Code, as amended.

CHAPTER 9, SUBCHAPTER C.—FEDERAL UNEMPLOYMENT TAX ACT.

SECTION 1601: Credits against tax.
REGULATIONS 90 (as amended), ARTICLE 211(1): Credit against tax for calendar year 1939 for contributions paid.

Credit against tax for calendar year 1939. (See T. D. 5088, page 230.)

SECTION 1601: Credits against tax.
REGULATIONS 107, ARTICLE 403.401: Credit against tax for contributions paid.

Credit against tax imposed by the Federal Unemployment Tax Act (Subchapter C, Chapter 9, of Internal Revenue Code) for the calendar years 1939 and 1940. (See T. D. 5088, page 230.)

SECTION 1607: Definitions.
REGULATIONS 90 (as amended), ARTICLE 209: Items included as wages.

Dismissal payments. (See Em. T. 424, page 229.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.204: Who are employees.

Directors of bank performing services as committee members. (See Mim. 5217, page 220.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.204: Who are employees.

Bar pilot directing the handling of a vessel on entering and leaving a port. (See Em. T. 420, page 221.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.204: Who are employees.

Pilot directing the river navigation of a vessel. (See Em. T. 425, page 222.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.205: Who are employers.

Status of lessee of a department in the X Department Store. (See Em. T. 419, page 223.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.208: Agricultural labor.

Breeding, raising, and caring for dogs. (See Em. T. 421, page 224.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.209: Domestic service.

Services performed by a housemother during the summer school term for the M Sorority. (See Em. T. 422, page 225.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.211: Officers and members of crew.

Services performed in the operation of a fishing vessel. (See Em. T. 423, page 226.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.212: Family employment.

Services performed for family partnership. (See T. D. 5062, page 239.)

SECTION 1610: Other laws applicable.
REGULATIONS 90 (as amended), ARTICLE 503⅝: Refund, under section 1601(a)5 of Federal Unemployment Tax Act or section 701(b) of Second Revenue Act of 1940, of tax for calendar year 1939.

Credit against, refund, or abatement of tax imposed by Federal Unemployment Tax Act (Subchapter C, Chapter 9, of the Internal Revenue Code) for the calendar year 1939. (See T. D. 5088, page 230.)

SECTION 1610: Other laws applicable.
REGULATIONS 107, SECTION 403.602: Refund or credit of overpayments; abatement of overassessments.

Credit against, refund, or abatement of tax imposed by the Federal Unemployment Tax Act (Subchapter C, Chapter 9, of the Internal Revenue Code) for the calendar year 1940. (See T. D. 5088, page 230.)

TAXES UNDER SOCIAL SECURITY ACT.

SECTIONS 811 AND 907: Definitions. 1941–45–10891
REGULATIONS 91 AND 90, ARTICLES 16 AND 209: Items included as wages. Em. T. 424
(Also Internal Revenue Code, Subchapter A, Section 1426; Regulations 91 (as amended), Article 16; Subchapter C, Section 1607; Regulations 90 (as amended), Article 209.)

A dismissal wage which clearly represents remuneration for services performed prior to dismissal is allocable to the taxable periods during which the services were performed. In other instances a dismissal wage is taxable in its entirety in the taxable period of receipt.

S. S. T. 54 (C. B. XV–2, 421 (1936)) and S. S. T. 123 (C. B. 1937–1, 483) modified.

S. S. T. 54, item 3 (C. B. XV–2, 421 (1936)), holds that where an employee upon being discharged is paid one, two, three, or four months' salary, depending upon his length of service, such payments being made under a general policy of the firm, which policy, however, is unknown to the employee and is not held out to him as inducement to employment, the amount paid to the employee constitutes "wages" under article 209(b) of Regulations 90, and is subject to the tax imposed by Title IX of the Social Security Act.

S. S. T. 123 (C. B. 1937–1, 483) holds that the words "dismissal wages," as used in article 209(b) of Regulations 90, contemplate wages paid to an employee because of his discharge from employment and a release by the employer of his services rather than as a bonus for faithful services; and that while such a payment is "remuneration for employment" within the meaning of section 907(b), it should not ordinarily be considered as a payment for services performed prior to dismissal. S. S. T. 123 further holds that if such remuneration paid at the time of dismissal does represent payment for services performed prior thereto, then such payment is not a dismissal wage within the meaning of article 209(b) and must be allocated to the calendar year in which the services were performed.

Upon reconsideration, it is held that the term "dismissal wages" includes amounts paid to an employee because of the termination of employment even though such amounts represent payment for prior services. The term also includes amounts paid in lieu of notice of termination of employment. (As to the treatment of amounts paid to individuals who have been pensioned or who are totally and per-

manently disabled, see S. S. T. 81 (C. B. 1937–1, 461) and S. S. T. 201 (C. B. 1937–2, 457), respectively.)

When a dismissal wage clearly represents payment for services performed prior to the time of dismissal, as, for example, where the length of service or the number of years of continuous service is the primary factor in determining whether a payment will be made and the amount thereof, the amount should be allocated to the taxable periods in which the services were performed. Where an allocation is proper, any portion of the dismissal wage attributable to services performed prior to January 1, 1937, and January 1, 1936, does not constitute "wages" under Titles VIII and IX, respectively, of the Social Security Act and the corresponding provisions of the Internal Revenue Code in effect prior to January 1, 1940. On the other hand, for example, where an amount equal to two weeks' salary is paid to a discharged employee in lieu of notice, no allocation is proper and the amount constitutes wages for the taxable period or periods in which payment is made.

Since the conclusions reached in S. S. T. 54, item 3, supra, and S. S. T. 123, supra, are not entirely in accord with the conclusions reached herein, those rulings are modified accordingly.

TITLE IX.—TAX ON EMPLOYERS OF EIGHT OR MORE.

SECTION 902: Credit against tax. 1941–43–10876
REGULATIONS 90 (as amended), ARTICLE 211: Credit of contributions against tax for calendar years 1936, 1937, and 1938. T. D. 5088
(Also Section 905, Article 503½; Internal Revenue Code, Chapter 9, Subchapter C (Federal Unemployment Tax Act), Sections 1601 and 1610; Regulations 90 (as amended), Articles 211(1), a and 503⅝; also regulations 107, Articles 403.401 and 403.602.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER D, PARTS 400 AND 403.—FEDERAL UNEMPLOYMENT TAX.

Regulations 90, such regulations as made applicable to the Internal Revenue Code by Treasury Decision 4885 [C. B. 1939–1 (Part 1), 396], and Regulations 107, amended to conform to section 701 of the Revenue Act of 1941.

Credit against the tax imposed by Title IX of the Social Security Act for the calendar years 1936, 1937, and 1938, and the tax imposed by the Federal Unemployment Tax Act (Subchapter C, Chapter 9, of the Internal Revenue Code) for the calendar years 1939 and 1940, for contributions paid into State unemployment funds.

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

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH A. *Credit against tax for 1936, 1937, and 1938.*—In order to conform Regulations 90 [Part 400, Title 26, Code of Federal Regulations], relating to the excise tax on employers under Title IX of the Social Security Act (49 Stat., 639; 42 U. S. C., Sup. V, 1101 to 1110, inclusive), to section 701 of the Revenue Act of 1941, approved

September 20, 1941 (Public law 250, Seventy-seventh Congress), such regulations are amended as follows:

(1) Immediately preceding article 211 [section 400.211, Title 26, Code of Federal Regulations], as amended by Treasury Decision 4812 [C. B. 1938–1, 462] [section 400.211 of such Title 26, 1938 Sup.], by Treasury Decision 4937 [C. B. 1939–2, 320] [section 400.211 of such Title 26, 1939 Sup.], and by Treasury Decision 5022 [C. B. 1940–2, 275] [section 400.211 of such Title 26, 1940 Sup.], relating to credit of contributions against the tax for the calendar years 1936, 1937, and 1938, the following is inserted:

Section 701(a) of the Revenue Act of 1941.

ALLOWANCE OF CREDIT AGAINST TAX FOR 1936, 1937, AND 1938.—Against the tax imposed by section 901 of the Social Security Act for the calendar year 1936, 1937, or 1938, any taxpayer shall be allowed credit (if credit is not allowable under section 902 of such Act) for the amount of contributions paid by him into an unemployment fund under a State law—

(1) Before the sixtieth day after the date of the enactment of this Act, if such credit is claimed before the expiration of six months after such date of enactment;

(2) Without regard to the date of payment, with respect to wages paid after September 19, 1939;

(3) Without regard to the date of payment, if the assets of the taxpayer are, at any time during the fifty-nine-day period following such date of enactment, or were at any time during the period August 11, 1939, to October 8, 1939, inclusive, or the period October 9, 1940, to December 6, 1940, inclusive, in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction.

The provisions of the Social Security Act in force prior to February 11, 1939 (except the provision limiting the credit to amounts paid before the date of filing returns), shall apply to allowance of credit under this subsection; except that the amount of credit against the tax for the calendar year 1936, 1937, or 1938, for contributions paid after December 6, 1940, shall not (unless the credit is allowable on account of paragraph (2) or (3)) exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid before the last day upon which the taxpayer was required under section 905 of such Act to file a return for such year. The terms used in this subsection shall have the same meaning as when used in title IX of such Act prior to February 11, 1939. The total credit allowable against the tax imposed by section 901 of such Act for the calendar year 1936, 1937, or 1938 shall not exceed 90 per centum of such tax.

(2) Article 211 [section 400.211, Title 26, Code of Federal Regulations], as amended by Treasury Decision 4812 [section 400.211 of such Title 26, 1938 Sup.], by Treasury Decision 4937 [section 400.211 of such Title 26, 1939 Sup.], and by Treasury Decision 5022 [section 400.211 of such Title 26, 1940 Sup.], relating to credit of contributions against the tax for the calendar years 1936, 1937, and 1938, is further amended to read as follows:

ART. 211 [Sec. 400.211, Title 26, Code of Federal Regulations, 1941 Sup.]. *Credit against tax for calendar year 1936, 1937, or 1938 for contributions paid.*—(*a*) *In general.*—Subject to the limitations hereinafter prescribed in paragraphs (*b*), (*c*), (*d*), and (*e*), the taxpayer may credit against the tax for the calendar year 1936, 1937, or 1938 the total amount of his contributions under all State laws which have been found by the Social Security Board to contain the provisions specified in section 903(a) of the Social Security Act; provided that no credit may be taken for a contribution under a State law if such State has not been duly certified for the calendar year to the Secretary

by the Social Security Board. (See, however, article 503 (*c*) and (*d*) [section 400.503 (*c*) and (*d*), Title 26, Code of Federal Regulations], relating to the statutory period of limitations applicable to refunds and credits.)

(*b*) *Limitation on amount of credit allowable.*—The total credit allowed to any taxpayer for contributions to State unemployment funds with respect to employment during any one year shall not exceed 90 per cent of the tax against which such credit is applied.

(*c*) *Limitation on services with respect to which credit is allowable.*—Contributions must have been paid with respect to employment as defined in section 907(c) of the Social Security Act, that is, with respect to services performed by an employee within the United States and not excepted by such Act. (See articles 206 to 206(7) [sections 400.206 to 400.206(7), Title 26, Code of Federal Regulations], inclusive.)

(*d*) *Limitation on the taxable year in which services are performed.*—Contributions must have been paid with respect to services performed during the calendar year covered by the return.

(*e*) *Limitation on the time within which contributions may be paid in order to be allowable as credit.*—(1) *General rule.*—Contributions must have been actually paid into a State unemployment fund before the last day upon which the return for the taxable year is required to be filed, except that under the conditions described in subparagraph (2), (3), (4), (5), or (6), below, credit may be allowed for contributions paid on or after such last day. (The last day for filing the return is January 31 next following the close of the taxable year unless the time for filing the return is extended. See article 303 [section 400.303, Title 26, Code of Federal Regulations], article 304 [section 400.304 of such Title 26], and article 305 [section 400.305 of such Title 26].)

(2) *Exception when contributions are paid on or after the last day for filing the return but before December 7, 1940.*—Contributions paid into a State unemployment fund on or after the last day upon which the return for the taxable year is required to be filed but before December 7, 1940, may be credited against the tax, provided such credit is claimed before March 21, 1942. The amount of such credit is the same amount that would have been allowable as credit had such contributions been paid before such last day. (See article 503½ [section 400.503½, Title 26, Code of Federal Regulations, 1941 Sup.], relating to refund, credit, or abatement based on credit for contributions paid.)

(3) *Exception when contributions are paid after December 6, 1940, but before November 19, 1941.*—Contributions paid into a State unemployment fund after December 6, 1940, but before November 19, 1941, may be credited against the tax, provided such credit is claimed before March 21, 1942. The amount of such credit shall not exceed 90 per cent of the amount which would have been allowable as credit on account of such contributions had they been paid before the last day upon which the return for the taxable year was required to be filed. (See article 503½ [section 400.503½, Title 26, Code of Federal Regulations, 1941 Sup.], relating to refund, credit, or abatement based on credit for contributions paid.)

(4) *Exception when taxpayers' assets are in custody or control of certain fiduciaries.*—Contributions of a taxpayer whose assets, at any time during the period August 11, 1939, to October 8, 1939, inclusive, or the period October 9, 1940, to December 6, 1940, inclusive, or the period September 21, 1941, to November 18, 1941, inclusive, are in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction, may be paid into a State unemployment fund at any time, and upon such payment may be credited against the tax in the same amount that would have been allowable as credit had the contributions been paid before the last day upon which the return for the taxable year was required to be filed.

(5) *Exception when wages are paid after September 19, 1939, for employment during 1936, 1937, or 1938.*—Contributions with respect to wages paid after September 19, 1939, for employment during the calendar year 1936, 1937, or 1938, may be paid into a State unemployment fund at any time, and upon such payment may be credited against the tax in the same amount that would have been allowable as credit had the contributions been paid before the last day upon which the return for such year was required to be filed.

(6) *Exception when contributions are paid to wrong State.*—Contributions paid into the unemployment fund of a State which are required under the unemployment compensation law of that State, with respect to remuneration on the basis of which the taxpayer had, prior to such payment, erroneously paid

an amount as contributions under another unemployment compensation law, shall be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall be deemed to have been made on the date the return for the taxable year was actually filed under section 905 of the Social Security Act.

(f) *Contributions.*—The term "contributions" for purposes of credit against the tax means payments required to be made by an employer pursuant to a State law into the unemployment fund of such State, to the extent that such payments are made by the employer without any part thereof being deducted or deductible from the wages of individuals in his employ. Notwithstanding the provision limiting the term to payments required by a State law, the term also includes so much of any payments made as contributions for the calendar year 1936 or 1937 into the unemployment fund of a State which payments are held by the highest court of such State not to be required payments under the unemployment compensation law of such State, as are not returned to the taxpayer.

(g) *Refund of State contributions.*—If, subsequent to the filing of the return, a refund is made by a State to the taxpayer of any part of his contributions which had been credited against the tax, the taxpayer is required to advise the Commissioner under oath of the date and amount of such refund and the reason therefor, and to pay the tax, if any, due as a result of such refund, together with interest from the date when the tax was due.

(3) Immediately preceding article 503½, added by Treasury Decision 4812 [section 400.503½, Title 26, Code of Federal Regulations, 1938 Sup.], as amended by Treasury Decision 4937 [section 400.503½ of such Title 26, 1939 Sup.], and by Treasury Decision 5022 [section 400.503½ of such Title 26, 1940 Sup.], relating to certain refunds of the tax for the calendar years 1936, 1937, and 1938, the following is inserted:

Section 701(c) of the Revenue Act of 1941.

REFUND.—Refund, credit, or abatement of the tax (including penalty and interest assessed or collected with respect thereto, if any), based on any credit allowable under subsection (a) * * *, may be made in accordance with the provisions of law applicable in the case of erroneous or illegal assessment or collection of the tax (including statutes of limitations). No interest shall be allowed or paid on the amount of any such credit or refund. On and after the date of the enactment of this Act no refund, credit, or abatement shall be allowed based on any credit allowable under section 810 of the Revenue Act of 1938, section 902(a) of the Social Security Act Amendments of 1939, or section 701 of the Second Revenue Act of 1940.

(4) Article 503½, added by Treasury Decision 4812 [section 400.503½, Title 26, Code of Federal Regulations, 1938 Sup.], as amended by Treasury Decision 4937 [section 400.503½ of such Title 26, 1939 Sup.], and by Treasury Decision 5022 [section 400.503½ of such Title 26, 1940 Sup.], relating to certain refunds of the tax for the calendar years 1936, 1937, and 1938, is amended to read as follows:

ART. 503½ [Sec. 400.503½, Title 26, Code of Federal Regulations, 1941 Sup.] *Refund, credit, or abatement of tax for calendar year 1936, 1937, or 1938, based on credit against such tax for contributions paid.*—If the tax for the calendar year 1936, 1937, or 1938, against which an amount is allowable as credit, for contributions paid, under section 701 of the Revenue Act of 1941, has been paid without the benefit of such credit, the taxpayer shall be entitled to a refund or credit of the tax equal to the amount of such allowable credit for contributions paid. (See section 701(a)(1) of the Revenue Act of 1941, which requires as a condition of the allowance of credit thereunder that the credit be claimed before March 21, 1942.) The taxpayer shall also

be entitled to a refund or credit of the amount of interest or penalty, if any, collected from him with respect to the tax refunded or credited. No interest, however, shall be allowed or paid by the Government on the amount of any such refund or credit. Every claim for such refund or credit shall be made on Form 843 in accordance with the provisions of this article and article 503 [section 400.503, Title 26, Code of Federal Regulations], relating to refund and credit of taxes erroneously collected. A claim which does not comply with these requirements will not be considered for any purpose as a claim for refund or credit.

On and after September 20, 1941, no refund, credit, or abatement shall be allowed based on any credit allowable under section 810 of the Revenue Act of 1938, section 902(a) of the Social Security Act Amendments of 1939, or section 701 of the Second Revenue Act of 1940.

PAR. B. *Credit against tax for 1939.*—In order to conform Regulations 90 [Part 400, Title 26, Code of Federal Regulations], only as made applicable to the Internal Revenue Code (53 Stat., Part 1; 26 U. S. C., Sup. V) by Treasury Decision 4885 [Chapter I, note, Title 26, Code of Federal Regulations, 1939 Sup.], to section 701 of the Revenue Act of 1941, approved September 20, 1941 (Public law 250, Seventy-seventh Congress), such regulations are amended as follows:

(1) Immediately preceding article 211(1), added by Treasury Decision 4953 [C. B. 1939-2, 297] [section 400.211(1), Title 26, Code of Federal Regulations, 1939 Sup.], as amended by Treasury Decision 5022 [C. B. 1940-2, 275] and by Treasury Decision 5028 [C. B. 1941-1, 420] [section 400.211(1) of such Title 26, 1940 Sup.], relating to credit against the tax for the calendar year 1939 for contributions paid, the following is inserted:

Section 701(b) of the Revenue Act of 1941.

ALLOWANCE OF CREDIT AGAINST TAX FOR 1939 * * *.—Against the tax imposed by the Federal Unemployment Tax Act for the calendar year 1939 * * *, any taxpayer shall be allowed credit (if credit is not allowable under section 1601 of such Act) for the amount of contributions paid by him into an unemployment fund under a State law—

(1) Before the sixtieth day after the date of the enactment of this Act, if such credit is claimed before the expiration of six months after such date of enactment;

(2) Without regard to the date of payment, if the assets of the taxpayer are, at any time during the fifty-nine-day period following such date of enactment, or were at any time during the period from the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act to file a return of the tax against which credit is claimed to June 30 next following such last day, inclusive, or (in the case of credit against the tax for the calendar year 1939) the period October 9, 1940, to December 6, 1940, inclusive, in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction.

The provisions of the Federal Unemployment Tax Act (except section 1601(a)(3)) * * * shall apply to allowance of credit under this subsection. The amount of such credit against the tax for the calendar year 1939 * * *, in the case of contributions paid after the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act to file a return for such year, shall not (unless the credit is allowable on account of paragraph (2)) exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day. The terms used in this subsection shall have the same meaning as when used in the Federal Unemployment Tax Act. The

total credit allowable against the tax imposed by such Act for the calendar year 1939 * * * shall not exceed 90 per centum of such tax.

(2) Article 211(1), added by Treasury Decision 4953 [section 400.211(1), Title 26, Code of Federal Regulations, 1939 Sup.], as amended by Treasury Decision 5022 and by Treasury Decision 5028 [section 400.211(1) of such Title 26, 1940 Sup.], relating to credit against the tax for the calendar year 1939 for contributions paid, is further amended to read as follows:

ART. 211(1) [Sec. 400.211(1), Title 26, Code of Federal Regulations, 1941 Sup.]. *Credit against tax for calendar year 1939 for contributions paid.*—(*a*) *In general.*—Subject to the limitations hereinafter prescribed in paragraphs (*b*), (*c*) and (*d*), the taxpayer may credit against the tax for the calendar year 1939 the total amount of contributions paid by him under all State laws which have been found by the Social Security Board to contain the provisions specified in section 1603(a) of the Federal Unemployment Tax Act; provided that no credit may be taken for a contribution under a State law if such State has not been duly certified for the calendar year to the Secretary by the Social Security Board. (See, however, article 503 (*c*) and (*d*) [section 400.503 (*c*) and (*d*), Title 26, Code of Federal Regulations], relating to the statutory period of limitations applicable to refunds and credits.) The contributions may be credited against the tax whether or not they are paid with respect to employment as defined in the Federal Unemployment Tax Act.

(*b*) *Limitation on amount of credit allowable.*—The total credit allowed to any taxpayer for contributions to State unemployment funds shall not exceed 90 per cent of the tax against which such credit is applied.

(*c*) *Limitation on the taxable year with respect to which contributions are allowable.*—Contributions must have been paid with respect to the calendar year 1939.

(*d*) *Limitation on the time within which contributions may be paid in order to be allowable as credit.*—(1) *General rule.*—Contributions must have been actually paid into a State unemployment fund on or before the last day upon which the return for the taxable year is required to be filed, except that under the conditions described in subparagraph (2), (3), (4), or (5), below, credit may be allowed for contributions paid after such last day. (The last day for filing the return is January 31, 1940, unless the time for filing the return is extended. See article 303 [section 400.303, Title 26, Code of Federal Regulations], article 304 [section 400.304 of such Title 26, and 1939 Sup.], and article 305 [section 400.305 of such Title 26].)

(2) *Exception when contributions are paid after the last day for filing a return but before July 1, 1940.*—Contributions may be paid into a State unemployment fund after the last day upon which the return for the taxable year is required to be filed but before July 1, 1940, and, in such case, may be credited, under section 1601(a)(3) of the Federal Unemployment Tax Act, against the tax in an amount not to exceed 90 per cent of the amount which would have been allowable as credit on account of such contributions had they been paid into the State unemployment fund on or before such last day.

(3) *Exception when contributions are paid after June 30, 1940, but before November 19, 1941.*—Contributions may be paid into a State unemployment fund after June 30, 1940, but before November 19, 1941, and, in such case, may be credited, under section 701 of the Revenue Act of 1941, against the tax, provided such credit is claimed before March 21, 1942. The amount of such credit shall not exceed 90 per cent of the amount which would have been allowable as credit on account of such contributions had they been paid into the State unemployment fund on or before the last day upon which the return for the taxable year was required to be filed. (See article 503⅝ [section 400.503⅝, Title 26, Code of Federal Regulations, 1941 Sup.], relating to refund, credit, or abatement based on credit with respect to contributions.)

(4) *Exception when taxpayers' assets are in the custody or control of certain fiduciaries.*—Contributions of a taxpayer whose assets, at any time during the period from the last day upon which the return for the calendar year 1939 is required to be filed to June 30, 1940, inclusive, or the period October 9, 1940, to December 6, 1940, inclusive, or the period September 21, 1941, to November 18,

1941, inclusive, are in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction, may be paid into a State unemployment fund at any time, and upon such payment may be credited against the tax in the same amount that would have been allowable as credit had the contributions been paid on or before the last day upon which the return for the taxable year was required to be filed.

(5) *Exception when contributions are paid to wrong State.*—Contributions for the calendar year 1939 paid into the unemployment fund of a State which are required under the unemployment compensation law of that State, but which are paid with respect to remuneration on the basis of which the taxpayer had, prior to such payment, erroneously paid an amount as contributions under another unemployment compensation law, shall be deemed for purposes of credit to have been paid at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall be deemed for purposes of credit to have been made on the date the return was actually filed under section 1604 of the Federal Unemployment Tax Act.

(See, however, section 7(b) of the Act approved August 13, 1940 (Public, No. 764, Seventy-sixth Congress, third session), for a special provision relating to credit for certain contributions paid with respect to certain services affected by such Act; and see sections 1, 3, 4, and 6 of such Act quoted immediately preceding article 206(8) [section 400.206(8), Title 26, Code of Federal Regulations, 1940 Sup.], relating to such services.)

(e) *Refund of State contributions.*—If, subsequent to the filing of the return for the calendar year 1939, a refund is made by a State to the taxpayer of any part of his contributions for such year which had been credited against the tax, the taxpayer is required to advise the Commissioner under oath of the date and amount of such refund and the reason therefor, and to pay the tax, if any, due as a result of such refund, together with interest from the date when the tax was due.

(3) Immediately preceding article 503⅝, added by Treasury Decision 4953 [section 400.503⅝, Title 26, Code of Federal Regulations, 1939 Sup.], as amended by Treasury Decision 5022 [section 400.503⅝ of such Title 26, 1940 Sup.], relating to certain refunds of the tax for the calendar year 1939, the following is inserted:

Section 701(c) of the Revenue Act of 1941.

REFUND.—Refund, credit, or abatement of the tax (including penalty and interest assessed or collected with respect thereto, if any), based on any credit allowable under subsection * * * (b), may be made in accordance with the provisions of law applicable in the case of erroneous or illegal assessment or collection of the tax (including statutes of limitations). No interest shall be allowed or paid on the amount of any such credit or refund. On and after the date of the enactment of this Act no refund, credit, or abatement shall be allowed based on any credit allowable under * * * section 701 of the Second Revenue Act of 1940.

(4) Article 503⅝, added by Treasury Decision 4953 [section 400.503⅝, Title 26, Code of Federal Regulations, 1939 Sup.], as amended by Treasury Decision 5022 [section 400.503⅝ of such Title 26, 1940 Sup.], relating to certain refunds of the tax for the calendar year 1939, is amended to read as follows:

ART. 503⅝ [Sec. 400.503⅝, Title 26, Code of Federal Regulations, 1941 Sup.]. *Refund, credit, or abatement of tax for calendar year 1939, based on credit against such tax with respect to contributions.*—If the tax for the calendar year 1939, against which an amount is allowable as credit under section 1601 of the Federal Unemployment Tax Act or section 701 of the Revenue Act of 1941, has been paid without the benefit of such credit, the taxpayer shall be entitled to a refund or credit of the tax equal to the amount of such allowable credit. (See section 701(b)(1) of the Revenue Act of 1941, which requires as a condition of the allowance of credit thereunder that the credit be claimed

before March 21, 1942.) The taxpayer shall also be entitled to a refund or credit of the amount of interest or penalty, if any, collected from him with respect to the amount of tax refunded or credited. No interest, however, shall be allowed or paid by the Government on the amount of any such refund or credit. Every claim for such refund or credit shall be made on Form 843 in accordance with the provisions of this article and article 503 [section 400.503, Title 26, Code of Federal Regulations], relating to refund and credit of taxes erroneously collected. A claim which does not comply with these requirements will not be considered for any purpose as a claim for refund or credit.

On and after September 20, 1941, no refund, credit, or abatement shall be allowed based on any credit allowable under section 701 of the Second Revenue Act of 1940.

PAR. C. *Credit against tax for 1940.*—In order to conform Regulations 107 [Part 403, Title 26, Code of Federal Regulations, 1940 Sup.], relating to the excise tax on employers under the Federal Unemployment Tax Act (53 Stat., 183, 1387; 26 U. S. C., Sup. V, 1600 to 1611, inclusive), to section 701 of the Revenue Act of 1941, approved September 20, 1941 (Public law 250, Seventy-seventh Congress), such regulations are amended as follows:

(1) Immediately preceding section 403.401, relating to credit against the tax for the calendar year 1940 and subsequent years for contributions paid, the following is inserted:

Section 701(b) of the Revenue Act of 1941.

ALLOWANCE OF CREDIT AGAINST TAX FOR * * * 1940.—Against the tax imposed by the Federal Unemployment Tax Act for the calendar year * * * 1940, any taxpayer shall be allowed credit (if credit is not allowable under section 1601 of such Act) for the amount of contributions paid by him into an unemployment fund under a State law—

(1) Before the sixtieth day after the date of the enactment of this Act, if such credit is claimed before the expiration of six months after such date of enactment;

(2) Without regard to the date of payment, if the assets of the taxpayer are, at any time during the fifty-nine day period following such date of enactment, or were at any time during the period from the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act to file a return of the tax against which credit is claimed to June 30 next following such last day, inclusive, * * * in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction.

The provisions of the Federal Unemployment Tax Act (except section 1601(a)(3)), including such provisions as modified by section 902(e) of the Social Security Act Amendments of 1939, shall apply to allowance of credit under this subsection. The amount of such credit against the tax for the calendar year * * * 1940, in the case of contributions paid after the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act to file a return for such year, shall not (unless the credit is allowable on account of paragraph (2)) exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day. The terms used in this subsection shall have the same meaning as when used in the Federal Unemployment Tax Act. The total credit allowable against the tax imposed by such Act for the calendar year * * * 1940 shall not exceed 90 per centum of such tax.

(2) Section 403.401(*c*), relating to the limitation on the time within which contributions may be paid in order to be allowable

as credit, is amended by adding at the end of subparagraph (1) thereof the following new sentence:

See also subparagraphs (5) and (6), below, for special provisions relating to credit, against the tax for the taxable year 1940 only, for contributions paid.

(3) Section 403.401(*c*), relating to the limitation on the time within which contributions may be paid in order to be allowable as credit, is amended by adding at the end thereof the following new subparagraphs:

(5) *Credit, against tax for taxable year 1940 only, for contributions paid after June 30, 1941, but before November 19, 1941.*—Notwithstanding the preceding provisions of paragraph (*c*), contributions may be paid into a State unemployment fund after June 30, 1941, but before November 19, 1941, and in such case may be credited, against the tax for the taxable year 1940 only, in an amount not to exceed 90 per cent of the amount which would have been allowable as credit on account of such contributions had they been paid into the State unemployment fund on or before the last day upon which the return for the taxable year 1940 is required to be filed, provided such credit is claimed before March 21, 1942.

(6) *Credit, against tax for taxable year 1940 only, when taxpayers' assets are in custody or control of certain fiduciaries.*—Contributions of a taxpayer whose assets, at any time during the period prescribed in subparagraph (3), above, or during the period September 21, 1941, to November 18, 1941, both dates inclusive, are in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction, may be paid into the State unemployment fund at any time (subject, however, to the provisions of section 403.602(*c*), relating to the statutory period of limitations applicable to credits), and upon such payment, may be credited, against the tax for the taxable year 1940 only, in the same amount that would have been allowable as credit had the contributions been paid on or before the last day upon which the return for such year was required to be filed.

(4) Immediately following the provisions of law under the caption "Section 1601(a)(5) of the Act" preceding section 403.602, the following is inserted:

Section 701(c) of the Revenue Act of 1941.

REFUND.—Refund, credit, or abatement of the tax (including penalty and interest assessed or collected with respect thereto, if any), based on any credit allowable under subsection * * * (b), may be made in accordance with the provisions of law applicable in the case of erroneous or illegal assessment or collection of the tax (including statutes of limitations). No interest shall be allowed or paid on the amount of any such credit or refund. * * *

(5) Section 403.602, relating to claims for refund, credit, or abatement, is amended by adding at the end thereof the following new paragraph:

(*g*) *Refund, credit, or abatement of tax for calendar year 1940, based on credit against such tax for contributions paid.*—The provisions of this section of these regulations shall apply in the case of claims for refund, credit, or abatement, based on credit, for contributions paid, allowable under section 701 of the Revenue Act of 1941. (See section 701(b)(1) of the Revenue Act of 1941, which requires as a condition of the allowance of credit thereunder that the credit be claimed before March 21, 1942.)

(Paragraph A of this Treasury decision is issued under the authority contained in sections 902 and 908 of the Social Security Act (49 Stat., 639, 643; 42 U. S. C., Sup. V, 1102, 1108); section 902 (b), (c), (d), and (h) of the Social Security Act amendments of 1939 (53 Stat., 1399; 42 U. S. C., Sup. V, 1102, note); and section 701 of the Revenue

Act of 1941 (Public law 250, Seventy-seventh Congress). Paragraphs B and C of this Treasury decision are issued under the authority contained in section 1601 of the Internal Revenue Code, as amended by section 609 of the Social Security Act Amendments of 1939 (53 Stat., 1387; 26 U. S. C., Sup. V, 1601); section 1609 of the Internal Revenue Code (53 Stat., 188; 26 U. S. C., Sup. V, 1609); and section 701 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress).)

NORMAN D. CANN,
Acting Commissioner of Internal Revenue.

Approved October 17, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 21, 1941, 11.33 a. m.)

SECTION 905: Administration, refunds, and penalties.
REGULATIONS 90 (as amended), ARTICLE 503½: Refund, under section 902(d) of Social Security Act Amendments of 1939 or section 701 (b) of Second Revenue Act of 1940, of tax for calendar year 1936, 1937, or 1938.

Credit against, and refund of, tax for the calendar years 1936, 1937, and 1938. (See T. D. 5088, page 230.)

SECTION 907: Definitions. 1941-30-10795
REGULATIONS 90 (as amended), ARTICLE 206(4): T. D. 5062
Family employment.
(Also Internal Revenue Code, Chapter 9, Subchapter A (Federal Insurance Contributions Act), Section 1426; Regulations 106, Section 402.211; and Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Section 403.212.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER D, PARTS 400, 402, AND 403.—SOCIAL SECURITY AND EMPLOYMENT TAXES.

Regulations 90, such regulations as made applicable to the Internal Revenue Code by Treasury Decision 4885 [C. B. 1939-1 (Part 1), 396], Regulations 106, and Regulations 107, amended with respect to family employment.

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

To Collectors of Internal Revenue and Others Concerned:

Article 206(4) of Regulations 90 [section 400.206(4), Title 26, Code of Federal Regulations], that article of such regulations as made applicable to the Internal Revenue Code (53 Stat., Part 1; 26 U. S. C., Sup. V) by Treasury Decision 4885 [C. B. 1939-1 (Part 1), 396] [Chapter I, note, Title 26, Code of Federal Regulations, 1939 Sup.], section 402.211 of Regulations 106 [Part 402, of such Title 26, 1940

Sup.], and section 403.212 of Regulations 107 [Part 403, of such Title 26, 1940 Sup.], are amended by striking out the last sentence in each of such articles and sections, and by substituting in lieu thereof the following new paragraph:

Services performed in the employ of a corporation are not within the exception. Services performed in the employ of a partnership are not within the exception unless the requisite family relationship exists between the employee and each of the partners comprising the partnership.

(This Treasury decision is issued under the authority contained in sections 907(c)4 and 908 of the Social Security Act (49 Stat., 643; 42 U. S. C., Sup. V, 1107(c)4, 1108), sections 1429, 1609, and 3791 of the Internal Revenue Code (53 Stat., 178, 188, 467; 26 U. S. C., Sup. V, 1429, 1609, 3791), section 1607(c)4 of the Internal Revenue Code in effect prior to January 1, 1940 (53 Stat., 187; 26 U. S. C., Sup. V, 1607, note), and sections 1426(b)4 and 1607(c)5 of the Internal Revenue Code as amended by sections 606 and 614 of the Social Security Act Amendments of 1939 (53 Stat., 1383, 1392; 26 U. S. C., Sup. V, 1426(b)4, 1607(c)5.)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved July 22, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register July 24, 1941, 11.44 a. m.)

CHAPTER 9, SUBCHAPTER C.—TAX ON EMPLOYERS OF EIGHT OR MORE.

SECTION 1607: Definitions.
REGULATIONS 90 (as amended), ARTICLE 209: Items included as wages.

Dismissal payments. (See Em. T. 424, page 229.)

CHAPTER 9, SUBCHAPTER A.—EMPLOYMENT BY OTHERS THAN CARRIERS.

SECTION 1426: Definitions.
REGULATIONS 91 (as amended), ARTICLE 16: Items included as wages.

Dismissal payments. (See Em. T. 424, page 229.)

MISCELLANEOUS TAX RULINGS.

ESTATE TAX.

INTERNAL REVENUE CODE.

CHAPTER 3.

REGULATIONS 80 (1937). (Also Chapter 4—Gift Tax; and Regulations 79 (1936).)

1941-28-10776
Mim. 5202

Application of the Federal estate and gift taxes to United States savings bonds. Mimeograph 5109 (C. B. 1940-2, 283) superseded.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 14, 1941.

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

Numerous inquiries are being received by the Bureau, particularly from taxpayers, regarding the status of United States savings bonds for Federal estate and gift tax purposes. The purpose of this mimeograph is to furnish such information as will apprise persons concerned of the application and effect of such taxes on savings bonds and thereby make unnecessary many inquiries.

IN GENERAL.

Various statutory provisions, which exempt bonds, notes, bills, and certificates of indebtedness of the Federal Government or its agencies and the interest thereon from taxation, are not applicable to estate and gift taxes, since these taxes are excises imposed on the transfer of property and not on the property itself. Under existing law, transfers of the property in United States savings bonds are not exempt from Federal estate and gift taxes (except in respect of any such bonds issued *prior* to March 1, 1941, if beneficially owned by a nonresident alien not engaged in business in the United States). Whether a particular transfer of the property in such bonds entails liability for Federal estate or gift tax, and, if so, the amount thereof, depends upon the value of the property transferred, the specific exemption, etc., allowable under the law, and the tax rates in effect at the time of the transfer.

WHEN PURCHASED AND REGISTERED IN CERTAIN AUTHORIZED FORMS.

If "John Jones" purchases with his separate funds savings bonds and has them registered in his name as owner and the bonds are so held at the time of his death, the redemption value of the bonds constitutes a part of his gross estate for Federal estate tax purposes.

If "John Jones" purchases with his separate funds savings bonds and has them registered in his name as owner, payable on death to an individual as beneficiary, for example, "John Jones, payable on death to Miss Mary Jones," no gift results from the transaction. In such case "John Jones" alone, as the registered owner, may during his lifetime redeem the bonds and retain the proceeds. For Federal estate tax purposes, however, upon the death of "John Jones" while the bonds are so held, their entire redemption value at the time of death would form a part of his gross estate.

If "John Jones" purchases with his separate funds savings bonds and has them gratuitously registered in the name of "Mary Jones" as owner, the transaction results in a gift from "John Jones" to "Mary Jones" during the year in which the bonds are purchased and registered, and the cost of the bonds must be considered in determining the donor's gift tax liability for such year. If "Mary Jones" dies while the bonds are so registered, the redemption value of the bonds at the time of her death would be includible in her gross estate for Federal estate tax purposes.

If "John Jones" purchases with his separate funds savings bonds and gratuitously has them registered in the name of "Miss Mary Jones, payable on death to Miss Helen Jones," he has made a gift in the amount of the purchase price and such amount must be considered in determining his gift tax liability, if any, for the calendar year in which the gift was made. "John Jones" having made, during his lifetime, a gift of his investment in the bonds (and provided the transfer was not made in contemplation of death), his estate will not be subject to any Federal estate tax liability in respect of the bonds.

If "John Jones" purchases with his separate funds savings bonds and gratuitously has them registered in the name of "Miss Mary Jones or Miss Helen Jones," he has made a gift, for Federal gift tax purposes, to each of them of one-half of the amount of the purchase price of the bonds, and (provided the gifts were not made in contemplation of death) his estate will not be subject to any Federal estate tax liability in respect of the bonds.

If "John Jones" purchases with his separate funds savings bonds and has them registered in his name and that of another individual in the alternative as coowners, for example, "John Jones or Mrs. Ella S. Jones," there is no gift for Federal gift tax purposes, unless and until he during his lifetime gratuitously permits "Mrs. Ella S. Jones" to redeem them and retain the proceeds as her separate property, in which event a gift of the then redemption value of the bonds would be made. Of course, such bonds if not previously redeemed would, on the death of "John Jones" be includible in his gross estate for estate tax purposes at their full redemption value.

If savings bonds are purchased with the separate funds of two individuals and registered in their names as coowners, for example, "John Jones or Ella S. Jones," the amount includible in the gross estate, for Federal estate tax purposes, of the first coowner to die (if the bonds were not previously redeemed) is the full redemption value of the bonds less such part thereof as is proportionate to the amount of the purchase price furnished by the survivor and not acquired from the decedent for less than an adequate and full consideration in money or money's worth.

STATE ESTATE, INHERITANCE, LEGACY, OR GIFT TAXES.

Statutory provisions exempting bonds and other obligations of the Federal Government from certain taxation are not applicable to estate, inheritance, legacy, or gift taxes imposed by a State government. The extent to which United States savings bonds are subject to such State taxes depends upon the applicable State law. Inquiries regarding such laws should be addressed to the proper State tax officials.

This mimeograph supersedes Mimeograph 5109, dated September 9, 1940 (C. B. 1940–2, 283).

Inquiries with regard to the provisions of this mimeograph should be addressed to the Commissioner of Internal Revenue, Washington, D. C., for the attention of MT:ET:RR.

GUY T. HELVERING,
Commissioner.

REGULATIONS 80 (1937), ARTICLES 1, 7, AND 8. 1941–43–10877
T. D. 5089

TITLE 26—INTERNAL REVENUE.—SUBCHAPTER B, PART 80.—ESTATE TAX.

Regulations 80 (1937 edition) amended to conform to the Revenue Act of 1941.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 80 (1937 edition) [Part 80, Title 26, Code of Federal Regulations], as made applicable to the Internal Revenue Code (53 Stat., Part 1) by Treasury Decision 4885, approved February 11, 1939 [C. B. 1939–1 (Part 1), 396] [Chapter I, note, Title 26, Code of Federal Regulations, 1939 Sup.], to the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress), approved September 20, 1941, such regulations are amended as follows:

PARAGRAPH 1. The following is inserted immediately preceding article 1 [section 80.1 of such Title 26]:

SEC. 401. ESTATE TAX RATES. (Revenue Act of 1941; enacted September 20, 1941.)

(a) RATES.—Section 935(b) of the Internal Revenue Code is amended to read as follows:

"(b) The tentative tax referred to in subsection (a)(1) of this section shall be the tentative tax shown in the following table:

"If the net estate is:	The tentative tax shall be:
Not over $5,000	3% of the net estate.
Over $5,000 but not over $10,000.	$150, plus 7% of excess over $5,000.
Over $10,000 but not over $20,000.	$500, plus 11% of excess over $10,000.
Over $20,000 but not over $30,000.	$1,600, plus 14% of excess over $20,000.
Over $30,000 but not over $40,000.	$3,000, plus 18% of excess over $30,000.
Over $40,000 but not over $50,000.	$4,800, plus 22% of excess over $40,000.

"If the net estate is—Continued.	The tentative tax shall be—Cont.
Over $50,000 but not over $60,000.	$7,000, plus 25% of excess over $50,000.
Over $60,000 but not over $100,000.	$9,500, plus 28% of excess over $60,000.
Over $100,000 but not over $250,000.	$20,700, plus 30% of excess over $100,000.
Over $250,000 but not over $500,000.	$65,700, plus 32% of excess over $250,000.
Over $500,000 but not over $750,000.	$145,700, plus 35% of excess over $500,000.
Over $750,000 but not over $1,000,000.	$233,200, plus 37% of excess over $750,000.
Over $1,000,000 but not over $1,250,000.	$325,700, plus 39% of excess over $1,000,000.
Over $1,250,000 but not over $1,500,000.	$423,200, plus 42% of excess over $1,250,000.
Over $1,500,000 but not over $2,000,000.	$528,200, plus 45% of excess over $1,500,000.
Over $2,000,000 but not over $2,500,000.	$753,200, plus 49% of excess over $2,000,000.
Over $2,500,000 but not over $3,000,000.	$998,200, plus 53% of excess over $2,500,000.
Over $3,000,000 but not over $3,500,000.	$1,263,200, plus 56% of excess over $3,000,000.
Over $3,500,000 but not over $4,000,000.	$1,543,200, plus 59% of excess over $3,500,000.
Over $4,000,000 but not over $5,000,000.	$1,838,200, plus 63% of excess over $4,000,000.
Over $5,000,000 but not over $6,000,000.	$2,468,200, plus 67% of excess over $5,000,000.
Over $6,000,000 but not over $7,000,000.	$3,138,200 plus 70% of excess over $6,000,000.
Over $7,000,000 but not over $8,000,000.	$3,838,200, plus 73% of excess over $7,000,000.
Over $8,000,000 but not over $10,000,000.	$4,568,200, plus 76% of excess over $8,000,000.
Over $10,000,000 ----------	$6,088,200, plus 77% of excess over $10,000,000."

(b) DEFENSE TAX REPEALED.—Subchapter C of Chapter 3 of the Internal Revenue Code is repealed.

(c) EFFECTIVE DATE.—Subsections (a) and (b) shall be effective only with respect to estates of decedents dying after the date of the enactment of this Act.

PAR. 2. Article 1 [section 80.1 of such Title 26], as amended by Treasury Decision 4995, approved August 1, 1940 [C. B. 1940–2, 282], is further amended as follows:

(A) By changing the first sentence to read as follows:

Federal estate taxation under Chapter 3 of the Internal Revenue Code, as amended, consists of, *first*, the basic estate tax, *second*, the additional estate tax, and *third*, if the decedent died after June 25, 1940, and on or before September 20, 1941 (the date of the enactment of the Revenue Act of 1941), the defense tax.

(B) By inserting at the end thereof the following paragraph:

The Revenue Act of 1941 amended the Internal Revenue Code by increasing the rates for the computation of the additional tax with respect to the estates of decedents dying after September 20, 1941 (the date of the enactment of such Act), and, as to such estates, repealed the defense tax imposed by section 951 (Subchapter C of Chapter 3) of the Internal Revenue Code, as added by the Revenue Act of 1940.

PAR. 3. The last two sentences of article 7 [section 80.7 of such Title 26] are stricken out, and the following is inserted in lieu thereof:

The rates prescribed by the Revenue Act of 1935 for the computation of the additional tax are applicable to estates of decedents dying after August 30, 1935, and on or before February 10, 1939, the date of the enactment of the Internal Revenue Code. The rates prescribed by section 935(b) of the Internal Revenue Code, as enacted on February 10, 1939, for computation of the additional tax are the same as those prescribed by the Revenue Act of 1935 and are applicable to estates of decedents dying after February 10, 1939, and on or before September 20, 1941, the date of the enactment of the Revenue Act of 1941. The rates prescribed by section 935(b) of the Code as amended by section 401 of the Revenue Act of 1941 for computation of the additional tax are applicable to estates of decedents dying after September 20, 1941. See "Table I," and "Table II," contained in the following article, for the various rates in effect prior to September 21, 1941, and such article for an explanation of the use of the tables.

PAR. 4. Article 8 [section 80.8 of such Title 26], as amended by Treasury Decision 4995, is further amended as follows:

(A) By inserting immediately after the second sentence of the first paragraph the following:

In the case of decedents dying after February 10, 1939, and on or before September 20, 1941, the additional tax is obtained by subtracting the basic estate tax imposed by the Internal Revenue Code (corresponding to the tax imposed by the Revenue Act of 1926) from an amount computed on the value of the appropriate net estate at the rates set forth in section 935(b) of the Internal Revenue Code when enacted (corresponding to the rates set forth in the Revenue Act of 1932 as amended by the Revenue Act of 1935), or, if the decedent died after September 20, 1941, at the rates set forth in section 935(b) of the Internal Revenue Code as amended by the Revenue Act of 1941.

(B) By inserting " or under the Internal Revenue Code or the Internal Revenue Code as amended," immediately after " Revenue Act of 1932 as amended," in the next to the last sentence of the first paragraph.

(C) By changing the second paragraph to read as follows:

The defense tax, applicable if the decedent died after June 25, 1940, and on or before September 20, 1941, is obtained by computing 10 per cent of the total net tax (the total net tax being the sum of the net basic tax and the net additional tax).

(D) By changing the heading in column (1) of " Table I " to read as follows:

In effect from August 31, 1935, to September 20, 1941, inclusive. (Tentative tax.)

(This Treasury decision is issued under authority contained in section 401 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress), approved September 20, 1941, and in section 3791 (a) of the Internal Revenue Code (53 Stat., 467, 26 U. S. C., Sup. V, 3791(a)).)

NORMAN D. CANN,
Acting Commissioner of Internal Revenue.

Approved October 17, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 21, 1941, 11.34 a. m.)

TITLE III.—ESTATE TAX. (1926)

SECTION 302, AS AMENDED.

REGULATIONS 70 (1929), ARTICLE 15: Transfers during life. (Also Section 303 and Article 36.)

1941-30-10792
Ct. D. 1523

ESTATE TAX—REVENUE ACT OF 1926—DECISION OF COURT.

GROSS ESTATE—COMMUNITY PROPERTY—CALIFORNIA LAW—AGREEMENT BETWEEN SPOUSES DEFINING WIFE'S INTEREST—DEDUCTION OF DEBTS OF DECEDENT.

Where a husband and wife, residents of California, entered into an agreement in 1931 granting to the wife a present, existing, and equal interest in personal and real property owned by them as community property, the value of only one-half of the community property is includible in the gross estate of the decedent husband, who died in 1933. The community property law of the State is applicable in determining the amount of the gross estate under section 302 of the Revenue Act of 1926; the agreement was sufficient in form to operate as a conveyance and was valid to change the legal rights of the wife from a mere expectancy to a present and equal interest in the property; vesting of the interest was not a transfer intended to take effect in possession or enjoyment at or after death within the meaning of the statute; although the property was subject to the management and control of the husband, he did not possess and enjoy his wife's interest therein; the transfer does not come within the meaning of section 302(d); and, a stipulated amount representing 100 per cent of the debts of the decedent was his personal obligation and not that of the community, and is therefore a proper deduction.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

United States of America, appellant, v. *Ida P. Goodyear, Executrix of the Estate of W. E. Goodyear, Deceased, appellee.*

[99 Fed. (2d), 523.]

Upon appeal from the District Court of the United States for the Southern District of California, Central Division.

[October 18, 1938.]

OPINION.

HANEY, Circuit Judge: Refund of estate taxes paid the United States was obtained by the judgment appealed from.

Ida P. Goodyear and W. E. Goodyear were married in California on August 18, 1891. They were at that time, and continued to be thereafter, residents of California. They acquired certain community property while married prior to July 29, 1927. Since the wife had only an "expectancy" in community property prior to 1927 (*Stewart* v. *Stewart*, 204 Cal., 546, 269 Pac., 439), it was held that community income could not be divided between the spouses for income tax purposes. (*United States* v. *Robbins*, 269 U. S., 315 [T. D. 3817, C. B. V-1, 188 (1926)].) At that time California Civil Code section 172 provided that "The husband has the management and control of the community personal property, with like absolute power of disposition, other than testamentary, as he has of his separate estate" subject to certain exceptions. Likewise at that time, California Civil Code section 172a provided that "The husband has the management and control of the community real property, but the wife, either personally or by duly authorized agent, must join with him in executing any instrument by which such community real property or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered" subject to certain exceptions.

Likewise it was held that all of the community property for estate tax purposes, must be included in the value of a decedent's estate. (*Wardell* v. *Blum* (C. C. A. 9), 276 Fed., 226, certiorari denied, 258 U. S., 617; *Talcott* v. *United*

States (C. C. A. 9), 23 Fed. (2d), 897, certiorari denied, 277 U. S., 604 [T. D. 4137, C. B. VII–1, 319 (1928)]; *Title Insurance & Trust Co.* v. *Goodcell* (C. C. A. 9), 60 Fed. (2d), 803, certiorari denied, 288 U. S., 613.)

In 1923 there was an amendment to the Civil Code, section 1401 (now section 201 of the Probate Code) provided that "Upon the death of either husband or wife, one-half of the community property belongs to the surviving spouse; the other one-half is subject to the testamentary disposition of the decedent, and in the absence thereof goes to the surviving spouse" subject to certain exceptions.

On July 29, 1927, section 161(a), an amendment to the Civil Code became effective. It provided:

"The respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests under the management and control of the husband as is provided in sections 172 and 172a of the Civil Code. This section shall be construed as defining the respective interests and rights of husband and wife in community property * * *."

After that amendment, litigation ensued over the question as to whether the income of the community could then be divided for income tax purposes. The question was answered in the affirmative on January 19, 1931, in *The United States* v. *Malcolm* (282 U. S., 792).

Ida P. Goodyear and W. E. Goodyear entered into an agreement as of January 1, 1931, on July 9, 1931. The instrument provided in part:

"Whereas, the parties hereto are the owners of certain personal and real property, hereinafter described, as community property, all of the same having been acquired by them after their marriage on the 18th day of August, 1891; and,

"Whereas, all of said property was acquired by the parties hereto previous to July 29, 1927, or from income from property acquired previous to July 29, 1927; and,

"Whereas, it is the desire of the party of the first part to vest, in the party of the second part, a present, existing and equal interest in such community property and in all property acquired by them from income derived therefrom, the same as if said property had been acquired by the parties hereto as community property after July 29, 1927;

"Now, therefore, the said party of the first part, in consideration of the love and affection which he has and bears unto the said party of the second part, does hereby give, grant, convey and confirm unto the party of the second part such an interest in the personal and real property herein described and referred to as will vest in her, with the party of the first part, a present, existing and equal interest in said personal and real property.

* * * * * * *

"It is not the intention of this instrument to create in the parties hereto a tenancy in common in said property to which reference is herein made, but rather to vest in the party of the second part such an interest in the community property as she would have at the present time were the property to be acquired now from earnings of either of the parties hereto accumulated or earned since July 29, 1927."

That instrument was acknowledged on July 9, 1931, and recorded in the proper county in California on the following day.

On September 3, 1933, W. E. Goodyear died in California. On October 2, 1933, Ida P. Goodyear was appointed executrix of his estate, qualified, and since has acted as such. On June 12, 1934, the executrix, hereafter called appellee, filed an estate tax return, including therein only one-half of the value of the community property, and on that day paid the amount of tax shown to be due by the return. The Commissioner of Internal Revenue audited the return, and determined that the entire value of the community property should have been included in the return. On December 21, 1935, appellee paid the additional tax and interest demanded, in the sum of $7,671.22.

On January 22, 1936, appellee filed a claim for refund, which was denied on April 10, 1936. On April 18, 1936, this action against appellant was commenced to recover the amount of the additional tax paid with interest. The trial court held that the agreement gave Ida P. Goodyear the same interest in the community property as she would have had if the property had been acquired after the effective date of section 161a of the Civil Code. Judgment was entered on July 21, 1937. This appeal followed.

The applicable statute is section 302 of the Revenue Act of 1926 (44 Stat., 9). The Act of March 3, 1931 (46 Stat., 1516) amended subdivision (c) of that

section. In quoting that section the matter added to the amendment is shown in italics. Section 302 provides in part:

"The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated— * * *

"(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, *including a transfer under which the transferor has retained for his life or any period not ending before his death (1) the possession or enjoyment of, or the income from, the property or (2) the right to designate the persons who shall possess or enjoy the property or the income therefrom;* except in case of a bona fide sale for an adequate and full consideration in money or money's worth.

"(d) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. * * *"

First, Although it had been decided that local law was controlling in determining who owned community earnings with regard to income tax, the Supreme Court had not, until recently ruled with respect to estate taxes. In *Burnet* v. *Harmel* (287 U. S., 103, 110 [Ct. D. 611, C. B. XI–2, 210 (1932)]), it was said that "State law may control only when the Federal taxing Act, by express language or necessary implication, makes its own operation dependent upon State law."[1] In accordance with that rule, the Supreme Court had applied that rule, and held with respect to ownership of property, and the extent thereof, that general law would apply, rather than local law, and had reached a result opposite to what it would have reached had local law been applied. See cases cited in *Welch* v. *Kerckhoff* (C. C. A. 9) (84 Fed. (2d), 295, 298).

The primary question was, then, whether section 302 was to depend on ownership, as defined by local law. Construing that section, it was said in *Porter* v. *Commissioner* (288 U. S., 436, 441 [Ct. D. 647, C. B. XII–1, 354 (1933)]):

"The net estate as there used does not mean an amount to be ascertained as such under any general rule of law or under statutes governing the administration of estates, but is the gross estate as specifically defined in section 302 * * * less deductions permitted by section 303 * * *."

It is obvious that statutes relating to community property govern "the administration of estates" and therefore, under the language used, it would seem that such statutes would not be applicable. We so held in *Bank of America Nat. T. & Sav. Association* v. *Commissioner of Internal Revenue* (C. C. A. 9) (90 Fed. (2d), 981, 983 [Ct. D. 1298, C. B. 1938–1, 504]), saying that we believed local law "to be immaterial." Thereafter, that statement was said to be "inaccurate" and community property law was applied under section 302, in *Lang* v. *Commissioner* (304 U. S., 264, May 16, 1938 [Ct. D. 1342, C. B. 1938–1, 507]), the opinion making no explanation of, or reference to, *Porter* v. *Commissioner*, supra. In view of *Lang* v. *Commissioner*, supra, the present rule seems to be that community property law is applicable in determining the amount of the gross estate under section 302, and we consider the instant case on that assumption.

Second. Appellant contends that the agreement did not operate as a "transfer" because it "merely attempted to define a tenancy without creating one and did not establish an interest in and to property by any recognized conveyance." In view of the granting words, we think the agreement was sufficient in form to operate as a conveyance.

Appellant further contends that there was no transfer because decedent "gave up none of his statutory rights, powers or privileges with regard to community property acquired in California prior to 1927, and she by the same token gained no additional rights, powers or privileges in and to such property." We believe this contention can not be sustained.

California Civil Code section 158 provides that "Either husband or wife may enter into any engagement or transaction with the other * * * respecting property, which either might if unmarried * * *." Section 159 provides: "A husband and wife can not, by any contract with each other, alter their legal

[1] The effect of *Erie Railroad Co* v. *Tompkins* (304 U. S., 64, April 25, 1938) and *Ruhlin* v. *New York Life Ins. Co.* (304 U. S., 202, May 2, 1938), if any, on this rule is yet to be determined.

relations, except as to property * * *." Thus, it is apparent that husband and wife may make a valid contract with each other, and may alter their legal relations with respect to property. Here decedent granted a present and equal interest in the property to which his wife then became entitled by virtue of the grant. Her legal rights were changed from an "expectancy" to a present and equal interest in the community property. The grant took effect, we think, upon delivery of the grant by virtue of section 1054 of the Civil Code, which provides: "A grant takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor."

Third. Appellant further contends that even if the agreement did constitute a transfer, it was "intended to take effect in possession or enjoyment at or after death" and therefore the entire value should have been included in the gross estate pursuant to section 302(c), before amendment. Vesting of the interest, however, took place upon execution and delivery of the agreement, and was intended as such, and not at the death of the decedent. While such interest vested immediately, other rights, such as disposal, accrued to her upon the death of decedent. There is here no contention that such rights were sufficient to authorize taxation of the privilege of disposing of them. Compare *Tyler* v. *United States* (281 U. S., 497 [Ct. D. 190, C. B. IX-1, 383 (1930)]); *Gwinn* v. *Commissioner* (287 U. S., 224).

Fourth. Appellant further contends that decedent "retained for his life * * * the possession or enjoyment of * * * the property" and therefore the entire value should have been included in the gross estate under section 302(c) as amended. Eliminating redundant parts of the statute, we find that there must be included in the value of the gross estate "all property * * *. To the extent of any interest therein of which the decedent has at any time made * * * a transfer under which the transferor has retained for his life * * * the possession or enjoyment of * * * the property." We think what decedent retained was his own interest. Both spouses had possession and enjoyment of the property and owned the income therefrom, although the property was subject to "management and control" by decedent. The terms "management and control" are not synonymous with "possession and enjoyment." That one may manage and control property without either possession or enjoyment is illustrated by the situation where an agent manages real property for the owner. In such case although the agent may have absolute control in managing and renting the property and in collecting rents, the rents belong to the owner who enjoys them. We think that theoretically each spouse had possession and enjoyment of his particular interest. Decedent, therefore, did not possess and enjoy his wife's interest. If in controlling and managing the property, decedent transferred possession and enjoyment to a third person, the fruits received for such transfer, were then owned by both spouses. See the cases in the dissenting opinion in *Bank of America Nat. T. & Sav. Association* v. *Commissioner of Internal Revenue*, supra, 985.

Fifth. Appellant further contends that while the agreement is irrevocable, decedent could have used the property so as to "alter, amend or revoke" the effect of the agreement, and therefore the entire value should be included pursuant to section 302(d). We do not understand that decedent had such power. however. By Civil Code section 172, he could not make a gift of, or dispose of, the community personal property, except for a valuable consideration, without the written consent of the wife. Civil Code section 172a, quoted above, discloses that except for leases for less than a year, the wife is required to join in executing an instrument. If on disposal of either kind of property, consideration is received, then such consideration becomes community property. See the dissent in *Bank of America Nat. T. & Sav. Association* v. *Commissioner of Internal Revenue*, supra, 985.

Sixth. The remaining contention of appellant is that if only one-half of the community property is included, then only one-half of the community debts should be deducted. Section 303 of the Act in question, permits deduction of "claims against the estate." Article 36 of Regulations 80 is applicable, and provides that there may be deducted amounts which "represent personal obligations of the decedent existing at the time of his death." It was stipulated by the parties that the deduction was "the amount of $5,696.91, representing 100 per cent of the debts of said W. E. Goodyear at the date of his death." Since those debts were personal debts of decedent, and not debts of the community, the deduction was properly made.

Affirmed.

GIFT TAX.

REGULATIONS 79 (1936), ARTICLES 5, 6, AND 7. 1941-43-10878
T. D. 5090

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 85.—GIFT TAX.

Regulations 79 (1936 edition) amended to conform to the Revenue Act of 1941.

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

Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 79 (1936 edition) [Part 85, Title 26, Code of Federal Regulations], as made applicable to the Internal Revenue Code [53 Stat., Part 1] by Treasury Decision 4885, approved February 11, 1939 [C. B. 1939-1 (Part 1), 396] [Chapter I, note, Title 26, Code of Federal Regulations, 1939 Sup.], to the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress), approved September 20, 1941, such regulations are amended as follows:

PARAGRAPH 1. The following is inserted immediately preceding article 5 [section 85.5 of such Title 26]:

SEC. 402. GIFT TAX RATES. (Revenue Act of 1941).

(a) RATES.—The Rate Schedule of section 1001 of the Internal Revenue Code is amended to read as follows:

"If the net gifts are:	The tax shall be:
Not over $5,000	2¼% of the net gifts.
Over $5,000 but not over $10,000.	$112.50, plus 5¼% of excess over $5,000.
Over $10,000 but not over $20,000.	$375, plus 8¼% of excess over $10,000.
Over $20,000 but not over $30,000.	$1,200, plus 10½% of excess over $20,000.
Over $30,000 but not over $40,000.	$2,250, plus 13½% of excess over $30,000.
Over $40,000 but not over $50,000.	$3,600, plus 16½% of excess over $40,000.
Over $50,000 but not over $60,000.	$5,250, plus 18¾% of excess over $50,000.
Over $60,000 but not over $100,000.	$7,125, plus 21% of excess over $60,000.
Over $100,000 but not over $250,000.	$15,525, plus 22½% of excess over $100,000.
Over $250,000 but not over $500,000.	$49,275, plus 24% of excess over $250,000.
Over $500,000 but not over $750,000.	$109,275, plus 26¼% of excess over $500,000.
Over $750,000 but not over $1,000,000.	$174,900, plus 27¾% of excess over $750,000.
Over $1,000,000 but not over $1,250,000.	$244,275, plus 29¼% of excess over $1,000,000.
Over $1,250,000 but not over $1,500,000.	$317,400, plus 31½% of excess over $1,250,000.
Over $1,500,000 but not over $2,000,000.	$396,150, plus 33¾% of excess over $1,500,000.
Over $2,000,000 but not over $2,500,000.	$564,900, plus 36¾% of excess over $2,000,000.

"If the net gifts are—Continued.	The tax shall be—Continued.
Over $2,500,000 but not over $3,000,000.	$748,650, plus 39¾% of excess over $2,500,000.
Over $3,000,000 but not over $3,500,000.	$947,400, plus 42% of excess over $3,000,000.
Over $3,500,000 but not over $4,000,000.	$1,157,400, plus 44¼% of excess over $3,500,000.
Over $4,000,000 but not over $5,000,000.	$1,378,650, plus 47¼% of excess over $4,000,000.
Over $5,000,000 but not over $6,000,000.	$1,851,150, plus 50¼% of excess over $5,000,000.
Over $6,000,000 but not over $7,000,000.	$2,353,650, plus 52½% of excess over $6,000,000.
Over $7,000,000 but not over $8,000,000.	$2,878,650, plus 54¾% of excess over $7,000,000.
Over $8,000,000 but not over $10,000,000.	$3,426,150, plus 57% of excess over $8,000,000.
Over $10,000,000	$4,566,150, plus 57¾% of excess over $10,000,000."

(b) YEARS TO WHICH AMENDMENTS APPLICABLE.—The amendments made by this section shall be applied in computing the tax for the calendar year 1942 and each calendar year thereafter (but not the tax for the calendar year 1941 or a previous calendar year), and such amendments shall be applied in all computations in respect of the calendar year 1941 and previous calendar years for the purpose of computing the tax for the calendar year 1942 and any calendar year thereafter.

(c) DEFENSE TAX REPEALED.—Section 1001(d) of the Internal Revenue Code (relating to defense tax for five years on gifts) is repealed.

PAR. 2. Article 5 [section 85.5 of such Title 26], as amended by Treasury Decision 4996, approved August 1, 1940 [C. B. 1940–2, 295], is further amended as follows:

(A) By striking "prior to 1940 or subsequent to 1945" in the last sentence of the first paragraph and substituting in lieu thereof "other than the calendar year 1940 or 1941."

(B) By striking "1942, 1943, 1944, or 1945," in the first sentence of the second paragraph.

(C) By striking "any" in the second sentence of the second paragraph.

(D) By inserting immediately following the last paragraph the following:

The defense tax imposed by subsection (d) of section 1001 of the Internal Revenue Code, as added by section 207 of the Revenue Act of 1940 (repealed by section 402 of the Revenue Act of 1941) is not applicable to the calendar year 1942 or any calendar year thereafter but remains in effect for the calendar years 1940 and 1941.

PAR. 3. Article 6 [section 85.6 of such Title 26] is amended as follows:

(A) By substituting the following for the third sentence and the statement preceding the Table for Computing Gift Tax:

The rates were again increased by the Revenue Act of 1935, and the rate schedule in such Act (section 301) is applicable in the computation of the tax for the calendar years 1936 to 1939, inclusive. The rate schedule in the Internal Revenue Code (section 1001), as enacted on February 10, 1939, is the same as the rate schedule in the Revenue Act of 1935 and is applicable in the computation of the gift tax for the calendar years 1940 and 1941. The rates were further increased by the Revenue Act of 1941, approved September 20, 1941, and the rate schedule under section 1001 of the Code, as amended by such Act, is applicable in the computation of the tax for the calendar year 1942 and each calendar year thereafter. There follows a tabulation of the several rate schedules in effect for calendar years prior to 1942.

(B) By changing the heading in column (1) of the Table for Computing Gift Tax to read as follows: "In effect for calendar years 1936 to 1941, inclusive."

PAR. 4. Article 7 [section 85.7 of such Title 26] is amended by changing the second sentence of the third paragraph to read as follows:

Only column 1 should be used in the computation of the tax for the years 1936 to 1941, inclusive.

(This Treasury decision is issued under the authority contained in section 402 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress), approved September 20, 1941, and in sections 1029 and 3791(a) of the Internal Revenue Code (53 Stat., 157, 467, 26 U. S. C., Sup. V, 1029, 3791(a)).)

NORMAN D. CANN,
Acting Commissioner of Internal Revenue.

Approved October 17, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 21, 1941, 11.34 a. m.)

CAPITAL STOCK TAX.

INTERNAL REVENUE CODE.

SECTION 1200, AS AMENDED BY SECTION 205 OF THE REVENUE ACT OF 1940.—TAX.

REGULATIONS 64 (1938), ARTICLE 41: Nature and rate of tax. 1941–37–10825
(Also Section 3798, as amended by section 406 of the Revenue Act of 1939; and section 22 of the Act of March 1, 1879 (20 Stat., 327), as amended by section 818 of the Revenue Act of 1938.) C. S. T. 11

The M Corporation, a wholly-owned subsidiary of an insolvent bank, and the N Corporation, all of the capital stock of which is owned by the M Corporation, are entitled to immunity from capital stock tax under section 3798 of the Internal Revenue Code, as amended, or under section 22 of the Act of March 1, 1879, as amended, since the insolvent bank has insufficient assets to pay its depositors in full.

C. S. T. 7 (C. B. 1938-1, 520) is revoked.

Advice is requested whether the M Corporation, a wholly-owned subsidiary of an insolvent bank, and the N Corporation, all of the capital stock of which is owned by the M Corporation (the wholly-owned subsidiary of the insolvent bank), are entitled to immunity from capital stock tax under the provisions of section 3798 of the Internal Revenue Code, as amended by section 406 of the Revenue Act of 1939, or under the corresponding provisions of section 22 of the Act of March 1, 1879 (20 Stat., 327), as amended by section 818 of the Revenue Act of 1938. The assets of the insolvent bank are insufficient to pay the depositors in full. Neither the M Corporation nor the N Corporation is engaged in the banking business.

Section 3798 of the Internal Revenue Code, as amended, and the corresponding provisions of section 22 of the Act of March 1, 1879, supra, as amended, provide in substance that under certain prescribed conditions no tax shall be assessed or collected on account of any bank or trust company which has ceased to do business by reason of insolvency or bankruptcy, if the payment of such tax would diminish the assets of such bank or trust company necessary for the full payment of all its depositors.

In C. S. T. 7 (C. B. 1938–1, 520) it was held that a wholly-owned subsidiary of an insolvent bank was not entitled to the benefits of section 22 of the Act of March 1, 1879, since the subsidiary was not itself a bank which had ceased to do business by reason of insolvency or bankruptcy.

In *The Valuation Service Co.* v. *Commissioner* (41 B. T. A., 811; acquiescence, C. B. 1941–1, 11), involving a deficiency in income tax, the United States Board of Tax Appeals held that a corporation whose sole indirect stockholder was an insolvent bank was exempt from tax to the same extent as the insolvent bank. The Valuation Service Co. was organized to handle foreclosures on real estate held by a bank as security. It was to take title to the property and operate, manage, and sell the same at the request of the bank. It thus acted as a real estate broker and dealer in handling the real estate of the bank and

real estate taken over from the bank, a function which the bank could not perform under the law. All of the company's stock was owned by another corporation, all of the stock of which was owned by the bank, and its affairs were absolutely controlled by the bank. The Board, in holding that no deficiency in tax was due from the petitioner, stated in part:

* * * if respondent is successful in this proceeding, the entirely collateral element of the form of petitioner's organization as a separate corporation, instead of as the bank's real estate department, will result in denial to the depositors of that relief which it seems evident it was the purpose of Congress to afford; relief which they would have obtained without question in the absence of petitioner's intervening presence.

In that view we can not avoid the conclusion that it will most nearly effectuate the evident legislative purpose to treat these taxes as being due only "on account of such bank"; to treat petitioner and the bank as parts of a single organization, all of whose assets are subject to the claims of the bank's depositors, * * *.

Treasury Decision 5018 (C. B. 1940-2, 173) amended section 464A.5(*b*) of Treasury Decision 4958 (C. B. 1940-1, 74) by striking out the second paragraph thereof. The deleted paragraph provided that:

Property of a separate corporation not conveyed to it by the bank pursuant to an agreement with depositors, is not within the immunity of the section, even though the corporation's stock is owned by the bank. Tax due from a separate corporation to which assets of an insolvent bank are conveyed is collectible, even though such tax be due to the property so conveyed, except in so far as tax collection will diminish assets conveyed by the bank for benefit of depositors or the earnings from such assets to which the depositors are entitled, and which are necessary for payment of the depositors' claims. Other assets and earnings of a separate corporation are available for collection of the taxes of such corporation even though the assets and earnings of such corporation if received by the bank would be available for satisfaction of claims of the bank's depositors and such claims can not otherwise be paid.

In view of the acquiescence in *The Valuation Service Co.* v. *Commissioner*, supra, and the amendment of section 464A5(*b*) of Treasury Decision 4958 by Treasury Decision 5018, a separate corporation is entitled to immunity under section 3798 of the Internal Revenue Code, as amended, and the corresponding provisions of section 22 of the Act of March 1, 1879, as amended, where the separate corporation and the insolvent bank are parts of a single organization, the separate corporation being in substance and effect a department of the bank, and consequently all of the assets of such corporation are directly or indirectly subject to the claims of the bank's depositors. A separate corporation, the stock of which is wholly owned either directly or indirectly by an insolvent bank (thus rendering its operation and activities subject to the direction and control of liquidators of such bank), meets the requirements for such immunity. Under such circumstances, a tax on the subsidiary would, in effect, be a tax "on account of such bank" within the meaning of the statute. It is immaterial that the bank itself would be precluded by law from engaging in the activities carried on by the corporation. Ownership by the bank of *all* of the capital stock of the separate corporation is a condition precedent to immunity from tax. It must be clearly established that the exaction of the tax would inevitably diminish the assets of the insolvent bank necessary for the full payment of its depositors.

In accordance with the foregoing, it is held that the M Corporation and the N Corporation are entitled to immunity from capital stock tax under the provisions of section 3798 of the Internal Revenue Code, as amended, or under the corresponding provisions of section 22 of the Act of March 1, 1879, as amended.

C. S. T. 7 (C. B. 1938-1, 520) is revoked.

SECTION 1202, AS AMENDED BY SECTION 301 OF THE REVENUE ACT OF 1939, AND SECTION 202(i) OF THE REVENUE ACT OF 1941.—ADJUSTED DECLARED VALUE.

REGULATIONS 64 (1938), ARTICLE 46: Adjusted value. 1941-42-10871 C. S. T. 12

The "net income * * *" required by section 1202(b)1(C) of the Internal Revenue Code, as amended by section 202(i)1 of the Revenue Act of 1941, to be added in determining the adjusted declared value for capital stock tax purposes is the "net income * * *" which results after the proper deduction for income tax purposes of a "net operating loss." The (minus) adjustment, "the excess of the deductions allowable for income tax purposes * * * over its gross income," required by section 1202(b)1(iii) of the Internal Revenue Code, as amended by section 202(i)2 of the Revenue Act of 1941, includes any excess resulting from a proper income tax deduction of "net operating loss" under section 23(s).

Advice is requested as to what effect is to be given, for capital stock tax purposes, to the "net operating loss deduction" provided in section 23(s) of the International Revenue Code, and to the "net operating loss carry-over" provisions of section 122 of the Internal Revenue Code, as added by section 211 of the Revenue Act of 1939, where either a separate return or a consolidated return is filed for income tax purposes.

Section 1202(b) of the Internal Revenue Code, as amended, prescribes the manner of determining the adjusted declared value of a corporation's capital stock. That section makes no provision for direct adjustment of the capital stock declared value by reason of a "net operating loss deduction" and a "net operating loss carry-over." However, such items affect the adjusted declared value of the capital stock of a corporation to the extent that they enter into the computation of the "net income * * *" to be added under section 1202(b)1(C), as amended, and "the excess of deductions allowable for income tax purposes * * * over its gross income" to be deducted under section 1202(b)1(iii), as amended.

For capital stock tax purposes, net income means the gross income computed under section 22 of the Internal Revenue Code less the deductions allowed by section 23. Since section 23(s) provides for the deduction of a "net operating loss" computed under section 122, it follows (1) that the "net income * * *" required by section 1202(b)1(C), as amended, to be added in determining the adjusted declared value for capital stock tax purposes is the "net income * * *" which results after the proper deduction for income tax purposes of a "net operating loss"; and (2) that the phrase "the excess of the deductions allowable for income tax purposes * * * over its gross income" includes any excess resulting from a proper income tax deduction under section 23(s).

In so far as separate capital stock tax returns of corporations which make consolidated returns for income tax purposes are concerned, all adjustments for capital stock tax purposes should be computed on a separate basis and in the same manner as if separate income tax returns had been filed. See last paragraph of section 1202(b)1 of the Internal Revenue Code.

SECTIONS 1203 (RETURNS) AND 1205 (PAYMENT OF TAX).

REGULATIONS 64 (1938), ARTICLE 36: Place and time for filing returns. 1941-30-10794
T. D. 5061
ARTICLE 81: Time for payment of tax.

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 137, SUBPART E.—CAPITAL STOCK TAX.

Sections 1203 and 1205, Internal Revenue Code—Extension of time for filing capital stock tax returns and paying tax.

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

To Collectors of Internal Revenue and Others Concerned:

General extension.—Returns of capital stock tax under Chapter 6 of the Internal Revenue Code (53 Stat., Part 1), as amended, for the year ended June 30, 1941, are required to be filed and the tax paid on or before July 31, 1941, unless the time for filing returns and paying the tax is extended under the provisions of sections 1203 and 1205 of the afore-mentioned chapter.

In accordance with the provisions of these sections, the period during which the returns of capital stock tax may be filed and the tax paid by all corporations is extended to September 29, 1941. Collectors of internal revenue are authorized to accept returns without assertion of penalties for delinquency or of interest if the returns are filed and the tax paid on or before the extended date. (Sections 1203, 1205, 3791, 53 Stat., 171, 467; 26 U. S. C., Sup. V, 1203, 1205, and 3791.)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved July 21, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register July 22, 1941, 11.47 a. m.)

REGULATIONS 64(1938), ARTICLE 36: Place and time for filing returns. 1941-39-10840
T. D. 5069
ARTICLE 81: Time for payment of tax.

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 137, SUBPART E.—CAPITAL STOCK TAX.

Sections 1203 and 1205, Internal Revenue Code.—Extension of time for filing capital stock tax returns and paying tax.

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

To Collectors of Internal Revenue and Others Concerned:

General extension.—Under the authority of section 1203(b)(2) of the Internal Revenue Code, as amended by section 301(c) of the Revenue Act of 1941, the period within which returns of capital stock tax for the year ended June 30, 1941, may be filed without assertion of penalties for delinquency, as extended to September 29, 1941, by Treasury Decision 5061, approved July 21, 1941 [page 256, this Bulletin], is hereby further extended to October 29, 1941.

Under the authority of section 1205(b) of the Internal Revenue Code, the period within which payments of capital stock tax for the year ended June 30, 1941, may be made without assertion of interest accruals thereon, as extended to September 29, 1941, by Treasury Decision 5061, is hereby further extended to December 28, 1941. In any case, however, where a notice and demand for payment of capital stock tax for the year ended June 30, 1941, is issued and payment is made on or before December 28, 1941, such payment shall be considered timely only if made within 10 days from issuance of the notice and demand. If the tax is not paid within such 10-day period, interest shall be accrued thereon as required by law. (Sections 1203, 1205, 3655, 3791, 53 Stat., 171, 446, 467; 26 U. S. C., Sup. V, 1203, 1205, 3655, and 3791; and section 301(c) of the Revenue Act of 1941 (Public Law 250, Seventy-seventh Congress).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved September 24, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 24, 1941, 2.44 p. m.)

REGULATIONS 64 (1938). ARTICLES 36, 41, 46, AND 61. 1941-41-10855 T. D. 5081

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 137.—CAPITAL STOCK TAX.

Articles 36 and 46, articles 41 and 61, as amended, of Regulations 64 (1938), amended.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 64, approved February 4, 1939 [Part 137, Title 26, Code of Federal Regulations, 1939 Sup.], as made applicable to the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939 [C. B. 1939-1 (Part 1), 396] [Chapter I, note, Title 26, Code of Federal Regulations, 1939 Sup.], and as amended by Treasury Decision 4912, approved July 24, 1939 [C. B. 1939-2, 347] and Treasury Decision 4983, approved July 16, 1940

[C. B. 1940–2, 298], to the provisions of sections 202(i), 205, and 301 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress), approved September 20, 1941, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding article 31 [section 137.31] the following:

Section 301(c) of the Revenue Act of 1941.

(c) RETURNS FOR 1941.—Section 1203(b)(2) of the Internal Revenue Code (relating to extensions of time for filing capital-stock tax returns) is amended by inserting at the end thereof the following: "With respect to the year ending June 30, 1941, the extension may be for not more than ninety days."

PAR. 2. The first sentence of article 36(b) [section 137.36(*b*)] is amended by striking out the period at the end and by inserting in lieu thereof the following:

, except that for the year ending June 30, 1941, the extension of the time for filing returns may be for not more than 90 days.

PAR. 3. There is inserted immediately preceding article 41 [section 137.41] the following:

Section 202(i), Title II, of the Revenue Act of 1941.

(i) ADJUSTED DECLARED VALUE.—

(1) Section 1202(b)(1)(C) of the Internal Revenue Code is amended to read as follows:

"(C) its net income, computed without the deduction of the tax imposed by Subchapter E of Chapter 2,".

(2) Section 1202(b)(1)(iii) is amended to read as follows:

"(iii) the excess of the deductions allowable for income tax purposes (not including the deduction for the tax imposed by Subchapter E of Chapter 2) over its gross income."

Section 205, Title II, of the Revenue Act of 1941.

The amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1940.

Section 301 of the Revenue Act of 1941.

(a) INCREASE IN RATE OF TAX.—Section 1200 (a) and (b) of the Internal Revenue Code (relating to rate of capital stock tax) is amended by striking out "$1" and inserting in lieu thereof "$1.25".

(b) DEFENSE TAX RATE.—Section 1200(c) of the Internal Revenue Code is repealed.

* * * * * * *

(d) EFFECTIVE DATE.—This section shall be effective only with respect to the year ending June 30, 1941, and succeeding years.

PAR. 4. The fourth sentence of article 41 [section 137.41], as amended by Treasury Decision 4983, is further amended to read as follows:

The tax for each full $1,000 of the adjusted declared value of the capital stock is imposed at the rate of $1 for the taxable years ending June 30, 1938, and June 30, 1939, $1.10 for the taxable year ending June 30, 1940, and $1.25 for the taxable year ending June 30, 1941, and years subsequent thereto.

PAR. 5. The second sentence of subdivision (C) of article 46 [section 137.46] is amended by striking out the period at the end and by inserting in lieu thereof the following:

, except that, for the taxable year ending June 30, 1942, and subsequent adjustment years, the "net income" for this addition shall be computed without the deduction of the tax imposed by Subchapter E of Chapter 2 of the Internal Revenue Code.

PAR. 6. Subdivision (iii) of article 46 [section 137.46] is amended by striking out the period at the end and by inserting in lieu thereof the following:

, except that, for the taxable year ending June 30, 1942, and subsequent adjustment years, the deduction of the tax imposed by Subchapter E of Chapter 2 of the Internal Revenue Code shall not be included.

PAR. 7. There is inserted immediately preceding article 61 [section 137.61] the following:

Section 301 of the Revenue Act of 1941.

(a) INCREASE IN RATE OF TAX.—Section 1200 (a) and (b) of the Internal Revenue Code (relating to rate of capital stock tax) is amended by striking out "$1" and inserting in lieu thereof "$1.25".

(b) DEFENSE TAX RATE.—Section 1200(c) of the Internal Revenue Code is repealed.

* * * * * * *

(d) EFFECTIVE DATE.—This section shall be effective only with respect to the year ending June 30, 1941, and succeeding years.

PAR. 8. The second sentence of article 61 [section 137.61], as amended by Treasury Decision 4983, is further amended to read as follows:

The tax for each full $1,000 of the adjusted declared value of capital employed by a foreign corporation in the transaction of business in the United States is imposed at the rate of $1.00 for the taxable years ending June 30, 1938, and June 30, 1939, $1.10 for the taxable year ending June 30, 1940, and $1.25 for the taxable year ending June 30, 1941, and years subsequent thereto.

(This Treasury decision is issued under the authority contained in sections 202(i), 205, and 301 of the Revenue Act of 1941 (Public Law 250, Seventy-seventh Congress) and section 3791 of the Internal Revenue Code (53 Stat., 467; 26 U. S. C., Sup. V, 3791).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved October 3, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 6, 1941, 3.32 p. m.)

ADMISSIONS AND DUES TAXES.

INTERNAL REVENUE CODE.

SECTION 1700.

REGULATIONS 43 (1941), SECTION 101.2: Meaning of "admission." 1941–45–10895 T. D. 5096

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 101.—TAXES ON ADMISSIONS, DUES, AND INITIATION FEES.

Section 101.2 of Regulations 43 (1941 edition) amended.

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

To Collectors of Internal Revenue and Others Concerned:

Regulations 43 [Part 101, Title 26, Code of Federal Regulations, 1941 Sup.], approved October 17, 1941, relating to the taxes on admissions, dues, and initiation fees under Chapter 10 of the Internal Revenue Code, as amended, are hereby amended as follows:

Section 101.2 is amended by adding the following at the end thereof:

Amounts paid or contributed for the privilege of attending an exclusively religious service conducted in a place of worship are not considered "amounts paid for admission."

(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., Sup. V, 3791).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved November 1, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 3, 1941, 11.57 a. m.)

SECTIONS 1700, 1701, 1710, AND 1712, AS AMENDED BY SECTIONS 541, 542, AND 543 OF THE REVENUE ACT OF 1941, RESPECTIVELY.

REGULATIONS 43 (1940). 1941–42–10870 Mim. 5255

Changes with respect to the taxes on admissions and dues effected by the Revenue Act of 1941.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 26, 1941.

Collectors of Internal Revenue and Others Concerned:

The Revenue Act of 1941, approved September 20, 1941, effected certain changes with respect to the taxes on admissions and dues, and it is believed desirable that appropriate information regarding these changes should be circulated at the earliest practicable moment to all persons in your districts who may be concerned with the collection of the taxes on admissions and dues or the taxes applicable to cabarets and similar places of amusement.

All of the changes in the existing law with respect to the taxes on admissions and dues which are brought about by the Revenue Act of 1941 are effective as of the first moment of October 1, 1941 (10 a. m. of October 1, 1941, in the case of cabarets, roof gardens, etc.).

Section 1700(a)1 of the Internal Revenue Code is amended by section 541 of the Revenue Act of 1941 to make the present rate of tax on admissions applicable to the amount paid for admission to any place regardless of the amount of such admission charge, except that any admission charge of less than 10 cents made to a child under 12 years of age will be exempt from the tax. Under the amendment, all persons admitted free or at a reduced rate (except bona fide employees, municipal officers on official business, children under 12 years of age, members of the military and naval forces of the United States when in uniform, and members of the Civilian Conservation Corps when in uniform) are liable for a tax based on the established price of admission to other persons for the same or similar accommodations. Therefore, employees, municipal officers on official business, members of the military and naval forces of the United States, and members of the Civilian Conservation Corps when in uniform are not liable for tax if admitted free, and if admitted at a reduced price are liable for tax on the reduced price. The exception with respect to free or reduced-rate admissions to spoken plays is eliminated.

Section 1701 of the Internal Revenue Code, under which there are a number of exemptions, such as where the proceeds of the admissions inure to religious, educational, or charitable organizations, agricultural fairs, veterans' organizations, etc., and admissions to certain concerts, is repealed in its entirety. Consequently, no further exemptions shall be allowed for entertainments to be held on or after October 1, 1941, regardless of the disposition which may be made of the proceeds from the admissions. If any exemption certificates have already been issued by your office for entertainments to be held on or after October 1, 1941, the appropriate parties should be advised that they will be required to overstamp their tickets and to collect and account for the tax on all admission charges collected on and after October 1, 1941. This information should be given the widest publicity, particularly as to churches, schools, posts of the American Legion, and other organizations which have heretofore been entitled to exemption in respect of admissions inuring to their benefit.

Section 1700(e) of the Internal Revenue Code, under which a tax was imposed on amounts charged at cabarets, roof gardens, etc., has been amended in three important respects, namely, (*a*) the tax rate will be 5 per centum of the total amount paid for admission, refreshment, service, or merchandise, if the amount so paid, or any portion thereof, entitles the patron to be present during any portion of a performance at a roof garden, cabaret, or similar place furnishing a public performance for profit, (*b*) the provision exempting the admission charge if the amount paid was 50 cents or less (that is, if the amount paid for refreshment, service, or merchandise was under $2.50) has been eliminated, and (*c*) the tax is imposed upon, and shall be returned and paid by, the person receiving such payments. This tax is not required to be collected from the patron, as heretofore, but there is no objection to the cabaret, etc., passing it on to the patron if billed separately and in the exact amount.

Since there are a number of motion picture theaters, skating rinks, dance halls, etc., the admissions to which were not taxable before October 1, 1941, but which will be taxable on that date and thereafter, appropriate information should be circulated to such theaters, skating rinks, dance halls, etc., at the earliest practicable moment; and they should be advised that all admission charges are subject to the tax except in the case of admissions of less than 10 cents charged to children under 12 years of age.

Form 729 used in reporting the tax on admissions will be revised at the earliest practicable date in order to incorporate the changes made necessary by the Revenue Act of 1941. It is expected that the new forms will be available in time for taxpayers to prepare their October returns and file them with the collector by the end of November.

With respect to admission tickets which were previously not taxable, either by reason of the fact that the admission charges were under 21 cents or due to the exemptions formerly allowed by section 1701 of the Internal Revenue Code, the following procedure has been approved:

(*a*) In all instances where it is practicable new tickets must be provided or the tickets on hand overprinted or overstamped to show the established price and the tax applicable thereto.

(*b*) Section 1702 of the Internal Revenue Code specifically provides that the price for which every admission ticket or card is sold shall be printed, stamped, or written on the ticket. Accordingly, in every case where the established price of admission is changed new tickets will have to be provided or the tickets on hand must be overprinted or overstamped.

(*c*) Where the established price is not changed, for a limited time until properly printed tickets can be obtained, the use of tickets now on hand which do not show the tax due under the Revenue Act of 1941 will be permitted. However, the manager or proprietor must keep conspicuously posted at the outer entrance and near the box office one or more signs accurately stating each of the established prices of admission, and in the case of each such price the tax due and the sum total.

Social, athletic, and sporting clubs in your districts should be advised that under sections 1710 and 1712 of the Internal Revenue Code, as amended by section 543 of the Revenue Act of 1941, all dues or membership fees paid on or after October 1, 1941, are subject to the tax of 11 per cent if the dues or fees paid by active resident annual members are in excess of $10 a year; and that amounts paid as initiation fees are taxable if such fees are in excess of $10 a year, or if the dues or membership fees of active resident annual members amount to more than $10 a year.

The various clubs should, likewise, be notified of the change in the meaning of the phrase " dues or membership fees," which now includes any charges for social privileges or for golf, tennis, polo, swimming, or other athletic or sporting privileges or facilities if made for any period of more than six days.

Any correspondence in reference to this mimeograph should refer to the symbols MT: M.

GUY T. HELVERING,
Commissioner.

MANUFACTURERS' EXCISE TAXES.

INTERNAL REVENUE CODE.

TAXES ON GASOLINE, LUBRICATING OIL, AND MATCHES.

REGULATIONS 44 (1939), SECTIONS 314.2, 314.3, 314.4, 314.35, 314.44, 314.50, and 314.52. 1941–41–10857 T. D. 5082

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 314.—TAXES ON GASOLINE, LUBRICATING OIL, AND MATCHES.

Sections 314.2, 314.3, 314.4, 314.35, 314.44, 314.50, and 314.52 of Regulations 44 (1939 edition), as amended by Treasury Decision 4990, approved July 19, 1940 [C. B. 1940–2, 306], further amended.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 44 [Part 314, Title 26, Code of Federal Regulations, 1939 Sup.], as amended by Treasury Decision 4990, approved July 19, 1940 [C. B. 1940–2, 306], relating to taxes on gasoline, lubricating oils, and matches under the Internal Revenue Code, as amended, to sections 501, 521 (a) (20) and (21) and (b), 547, 549, 550, and 553 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress, approved September 20, 1941, such regulations are further amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 314.1 the following:

SEC. 553. ADMINISTRATIVE CHANGES IN MANUFACTURERS' EXCISE TAX TITLE OF CODE. (Revenue Act of 1941.)

(a) LEASES.—Section 3440 of the Internal Revenue Code is amended to read as follows:

"SEC. 3440. DEFINITION OF SALE.

"For the purposes of this chapter the lease of an article (including any renewal or any extension of a lease or any subsequent lease of such article) by the manufacturer, producer, or importer shall be considered a taxable sale of such article."

* * * * * * *

PAR. 2. There is inserted immediately preceding section 314.2 the following:

SEC. 501. 1932 EXCISE TAXES MADE PERMANENT. (Revenue Act of 1941.)

Section 3452 of the Internal Revenue Code (relating to expiration of 1932 excise taxes) is repealed.

SEC. 521. DEFENSE EXCISE TAX RATES MADE PERMANENT WHICH ARE NOT INCREASED BY THIS ACT. (Revenue Act of 1941.)

* * * * * * *

(b) The rates specified in subsection (a) shall be applicable only with respect to the period after the date of the enactment of this Act, and the rates specified in section 1650(a) * * * of the Internal Revenue Code shall not apply with respect to such period.

SEC. 550. EFFECTIVE DATE OF PART IV. (Revenue Act of 1941, Title V.)

(a) The amendments made by this Part shall be applicable only with respect to the period beginning with the effective date of this Part,

and the rates specified in section 1650(a) * * * shall not apply with respect to such period. This Part shall take effect on October 1, 1941.

* * * * * * *

PAR. 3. Section 314.2 as amended by Treasury Decision 4990 is further amended to read as follows:

SEC. 314.2. *Effective period.*—Taxes on the sale of gasoline, lubricating oils, and matches became effective under Title IV of the Revenue Act of 1932, on June 21, 1932. The applicable provisions of the Revenue Act of 1932, as amended, were superseded as of March 1, 1939, by provisions of the Internal Revenue Code. The Code provisions were amended by subsequent Acts, including the Revenue Act of 1941.

Section 521(b) of the Revenue Act of 1941 is applicable to gasoline and lubricating oils, and section 550(a) to matches. Section 501 is applicable to all three. With respect to gasoline and lubricating oils, the effect is to continue indefinitely the increases of tax rates imposed by section 1650(a) of the Internal Revenue Code, added by section 210 of the Revenue Act of 1940. Under section 1650(a) the tax increases were effective after June 30, 1940, and before July 1, 1945.

Prior to enactment of the Revenue Act of 1940, there was a tax, imposed by section 3409 of the Internal Revenue Code, on fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem. Section 1650(a) of the Internal Revenue Code increased the tax on these matches also. The increased tax rate on these matches is continued indefinitely. However, section 547 of the Revenue Act of 1941 also imposes a tax on other matches at a lower rate. This latter tax, by virtue of section 550(a) of the Revenue Act of 1941, takes effect on October 1, 1941. The result then is that the tax rates on gasoline, lubricating oils, and fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem which have been in effect since July 1, 1940, continue in effect indefinitely, and a new tax on other matches is applicable for an indefinite period beginning October 1, 1941.

The tax attaches upon sale or use by the manufacturer irrespective of when the article was manufactured, produced, or imported.

PAR. 4. There is inserted immediately following the subtitle "Liability for Tax," which follows section 314.2, the following:

SEC. 553. ADMINISTRATIVE CHANGES IN MANUFACTURERS' EXCISE TAX TITLE OF CODE. (Revenue Act of 1941.)

* * * * * * *

(b) EXISTING CONTRACTS.—Chapter 29 of the Internal Revenue Code is amended by adding at the end thereof the following new section:

"SEC. 3453. EXISTING CONTRACTS.

"(a) TAX PAYABLE BY VENDEE.—If (1) any person has, prior to the effective date of Part V of Title V of the Revenue Act of 1941, made a bona fide contract for the sale on or after such date, of any article with respect to the sale of which a tax is imposed by that Act or an existing rate of tax is increased by that Act, and (2) such contract does not permit the adding to the amount to be paid under such contract of the whole of such tax or increased rate of tax, then (unless the contract prohibits such addition) the vendee shall, in lieu of the vendor, pay so much of the tax as is not so permitted to be added to the contract price.

"(b) TAX PAID TO VENDOR.—Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated, and shall be collected and paid to the United States by the vendor in the same manner as provided in section 3467. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner who shall cause collection of such taxes to be made from the vendee."

PAR. 5. There is inserted immediately preceding section 314.3 the following:

SEC. 549. INSTALLMENT, ETC., PAYMENTS. (Revenue Act of 1941.)

Section 3441(c) of the Internal Revenue Code is amended to read as follows:

"(c) (1) In the case of (A) a lease, (B) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments, or (C) a conditional sale, there shall be paid upon each payment with respect to the article that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment.

"(2) In the application of paragraph (1) to the articles with respect to which the rate of tax is increased by the Revenue Act of 1941 or by the Revenue Act of 1940, where the lease, contract of sale, or conditional sale, and delivery thereunder—

"(A) was made before July 1, 1940, the total tax referred to in paragraph (1) shall be the tax at the rate in force on June 30, 1940, and not at any greater rate; or

"(B) was made after June 30, 1940, and before October 1, 1941, the total tax referred to in paragraph (1) shall be the tax at the rate in force on September 30, 1941, and not at any greater rate.

"(3) Despite the provisions of paragraph (1), no tax shall be imposed with respect to any article not taxable under the law in existence on the day before the date of the enactment of the Revenue Act of 1941, if with respect to such article the lease, contract for sale, or conditional sale, and delivery thereunder, was made before October 1, 1941."

PAR. 6. Section 314.3 is amended by adding thereto the following paragraph:

The amendment of section 3440 of the Internal Revenue Code by section 553 of the Revenue Act of 1941 clarifies existing language. The term "lease" includes any renewal or extension of a lease or any subsequent lease of an article.

PAR. 7. Section 314.4 as amended by Treasury Decision 4990 is further amended by substituting the following for paragraph 5:

Where an article is leased by the manufacturer, or sold under an installment-payment contract, or under a conditional-sale contract with payments to be made in installments, a proportionate part of the total tax shall be paid upon each payment received with respect to the article. The tax must be returned and paid to the collector during the month following that in which such payment is received.

In the case of articles with respect to which the rate of tax is increased by the Revenue Act of 1940 or by the Revenue Act of 1941—

(A) if the lease, contract for sale, or conditional sale, and delivery thereunder, were made before July 1, 1940, the tax on all payments made after September 30, 1941, is at the rate in force on June 30, 1940;

(B) if the lease, contract for sale, or conditional sale, and delivery thereunder, were made after June 30, 1940, and before October 1, 1941, the tax on all payments after September 30, 1941, is at the rate in force on September 30, 1941.

In the case of articles not subject to tax on September 30, 1941, if the lease, contract for sale, or conditional sale, and delivery thereunder, were made on or before that date, no tax is due on payments made on or after October 1, 1941.

PAR. 8. There is inserted immediately preceding section 314.30 the following:

SEC. 521. DEFENSE EXCISE TAX RATES MADE PERMANENT WHICH ARE NOT INCREASED BY THIS ACT. (Revenue Act of 1941.)

(a) The following sections of the Internal Revenue Code are amended as follows:

* * * * *

(20) GASOLINE.—Section 3412(a) is amended by striking out "1 cent" and inserting in lieu thereof "1½ cents".

* * * * *

PAR. 9. Section 314.35 as amended by Treasury Decision 4990 is further amended to read as follows:

SEC. 314.35. *Rate of tax.*—The tax payable by the importer or producer thereof, or by any producer of gasoline with respect to the period after June 30, 1940, is at the rate of 1½ cents a gallon.

PAR 10. There is inserted immediately preceding section 314.40 the following:

SEC. 521. DEFENSE EXCISE TAX RATES MADE PERMANENT WHICH ARE NOT INCREASED BY THIS ACT. (Revenue Act of 1941.)

(a) The following sections of the Internal Revenue Code are amended as follows:

* * * * *

(21) LUBRICATING OILS.—Section 3413 is amended by striking out "4 cents" and inserting in lieu thereof "4½ cents".

* * * * *

PAR. 11. The first sentence of section 314.44 as amended by Treasury Decision 4990 is further amended to read as follows:

The tax payable by the manufacturer with respect to the period after June 30, 1940, is at the rate of 4½ cents a gallon.

PAR. 12. There is inserted immediately preceding section 314.50 the following:

SEC. 547. MATCHES. (Revenue Act of 1941, Title V, Part IV.)

Section 3409 of the Internal Revenue Code is amended to read as follows:

"SEC. 3409. TAX ON MATCHES.

"(a) MANUFACTURERS' TAX.—There shall be imposed upon matches sold by the manufacturer, producer, or importer, a tax of 2 cents per 1,000 matches, except that in the case of fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem, packed in boxes or in bulk, the tax shall be 5½ cents per 1,000 matches.

* * * * * * *

PAR. 13. Section 314.50 is amended to read as follows:

SEC. 314.50. *Scope of tax.*—The tax imposed by section 3409 of the Internal Revenue Code, as amended by section 547 of the Revenue Act of 1941, applies to all types of matches, including waxed matches, parlor matches, safety matches, book matches, vestas, etc., regardless of whether sold in bulk, boxes, books, or in any other manner.

PAR. 14. Section 314.52 as amended by Treasury Decision 4990 is further amended to read as follows:

SEC. 314.52. *Rate of tax.*—In the case of fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem, the tax payable by the manufacturer with respect to the period after June 30, 1940, is at the rate of 5½ cents per thousand.

In the case of all other matches the tax payable by the manufacturer with respect to the period on and after October 1, 1941, is at the rate of 2 cents per thousand.

(This Treasury decision is prescribed pursuant to sections 501, 521 (a) (20) and (21) and (b), 547, 549, 550, and 553 of the Revenue Act of 1941, approved September 20, 1941, and section 3791 of the Internal Revenue Code (53 Stat., 467; 26 U. S. C., Sup. V, 3791).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved October 3, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 6, 1941, 3.31 p. m.)

REGULATIONS 46 (1940). 1941–48–10919
T. D. 5099

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 316.—MANUFACTURERS' EXCISE TAXES.

Regulations 46 (1940 edition) as amended by Treasury Decision 4998, approved August 1, 1940 [C. B. 1940–2, 300], further amended.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 46 [Part 316, Title 26, Code of Federal Regulations, 1940 Sup.], as amended by Treasury Decision 4998, approved August 1, 1940 [C. B. 1940–2, 300], relating to excise taxes on sales by the manufacturer under the Internal Revenue Code, as amended, to sections 501, 521, 535, 536, 544, 545, 546, 549, 550, 551, 552(b), 553, and 558 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress), and to include section 3411 of the Internal Revenue Code as amended by section 521 of the Revenue Act of 1941 within the scope thereof, such regulations are further amended as follows:

PARAGRAPH 1. The first and second paragraphs of section 316.0 are amended to read as follows:

These regulations deal with excise taxes imposed by Chapter 29, Subchapter A, of the Internal Revenue Code, as amended, on sales—

(*a*) by the manufacturer, producer, or importer of—
(1) Tires and inner tubes;
(2) Automobiles, tractors, busses, trailers, etc.;
(3) Radios and components, phonographs, phonograph records, and musical instruments;
(4) Mechanical refrigerators, air-conditioning units, and components;
(5) Firearms, shells, and cartridges;
(6) Sporting goods;
(7) Luggage;
(8) Electric, gas, and oil appliances;
(9) Phonographic apparatus;
(10) Electric signs;
(11) Business and store machines;
(12) Rubber articles;
(13) Commercial washing machines;
(14) Optical equipment;
(15) Electric light bulbs and tubes; and

(*b*) by the vendor of—
(16) Electrical energy for domestic and commercial consumption.

The regulations with respect to the imposition, manner of application, and computation of tax liability are set forth in Subparts B to T, inclusive. The regulations relating to the return and collection of tax and the imposition of penalties and other matters are contained in Subpart U.

PAR. 2. There is inserted immediately preceding section 316.1, the following:

SEC. 553. ADMINISTRATIVE CHANGES IN MANUFACTURERS' EXCISE TAX TITLE OF CODE. (Revenue Act of 1941, Title V, Part V.)

(a) LEASES.—Section 3440 of the Internal Revenue Code is amended to read as follows:

"SEC. 3440. DEFINITION OF SALE.

"For the purposes of this chapter the lease of an article (including any renewal or any extension of a lease or any subsequent lease of such article) by the manufacturer, producer, or importer shall be considered a taxable sale of such article."

* * * * *

PAR. 3. There is inserted immediately preceding section 316.2 the following:

SEC. 501. 1932 EXCISE TAXES MADE PERMANENT. (Revenue Act of 1941, Title V, Part I.)

Section 3452 of the Internal Revenue Code (relating to expiration of 1932 excise taxes) is repealed.

SEC. 521. DEFENSE EXCISE TAX RATES MADE PERMANENT WHICH ARE NOT INCREASED BY THIS ACT. (Revenue Act of 1941, Title V, Part II.)

* * * * *

(b) The rates specified in subsection (a) shall be applicable only with respect to the period after the date of the enactment of this Act, and the rates specified in section 1650(a) * * * of the Internal Revenue Code shall not apply with respect to such period.

SEC. 536. EFFECTIVE DATE OF PART III. (Revenue Act of 1941, Title V.)

The amendments made by this Part shall be applicable only with respect to the period beginning with October 1, 1941, and the rates specified in section 1650(a) * * * of the Internal Revenue Code shall not apply with respect to such period. This Part shall take effect on October 1, 1941.

SEC. 550. EFFECTIVE DATE OF PART IV. (Revenue Act of 1941, Title V.)

(a) The amendments made by this Part shall be applicable only with respect to the period beginning with the effective date of this Part, and the rates specified in section 1650(a) * * * of the Internal Revenue Code shall not apply with respect to such period. This Part shall take effect on October 1, 1941.

* * * * *

SEC. 551. NEW MANUFACTURERS' EXCISE TAXES. (Revenue Act of 1941, Title V, Part V.)

Subchapter A of Chapter 29 of the Internal Revenue Code is amended by inserting after section 3405 the following new section:

"SEC. 3406. EXCISE TAXES IMPOSED BY THE REVENUE ACT OF 1941.

* * * * *

"(c) EFFECTIVE DATE.—This section shall take effect on October 1, 1941."

SEC. 558. EFFECTIVE DATE OF PART V. (Revenue Act of 1941, Title V.)

This part shall take effect on October 1, 1941.

PAR. 4. Section 316.2 as amended by Treasury Decision 4998, is further amended to read as follows:

SEC. 316.2. *Effective period.*—Taxes on the manufacturer's sale of tires and inner tubes; automobile truck chassis and bodies, other automobile chassis and bodies and motorcycles, and parts and accessories therefor; radio components; household type mechanical refrigerators and components therefor; and firearms, shells, and cartridges became effective under Title IV of the Revenue Act of 1932, on June 21, 1932. The tax on the vendor's sale of electrical energy became effective under section 6 of the Act of June 16, 1933 (Public, No. 73, Seventy-third Congress), amending section 616 of the Revenue Act of 1932, on September 1, 1933. The tax on the manufacturer's sale of tractors of the kind chiefly used for highway transportation in combination with a trailer or semi-

trailer became effective under Title IV of the Revenue Act of 1938, on July 1, 1938. The applicable provisions of the Revenue Act of 1932, as amended, were superseded as of March 1, 1939, by provisions of the Internal Revenue Code. The Code provisions were amended by subsequent Acts, including the Revenue Act of 1941.

The change in the basis of the tax on automobile bus chassis, bus bodies, bus trailer and semitrailer chassis and bodies therefor; the tax on the manufacturer's sale of chassis and bodies for trailers and semitrailers suitable for use in connection with passenger automobiles and motorcycles; the taxes on the manufacturer's sale of complete radio receiving sets; phonographs, phonograph records; musical instruments; mechanical refrigerators (other than household type refrigerators, and components therefor) including commercial refrigerators, coolers, etc.; refrigerating apparatus; air-conditioners, and components therefor; and, the new manufacturers' excise taxes on sales of sporting goods; luggage; electric, gas, and oil appliances; photographic apparatus; electric signs; business and store machines; rubber articles; washing machines; optical equipment; and electric light bulbs and tubes, became effective under Title V of the Revenue Act of 1941, on October 1, 1941.

Section 521(b) of the Revenue Act of 1941 is applicable to firearms, shells, and cartridges, and to electrical energy; section 536 is applicable to tires and inner tubes; section 550(a) is applicable to the automobile, truck, bus, and parts tax, to radios, phonographs, records, and musical instruments, and to refrigerators, refrigerating apparatus, and air-conditioners; and section 3406(c) added by section 551, and section 558 are applicable to sporting goods, luggage, electric, gas, and oil appliances, photographic apparatus, electric signs, business and store machines, rubber articles, washing machines, optical equipment, and electric light bulbs and tubes. Section 501 is applicable to all of the taxes covered by these regulations.

The final result is that under Title V of the Revenue Act of 1941 all of the manufacturers' tax rates which have been in effect since July 1, 1940, and the increased rates and new taxes imposed under Title V are applicable for an indefinite period beginning October 1, 1941.

PAR. 5. There is inserted immediately preceding section 316.3 the following:

SEC. 553. ADMINISTRATIVE CHANGES IN MANUFACTURER'S EXCISE TAX TITLE OF CODE. (Revenue Act of 1941, Title V, Part V.)

* * * * * * *

(b) EXISTING CONTRACTS.—Chapter 29 of the Internal Revenue Code is amended by adding at the end thereof the following new section:

"SEC. 3453. EXISTING CONTRACTS.

"(a) TAX PAYABLE BY VENDEE.—If (1) any person has, prior to the effective date of Part V of Title V of the Revenue Act of 1941, made a bona fide contract for the sale on or after such date, of any article with respect to the sale of which a tax is imposed by that Act or an existing rate of tax is increased by that Act, and (2) such contract does not permit the adding to the amount to be paid under such contract of the whole of such tax or increased rate of tax, then (unless the contract prohibits such addition) the vendee shall, in lieu of the vendor, pay so much of the tax as is not so permitted to be added to the contract price.

"(b) TAX PAID TO VENDOR.—Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated, and shall be collected and paid to the United States by the vendor in the same manner as provided in section 3467. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner who shall cause collection of such taxes to be made from the vendee."

* * * * * * *

PAR. 6. Section 316.3 is amended by adding thereto the following new paragraphs:

The amendment of section 3400 by section 553(a) of the Revenue Act of 1941 clarifies existing language. The term "lease" includes any renewal or extension of a lease or any subsequent lease of an article.

The purpose of section 3453, added by section 553(b) of the Revenue Act of 1941, is to shift under certain conditions the liability for a tax, or for an increase in existing rate of tax, imposed by the Revenue Act of 1941, from the manufacturer to the vendee. The conditions under which such liability is shifted are as follows: First, there must be a bona fide contract made by the manufacturer prior to October 1, 1941, for the sale on or after such date of an article with respect to which a manufacturers' excise tax is imposed, or the rate of an existing manufacturers' excise tax is increased, by the Revenue Act of 1941; second, the contract does not provide for the addition of such tax or increase in tax to the amount payable thereunder; and, third, the contract does not expressly or by implication prohibit such addition to the contract price. Where these conditions are present, the vendee becomes liable for the tax or additional tax imposed by the Revenue Act of 1941. In all other cases, the liability remains upon the manufacturer and the full amount of the tax is payable by him.

A contract which provides that the tax shall be paid by the vendor, or otherwise negatives any addition to the contract price, is regarded as prohibiting an addition of the tax to such price.

A vendee who is required to pay the tax shall make payment thereof to the vendor at the time the sale is consummated, and the tax shall be returned and paid to the collector by the vendor. (See section 316.200.) In case of failure or refusal by the vendee to pay the tax to the vendor, the vendor shall report the facts to the Commissioner, for direct collection of the tax from the vendee.

PAR. 7. There is inserted immediately preceding section 316.8 the following:

SEC. 549. INSTALLMENT, ETC., PAYMENTS. (Revenue Act of 1941, Title V, Part IV.)

Section 3441(c) of the Internal Revenue Code is amended to read as follows:

"(c)(1) In the case of (A) a lease, (B) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments, or (C) a conditional sale, there shall be paid upon each payment with respect to the article that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment.

"(2) In the application of paragraph (1) to the articles with respect to which the rate of tax is increased by the Revenue Act of 1941 or by the Revenue Act of 1940, where the lease, contract of sale, or conditional sale, and delivery thereunder—

"(A) was made before July 1, 1940, the total tax referred to in paragraph (1) shall be the tax at the rate in force on June 30, 1940, and not at any greater rate; or

"(B) was made after June 30, 1940, and before October 1, 1941, the total tax referred to in paragraph (1) shall be the tax at the rate in force on September 30, 1941, and not at any greater rate.

"(3) Despite the provisions of paragraph (1), no tax shall be imposed with respect to any article not taxable under the law in existence on the day before the date of the enactment of the Revenue Act of 1941, if with respect to such article the lease, contract for sale, or conditional sale, and delivery thereunder, was made before October 1, 1941."

PAR. 8. Section 316.9 as amended by Treasury Decision 4998 is further amended by substituting the following new paragraphs for the second paragraph thereof:

Where articles are leased by the manufacturer, or sold under an installment-payment contract with title reserved, or under a conditional-sale contract with payments to be made in installments, a proportionate part of the total tax shall be paid upon each payment made with respect to the article. The tax must be returned and paid to the collector during the month following that in which such payment is made.

In the case of articles with respect to which the rate of tax is increased by the Revenue Act of 1940 or by the Revenue Act of 1941—

(*a*) the tax is payable at the rate in force on June 30, 1940, upon all payments where the lease, contract for sale, or conditional sale, and the delivery thereunder were made before July 1, 1940;

(*b*) the tax is payable at the rate in force on September 30, 1941, upon all payments where the lease, contract for sale, or conditional sale, and the delivery thereunder were made after June 30, 1940, and before October 1, 1941.

In the case of articles not subject to tax on September 30, 1941, no tax is payable upon payments made on and after October 1, 1941, where the lease, contract for sale, or conditional sale, and the delivery thereunder were made before October 1, 1941.

PAR. 9. Immediately preceding the subtitle "ARTICLES MANUFACTURED OR PRODUCED BY INDIANS" appearing at the end of section 316.29, there is inserted the following:

EXEMPTION OF ARTICLES TAXABLE AS JEWELRY.

SEC. 551. NEW MANUFACTURERS' EXCISE TAXES. (Revenue Act of 1941, Title V, Part V.)

Subchapter A of Chapter 29 of the Internal Revenue Code is amended by inserting after section 3405 the following new section:

"SEC. 3406. EXCISE TAXES IMPOSED BY THE REVENUE ACT OF 1941.

* * * * * * *

"(b) EXEMPTION IF ARTICLE TAXABLE AS JEWELRY.—No tax shall be imposed under this section on any article taxable under section 2400 (relating to jewelry tax).

* * * * * * *

SEC. 316.29A. *Exemption of articles taxable as jewelry.*—The manufacturers' excise taxes imposed by section 3406 of the Internal Revenue Code, as added by section 551 of the Revenue Act of 1941, do not apply with respect to any article the sale of which at retail is subject to the tax (relating to jewelry) imposed by section 2400 of the Code, as added by section 552 of the Revenue Act of 1941.

PAR. 10. There is inserted immediately preceding section 316.30 the following:

SEC. 535. TIRES AND TUBES. (Revenue Act of 1941, Title V, Part III.)

(a) RATE ON TIRES.—Section 3400(1) of the Internal Revenue Code is amended by striking out "2¼ cents" and inserting in lieu thereof "5 cents".

(b) RATE ON TUBES.—Section 3400(2) of the Internal Revenue Code is amended by striking out "4 cents" and inserting in lieu thereof "9 cents".

* * * * * * *

PAR. 11. The first paragraph of section 316.32 as amended by Treasury Decision 4998, is further amended to read as follows:

The tax is payable by the manufacturer at the following rates: (*a*) tires, 5 cents a pound on total weight (exclusive of metal rims or rim bases); and (*b*) inner tubes (for tires), 9 cents a pound on total weight.

PAR. 12. There is inserted immediately preceding section 316.40, the following:

SEC. 552. NEW RETAILERS' EXCISE TAXES. (Revenue Act of 1941, Title V, Part V.)

* * * * * * *

(b) TERMINATION OF MANUFACTURERS' TAX ON TOILET PREPARATIONS.—The tax imposed by section 3401 of the Internal Revenue Code shall not apply to articles sold on or after October 1, 1941.

PAR. 13. Sections 316.40, 316.41 as amended by Treasury Decision 4998, 316.43, and 316.44 are eliminated and the following section is substituted in their place:

SEC. 316.40. *Termination of tax.*—The tax imposed by section 3401 as amended upon sales of toilet preparations by the manufacturer does not apply to sales made on and after October 1, 1941.

See Regulations 51 relative to the tax on sales of toilet preparations by retailers imposed by section 2402 as added to the Code by section 552 of the Revenue Act of 1941, effective as of October 1, 1941.

PAR. 14. There is inserted immediately preceding section 316.50, the following:

SEC. 544. AUTOMOBILE, TRUCK, BUS, AND PARTS TAX. (Revenue Act of 1941, Title V, Part IV.)

(a) INCREASE OF RATE AND CLASSIFICATION OF BUSSES.—Section 3403(a) and (b) of the Internal Revenue Code are amended to read as follows:

"(a) Automobile truck chassis, automobile truck bodies, automobile bus chassis, automobile bus bodies, truck and bus trailer and semitrailer chassis, truck and bus trailer and semitrailer bodies, tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer (including in each of the above cases parts or accessories therefor sold on or in connection therewith or with the sale thereof), 5 per centum. A sale of an automobile truck, bus, or truck or bus trailer or semitrailer, shall, for the purposes of this subsection, be considered to be a sale of the chassis and of the body.

"(b) Other automobile chassis and bodies, chassis and bodies for trailers or semitrailers suitable for use in connection with passenger automobiles, and motorcycles (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof), except tractors, 7 per centum. A sale of an automobile, trailer, or semitrailer shall, for the purposes of this subsection, be considered to be a sale of the chassis and of the body."

* * * * * * *

PAR. 15. The first paragraph of section 316.50 is amended to read as follows:

The tax is imposed on the sale by the manufacturer of (1) automobile truck chassis and bodies, (2) other automobile chassis and bodies, (3) tractors, and (4) motorcycles.

PAR. 16. The first sentence of the last paragraph of section 316.50 is amended to read as follows:

Any parts or accessories for automobile truck chassis and bodies, other automobile chassis and bodies, tractors, and motorcycles, sold on or in connection therewith, or with the sale thereof, are taxable at the rate applicable to the sale price of the complete articles.

PAR. 17. A new section is inserted at the end of section 316.50 as follows:

SEC. 316.50A. *Definitions.*—As used in this subpart, unless from the context it is clear that a different meaning is intended—

(*a*) The term "automobile truck" shall include automobile trucks, automobile busses, and truck and bus trailers and semitrailers.

(*b*) The term "other automobile" shall mean all automobiles other than automobile trucks, and shall include trailers and semitrailers suitable for use in connection with passenger automobiles.

(*c*) The term "tractor" shall mean the kind of tractors chiefly used for highway transportation in combination with a trailer or semitrailer.

(*d*) The term "motorcycle" shall mean all types of motorcycles and shall include side cars as parts of motorcycles.

PAR. 18. Section 316.51 as amended by Treasury Decision 4998, is further amended to read as follows:

SEC. 316.51. *Rate of tax.*—The tax is payable by the manufacturer at the rate of 5 per cent of the sale price of automobile truck chassis, bodies, or tractors, and at the rate of 7 per cent of the sale price of other automobile chassis or bodies or motorcycles as determined under sections 316.8 to 316.15, inclusive.

PAR. 19. The first and second sentences of section 316.52 as amended by Treasury Decision 4998, are further amended to read as follows:

If the manufacturer of a truck body installs it on an "other automobile chassis" manufactured by him, he must record and bill the sale of the body and chassis separately, and pay tax on the sale price at the rates of 5 per cent and 7 per cent, respectively. In case a passenger body is installed by the manufacturer thereof on an automobile truck chassis manufactured by him, the transaction must be handled in a similar manner, and tax paid on the body and chassis at the rates of 7 per cent and 5 per cent, respectively.

PAR. 20. There is inserted immediately preceding section 316.51 the following:

SEC. 544. AUTOMOBILE, TRUCK, BUS, AND PARTS TAX. (Revenue Act of 1941, Title V, Part IV.)

* * * * * * *

(c) CREDITS ON ACCOUNT OF TIRE AND TUBE TAX.—Section 3403(e) of the Internal Revenue Code is amended to read as follows:

"(e) If tires or inner tubes on which tax has been imposed under this chapter are sold on or in connection with, or with the sale of, a chassis, body, or motorcycle, there shall (under regulations prescribed by the Commissioner, with the approval of the Secretary) be credited against the tax under this section an amount equal to, in the case of an article taxable under subsection (a), 5 per centum, and in the case of an article taxable under subsection (b), 7 per centum—

"(1) of the purchase price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) if such tires or inner tubes were taxable under section 3400 (relating to tax on tires and inner tubes); or

"(2) if such tires or inner tubes were taxable under section 3444 (relating to use by manufacturer, producer, or importer) then of the price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) at which such or similar tires or inner tubes are sold, in the ordinary course of trade, by manufacturers, producers, or importers thereof, as determined by the Commissioner. In lieu of the rates of credit of 5 per centum and 7 per centum above provided, the rates, respectively, for the following periods, shall be as follows:

"(A) With respect to the period after June 30, 1940, and before the effective date of the increase in tax on automobiles made by the Revenue Act of 1941, 2½ per centum and 3½ per centum; and

"(B) With respect to the period before July 1, 1940, 2 per centum and 3 per centum."

* * * * * * *

SEC. 553. ADMINISTRATIVE CHANGES IN MANUFACTURERS' EXCISE TAX TITLE OF CODE. (Revenue Act of 1941, Title V, Part V.)

* * * * * * *

(d) CREDITS, AND TAX FREE SALES OF AUTOMOBILE RADIOS.—* * * Section 3403(e) of the Internal Revenue Code, as amended by this Act, is further amended by striking out "tires and inner tubes" where the phrase appears the first time and inserting "tires, inner tubes, or automobile radios"; paragraph (1) of subsection (e) of such section is amended by inserting before the semicolon "or, in the case of automobile radios, if such radios were taxable under section 3404"; paragraph (2) of subsection (e) of such section is amended by striking out "tires or inner tubes" wherever such phrase appears and inserting "tires, inner tubes, or automobile radios".

PAR. 21. Section 316.54 as amended by Treasury Decision 4998, is further amended to read as follows:

SEC. 316.54. *Credit for taxes on tires, inner tubes, or automobile radios.*—Under the specific provisions of the Code, tires, inner tubes, and automobile radios may not be purchased tax free for use as material in the manufacture of, or as a component part of, other taxable articles manufactured by the purchaser.

Where a manufacturer sells tax-paid tires, inner tubes, and automobile radios on, or in connection with, or with the sale of automobile trucks, other automobiles, taxable tractors, or motorcycles, he may take credit against the tax due on his sale in an amount determined by applying to the purchase price of the tires, inner tubes, automobile radios, the percentage rate of tax applicable to such automobile trucks, other automobiles, taxable tractors, or motorcycles, but the part of the purchase price of tires attributable to any metal rims or rim bases shall be excluded. For example, if the sale price of an automobile is $1,000, the tax payable thereon $70, and the cost to the automobile manufacturer of the tires, inner tubes or automobile radios, sold on or in connection therewith is $40, the manufacturer will be permitted to take a credit against the tax payable on the selling price of the automobile in an amount equal to 7 per cent of $40, or $2.80.

In the event that the manufacturer of an automobile also manufactures or imports tires and inner tubes, and sells the automobile and the tires and tubes in a single transaction, he will be liable for tax on the sale price of the automobile (including the tires and tubes) at the rate of 7 per cent, and he will also be liable for tax on the tires and tubes at the rates of 5 cents and 9 cents per pound, respectively. He will, however, be permitted to take a credit against the tax on the automobile on the same basis as if he had purchased the tires and tubes so sold. The same rule applies in the case of motorcycles and, except for the difference in the rate of tax, in the case of automobile truck chassis and taxable tractors.

Sales of automobile trucks, taxable tractors, other automobiles and motorcycles, originally equipped with tax-paid tires, inner tubes, or automobile radios to an exempt governmental agency for its exclusive use are not properly to be regarded resales of tires and inner tubes, as such, so as to entitle the manufacturer of such tires and inner tubes to a credit or refund of the amount of tax paid by him thereon.

PAR. 22. There is inserted immediately preceding section 316.55 the following:

SEC. 544. AUTOMOBILE, TRUCK, BUS, AND PARTS TAX. (Revenue Act of 1941, Title V, Part IV.)

* * * * *

(b) INCREASE IN RATE ON PARTS AND EXCLUSION OF RADIOS FROM AUTOMOBILE TAX.—The first sentence of section 3403(c) of the Internal Revenue Code is amended to read as follows: "Parts or accessories (other than tires and inner tubes and other than radios) for any of the articles enumerated in subsection (a) or (b), 5 per centum."

* * * * *

PAR. 23. Section 316.55 is amended by adding the following sentence at the end of the first paragraph:

However, such term does not include tires, inner tubes, and automobile radios since these articles are expressly excluded by the statute from the tax on parts or accessories. With respect to fare registers and fare boxes for use on busses and automobiles, see section 316.140.

PAR. 24. Section 316.56 as amended by Treasury Decision 4998, is further amended to read as follows:

SEC. 316.56. *Rate of tax.*—The tax is payable by the manufacturer at the rate of 5 per cent of the sale price as determined under sections 316.8 to 316.13 inclusive.

PAR. 25. There is inserted immediately after the citation of section 3403(f) the following:

SEC. 544. AUTOMOBILE, TRUCK, BUS, AND PARTS TAX. (Revenue Act of 1941, Title V, Part IV.)

* * * * *

(d) CREDITS ON TERMINATION OF TAX.—Section 3403(f) of the Internal Revenue Code (relating to credits and refunds on termination of automobile tax) is repealed.

PAR. 26. There is inserted immediately preceding section 316.60 the following:

SEC. 545. RADIOS, PHONOGRAPHS, RECORDS, AND MUSICAL INSTRUMENTS. (Revenue Act of 1941, Title V, Part IV.)

Section 3404 of the Internal Revenue Code is amended to read as follows:

"SEC. 3404. TAX ON RADIO RECEIVING SETS, PHONOGRAPHS, PHONOGRAPH RECORDS, AND MUSICAL INSTRUMENTS.

"There shall be imposed upon the following articles (including in each case, except in the case of musical instruments, parts or accessories therefor sold on or in connection with the sale thereof) sold by the manufacturer, producer, or importer a tax equivalent to 10 per centum of the price for which sold:

"(a) Radio receiving sets, automobile radio receiving sets, combination radio and phonograph sets, and phonographs.

"(b) Chassis, cabinets, tubes, reproducing units, power packs, antennae of the 'built-in' type, and phonograph mechanisms, which are suitable for use on or in connection with, or as component parts of, any of the articles enumerated in subsection (a), whether or not primarily adapted for such use.

"(c) Phonograph records.

"(d) Musical instruments."

PAR. 27. Sections 316.60 as amended by Treasury Decision 4998, 316.61, and 316.62, as amended by Treasury Decision 4998, are eliminated and the following new sections are inserted in lieu thereof:

SEC. 316.60. SCOPE OF TAX.—The tax attaches to the sale by the manufacturer of (1) radio receiving sets, automobile radio receiving sets, combination radio and phonograph sets, and phonographs; (2) chassis, cabinets, tubes, reproducing units, power packs, antennae of the "built-in" type, and phonograph mechanisms, which are suitable for use on or in connection with, or as component parts of, radio receiving sets, automobile radio receiving sets, combination radio and phonograph sets, and phonographs, regardless of whether such components are primarily adapted for such use; (3) phonograph records; and (4) musical instruments. Parts and accessories for such articles (except musical instruments) are subject to the tax when sold on or in connection with the sale thereof.

Automobile radio receiving sets may not be sold tax free to manufacturers of automobiles under the provisions of either section 3442 or section 3403(c), as amended.

Automatic devices for playing or repeating records, phonograph pick-ups, home recording apparatus, and similar devices are subject to the tax if sold on or in connection with or with the sale of radio receiving sets, combination radio and phonograph sets, or phonographs.

SEC. 316.61. *Radios, phonographs, etc., components.*—The term "chassis" includes radio receiving apparatus of all types.

The term "cabinets" includes containers suitable for housing radio receiving sets, automobile radio receiving sets, combination radio and phonograph sets, and phonographs.

The term "tubes" includes vacuum tubes of all types suitable for use in connection with or as part of radio receiving sets, automobile radio receiving sets, combination radio and phonograph sets, or phonographs.

The term "reproducing units" includes all apparatus for the amplification or reproduction of sound which are suitable for use in connection with or as parts of radio receiving sets, automobile radio receiving sets, combination radio and phonograph sets, or phonographs.

The term "power packs" includes all devices which are suitable for use on or in connection with or as part of radio receiving sets, automobile radio receiving sets, combination radio and phonograph sets, or phonographs, which convert electric current of ordinary commercial or domestic voltages into electric current of voltages suitable for operating such articles.

The term "antennae of the 'built-in' type" includes all types of aerials of the kind completely contained in a radio receiving set, automobile radio receiving set, or combination radio and phonograph set.

The term "phonograph mechanisms" includes devices which are suitable for use in combination radio and phonograph sets, or phonographs for the purpose of playing records.

The articles defined in this section are subject to the tax regardless of whether such articles are primarily adapted for use in connection with radio receiving sets, automobile radio receiving sets, combination radio and phonograph sets, or phonographs.

SEC. 316.62. *Phonograph records.*—The term "phonograph records" means all disks, cylinders, or other articles, regardless of the material from which they are made, and upon which are recorded or may be recorded human speech or other sounds for reproduction by means of a phonograph or combination radio and phonograph.

SEC. 316.63. *Musical instruments.*—The term "musical instruments" includes pianos and organs of all types, trombones, saxophones, violins, drums, xylophones, chimes, cymbals, etc., and all string, wind, reed, or percussion instruments used in producing music, or in reproducing it, except radios and phonographs, for which see section 316.61.

SEC. 316.64. *Rate of tax.*—The tax is payable by the manufacturer at the rate of 10 per cent of the sale price as determined by sections 316.8 to 316.15, inclusive.

PAR. 28. There is inserted immediately preceding section 316.70 the following:

SEC. 546. MECHANICAL REFRIGERATORS. (Revenue Act of 1941, Title V, Part IV.)

Section 3405 of the Internal Revenue Code is amended to read as follows:

"SEC. 3405. TAX ON REFRIGERATORS, REFRIGERATING APPARATUS, AND AIR-CONDITIONERS.

"There shall be imposed on the following articles (including in each case parts or accessories therefor sold on or in connection with the sale thereof) sold by the manufacturer, producer, or importer a tax equivalent to 10 per centum of the price for which so sold:

"(a) REFRIGERATORS, ETC.—Refrigerators, beverage coolers, ice cream cabinets, water coolers, food and beverage display cases, food and beverage storage cabinets, ice making machines, and milk cooler cabinets, each such article having, or being primarily designed for use with, a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline.

"(b) REFRIGERATING APPARATUS.—Compressors, condensers, evaporators, expansion units, absorbers, and controls, for, or suitable for use as part of, or with, a refrigerating plant, refrigerating system, refrigerating equipment or unit, or any of the articles enumerated in subsection (a).

"(c) AIR-CONDITIONERS.—Self-contained air-conditioning units.

"(d) COMPONENTS.—Cabinets, compressors, condensers, fans, blowers, heating coils, cooling coils, filters, humidifiers, and controls, for, or suitable for use as part of, or with, any of the articles enumerated in subsection (c)."

PAR. 29. Sections 316.70, 316.71, 316.72, and 316.73 as amended by Treasury Decision 4998, are eliminated and the following new sections inserted in lieu thereof:

SEC. 316.70. *Refrigerators, etc.*—Subsection (a) of section 3405, as amended by section 546 of the Revenue Act of 1941, imposes a tax on sales by the manufacturer of refrigerators, beverage coolers, ice cream cabinets, water coolers, food and beverage display cases, food and beverage storage cabinets, ice making machines,

and milk cooler cabinets, each such article having, or being primarily designed for use with, a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline, and including in each case parts or accessories therefor sold on or in connection with the sale of the article.

The tax applies to all the above-enumerated articles without regard to their size, whether single or multiple cabinet installation, or whether designed for household, commercial, or industrial use.

The tax applies to all the above-enumerated articles, if primarily designed for use with a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline; it is not necessary that such a mechanical refrigerating unit be sold on or in connection with the sale of the article.

A manufacturer of an article taxable under section 3405(a), as amended, may purchase tax free for use as a component in the manufacture of such article any of the refrigerating apparatus specified in section 3405(a), as amended. (See section 316.71.) However, if any of the refrigerating apparatus specified in section 3405(b), as amended, is purchased tax paid and used as a component in the manufacture of an article taxable under section 3405(a), as amended, the manufacturer of such article may be allowed a credit to the extent of the tax paid on the refrigerating apparatus so used as a component. (See section 316.204.)

The tax does not apply to refrigerator cabinets which are primarily designed for use without a mechanical refrigerating unit.

SEC. 316.71. *Refrigerating apparatus.*—Subsection (b) of section 3405, as amended by section 546 of the Revenue Act of 1941, imposes a tax on sales by the manufacturer of compressors, condensers, evaporators, expansion units, absorbers, and controls, for, or suitable for use as part of, or with, a refrigerating plant, refrigerating system, refrigerating equipment or unit, or any of the articles enumerated in section 3405(a), as amended, and including in each case parts or accessories therefor sold on or in connection with the sale of the specified refrigerating apparatus.

SEC. 316.72. *Air-conditioners, and components.*—Subsections (c) and (d) of section 3405, as added by section 546 of the Revenue Act of 1941, impose taxes on sales by the manufacturer of self-contained air-conditioning units, as well as separate sales of cabinets, compressors, condensers, fans, blowers, heating coils, cooling coils, filters, humidifiers, and controls for, or suitable for use as part of, or with, self-contained air-conditioning units, and including in each case parts or accessories therefor sold on or in connection with the sale of the specified articles.

SEC. 316.73. *Rate of tax.*—The tax is payable by the manufacturer at the rate of 10 per cent of the sale price as determined by sections 316.8 to 316.15, inclusive.

PAR. 30. There is inserted immediately preceding section 316.80, the following:

SEC. 521. DEFENSE EXCISE TAX RATES MADE PERMANENT WHICH ARE NOT INCREASED BY THIS ACT. (Revenue Act of 1941, Title V, Part II.)

(a) The following sections of the Internal Revenue Code are amended as follows:

* * * * *

(18) FIREARMS, ETC.—Section 3407 is amended by striking out "10 per centum" and inserting in lieu thereof "11 per centum."

* * * * *

PAR. 31. The second paragraph of section 316.81 is amended to read as follows:

Sales of pistols and revolvers are specifically exempt from the tax imposed under section 3407 of the Code, as amended, but are subject to the tax imposed under section 2700(a), as amended, and (b) of the Code, which remains in effect. (See Regulations 47, revised October, 1928, as amended by T. D. 5083, approved October 3, 1941 [page 293, this Bulletin], relating to excise taxes on sales by the manufacturer of pistols and revolvers.)

PAR. 32. Section 316.82 as amended by Treasury Decision 4998, is further amended to read as follows:

SEC. 316.82. *Rate of tax.*—The tax is payable by the manufacturer at the rate of 11 per cent of the sale price as determined under sections 316.8 to 316.15, inclusive.

PAR. 33. "SUBPART J. MISCELLANEOUS PROVISIONS" is amended to read "SUBPART U. MISCELLANEOUS PROVISIONS," and the sections now appearing under "Administrative Provisions" are renumbered as follows: 316.90 to 316.200; 316.91 to 316.201; 316.92 to 316.202; 316.93 to 316.203; 316.94 to 316.204; 316.95 to 316.205; and 316.96 to 316.206.

PAR. 34. There are inserted immediately after section 316.82 new Subparts J to T, inclusive, as follows:

SUBPART J. SPORTING GOODS.

SEC. 551. NEW MANUFACTURERS' EXCISE TAXES. (Revenue Act of 1941, Title V, Part V.)

Subchapter A of Chapter 29 of the Internal Revenue Code is amended by inserting after section 3405 the following new section:

"SEC. 3406. EXCISE TAXES IMPOSED BY THE REVENUE ACT OF 1941.

"(a) IMPOSITION.—There shall be imposed on the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to the rate, on the price for which sold, set forth in the following paragraphs (including in each case parts or accessories of such articles sold on or in connection therewith, or with the sale thereof):

"(1) SPORTING GOODS.—Badminton nets; badminton rackets (measuring 22 inches over-all or more in length); badminton racket frames (measuring 22 inches over-all or more in length); badminton racket string; badminton shuttlecocks, badminton standards; baseballs; baseball bats (measuring 26 inches or more in length); baseball body protectors and shin guards; baseball gloves and mitts; baseball masks; basketballs; billiard and pool tables (measuring 45 inches over-all or more in length); billiard and pool balls and cues for such tables; bowling balls and pins; boxing gloves, masks, head guards, and ear guards; clay pigeons; cricket balls; cricket bats; croquet balls and mallets; curling stones; deck tennis rings, nets, and posts; fencing equipment; fishing rods, creels, reels, and artificial lures, baits, and flies; footballs; football harness; football helmets; golf bags (measuring 26 inches or more in length); golf balls; golf clubs (measuring 30 inches or more in length); gymnasium equipment and apparatus; hockey balls; hockey pucks; hockey sticks (measuring 30 inches or more in length); indoor baseballs; indoor baseball bats (measuring 26 inches or more in length); indoor baseball gloves and mitts; lacrosse balls; lacrosse sticks; mass balls; polo balls; polo mallets; push balls; skates; skis; ski poles; snow shoes; snow toboggans and sleds; soccer balls; softball balls; softball bats (measuring 26 inches or more in length); softball gloves and mitts; squash balls; squash rackets (measuring 22 inches over-all or more in length); squash racket frames (measuring 22 inches over-all or more in length); squash racket string; tennis balls; table tennis tables, balls, nets, and paddles; tennis nets; tennis rackets (measuring 22 inches over-all or more in length); tennis racket frames (measuring 22 inches over-all or more in length); tennis racket string; track burdles; traps for throwing clay pigeons; vaulting poles, cross bars, and standards; volley balls, nets, and standards; water polo balls and goals; and wrestling head harness; 10 per centum.

* * * * *

SEC. 316.90. *Scope of tax.*—Subsection (a)(1) of section 3406, as added by section 551 of the Revenue Act of 1941, imposes a tax on sales by the manufacturer of the specified articles, equipment, and apparatus, including in each case

parts or accessories therefor sold on or in connection therewith, or with the sale thereof.

The term "fencing equipment" includes foils, sabers, blades, dueling swords, masks, guards, plastrons, and all other equipment used in the sport of fencing.

The term "gymnasium equipment and apparatus" includes all equipment or apparatus of the type used in connection with any variety of indoor exercise for developing or exhibiting the strength, activity, or control of the body. The following is descriptive but not all-inclusive of the type of equipment or apparatus intended to be included in the above-mentioned term: indian clubs, dumbbells, exercising rings, stall bars, gymnasium ladders, parallel bars, vaulting horses, horizontal bars, striking or punching bags, pulley weights, rowing machines, etc.

The tax does not attach (unless otherwise indicated in subsection 3406(a)(1)) to articles which, in view of their size, quality, or the substance of their material, are not capable of being used in the playing of any game, athletic event, sport, or as gymnasium equipment.

SEC. 316.91. *Rate of tax.*—The tax is payable by the manufacturer at the rate of 10 per cent of the sale price as determined by sections 316.8 to 316.15, inclusive.

SUBPART K. LUGGAGE.

SEC. 551. NEW MANUFACTURERS' EXCISE TAXES. (Revenue Act of 1941, Title V, Part V.)

Subchapter A of Chapter 29 of the Internal Revenue Code is amended by inserting after section 3405 the following new section:

"SEC. 3406. EXCISE TAXES IMPOSED BY THE REVENUE ACT OF 1941.

"(a) IMPOSITION.—There shall be imposed on the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to the rate, on the price for which sold, set forth in the following paragraphs (including in each case parts or accessories of such articles sold on or in connection therewith, or with the sale thereof):

* * * * * * *

"(2) LUGGAGE.—Trunks, valises, traveling bags, suitcases, hat boxes for use by travelers, fitted toilet cases (not including contents), and other traveler's luggage, and leather and imitation leather brief cases, 10 per centum.

* * * * * * *

SEC. 316.100. *Scope of tax.*—Subsection (a)(2) of section 3406, as added by section 551 of the Revenue Act of 1941, imposes a tax on the sale by the manufacturer of trunks, valises, traveling bags, suitcases, hat boxes for use by travelers fitted toilet cases (not including contents), other traveler's luggage, and leather and imitation leather brief cases, including in each case (except contents of fitted toilet cases) parts or accessories therefor sold on or in connection therewith, or with the sale thereof.

The term "trunks" includes all receptacles which are commonly or commercially designated as trunks, and which are designed for the purpose of carrying or conveying the effects of a traveler.

The terms "valises," "traveling bags" and "suitcases," include all receptacles which are commonly or commercially designated as valises, traveling bags, and suitcases and which are designed to be used for the purpose of carrying or conveying by hand the effects of a traveler.

The term "other traveler's luggage" includes all other receptacles commonly or commercially designated as luggage and which are designed for the purpose of carrying or conveying by hand or otherwise the effects of a traveler.

The term "hat boxes for use by travelers" includes all receptacles commonly or commercially designated as hat boxes and which are designed for the purpose of conveying or carrying hats by hand or otherwise in traveling.

The term "leather or imitation leather brief cases" includes all receptacles commonly or commercially designated as brief cases which are made of any leather or imitations thereof, and which are designed for the purpose of carrying or conveying documents, etc., of any size or shape.

The term "fitted toilet cases" includes all receptacles of any form whatsoever designed or fitted to contain toilet articles or other effects of a traveler, or both, exclusive of the toilet article contents thereof.

Articles commonly or commercially designated as salesmen's trunks, valises, utility bags, etc., designed for the purpose of carrying or conveying samples of any kind are subject to the tax even though not specifically used to carry or convey the usual effects of a traveler.

SEC. 316.101. *Application of the tax.*—In the case of articles taxable under section 3406(a)(2), which contain fixtures such as hangers, trays, drawers, etc., the tax attaches to the price for which the entire assembly is sold.

Fittings such as bottles, phials, jars, combs, brushes, mirrors, etc., contained in fitted toilet cases, are not taxable when sold as a part thereof and the sale price of such fittings may be excluded in determining the sale price of the taxable fitted toilet case, provided the sale price of such fittings is separately invoiced by the manufacturer or that such sale price can be established by adequate records to the satisfaction of the Commissioner.

If an article taxable under section 3406(a)(2) is sold at retail by the manufacturer, and such article contains fittings that are subject to the retailers' excise tax imposed by section 2400 (relating to jewelry, etc.) or section 2402 (relating to toilet preparations), the manufacturer, in addition to the manufacturers' excise tax, incurs liability for the retailers' excise tax with respect to the sale which must be returned and paid as required by Regulations 51 (1941 edition). However, where the fittings are subject to the tax imposed by section 2400, the sale thereof by the manufacturer, whether at wholesale or retail, does not subject him to a liability under section 3406(a)(2). (See section 316.29A.)

SEC. 316.102. *Rate of tax.*—The tax is payable by the manufacturer at the rate of 10 per cent of the sale price as determined by sections 316.8 to 316.15, inclusive.

SUBPART L. ELECTRIC, GAS, AND OIL APPLIANCES.

SEC. 551. NEW MANUFACTURERS' EXCISE TAXES. (Revenue Act of 1941, Title V, Part V.)

Subchapter A of Chapter 29 of the Internal Revenue Code is amended by inserting after section 3405 the following new section:

"SEC. 3406. EXCISE TAXES IMPOSED BY THE REVENUE ACT OF 1941.

"(a) IMPOSITION.—There shall be imposed on the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to the rate, on the price for which sold, set forth in the following paragraphs (including in each case parts or accessories of such articles sold on or in connection therewith, or with the sale thereof):

* * * * * * *

"(3) ELECTRIC, GAS, AND OIL APPLIANCES.—Electric direct motor-driven fans and air circulators; electric, gas, or oil water heaters; electric flat irons; electric air heaters (not including furnaces); electric immersion heaters; electric heating pads and blankets; electric, gas, or oil appliances of the type used for cooking, warming, or keeping warm food or beverages for consumption on the premises; electric mixers, whippers, and juicers; and household type electric vacuum cleaners; 10 per centum.

* * * * *

SEC. 316.110. *Scope of tax.*—Subsection (a)(3) of section 3406, as added by section 551 of the Revenue Act of 1941, imposes a tax on sales by the manufacturer of electric direct motor-driven fans and air circulators, electric, gas, or oil water heaters, electric flat irons, electric air heaters (not including furnaces), electric immersion heaters, electric heating pads and blankets, electric, gas, or oil appliances of the type used for cooking, warming, or keeping warm food or beverages for consumption on the premises, electric mixers, whippers, and juicers, household type electric vacuum cleaners, and combinations of two or more of such appliances, including in each case parts and accessories therefor sold on or in connection therewith, or with the sale thereof.

The term "electric direct motor-driven fans and air circulators" includes appliances of the type primarily designed and adapted to be operated as independent units. It includes so-called "exhaust" fans but does not include so-called "blowers." With respect to fans and blowers for, or suitable for use as part of, or with, self-contained air-conditioning units, see section 316.72.

The phrase "electric, gas, or oil appliances of the type used for cooking, warming, or keeping warm food or beverages for consumption on the premises" includes any type of appliance operated by, or for which the heat is generated by, electricity, gas, or oil, which is used, commercially or domestically, to cook, warm, or keep warm food or beverages for consumption on the premises. The following are descriptive but not all inclusive of the types of articles subject to tax under this classification: coffee makers, ranges, roasters, toasters, waffle irons, griddles, hot plates, casseroles, steam tables, etc.

SEC. 316.111. *Rate of tax.*—The tax is payable by the manufacturer at the rate of 10 per cent of the sale price as determined by sections 316.8 to 316.15, inclusive.

SUBPART M. PHOTOGRAPHIC APPARATUS.

SEC. 551. NEW MANUFACTURERS' EXCISE TAXES. (Revenue Act of 1941, Title V, Part V.)

Subchapter A of Chapter 29 of the Internal Revenue Code is amended by inserting after section 3405 the following new section:

"SEC. 3406. EXCISE TAXES IMPOSED BY THE REVENUE ACT OF 1941.

"(a) IMPOSITION.—There shall be imposed on the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to the rate, on the price for which sold, set forth in the following paragraphs (including in each case parts or accessories of such articles sold on or in connection therewith, or with the sale thereof):

* * * * *

"(4) PHOTOGRAPHIC APPARATUS.—Cameras and lenses; unexposed photographic films (including motion picture films but not including X-ray film), photographic plates and sensitized paper; photographic apparatus and equipment; and any apparatus or equipment designed especially for use in the taking of photographs or motion pictures or in the developing, printing, or enlarging of photographs or motion picture films; 10 per centum.

* * * * *

SEC. 553. ADMINISTRATIVE CHANGES IN MANUFACTURERS' EXCISE TAX TITLE OF CODE. (Revenue Act of 1941, Title V, Part V.)

* * * * *

(c) UNEXPOSED MOTION PICTURE FILMS.—Section 3443(a)(3)(A) of the Internal Revenue Code (relating to credits or refunds of tax to manufacturer) is amended by inserting at the end thereof the following new clause:

"(v) in the case of unexposed motion picture films, used or resold for use in making of news reel motion picture films."

* * * * *

SEC. 316.120. *Scope of tax.*—Subsection (a)(4) of section 3406, as added by section 551 of the Revenue Act of 1941, imposes a tax on sales by the manufacturer of cameras, lenses for cameras, all unexposed still or motion picture films (except X-ray films), photographic plates, photographic sensitized paper, photographic apparatus, photographic equipment, and any apparatus or equipment designed especially for use in the taking of photographs or motion pictures or in the developing, printing, or enlarging of photographs or motion picture films, including in each case parts or accessories therefor sold on or in connection therewith, or with the sale thereof.

The term "cameras" includes the entire assembly, regardless of weight, which is used for or capable of use in the taking of still or motion pictures.

The term "lenses" includes the glass and also the frame or cell in which such glass is mounted. Where a lens is sold in combination with a barrel, shutter, diffusing device, etc., the tax attaches to the total amount paid for the assembly.

The term "unexposed photographic film" includes all films for use in any type of still or motion picture camera whether in rolls, reels, or packs, but does not include X-ray films.

The term "photographic plates" includes any plate used in any type camera in the taking of a picture.

The term "sensitized paper" includes any type of paper, regardless of size, used in producing prints or enlargements from any type of photographic negative.

The term "photographic apparatus and equipment" includes any article used on or in connection with a camera or lens in the taking of a still or motion picture. The following are descriptive but not all-inclusive of such articles: range finders, view finders, lens extension tubes, filters, diffusers, tripods, focusing finders, etc.

The phrase "any apparatus or equipment designed especially for use in the taking of photographs or motion pictures or in the developing, printing, or enlarging of photographs or motion picture films" includes the following articles which are descriptive but not all-inclusive: exposure meters, enlargers, lenses and other attachments for enlargers, tanks or pans designed for developing films, printing frames, photoflood lamps and reflectors, flash bulbs, etc.

SEC. 316.121. *Unexposed motion picture films used in making news reel motion picture films.*—Under the provisions of the Code, where unexposed motion picture films are used or are resold for use in the making of "news reel motion picture films" the manufacturer of such unexposed motion picture films is entitled to a refund or credit of the tax paid on the sale of such unexposed films.

The term "making of news reel motion picture films" means the production of news reel motion pictures covering current news events for immediate release for public exhibition.

The tax attaches to the manufacturer's sale of all unexposed motion picture films even though it is known at the time of the sale that such unexposed films will be used or resold for use in the making of news reel motion picture films.

In order to establish the right to a credit or refund of the tax paid on the sale of unexposed motion picture films used or resold for use in the making of news reel motion picture films, it is necessary that, (1) the manufacturer have definite knowledge that the film in question was used for such purposes, and (2) he obtain from the purchaser and retain in his possession a properly executed certificate in the form prescribed by this section.

Where the certificate is obtained prior to the time the manufacturer is required to file a return covering taxes due for the month in which the sale was made, he must include the tax on such sale in his return for that month, in the item "Total tax due," but he may deduct an amount equivalent to the tax applicable to such sale and pay the net tax resulting, making appropriate explanation on a rider attached to the return. If the certificate is not so obtained, the manufacturer must include the tax on such sale in his return for the month in which the sale was made, and when the certificate is obtained later he may file a claim for refund on Form 843, or take a credit upon any subsequent return, but such action must be taken within the 4-year period of limitation prescribed by section 3313.

For regulations relating to the claiming of credits or refunds, see section 316.204.

The following is a form of exemption certificate which will be acceptable for the purpose of this section and must be adhered to in substance:

CREDIT OR REFUND CERTIFICATE.

(For use by purchasers of unexposed motion picture films for use in the making of news reel motion pictures.)

----------, 19----.

The undersigned hereby certifies that the unexposed motion picture films covered by this certificate were used in the making of news reel motion picture films.

The undersigned understands that a fraudulent use of this certificate to secure a credit or refund may subject him (1) to a penalty equivalent to the amount of tax due on the sale of the unexposed motion picture film, and (2) to a fine of not more than $10,000, or imprisonment of not more than five years, or both, together with costs of prosecution.

(Name.)

(Address.)

If it is impracticable to furnish a separate certificate for each order or contract, a certificate covering all orders between given dates (such period not to exceed a month) will be acceptable. Such certificate and proper records of invoices, orders, etc., relative to tax-free use shall be retained as provided in section 316.202. If, upon inspection, it is discovered that a manufacturer's records with respect to any use claimed to be tax free do not contain a proper certificate, as outlined above, with supporting invoices and such other evidence as may be necessary to establish the exempt character of the use, the tax shall be payable by the manufacturer on such sale.

The unexposed motion picture films covered by the certificate must be fully identified as to the nature of its use, the quantity used, the date of sale, and the amount of tax paid thereon.

SEC. 316.122. *Rate of tax.*—The tax is payable by the manufacturer at the rate of 10 per cent of the sale price as determined by sections 316.8 to 316.15, inclusive.

SUBPART N. ELECTRIC SIGNS.

SEC. 551. NEW MANUFACTURERS' EXCISE TAXES. (Revenue Act of 1941, Title V, Part V.)

Subchapter A of Chapter 29 of the Internal Revenue Code is amended by inserting after section 3405 the following new section:

"SEC. 3406. EXCISE TAXES IMPOSED BY THE REVENUE ACT OF 1941.

"(a) IMPOSITION.—There shall be imposed on the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to the rate, on the price for which sold, set forth in the following paragraphs (including in each case parts or accessories of such articles sold on or in connection therewith, or with the sale thereof):

* * * * *

"(5) ELECTRIC SIGNS.—Neon-tube signs, electric signs, and electric advertising devices, 10 per centum.

* * * * *

SEC. 316.130. *Scope of tax.*—Subsection (a)(5) of section 3406, as added by section 551 of the Revenue Act of 1941, imposes a tax on the sale by the manufacturer of neon-tube signs, electric signs, and electric advertising devices, including in each case parts or accessories therefor sold on or in connection therewith, or with the sale thereof.

SEC. 316.131. *Rate of tax.*—The tax is payable by the manufacturer at the rate of 10 per cent of the sale price as determined by sections 316.8 to 316.15, inclusive.

SUBPART O. BUSINESS AND STORE MACHINES.

SEC. 551. NEW MANUFACTURERS' EXCISE TAXES. (Revenue Act of 1941, Title V, Part V.)

Subchapter A of Chapter 29 of the Internal Revenue Code is amended by inserting after section 3405 the following new section:

"SEC. 3406. EXCISE TAXES IMPOSED BY THE REVENUE ACT OF 1941.

"(a) IMPOSITION.—There shall be imposed on the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to the rate, on the price for which sold, set forth in the following paragraphs (including in each case parts or accessories of such articles sold on or in connection therewith, or with the sale thereof):

* * * * *

"(6) BUSINESS AND STORE MACHINES.—Adding machines, addressing machines, autographic registers, bank proof machines, billing machines, bookkeeping machines, calculating machines, card punching machines, cash registers, change making machines, check writing machines, check signing machines, check canceling machines, check perforating machines, check cutting machines, check dating machines, other check protector machine devices, computing machines, coin counters, dictographs, dictating machine record shaving machines, dictating machines, duplicating machines, embossing machines, envelope opening machines, erasing machines, folding ma-

chines, fanfold machines, fare registers, fare boxes, listing machines, line-a-time and similar machines, mailing machines, multigraph machines, multigraph typesetting machines, multigraph type justifying machines, numbering machines, portable paper fastening machines, pay roll machines, pencil sharpeners, postal permit mailing machines, punch card machines, sorting machines, stencil cutting machines, shorthand writing machines, sealing machines, tabulating machines, ticket counting machines, ticket issuing machines, typewriters, transcribing machines, time recording devices, and combinations of any of the foregoing, 10 per centum.

* * * * *

SEC. 316.140. *Scope of tax.*—Subsection (a) (6) of section 3406, as added by section 551 of the Revenue Act of 1941, imposes a tax on sales by the manufacturer of all business and store machines of the types enumerated in such subsection, and to sales by the manufacturer of any combination of two or more of such machines, including parts and accessories sold on or in connection therewith, or with the sale thereof.

Where any taxable business or store machine is leased (including any renewal or any extension of a lease or any subsequent lease of such article) by the manufacturer, such lease shall, for the purpose of this section, be considered as the sale thereof. For computation of tax on leases or rentals see section 316.9.

Fare registers and fare boxes for use in streetcars, busses, and other vehicles are taxable as business machines under section 3406(a) (6) and not as automobile accessories under section 3403(c), as amended.

SEC. 316.141. *Rate of tax.*—The tax is payable by the manufacturer at the rate of 10 per cent of the sale price as determined by sections 316.8 to 316.15, inclusive.

SUBPART P. RUBBER ARTICLES.

SEC. 551. NEW MANUFACTURERS' EXCISE TAXES. (Revenue Act of 1941, Title V, Part V.)

Subchapter A of Chapter 29 of the Internal Revenue Code is amended by inserting after section 3405 the following new section:

"SEC. 3406. EXCISE TAXES IMPOSED BY THE REVENUE ACT OF 1941.

"(a) IMPOSITION.—There shall be imposed on the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to the rate, on the price for which sold, set forth in the following paragraphs (including in each case parts or accessories of such articles sold on or in connection therewith, or with the sale thereof):

* * * * *

"(7) RUBBER ARTICLES.—Articles of which rubber is the component material of chief weight, 10 per centum. The tax imposed under this paragraph shall not be applicable to footwear, articles designed especially for hospital or surgical use, or articles taxable under any other provision of this chapter.

* * * * *

SEC. 316.150. *Scope of tax.*—Subsection (a) (7) of section 3406, as added by section 551 of the Revenue Act of 1941, imposes a tax on the sale by the manufacturer of any article of which rubber is the component material of chief weight, except articles of footwear such as shoes, rubbers, boots, heels, soles, etc.; articles especially designed for hospital or surgical use; and articles taxable under any other section of Chapter 29 of the Code, as amended.

The component material of chief weight of any article, for the purposes of this section, is that component material which is not exceeded in weight by any other single component.

The following list is descriptive but not all-inclusive of the type of articles subject to tax if rubber is the component material of chief weight: raincoats, hose, flooring, mats and matting, thread, cement, gloves, stationers' bands, erasers, camelback, bathing caps and belts and belting, tape, sponge, fabric, tubing, packing, washers, valves, battery jars, mouth pieces for pipes, cigar and cigarette holders, stoppers of all types, etc.

Where rubber is a component material of an article and exemption with respect to the sale of such article is claimed on the ground that rubber is not the component material of chief weight, the manufacturer must maintain adequate

records or have in his possession proper evidence to establish to the satisfaction of the Commissioner that the rubber is not the component material of chief weight. In the absence of such records or evidence, the tax must be paid with respect to the sale of such article.

SEC. 316.151. *Rate of tax.*—The tax is payable by the manufacturer at the rate of 10 per cent of the sale price as determined by sections 316.8 to 316.15, inclusive.

SUBPART Q. COMMERCIAL WASHING MACHINES.

SEC. 551. NEW MANUFACTURERS' EXCISE TAXES. (Revenue Act of 1941, Title V, Part V.)

Subchapter A of Chapter 29 of the Internal Revenue Code is amended by inserting after section 3405 the following new section:

"SEC. 3406. EXCISE TAXES IMPOSED BY THE REVENUE ACT OF 1941.

"(a) IMPOSITION.—There shall be imposed on the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to the rate, on the price for which sold, set forth in the following paragraphs (including in each case parts or accessories of such articles sold on or in connection therewith, or with the sale thereof):

* * * * *

"(8) WASHING MACHINES.—Washing machines of the kind used in commercial laundries, 10 per centum. No tax shall be imposed under this paragraph on washing machines of the household type.

* * * * *

SEC. 316.160. *Scope of tax.*—Subsection (a)(8) of section 3406, as added by section 551 of the Revenue Act of 1941, imposes a tax on the sale by the manufacturer of washing machines of the type designed and intended to be used in commercial laundries, including parts and accessories for such machines sold on or in connection therewith or with the sale thereof.

Under the express provisions of the Code, as amended, no tax attaches with respect to sales of washing machines of the type designed and intended solely for use in the home.

SEC. 316.161. *Rate of tax.*—The tax is payable by the manufacturer at the rate of 10 per cent of the sale price as determined by sections 316.8 to 316.15, inclusive.

SUBPART R. OPTICAL EQUIPMENT.

SEC. 551. NEW MANUFACTURERS' EXCISE TAXES. (Revenue Act of 1941, Title V, Part V.)

Subchapter A of Chapter 29 of the Internal Revenue Code is amended by inserting after section 3405 the following new section:

"SEC. 3406. EXCISE TAXES IMPOSED BY THE REVENUE ACT OF 1941.

"(a) IMPOSITION.—There shall be imposed on the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to the rate, on the price for which sold, set forth in the following paragraphs (including in each case parts or accessories of such articles sold on or in connection therewith, or with the sale thereof):

* * * * *

"(9) OPTICAL EQUIPMENT.—Refractometers; spectrometers; spectroscopes; colorimeters; polariscopes; optical measuring instruments; telescopic sights; projection lenses and prisms; optical machinery; microscopes; telescopes; photo-micro and micro-projection apparatus; fire control optical instruments; and searchlight mirrors and reflectors; 10 per centum.

* * * * *

SEC. 316.170. *Scope of tax.*—Subsection (a)(9) of section 3406, as added by section 551 of the Revenue Act of 1941, imposes a tax on the sale by the manufacturer of (*a*) refractometers, spectrometers, spectroscopes, colorimeters, polariscopes, optical measuring instruments, telescopic sights, projection lenses, projection prisms, optical machinery, microscopes, telescopes, photo-micro and micro-projection apparatus, fire control optical instruments, searchlight mirrors and reflectors; (*b*) combinations of two or more of such articles; and (*c*) parts or accessories of such articles sold on or in connection therewith, or with the sale thereof.

SEC. 316.171. *Rate of tax.*—The tax is payable by the manufacturer at the rate of 10 per cent of the sale price as determined by sections 316.8 to 316.15, inclusive.

SUBPART S. ELECTRIC LIGHT BULBS AND TUBES.

SEC. 551. NEW MANUFACTURERS' EXCISE TAXES. (Revenue Act of 1941, Title V, Part V.)

Subchapter A of Chapter 29 of the Internal Revenue Code is amended by inserting after section 3405 the following new section:

"SEC. 3406. EXCISE TAXES IMPOSED BY THE REVENUE ACT OF 1941.

"(a) IMPOSITION.—There shall be imposed on the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to the rate, on the price for which sold, set forth in the following paragraphs (including in each case parts or accessories of such articles sold on or in connection therewith, or with the sale thereof):

* * * * *

"(10) ELECTRIC LIGHT BULBS AND TUBES.—Electric light bulbs and tubes, not including articles taxable under any other provision of this subchapter, 5 per centum.

* * * * *

SEC. 316.180. *Scope of tax.*—Subsection (a)(10) of section 3406, as added by section 551 of the Revenue Act of 1941, imposes a tax on the sale by the manufacturer of electric light bulbs and tubes.

An electric light bulb or tube is any device designed for the diffusion of artificial light for illuminative or decorative purposes through the use of electricity.

SEC. 316.181. *Rate of tax.*—The tax is payable by the manufacturer at the rate of 5 per cent of the sale price as determined by sections 316.8 to 316.15, inclusive.

SUBPART T. ELECTRICAL ENERGY.

SEC. 3411 (AS AMENDED BY SECTION 521(a)(19) OF THE REVENUE ACT OF 1941). TAX ON ELECTRICAL ENERGY FOR DOMESTIC OR COMMERCIAL CONSUMPTION.

(a) There shall be imposed upon electrical energy sold for domestic or commercial consumption and not for resale a tax equivalent to 3⅓ per centum of the price for which so sold, to be paid by the vendor under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe. The sale of electrical energy to an owner or lessee of a building, who purchases such electrical energy for resale to the tenants therein, shall for the purposes of this section be considered as a sale for consumption and not for resale, but the resale to the tenant shall not be considered a sale for consumption.

* * * * * * *

SEC. 316.190. *Scope of tax.*—The tax imposed by section 3411(a) of the Internal Revenue Code, as amended, applies, except as provided hereinafter, to all electrical energy sold for domestic or commercial consumption and not for resale.

The term "electrical energy sold for domestic or commercial consumption" does not include (1) electrical energy sold for industrial consumption, e. g., for use in manufacturing, mining, refining, shipbuilding, building construction, irrigation, etc., or (2) that sold for other uses which likewise can not be classed as domestic or commercial, such as the electrical energy used by electric and gas companies, waterworks, telegraph, telephone, and radio communication companies, railroads, other similar common carriers, educational institutions not operated for private profit, churches, and charitable institutions in their operations as such. However, electrical energy is subject to tax if sold for consumption in commercial phases of industrial or other businesses, such as in office buildings, sales and display rooms, retail stores, etc., or in domestic phases, such as in dormitories or living quarters maintained by educational institutions, churches, charitable institutions, or others.

Where electrical energy is sold to a consumer for two or more purposes, through separate meters, the specific use for which the energy is sold through each

meter, i. e., whether for domestic or commercial consumption, or for other use, shall determine its taxable status. Where the consumer has all the electrical energy consumed at a given location furnished through one meter, the predominant character of the business carried on at such location shall determine the classification of consumption for the purposes of this tax.

The tax attaches to electrical energy sold for domestic or commercial consumption, irrespective of whether any of the energy sold is actually used or the charges therefor actually collected. The tax is due on all such sales whether the charge therefor is billed as a minimum charge, a flat charge, a service charge, or otherwise.

Where a discount is allowable from the gross charge for electrical energy if payment therefor is made by the consumer within a prescribed period, or where an additional amount is added for failure to make payment within a prescribed period, the tax shall be based on the amount due.

SEC. 316.191. *Sales for resale.*—The tax does not apply to sales of electrical energy for resale, except where the electrical energy is sold to an owner or lessee of a building for resale to the tenants therein. The statute provides that sales of electrical energy to an owner or lessee of a building for resale to the tenants therein shall be considered a sale for consumption; accordingly, the sales to such owner or lessee are subject to the tax. However. in such case the resale of the electrical energy by the owner or lessee of the building to the tenants is not taxable. In determining the tax payable with respect to the electrical energy sold to an owner or lessee of a building for resale to tenants therein, such portion of the electrical energy as can be shown to have been resold to the tenants for other than domestic or commercial consumption may be excluded.

Every person who purchases electrical energy for resale (except resale by the owner or lessee of a building to the tenants therein) must register with the collector for the district in which is located the principal place of business of such person (or, if he has no principal place of business in the United States, with the collector at Baltimore, Md.). The application for registry must show the name and place, or places, of business of the applicant. The collector will issue registration numbers in a separate series, beginning with number 1, for his district. Electrical energy so furnished for resale shall be exempt from tax only when the vendee furnishes to the vendor a certificate showing the vendee's registration number and that the electrical energy is to be resold by him.

Where electrical energy is sold to a person registered under the provisions of the preceding paragraph, a portion of which is for domestic or commercial consumption by the vendee and a portion of which is for resale, the certificate furnished by such vendee must show the amount of such electrical energy purchased for domestic or commercial consumption by him, and the amount purchased by him for resale. The vendor must pay tax on the portion of such electrical energy sold to the vendee for domestic or commercial consumption by such vendee. Such vendee must in turn pay tax on the portion of such electrical energy resold by him for domestic or commercial consumption. The tax in each case is based on the price for which the electrical energy is sold to the consumer thereof.

SEC. 316.192. *Rate of tax.*—The tax is payable by the vendor at the rate of 3⅓ per cent of the sale price.

ELECTRICAL ENERGY EXEMPTIONS.

SEC. 3411. TAX ON ELECTRICAL ENERGY FOR DOMESTIC OR COMMERCIAL CONSUMPTION.

* * * * * * *

(c) No tax shall be imposed under this section upon electrical energy sold to the United States or to any State or Territory, or political subdivision thereof, or the District of Columbia. None of the provisions of this section shall apply to publicly owned electric and power plants, or to electric and power plants or systems owned and operated by cooperative or nonprofit corporations engaged in rural electrification. The right to exemption under this subsection shall be evidenced in such manner as the Commissioner, with the approval of the Secretary, may, by regulation, prescribe.

SEC. 316.193. *Exemptions.*—Electrical energy sold to the United States or to any State or Territory, or political subdivision thereof, or the District of Columbia, is exempt from the tax.

Sales of electrical energy by electric and power plants owned by the United States, or any State or Territory, or political subdivision thereof, or the District of Columbia, are exempt from the tax.

Sales of electrical energy by electric and power plants or systems owned and operated by cooperative or nonprofit corporations engaged in rural electrification are exempt from the tax.

In every case, the exemption specified in this section must be established by an official ruling. Where not so established, any corporation claiming the right to such exemption must submit for ruling by the Commissioner, (A) a copy of its charter, (B) a copy of its by-laws, and (C) adequate and sufficiently detailed evidence of the area served by its operations.

SEC. 3411. TAX ON ELECTRICAL ENERGY FOR DOMESTIC OR COMMERCIAL CONSUMPTION.

* * * * *

(b) The provisions of sections 3441, 3444, and 3447 shall not be applicable with respect to the tax imposed by this section.

* * * * *

SEC. 316.194. *Inapplicable administrative provisions.*—The provisions of sections 3441, 3444, and 3447 of the Internal Revenue Code relating to sale price, use by manufacturers, and contracts prior to May 1, 1932, respectively, do not apply to the tax imposed on sales of electrical energy.

PAR. 35. The first sentence of paragraph 3 of renumbered section 316.200 is amended to read as follows:

Returns covering taxes collected from vendees under section 3447(b), or section 3453, as added by section 553(b) of the Revenue Act of 1941, should be made as prescribed above on Form 728.

PAR. 36. The last sentence of renumbered section 316.201 is amended by changing " section 316.95 " in last sentence to " section 316.205 ".

PAR. 37. There is inserted immediately preceding renumbered section 316.204, the following:

SEC. 553. ADMINISTRATIVE CHANGES IN MANUFACTURERS' EXCISE TAX TITLE OF CODE. (Revenue Act of 1941, Title V, Part V.)

* * * * *

(c) UNEXPOSED MOTION PICTURE FILMS.—Section 3443(a)(3)(A) of the Internal Revenue Code (relating to credits or refunds of tax to manufacturer) is amended by inserting at the end thereof the following new clause:

"(v) in the case of unexposed motion picture films, used or resold for use in the making of news reel motion picture films."

(d) CREDITS, AND TAX FREE SALES OF AUTOMOBILE RADIOS.—Section 3442, section 3443(a)(1), and section 3444(a)(1) and (2) of the Internal Revenue Code (relating to tax in case of sale of tires to manufacturers of automobiles, etc., and credit on sale) are amended by striking out " tires or inner tubes " wherever appearing therein and inserting " tires, inner tubes, or automobile radios taxable under section 3404 "; and by striking out " tire or inner tube " wherever appearing therein and inserting " tire, inner tube, or automobile radio taxable under section 3404 ". Section 3403(e) of the Internal Revenue Code, as amended by this Act, is further amended by striking out " tires and inner tubes " where the phrase appears the first time and inserting " tires, inner tubes, or automobile radios "; paragraph (1) of subsection (e) of such section is amended by inserting before the semicolon " or, in the case of automobile radios, if such radios were taxable under section 3404 "; paragraph (2) of subsection (e) of such section is amended by striking out " tires or inner tubes " wherever such phrase appears and inserting " tires, inner tubes, or automobile radios ".

PAR. 38. Paragraph 1 of renumbered section 316.204 is amended by substituting "(other than a tire, inner tube, or automobile radio taxable under section 3404)" for "(other than a tire or inner tube)".

PAR. 39. The amendments made by this Treasury decision shall be applicable only with respect to the period beginning with October 1, 1941.

(This Treasury decision is issued under the authority contained in sections 501, 521, 535, 536, 544, 545, 546, 549, 550, 551, 552(b), 553, and 558 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress), and section 3791 of the Internal Revenue Code (53 Stat., 467; 26 U. S. C., Sup. V, 3791).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved November 28, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 28, 1941, 2.58 p. m.)

TITLE IV.—MANUFACTURERS' EXCISE TAXES. (1932)

SECTION 606.—AUTOMOBILES, ETC.

REGULATIONS 46 (1932), ARTICLE 41: Definition of parts or accessories. 1941–27–10767 Ct. D. 1521

MANUFACTURERS' EXCISE TAX—REVENUE ACT OF 1932—DECISION OF COURT.

1. MANUFACTURER OR PRODUCER—AUTOMOBILE PARTS OR ACCESSORIES—USE OF DISCARDED ARMATURES IN PRODUCTION OF ARMATURES FOR SALE.

A corporation which acquires burned and worn out armatures, strips them to the core, and by various machine and hand operations, through the use of the old core and new materials, turns out for the general market rebuilt armatures stamped with the corporation's trade name and stock number and placed in stock for future sale, is a "manufacturer or producer" within the meaning of section 606(c) of the Revenue Act of 1932, and the sale of such articles is subject to the tax imposed by that section. The discarded armatures purchased by the taxpayer, having lost their function as a useful article as well as their commercial value as such, when acquired for use in the manufacture and production of an article of commerce bear the same relation to the completed armature as the purchase of unused materials would bear to the completed article.

2. CASE FOLLOWED.

Clawson & Bals, Inc., v. *Harrison* [Ct. D. 1442, C. B. 1940–1, 249] (108 Fed. (2d), 991) followed.

3. DECISION REVERSED.

Decision of the district court (28 F. Supp., 10 (1939)), reversed.

4. CERTIORARI DENIED.

Petition for certiorari denied May 5, 1941.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

United States of America, appellant, v. *Armature Exchange, Incorporated, a Corporation, also known as The Armature Exchange, Incorporated, a Corporation, appellee.*

[116 Fed. (2d), 969.]

Upon appeal from the District Court of the United States for the Southern District of California, Central Division.

[January 17, 1941.]

OPINION.

STEPHENS, Circuit Judge: Suit by appellee taxpayer against the United States for recovery of $1,452.30 assessed and paid as manufacturers' excise taxes on sales of armatures. From a judgment of the district court in favor of the taxpayer [28 Fed. Supp., 10] the United States appeals. For clarity in this opinion we shall refer to the appellant United States of America as the Government, and to the appellee as taxpayer.

The taxes in question were assessed against the taxpayer by virtue of section 606(c) of the Revenue Act of 1932 (26 U. S. C. A., end of chapter 20), which provides, so far as here applicable:

"SEC. 606 TAX ON AUTOMOBILES, ETC.

"There is hereby imposed upon the following articles sold by the manufacturer, producer, or importer, a tax equivalent to the following percentages of the price for which so sold:

* * * * * * *

"(c) Parts or accessories (other than tires and inner tubes) for any of the articles enumerated in subsection (a) or (b), 2 per centum, * * *."

[NOTE.—Subsections (a) and (b) referred to enumerate automobiles, automobile trucks and motorcycles.]

It is not denied that the taxpayer sold the armatures in question, nor is it denied that the armatures constitute automobile parts or accessories. The sole question involved in this appeal is whether or not the sales are taxable to taxpayer as the manufacturer or producer thereof, within the meaning of the Act.

Taxpayer was incorporated under the laws of California "to carry on the business of manufacturing and assembling armatures, motors and electrical equipment of any and all kinds. To design and prepare plans and specifications for the manufacture, construction and assembling of electrical appliances and equipment. To enter into contracts and make the necessary agreements for marketing and disposing of the same. * * *"

Taxpayer acquires burned and worn out armatures, strips them to the core, and by various machine and hand operations, through the use of the old core and new material, turns out for the general market "rebuilt armatures." The method of taxpayer's operations is fully described in the opinion of the judge who tried the case, supra, and it need not be repeated here. Each article is stamped with the taxpayer's trade name "Armex" and is separately boxed and labeled "Armex Rebuilt Armature. 'A Quality Product.' Armex Code (giving number)." About 80 armatures are turned out, checked, boxed and put on the taxpayer's shelves daily. It maintains a stock for sale of 600 different types of armatures, each with taxpayer's own stock number.

It is the contention of the taxpayer, and in this it is supported by the conclusion of the trial court, that its business is simply that of reconstructing and restoring armatures, as contrasted to that of manufacturing or producing armatures.

The trial court's conclusion that the rebuilt armatures were not "manufactured or produced" by the taxpayer is premised upon the assumption that there must be a "new and different article" at the completion of the taxpayer's operations. *Hartranft* v. *Wiegmann* (121 U. S., 609) and *Anheuser-Busch Association* v. *United States* (207 U. S., 556) are cited as authority for this proposition.

The Hartranft case arose under the provisions of sections 2504 and 2505 of the Revised Statutes. By section 2504 "manufactures of shells" were dutiable. Under the provisions of section 2505 "shells of every description, not manufactured" were exempt from duty. The taxpayer there involved had imported shells which had been cleaned with acid and ground on an emery wheel. Some of them were etched with acid. All were intended to be sold for ornaments, as shells. It was held that the cleaned and polished shells were not "manufac-

tures" of shells, as they had not been manufactured into a new and different article.

The Anheuser-Busch Brewing Association case arose under section 25 of the Tariff Act of October 1, 1890 (26 Stat., 567, 617), which provided for a rebate on exported manufactured articles. The taxpayer exported beer in corked bottles. The corks had been brought from Spain, and then treated to make them usable. It was held by the Supreme Court that the corks had not been "manufactured" here. The court cited the Hartranft case, supra, with approval, and held that in order to constitute a "manufacture" "there must be a transformation; a new article must emerge having a distinctive name, character or use" (page 562).

In our opinion neither of the cited cases is authority for the position of the taxpayer that it is not a "manufacturer or producer" of armatures. In both cases the raw materials were not subject to the terms of the statute involved, the statutes relating solely to "manufactures." Certainly in such statutes there must be a "transformation."

De Jonge v. *Magone* (159 U. S., 562), cited by the taxpayer in its brief, is in the same category. It also arose under the Tariff Act [22 Stat., 488, 510], which imposed a duty of 15 per cent on "paper, manufactures of, or of which paper is a component material," and a duty of 25 per cent on "all other paper not specially enumerated or provided for." The question was whether the taxpayer was subject to 15 per cent or 25 per cent duty. The paper involved had been treated to make a higher and better grade of paper. There was no change of form, and the court therefore held that the 25 per cent duty applied.

Other cases relied on by the taxpayer are those arising under the patent laws. *American Fruit Growers, Inc.*, v. *Brogdex* (283 U. S., 1); *Goodyear Shoe Machinery Co.* v. *Jackson* (112 Fed., 146) (C. C. A. 1, 1901); *Foglesong Mach. Co.* v. *J. D. Randall Co.* (239 Fed., 893) (C. C. A. 6, 1917); *Ely Norris Safe Co.* v. *Mosler Safe Co.* (62 Fed. (2d), 524) (C. C. A. 2, 1933); and *Hess-Bright Mfg. Co.* v. *Bearings Co.* (271 Fed., 350) (D. C. Pa., 1921).

The American Fruit Growers case involved the question of whether certain claims of a patent described an article of manufacture within the meaning of 35 U. S. C. A., section 31. The product attempted to be patented was orange rind treated to make it resistant to blue mold decay. There the Court properly held that the treated rind was not a "manufactured article."

The other patent cases cited above involved the question of what repairs may be made by a purchaser of a patent article without constituting infringement. They all turn on the extent of the license granted to the purchaser of a patented combination, and are not authority in the instant case. (See *Cotton Tie Co.* v. *Simmons*, 106 U. S., 89; *Miller Hatcheries, Inc.*, v. *Buckeye Incubator Co.*, 41 Fed. (2d), 619 (C. C. A. 8, 1930).)

We can not find any justification for reading into the statute involved here, as taxpayer would have us do, the qualification that the articles "manufactured or produced" must have been so manufactured or produced entirely from new or virgin raw materials. We recognize the rule of construction that the literal meaning of words can be insisted on in resistance to a taxing statute, but as stated by the Supreme Court in *Carbon Steel* v. *Lewellyn* (251 U. S., 501, 505), "* * * it [the rule of literal construction] can not be carried to reduce the statute to empty declarations. * * *"

The Government contends, and we think correctly, that the discarded armatures purchased by the taxpayer, having lost their function as a useful article as well as their commercial value as such, when acquired for use in the manufacturing and production of an article of commerce, bear the same relation to the completed armature as the purchase of unused materials would bear to the completed article. (See *Cadwalader* v. *Jessup & Moore Paper Co.*, 149 U. S., 350.) The article resulting from the use of the discarded core with new materials, and through the employment of skill, labor, and machinery, is, as it seems to us, a manufactured and produced article of commerce. Such an article produced in quantities under a trade name and placed in stock for future sale must be classified as a manufactured or produced article. It is our opinion and we hold that these operations constituted "manufacture or production" within the meaning of the statute involved. See opinion in *Clarson & Bals, Inc.*, v. *Harrison* (108 Fed. (2d), 991 [Ct. D. 1442, C. B. 1940–1, 249]).

In addition to the above, if more were needed, Treasury Regulations 46, article 4, approved June 18, 1932, regulating taxation of automobile accessories under section 606(c) of the Revenue Act of 1932, provides,

"ART. 4. *Who is a manufacturer or producer.*—As used in the Act, the term 'producer' includes a person who * * * produces a taxable article by combining or assembling two or more articles."

This provision has appeared in the Treasury regulations since 1920, during which time the statute taxing manufacturers and producers of automobile accessories has been reenacted, without change material to this cause, several times. "Under the established rule Congress must be taken to have approved the administrative construction and thereby to have given it the force of law." (*Helvering* v. *Reynolds Tobacco Co.*, 306 U. S., 110, 115 [Ct. D. 1383, C. B. 1939–1, 225].)

It is certain that had the taxpayer in its operations purchased new cores and combined these cores with the other materials needed, it would have "manufactured or produced" armatures within the terms of the statute and regulations. (See *Klepper* v. *Carter*, 286 Fed., 370, 371 (C. C. A. 9) [T. D. 3443, C. B. II–1, 281 (1923)].) There can be no possible difference where the taxpayer utilizes used cores, which have been discarded and are out of circulation, to combine with new essential materials constituting a substantial and material portion of the completed product.

Reversed.

DENMAN, Circuit Judge, concurs in the result.

SECTION 609.—TAX ON SPORTING GOODS.

REGULATIONS 46 (1932), ARTICLE 55: Games. 1941–49–10922
Ct. D. 1530

MANUFACTURERS' EXCISE TAXES—REVENUE ACT OF 1932—DECISION OF COURT.

1. TAX ON SPORTING GOODS—"JIG-SAW BLOW BALL" MACHINE—TAXABLE AS A GAME.

A "Jig-Saw Blow Ball" machine, manufactured and sold by the plaintiff, is a game within the meaning of section 609 of the Revenue Act of 1932, and is therefore subject to the tax imposed by that section.

2. CERTIORARI DENIED.

Petition for certiorari denied October 20, 1941.

COURT OF CLAIMS OF THE UNITED STATES.

C. R. Kirk & Co. v. *The United States.*
[37 Fed. Supp., 934.]

[April 7, 1941.]

OPINION.

WHITAKER, Judge, delivered the opinion of the court.

The first question presented in this case is whether or not the article described in the first finding is a game in the sense that word is used in section 609 of the Revenue Act of 1932 (47 Stat., 169, 264). This section levies a tax on numerous articles sold by the manufacturer, producer, or importer, of which the following groups are typical: (1) tennis rackets, baseball bats, golf clubs, lacrosse sticks, baseballs, footballs, tennis balls, and golf balls; (2) skates, snow shoes, toboggans, canoe paddles, and fishing rods and reels; and (3) billiard and pool balls, chess and checker boards, dice, and games. Then follows this catch-all phrase: "and all similar articles commonly or commercially know as sporting goods."

It will be noted that the articles listed include equipment for both indoor and outdoor sporting contests. Among the outdoor sports are tennis, baseball, football, golf, lacrosse, and polo. Among the indoor sports are billiards, chess, checkers, dice, and games. All of these involve contests; but, in addition, there is also subjected to the tax equipment for sports which do not often involve contests, such as snow shoes, canoe paddles, fishing rods and reels.

Many of the courts have said that the word "game" necessarily involves the element of contest (*Stearnes* v. *State*, 21 Tex., 692, 694; *Cheek* v. *Commonwealth*,

79 Ky., 359, 363; Bouvier's Law Dictionary "Games"); but we doubt that Congress meant to so limit it here. Snow shoes, toboggans, canoe paddles, fishing rods and reels, which Congress specifically taxed, may be used in contests, but rarely are.

The Supreme Court, however, in *White* v. *Aronson* (302 U. S., 16 [Ct. D. 1283, C. B. 1937-2, 507]), gave somewhat qualified approval to the following statement of the circuit court of appeals:

"The words 'Games and parts of games' bring into the list of taxables only such other articles as are used in games of contest, the same as those particularly named are and with which they are closely associated."

In view of this, we shall assume that the element of contest is necessary.

The proof shows, and we have so found, that while there was some inducement for a person to play the machine in question by himself, the greatest enjoyment from its use was in competition with others, to see who could get the highest score. Except for the fact that it was adaptable to such contests, we doubt if many of the machines could have been sold.

We have no doubt that, in so far as this element is concerned, it comes within the definition of the word "game" as limited by *White* v. *Aronson*, supra.

The only utility of the device was recreation or amusement. It served no other useful purpose. It improved neither the mind nor the body. It had no utilitarian use.

The fact that but one player could manipulate it at a time is immaterial. Numerous articles subjected to the tax can be used by only one person at a time. A baseball bat, golf clubs, a tennis racket, a football, a billiard ball, dice, etc., can be used by only one player at a time.

We have cast about for some word to describe this device other than "game." We have been unable to think of one. It was so described by the plaintiff. The plaintiff speaks of it as "the fastest game you've ever seen."

We are of opinion that the device comes within the definition of the word "game" as used in the Act.

This view makes it unnecessary for us to consider the second question presented, which is whether or not the plaintiff passed on the tax.

It results that plaintiff's petition must be dismissed. It is so ordered.

MADDEN, Judge; JONES, Judge; LITTLETON, Judge; and WHALEY, Chief Justice, concur.

INTERNAL REVENUE CODE.

SECTION 2700, AS AMENDED.—PISTOLS AND REVOLVERS.

REGULATIONS 47, ARTICLE 1: Rate of tax. 1941-41-10858
T. D. 5083

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 302.—TAX ON PISTOLS AND REVOLVERS.

Regulations 47, as made applicable to the Internal Revenue Code by Treasury Decision 4885 [C. B. 1939-1 (Part 1), 396], amended.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 47 [Part 302, Title 26, Code of Federal Regulations], relating to the tax on sales of pistols and revolvers by the manufacturer, to section 210 of the Revenue Act of 1940 (54 Stat., 516), and section 521 (a)(9) and (b) of the Revenue Act of 1941 (Public Law 250, Seventy-seventh Congress), approved September 20, 1941, amending section 2700(a) of the Internal Revenue Code, such regulations, but only as prescribed and made applicable to

the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939 [C. B. 1939–1 (Part 1), 396] [Chapter I, note, Title 26, Code of Federal Regulations, 1939 Sup.], are amended as follows:

There is inserted immediately preceding article 1 [section 302.1] the following:

SEC. 2700. TAX. (Internal Revenue Code.)

(a) RATE.—There shall be levied, assessed, collected, and paid upon pistols and revolvers sold or leased by the manufacturer, producer, or importer, a tax equivalent to 10% of the price for which so sold or leased.

* * * * * * *

SEC. 210. MISCELLANEOUS EXCISES. (Revenue Act of 1940.)

The Internal Revenue Code is amended by inserting at the end of chapter 9 the following new chapter:

"CHAPTER 9A—DEFENSE TAX FOR FIVE YEARS.

"SEC. 1650. DEFENSE TAX FOR FIVE YEARS.

"(a) In lieu of the rates of tax specified in such of the sections of this title as are set forth in the following table, the rates applicable with respect to the period after June 30, 1940, and before July 1, 1945, shall be the rates set forth under the heading 'Defense-Tax Rate':

"Section.	Description of tax.	Old rate.	Defense-tax rate.
*	* * *	*	*
2700(a)	Pistols and revolvers	10 percent	11 percent.
*	* * *	*	*

* * * * * * *

SEC. 521. DEFENSE EXCISE TAX RATES MADE PERMANENT WHICH ARE NOT INCREASED BY THIS ACT. (Revenue Act of 1941.)

(a) The following sections of the Internal Revenue Code are amended as follows:

* * * * * * *

(9) PISTOLS AND REVOLVERS.—Section 2700(a) is amended by striking out "10 per centum" and inserting in lieu thereof "11 per centum."

(b) The rates specified in subsection (a) shall be applicable only with respect to the period after the date of the enactment of this Act, and the rates specified in section 1650(a) * * * of the Internal Revenue Code shall not apply with respect to such period.

Article 1 [section 302.1] is amended to read as follows:

ARTICLE 1. *Rate of tax.*—The tax is imposed at the rate of 10 per cent with respect to the period prior to July 1, 1940. By reason of the modification made by section 210 of the Revenue Act of 1940 and the amendment made by section 521 of the Revenue Act of 1941, the tax is levied at the rate of 11 per cent with respect to the period after June 30, 1940.

(This Treasury decision is prescribed pursuant to section 210 of the Revenue Act of 1940 (54 Stat., 516), section 521 of the Revenue Act of 1941, approved September 20, 1941, and section 3791 of the Internal Revenue Code (53 Stat., 467; 26 U. S. C., Sup. V, 3791).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved October 3, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 6, 1941, 3.31 p. m.)

RETAILERS' EXCISE TAXES.

INTERNAL REVENUE CODE.

SECTION 2400, AS ADDED BY SECTION 552 OF THE REVENUE ACT OF 1941.

REGULATIONS 51 (1941), SECTION 320.30: Scope of tax. 1941–45–10892 S. T. 921

(Also Sections 2401 and 2402, as added by Section 552 of the Revenue Act of 1941, and Sections 320.40 and 320.50 of Regulations 51 (1941).)

Where the retailers' excise tax is collected as a specific item, and the addition of the tax to the retail sale price results in a fractional part of a cent being collectible from the customer, such fractional part of a cent, if less than one-half cent, may be disregarded, but if one-half cent or more should be increased to 1 cent.

Advice is requested as to how fractional parts of a cent are to be treated by retailers where the retailers' excise tax under sections 2400, 2401, and 2402 of the Internal Revenue Code, as added by section 552 of the Revenue Act of 1941, is collected from customers as a specific item.

Where the retailers' excise tax is collected from the customer as a specific item, individual transactions frequently arise which involve a fraction of a cent. For example, in the case of an article which is sold at retail for 25 cents the retailer now adds the 10 per cent retailers' excise tax, or 2½ cents, so that 27½ cents is the total amount due from the customer. Thus, the question is presented whether a tax of 2 cents or a tax of 3 cents should be collected from the customer. (The fractional part of a cent ascribable to the tax will vary according to the amount of the retail sale price.)

Because of the necessity for making change in even cents, and in order not to handicap the orderly transaction of retail business where a large number of sales are involved, in determining the tax to be collected, a fractional part of a cent which is less than one-half cent may be disregarded, but where such fractional part of a cent is one-half cent or more, such amount should be increased to 1 cent. Accordingly, in the example stated, a tax of 3 cents should be collected.

The foregoing practice is approved where it is adopted solely for the bona fide purpose of making change.

REGULATIONS 51 (1941), SECTION 320.30: Scope of tax. 1941–48–10915 S. T. 924

(Also Section 2405, as added by Section 552 of the Revenue Act of 1941, and Section 320.10 of Regulations 51 (1941).)

Where a jeweler pays the full amount of retailers' excise tax on a sale of jewelry on the installment plan at the time the installment sale contract is entered into, and is unable to collect one or more of the installment payments, the jeweler may take a credit against tax due on a subsequent return, or may file a claim for refund for the amount of tax attributable to the uncollectible installment or installments.

Advice is requested whether a jeweler, who at the time an installment sale contract is entered into pays the full amount of retailers' excise tax on the retail sale price of an article of jewelry, etc., sold under such contract, is entitled to a credit or refund of the proportionate part of the tax in the event he is unable to collect one or more of the installment payments due under the contract.

A number of so-called "credit" jewelers have expressed the desire to pay the full amount of tax on retail sales of jewelry on the installment plan at the time the contracts are entered into in order to avoid the work incident to accounting for a portion of the tax as each payment is received, provided a credit or refund is allowable for that portion of the tax applicable to uncollectible installments.

Section 2400 of the Internal Revenue Code, as added by section 552 of the Revenue Act of 1941, imposes a tax of 10 per cent of the price for which jewelry and other enumerated articles are sold at retail.

Section 2405 provides in part that in the case of a contract of sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date, "there shall be paid upon each payment with respect to the article that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment." The effect of this section is that a portion of the tax is incurred upon the payment of each installment of the purchase price of the article sold. There is nothing in the statute to suggest that such payments of the tax are predicated upon, or are affected in any way by, the ultimate passing of title to the article purchased. The tax is imposed upon each paid installment. Under section 2405, no tax is imposed upon uncollectible installments. Thus, it is believed that section 2400 and section 2405 must be read together and treated as the imposing sections in cases of leases, installment sales, and conditional sales where the passing of title is postponed.

In view of the foregoing, it is held that where a retail jeweler pays the full amount of tax at the time the installment sale contract is entered into and it later develops that he is unable to collect one or more of the installment payments due under such contract, there is, in effect, an overpayment of the tax to the extent of the amount of tax attributable to the uncollectible installments. In such a case, the taxpayer may take a credit for such overpayment against the tax due on a subsequent return, or may file a claim for the refund thereof, upon compliance with the requirements of section 320.66 of Regulations 51 (1941).

REGULATIONS 51 (1941), SECTION 320.33: Articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof. 1941–45–10893 S. T. 922

The pen point, lever, clip, and the narrow metal band or bands placed on the cap for the express purpose of preventing the splitting or expansion of the cap are held to be essential parts of a fountain pen not used for ornamental purposes, within the meaning of the exemption provisions contained in section 2400 of the Internal Revenue Code, relating to fountain pens. All other parts made of precious metals or imitations thereof are held to be ornamentations unless it is conclusively established that a particular part is an essential part and not for ornamental purposes.

Advice is requested as to which parts of a fountain pen are considered "essential parts not used for ornamental purposes," within the meaning of the exemption provisions contained in section 2400 of the Internal Revenue Code, as added by section 552 of the Revenue Act of 1941.

Section 2400 of the Code provides as follows:

There is hereby imposed upon the following articles sold at retail a tax equivalent to 10 per centum of the price for which so sold: * * * articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof * * *. The tax imposed by this section shall not apply * * * to a fountain pen if the only parts of the pen which consist of precious metals are essential parts not used for ornamental purposes.

The pen point, lever, clip, and the narrow metal band or bands placed on the cap for the express purpose of preventing the cap from splitting or expanding are held to be the parts of a fountain pen which are "essential parts not used for ornamental purposes," within the meaning of the exemption provisions contained in section 2400 of the Internal Revenue Code. All other parts consisting of precious metals or imitations thereof are held to be ornamentations unless it is conclusively established that a particular part is an essential part and not for ornamental purposes. Accordingly, fountain pens which have parts (other than the essential parts enumerated above) consisting of precious metals or imitations thereof are subject to the tax imposed by section 2400 of the Internal Revenue Code.

REGULATIONS 51 (1941), SECTIONS 320.30, 320.31, 320.32, 320.37, AND 320.64. 1941-50-10929 T. D. 5102

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 320.

Regulations 51, relating to excise taxes on sales by the retailer, amended.

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

To Collectors of Internal Revenue and Others Concerned:

Regulations 51, approved September 29, 1941 [Part 320, Title 26, Code of Federal Regulations, 1941 Sup.], are amended as follows:

PARAGRAPH 1. Subparagraph (1) of section 320.30 is amended to read as follows:

(1) All articles commonly or commercially known as jewelry, whether real or imitation, regardless of the substance of which made, including articles to be carried in the hand, or hung on the arm, or carried or worn on the person, which are made of, ornamented, mounted or fitted with, pearls, precious or semi-precious stones, or imitations thereof.

PAR. 2. Section 320.31 is amended to read as follows:

SEC. 320.31. *Jewelry.*—Jewelry in general includes articles designed to be worn on the person or apparel for the purpose of adornment and which in accordance with custom or ordinary usage are worn so as to be displayed, such as rings, chains, brooches, bracelets, cuff buttons, necklaces, earrings, beads, etc. The tax is imposed on the sale of any of such articles at retail, regardless of the substance of which made and without reference to their utilitarian value or purpose, unless for a purpose specifically exempted by law.

Jewelry also includes articles to be carried in the hand, or hung on the arm, or carried or worn on the person, whether in pocket or bag or under the outer garment, such as cigarette cases, eyeglass cases, pencils, powder boxes, garter buckles, canes, purses or handbags, if made of, or ornamented, mounted or fitted with, pearls, precious or semi-precious stones, or imitations thereof. Such articles are likewise subject to tax without regard to their utilitarian value or purpose. (But see section 320.33 for the taxability of such articles where made of, or ornamented, mounted or fitted with, precious metals, or imitations thereof.)

For purposes of the tax, it is immaterial whether jewelry is real or imitation.

PAR. 3. Section 320.32 is amended by adding the following at the end thereof:

(But see section 320.31 for the taxability of certain articles where made of, or ornamented, mounted or fitted with, pearls, precious or semi-precious stones, or imitations thereof.)

PAR. 4. The third paragraph of section 320.37 is amended to read as follows:

Where an article otherwise taxable is sold for religious purposes and the article is of such nature as to be usable for nonreligious as well as religious purposes, for example, crosses, candlesticks, vases, etc., the retailer must have in his possession a statement from the consumer certifying that the article was purchased solely for religious purposes in order to establish his right to exemption from the tax on the sale. However, if the article is of such nature as to be usable only for religious purposes, for example, a crucifix, rosary, chalice, etc., a statement from the purchaser or consumer will not be required to establish the tax exemption.

PAR. 5. Section 320.64 is amended by eliminating all but the first paragraph and substituting the following in lieu thereof:

Where an article is sold and *before use*, the sale is rescinded by a return of the article to the retailer and by a refund or credit of the full amount of the purchase price, including tax, to the purchaser, no tax is payable with respect to the transaction. In such case, if a tax was paid by the retailer, the amount thereof may be applied as a credit upon a subsequent monthly return, or may be made the subject of a claim for refund.

Where an article is sold and *before use*, the sale is rescinded by a return of the article to the retailer, and the purchaser receives credit for the full amount of the purchase price, including tax, in an exchange of the article for another article, with appropriate adjustment for the difference, if any, in the values of both articles, the tax applies to the second article, if taxable, without regard to the time when the sale of the first article occurred, whether before, on, or after October 1, 1941. If a tax was paid by the retailer with respect to the first article, the amount thereof may be applied as a credit upon a subsequent monthly return or may be made the subject of a claim for refund.

Where an article sold under a guaranty contract is returned to the retailer from whom purchased, *whether before or after use*, by reason of a defect or a failure under the warranty, and a new article of the same kind is given without charge in exchange therefor, no tax is payable with respect to the transaction. In such case, there is no adjustment within the meaning of section 2407(a) of the price at which the first article was sold; accordingly, no credit or refund of the tax, if any, paid with respect to the returned article is allowable. Where the purchaser receives an article, whether of the same kind or of a different kind, and is required to make some payment for the second article in addition to whatever amount is allowed as an adjustment for the returned defective article, the tax is payable with respect to the second article, if taxable, on the basis of the amount paid therefor, plus the amount allowed for the returned article. In that case, the amount allowed for the returned article is an adjustment within the meaning of section 2407(a) of the price at which such article was sold, and the retailer may be allowed a refund or credit of that part of the tax, if any, paid with respect to such article which is proportionate to the part of the sales price allowed as an adjustment.

A credit or refund of tax is not allowable with respect to an article returned as a "trade-in" in the purchase of another article. In such case, there is no adjustment within the meaning of section 2407(a) of the price at which the first

article was sold. Instead, the sale of the second article is a separate and distinct transaction in which the first article is merely applied in part payment of the purchase price. Accordingly, the full amount of the tax due upon the sale of the second article is payable without any allowance or offset for the tax paid on the sale of the first article. (See section 320.5.)

(This Treasury decision is issued pursuant to the authority contained in section 2410 of the Internal Revenue Code, added by section 552 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved December 9, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 10, 1941, 11.23 a. m.)

FURS.

SECTION 2401, AS ADDED BY SECTION 552 OF THE REVENUE ACT OF 1941.

REGULATIONS 51 (1941), SECTION 320.40: Scope of tax. (Also Section 2405, as added by Section 552 of the Revenue Act of 1941, and Section 320.10 of Regulations 51 (1941).) 1941-42-10872 S. T. 920

Taxability under section 2401 of the Internal Revenue Code, as added by section 552 of the Revenue Act of 1941, of retail sales of furs and fur-trimmed garments under installment sale and "layaway" contracts made prior to October 1, 1941, and retail sales of such articles for cash or on open account.

Advice is requested as to the application of section 2401 of the Internal Revenue Code, as added by section 552 of the Revenue Act of 1941, to retail sales of fur, or fur-trimmed garments of which the fur trimming is the component material of chief value, under installment sale or "layaway" contracts made prior to October 1, 1941, and to cash sales or sales on open account made prior to that date.

Section 2401 of the Internal Revenue Code, as added by section 552 of the Revenue Act of 1941, imposes a tax of 10 per cent of the price for which articles made of fur on the hide or pelt, and articles of which such fur is the component material of chief value, are sold at retail.

Section 2405 of the Internal Revenue Code, as added by section 552 of the Revenue Act of 1941, provides as follows:

In the case of (*a*) a lease, (*b*) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payments by installments, or (*c*) a conditional sale, there shall be paid upon each payment with respect to the article that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment. No tax shall be imposed under this chapter on the sale of any article taxable under section 2400 or section 2401 if with respect to such article the lease, contract for sale, or conditional sale was made, delivery thereunder was made, and a part of the consideration was paid, before October 1, 1941.

In the case of a retail sale of a fur, or fur-trimmed garment of which the fur trimming is the component material of chief value, it is held that, under section 2405 of the Internal Revenue Code, the tax imposed by section 2401 will attach to any payment made on or after October 1, 1941, pursuant to an installment sale contract entered into prior to that date, unless before October 1, 1941, part payment of the purchase price was made and there was actual delivery of such article to the customer, or the article was so identified as the customer's property as to entitle the customer to receive delivery prior to October 1, 1941.

In the case of a so-called "layaway" sale of such fur or garment before October 1, 1941, where part payment to the retailer was made but the purchaser can not obtain delivery of such article until the entire purchase price has been paid, payments made on and after October 1, 1941, are subject to tax.

In the case of a retail sale of such fur or garment for cash or on open account prior to October 1, 1941, the tax does not attach to such sale where title to the article passed to the customer prior to that date.

PROCESSING TAXES.

INTERNAL REVENUE CODE.

COCONUT AND OTHER VEGETABLE OILS.

SECTION 2477.—FIRST DOMESTIC PROCESSING DEFINED.

REGULATIONS 48 (1934), ARTICLE 1: Definitions. 1941–38–10830
S. T. 919

The exemption provided in section 2477 of the Internal Revenue Code, relating to the use of palm oil in the manufacture of tin plate or terne plate, does not apply to the use of palm oil by the M Company in the manufacture of cold-rolled steel sheets which are not manufactured into tin plate or terne plate.

Advice is requested whether the exemption provided in section 2477 of the Internal Revenue Code, with respect to the use of palm oil in the manufacture of tin plate or terne plate, applies to the use by the M Company of palm oil in the manufacture of cold-rolled steel sheets which are not eventually manufactured into tin plate or terne plate.

Section 2470 of the Internal Revenue Code imposes a tax upon the first domestic processing in the United States of palm oil and certain other vegetable oils. Section 2477 of the Code provides as follows:

For the purposes of this chapter the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate or terne plate, or any subsequent use of palm oil residue resulting from the manufacture of tin plate or terne plate.

In the instant case the palm oil is heated until it reaches the consistency of water. It is then run on the felt rollers through which the steel sheets are passed. The steel sheets become coated on both sides with a light application of palm oil. The M Company also uses palm oil by direct application on the cold mill rolls. Under both processes, the palm oil is used to prevent the steel from being scratched and to aid in the reduction of light gauges. The M Company produces neither terne plate nor tin plate. Either of such products can be manufactured from the M Company's product, and some of the M Company's product is manufactured into terne plate by the purchasers.

The exemption provided in section 2477 expressly applies to the use of palm oil in the manufacture of tin plate or terne plate. Such exemption also applies to the use of palm oil in the initial stages of the manufacture of tin plate or terne plate, although the final stages of such manufacture may be performed by some person or company other than the person or company which performed the initial stages of such manufacture. However, many of the cold-rolled sheets produced by the M Company are not manufactured into tin plate or terne plate. The question is presented whether the exemption provisions of section 2477, supra, apply to the use of palm oil in the manufacture of such sheets.

In *Farrington* v. *Tennessee* (95 U. S., 679, 686) the Supreme Court of the United States made the following observations concerning exemptions from taxation:

* * * When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it. A well-founded doubt is fatal to the claim. It is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported. (*West Wisconsin Railway Co.* v. *Board of Supervisors*, 93 U. S., 595; *Tucker* v. *Ferguson*, 22 Wall., 527.)

In *Phipps* v. *Commissioner* (91 Fed. (2d), 627, 629, certiorari denied (1937), 302 U. S., 742) the Court pointed out that when a taxing statute is being construed the usual rule that such a statute is liberally construed in favor of the taxpayer does not apply when the question of exemption from taxation is concerned, but on the contrary the provision granting exemptions is construed against the taxpayer with respect to all ambiguities. (See also cases cited in *Phipps* v. *Commissioner*, supra.)

It is held that the exemption provided in section 2477 of the Internal Revenue Code does not apply to the use of palm oil by the M Company in the manufacture of cold-rolled steel sheets which are not manufactured into tin plate or terne plate.

SECTION 2483, AS ADDED BY SECTION 561 OF THE REVENUE ACT OF 1941.

REGULATIONS 48, ARTICLE 8: Records. 1941–50–10928
T. D. 5101

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 306.—PROCESSING TAX ON CERTAIN OILS.

Regulations 48, as made applicable to the Internal Revenue Code by Treasury Decision 4885 [C. B. 1939–1 (Part 1), 396], amended.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 48 [Part 306, Title 26, Code of Federal Regulations], relating to the processing tax on certain oils, to section 561 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress), approved September 20, 1941, amending Chapter 21 of the Internal Revenue Code, such regulations, but only as prescribed and made applicable to the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939 [C. B. 1939–1 (Part 1), 396] [Chapter 1, note, Title 26, Code of Federal Regulations, 1939 Sup.], are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding article 2 [section 306.2, Title 26, Code of Federal Regulations], as amended by Treasury Decision 4695 [C. B. XV–2, 324 (1936)], the following:

SEC. 561. PAYMENT OF PROCEEDS OF PROCESSING TAX TO GUAM AND AMERICAN SAMOA. (Revenue Act of 1941.)

(a) PAYMENT TO POSSESSIONS.—Chapter 21 of the Internal Revenue Code (relating to processing tax on oils) is amended by adding at the end thereof the following new section:

"SEC. 2483. All taxes collected under this chapter with respect to coconut oil wholly of the production of Guam or American Samoa or

produced from materials wholly of the growth or production of Guam or American Samoa, shall be held as separate funds and paid to the Treasury of Guam or American Samoa, respectively. No part of the money from such funds shall be used, directly or indirectly, to pay a subsidy to the producers or processors of copra, coconut oil, or allied products, except that this sentence shall not be construed as prohibiting the use of such money, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, for the acquisition or construction of facilities for the better curing of copra or for bona fide loans to copra producers of Guam or American Samoa."

(b) EFFECTIVE DATE OF AMENDMENT.—The amendment made by this section shall be applicable only with respect to taxes collected after the date of enactment of this Act.

PAR. 2. Subdivision (c) of article 8 [section 306.8, Title 26, Code of Federal Regulations], is amended to read as follows:

(c) Records relative to coconut oil or to any combination or mixture containing a substantial quantity of coconut oil, with respect to which oil no tax has been paid, must be maintained in such a manner as to show:

(1) Separately, the quantity of coconut oil or combination or mixture containing a substantial quantity of coconut oil, which is wholly the production of (i) the Philippine Islands, (ii) Guam, (iii) American Samoa, and (iv) all other possessions of the United States; and

(2) Separately, the quantity of coconut oil, or combination or mixture containing a substantial quantity of coconut oil, produced wholly from materials which are the growth or production of (i) the Philippine Islands, (ii) Guam, (iii) American Samoa, and (iv) all other possessions of the United States.

The records shall also show the country or possession in which the raw materials or oils were produced, when such articles were brought into the United States, and the name and address of the importer.

Such records shall be retained for a period of at least four years from the date the tax became due. The books of every person liable for the tax shall at all times be open for inspection by internal revenue officers.

For provisions relating to the imposition of penalties for failure to keep proper records, see article 21.

This Treasury decision shall be effective as of September 21, 1941.

(This Treasury decision is prescribed pursuant to section 3791 of the Internal Revenue Code (53 Stat., 467; 26 U. S. C., Sup. V, 3791).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved December 5, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 8, 1941, 11.12 a. m.)

TITLE VII.—REFUNDS OF AMOUNTS COLLECTED UNDER THE AGRICULTURAL ADJUSTMENT ACT. (1936)

REGULATIONS 96 (1936), ARTICLE 204: Conditions as to tax burden with respect to amount of refund allowable. 1941–41–10856 Ct. D. 1526

PROCESSING TAX—AGRICULTURAL ADJUSTMENT ACT—REVENUE ACT OF 1936—DECISION OF COURT.

1. CLAIM FOR REFUND—POWER OF CONGRESS TO LIMIT REFUND TO AMOUNT OF TAX BURDEN BORNE BY TAXPAYER.

Congress has the power to limit refunds of taxes illegally collected to the amount of the tax burden borne by the taxpayer.

2. PROCESSING TAX BOARD OF REVIEW—FINDINGS OF FACT—AUTHORITY OF CIRCUIT COURT OF APPEALS TO REVIEW.

The question of whether the taxpayer bore the burden of the tax imposed upon the first domestic processing of cotton within the meaning of the statute is a question of fact to be determined, first, by the Commissioner, and, second, by the Processing Tax Board of Review. A finding by such Board that the taxpayer had not borne the burden of the tax, if supported by substantial evidence, is binding upon the circuit court of appeals, whose authority to review decisions of the Processing Tax Board of Review is substantially similar to that granted to it by section 1141 of the Internal Revenue Code to review decisions of the United States Board of Tax Appeals.

3. EVIDENCE—SUFFICIENCY—INCREASE IN PRICE OF PRODUCT—MOTIVE.

The Board of Review had before it substantial evidence on which to base its decision that the taxpayer had not borne the burden of the processing tax, where the record showed that the taxpayer increased the price of its article concurrently with the imposition of the tax in an amount more than sufficient to take care of the tax and there was no evidence that such increase was due to any increase in the cost of raw materials, of labor, or of manufacture generally. Although the president of the company testified that the price was increased because its competitor raised the price of its product and that the processing taxes were not taken into consideration in fixing the price, the motive for such increase is immaterial.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

Honorbilt Products, Inc., petitioner, v. Commissioner of Internal Revenue, respondent.

[119 Fed. (2d), 797.]

On petition to review the decision of the United States Processing Tax Board of Review.

Before BIGGS, MARIS, and CLARK, Circuit Judges.

[April 30, 1941.]

OPINION.

BIGGS, Circuit Judge: The petitioner seeks to recover the sum of $1,054.47 paid under the Agricultural Adjustment Act (ch. 25, 48 Stat., 31), upon the first domestic processing of cotton and brought a proceeding to the United States Processing Tax Board of Review upon the Commissioner's disallowance of the claim for refund. Section 901 of the Revenue Act of 1936 (ch. 690, 49 Stat., 1648) repealed those portions of the Agricultural Adjustment Act relating to the processing taxes, following the decision of the Supreme Court in *United States* v. *Butler* (297 U. S., 1 [Ct. D. 1070, C. B. XV-1, 421 (1936)]). Section 902(a) provides that, "No refund shall be made or allowed, * * * of any amount paid by or collected from any claimant as tax under the Agricultural Act, unless the claimant establishes to the satisfaction of the Commissioner * * * or to the satisfaction of the trial court, or the Board of Review * * * (a) That he bore the burden of such amount and has not been relieved thereof nor reimbursed therefor nor shifted such burden, directly or indirectly, * * *." The Commissioner rejected the claim, finding that the petitioner had not proved that it had borne the burden of the processing taxes covered by its claim. The Board of Review affirmed the Commissioner and a petition for review was filed in this court pursuant to the provisions of section 906(g) of the pertinent Revenue Act. The testimony before the Board of Review was not included in the original record filed in this court. It has now been certified, however, and is part of the record before us.

The facts are as follows. The petitioner, Honorbilt, manufactures a mattress advertised and sold under the trade name of "Perfect Sleeper." The only raw (taxable) cotton used by Honorbilt in the year 1933, with negligible exceptions, was used in these mattresses in filling a Government contract which specified the use of 25 per cent raw cotton. Approximately 16 pounds of raw cotton went into the manufacture of each "Perfect Sleeper" mattress and this cotton represented approximately 10 per cent of the total cost of the raw materials entering

into the manufacture of each mattress. The rate of tax per pound of cotton processed, in the period August to December, 1933, inclusive, was 4.2 cents. Honorbilt began manufacturing the "Perfect Sleeper" mattress in the latter part of 1929 or the early part of 1930. At this time the wholesale price was twenty to twenty-one dollars for each mattress. In 1932 the petitioner lowered the wholesale price of the "Perfect Sleeper" to $18 and in June or July, 1933, raised it again to $20 per mattress. The president of Honorbilt testified that the price of the "Perfect Sleeper" mattress was controlled by the price of the "Beauty Rest" mattress which was manufactured by the Simmons Mattress Co. and was sold in the same price range as the "Perfect Sleeper" in competition with it. The witness also testified that the only other factor taken into consideration in putting a price upon the "Perfect Sleeper" was the manufacturing cost, including the market price of the materials. He stated specifically that the processing tax was not considered and was not a factor in fixing the amount of his company's bid to the United States.

There can be no question of the power of Congress to limit refunds of taxes illegally collected to the amount of the tax burden borne by the taxpayer. (*Anniston Manufacturing Co.* v. *Davis*, 301 U. S., 337 [Ct. D. 1234, C. B. 1937-1, 485]; *United States* v. *Jefferson Electric Co.*, 291 U. S., 386 [Ct. D. 803, C. B. XIII-1, 393 (1934)].) We also entertain no doubt that the question of whether a taxpayer bore the burden of the tax within the terms of the statute is primarily a question of fact to be determined, first, by the Commissioner, and second, by the Board of Review. Section 106(g) which grants authority to this court to review the decisions of the Board of Review, states that the circuit courts of appeals "* * * shall have exclusive jurisdiction to affirm the decision of the Board, or to modify or reverse such decision, if it is not in accordance with law, with or without remanding the cause for a rehearing, as justice may require." The power of this court to review the decisions of the Board of Review is substantially similar to the authority granted to us to review decisions of the United States Board of Tax Appeals by section 1141 of the Internal Revenue Code (26 U. S. C. A., 1141). (Cf. *Old Colony Trust Co.* v. *Commissioner*, 279 U. S., 716 [Ct. D. 80, C. B. VIII-2, 222 (1929)]; *Helvering* v. *Kehoe*, 309 U. S., 277 [Ct. D. 1147, C. B. 1940-1, 187].) It follows therefore that a conclusion by the Board of Review which is supported by substantial evidence is binding upon us and that we may not substitute our judgment upon the facts for the decision of the Board.

In our opinion the Board of Review had before it substantial evidence on which to base its decision that the taxpayer had not borne the burden of the tax. The petitioner's increase of price of the "Perfect Sleeper" mattress from eighteen to twenty dollars went into effect concurrently with the imposition of the processing tax. The tax amounted to about 67.2 cents for each mattress or about one-third of the price increase of $2. The increase was more than sufficient to take care of the tax and there is nothing in the record to show that the increase in price was due to any increase in the cost of raw materials, of labor or of manufacture generally. The testimony of the petitioner's president is simply that the price was increased because the Simmons Mattress Co. raised the price of its competing mattress. Whether the petitioner intended it or not, the burden of the tax was not borne by it, but was borne by the purchaser of its matresses who paid the increased price. In our opinion the motive for the increase in price is immaterial and it makes no difference that Honorbilt's president testified that processing taxes were not taken into consideration in fixing the price per mattress.

The case at bar is closely analogous to *Luzier's, Inc.*, v. *Nee* (106 Fed. (2d), 130, 135, certiorari denied 309 U. S., 660). In that case manufacturers' excise taxes imposed under the Revenue Act of 1932 (ch. 209, 47 Stat., 169) (which contained a limitation[1] upon refund of taxes erroneously or illegally collected thereunder similar to section 902 of the Revenue Act of 1936) were under consideration. When the tax was imposed the Luzier's, Inc., added to retail prices of all orders a flat charge of 10 per cent intended to cover items of additional cost and expenses in addition to the tax. The 10 per cent charge which the taxpayer had thus collected was sufficient to cover the amount of the additional tax but was insufficient to cover the tax and the items of increased cost. The Circuit Court of Appeals of the Eighth Circuit held that the motive for the increase was immaterial and since the amount collected was sufficient to re-

[1] See subdivision (d), section 621 of the Revenue Act of 1932.

imburse the company for taxes, it could not recover the amount of the taxes illegally assessed. The case at bar is more strongly in favor of the Commissioner than the case cited, for in the instant case there is no showing whatsoever that the increase in price was for any purpose than to take advantage of a more favorable market.

Accordingly the decision of the United States Processing Tax Board of Review is affirmed.

REGULATIONS 96, ARTICLE 204: Conditions as to tax burden with respect to amount of refund allowable. 1941–47–10905 Ct. D. 1528

PROCESSING TAX—AGRICULTURAL ADJUSTMENT ACT—REVENUE ACT OF 1936—DECISION OF COURT.

PROCESSING TAX ON RICE—CLAIM FOR REFUND—TAX-PAYMENT WARRANTS—TAXPAYER NOT ENTITLED TO REFUND.

The use of "tax-payment warrants" by a processor of rice and the acceptance thereof by the collector of internal revenue at their face value in payment of the processing tax did not constitute such a payment or collection of the tax under the Agricultural Adjustment Act as to entitle the taxpayer to a refund under the provisions of Title VII of the Revenue Act of 1936. The taxpayer was in fact seeking only recovery of an export adjustment balance. Disappointment as to this can not be remedied under the provisions for refunding processing taxes unlawfully collected.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

El Campo Rice Milling Co., Inc., petitioner, v. Commissioner of Internal Revenue, respondent.

[121 Fed. (2d), 303.]

Petition for review of decision of United States Processing Tax Board of Review, sitting at Washington, D. C.

Before SIBLEY, HOLMES, and MCCORD, Circuit Judges.

[June 25, 1941.]

OPINION.

SIBLEY, Circuit Judge: El Campo Rice Milling Co., under marketing agreements made with the Secretary of Agriculture by virtue of section 8(2) of the original Agricultural Adjustment Act (48 Stats., 31) bought rough rice from producers at prices above the market and had on hand on March 31, 1935, over 8,000,000 pounds unprocessed. By the amendment of March 18, 1935, section 9(b)3 (49 Stats., 45), a tax of 1 cent a pound was levied for processing, beginning April 1, 1935. Because rice on hand produced in 1933 and 1934 had been purchased at an advanced price of which the producer had the benefit, and because it was deemed unjust to impose the processing tax on such rice, section 15(b) of the original Act was amended by adding provisions for issuing "tax-payment warrants" on such rice "sufficient to cover the tax with respect to the processing thereof," and these "shall be accepted by the collector of internal revenue at the face value thereof in payment of any processing tax on rice." El Campo received such warrants for its rice on hand in an amount of $88,477. During April, May, June, July, and August, 1935, it processed its rice and paid the processing tax with the warrants, to an amount of $81,456. Of the rice thus processed and taxed it exported during the fall a part, and under section 17(a), as amended, of the Agricultural Adjustment Act, became entitled to a refund of processing taxes on it in a sum of over $59,897. Of this $47,838 was refunded in cash, and a claim for the balance of $12,059 was pending at the time the taxing provisions of the Agricultural Act were declared unconstitutional. (*United States* v. *Butler*, 297 U. S., 1 [Ct. D. 1070, C. B. XV–1,

421 (1936)]; *Rickert Rice Mills* v. *Fontenot*, 297 U. S., 110 [Ct. D. 1080, C. B. XV–1, 436 (1936)].) This claim for refund was disallowed.

The Revenue Act of 1936 (49 Stats., 1647), took cognizance of the duty of the United States to refund taxes unconstitutionally collected under the Agricultural Adjustment Act, and made limited provision for their return. By section 906 no suit or proceeding in court could be maintained for the refund of a processing tax, except through the Board of Review which was set up. El Campo thereupon filed with the collector of Internal revenue claim for refund of $12,059, as a processing tax paid, and on its disallowance brought the matter before the Board of Review, which held that the use of the "tax-payment warrants" at face value to discharge the processing tax did not constitute such payment as entitled El Campo to a money refund from the Treasury. A petition to review this decision is before us, under Revenue Act 1936 (section 906(g), 49 Stats., 1748).

The Board decided rightly. Section 902 (49 Stats., 1747) speaks of refunding amounts "paid by or collected from any claimant as tax." If the Treasury has received money as tax which it ought not to retain a refund is provided under strict limitations. If the Treasury has received no money from the claimant, no obligation is imposed to pay back money. What El Campo paid as tax to the collector was not money, but certain warrants or certificates whose purpose and function was to discharge the tax claim without paying it in money. El Campo paid nothing to the United States for the warrants. The United States issued them to offset the tax about to be imposed because it seemed unfair to burden the rice owner with the tax after he had paid an exaggerated price to the producer at the instance of the Secretary of Agriculture. It is true this exaggerated price operated in the case of rice to aid the producer in just the way processing taxes on other commodities were used, and as the newly imposed processing tax on rice was intended to be used in the future, and in this way tended to relieve the Treasury. But it remains true that El Campo paid all the money it ever paid to the producers, and none to the United States. It certainly paid no money as tax, because there was no tax while it was buying its rice. All it ever paid as tax was the warrants which had been given to it by the United States. If anything ought to be refunded in respect of paying the tax, it is the warrants, and El Campo does not wish them. It in fact is asking only for the $12,059 export adjustment balance. Disappointment as to this (see *Wilson & Co.* v. *United States*, 311 U. S., 104; *Standard Rice Co.* v. *Schofield*, 27 Fed. Sup., 854 [Ct. D. 1422, C. B. 1939–2, 388]) can not be remedied under the provisions for refunding processing taxes unlawfully collected. The judgment of the Board of Review is affirmed.

STAMP TAXES.

INTERNAL REVENUE CODE.

SECTION 3482, AS AMENDED BY SECTION 1 OF THE REVENUE ACT OF 1939, SECTIONS 209 AND 210 OF THE REVENUE ACT OF 1940, AND SECTIONS 505 AND 521(a)24 OF THE REVENUE ACT OF 1941.—CONVEYANCES.

REGULATIONS 71 (1932), ARTICLE 79: "Sold" defined. (Also Article 89.) 1941–50–10927 G. C. M. 22955

The transfer of real estate in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation, as the case may be, constitutes a transfer of "realty sold" within the meaning of section 3482 of the Internal Revenue Code, as amended, and is subject to stamp tax under that section.

An opinion is requested whether the transfer of realty in a statutory merger or consolidation of two or more corporations constitutes a transfer of "realty sold" subject to stamp tax under section 3482 of the Internal Revenue Code, as amended by section 1 of the Revenue Act of 1939, sections 209 and 210 of the Revenue Act of 1940, and sections 505 and 521(a)24 of the Revenue Act of 1941.

Section 3482 of the Internal Revenue Code, as amended, imposes a stamp tax on any "Deed, instrument, or writing * * * whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, * * * when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100 * * *."

The term "sold" imports the transfer of the absolute or general title for a valuable consideration or price. (Article 79, Regulations 71 (1932).) Stock in a corporation is a valuable consideration for the transfer of real property. (Article 89, Regulations 71 (1932).)

In a generic sense, statutory mergers and consolidations are to be distinguished from mere sales. An illustration of such distinction may be found, for example, in *Pinellas Ice & Cold Storage Co.* v. *Commissioner* (287 U. S., 462 [Ct. D. 630, C. B. XII–1, 161 (1924)]) and *Mercantile Home Bank & Trust Co.* v. *United States* (96 Fed. (2d), 655). The Pinellas case involved a sale by one corporation to another of all of its assets for a money consideration, part in cash and the remainder in promissory notes of the vendee. It was held that such sale was not an "exchange" of property for cash and "securities" by a "party to a reorganization" within the meaning of section 203(6)3(h) of the Revenue Act of 1926. The Court stated in part as follows:

But the mere purchase for money of the assets of one company by another is beyond the evident purpose of the provision, and has no real semblance to a merger or consolidation.

Again, in *Cortland Specialty Co. et al.* v. *Commissioner* (60 Fed. (2d), 937, C. B. XII–1, 164 (1933)), involving substantially the same question as that in the Pinellas case, it was stated that—

Reorganization, merger and consolidation are words indicating corporate readjustments of existing interests. They all differ fundamentally from a sale where the vendor corporation parts with its interest for cash and receives nothing more. Reorganization in the most ordinary sense suggests "the formation of a new corporation that is in financial difficulties, for the purpose of purchasing the company's works and other property, after the foreclosure of a mortgage or judicial sale."

Thus, it may be seen that the courts have recognized a distinction between mere sales on the one hand and mergers and consolidations on the other. This office is of the opinion, however, that these cases must be distinguished from the present consideration for they do not touch upon the question whether mergers and consolidations *involve sales of assets* of the constituent corporations.

Ordinarily, form rather than substance is the test of liability in stamp tax cases. Under section 3482 of the Internal Revenue Code, as amended, however, the tax is imposed upon the transfer of "realty sold." Whether or not realty is sold is a question of substance rather than of form, for article 79 of Regulations 71 provides that "sold" imports the transfer of realty for a valuable consideration. If consideration passes to the constituent corporations for realty transferred to the continuing or new corporation in a statutory merger or consolidation, then such a transfer is taxable as one of "realty sold."

Looking therefore to substance, statutory mergers and consolidations are not distinguishable, for present purposes, from cases in which the constituent corporations make an outright sale of their assets to a continuing corporation or to a newly created corporation in consideration for the assumption of their liabilities and the issuance to them of stocks of the transferee corporation. In the latter case, the constituent corporations make a liquidating dividend of the stock so received to their stockholders, and subsequently go through the formality of dissolution as provided by statute. The net result in either type of case is the same. The only distinction, so far as the instant question is concerned, is one of legal form. The real purpose of statutes extending to corporations the privilege of merging or consolidating in the technical sense is to provide a simple and convenient method of corporate reorganization, thus eliminating the necessity of several formal steps. Hence, such statutes should not be treated as affecting the question of substance or, more specifically, the question whether consideration passes to the constituent corporations.

There can be no doubt that a taxable transfer of "realty sold" is involved in the situation above mentioned where constituent corporations in a nontechnical merger or consolidation make an outright sale of their assets to a continuing or newly created corporation in consideration for the assumption by it of their liabilities and for the new stock of such corporation. It is therefore believed that a taxable conveyance of "realty sold" is in substance also involved in a statutory merger or consolidation. Support for this conclusion is found in *Argenbright et al.* v. *Phoenix Finance Co. of Iowa et al.* (Del., 1936, 187 Atl., 124, 126), wherein it is stated that "While in every merger a sale of assets is involved * * *, yet the converse is not true, viz, that in every sale of assets a merger or consolidation is involved. * * *" To the same effect is *Cole et al.* v. *National*

Cash Credit Association (Del., 1931, 156 Atl., 183), which involved a suit by certain stockholders to enjoin their corporation from proceeding with a merger agreement. The court said:

> The case therefore is one that rests on the sole fact of alleged undervaluation and overvaluation of the assets of two of the merging companies.
>
> Where that is the case the rule adopted by this court and applicable to the sale of corporate assets would seem by analogy to supply a sound basis for guidance. While a consolidation is quite distinct from a sale, yet from the viewpoint of the constituent companies, a sale of assets is in substance involved.

The argument has sometimes been made that since the new stock passes directly to the stockholders of the constituent corporations, the corporations themselves can not be said to have acquired a right to such new stock. That such is not the case was pointed out in *Raybestos-Manhattan, Inc.*, v. *United States* (296 U. S., 60, C. B. XIV-2, 400 (1935)), involving a nontechnical consolidation with an agreement which provided that the new stock should be issued directly to the stockholders of the constituent corporations. The question in that case was whether there occurred a taxable transfer of a right to receive the new stock from the constituent corporations to their stockholders. The Court, holding that there was such a transfer, said:

> In the present case the generating source of the right to receive the newly issued shares of petitioner [new corporation] was the conveyance to it of the property of each of the corporations to be consolidated. The new shares could not lawfully be issued to any other than the grantor corporation without its authority, * * *. The consolidation agreement thus imposed the duty on petitioner to issue the new shares upon receipt of the property, and at the same time made disposition to the stockholders of the two corporations of the correlative right to receive the stock.
>
> We think that this effective disposition of the right to receive the stock involved a taxable transfer quite as much as if the several legal relationships of the parties had been established at different times and by separate documents. It is not doubted that there would have been a taxable transfer if each corporation had conveyed its property to petitioner in exchange for its shares of stock to be issued as the grantor might direct, and had later ordered the certificates issued to its stockholders. The reach of a taxing Act whose purpose is as obvious as the present is not to be restricted by technical refinements.

Marconi Wireless Telegraph Co. of America v. *Duffy* (D., New Jersey, 1921, 273 Fed., 197 [T. D. 3219, ST. 9–21–313, 55 (1921)]) is to the same effect. In that case one corporation sold a part of its assets to another corporation in consideration of a certain number of shares of the purchasing corporation. The stock was to be issued directly to the stockholders of the selling corporation. The question was whether the selling corporation had a right to receive the stock. The Court stated in part as follows:

> In considering the question at issue we must not ignore the substantial difference between a corporation and its stockholders. * * * The property sold to Radio was the plaintiff's [selling corporation] property, and could be sold only by it. To effect the sale the consent of the stockholders was necessary; but it, and not the stockholders, held the legal title, and it alone could vest such title in the purchaser. The stockholders eventually would share in the consideration of the sale, but this could be brought about only by means of dividends or similar methods of distribution. The stock issued by Radio to the plaintiff's stockholders was the consideration for the property sold to it by the plaintiff.

Attention has been called to the case of *Rochelle Investment Corporation* v. *Fontenot* (D. C. La., 1940, 34 Fed. Supp., 118), wherein

it was held that a transfer of real estate by virtue of a statutory merger did not constitute a sale of real estate and accordingly was not subject to stamp tax. The Court stated in part as follows:

Consistent with the ruling of the Commissioner the defendant contends that Schedule A-8 of the above mentioned title and Act imposes a tax on any deed, instrument, or writing whereby the absolute or general title to real property sold is conveyed to the grantee or to any other person at his direction. It is urged that the term "sold" imports the transfer of such title for a valuable consideration or price and that stock in a corporation is deemed a valuable consideration for the transfer of real property. That since the assets of the merging corporations were conveyed to the Rochelle Investment Corporation in consideration for the issuance of capital stock there was a valuable consideration for the transfer of the real property.

Plaintiff on the other hand contends that the Act does not apply to all transfers of real estate, but that it applies only to deeds executed to transfer property sold to a purchaser or a nominee. That the property herein involved was not sold to a purchaser, but was transferred by virtue of the merger agreement through operation of law, the operating laws being the corporation laws of Delaware and Louisiana.

In my judgment plaintiff is right. A transfer of real estate by virtue of merger is not a sale of real estate. In merger the merging corporations, except the one which survives cease to exist. Consequently the merging corporations in the instant case did not and could not receive any consideration for the transfer, because they were extinguished and dissolved by the acts of their stockholders in assenting to the proposed agreement of merger.

It is to be noted that the Court rested its conclusion mainly on the ground that no consideration could pass to the merging corporations because they ceased to exist at the moment of merger. The Court thus assumed that consideration for a sale must pass *subsequent* to the transfer of the thing purchased. However, it is the intention of the parties as expressed in the sales agreement which must control, and pursuant to such intention the consideration may pass prior to, subsequent to, or at the same instant as the passing of title of the thing purchased. (Williston on Sales, Second Edition, section 452.)

In cases involving statutory mergers or consolidations the intentions of the constituent corporations are to be found in the agreements to merge or consolidate. Under State law, such agreements are required to follow certain well defined patterns and must contain, either expressly or by implication, certain specific provisions. Thus, under such laws the continuing or new corporation acquires the assets of the constituent corporations. It issues its stocks to the stockholders of the constituent corporations, and it is required to assume the liabilities of such corporations. Furthermore, the constituent corporations cease to exist without the necessity of formal dissolution. It follows that when corporations exercise the privilege of merging or consolidating under such statutes they do so with the knowledge and intention that the above-mentioned characteristic provisions are required to be an inherent part of the merger or consolidation agreement. Viewed in this light, such agreement must be interpreted as reflecting an intention on the part of the constituent corporations that the transfer of their assets, the assumption of their liabilities by the continuing or new corporation, and the creation of the rights to receive the new stock should all occur at the same instant. It follows that since the constituent corporations are in existence at the moment their assets are transferred they must also be in existence at

the same moment for cancellation of their liabilities, and for the receipt of any other consideration due them. Such conclusion is not in accord with the holding in the Rochelle case that the constituent corporations could not receive consideration because they ceased to exist.

It is the opinion of this office that in the case of a statutory merger or consolidation of two or more corporations the assets of the constituent corporations are transferred to the continuing or new corporation, as the case may be, in consideration for the issuance of the stock of the continuing or new corporation and the assumption of the liabilities of the constituent corporations by the continuing or new corporation, and that the transfer of real estate from one or more of the constituent corporations to the continuing or new corporation pursuant to such a statutory merger or consolidation constitutes a transfer of "realty sold" within the meaning of section 3482 of the Internal Revenue Code, as amended. Accordingly, such a transfer is subject to the stamp tax imposed by that section.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

PLAYING CARDS.

SECTION 1807, AS AMENDED.

REGULATIONS 66, ARTICLE 8: Tax on playing cards. 1941-41-10859
ARTICLE 19: Imported playing cards. T. D. 5080

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 305.—TAX ON PLAYING CARDS

Increase of rate of tax under section 1807 of the Internal Revenue Code, as amended, and as further amended by section 531 of the Revenue Act of 1941.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 66 [Part 305, Title 26, Code of Federal Regulations], as amended by Treasury Decision 4987, approved July 18, 1940 [C. B. 1940-2, 340], relating to the tax on playing cards under the Internal Revenue Code, to sections 531 and 536 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress), approved September 20, 1941, amending section 1807(a) of the Internal Revenue Code, such regulations, but only as prescribed and made applicable to the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939 [C. B. 1939-1 (Part 1), 396] [Chapter I, note, Title 26, Code of Federal Regulations, 1939 Sup.], are further amended as follows:

There is inserted immediately preceding article 8 [section 305.8], the following:

TITLE V OF THE REVENUE ACT OF 1941.

PART III—INCREASES IN RATES OF EXISTING EXCISE TAXES.

SEC. 531. PLAYING CARDS.

Section 1807(a) of the Internal Revenue Code is amended by striking out "10 cents" and inserting in lieu thereof "13 cents".

SEC. 536. EFFECTIVE DATE OF PART III.

The amendments made by this Part shall be applicable only with respect to the period beginning with October 1, 1941, and the rates specified in * * * section 1807(b) * * * of the Internal Revenue Code shall not apply with respect to such period. This Part shall take effect on October 1, 1941.

The first paragraph of article 8 [section 305.8], as amended by Treasury Decision 4987, is amended to read as follows:

ART. 8. *Tax on playing cards.*—On and after October 1, 1941, the rate of tax on playing cards is 13 cents per pack containing not more than 54 cards. Each additional 54 cards or fraction thereof in a pack constitutes a new pack on which tax must be paid. For example, if a pack contains 120 cards it must be considered as constituting three packs, two packs of 54 cards and one pack of 12 cards, and each such pack is subject to tax at the rate in effect when liability is incurred.

There is inserted immediately preceding article 19 [section 305.19], the following:

TITLE V OF THE REVENUE ACT OF 1941.

PART III—INCREASES IN RATES OF EXISTING EXCISE TAXES.

SEC. 531. PLAYING CARDS.

Section 1807(a) of the Internal Revenue Code is amended by striking out "10 cents" and inserting in lieu thereof "13 cents".

SEC. 536. EFFECTIVE DATE OF PART III.

The amendments made by this Part shall be applicable only with respect to the period beginning with October 1, 1941, and the rates specified in * * * section 1807(b) * * * of the Internal Revenue Code shall not apply with respect to such period. This Part shall take effect on October 1, 1941.

The first paragraph of article 19 [section 305.19], as amended by Treasury Decision 4987, is amended to read as follows:

ART. 19. *Imported playing cards.*—(a) *Liability to tax.*—On and after October 1, 1941, playing cards imported from foreign countries must be tax-paid at the rate of 13 cents per pack of not more than 54 cards. Such tax is in addition to any import duty and must be paid by affixing the required stamps prior to release of the cards from customs custody.

(This Treasury decision is prescribed pursuant to sections 531 and 536 of the Revenue Act of 1941, approved September 20, 1941, and sections 1835 and 3791 of the Internal Revenue Code (53 Stat., 204, 467; 26 U. S. C., Sup. V, 1835, 3791).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved October 3, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 6, 1941, 3.32 p. m.)

INTERNAL REVENUE CODE.

FIREARMS.

SECTION 2733.—DEFINITIONS.

REGULATIONS 88 (1941), SECTION 319.1: Meaning of terms. 1941–48–10914 S. T. 923

A Luger or Mauser semiautomatic pistol equipped merely with a lug, spur, slot, or other device for the attachment of a shoulder stock is not a "firearm" within the meaning of section 2733(a) of the Internal Revenue Code.

S. T. 908 (C. B. 1940–2, 342) revoked.

It was held in S. T. 908 (C. B. 1940–2, 342) that a Luger or Mauser pistol equipped with a lug, spur, slot, or other device for the attachment of a shoulder stock is a "firearm" within the meaning of section 2733(a) of the Internal Revenue Code.

Upon reconsideration of the matter, it is now held that a Luger or Mauser semiautomatic pistol which is equipped merely with a lug, spur, slot, or other device for the attachment of a shoulder stock is not a "firearm" within the meaning of section 2733(a) of the Internal Revenue Code. In order for such a pistol to constitute a "firearm," as defined in that section, there must be an accompanying shoulder stock with which the pistol may be used.

S. T. 908 (C. B. 1940–2, 342) is revoked.

OLEOMARGARINE.

SECTION 2302(b).

REGULATIONS 9 (1936), ARTICLE 28: Packages. 1941–38–10831
T. D. 5068

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 310.

Regulations 9, as amended, relating to taxes on oleomargarine, adulterated butter, and process or renovated butter, as made applicable to the Internal Revenue Code by Treasury Decision 4886 [C. B. 1939–1 (Part 1), 396], amended.

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

To Collectors of Internal Revenue and Others Concerned:

Regulations 9 (revised April, 1936) [part 310, Title 26, Code of Federal Regulations], but only as prescribed and made applicable to the Internal Revenue Code by Treasury Decision 4886, approved February 11, 1939 [C. B. 1939–1 (Part 1), 396] [Chapter I, note, Title 26, Code of Federal Regulations, 1939 Sup.], are amended as follows:

Article 28 [section 310.28, Title 26, Code of Federal Regulations] is amended by changing paragraph (*a*) thereof to read as follows:

(*a*) *General.*—No maximum package is prescribed by law. However, manufacturers are required to put up their product in statutory packages. A statutory package is one designed to contain only that quantity and class of oleomargarine as indicated by the stamp to be affixed thereto. A statutory package may include small advertising cards, coupons, certificates, circulars, and other like advertising matter intended as an advertisement of the oleomargarine business of the manufacturer. It shall not contain any article which would materially increase the weight or size of the package.

Containers of oleomargarine must be of a durable and substantial character and must completely cover the contents. As to penalty for refilling containers from which oleomargarine has been removed, see section 13, Act of August 2, 1886.

(This Treasury decision is issued under the authority contained in sections 3644 and 3791 of the Internal Revenue Code (53 Stat., 442 and 467).

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved September 11, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 13, 1941, 12.31 p. m.)

CIGARETTES.

INTERNAL REVENUE CODE.

SECTION 2000(c)2, AS AMENDED BY SECTION 212 OF THE REVENUE ACT OF 1940 AND SECTION 521(a)8 OF THE REVENUE ACT OF 1941.

REGULATIONS 8 (1934), ARTICLE 72: Rates of tax on cigars and cigarettes, etc. 1941–47–10906 T. D. 5097

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 140.—TAX ON CIGARETTES.

Regulations 8 as made applicable to the Internal Revenue Code by Treasury Decision 4885 [C. B. 1939–1 (Part 1), 396], amended.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 8 (revised November, 1934) [Part 140, Title 26, Code of Federal Regulations], relating to the taxes on tobacco, snuff, cigars, and cigarettes, also on cigarette papers and tubes and purchase and sale of leaf tobacco, to section 212 of the Revenue Act of 1940 (54 Stat., 516) and section 521(a)8 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Congress), amending section 2000(c)2 of the Internal Revenue Code, such regulations, but only as prescribed and made applicable to the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939 [C. B. 1939–1 (Part 1), 396] [Chapter I, note, Title 26, Code of Federal Regulations, 1939 Sup.], are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding article 72 [section 140.72] the following:

SEC. 2000. RATE OF TAX. (Internal Revenue Code.)

* * * * * * *

(c) CIGARS AND CIGARETTES.—Upon cigars and cigarettes manufactured in or imported into the United States, which are sold by the manufacturer or importer, or removed for consumption or sale, there shall be levied, collected, and paid the following taxes:

(1) CIGARS.—On cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, 75 cents per thousand;

On cigars made of tobacco, or any substitute therefor, and weighing more than three pounds per thousand, if manufactured or imported to retail at not more than 5 cents each, $2 per thousand;

If manufactured or imported to retail at more than 5 cents each and not more than 8 cents each, $3 per thousand;

If manufactured or imported to retail at more than 8 cents each and not more than 15 cents each, $5 per thousand;

If manufactured or imported to retail at more than 15 cents each and not more than 20 cents each, $10.50 per thousand;

If manufactured or imported to retail at more than 20 cents each, $13.50 per thousand;

Whenever in this paragraph reference is made to cigars manufactured or imported to retail at not over a certain price each, then

in determining the tax to be paid regard shall be had to the ordinary retail price of a single cigar in its principal market.

(2) CIGARETTES.—On cigarettes made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, $3 per thousand;

Weighing more than three pounds per thousand, $7.20 per thousand; except that if more than 6½ inches in length they shall be taxable at the rate provided in the preceding paragraph, counting each 2¾ inches (or fraction thereof) of the length of each as one cigarette.

The tax imposed by this subsection shall be in addition to any import duties imposed upon imported cigars and cigarettes.

* * * * * * *

SEC. 212. CIGARETTES. (Revenue Act of 1940.)

Subchapter A of Chapter 15 of the Internal Revenue Code is amended by inserting at the end thereof the following new sections:

"SEC. 2004. DEFENSE TAX FOR FIVE YEARS.

"In lieu of the rates of tax specified in section 2000(c)(2), the rates of tax for the period after June 30, 1940, and before July 1, 1945, shall be $3.25 and $7.80, respectively.

* * * * * * *

SEC. 521. DEFENSE EXCISE TAX RATES MADE PERMANENT WHICH ARE NOT INCREASED BY THIS ACT. (Revenue Act of 1941.)

(a) The following sections of the Internal Revenue Code are amended as follows:

* * * * * * *

(8) CIGARETTES.—Section 2000(c)(2) is amended by striking out "$3" and inserting in lieu thereof "$3.25" and by striking out "$7.20" and inserting in lieu thereof "$7.80".

* * * * * * *

(b) The rates specified in subsection (a) shall be applicable only with respect to the period after the date of the enactment of this Act, and the rates specified in * * * section 2004 * * * of the Internal Revenue Code shall not apply with respect to such period.

PAR. 2. Article 72(*a*) [section 140.72] as amended by Treasury Decision 4985, approved July 18, 1940 [C. B. 1940-2, 349], is further amended to read as follows:

(*a*) The rates of tax on cigars as shown below became effective on March 29, 1926. The rates of tax on cigarettes as shown below became effective on July 1, 1940.

Class.	Cigars weighing more than 3 pounds per 1,000.	Rate per 1,000.
	If manufactured or imported to retail at—	
A	Not more than 5 cents each	$2.00
B	More than 5 cents each and not more than 8 cents each	3.00
C	More than 8 cents each and not more than 15 cents each	5.00
D	More than 15 cents each and not more than 20 cents each	10.50
E	More than 20 cents each	13.50

	Rate.
Cigars weighing not more than 3 pounds per 1,000—per 1,000	$0.75
Cigarettes weighing not more than 3 pounds per 1,000—per 1,000	3.25
Cigarettes weighing more than 3 pounds per 1,000 and measuring not more than 6½ inches in length—per 1,000	7.80
Cigarettes weighing more than 3 pounds per 1,000 and measuring more than 6½ inches in length; each 2¾ inches (or fraction thereof) of the length of each to be counted as one cigarette—per 1,000	3.25

(This Treasury decision is prescribed pursuant to section 212 of the Revenue Act of 1940 (54 Stat., 516), section 521 of the Revenue Act of 1941, approved September 20, 1941, and section 3791 of the Internal Revenue Code (53 Stat., 467; 26 U. S. C., Sup. V, 3791).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved November 13, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 14, 1941, 2.59 p. m.)

FLOOR STOCKS TAXES.

INTERNAL REVENUE CODE.

TIRES, INNER TUBES, AND MATCHES.

SECTION 3400(b), AS ADDED BY SECTION 535(c) OF THE REVENUE ACT OF 1941; SECTION 3409(b), AS ADDED BY SECTION 547 OF THE REVENUE ACT OF 1941.

1941–39–10837
Mim. 5247

Preliminary instructions in regard to the procedure respecting the filing of returns and payment of the floor stocks taxes on tires, inner tubes, and matches imposed by sections 3400(b) and 3409(b) of the Internal Revenue Code.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 19, 1941.

Collectors of Internal Revenue and Others Concerned:

Section 3400(b) of the Internal Revenue Code (as added by section 535(c) of the Revenue Act of 1941) imposes a floor stocks tax on certain tires and inner tubes which on October 1, 1941, are held for sale.

Section 3409(b) of the Internal Revenue Code (as added by section 547 of the Revenue Act of 1941) imposes a floor stocks tax on certain matches which on October 1, 1941, are held and intended for sale or for disposition in connection with the sale of another article.

The preliminary instructions as contained herein are issued for the convenience of collectors and taxpayers.

TIRES AND TUBES.

1. *Law.*—Section 535 of the Revenue Act of 1941 reads as follows:

SEC. 535. TIRES AND TUBES.

(a) RATE ON TIRES.—Section 3400(1) of the Internal Revenue Code is amended by striking out "2¼ cents" and inserting in lieu thereof "5 cents".

(b) RATE ON TUBES.—Section 3400(2) of the Internal Revenue Code is amended by striking out "4 cents" and inserting in lieu thereof "9 cents".

(c) FLOOR STOCKS TAX ON TIRES AND INNER TUBES.—Section 3400 of the Internal Revenue Code is amended by inserting "(a) TAX.—" before the beginning thereof and by inserting at the end thereof the following:

"(b) FLOOR STOCKS TAX.—Upon tires and inner tubes subject to tax under subsection (a) of the type used on vehicles subject to tax under section 3403 (a) or (b) which on October 1, 1941, are held for sale by any person there shall be levied, assessed, collected, and paid a floor stocks tax at the rate of 2½ cents per pound in the case of tires and 4½ cents per pound in the case of inner tubes. The tax shall apply to tires and inner tubes held for sale on, or in connection with, or held for use in the manufacture or production of, articles the sale of which will be subject to tax under section 3403 (a) or (b). The tax shall not apply to tires and inner tubes held for sale by the manufacturer, producer, or importer thereof, and to tires and inner tubes the sale of which will be subject under the provisions of sections 3444(a)(2) and 3445 to the manufacturers' tax on tires and inner tubes."

MATCHES.

2. LAW.—Section 547 of the Revenue Act of 1941 reads as follows:

SEC. 547. MATCHES.

Section 3409 of the Internal Revenue Code is amended to read as follows:

"SEC. 3409. TAX ON MATCHES.

"(a) MANUFACTURERS' TAX.—There shall be imposed upon matches sold by the manufacturer, producer, or importer, a tax of 2 cents per 1,000 matches, except that in the case of fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem, packed in boxes or in bulk, the tax shall be 5½ cents per 1,000 matches.

"(b) FLOOR STOCKS TAX.—On matches subject to tax under subsection (a) which, on October 1, 1941, are held and intended for sale, or for disposition in connection with the sale of other articles, there shall be levied, assessed, collected, and paid a floor stocks tax at the rate of 2 cents per thousand matches. The tax shall not apply to matches in retail stocks held at the place where intended to be sold or disposed of. The tax shall not apply to matches held for sale by the manufacturer, producer, or importer thereof, nor to fancy wooden matches or wooden matches having a stained, dyed, or colored stick or stem."

GENERAL.

3. LAW.—Section 3449 of the Internal Revenue Code reads as follows:

SEC. 3449. APPLICABILITY OF ADMINISTRATIVE PROVISIONS.

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700 shall, in so far as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter.

INSTRUCTIONS.

4. *Scope of tax.*—In general the floor stocks taxes are imposed upon tires, inner tubes, and matches (with the exceptions herein set forth) which at the first moment of October 1, 1941, are held for sale by any person other than the manufacturer, producer, or importer thereof. The tax is on the holding thereof for sale and not on the sale.

(*a*) *Tires and inner tubes.*—The floor stocks taxes apply to—

(1) Tires and inner tubes of the type used on automobiles, trucks, busses, highway tractors, trailers, semitrailers, and motorcycles, if such tires and inner tubes are held for sale at the first moment of October 1, 1941, by wholesalers, jobbers, distributors, retailers, or any person other than the manufacturer, producer, or importer, of such tires and inner tubes;

(2) Tires and inner tubes which at the first moment of October 1, 1941, are mounted on automobiles, trucks, busses, highway tractors, trailers, semitrailers, and motorcycles held by the manufacturers, producers, or importers of such vehicles;

(3) Tires and inner tubes which at the first moment of October 1, 1941, are held by manufacturers of automobiles, trucks, busses, highway tractors, trailers, semitrailers, and motorcycles for use in the manufacture of such vehicles.

The floor stocks taxes do not apply to tires and inner tubes held for sale by the manufacturer, producer, or importer thereof. The floor stocks taxes likewise are not applicable to tires and inner tubes actually mounted on automobiles, trucks, etc., which are held for sale by persons who are not the manufacturers of such vehicles.

(*b*) *Matches.*—The floor stocks tax applies to matches which at the first moment of October 1, 1941, are held and intended for sale, or for disposition in connection with the sale of other articles, by wholesalers, jobbers, distributors, and retailers. In respect to matches held by retailers, the floor stocks tax is applicable only to matches held in a warehouse or place other than the separate retail establishment where matches are sold or disposed of to consumers. The phrase "for disposition in connection with the sale of another article" includes matches held for delivery to a customer purchasing another article. For example, matches used as advertising material by manufacturers of various other articles and delivered to purchasers in connection with the sale of such articles are subject to the floor stocks tax.

The floor stocks tax does not apply to matches held on October 1, 1941, in separate retail establishments or departments where such matches are to be sold or disposed of exclusively at retail directly to consumers. The floor stocks tax likewise does not apply to matches held for sale on October 1, 1941, by the manufacturer, producer, or importer thereof, or to fancy wooden matches, or wooden matches having a stained, dyed, or colored stick or stem.

(*c*) Tires, inner tubes, and matches will be regarded as held for sale or disposition by the owner thereof on October 1, 1941, although on that date the articles may be in transit to the owner, or in a warehouse, storeroom, or distributing depot of the owner.

5. *Rates of tax.*—The rates of tax are:

Tires—2½ cents per pound on the total weight (exclusive of metal rims or rim bases).

Inner tubes—4½ cents per pound on the total weight.

Matches—2 cents per thousand matches.

6. *Inventory.*—Every person liable to pay the floor stocks taxes on tires, inner tubes, or matches shall promptly make an itemized inventory of such articles subject to the floor stocks tax held for sale at the first moment of October 1, 1941. Tires and inner tubes shall be segregated and inventoried separately according to trade name, size, and weight. Matches shall be inventoried as to number.

Persons holding tires, inner tubes, or matches at more than one location shall prepare a separate inventory *in duplicate* for each such location. One copy of the separate inventory shall be retained at such location and one copy shall be forwarded to the taxpayer's principal place of business. Each inventory shall show the name of the taxpayer, the location of the particular premises for which the inventory is made, and the name and address of the principal office from which the floor stocks return will be filed.

Separate inventories forwarded to the taxpayer's principal place of business shall be consolidated into a single inventory for the purpose of computing the tax and making return.

Tires, inner tubes, and matches in transit on October 1, 1941, shall be included in the inventory of the person having title thereto on the date mentioned. Where title does not pass to the consignee until the articles are delivered, such articles in transit on October 1, 1941, shall be included in the inventory of the consignor.

Inventories should NOT be filed with the return but must be retained by the taxpayer at his principal place of business.

7. *Return and payment of tax.*—Form 887, revised 1941, is prescribed as the form on which persons liable to the floor stocks taxes

on tires, inner tubes, and matches shall make return and pay such tax. The return shall be prepared and filed in duplicate on or before October 31, 1941, with the collector of the district in which is located the taxpayer's principal place of business, accompanied by remittance of the tax due.

The collector will retain the copy of the return for the files of his office and forward the original return to the Commissioner.

8. *Records.*—Records showing payment of floor stocks tax on tires, inner tubes, and matches, together with the consolidated and individual inventories and other relevant papers and material, must be kept by the taxpayer for a period of four years from the date the tax is due.

9. *Penalties and interest.*—Any person liable to the floor stocks tax who fails to make return and pay such tax on or before October 31, 1941, will incur liability to a penalty of 5 per cent of the tax if the failure is for not more than 30 days, with additional penalty of 5 per cent for each additional 30 days, or fraction thereof, during which delinquency continues, not to exceed 25 per cent of the aggregate tax and interest at the rate of 6 per cent per annum. Severe penalties are also imposed by the Internal Revenue Code for willful failure to pay tax, keep records, file returns, supply information for purposes of tax computation, and for filing false or fraudulent returns.

Correspondence in regard to the procedure described herein shall refer to the number of this mimeograph and to the symbols MT:T.

GUY T. HELVERING,
Commissioner.

1941–44–10886
T. D. 5094

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 321.

Regulations relating to the floor stocks taxes on tires, inner tubes, and matches.[1]

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

To Collectors of Internal Revenue and Others Concerned:

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SECTION 321.0. *Scope of regulations.*—These regulations deal with the floor stocks taxes imposed by sections 3400(b) and 3409(b) of the Internal Revenue Code, as added by sections 535(c) and 547 of the Revenue Act of 1941 (Public law 250, Seventy-seventh Con-

[1] Sections 321.0 to 321.8 are issued under authority of sections 3448 and 3791 of the Internal Revenue Code (53 Stat., 419, 467; 26 U. S. C., Sup. V, 3448, 3791).

gress), approved September 20, 1941. Section 3400(b) imposes taxes with respect to tires and inner tubes, and 3409(b) with respect to matches.

SEC. 535. TIRES AND TUBES. (Revenue Act of 1941.)

(a) RATE ON TIRES.—Section 3400(1) of the Internal Revenue Code is amended by striking out "2¼ cents" and inserting in lieu thereof "5 cents".

(b) RATE ON TUBES.—Section 3400(2) of the Internal Revenue Code is amended by striking out "4 cents" and inserting in lieu thereof "9 cents".

(c) FLOOR STOCKS TAX ON TIRES AND INNER TUBES.—Section 3400 of the Internal Revenue Code is amended by inserting "(a) TAX.—" before the beginning thereof and by inserting at the end thereof the following:

"(b) FLOOR STOCKS TAX.—Upon tires and inner tubes subject to tax under subsection (a) of the type used on vehicles subject to tax under section 3403 (a) or (b) which on October 1, 1941, are held for sale by any person there shall be levied, assessed, collected, and paid a floor stocks tax at the rate of 2½ cents per pound in the case of tires and 4½ cents per pound in the case of inner tubes. The tax shall apply to tires and inner tubes held for sale on, or in connection with, or held for use in the manufacture or production of, articles the sale of which will be subject to tax under section 3403 (a) or (b). The tax shall not apply to tires and inner tubes held for sale by the manufacturer, producer, or importer thereof, and to tires and inner tubes the sale of which will be subject under the provisions of sections 3444(a)(2) and 3445 to the manufacturers' tax on tires and inner tubes."

SEC. 547. MATCHES. (Revenue Act of 1941.)

Section 3409 of the Internal Revenue Code is amended to read as follows:

"SEC. 3409. TAX ON MATCHES.

"(a) MANUFACTURERS' TAX.—There shall be imposed upon matches sold by the manufacturer, producer, or importer, a tax of 2 cents per 1,000 matches, except that in the case of fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem, packed in boxes or in bulk, the tax shall be 5½ cents per 1,000 matches.

"(b) FLOOR STOCKS TAX.—On matches subject to tax under subsection (a) which, on October 1, 1941, are held and intended for sale, or for disposition in connection with the sale of other articles, there shall be levied, assessed, collected, and paid a floor stocks tax at the rate of 2 cents per thousand matches. The tax shall not apply to matches in retail stocks held at the place where intended to be sold or disposed of. The tax shall not apply to matches held for sale by the manufacturer, producer, or importer thereof, nor to fancy wooden matches or wooden matches having a stained, dyed, or colored stick or stem."

SEC. 3449. APPLICABILITY OF ADMINISTRATIVE PROVISIONS. (Internal Revenue Code.)

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700 shall, in so far as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter.

SEC. 321.1. *Scope of tax.*—(*a*) *General.*—Floor stocks taxes are imposed on tires, inner tubes, and matches (with the exceptions set forth in these regulations) held for sale or specified disposition at the first moment of October 1, 1941, by any person other than the manufacturer, producer, or importer of the articles. The floor stocks taxes are on the holding for sale, etc., and not on the sale of the articles.

Tires, inner tubes, and matches are regarded as held by the owner thereof at the first moment of October 1, 1941, although at that time the articles are in transit to the owner, or in a warehouse, storeroom, or distributing depot. Where title does not pass to the consignee until delivery, articles in transit at the

first moment of October 1, 1941, are regarded as held by the consignor at that time.

(*b*) *Tires and inner tubes.*—(1) The floor stocks taxes apply to—

(i) Tires and inner tubes of the type used on automobiles, trucks, busses, highway tractors, trailers, semi-trailers, and motorcycles, held for sale at the first moment of October 1, 1941, by wholesalers, jobbers, distributors, and retailers, or any person other than the manufacturer, producer, or importer, of such tires and inner tubes;

(ii) Tires and inner tubes which at the first moment of October 1, 1941, are mounted on, or held for sale on or in connection with, automobiles, trucks, busses, highway tractors, trailers, semi-trailers, and motorcycles held by the manufacturers, producers, or importers, of such vehicles and the sale of which will be taxable;

(iii) Tires and inner tubes which at the first moment of October 1, 1941, are held by manufacturers of automobiles, trucks, busses, highway tractors, trailers, semi-trailers, and motorcycles for use in the manufacture of such vehicles.

(2) The floor stocks taxes do not apply to tires and inner tubes held for sale by the manufacturer, producer, or importer thereof. The floor stocks taxes likewise are not applicable to tires and inner tubes actually mounted on automobiles, trucks, etc., which are held for sale by persons who are not the manufacturers of such vehicles.

(3) The term "tires" includes rubber casings, rubber hoops, and rubber strips or bands, of all kinds, designed and shaped or built to form the tread of or to fit a wheel of a vehicle capable of use as a means of transporting a person or burden. The term includes also tires of either the pneumatic or solid type.

(4) The term "inner tubes" includes tubes or air containers of all types made wholly or in part of rubber and designed and manufactured for use in pneumatic tires.

(*c*) *Matches.*—(1) The floor stocks tax applies to matches which at the first moment of October 1, 1941, are held and intended for sale, or for disposition in connection with the sale of other articles, by wholesalers, jobbers, distributors, and retailers. In respect of matches held by retailers the floor stocks tax is applicable only to matches held in a warehouse or place other than the separate retail establishment where matches are sold or disposed of to consumers. The phrase "for disposition in connection with the sale of another article" includes matches held for delivery to a customer purchasing another article. For example, matches used as advertising material by manufacturers of various other articles and delivered to purchasers in connection with the sale of such other articles, are subject to the floor stocks tax.

(2) The floor stocks tax does not apply to matches held on October 1, 1941, in seperate retail establishments or departments where such matches are to be sold or disposed of exclusively at retail directly to consumers. The floor stocks tax likewise does not apply to matches held for sale on October 1, 1941, by the manufacturer, producer, or importer thereof, or to fancy wooden matches, or wooden matches having a stained, dyed, or colored stick or stem.

(3) The term "fancy wooden matches" means matches having a wooden stem, and which in addition to serving the purpose of the ordinary match, are colored or decorated or manufactured in such a manner as to be more ornamental or attractive than the ordinary match.

SEC. 321.2. *Rates of tax.*—The rates of the floor stocks taxes are:

Tires—2½ cents per pound on the total weight (exclusive of metal rims or rim bases).

Inner tubes—4½ cents per pound on the total weight.

Matches—2 cents per thousand matches.

SEC. 321.3. *Payment of tax.*—Every person liable to floor stocks tax on tires, inner tubes, or matches is required to make return and pay such tax on or before November 30, 1941. Tax shall be paid at the time of filing return.

SEC. 321.4. *Inventory.*—Every person liable to pay floor stocks tax on tires, inner tubes, or matches, shall promptly make an itemized inventory of such articles subject to the floor stocks tax held at the first moment of October 1, 1941. Tires and inner tubes shall be segregated and inventoried separately according to trade name, size, and weight. Matches shall be inventoried as to number.

Persons holding tires, inner tubes, or matches at more than one location shall prepare a separate inventory *in duplicate* for each such location. One copy

of the separate inventory shall be retained at such location and one copy shall be forwarded to and kept at the taxpayer's principal place of business. Each inventory shall show the name of the taxpayer, the location of the particular premises for which the inventory is made, and the name and address of the principal office from which the floor stocks return will be filed.

Separate inventories forwarded to the taxpayer's principal place of business shall be consolidated into a single inventory for the purpose of computing the tax and making return.

Inventories should NOT be filed with the return but must be retained by the taxpayer at his principal place of business.

SEC. 321.5. *Return.*—Form 887, revised 1941, is prescribed as the form on which persons liable to floor stocks tax on tires, inner tubes, or matches shall make return and pay tax. The return shall be prepared and filed in duplicate on or before November 30, 1941, with the collector of the district in which is located the taxpayer's principal place of business.

The collector will retain the copy of the return for the files of his office and forward the original return to the Commissioner.

SEC. 321.6 *Records.*—Records showing payment of floor stocks tax on tires, inner tubes, or matches, together with the consolidated and separate inventories and other relevant papers and material, must be kept by the taxpayer for a period of four years from the date the tax is due.

SEC. 321.7. *Penalties and interest.*—In the case of failure to pay the tax due on or before November 30, 1941, there shall be added as part of the tax, interest at the rate of 6 per cent per annum for the period beginning December 1, 1941, to the date of payment of the tax. Where an assesssment of the floor stocks tax is certified by the Commissioner to the collector of the district and payment of such tax is not made within 10 days after issuance by the collector of the first notice and demand on Form 17 for payment, there will accrue under section 3655 of the Internal Revenue Code a 5 per cent penalty and interest at the rate of 6 per cent per annum from the date of issuance of the first notice and demand on Form 17 until date of payment of the tax.

The penalty under section 3612(d)(1) of the Internal Revenue Code for delinquency in filing the return is 5 per cent of the amount of the tax if the failure is not for more than 30 days, with an additional 5 per cent for each additional 30 days or fraction thereof during which failure continues, but not to exceed 25 per cent in the aggregate. The penalty does not apply where the return is later filed and failure to file the return within the prescribed time is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect.

In case a false or fraudulent return is willfully made the penalty under section 3612(d)(2) of the Internal Revenue Code is 50 per cent of the total tax due.

Under section 3612(e) of the Internal Revenue Code the penalty added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

Other penalties are also imposed by the Internal Revenue Code for willful failure to pay tax, keep records, file returns, or supply information for purposes of tax computation, and for filing false or fraudulent returns.

SEC. 321.8. *Refunds.*—A claim for refund may be filed by any person who has overpaid a floor stocks tax on tires, inner tubes, or matches. The claim must be made under oath on Form 843 and filed with the collector of internal revenue to whom the tax was paid. The claim must contain the information required by the form and be supported by a statement of the facts and evidence upon which the claim is based.

NORMAN D. CANN,
Acting Commissioner of Internal Revenue.

Approved October 25, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 28, 1941, 9.54 a. m.)

1941-39-10841
T. D. 5070

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 171.

Floor stocks taxes on distilled spirits and wines.

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

To Collectors of Internal Revenue, District Supervisors, and Others Concerned:

Sections 533 and 534 of the Revenue Act of 1941, approved September 20, 1941 (Public Law 250, Seventy-seventh Congress), read as follows:

SEC. 533. DISTILLED SPIRITS.

* * * * * * *

(d) FLOOR STOCKS TAX.—Section 2800 of the Internal Revenue Code is amended by inserting at the end thereof the following new subsection:

"(i) FLOOR STOCKS TAX.—

"(1) Upon all distilled spirits upon which the internal-revenue tax imposed by law has been paid, and which on October 1, 1941, are held and intended for sale or for use in the manufacture or production of any article intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax of $1 (except that in the case of brandy, the rate shall be $1.25) on each proof-gallon, and a proportionate tax at a like rate on all fractional parts of such proof-gallon.

"(2) Every person required by this subsection to pay any floor stocks tax shall, on or before January 1, 1942, under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe, make a return and pay such tax. Payment of the tax shown to be due may be extended to a date not later than August 1, 1942, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Commissioner, with the approval of the Secretary, may prescribe.

"(3) All provisions of law, including penalties, applicable in respect of internal-revenue taxes on distilled spirits shall, insofar as applicable and not inconsistent with this subsection, be applicable in respect of the floor stocks tax imposed hereunder. For the purposes of this subsection on the term 'distilled spirits' shall include products produced in such manner that the person producing them is a rectifier within the meaning of section 3254(g)."

SEC. 534. WINES.

* * * * * * *

(c) Subchapter F of Chapter 26 of the Internal Revenue Code is amended by inserting at the end thereof the following new section:

"SEC. 3192. FLOOR STOCKS TAX ON WINES.

"(a) FLOOR STOCKS TAX.—Upon all wines upon which the internal-revenue tax imposed by law has been paid, and which on October 1, 1941, are held and intended for sale or for use in the manufacture or production of an article intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax at rates equal to the increases in rates of tax (over the defense tax rates) made applicable to such articles by section 534 of the Revenue Act of 1941.

"(b) RETURNS.—Every person required by subsection (a) to pay any floor stocks tax shall, on or before January 1, 1942, under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe, make a return and pay such tax. Payment of the tax shown to be due may be extended to a date not later than August 1, 1942,

upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Commissioner, with the approval of the Secretary, may prescribe.

"(c) LAWS APPLICABLE.—All provisions of law, including penalties, applicable in respect of the taxes imposed by section 3030(a) shall, insofar as applicable and not inconsistent with this subsection, be applicable with respect to the floor stocks tax imposed by subsection (a)."

Pursuant to the above sections of law, the following regulations are prescribed:

DISTILLED SPIRITS.

1. Each distiller, proprietor of an industrial alcohol plant, internal revenue bonded warehouse, alcohol bonded warehouse, or tax-paid bottling house, and each rectifier, wholesale dealer in liquors, retail dealer in liquors, manufacturer, or any other person, corporation, partnership or association holding on October 1, 1941, tax-paid distilled spirits, including alcohol and brandy, intended for sale or for use in the manufacture or production of any article intended for sale, shall before beginning business on that date prepare an inventory of all such tax-paid distilled spirits.

2. The following kinds of distilled spirits, among others, are subject to the floor stocks tax of $1 a proof gallon if tax-paid prior to October 1, 1941, and which on that date are held and intended for sale or for use in the manufacture or production of any article intended for sale:

(*a*) Alcohol.

(*b*) Spirits—grain, spirits—cane, and spirits—fruit.

(*c*) Whisky, rum, and gin.

(*d*) Vermouth containing distilled spirits of any kind.

(*e*) Cocktails containing distilled spirits of any kind.

(*f*) Liqueurs, cordials, and similar compounds containing distilled spirits of any kind.

(*g*) Tequila, okolehao, etc.

(*h*) Distilled spirits of any kind, except brandy, held by any person for use in the manufacture of any article intended for sale, regardless of whether the article to be produced is in itself unfit for beverage purposes.

3. Brandy is subject to a floor stocks tax of $1.25 a proof gallon if tax-paid prior to October 1, 1941, and which on that date is held and intended for sale or for use in the manufacture or production of any article intended for sale. The term "brandy" includes the following:

(*a*) Brandy.

(*b*) Blends of brandies.

(*c*) Alcoholic products labeled and intended for sale as "brandy."

(*d*) Brandy held by any person for use in the manufacture of any article intended for sale, regardless of whether the article to be produced is in itself unfit for beverage purposes.

4. (*a*) The inventory of distilled spirits shall be prepared in duplicate on sheets of paper not larger than 10½ by 16 inches to be furnished by the taxpayer. The distilled spirits shall be listed separately by kinds, that is, there will be a separate listing of alcohol, whisky, gin, rum, cordials, liqueurs, cocktails, etc.

(*b*) The inventory of brandy will be prepared, in duplicate, on a separate sheet or sheets of paper not larger than 10½ by 16 inches, and identified as the inventory of brandy.

(*c*) Each inventory will consist of two sections. The first section will cover bottled distilled spirits and will be divided into seven vertical columns which will be designated:

(1) Kind.
(2) Number of cases.
(3) Size of bottle.
(4) Number of bottles.
(5) Wine gallons.
(6) Proof of spirits.
(7) Proof gallons.

Where distilled spirits in cases are in transit on October 1, 1941, the taxpayer will show, in addition to the foregoing, the serial numbers of the cases and the name of the bottler, plus the data required by paragraph 9.

(*d*) The second section will cover distilled spirits in packages (barrels or drums), tank cars, and in tanks. The serial number and kind of container, the name of the distiller, wine gallons, proof of the spirits, and proof gallons must be shown. Where such spirits are in transit on October 1, 1941, the taxpayer must also show the data required by paragraph 9.

Spirits in process of rectification, or in bottling or storage tanks, will be measured and proofed and the wine gallons, proof, and proof-gallon content of each tank reported separately on the inventory. The number and kind of receptacle containing the spirits will also be shown.

WINES.

5. Each proprietor of a bonded winery, bonded storeroom, or tax-paid bottling house, and each rectifier, wholesale or retail dealer in liquors (including wholesale or retail dealer in wines and wholesale or retail dealer in wines and malt liquors), manufacturer, or any other person, corporation, partnership or association holding on October 1, 1941, tax-paid wines intended for sale or for use in the manufacture or production of any article intended for sale, shall also before beginning business on that date prepare an inventory of all such tax-paid wines.

6. The term "wines" shall include, among others, the following, which are subject to the floor stocks taxes indicated below if tax-paid prior to October 1, 1941, and which on that date are held and intended for sale or for use in the manufacture or production of any article intended for sale:

Kind.	Floor stocks tax.
(*a*) Still wines, including vermouth, and all artificial or imitation wines, or compounds sold as still wine, containing:	
(1) Not more than 14 per cent of alcohol by volume	2 cents a gallon.
(2) More than 14 per cent and not exceeding 21 per cent of alcohol by volume.	12 cents a gallon.
(3) More than 21 per cent and not exceeding 24 per cent of alcohol by volume.	35 cents a gallon.
(*b*) Champagne and sparkling wines, that is, effervescent wine charged with carbon dioxide resulting from secondary fermentation of the wine in bulk or in the bottle.	4 cents per each one-half pint or fraction thereof.
(*c*) Artificially carbonated wine, that is, effervescent wine artificially charged with carbon dioxide.	2 cents per each one-half pint or fraction thereof.

7. The inventory of wines shall be prepared, in duplicate, on sheets of paper not larger than 10½ by 16 inches to be furnished by the taxpayer. The inventory will be divided into five parts for the separate listing of the five different tax classes as follows:

Part 1—Still wines containing not more than 14 per cent of alcohol.

Part 2—Still wines containing more than 14 per cent but not exceeding 21 per cent of alcohol.

Part 3—Still wines containing more than 21 per cent but not exceeding 24 per cent of alcohol.

Part 4—Champagne and other sparkling wines.

Part 5—Artificially carbonated wines.

Each part will be divided into six vertical sections which will be designated:

(*a*) Kind of wine.
(*b*) Number of packages.
(*c*) Number of cases.
(*d*) Size of bottles.
(*e*) Number of bottles.
(*f*) Total gallons.

Where wines are in transit on October 1, 1941, the taxpayer will show, in addition to the foregoing, the serial numbers of the cases, packages, or tank car, the name of the producer or bottler, plus the data required by paragraph 9.

Wines in process of rectification, or in bottling or storage tanks, shall be measured and the wine gallons and alcoholic content of the contents of each tank reported separately on the inventory The number and kind of receptacle containing the wine shall also be shown.

8. The inventory of wines may be attached to and made a part of the inventory of distilled spirits if the person preparing the inventory of wines also holds distilled spirits subject to floor stocks tax.

DISTILLED SPIRITS OR WINES ON OTHER PREMISES OR IN TRANSIT.

9. The taxpayer shall show separately and clearly in the inventory:

(*a*) All tax-paid distilled spirits of any kind and wines not on the premises of the taxpayer on October 1, 1941, but owned by him and stored elsewhere, giving the address of the place or places of storage;

(*b*) All tax-paid distilled spirits of any kind and wines not on the premises of the taxpayer, but owned by him and in transit from him to other persons or to himself on October 1, 1941, giving the means of transportation and the name and address of the consignee; and

(*c*) All tax-paid distilled spirits of any kind and wines owned by him and in transit to him on October 1, 1941, giving the means of transportation and the name and address of the consignor.

FILING OF RETURN AND PAYMENT OF TAX.

10. Each taxpayer designated in paragraphs 1 and 5 shall make a return on Form 758 (revised 1941), in triplicate, for each place where distilled spirits or wines are held, in accordance with the instructions thereon. The original and duplicate copies must be filed not later than January 1, 1942, with the collector of internal revenue of the district in which the distilled spirits or wines are held. The original of the inventory must be attached to the duplicate copy of Form 758.

The triplicate copy of the return and the duplicate copy of the inventory will be retained by the taxpayer at the location covered by the return. The filing of a blanket return with one collector to cover a number of places in different collection districts will not be acceptable.

11. The floor stocks tax shown by the return to be due shall be paid to the collector of internal revenue at the time the return is filed, unless the date of payment of the tax is extended to a date not later than August 1, 1942, upon the filing, in accordance with the instructions thereon, of a bond on Form 723–A, in duplicate, in a penal sum of not less than the amount of the tax (including the delinquency penalty, if any), plus an amount equivalent to and not more than 10 per cent of the tax (including the delinquency penalty, if any).

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved September 25, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 26, 1941, 11.27 a. m.)

MISCELLANEOUS RULINGS.

ALCOHOL TAXES.

DISTILLED SPIRITS.

REGULATIONS 4, SECTIONS 183.47, 183.155, 183.214, 183.362, 183.376, 183.377, 183.378, 183.381, 183.383.

1941–42–10869
T. D. 5085

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 183.—PRODUCTION OF DISTILLED SPIRITS.

Amending Regulations 4 (1940).

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

To District Supervisors and Others Concerned:

By virtue of and pursuant to section 3176 of the Internal Revenue Code, Regulations 4, "Production of Distilled Spirits" (1940), is hereby amended by inserting a new section in Articles VIII and XXX, designated section 183.47*a* and section 183.377*a*, respectively, and amending sections 183.155(*a*)(4), 183.214, 183.362, 183.376, 183.378, 183.381, and 183.383 to read as follows:

ARTICLE VIII.—EQUIPMENT.

* * * * * * *

SEC. 183.47*a*. *Unfinished spirits tanks.*—Whenever a distillery established or operated under these regulations is to be operated alternately as such and as an industrial alcohol plant or fruit distillery in accordance with Article XV, and the distiller desires to retain unfinished spirits where the change in type of plant is to be temporary only, he must provide for the purpose one or more tanks, each of which must be constructed and equipped in accordance with the provisions of section 183.46 and have painted thereon the words "Unfinished Spirits Tank," followed by its serial number and capacity in wine gallons. The tanks must be so arranged that the unfinished spirits to be collected therein will pass from the still into the tank through continuous and securely closed, fixed pipes and vessels. The pipe lines connecting the tanks with stills or other apparatus must be constructed in accordance with section 183.54. Valves must be provided in the pipe lines and so arranged as to control completely the flow of unfinished spirits both into and out of each tank. The construction of the valves must be such that they can be secured with Government locks. (Secs. 2823, 2829, 3176, I. R. C.)

ARTICLE XV.—REQUIREMENTS GOVERNING ALTERNATE OPERATIONS AS FRUIT DISTILLERY OR INDUSTRIAL ALCOHOL PLANT.

* * * * * * *

SEC. 183.155(*a*).

* * * * * * *

(4) *Materials, heads and tails, and unfinished spirits.*—If distilling materials are transferred to the successor or if heads and tails or unfinished spirits are to

be retained on the premises pending the resumption of operations as a registered distillery, comply with the requirements of Article XXX.

* * * * * * *

ARTICLE XX.—MANUFACTURE OF DISTILLED SPIRITS.

* * * * * * *

SEC. 183.214. *Gauging of unfinished spirits.*—At distilleries where spirits, in the course of distillation, are run from the beer still into tanks in the distillery building for temporary deposit preparatory to completing the distillation thereof, storekeeper-gaugers shall promptly gauge (measure and proof) the unfinished spirits in such tanks and make proper entry on Form 1592. Except as provided in Article XXX, unfinished spirits may not be stored in such tanks but may be deposited therein only temporarily in the course of distillation. Distillates containing one-half of 1 per cent or more of aldehydes or 1 per cent or more of fusel oil, collected in locked tanks for removal for denaturation or destruction, as provided in Article XXI, will be carried on Form 1592 as unfinished spirits until gauged and destroyed or removed for denaturation. (Sec. 3176, I. R. C.)

ARTICLE XXVII.—SUSPENSION AND RESUMPTION OF OPERATIONS.

* * * * * * *

SEC. 183.362. *Date of suspension.*—The distiller will fix in the notice the time when all the beer on the distillery premises will be distilled and all spirits in the distillery run into the receiving cisterns in the cistern room, except unfinished spirits or distillates containing one-half of 1 per cent or more of aldehydes or 1 per cent or more of fusel oil which are to be retained on the premises during a temporary change in the type of distillery, as provided in Article XXX. (Secs. 2850, 3176, I. R. C.)

ARTICLE XXX.—ALTERNATE OPERATION AS INDUSTRIAL ALCOHOL PLANT OR FRUIT DISTILLERY.

* * * * * * *

SEC. 183.376. *Completion of operation required.*—When a registered distillery is to be operated as an industrial alcohol plant or as a fruit distillery, the business of producing spirits, except as hereinafter provided, must be completely finished by the person or persons first carrying on the business, and the distillery duly suspended before it can be operated as an industrial alcohol plant or a fruit distillery. Except as provided in sections 183.377 and 183.377*a*, all unfinished spirits, including high wines and low wines, and distillates containing one-half of 1 per cent or more of aldehydes or 1 per cent or more of fusel oil collected in accordance with the provisions of Article XXI, must be redistilled and run into the cistern room and warehoused by the outgoing distiller. Except as provided in the following sections, all such distillates or unfinished spirits must be disposed of before the distillery can be operated as an industrial alcohol plant or fruit distillery. (Secs. 2850, 3176, I. R. C.)

SEC. 183.377*a*. *Retention of unfinished spirits.*—Where the change in type of plant is to be temporary only, the outgoing distiller may retain unfinished spirits under Government lock in unfinished spirits tanks provided in accordance with section 183.47*a* in the distillery until the plant is again operated by him as a registered distillery under these regulations: *Provided*, That such distiller furnishes a duly executed consent of surety, Form 1533, in triplicate, continuing liability on the distiller's bond, Form 30, for the tax on such unfinished spirits retained on the premises, notwithstanding the change in the type of plant. (Sec. 3176, I. R. C.)

SEC. 183.378. *Transfer of materials, etc.*—The outgoing distiller may transfer to his successor materials on hand, including mash and beer in process, at the time the change in type of plant takes place, but no spirits may be so transferred, except the residue of spirits in the stills which it is not practicable to completely boil out: *Provided*, That materials not usable and residue of spirits in stills not producible under the law at the succeeding type of plant may not be transferred to the successor. Where such materials and residue of spirits are not transferable, all mash and beer must be distilled, all basic

materials must be removed from the premises, and the stills and other vessels must be completely cleared of spirits, and such spirits, if other than distillates or unfinished spirits intended for retention in accordance with the provisions of sections 183.377 and 183.377*a*, removed to the receiving cisterns in accordance with law before the change in type of plant becomes effective. When it is again desired to resume operations as a distiller under these regulations the business of producing alcohol or brandy, as the case may be, must be similarly finished and the industrial alcohol plant or fruit distillery suspended in accordance with governing regulations. (Sec. 3176, I. R. C.)

SEC. 183.381. *Completion of records.*—The outgoing distiller will complete his record, Form 1598, and the storekeeper-gauger his record, Form 1592, as to the removal of basic materials from the premises, or the transfer of basic materials and mash and beer in process to the successor, as the case may be, and as to production and removal from the cistern room of all spirits produced by the outgoing distiller. The actual date of the entry of the deposit of the finished spirits in the cistern room and the actual date the spirits are removed from the cistern room will be given in the respective columns of both forms. If distillates collected in accordance with Article XXI, or unfinished spirits are retained on the premises in locked tanks as provided in sections 183.377 and 183.377*a*, a notation will be made on Form 1598 under "Special Operations or Conditions," showing that such distillates or unfinished spirits are temporarily retained on the premises pending resumption of operations as a registered distillery. The storekeeper-gauger will make a similar notation on his Form 1592 for such distiller. The distiller and storekeeper-gauger will continue to file monthly reports on Forms 1598 and 1592, respectively, during the period such distillates or unfinished spirits are retained on the distillery premises. Where the plant is operated as a registered distillery in two or more periods during the same month by the same proprietor, the operations of such proprietor will be recorded on the same Form 1598 and the same Form 1592, but appropriate notations will be made on the separating lines on each form to show the dates the distillery was operated as a fruit distillery or an industrial alcohol plant and the names under which it was so operated. (Secs. 2841(a), 3176, I. R. C.)

SEC. 183.383. *Disposition of spirits.*—Where a change in the type of plant takes place, the storekeeper-gauger in charge of the distillery will see that all distillates collected in accordance with Article XXI are disposed of, and that all other unfinished spirits, except the residue of spirits in stills where the same is to be transferred to the successor as provided in section 183.378, are distilled and transferred to the cistern room, unless retained in locked tanks in accordance with sections 183.377 and 183.377*a*, respectively, before the plant is operated as another type of distillery. Upon disposition or retention in locked tanks of such distillates or unfinished spirits, and transfer of all other spirits to the cistern room, the distillery may be operated as another type of plant, but all spirits transferred to the cistern room must be branded and removed in accordance with law by the outgoing distiller in the name under which they were produced, before any spirits are deposited in the cistern room or withdrawn from the distillery by the successor, and in any event within three days of their deposit in the cistern room. (Sec. 3176, I. R. C.)

NORMAN D. CANN,
Acting Commissioner of Internal Revenue.

Approved October 9, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 10, 1941, 1.57 p. m.)

REGULATIONS 4, ARTICLES 183.437–183.447. 1941–41–10860
T. D. 5077

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 183.—PRODUCTION OF DISTILLED SPIRITS.[1]

Amending Regulations 4.

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

To District Supervisors, Collectors of Internal Revenue, and Others Concerned:

Pursuant to the provisions of sections 2883 and 3176 of the Internal Revenue Code, Regulations 4 are hereby amended by adding the following new article and sections:

ARTICLE XLI—TRANSFER OF TAX-PAID DISTILLED SPIRITS BY PIPE LINE TO RECTIFYING PLANTS.

SEC. 183.437. *Commissioner may authorize.*—The Commissioner may, in his discretion, authorize the installation of a pipe line for the transfer of distilled spirits produced under section 2883, Internal Revenue Code, at a proof in excess of 159 degrees and reduced in the receiving cistern to not more than 159 and not less than 100 degrees proof, from the weighing tank in the cistern room of a registered distillery, after tax-payment, to storage tanks in a rectifying plant for use in rectification and bottling, when such rectifying plant is contiguous to, or is in the immediate vicinity of the distillery. The Commissioner will determine from all the circumstances in each case whether the rectifying plant is in the immediate vicinity of the distillery. (*; Sec. 2883, I. R. C.)

SEC. 183.438. *Application.*—A distiller who desires to install a pipe line for the transfer of such spirits to a contiguous rectifying plant or rectifying plant in the immediate vicinity of the distillery, must file application in triplicate with the district supervisor showing the relative positions of the plants and the proprietorship thereof, and giving a full description of the proposed pipe line. (*; Sec. 2883, I. R. C.)

SEC. 183.439. *Action on application.*—Upon receipt of the application, the district supervisor will make such inquiry as he may deem necessary to determine the propriety of granting the permission sought and will then forward all copies of the application to the Commissioner with his recommendation thereon. The Commissioner will indicate his approval or disapproval on all copies of the application and will return two copies to the district supervisor, who will forward one copy to the applicant. Where the application is approved, the distiller will, upon installation of the pipe line, file amended distiller's notice, Form 27–A, and plans, as provided in section 183.149 in the case of major changes in equipment, and an amended plat. (*; Sec. 2883, I. R. C.)

SEC. 183.440. *Pipe-line construction.*—The pipe line shall be constructed and the outlet of the weighing tank secured, in the manner provided by section 183.54, respecting pipe lines from the cistern room to storage tanks in an internal revenue bonded warehouse on the distillery premises. (*; Sec. 2883, I. R. C.)

SEC. 183.441. *Application, Form 179.*—Where a pipe line has been installed for the transfer of distilled spirits direct from the weighing tank in the distillery to a contiguous rectifying plant or rectifying plant in the immediate vicinity under the provisions of this article, and the distiller desires to transfer such spirits, he shall execute application for the tax-payment of such spirits on Form 179, in quadruplicate. The distiller and the storekeeper-gauger shall then proceed in accordance with the provisions of sections 183.281, 183.282, and 183.297, respecting the gauging and withdrawal of spirits for tax-payment in railroad tank cars, in so far as the provisions thereof are applicable. (*; Sec. 2883, I. R. C.)

SEC. 183.442. *Application for certificate of tax-payment, Form 1594.*—The distiller will forward all copies of Form 179 and Form 1520, prepared in accord-

[1] The asterisk at the end of sections refers to section 3176 of the Internal Revenue Code.

ance with section 183.297, with Form 1594, "Application for Collector's Certificate of Tax-Payment of Distilled Spirits for Shipment in Tank Cars," in duplicate, appropriately modified to cover the transfer by pipe line, accompanied by proper remittance for the tax to the collector of internal revenue. (*; Sec. 2883, I. R. C.).

SEC. 183.443. *Certificate of tax-payment, Form 1595.*—The collector will note the tax-payment (including the serial number of the certificate, Form 1595) in the column on all copies of Form 179 and Form 1520, provided for entering the serial numbers of tax-paid stamps, execute a certificate of tax-payment on Form 179 and issue Form 1595, "Collector's Certificate of Tax-Payment of Distilled Spirits for Shipment in Tank Cars," which certificate shall be appropriately modified to cover the transfer of spirits by pipe line. The collector shall fill in all required data in the blank spaces on the certificate, except those provided in the lower left corner for the verification of the storekeeper-gauger, and shall date and sign the certificate in the manner required by section 183.299. The certificate is not negotiable and shall not be used for any spirits other than those described therein. The collector will enter on the original and the copy or copies of Form 1594 in the space provided, the serial number, date, and amount of the certificate issued. The collector will retain one copy each of Form 179 and Form 1520, and the original copy of Form 1594. He will mail or deliver the certificate, Form 1595, and the original and remaining copies of Form 179 and Form 1520 to the distiller or his designated agent, in accordance with the distiller's request in Form 1594. The collector will send one copy of the application, Form 1594, to the district supervisor. (*; Sec. 2883, I. R. C.).

SEC. 183.444. *Storekeeper-gauger's verification.*—The distiller shall deliver the certificate of tax-payment, Form 1595, and all copies of Form 179 and Form 1520 to the storekeeper-gauger at the distillery. The storekeeper-gauger will verify the contents of the weighing tank and date and sign the certificate, Form 1595, in the space provided therefor. The certificate must be attached to a board on the weighing tank by means of a tack in each corner, after which it will be canceled in the same manner as a tax-paid stamp attached to a package, and covered with a coating of transparent varnish, shellac, or lacquer to prevent any alteration thereof. (*; Sec. 2883, I. R. C.).

SEC. 183.445. *Release of spirits for transfer.*—When the certificate of tax-payment has been affixed to the weighing tank and canceled, the storekeeper-gauger will unlock the outlet valve and permit the distiller to transfer the spirits by pipe line to the rectifying plant named in the certificate. The spirits shall be transferred only under the immediate supervision of the storekeeper-gauger. After the spirits have been transferred, the storekeeper-gauger will forward one copy of Form 179 and Form 1520 and the canceled Form 1595 to the district supervisor, retain one copy of Form 179 and Form 1520, and deliver one copy of Form 179 and two copies of Form 1520 to the distiller, who will immediately deliver one copy of Form 1520 to the rectifier. (*; Sec. 2883, I. R. C.).

SEC. 183.446. *Rectifier's use of Form 1520.*—The report of gauge, Form 1520, delivered to the rectifier by the distiller, shall be attached to the storage tank in the rectifying plant. The rectifier shall enter the date and quantity of removals from the tank in the blank space on such Form 1520. The report of gauge shall be kept on the tank until such time as the quantity covered by such report has been withdrawn from the tank. The report shall then be filed by the rectifier, available for inspection by Government officers. The spirits transferred by pipe line may not be used by the rectifier prior to attachment of Form 1520 to the storage tank.*

SEC. 183.447. *Comparison of canceled certificate with application.*—The district supervisor will compare the canceled certificate with the copy of the application and the report of gauge as to the number of gallons of distilled spirits, the amount of tax, etc., and investigate any discrepancy. He will then send the copy of the application to the Commissioner and where there is a discrepancy, a report of his findings relative thereto.*

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved October 2, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 4, 1941, 10.31 a. m.)

REGULATIONS 10, SECTION 185.382: Inspection of bottled spirits.
SECTION 185.395: Losses in transit.

1941-40-10848
T. D. 5072

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 185.

Amending Regulations 10.[1]

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

To District Supervisors, Collectors of Internal Revenue, and Others Concerned:

1. Section 3 of the Act of July 22, 1941 (Public Law 187, Seventy-seventh Congress), reads in part as follows:

> That section 309(a) of the Tariff Act of 1930, as amended, be further amended by inserting after the words "internal revenue tax" a comma and the words "or from any internal revenue bonded warehouse, from any brewery, or from any winery premises or bonded premises for the storage of wine, free of internal revenue tax."
>
> That section 2907 of the Internal Revenue Code be repealed.

2. Pursuant to the foregoing provisions of law, and sections 2905, 3170, and 3176 of the Internal Revenue Code, Regulations 10 are hereby amended in these respects:

3. Sections 185.395(*b*) and 185.401 are revoked.

4. Sections 185.382 and 185.395(*a*) are amended to read as follows:

SEC. 185.382. *Inspection of bottled spirits.*—The inspector at the port of export will in every instance carefully inspect cases containing spirits for the purpose of ascertaining whether the cases bear evidence of tampering or have sustained losses in transit due to breakage. The inspector will report on Form 691 any cases as to which a discrepancy is found, giving the serial numbers of the cases, their original contents in proof gallons, and the nature of the discrepancy as to each case. When the inspector has completed his inspection and report as prescribed, the entire shipment may be laden without detention of the deficient cases, unless the circumstances indicate fraud, in which event such cases will be detained pending investigation by the district supervisor, to whom the detention should be immediately reported. (*; Sec. 2905, I. R. C.)

SEC. 185.395. *Losses in transit.*—(*a*) *Leakage or unavoidable accident.*—Under the provisions of sections 2889 and 2890, I. R. C., allowance may be made for distilled spirits lost by leakage or by any unavoidable accident, and without any fraud or negligence of the distiller, owner, exporter, carrier, or their agents or employees, occurring during transportation from a bonded warehouse to the port of export, except that where the spirits are covered by a valid claim of insurance in excess of the market value thereof, exclusive of the tax, the tax shall not be remitted to the extent of such excessive insurance.*

5. The following new article and sections are added:

ARTICLE XLVII.—SUPPLIES FOR CERTAIN VESSELS AND AIRCRAFT.

SEC. 185.499. *General.*—Distilled spirits in packages and in cases which have been bottled in bond for export may be withdrawn from internal revenue bonded warehouses free of tax for use as supplies on the following vessels and aircraft:

(1) Vessels of war, in ports of the United States, of any nation which may reciprocate such privilege toward the vessels of war of the United States in its ports;

[1] The asterisk at the end of sections refers to section 3176 of the Internal Revenue Code.

(2) Vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions;

(3) Aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions; and

(4) Aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, where such trade by foreign aircraft is permitted, and where the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. (Sec. 309(a) of the Tariff Act of 1930, as amended by the Act of July 22, 1941 (Public Law 187, Seventy-seventh Congress).)

SEC. 185.500. *Procedure.*—Application to remove distilled spirits in packages and in cases bottled in bond for export from internal revenue bonded warehouses for use as supplies on vessels or aircraft will be made on Form 206, properly modified. The procedure prescribed in Article XXXIII of these regulations, as it relates to the withdrawal of packages from internal revenue bonded warehouses for exportation, is hereby made applicable to the withdrawal of packages for use as supplies on vessels or aircraft. The procedure prescribed in sections 185.366, 185.367, and 185.368, relating to the transfer and withdrawal of spirits bottled in bond for export, is hereby made applicable to the transfer and withdrawal of bottled spirits free of tax for use as supplies on vessels or aircraft. (Sec. 309(a) of the Tariff Act of 1930, as amended by the Act of July 22, 1941 (Public Law 187, Seventy-seventh Congress).)

SEC. 185.501. *Bond.*—Distilled spirits which are to be withdrawn from internal revenue bonded warehouses free of tax for use as supplies on vessels or aircraft must be covered by a bond on Form 547 or Form 657. Such bonds will be executed in the same manner as bonds for distilled spirits withdrawn free of tax for exportation, but must be accompanied by consent of surety, Form 1533, specifically stipulating that the terms thereof will cover distilled spirits withdrawn for use as supplies on vessels or aircraft. Exporters who have on file bonds on Form 657, covering the exportation of distilled spirits, and who desire to withdraw spirits free of tax from an internal revenue bonded warehouse for use as supplies on vessels or aircraft, may file a consent of surety containing a similar stipulation, provided that such bonds are of sufficient penal sum. (Sec. 309(a) of the Tariff Act of 1930, as amended by the Act of July 22, 1941 (Public Law 187, Seventy-seventh Congress).)

SEC. 185.502. *Export entry.*—Before the spirits may be laden on the vessel or aircraft, the owner must file Form 691, properly modified, with the collector of customs. The provisions of sections 185.379, 185.380, 185.382, as amended herein, 185.383, and 185.384 will be observed in so far as applicable. (Sec. 309(a) of the Tariff Act of 1930, as amended by the Act of July 22, 1941 (Public Law 187, Seventy-seventh Congress).)

SEC. 185.503. *Evidence of use as supplies on vessels and aircraft.*—If the distilled spirits were laden on board a vessel or aircraft for use as ship's supplies or supplies for aircraft, there must be submitted to the district supervisor, within six months (or such additional extensions of time as may be granted by the district supervisor or the Commissioner), an affidavit of the master or other officer of the vessel or aircraft on which the spirits were laden, having knowledge of the facts, showing that the spirits have been used on board the vessel or aircraft, and that no portion thereof has been unladen in the United States or any of its possessions: *Provided*, That in the case of any shipment, the amount of tax thereon does not exceed $25, such affidavit will not be required. In the case of vessels of war, such affidavit will not be required. (Sec. 309(a) of the Tariff Act of 1930, as amended by the Act of July 22, 1941 (Public Law 187, Seventy-seventh Congress).)

SEC. 185.504. *Account with bond, Form 657.*—The district supervisor will keep an account with each bond, Form 657, similar to that kept for distilled spirits exported free of tax. In cases where exportations free of tax and withdrawals free of tax for use as supplies on vessels or aircraft are made under the same bond, only one account covering both transactions need be kept. Upon receipt of satisfactory evidence of the use of the spirits as supplies, the bond will be credited with the quantity so reported. (Sec. 309(a) of the Tariff Act of 1930, as amended by the Act of July 22, 1941 (Public Law 187, Seventy-seventh Congress).)

SEC. 185.505. *Records.*—When spirits are withdrawn for use as supplies on vessels or aircraft, the quantity so removed will be reported on Forms 1513 and 1514 or Forms 1516 and 1517, as the case may be, as "Withdrawn as supplies for vessels and aircraft." (Sec. 309(a) of the Tariff Act of 1930, as amended by the Act of July 22, 1941 (Public Law 187, Seventy-seventh Congress).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved October 2, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 3, 1941, 10.24 a. m.)

REGULATIONS 13, SECTION 175.3: Definitions. 1941-30-10796
SECTION 175.9: Labels. T. D. 5063

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 175.—TRAFFIC IN CONTAINERS OF DISTILLED SPIRITS.

Amending Regulations 13.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., July 22, 1941.

To District Supervisors and Others Concerned:

Pursuant to section 2871 of the Internal Revenue Code, Regulations 13 are amended in these respects:

(1) Section 175.3 is amended by substituting in paragraphs (*m*) and (*n*) thereof the words "in effect as of July 1, 1941," for the words "in effect as of July 1, 1938," wherever such words appear in said paragraphs.

(2) Paragraph (*c*) of section 175.9 is amended, effective 60 days after the date of filing hereof with the Division of the Federal Register, to read as follows:

(*c*) Name and address of the bottler, except that in the case of distilled spirits bottled for the actual distiller or rectifier thereof, the name and address of such distiller or rectifier may be stated in lieu of the name and address of the bottler. In addition, on labels of distilled spirits bottled for a retailer or other person who is not the actual distiller or rectifier of such distilled spirits, there may be stated the name and address of such retailer or other person, immediately preceded by the words "Bottled for" or "Distributed by" or other similar statement.

(3) Section 175.9 is further amended by adding thereto a new paragraph as follows:

(*g*) If brandy, aged for a period of less than two years, the age thereof.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register July 24, 1941, 11.44 a. m.)

1941–28–10779
T. D. 5060

Amending the Gauging Manual.

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

To District Supervisors and Others Concerned:

By virtue of and pursuant to the provisions of sections 2808 and 3176, Internal Revenue Code, subparagraphs (*a*), (*f*), and (*j*), paragraph 60, of the Gauging Manual, approved November 21, 1938, are hereby amended to read as follows:

PAR. 60. (*a*) The proof at which the spirits other than spirits derived from fruit were distilled shall be shown by the legend "Distilled 190 Proof or over," "Distilled between 160 and 190 Proof," or "Distilled not over 160 Proof," as the case may be, in letters and figures not less than one-half inch in height. The following symbols may be used as the equivalent of the specified markings "D 190 P" for "Distilled 190 Proof or over," "D 160–190 P" for "Distilled between 160 and 190 Proof," and "D 160 P" for "Distilled not over 160 Proof."

The proof at which spirits derived from fruit were distilled shall be shown by the legend "Distilled 190 Proof or over," "Distilled between 170 and 190 Proof," or "Distilled not over 170 Proof," as the case may be, in letters and figures not less than one-half inch in height. The following symbols may be used as the equivalent of the specified markings: "D 190 P" for "Distilled 190 Proof or over," "D 170–190 P" for "Distilled between 170 and 190 Proof," and "D 170 P" for "Distilled not over 170 Proof."

PAR. 60. (*f*) Spirits obtained solely from the fermented juice or mash of fruit distilled at less than 190 degrees of proof in such manner that the spirits possess the taste, aroma, and characteristics generally attributed to brandy shall be branded as follows:

(1) Brandy distilled on or after July 1, 1941, at more than 170° proof and less than 190° proof, shall be branded in the same manner as if distilled at a lower proof, except that the designation shall be qualified by the word "neutral," e. g., "neutral brandy," "neutral grape lees brandy," or "neutral grape pomace brandy," "neutral peach brandy," "neutral peach pomace brandy," etc.

(2) Brandy conforming to the standard for fruit brandy, as defined in Regulations 5, Relating to Labeling and Advertising of Distilled Spirits, as amended, derived exclusively from grapes, shall be branded "grape brandy" or "brandy"; and 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 distilled from more than one variety of fruit shall be branded "fruit brandy," qualified by a statement of composition (e. g., "fruit brandy — per cent grapes and — per cent blackberries").

(3) Brandy that conforms to the standard for fruit brandy except that it has been derived from sound dried fruit, or from the standard wine of such fruit, shall be branded "dried fruit brandy." Brandy derived from raisins, or from raisin wine, shall be branded "raisin brandy." Other brandies defined in this subparagraph shall be designated in the same manner as fruit brandy from the corresponding

variety or varieties of fruit except that the name of the fruit shall be qualified by the word "dried."

(4) Brandy distilled from the lees of standard grape, citrus, or other fruit wine, shall be branded "lees brandy," qualified by the name of the fruit from which such lees are derived (e. g., "grape lees brandy").

(5) Brandy distilled from the skin and pulp of sound, ripe grapes, citrus or other fruit, after the withdrawal of the juice or wine therefrom, shall be branded "pomace brandy," or "marc brandy," qualified by the name of the fruit from which derived (e. g., "grape pomace brandy"). Grape pomace brandy may be designated as "grappa" or "grappa brandy."

(6) "Substandard" brandy, as defined in Regulations No. 5, Relating to Labeling and Advertising of Distilled Spirits, as amended, shall bear as a part of its designation the word "substandard."

PAR. 60. (*j*) Whisky, rye whisky, wheat whisky, malt whisky, rye malt whisky, bourbon whisky, or corn whisky, as defined in subparagraphs (*c*) and (*d*) of this paragraph, produced on or after March 1, 1938, or brandy as defined in subparagraph (*f*) of this paragraph, produced on or after July 1, 1941, which in whole or in part is treated with wood chips through percolation or otherwise, during distillation or storage, shall be further marked, either by branding or stenciling, with the words "Treated with oak chips."

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved July 8, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register July 11, 1941, 9.10 a. m.)

ALCOHOL ADMINISTRATION ACT.

1941-43-10881
T. D. 5093

Standards of fill for wine under the Federal Alcohol Administration Act.

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

To District Supervisors and Others Concerned:

1. By virtue of and pursuant to section 5(e) of the Federal Alcohol Administration Act, as amended (U. S. C. Sup., Title 27), section 3170 of the Internal Revenue Code (53 Stat., part 1), and section 161 of the Revised Statutes (U. S. C., Title 5, section 22), subsections (*a*) and (*b*) of section 37 of Regulations No. 4, Relating to Labeling and Advertising of Wine (27 C. F. R., 4.37 (*a*) and (*b*)), are amended, effective two years after the date of filing hereof with the Division of the Federal Register, to read as follows:

SEC. 37. *Net contents.*—(*a*) The net contents of wine for which a standard of fill is prescribed in Article VII of these regulations shall be stated in the

same manner and form in which such standard of fill is set forth in said article.

(*b*) The net contents of wine for which no standard of fill is prescribed in Article VII of these regulations shall be stated as follows, except that net contents may be expressed in the metric system of measure for containers of ½ liter, 1 liter, and 1½ liter:

(1) If 1 pint, 1 quart, or 1 gallon, the net contents shall be so stated.

(2) If less than a pint, the net contents shall be stated in fractions of a pint, or in fluid ounces.

(3) If more than a pint, but less than a quart, the net contents shall be stated in fractions of a quart, or in pints and fluid ounces.

(4) If more than a quart, but less than a gallon, the net contents shall be stated in fractions of a gallon, or in quarts, pints, and fluid ounces.

(5) If more than a gallon, the net contents shall be stated in gallons and fractions thereof.

2. By virtue of and pursuant to section 5(e) of the Federal Alcohol Administration Act, as amended (U. S. C. Sup., Title 27), section 3170 of the Internal Revenue Code (53 Stat., part 1), and section 161 of the Revised Statutes (U. S. C., Title 5, section 22), Regulations No. 4, Relating to Labeling and Advertising of Wine (27 C. F. R., part 4) are amended, effective two years after the date of filing hereof with the Division of the Federal Register, by striking out Article VII thereof and substituting therefor the following:

ARTICLE VII. STANDARDS OF FILL FOR WINE.

SEC. 70. *Application of article.*—(*a*) Except as provided in subsection (*b*), no person engaged in business as a producer, rectifier, blender, importer, or wholesaler of wine, directly or indirectly or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody, any wine unless such wine is bottled or packed in the standard wine containers herein prescribed.

(*b*) This article shall not apply (i) to sake, or (ii) to wine packed in containers of 5 gallons or more, or (iii) to imported wine in the original containers in which entered in customs custody, or (iv) to wine domestically bottled or packed, either in or out of customs custody, prior to the effective date of this article, if the container, or the label on the container, bears a conspicuous statement of the net contents thereof, and if the actual capacity of the container is not substantially less than the apparent capacity upon visual examination under ordinary conditions of purchase or use.

SEC. 71. *Standard wine containers.*—(*a*) A standard wine container shall be made, formed, and filled to meet the following specifications:

(1) *Design.*—It shall be so made and formed as not to mislead the purchaser. Wine containers shall be held (irrespective of the correctness of the net contents specified on the label) to be so made and formed as to mislead the purchaser if the actual capacity is substantially less than the apparent capacity upon visual examination under ordinary conditions of purchase or use; and

(2) *Fill.*—It shall be so filled as to contain the quantity of wine specified in one of the standards of fill prescribed in section 72; and

(3) *Headspace.*—It shall be so made and filled as to have a headspace not in excess of 6 per cent of its total capacity after closure if the net contents of the container is ⅖ pint or more, and a headspace not in excess of 10 per cent of such capacity in the case of all other containers.

SEC. 72. *Standards of fill.*—(*a*) The standards of fill for wine shall be the following, subject to the tolerances hereinafter allowed:

4.9 gallons.	⅘ pint.
3 gallons.	⅖ pint
1 gallon.	4 ounces.
½ gallon.	3 ounces.
1 quart.	2 ounces.
⅘ quart.	

(*b*) The tolerances in fill shall be the same as are allowed by section 37 of these regulations in respect to statement of net contents upon labels.

ARTICLE VIII. GENERAL PROVISIONS.

SEC. 80. *Exports.*—These regulations shall not apply to wine exported in bond.

STEWART BERKSHIRE,
Deputy Commissioner of Internal Revenue.

Approved October 21, 1941.

NORMAN D. CANN,
Acting Commissioner of Internal Revenue.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 24, 1941, 11.40 a. m.)

INTERNAL REVENUE CODE.

REGULATIONS 4 (Alcohol), SECTION 4.32: Mandatory label information. 1941–47–10907 T. D. 5098

TITLE 27—INTOXICATING LIQUORS.—CHAPTER I, PART 4—LABELING AND ADVERTISING OF WINE.

Mandatory information on wine labels under the Federal Alcohol Administration Act.

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

To District Supervisors and Others Concerned:

SECTION 1. By virtue of and pursuant to section 5(e) of the Federal Alcohol Administration Act, as amended (U. S. C. Sup., Title 27), section 3170 of the Internal Revenue Code (53 Stat., Part 1), and section 161 of the Revised Statutes (U. S. C., Title 5, section 22), section 4.32, Part 4, Chapter 1, Title 27 of the Code of Federal Regulations (section 32 of Regulations No. 4, Relating to Labeling and Advertising of Wine), is amended to read as follows:

SEC. 4.32. *Mandatory label information.*—(*a*) Except as otherwise provided in subsection (*c*), there shall be stated on the brand label—

(1) Brand name, in accordance with section 4.33.

(2) Class, type, or other designation, in accordance with section 4.34.

(3) Name and address, in accordance with section 4.35.

(4) On blends consisting of foreign and domestic wines, if any reference to the presence of foreign wine is made, the exact percentage by volume of foreign wine.

(*b*) There shall be stated on the brand label, or on a separate label affixed in immediate proximity thereto on the same side of the container—

(5) Alcoholic content, in accordance with section 4.36.

(6) Net contents, in accordance with section 4.37.

(*c*) In the case of imported wine, the name and address of the importer need not be stated upon the brand label if it is stated upon any other label affixed to the container. In the case of domestic wine, bottled or packed for a retailer or other person under his private brand, the name and address of the bottler or packer need not be stated upon the brand label if the name and address of the person for whom bottled or packed appears upon the brand label, and the name and address of the bottler or packer is stated upon any other label affixed to the container.

SEC. 2. These regulations shall take effect upon the date of filing with the Division of the Federal Register.

STEWART BERKSHIRE,
Deputy Commissioner of Internal Revenue.

Approved November 13, 1941.

GUY T. HELVERING,
Commissioner of Internal Revenue.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 14, 1941, 2.59 p. m.)

REGULATIONS 7, ARTICLE XXVII: Exportation of wines free of tax. 1941–40–10849 T. D. 5073

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 178.

Withdrawal of wines, free of tax, for supplies of certain vessels and aircraft (amending Regulations No. 7).

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

To District Supervisors and Others Concerned:

Section 3 of the Act of July 22, 1941 (Public Law 187, Seventy-seventh Congress), provides in part as follows:

> That section 309(a) of the Tariff Act of 1930, as amended, be further amended by inserting after the words "internal revenue tax" a comma and the words "or from any internal revenue bonded warehouse, from any brewery, or from any winery premises or bonded premises for the storage of wine, free of internal revenue tax."

Pursuant to the above provisions of law and sections 3170 and 3176, Internal Revenue Code, paragraph 143, Regulations No. 7, as amended (Part 178, Title 26, Code of Federal Regulations) is hereby amended to read as follows:

PAR. 143. *Removals free of tax to American possessions and for supplies of vessels and aircraft.*—(*a*) *Shipments to American possessions.*—The provisions of these regulations, and the forms prescribed, in respect to the removal of wines, free of tax for exportation to foreign countries, apply to like removals and shipments to the Philippine Islands, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Panama Canal Zone. Hawaii and Alaska are Territories of the United States, and all shipments of domestic wines thereto must be tax-paid before withdrawal from bonded wineries or other bonded premises, unless transferred in bond to a bonded winery or storeroom located in one of those Territories.

(*b*) *Withdrawals for supplies of certain vessels and aircraft.*—The provisions of these regulations, in respect to the removal of wines, free of tax for exportation to foreign countries, are extended to withdrawals of wines for lading as supplies upon the following vessels or aircraft:

(1) Vessels of war, in ports of the United States, of any nation which may reciprocate such privilege toward the vessels of war of the United States in its ports;

(2) Vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions;

(3) Aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions; and

(4) Aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, where such trade by foreign aircraft is permitted, and where the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States.

Application to withdraw wine free of tax for supplies of vessels and aircraft must be made on Form 711, modified appropriately. Wine which is to be withdrawn from bonded wineries or bonded storerooms free of tax for use as supplies on vessels and aircraft must be covered by a bond, Form 186. Such bond will be executed in the same manner as bonds for wine withdrawn free of tax for exportation, but must be accompanied by consent of surety, Form 1533, specifically stipulating that the terms thereof will cover wine withdrawn for use as supplies on vessels and aircraft. Exporters who have on file bonds on Form 186, covering the exportation of wine, and who desire to withdraw wine free of tax from a bonded winery or bonded storeroom for use as supplies on vessels and aircraft, may file a consent of surety containing a similar stipulation, provided that such bonds are of a sufficient penal sum. Wine so withdrawn shall not be unladen at any port or place in the United States or in any of its possessions.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved October 2, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 3, 1941, 10.24 a. m.)

REGULATIONS 15, SECTIONS 190.33, 190.45, 190.170, 190.173, 190.174. 1941-41-10861 T. D. 5078

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 190.—RECTIFICATION OF SPIRITS AND WINES.[1]

Amending Regulations 15.

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

To District Supervisors, Collectors of Internal Revenue, and Others Concerned:

1. Pursuant to the provisions of sections 2801(e)(1) and 3176 of the Internal Revenue Code, Regulations 15 are amended as hereinafter set forth.

2. Section 190.45 is amended by adding a new paragraph thereto, as follows:

SECTION 190.45. (*f*) *Pipe line from contiguous distillery or distillery in immediate vicinity.*—The pipe line used for the conveyance of tax-paid spirits from the cistern room of a contiguous distillery or distillery in the immediate vicinity of the rectifying plant, as provided in Regulations 4, as amended, and the pipe line used for the conveyance of tax-paid alcohol from a contiguous bonded warehouse or bonded warehouse in the immediate vicinity of the rectifying plant, as provided in Regulations 3, as amended, shall be of a fixed and permanent character, constructed of metal and so arranged as to be exposed to view throughout its entire length, and all connections, valves, flanges, unions, etc., shall be brazed, welded, or otherwise secured. The pipe line shall be connected directly to the storage tank in the receiving room of the rectifying plant, and must be equipped with a valve, at or near the point of entrance to the storage tank, capable of being locked with a Government

[1] The asterisk at the end of sections refers to sections 2801(e)(1) and 3176 of the Internal Revenue Code.

lock. When the storage tank is mounted on scales the pipe line may be connected therewith by means of short, detachable hose connections if the end of the pipe line is equipped with a valve which may be locked with a Government lock. Where spirits are to be conveyed to two or more storage tanks in the rectifying plant, the pipe line may be connected with the storage tanks by manifold connections so arranged as to control the flow of spirits into each tank. There shall be painted on each pipe line extending from the manifold to the storage tanks a number corresponding with the serial number of the storage tank with which the pipe line is connected, unless the arrangement of the pipe line is such that the identity of the tank with which it is connected is apparent. (*; Sec. 2829, I. R. C.)

8. Sections 190.33, 190.170, 190.173, and 190.174 are amended to read as follows:

SEC. 190.33. *Storage tanks.*—If spirits are received in tank cars, or by pipe line from the cistern room of a contiguous distillery or distillery in the immediate vicinity of the rectifying plant, or by pipe line from a contiguous bonded warehouse or bonded warehouse in the immediate vicinity of the rectifying plant, suitable storage tanks must be provided in the receiving room within which to store such spirits, except that such storage tanks will not be required in the case of spirits received in tank cars which are transferred directly to processing and bottling tanks in accordance with section 190.170(*a*). Each storage tank shall be constructed of metal and be of uniform dimensions from top to bottom. Each such tank shall be equipped with a suitable measuring device, or mounted on scales, whereby the actual contents will be correctly indicated. There shall be painted on each tank the words, "Storage Tank," followed by its serial number and capacity in wine gallons. A suitable board shall be provided on each storage tank for the attachment of Forms 1520 and 1440, as hereinafter provided. Manheads, inlets, and outlets of the tanks must be provided with facilities for locking with Government locks. Stopcocks must be provided and so arranged as to control completely the flow of spirits, both into and out of the tank. The construction of the valves must be such that they can be secured with Government locks. The pipe connections containing such stopcocks or valves must be brazed, welded, or otherwise secured, to the tanks in such a manner that they can not be detached or altered without showing evidence of tampering. Storage tanks must not be permanently connected with pipe lines used for the conveyance of air, distilled water, or other substances than spirits. (*; Sec. 2829, I. R. C.)

SEC. 190.170. (*a*) *Receipt in tank cars.*—Where distilled spirits are received in tank cars or wines are received in tank cars, tanks, or tank trucks, they may be transferred directly from such containers into processing or bottling tanks if permission is first obtained from the district supervisor and the spirits or wines are first inspected by a Government officer. When liquors are so transferred the rectifier must submit Form 122 or Form 230 to the Government officer assigned to the plant, or to the district supervisor or designated officer for approval as provided in Articles XXVI and XXXIV, immediately the tank cars, tanks, or tank trucks are emptied. Distilled spirits may be received in tank cars only if the premises of the rectifier are equipped with suitable railroad siding facilities. Before permitting spirits to be transferred from a tank car into a storage tank or a processing or bottling tank, the Government officer will see that the railroad car seals are intact on the tank car and that the car bears the collector's certificate of tax-payment, Form 1595. When spirits are transferred into or out of storage tanks the Government officer shall open and close the Government locks, but it shall be the duty of the proprietor to manipulate the stopcocks or valves controlling the flow of the spirits. The officer will keep a memorandum record of the quantities of spirits entered into and withdrawn from each storage tank by dates, in order that he may determine that only lawful, tax-paid spirits are withdrawn from such tanks for rectification.

(*b*) *Receipt by pipe line.*—Where spirits are received by pipe line from the cistern room of a contiguous distillery or distillery in the immediate vicinity of the rectifying plant, as provided by Regulations 4, as amended, or alcohol is received by pipe line from a contiguous bonded warehouse or bonded warehouse in the immediate vicinity of the rectifying plant, as provided in Regulations 3, as amended, they shall be conveyed directly into the storage tank or tanks in

the receiving room. When spirits are transferred into or out of such tanks, the Government officer shall follow the procedure specified in the foregoing paragraph, in so far as it is applicable.*

SEC. 190.173. *Disposition of gauge report.*—(*a*) *Receipt in tank cars.*—When distilled spirits received in a tank car are run into a storage tank, the report of gauge, Form 1520 in the case of spirits other than alcohol, and Form 1440 in the case of alcohol, sent to the rectifier by the vendor, shall be attached to such storage tank. The rectifier shall enter the date and quantity of removals from the storage tank in a blank space on the report of gauge. The report of gauge shall be kept on the tank until such time as the quantity covered by such report has been withdrawn from the tank. The report shall then be filed by the rectifier, available for inspection by Government officers. If the spirits are transferred directly from the tank car into a processing or bottling tank, the rectifier shall make a notation to that effect on the report of gauge and file it. The requirements of this section shall not preclude use of the spirits prior to receipt of Form 1520 or 1440.

(*b*) *Receipt by pipe line.*—When spirits received by pipe line are run into the storage tank, the report of gauge, Form 1520 or Form 1440, delivered to the rectifier by the vendor shall be attached to the storage tank. The rectifier shall enter the date and quantity of removals from the tank in the blank space on such Form 1520 or Form 1440. The report of gauge shall be kept on the tank until such time as the quantity covered by such report has been withdrawn from the tank. The report shall then be filed by the rectifier, available for inspection by Government officers. The spirits transferred by pipe line may not be used by the rectifier prior to attachment of Form 1520 or Form 1440 to the storage tank.*

SEC. 190.174. *Mixing of different spirits prohibited.*—Spirits received in tank cars or by pipe line which were produced from different materials, or by two or more distillers or from different combinations of the same materials at less than 190 degrees of proof, or which differ in kind according to the standards of identity established under the Federal Alcohol Administration Act, or which differ more than 10 degrees in proof, or which are otherwise heterogeneous, may not be mingled in a storage tank, nor may spirits received in tank cars be mingled in a storage tank with spirits received by pipe line. (*; Sec. 3254(g), I. R. C.).

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved October 3, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 4, 1941, 10.32 a. m.)

REGULATIONS 28, SECTIONS 176.3, 176.5, 176.12, 176.16–176.24, 176.27, 176.34, 176.35, 176.39–176.41, 176.49, 176.50. 176.55, 176.57, 176.69, 165.64. 1941–41–10862 T. D. 5081

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 176.—DRAWBACK ON DISTILLED SPIRITS AND WINES.[1]

Amending Regulations 28.

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

To District Supervisors, Collectors of Internal Revenue, and Others Concerned:

1. The Act approved July 22, 1941 (Public Law 187, Seventy-seventh Congress), provides, in part, as follows:

[1] The asterisk at end of sections refers to section 3179(b), Internal Revenue Code, and section 309 (a), (b), (c), (d) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1309 (a), (b), (c), (d)).

That subsection (c) of section 3341, Internal Revenue Code, be amended to read as follows:

"(c) DRAW-BACK OF TAX PAID IN THE UNITED STATES.—All provisions of law for the allowance of draw-back of internal revenue tax on articles exported from the United States are, so far as applicable, extended to like articles upon which an internal revenue tax has been paid when shipped from the United States to the Philippine Islands."

SEC. 2. That section 3351, Internal Revenue Code, be amended by adding at the end thereof a new subsection to read as follows:

"(c) DRAW-BACK OF TAX PAID IN THE UNITED STATES.—All provisions of law for the allowance of draw-back of internal revenue tax on articles exported from the United States are, so far as applicable, extended to like articles upon which an internal revenue tax has been paid when shipped from the United States to the Virgin Islands."

SEC. 3. That subsection (c) of section 3361, Internal Revenue Code, be amended to read as follows:

"(c) DRAW-BACK OF TAX PAID IN THE UNITED STATES.—All provisions of law for the allowance of draw-back of internal revenue tax on articles exported from the United States are, so far as applicable, extended to like articles upon which an internal revenue tax has been paid when shipped from the United States to Puerto Rico, Guam, or American Samoa."

* * * * * * *

2. Pursuant to the foregoing provisions of law and sections 2887, as amended, 3176, and 3179, Internal Revenue Code, and sections 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)), Regulations 28 are amended as hereinafter set forth:

3. Sections 176.16, 176.17, 176.23, and 176.24 are amended by adding new paragraphs thereto, as follows:

SEC. 176.16. (*e*) *Tax-paid certificate.*—Upon receipt of the Form 230, the district supervisor will prepare Form 1600, "Certificate of District Supervisor of Alcohol Tax Unit of Tax-Paid Spirits or Wines Bottled Especially for Export," using as a basis therefor the dumping and bottling record Form 230. He will then forward the Form 1600 to the Commissioner with a copy of the Form 230. The Forms 1600 and 230 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.

(*f*) *Transfer and storage pending exportation.*—Spirits or wines bottled especially for export under this section may be transferred from the export storage room of the bottler, pursuant to Form 1656, "Application for Transfer of Distilled Spirits or Wines Bottled Especially for Export," 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 rectifier, under the provisions of Regulations 11 or 15, whether or not the proprietor of the tax-paid bottling house or rectifier intends to bottle distilled spirits or wines especially for export. Form 1656 will be executed, in quadruplicate (or quintuplicate, if the spirits are to be transferred to another supervisory district), by the bottler 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. Upon approval thereof, the spirits or wines may be released by the Government officer for transfer. The officer will retain one copy for his files, furnish one copy to the bottler, forward one copy to the district supervisor, and forward one copy to the consignee. If the spirits or wines are transferred to another district, he will forward one copy to the district supervisor of such district. The 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 by sections 176.35 to 176.38, inclusive.*

SEC. 176.17. (*e*) *Tax-paid certificate.*—Upon receipt of the Form 230, the district supervisor will prepare and forward to the Commissioner Form 1600, and a copy of the Form 230, in accordance with the procedure prescribed by section 176.16(*e*).

SEC. 176.17. (*f*) *Transfer and storage pending exportation.*—Wines bottled especially for export under this section may be transferred pursuant to Form 1656 from the export storage room of the bottler, 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 set forth in section 176.16(*f*). Such export storage room at the port of exportation may be established by a winemaker or the proprietor of a bonded storeroom under section 176.15 of these regulations, or by the proprietor of a tax-paid bottling house, or rectifier, under the provisions of Regulations 11 or 15, whether or not the winemaker or the proprietor of a bonded storeroom intends to bottle wines especially for export, or the proprietor of the tax-paid bottling house or rectifier intends to bottle spirits or wines especially for export.*

SEC. 176.23. (*e*) *Action by district supervisor.*—Upon receipt of Form 230 from the bottler in such cases, the district supervisor will forward a copy of such form to the Commissioner.

(*f*) *Transfer and storage pending exportation.*—Spirits and wines bottled especially for export under this section may be transferred pursuant to Form 1656 from the export storage room of the bottler 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 by 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 rectifier, under the provisions of Regulations 11 or 15, whether or not the proprietor of the tax-paid bottling house or rectifier intends to bottle distilled spirits or wines especially for export.*

SEC. 176.24. (*a*) *Claim required on Form 1582.*—Where distilled spirits and wines are mixed in the process of rectification, for bottling especially for export with benefit of drawback, claim for drawback of the distilled spirits tax, the rectification tax, and the tax under section 5030(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.

4. Sections 176.3(*e*), 176.5, 176.12, 176.18, 176.19(*a*), 176.20, 176.21, 176.22, 176.23(*a*), 176.27(*a*)(1), 176.34, 176.35(*a*), 176.39, 176.40, 176.41, 176.49, 176.50, 176.55, 176.57, and 176.69 are amended to read as follows:

SEC. 176.3. (*e*) *Definitions.*—"Distilled spirits" or "spirits" shall mean all the substances produced by the distillation of fermented grain, molasses, fruit or other material commonly known as spirits, whisky, rum, gin, brandy, alcohol, etc., and shall include rectified spirits, cordials, liqueurs, and similar compounds and other rectified products prepared with distilled spirits and wines, except where otherwise indicated.

SEC. 176.5. *Exportation.*—An exportation is an act defined by section 176.3(*g*). Shipments of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in part with domestic alcohol to the Philippine Islands, Puerto Rico, the Virgin Islands, American Samoa, Guam, and Panama Canal Zone shall be treated as exportations. There is no authority of law for the allowance of drawback on alcohol contained in such products which are shipped to Alaska, Hawaii, Kingman's Reef, the Midway Islands, or Wake Island. (Secs. 3341(c), as amended, 3351(c), and 3361(c), as amended, I. R. C., and Sec. 313 of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1313(d), (i)).)

SEC. 176.12. *Exportation.*—An exportation is an act defined by section 176.3(*g*). The provisions of this section, relating to the 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 bottling, removal, and shipment to American Samoa, Guam, Puerto Rico, the Philippine Islands, the Virgin Islands, and the Panama Canal Zone. There is no authority of law for the 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. 3341(c), as amended, 3351(c), and 3361(c), as amended, I. R. C.)

SEC. 176.18. *Application, Form 122.*—Rectifiers shall prepare a separate application on Form 122, "Rectifier's Description of Spirits, Wines, or Other Liquors to be Dumped for Rectification, and Return of Gauge," in triplicate, for each lot of distilled spirits or wines to be rectified before being bottled for exportation with benefit of drawback. 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 pursuant to approval of Form 237 especially for export with benefit of drawback." *

SEC. 176.19. *Approval of Form 122.—(a) By storekeeper-gauger.*—Except as provided by the following paragraph, all copies of Form 122 will be submitted for approval to the storekeeper-gauger assigned to supervise rectifying operations. The storekeeper-gauger will examine the packages described in the application and the scalped portions of 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 especially for export are as described, and have been lawfully tax-paid, and the forms are properly prepared, he will execute his certificate and authorize the rectifier to dump the packages described in the application and return all copies of the form to the proprietor. 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. 176.20. *Mixing of distilled spirits or wines tax-paid at different rates.*—When a rectifier manufactures distilled spirits to be bottled especially for export with benefit of drawback by a process of rectification involving the mixing of distilled spirits or distilled spirits and wines upon which basic taxes were paid at different rates (i. e., alcohol and wine, alcohol, brandy, and wine, or brandy and rum, 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. 176.21. *Application, Form 237, etc.—(a) Procedure.*—The rectifier shall make application on Form 237, "Notice of Completion of Rectification and Return of Rectified Spirits, Wines or Other Liquors Gauged, Marked and Stamped," in quadruplicate (or in quintuplicate, if the spirits or wines are to be transferred by pipe line to a contiguous tax-paid bottling house), to the storekeeper-gauger, or to an officer designated by the district supervisor, if no storekeeper-gauger is available, for permission to bottle the spirits or wines. 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 No. _____, dated _____, 19____, are to be bottled especially for export with benefit of drawback."

When the process of manufacturing spirits or wines, in accordance with section 176.20, has been completed, the rectifier shall note on Form 237 the quantity of each kind of distilled spirits or wines, or both (calculated on a proof gallon basis as to spirits and a wine gallon basis as to wines), used in manufacturing the spirits or wines. The storekeeper-gauger or designated officer will, after approval, return all copies of Form 237 to the rectifier, who shall, if the spirits are subject to the rectification tax, forward all copies of the form to the collector of internal revenue, with remittance of the tax, in accordance with the procedure prescribed by Regulations 15. Upon receipt of the copies of Form 237 from the collector, or, in the case of spirits or wines exempted from the rectification tax, upon receipt of the copies of such form from the storekeeper-gauger or designated officer, the rectifier shall proceed to bottle the spirits or wines, or, if the spirits or wines are to be packaged, to fill, mark, and stamp the packages. Upon completion of the bottling and casing or packaging of the spirits or wines, and the execution of Form 237, the rectifier shall retain one copy of the form and forward the original and one copy to the district supervisor. The storekeeper-gauger or designated officer will, upon completion of the bottling or packaging operations,

supervise the deposit of the spirits or wines in the export storage room, except as provided by section 176.22.

(*b*) *Tax-paid certificate.*—Upon receipt of the Form 122, as provided in section 176.19 and the Form 237, as herein provided, the district supervisor will prepare Form 1600, using as a basis therefor the dumping and bottling records Forms 122 and 237. He will then forward Form 1600 to the Commissioner with a copy each of Forms 122 and 237, and Form 1583, if any. Forms 1583, 1600, 122, and 237 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 especially for export under this section may be transferred from the export storage room of the bottler, 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 by 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 rectifier, under the provisions of Regulations 11 or 15, whether or not the proprietor of the tax-paid bottling house or rectifier intends to bottle distilled spirits or wines especially for export.*

SEC. 176.22 *Rectification by person other than the bottler.*—Where distilled spirits or wines intended to be bottled especially for export with benefit of drawback are to be rectified by a person other than the bottler, the rectifier shall insert in each copy of Form 122, after the description of the packages to be dumped, a notice of intention as follows:

"The above described spirits (or wines) will, after rectification, be packaged and shipped to_____,
(Name and address of bottler.)
for bottling especially for export."

When the spirits have been rectified and packaged, the rectifier shall insert in each copy of Form 237, before forwarding the same to the district supervisor, a notice of intention as follows:

"The above described spirits (or wines), rectified pursuant to Form 122, Serial No. _____, dated _____, 19____, are to be shipped to_____
(Name and address of bottler.)
for bottling especially for export."

After the packages have been properly stamped, the rectifier shall stencil or mark thereon, in addition to the other required marks or brands, the words "for bottling especially for export." Such packages shall then be deposited in the export storage room pending release by the Government officer for shipment to the bottling plant, unless they are to be shipped immediately. The rectifier and the storekeeper-gauger, or designated officer, will proceed otherwise in accordance with the provisions of sections 176.18 to 176.21, inclusive, and in addition the rectifier will furnish the bottler with a copy of the Form 237. Upon receipt of the Forms 122 and 237, the district supervisor will prepare and forward to the Commissioner Form 1600 and a copy each of Forms 122, 237, and Form 1583, if any, in accordance with the procedure indicated by section 176.21(*b*). If the spirits or wines so rectified are to be transferred by pipe line to a contiguous tax-paid bottling house, the rectifier shall proceed in accordance with the provisions of this section, except that he shall insert in each copy of Form 237, before forwarding one copy to the bottler and two copies to the district supervisor, in lieu of the notice of intention above required, a notice of intention as follows:

"The above described spirits (or wines), rectified pursuant to Form 122, Serial No. _____, dated _____, 19____, are to be transferred by pipe line to_____
(Name and address of bottler.)
for bottling especially for export." *

SEC. 176.23. *Bottling by person other than rectifier.*—(*a*) *Application, Form 230.*—Where packages of distilled spirits or wines rectified by a person other than the bottler, especially for export with benefit of drawback, are received for bottling, the bottler shall, unless such spirits or wines are to be bottled immediately, place them in the export storage room pending removal for bottling. Such spirits or wines will be reported on Form 45 or 52-D, as the

case may be, as having been deposited in the export storage room prior to bottling. The bottler (rectifier or proprietor of a tax-paid bottling house) shall prepare a separate application on Form 230, in triplicate, for each lot of such spirits or wines to be dumped and bottled. The bottler shall insert in each copy of Form 230, after the description of the packages, or of spirits or wines transferred by pipe line, a notice of intention as follows:

"The above described spirits (or wines) are to be bottled especially for export with benefit of drawback."

Spirits or wines which have been stored in the export storage room in packages may be released by the storekeeper-gauger for bottling, pursuant to request for that purpose by the bottler.

SEC. 176.27. *Fiberboard cases.*—(*a*) (*1*).—*Outer container.*—In addition to meeting such requirements, the outer container of the cases shall be double-faced, and shall not be less than 0.0808 of an inch thick for solid fiberboard, and three-sixteenths of an inch thick for single and double wall corrugated fiberboard, and shall have a bursting strength of not less than 200 pounds per square inch, Mullen or Cady test, and be faced on the outside with tough smooth material. The outer ply shall be water-proofed, as required by the above-mentioned rules, and the inner plies may be water-proofed where desired. The outer flaps of both the top and bottom shall meet at the center of the case.

SEC. 176.34. *Record of spirits and wines bottled especially for export.*—(*a*) *By rectifiers and proprietors of tax-paid bottling houses.*—The receipt, rectification, if any, bottling, and disposition of distilled spirits and wines bottled 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, and disposition of distilled spirits or wines bottled 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, and disposition of wines bottled 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 indicated by the headings of the columns and lines, and the instructions printed on the form, will be entered thereon. Form 52–D will be kept, and transcript thereof will be forwarded to the district supervisor on or before the 10th day of the succeeding month.*

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 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, "Claim for Internal Revenue Drawback on Bottled Distilled Spirits Exported, and Entry for Exportation Thereof," in quadruplicate, for distilled spirits, and Form 1582–A, "Claim for Internal Revenue Drawback on Bottled Wines Exported, and Entry for Exportation Thereof," 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 bottled spirits or wines are stored at the time of exportation. All of 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. 176.39. *Certificate, Form 1583.*—Where spirits or wines manufactured (rectified) in the United States from imported spirits or wines are bottled especially for export with benefit of drawback, the collector of customs at the port where the entry or withdrawal for consumption was made will, 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 will 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 will be retained by the collector of customs. Such certificates shall be serially numbered, beginning with number 1 for each customs district.*

SEC. 176.40. *Application for certificate.*—The rectifier must set forth in his application for the issuance of the certificate sufficient information to enable the

collector of customs to identify the importation, such as the port of entry, the entry number, name of importing vessel or other carrier, date of importation, name of importer, marks and numbers of packages, and a description of the spirits or wines.*

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 especially for export prior to the receipt of the certificate, Form 1583, from the collector of customs, showing that internal revenue tax has been collected on such imported spirits or wines.*

SEC. 176.49. *Direct delivery for customs inspection.*—(*a*) If the export storage room where the bottled 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 in order to allow opportunity for customs inspection. The exporter must file one copy of the export bill of lading with the collector of customs and one copy with the district supervisor. The bill of lading must show the exporter as the shipper, the serial numbers of the cases, and the quantity shipped in wine gallons.

SEC. 176.50. *Shipment to port of export.*—In the event the export storage room where the spirits or wines are stored is located elsewhere than at the port of exportation, the exporter shall deliver the shipment either directly for customs inspection and supervision of lading, as in the case where spirits or wines are stored at the port of exportation, or to a common carrier for transportation to the port of exportation. If the spirits or wines are delivered to a common carrier for transportation, the exporter shall procure two copies of the bill of lading covering such transportation. In case of exportation through a border port to contiguous foreign territory, the bill of lading shall cover transportation to destination and must show the routing, particularly the carrier which will deliver the shipment for customs inspection at the border. The bill of lading shall also show that the shipment was sent in care of the collector or deputy collector of customs at the border port. The exporter shall immediately forward one copy of the bill of lading direct to the collector of customs at the port of export, and transmit the other copy to the district supervisor of the district from which the spirits or wines were released for exportation. The district supervisor will attach his copy of the bill of lading to the copy of the claim and entry, Form 1582 or Form 1582–A, returned by the Government officer at the export storage room.*

SEC. 176.55. *District supervisor's approval.*—The district supervisor will examine the two copies of drawback claim, Form 1582 or 1582–A, received from the collector of customs, and compare them with the copy received from the storekeeper-gauger or designated officer who supervised the release of the liquor from the export storage room. If the district supervisor is satisfied that the claimant has complied in every respect with the law and regulations, and the claim is valid, and if a good and sufficient bond has been furnished, he will execute his certificate of approval on each copy of the claim and forward the original to the Commissioner, except as provided by section 176.45.*

SEC. 176.57. *Action on claim.*—The Commissioner will, upon receipt of the claim from the district supervisor, examine the claim and the records of his office, Forms 230, 122, 237, 1583, and 1600, 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 tax-paid. If the Commissioner finds that such spirits or wines have been tax-paid, he will execute a certificate to that effect on Form 646–A, "Certificate of Commissioner of Internal Revenue of Tax-Paid Spirits," or Form 646–B, "Certificate of Commissioner of Internal Revenue of Tax-paid Wines." If the claim is allowed in whole, or in part, the Commissioner will forward it, together with his certificate, Form 646–A or Form 646–B, scheduled on Form 1550–A, "Schedule of Claims for Allowance of Drawback on Distilled Spirits or Wines Bottled Especially for Export and Exported," to the Comptroller General of the United States for certification of the amount allowed. If the claim is disallowed, the Commissioner will so notify the claimant and state the reasons therefor.*

SEC. 176.69. *Exportation.*—An exportation is an act defined by section 176.3(*g*), except that shipments of tax-paid distilled spirits in distillers' original packages to American Samoa, Guam, Puerto Rico, the Philippine Islands, the Virgin Islands, and the Panama Canal Zone shall be treated as exportations. There is no authority of law for the shipment of distilled spirits in distillers' original packages, with benefit of drawback, to Alaska, Hawaii, Kingman's Reef, the Midway Islands,

or Wake Island. (Secs. 2887, as amended, 3176, 3341(c), as amended, 3351(c), and 3361(c), as amended, I. R. C.)

5. Page 36 of Regulations 28 is modified by striking out "SEC. 165 64" and substituting therefor "SEC. 176.64."

6. These regulations shall take effect on and after the sixtieth day following the date of approval, except sections 176.5, 176.12, and 176.69, which shall take effect immediately.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved October 3, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 6, 1941, 3.29 p. m.)

REGULATIONS 5 (1940), ARTICLES IX, XVI, XXIV, and XXXII. 1941-48-10916
T. D. 5100

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 4.—PRODUCTION OF BRANDY.

Amending Regulations 5 (1940).

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

To District Supervisors and Others Concerned:

By virtue of and pursuant to sections 2825 and 3176 of the Internal Revenue Code, Regulations 5, "Production of Brandy" (1940), is hereby amended by inserting a new section in Articles IX and XXXII, designated section 184.47a and section 184.399a, respectively, and amending sections 184.138(*a*)(4), 184.383, 184.398, 184.400, 184.403, and 184.405, to read as follows:

ARTICLE IX.—EQUIPMENT.

* * * * * * *

SEC. 184.44a. *Unfinished spirits tanks.*—Whenever a fruit distillery established or operated under these regulations is to be operated alternately as such and as an industrial alcohol plant or as a registered distillery in accordance with Article XVI, and the fruit distiller desires to retain unfinished spirits where the change in type of plant is to be temporary only, he must provide for the purpose one or more tanks, each of which must be constructed and equipped in accordance with the provisions of section 184.42 and have painted thereon the words "Unfinished Spirits Tank," followed by its serial number and capacity in wine gallons. The tanks must be so arranged that the unfinished spirits to be collected therein will pass from the still into the tank through continuous and securely closed, fixed pipes and vessels. The pipe lines connecting the tanks with stills or other apparatus must be constructed in accordance with section 184.52. Valves must be provided in the pipe lines and so arranged as to control completely the flow of unfinished spirits both into and out of each tank. The construction of the valves must be such that they can be secured with Government locks. (Secs. 2823, 2829, 3176, I. R. C.)

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ARTICLE XVI.—REQUIREMENTS GOVERNING ALTERNATE OPERATIONS AS INDUSTRIAL ALCOHOL PLANT OR REGISTERED DISTILLERY.

* * * * * * *

SEC. 184.138. (*a*)

* * * * * * *

(4) *Materials, heads and tails, and unfinished spirits.*—If distilling materials are transferred to the successor or if heads and tails or unfinished spirits are

to be retained on the premises pending the resumption of operations as a fruit distillery, comply with the requirements of Article XXXII.

* * * * * * *

ARTICLE XXIV.—SUSPENSION AND RESUMPTION OF OPERATIONS.

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SEC. 184.383. *Date of suspension.*—The distiller will fix in the notice the time when all distilling material on the distillery premises will be distilled and all spirits in the distillery run into the receiving tanks, except unfinished spirits or distillates containing one-half of 1 per cent or more of aldehydes or 1 per cent or more of fusel oil which are to be retained on the premises during a temporary change in the type of distillery, as provided in Article XXXII. Where no storekeeper-gauger is assigned to the distillery the distiller will forward the notice to the district supervisor in sufficient time to reach him at least 48 hours before the date the distiller intends to suspend operations, in order that the district supervisor may detail an officer to lock the furnace door of each still or the control valve in the pipe line conveying steam or fuel to each still, as the case may be, at the time operations are suspended. (Secs. 2825, 2850, 3176, I. R. C.)

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ARTICLE XXXII.—ALTERNATE OPERATION AS INDUSTRIAL ALCOHOL PLANT OR REGISTERED DISTILLERY.

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SEC. 184.398. *Completion of operation required.*—When a fruit distillery is to be operated as an industrial alcohol plant or as a registered distillery, the business of producing brandy, except as hereinafter provided, must be completely finished by the person or persons first carrying on the business, and the distillery duly suspended before it can be operated as an industrial alcohol plant or a registered distillery. Except as provided in sections 184.399 and 184.399a, all unfinished spirits, including singlings and low wines, and distillates containing one-half of 1 per cent or more of aldehydes or 1 per cent or more of fusel oil collected in accordance with the provisions of Article XXI, must be redistilled and run into receiving tanks, drawn off, gauged, and removed by the outgoing distiller. Except as provided in sections 184.399 and 184.399a, all such unfinished spirits or distillates must be disposed of before the distillery can be operated as an industrial alcohol plant or registered distillery. (Secs. 2825, 2850, 3176, I. R. C.)

SEC. 184.399a. *Retention of unfinished spirits.*—Where the change in type of plant is to be temporary only, the outgoing distiller may retain unfinished spirits under Government lock in unfinished spirits tanks, provided in accordance with section 184.44a in the fruit distillery, until the plant is again operated by him as a fruit distillery under these regulations: *Provided*, That such distiller furnishes a duly executed consent of surety, Form 1533, in triplicate, continuing liability on the fruit distiller's bond, Form 30½, for the tax on such unfinished spirits retained on the premises, notwithstanding the change in the type of plant. (Secs. 2825, 3176. I. R. C.)

SEC. 184.400. *Transfer of materials, etc.*—The outgoing distiller may transfer to his successor materials on hand, including those in process, at the time the change in type of plant takes place, but no spirits may be so transferred, except the residue of spirits in the stills which it is not practicable to completely boil out: *Provided*, That materials not usable and residue of spirits in stills not producible under the law at the succeeding type of plant may not be transferred to the successor. Where such materials and residue of spirits are not transferable, all materials in process must be distilled, all basic materials must be removed from the premises, and the stills and other vessels must be completely cleared of spirits, and such spirits, if other than unfinished spirits or distillates intended for retention in accordance with the provisions of sections 184.399 and 184.399a, removed from the distillery in accordance with law before the change in type of plant becomes effective. When it is again desired to resume operations as a distiller under these regulations, the business of producing alcohol or whisky, rum, etc., as the case may be, must be similarly finished and the industrial alcohol plant or registered distillery suspended in accordance with governing regulations. (Secs. 2825, 3176, I. R. C.)

SEC. 184.403. *Completion of records.*—The outgoing distiller will complete his record, Form 15, as to the removal of basic materials from the premises, or the transfer of basic materials and materials in process to the successor, as the case may be, and as to production and removal from the distillery of all brandy produced by him. If distillates collected in accordance with Article XXI are retained on the premises under lock in tanks or in the brandy deposit room, as provided in section 184.399, or unfinished spirits are retained on the premises in locked tanks, as provided in section 184.399a, a notation will be made on Form 15 showing that such unfinished spirits or distillates are temporarily retained on the premises pending resumption of operations as a fruit distillery. The distiller will continue to file monthly reports on Form 15 during the period such unfinished spirits or distillates are retained on the distillery premises. Where the plant is operated as a fruit distillery in two or more periods during the same month by the same proprietor, the operations of such proprietor will be recorded on the same Form 15, but appropriate notations will be made on the separating lines to show the dates the distillery was operated as a registered distillery or an industrial alcohol plant and the names under which it was so operated. (Secs. 2825, 2841(a), 3176, I. R. C.)

SEC. 184.405. *Disposition of spirits.*—Where a change in the type of plant takes place, the storekeeper-gauger assigned or detailed to the distillery will see that all distillates collected in accordance with Article XXI are disposed of, and that all other unfinished spirits, except the residue of spirits in stills where the same is to be transferred to the successor as provided in section 184.400, are distilled and run into receiving tanks, drawn off, gauged, and removed by the outgoing distiller in the name under which they were produced, unless retained in the distillery in accordance with sections 184.399 and 184.399a, respectively, before the plant is operated as another type of distillery. Upon disposition or retention in the distillery of such unfinished spirits or distillates, and transfer of all other spirits to the receiving tanks, the distillery may be operated as another type of plant, but all spirits transferred to the receiving tanks must be branded and removed in accordance with law by the outgoing distiller in the name under which they were produced, before any spirits are deposited in the receiving tanks or withdrawn from the distillery by the successor. (Secs. 2825, 3176, I. R. C.)

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GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved November 27, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 29, 1941, 11.21 a. m.)

INDUSTRIAL ALCOHOL.

1941–45–10894
T. D. 5095

Amendment of Appendix to Regulations No. 3, revised 1938.

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

To District Supervisors and Others concerned:

Pursuant to authority in sections 3070(a), 3105(a), 3124(a)(6), and 3176(a), Internal Revenue Code, completely denatured alcohol formulae Nos. 12, 13, and 14, as set forth in Appendix to Regulations No. 3, approved December 29, 1938, are amended to read as follows:

FORMULA NO. 12.

To every 100 gallons of ethyl alcohol of not less than 160° proof add:
4 gallons of "Denol" or a compound similar thereto.

1.5 gallons of methyl isobutyl ketone, or 2.5 gallons of methyl propyl ketone, or 1 gallon of acetaldol (hydroxy-butyraldehyde).
1 gallon of gasoline.
1 gallon of "Agdite" or a compound similar thereto, or 2 gallons of "Hydronol" or a compound similar thereto.

FORMULA No. 13.

To every 100 gallons of ethyl alcohol of not less than 160° proof add:
4 gallons of "ST–115" or a compound similar thereto.
1.5 gallons of methyl isobutyl ketone, or 2.5 gallons of methyl propyl ketone, or 1 gallon of acetaldol (hydroxy-butyraldehyde).
1 gallon of gasoline.
0.5 gallon of "Agdite" or a compound similar thereto or 1 gallon of "Hydronol" or a compound similar thereto.

FORMULA No. 14.

To every 100 gallons of ethyl alcohol of not less than 160° proof add:
5 gallons of "FD–13" or a product similar thereto.
1.75 gallons of methyl isobutyl ketone, or 2.5 gallons of methyl propyl ketone, or 1 gallon of acetaldol (hydroxy-butyraldehyde).

SPECIFICATIONS FOR ACETALDOL.

Acetaldol: 90 per cent to 100 per cent.
Specific gravity: 1.098 to 1.105 at 20° C.
Purity: It shall titrate not less than 90 per cent or more than 110 per cent by the following method:
Dissolve 15 grams of the acetaldol in distilled water and dilute to 1 liter in a volumetric flask. Transfer 5 ml. of this solution to a 250 ml. glass stoppered flask containing 25 ml. distilled water. Add 25 ml. of a freshly prepared 1 per cent sodium bisulphite solution. Prepare a blank omitting the acetaldol solution. Place flasks in a dark place away from excessive heat or cold and allow to stand six hours. Remove and titrate free bisulphite with tenth-normal iodine solution using starch indicator.

$$\frac{(\text{ml. Blank—ml. test}) \times 200 \times 0.44}{\text{weight of sample}} = \text{per cent Acetaldol.}$$

On account of the presence of acetaldehyde, titrations in excess of 100 per cent will sometimes be obtained.

NORMAN D. CANN,
Acting Commissioner of Internal Revenue.

Approved October 30, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 31, 1941, 11.42 a m.)

REGULATIONS 3, ARTICLE 111: Marking packages. 1941–36–10819
ARTICLE 146: General provisions governing use. T. D. 5065

Amendment of Regulations No. 3.

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

To District Supervisors and Others Concerned:

Pursuant to the authority in section 3105(a), Internal Revenue Code, Regulations No. 3 is amended as hereinafter set forth.

Article 111, as amended, is further amended by adding thereto the following paragraph:

Effective immediately and until further notice, proprietors of denaturing plants and their bona fide agents may reuse embossed steel drums bearing the identifying symbol of the denaturer for packaging completely denatured alcohol and antifreeze manufactured with completely denatured alcohol, provided that drums bearing the embossed symbol of one denaturer may not be reused by another denaturer or his agents. New and reused drums, when filled, shall have the date of filling stenciled thereon in addition to all the marks now required by these regulations.

Article 146, as amended, is further amended by adding thereto the following paragraph:

Effective immediately and until further notice, producers of proprietary solvents and their bona fide agents may reuse embossed steel drums bearing the identifying symbol of the producer for packaging proprietary solvent, provided that drums bearing the embossed symbol of one producer may not be reused by another producer or his agents. New and reused drums, when filled, shall have the date of filling stenciled thereon in addition to all the marks required by these regulations.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved August 29, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 2, 1941, 3.22 p. m.)

REGULATIONS 3, ARTICLE 111: Marking packages. 1941-41-10863
ARTICLE 146: General provisions governing use. T. D. 5075

Amendment of Regulations No. 3.

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

To District Supervisors and Others Concerned:

Pursuant to the authority in sections 3105(a), 3124(a)(6), and 3176(a), Internal Revenue Code, Regulations No. 3 is amended as hereinafter set forth.

Article 111, as amended, is further amended as follows:

Effective immediately and until further notice, the producer's identifying symbol and the serial number on packages of completely denatured alcohol, in lieu of being embossed as heretofore prescribed, may be cut, sand-blasted, or otherwise permanently indented thereon. Packages marked in this manner may be reused by producers and their agents in accordance with the procedure outlined in this article as amended by Treasury Decision 5065 [page 356, this Bulletin], provided such identifying symbols and serial numbers are distinct and legible when the reused packages are filled and shipped.

Article 146, as amended, is further amended as follows:

Effective immediately and until further notice, the producer's identifying symbol and the serial number on packages of proprietary solvent, in lieu of being embossed as heretofore prescribed, may be cut, sand-blasted, or otherwise permanently indented thereon. Packages marked in this manner may be reused by producers and their agents in accordance with the procedure outlined in this

article as amended by Treasury Decision 5065 [page 356, this Bulletin], provided such identifying symbols and serial numbers are distinct and legible when the the reused packages are filled and shipped.

GUY T. HELVERING,
Commissioner.

Approved October 3, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 4, 1941, 10.31 a. m.)

REGULATIONS 3, ARTICLES 171–180. 1941–41–10864
T. D. 5076

Amendment of Regulations No. 3.

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

To District Supervisors, Collectors of Internal Revenue, and Others Concerned:

Pursuant to the authority in sections 3105, 3124(a) (6), and 3176 of the Internal Revenue Code, Regulations No. 3 is amended by adding thereto the following new articles:

TRANSFER OF TAX-PAID ALCOHOL BY PIPE LINE TO RECTIFYING PLANTS.

ART. 171. The Commissioner may, in his discretion, authorize the installation of a pipe line for the transfer of alcohol produced in accordance with these regulations from the weighing tank in an industrial alcohol bonded warehouse, after tax-payment, to storage tanks in a rectifying plant for use in rectification and bottling, when such rectifying plant is contiguous to, or is in the immediate vicinity of the bonded warehouse. The Commissioner will determine from all the circumstances in each case whether the rectifying plant is in the immediate vicinity of the bonded warehouse.

ART. 172. The proprietor of a bonded warehouse who desires to install a pipe line for the transfer of tax-paid alcohol to a contiguous rectifying plant, or rectifying plant in the immediate vicinity of the bonded warehouse, must file application in triplicate with the district supervisor showing the relative position of the bonded warehouse and the rectifying plant, the proprietorship thereof, and a full description of the proposed pipe line.

ART. 173. Upon receipt of the application, the district supervisor will make such inquiry as he may deem necessary to determine the propriety of granting the permission sought and will then forward all copies of the application to the Commissioner with his recommendation thereon. The Commissioner will indicate his approval or disapproval on all copies of the application and return two copies to the district supervisor, who will forward one copy to the applicant. Where the application is approved, the proprietor of the warehouse will, upon installation of the pipe line, file amended application, Form 1431, and plans and plat covering such changes in equipment in accordance with these regulations.

ART. 174. The pipe line shall be constructed and the outlet of the weighing tank secured in the manner provided by section 183.54 of Regulations 4, respecting pipe lines from the cistern room to storage tanks in an internal revenue bonded warehouse on the distillery premises.

ART. 175. Where a pipe line has been installed for the transfer of alcohol direct from the weighing tank in the bonded warehouse to a contiguous rectifying plant or rectifying plant in the immediate vicinity, as provided herein, and the proprietor of the warehouse desires to transfer such alcohol, he shall execute application for the tax-payment of such alcohol on Form 1594, "Application for Collector's Certificate of Tax-Payment of Distilled Spirits for Shipment in Tank Cars," in duplicate, appropriately modified to cover the transfer

by pipe line. The proprietor and the storekeeper-gauger shall then proceed in accordance with the provisions of these regulations, as amended, respecting the gauging and withdrawal of spirits for tax-payment in railroad tank cars. The proprietor will forward all copies of Form 1440, prepared in accordance with article 63, with Form 1594, in duplicate, accompanied by proper remittance for the tax, to the collector of internal revenue.

ART. 176. The collector will note on all copies of Form 1440, the tax-payment (including the serial number of the certificate, Form 1595), in the column provided for entering the serial numbers of tax-paid stamps, execute the certificate of tax-payment on Form 1440, and issue Form 1595, "Collector's Certificate of Tax-Payment of Distilled Spirits for Shipment in Tank Cars," which certificate shall be appropriately modified to cover the transfer of alcohol by pipe line. The collector will fill in all the required data in the blank spaces on the certificate, except those provided in the lower left corner for the verification of the storekeeper-gauger, and shall date and sign the certificate in the manner required by section 183.299 of Regulations 4. The certificate is not negotiable and shall not be used for any spirits other than those described therein. The collector will enter on the original and copy of Form 1594, in the space provided, the serial number, date, and amount of the certificate issued. The collector will retain one copy of Form 1440 and the original copy of Form 1594. He will mail or deliver the certificate, Form 1595, and the original and remaining copies of Form 1440 to the proprietor of the warehouse or his designated agent, in accordance with the proprietor's request in Form 1594. The collector will send one copy of the application, Form 1594, to the district supervisor.

ART. 177. The proprietor shall deliver the certificate of tax-payment, Form 1595, and all copies of Form 1440 to the storekeeper-gauger at the bonded warehouse. The storekeeper-gauger will verify the contents of the weighing tank and date and sign the certificate, Form 1595, in the space provided therefor. The certificate must be attached to a board on the weighing tank by means of a tack in each corner, after which it will be canceled in the same manner as a tax-paid stamp attached to a package and covered with a coating of transparent varnish, shellac, or lacquer to prevent any alteration thereof.

ART. 178. When the certificate of tax-payment has been affixed to the weighing tank and canceled, the storekeeper-gauger will unlock the outlet valve and permit the proprietor to transfer the alcohol by pipe line to the rectifying plant named in the certificate. The alcohol shall be transferred only under the immediate supervision of the storekeeper-gauger. After the alcohol has been transferred, the storekeeper-gauger will forward one copy of Form 1440 and the canceled Form 1595 to the district supervisor, and deliver two copies of Form 1440 to the proprietor, who will deliver one copy of such form to the rectifier.

ART. 179. The report of gauge, Form 1440, delivered to the rectifier by the proprietor, shall be attached to the storage tank in the rectifying plant. The rectifier shall enter the date and quantity of removals from the tank in the blank spaces of such Form 1440. The report of gauge shall be kept on the tank until such time as the quantity covered thereby has been withdrawn from the tank. The report shall then be filed by the rectifier available for inspection by Government officers. The alcohol transferred by pipe line may not be used by the rectifier prior to attachment of Form 1440 to the storage tank.

ART. 180. The district supervisor will compare the canceled certificate with the copy of the application and the report of gauge as to the number of gallons of alcohol, the amount of tax, etc., and investigate any discrepancy. He will then send a copy of the application to the Commissioner and where there is a discrepancy, a report of his findings relative thereto.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved October 3, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 4, 1941, 10.31 a. m.)

REGULATIONS 18, SECTIONS 192.197, 192.230, 192.261, 192.262, 192.263, 192.264, 192.265, and 192.266.

1941–40–10850
T. D. 5074

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 192.

Amending Regulations No. 18.[1]

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

To District Supervisors, Collectors of Internal Revenue, and Others Concerned:

Pursuant to the provisions of sections 3153(b) and 3176 of the Internal Revenue Code, and section 3 of the Act of July 22, 1941 (Public Law 187, Seventy-seventh Congress), sections 192.197 and 192.230 of Regulations No. 18 (Title 26, Part 192, Code of Federal Regulations) are hereby amended, and new sections 192.261 to 192.266 are added, to read as follows:

SEC. 192.197. *Bond.*—Brewers who desire to export fermented malt liquors without the payment of tax shall be required to furnish the district supervisor of the district in which the brewery is located, a bond, in duplicate, on Form 263, with acceptable corporate surety, individual sureties, or by the deposit of proper collateral. Bond Form 263 must be filed with the district supervisor prior to the filing of the first application for withdrawal and entry for exportation on Form 550 if exportation is made in barrels, or prior to the filing of the first notice on Form 127 if beer is bottled for export. Separate bonds are not required for the exportation of beer in barrels and bottles. (*; Sec. 3153(b), I. R. C.)

SEC. 192.230. *Proof of landing not furnished.*—In case the brewer, from causes beyond his control, is unable to furnish the required proof of landing or loss on land or at sea within the time prescribed, he may make application to the supervisor for an extension of time for production of the evidence. Such application must state specifically the cause of failure to produce the evidence and be verified under oath. One extension of three months may be granted by the supervisor and, if necessary, upon a second application, an additional extension of three months may be granted by him. (*; Sec. 3153(b), I. R. C.)

ARTICLE XXXIII.—SUPPLIES FOR VESSELS AND AIRCRAFT.

SEC. 192.261. *Supplies for vessels and aircraft.*—Fermented malt liquor may be removed from breweries and brewery bottling houses free of tax for use as supplies on the following vessels and aircraft:

(1) Vessels of war, in ports of the United States, of any nation which may reciprocate such privilege toward the vessels of war of the United States in its ports;

(2) Vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions;

(3) Aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions; and

(4) Aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, where such trade by foreign aircraft is permitted, and where the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. (*; Sec. 3183(h), I. R. C.; Section 3 of the Act of July 22, 1941 (Public Law 187, Seventy-seventh Congress).)

[1] The asterisk at the end of sections refers to section 3176 of the Internal Revenue Code.

SEC. 192.262. *Procedure applicable.*—The removal, shipment, examination by customs officers, and evidence of lading on vessels and aircraft, of fermented malt liquor from a brewery or brewery bottling house for use as supplies will, so far as applicable, follow the procedure of sections 192.192 to 192.239 of these regulations, concerning the exportation, free of tax, of fermented malt liquor. (*; Section 3 of the Act of July 22, 1941 (Public Law 187, Seventy-seventh Congress).)

SEC. 192.263. *Form 550.*—Application will be made on Form 550, properly modified, for the removal of fermented malt liquor from a brewery or from the bottling house of a brewery for use as supplies on vessels and aircraft. (*; Section 3 of the Act of July 22, 1941 (Public Law 187, Seventy-seventh Congress).)

SEC. 192.264. *Bond.*—Before any beer is removed from the bottling house for use as supplies on vessels or aircraft, consent of surety on bond Form 263 must be obtained in accordance with section 192.65 of these regulations. If no bond Form 263 is on file with the supervisor, the brewer, prior to bottling beer for use on vessels or aircraft, will be required to obtain and file such bond properly modified. (*; Section 3 of the Act of July 22, 1941 (Public Law 187, Seventy-seventh Congress).)

SEC. 192.265. *Beer bottled for export.*—Beer which has been bottled for export and is stored in the bottling house of the brewery, may be removed for use as supplies on vessels and aircraft. (*; Section 3 of the Act of July 22, 1941 (Public Law 187, Seventy-seventh Congress).)

SEC. 192.266. *Evidence of use.*—When fermented liquor has been laden on board a vessel or aircraft for use as ship's supplies or supplies for aircraft, there must be submitted to the district supervisor within six months (or such additional extensions of time as may be granted by the district supervisor or the Commissioner), an affidavit of the master or other officer of the vessel or aircraft on which the articles were laden, having knowledge of the facts, showing that the fermented malt liquor has been used on board the vessel or aircraft, and that no portion thereof has been unladen in the United States or any of its possessions: *Provided*, That in the case of any shipment the tax on which does not exceed $25, such affidavit will not be required. In the case of vessels of war, such affidavit will not be required. (*; Section 3 of the Act of July 22, 1941 (Public Law 187, Seventy-seventh Congress).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved October 2, 1941.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 3, 1941, 10.24 a. m.)

FIREARMS.

1941-36-10820
T. D. 5066

TITLE 26—INTERNAL REVENUE.—CHAPTER I, PART 468.[1]

Amending Treasury Decision 4961 [C. B. 1940-1, 282].

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

To District Supervisors and Others Concerned:

By virtue of and pursuant to the provisions of the Act of August 9, 1939 (U. S. C., Sup., title 49, chapter 11), and Subchapter B of Chapter 25 of the Internal Revenue Code, the last paragraph of section 468.0, and sections 468.1 to 468.14, inclusive, and section 468.16 of Treasury Decision 4961, approved January 5, 1940 [C. B. 1940-1, 282], are amended to read as follows:

SECTION 468.0. *Introductory.*— * * *

The following regulations are hereby prescribed under the Act of August 9, 1939, and Subchapter B of Chapter 25 of the Internal Revenue Code, relative to the seizure and disposition of vessels, vehicles, and aircraft when engaged in the transportation, etc., of contraband firearms, and to the seizure and disposition of the contraband firearms involved:

SEC. 468.1. *Definitions.*—As used in these regulations, except as otherwise indicated by the context:

(*a*) The term "conveyance" means a vessel, vehicle, or aircraft within the scope of the Act of August 9, 1939, and these regulations.

(*b*) The terms "seizing officer," "officer seizing," etc., mean the Deputy Commissioner of Internal Revenue in charge of the Alcohol Tax Unit, the district supervisor, investigator in charge, investigator, or inspector of the proper district, or such other officer of internal revenue as may be specially authorized by the Commissioner pursuant to section 3720 of the Internal Revenue Code to seize property legally subject to seizure and who has made or adopted a seizure within the scope of these regulations.

(*c*) The term "Secretary" means the Secretary of the Treasury.

(*d*) The term "Commissioner" means the Commissioner of Internal Revenue.

(*e*) The term "Deputy Commissioner" means the Deputy Commissioner of Internal Revenue in charge of the Alcohol Tax Unit.

(*f*) The term "district supervisor" means the person having charge of a supervisory district of the Alcohol Tax Unit of the Bureau of Internal Revenue.

(*g*) The term "investigator in charge" means the person having charge of a subdivision of a supervisory district of the Alcohol Tax Unit of the Bureau of Internal Revenue.

(*h*) The term "collector" means the collector of internal revenue.

(*i*) The terms defined in the Act of August 9, 1939, shall have the meanings thereby ascribed to them.*

SEC. 468.2. *Reports of seizure.*—An officer seizing or adopting the seizure of a conveyance or contraband firearm shall promptly make a complete written report to the district supervisor for the district in which the seizure was made. The report shall be in such form and submitted in such manner as the Deputy Commissioner may require.*

SEC. 468.3. *Custody and storage.*—Any conveyance or contraband firearm seized under the law and these regulations shall be in the custody of the district supervisor or investigator in charge for the district in which the seizure

[1] The asterisk at end of sections 468.1 to 468.12, inclusive, and section 468.16 refers to Act of August 9, 1939 (53 Stat., 1291; 49 U. S. C., Sup., chapter 11), and the Internal Revenue Code, Chapter 25, Subchapter B.

is made. The seizing officer shall store the conveyance or contraband firearm in a place designated, either generally or in the particular case, by the district supervisor or investigator in charge. The place of storage shall be in the judicial district in which the seizure occurred. Government storage facilities shall be utilized if practicable. If the conveyance is stored on private premises there shall be secured from the proprietor thereof and forwarded with the report to the district supervisor a receipt for the conveyance coinciding with the description in the report to the district supervisor. Conveyances or contraband firearms may not be used prior to forfeiture and award for official use.*

SEC. 468.4. *Appraisement.*—The district supervisor or investigator in charge shall appraise the conveyance or firearm to determine the value at the time and place of appraisement, or if there is no market for the conveyance or firearm at the place of appraisement, the value in the principal market nearest the place of appraisement. The appraisal may be based upon the report of the seizing officer and any other information which may be acquired.*

SEC. 468.5. *Advertisement.*—If the appraised value does not exceed $1,000, the district supervisor shall cause a notice of the seizure and of the intention to forfeit and sell or otherwise dispose of the property to be published once a week for at least three successive weeks in a newspaper of general circulation in the judicial district in which the seizure occurred. The notice shall not be inserted oftener than three times, unless the district supervisor is of the opinion that, because of circumstances peculiar to the particular case, a greater number of insertions will be to the advantage of the Government. The notice shall—

(1) describe the conveyance or firearm seized, and show the registration, motor and serial numbers of the conveyance and the number or other identifying mark of the firearm, if any;

(2) show the reason for, and time and place of, seizure; and

(3) state that any person desiring to claim the conveyance or firearm may, within 20 days from the date of first publication of the notice in the case of a conveyance and within 30 days from the date of first publication of the notice in the case of a firearm, file with the investigator in charge a claim for the conveyance or firearm and a bond for costs of judicial condemnation with satisfactory sureties in the sum of $250; and that unless such claim and bond are filed within the stated time the conveyance or firearm will be disposed of in accordance with law. The form of notice used in seizures under other laws by the Alcohol Tax Unit will, as far as applicable, be followed.*

SEC. 468.6. *Requirements as to claim and bond.*—The bond and claim shall be in triplicate. The bond shall sufficiently identify the conveyance or firearm, shall run to the United States of America, have sureties approved by the district supervisor, and be conditioned that in case of condemnation of the conveyance or firearm the obligor shall pay all the costs and expenses of the proceeding to obtain the condemnation. Bond, Form 175, may be adapted for the purposes of these regulations. When a claim and bond are received in proper form and the sureties are satisfactory, the district supervisor and the investigator in charge shall proceed in accordance with section 468.8. If the documents are not in satisfactory form when first received by the district supervisor or investigator in charge, a reasonable time for correction may be allowed. If correction is not made within a reasonable time the documents may be treated as nugatory, and the case may proceed as though they had not been tendered. The filing in proper form of the claim and bond does not entitle the claimant to possession of the conveyance or firearm but stops the summary proceedings.*

SEC. 468.7. *Summary forfeiture.*—If the appraised value does not exceed $1,000, and the claim and bond mentioned in section 468.6 are not filed within the time required, the investigator in charge shall execute, in quadruplicate, a declaration of forfeiture, one copy of which will be retained and the original and two copies forwarded to the district supervisor. The declaration should state that it is made in accordance with section 609 of the Tariff Act of 1930 in the case of a conveyance and with section 3724 of the Internal Revenue Code in the case of a firearm, and should follow, with necessary modifications, Form 1570. Thereafter the conveyance shall be disposed of in accordance with official instructions duly received by the district supervisor. No notice of public sale of any such forfeited firearm shall be given and no such firearm shall be sold at public sale. Any such firearm forfeited as provided herein

shall be delivered by the district supervisor to the Director of Procurement for appropriate disposition.*

SEC. 468.8. *Presentation for judicial action.*—If the appraised value is greater than $1,000, or if the appraised value is not more than $1,000 but a claim and satisfactory bond have been received (see section 468.6), the investigator in charge shall transmit a copy of the report of the seizing officer, and a supplemental report of any pertinent facts and circumstances additional to those disclosed by the seizing officer's report (see section 468.2), to the United States attorney for the judicial district in which the seizure was made for institution of condemnation proceedings. If the seizure has been advertised the report shall include copies of the newspapers containing the advertisements. Immediately upon reference of a case to the United States attorney, the district supervisor shall notify the Deputy Commissioner. If deemed appropriate, the Commissioner will, in the case of a conveyance, request the Director of Procurement to petition the court for delivery of the same for official use. See Treasury Decision 4625 (section 3), Cumulative Bulletin XV–1 (1936), page 492.*

SEC. 468.9. *Petitions for remission or mitigation of forfeiture.*—Any person interested in any conveyance or firearm within the scope of these regulations which has been forfeited by summary or administrative proceedings, or which is held for summary or administrative forfeiture, may within the time prescribed (see section 468.10) petition the Secretary for remission or mitigation of the forfeiture, and, if the conveyance or firearm has been sold, or delivered to a governmental agency for official use, for restoration of the proceeds of sale or such part thereof as may be claimed by the petitioner. The petition shall be filed in triplicate with the district supervisor or the investigator in charge.

The petition shall be addressed to the Secretary and shall be executed and sworn to by the petitioner. The petition shall state in clear and concise terms the following:

(1) A complete description of the conveyance or firearm, including registration number and motor and serial numbers of the conveyance and the number or other identifying mark of the firearm, if any, the name of the owner, and of the person from whom seized, as well as the date and place of seizure.

(2) The interest of the petitioner in the conveyance or firearm, which shall be established by bills of sale, contracts, mortgages, or other satisfactory documentary evidence filed with the petition.

(3) The circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify remission or mitigation.

Where the forfeiture and sale have already occurred (see section 468.10), it must be established by satisfactory proof that the petitioner did not know of the seizure prior to the forfeiture, and was in such circumstances as prevented him from knowing thereof.

Where the petitioner is not the one who in person committed the act which caused the forfeiture, the petition should show how the property came into the possession of such other person, and what investigation, if any, was made of such person prior to parting with the conveyance or firearm. If such investigation was not made, the reason for not making it should be stated.*

SEC. 468.10. *Time for filing petition.*—A petition for remission or mitigation of a forfeiture must be seasonably filed. Where the petition is for restoration of the proceeds of sale, it must be filed within three months after the date of sale. In the case of a conveyance or firearm which is retained or awarded for official use, the retention or delivery shall be regarded as a sale for the purposes of these regulations.*

SEC. 468.11 *Handling of petition.*—Where the petition is in proper form, the district supervisor shall, upon completion of any investigation necessary to determine the merits of the petition, forward to the Deputy Commissioner the original of the petition (including all supporting documents), together with the original of the investigation report, a copy of the case report, a copy of the appraisement list, and the district supervisor's recommendation. One copy of the petition will be retained by the district supervisor and one copy by the investigator in charge.*

SEC. 468.12. *Expenses: Disposition of proceeds.*—Expenses in connection with a seizure and forfeiture within the scope of these regulations shall be paid from the internal revenue appropriation. Where a conveyance is forfeited and sold through summary or administrative proceedings, the investigator in charge shall transmit to the collector with the gross proceeds of the sale a statement

of all expenses incurred in connection with the seizure and forfeiture. The collector shall, after reimbursing the internal revenue appropriation for all such expenses, deposit the net proceeds as other internal revenue receipts.

Where a forfeited conveyance is transferred to another Federal agency, such agency shall reimburse the internal revenue appropriation for the costs of hauling, transporting, towing, and storage from the date of seizure to the date of delivery.

If the forfeiture and sale be by court proceedings, the sum recovered after deducting all appropriate charges for marshal's fees, court costs (where no bond was given therefor), etc., is payable to the collector. When such sum is received, the collector shall, after reimbursing the internal revenue appropriation for all expenses incurred in connection with the seizure before delivery of the conveyance to the marshal, deposit the net proceeds as other internal revenue receipts. The investigator in charge shall transmit to the collector immediately the conveyance is delivered to the marshal a statement of such expenses.*

SEC. 468.13. *Release on payment of appraised value.*—If any person claiming an interest in any conveyance within the scope of these regulations offers to pay the appraised value thereof (see section 468.4), and it appears that the claimant has in fact a substantial interest in the conveyance, the Commissioner may, subject to the approval of the Secretary, accept the offer and release the conveyance upon payment of the money, which shall be distributed in accordance with section 468.12.

The offer must be in writing, addressed to the Secretary, signed by the claimant, and submitted in triplicate to the district supervisor or investigator in charge. It must express assent to forfeiture of the conveyance and waive further proceedings. The offer shall be supported by such proof of ownership as in the opinion of the district supervisor is necessary. The district supervisor shall forward the offer to the Deputy Commissioner and retain custody of the conveyance, pending action on the offer and payment of the amount of the offer if it is approved. (53 Stat., 1291; 49 U. S. C., Sup., chapter 11.)

SEC. 468.14. *Awards.*—Any person not an officer of the United States who takes and seizes any conveyance within the scope of these regulations, and reports the matter to an officer of internal revenue or who furnishes information leading to the forfeiture of such a conveyance, may be awarded compensation of 25 per centum of the net amount realized, but not exceeding $50,000 in any case which shall be paid out of the internal revenue appropriation. If a forfeited conveyance is destroyed in lieu of sale, or devoted to official use, compensation of 25 per centum of the appraised value, not to exceed $50,000 in any case, may be awarded and paid. Awards may not be paid out of the proceeds of sale.

When information of the existence of legal basis for seizure is furnished to an internal revenue officer in writing, the original will be forwarded immediately to the Commissioner. The officer shall retain a copy. If the information is furnished orally, a memorandum thereof will be made and likewise forwarded. However, appropriate action shall be taken in the case without awaiting instructions from the Commissioner.

The claim of an informer, or of a detector and seizor, shall be executed in triplicate on Form No. 211, appropriately amended. The original of the claim for compensation shall contain the signatures of the respective parties to the claim. Any number of additional copies necessary to complete the district supervisor's files may be required. The claim must show the date when, and the circumstances under which, the information was furnished or the conveyance was detected and seized, and fairly state all the pertinent facts of the case.

The district supervisor of the district in which the claim originated will attach a statement showing the following facts:

(1) The place of seizure; (2) the date of seizure; (3) the statutes on the violation of which the seizure was based; (4) a full description of the conveyance and any other property seized; (5) the names of the persons involved in the violation; (6) the net amount realized from the forfeitures; (7) the date when the amount realized was deposited, and the amount of the certificate of deposit; (8) the amount paid in compromise, if any, and the date of payment; (9) the amount of expenses payable from the internal revenue appropriation; and (10) if the conveyance was released upon payment of the appraised value, or the conveyance was devoted to official use, the appraised value, as well as costs and expenses incurred, or that would properly have been incurred had the ordinary procedure been followed.

The district supervisor shall indicate his approval or disapproval of the claim and shall certify whether or not the claimant was an officer of the United States, and if an informer, whether he furnished the original information in the case, and if a detector and seizor, whether the claimant actually detected and seized the conveyance, and in either case whether any person other than the claimant gave original information in the case.

Claims will be transmitted by the district supervisor to the Commissioner in duplicate. Where there is a decree or order of court designating the informer, a copy thereof shall also be forwarded. In a contested case the district supervisor shall forward the applications of all claimants and furnish a statement of the facts bearing on the merits of the several claims together with his recommendation. (53 Stat., 1291; 49 U. S. C., Sup., chapter 11.)

SEC. 468.16. *Procedural details.*—With respect to procedural details not expressly covered by these regulations, district supervisors and other officers will follow the procedure governing the forfeiture and disposition of personal property seized under other laws administered by the Alcohol Tax Unit, in so far as applicable and not inconsistent with these or any other regulations or any statutory provision, with such variations as may be appropriate in the circumstances.*

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved August 29, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 2, 1941, 3.22 p. m.)

1941-36-10821
T. D. 5067

Enforcement of laws relating to certain firearms.

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

To Collectors of Internal Revenue, District Supervisors, and Others Concerned:

SECTION 1. By virtue of and pursuant to the provisions of the Act of June 30, 1938 (U. S. C., Sup., title 15, chapter 18), the Act of August 9, 1939 (U. S. C., Sup., title 49, chapter 11), section 2732 of the Internal Revenue Code, and section 161 of the Revised Statutes (U. S. C., title 5, section 22), Part 171 of Title 26, Code of Federal Regulations, is hereby amended by inserting a new subpart designated B(D) to read as follows:

SUBPART B(D).—SEIZURES IN CONNECTION WITH CONTRABAND FIREARMS.

SEC. 171.4e. *Delegation of functions.*—The Alcohol Tax Unit in the Bureau of Internal Revenue is charged with the duty and responsibility, under the direction of the Commissioner of Internal Revenue, of (1) investigating, preventing and detecting violations of Subchapter B of Chapter 25 and Part VIII of Subchapter A of Chapter 27 of the Internal Revenue Code, except that collectors of internal revenue, subject to the direction of the Commissioner of Internal Revenue, shall make all inquiries and investigations relating to the filing of special tax returns and shall receive and account for all moneys; (2) investigating, preventing, and detecting violations of the Federal Firearms Act of June 30, 1938 (U. S. C., Sup., title 15, chapter 18), and the regulations thereunder, except that collectors of internal revenue, subject to the direction of the Commissioner of Internal Revenue, shall make all inquiries and investigations relating to the issuance of licenses and shall receive and account for all moneys; (3) detaining and seizing firearms for violation of Subchapter B of Chapter 25

and Part VIII of Subchapter A of Chapter 27 of the Internal Revenue Code, and the custody and disposition, including remission or mitigation of the forfeiture, of firearms so seized, and (4) administering and enforcing the Act of August 9, 1939 (U. S. C., Sup., title 49, chapter 11), and the regulations thereunder, in so far as such Act and regulations relate to the seizure and forfeiture of vessels, vehicles, and aircraft used for, or to facilitate, the transportation, carriage, conveyance, concealment, receipt, possession, etc., of any firearm defined by section 1(b)(2) of such Act to be a contraband article; the remission or mitigation of the forfeiture of such vessels, vehicles, aircraft, and the equipment thereof; the custody and disposition of such conveyances; and awards for information leading to the forfeiture of such conveyances: *Provided*, That the remission or mitigation of the forfeiture of any such conveyance, or the release of any such conveyance to a claimant upon payment of the appraised value thereof, shall be subject to the approval of the Secretary of the Treasury: *And provided further*, That the awarding of compensation for information leading to the forfeiture of any such conveyance shall be determined by the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury.

SEC. 171.4f. *Delegation of authority.*—The powers necessary for the discharge of the functions delegated to the Alcohol Tax Unit by section 171.4e are hereby conferred and imposed upon the Deputy Commissioner in charge of that Unit to be exercised by him under the direction and supervision of the Commissioner of Internal Revenue, and to district supervisors and other officers and employees of such Unit to be exercised by them under the supervision and direction of the said Deputy Commissioner.

SEC. 2. Treasury Decision 4961, approved January 5, 1940 [C. B. 1940–1, 282], is revoked to the extent that it is inconsistent herewith.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved August 29, 1941.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 2, 1941, 3.22 p. m.)

PROPOSED ADMINISTRATIVE CODE.

1941–39–10839

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 23, 1941.

Government Officials, Attorneys and Accountants Interested in Tax Matters, Professors of Tax Law, and Other Interested Persons:

Announcement is made of the publication of a tentative draft of an administrative code based on the administrative provisions contained in the Internal Revenue Code and all amendments thereto made prior to January 1, 1941. The purpose of the proposed code is to suggest the lines along which the administrative provisions of the internal revenue laws may be simplified, condensed, and modernized. The proposed code has no force or effect as law, and it should not be construed to have such force or effect or quoted or cited as the law.

Copies of the proposed code will, upon request, be forwarded free of charge to Government officials, attorneys and accountants interested in tax matters, professors of tax law, and other interested persons, for examination, comment, and suggestions as to changes. The requests should be addressed to Guy T. Helvering, Commissioner of Internal Revenue, Washington, D. C., for the attention of John P. Wenchel, Chief Counsel.

The comments and suggestions with respect to the proposed code will receive thorough consideration and, together with administrative provisions enacted since December 31, 1940, will determine the nature and extent of the work remaining to be done on the proposed code. Eventually the proposed code will be submitted to the Congress for its consideration.

GUY T. HELVERING,
Commissioner.

OLEOMARGARINE.

1941-30-10797
MS. 241

Schedule of oleomargarine produced and materials used during the month of June, 1941, as compared with June, 1940.

	June, 1941.	June, 1940.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 24,782,558	[2] 19,587,931
Total withdrawn tax-paid	25,541,764	19,495,627
Ingredient schedule of uncolored oleomargarine:		
Babassu oil		681,865
Coconut oil	1,371,003	1,416,518
Corn oil	35,743	9,751
Cottonseed oil	10,750,382	7,377,850
Derivative of glycerine	58,109	54,274
Diacetyl	2	
Lecithin	13,928	6,119
Milk	4,575,335	3,757,496
Monostearine	8,662	
Neutral lard	493,678	418,567
Oleo oil	1,118,784	885,355
Oleo stearine	230,637	233,811
Oleo stock	102,808	68,825
Palm oil	226,768	2,916
Peanut oil	159,173	136,755
Salt	839,552	796,293
Soda (benzoate of)	12,030	7,687
Soya bean oil	5,490,726	4,431,376
Soya bean stearine	145	609
Vitamin concentrate	1,513	843
Total	25,488,978	20,286,901
Total production of colored oleomargarine	[3] 300,116	[4] 282,108
Total withdrawn tax-paid	41,046	21,838
Ingredient schedule of colored oleomargarine:		
Babassu oil		873
Butter flavor	2	1
Coconut oil	64,447	158,635
Color	367	196
Corn oil	55	
Cottonseed oil	65,595	14,566
Cottonseed stearine		1,470
Derivative of glycerine	589	378
Lecithin	39	68
Milk	51,568	53,851
Monostearine	375	
Neutral lard	4,650	3,783
Oleo oil	26,759	14,940
Oleo stearine	200	2,220
Oleo stock	2,307	1,256
Palm oil	19,816	
Peanut oil	82	39
Salt	10,787	12,362
Soda (benzoate of)	160	28
Soya bean oil	55,560	31,978
Vitamin concentrate	2	3
Total	303,360	296,651

[1] Of the amount produced, 25,747 pounds were reworked.
[2] Of the amount produced, 28,232 pounds were reworked.
[3] Of the amount produced, 32 pounds were reworked.
[4] Of the amount produced, 568 pounds were reworked.

Note.—Figures are subject to revision until published in the Commissioner's annual report.

1941–35–10815
MS. 242

Schedule of oleomargarine produced and materials used during the month of July, 1941, as compared with July, 1940.

	July, 1941.	July, 1940.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 27,084,597	[2] 21,812,339
Total withdrawn tax-paid	25,862,439	22,044,758
Ingredient schedule of uncolored oleomargarine:		
Babassu oil	----------	594,316
Butyric acid	1	----------
Coconut oil	2,373,766	1,158,645
Corn oil	55,016	----------
Cottonseed oil	11,394,593	8,515,202
Derivative of glycerine	59,199	70,691
Diacetyl	15	----------
Lecithin	15,372	6,748
Milk	4,821,451	4,225,008
Monostearine	12,138	----------
Neutral lard	645,361	312,360
Oleo oil	1,270,659	1,109,738
Oleo stearine	236,661	280,807
Oleo stock	135,420	95,839
Palm oil	667,162	----------
Palm stearine	22,237	----------
Peanut oil	221,204	64,994
Salt	926,047	875,639
Soda (benzoate of)	14,263	8,820
Soya bean oil	4,852,709	5,376,339
Soya bean stearine	618	----------
Vegetable gum	----------	6
Vitamin concentrate	1,751	974
Total	27,725,646	22,696,126
Total production of colored oleomargarine	[3] 280,270	[4] 208,417
Total withdrawn tax-paid	46,198	21,170
Ingredient schedule of colored oleomargarine:		
Babassu oil	----------	725
Butter flavor	1	3
Coconut oil	100,381	102,616
Color	211	149
Corn oil	31	----------
Cottonseed oil	18,622	11,025
Cottonseed stearine	----------	630
Derivative of glycerine	301	664
Lecithin	36	125
Milk	97,544	89,251
Monostearine	308	----------
Neutral lard	5,131	5,333
Oleo oil	34,540	13,282
Oleo stearine	----------	1,288
Oleo stock	4,819	350
Palm stearine	6,005	----------
Peanut oil	64	17
Salt	8,709	9,220
Soda (benzoate of)	75	65
Soya bean oil	58,931	25,914
Soya bean stearine	----------	690
Vitamin concentrate	2	----------
Total	335,711	211,349

[1] Of the amount produced, 20,684 pounds were reworked.
[2] Of the amount produced, 59,091 pounds were reworked.
[3] Of the amount produced, 48 pounds were reworked.
[4] Of the amount produced, 5,458 pounds were reworked.

NOTE.—Subject to revision until published in the Commissioner's annual report.

1941–40–10847
MS. 243

Schedule of oleomargarine produced and materials used during the month of August, 1941, as compared with August, 1940.

	August, 1941.	August, 1940.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 24, 551, 340	[2] 21, 481, 135
Total withdrawn tax-paid	25, 126, 325	22, 476, 917
Ingredient schedule of uncolored oleomargarine:		
Babassu oil		445, 659
Coconut oil	2, 354, 112	1, 100, 071
Corn oil	42, 926	
Cottonseed oil	10, 114, 808	8, 259, 796
Derivative of glycerine	52, 638	62, 588
Diacetyl	15	
Emulsol	157	
Lecithin	14, 411	7, 356
Milk	4, 539, 482	4, 141, 356
Monostearine	10, 077	
Neutral lard	530, 619	309, 039
Oleo oil	1, 197, 802	1, 102, 247
Oleo stearine	161, 610	281, 803
Oleo stock	126, 387	95, 684
Palm oil	843, 717	
Palm kernel oil	284, 969	
Peanut oil	183, 128	139, 278
Salt	840, 645	849, 991
Soda (benzoate of)	10, 881	8, 724
Soya bean oil	3, 937, 937	5, 467, 838
Soya bean stearine	115	
Vitamin concentrate	3, 329	901
Total	25, 249, 765	22, 272, 331
Total production of colored oleomargarine	[3] 251, 685	[4] 182, 651
Total withdrawn tax-paid	47, 924	21, 202
Ingredient schedule of colored oleomargarine:		
Babassu oil		140
Butter flavor	2	3
Coconut oil	67, 195	80, 360
Color	337	153
Corn oil	1	
Cottonseed oil	16, 071	15, 482
Cottonseed stearine		840
Derivative of glycerine	410	458
Lecithin	29	77
Milk	42, 432	37, 758
Monostearine	309	
Neutral lard	7, 605	4, 611
Oleo oil	42, 833	19, 407
Oleo stearine	189	954
Oleo stock	5, 775	2, 099
Palm oil	3, 537	
Peanut oil	2	35
Salt	8, 843	7, 942
Soda (benzoate of)	113	53
Soya bean oil	63, 938	29, 117
Vitamin concentrate	2	2
Total	259, 623	199, 491

[1] Of the amount produced, 22,764 pounds were reworked.
[2] Of the amount produced, 25,256 pounds were reworked.
[3] Of the amount produced, 417 pounds were reworked.
[4] Of the amount produced, 52 pounds were reworked.

NOTE.—Subject to revision until published in the Commissioner's annual report.

1941–44–10885
MS. 244

Schedule of oleomargarine produced and materials used during the month of September, 1941, as compared with September, 1940.

	September, 1941.	September, 1940.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 32, 867, 535	[2] 26, 327, 721
Total withdrawn tax-paid	33, 040, 147	25, 693, 306
Ingredient schedule of uncolored oleomargarine:		
Babassu oil	289, 702	331, 204
Citric acid	260	
Coconut oil	3, 492, 765	1, 067, 159
Corn oil	42, 760	889
Cottonseed oil	12, 507, 893	9, 940, 576
Derivative of glycerine	72, 595	61, 268
Diacetyl	30	
Emulsol	978	
Lecithin	16, 474	8, 303
Margo		593
Milk	6, 000, 190	5, 077, 784
Monostearine	14, 524	18, 077
Neutral lard	541, 583	423, 286
Oleo oil	1, 762, 162	1, 225, 590
Oleo stearine	355, 783	281, 880
Oleo stearine oil	131, 295	
Oleo stock	215, 448	92, 644
Palm oil	885, 026	
Palm kernel oil	499, 392	
Peanut oil	181, 337	153, 366
Salt	1, 124, 875	1, 020, 803
Soda (benzoate of)	14, 579	9, 854
Soya bean oil	5, 797, 112	7, 548, 595
Soya bean stearine	595	
Vitamin concentrate	6, 485	1, 091
Total	33, 953, 843	27, 262, 962
Total production of colored oleomargarine	256, 824	213, 959
Total withdrawn tax-paid	55, 134	25, 432
Ingredient schedule of colored oleomargarine:		
Babassu oil	410	
Butter flavor	4	1
Coconut oil	81, 050	74, 647
Color	274	140
Corn oil	34	
Cottonseed oil	16, 670	15, 084
Cottonseed stearine		60
Derivative of glycerine	341	104
Lecithin	39	71
Milk	44, 276	39, 906
Monostearine	298	252
Neutral lard	2, 276	2, 732
Oleo oil	33, 557	14, 156
Oleo stearine		433
Oleo stock	4, 421	2, 169
Palm oil	19, 787	
Peanut oil	73	31
Salt	8, 447	9, 246
Soda (benzoate of)	118	57
Soya bean oil	49, 509	56, 975
Vitamin concentrate	12	2
Total	261, 596	216, 156

[1] Of the amount produced, 30,140 pounds were reworked
[2] Of the amount produced, 16,307 pounds were reworked

NOTE.—Subject to revision until published in the Commissioner's annual report.

1941–48–10917
MS. 245

Schedule of oleomargarine produced and materials used during the month of October, 1941, as compared with October, 1940.

	October, 1941.	October, 1940.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 33,853,160	[2] 29,944,880
Total withdrawn tax-paid	33,870,068	29,459,381
Ingredient schedule of uncolored oleomargarine:		
Babassu oil	273,534	137,948
Citric acid	196	----------
Coconut oil	4,637,340	1,381,626
Corn oil	82,289	19,145
Cottonseed oil	13,690,711	11,806,267
Derivative of glycerine	70,152	69,477
Diacetyl	31	----------
Emulsol	1,259	----------
Lecithin	20,771	9,974
Milk	6,012,000	5,505,555
Monostearine	15,740	19,277
Neutral lard	674,415	422,880
Oleo oil	1,725,854	1,139,195
Oleo stearine	277,171	346,947
Oleo stock	147,747	103,390
Palm flakes	15,681	----------
Palm oil	1,121,819	----------
Palm kernel oil	36,256	----------
Peanut oil	237,397	184,481
Salt	1,146,709	1,122,000
Soda (benzoate of)	14,429	11,225
Soya bean oil	4,643,846	8,621,968
Soya bean stearine	146	----------
Vitamin concentrate	6,573	1,353
Total	34,852,066	30,902,708
Total production of colored oleomargarine	206,420	[3] 215,193
Total withdrawn tax-paid	62,372	30,102
Ingredient schedule of colored oleomargarine:		
Babassu oil	989	50
Butter flavor	----------	2
Coconut oil	42,820	82,771
Color	345	201
Corn oil	40	17
Cottonseed oil	16,859	21,029
Cottonseed stearine	----------	480
Derivative of glycerine	310	323
Lecithin	79	36
Milk	37,022	39,679
Monostearine	371	454
Neutral lard	7,547	3,968
Oleo oil	39,946	20,087
Oleo stearine	854	250
Oleo stock	5,375	3,500
Palm flakes	696	----------
Palm oil	3,563	----------
Peanut oil	127	44
Salt	8,056	7,635
Soda (benzoate of)	58	133
Soya bean oil	49,909	42,037
Soya bean stearine	----------	60
Vitamin concentrate	12	2
Total	214,978	222,758

[1] Of the amount produced, 27,256 pounds were reworked.
[2] Of the amount produced, 36,452 pounds were reworked.
[3] Of the amount produced, 1,664 pounds were reworked.

NOTE.—Subject to revision until published in the Commissioner's annual report.

1941-52-10941
MS. 246

Schedule of oleomargarine produced and materials used during the month of November, 1941, as compared with November, 1940.

	November, 1941.	November, 1940.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 32,270,402	[2] 29,724,028
Total withdrawn tax-paid	32,091,682	30,820,646
Ingredient schedule of uncolored oleomargarine:		
Babassu oil	42,350	55,550
Citric acid	10	
Coconut oil	4,140,934	1,564,411
Corn oil	106,376	16,321
Cottonseed oil	14,621,741	10,889,014
Derivative of glycerine	70,084	66,323
Diacetyl	129	
Emulsol	1,537	
Lecithin	21,382	10,413
Milk	5,726,725	5,494,772
Monostearine	15,537	18,529
Neutral lard	684,881	400,690
Oleo oil	1,641,641	1,321,896
Oleo stearine	178,974	262,757
Oleo stock	233,473	102,899
Palm flakes	28,510	
Palm oil	629,278	
Peanut oil	168,698	157,051
Salt	1,075,035	1,101,177
Soda (benzoate of)	14,926	10,692
Soya bean oil	3,724,582	9,186,556
Soya bean stearine		200
Vitamin concentrate	8,731	1,086
Total	33,135,534	30,660,337
Total production of colored oleomargarine	232,154	[3] 278,001
Total withdrawn tax-paid	55,378	33,780
Ingredient schedule of colored oleomargarine:		
Butter flavor		2
Coconut oil	57,232	99,846
Color	250	268
Corn oil	44	18
Cottonseed oil	28,527	19,282
Cottonseed stearine	30	60
Derivative of glycerine	346	324
Diacetyl	1	
Lecithin	80	81
Milk	37,763	49,828
Monostearine	208	397
Neutral lard	9,628	5,126
Oleo oil	42,279	23,422
Oleo stearine	93	575
Oleo stock	7,785	3,800
Palm flakes	3,380	
Palm oil	2,454	
Peanut oil	67	67
Salt	8,616	18,248
Soda (benzoate of)	91	98
Soya bean oil	36,249	70,638
Soya bean stearine		480
Vitamin concentrate	33	2
Total	235,156	292,562

[1] Of the amount produced, 22,007 pounds were reworked.
[2] Of the amount produced, 16,546 pounds were reworked.
[3] Of the amount produced, 2,528 pounds were reworked.

NOTE.—Subject to revision until published in the Commissioner's annual report.

TOBACCO.

1941–27–10768
T. 84

Statement of manufactured tobacco produced, by classes, during the month of April, 1941, as compared with April, 1940.

	April, 1941.	April, 1940.
	Pounds.	*Pounds.*
Plug	4, 466, 430	4, 277, 764
Twist	483, 441	458, 602
Fine-cut chewing	402, 464	361, 940
Scrap chewing	3, 745, 494	3, 507, 122
Smoking	17, 208, 577	16, 949, 251
Total	26, 246, 406	25, 554, 079

1941–31–10799
T. 85

Statement of manufactured tobacco produced, by classes, during the month of May, 1941, as compared with May, 1940.

	May, 1941.	May, 1940.
	Pounds.	*Pounds.*
Plug	4, 288, 460	4, 331, 018
Twist	375, 686	502, 688
Fine-cut chewing	427, 150	511, 564
Scrap chewing	3, 523, 563	3, 539, 123
Smoking	16, 847, 488	18, 004, 434
Total	25, 462, 347	26, 888, 827

1941–35–10816
T. 86

Statement of manufactured tobacco produced, by classes, during the month of June, 1941, as compared with June, 1940.

	June, 1941.	June, 1940.
	Pounds.	*Pounds.*
Plug	4, 228, 775	4, 114, 862
Twist	477, 545	416, 166
Fine-cut chewing	440, 677	366, 896
Scrap chewing	3, 910, 412	3, 187, 323
Smoking	16, 288, 460	16, 081, 503
Total	25, 345, 869	24, 166, 750

NOTE.—Figures are subject to revision until published in the Commissioner's annual report.

1941–39–10838
T. 87

Statement of manufactured tobacco produced, by classes, during the month of July, 1941, as compared with July, 1940.

	July, 1941.	July, 1940.
	Pounds.	*Pounds.*
Plug	4, 559, 800	4, 521, 480
Twist	482, 655	488, 586
Fine-cut chewing	457, 691	431, 679
Scrap chewing	3, 883, 773	3, 984, 975
Smoking	16, 348, 280	17, 460, 495
Total	25, 732, 199	26, 887, 215

1941–44–10884
T. 88

Statement of manufactured tobacco produced, by classes, during the month of August, 1941, as compared with August, 1940.

	August, 1941.	August, 1940.
	Pounds.	*Pounds.*
Plug	4, 264, 156	4, 224, 716
Twist	501, 499	496, 657
Fine-cut chewing	504, 759	456, 416
Scrap chewing	4, 064, 149	3, 806, 751
Smoking	15, 200, 114	16, 948, 679
Total	24, 534, 677	25, 933, 219

1941–48–10918
T. 89

Statement of manufactured tobacco produced, by classes, during the month of September, 1941, as compared with September, 1940.

	September, 1941.	September, 1940.
	Pounds.	*Pounds.*
Plug	4, 475, 741	4, 145, 011
Twist	503, 496	469, 889
Fine-cut chewing	467, 359	398, 413
Scrap chewing	3, 961, 842	3, 524, 595
Smoking	17, 757, 782	17, 762, 417
Total	27, 166, 220	26, 300, 325

NOTE.—Figures are subject to revision until published in the Commissioner's annual report.

LEGISLATION.

REVENUE ACT OF 1941. 1941–40–10846

H. R. 5417. PUBLIC LAW 250, SEVENTY-SEVENTH CONGRESS [CHAPTER 412—FIRST SESSION].

An Act To provide revenue, 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 1941":

TABLE OF CONTENTS.

TITLE I—INDIVIDUAL AND CORPORATION INCOME TAXES.

Sec. 101. Surtax on individuals.
Sec. 102. Optional tax on individuals with certain gross income of $3,000 or less.
Sec. 103. Corporation defense tax rates incorporated in rate schedules.
Sec. 104. Surtax on corporations and termination of defense tax.
Sec. 105. Tax on nonresident alien individuals.
Sec. 106. Tax on foreign corporations.
Sec. 107. Withholding of tax at source.
Sec. 108. Treaty obligations.
Sec. 109. Reduction in pursuance of treaties of rates of tax and withholding on nonresident alien individuals resident in, and corporations organized under laws of, Western Hemisphere countries.
Sec. 110. Defense tax rates on personal holding companies and transfers to avoid income tax incorporated in rate schedules.
Sec. 111. Personal exemption.
Sec. 112. Returns of income tax.
Sec. 113. Credit for dependents.
Sec. 114. Noninterest-bearing obligations issued at discount.
Sec. 115. Short-term obligations issued on a discount basis.
Sec. 116. Information returns with respect to Federal obligations.
Sec. 117. Extension of time of orders of Securities and Exchange Commission.
Sec. 118. Taxable years to which amendments applicable.

TITLE II—EXCESS PROFITS TAX.

Sec. 201. Excess profits tax rates and credits.
Sec. 202. Deduction of excess-profits tax.
Sec. 203. New capital.
Sec. 204. Corporations engaged in mining strategic metals.
Sec. 205. Taxable years to which amendments applicable.

TITLE III—CAPITAL STOCK TAX AND DECLARED VALUE EXCESS-PROFITS TAX.

Sec. 301. Capital stock tax.
Sec. 302. Declared value excess-profits tax—Defense tax rates incorporated in rate schedule.

TITLE IV—ESTATE AND GIFT TAXES.

Sec. 401. Estate tax rates.
Sec. 402. Gift tax rates.

TITLE V—EXCISE TAXES.

PART I—1932 EXCISE TAXES MADE PERMANENT.

Sec. 501. 1932 excise taxes made permanent.
Sec. 502. Pipe line tax.
Sec. 503. Technical amendment.
Sec. 504. Bond tax.
Sec. 505. Conveyance tax.

PART II—DEFENSE TAX RATES MADE PERMANENT (NO INCREASE IN TAX AND NO CHANGE IN BASIS OF TAX).

Sec. 521. Defense excise tax rates made permanent which are not increased by this Act.

PART III—INCREASES IN RATES OF EXISTING EXCISE TAXES.

Sec. 531. Playing cards.
Sec. 532. Safe deposit boxes.
Sec. 533. Distilled spirits.
Sec. 534. Wines.
Sec. 535. Tires and tubes.
Sec. 536. Effective date of Part III.

PART IV—CHANGES IN BASIS OF COMPUTING TAX (RATES INCREASED IN CERTAIN CASES).

Sec. 541. Admissions tax.
Sec. 542. Cabaret, roof garden, etc., tax.
Sec. 543. Club dues.
Sec. 544. Automobile, truck, bus, and parts tax.
Sec. 545. Radios, phonographs, records, and musical instruments.
Sec. 546. Mechanical refrigerators.
Sec. 547. Matches.
Sec. 548. Telephone, telegraph, etc.
Sec. 549. Installment, etc., payments.
Sec. 550. Effective date of Part IV.

PART V—NEW EXCISE TAXES.

Sec. 551. New manufacturers' excise taxes.
Sec. 552. New retailers' excise taxes.
Sec. 553. Administrative changes in manufacturers' excise tax title of Code.
Sec. 554. Transportation of persons, etc.
Sec. 555. Coin-operated amusement and gaming devices.
Sec. 556. Bowling alleys, etc.
Sec. 557. Use of motor vehicles and boats.
Sec. 558. Effective date of Part V.

PART VI—PROCESSING TAX ON CERTAIN OILS.

Sec. 561. Payment of proceeds of processing tax to Guam and American Samoa.

TITLE VI—NONESSENTIAL FEDERAL EXPENDITURES.

Sec. 601. Nonessential Federal expenditures.

TITLE VII—CREDIT AGAINST FEDERAL UNEMPLOYMENT TAXES.

Sec. 701. Credit against Federal unemployment taxes.

TITLE I—INDIVIDUAL AND CORPORATION INCOME TAXES.

SEC. 101. SURTAX ON INDIVIDUALS.

Section 12(b) of the Internal Revenue Code is amended to read as follows:

"(b) RATES OF SURTAX.—There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual the surtax shown in the following table:

"If the surtax net income is:	The surtax shall be:
Not over $2,000	6% of the surtax net income.
Over $2,000 but not over $4,000	$120, plus 9% of excess over $2,000.
Over $4,000 but not over $6,000	$300, plus 13% of excess over $4,000.
Over $6,000 but not over $8,000	$560, plus 17% of excess over $6,000.
Over $8,000 but not over $10,000	$900, plus 21% of excess over $8,000.
Over $10,000 but not over $12,000	$1,320, plus 25% of excess over $10,000.
Over $12,000 but not over $14,000	$1,820, plus 29% of excess over $12,000.
Over $14,000 but not over $16,000	$2,400, plus 32% of excess over $14,000.
Over $16,000 but not over $18,000	$3,040, plus 35% of excess over $16,000.
Over $18,000 but not over $20,000	$3,740, plus 38% of excess over $18,000.
Over $20,000 but not over $22,000	$4,500, plus 41% of excess over $20,000.
Over $22,000 but not over $26,000	$5,320, plus 44% of excess over $22,000.
Over $26,000 but not over $32,000	$7,080, plus 47% of excess over $26,000.
Over $32,000 but not over $38,000	$9,900, plus 50% of excess over $32,000.
Over $38,000 but not over $44,000	$12,900, plus 53% of excess over $38,000.
Over $44,000 but not over $50,000	$16,080, plus 55% of excess over $44,000.
Over $50,000 but not over $60,000	$19,380, plus 57% of excess over $50,000.
Over $60,000 but not over $70,000	$25,080, plus 59% of excess over $60,000.
Over $70,000 but not over $80,000	$30,980, plus 61% of excess over $70,000.
Over $80,000 but not over $90,000	$37,080, plus 63% of excess over $80,000.
Over $90,000 but not over $100,000	$43,380, plus 64% of excess over $90,000.
Over $100,000 but not over $150,000	$49,780, plus 65% of excess over $100,000.
Over $150,000 but not over $200,000	$82,280, plus 66% of excess over $150,000.
Over $200,000 but not over $250,000	$115,280, plus 67% of excess over $200,000.
Over $250,000 but not over $300,000	$148,780, plus 69% of excess over $250,000.
Over $300,000 but not over $400,000	$183,280, plus 71% of excess over $300,000.
Over $400,000 but not over $500,000	$254,280, plus 72% of excess over $400,000.
Over $500,000 but not over $750,000	$326,280, plus 73% of excess over $500,000.
Over $750,000 but not over $1,000,000	$508,780, plus 74% of excess over $750,000.
Over $1,000,000 but not over $2,000,000.	$693,780, plus 75% of excess over $1,000,000.
Over $2,000,000 but not over $5,000,000.	$1,443,780, plus 76% of excess over $2,000,000.
Over $5,000,000	$3,723,780, plus 77% of excess over $5,000,000."

SEC. 102. OPTIONAL TAX ON INDIVIDUALS WITH CERTAIN GROSS INCOME OF $3,000 OR LESS.

(a) OPTIONAL TAX.—The Internal Revenue Code is amended by inserting after section 396 the following new Supplement:

"SUPPLEMENT T—INDIVIDUALS WITH GROSS INCOME FROM CERTAIN SOURCES OF $3,000 OR LESS.

"SEC. 400. IMPOSITION OF TAX.

"In lieu of the tax imposed under sections 11 and 12, an individual may elect, for each taxable year, to pay the tax shown in the following table if his gross income for such taxable year is $3,000 or less and consists wholly of one or more of the following: Salary, wages, compensation for personal services, dividends, interest, rent, annuities, or royalties:

"If the gross income is over—	But not over—	The tax shall be—	
		Single person (not head of a family)	Head of family or married person
$1	$750	$0	$0
$750	775	1	0
$775	800	2	0
$800	825	3	0
$825	850	5	0
$850	875	7	0
$875	900	9	0
$900	925	11	0
$925	950	14	0
$950	975	16	0
$975	1,000	18	0
$1,000	1,025	20	0
$1,025	1,050	22	0
$1,050	1,075	24	0
$1,075	1,100	26	0
$1,100	1,125	29	0
$1,125	1,150	31	0
$1,150	1,175	33	0
$1,175	1,200	35	0
$1,200	1,225	37	0
$1,225	1,250	39	0
$1,250	1,275	42	0
$1,275	1,300	44	0
$1,300	1,325	46	0
$1,325	1,350	48	0
$1,350	1,375	50	0
$1,375	1,400	52	0
$1,400	1,425	55	0
$1,425	1,450	57	0
$1,450	1,475	59	0
$1,475	1,500	61	0
$1,500	1,525	63	1
$1,525	1,550	65	2
$1,550	1,575	68	3
$1,575	1,600	70	5
$1,600	1,625	72	6
$1,625	1,650	74	7
$1,650	1,675	76	9
$1,675	1,700	78	11
$1,700	1,725	80	13
$1,725	1,750	83	15
$1,750	1,775	85	17
$1,775	1,800	87	19
$1,800	1,825	89	22

"If the gross income is over—	But not over—	The tax shall be—	
		Single person (not head of a family)	Head of family or married person
$1,825	$1,850	$91	$24
$1,850	1,875	93	26
$1,875	1,900	96	28
$1,900	1,925	98	30
$1,925	1,950	100	32
$1,950	1,975	102	35
$1,975	2,000	104	37
$2,000	2,025	106	39
$2,025	2,050	109	41
$2,050	2,075	111	43
$2,075	2,100	113	45
$2,100	2,125	115	48
$2,125	2,150	117	50
$2,150	2,175	119	52
$2,175	2,200	122	54
$2,200	2,225	124	56
$2,225	2,250	126	58
$2,250	2,275	128	60
$2,275	2,300	130	63
$2,300	2,325	132	65
$2,325	2,350	134	67
$2,350	2,375	137	69
$2,375	2,400	139	71
$2,400	2,425	141	73
$2,425	2,450	143	76
$2,450	2,475	145	78
$2,475	2,500	147	80
$2,500	2,525	150	82
$2,525	2,550	152	84
$2,550	2,575	154	86
$2,575	2,600	156	89
$2,600	2,625	158	91
$2,625	2,650	160	93
$2,650	2,675	163	95
$2,675	2,700	165	97
$2,700	2,725	167	99
$2,725	2,750	169	102
$2,750	2,775	172	104
$2,775	2,800	174	106
$2,800	2,825	177	108
$2,825	2,850	180	110
$2,850	2,875	183	112
$2,875	2,900	186	114
$2,900	2,925	189	117
$2,925	2,950	191	119
$2,950	2,975	194	121
$2,975	3,000	197	123

In applying the above schedule to determine the tax of a taxpayer with one or more dependents there shall be subtracted from his gross income $400 for each such dependent.

"SEC. 401. RULES FOR APPLICATION OF SECTION 400.

"For the purposes of this Supplement—

"(a) DEFINITIONS—

"(1) 'Married person' means a married person living with husband or wife.

"(2) 'Dependent' means a person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer if such

dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective, excluding as a dependent, in the case of a head of a family, one who would be excluded under section 25(b)(2)(B).

"(b) DETERMINATION OF STATUS.—The determination of whether a person is living with husband or wife, is a head of a family, or is a dependent, shall be made as of the last day of the taxpayer's taxable year.

"(c) SEPARATE RETURN OF HUSBAND AND WIFE.—If a husband and wife living together file separate returns, each shall be treated as a single person.

"(d) MARRIED PERSONS NOT LIVING WITH HUSBAND OR WIFE.—A married person not a head of a family and not living with husband or wife shall be treated as a single person.

"SEC. 402. MANNER OF ELECTION.

"The election referred to in section 400 shall be considered to have been made if the taxpayer files the return prescribed for this Supplement and such election shall be irrevocable. If the taxpayer for any taxable year has filed a return computing his tax without regard to this Supplement, he may not thereafter elect for such year to compute his tax under this Supplement.

"SEC. 403. CREDITS AGAINST TAX NOT ALLOWED.

"Section 31 (relating to foreign tax credit) and section 32 (relating to credit for taxes withheld at source) shall not apply with respect to the tax imposed by this Supplement.

"SEC. 404. CERTAIN TAXPAYERS NOT ELIGIBLE.

"This Supplement shall not apply to a nonresident alien individual, or an estate or trust."

(b) CROSS-REFERENCES.—

(1) Section 11 of the Internal Revenue Code is amended by inserting at the end thereof the following: "(For alternative tax if gross income from certain sources is $3,000 or less, see section 400)".

(2) Section 12 of the Internal Revenue Code is amended by inserting at the end thereof the following:

"(g) For alternative tax if gross income from certain sources is $3,000 or less, see section 400."

(c) AMENDMENT TO SECTION 4.—Section 4 of the Internal Revenue Code is amended by inserting at the end thereof the following:

"(k) Shareholders of Personal Service Corporations,—Supplement S.

"(l) Individuals with gross income from certain sources of $3,000 or less,—Supplement T."

SEC. 103. CORPORATION DEFENSE TAX RATES INCORPORATED IN RATE SCHEDULES.

(a) TAX ON CORPORATIONS IN GENERAL.—Section 13(b) (1) and (2) of the Internal Revenue Code are amended to read as follows:

"(1) GENERAL RULE.—A tax of 24 per centum of the normal-tax net income; or

"(2) ALTERNATIVE TAX (CORPORATIONS WITH NORMAL-TAX NET INCOME SLIGHTLY MORE THAN $25,000).—A tax of $4,250, plus 37 per centum of the amount of the normal-tax net income in excess of $25,000."

(b) TAX ON SPECIAL CLASSES OF CORPORATIONS.—Section 14(b) of the Internal Revenue Code is amended to read as follows:

"(b) CORPORATIONS WITH NORMAL-TAX NET INCOMES OF NOT MORE THAN $25,000.—If the normal-tax net income of the corporation is not more than $25,000, and if the corporation does not come within one of the classes specified in subsection (c), (d), or (e) of this section, the tax shall be as follows:

"Upon normal-tax net incomes not in excess of $5,000, 15 per centum.

"$750 upon normal-tax net incomes of $5,000, and upon normal-tax net incomes in excess of $5,000 and not in excess of $20,000, 17 per centum in addition of such excess.

"$3,300 upon normal-tax net incomes of $20,000, and upon normal-tax net incomes in excess of $20,000, 19 per centum in addition of such excess."

(c) FOREIGN CORPORATIONS.—Section 14(c) of the Internal Revenue Code (relating to tax on resident foreign corporations) is amended by striking out "22½ per centum" and inserting "24 per centum".

(d) SURTAX ON CORPORATIONS IMPROPERLY ACCUMULATING SURPLUS.—The rate schedule of section 102 of the Internal Revenue Code is amended to read as follows:

"27½ per centum of the amount of the undistributed section 102 net income not in excess of $100,000, plus

"38½ per centum of the undistributed section 102 net income in excess of $100,000."

(e) MUTUAL INVESTMENT COMPANIES.—Section 362(b) of the Internal Revenue Code (relating to tax on mutual investment companies) is amended by striking out "22½ per centum" and inserting "24 per centum".

SEC. 104. SURTAX ON CORPORATIONS AND TERMINATION OF DEFENSE TAX.

(a) GENERAL RULE.—Section 15 of the Internal Revenue Code (relating to defense tax) is amended to read as follows:

"SEC. 15. SURTAX ON CORPORATIONS.

"(a) CORPORATION SURTAX NET INCOME.—For the purposes of this chapter the term 'corporation surtax net income' means the net income minus the credit for dividends received provided in section 26(b), computed by limiting such credit to 85 per centum of the net income in lieu of 85 per centum of the adjusted net income.

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

"Upon corporation surtax net incomes not in excess of $25,000, 6 per centum of the amount thereof;

"Upon corporation surtax net incomes in excess of $25,000, $1,500, plus 7 per centum of the excess over $25,000."

(b) SURTAX ON MUTUAL INVESTMENT COMPANIES.—Supplement Q of the Internal Revenue Code (relating to mutual investment companies) is amended by inserting at the end thereof a new section to read as follows:

"SEC. 363. SURTAX ON MUTUAL INVESTMENT COMPANIES.

(a) SUPPLEMENT Q SURTAX NET INCOME.—For the purposes of this chapter the term 'Supplement Q surtax net income' means the net income, computed without the net operating loss deduction provided in section 23(s), minus the dividends paid during the taxable year increased by the consent dividends credit provided in section 28. For the purposes of this subsection the amount of dividends paid shall be computed in the same manner as provided in subsections (d), (e), (f), (g), (h), and (i) of section 27 for the purpose of the basic surtax credit provided in section 27.

"(b) IMPOSITION OF TAX.—There shall be levied, collected, and paid for each taxable year upon the Supplement Q surtax net income of every mutual investment company a surtax as follows:

"Upon Supplement Q surtax net incomes not in excess of $25,000, 6 per centum of the amount thereof;

"Upon Supplement Q surtax net incomes in excess of $25,000, $1,500, plus 7 per centum of the excess over $25,000."

(c) SURTAX ON BANKS.—Section 104(b) of the Internal Revenue Code (relating to certain banks and trust companies) is amended to read as follows:

"(b) RATE OF TAX.—Banks shall be subject to tax under section 13 or section 14(b), and under section 15."

(d) SURTAX ON RESIDENT FOREIGN CORPORATIONS.—Section 231(b) of the Internal Revenue Code (relating to certain foreign corporations) is amended to read as follows:

"(b) RESIDENT CORPORATIONS.—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable as provided in section 14(c)(1) and section 15."

(e) SURTAX ON CORPORATIONS ENTITLED TO THE BENEFITS OF SECTION 251.—Section 251(c)(1) of the Internal Revenue Code (relating to the tax on corporations entitled to the benefits of section 251) is amended to read as follows:

"(1) CORPORATION TAX.—A domestic corporation entitled to the benefits of this section shall be subject to tax under section 13 or section 14(b), and under section 15."

(f) SURTAX ON CHINA TRADE ACT CORPORATIONS.—

(1) SURTAX.—Section 261(a) of the Internal Revenue Code (relating to the ax on China Trade Act corporations) is amended to read as follows:

"(a) CORPORATION TAX.—A corporation organized under the China Trade Act, 922 (42 Stat. 849; U. S. C., 1934 ed., title 15, ch. 4), shall be subject to tax nder section 13 or section 14(b), and under section 15."

(2) CREDIT OF CHINA TRADE ACT CORPORATIONS.—Section 262(a) of the Internal evenue Code (relating to credit against net income of China Trade Act corporations) is amended by striking out "sections 13, 14, and 600" and inserting n lieu thereof "sections 13, 14, 15, and 600"; and by striking out "section 3 or 14" wherever occurring therein and inserting in lieu thereof "section 13, 4, or 15".

EC. 105. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

(a) TAX IN GENERAL.—Section 211(a)(1)(A) of the Internal Revenue Code relating to tax on nonresident alien individuals not engaged in trade or business within the United States and not having an office or place of business herein) is amended by striking out "15 per centum" and inserting in lieu hereof "27½ per centum".

(b) AGGREGATE RECEIPTS MORE THAN $23,000.—Section 211(a)(2) of the nternal Revenue Code is amended to read as follows:

"(2) AGGREGATE MORE THAN $23,000.—The tax imposed by paragraph (1) shall not apply to any individual if the aggregate amount received during the taxable year from the sources therein specified is more than $23,000."

(c) TAX WHERE GROSS INCOME OF MORE THAN $23,000.—Section 211(c) of he Internal Revenue Code (relating to tax on certain nonresident alien individuals) is amended by striking out "$24,000" wherever occurring therein and nserting in lieu thereof "$23,000"; and by striking out "15 per centum" and nserting in lieu thereof "27½ per centum".

EC. 106. TAX ON FOREIGN CORPORATIONS.

Section 231(a) of the Internal Revenue Code (relating to tax on nonresident oreign corporations) is amended by striking out "15 per centum" and inrting in lieu thereof "27½ per centum".

EC. 107. WITHHOLDING OF TAX AT SOURCE.

(a) Sections 143 (a) and (b) and 144 of the Internal Revenue Code are mended by striking out "15 per centum" wherever occurring therein and nserting in lieu thereof "27½ per centum".

(b) Section 143(h) of the Internal Revenue Code is repealed.

(c) Subsections (a) and (b) of this section shall apply only with respect to he period beginning with the tenth day after the date of the enactment of this ct.

EC. 108. TREATY OBLIGATIONS.

No amendment made by this title shall apply in any case where its application ould be contrary to any treaty obligation of the United States.

EC. 109. REDUCTION IN PURSUANCE OF TREATIES OF RATES OF TAX AND WITHHOLDING ON NONRESIDENT ALIEN INDIVIDUALS RESIDENT IN, AND CORPORATIONS ORGANIZED UNDER LAWS OF, WESTERN HEMISPHERE COUNTRIES.

(a) Section 143(a)(1) (relating to withholding of tax on tax-free covenant nds); section 143(b) (relating to withholding of tax on dividends, rents, c.); section 144 (relating to payment of corporation income tax at source); ction 211(a)(1) (relating to tax on nonresident alien individuals); and sec- n 231(a)(1) (relating to tax on nonresident foreign corporations) of the ternal Revenue Code are amended by striking out "a contiguous country" id inserting in lieu thereof "any country in North, Central, or South America, in the West Indies, or of Newfoundland".

(b) Section 211(a)(3) of the Internal Revenue Code is amended to read as llows:

"(3) RESIDENTS OF CERTAIN COUNTRIES.—The provisions of paragraph (2) shall not apply to a resident of any country in North, Central, or South America, or in the West Indies, or of Newfoundland, so long as there is in effect with such country a treaty which provides otherwise."

(c) Section 211(c)(4) of the Internal Revenue Code is amended to read as follows:

"(4) This subsection shall not apply to a resident of any country in North, Central, or South America, or in the West Indies, or of Newfoundland, so long as there is in effect with such country a treaty which provides otherwise."

SEC. 110. DEFENSE TAX RATES ON PERSONAL HOLDING COMPANIES AND TRANSFERS TO AVOID INCOME TAX INCORPORATED IN RATE SCHEDULES.

(a) PERSONAL HOLDING COMPANIES.—Section 500 of the Internal Revenue Code (relating to tax on personal holding companies) is amended as follows:

(1) By striking out the heading "(a) GENERAL RULE.—";

(2) By amending the rate schedule to read as follows:

"(1) 71½ per centum of the amount thereof not in excess of $2,000; plus

"(2) 82½ per centum of the amount thereof in excess of $2,000."; and

(3) By repealing subsection (b) (relating to defense tax for five years).

(b) TRANSFERS TO AVOID INCOME TAX.—Section 1250 of the Internal Revenue Code (relating to tax on transfers to avoid income tax) is amended as follows:

(1) By striking out the heading "(a) GENERAL RULE.—";

(2) By striking out "25 per centum" and inserting "27½ per centum"; and

(3) By repealing subsection (b) (relating to defense tax for five years).

SEC. 111. PERSONAL EXEMPTION.

(a) Section 25(b)(1) of the Internal Revenue Code is amended to read as follows:

"(1) PERSONAL EXEMPTION.—In the case of a single person or a married person not living with husband or wife, a personal exemption of $750; or in the case of the head of a family or a married person living with husband or wife, a personal exemption of $1,500. A husband and wife living together shall receive but one personal exemption. The amount of such personal exemption shall be $1,500. If such husband and wife make separate returns, the personal exemption may be taken by either or divided between them, except that if one spouse makes a return under Supplement T, the personal exemption of the other spouse shall be $750."

(b) Section 214 of the Internal Revenue Code (relating to personal exemption of nonresident alien individuals) is amended by striking out "$800" and inserting in lieu thereof "$750".

(c) Section 251(f) of the Internal Revenue Code (relating to personal exemption of citizens entitled to benefits of section 251) is amended by striking out "$800" and inserting in lieu thereof "$750".

SEC. 112. RETURNS OF INCOME TAX.

(a) INDIVIDUAL RETURNS.—Section 51(a) of the Internal Revenue Code is amended to read as follows:

"(a) REQUIREMENT.—The following individuals shall each make under oath a return stating specifically the items of his gross income and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe—

"(1) Every individual who is single or who is married but not living with husband or wife, if having a gross income for the taxable year of $750 or over.

"(2) Every individual who is married and living with husband or wife, if no joint return is made under subsection (b) and if—

"(A) Such individual has for the taxable year a gross income of $1,500 or over, and the other spouse has no gross income; or

"(B) Such individual and his spouse each has for the taxable year a gross income and the aggregate gross income is $1,500 or over."

(b) FIDUCIARY RETURNS.—Section 142(a) of the Internal Revenue Code is amended to read as follows:

"(a) REQUIREMENT OF RETURN.—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of

this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe—

"(1) Every individual having a gross income for the taxable year of $750 or over, if single, or if married and not living with husband or wife;

"(2) Every individual having a gross income for the taxable year of $1,500 or over, if married and living with husband or wife;

"(3) Every estate the gross income of which for the taxable year is $750 or over;

"(4) Every trust the net income of which for the taxable year is $100 or over, or the gross income of which for the taxable year is $750 or over, regardless of the amount of the net income; and

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

(c) INFORMATION RETURNS.—Section 147(a) of the Internal Revenue Code (relating to information at the source) is amended by striking out "$800" wherever occurring therein and inserting in lieu thereof "$750".

SEC. 113. CREDIT FOR DEPENDENTS.

Section 25(b)(2) of the Internal Revenue Code (relating to credit for dependents) is amended to read as follows:

"(2) CREDIT FOR DEPENDENTS.—

"(A) Allowance in General.—$400 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective.

"(B) Exception for Certain Heads of Families.—If the taxpayer would not occupy the status of head of a family except by reason of there being one or more dependents for whom he would be entitled to credit under subparagraph (A), the credit under such subparagraph shall be disallowed with respect to one of such dependents."

SEC. 114. NONINTEREST-BEARING OBLIGATIONS ISSUED AT DISCOUNT.

Section 42 of the Internal Revenue Code (relating to period in which items of gross income are included) is amended by inserting before the first sentence thereof "(a) GENERAL RULE.—", and by inserting at the end of such section a new subsection to read as follows:

"(b) NONINTEREST-BEARING OBLIGATIONS ISSUED AT DISCOUNT.—If, in the case of a taxpayer owning any noninterest-bearing obligation issued at a discount and redeemable for fixed amounts increasing at stated intervals, the increase in the redemption price of such obligation occurring in the taxable year does not (under the method of accounting used in computing his net income) constitute income to him in such year, such taxpayer may, at his election made in his return for any taxable year beginning after December 31, 1940, treat such increase as income received in such taxable year. If any such election is made with respect to any such obligation, it shall apply also to all such obligations owned by the taxpayer at the beginning of the first taxable year to which it applies and to all such obligations thereafter acquired by him and shall be binding for all subsequent taxable years, unless upon application by the taxpayer the Commissioner permits him, subject to such conditions as the Commissioner deems necessary, to change to a different method. In the case of any such obligations owned by the taxpayer at the beginning of the first taxable year to which his election applies, the increase in the redemption price of such obligations occurring between the date of acquisition and the first day of such taxable year shall also be treated as income received in such taxable year."

SEC. 115. SHORT-TERM OBLIGATIONS ISSUED ON A DISCOUNT BASIS.

(a) DISCOUNT ACCRUED AT MATURITY.—Section 42 of the Internal Revenue Code (relating to period in which items of gross income are included) is amended by inserting at the end thereof the following new subsection:

"(c) SHORT-TERM OBLIGATIONS ISSUED ON DISCOUNT BASIS.—In the case of any obligation of the United States or any of its possessions, or of a State or Territory, or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue, the amount of discount at which such obligation is originally sold shall not be considered to accrue until the date on which such obligation is paid at maturity, sold, or otherwise disposed of."

(b) CAPITAL GAIN RULE NOT APPLICABLE.—Section 117(a)(1) of the Internal Revenue Code (relating to definition of capital assets) is amended by striking out the semicolon at the end thereof and inserting in lieu thereof the following: ", or an obligation of the United States or any of its possessions, or of a State or Territory, or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue;".

(c) EFFECTIVE DATE OF AMENDMENTS.—The amendments made by this section shall be applicable with respect to taxable years ending after February 28, 1941.

SEC. 116. INFORMATION RETURNS WITH RESPECT TO FEDERAL OBLIGATIONS.

(a) Section 147(d) of the Internal Revenue Code (exempting interest on obligations of the United States from information requirement) is repealed.

(b) Section 147(b) of the Internal Revenue Code is amended by striking out "and (2)" and inserting in lieu thereof "(2) in the case of payments of interest upon obligations of the United States or any agency or instrumentality thereof, and (3)".

(c) Subsections (a) and (b) of this section shall take effect upon the day after the date of the enactment of this Act.

SEC. 117. EXTENSION OF TIME OF ORDERS OF SECURITIES AND EXCHANGE COMMISSION.

(a) EXTENSION.—Section 373(a) of the Internal Revenue Code (relating to the definition of orders of the Securities and Exchange Commission with respect to which Supplement R applies) is amended to read as follows:

"(a) The term 'order of the Securities and Exchange Commission' means an order (1) issued after May 28, 1938, and prior to January 1, 1943, by the Securities and Exchange Commission to effectuate the provisions of section 11(b) of the Public Utility Holding Company Act of 1935 (49 Stat. 820; U. S. C., Supp. V, title 15, section 79k(b)), or (2) issued by the Commission subsequent to December 31, 1942, in which it is expressly stated that an order of the character specified in clause (1) is amended or supplemented, and (3) which has become final in accordance with law."

(b) EFFECTIVE DATE OF AMENDMENT.—The amendment made by this section shall be applicable only with respect to taxable years beginning after December 31, 1939.

SEC. 118. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.

The amendments made by this title (except sections 107, 115, 116, and 117) shall be applicable only with respect to taxable years beginning after December 31, 1940.

TITLE II—EXCESS PROFITS TAX.

SEC. 201. EXCESS PROFITS TAX RATES AND CREDITS.

(a) RATES.—Section 710(a) of the Internal Revenue Code is amended to read as follows:

"(a) IMPOSITION.—

"(1) GENERAL RULE.—There shall be levied, collected, and paid, for each taxable year, on the adjusted excess profits net income, as defined in subsection (b), of every corporation (except a corporation exempt under section 727) the tax shown in the following table:

"If the adjusted excess profits net income is:	The tax shall be:
Not over $20,000	35% of the adjusted excess profits net income.
Over $20,000, but not over $50,000	$7,000, plus 40% of excess over $20,000.
Over $50,000, but not over $100,000	$19,000, plus 45% of excess over $50,000.
Over $100,000, but not over $250,000	$41,500, plus 50% of excess over $100,000.
Over $250,000, but not over $500,000	$116,500, plus 55% of excess over $250,000.
Over $500,000	$254,000, plus 60% of excess over $500,000.

"(2) APPLICATION OF RATES IN CASE OF CERTAIN EXCHANGES.—If the taxpayer's highest bracket amount for the taxable year computed under section 752 (relating to certain exchanges) is less than $500,000, then in the applica-

tion of the table in paragraph (1) of this subsection to such taxpayer, in lieu of each amount, other than the percentages, specified in such table, there shall be substituted an amount which bears the same ratio to the amount so specified as the highest bracket amount so computed bears to $500,000."

(b) EXCESS PROFITS CREDIT—BASED ON INVESTED CAPITAL.—Section 714 of the Internal Revenue Code, as amended, is amended to read as follows:

"SEC. 714. EXCESS PROFITS CREDIT—BASED ON INVESTED CAPITAL.

"The excess profits credit, for any taxable year, computed under this section, shall be the amount shown in the following table:

"If the invested capital for the taxable year, determined under section 715, is:	The credit shall be:
Not over $5,000,000	8% of the invested capital.
Over $5,000,000	$400,000, plus 7% of the excess over $5,000,000."

SEC. 202. DEDUCTION OF EXCESS-PROFITS TAX.

(a) AMENDMENT OF SECTION 23(c).—Section 23(c) of the Internal Revenue Code (relating to the deduction of taxes in computing net income) is amended to read as follows:

"(c) TAXES GENERALLY.—

"(1) ALLOWANCE IN GENERAL.—Taxes paid or accrued within the taxable year, except—

"(A) Federal income taxes;

"(B) war-profits and excess-profits taxes imposed by Title II of the Revenue Act of 1917, Title III of the Revenue Act of 1918, Title III of the Revenue Act of 1921, section 216 of the National Industrial Recovery Act, or section 702 of the Revenue Act of 1934, or by any such provisions as amended or supplemented;

"(C) income, war-profits, and excess-profits taxes imposed by the authority of any foreign country or possession of the United States; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of section 131 (relating to credit for taxes of foreign countries and possessions of the United States);

"(D) estate, inheritance, legacy, succession, and gift taxes; and

"(E) taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not exclude the allowance as a deduction of so much of such taxes as is properly allocable to maintenance or interest charges.

"(2) EXCESS-PROFITS TAX UNDER CHAPTER 2E—SPECIAL RULES.—For the purposes of this subsection, in the case of the excess-profits tax imposed by Subchapter E of Chapter 2—

"(A) The deduction shall be limited to the tax imposed for the taxable year, but any portion of such tax paid after the taxable year shall be considered as having been paid within the taxable year;

"(B) No reduction in such tax shall be made by reason of the credit for income, war-profits, or excess-profits taxes paid to any foreign country or possession of the United States;

"(C) Such tax shall be computed without regard to the adjustments provided in section 734; and

"(D) Such tax, in the case of a consolidated return under section 730, shall be allocated to the members of the affiliated group under regulations prescribed by the Commissioner, with the approval of the Secretary."

(b) AMENDMENT OF SECTION 102(d).—Section 102(d)(1)(A) of the Internal Revenue Code (relating to the deduction of taxes in computing section 102 net income) is amended to read as follows:

"(A) Taxes.—Federal income, war-profits, and excess-profits taxes (other than the tax imposed by Subchapter E of Chapter 2 for a taxable year beginning after December 31, 1940) paid or accrued during the taxable year, to the extent not allowed as a deduction by section 23, but not including the tax imposed by this section or a corresponding section of a prior income-tax law."

(c) COMPUTATION OF EXCESS-PROFITS NET INCOME.—

(1) TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1940.—

(A) Section 711(a)(1)(A) (relating to adjustment for income taxes in computing excess-profits net income under income credit) is amended to read as follows:

"(A) Income Taxes.—In computing such normal-tax net income the deduction for the tax imposed by this subchapter shall not be allowed;".

(B) Section 711(a)(2)(C) (relating to adjustment for income taxes in computing excess-profits net income under invested capital credit) is amended to read as follows:

"(C) Income Taxes.—In computing such normal-tax net income the deduction for the tax imposed by this subchapter shall not be allowed;".

(2) TAXABLE YEARS IN THE BASE PERIOD.—Section 711(b)(1)(A) (relating to adjustment for income taxes for taxable years in the base period) is repealed.

(d) COMPUTATION OF CHARITABLE, ETC., DEDUCTIONS.—

(1) Section 711(a)(1) of the Internal Revenue Code is amended by inserting at the end thereof the following new subparagraph:

"(G) Computation of Charitable, Etc., Deductions.—In determining any deduction the amount of which is limited to a percentage of the taxpayer's net income (or net income from the property), such net income (or net income from the property) shall be computed without regard to the deduction on account of the tax imposed by this subchapter."

(2) Section 711(a)(2) of the Internal Revenue Code is amended by adding at the end thereof the following new subparagraph:

"(I) Computation of Charitable, Etc., Deductions.—In determining any deduction the amount of which is limited to a percentage of the taxpayer's net income (or net income from the property), such net income (or net income from the property) shall be computed without regard to the deduction on account of the tax imposed by this subchapter."

(e) EXCESS-PROFITS CREDIT CARRY-OVER.—Section 710(c)(1) (defining the unused excess-profits credit) is amended by adding at the end thereof a new sentence to read as follows: "For such purpose the excess-profits credit and the excess-profits net income for any taxable year beginning in 1940 shall be computed under the law applicable to taxable years beginning in 1941.".

(f) EQUITY INVESTED CAPITAL.—Section 718(c)(3) (relating to the computation of earnings and profits for invested capital purposes) is amended by adding after the word "subchapter" the words "or chapter 1".

(g) ADJUSTMENT OF ABNORMAL BASE PERIOD NET INCOME.—Section 722(c) (placing a limit on the amount of relief afforded under section 722) is amended by adding at the end thereof a new sentence to read as follows: "For the purposes of this subsection and subsection (d) the taxpayer's normal-tax net income shall be computed without deduction of the tax imposed by this subchapter".

(h) NONDEDUCTIBILITY OF EXCESS PROFITS TAX IN COMPUTATION OF DECLARED VALUE EXCESS PROFITS TAX.—Section 602 of the Internal Revenue Code is amended by striking out "computed without the deduction of the tax imposed by section 600" and inserting in lieu thereof "computed without the deduction of the tax imposed by section 600 or the tax imposed by Subchapter E of Chapter 2".

(i) ADJUSTED DECLARED VALUE.—

(1) Section 1202(b)(1)(C) of the Internal Revenue Code is amended to read as follows:

"(C) its net income, computed without the deduction of the tax imposed by Subchapter E of Chapter 2,".

(2) Section 1202(b)(1)(iii) is amended to read as follows:

"(iii) the excess of the deductions allowable for income tax purposes (not including the deduction for the tax imposed by Subchapter E of Chapter 2) over its gross income."

SEC. 203. NEW CAPITAL.

Section 718(a) of the Internal Revenue Code is amended by striking out "and" at the end of paragraph (4); by striking out the period at the end of para-

graph (5) and inserting in lieu thereof a semicolon and the word "and", and by inserting at the end thereof the following:

"(6) NEW CAPITAL.—An amount equal to 25 per centum of the new capital for such day. The term 'new capital' for any day means so much of the amounts of money or property includible for such day under paragraphs (1) and (2) as was previously paid in during a taxable year beginning after December 31, 1940, and so much of the distributions in stock includible for such day under paragraph (3) as was previously made during a taxable year beginning after December 31, 1940, subject to the following limitations:

"(A) There shall not be included money or property paid in by a corporation in an exchange to which section 112(b) (3), (4), or (5), or so much of section 112 (c), (d), or (e) as refers to section 112(b) (3), (4), or (5) is applicable (or would be applicable except for section 371(g)), or would have been applicable if the term 'control' had been defined in section 112(h) to mean the ownership of stock possessing more than 50 per centum of the total combined voting power of all classes of stock entitled to vote or more than 50 per centum of the total value of shares of all classes of stock.

"(B) There shall not be included money or property paid in to the taxpayer by a transferor corporation if immediately after such transaction the transferor and the taxpayer are members of the same controlled group. As used in this subparagraph and subparagraph (C), a controlled group means one or more chains of corporations connected through stock ownership with a common parent corporation if (i) more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock, of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations, and (ii) the common parent corporation owns directly more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock, of at least one of the other corporations.

"(C) There shall not be included a distribution in stock described in paragraph (3) made to another corporation, if immediately after the distribution the taxpayer and the distributee are members of the same controlled group.

"(D) Increase in Inadmissible Assets.—The new capital for any day of the taxable year, computed without the application of subparagraph (E), shall be reduced by the excess, if any, of the amount computed under section 720(b) with respect to inadmissible assets held on such day, over the amount computed under section 720(b) with respect to inadmissible assets held on the first day of the taxpayer's first taxable year beginning after December 31, 1940. For the purposes of this subparagraph, in determining whether obligations which are described in section 22(b)(4) any part of the interest from which is excludible from gross income or allowable as a credit against net income are to be treated as admissible or inadmissible assets, such obligations shall be treated in the same manner as they are treated for the taxable year for which tax under this subchapter is being computed.

"(E) Maximum New Capital Allowable.—The new capital for any day of the taxable year shall not be more than the amount, if any, by which—

"(i) the sum of the equity invested capital (computed without regard to this paragraph) and the borrowed capital (as defined in section 719(a)) of the taxpayer as of such day, reduced by the amount of money or property paid in which is excluded by reason of the limitation of subparagraph (A) or (B) of this paragraph, exceeds

"(ii) the sum of such equity invested capital and borrowed capital as of the beginning of the first day of such taxpayer's first taxable year beginning after December 31, 1940, reduced by the amount, if any, by which the accumulated earnings and profits as of such first day of such first taxable year exceed the accumulated earnings and profits (computed without regard to distributions made in taxable years beginning after December 31, 1940) as of the beginning of the first day of the taxable year for which the tax under this subchapter is being computed.

"(F) Reduction on Account of Distributions Out of Pre-1941 Accumulated Earnings and Profits.—The new capital for any day of the taxable year, computed without the application of subparagraph (E), shall be reduced by the amount which, after the beginning of the first taxable year which begins after December 31, 1940, has been distributed out of earnings and profits accumulated prior to the beginning of such first taxable year."

SEC. 204. CORPORATIONS ENGAGED IN MINING STRATEGIC METALS.

Section 731 of the Internal Revenue Code (exempting from excess-profits tax income derived from mining certain metals) shall not apply with respect to any taxable year beginning after December 31, 1940.

SEC. 205. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.

The amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1940.

TITLE III—CAPITAL STOCK TAX AND DECLARED VALUE EXCESS-PROFITS TAX.

SEC. 301. CAPITAL STOCK TAX.

(a) INCREASE IN RATE OF TAX.—Section 1200 (a) and (b) of the Internal Revenue Code (relating to rate of capital stock tax) is amended by striking out "$1" and inserting in lieu thereof "$1.25".

(b) DEFENSE TAX RATE.—Section 1200(c) of the Internal Revenue Code is repealed.

(c) RETURNS FOR 1941.—Section 1203(b)(2) of the Internal Revenue Code (relating to extensions of time for filing capital-stock tax returns) is amended by inserting at the end thereof the following: "With respect to the year ending June 30, 1941, the extension may be for not more than ninety days.".

(d) EFFECTIVE DATE.—This section shall be effective only with respect to the year ending June 30, 1941, and succeeding years.

SEC. 302. DECLARED VALUE EXCESS PROFITS TAX—DEFENSE TAX RATES INCORPORATED IN RATE SCHEDULE.

(a) RATES.—Section 600 of the Internal Revenue Code (relating to rate of declared value excess profits tax) is amended as follows:

(1) By striking out the heading "(a) GENERAL RULE.—";

(2) By amending the rate schedule to read as follows:

"6⅔ per centum of such portion of its net income for such income-tax taxable year as is in excess of 10 per centum and not in excess of 15 per centum of the adjusted declared value;

"13⅓ per centum of such portion of its net income for such income-tax taxable year as is in excess of 15 per centum of the adjusted declared value."; and

(3) By repealing subsection (b) (relating to defense tax for five years).

(b) EFFECTIVE DATE.—This section shall be effective only with respect to income-tax taxable years ending after June 30, 1941.

TITLE IV—ESTATE AND GIFT TAXES.

SEC. 401. ESTATE TAX RATES.

(a) RATES.—Section 935(b) of the Internal Revenue Code is amended to read as follows:

"(b) The tentative tax referred to in subsection (a)(1) of this section shall be the tentative tax shown in the following table:

"If the net estate is:	The tentative tax shall be:
Not over $5,000	3% of the net estate.
Over $5,000 but not over $10,000	$150, plus 7% of excess over $5,000.
Over $10,000 but not over $20,000	$500, plus 11% of excess over $10,000.
Over $20,000 but not over $30,000	$1,600, plus 14% of excess over $20,000.
Over $30,000 but not over $40,000	$3,000, plus 18% of excess over $30,000.

"If the net estate is:	The tentative tax shall be:
Over $40,000 but not over $50,000	$4,800, plus 22% of excess over $40,000.
Over $50,000 but not over $60,000	$7,000, plus 25% of excess over $50,000.
Over $60,000 but not over $100,000	$9,500, plus 28% of excess over $60,000.
Over $100,000 but not over $250,000	$20,700, plus 30% of excess over $100,000.
Over $250,000 but not over $500,000	$65,700, plus 32% of excess over $250,000.
Over $500,000 but not over $750,000	$145,700, plus 35% of excess over $500,000.
Over $750,000 but not over $1,000,000	$233,200, plus 37% of excess over $750,000.
Over $1,000,000 but not over $1,250,000.	$325,700, plus 39% of excess over $1,000,000.
Over $1,250,000 but not over $1,500,000.	$423,200, plus 42% of excess over $1,250,000.
Over $1,500,000 but not over $2,000,000.	$528,200, plus 45% of excess over $1,500,000.
Over $2,000,000 but not over $2,500,000.	$753,200, plus 49% of excess over $2,000,000.
Over $2,500,000 but not over $3,000,000.	$998,200, plus 53% of excess over $2,500,000.
Over $3,000,000 but not over $3,500,000.	$1,263,200, plus 56% of excess over $3,000,000.
Over $3,500,000 but not over $4,000,000.	$1,543,200, plus 59% of excess over $3,500,000.
Over $4,000,000 but not over $5,000,000.	$1,838,200, plus 63% of excess over $4,000,000.
Over $5,000,000 but not over $6,000,000.	$2,468,200, plus 67% of excess over $5,000,000.
Over $6,000,000 but not over $7,000,000.	$3,138,200, plus 70% of excess over $6,000,000.
Over $7,000,000 but not over $8,000,000.	$3,838,200, plus 73% of excess over $7,000,000.
Over $8,000,000 but not over $10,000,00.	$4,568,200, plus 76% of excess over $8,000,000.
Over $10,000,000	$6,088,200, plus 77% of excess over $10,000,000."

(b) DEFENSE TAX REPEALED.—Subchapter C of Chapter 3 of the Internal Revenue Code is repealed.

(c) EFFECTIVE DATE.—Subsections (a) and (b) shall be effective only with respect to estates of decedents dying after the date of the enactment of this Act.

SEC. 402. GIFT TAX RATES.

(a) RATES.—The Rate Schedule of section 1001 of the Internal Revenue Code is amended to read as follows:

" If the net gifts are:	The tax shall be:
Not over $5,000	2¼% of the net gifts.
Over $5,000 but not over $10,000	$112.50, plus 5¼% of excess over $5,000.
Over $10,000 but not over $20,000	$375, plus 8¼% of excess over $10,000.
Over $20,000 but not over $30,000	$1,200, plus 10½% of excess over $20,000.
Over $30,000 but not over $40,000	$2,250, plus 13½% of excess over $30,000.
Over $40,000 but not over $50,000	$3,600, plus 16½% of excess over $40,000.
Over $50,000 but not over $60,000	$5,250, plus 18¾% of excess over $50,000.
Over $60,000 but not over $100,000	$7,125, plus 21% of excess over $60,000.
Over $100,000 but not over $250,000	$15,525, plus 22½% of excess over $100,000.
Over $250,000 but not over $500,000	$49,275, plus 24% of excess over $250,000.

"If the net gifts are:	The tax shall be:
Over $500,000 but not over $750,000	$109,275, plus 26¼% of excess over $500,000.
Over $750,00 but not over $1,000,000	$174,900, plus 27½% of excess over $750,000.
Over $1,000,000 but not over $1,250,000.	$244,275, plus 29¼% of excess over $1,000,000.
Over $1,250,000 but not over $1,500,000.	$317,400, plus 31½% of excess over $1,250,000.
Over $1,500,000 but not over $2,000,000.	$396,150, plus 33¾% of excess over $1,500,000.
Over $2,000,000 but not over $2,500,000.	$564,900, plus 36¾% of excess over $2,000,000.
Over $2,500,000 but not over $3,000,000.	$748,650, plus 39¾% of excess over $2,500,000.
Over $3,000,000 but not over $3,500,000.	$947,400, plus 42% of excess over $3,000,000.
Over $3,500,000 but not over $4,000,000.	$1,157,400, plus 44¼% of excess over $3,500,000.
Over $4,000,000 but not over $5,000,000.	$1,378,650, plus 47¼% of excess over $4,000,000.
Over $5,000,000 but not over $6,000,000.	$1,851,150, plus 50¼% of excess over $5,000,000.
Over $6,000,000 but not over $7,000,000.	$2,353,650, plus 52½% of excess over $6,000,000.
Over $7,000,000 but not over $8,000,000.	$2,878,650, plus 54¾% of excess over $7,000,000.
Over $8,000,000 but not over $10,000,000.	$3,426,150, plus 57% of excess over $8,000,000.
Over $10,000,000	$4,566,150, plus 57¾% of excess over $10,000,000."

(b) YEARS TO WHICH AMENDMENTS APPLICABLE.—The amendments made by this section shall be applied in computing the tax for the calendar year 1942 and each calendar year thereafter (but not the tax for the calendar year 1941 or a previous calendar year), and such amendments shall be applied in all computations in respect of the calendar year 1941 and previous calendar years for the purpose of computing the tax for the calendar year 1942 and any calendar year thereafter.

(c) DEFENSE TAX REPEALED.—Section 1001(d) of the Internal Revenue Code (relating to defense tax for five years on gifts) is repealed.

TITLE V—EXCISE TAXES.

PART I—1932 EXCISE TAXES MADE PERMANENT.

SEC. 501. 1932 EXCISE TAXES MADE PERMANENT.

Section 3452 of the Internal Revenue Code (relating to expiration of 1932 excise taxes) is repealed.

SEC. 502. PIPE LINE TAX.

Section 3460(a) of the Internal Revenue Code (relating to termination of tax on transportation by pipe line) is amended by striking out "originating before July 1, 1945".

SEC. 503. TECHNICAL AMENDMENT.

The heading of Subtitle C of the Internal Revenue Code is amended to read as follows:

"SUBTITLE C—MANUFACTURERS' EXCISE AND IMPORT TAXES AND TEMPORARY TAXES."

SEC. 504. BOND TAX.

Section 3481(b) of the Internal Revenue Code (relating to expiration of tax on transfer of bonds) is repealed.

SEC. 505. CONVEYANCE TAX.

Section 3482 of the Internal Revenue Code (relating to tax on conveyances) is amended by striking out "delivered before July 1, 1945".

PART II—DEFENSE TAX RATES MADE PERMANENT (NO INCREASE IN TAX AND NO CHANGE IN BASIS OF TAX).

SEC. 521. DEFENSE EXCISE TAX RATES MADE PERMANENT WHICH ARE NOT INCREASED BY THIS ACT.

(a) The following sections of the Internal Revenue Code are amended as follows:

(1) BOX SEATS.—Section 1700(b)(1) is amended by striking out "10 per centum" and inserting in lieu thereof "11 per centum".

(2) SALES OUTSIDE BOX OFFICE.—Section 1700(c)(1) is amended by striking out "10 per centum" and inserting in lieu thereof "11 per centum".

(3) CORPORATE SECURITIES.—Section 1801 is amended by striking out "10 cents until July 1, 1945, and 5 cents thereafter" and inserting in lieu thereof "11 cents".

(4) CAPITAL STOCK ISSUES.—Section 1802(a) is amended by striking out "10 cents until July 1, 1945, and 5 cents thereafter" and the comma wherever following such expression and inserting in lieu thereof "11 cents"; and by striking out "2 cents until July 1, 1945, and 1 cent thereafter," and inserting in lieu thereof "3 cents".

(5) CAPITAL STOCK TRANSFERS.—Section 1802(b) is amended by striking out "4 cents until July 1, 1945, and 2 cents thereafter," and inserting in lieu thereof "5 cents"; and by striking out "5 cents instead of 4 cents until July 1, 1945" and inserting in lieu thereof "6 cents".

(6) INSURANCE POLICIES.—Section 1804 is amended by striking out "3 cents" and inserting in lieu thereof "4 cents".

(7) PASSAGE TICKETS.—Section 1806 is amended by striking out "$1" and inserting in lieu thereof "$1.10"; by striking out "$3" and inserting in lieu thereof "$3.30"; and by striking out "$5" and inserting in lieu thereof "$5.50".

(8) CIGARETTES.—Section 2000(c)(2) is amended by striking out "$3" and inserting in lieu thereof "$3.25" and by striking out "$7.20" and inserting in lieu thereof "$7.80".

(9) PISTOLS AND REVOLVERS.—Section 2700(a) is amended by striking out "10 per centum" and inserting in lieu thereof "11 per centum".

(10) FERMENTED MALT LIQUORS.—Section 3150(a) is amended by striking out "$5" and inserting in lieu thereof "$6".

(11) WHOLESALERS OF LIQUOR.—Section 3250(a)(1) is amended by striking out "$100" and inserting in lieu thereof "$110".

(12) RETAILERS OF LIQUOR.—Section 3250(b) is amended by striking out "$25" and inserting in lieu thereof "$27.50".

(13) BREWERS.—Section 3250(c) is amended by striking out "$100" and inserting in lieu thereof "$110" and by striking out "$50" and inserting in lieu thereof "$55".

(14) WHOLESALERS OF MALT LIQUORS.—Section 3250(d) is amended by striking out "$50" and inserting in lieu thereof "$55".

(15) RETAILERS OF MALT LIQUORS.—Section 3250(e)(1) is amended by striking out "$20" and inserting in lieu thereof "$22", and section 3250(e)(3) is amended by striking out "$2" and inserting in lieu thereof "$2.20".

(16) RECTIFIERS.—Section 3250(f)(1) is amended by striking out "$200" and inserting in lieu thereof "$220"; and by striking out "$100" and inserting in lieu thereof "$110".

(17) STILLS.—Section 3250(j) is amended by striking out "$50" and inserting in lieu thereof "$55"; and by striking out "$20" and inserting in lieu thereof "$22".

(18) FIREARMS, ETC.—Section 3407 is amended by striking out "10 per centum" and inserting in lieu thereof "11 per centum".

(19) ELECTRICAL ENERGY.—Section 3411 is amended by striking out "3 per centum" and inserting in lieu thereof "3⅓ per centum".

(20) GASOLINE.—Section 3412(a) is amended by striking out "1 cent" and inserting in lieu thereof "1½ cents".

(21) LUBRICATING OILS.—Section 3413 is amended by striking out "4 cents" and inserting in lieu thereof "4½ cents".

(22) TRANSPORTATION OF OIL BY PIPE LINE.—Section 3460(a) is amended by striking out "4 per centum" and inserting in lieu thereof "4½ per centum".

(23) TRANSFER OF BONDS.—Section 3481(a) is amended by striking out "4 cents" and inserting in lieu thereof "5 cents".

(24) CONVEYANCES.—Section 3482 is amended by striking out "50 cents" and inserting in lieu thereof "55 cents".

(b) The rates specified in subsection (a) shall be applicable only with respect to the period after the date of the enactment of this Act, and the rates specified in section 1650(a), section 2004, and section 3190 of the Internal Revenue Code shall not apply with respect to such period.

PART III—INCREASES IN RATES OF EXISTING EXCISE TAXES.

SEC. 531. PLAYING CARDS.

Section 1807(a) of the Internal Revenue Code is amended by striking out "10 cents" and inserting in lieu thereof "13 cents".

SEC. 532. SAFE DEPOSIT BOXES.

Section 1850(a) of the Internal Revenue Code is amended by striking out "10 per centum" and inserting in lieu thereof "20 per centum".

SEC. 533. DISTILLED SPIRITS.

(a) RATE ON DISTILLED SPIRITS.—Section 2800(a)(1) of the Internal Revenue Code is amended by striking out "at the rate of $2.25 (and on brandy at the rate of $2)" and by inserting in lieu thereof "at the rate of $4", and by striking out "(except brandy)".

(b) RATE ON IMPORTED PERFUMES CONTAINING ALCOHOL.—Section 2800(a)(3) of the Internal Revenue Code is amended by striking out "$2.25" and inserting in lieu thereof "$4".

(c) DRAWBACK ON DISTILLED SPIRITS.—The third paragraph of section 2887 of the Internal Revenue Code is amended by striking out "but shall not exceed a rate of $3 (or, in the case of brandy, $2.75)" and inserting in lieu thereof "but shall not exceed a rate of $4".

(d) FLOOR STOCKS TAX.—Section 2800 of the Internal Revenue Code is amended by inserting at the end thereof the following new subsection:

"(i) FLOOR STOCKS TAX.—

"(1) Upon all distilled spirits upon which the internal-revenue tax imposed by law has been paid, and which on October 1, 1941, are held and intended for sale or for use in the manufacture or production of any article intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax of $1 (except that in the case of brandy, the rate shall be $1.25) on each proof-gallon, and a proportionate tax at a like rate on all fractional parts of such proof-gallon.

"(2) Every person required by this subsection to pay any floor stocks tax shall, on or before January 1, 1942, under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe, make a return and pay such tax. Payment of the tax shown to be due may be extended to a date not later than August 1, 1942, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Commissioner, with the approval of the Secretary, may prescribe.

"(3) All provisions of law, including penalties, applicable in respect of internal-revenue taxes on distilled spirits shall, insofar as applicable and not inconsistent with this subsection, be applicable in respect of the floor stocks tax imposed hereunder. For the purposes of this subsection the term 'distilled spirits' shall include products produced in such manner that the person producing them is a rectifier within the meaning of section 3254(g)."

SEC. 534. WINES.

(a) RATE ON STILL WINES.—Section 3030(a)(1)(A) of the Internal Revenue Code is amended by striking out "5 cents" and inserting in lieu thereof "8 cents"; by striking out "15 cents" and inserting in lieu thereof "30 cents"; and by striking out "25 cents" and inserting in lieu thereof "65 cents".

(b) RATE ON SPARKLING WINES, LIQUEURS, CORDIALS, ETC.—Section 3030(a)(2) of the Internal Revenue Code is amended by striking out "2½ cents" and inserting in lieu thereof "7 cents"; and by striking out "1¼ cents" and inserting in lieu thereof "3½ cents".

(c) Subchapter F of Chapter 26 of the Internal Revenue Code is amended by inserting at the end thereof the following new section:

"SEC. 3192. FLOOR STOCKS TAX ON WINES.

"(a) FLOOR STOCKS TAX.—Upon all wines upon which the internal-revenue tax imposed by law has been paid, and which on October 1, 1941, are held and intended for sale or for use in the manufacture or production of an article intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax at rates equal to the increases in rates of tax (over the defense tax rates) made applicable to such articles by section 534 of the Revenue Act of 1941.

"(b) RETURNS.—Every person required by subsection (a) to pay any floor stocks tax shall, on or before January 1, 1942, under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe, make a return and pay such tax. Payment of the tax shown to be due may be extended to a date not later than August 1, 1942, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Commissioner, with the approval of the Secretary, may prescribe.

"(c) LAWS APPLICABLE.—All provisions of law, including penalties, applicable in respect of the taxes imposed by section 3030(a) shall, insofar as applicable and not inconsistent with this subsection, be applicable with respect to the floor stocks tax imposed by subsection (a)."

SEC. 535. TIRES AND TUBES.

(a) RATE ON TIRES.—Section 3400(1) of the Internal Revenue Code is amended by striking out "2¼ cents" and inserting in lieu thereof "5 cents".

(b) RATE ON TUBES.—Section 3400(2) of the Internal Revenue Code is amended by striking out "4 cents" and inserting in lieu thereof "9 cents".

(c) FLOOR STOCKS TAX ON TIRES AND INNER TUBES.—Section 3400 of the Internal Revenue Code is amended by inserting "(a) TAX.—" before the beginning thereof and by inserting at the end thereof the following:

"(b) FLOOR STOCKS TAX.—Upon tires and inner tubes subject to tax under subsection (a) of the type used on vehicles subject to tax under section 3403 (a) or (b) which on October 1, 1941, are held for sale by any person there shall be levied, assessed, collected, and paid a floor stocks tax at the rate of 2½ cents per pound in the case of tires and 4½ cents per pound in the case of inner tubes. The tax shall apply to tires and inner tubes held for sale on, or in connection with, or held for use in the manufacture or production of, articles the sale of which will be subject to tax under section 3403 (a) or (b). The tax shall not apply to tires and inner tubes held for sale by the manufacturer, producer, or importer thereof, and to tires and inner tubes the sale of which will be subject under the provisions of sections 3444(a)(2) and 3445 to the manufacturers' tax on tires and inner tubes."

SEC. 536. EFFECTIVE DATE OF PART III.

The amendments made by this Part shall be applicable only with respect to the period beginning with October 1, 1941, and the rates specified in section 1650(a), section 1807(b), section 2004, section 2800(g), and section 3190 of the Internal Revenue Code shall not apply with respect to such period. This Part shall take effect on October 1, 1941.

PART IV—CHANGES IN BASIS OF COMPUTING TAX (RATES INCREASED IN CERTAIN CASES).

SEC. 541. ADMISSIONS TAX.

(a) REDUCTION OF EXEMPTION.—Section 1700(a)(1) of the Internal Revenue Code is amended to read as follows:

"(1) RATE.—A tax of 1 cent for each 10 cents or fraction thereof of the amount paid for admission to any place, including admission by season ticket or subscription. In the case of persons (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, and members of the Civilian Conservation Corps when in uniform) admitted free or at reduced rates to any place at any time when and under circumstances under which an admission charge is made to other persons, an equivalent tax shall be collected based on the price so charged to such other persons for the same or similar accommodations, to be paid by the person so admitted. No tax shall be imposed on the amount paid for the admission of a child under twelve years of age if the amount paid is less than 10 cents."

(b) TERMINATION OF EXEMPTIONS.—Section 1701 of the Internal Revenue Code (relating to exemptions from admissions tax) shall not apply with respect to amounts paid, on or after the effective date of this part, for admission.

(c) EXEMPTION OF NATIONAL PARK, ETC., ADMISSIONS TERMINATED.—The Interior Department Appropriation Act, 1942, is amended by striking out that part thereof under the heading "NATIONAL PARK SERVICE" which reads as follows:

"Hereafter fees incident to admission to the national parks and monuments and other areas in the national park system, charged and collected with the approval of the Secretary of the Interior, shall be exempt from all Federal tax on admissions."

The Act entitled "An Act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1936, and for other purposes", approved May 9, 1935, is amended by striking out that part thereof under the heading "NATIONAL PARK SERVICE" which reads as follows: " : *Provided*, That any admission fee charged for entrance to Carlsbad Caverns and any fee charged for guide service therein, shall be exempt from all taxes on admissions".

SEC. 542. CABARET, ROOF GARDEN, ETC., TAX.

(a) IMPOSITION.—Section 1700(e) of the Internal Revenue Code is amended to read as follows:

"(e) TAX ON CABARETS, ROOF GARDENS, ETC.—

"(1) RATE.—A tax equivalent to 5 per centum of all amounts paid for admission, refreshment, service, and merchandise, at any roof garden, cabaret, or other similar place furnishing a public performance for profit, if any payment, or part thereof, for admission, refreshment, service, or merchandise, entitles the patron to be present during any portion of such performance. No tax shall be applicable under subsection (a)(1) on account of an amount paid with respect to which tax is imposed under this subsection.

"(2) BY WHOM PAID.—The tax imposed under paragraph (1) shall be returned and paid by the person receiving such payments."

(b) PLACE OF PAYMENT.—Section 1715(b) of the Internal Revenue Code is amended to read as follows:

"(b) PLACE OF PAYMENT.—The taxes collected under subsection (a), and the taxes required to be paid under section 1700 (c), (d), or (e), shall be paid to the collector of the district in which the principal office or place of business is located."

(c) RETURNS.—Section 1716(a) of the Internal Revenue Code is amended to read as follows:

"(a) REQUIREMENT.—Every person required under subsection (a) of section 1715 to collect the taxes, or required under section 1700 (c), (d), or (e) to pay the taxes, imposed by this chapter shall make returns under oath, in duplicate, in such manner and containing such information as the Commissioner, with the approval of the Secretary, may, by regulation, prescribe."

(d) Section 1700(c)(3) and section 1700(d)(3) of the Internal Revenue Code are repealed as of the effective date of this Part.

SEC. 543. CLUB DUES.

(a) REDUCTION OF EXEMPTION AND DEFENSE TAX RATE MADE PERMANENT.—Section 1710(a) (1) and (2) of the Internal Revenue Code are amended to read as follows:

"(1) DUES OR MEMBERSHIP FEES.—A tax equivalent to 11 per centum of any amount paid as dues or membership fees to any social, athletic, or sporting club or organization, if the dues or fees of an active resident annual member are in excess of $10 per year.

"(2) INITIATION FEES.—A tax equivalent to 11 per centum of any amount paid as initiation fees to such a club or organization, if such fees amount to more than $10, or if the dues or membership fees, not including initiation fees, of an active resident annual member are in excess of $10 per year."

(b) DEFINITION OF DUES.—Section 1712(a) of the Internal Revenue Code is amended to read as follows:

"(a) DUES.—The term 'dues' includes any assessment, irrespective of the purpose for which made, and any charges for social privileges or facilities, or for golf, tennis, polo, swimming, or other athletic or sporting privileges or facilities, for any period of more than six days; and".

SEC. 544. AUTOMOBILE, TRUCK, BUS, AND PARTS TAX.

(a) INCREASE OF RATE AND CLASSIFICATION OF BUSSES.—Section 3403 (a) and (b) of the Internal Revenue Code are amended to read as follows:

"(a) Automobile truck chassis, automobile truck bodies, automobile bus chassis, automobile bus bodies, truck and bus trailer and semitrailer chassis, truck and bus trailer and semitrailer bodies, tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer (including in each of the above cases parts or accessories therefor sold on or in connection therewith or with the sale thereof), 5 per centum. A sale of an automobile truck, bus, or truck or bus trailer or semitrailer, shall, for the purposes of this subsection, be considered to be a sale of the chassis and of the body.

"(b) Other automobile chassis and bodies, chassis and bodies for trailers or semitrailers suitable for use in connection with passenger automobiles, and motorcycles (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof), except tractors, 7 per centum. A sale of an automobile, trailer, or semitrailer shall, for the purposes of this subsection, be considered to be a sale of the chassis and of the body."

(b) INCREASE IN RATE ON PARTS AND EXCLUSION OF RADIOS FROM AUTOMOBILE TAX.—The first sentence of section 3403(c) of the Internal Revenue Code is amended to read as follows: "Parts or accessories (other than tires and inner tubes and other than radios) for any of the articles enumerated in subsection (a) or (b), 5 per centum."

(c) CREDITS ON ACCOUNT OF TIRE AND TUBE TAX.—Section 3403(e) of the Internal Revenue Code is amended to read as follows:

"(e) If tires or inner tubes on which tax has been imposed under this chapter are sold on or in connection with, or with the sale of, a chassis, body, or motorcycle, there shall (under regulations prescribed by the Commissioner, with the approval of the Secretary) be credited against the tax under this section an amount equal to, in the case of an article taxable under subsection (a), 5 per centum, and in the case of an article taxable under subsection (b), 7 per centum—

"(1) of the purchase price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) if such tires or inner tubes were taxable under section 3400 (relating to tax on tires and inner tubes); or

"(2) if such tires or inner tubes were taxable under section 3444 (relating to use by manufacturer, producer, or importer) then of the price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) at which such or similar tires or inner tubes are sold, in the ordinary course of trade, by manufacturers, producers, or importers thereof, as determined by the Commissioner. In lieu of the rates of credit of 5 per centum and 7 per centum above provided, the rates, respectively, for the following periods, shall be as follows:

"(A) With respect to the period after June 30, 1940, and before the effective date of the increase in tax on automobiles made by the Revenue Act of 1941, 2½ per centum and 3½ per centum; and

"(B) With respect to the period before July 1, 1940, 2 per centum and 3 per centum."

(d) CREDITS ON TERMINATION OF TAX.—Section 3403(f) of the Internal Revenue Code (relating to credits and refunds on termination of automobile tax) is repealed.

SEC. 545. RADIOS, PHONOGRAPHS, RECORDS, AND MUSICAL INSTRUMENTS.

Section 3404 of the Internal Revenue Code is amended to read as follows:

"SEC. 3404. TAX ON RADIO RECEIVING SETS, PHONOGRAPHS, PHONOGRAPH RECORDS, AND MUSICAL INSTRUMENTS.

"There shall be imposed upon the following articles (including in each case, except in the case of musical instruments, parts or accessories therefor sold on or in connection with the sale thereof) sold by the manufacturer, producer, or importer a tax equivalent to 10 per centum of the price for which sold:

"(a) Radio receiving sets, automobile radio receiving sets, combination radio and phonograph sets, and phonographs.

"(b) Chassis, cabinets, tubes, reproducing units, power packs, antennae of the 'built-in' type, and phonograph mechanisms, which are suitable for

use on or inconnection with, or as component parts of, any of the articles enumerated in subsection (a), whether or not primarily adapted for such use.

"(c) Phonograph records.

"(d) Musical instruments."

SEC. 546. MECHANICAL REFRIGERATORS.

Section 3405 of the Internal Revenue Code is amended to read as follows:

"SEC. 3405. TAX ON REFRIGERATORS, REFRIGERATING APPARATUS, AND AIR-CONDITIONERS.

"There shall be imposed on the following articles (including in each case parts or accessories therefor sold on or in connection with the sale thereof) sold by the manufacturer, producer, or importer a tax equivalent to 10 per centum of the price for which so sold:

"(a) REFRIGERATORS, ETC.—Refrigerators, beverage coolers, ice cream cabinets, water coolers, food and beverage display cases, food and beverage storage cabinets, ice making machines, and milk cooler cabinets, each such article having, or being primarily designed for use with, a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline.

"(b) REFRIGERATING APPARATUS.—Compressors, condensers, evaporators, expansion units, absorbers, and controls, for, or suitable for use as part of, or with, a refrigerating plant, refrigerating system, refrigerating equipment or unit, or any of the articles enumerated in subsection (a).

"(c) AIR-CONDITIONERS.—Self-contained air-conditioning units.

"(d) COMPONENTS.—Cabinets, compressors, condensers, fans, blowers, heating coils, cooling coils, filters, humidifiers, and controls, for, or suitable for use as part of, or with, any of the articles enumerated in subsection (c)."

SEC. 547. MATCHES.

Section 3409 of the Internal Revenue Code is amended to read as follows:

"SEC. 3409. TAX ON MATCHES.

"(a) MANUFACTURERS' TAX.—There shall be imposed upon matches sold by the manufacturer, producer, or importer, a tax of 2 cents per 1,000 matches, except that in the case of fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem, packed in boxes or in bulk, the tax shall be 5½ cents per 1,000 matches.

"(b) FLOOR STOCKS TAX.—On matches subject to tax under subsection (a) which, on October 1, 1941, are held and intended for sale, or for disposition in connection with the sale of other articles, there shall be levied, assessed, collected, and paid a floor stocks tax at the rate of 2 cents per thousand matches. The tax shall not apply to matches in retail stocks held at the place where intended to be sold or disposed of. The tax shall not apply to matches held for sale by the manufacturer, producer, or importer thereof, nor to fancy wooden matches or wooden matches having a stained, dyed, or colored stick or stem."

SEC. 548. TELEPHONE, TELEGRAPH, ETC.

Sections 3465 and 3466 of the Internal Revenue Code are amended to read as follows:

"SEC. 3465. IMPOSITION AND RATE OF TAX.

"(a) There shall be imposed:

"(1) (A) In the case of each telephone or radio telephone message or conversation which originates within the United States, for which the charge is more than 24 cents, a tax of 5 cents for each 50 cents, or fraction thereof, of the charge.

"(B) In the case of each telegraph, cable, or radio dispatch or message which originates within the United States, a tax of 10 per centum of the amount of the charge.

Only one payment of a tax imposed by subparagraph (A) or (B) shall be required notwithstanding the lines or stations of one or more persons are used in the transmission of such dispatch, message, or conversation.

"(2) (A) A tax equivalent to 10 per centum of the amount paid for leased wire, teletypewriter, or talking circuit special service.

"(B) A tax equivalent to 5 per centum of the amount paid for any wire and equipment service (including stock quotation and information services, burglar alarm or fire alarm service, and all other similar services, but not including service described in subparagraph (A)).

The tax shall apply under this paragraph whether or not the wires or services are within a local exchange area.

"(3) A tax equivalent to 6 per centum of the amount paid by subscribers for local telephone service and for any other telephone service in respect of which a tax is not payable under paragraph (1) or (2). Amounts paid for the installation of instruments, wires, poles, switchboards, apparatus, and equipment shall not be considered amounts paid for service. Service paid for by inserting coins in coin-operated telephones shall not be subject to the tax imposed by this paragraph.

"(b) This section shall not apply to the amount paid for so much of the service described in paragraph (2) of subsection (a) as is utilized in the conduct, by a common carrier or telephone or telegraph company or a radio broadcasting station or network, of its business as such.

"SEC. 3466. EXEMPTION FROM TAX.

"(a) No tax shall be imposed under section 3465 upon any payment received for services or facilities furnished to the United States or to any State or Territory, or political subdivision thereof, or the District of Columbia.

"(b) No tax shall be imposed under section 3465(a) (1) and (2) upon any payment received from any person for services or facilities utilized in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such services or facilities is billed in writing to such person. Section 3465(a)(3) shall not be construed as imposing a tax on services and facilities described in section 3465(a) (1) or (2) which are exempt from tax under this subsection.

"(c) The right to exemption under this section shall be evidenced in such manner as the Commissioner with the approval of the Secretary may by regulation prescribe."

SEC. 549. INSTALLMENT, ETC., PAYMENTS.

Section 3441(c) of the Internal Revenue Code is amended to read as follows:

"(c) (1) In the case of (A) a lease, (B) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments, or (C) a conditional sale, there shall be paid upon each payment with respect to the article that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment.

"(2) In the application of paragraph (1) to the articles with respect to which the rate of tax is increased by the Revenue Act of 1941 or by the Revenue Act of 1940, where the lease, contract of sale, or conditional sale, and delivery thereunder—

"(A) was made before July 1, 1940, the total tax referred to in paragraph (1) shall be the tax at the rate in force on June 30, 1940, and not at any greater rate; or

"(B) was made after June 30, 1940, and before October 1, 1941, the total tax referred to in paragraph (1) shall be the tax at the rate in force on September 30, 1941, and not at any greater rate.

"(3) Despite the provisions of paragraph (1), no tax shall be imposed with respect to any article not taxable under the law in existence on the day before the date of the enactment of the Revenue Act of 1941, if with respect to such article the lease, contract for sale, or conditional sale, and delivery thereunder, was made before October 1, 1941."

SEC. 550. EFFECTIVE DATE OF PART IV.

(a) The amendments made by this Part shall be applicable only with respect to the period beginning with the effective date of this Part, and the rates specified in section 1650(a), section 1807(b), section 2004, section 2800(g), and section 3190 of the Internal Revenue Code shall not apply with respect to such period. This Part shall take effect on October 1, 1941.

(b) Despite the provisions of subsection (a), the tax imposed by section 1700(e) of the Internal Revenue Code, as amended by section 542 of this Act (relating to cabaret, etc., tax), shall be applicable only with respect to the period beginning at 10 a. m. on October 1, 1941, and the tax imposed by such

subsection as in force prior to its amendment by section 542 of this Act, as modified by section 1650(a) of the Internal Revenue Code, shall be applicable with respect to the period before 10 a. m. on such date.

(c) Despite the provisions of subsection (a), the amendment of section 3465(a)(2) made by section 548 of this Act (relating to tax on leased-wire, etc., services) shall be applicable only to amounts paid on or after such effective date for services rendered, on or after October 1, 1941, and the provisions of such subsection before its amendment by section 548 shall be applicable with respect to the period before October 1, 1941.

(d) Despite the provisions of subsection (a), section 3465(a)(3) of the Internal Revenue Code (relating to tax on telephone bills), added to the Internal Revenue Code by section 548 of this Act, shall apply only to the amounts paid in pursuance of bills rendered, after October 5, 1941, for services for which no previous bill was rendered. Such section 3465(a)(3) shall not apply to amounts paid for services otherwise taxable under section 3465(a)(1) which were rendered before October 6, 1941; nor to amounts paid for services otherwise taxable under section 3465(a)(2) which were rendered or paid for before October 6, 1941.

PART V—NEW EXCISE TAXES.

SEC. 551. NEW MANUFACTURERS' EXCISE TAXES.

Subchapter A of Chapter 29 of the Internal Revenue Code is amended by inserting after section 3405 the following new section:

"SEC. 3406. EXCISE TAXES IMPOSED BY THE REVENUE ACT OF 1941.

"(a) IMPOSITION.—There shall be imposed on the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to the rate, on the price for which sold, set forth in the following paragraphs (including in each case parts or accessories of such articles sold on or in connection therewith, or with the sale thereof):

"(1) SPORTING GOODS.—Badminton nets; badminton rackets (measuring 22 inches over-all or more in length); badminton racket frames (measuring 22 inches over-all or more in length); badminton racket string; badminton shuttlecocks, badminton standards; baseballs; baseball bats (measuring 26 inches or more in length); baseball body protectors and shin guards; baseball gloves and mitts; baseball masks; basketballs; billiard and pool tables (measuring 45 inches over-all or more in length); billiard and pool balls and cues for such tables; bowling balls and pins; boxing gloves, masks, head guards, and ear guards; clay pigeons; cricket balls; cricket bats; croquet balls and mallets; curling stones; deck tennis rings, nets, and posts; fencing equipment; fishing rods, creels, reels, and artificial lures, baits, and flies; footballs; football harness; football helmets; golf bags (measuring 26 inches or more in length); golf balls; golf clubs (measuring 30 inches or more in length); gymnasium equipment and apparatus; hockey balls; hockey pucks; hockey sticks (measuring 30 inches or more in length); indoor baseballs; indoor baseball bats (measuring 26 inches or more in length); indoor baseball gloves and mitts; lacrosse balls; lacrosse sticks; mass balls; polo balls; polo mallets; push balls; skates; skis; ski poles; snow shoes; snow toboggans and sleds; soccer balls; softball balls; softball bats (measuring 26 inches or more in length); softball gloves and mitts; squash balls; squash rackets (measuring 22 inches over-all or more in length); squash racket frames (measuring 22 inches over-all or more in length); squash racket string; tennis balls; table tennis tables, balls, nets, and paddles; tennis nets; tennis rackets (measuring 22 inches over-all or more in length); tennis racket frames (measuring 22 inches over-all or more in length); tennis racket string; track hurdles; traps for throwing clay pigeons; vaulting poles, cross bars, and standards; volley balls, nets, and standards; water polo balls and goals; and wrestling head harness; 10 per centum.

"(2) LUGGAGE.—Trunks, valises, traveling bags, suitcases, hat boxes for use by travelers, fitted toilet cases (not including contents), and other traveler's luggage, and leather and imitation leather brief cases, 10 per centum.

"(3) ELECTRIC, GAS, AND OIL APPLIANCES.—Electric direct motor-driven fans and air circulators; electric, gas, or oil water heaters; electric flat irons; electric air heaters (not including furnaces); electric immersion heaters;

electric heating pads and blankets; electric, gas, or oil appliances of the type used for cooking, warming, or keeping warm food or beverages for consumption on the premises; electric mixers, whippers, and juicers; and household type electric vacuum cleaners; 10 per centum.

"(4) PHOTOGRAPHIC APPARATUS.—Cameras and lenses; unexposed photographic films (including motion picture films but not including X-ray film), photographic plates and sensitized paper; photographic apparatus and equipment; and any apparatus or equipment designed especially for use in the taking of photographs or motion pictures or in the developing, printing, or enlarging of photographs or motion picture films; 10 per centum.

"(5) ELECTRIC SIGNS.—Neon-tube signs, electric signs, and electric advertising devices, 10 per centum.

"(6) BUSINESS AND STORE MACHINES.—Adding machines, addressing machines, autographic registers, bank proof machines, billing machines, bookkeeping machines, calculating machines, card punching machines, cash registers, change making machines, check writing machines, check signing machines, check canceling machines, check perforating machines, check cutting machines, check dating machines, other check protector machine devices, computing machines, coin counters, dictographs, dictating machine record shaving machines, dictating machines, duplicating machines, embossing machines, envelope opening machines, erasing machines, folding machines, fanfold machines, fare registers, fare boxes, listing machines, linea-time and similar machines, mailing machines, multigraph machines, multigraph typesetting machines, multigraph type justifying machines, numbering machines, portable paper fastening machines, pay roll machines, pencil sharpeners, postal permit mailing machines, punch card machines, sorting machines, stencil cutting machines, shorthand writing machines, sealing machines, tabulating machines, ticket counting machines, ticket issuing machines, typewriters, transcribing machines, time recording devices, and combinations of any of the foregoing, 10 per centum.

"(7) RUBBER ARTICLES.—Articles of which rubber is the component material of chief weight, 10 per centum. The tax imposed under this paragraph shall not be applicable to footwear, articles designed especially for hospital or surgical use, or articles taxable under any other provision of this chapter.

'(8) WASHING MACHINES.—Washing machines of the kind used in commercial laundries, 10 per centum. No tax shall be imposed under this paragraph on washing machines of the household type.

"(9) OPTICAL EQUIPMENT.—Refractometers; spectrometers; spectroscopes; colorimeters; polariscopes; optical measuring instruments; telescopic sights; projection lenses and prisms; optical machinery; microscopes; telescopes; photo-micro and micro-projection apparatus; fire control optical instruments; and searchlight mirrors and reflectors; 10 per centum.

"(10) ELECTRIC LIGHT BULBS AND TUBES.—Electric light bulbs and tubes, not including articles taxable under any other provision of this subchapter, 5 per centum.

"(b) EXEMPTION IF ARTICLE TAXABLE AS JEWELRY.—No tax shall be imposed under this section on any article taxable under section 2400 (relating to jewelry tax).

"(c) EFFECTIVE DATE.—This section shall take effect on October 1, 1941."

SEC. 552. NEW RETAILERS' EXCISE TAXES.

(a) IMPOSITION OF TAX.—The Internal Revenue Code is amended by adding after chapter 18 the following new chapter:

"CHAPTER 19—RETAILERS' EXCISE TAXES.

"SEC. 2400. TAX ON JEWELRY, ETC.

"There is hereby imposed upon the following articles sold at retail a tax equivalent to 10 per centum of the price for which so sold: All articles commonly or commercially known as jewelry, whether real or imitation; pearls, precious and semi-precious stones, and imitations thereof; articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof; watches and clocks and cases and movements therefor; gold, gold-plated, silver, silver-plated or sterling flatware or hollow ware; opera glasses; lorgnettes; marine glasses; field glasses; and binoculars. The tax imposed by this section shall

not apply to any article used for religious purposes, to surgical instruments, or to frames or mountings for spectacles or eyeglasses, or to a fountain pen if the only parts of the pen which consist of precious metals are essential parts not used for ornamental purposes.

"SEC. 2401. TAX ON FURS.

"There is hereby imposed upon the following articles sold at retail a tax equivalent to 10 per centum of the price for which so sold: Articles made of fur on the hide or pelt, and articles of which such fur is the component material of chief value.

"SEC. 2402. TAX ON TOILET PREPARATIONS.

"(a) TAX.—There is hereby imposed upon the following articles sold at retail a tax equivalent to 10 per centum of the price for which so sold: Perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, and any similar substance, article, or preparation, by whatsoever name known or distinguished; any of the above which are used or applied or intended to be used or applied for toilet purposes.

"(b) BEAUTY PARLORS, ETC.—For the purposes of subsection (a) the sale of any article described in subsection (a) to any person operating a barber shop, beauty parlor, or similar establishment shall be considered a sale at retail; resale by such person shall be subject to tax as a sale at retail, but there shall be credited against the tax payable by such person with respect to such resale the amount of tax paid on the sale to such person.

"SEC. 2403. RETURN AND PAYMENT OF RETAILERS' EXCISE TAXES.

"(a) Every person who sells at retail any article taxable under this chapter shall make monthly returns under oath in duplicate and pay the taxes imposed by this chapter to the collector for the district in which is located his principal place of business or, if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

"(b) The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid.

"(c) In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Commissioner, in accordance with the regulations. There shall also be excluded, if stated as a separate charge, the amount of any retail sales tax imposed by any State or Territory or political subdivision of the foregoing, or the District of Columbia, whether the liability for such tax is imposed on the vendor or the vendee.

"SEC. 2404. DEFINITION OF SALE.

"For the purposes of this chapter, the lease of an article shall be considered the sale of such article.

"SEC. 2405. LEASES, CONDITIONAL SALES, ETC.

"In the case of (a) a lease, (b) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments, or (c) a conditional sale, there shall be paid upon each payment with respect to the article that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment. No tax shall be imposed under this chapter on the sale of any article taxable under section 2400 or section 2401 if with respect to such article the lease, contract for sale, or conditional sale was made, delivery thereunder was made, and a part of the consideration was paid, before October 1, 1941.

"SEC. 2406. TAX-FREE SALES.

"Under regulations prescribed by the Commissioner with the approval of the Secretary, no tax under this chapter shall be imposed with respect to the sale of any article—

"(a) for the exclusive use of the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia;

"(b) for export, or for shipment to a possession of the United States, and in due course so exported or shipped.

"SEC. 2407. CREDITS AND REFUNDS.

"(a) A credit against tax under this chapter, or a refund, may be allowed with respect to an article, when the price on which the tax was based is readjusted by reason of return or repossession of the article, or by a bona fide discount, rebate, or allowance, in the amount of that part of the tax proportionate to the part of the price which is refunded or credited.

"(b) No overpayment of tax under this chapter shall be credited or refunded, in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, (1) that he has not included the tax in the price of the article with respect to which it was imposed, or collected the amount of tax from the purchaser, or (2) that he has repaid the amount of the tax to the purchaser of the article, or unless he files with the Commissioner written consent of such purchaser to the allowance of the credit or refund.

"SEC. 2408. APPLICABILITY OF ADMINISTRATIVE PROVISIONS.

"All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700 shall, insofar as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter.

"SEC. 2409. PENALTY FOR REPRESENTATION THAT TAX IS NOT PASSED ON.

"Whoever in connection with the sale or lease, or offer for sale or lease, of any article taxable under this chapter, makes any statement, written or oral, in advertisement or otherwise, intended or calculated to lead any person to believe that the price of the article does not include the tax imposed by this chapter, shall on conviction thereof be punished by a fine of not more than $1,000.

"SEC. 2410. RULES AND REGULATIONS.

"The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

"SEC. 2411. EFFECTIVE DATE.

"This chapter shall be effective on and after October 1, 1941."

(b) TERMINATION OF MANUFACTURERS' TAX ON TOILET PREPARATIONS.—The tax imposed by section 3401 of the Internal Revenue Code shall not apply to articles sold on or after October 1, 1941.

SEC. 553. ADMINISTRATIVE CHANGES IN MANUFACTURERS' EXCISE TAX TITLE OF CODE.

(a) LEASES.—Section 3440 of the Internal Revenue Code is amended to read as follows:

"SEC. 3440. DEFINITION OF SALE.

"For the purposes of this chapter the lease of an article (including any renewal or any extension of a lease or any subsequent lease of such article) by the manufacturer, producer, or importer shall be considered a taxable sale of such article."

(b) EXISTING CONTRACTS.—Chapter 29 of the Internal Revenue Code is amended by adding at the end thereof the following new section:

"SEC. 3453. EXISTING CONTRACTS.

"(a) TAX PAYABLE BY VENDEE.—If (1) any person has, prior to the effective date of Part V of Title V of the Revenue Act of 1941, made a bona fide contract for the sale on or after such date, of any article with respect to the sale of which a tax is imposed by that Act or an existing rate of tax is increased by that Act, and (2) such contract does not permit the adding to the amount to be paid under such contract of the whole of such tax or increased rate of tax,

then (unless the contract prohibits such addition) the vendee shall, in lieu of the vendor, pay so much of the tax as is not so permitted to be added to the contract price.

"(b) TAX PAID TO VENDOR.—Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated, and shall be collected and paid to the United States by the vendor in the same manner as provided in section 3467. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner who shall cause collection of such taxes to be made from the vendee."

(c) UNEXPOSED MOTION PICTURE FILMS.—Section 3443(a)(3)(A) of the Internal Revenue Code (relating to credits or refunds of tax to manufacturer) is amended by inserting at the end thereof the following new clause:

"(v) in the case of unexposed motion picture films, used or resold for use in the making of news reel motion picture films."

(d) CREDITS, AND TAX FREE SALES OF AUTOMOBILE RADIOS—Section 3442, section 3443(a)(1), and section 3444(a) (1) and (2) of the Internal Revenue Code (relating to tax in case of sale of tires to manufacturers of automobiles, etc., and credit on sale) are amended by striking out "tires or inner tubes" wherever appearing therein and inserting "tires, inner tubes, or automobile radios taxable under section 3404"; and by striking out "tire or inner tube" wherever appearing therein and inserting "tire, inner tube, or automobile radio taxable under section 3404". Section 3403(e) of the Internal Revenue Code, as amended by this Act, is further amended by striking out "tires and inner tubes" where the phrase appears the first time and inserting "tires, inner tubes, or automobile radios"; paragraph (1) of subsection (e) of such section is amended by inserting before the semicolon "or, in the case of automobile radios, if such radios were taxable under section 3404"; paragraph (2) of subsection (e) of such section is amended by striking out "tires or inner tubes" wherever such phrase appears and inserting "tires, inner tubes, or automobile radios".

SEC. 554. TRANSPORTATION OF PERSONS, ETC.

(a) The heading of subchapter C is amended to read as follows:

"SUBCHAPTER D—ADMINISTRATIVE PROVISIONS."

(b) Chapter 30 of the Internal Revenue Code is amended by inserting after section 3468 the following new subchapter:

"SUBCHAPTER C—TRANSPORTATION OF PERSONS.

"SEC. 3469. TAX ON TRANSPORTATION OF PERSONS, ETC.

"(a) TRANSPORTATION.—There shall be imposed upon the amount paid within the United States, on or after October 10, 1941, for the transportation, on or after such effective date, of persons by rail, motor vehicle, water, or air, within or without the United States, a tax equal to 5 per centum of the amount so paid. Such tax shall apply to transportation by motor vehicles having a passenger seating capacity of less than ten adult passengers, including the driver, only when such vehicle is operated on an established line.

"(b) EXEMPTION OF CERTAIN TRIPS.—The tax imposed by subsection (a) shall not apply to amounts paid for transportation which do not exceed 35 cents, to amounts paid for commutation or season tickets for single trips of less than thirty miles, or to amounts paid for commutation tickets for one month or less.

"(c) SEATS, BERTHS, ETC.—There shall be imposed upon the amount paid within the United States for seating or sleeping accommodations in connection with transportation with respect to which a tax is imposed by subsection (a) a tax equivalent to 5 per centum of the amount so paid.

"(d) RETURNS AND PAYMENT.—The taxes imposed by this section shall be paid by the person making the payment subject to the tax. Each person receiving any payment specified in subsection (a) or (c) shall collect the amount of the tax imposed from the person making such payment, and shall, on or before the last day of each month, make a return, under oath, for the preceding month, and pay the taxes so collected to the collector in the district in which his principal place of business is located, or if he has no principal place of business in the United States, to the collector at Baltimore, Maryland. Such returns shall contain such information and be made in such manner as

the Commissioner with the approval of the Secretary may by regulations prescribe.

"(e) EXTENSIONS OF TIME.—The Commissioner may extend the time for making returns and paying the taxes collected, under such rules and regulations as he shall prescribe with the approval of the Secretary, but no such extension shall be for more than ninety days.

"(f) EXEMPTIONS.—

"(1) GOVERNMENTAL EXEMPTIONS.—The tax imposed by this section shall not apply to the payment for transportation or facilities furnished to the United States, or to any State or Territory, or political subdivision thereof, or the District of Columbia.

"(2) EXEMPTION OF MEMBERS OF MILITARY AND NAVAL SERVICE.—The tax imposed by this section shall not apply to the payment for transportation or facilities furnished under special tariffs providing for fares of not more that 1¼ cents per mile applicable to round trip tickets sold to personnel of the United States Army, Navy, Marine Corps, and Coast Guard traveling in uniform of the United States at their own expense when on official leave, furlough, or pass, including authorized cadets and midshipmen, issued on presentation of properly executed certificate."

(c) STAMP TAX ON PASSAGE TICKETS NOT TO APPLY.—No tax shall be imposed under chapter 11 of the Internal Revenue Code on a ticket sold or issued for passage the amount paid for which is taxable under section 3469 of the Internal Revenue Code.

(d) TECHNICAL AMENDMENTS.—

(1) Section 55(a)(2) of the Internal Revenue Code is amended by striking out "subchapters A and B of".

(2) Section 3471 (a) and (c) are amended by inserting after "subchapter B" wherever occurring therein "or subchapter C".

(3) Section 3472 of the Internal Revenue Code is amended by striking out "of subchapters A and B".

SEC. 555. COIN-OPERATED AMUSEMENT AND GAMING DEVICES.

Subchapter A of chapter 27 of the Internal Revenue Code is amended by adding at the end thereof the following new part:

"PART IX—COIN-OPERATED AMUSEMENT AND GAMING DEVICES.

"SEC. 3267. TAX ON COIN-OPERATED AMUSEMENT AND GAMING DEVICES.

"(a) RATE.—Every person who maintains for use or permits the use of, on any place or premises occupied by him, a coin-operated amusement or gaming device shall pay a special tax as follows:

"(1) $10 per year in the case of a device defined in clause (1) of subsection (b);

"(2) $50 per year, in the case of a device defined in clause (2) of subsection (b); and

"(3) $10 or $50, as the case may be, for each additional device so maintained or the use of which is so permitted. If one such device is replaced by another, such other device shall not be considered an additional device.

"(b) DEFINITION.—As used in this part the 'coin-operated amusement and gaming devices' means (1) so-called 'pin-ball' and other similar amusement machines, operated by means of the insertion of a coin, token, or similar object, and (2) so-called 'slot' machines which operate by means of insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive, cash, premiums, merchandise, or tokens. The term does not include bona fide vending machines in which are not incorporated gaming or amusement features.

"(c) APPLICABILITY OF ADMINISTRATIVE PROVISIONS.—An operator of a place or premises who maintains for use or permits the use of any coin-operated device shall be considered, for the purposes of subchapter B, to be engaged in a trade or business in respect of each such device.

"(d) EFFECTIVE DATE OF TAX.—With respect to the year ending June 30, 1942, no tax shall be payable under this part for any period prior to October 1, 1941."

SEC. 556. BOWLING ALLEYS, ETC.

Subchapter A of chapter 27 of the Internal Revenue Code is amended by adding at the end thereof the following new part:

"PART X—BOWLING ALLEYS, AND BILLIARD AND POOL TABLES.

"SEC. 3268. TAX ON BOWLING ALLEYS, AND BILLIARD AND POOL TABLES.

"(a) RATE.—Every person who operates a bowling alley, billiard room, or pool room shall pay a special tax of $10 per year for each bowling alley, billiard table, or pool table. Every building or place where bowls are thrown or where games of billiards or pool are played, except in private homes, shall be regarded as a bowling alley, billiard room, or pool room, respectively.

"(b) EFFECTIVE DATE OF TAX.—With respect to the year ending June 30, 1942, no tax shall be payable under this part for any period prior to October 1, 1941."

SEC. 557. USE OF MOTOR VEHICLES AND BOATS.

The Internal Revenue Code is amended by inserting after chapter 33 the following new chapter:

"CHAPTER 33A—USE OF MOTOR VEHICLES AND BOATS.

"SEC. 3540. TAX ON USE OF MOTOR VEHICLES AND BOATS.

"(a) IMPOSITION OF TAX.—There shall be imposed upon the use of motor vehicles and boats a tax, with respect to each year in which such use occurs, at the following rates:

"(1) Motor vehicles—$5.

"(2) BOATS.—

"Over-all length 16 feet or over but not over 28 feet, $5.

"Over-all length over 28 feet but not over 50 feet, $10.

"Over-all length over 50 feet but not over 100 feet, $40.

"Over-all length over 100 feet but not over 150 feet, $100.

"Over-all length over 150 feet but not over 200 feet, $150.

"Over-all length over 200 feet, $200.

Such tax, in the case of a motor vehicle, shall be paid by the person in whose name the motor vehicle is, or is required to be, registered under the law of the State, Territory, or the District of Columbia in which such motor vehicle is, or is required to be, registered. Such tax, in the case of a boat, shall be paid by the owner of the boat. The tax imposed by this section shall not apply to any use before February 1, 1942, and use before such date shall not be considered to be, use within the meaning of this section.

"(b) DEFINITIONS.—For the purposes of this section—

"(1) The term 'year' means the year beginning July 1.

"(2) The term 'motor vehicle' means all motor vehicles of the kind chiefly used for highway transportation.

"(3) The term 'boat' means all boats propelled by machinery, sail, or both, measuring sixteen feet or more in over-all length, owned by a citizen or resident of the United States. Such term does not include boats used chiefly for trade, or commercial fishing, or boats used without profit by any benevolent, charitable, or religious organization exclusively for furnishing aid, comfort, or relief to seamen, or boats used by the sea scouts department of the Boy Scouts of America chiefly for training scouts in seamanship.

"(4) The term 'use' in the case of the use of a motor vehicle means use on the public highways.

"(c) PRORATION OF TAX.—If in any year the first use of the motor vehicle or boat is after July 31 the tax shall be reckoned proportionately from the first day of the month in which such use occurs to and including the 30th day of June following.

"(d) ONE PAYMENT PER YEAR.—If the tax imposed by this section is paid with respect to any motor vehicle or boat for any year no further tax shall be imposed for such year with respect to such motor vehicle or boat.

"(e) EVIDENCE OF TAX PAYMENT.—The payment of the tax imposed by this section shall be evidenced by such suitable stamp, sticker, or tag of such form, which shall be affixed to the motor vehicle or boat in such manner, as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

"(f) MANNER OF COLLECTION.—The place, time, and manner of making payment of the tax, and of furnishing such stamp, sticker, or tag shall be such as may be provided in regulations prescribed by the Commissioner with the approval of the Secretary.

"(g) COOPERATION OF POST OFFICE DEPARTMENT.—The Commissioner shall furnish to the Postmaster General without prepayment a suitable quantity of

stamps, stickers, or tags to be distributed to and kept on sale by postmasters in the United States. The Postmaster General may require each such postmaster to give additional or increased bond as postmaster for the value of the stamps, stickers, or tags furnished to him, and each such postmaster shall deposit the receipts from the sale of such stamps, stickers, or tags to the credit of and render accounts to the Postmaster General at such times and in such form as he may by regulations prescribe. The Postmaster General shall at least once monthly transfer all collections from this source to the Treasury as internal-revenue collections. The Postmaster General is authorized to cooperate to the fullest extent possble with the Commissioner in the sale of such stamps, stickers, or tags and in forwarding to the Commissioner or to the collector of internal revenue such blanks or forms as the Commissioner may determine necessary to the collection of the tax. There are authorized to be appropriated such sums as may be necessary to enable the Secretary of the Treasury to advance from time to time to the Postmaster General such sums as the Postmaster General may show shall be required for the expenses of the Post Office Department in performing in the District of Columbia and elsewhere all services required by this section.

"(h) SALE OF STAMPS BY PRIVATE PERSONS.—If the Commissioner provides for the sale of stamps, stickers, or tags by persons not officers or employees of the United States he may require bond, with sufficient sureties, in a sum to be fixed by the Commissioner, conditioned for the faithful return, whenever required, of all quantities or amounts undisposed of, and for the payment for, all quantities or amounts sold or not remaining on hand. The Commissioner, with approval of the Secretary, may from time to time make such regulations as he may find necessary to insure the safekeeping or prevention of illegal use of all such stamps, stickers, or tags.

"(i) PENALTIES FOR UNLAWFUL USE.—Any person liable for the tax under this section who uses or permits the use of the motor vehicle or boat before tax has been paid shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $25 or imprisoned for not more than thirty days, or both. Any person who uses or operates a motor vehicle or boat at a time when the stamp, sticker, or tag does not appear on the motor vehicle or boat in the manner provided in the regulations prescribed under subsection (e) or (f) shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $25.

"(j) EXEMPT USES.—The tax imposed by this section shall not apply to the use of a motor vehicle or boat by the United States, a State, Territory, the District of Columbia, or a political subdivision of any of the foregoing."

SEC. 558. EFFECTIVE DATE OF PART V.

This part shall take effect on October 1, 1941.

PART VI—PROCESSING TAX ON CERTAIN OILS.

SEC. 561. PAYMENT OF PROCEEDS OF PROCESSING TAX TO GUAM AND AMERICAN SAMOA.

(a) PAYMENT TO POSSESSIONS.—Chapter 21 of the Internal Revenue Code (relating to processing tax on oils) is amended by adding at the end thereof the following new section:

"SEC. 2483. All taxes collected under this chapter with respect to coconut oil wholly of the production of Guam or American Samoa or produced from materials wholly of the growth or production of Guam or American Samoa, shall be held as separate funds and paid to the Treasury of Guam or American Samoa, respectively. No part of the money from such funds shall be used, directly or indirectly, to pay a subsidy to the producers or processors of copra, coconut oil, or allied products, except that this sentence shall not be construed as prohibiting the use of such money, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, for the acquisition or construction of facilities for the better curing of copra or for bona fide loans to copra producers of Guam or American Samoa."

(b) EFFECTIVE DATE OF AMENDMENT.—The amendment made by this section shall be applicable only with respect to taxes collected after the date of enactment of this Act.

TITLE VI—NONESSENTIAL FEDERAL EXPENDITURES.

SEC. 601. NONESSENTIAL FEDERAL EXPENDITURES.

(a) There is hereby established a committee to investigate Federal expenditures (hereinafter referred to as the "committee"), to be composed of (1) three members of the Senate Committee on Finance and three members of the Senate Committee on Appropriations, to be appointed by the President of the Senate; (2) three members of the House Committee on Ways and Means and three members of the House Committee on Appropriations, to be appointed by the Speaker of the House of Representatives; and (3) the Secretary of the Treasury, and the Director of the Bureau of the Budget. A vacancy in the committee shall not affect the power of the remaining members to execute the functions of the committee, and shall be filled in the same manner as the original selection. A majority of the committee shall constitute a quorum, and the powers conferred upon them by this section may be exercised by a majority vote.

(b) It shall be the duty of the committee to make a full and complete study and investigation of all expenditures of the Federal Government with a view to recommending the elimination or reduction of all such expenditures deemed by the committee to be nonessential. The committee shall report to the President and to the Congress the results of its study, together with its recommendations, at the earliest practicable date.

(c) The committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such times and places, to employ such experts and such clerical and other assistants, to require by subpena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, and to make such expenditures, as it deems advisable. The provisions of sections 102 to 104, inclusive, of the Revised Statutes shall apply in case of any failure of any witness to comply with any subpena, or to testify when summoned under the authority of this section.

(d) The committee is authorized to utilize the services, information, facilities, and personnel of the departments and agencies of the Government.

(e) There is hereby authorized to be appropriated, the sum of $10,000, or so much thereof as may be necessary, to carry out the provisions of this section.

(f) All authority conferred by this section shall terminate upon the submission of the committee's final report.

SEC. 602. Section 1303 of the Revenue Act of 1918, as amended, is amended by striking out "President of the Senate" wherever it appears therein and inserting in lieu thereof "President pro tempore of the Senate".

TITLE VII—CREDIT AGAINST FEDERAL UNEMPLOYMENT TAXES.

SEC. 701. CREDIT AGAINST FEDERAL UNEMPLOYMENT TAXES.

(a) ALLOWANCE OF CREDIT AGAINST TAX FOR 1936, 1937, AND 1938.—Against the tax imposed by section 901 of the Social Security Act for the calendar year 1936, 1937, or 1938, any taxpayer shall be allowed credit (if credit is not allowable under section 902 of such Act) for the amount of contributions paid by him into an unemployment fund under a State law—

(1) Before the sixtieth day after the date of the enactment of this Act, if such credit is claimed before the expiration of six months after such date of enactment;

(2) Without regard to the date of payment, with respect to wages paid after September 19, 1939;

(3) Without regard to the date of payment, if the assets of the taxpayer are, at any time during the fifty-nine-day period following such date of enactment, or were at any time during the period August 11, 1939, to October 8, 1939, inclusive, or the period October 9, 1940, to December 6, 1940, inclusive, in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction.

The provisions of the Social Security Act in force prior to February 11, 1939 (except the provision limiting the credit to amounts paid before the date of filing returns), shall apply to allowance of credit under this subsection; except that the amount of credit against the tax for the calendar year 1936, 1937, or 1938, for contributions paid after December 6, 1940, shall not (unless the credit is allowable on account of paragraph (2) or (3)) exceed 90 per centum of the amount which would have been allowable as credit on account

of such contributions had they been paid before the last day upon which the taxpayer was required under section 905 of such Act to file a return for such year. The terms used in this subsection shall have the same meaning as when used in title IX of such Act prior to February 11, 1939. The total credit allowable against the tax imposed by section 901 of such Act for the calendar year 1936, 1937, or 1938 shall not exceed 90 per centum of such tax.

(b) ALLOWANCE OF CREDIT AGAINST TAX FOR 1939 AND 1940.—Against the tax imposed by the Federal Unemployment Tax Act for the calendar year 1939 or 1940, any taxpayer shall be allowed credit (if credit is not allowable under section 1601 of such Act) for the amount of contributions paid by him into an unemployment fund under a State law—

(1) Before the sixtieth day after the date of the enactment of this Act, if such credit is claimed before the expiration of six months after such date of enactment;

(2) Without regard to the date of payment, if the assets of the taxpayer are, at any time during the fifty-nine-day period following such date of enactment, or were at any time during the period from the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act to file a return of the tax against which credit is claimed to June 30 next following such last day, inclusive, or (in the case of credit against the tax for the calendar year 1939) the period October 9, 1940, to December 6, 1940, inclusive, in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction.

The provisions of the Federal Unemployment Tax Act (except section 1601 (a)(3)), including such provisions as modified by section 902(e) of the Social Security Act Amendments of 1939, shall apply to allowance of credit under this subsection. The amount of such credit against the tax for the calendar year 1939 or 1940, in the case of contributions paid after the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act to file a return for such year, shall not (unless the credit is allowable on account of paragraph (2)) exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day. The terms used in this subsection shall have the same meaning as when used in the Federal Unemployment Tax Act. The total credit allowable against the tax imposed by such Act for the calendar year 1939 or 1940 shall not exceed 90 per centum of such tax.

(c) REFUND.—Refund, credit, or abatement of the tax (including penalty and interest assessed or collected with respect thereto, if any), based on any credit allowable under subsection (a) or (b), may be made in accordance with the provisions of law applicable in the case of erroneous or illegal assessment or collection of the tax (including statutes of limitations). No interest shall be allowed or paid on the amount of any such credit or refund. On and after the date of the enactment of this Act no refund, credit, or abatement shall be allowed based on any credit allowable under section 810 of the Revenue Act of 1938, section 902(a) of the Social Security Act Amendments of 1939, or section 701 of the Second Revenue Act of 1940.

Approved, Sept. 20, 12.15 p. m. E. S. T., 1941.

1941-46-10901

H. J. RES. 235. PUBLIC LAW 285—SEVENTY-SEVENTH CONGRESS [CHAPTER 464—FIRST SESSION].

Joint Resolution To amend section 124 of the Internal Revenue Code by extending the time for applications, and changing the procedure, for certification of national-defense facilities and contracts for amortization purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 124(f)(1) of the Internal Revenue Code, as amended, is amended to read as follows:

(1) There shall be included only so much of the amount otherwise constituting such adjusted basis as is properly attributable to such construction, reconstruction, erection, installation, or acquisition after June 10, 1940, as either the Secretary of War or the Secretary of the Navy has certified as necessary in the interest of national defense during the emergency period, which certification shall be under such regulations as may be prescribed from time to time by the Secretary of War and the Secretary of the Navy, with the approval of the President.

SEC. 2. Section 124(f)(3) of the Internal Revenue Code, as amended, is amended by striking out "sixty days" and inserting in lieu thereof "six months" and by striking out "February 6, 1941" and inserting in lieu thereof "December 1, 1941".

SEC. 3. Section 124(i) of the Internal Revenue Code, as amended, is amended to read as follows:

PROTECTION OF THE UNITED STATES.—If the taxpayer has been or will be reimbursed by the United States for all or a part of the cost of any emergency facility pursuant to any contract (in excess of $15,000 in amount) with the United States, made on its behalf after December 31, 1939, by the War Department, the Navy Department, the United States Maritime Commission, or such other department or agency as the President may designate, either—

(1) directly, by a provision therein dealing expressly with such reimbursement, or

(2) indirectly, because the price paid by the United States (insofar as return of cost of the facility is used by the United States as a factor in the fixing of such price) is recognized by the contract as including a return of cost greater than the normal exhaustion, wear, and tear: *Provided*, That no such greater return of cost shall be deemed to have been used as a factor in the fixing of such price when the negotiating or contracting officer reports that after careful consideration he is satisfied that such greater return was not included in the price,

no amortization deduction with respect to such emergency facility shall be allowed for any month after the end of the month in which such contract is made unless either the Secretary of War or the Secretary of the Navy certifies to the Commissioner that the interest of the United States is adequately protected with reference to the future use and disposition of such emergency facility. A certificate of like effect may also be issued with respect to emergency facilities for which the taxpayer has not been or will not be so reimbursed. A certificate by either the Secretary of War or the Secretary of the Navy made to the Commissioner, to the effect that under any such contract, reimbursement for all or a part of the cost of any emergency facility is not provided for within the meaning of clause (1) or clause (2), shall be conclusive for the purposes of this subsection. Except in cases of applications therefor filed before December 1, 1941, the certificates provided for under this subsection shall have no effect unless an application therefor is filed either before the expiration of six months after the making of such contract or before the expiration of sixty days after the making of a certificate under subsection (f), whichever is later.

The reports of negotiating and contracting officers and the certificates provided for in this subsection shall be issued under such regulations as may be prescribed from time to time by the Secretary of War and the Secretary of the Navy, with the approval of the President.

The terms and conditions of contracts with reference to reimbursement of the cost of emergency facilities and the protecting of the United States with reference to the future use and disposition of such emergency facilities shall be made available to the public.

SEC. 4. The amendments made by this joint resolution to section 124 of the Internal Revenue Code shall be applicable as if they were a part of such section on the date of the enactment of the Second Revenue Act of 1940.

Approved, October 30, 1941.

COMMITTEE REPORTS.

1941-37-10823

THE REVENUE BILL OF 1941.

[House of Representatives Report No. 1040, Seventy-seventh Congress, First Session.]

[July 24, 1941.]

Mr. Doughton, from the Committee on Ways and Means, submitted the following report [to accompany H. R. 5417]:

The Committee on Ways and Means, to whom was referred the bill (H. R. 5417) to provide revenue and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

NEED FOR THE LEGISLATION.

The united effort on the part of the American people adequately to defend this Nation has placed a tremendous financial burden upon the Government.

Upon his appearance before your committee on April 24, 1941, the Secretary of the Treasury stated that as of that date the appropriations, authorizations, and recommendations for the national defense program totaled $39,000,000,000, including the lease-lend appropriations. According to the estimate of the Bureau of the Budget as of June 1, 1941, this figure had then risen to $43,000,000,000. It is now set at approximately $50,000,000,000. Thus, since April, the scope of our defense program has been expanded by $11,000,000,000.

Upon that occasion, the Secretary further stated that actual expenditures for all Federal purposes for the fiscal year 1942 were then expected to be $19,000,000,000. It is now anticipated that the expenditures for the fiscal year 1942 will exceed $22,000,000,000. The Budget message of January, 1941, estimated that the deficit for the fiscal year 1942 would be $9,200,000,000. The Bureau of the Budget, as of June 1, 1941, set this figure at $12,800,000,000. These figures do not reflect any additional revenue from proposed tax legislation.

Your committee bill is designed to yield a net additional revenue in excess of $3,500,000,000 for a year of full operation. For the fiscal year 1942, it is estimated to yield about $1,900,000,000. Thus, the net deficit of $12,800,000,000, predicted without regard to this bill, will be reduced to $10,900,000,000.

The bill with the present law will meet about 60 per cent of the anticipated expenditures, leaving 40 per cent to be met by borrowing. During the World War only one-third of the expenditures were met by taxes and two-thirds by borrowing.

In recent years, your committee has recommended and the Congress has enacted legislation substantially increasing our tax revenues. These increases were designed to bring our receipts and expenditures into closer alignment. Except for the enormous expenditures made necessary by our defense program our goal would have been achieved. For example, for the fiscal year 1941 our total receipts aggregated $7,607,000,000 and our total expenditures were $12,710,000,000, leaving a deficit of $5,103,000,000. Of the total expenditures of $12,710,000,000, $6,048,000,000 were for national defense. Thus, had defense expenditures been at normal levels, a small deficit or perhaps no deficit for 1941 would have occurred.

The bill is unprecedented in the amount of revenue it is designed to provide. It lays a substantially increased burden upon the American people. But there is convincing evidence that this burden will be borne cheerfully in the light of the overwhelming importance of national defense to the continued freedom and security of the United States. It is believed that the risk to life and property from an inadequate preparedness would make even a much heavier burden attractive by comparison.

In its deliberations on this measure, it has been your committee's aim and desire to distribute the additional tax burden as equitably as possible among the several classes of taxpayers. Due consideration has also been given to the economic and social effects of the increased levies. There was continually in mind the need for keeping to a minimum, consistent with our defense efforts, any

disruption of our economy, and, at the same time, supplying a needed restraint upon inflationary tendencies.

Your committee's principal aim in this bill, however, as in all tax legislation, is the procurement of revenue.

ESTIMATES OF REVENUE.

Of the more than $3,500,000,000 to be raised by the bill, nearly $2,475,000,000 is to be derived from corporate and individual income taxpayers; $152,000,000 from estate and gift taxpayers; and about $900,000,000 from excise taxes.

The following table sets out in detail the items contained in the bill and the expected revenue therefrom. These figures, supplied by the Treasury Department, contemplate a year of full operation.

Estimated increase or decrease (—) in revenue yield due to revenue bill of 1941.

Tax.	Proposed change.	Estimated increase or decrease (—) over present law [1].
		Millions of dollars.
Income taxes:		
Corporation:		
Normal tax	Allow excess profits tax as a deduction in computing normal tax net income; increase withholding rate and increase income tax rate on nonresident alien individuals and corporations.	—520.1
Surtax	5 per cent on surtax net income not in excess of $25,000; 6 per cent on surtax net income in excess of $25,000.	644.7
Excess-profits tax	Revise basis; increase rates 10 percentage points in each bracket.	1,198.3
Total		1,322.9
Individual		1,152.0
Total income taxes		2,474.9
Miscellaneous internal revenue:		
Capital stock tax	Increase rate from $1.10 to $1.25	22.3
Estate tax	Increase rates	135.9
Gift tax	do	16.0
Total		174.2
Manufacturers' and retailers' excise taxes:		
Distilled spirits	Increase rates $1 per gallon	[2] 122.3
Wines	Increase rate	[2] 5.0
Passenger automobiles, parts, and accessories.	Double rates; revise base	74.9
Automobile trucks, busses, and trailers.	do	16.1
Tires and tubes	Double rates	[2] 44.6
Refrigerators, refrigerating apparatus, and air-conditioners.	Increase rates from 5½ per cent to 10 per cent; revise base.	21.0
Matches	2 cents per 1,000, except fancy wooden or colored wooden (unchanged).	8.2
Playing cards	Increase rate from 11 cents to 13 cents	1.0
Radio receiving sets and parts	Increase rate from 5½ per cent to 10 per cent; revise base.	9.4
Phonographs and phonograph records.	10 per cent of manufacturers' sales price	4.5
Musical instruments	do	3.6
Sporting goods	do	8.5
Luggage	do	4.5
Electrical appliances	do	12.6
Photographic apparatus	do	12.4
Electric signs	do	2.7

[1] Full year effect. Estimates for corporation and individual income taxes and the gift tax are based on income levels estimated for calendar year 1941; all other estimates are based on income levels estimated for fiscal year 1942.

[2] Excluding nonrecurring floor stocks taxes collectible only in fiscal year 1942—distilled spirits, $38.0 millions; wines, $1.0 millions; tires and tubes, $6.7 millions.

Estimated increase or decrease (—) in revenue yield due to revenue bill of 1941—Continued.

Tax.	Proposed change.	Estimated increase or decrease (—) over present law.
		Millions of dollars.
Miscellaneous internal revenue—Con.		
Manufacturers' and retailers' excise taxes—Continued.		
Business and store machines	10 per cent of manufacturers' sales price	21.0
Rubber articles	do	21.3
Washing machines (commercial)	do	1.1
Optical equipment	do	1.0
Soft drinks	Various rates on bottled soft drinks, finished or fountain sirups, and carbonic acid gas.	22.6
Jewelry, etc.	10 per cent of retailers' sales price	56.2
Furs	do	20.7
Toilet preparations	do	19.7
Total manufacturers' and retailers' excise taxes.		514.9
Miscellaneous taxes:		
Admissions	Reduce exemption to 9 cents and eliminate certain present law exemptions. Exempt service men in uniform when admitted free, or at reduced rates on reduced admission charge.	60.0
Cabarets, roof gardens, etc.	5 per cent of total bill	2.0
Club dues	Reduce exemption to $10 and tax certain privilege fees.	2.8
Safe-deposit boxes	Increase rate from 11 per cent to 20 per cent	1.7
Telephone, telegraph, radio, and cable facilities, leased wires, etc.	On dispatches, messages, or conversations for which the charge is 25 cents or more, 5 cents for each 50 cents or fraction thereof; revise definition of leased wires.	26.6
Telephone bill	5 per cent of total bill excluding messages subject to tax above.	43.6
Transportation of persons	5 per cent of amount paid; 35-cent exemption	36.5
Use of motor vehicles and boats	$5 per motor vehicle or boat per year with graduated rates on yachts.	160.2
Bowling alleys, and billiard and pool tables.	$15 per alley, billiard or pool table per year	3.4
Coin-operated amusement and gaming devices.	$25 per device per year	8.9
Radio broadcasting	Various rates based on amount of net time sales; stations with net time sales of less than $100,000 per year exempt.	12.5
Outdoor advertising	Various rates determined by size of sign	7.0
Total miscellaneous taxes		365.2
Total excise and miscellaneous taxes.		880.1
Total miscellaneous internal revenue.		1,054.3
Total		3,529.2

SUMMARY OF PRINCIPAL FEATURES.

I. Individual Income Tax.

1. TAXABLE YEARS.

The changes made by the bill with respect to the individual income tax are effective with respect to taxable years beginning after December 31, 1940.

2. DEFENSE TAX MADE PERMANENT.

The 10 per cent defense tax, imposed for five years by section 15 of the Internal Revenue Code, is made permanent.

3. PERSONAL EXEMPTIONS AND CREDITS FOR DEPENDENTS.

Under existing law a person though unmarried who supports in one household one or more other persons, actually dependent upon him for their chief support, is deemed to be the head of a family and is allowed an exemption of $2,000, plus $400 for each person dependent upon him who is less than 18 years of age or is incapable of self-support. It is felt that such person should not be allowed to obtain this double benefit on account of a dependent, namely, $1,200 (the difference between a single person's exemption of $800 and that of $2,000 for the head of a family), plus $400, or $1,600 in all.

Consequently, the bill provides that a dependent counted to constitute an individual as the head of a family can not be counted again as a dependent for purposes of the $400 credit.

The individual income-tax exemptions were reduced last year from $1,000 to $800 for a single person and from $2,500 to $2,000 for a married couple. A married person's exemption is now as low as it has ever been since the Federal income tax was adopted in 1913. During the period 1917–20 it was $2,000. A single person's exemption is now lower than it has ever been. During the periods 1917–24 and 1932–39 it was $1,000. The present exemptions on a weekly basis are $15 for a single person and $38 for a married person. Your committee feels that a further reduction in these exemptions is not warranted at this time, especially in view of the rising cost of living.

It should be remembered that because an individual is exempt from the individual income tax does not mean that he is free from taxation. The revenue system includes many taxes which directly and indirectly burden these lower income classes. In this connection it is important to consider, not the Federal taxes alone, but also the State and local taxes, which on the whole are less progressive than the taxes imposed by the Federal Government. Furthermore, several of the excise taxes will in substantial part fall upon individuals not reached by the income tax. Moreover, the proposed use tax on automobiles will result in collecting at least $5 from many individuals who are not subject to the income tax. Statistics indicate that over 50 per cent of the passenger automobiles are owned by individuals with incomes of $2,000 or less and over 18 per cent are owned by individuals with incomes of $1,000 or less.

All the income taxpayers have had their income taxes increased by increases in rates. A reduction in the exemptions would impose upon this same group still further income-tax burdens. The additional revenue resulting from reduced exemptions comes almost entirely, not from new taxpayers, but from individuals already subject to the income tax.

It should be noted that while the personal exemptions are not decreased by this bill, a large number of persons will pay income taxes under it who do not pay under present law. The amount of income exempt from taxation would, in effect, be lowered under the surtax rate schedule adopted by the committee since the surtax is applicable to the first dollar of income after personal exemption and credit for dependents. The first $88 above exemptions of a single person without dependents and the first $222 above exemptions of a married person without dependents, now free from the normal tax on account of the earned income credit, become subject to surtax.

4. TREATMENT OF INCOME FROM NONINTEREST-BEARING SECURITIES SOLD AT A DISCOUNT.

Under its program for financing the national-defense expenditures, the Treasury Department is offering several types of securities which are noninterest bearing but are issued at a discount. These securities are redeemable at a fixed amount, increasing at stated intervals. Taxpayers on the accrual basis report and pay tax on this income as it accrues. The bill extends to taxpayers on the cash basis the privilege of electing this same treatment. If they so elect, the income will be reported gradually as it accrues and will not all fall into the taxable year in which the security is redeemed, as would be the case under existing law.

5. INDIVIDUAL SURTAX.

While no change is made in the individual normal-tax rate, the surtax rates are increased substantially. In addition, the surtax rates apply to the entire surtax net income, the first $4,000 of which is free from surtax under the present

law. In order clearly to demonstrate the effect of this change, an example showing the computation of the tax under the rates of the bill is given. It may also be of value to show the determination of net income, surtax net income, and normal-tax net income.

A married man with one dependent, having the indicated items of income and deductions, would compute his tax base and the tax thereon as follows:

Items of gross income:			
Salary	$7,000		
Dividends	3,200		
Partially tax-exempt interest	300		
Other interest (fully taxable)	500		
Gross income		$11,000	
Items of deductions:			
Taxes	$600		
Interest	100		
Losses (not capital losses)	775		
Contributions	125		
Total deductions		1,600	
Net income		9,400	
Credits against net income for surtax purposes—			
Personal exemption	$2,000		
Credit for dependent	400		
		2,400	
Surtax net income		7,000	
Surtax			$630
Net income		$9,400	
Credits against net income for normal tax purposes—			
Personal exemption	$2,000		
Credit for dependent	400		
Earned income credit (10 per cent of earned income or net income, whichever is less)	700		
Partially tax-exempt interest	300		
		3,400	
Normal tax net income		6,000	
Normal tax (4 per cent of $6,000)			240
Total normal tax and surtax			870
10 per cent defense tax			87
Total normal tax, surtax, and defense tax			957

It will be noted that the amount subject to surtax is greater than that subject to normal tax. This is true since the credits against net income for normal-tax purposes are greater than those allowed for surtax purposes. The bill makes no change in this respect, but it does apply the surtax to the entire surtax net income while under existing law the first $4,000 is not taxed.

The following table shows a comparison of the proposed surtax rates and cumulative surtax with those under existing law:

Surtax net income classes.	Surtax rates.		Cumulative surtax on higher amount shown in bracket.	
	Present law.	Proposed law.	Present law.	Proposed law.
	Per cent.	*Per cent.*		
$0,000 to $2,000	----------	5	----------	$100
$2,000 to $4,000	----------	8	----------	260
$4,000 to $6,000	4	11	$80	480
$6,000 to $8,000	6	15	200	780
$8,000 to $10,000	8	19	360	1,160
$10,000 to $12,000	10	22	560	1,600
$12,000 to $14,000	12	25	800	2,100
$14,000 to $16,000	15	28	1,100	2,660
$16,000 to $18,000	18	31	1,460	3,280
$18,000 to $20,000	21	33	1,880	3,940
$20,000 to $22,000	24	36	2,360	4,660
$22,000 to $26,000	27	39	3,440	6,220
$26,000 to $32,000	30	42	5,240	8,740
$32,000 to $38,000	33	45	7,220	11,440
$38,000 to $44,000	36	48	9,380	14,320
$44,000 to $50,000	40	50	11,780	17,320
$50,000 to $60,000	44	53	16,180	22,620
$60,000 to $70,000	47	55	20,880	28,120
$70,000 to $80,000	50	57	25,880	33,820
$80,000 to $90,000	53	59	31,180	39,720
$90,000 to $100,000	56	61	36,780	45,820
$100,000 to $150,000	58	62	65,780	76,820
$150,000 to $200,000	60	63	95,780	108,320
$200,000 to $250,000	62	64	126,780	140,320
$250,000 to $300,000	64	66	158,780	173,320
$300,000 to $400,000	66	68	224,780	241,320
$400,000 to $500,000	68	70	292,780	311,320
$500,000 to $750,000	70	71	467,780	488,820
$750,000 to $1,000,000	72	72	647,780	668,820
$1,000,000 to $2,000,000	73	73	1,377,780	1,398,820
$2,000,000 to $5,000,000	74	74	3,597,780	3,618,820
Over $5,000,000	75	75	----------	----------

The following tables compare the tax payable by individuals of designated status on specified net incomes, under existing law and under the bill; also the effective rates of tax, expressed as percentages of tax to net income:

Comparison of individual income tax on specified net incomes (all income earned) under existing law, and proposed revenue bill of 1941.

Net income.	Single person.		Married persons.					
			No dependents.		2 dependents.		4 dependents.	
	Present law.	Proposed bill.	Present law.	Proposed bill.	Present law.	Proposed bill.	Present law.	Proposed bill.
$800								
$900	$0.44	$5.94						
$1,000	4.40	15.40						
$1,100	8.36	24.86						
$1,200	12.32	34.32						
$1,300	16.28	43.78						
$1,400	20.24	53.24						
$1,500	24.20	62.70						
$1,600	28.16	72.16						
$1,700	32.12	81.62						
$1,800	36.08	91.08						
$1,900	40.04	100.54						
$2,000	44.00	110.00						
$2,500	63.80	157.30	$11.00	$38.50		$11.00		
$3,000	83.60	211.20	30.80	85.80				
$4,000	123.20	338.80	70.40	180.40	$35.20	101.20		$22.00
$5,000	171.60	473.00	110.00	308.00	74.80	202.40	$39.60	116.60
$6,000	255.20	633.60	149.60	435.60	114.40	330.00	79.20	224.40
$7,000	343.20	803.00	233.20	596.20	162.80	464.20	118.80	352.00
$8,000	448.80	1,007.60	316.80	756.80	246.40	624.80	176.00	492.80
$9,000	558.80	1,221.00	422.40	961.40	334.40	794.20	259.60	653.40
$10,000	686.40	1,469.60	528.00	1,166.00	440.00	998.80	352.00	831.60
$12,000	1,476.20	2,934.80	1,258.40	2,545.40	1,117.60	2,200.20	990.00	2,054.80
$20,000	2,666.40	4,826.80	2,336.40	4,338.40	2,142.80	4,030.40	1,949.20	3,722.40
$25,000	4,252.60	7,073.00	3,843.40	6,505.40	3,570.60	6,127.00	3,317.60	5,768.40
$30,000	6,063.20	9,543.60	5,614.40	8,936.40	5,315.20	8,531.60	5,016.00	8,126.80
$40,000	14,709.20	20,715.20	14,128.40	20,002.40	13,741.20	19,527.20	13,354.00	19,052.00
$50,000	19,954.00	26,958.80	19,320.40	26,206.40	18,898.00	25,704.80	18,475.60	25,203.20
$60,000	31,451.20	40,123.60	30,738.40	39,318.40	30,263.20	38,781.60	29,788.00	38,244.80
$75,000	44,268.40	54,168.40	43,476.40	53,310.40	42,948.40	52,738.40	42,420.40	52,166.40
$100,000	78,350.80	89,012.40	77,532.40	88,299.60	76,986.80	87,824.40	76,441.20	87,349.20
$250,000	147,576.40	159,748.00	146,863.60	159,013.60	146,388.40	158,524.00	145,913.20	158,034.40
$500,000	330,933.20	347,604.80	330,155.60	346,805.60	329,637.20	346,272.80	329,118.80	345,740.00
$750,000	522,418.80	541,347.60	521,619.60	540,537.60	521,086.80	539,997.60	520,554.00	539,457.60
$1,000,000	718,401.40	737,340.40	717,583.60	736,519.60	717,036.40	735,972.40	716,489.20	735,425.20
$2,000,000	1,511,397.20	1,530,333.20	1,510,565.60	1,529,501.60	1,510,011.20	1,528,947.20	1,509,456.80	1,528,392.80
$5,000,000	3,917,390.00	3,936,326.00	3,916,547.60	3,935,483.60	3,915,986.00	3,934,922.00	3,915,424.40	3,934,360.40

Comparison of effective rates of individual income tax on specified net incomes (all income earned) under existing law, and proposed revenue bill of 1941.

Net income.	Single person.		Married persons.					
			No dependents.		2 dependents.		4 dependents.	
	Present law.	Proposed bill.	Present law.	Proposed bill.	Present law.	Proposed bill.	Present law.	Proposed bill.
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*
$800	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
$900	.048	.660	.000	.000	.000	.000	.000	.000
$1,000	.440	1.540	.000	.000	.000	.000	.000	.000
$1,100	.760	2.260	.000	.000	.000	.000	.000	.000
$1,200	1.026	2.860	.000	.000	.000	.000	.000	.000
$1,300	1.252	3.367	.000	.000	.000	.000	.000	.000
$1,400	1.445	3.802	.000	.000	.000	.000	.000	.000
$1,500	1.613	4.180	.000	.000	.000	.000	.000	.000
$1,600	1.760	4.510	.000	.000	.000	.000	.000	.000
$1,700	1.889	4.801	.000	.000	.000	.000	.000	.000
$1,800	2.004	5.060	.000	.000	.000	.000	.000	.000
$1,900	2.107	5.291	.000	.000	.000	.000	.000	.000
$2,000	2.200	5.500	.000	.000	.000	.000	.000	.000
$2,500	2.552	6.292	.440	1.540	.000	.000	.000	.000
$3,000	2.786	7.040	1.026	2.860	.000	.366	.000	.000
$4,000	3.080	8.470	1.760	4.510	.880	2.530	.000	.550
$5,000	3.432	9.460	2.200	6.160	1.496	4.048	.792	2.915
$6,000	4.253	10.560	2.493	7.260	1.906	5.500	1.320	3.740
$7,000	4.902	11.471	3.331	8.517	2.325	6.631	1.697	5.025
$8,000	5.610	12.595	3.960	9.460	3.080	7.810	2.200	6.160
$9,000	6.208	13.566	4.693	10.682	3.715	8.824	2.884	7.260
$10,000	6.864	14.696	5.280	11.660	4.400	9.988	3.520	8.316
$15,000	9.841	19.565	8.389	16.969	7.450	15.268	6.600	13.698
$20,000	13.332	24.134	11.682	21.692	10.714	20.152	9.746	18.612
$25,000	17.010	28.292	15.373	26.021	14.282	24.508	13.270	23.073
$30,000	20.210	31.812	18.714	29.788	17.717	28.438	16.720	27.089
$50,000	29.418	41.430	28.256	40.004	27.482	39.054	26.708	38.104
$60,000	33.256	44.931	32.200	43.677	31.496	42.841	30.792	42.005
$80,000	39.314	50.154	38.423	49.148	37.829	48.477	37.235	47.806
$100,000	44.268	54,168	43.476	53.310	42.948	52.738	42.420	52.166
$150,000	52.233	59.341	51.688	58.866	51.324	58.549	50.960	58.232
$250,000	59.030	63.899	58.745	63.605	58.555	63.409	58.365	63.213
$500,000	66.186	69.520	66.031	69.361	65.927	69.254	65.823	69.148
$750,000	69.665	72.179	69.549	72.071	69.478	71.999	69.407	71.927
$1,000,000	71.840	73.734	71.758	73.651	71.703	73.597	71.648	73.542
$2,000,000	75.569	76.516	75.528	76.475	75.500	76.447	75.472	76.419
$5,000,000	78.347	78.726	78.330	78.709	78.319	78.698	78.308	76.687

6. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

The tax on nonresident alien individuals not engaged in trade or business within the United States and not having an office or place of business therein is increased from 16½ per cent (15 per cent plus 1½ per cent defense tax) to 27½ per cent (25 per cent plus 2½ per cent defense tax). The provisions for withholding of tax at the source are amended correspondingly to increase the withholding rate from 16½ to 27½ per cent. These increased rates are in proportion to the increased rates on American citizens and residents.

The rates generally applicable to nonresident aliens do not apply where they would infringe a treaty obligation. Under existing law these rates may be reduced to not less than 5 per cent as applied to residents of a contiguous country if so provided by treaty. The bill authorizes a similar reduction in the case of residents of any country in North, Central, or South America, the West Indies, or Newfoundland. The extension of this favorable treatment is a part of the program toward improving relations with our sister nations in the Western Hemisphere.

7. JOINT RETURN OF HUSBAND AND WIFE LIVING TOGETHER.

The provision.—The bill as reported by your committee requires husband and wife living together at any time during their joint taxable year to report their income in a single joint return and compute the tax on their aggregate income. A husband and wife are considered living together in any case

where they have not separated with intent to abandon permanently the marital relationship, whether or not the husband makes his home at one place and the wife at another place. If one of the spouses has no income, deduction, or credit appearing on the return, such spouse is not required to sign or swear to such return. In the case of husband and wife making a joint return, the net income of each up to and including $3,000 shall in every case be considered earned income and in the case of each the compensation for services actually rendered may be considered earned income to the extent of $14,000. The earned income of each is to be added together and 10 per cent of such earned net income but not in excess of 10 per cent of the aggregate net income is allowable as a credit for the purposes of the normal tax. Either spouse may elect to have the liability for the tax apportioned between them in a ratio which a tax computed upon their separate income bears to the sum of such taxes computed upon their separate incomes.

In computing the separate tax for the purpose of the allocation, each spouse is deemed to have a personal exemption of $1,000 and the credit for dependents is to be computed as if husband and wife were single persons. The following example will show how the section operates:

Husband's gross income		$11,000.00
Wife's gross income		114,000.00
Total gross income		125,000.00
Total deductions		15,000.00
Combined net income		110,000.00
Credits:		
Earned income	$2,400.00	
Personal exemption	2,000.00	
Total credits		4,400.00
Net income in excess of credits for normal tax purpose		105,600.00
Normal tax at 4 per cent		4,224.00
Surtax on $108,000		50,780.00
Total normal and surtax		55,004.00
Plus defense tax, 10 per cent of ($54,996) difference between net income and total normal and surtax, or		5,499.60
Total tax under committee bill		60,503.60
Allocation of tax liability:		
Husband's tax computed separately—		
Gross income		11,000.00
Deductions		1,000.00
Net income		10,000.00
Credits:		
Earned income	$1,000.00	
Personal exemption	1,000.00	
Total credits		2,000.00
Net income in excess of credits for normal tax purpose		8,000.00
Normal tax at 4 per cent		320.00
Surtax on $9,000		970.00
Total normal tax and surtax		1,290.00
Plus 10 per cent defense tax		129.00
Total tax, husband computed separately		1,419.00

Wife's tax computed separately:		
Gross income		$114,000.00
Deductions		14,000.00
Net income		100,000.00
Credits—		
Earned income	$1,400.00	
Personal exemption	1,000.00	
Total credits		2,400.00
Net income in excess of credits for normal tax purposes		97,600.00
Normal tax at 4 per cent		3,904.00
Surtax on $99,000		45,210.00
Total normal tax and surtax		49,114.00
Plus 10 per cent defense tax		4,911.40
Total tax, wife computed separately		54,025.40
Combined tax of husband and wife computed separately		55,444.40
Per cent of combined tax (separate returns)—		
Husband, 2.559 per cent.		
Wife, 97.441 per cent.		
Husband's and wife's tax liability under joint return—		
Husband, 2.559 per cent of $60,503.60		1,548.29
Wife, 97.441 per cent of $60,503.60		58,503.60
Total tax under joint return		60,503.60

The joint taxable year does not include the taxable year in which the marriage took place. For example, if the spouses filed income tax returns on a calendar-year basis and married in 1941, a joint return would not be required until the calendar year 1942. The joint taxable year is automatically terminated upon divorce or legal separation. In the case of death, the surviving spouse and the decedent's personal representative are required to file a joint return for the full taxable year in which the death occurred.

Inequities of the present law.—(1) Entire income earned by one spouse.—Under the present law, if the entire income is earned by the husband, the family is required to pay a greater tax than if the wife had contributed to the family income. For example, if the husband and wife had an income of $10,000 per year but it was all earned by the husband, the tax under the present law with the proposed rates in the bill will amount to $1,166. On the other hand, if $5,000 of the income was contributed by the wife, the total tax to be paid by the family under the present law with the proposed rates will be $880, or $440 by each spouse. These two families have exactly the same income, yet one will pay $286 more than the other. Since in most cases the family income is contributed by the husband, the present law operates unjustly against the great majority of families in the country. The man whose wife has a separate income is in a better position that the man whose wife has no separate income. In the former case, he does not have to set aside as much of his earnings to provide for his wife as in the latter case, yet the existing law actually favors the more fortunate family.

(2) *Families living in different sections of the country.*—The present law permits a family living in one section of the country to pay a lesser tax than a family living in another section of the country. For example, if the husband is a resident of California and earns a salary of $10,000 a year, this salary is divided equally between husband and wife for income-tax purposes. On the other hand, if the husband was living in New York or some other noncommunity-property State, he is required to report his entire salary as his own for Federal income tax purposes. The husband in the noncommunity-property State has no means of mitigating this burden, for the reason that the Supreme Court has held (*Lucus* v. *Earl*, 281 U. S., 111) that an assignment of income for personal services is not recognized for Federal income-tax purposes. In commenting upon this inequity, Mark Graves, Commissioner of Taxation and Finance, State of New York, stated in a letter to Congressman Reed, of New

York, inserted in the joint hearings on tax evasion and avoidance, 1937, page 37:

"A family living in a noncommunity-property State, having an income of a certain size, should, in all fairness, contribute as much to the support of the Federal Government as does a like family with the same income in any other State."

(3) *Family receiving entire income from earnings.*—The present law also discriminates against a family living in a noncommunity-property State receiving all or the greater part of the income from earnings as contrasted with a family receiving all or the greater part of the income from investments. Husbands and wives frequently transfer property between each other, thus splitting up their income for tax purposes. As previously pointed out, an assignment of earned income is not recognized for Federal income-tax purposes.

(4) *Option to file separate returns.*—The present law by permitting husbands and wives to file separate returns or joint returns at their own option always operates to the disadvantage of the Government and in favor of the taxpayers. If each has income of any considerable size, each will ordinarily make a separate return, in order to reduce his income tax. If the husband and wife can so arrange their affairs that the wife is in receipt of a portion of the income, income taxes can be considerably reduced, especially in the case of the larger taxpayers. The lawbooks are filled with cases where the husband and wife have split up their incomes for the purpose of avoiding the progressive income-tax schedule.

(5) *Family partnerships, gifts, and trusts.*—Certain husbands and wives not only split their income through the creation of trusts, or gifts, but also through the use of family partnerships. There have been cases in which such partnerships have been recognized, even though the wife did not contribute either capital or services to the partnership. The purpose of many of these partnerships is to split the family income into two parts. The large amount of gifts made, even after the gift tax went into effect in 1932, also indicates the effort on the part of many wealthy spouses to reduce their income taxes through family transfers. The following, taken from the statistics of income for 1938 and 1939, shows the large number of gifts transferred after the gift tax enacted in 1932 went into effect:

Year:	*Total gifts.*
1932	$81,389,000
1933	241,008,000
1934	888,753,000
1935	2,130,514,000
1936	482,783,000
1937	568,109,000
1938	399,773,000
	4,792,329,000

It will be noted that during this 7-year period, the total gifts made amounted to $4,792,329,000. While there is no break-down of the number of these gifts, it seems clear that a large part of them were family transfers. There were undoubtedly also a great many gifts made during the period from the enactment of the first income tax in 1913 to June 2, 1932, the date of the present gift tax Act. During this period, the only gift tax in effect was one with very slight rates applicable to the year 1924.

Advantages of the committee proposal.—It is the opinion of your committee that division of income between husband and wife as a tax-saving device has no equitable basis. It results in an unequal distribution of the tax burden as between families similarly situated. The joint return proposal will overcome the inequities referred to and will result in a more equitable distribution of the tax burden. It appears proper to treat husbands and wives as taxable units for purposes of the Federal income tax. The proposal has the following virtues:

(1) It prevents the income-tax law from operating unfairly with respect to a family where all the income is received by one spouse as compared with a family where the income is received by both.

(2) It removes the discrimination under the present law against earned income in favor of investment income.

(3) It treats a family living in one part of the United States in the same manner as a family living in another part of the United States, thus removing the discrimination at present existing in favor of those residing in community-property States.

(4) It does not invade the rights of a married woman. It treats her exactly in the same manner as her husband for Federal tax purposes. It merely regards the marital community as the taxable unit instead of the individuals who make it up.

(5) The inherent property rights of the separate members of the taxable unit are in no way invaded. The proposal merely determines the amount of tax to be paid by the unit and permits the tax so determined to be apportioned on an equitable basis.

(6) It prevents the income tax from being avoided through interspouse transfers or partnerships. Property acquired by one spouse may be transferred to the other spouse mainly for the purpose of reducing the tax liability of the one who would otherwise have the greater income.

(7) It is not believed that the joint return will result in any increase in the divorce rate in the United States or adversely affect the morals of American families. A compulsory joint return in Great Britain has been required since 1914, and their divorce rate is not as high as in the United States.

The rate of divorces by each 1,000 of population in 1935 was, in the United States, 1.71 per cent as against 0.10 per cent in England and Wales. The number of divorces for each thousand marriages was, in 1935, in the United States, 164 divorces for each 1,000 marriages, in England and Wales, 12 divorces for each 1,000 marriages.

(8) The mandatory joint return will not result in an increase in the tax of any family whose net income does not exceed $4,000. Where the family has one dependent, the net income would have to exceed $4,400 before the joint return will result in an increase in tax. For every additional dependent, the net income would have to be increased by $400 before the joint return would result in any increase in tax.

(9) The proposal levies the tax according to ability to pay. The taxable capacity is made to depend upon the income that accrued to the marital community and not upon the way that income happens fortuitously to be owned by members of the union. In the majority of cases where the wife has separate income, she contributes to the common purse, either by actual merger of her income with her husband's or by bearing expenses which in less fortunate households fall upon the husband.

(See the appendix of the report for a discussion of Prior Advocacy of Joint Returns and Report of the Royal Commission on the Income Tax, 1920.)

The following tables will show the relative tax burdens under the proposal:

TABLE 1.—*Comparison of tax on married person under joint return, with tax computed under separate returns, on specified net incomes (all income earned).*

Combined net income.	Under joint return.	Under separate returns.						
		Percentage of combined net income attributable to each spouse.						
		Husband—— Wife——	90 10	80 20	75 25	70 30	60 40	50 50
$2,500	$38.50		$38.50	$38.50	$38.50	$38.50	$38.50	$38.50
$3,000	85.80		85.80	85.80	85.80	85.80	85.80	85.80
$4,000	180.40		180.40	180.40	180.40	180.40	180.40	180.40
$5,000	308.00		291.50	275.00	275.00	275.00	275.00	275.00
$6,000	435.60		415.80	396.00	386.10	376.20	369.60	369.60
$7,000	596.20		550.00	517.00	505.45	497.20	497.20	497.20
$8,000	756.80		704.00	651.20	624.80	624.80	624.80	624.80
$9,000	961.40		862.40	798.60	777.15	762.30	752.40	752.40
$10,000	1,166.00		1,056.00	946.00	929.50	913.00	880.00	880.00
$15,000	2,545.40		2,227.50	1,980.00	1,889.25	1,815.00	1,727.00	1,727.00
$20,000	4,338.40		3,757.50	3,308.80	3,150.40	2,992.00	2,838.00	2,838.00
$25,000	6,505.40		5,625.40	4,943.40	4,673.90	4,464.90	4,217.40	4,180.00
$30,000	8,936.40		7,768.20	6,798.00	6,444.90	6,168.80	5,803.60	5,728.80
$50,000	20,002.40		17,659.40	15,866.40	15,238.40	14,715.80	14,088.80	13,956.80
$60,000	26,206.40		23,210.00	21,049.60	20,270.80	19,676.80	19,016.80	18,884.80
$80,000	39,318.40		35,125.20	32,326.80	31,358.80	30,676.80	29,774.80	29,532.80
$100,000	53,310.40		47,876.40	44,470.80	43,414.80	42,600.80	41,544.80	41,192.80
$150,000	88,209.60		81,106.00	77,428.00	76,199.50	75,138.80	73,664.80	73,268.80
$250,000	159,013.60		148,665.00	144,622.00	143,727.00	143,162.00	143,040.00	143,087.20
$500,000	346,805.60		329,696.00	324,982.00	323,679.20	322,329.20	320,115.20	319,251.20
$750,000	540,537.60		519,718.00	513,775.20	511,075.20	508,600.20	505,243.20	504,379.20
$1,000,000	736,519.60		712,860.00	704,357.20	700,775.20	698,525.20	695,825.20	694,943.20
$2,000,000	1,529,501.60		1,495,539.20	1,483,839.20	1,481,139.20	1,479,339.20	1,476,189.20	1,474,407.20
$5,000,000	3,935,483.60		3,882,621.20	3,871,371.20	3,869,121.20	3,866,835.20	3,862,371.20	3,862,371.20

This table compares the tax under the rates in the bill on the income of a family filing a joint return, all of the income of which is earned by the husband, with the tax under the rates in the bill on the income of a family filing separate returns, where some of the income is contributed by the wife.

The following table shows the number of married couples (husbands and wives living together) filing income tax returns for 1938, the number filing joint returns, the number filing separate returns, and the percentage of those filing separate returns to the total. It should be pointed out that this action was voluntary; married people being permitted to file either joint or separate returns, as they chose.

TABLE II.

State.	Number of married couples—			Percentage of separate returns to total.
	Filing joint returns.	Filing separate returns.[1]	Total filing returns.	
Alabama	21,073	768	21,841	3.52
Arizona	9,849	1,261	11,110	11.35
Arkansas	12,368	383	12,751	3.00
California	213,009	28,580	241,589	11.83
Colorado	21,059	939	21,998	4.27
Connecticut	48,673	3,532	52,205	6.77
Delaware	7,482	684	8,166	8.38
District of Columbia	41,170	2,502	43,672	5.73
Florida	30,835	2,133	32,968	6.47
Georgia	31,947	1,374	33,321	4.12
Hawaii	8,783	508	9,291	5.47
Idaho	5,887	856	6,743	12.69
Illinois	228,240	10,273	238,513	4.31
Indiana	59,335	1,982	61,317	3.23
Iowa	39,750	1,223	40,973	2.98
Kansas	29,450	1,003	30,453	3.29
Kentucky	24,529	1,347	25,876	5.21
Louisiana	25,054	5,199	30,253	17.19
Maine	12,051	665	12,716	5.23
Maryland	64,307	3,175	67,482	4.70
Massachusetts	115,938	8,596	124,534	6.90
Michigan	132,080	4,621	136,701	3.38
Minnesota	50,283	2,033	52,316	3.89
Mississippi	11,494	462	11,956	3.86
Missouri	69,004	3,033	72,037	4.21
Montana	13,035	275	13,310	2.07
Nebraska	21,527	665	22,192	3.00
Nevada	3,878	459	4,337	10.58
New Hampshire	8,982	546	9,528	5.73
New Jersey	139,331	6,740	146,071	4.61
New Mexico	6,823	950	7,773	12.22
New York	485,084	26,977	512,061	5.27
North Carolina	26,727	1,496	28,223	5.30
North Dakota	6,573	156	6,729	2.32
Ohio	160,061	6,282	166,343	3.78
Oklahoma	32,542	1,680	34,222	4.91
Oregon	24,931	804	25,735	3.12
Pennsylvania	261,722	9,518	271,240	3.51
Rhode Island	16,418	872	17,290	5.04
South Carolina	12,890	539	13,429	4.01
South Dakota	6,402	149	6,551	2.27
Tennessee	29,758	1,097	30,855	3.56
Texas	99,248	17,267	116,515	14.82
Utah	10,702	361	11,063	3.26
Vermont	5,643	231	5,874	3.93
Virginia	36,731	1,377	38,108	3.61
Washington[2]	43,425	5,942	49,367	12.04
West Virginia	25,657	880	26,537	3.32
Wisconsin	68,191	3,025	71,216	4.25
Wyoming	6,095	178	6,273	2.84
Total	2,866,026	175,598	3,041,624	5.77

[1] Estimated on basis of number of separate returns filed by husbands and wives living together, as shown by Statistics of Income, 1938.

[2] Includes Alaska.

Thus, of 3,014,624 married couples filing income-tax returns, 2,866,026, or more than 94 per cent, chose voluntarily to file joint returns, and only 175,598, or 5.77 per cent, elected to file separate returns.

The following table demonstrates the tax burden the 94 per cent would be obliged to assume in order to make up the revenue lost by allowing the other 6 per cent to file separate returns:

TABLE III.—*Married man—no dependents.*

Net income.	Tax under plan A.	Tax under the committee surtax rates (without the application of the mandatory joint return provision) if the—	
		Income is all the husband's.	Income is divided 50–50 between husband and wife.
	(A)	(B)	(C)
$2,500	$71.50	$38.50	$38.50
$3,000	151.80	85.80	85.80
$4,000	312.40	180.40	180.40
$5,000	506.00	308.00	275.00
$6,000	699.60	435.60	369.60
$7,000	915.20	596.20	497.20
$8,000	1,130.80	756.80	624.80
$9,000	1,379.40	961.40	752.40
$10,000	1,628.00	1,166.00	880.00
$15,000	3,073.40	2,545.40	1,727.00
$20,000	4,800.40	4,338.40	2,838.00
$25,000	6,824.40	6,505.40	4,180.00
$30,000	9,090.40	8,936.40	5,728.80
$50,000	19,540.40	20,002.40	13,956.80
$60,000	25,524.40	26,206.40	18,884.80
$80,000	38,482.40	39,318.40	29,532.80
$100,000	52,474.40	53,310.40	41,192.80
$150,000	87,615.60	88,299.60	73,268.80
$250,000	158,329.60	159,013.60	143,087.20
$500,000	346,121.60	346,805.60	319,251.20
$750,000	542,085.60	540,537.60	504,379.20
$1,000,000	738,085.60	736,519.60	694,913.20
$2,000,000	1,531,067.60	1,529,501.60	1,474,407.20
$5,000,000	3,937,049.60	3,935,483.60	3,892,371.20

In column (C), Mr. and Mrs. Jones each receive one-half of the income shown. In column (B) Mr. Smith receives the entire income, Mrs. Smith having no income of her own. It would be necessary to increase the tax on Mr. Smith from the amount of tax shown in column (B) to the amount shown in column (A) to secure the same revenue that would be produced by treating Mr. and Mrs. Jones like Mr. and Mrs. Smith.

Constitutionality of proposal.—It seems clear that Congress has the constitutional power to enact this proposed amendment. Generically an income tax is classed as an excise (*Brushaber* v. *Union Pac. R. R.*, 240 U. S., 1). The only express constitutional limitation upon such taxes is that they be geographically uniform. The only other possible limitations upon this kind of exercise of the taxing power are those imposed by the broad outlines of the due process clause of the fifth amendment. Obviously the proposed amendment does not run counter to the constitutional mandate of uniformity. With respect to the possible application of the due process clause, the problem revolves essentially around the power of Congress to classify income for purposes of taxation. May Congress place married persons who live together in a separate class and, by reason of the fact that each one of those persons has a separate income, require each of them to pay a higher tax upon his or her income than he or she would have been required to pay had they lived separately?

The Supreme Court has indicated the scope of the power of Congress in this regard in the following language:

"In levying excise taxes the most ample authority has been recognized from the beginning to select some and omit other possible subjects of taxation, to select one calling and omit another, to tax one class of property and to forbear to tax another." (*Flint* v. *Stone Tracy Co.*, 220 U. S., 107, 158.)

Applying this principle specifically to income taxes, it has always been recognized that Congress has plenary authority to classify income for purposes

of taxation, and in fact Congress has frequently exercised this authority. For example, in *Flint* v. *Stone Tracy Co.*, supra, the Court sustained the power of Congress to levy a tax on income derived from doing business in corporate form although persons who derived income from exactly the same kind of business were not subject to tax if they did not carry on that business in the corporate form. Under the Revenue Act of 1913, a single person was allowed an exemption of $3,000 but married persons living together were entitled to an exemption of only $4,000. If the husband and wife were separated and living apart from each other, each was entitled to an exemption of $3,000. It will be noted that under this provision, a husband and wife living together were entitled to an aggregate exemption of only $4,000, regardless of whether they filed joint or separate returns. On the other hand, a husband and wife not living together were entitled to the exemption allowed two single persons, or $6,000 in the aggregate. It was contended in the Brushaber case, supra, that "want of due process" arises from the provisions of the Act allowing a deduction for the purpose of ascertaining the taxable income of stated amounts on the ground that the provisions discriminate between married and single people and discriminates between husbands and wives who are living together and those who are not. In denying this contention, the Court said:

"* * * So far as the due process clause of the fifth amendment is relied upon it suffices to say that there is no basis for such reliance since it is equally well settled that such clause is not a limitation upon the taxing power conferred upon Congress by the Constitution; in other words, that the Constitution does not conflict with itself by conferring upon the one hand a taxing power and taking the same power away on the other by the limitations of the due process clause. (*Treat* v. *White*, 181 U. S., 264; *Patton* v. *Brady*, 184 U. S., 608; *McCray* v. *United States*, 195 U. S., 27, 61; *Flint* v. *Stone Tracy Co.*, supra; *Billings* v. *United States*, 232 U. S., 261, 282.) And no change in the situation here would arise even if it be conceded, as we think it must be, that this doctrine would have no application in a case where although there was a seeming exercise of the taxing power, the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation but a confiscation of property, that is, a taking of the same in violation of the fifth amendment, or, what is equivalent thereto, was so wanting in basis for classification as to produce such a gross and patent inequality as to inevitably lead to the same conclusion. We say this because none of the propositions relied upon in the remotest degree present such questions. * * * In fact, comprehensively surveying all the contentions relied upon, aside from the erroneous construction of the amendment which we have previously disposed of, we can not escape the conclusion that they all rest upon the mistaken theory that although there be differences between the subjects taxed, to differently tax them transcends the limit of taxation and amounts to a want of due process, and that where a tax levied is believed by one who resists its enforcement to be wanting in wisdom and to operate injustice, from that fact in the nature of things there arises a want of due process of law and a resulting authority in the judiciary to exceed its powers and correct what is assumed to be mistaken or unwise exertions by the legislative authority of its lawful powers, even although there be no semblance of warrant in the Constitution for so doing."

More recently the Court has sustained the power of Congress to classify income for the purposes of taxation in *United States* v. *Hudson* (299 U. S., 498), and in *Helvering* v. *Northwest Steel Mills* (311 U. S., 46). In the Hudson case the Court sustained a special income tax of 50 per cent on the profits derived from the transfer of interests in silver bullion. In the Northwest Steel Mills case the Court sustained the surtax imposed upon undistributed corporate earnings by the Revenue Act of 1936. A still more striking example is the recent tax on unjust enrichment, imposed by the Revenue Act of 1936, which levies a tax of 80 per cent upon special kinds of income. These illustrations amply demonstrate the power of Congress to classify income for taxation purposes.

Coming down to the classification made by the proposed amendments, it should be noted that the proposed levy does not change the fundamental liabilities of the parties. Each spouse is required to pay a tax only upon his or her separate income. There is no imposition of a liability upon one person for the taxes payable by another; there is only an increase of tax upon the individual income of each spouse. Primarily a tax is a forced contribution from the members of a society to provide the necessary funds for the functioning of that society as an integrated unit. In levying a graduated income tax, Congress

has given recognition to the principle that these forced exactions should be levied upon various individuals with reference to their ability to pay. In pursuance of this principle, Congress has from the beginning recognized the family status as sufficiently distinct to permit of special treatment. Thus the provision of the present law which allows a man to take a deduction from his gross income for dependents is merely a recognition that this man's ability to pay is not as great as that of the man who has no dependents and therefore the tax liability of the former is reduced.

From 1913 on Congress has provided such special treatment for the head of a family. Conversely, if Congress in the exercise of its judgment concludes that a man's ability to pay a higher tax is materially affected by the fact that other people in his economic unit—the family—have incomes of their own, then it may take that factor into consideration in fixing the tax such a man should pay. Thus Congress has declared that deductions may not be taken for losses resulting from sales of property between members of the same family. See section 24(a)(6) of the Revenue Acts of 1934 and 1936 and section 24(b)(1)(A) of the Revenue Act of 1938. Clearly Congress is not limited in classification for the imposition of higher taxes to a consideration of the amount of income only. It has been demonstrated that it may consider as a factor in classification the particular kind of source of the income. It has also been shown that Congress has always considered as a factor in classification the ability of the taxpayer to pay as affected by his family obligations. A man whose wife enjoys an independent income may as a practical matter be thereby relieved from sufficient familial burdens to materially increase his ability to support the Government. For example, a man in such a position is not under the same practical burden to provide insurance for his wife in case of his death as the man whose wife has no independent income; or he may be relieved from the burden of providing her with numerous small luxuries from his own income if she is able to purchase those things for herself. It has often been said by the Supreme Court that taxation is essentially a practical matter. Congress may therefore take into consideration the practicalities of the situation and classify accordingly.

The only authority against the constitutionality of the proposed legislation is *Hoeper* v. *Tax Commission* (284 U. S., 206). There the State of Wisconsin had provided for treatment of spouses who enjoyed independent incomes similar to that provided for in the proposed amendments. There was, however, one essential difference. Under the Wisconsin law each person whose income was included within the tax computation was liable for the entire tax. The Supreme Court held that this legislation was unconstitutional on the ground that each person was liable for the total tax and therefore A was required to pay a tax on B's income. But this conclusion was reached over the vigorous dissent of Mr. Justice Holmes, Mr. Justice Brandeis, and Mr. Justice Stone, and the views of the dissenters in the Hoeper case have recently been measurably strengthened by the Supreme Court in a series of significant decisions: *Burnet* v. *Wells* (289 U. S., 670), *Helvering* v. *Clifford* (309 U. S., 331), see also *Helvering* v. *Horst* (311 U. S., 112), *Helvering* v. *Eubank* (311 U. S., 122), *Hormel* v. *Helvering* (85 L. Ed., 651), *Harrison* v. *Schaffner* (85 L. Ed., 694).

These cases conclusively demonstrate that the convenient phrase, "A may not be taxed on B's" income, is by no means an all-pervasive formula which will assist in the solution of tax problems. On the contrary A may be taxed on B's income if there are sufficient justificatory facts. The inquiry does not cease with a determination that A is being taxed on income which he did not receive, but must be further pursued with a view to discovering whether there are sufficient facts to so justify taxing A. The Wells, Clifford, Horst, Eubank, Hormel, and Schaffner cases are examples of situations in which the Supreme Court has concluded that A could be so taxed.

Thus in the Wells case the taxpayer had created certain irrevocable trusts the income from which was used to pay premiums on policies of insurance on his life. The Court held that the provision of the Revenue Act of 1924 which directed that such income be taxed to the grantor was constitutional, saying, through Mr. Justice Cardozo (pages 677-679):

"The controversy is one as to the boundaries of legislative power. It must be dealt with in a large way, as questions of due process always are, not narrowly or pedantically, in slavery to forms or phrases. 'Taxation is not so much concerned with the refinements of title as it is with the actual command over the property taxed—the actual benefit for which the tax is paid' (*Corliss* v. *Bowers*,

supra, 378; cf: *Burnet* v. *Guggenheim*, supra, 283). Refinements of title have at times supplied the rule when the question has been one of construction and nothing more, a question as to the meaning of a taxing act to be read in favor of the taxpayer. Refinements of title are without controlling force when a statute, unmistakable in meaning, is assailed by a taxpayer as overpassing the bounds of reason, an exercise by the lawmakers of arbitrary power. In such circumstances the question is no longer whether the concept of ownership reflected in the statute is to be squared with the concept embodied, more or less vaguely, in common-law traditions. The question is whether it is one that an enlightened legislator might act upon without affront to justice. Even administrative convenience, the practical necessities of an efficient system of taxation, will have heed and recognition within reasonable limits (*Milliken* v. *United States*, 283 U. S., 15, 24, 25; *Reinecke* v. *Smith*, supra). Liability does not have to rest upon the enjoyment by the taxpayer of all the privileges and benefits enjoyed by the most favored owner at a given time or place (*Corliss* v. *Bowers*, supra, *Reinecke* v. *Smith*, supra). Government in casting about for proper subjects of taxation is not confined by the traditional classification of interests or estates. It may tax not only ownership but any right or privelege that is a constituent of ownership (*Nashville, C. & St. L. Ry. Co.* v. *Wallace*, 288 U. S., 249, 268; *Bromley* v. *McCaughn*, 280 U. S., 124, 136). Liability may rest upon the enjoyment by the taxpayer of privileges and benefits so substantial and important as to make it reasonable and just to deal with him as if he were the owner, and to tax him on that basis. A margin must be allowed for the play of legislative judgment. To overcome this statute the taxpayer must show that in attributing to him the ownership of the income of the trusts, or something fairly to be dealt with as equivalent to ownership, the lawmakers have done a wholly arbitrary thing, have found equivalence where there was none nor anything approaching it, and laid a burden unrelated to privilege or benefit. * * *"

In *Helvering* v. *Clifford*, supra, the Court pointed out that the familial relationship has sufficient individuality to have a substantial effect upon tax consequences. In that case a husband had created a trust of certain securities for the term of five years, the income from which was to be paid to his wife. In holding the husband taxable upon the income of that trust,[1] the Court said (pages 335–336):

"We have at best a temporary reallocation of income within an intimate family group. Since the income remains in the family and since the husband retains control over the investment, he has rather complete assurance that the trust will not effect any substantial change in his economic position. It is hard to imagine that respondent felt himself the poorer after this trust had been executed or, if he did, that it had any rational foundation in fact, for as a result of the terms of the trust and the intimacy of the familial relationship respondent retained the substance of full enjoyment of all the rights which previously he had in the property. That might not be true if only strictly legal rights were considered, but when the benefits flowing to him indirectly through the wife are added to the legal rights he retained, the aggregate may be said to be a fair equivalent of what he previously had. To exclude from the aggregate those indirect benefits would be to deprive section 22(a) of considerable vitality and to treat as immaterial what may be highly relevant considerations in the creation of such family trusts, for where the head of the household has income in excess of normal needs, it may well make but little difference to him (except income-taxwise) where portions of that income are routed—so long as it stays in the family group."

Not only does the Hooper case have no authority in the field of Federal income taxation, but its vitality as an effective limitation upon the taxing power of the States has also been dissipated by more recent decisions of the Supreme Court which have seriously undermined its foundations by holding that a State is not forbidden by the fourteenth amendment to make such classifications as the legislature regards to be necessary to protect its revenues. In *Madden* v. *Kentucky* (309 U. S., 83), the Supreme Court upheld a Kentucky statute which taxed deposits in banks outside of the State at 50 cents per $100, although deposits in banks within the State were taxed at only 10 cents per $100. The Court there said (pages 87–88):

[1] Though the taxpayer argued on the basis of the Hooper case that it was unconstitutional to tax A on B's income, the Court did not even deem it necessary to discuss the point.

"The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. * * * Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court can not have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."

It may fairly be predicted that if the Supreme Court were presented today with the question presented in the Hoeper case that that case would not be followed. But even if the Hoeper case be taken at its face value, the provisions of the bill do not come within its scope. The motivating factor for the decision in that case was the provision that each person whose income was included within the tax computation was liable for the entire tax. It has been pointed out that the legislation here under consideration does not make the spouses jointly and severally liable for the entire tax unless they so elect. Each person is required to pay a tax only upon his own income and not upon the income of any other person. The net effect is merely that the amount of the tax which he is required to pay is conditioned by the fact that he lives in an economic unit which has other income accruing to it.

For these reasons it is concluded that it is within the power of Congress to make the suggested changes in the Internal Revenue Code.

II. Corporation Income and Excess-Profits Taxes.

1. TAXABLE YEARS.

The amendments made with respect to corporation income and excess-profits taxes are applicable with respect to taxable years beginning after December 31, 1940.

2. CORPORATION NORMAL TAX.

The bill makes the defense tax permanent but does not change the corporation normal tax rate. A change is made, however, in the normal tax base, the excess-profits tax being allowed as a deduction from gross income in arriving at net income subject to normal tax.

3. CORPORATION SURTAX.

The bill imposes upon corporations a surtax of 5 per cent of the first $25,000 of surtax net income and 6 per cent of the balance. The surtax is employed as the only means of reaching income from the large volume of partially tax-exempt Federal securities held by corporations.

Of the total amount outstanding of partially tax-exempt securities held by private investors in the amount of $30,966,000,000, $15,817,000,000 are held by banks, $6,123,000,000 by insurance companies, and the balance are held by other persons. Thus banks hold 51.1 per cent of the total, insurance companies 19.8 of the total, and other persons 29.1 of the total.

4. FOREIGN CORPORATIONS.

The rate of tax on foreign corporations not engaged in trade or business within the United States and not having an office or place of business therein is increased from 16½ per cent (15 per cent plus 1½ per cent defense tax) to 27½ per cent (25 per cent plus 2½ per cent defense tax). The rates for withholding this tax at the source are increased accordingly.

Treatment similar to that accorded nonresident alien individuals who are residents of the Western Hemisphere is accorded foreign corporations organized under the laws of any country in North, Central, or South America, the West Indies, or Newfoundland.

5. EXCESS-PROFITS TAX.

Your committee has retained the excess-profits tax structure which was established in the Second Revenue Act of 1940. The allowance of the alternative methods of computing the excess-profits credit—that is, either the invested-capital method or the average-earnings method—has been justified by experi-

ence. The soundness of the policy of allowing the computation of the credit on the basis of average earnings appears to your committee to have been adequately demonstrated.

A method for computing excess profits based upon invested capital alone will penalize many corporations and favor their competitors. For example, a corporation organized in a period of low values would be discriminated against in favor of a corporation organized in a period of high values. Compare, for example, a corporation organized in 1929 with a corporation organized in 1931. The identical assets may have been turned in to each corporation. Yet such assets may be reflected in invested capital of one corporation at many times the value it would have in computing the invested capital of the other corporation. In the summary of the testimony before the War Policy Commission, House Document No. 271, it is stated in reference to invested capital that, "in some cases mere accidents of incorporation in one year, instead of one year later, meant savings in taxes of millions of dollars." A corporation reorganized shortly before the World War would have a higher basis than if there had been no such reorganization. The invested-capital method alone would also favor a corporation which has distributed in the past little or no dividends as compared with a corporation which has pursued a liberal dividend policy. This is because the accumulated earnings and profits of a corporation enter into the computation of its invested capital. It would also penalize the stockholders of a corporation who paid for their stock on the basis of the present worth of the corporation. It is well recognized that there has been a large turn-over in the stock of many corporations. The present owners in many instances acquired such stock on the basis of the earning record of the corporation at the time of purchase. To conclude that they have realized excess profits on the basis of what the original owners paid for the stock seems contrary to equity and justice.

The invested-capital method will also give no recognition to the fact that many businesses have been conservatively capitalized or built up, especially the smaller ones, not mainly from capital but from good management, skill, development of good will, favorable locations, trade advantages, and other important factors of personal efficiency. As well stated by the late Professor Seligman of Columbia University: "Almost all large businesses have grown from humble beginnings and it is precisely in these humble beginnings that the percentage of the profits to the capital invested is apt to be the greatest." However, your committee felt that there was ample justification for continuing the use of the invested-capital method as an optional base. It is necessary to provide a yardstick for those corporations which had no base-period income or those which were operating on a subnormal basis in the base period. But it is not believed that the treatment should be such as to give corporations too large an exemption of profits attributable to the defense program.

Upon this structure, your committee has made the following changes:

(*a*) *Increased rates.*—The existing rates have been increased by 10 percentage points in each bracket, as follows:

Adjusted excess-profits net income.	Rates under—	
	Existing law (per cent).	Proposed law (per cent).
$0 to $20,000	25	35
$20,000 to $50,000	30	40
$50,000 to $100,000	35	45
$100,000 to $250,000	40	50
$250,000 to $500,000	45	55
Over $500,000	50	60

(*b*) *Reduction in invested capital credit.*—The invested capital credit, which under existing law is 8 per cent of the invested capital, is left 8 per cent on the first $5,000,000 of invested capital but is reduced to 7 per cent on the balance.

(*c*) *Reversal of the deduction for income and excess-profits taxes.*—Under existing law, the income tax is allowed as a deduction in the computation of the excess-profits tax. It seems unfair to allow that part of the income tax which is computed on income which is not subject to the excess-profits tax to reduce the excess-profits net income. Canada allows only that part of the income tax which is computed upon income subject to the excess-profits tax. Under the

World War Act, the excess-profits tax was allowed as a deduction in computing the normal tax but the normal tax was not allowed as a deduction in computing the excess-profits tax. This is also the rule which is now applied by the British. The tax result in Canada is practically the same as the British rule and our 1918 rule. However, it is believed that the World War rule is much simpler in its application. Your committee has, therefore, deemed it advisable to return to the 1918 rule, and has disallowed the deduction of income taxes, both in the base period and in the taxable year, in computing the excess-profits tax. The deduction is allowed in computing both the normal tax and the surtax. The effect of the reversal of the deduction is that the 8 per cent credit on invested capital provided in the bill is equivalent to a credit on invested capital of 5.6 per cent after deduction of the normal tax and surtax, and the 7 per cent credit on invested capital is equivalent to a credit on invested capital of 4.9 per cent after deduction of the normal tax and surtax. The following example will show how the plan will operate:

CORPORATION INCOME TAX DEDUCTIBLE IN COMPUTING EXCESS-PROFITS NET INCOME.

Corporation "A" (invested capital):		Corporation "B" (average earnings):	
Invested capital	$1,250,000	Average base period earnings	$100,000
Credit of 8 per cent	100,000	Base period tax at 17 per cent	17,000
		Excess-profits base period net income	83,000
Net income, taxable year	130,000		
Normal and surtax	38,750	Net income, taxable year	130,000
		Normal tax and surtax	38,750
Excess-profits net income	91,250		
Less credit of 8 per cent plus specific exemption of $5,000	105,000	Excess-profits net income	91,250
		Less credit, 95 per cent of $83,000 plus specific exemption of $5,000	83,850
Adjusted excess-profits net income (deficit)	13,750	Adjusted excess-profits net income	7,400
Excess-profits tax		Excess-profits tax	1,850
Total tax	38,750	Total tax	40,600

EXCESS-PROFITS TAX DEDUCTIBLE IN COMPUTING CORPORATION NET INCOME FOR NORMAL TAX AND SURTAX.

Invested capital	$1,250,000	Average base period earnings	$100,000
Credit of 8 per cent	100,000		
Net income, taxable year	130,000	Net income, taxable year	130,000
Less credit of 8 per cent plus specific exemption of $5,000	105,000	Less credit—95 per cent of $100,000 plus specific exemption of $5,000	100,000
Adjusted excess-profits net income	25,000	Adjusted excess-profits net income	30,000
Excess-profits tax	9,000	Excess-profits tax	11,000
Normal tax and surtax.		*Normal tax and surtax.*	
Net income, taxable year	$130,000	Net income, taxable year	$130,000
Less excess-profits tax	9,000	Less excess-profits tax	11,000
Adjusted net income	121,000	Adjusted net income	119,000
Normal tax and surtax	36,050	Normal tax and surtax	35,450
Total tax	45,050	Total tax	46,450

(*d*) *Ten per cent tax on additional profits not subjected to excess-profits tax under existing law.*—The existing law does not subject to the excess-profits tax earnings which are not in excess of the greater of the average earnings for the base period and the invested capital credit. Thus, many corporations which are making added profits directly or indirectly attributable to Government expenditures for the national defense are paying no additional taxes upon such profits. It is felt that such corporations, benefiting so substantially from the defense expenditures, should make a larger contribution from their increased income even though their income for the taxable year is still less than the invested capital credit.

For these reasons, your committee recommends that corporations using the invested capital credit pay a tax of 10 per cent upon their increased earnings which are not subjected to excess-profits tax under existing law.

(*e*) *New capital.*—In order to encourage the investment of new capital in corporate enterprise, your committee is impressed with the desirability of offering a special inducement in the form of a more liberal credit where new capital is present. To achieve this result, new capital is counted at 125 per cent. Thus for every $100 of new capital paid in to a corporation, the invested capital of such corporation is increased by $125. This method is the equivalent of allowing an invested capital credit on new capital of 10 per cent, where 8 per cent is allowed on old capital, and 8¾ per cent where 7 per cent is allowed on old capital.

New capital is limited to money or property paid in for stock during taxable years beginning after December 31, 1940, and taxable stock dividends made during the same period. Borrowed capital does not constitute new capital nor can transactions in certain tax-free exchanges or between corporations which are members of an affiliated group in which more than 50 per cent control is present, create new capital. Earnings and profits retained in the business are not considered new capital.

To prevent corporations from turning old capital into new by paying it out to shareholders and then having it reinvested, and to prevent borrowed capital from being transformed into new equity capital, a net capital increase concept is used. For the purposes of measuring such net increases in capital, reference is had to the capital as of the beginning of the first taxable year beginning in 1941. Furthermore, capital that would otherwise receive new capital treatment, is denied such treatment to the extent that there is a net increase in inadmissible assets.

6. INCOME FROM MINING STRATEGIC METALS.

The existing law exempts from the excess-profits tax that portion of the adjusted excess-profits tax net income of a domestic corporation which is attributable to mining within the United States of tungsten, quicksilver, manganese, platinum, antimony, chromite, or tin.

Your committee has removed this exemption, as it is believed that these corporations which make money out of the defense program should bear their share of the tax burden.

III. Capital Stock Tax and Declared Value Excess-Profits Tax.

1. CAPITAL STOCK TAX.

The bill increases the capital stock tax rate from $1.10 ($1 plus 10 cents defense tax) per $1,000 of adjusted declared value to $1.25 effective for the fiscal year ending June 30, 1941. The Commissioner has extended the time for filing returns and paying the tax for the year ended June 30, 1941, until September 29 of this year. For the period of this extension, no interest will be required.

2. DECLARED VALUE EXCESS-PROFITS TAX.

Under existing law, the same deductions (with the exception of the declared value excess profits tax itself) are allowed in computing net income for income tax purposes as for the purposes of the declared value excess profits tax.

While the bill adds the excess-profits tax to the existing deductions allowed in computing net income for income-tax purposes, it makes no such provision for the computation of net income for the purposes of the declared value excess-profits tax. While the effect of this disallowance would be ordinarily to justify a higher declared value for capital stock, and therefore, a greater capital stock tax, it is believed that this disadvantage to the taxpayer will be largely offset by the larger deduction on that account for income and excess profits tax pur-

poses and by the fact that the allowance of the deduction in question would introduce a factor of considerable uncertainty in the determination of a declared value that would produce the smallest combined capital stock and declared value excess profits tax.

IV. Estate and Gift Taxes.

1. Estate tax.

The bill provides a new schedule of increased rates for the estate tax, applicable only to the estates of decedents dying after the enactment of this bill. In addition, the 10 per cent defense tax is made permanent. No other change is made with respect to the estate tax. The following table sets out a comparison of the rates and the cumulative tax under existing law and under the bill. It should be noted that the tax computed under these rates is subject to reduction by the credit allowed for State death taxes paid and does not include the 10 per cent defense tax.

Net estate after specific exemption.	Existing law.		Proposed law.	
	Bracket rate (per cent).	Cumulative tax on higher amount.	Bracket rate (per cent).	Cumulative tax on higher amount.
0 to $5,000	2	$100	3	$150
$5,000 to $10,000	2	200	7	500
$10,000 to $20,000	4	600	10	1,500
$20,000 to $30,000	6	1,200	13	2,800
$30,000 to $40,000	8	2,000	16	4,400
$40,000 to $50,000	10	3,000	20	6,400
$50,000 to $60,000	12	4,200	23	8,700
$60,000 to $100,000	12-14	9,600	25	18,700
$100,000 to $250,000	17-20	36,600	27	59,200
$250,000 to $500,000	20-23	89,600	29	131,700
$500,000 to $750,000	23-26	151,600	32	211,700
$750,000 to $1,000,000	26-29	222,600	34	296,700
$1,000,000 to $1,250,000	32	302,600	36	386,700
$1,250,000 to $1,500,000	32	382,600	38	481,700
$1,500,000 to $2,000,000	35	557,600	41	686,700
$2,000,000 to $2,500,000	38	747,600	45	911,700
$2,500,000 to $3,000,000	41	952,600	48	1,151,700
$3,000,000 to $3,500,000	44	1,172,600	51	1,406,700
$3,500,000 to $4,000,000	47	1,407,600	54	1,676,700
$4,000,000 to $5,000,000	50-53	1,922,600	58	2,256,700
$5,000,000 to $6,000,000	56	2,482,600	61	2,866,700
$6,000,000 to $7,000,000	59	3,072,600	64	3,506,700
$7,000,000 to $8,000,000	61	3,682,600	66	4,166,700
$8,000,000 to $9,000,000	63	4,312,600	69	4,856,700
$9,000,000 to $10,000,000	65	4,962,600	69	5,546,700
$10,000,000 to $20,000,000	67	11,662,600	70	12,546,700
$20,000,000 to $50,000,000	69	32,362,600	70	33,546,700
Over $50,000,000	70	----------	70	----------

The following table shows a comparison of the Federal estate tax burden (before allowance of credit for State death taxes) under existing law and under the bill upon net estates (before exemption) of selected sizes:

Net estate before exemption.	Amount of tax.[1]		Effective rates.		Increase in tax.	
	Existing law.	Proposed law.	Existing law.	Proposed law.	Amount.	Per cent.
$50,000	$220	$550	0.4	1.1	$330	150.0
$60,000	660	1,650	1.1	2.8	990	150.0
$80,000	2,200	4,840	2.8	6.1	2,640	120.0
$100,000	4,620	9,570	4.6	9.6	4,950	107.1
$200,000	21,660	38,270	10.8	19.1	16,610	76.7
$400,000	63,780	99,530	15.9	24.9	35,750	56.1
$600,000	112,340	164,590	18.7	27.4	52,250	46.5
$800,000	167,340	234,330	20.9	29.3	66,990	40.0
$1,000,000	228,780	308,090	22.9	30.8	79,310	34.7
$2,000,000	588,000	727,370	29.4	36.3	139,370	23.7
$4,000,000	1,499,640	1,792,570	37.5	44.8	292,930	19.5
$6,000,000	2,655,140	3,075,450	44.3	51.3	420,310	15.8
$10,000,000	5,323,500	5,964,250	53.2	59.6	640,750	12.0
$20,000,000	12,532,700	13,503,890	62.7	67.5	971,190	7.7
$40,000,000	27,391,820	28,583,890	68.5	71.4	1,192,070	4.4
$60,000,000	42,361,380	43,663,890	70.6	72.8	1,302,510	3.1
$100,000,000	72,521,380	73,823,890	72.5	73.8	1,302,510	1.8

[1] Includes 10 per cent defense tax.

2. GIFT TAX.

The bill provides a new schedule of increased gift tax rates applicable for computing the tax for the calendar year 1942 and subsequent calendar years. In addition, the 10 per cent defense tax is made permanent. As under existing law, the new gift tax rates are in each case three-fourths of the corresponding estate tax rate. No other change is made with respect to the gift tax.

V. EXCISE TAXES.

In connection with the increase in the rates of many excise taxes and the imposition of several new levies, it should be noted that the Federal statutes impose a severe penalty upon persons making false statements to purchasers of articles regarding Federal taxes thereon. Section 3325 of the Internal Revenue Code provides as follows:

"Whoever in connection with the sale or lease, or offer for sale or lease, of any article, or for the purpose of making such sale or lease, make any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or (2) ascribing a particular part of such price to a tax imposed under the authority of the United States, knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment not exceeding one year, or both."

At the outset, it should be pointed out that many excise taxes under existing law will expire in 1945. Other such taxes will then become effective at reduced rates. In addition, the temporary defense taxes imposed by the first Revenue Act of 1940 will terminate in 1945. As a result of these varying rules, both as to the termination of taxes and as to the changes in rates, considerable confusion has arisen.

Your committee deems it desirable to remove these expiration dates and future rate changes from the law. This action has been taken without prejudice to the temporary nature of these levies and rate increases, for the desirability of their repeal or downward revision as soon as our revenue needs will allow is fully recognized.

1. EXCISE TAXES MADE PERMANENT.

A.—Temporary subjects of tax made permanent.

Subject of tax.	Internal Revenue Code section.	Expiration date under existing law.
MANUFACTURERS' EXCISE TAXES.		
Tires and inner tubes	3400	July 31, 1945
Toilet preparations	3401	June 30, 1945
Automobiles	3403	July 31, 1945
Radio receiving sets	3404	June 30, 1945
Mechanical refrigerators	3405	Do.
Matches	3409	Do.
Electrical energy	3411	Do.
Gasoline	3412	Do.
Lubricating oils	3413	Do.
IMPORT TAXES.		
Petroleum and derivatives	3422	Do.
Coal	3423	Do.
Lumber	3424	Do.
Copper	3425	Do.
TRANSPORTATION AND COMMUNICATION TAXES.		
Transportation of oil by pipe line	3460	June 30, 1945
Telegraph, telephone, radio, and cable facilities	3465	Do.
DOCUMENTARY STAMP TAXES.		
Corporate securities (transfer)	3481	Do.
Conveyances	3482	Do.

B.—Taxes with respect to which temporary increases in rate are made permanent.

Subject of tax.	Internal Revenue Code section.	Expiration date of increase in rate under existing law.
Corporate securities (issue)	1801	June 30, 1945
Capital stock (issue)	1802(a)	Do.
Capital stock (transfer)	1802(b)	Do.

2. DEFENSE TAX RATES MADE PERMANENT.

In the first Revenue Act of 1940, the rate of almost every excise tax was increased by the defense tax. In most cases, these increases amounted to 10 per cent of the then existing tax rate. These defense tax rate increases would expire under existing law in 1945. Because of the confusion which might result from these complexities, the bill makes these rate increases permanent.

The amendments made by the bill to the existing law in this respect are clerical in nature and do not change the rates or the scope of the taxes involved. For convenience, the following table sets out the taxes to which these technical changes apply:

Subject of tax.	Internal Revenue Code section.	Permanent rates.
(1) Box seats	1700(b)(1)	11 per cent.
(2) Sales outside box office	1700(c)(1)	Do.
(3) Corporate securities (issue)	1801	11 cents.
(4) Capital stock (issue)	1802(a)	11 and 3 cents.
(5) Capital stock (transfer)	1802(b)	5 and 6 cents.
(6) Insurance policies	1804	4 cents.
(7) Passage tickets	1806	$1.10, $3.30, and $5.50.
(8) Cigarettes	2000(c)(2)	$3.25 and $7.80.
(9) Pistols and revolvers	2700 (a)	11 per cent.
(10) Fermented malt liquors	3150(a)	$6.
(11) Wholesalers of liquors	3250(a)(1)	$110.
(12) Retailers of liquors	3250(b)	$27.50.
(13) Brewers	3250(c)	$110 and $55.
(14) Wholesalers of malt liquors	3250(c)	$55.
(15) Retailers of malt liquors	3250(e)(1)	$22.
Do	3250(e)(3)	$2.20.
(16) Rectifiers	3250(f)(1)	$220 and $110.
(17) Stills	3250(j)	$55 and $22.
(18) Firearms, etc	3407	11 per cent.
(19) Electrical energy	3411	3½ per cent.
(20) Gasoline	3412(a)	1½ cents.
(21) Lubricating oils	3413	4½ cents.
(22) Transportation of oil by pipe line	3460(a)	4½ per cent.
(23) Corporate securities (transfer)	3481(a)	5 cents.
(24) Conveyances	3482	55 cents.

The above rates include the basic rates imposed by the indicated sections of the Internal Revenue Code and the defense tax imposed by section 1650(a).

3. INCREASE IN RATES OF EXISTING EXCISE TAXES.

The bill increases the rates of certain excise taxes but makes no change in their bases. Other existing excise tax rates are increased but there are also changes made in their bases. Such changed rates and bases will be discussed in the next part of this report.

Those excise taxes with respect to which the bill makes rate increases only are listed in the following table, along with the pertinent sections of the Internal Revenue Code, the rate under existing law, and the rate under the bill:

Subject of tax.	Internal Revenue Code section.	Rate of tax—	
		Existing law, including defense tax rate.	Proposed law.
Playing cards	1807(a)	11 cents	13 cents.
Safe-deposit boxes	1850(a), 1650(a)	11 per cent	20 per cent.
Distilled spirits	2°00(a)(1), (g)	$3	$4.
Brandy	2800(a)(1), (g)	$2.75	$3.75.
Imported perfumes	2800(a)(3), (g)	$3	$4.
Still wines	3030(a)(1)(A), 3190	6 cents	8 cents.
		18 cents	24 cents.
		30 cents	50 cents.
Sparkling wines (natural)	3030(a)(2), 3190	3 cents	4 cents.
Sparkling wines (artificial)	3030(a)(2), 3190	1½ cents	2¼ cents.
Liqueurs, cordials, etc.	3030(a)(2), 3190	1½ cents	2¼ cents.
Tires	3400(1), 1650(a)	2½ cents	5 cents.
Tubes	3400(2), 1650(a)	4½ cents	9 cents.

A floor stocks tax of $1 per proof gallon is imposed with respect to distilled spirits which on the effective date of this bill are held for sale or for use in the further manufacture or production of any article intended for sale.

A like floor stocks tax is imposed upon wines at rates equal to the increases in tax shown in the above table.

Floor stocks taxes are imposed upon tires and tubes held for sale by anyone, other than the manufacturer, on the effective date of this bill. The floor stocks tax rate on tires is 2½ cents per pound and on tubes 4½ cents per pound. These rates are equal to the increase in taxes on these articles shown in the above table.

4. CHANGES IN BASIS OF COMPUTING TAX (RATES INCREASED IN CERTAIN CASES).

In addition to the increases made by the bill in the rates of the existing excise taxes described under the preceding heading, certain other excise taxes undergo a change of base and, in some instances, an increase in rate as well, under the bill. Those existing excises with respect of which a change of base only is made are—

Admission tax.—The existing law imposes a tax on admission charges of 21 cents or more. The bill taxes admission charges of 10 cents or more. Your committee felt it desirable to provide that where members of the military or naval forces, or the Civilian Conservation Corps, are admitted free or at reduced rates, the tax shall apply only to the amount actually paid for admission.

Certain admission charges exempted from tax under existing law, however, are denied exemption under the bill. The principal category of such admission charges comprises those of which the proceeds go to religious, educational, or charitable institutions or organizations. Your committee regards these exemptions as of little or no benefit to such institutions or organizations and, at the same time, as a source of serious administrative difficulties and loss of revenue. This tax is imposed upon the person admitted and not the organization.

In addition, the bill would repeal a provision of the Department of the Interior Appropriation Act (Public, No. 136, Seventy-seventh Congress, first session) which exempts from the admission tax fees for admission to national parks and monuments.

Cabarets, roof gardens, etc.—Under the existing law, an attempt is made to segregate from the total charge made at cabarets, roof gardens, and similar places of entertainment, the portion attributable to a charge for admission, where such charge is wholly or in part included in the patron's bill. This method of taxation has entailed serious administrative difficulties.

To obviate these difficulties, the bill makes the total charge the basis of the tax and applies to that base a rate of 5 per cent, in lieu of the existing rate of approximately 20 per cent of the portion of the bill attributable to an admission charge. Under existing law the tax is upon the patron but the owner of the establishment is charged with its collection and payment into the Treasury. The bill places the tax directly on the owner.

Club dues.—The existing law taxes club dues which exceed $25 a year. The bill taxes such dues if they exceed $10 a year.

Furthermore, the bill redefines "club dues" so that they include any charge for social, athletic, or sporting privileges or facilities. The inclusion of such charges will prevent the tax avoidance possible under existing law by the practice of making separate charges for the various privileges and facilities. The exemption allowed fraternal organizations remains unchanged.

Those existing excise taxes, with respect to which both a change in base and an increase in rate are effected by the bill, are:

Automobiles, trucks, busses, and parts.—The rate on passenger automobiles and motorcycles is increased from 3½ to 7 per cent. In addition, trailers suitable for use with passenger automobiles and motorcycles, which are not taxed under existing law, are also taxed in this category.

The rate on trucks is increased from 2½ to 5 per cent. Busses are made taxable under this category rather than as passenger automobiles. In addition, truck and bus trailers, which are not taxed under existing law, are made taxable at the 5 per cent rate.

The tax on parts or accessories is increased from 2½ to 5 per cent. Radios are excluded from the list of automobile accessories since they are separately taxed at a higher rate.

Radios, phonographs, phonograph records, and musical instruments.—Under existing law the tax applies only to parts and accessories for radio receiving sets and combination radio and phonograph sets. This category has been expanded to include completed radio sets, phonographs, phonograph records, automobile radios, and musical instruments.

The rate of tax is increased from 5½ to 10 per cent.

Refrigerators, refrigerating apparatus, and air-conditioners.—Under existing law the tax on mechanical refrigerators applies only to those of the household type and components and parts thereof. Under the bill this tax will apply to all mechanical refrigerators and refrigerating units whether of household or other type. In addition, self-contained air-conditioning units and their components are added to this category.

The tax rate is increased from 5½ to 10 per cent.

Matches.—The existing law taxes only fancy wooden matches at a rate of 5½ cents per thousand. The bill continues this tax at the same rate and also taxes all other matches at a rate of 2 cents per thousand.

Telephone, telegraph, etc.—Under existing law telephone toll charges, telegraph messages, and radio messages are taxed separately and at different rates. Telephone toll charges are now taxed at 5, 15, and 20 cents on charges of from 50 cents to $1, $1 to $2, and over $2, respectively. Telegraph messages are now taxed at 5 per cent of the amount charged and radio messages at 10 cents each.

The bill places these three types of services in the same category and taxes them on an ad valorem basis. Where the charge is more than 24 cents, a tax of 5 cents for each 50 cents, or fraction thereof, of the charge is imposed.

The 5 per cent tax on leased wires and talking circuits is retained and the base is expanded to include wire services such as teletypewriter service, burglar alarm service, news ticker service, stock quotation and information services, and the like. The exemption provided by existing law for the services of this type utilized by a common carrier, telephone or telegraph company, or a radio broadcasting company or net work in the conduct of its business as such, is continued by the bill.

A new tax of 5 per cent is imposed upon the amount paid for local telephone service, excluding amounts paid for installation and upkeep.

5. NEW EXCISE TAXES.

In addition to the present excise taxes your committee recommends the adoption of the following new levies:

Soft drinks.—A tax on bottled soft drinks, sold by the bottler or importer, at one-sixth of a cent per bottle for bottles selling at retail for not more than 10 cents per bottle; one-third of a cent for a bottle selling for from 11 to 20 cents; and one-half of a cent for a bottle selling for more than 20 cents. These rates apply to bottles containing a quart or less. If the bottle contains more than a quart, the tax is 6 per cent of the price for which sold by the bottler or importer.

As a corollary to the tax on bottled beverages, a manufacturers' excise tax of 6 cents per gallon is imposed upon finished or fountain sirups sold to any person other than a bottler, and a tax of 4 cents per pound is imposed upon carbonic acid gas sold to soda fountains.

Manufacturers' excise taxes.—Taxes are imposed upon the following items at the rate of 10 per cent of the price for which sold by the manufacturer, producer, or importer:

Subject of tax:	Subject of tax—Continued.
Sporting goods.	Rubber products.
Luggage.	Commercial washing machines.
Electrical appliances.	Optical equipment (not including eyeglasses).
Photographic apparatus.	
Business and store machines.	

Retailers' excise taxes.—The bill imposes a tax of 10 per cent upon the retail sale of jewelry, furs, and toilet preparations. The tax is placed upon the retail sale rather than the manufacturer's or importer's sale because of administrative and equitable considerations. Manufacturers' excise taxes upon these articles have been imposed by the Federal Government in the past. Such a tax upon toilet preparations is, in fact, imposed by existing law. Experience has proven, however, that under such taxes evasion is substantial and inequitable competitive situations are created.

In view of these considerations, your committee is convinced of the desirability of placing these taxes upon the retail sale. The manufacturers' tax on toilet preparations is repealed.

Transportation of persons.—A tax of 5 per cent is imposed upon the amount paid within the United States for the transportation of persons by rail, motor vehicle, water, or air. Transportation by motor vehicles seating less than 10 persons is exempt. Likewise, the bill exempts amounts paid for transportation which do not exceed 35 cents, amounts paid for commutation tickets for single trips of less than 30 miles, and amounts paid for commutation tickets for 1 month or less.

Coin operated amusement and gaming devices.—A special tax of $25 per year is imposed for each slot machine, pinball machine, or similar amusement or gaming device maintained on any place or premises. The tax does not apply with respect to bona fide vending machines.

Bowling alleys, billiard and pool tables.—A special tax of $15 per year is imposed for every billiard or pool table and every bowling alley except those in private homes.

Outdoor advertising.—A special tax is imposed on advertising on billboards or other structures upon real property, the rate of which is regulated according to the amount of advertising-space area. For each billboard having an advertising space of not over 300 square feet the tax is $5 per annum; for such space amounting to more than 300 square feet and not more than 600 square feet, the tax is $8 per annum; and for such space amounting to more than 600 square feet, the tax is $11 per annum. The tax is to be paid by the lessor of billboards, with respect to each billboard maintained or controlled by him. However, if such lessor discontinues the control or maintenance of a billboard within the taxable year on which he has paid tax, and later employs another billboard of the same tax classification as the one on which tax was paid and control or maintenance of which was discontinued, then with respect to such additional billboard no tax shall be payable.

Use of motor vehicles.—An annual tax of $5 is imposed upon the use of all motor vehicles of the kind chiefly used for highway transportation. Consideration was given by the committee to the graduation of the tax upon some such basis as weight or horsepower. The tax is conceived of, however, as essentially a privilege tax and not one to which the principle of ability to pay has any necessary application. It is also designed to reach a large number of individuals who by reason of the personal exemptions have no income-tax liability. In a measure, too, it accomplishes the objectives of the advocates of the imposition of an income tax return filing fee. Graduation, moreover, would entail administrative difficulties and expense out of proportion to the revenue and the equitable considerations involved.

Use of boats.—An annual tax is also imposed on the use of boats. The tax is graduated on the basis of the over-all length of the boat, as follows: 16 or

over but not over 28 feet, $5; over 28 but not over 50 feet, $10; over 50 but not over 100 feet, $40; over 100 but not over 150 feet, $100; over 150 but not over 200 feet, $150; over 200 feet, $200.

VI. Radio Broadcasting Stations and Networks.

Your committee have imposed a tax for calendar years beginning after December 31, 1941, upon every person who during the year operates a radio broadcasting station or engages in network broadcasting.

The desirability of a special tax on radio broadcasting (distinct from a tax on advertising, one medium for which is radio) is indicated by several considerations.

1. Radio broadcasters are the possessors of a valuable privilege awarded to them free of charge, on the condition that they operate in the public interest. Because of the technical limitations of the broadcasting band, the number of commercial broadcasters at any one time is for all practical purposes limited. In consequence, the right to operate a broadcasting station in particular areas carries with it a measure of monopolistic privilege and the opportunity for an extremely profitable investment. Through the exercise of that privilege and the exploitation of that opportunity, many broadcasters make substantial profits and virtually all broadcasters derive less tangible benefits in the form of publicity and good will.

2. The principal operators in commercial broadcasting earn high rates of return on relatively small investments. They possess unusual taxpaying ability which, in view of the Government's present revenue requirements, can properly be subjected to special taxation.

3. Radio broadcasting requires public regulation. Such regulation is provided at public expense, with great benefit to the industry but without any special costs to that industry.

The tax imposed is to be equal to a given percentage of net time sales made during the year. A net time sale is in effect defined as the gross amount received or accrued from the sale of radio time, not including the amount of any commission (not to exceed 15 per cent of the gross amount) paid to or deducted by an advertising agency, and minus any amount paid by the taxpayer, pursuant to the sale by him, for broadcasting time to other persons operating radio stations or engaged in network broadcasting.

Taxpayers are divided into three classes, with rates prescribed as follows:

(1) If the net time sales are in excess of $100,000, but not in excess of $500,000, 5 per cent.

(2) If the net time sales are in excess of $500,000, but not in excess of $1,000,000, 10 per cent.

(3) If the net time sales are in excess of $1,000,000, 15 per cent.

The rate prescribed with respect to each class of taxpayer is applicable to the entire amount of the net time sales for the taxable year. The Act provides, however, that the liability of a taxpayer in one classification can not exceed the maximum liability under the next lower classification, plus the amount of the taxpayer's net time sales in excess of the maximum net times sales taxable under the lower classification.

For example, the tax in the case of a taxpayer with net time sales of $500,000 would be at the rate of 5 per cent of the net time sales, or $25,000. Except for the above notch provision, if the net time sales were $500,001, the rate would be 10 per cent of the net time sales, or $50,001.10. By reason of the notch provision, the tax in the latter case would be $25,000 plus the net time sales in excess of $500,000, or $1, making the tax in the latter case $25,001.

If the net time sales do not exceed $100,000 no tax is imposed.

DETAILED DISCUSSION OF THE PROVISIONS OF THE BILL.

Title I—Individual And Corporation Income Taxes.

SECTION 101. SURTAX ON INDIVIDUALS.

The surtaxes apply upon the entire surtax net income and hence the exemption from surtax of the first $4,000 of surtax net income found in existing law is abolished. The lowest surtax bracket rate is 5 per cent as compared with 4 per cent under existing law. The surtaxes are increased in all brackets up

to $750,000 and from that point the rates of existing law are retained. While the rates attributable to surtax net income in excess of $750,000 are not increased, surtaxes payable by taxpayers in these upper brackets are increased by reason of the higher rates in the lower brackets.

SECTION 102. SURTAX ON CORPORATIONS.

This section, adding section 16 to the Internal Revenue Code, imposes upon all corporations (including insurance companies), except nonresident foreign corporations and mutual investment companies (the latter being later dealt with in the section), a surtax of 5 per cent upon the first $25,000 of corporation surtax net income and 6 per cent upon the excess of such income over $25,000. Complementary amendments are made to sections 104(b), 231(b), 251(c)(1), and 261(a). Corporation surtax net income is defined as net income minus the credit for dividends received provided in section 26(b) and thus includes United States interest in the tax base.

This section also imposes upon mutual investment companies a surtax upon Supplement Q surtax net income of such companies at rates corresponding to those imposed upon corporations generally.

SECTION 103. INCOME DEFENSE TAX MADE PERMANENT.

This section makes permanent the defense tax imposed by section 15 of the Internal Revenue Code as added by section 201 of the Revenue Act of 1940.

SECTION 104. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

Under existing law a nonresident alien individual not engaged in business within the United States, and not having an office or place of business therein, is taxed only upon dividends, interest, and other fixed or determinable annual or periodical income from sources within the United States and at the rate of 16½ per cent. This rate may be reduced under existing law to 5 per cent in the case of a resident of a contiguous country if so provided by treaty with such country. Section 104, amending section 211(a)(1) of the Code, increases such rate to 25 per cent (in effect increased to 27½ per cent through the defense tax imposed by section 15), which corresponds to the proportionate increase in burden imposed upon American citizens and residents by the increase in income taxes under the bill.

Under existing law, if such a nonresident alien individual has a gross income of more than $24,000, which is the level at which the average effective rate equals 16½ per cent, he is subject to the full normal tax and surtax on his fixed or determinable annual or periodical income. The bill adjusts this figure of $24,000 to $23,800, at which under the bill there is reached approximately an effective rate of 27½ per cent. Nonresident aliens engaged in business in the United States, or having an office or place of business therein, are subject to the same rates as apply to American citizens, but only with respect to income from sources within the United States. They will therefore be subject to the increase in tax applicable to American citizens.

The rates thus imposed in the case of nonresident alien individuals do not apply in any case where their application would be contrary to any treaty obligation of the United States (section 106). Under the provisions of section 107 these rates may be reduced in the case of residents of any country, including foreign colonies and possessions, in North, Central, or South America, or in the West Indies or of Newfoundland, to 5 per cent if so provided by treaty with such country. For the purposes of the section the Bermuda Islands are considered as included in the West Indies.

SECTION 105. TAX ON FOREIGN CORPORATIONS.

This section amends section 231 of the Code to increase tax imposed upon foreign corporations not engaged in trade or business in the United States and not having an office or place of business therein from 15 to 25 per cent (27½ per cent with the addition of the 10 per cent defense tax). The increase is commensurate with the increase in the tax burden imposed upon domestic corporations.

SECTION 106. WITHHOLDING OF TAX AT SOURCE.

This section provides for withholding of the tax at the source (by means of which the tax in the case of nonresident aliens is very largely collected) at the

rate of 27½ per cent instead of 16½ per cent under existing law. The rate of 27½ per cent represents the combined effective rate of tax imposed by section 211(a)(1)(A) after its amendment by section 104 of this bill and by section 15 of the Code (defense tax). The increased rates of withholding will not go into effect until the tenth day after the enactment of the Act in order to afford a reasonable period within which withholding agents will be informed of the higher rates applicable to payments made to nonresident aliens or nonresident foreign corporations.

SECTION 107 (TREATY OBLIGATIONS) AND SECTION 108 (REDUCTION IN PURSUANCE OF TREATIES OF RATES OF TAX AND WITHHOLDING ON NONRESIDENT ALIEN INDIVIDUALS RESIDENT IN, AND CORPORATIONS ORGANIZED UNDER LAWS OF, WESTERN HEMISPHERE COUNTRIES).

The effect of these sections and their general relation to the taxation of nonresident alien individuals have already been treated under section 104. Section 108 also authorizes reduction by treaty in the rate of taxation and of withholding with respect to dividends derived from sources within the United States by nonresident foreign corporations organized under the laws of any country in North, Central, or South America, or in the West Indies, or of Newfoundland.

SECTION 109. DEFENSE TAX ON PERSONAL HOLDING COMPANIES AND TRANFERS TO AVOID INCOME TAX MADE PERMANENT.

This section makes permanent the defense tax imposed upon personal holding companies by section 203 of the Revenue Act of 1940 and upon transfers to avoid income tax by section 208 of the Revenue Act of 1940.

SECTION 110. CREDIT FOR DEPENDENTS.

Section 110 of the bill amends section 25(b)(2) of the Internal Revenue Code relative to the credit for dependents.

In the case of the head of a family or a married person living with husband or wife, the existing law provides as a credit against net income a personal exemption of $2,000 plus $400 for each dependent other than husband or wife. Under these provisions, a married person living with husband or wife and having no dependents receives as a maximum credit the personal exemption of $2,000. On the other hand, an unmarried person maintaining a home for a person who also qualifies as a dependent may receive a personal exemption of $2,000 plus the credit of $400 for such dependent, or a total credit of $2,400. The proposed legislation disallows the credit for one dependent in cases where the taxpayer's status as head of a family is occasioned solely by the existence of one or more of such dependents. The amendment will not affect any case except one in which the taxpayer occupies the status as head of a family solely by reason of the existence of a person for whom he is also entitled to the credit for a dependent. For instance, it will not operate to reduce the credit in the case where a widower is maintaining a home for two children, only one of whom qualifies as a dependent. In such case, the status as head of a family is not occasioned solely by existence of the child in respect of whom the credit of $400 is allowed and consequently the taxpayer may be entitled to the personal exemption of $2,000 plus the $400 credit, or a total of $2,400, the same as under existing law.

SECTION 111. JOINT RETURNS OF HUSBAND AND WIFE.

Section 111 of the bill amends sections 25(a)(4), 25(b)(3), 47(c), 47(e), 51, and 142(a) of the Internal Revenue Code, and adds new sections 278 and 300 to the Code.

The section provides that a husband and wife living together at any time during their "joint taxable year" shall report their income in a single return made by them jointly, and that the tax shall be computed on their aggregate income.

An individual is only required to participate in a joint return if he is "living with husband or wife" at some time during a joint taxable year. This term is intended to have a broad application. It does not require that a husband and wife live under the same roof. They are considered to be living together in any case where they have not separated with intent to abandon permanently

the marital relationship, whether or not the husband makes his home at one place and the wife at another place.

It is provided that no joint return shall be made if one spouse is a nonresident alien individual taxable under section 211(a).

If one spouse has no item of gross income, deduction, or credit appearing on the joint return, such spouse is not required to sign or swear to such return. A return signed by only one spouse is nevertheless a joint return. In order to obtain a foreign-tax credit, in the case of a joint return, both husband and wife must make the required election in the manner prescribed by law.

Either spouse may elect, under rules and regulations prescribed by the Commissioner with the approval of the Secretary, to have the liability for the tax on aggregate income apportioned between the spouses rather than to have such liability joint and several. In such case, the tax upon the aggregate income is apportioned between husband and wife in the ratio which a tax computed upon the separate income of each bears to the sum of such taxes computed upon their separate incomes. If a spouse has elected on the joint return to have the benefits of any deduction or credit, such spouse must compute his separate tax, for purposes of the allocation, in conformity with such election. Appropriate provision has been made to insure that the credits for foreign taxes for taxes withheld at the source allowable against the tax on aggregate income shall be applicable in reduction of the tax liability of the spouse to whom they are attributable.

A husband and wife are required jointly to make a return of income on the basis of a "joint taxable year." In general, any taxable year in which a husband and wife live together constitutes such a joint taxable year, but the term does not embrace a taxable year in which the marriage occurs, a taxable year during the whole of which the spouses did not live together, or, if no joint taxable year has previously been established, the taxable year during which a husband and wife previously separated are reconciled. Appropriate provision has been made to deal with the situation which arises in the few cases where one of the spouses makes a return on a fiscal-year basis.

The joint taxable year of a husband and wife is automatically terminated upon the date of their divorce or legal separation or upon the date of the annulment of their marriage; and for the purposes of this section a marriage terminated by annulment is deemed to be a valid marriage from the date of such marriage to the date of the decree of annulment. The termination of the joint taxable year in such case does not, however, alter the annual accounting period of such husband or wife previously established under this section. Separate returns are required for the period from the date of termination of the joint taxable year to the close of such accounting period. A joint taxable year is not terminated automatically by the death of one of the spouses. In such a case the surviving spouse and the decedent's personal representative are required to file a joint return for the full taxable year in which the death occurred. In such a return there is to be included the income of the decedent and the surviving spouse for the entire joint taxable year, and the personal exemption of a husband and wife for an entire taxable year is allowed.

Section 25(a)(4)(C), relating to the definition of earned net income, is amended to provide that, in the case of a husband and wife making a joint return, the net income of each up to and including $3,000 shall in every case be considered earned income, and that in the case of each the compensation for services actually rendered may be considered as earned income to the extent of $14,000. The earned net income of the husband and the earned net income of the wife are to be added together and 10 per cent of such earned net income, but not in excess of 10 per cent of the aggregate net income, is allowable as a credit for the purposes of the normal tax.

Section 25(b)(3) is amended to provide that in every case where a husband and wife are required to make a joint return for any taxable year, they shall be entitled to a personal exemption of $2,000 for such taxable year.

In the case of any short period for which a return is required under the provisions of section 51, section 47(c) is amended to provide that the income shall be placed on an annual basis, and a complementary amendment is made to section 47(c) to prevent the reduction of credits in such cases. It is provided that the net income may be placed on an annual basis by a method other than that described in section 47(c), where the Commissioner determines that such other method would more clearly reflect the income.

Section 142(a), dealing with the requirements for filing fiduciary returns, is amended to conform to the changes made in section 51(a) in connection with individual returns.

Section 111(h) of the bill adds to the Internal Revenue Code a new section designated section 278 and applicable only to cases in which the tax on aggregate income is apportioned under the provisions of section 51(b). If the Commissioner determines a deficiency or an overpayment in respect of the tax liability of one spouse, the section provides at least one year for the adjustment of the tax liability of the other spouse with respect to any overpayment or deficiency which results solely from the reapportionment occasioned by the Commissioner's determination. The 1-year period begins to run from the date of the Commissioner's determination which, in the case of an overpayment, is the date of signing of the schedule of overassessments by the Commissioner and, in the case of a deficiency, is the date of mailing of the statutory notice of deficiency or, if no such notice is mailed, the date upon which the Commissioner signs the schedule of assessments.

The Internal Revenue Code is amended by adding a new section 300, which provides that if there is an addition to the tax on aggregate income for willful neglect in failing to make a return, or for negligence or fraud in connection with a deficiency, in the case of a husband and wife required to make a joint return, and but one spouse is responsible for such neglect, negligence, or fraud, such spouse only shall be liable for the payment of such addition to the tax. If both spouses are responsible in any degree, the liability for such additions to the tax will be joint and several, unless the tax on the aggregate income is apportioned under section 51(b)(2), in which case the additions will be allocated in accordance with the method of apportionment set forth in that subsection.

The penalty for failure to file a return is a percentage of the entire amount of the tax on aggregate income (computed after the allowance of the foreign tax credit and credit for taxes withheld at source) and the penalty for negligence or fraud is a percentage of the entire amount of the increase in the tax on aggregate income.

The same section also provides that a spouse who has no gross income shall not in any case be liable for an addition to the tax on aggregate income based upon a failure to make a return, since, in such a case, a return will be required solely because of income attributable to the other spouse.

SECTION 112. NONINTEREST-BEARING OBLIGATIONS ISSUED AT DISCOUNT.

This section provides that any taxpayer who owns any noninterest-bearing obligations issued at a discount and redeemable for fixed amounts increasing at stated intervals and who, under the method of accounting used by him in computing his net income, is not permitted to report the increment in value of such obligations as it accrues, may, at his election, treat such increment in value as constituting income to him in the year in which it accrues rather than in the year in which the obligations are disposed of, redeemed, or paid at maturity. Under existing law a taxpayer on the accrual basis who owns, for example, noninterest-bearing United States defense bonds is required to report the increment as it accrues, whereas a taxpayer on the cash basis who owns such defense bonds is required to treat the entire increment in value as being income received in the year of redemption or maturity. Therefore, with respect to such noninterest-bearing United States defense bonds, the effect of this section is to extend, at the election of the taxpayer, the accrual method to a taxpayer on the cash basis, but only for the limited purpose of reporting the increment in value of such bonds as it accrues.

The election provided for in this section must be made in the taxpayer's return, and may be made for any taxable year beginning after December 31, 1940. When so made with respect to any obligation, the election shall apply also to all obligations of the type described in this section owned by the taxpayer or thereafter acquired by him. The election applies to the taxable year for which such return is filed and is binding for all subsequent taxable years unless the Commissioner permits the taxpayer, subject to such conditions as the Commissioner deems necessary, to change to a different method of reporting income from such bonds. Although the election, once made, is binding upon the taxpayer, it would not apply to a transferee of such taxpayer. For example, A, on the cash basis, buys noninterest-bearing United States defense bonds in 1942 and elects in his return for 1942 to treat the increment in value as being income to him as it accrues. In 1943 A dies and bequeaths such bonds to B, who is

also on the cash basis. B is not bound by A's election, but he may, if he so desires, make an election under this section with respect to the increment in value accruing after the acquisition of such bonds by him. If B had previously made an election under this section, such election would apply to the bonds acquired from A.

In any case in which an election is made under this section, the amount considered to accrue in any taxable year to which the election applies is measured by the actual increases in the redemption price occurring in that year. Such amount shall not be considered to accrue ratably between the dates on which the redemption price changes. Thus, if two dates on which the redemption price increases fall within the taxable year and if the redemption price increases in the amount of 50 cents on each such date, the amount deemed to accrue in that year would be $1. The preceding sentence, however, is subject to an exception in the case of the first taxable year to which the election applies. If at the beginning of the first taxable year to which the election applies the taxpayer owns noninterest-bearing bonds of the prescribed character acquired prior thereto, he is required to report in such year, in addition to the increases in the redemption price actually falling within that year, the total of the increases in such price occurring between the date of acquisition and the beginning of such year. Accordingly, if a taxpayer on the calendar year basis makes an election under this section for 1944 and if the taxpayer had purchased his bonds in 1940, he would be required to include in his gross income for the taxable year 1944 the total of the increases in the redemption price of such bonds occurring between the acquisition in 1940 and December 31, 1944.

SECTION 113. INFORMATION RETURNS WITH RESPECT TO FEDERAL OBLIGATIONS.

As a consequence of the elimination of tax exemption with respect to Federal obligations brought about by the Public Debt Act of 1941, section 113 of the bill repeals, prospectively, section 147(d) of the Internal Revenue Code, which made inapplicable to interest on obligations of the United States those provisions of law relating to securing information at the source. Section 113 also makes a complementary amendment to section 147(b). Such amendments will enable the Commissioner to prescribe regulations requiring such information with respect to interest on United States obligations as he may deem necessary in the interest of good administration of the income tax laws. Section 113 is to take effect on the day following the enactment of the bill.

SECTION 114. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.

The amendments relative to individual and corporation income taxes made by this title, except the amendments made by section 106 (withholding of tax at source) and section 113 (information returns with respect to Federal obligations), are applicable only with respect to taxable years beginning after December 31, 1940.

TITLE II—EXCESS PROFITS TAX.

SECTION 201. EXCESS PROFITS TAX RATES AND CREDITS.

Section 201(a) increases the existing excess-profits rates and adds a special rule for the imposition of tax in certain cases where the invested capital credit is used. Section 201(b) of the bill also amends section 714 of the present law by reducing the credit with respect to corporations using the invested capital method in cases where the invested capital exceeds $5,000,000. In such cases, the invested capital credit is reduced from 8 to 7 per cent of the excess of the invested capital over $5,000,000. The technical features of the amendment made by section 201(a) of the bill are discussed below.

Rates in general.—Section 710(a) of the present law, relating to the imposition of the excess-profits tax, is amended by section 201(a) of the bill to provide for the increased rates of tax, which are set forth in the table in section 710(a)(1), and for the addition of two new paragraphs constituting section 710(a) (2) and (3), which set forth the special rule, and limitations thereon, for the imposition of the tax in certain cases where the invested capital credit is used. Section 710(a)(4), relating to the application of the rates of tax in case of certain exchanges, is the same as section 710(a)(2) of the present law except for the renumbering of the paragraph to (4).

Section 710(a)(1) states the general rule for the imposition of the excess-profits tax and the rates under which corporations using the income credit will determine the tax. These rates begin at 35 per cent upon adjusted excess profits net income of not more than $20,000 and increase upon a graduated scale to 60 per cent upon the amount of adjusted excess profits net income in excess of $500,000. The rates of tax set forth in section 710(a)(1) represent an increase of 10 percentage points in each rate bracket as compared with the rates under the present law which run from 25 per cent to 50 per cent.

Special rule in certain cases where invested capital credit is used.—Section 710(a)(2) provides a special rule for the measure of the excess-profits tax in the case of corporations which are entitled to use either the invested capital credit or the income credit in computing the tax under section 710(a)(1) and for which the use of the invested capital credit would be more advantageous. Section 710(a)(3) limits the application of section 710(a)(2) to only those cases where the amount of tax computed under the special rule will not be more than the amount of the tax computed under the general rule of section 710(a)(1) with the use of the income credit.

Section 710(a)(2) subjects to tax that portion of excess-profits net income (determined under the income credit method) which would be taxed if such corporation used the income credit but which escapes the present excess-profits tax when computed with the use of the invested capital credit. The excess-profits tax imposed upon such corporations by section 710(a)(2) is therefore composed of the following two parts, of which it is the sum:

(1) An amount determined under section 710(a)(1) with the use of the credit provided in section 714, plus

(2) Ten per cent of the amount, if any, by which—

(*a*) the adjusted excess-profits net income computed with the use of the credit under section 713 and with the excess-profits credit carry-over which would be available for the taxable year if the excess-profits credit applicable to each of the preceding taxable years for which tax is imposed by Subchapter E had been the excess-profits credit computed under section 713, exceeds

(*b*) the adjusted excess-profits net income computed with the use of the credit under section 714.

The tax computed under section 710(a)(2) is imposed only upon the corporations specified therein, subject to the further limitation of section 710(a)(3) that if the tax determined under section 710(a)(1) is less than the tax determined under section 710(a)(2), section 710(a)(2) shall not be applicable. Except where this limitation operates or where the taxpayer disclaims the use of the invested capital credit, every corporation which is qualified to compute its excess-profits credit under either section 713 (income credit) or section 714 (invested capital credit) and which has an adjusted excess-profits net income computed with the use of the income credit but has a lower adjusted excess-profits net income, or none at all, when the invested capital credit is used, is required to compute the excess-profits tax under section 710(a)(2). Where the use of a credit is referred to in section 710(a)(2), the reference is to the use of such credit with the excess-profits net income computed in accordance with that credit; for example, the use of the credit under section 714 with the excess-profits net income computed with the adjustments provided in section 711(a)(2).

An example of the computation of the tax under section 710(a)(2) is as follows: Suppose a domestic corporation in existence since December 31, 1935, and reporting on a calendar year basis, has, for 1941, an excess-profits net income of $355,000 computed under either the income or the invested capital methods, an excess-profits credit computed under section 713 of $100,000, and an excess-profits credit computed under section 714 of $300,000, with no excess-profits credit carry-over. The adjusted excess-profits net income of the corporation would be determined as follows:

1. Income method:		
Excess-profits net income		$355,000
Less:		
Specific exemption	$5,000	
Excess-profits credit under section 713	100,000	
		105,000
Adjusted excess-profits net income computed on the income method		250,000

(b) Invested capital method:

Excess-profits net income		$355,000
Less:		
Specific exemption	$5,000	
Excess-profits credit under section 714	300,000	
		305,000
Adjusted excess-profits net income computed on the invested capital method		50,000

Since the use of the invested capital credit produces the lower adjusted excess-profits net income, the corporation is subject to the tax computed under section 710(a)(2). Its excess-profits tax will therefore be $39,000, computed as the sum of the following two amounts:

(a) Amount determined under the rates of section 710(a)(1) upon adjusted excess-profits net income computed with the use of the invested capital credit	$19,000
(b) 10 per cent of the excess of adjusted excess-profits net income computed with the use of the income credit over adjusted excess-profits net income computed with the use of the invested capital credit (10 per cent of $200,000, i. e., $250,000 less $50,000)	20,000

In computing the amount under section 710(a)(2)(B), if there is no adjusted excess-profits net income computed with the use of the invested capital credit, that is, if the invested capital credit, plus the $5,000 exemption plus the carry-over, equals or exceeds the excess-profits net income under section 711(a)(2), the 10 per cent is computed on the excess of the adjusted excess-profits net income under the income method over zero. For example, if in the illustration above, the excess-profits net income were $255,000 instead of $355,000, the excess-profits tax for 1941 would be 10 per cent of $150,000, the excess of the adjusted excess-profits net income under the income method ($255,000 less $5,000 less $100,000) over zero. (Since there is no adjusted excess-profits net income computed with the use of the credit under section 714, there is no amount determined under section 710(a)(2)(A) which will constitute a part of the tax.) If, however, there is no adjusted excess-profits net income computed with the use of the income credit, that is, if the income credit, plus the $5,000 exemption plus the carry-over, equals or exceeds the excess-profits net income under section 711(a)(1), section 710(a)(2) is not applicable at all.

In computing the adjusted excess-profits net income for the purposes of section 710(a)(2)(B)(i), the adjusted excess-profits net income is computed with the use of the credit under section 713 and with the excess-profits credit carry-over which would be available for the taxable year if the excess-profits credit applicable to each of the preceding excess-profits tax taxable years had been the excess-profits credit computed under section 713. The determination of the carry-over for the purposes of this provision may be illustrated by the following example: Assume that in the case of a corporation qualified to use either the credit computed under section 713 or the credit computed under section 714 and reporting its income on the calendar-year basis, the following facts exist:

	1940	1941	1942	1943
Income credit	$80,000	$80,000	$80,000	$80,000
Excess-profits net income under sec. 711(a)(1)	50,000	45,000	130,000	220,000
Invested capital credit	80,000	150,000	160,000	200,000
Excess-profits net income under sec. 711 (a)(2)	60,000	100,000	200,000	265,000

In computing the corporation's excess-profits tax for 1943, the actual excess-profits credit carry-over computed under section 710(c)(2) is $40,000.

Under the facts in this illustration, the excess-profits credit which would be available for 1943 if the excess-profits credit applicable to 1940, 1941, and 1942 had been the credit computed under section 713 is $15,000, computed as follows:

Unused excess profits credit for 1942		None
Unused excess profits credit for 1941		$35,000
Less:		
Excess of excess-profits net income for 1942	$130,000	
Over sum of excess-profits credit for 1942 ($80,000) plus unused excess-profits credit for 1940 ($30,000)	110,000	
		20,000
Excess-profits credit carry-over for purposes of section 710(a)(2)(B)(i)		15,000

The corporation's excess-profits tax for 1943 determined under section 710(a)(2) is $17,000, computed as follows:

1. Excess-profits net income for 1943 under section 711(a)(2)		$265,000
Less:		
Specific exemption	$5,000	
Invested capital credit	200,000	
Excess-profits credit carry-over	40,000	
		245,000
Adjusted excess-profits net income under invested capital method		20,000
Amount determined at rates in section 710(a)(1) (35 per cent of $20,000)		7,000
2. Excess-profits net income under section 711(a)(1)		220,000
Less:		
Specific exemption	$5,000	
Income credit	80,000	
Excess-profits credit carry-over	15,000	
		100,000
Adjusted excess-profits net income		120,000
Excess of adjusted excess-profits net income under the income method over adjusted excess-profits net income under the invested capital method ($120,000 less $20,000)		100,000
10 per cent of such excess (10 per cent of $100,000)		10,000
Total excess-profits tax for 1943, computed under section 710(a)(2) ($7,000 plus $10,000)		17,000

SECTION 202. DISCLAIMER OF CREDIT.

Section 712(c), section 729(b)(1), and section 741(b) of the present law are amended to allow a disclaimer of the use of only the credit computed under section 714 (invested-capital credit). The present law allows a disclaimer of either the invested-capital credit or of the income credit in the return of a corporation entitled to use either credit; if the use of a credit is disclaimed, such credit is not applicable for the computation of the excess-profits tax for the taxable year, and the computation and information based on such credit may be omitted from the return. The amendments made by section 202 of the bill are necessitated by the enactment of the special rule of section 710(a)(2) under which computations of both the adjusted excess-profits net income with the use of the income credit and the adjusted excess-profits net income with the use of the invested-capital credit are required for the determination of the excess-profits tax computed under that section.

SECTION 203. CASES IN WHICH NO RETURN REQUIRED.

This section provides a technical amendment to section 729(b)(2) of the present law in order to require the filing of a return in all cases where the tax is determined under the special rule provided in section 710(a)(2). The amendment affects only corporations entitled to use either the income credit or the invested-capital credit, which corporations under the present law are not required to file a return if their excess-profits net income computed under the invested capital method and placed on an annual basis is not greater than $5,000. Under section 729(b)(2), as amended, such corporations are not required to file a return if their excess-profits net income computed under the income method and placed on an annual basis is not greater than $5,000.

SECTION 204. DEDUCTION OF EXCESS-PROFITS TAX.

This section provides that the income tax imposed by Chapter 1 of the Internal Revenue Code and by corresponding provisions of prior Revenue Acts shall not constitute an adjustment in determining excess-profits net income for current and base period taxable years. Section 23(c)(2) is amended to provide for the deduction of the excess-profits tax in determining income subject to Chapter 1 tax. Furthermore, the taxpayer, if using the average-earnings method, has its excess-profits credit increased by the corresponding nondeduction of income taxes in determining its average base period net income.

It is provided that the deduction shall be allowed only in computing the income tax imposed for the taxable year for which the excess-profits tax is levied. By providing that any excess-profits tax paid after the taxable year shall be deemed to have been paid within the taxable year, the same treatment is accorded to taxpayers on the cash basis as is accorded to taxpayers on the accrual basis. It is also provided that the excess-profits tax shall be computed, for the purposes of this deduction, without reduction by the foreign tax credit, and without regard to the adjustments provided for in section 734.

Since the excess-profits net income for a taxable year is primarily the normal-tax net income with certain adjustments, it is necessary to amend section 711(a) to require an adjustment to normal-tax net income in the form of a disallowance of the deduction of the excess-profits tax. A further adjustment is added to this section in the form of a provision stating that, for the purpose of computing any deduction or credit which is limited to a certain percentage of the taxpayer's net income—e. g., the deduction for charitable contributions or for percentage depletion—such net income (or, in the case of percentage depletion, such net income from the property) shall be computed without regard to the deduction on account of the excess-profits tax. It is also provided under section 718(c)(3) with reference to taxpayers on the invested-capital basis, that in determining whether distributions were out of earnings and profits of any excess-profits-tax taxable year, the income tax shall be disregarded in the computation. Finally, in determining the presence and extent of the taxpayer's right to the benefits of section 722, dealing with abnormalities, it is provided that the excess-profits tax shall be disregarded.

Section 602 of the Internal Revenue Code, dealing with the computation of net income for the purposes of the declared value excess-profits tax, is amended to provide that the net income shall be determined without regard to the deduction on account of the excess-profits tax imposed by Chapter 2E. Section 1202 of the Internal Revenue Code is amended in similar fashion.

It is also provided that, in computing the excess-profits credit carry-over, the excess-profits credit and excess-profits net income for taxable years beginning in 1940 shall be computed as if the amendments made by this bill were applicable.

SECTION 205. NEW CAPITAL.

This section amends section 718(a) of the Internal Revenue Code, defining equity invested capital, by adding a new paragraph designated as (6). The effect of the amendment is to increase by 25 per cent the amount includible in equity invested capital on account of new capital. The term "new capital" is defined to mean the aggregate of the amount of money and property paid in for stock or as paid-in surplus, or as a contribution to capital, and the amount of taxable stock dividends made, during a taxable year beginning after December 31, 1940, subject to certain limitations. These limitations are intended, in general, to prevent a taxpayer from treating as new capital amounts resulting from mere adjustments in the existing capital, including borrowed capital, of the taxpayer, or of a controlled group of corporations.

The limitations provided by subparagraphs (A), (B), and (C) bar from the concept of new capital the amount of any equity invested capital acquired in an exchange occurring during a taxable year beginning after December 31, 1940, to which section 112(b)(3), (4), or (5), or so much of section 112(c), (d), or (e) as refers to section 112(b)(3), (4), or (5) is applicable, or would be applicable if the term "control" had been defined in section 112(h) to mean the ownership of stock possessing more than 50 per cent of the total combined voting power of all classes of stock entitled to vote or more than 50 per cent of the total value of all classes of stock. These limitations also bar from the concept of new capital any equity invested capital acquired in a transaction between members of a controlled group of corporations as that term is defined in subparagraph (B).

The limitations provided by subparagraph (D) have the effect of reducing the amount of new capital as of any day by the excess of the amount of inadmissible assets held on that day over the amount of such assets held on the first day of the taxpayer's first taxable year beginning after December 31, 1940. This treatment is comparable to the treatment of excluded assets in the computation of daily capital additions under section 713(g) of the existing law.

The limitations under subparagraph (E) prevent new capital as of any day from exceeding the amount by which the total equity invested capital and borrowed capital as of such day, computed without including the 25 per cent increase, exceeds the sum of the equity invested capital and borrowed capital as of the first day of the taxpayer's first taxable year beginning after December 31, 1940. Any increase in new capital is thus prevented where the amount of borrowed capital is reduced by the same amount as that by which the equity invested capital is increased, and no increase in new capital will result from a distribution by a stock dividend of earnings and profits accumulated prior to the first day of a taxable year beginning after December 31, 1940. Subparagraph (E), however, is so worded that there is no reduction to the extent that the sum of the equity invested capital and borrowed capital as of any day is less than the sum of the equity invested capital and borrowed capital as of the first day of a taxable year beginning after December 31, 1940, due to an operating deficit occurring in any taxable year during the intervening period.

The limitations contained in subparagraphs (A) to (E) may be illustrated by the following examples:

Example (1), subparagraph (A).—Corporation A issues stock during a taxable year beginning after December 31, 1940, to Corporation B in exchange for the transfer of certain property by Corporation B. Immediately after the transfer the stock acquired by Corporation B has a value of $10,000, the total value of all classes of stock of Corporation A then outstanding amounting to $18,000. Corporation A obtains no new capital, since the property for which the new stock was issued was obtained in an exchange to which section 112(b)(5) would be applicable if the term "control" had been defined in section 112(h) so as to include either the ownership of stock possessing more than 50 per cent of the total combined voting power of all classes of stock entitled to vote or more than 50 per cent of the total value of all classes of stock outstanding.

Example (2), subparagraph (B).—Corporation A owns stock in Corporation B, and Corporation B owns stock in Corporation C. Corporation A transfers property to Corporation C in exchange for stock of Corporation C. Immediately after the transfer the stock owned by Corporation A in Corporation B possesses more than 50 per cent of the total combined voting power of all classes of stock entitled to vote. Also immediately after such transfer the stock owned by Corporation B in Corporation C has a value equal to more than 50 per cent of the total value of all classes of stock of Corporation C.

Corporation C obtains no new capital through the acquisition of the property from Corporation A in exchange for its stock, since immediately after the transfer Corporation A, the transferor, and Corporation C, the transferee, are members of the same controlled group.

Example (3), subparagraph (C).—Corporation A makes a distribution in taxable stock dividends to Corporations B and C during a taxable year beginning after December 31, 1940. Immediately after the distribution Corporations B and C owns stock in Corporation A which has a voting power of more than 50 per cent of the combined voting power of all classes of stock entitled to vote. Also immediately after the transfer Corporation B owns stock in Corporation C which has a value of more than 50 per cent of the total value of all classes of stock of Corporation A. The distribution made by Corporation A in the taxable stock dividend does not constitute new capital to Corporation A.

Example (4), subparagraph (D).—Corporation X makes its excess-profits tax return on the calendar year basis. On July 1, 1941, cash in the amount of $100,000 is paid in for stock. There are no other changes made in either the amount of equity invested capital or borrowed capital at any time during the year 1941. The adjusted basis of inadmissible assets as of January 1, 1941, amounts to $5,000. The adjusted basis of such assets as of July 2, 1941, is increased to $15,000. The new capital of $100,000 is reduced to $90,000 as of July 2, 1941, by subparagraph (D), as shown by the following computation:

$100,000, new capital, minus ($15,000, amount of inadmissibles as of July 2, 1941, minus $5,000, amount of inadmissibles as of July 1, 1941) = $90,000.

Example (5), subparagraph (E).—Corporation Y makes its return on the calendar year basis. Its equity invested capital as of January 1, 1941, amounts to $30,000, consisting of money paid in for stock, $20,000, and accumulated earnings and profits, $10,000. Its borrowed capital as of January 1, 1941, consists of bonds outstanding amounting to $15,000, making the total of its equity invested capital and borrowed capital as of January 1, 1941, $45,000. The corporation has no inadmissible assets at any time during the year 1941. On January 2, 1941, the corporation makes a distribution in taxable stock dividends amounting to $5,000. On July 1, 1941, money is paid in for stock amounting to $15,000, and on July 2, 1941, bonds are retired in the amount of $10,000.

The new capital of $20,000 acquired during the year 1941 represented by a distribution in a taxable stock dividend amounting to $5,000 and by money paid in for stock amounting to $15,000 is reduced to $5,000 on July 3, 1941, due to the retirement of $10,000 of bonds on July 2, 1941, and the fact that the stock dividend is paid out of earnings accumulated before January 1, 1941, under the application of subparagraph (E), shown as follows:

The sum of the equity invested capital and borrowed capital on July 3, 1941 (computed without regard to the 25 per cent increase for new capital), amounts to $50,000. This sum exceeds the total equity invested capital and borrowed capital on January 1, 1941, amounting to $45,000, by $5,000. Under subparagraph (E) the new capital shall not be more than such excess. The new capital is thus reduced from $20,000 to $5,000.

If the accumulated earnings and profits of Corporation Y as of January 1, 1942, are reduced to zero due to the stock dividend distribution of $5,000 made on January 2, 1941, and an operating deficit of $5,000 during the taxable year 1941, the new capital includible in equity invested capital as of January 1, 1942, would be $10,000 instead of $5,000 under the application of subparagraph (E), as shown by the following computation:

New capital as of January 1, 1942, before application of subparagraph (E), $20,000, shall not be more than the excess of $50,000 (total capital on January 1, 1942, before adding 25 per cent under section 718(a)(6)) over $45,000 (total capital on January 1, 1941) less $5,000 (amount by which the accumulated earnings and profits as of January 1, 1941, exceed the accumulated earnings and profits (computed without regard to distributions as of January 1, 1942)), or the new capital can not exceed $50,000 minus ($45,000 minus $5,000), or $10,000.

SECTION 206. CORPORATIONS ENGAGED IN MINING STRATEGIC METALS.

Under section 731 of the present law in the case of corporations engaged in mining certain metals, only that portion of adjusted excess-profits net income not attributable to such mining is subject to the excess-profits tax. Section 206 of the bill makes this provision inapplicable to taxable years beginning after December 31, 1940.

SECTION 207. TAXABLE YEARS TO WHICH AMENDMENTS ARE APPLICABLE.

The amendments relative to the excess-profits tax made by this title are applicable only with respect to taxable years beginning after December 31, 1940.

TITLE III—CAPITAL STOCK TAX AND DECLARED VALUE EXCESS-PROFITS TAX.

SECTION 301. CAPITAL STOCK TAX.

The defense tax of section 1200(c) of the Internal Revenue Code, which increased the capital stock tax from $1 to $1.10 for each $1,000 of the adjusted declared value of the capital stock of corporations, is repealed, and in lieu thereof the capital stock tax is increased from $1 to $1.25. This provision is applicable only with respect to years ending June 30, 1941, and subsequent years.

SECTION 302. DECLARED VALUE EXCESS-PROFITS TAX—DEFENSE TAX MADE PERMANENT.

The defense tax with respect to the declared value excess-profits tax is made permanent.

TITLE IV—ESTATE AND GIFT TAXES.

SECTION 401. ESTATE TAX RATES.

This section increases the rates applicable to the additional estate tax with respect to decedents dying after the date of enactment of this Act.

Subsection (c) of this section makes permanent the defense tax on net estates imposed by section 951.

SECTION 402. GIFT TAX RATES.

This section increases the rates for computing the gift tax for the calendar year 1942 and each calendar year thereafter. These increases are not to apply to the calendar year 1941. These gift tax rates are 75 per cent of the aggregate of the present estate tax rates and the proposed additional estate tax rates provided in section 401 of this Act, thus preserving the ratio now existing between the gift tax rates and the aggregate of the estate tax and additional estate tax rates.

Subsection (c) of this section makes permanent the defense tax imposed for five years by section 1001(d) of the Internal Revenue Code.

SECTION 501. 1932 EXCISE TAXES MADE PERMANENT.

This section repeals section 3452 of the Internal Revenue Code, which now provides that the manufacturers' excise taxes imposed by Chapter 29 shall terminate as of July 1, 1945. It thus makes permanent law the provisions imposing such taxes.

SECTION 502. PIPE-LINE TAX.

This section strikes out the termination date (July 1, 1945) applicable to the tax on the transportation of oil by pipe line.

SECTION 503. TECHNICAL AMENDMENT.

This section revises the title language of Subtitle C of the Internal Revenue Code to make it more descriptive of the taxes included within Subtitle C.

SECTION 504. BOND TAX.

SECTION 505. CONVEYANCE TAX.

The two sections strike out the termination date (July 1, 1945) applicable to the bond transfer and conveyance taxes.

SECTION 521. DEFENSE EXCISE TAX RATES MADE PERMANENT.

With respect to the taxes listed hereinafter section 521 incorporates, without change, in the applicable provisions of the Internal Revenue Code the defense tax rates imposed by the first Revenue Act of 1940 and makes such rates permanent. These tax rates were originally prescribed by the first Revenue Act of 1940 to be effective for the period prior to July 1, 1945. The particular taxes are those with respect to—

Box seats.
Sales outside box office.
Corporate securities.
Capital stock issues.
Capital stock transfers.
Insurance policies.
Passage tickets.
Cigarettes.
Pistols and revolvers.
Fermented malt liquors.
Wholesalers of liquors.
Retailers of liquors.
Brewers.
Wholesalers of malt liquors.
Retailers of malt liquors.
Rectifiers.
Stills.
Firearms, etc.
Electrical energy.
Gasoline.
Lubricating oils.
Transportation of oil by pipe line.
Transfer of bonds.
Conveyances.

SECTION 531. PLAYING CARDS.

This section increases the rate of tax on the manufacture of playing cards from 11 cents per pack to 13 cents per pack.

SECTION 532. SAFE-DEPOSIT BOXES.

This section increases the rate of tax on the rental of safe-deposit boxes from 11 per cent of the amount paid to 20 per cent.

SECTIONS 533, 534. LIQUOR.

Section 533 amends section 2800(a)(1) of the Internal Revenue Code, which imposes an excise tax upon distilled spirits and imported perfumes containing distilled spirits at the rate of $4 (and on brandy at the rate of $3.75).

The existing rate of tax upon distilled spirits other than brandy, and upon imported perfumes containing distilled spirits, is $3 per proof gallon; and upon brandy $2.75 per proof gallon. These are the defense-tax rates imposed by section 213 of the Revenue Act of 1940, effective July 1, 1940. The rates proposed by the bill, therefore, represent an increase of $1 per proof gallon over the defense-tax rates. The defense-tax rates are 75 cents per proof gallon over and above the rates in effect prior to July 1, 1940.

Subsection (c) of section 533 makes a complementary amendment to section 2887 of the Internal Revenue Code, which provides for the allowance of drawback of internal-revenue tax upon the exportation of distilled spirits in distillers' original packages.

Subsection (d) will amend section 2800 of the Internal Revenue Code by adding a new subsection "(i)" to provide a floor stocks tax of $1 per proof gallon on all distilled spirits upon which the tax has been paid and which on the effective date of the new rates are held and intended for sale or for use in the manufacture or production of any article intended for sale. This subsection will have the effect of placing all distilled spirits tax-paid at the old rates and held for the purposes specified on an equal tax basis with other distilled spirits withdrawn and tax-paid at the new rates. It will preclude loss of revenue through the withdrawal and tax payment of large stocks before the new rates become effective. As in prior floor stocks tax statutes, provision is made for the filing of returns and for deferring payment of the tax upon the submission of satisfactory surety bonds.

This subsection also provides that for the purposes thereof the term "distilled spirits" shall include products produced in such manner that the person producing them is a rectifier within the meaning of section 3254(g) of the Internal Revenue Code. The object of this provision is to subject to the floor stocks tax liqueurs, cordials, and similar compounds in the manufacture of which distilled spirits are a constituent.

The existing rates on still wines are as follows: Not more than 14 per cent of absolute alcohol, 6 cents per wine gallon; more than 14 per cent and not exceeding 21 per cent of absolute alcohol, 18 cents per wine gallon; and more than 21 per cent and not exceeding 24 per cent of absolute alcohol, 30 cents per wine gallon. Section 534(a) of the bill imposes rates of 8, 24, and 50 cents, respectively. The proposed rates represent an increase of 2 cents, 6 cents, and 20 cents per gallon over existing rates.

The existing tax rates on other wines are as follows: Sparkling wines, 3 cents on each one-half pint or fraction thereof; artificially carbonated wines, 1½ cents on each one-half pint or fraction thereof; liqueurs, cordials, and similar compounds, 1½ cents on each one-half pint or fraction thereof. Section 534(b) of the bill imposes rates of 4 and 2¼ cents, respectively. The proposed rates represent an increase of 1 cent on sparkling wines and three-fourths of 1 cent on artificially carbonated wines, and liqueurs, cordials, and similar compounds, over the tax rates on such products.

Subsection (c) of section 534 will amend Subchapter F of Chapter 26 of the Internal Revenue Code by inserting at the end thereof a new section imposing a floor stocks tax on all wines on which the tax has been paid and which are held and intended for sale or for use in the manufacture or production of any article intended for sale on the effective date of the new rates. This subsection, like subsection (d) of section 533 in the case of distilled spirits, will have the effect of placing all wines tax-paid at the old rates and held for the purposes specified on a basis of equality, in so far as taxation is concerned, with other wines withdrawn and tax-paid at the new rates.

SECTION 535. TIRES AND TUBES.

This section increases the rate of the manufacturers' excise tax (defense tax rates) on tires from 2½ cents per pound to 5 cents per pound and the rate of tax on inner tubes from 4½ cents per pound to 9 cents. It imposes a floor stocks tax on tires and inner tubes held for sale by any person other than the manufacturer, producer, or importer on the date the increased manufacturers' excise tax rates take effect. The floor stocks tax rates are in an amount equal to the increase in the rates of the manufacturers' tax. The floor stocks tax is restricted in its scope to tires and inner tubes for automobiles, trucks, trailers, motorcycles, etc., and will not be applicable to such miscellaneous items as bicycle tires, baby buggy tires, etc. The tax is specifically made applicable to tires and tubes held by automobile manufacturers as, or for, equipment on new automobiles. It is not made applicable to tires and tubes actually on automobiles held by new and second-hand car dealers but is applicable to the stocks of unmounted tires and tubes held by such dealers and by any person, including retailers, for sale. The floor stocks tax does not apply to any tires and tubes held by a person who must pay the increased manufacturers' excise tax rate on such articles when he sells them.

SECTION 536. EFFECTIVE DATE OF PART III.

This section applies to sections 531 to 535, inclusive, and provides, in brief, that the increased tax rates and new taxes imposed by such sections shall take effect on the first day of the first month which begins more than 10 days after the date of the enactment of the bill.

SECTION 541. ADMISSIONS TAX.

This section subjects to the admissions tax admissions of 10 cents or more at the rate of 1 cent for each 10 cents or fraction thereof. Under existing law the admissions tax applies only to admissions of 21 cents or more. Under this section admissions under 10 cents will be exempt from the tax.

The special treatment under the admissions tax with respect to so-called free or reduced rate admissions now applicable to employees, municipal officers, and children under 12 years of age, is extended to include members of the military or naval forces of the United States and of the Civilian Conservation Corps when in uniform. For example: If the established price is 50 cents and a soldier in uniform is charged only 20 cents, the tax would be 2 cents and not 5 cents. If he is admitted free, no tax is payable.

Section 541 repeals section 1701 of the Internal Revenue Code, which allows exemption from the admissions tax to certain organizations.

This section also repeals the exemption provision applicable to "spoken plays" and certain exemption provisions applicable to national parks.

SECTION 542. CABARET, ROOF GARDEN, ETC., TAX.

This section revises the base of the present "cabaret" tax. It imposes a tax of 5 per cent on amounts paid for admission, refreshment, service, and merchandise at any roof garden, cabaret, or other similar place furnishing a public performance for profit. Liability for the tax is imposed on the proprietor. The tax applies to all amounts paid. Under present law the tax is imposed on the patron under a rather complicated rate of 2 cents (including the defense tax) for each 10 cents of 20 per cent of the amount paid if 20 per cent of the amount paid exceeds 50 cents.

This section also makes certain amendments to administrative provisions of the Code applicable to the "cabaret" tax and other admission taxes.

SECTION 543. CLUB DUES.

This section reduces the amount used as a test for determining liability to the tax on club dues from $25 annual dues of an active resident annual member to $10, and redefines the term "dues" to include certain privilege fees and assessments not now subject to the tax.

This section also makes the defense tax rates applicable to dues and initiation fees, as imposed by the first Revenue Act of 1940.

SECTION 544. AUTOMOBILE, TRUCK, BUS, AND PARTS TAX.

This section increases the rates of tax on automobile truck chassis, truck bodies, etc., from 2½ per cent to 5 per cent and brings trailers and semitrailers for trucks within the scope of the tax. Passenger busses which under present law are subject to the higher rate of tax applicable to passenger automobiles have been included within the "truck" classification, and will be subject to the new 5 per cent rate.

The rate of tax on passenger automobile chassis and bodies, motorcycles, etc., is increased from 3½ per cent to 7 per cent. Trailers and semitrailers for such vehicles are made subject to the tax. Subsection (b) of section 544 increases the rate of tax on automobile parts and accessories from 2½ per cent to 5 per cent. It excludes automobile radios which have heretofore been subject to tax as automobile "parts or accessories." Automobile radios are by section 545 made subject to the manufacturers' tax on radio sets and parts at the rate of 10 per cent.

Subsection (c) of section 544 increases the rates of credit allowable under this section to automobile manufacturers with respect to the tires and inner tubes on such vehicles from 2½ to 5 per cent in the case of trucks, busses, etc., and 3½ to 7 per cent in the case of other automobiles and motorcycles.

Subsection (d) repeals section 3403(f) of the Internal Revenue Code, which would allow a tax adjustment with respect to floor stocks of passenger automobiles, trucks, etc., held by dealers as of the termination date of the present tax on such vehicles. This is done because the termination date of such tax has been deleted and the tax made of a permanent nature. Section 3403(f), therefore, becomes unnecessary.

SECTION 545. RADIOS, PHONOGRAPHS, RECORDS, AND MUSICAL INSTRUMENTS.

Section 3404 of the Internal Revenue Code now imposes a tax on sales by the manufacturer of certain radio components at the rate of 5½ per cent of the sale price. Section 545 amends section 3404 of the Code so as to impose a tax at the rate of 10 per cent on—

Radio receiving sets.
Automobile radio receiving sets.
Combination radio and phonograph sets.
Phonographs.
Certain principal components of these articles.
Phonograph records.
Musical instruments.

The articles listed have been included within the same section of the Code because largely related.

SECTION 546. REFRIGERATORS, AIR CONDITIONERS.

Section 3405 of the Internal Revenue Code imposes a tax on sales by the manufacturer of household type mechanical refrigerators and certain principal components of such articles at the rate of 5½ per cent of the sales price. Section 546 amends section 3405 of the Code to increase the tax rate to 10 per cent and to make the tax applicable to the principal commercial types of refrigerators, including such articles as ice cream cabinets, food and beverage display cases, water coolers, milk-cooler cabinets, and similar articles. In addition, there are brought within the scope of the tax components of refrigerating apparatus such as compressors, condensers, evaporators, expansion units, absorbers, and controls. However, the tax with respect to, such components is not limited to components for the household, commercial, and industrial type of refrigerator units referred to above. Refrigerating components will be subject to tax regardless of their intended use. For example, components for refrigerator ships and refrigerator cars, and for the refrigerating plants of breweries and cold-storage warehouses will be subject to the tax.

Section 546 also imposes a tax at the rate of 10 per cent on the sale by the manufacturer of self-contained air-conditioning units and certain principal components of such articles.

SECTION 547. MATCHES.

Section 3409 of the Internal Revenue Code now imposes a tax at the rate of $5\frac{1}{2}$ cents per thousand on certain fancy wooden matches. Section 547 amends section 3409 of the Code to also impose a tax at 2 cents per thousand on other

types of matches. The types of matches subject to the new tax at 2 cents per thousand include the well-known types of wooden and paper matches now in every day use.

SECTION 548. TELEPHONE, TELEGRAPH, ETC.

Section 548 imposes on telephone conversations, telegraph, cable, and radio dispatches, messages and conversations, for which the charge is more than 24 cents, a tax at the rate of 5 cents for each 50 cents or fraction thereof of the amount paid. Under existing law, the tax on telephone toll service does not apply to charges of less than 50 cents. Telegraph dispatches and messages are now subject to tax at the rate of 5 per cent of the amount charged, and cable and radio dispatches and messages at the rate of 10 cents per message.

This section also amends section 3465(b), which imposes a tax with respect to leased wires and talking circuit special service, to more clearly specify the types of service subject to tax, to impose the tax where the service is rendered within a local exchange area, and to also tax like service furnished by companies other than telegraph and telephone companies. The present tax is restricted to service furnished by a telegraph or telephone company.

This section also imposes a tax on amounts paid by subscribers for local telephone service and all other telephone service not otherwise within the tax with respect to telephone toll charges and the tax with respect to leased wires. For example, in addition to local subscribers' service, this tax also applies to telephone toll service where the charge is 24 cents or less. As the tax is imposed only on telephone "service," special provision is made to insure that charges for installation of instruments, poles, switchboards, apparatus, and equipment are not subject to the tax. Although service through coin-operated telephones is not subject to the tax on local subscribers' service, it is subject to tax in the case of toll charges of more than 24 cents. Coin-operated telephone service can not be subject to the tax because of the impracticability of charging the patron 5 per cent of 5 cents, and collecting the 5 per cent tax through the instrument. As the tax on telephone toll service is collected in multiples of 5 cents, it can be collected through coin-operated telephones.

SECTION 549. INSTALLMENT, ETC., PAYMENTS.

Section 549 makes certain changes in section 3441(c) of the Internal Revenue Code which relates to articles leased or sold under installment or conditional sales contracts. Under section 3441(c) the taxpayer is permitted to pay the tax as payments are made under the lease or conditional or installment sales contract. The provisions of section 1650(b) of the Internal Revenue Code is revised and included within section 3441(c), thus incorporating in the section a provision that where the lease or installment or conditional sales contract was entered into before July 1, 1940 (and delivery made before such date), the rate of tax is to be that in force on June 30, 1940. With respect to the period after June 30, 1940, and before July 1, 1941, the rate of tax applicable is to be that in effect during such period.

Provision is made in this section to take care of leases and conditional sales of articles the sale of which is newly subject to an excise tax by this bill or to an increased rate of tax. Under this section, payments under leases and installment contracts entered into on and after July 1, 1941, will be subject to the increased rate of tax or, if the tax is imposed for the first time by the bill to the tax.

SECTION 550. EFFECTIVE DATE OF PART IV.

Section 550 contains provisions respecting the effective date of new taxes, or increases in existing rates of tax, or changes in tax base, effected by sections 541 to 548. With certain exceptions, the provisions are the same as those described in the discussion of section 536, i. e., the first day of the first month which begins more than 10 days after the date of the enactment of the bill. The changes with respect to the "cabaret" tax become effective at 10 a. m. on the effective date for considerations peculiar to that tax. Special provision is made for the effective date of the tax imposed by section 548, with respect to local subscribers' telephone service, in order to give telephone companies (who will collect the tax for the Government) an opportunity to adjust their billing practices to the tax. It was also desired to restrict the application of the tax, as far as is reasonably practicable, to service rendered after the date

of the enactment of the Act. It is recognized, however, that some local service rendered prior to the date the Act is enacted (but billed after such date) will be subject to the tax. It is intended to tax such service.

SECTION 551. SOFT DRINKS.

This section imposes a tax on sales by the manufacturer of bottled soft drinks, finished or fountain sirups, and carbonic acid gas.

The tax rate on bottled soft drinks is one-sixth cent per bottle if made to retail at not more than 10 cents; one-third cent per bottle if made to retail at more than 10 cents and not more than 20 cents; one-half cent if made to retail at more than 20 cents. Bottles containing more than 33 fluid ounces are subject to tax at the rate of 6 per cent of the manufacturer's sale price.

The rate of tax with respect to finished or fountain sirups is 6 cents per gallon. The rate of tax with respect to carbonic acid gas is 4 cents per pound. These particular rates of tax are as closely equivalent, as may be practicably ascertained, to the rates of tax applicable to bottled soft drinks. That is to say, a soft drink sold at a soda fountain, made with sirup and carbonic acid gas, will bear, in most instances, relatively the same tax burden as a competitive bottled soft drink.

In the case of sirups, no tax is imposed on sirups sold for use by the vendee in the preparation of bottled soft drinks or for consumption by a vendee (not engaged in the preparation of soft drinks) in some use other than the preparation of soft drinks. Similarly, no tax is imposed on the use of sirups by the manufacturer in the preparation of bottled soft drinks, or the consumption of sirups by a manufacturer (who is not engaged in the preparation of soft drinks) in some use other than the preparation of soft drinks. Under these provisions, for example, a baker (providing he does not also use sirups at a soda fountain) can buy sirups "tax-free" from the manufacturer for use in baking. On the other hand, a grocer may not buy finished or fountain sirups "tax-free" for resale to his trade. No provision is made for refund of the tax in the case of sirups resold by any person for consumption other than in the preparation of soft drinks.

In the case of carbonic acid gas, the tax is restricted to carbonic acid gas in gaseous, liquid, or solid form, suitable for use in the preparation of soft drinks. As there are relatively few manufacturers of and dealers in this product, provision is made that sales by dealers will be subject to the tax, but the dealer may purchase such gas tax-free. That is to say, the sale of carbonic acid gas to a dealer in such gas for resale is not subject to the tax. The resale by the dealer is, of course, subject to the tax.

SECTION 552. NEW MANUFACTURERS' EXCISE TAXES.

This section imposes taxes on sales by the manufacturer, producer, or importer, of the article listed hereinafter at the rates given:

	Per cent.
Sporting goods	10
Luggage	10
Electrical appliances	10
Photographic apparatus	10
Electric signs	10
Business and store machines	10
Rubber products	10
Washing machines	10
Optical equipment	10

In the case of sporting goods, luggage, electrical appliances, photographic apparatus, business and store machines, and optical equipment, the particular articles the sale of which is subject to tax are named. Uniforms and sport clothing are not within the scope of the tax on sporting goods.

In the case of electric signs, the tax applies to articles falling within the general classifications of neon-tube signs, electric signs, and electric advertising devices.

It is recognized that a number of articles falling within the scope of the excise taxes listed herein may also fall within the scope of the jewelry retail sales tax imposed by section 553. Provision is accordingly made that such articles will be subject to the jewelry retail sales tax and not to the manufacturers' excise taxes imposed by this section.

SECTION 553. NEW RETAILERS' EXCISE TAXES.

This section adds a new chapter 19 imposing new taxes on retail sales of jewelry, furs, and toilet preparations each at the rate of 10 per cent of the price for which the article is sold. The articles falling within the jewelry tax (including clocks, watches, cases, and movements) are articles which have in former jewelry excise taxes been classified as jewelry. There are added flat ware and hollow ware made of gold or silver, or plated. The tax will not apply to religious articles, surgical instruments, or frames or mountings for eyeglasses.

The fur tax is to be imposed on the sale of articles made of fur on the hide or pelt and articles of which such fur is the component material of chief value. This is a classification which has been used in earlier manufacturers' excise taxes with respect to furs.

A tax on the sale at retail of toilet preparations is imposed in place of the existing tax on sales by the manufacturer (imposed by section 3401 of the Internal Revenue Code). Provision is made that beauty parlors and barber shops shall make monthly returns of toilet preparations used in the treatment of patrons and the quantity used during the month shall be considered to have been sold at retail by such establishments.

Section 553 contains, or makes applicable, the administrative provisions necessary to the administration of these retail sales taxes.

This section also provides that the present tax on sales of toilet preparations by the manufacturer (imposed by section 3401 of the Internal Revenue Code) shall not apply to articles sold after the effective date of the retail sales tax. Manufacturers' tax previously paid with respect to articles which will also be subject to the retail sales tax will not be refunded.

SECTION 554. TRANSPORTATION OF PERSONS, ETC.

This section imposes a tax on the amount paid within the United States for the transportation of persons by rail, motor vehicle, water, or air, within or without the United States. The rate is 5 per cent of the amount paid and tax liability is imposed on the person making the payment. Where the amount paid is less than 35 cents the tax does not apply. In the case of commutation or season tickets the tax does not apply if the particular trips the holder of the commutation or season ticket is entitled to make under the ticket are less than 30 miles. For example, a commutation ticket entitling a person to transportation for a certain number of trips between two points is not subject to tax if the distance between the two points is less than 30 miles. These provisions will exempt local street car, bus, and taxi service. Amounts paid for commutation tickets for one month or less are also exempt from tax.

This section also imposes a tax on amounts paid for seating or sleeping accommodations in connection with taxable transportation.

Provision is made that the time for filing returns may be extended for as much as 90 days in order that carriers may have the necessary time to assemble, from widely scattered points, necessary data for making returns. Provision is also made that the tax shall not apply to transportation facilities furnished the United States, to any State or Territory or political subdivision thereof, or the District of Columbia.

Section 554(d) provides that the stamp tax on steamship passage tickets imposed by section 3469 of the Internal Revenue Code shall not apply to any tickets the purchase of which is subject to tax under the new transportation tax.

SECTION 555. COIN-OPERATED AMUSEMENT AND GAMING DEVICES.

This section imposes an occupational tax of $25 per annum per machine on each person who maintains for use, or permits the use of, on premises occupied by him, a coin-operated amusement or gaming device. "Coin-operated amusement or gaming devices" are, briefly, machines which fall within the general classification colloquially referred to as "pin ball" machines and "slot machines." A separate liability is incurred with respect to each machine, but if one such machine is replaced by another, such other machine will not be considered an additional machine.

SECTION 556. BOWLING ALLEYS, ETC.

This section imposes an occupational tax on persons operating bowling alleys, billardrooms, or poolrooms. The rate of tax is $15 per annum for each

bowling alley, billiard table, or pool table. All types of establishments maintaining such equipment, including clubs or social organizations, etc., are subject to the tax. Maintaining such equipment in a private home is not subject to tax.

As in the case of other occupational taxes, the tax year begins July 1 of each year.

However, if after payment of tax and prior to the end of the tax year, additional bowling alleys, or billiard or pool tables, are placed in operation, a supplemental return must be filed and tax paid with respect to the additional equipment for the period beginning with the day of the month in which operation of the additional equipment commenced.

SECTION 557. TAX ON OUTDOOR ADVERTISING.

Section 557 imposes an annual special tax on persons engaged in the business of furnishing to others the use of billboards for outdoor advertising. The special tax is based on the number of billboards maintained or controlled by the taxpayer during the tax year, and the rate is graduated according to the number of such billboards in each size classification. There are three classifications, taxable, respectively, at $5, $8, and $11 per billboard.

SECTION 558. TAX ON USE OF MOTOR VEHICLES AND BOATS.

This section imposes a tax on the use of motor vehicles and boats. In the case of motor vehicles the tax is $5 per annum. In the case of boats the rate of tax ranges from $5 per annum on boats having an over-all length of 16 feet or over but not over 28 feet, to $200 per annum on boats over 200 feet in over-all length. In the case of motor vehicles, the tax is to be paid by the person in whose name the motor vehicle is, or is required to be, registered. In the case of boats, the tax is to be paid by the owner of the boat. The effective date of the tax is February 1, 1942. That is, the use of motor vehicles and boats before that date is not subject to tax.

The tax year begins, however, July 1. Persons using motor vehicles after February 1, 1942, would, therefore, pay a proportionate part of the $5 annual tax from the 1st day of the month in which the use began after February 1, 1942, to July 1, 1942. That is, a person beginning the use of a motor vehicle in the month of February, 1942, would pay five-twelfths of the $5 tax. A person beginning the use of a motor vehicle during the month of July, 1942, would pay the full $5 tax for the period from July 1, 1942, to June 30, 1943.

The term "motor vehicle" is defined to mean motor vehicles of the kind "chiefly used for highway transportation." Accordingly, no tax is imposed with respect to trailers for motor vehicles.

The term "boat" is defined to mean all boats propelled or equipped for propulsion by machinery, sail, or motor measuring 16 feet or more in over-all length, owned by a citizen or resident of the United States. Hence, for example, a citizen and resident of Canada bringing his boat into territorial waters of the United States would not be liable for the tax. Boats used for trade or commercial fishing and certain boats used for the relief of seamen are not subject to the tax. Liability in the case of a boat does not depend on use for actual transportation. Any form of use is taxable. A boat maintained and available for transportation is in use.

If the tax is paid with respect to any motor vehicle or boat for any year, no further tax for that year is imposed with respect to such vehicle or boat. For example, if a person using an automobile pays a tax with respect to such use and thereafter sells the automobile, the purchaser is not liable for the tax on the use of such automobile for the balance of the particular tax year. However, the tag or other evidence of payment is not transferable from one vehicle or boat to another, so that one who sells or "trades in" a vehicle or boat with respect to which a tax has been paid and procures another must pay a second tax.

In the administrative provisions made applicable to the tax, wide latitude is given to the Commissioner of Internal Revenue with respect to the method of collecting the tax, and for prescribing a form of stamp, sticker, or tag to be affixed to the motor vehicle or boat as evidence that the tax has been paid. Provision is made for allowing the cooperation of the Post Office Department or of private persons to assist in the collection of the tax.

Persons liable for the tax who use or permit the use of a motor vehicle or boat before the tax has been paid shall be guilty of a misdemeanor and be punished by a fine of $25 or 30 days' imprisonment or both. A similar penalty

is imposed on a person who uses or operates a motor vehicle or boat which does not bear a stamp, sticker, or tag affixed in the manner provided in the Commissioner's regulations. The use of motor vehicles or boats by the United States, a State, Territory, or political subdivision thereof or the District of Columbia is not subject to tax.

SECTION 559. EFFECTIVE DATE OF PART V.

This section provides that the new taxes imposed by sections 551 to 558 will take effect on the 1st day of the first month which begins more than 10 days after the date of the enactment of the Act.

TITLE VI—RADIO BROADCASTING STATIONS AND NETWORKS.

SECTION 601. RADIO BROADCASTING STATIONS AND NETWORKS.

This section imposes an excise tax for the calendar year 1942 and each succeeding calendar year upon every person who during the year operates a radio broadcasting station or engages in network broadcasting at any time during such calendar year. The tax is equal to a given percentage of net time sales during the year. A net time sale is the gross amount received or accrued from a sale of radio time, not including the amount of any commission to an advertising agency (up to 15 per cent of the gross amount), and minus any amounts paid or incurred by the taxpayer, pursuant to the sale of radio time by him, for broadcasting time to other persons operating radio stations or engaged in network broadcasting. Such other persons are in turn liable with respect to the amounts so paid to them. If the taxpayer is on a cash basis of accounting, net time sales are computed with reference to amounts received and amounts paid. In the case of a taxpayer on an accrual basis of accounting, net time sales are computed with reference to amounts accrued and liabilities incurred.

The rates of tax are 5 per cent where the net time sales during the year exceed $100,000 and do not exceed $500,000, 10 per cent where the net sales exceed $500,000 and do not exceed $1,000,000, and 15 per cent where the net sales exceed $1,000,000. The tax is measured in each case by the entire amount of the net time sales but the liability of a taxpayer in one classification can not exceed the maximum liability under the next lower classification plus the amount of the taxpayer's net time sales in excess of the maximum net time sales taxable under the lower classification. If the net sales do not exceed $100,000 no tax is imposed.

A return for the calendar year must be made prior to March 1 of the succeeding year.

APPENDIX.

MANDATORY JOINT RETURNS.

PRIOR ADVOCACY.

When the Hill subcommittee met in 1933 to consider "income-tax loopholes," one of the issues raised was that of community property. At that time the staff of the Joint Committee on Internal Revenue Taxation offered a proposal to tax the income to the spouse having management and control of the property. This proposal was defeated in the subcommittee by a very close vote. The subcommittee in its report said:

"The income-tax situation existing in eight States of the Union having community-property laws has been carefully considered. No recommendation in regard thereto is made by your subcommittee in view of the legal difficulties involved."

The full committee held public hearings on the subcommittee report. At that time Dr. Magill appeared, representing the Treasury Department. In this connection, he stated:

"Under the present law, a husband and wife living together may, at their own option, make separate returns or may make a single joint return. If each has an income of any considerable size, each will ordinarily make a separate return, in order to reduce the normal tax, and, more particularly, the surtaxes which would otherwise be payable. The family income is in fact frequently expended and otherwise treated as a unit; nevertheless, if the husband and

wife can so arrange their affairs that the wife is in receipt of a portion of the family income, income taxes can be considerably reduced. In other words, the present privilege of filing separate returns operates to that extent to defeat the progressive rate schedule, particularly in the case of the larger taxpayers. * * *

"The Treasury Department therefore recommends that the committee consider whether a husband and wife living together should not be required to file a single joint return, each to pay the tax attributable to his share of the income. Such a provision has long been in force in other countries.

"Reference may be made in this connection to the Hoeper case (284 U. S., 206), in which the Supreme Court held that a somewhat similar provision in the Wisconsin income-tax statute was invalid. The case is not, however, conclusive for two reasons. In the first place, the Wisconsin law was evidently interpreted by the Court as requiring that the husband should pay the tax on his wife's income. This objection can be eliminated by proper draftsmanship specifying otherwise. In the second place, the Federal Government is not under the same constitutional restrictions as the States in this respect."

In the 1934 hearings (page 116), Dr. Magill stated in answer to a question by Mr. Cooper as to the status of the law:

"My own view is that a provision of this kind is so fair that the likelihood is that the court will uphold it, and I don't see anything in these decisions which would prevent them from so holding."

On June 1, 1937, the President of the United States transmitted to the Congress a letter from the Secretary of the Treasury, dated May 29, 1937, discussing the devices being employed by taxpayers of large incomes to avoid income taxes. Among these devices were the following:

The device of the creation of multiple trusts for relatives and dependents.—Splitting income two ways, between husband and wife, reduces income taxes and leaves the family income intact. Splitting the family income many ways by means of many trusts, all for the same beneficiaries, may effect a much greater saving, while leaving the money actually in the same hands. For the creator of the trust often constitutes himself or his wife as trustee, and thus retains full control over the investment and disposition of the fund itself and of its income.

One thrifty taxpayer has formed 64 trusts for the benefit of four members of his immediate family, and thereby claims to have saved them over $485,000 in one year in taxes.

Another thrifty pair have constituted 40 trusts for their relatives, and a prominent lawyer and his wife utilize 16 trusts for the same purpose. The first pair maintains numbered brokerage accounts, and only at the end of the year are the beneficial owners identified. In this way innumerable transactions are carried on, often between accounts, which do not actually affect the beneficial interests of their owners, but which are designed solely to reduce tax liability.

The device of husband and wife or father and children partnerships.—The purpose of these partnerships, like the multiple trusts, is to split the family income artificially into two parts; or, if the children are taken in, into still smaller fractions.

There are many instances of this kind; but to illustrate the point, it is sufficient to cite the case of a New York brokerage firm which late in 1935 admitted into partnership the four minor children, two boys and two girls, of one of the partners. The tax saving he sought thereby in 1936 amounted to over $50,000.

The division of income between husband and wife in the eight community property States.—This is another major cause of revenue loss, which is unjustifiable because obtained at the expense of taxpayers in the 40 States which do not have community-property laws. A New York resident with a salary of $100,000 pays about $32,525 Federal income tax; a Californian with the same salary may cause one-half to be reported by his wife and the Federal income taxes payable by the two will be only $18,626. The total loss of revenue due to this unjustifiable discrimination against the residents of 40 States runs into the millions.

Dr. Magill, as the representative of the Treasury, in his testimony before the Tax Evasion and Avoidance Committee in 1937, said:

"In his statement to the Committee on Ways and Means the Acting Secretary also pointed out that the problem of taxing the incomes of spouses has a broader aspect than that of eliminating the discrimination in favor of husbands and wives living together in community-property States. Since spouses living

together in noncommunity-property States may file separate returns, there is a strong incentive for them to arrange their property holdings in such a way as to realize the greatest possible tax advantage through a division of income or an allocation of losses" (page 310).

And then in answer to the remedy for this situation, Dr. Magill said:

"I do not know whether we have got anything essentially different from what was worked out in 1933 and 1934 or not. I have not been able to go over that carefully in the last two or three weeks. As I say, our net suggestion is that we think it would be desirable over the country as a whole to provide that the incomes of husbands and wives living together should be aggregated and the tax computed with respect to the total" (page 312).

REPORT OF THE ROYAL COMMISSION (GREAT BRITAIN) ON THE INCOME TAX.

The following is taken verbatim from the Report of the Royal Commission (1920):

SECTION VII. THE ASSESSMENT OF MARRIED PERSONS.

248. The correct method of assessing married persons has received a great deal of public attention both before and since the appointment of this commission. The matter has been freely ventilated in the press and has been raised on several occasions in the House of Commons. In the course of our inquiry a considerable volume of evidence on the subject has been presented to us, and we have examined witnesses from representative women's societies; we have also received a large number of letters in connection with this part of our investigation.

249. Speaking generally, the existing position is that husband and wife are regarded as one unit for the purpose of income tax; the income of a married woman living with her husband being deemed to be (for this purpose) the income of the husband, and the husband being responsible for the inclusion of his wife's income in his own return; but this general position is subject to two important modifications.

(*a*) It is in the power of either spouse to elect to be separately assessed, and if that election is made, income tax is assessed, charged, and recovered on the income of the husband and on the income of the wife as if they were not married.

(*b*) If a married woman earns income by her own personal labor, and her husband also earns income unconnected with his wife's business or employment, a separate claim of exemption or abatement can be made in respect of the wife's earned income—provided the joint income of husband and wife does not exceed £500.

250. The option of separate assessment referred to in (*a*) dates from 1914; it applies to married men equally with married women, but it does not appear to be very widely known; indeed, some of the witnesses seem to have been unaware of the existence of any such provision. The option is rarely taken advantage of, either because of this prevailing want of knowledge, or because its exercise is not in fact often desired. Although a married woman can make a separate return and be assessed separately from her husband, if she wishes it, the total of their separate liabilities to income tax, if the election is made, does not differ from the combined liability that would have arisen if the option had not been exercised. For example, if husband and wife have incomes of £2,000 and £1,000 a year, respectively, and claim to be separately assessed, neither is granted exemption from supertax, but the liability attaching to an income of £3,000 is divided, and charged separately upon husband and wife in proportion to the size of their respective incomes.

251. This position does not satisfy the more extreme advocates of separate assessment; they say that husband and wife should be assessed as though they were separate taxable units—without any regard to the amount of their combined incomes. This contention has been urged upon us by many witnesses, and it forms the burden of the many letters we have received on this subject—mainly written by persons who would themselves benefit by the change proposed. By those who take this view it is claimed that the right to a completely separate assessment is an essential part of separate citizenship, and that the principle of absolute equality in regard to civil obligations should override any principle of taxation. The statement was also made that the present method of assessment imposes a penalty on marriage.

252. On the other hand, it has been contended by several witnesses that this proposal for separate assessment of husband and wife is not reconcilable with a just view of the principle of ability to bear taxation, and that the common menage which is our general mode of social life must be considered in any equitable system of taxation. From the point of view of ability to pay those who oppose separate treatment contend that it would be an anomaly if different sums of income tax were levied on two married couples enjoying equal incomes, merely because in one case the income belonged wholly to one spouse and in the other to both. In the case of a married man with £1,000 a year unearned income, the sacrifice involved by income tax, say, £187 10s., may in most households be regarded as borne equally by each spouse, a sacrifice of £93 15s. each. If the husband and wife each have £500 a year there is no such difference in their taxable capacity as would justify a sacrifice of only £60 a year each, which is what would result from treating husband and wife as two separate units.

253. If we conceive a number of households where the wife has a varying amount of separate income, but where the total income (unearned) of the husband and wife is the same, the anomalies that would result from the proposed method of separate assessment will be apparent. Let the total income be assumed to be £1,000.

	£	s.	d.
If the husband has the whole income, the tax paid would be	187	10	0
If the husband has £900 and the wife £100, the tax paid would be	168	15	0
If the husband has £800 and the wife £200, the tax paid would be	162	0	0
If the husband has £700 and the wife £300, the tax paid would be	145	2	6
If the husband has £600 and the wife £400, the tax paid would be	135	15	0
If the husband has £500 and the wife £500, the tax paid would be	120	0	0

The difference in the sums borne by the first and last of these households with identical incomes would thus be £67 10s., a result which appears to us not only inequitable but ridiculous under a system which aims at adjusting the tax in accordance with the principle of ability to pay.

254. Other witnesses referred to the fact that the income of husband and wife under the ordinary conditions of married life is treated as a joint one so far as expenditure is concerned, and argued that it is, therefore, not unfair to make their expenditure for taxation dependent upon their total resources. Under the present law and practice if the husband and wife are living apart their incomes are treated as separate subjects for assessment. It was pointed out that if the allegation is correct that joint assessment is conducive to immorality (an allegation unproved in the course of our inquiry and characterized by one of the women witnesses as being neither reasonable nor probable), the logical, even if not the practicable, remedy is to render liable to joint assessment the income of two unmarried persons living together.

255. It has been stated by the Chancellor of the Exchequer in the House of Commons that the loss which would arise from the separate assessment of husband and wife would be £20,000,000, increasing possibly to £45,000,000 in consequence of avoidance of tax by transfer of income from the husband to the wife. To shift a burden from the shoulders of persons whose joint income is such that their ability to pay permits of its being equitably borne by them, and to place part of that burden, by means of an increased rate, upon the shoulders of other taxpayers, would be, in our opinion, entirely contrary to all principles of equitable assessment.

256. We feel that the demand of those who favor this change is in effect not so much a demand for separate assessment or separate recovery of tax—this they can have under the existing law—as for a diminution in income-tax liability on the ground that part of the joint income happens to belong to the wife. There are two methods of recognizing, by diminished taxation, the obligations of marriage. One is to make an allowance, a wife allowance or marriage allowance, from the joint income; this wife allowance is already granted under the present law, and we have made proposals which will in effect increase it considerably. The other method is, by a complete severance in the treatment of husband and wife for income-tax purposes, to effect a differentiation the results of which will depend entirely on the particular manner in which a given income chances to be distributed between the two members of the household. The first method, seeing that it affects every married couple, is far more likely than the second to encourage marriage.

257. It strikes us as curious that, while ignoring the joint obligation of husband and wife for the purpose of pressing their claim to entirely separate treatment, the same witnesses have asked for increases in the wife and children allowances—which are express recognitions of the joint responsibilities created by marriage. It seems to us that it would be quite illogical, under the same system of taxation, to make an allowance which recognizes the joint responsibilities of husband and wife, and at the same time to grant relief to each of the partners to the union as though they were complete strangers. If separate assessment were granted the marriage allowance should logically be abolished, and the result would be a shifting of burdens from the rich to the poor, because in the vast majority of cases the wife has either no separate income at all or a separate income less than the amount of the present marriage allowance, and far less than allowance we suggest should be made.

258. The question involved should not be regarded as a political question, but purely as one of finance and revenue, and we are satisfied that it must be decided, not on any theoretical grounds of equality of citizenship, but in accordance with the outstanding principle of "ability to pay," which we recognize as governing all questions of taxation. In the application of this principle, we must regard the social conditions of the country in which the taxation is imposed. The great majority of married persons live together and use their several incomes for common purposes, and this common menage and joint dependency is recognized, to the benefit of the wife, for other purposes of taxation, e. g., legacy and succession duties payable by a widow are less than those payable by a person unrelated to the deceased.

259. The aggregation for income-tax purposes of the income of husband and wife is not dependent upon any medieval conception of the subordination of women; nor is it a question of sex disability, since either partner can claim separate assessment and separate collection. The incomes are aggregated because the law of taxable capacity is the supreme law in matters of taxation, and taxable capacity is, in fact, found to depend upon the amount of the income that accrues to the married pair, and not upon the way in which that income happens fortuitously to be owned by the members of the union. It is beyond question that in the immense majority of cases where the wife has separate means she contributes to the common purse, either by actual merger of her income with her husband's, or by bearing expenses which in less fortunate households fall upon the husband.

260. We have given a great deal of time and attention to this subject and have considered with the utmost care all the arguments that have been put before us, and we have been forced to the conclusion that the grievance complained of is more vocal than real, in other words, that it is a grievance rather than a hardship. We therefore recommend that *the aggregation of the incomes of wife and husband should continue to be the rule.*

261. In paragraph 249(b) we referred to the exceptional treatment allowed under the existing law to the earned income of a married woman where the joint income does not exceed £500. The effect of this provision, in a case where, for example, husband and wife each earn £250 and have no other income, is that two abatements of £120 each are allowed, as compared with the single abatement of £100 which would be allowed if the whole £500 were earned either by the husband or by the wife. The limit of £500 has been represented to us as too low in present conditions. We agree with this point of view, and recommend that the relief in its present form should be discontinued, and that where the wife has £50 or more of earned income the joint exemption or abatement allowance to a married couple should be increased from £250 (earned) to £300 (earned). Where the wife earns less than £50, the joint allowance for a married couple should be increased from £250 (earned) by the amount of the wife's earnings.

262. In connection with this subject, our attention has been directed to some minor details in regard to which we make the following suggestions: (*a*) that the revenue should have power of assessment, apportionment, and recovery of the tax against the spouses in respect of their separate incomes where necessary to the collection of the tax; (*b*) that the notice to be given by a wife or husband requiring separate assessment should be allowed to be given at any time not later than June 30 in the year of assessment; and (*c*) that when husband and wife are separately assessed any relief in respect of their unearned or investment income should be given to the husband and to the wife in proportion to their respective assessable incomes.

1941-38-10828

THE REVENUE BILL OF 1941.

[Senate Report No. 673, Part 1, Seventy-seventh Congress, First Session. Calendar No. 703.]

[September 2, 1941.]

Mr. George, from the Committee on Finance, submitted the following report [to accompany H. R. 5417]:

The Committee on Finance, to whom was referred the bill (H. R. 5417) to provide revenue, and for other purposes, having had the same under consideration, report favorably thereon with certain amendments and, as amended, recommend that the bill do pass.

ESTIMATES OF REVENUE.

The bill as passed by the House was estimated to produce added tax revenue of $3,216,400,000 annually. The amendments made by your committee add $463,400,000 to this figure, bringing the total additional annual yield to $3,679,800,000.

The additional revenue to be secured by your committee bill over that of the House bill comes principally from the following sources: corporation normal tax $19,000,000, corporation surtax $120,500,000, and individual income tax $332,400,000.

The following table sets out the estimated yields of the House bill and the Finance Committee bill, with the increase or decrease of the Finance Committee bill over the House bill. It should be noted that the figures contemplate a year of full operation.

Estimated revenue effect[1] of the revenue bill of 1941 (H. R. 5417) as passed by the House of Representatives August 4, 1941, and as reported by the Senate Finance Committee, September 2, 1941.

[In millions of dollars.]

	Estimated increase or decrease (−) over yield or present law.		Estimated increase (+) or decrease (−) Senate Finance Committee over House bill.
	House bill.	Senate Finance Committee.	
Income taxes:			
Corporation—			
Normal tax	−520.1	−501.1	+19.0
Surtax	644.7	765.2	+120.5
Excess-profits tax	1,198.3	1,130.6	−67.7
Total corporation income taxes	1,322.9	1,394.7	+71.8
Individual	864.8	1,197.2	+332.4
Total income taxes	2,187.7	2,591.9	+404.2
Miscellaneous internal revenue:			
Capital stock tax	22.3	−16.1	−38.4
Estate tax	135.9	141.6	+5.7
Gift tax	16.0.	16.0	0
Total	174.2	141.5	−32.7

[1] All estimates show full-year effect. Estimates for corporation and individual income taxes and the gift tax are based on levels of income estimated for calendar year 1941; all other estimates are based on income levels estimated for fiscal year 1942.

Estimated revenue effect of the revenue bill of 1941 (H. R. 5417) as passed by the House of Representatives August 4, 1941, and as reported by the Senate Finance Committee, September 2, 1941—Continued

[In millions of dollars.]

	Estimated increase or decrease (−) over yield or present law.		Estimated increase (+) or decrease (−) Senate Finance Committee over House bill.
	House bill.	Senate Finance Committee.	
Manufacturers' and retailers' excise taxes:			
Distilled spirits	122.3	123.0	+0.7
Wines	[2] 5.0	14.4	+9.4
Passenger automobiles, parts, and accessories	72.2	72.2	0
Automobile trucks, busses, and trailers	16.1	16.1	0
Tires and tubes	44.6	44.6	0
Refrigerators, refrigerating apparatus, and air-conditioners	16.6	16.6	0
Matches	8.2	[2] 8.2	0
Playing cards	1.0	1.0	0
Radio receiving sets and parts	9.4	9.4	0
Phonographs and phonograph records	4.5	4.5	0
Musical instruments	3.6	3.6	0
Sporting goods	8.5	8.2	−.3
Luggage	4.5	4.5	0
Electrical appliances	12.6	12.6	0
Photographic apparatus	10.0	9.9	−.1
Electric signs	2.7	2.7	0
Business and store machines	13.0	13.0	0
Rubber articles	21.3	21.3	0
Washing machines	.4	5.7	+5.3
Optical equipment	.3	.3	0
Soft drinks	22.6	0	−22.6
Gas and oil appliances		19.2	+19.2
Electric-light bulbs		8.0	+8.0
Jewelry, etc	56.2	56.2	0
Furs	20.7	20.7	0
Toilet preparations	19.7	19.7	0
Total manufacturers' and retailers' excise taxes	496.0	515.6	+19.6
Miscellaneous taxes:			
Admissions	60.0	105.9	+45.9
Cabarets, roof gardens, etc	2.0	2.0	0
Club dues	2.8	2.8	0
Safe deposit boxes	1.7	1.7	0
Telephone, telegraph, radio and cable facilities, leased wires, etc	26.6	24.3	−2.3
Telephone bill	43.6	87.2	+43.6
Transportation of persons	36.5	35.5	−1.0
Use of motor vehicles and boats	160.2	160.2	0
Bowling alleys and billiard and pool tables	2.0	1.3	−.7
Coin-operated amusement and gambling devices	8.9	9.9	+1.0
Radio broadcasting	12.5	0	−12.5
Outdoor advertising	1.7	0	−1.7
Total miscellaneous taxes	358.5	430.9	+72.3
Total excise and miscellaneous taxes	854.5	946.4	+91.9
Total miscellaneous internal revenue	1,028.7	1,087.9	+59.2
Total	3,216.4	3,679.8	+463.4

[2] Excluding nonrecurring floor stocks taxes collectible only in fiscal year 1942—distilled spirits, $38,000,000; wines, $1,000,000 under House bill, $2,900,000 under Senate Finance Committee agreement; matches, $700,000; tires and tubes, $6,700,000.

Treasury Department, Division of Research and Statistics, August 29, 1941

In order that a more complete summary of the entire revenue may be obtained, the following tables set forth the estimated receipts under present law coupled with those expected under the committee bill. The first table deals with the income and excess-profits taxes and the second sets out the estate, gift, capital stock, and excise taxes.

Income taxes—Estimated calendar year 1941 liabilities under present law and estimated increased income tax liabilities under a full year effect of the income tax provisions of the revenue bill of 1941 (H. R. 5417)[1] at levels of income estimated for calendar year 1941.

[In thousands of dollars.]

	Estimated liabilities under present law.	Estimated increase or decrease (−) due to revenue bill of 1941.	Estimated total income-tax liabilities under revenue bill of 1941.
Income taxes:			
Corporation normal tax	2,939,200	−501,100	2,438,100
Corporation surtax		765,200	765,200
Individual	2,223,300	1,197,200	3,420,500
Back taxes	260,000		260,000
Excess-profit tax	1,026,400	1,130,600	2,157,000
Declared value excess-profits tax	37,000		37,000
Unjust enrichment tax	4,000		4,000
Total income taxes	6,489,900	2,591,900	9,081,800

[1] As reported by the Senate Finance Committee, September 2, 1941.

Treasury Department, Division of Research and Statistics, September 2, 1941.

Miscellaneous internal revenue—Estimated fiscal year 1942 receipts under present law[1] and estimated full year effect of the revenue bill of 1941 (H. R. 5417)[2] at levels of income estimated for fiscal year 1942.

[Thousands of dollars.]

	Estimated receipts under present law.	Estimated increase or decrease (−) due to revenue bill of 1941.[2]	Estimated total receipts under revenue bill of 1941.[2]
		Hypothetical full year effect.[3]	Hypothetical fiscal year.[3]
Capital stock tax	193,400	−16,100	177,300
Estate tax	350,700	141,600	492,300
Gift tax	100,000	16,000	116,000
Liquor taxes:			
Distilled spirits (excise tax)	458,800	123,000	581,800
Fermented malt liquors	330,800		330,800
Rectification tax	12,800		12,800
Wines (domestic and imported) (excise tax)	15,200	14,400	29,600
Container stamps	10,400		10,400
Special taxes in connection with liquor occupations	10,200		10,200
All other	1,300		1,300
Total liquor taxes	839,500	137,400	976,900
Tobacco taxes:			
Cigarettes (small)	645,100		645,100
Cigars (large)	13,900		13,900
Tobacco (chewing and smoking)	56,100		56,100
Snuff	6,800		6,800
Cigarette paper and tubes	1,500		1,500
All other	130		130
Total tobacco taxes	723,530		723,530
Stamp taxes:			
Issues of securities, bond transfers, and deeds of conveyance	25,300		25,300
Stock transfers	14,000		14,000
Playing cards	4,800	1,000	5,800
Silver bullion sales or transfers	80		80
Total stamp taxes	44,180	1,000	45,180

[1] Detail of estimates released in summary form by the Bureau of the Budget, June 1, 1941.
[2] As reported by the Senate Finance Committee, September 2, 1941.
[3] Assuming that all provisions of the law were fully reflected in receipts for an entire year.

Miscellaneous internal revenue—Estimated fiscal year 1942 receipts under present law and estimated full year effect of the revenue bill of 1941 (H. R. 5417) at levels of income estimated for fiscal year 1942—Continued.

[Thousands of dollars.]

	Estimated receipts under present law.	Estimated increase or decrease (−) due to revenue bill of 1941. Hypothetical full year effect.	Estimated total receipts under revenue bill of 1941. Hypothetical fiscal year.
Manufacturers' excise taxes:			
Lubricating oils	37,100		37,100
Gasoline	399,800		399,800
Electrical energy	51,400		51,400
Tires and inner tubes	54,200	44,600	98,800
Automobile trucks	12,400	16,100	28,500
Passenger automobiles and motorcycles	73,400	72,200	145,600
Parts and accessories for automobiles	13,300		13,300
Radio sets, etc	7,900	9,400	17,300
Mechanical refrigerators	12,300	16,600	28,900
Firearms, shells, pistols, and revolvers	5,400		5,400
Matches		8,200	8,200
Electrical appliances		12,600	12,600
Phonographs and phonograph records		4,500	4,500
Musical instruments		3,600	3,600
Sporting goods		8,200	8,200
Luggage		4,500	4,500
Photographic apparatus		9,900	9,900
Electric signs		2,700	2,700
Business and store machines		13,000	13,000
Washing machines		5,700	5,700
Rubber articles		21,300	21,300
Optical equipment		300	300
Gas and oil appliances		19,200	19,200
Electric light bulbs		8,000	8,000
Toilet preparations	8,800	−8,800	
Total manufacturers' excise taxes	676,000	271,800	947,800
Retailers' excise taxes:			
Jewelry, etc		56,200	56,200
Furs		20,700	20,700
Toilet preparations		28,500	28,500
Total retailers' excise taxes		105,400	105,400
Miscellaneous taxes:			
Telephone, telegraph, radio, and cable facilities, leased wires, etc	28,000	24,300	52,300
Transportation of oil by pipe lines	13,300		13,300
Leases of safe-deposit boxes	2,200	1,700	3,900
Admissions to theaters, concerts, cabarets, etc	83,100	107,900	191,000
Club dues and initation fees	7,000	2,800	9,800
Oleomargarine, etc., including special taxes, and adulterated butter	2,300		2,300
Coconut and other vegetable oils processed	4,500		4,500
Bituminous-coal tax	4,900		4,900
Sugar tax	62,400		62,400
Transportation of persons		35,500	35,500
Use of motor vehicles and boats		160,200	160,200
Bowling alleys, and billiard and pool tables		1,300	1,300
Coin-operated amusement and gaming devices		9,900	9,900
Radio broadcasting		0	0
Outdoor advertising		0	0
Telephone bill		87,200	87,200
All other, including repealed taxes	620		620
Total miscellaneous taxes	208,320	430,800	639,120
Total miscellaneous internal revenue (other than capital stock, estate, and gift taxes)	2,491,530	946,400	3,437,930
Total miscellaneous internal revenue	3,135,630	1,087,900	4,223,530

Treasury Department, Division of Research and Statistics, September 2, 1941.

SUMMARY OF PRINCIPAL CHANGES.

I. Individual Income Tax.

1. *Reduced personal exemptions.*—The House bill made no changes in the personal exemptions provided by existing law. The committee bill reduces the personal exemptions in the case of married persons from $2,000 to $1,500 and, in the case of single persons, from $800 to $750. This broadening of the income tax base is thought to be desirable particularly during the present emergency in order that the greatest possible number of persons may contribute directly to the costs of the defense program.

It has been estimated by the Treasury Department that this reduction in the personal exemptions will require the filing of 4,911,000 new income tax returns and will increase the number of income-tax payers by 2,256,000. Under the House bill, it is estimated that 17,107,000 individual income tax returns would have been filed, of which 10,925,000 would have been taxable. Under the Finance Committee bill it is estimated that 22,108,000 individual income tax returns will be filed, of which 13,181,000 will be taxable.

The decrease in the personal exemptions has the effect of increasing the tax throughout the bracket structure. This increase is substantial in the lower brackets. The following table sets out the additional burden on single persons and on married persons without dependents caused solely by the reduced exemptions:

Additional tax due to decreased exemptions.

Net income.	Single man.	Married man—no dependents.	Net income.	Single man.	Married man—no dependents.
$750			$15,000	$17.60	$159.50
$800	$2.75		$20,000	20.35	203.50
$900	4.95		$25,000	23.65	236.50
$1,000	4.95		$30,000	25.30	253.00
$1,500	4.95		$50,000	29.70	297.00
$2,000	4.95	$40.70	$60,000	31.35	313.50
$2,500	4.95	49.50	$80,000	33.55	335.50
$3,000	6.60	49.50	$100,000	35.75	357.50
$4,000	6.60	66.00	$150,000	29.70	297.00
$5,000	8.25	66.00	$250,000	30.60	306.00
$6,000	8.25	82.50	$500,000	33.30	333.00
$7,000	10.45	82.50	$750,000	33.75	337.50
$8,000	10.45	104.50	$1,000,000	34.20	342.00
$9,000	12.65	104.50	$2,000,000	34.65	346.50
$10,000	12.65	126.50	$5,000,000	35.10	351.00

2. *Integration of defense tax.*—Under the existing law and under the House bill the 10 per cent defense tax is added to the tax computed under the rates provided in the normal tax and surtax schedule. The House bill makes the defense tax permanent. Your committee recommends and the committee bill so provides that the defense tax be integrated into the basic surtax rates. In order to avoid the use of fractional percentages, the surtax rates have been carried to the nearest whole percentage figure.

The following table shows the increase in the surtax rates and cumulative surtax burden caused solely by the integration of the defense tax:

Comparison of surtax rates and cumulative surtax.

Surtax net income classes.	Surtax rates.			Cumulative surtax on higher amount shown in bracket.		
	Present law.	House bill.	Finance Committee bill.	Present law.	House bill.	Finance Committee bill.
	Per cent.	*Per cent.*	*Per cent.*			
$0 to $2,000	----------	5	6	----------	$100	$120
$2,000 to $4,000	----------	8	9	----------	260	300
$4,000 to $6,000	4	11	13	$80	480	560
$6,000 to $8,000	6	15	17	200	780	900
$8,000 to $10,000	8	19	21	360	1,160	1,320
$10,000 to $12,000	10	22	25	560	1,600	1,820
$12,000 to $14,000	12	25	29	800	2,100	2,400
$14,000 to $16,000	15	28	32	1,100	2,660	3,040
$16,000 to $18,000	18	31	35	1,460	3,280	3,740
$18,000 to $20,000	21	33	38	1,880	3,940	4,500
$20,000 to $22,000	24	36	41	2,360	4,660	5,320
$22,000 to $26,000	27	39	44	3,440	6,220	7,080
$26,000 to $32,000	30	42	47	5,240	8,740	9,900
$32,000 to $38,000	33	45	50	7,220	11,440	12,900
$38,000 to $44,000	36	48	53	9,380	14,320	16,080
$44,000 to $50,000	40	50	55	11,780	17,320	19,380
$50,000 to $60,000	44	53	57	16,180	22,620	25,080
$60,000 to $70,000	47	55	59	20,880	28,120	30,980
$70,000 to $80,000	50	57	61	25,880	33,820	37,080
$80,000 to $90,000	53	59	63	31,180	39,720	43,380
$90,000 to $100,000	56	61	64	36,780	45,820	49,780
$100,000 to $150,000	58	62	65	65,780	76,820	82,280
$150,000 to $200,000	60	63	66	95,780	108,320	115,280
$200,000 to $250,000	62	64	67	126,780	140,320	148,780
$250,000 to $300,000	64	66	69	158,780	173,320	183,280
$300,000 to $400,000	66	68	71	224,780	241,320	254,280
$400,000 to $500,000	68	70	72	292,780	311,320	326,280
$500,000 to $750,000	70	71	73	467,780	488,820	508,780
$750,000 to $1,000,000	72	72	74	647,780	668,820	693,780
$1,000,000 to $2,000,000	73	73	75	1,377,780	1,398,820	1,443,780
$2,000,000 to $5,000,000	74	74	76	3,597,780	3,618,820	3,723,780
Over $5,000,000	75	75	77	----------	----------	----------

The following table sets out the effect of the integration of the defense tax by showing the increases or decreases in tax caused solely thereby:

Net income.	Single man.	Married man—no dependents.	Net income.	Single man.	Married man—no dependents.
$750	----------	----------	$15,000	$41.60	$34.10
$800	$0.25	----------	$20,000	81.85	72.10
$900	.51	----------	$25,000	127.35	122.10
$1,000	.65	----------	$30,000	152.60	149.60
$1,500	1.35	----------	$50,000	136.60	139.60
$2,000	2.05	$1.30	$60,000	−23.65	−10.90
$2,500	2.75	2.00	$80,000	−420.65	−404.90
$3,000	2.70	2.70	$100,000	−990.15	−963.90
$4,000	1.10	2.60	$150,000	−1,335.60	−1,407.60
$5,000	1.25	1.00	$250,000	−1,587.10	−1,660.60
$6,000	6.65	2.90	$500,000	−1,984.10	−2,054.60
$7,000	11.05	8.30	$750,000	−3,234.85	−3,306.10
$8,000	12.45	11.70	$1,000,000	−4,235.60	−4,307.60
$9,000	12.85	13.10	$2,000,000	−7,236.35	−7,309.10
$10,000	10.25	12.50	$5,000,000	−13,237.10	−13,310.60

The following tables compare the tax burdens and the effective rates of the present law, the House bill, and the Finance Committee bill on specified net incomes of both married and single persons:

Comparison of individual income tax on specified net incomes (all income earned) under present law, House bill, and Finance Committee bill.

Net income.	Single person.			Married person.		
	Present law.	House bill.	Finance Committee bill.	Present law.	House bill.	Finance Committee bill.
$750						
$800			$3.00			
$900	$0.44	$5.94	11.40			
$1,000	4.40	15.40	21.00			
$1,500	24.20	62.70	69.00			
$1,600	28.16	72.16	78.60			$6.00
$2,000	44.00	110.00	117.00			42.00
$2,500	63.80	157.30	165.00	$11.00	$38.50	90.00
$3,000	83.60	211.20	220.50	30.80	85.80	138.00
$4,000	123.20	338.80	346.50	70.40	180.40	249.00
$5,000	171.60	473.00	482.50	170.00	308.00	375.00
$6,000	255.20	633.60	648.50	149.60	435.60	521.00
$7,000	343.20	803.00	824.50	233.20	596.20	687.00
$8,000	448.80	1,007.00	1,030.50	316.80	756.80	873.00
$9,000	558.80	1,221.00	1,246.50	422.40	961.40	1,079.00
$10,000	686.40	1,469.60	1,492.50	528.00	1,166.00	1,305.00
$15,000	1,476.20	2,934.80	2,994.00	1,258.40	2,545.40	2,739.00
$20,000	2,666.40	4,826.80	4,929.00	2,336.40	4,338.40	4,614.00
$25,000	4,252.60	7,073.00	7,224.00	3,843.40	6,505.40	6,864.00
$30,000	6,063.20	9,543.60	9,721.50	5,614.40	8,936.40	9,339.00
$50,000	14,709.20	20,715.20	20,881.50	14,128.40	20,002.40	20,439.00
$60,000	19,954.00	26,958.80	26,966.50	19,320.40	26,206.40	26,509.00
$80,000	31,451.20	40,123.60	39,735.50	30,738.40	39,318.40	39,249.00
$100,000	44,268.40	54,168.40	53,214.00	43,476.40	53,310.40	52,704.00
$150,000	78,350.80	89,012.40	87,706.50	77,532.40	88,299.60	87,189.00
$250,000	147,576.40	159,748.00	158,191.50	146,865.60	159,013.60	157,659.00
$500,000	330,933.20	347,604.80	345,654.00	330,155.60	346,805.60	345,084.00
$750,000	522,418.80	541,347.60	538,146.50	521,619.60	540,537.60	537,569.00
$1,000,000	718,404.40	737,340.40	733,139.00	717,583.60	736,519.60	732,554.00
$2,000,000	1,511,397.20	1,530,333.20	1,523,131.50	1,510,565.60	1,529,501.60	1,522,539.00
$5,000,000	3,917,390.00	3,936,326.00	3,923,124.00	3,916,547.60	3,935,483.60	3,922,524.00

Comparison of effective rates of individual income tax on specified net incomes (all income earned) under present law, House bill, and Finance Committee bill.

Net income.	Single person.			Married person, no dependents.		
	Present law.	House bill.	Finance Committee bill.	Present law.	House bill.	Finance Committee bill.
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*
$750						
$800			0.375			
$900	0.048	0.660	1.266			
$1,000	.440	1.540	2.100			
$1,500	1.613	4.180	4.600			
$1,600	1.760	4.510	4.912			0.375
$2,000	2.200	5.500	5.850			2.100
$2,500	2.552	6.292	6.600	0.440	1.540	3.600
$3,000	2.786	7.040	7.350	1.026	2.860	4.600
$4,000	3.080	8.470	8.662	1.760	4.510	6.225
$5,000	3.432	9.460	9.650	2.200	6.160	7.500
$6,000	4.253	10.560	10.808	2.493	7.260	8.683
$7,000	4.902	11.471	11.778	3.331	8.517	9.814
$8,000	5.610	12.595	12.881	3.960	9.460	10.912
$9,000	6.208	13.566	13.850	4.693	10.682	11.988
$10,000	6.864	14.696	14.925	5.280	11.660	13.050
$15,000	9.841	19.565	19.960	8.389	16.969	18.260
$20,000	13.332	24.134	24.645	11.682	21.692	23.070
$25,000	17.010	28.292	28.896	15.373	26.021	27.456
$30,000	20.210	31.812	32.405	18.714	29.788	31.130
$50,000	29.418	41.430	41.763	28.256	40.004	40.878
$60,000	33.256	44.931	44.944	32.200	43.677	44.181
$80,000	39.314	50.154	49.670	38.423	49.148	49.061
$100,000	44.268	54.168	53.214	43.476	53.310	52.704
$150,000	52.233	59.341	58.471	51.688	58.866	58.126
$250,000	59.030	63.899	63.276	58.745	63.605	63.063
$500,000	66.186	69.529	69.130	66.031	69.361	69.016
$750,000	69.665	72.179	71.752	69.549	72.071	71.675
$1,000,000	71.840	73.734	73.313	71.758	73.651	73.255
$2,000,000	75.569	76.516	76.156	75.528	76.475	76.126
$5,000,000	78.347	78.726	78.462	78.330	78.709	78.450

3. *Returns where gross income is $3,000 or less.*—In order that persons in the lower income tax brackets, particularly those brought in by the reduction of the personal exemptions, may be caused a minimum of difficulty in filling out their returns, the optional use of a simplified return is provided where the gross income of the taxpayer does not exceed $3,000. If the taxpayer elects to use this simplified plan, the amount of the tax may be readily ascertained by reference to a table contained in the bill. This simplified return may be used only where the taxpayer's income is derived solely from salaries, wages, compensation for personal services, dividends, interest, rent, annuities, or royalties. If the taxpayer elects to use this method, no deductions or credits against net income are allowed. In lieu of these deductions and credits, the tax provided in the table represents a reduction of 10 per cent of the tax that would otherwise be payable without such deductions or credits. This 10 per cent reduction has been found to be the effect of the average amount of deductions taken by persons in the lower income brackets. One set of rates is provided for married persons or heads of families and another is provided for single persons (not heads of families). In determining the amount payable, the taxpayer in either case reduces his gross income by $400 for each dependent, then by reference to the appropriate table he ascertains the tax set out opposite the amount so determined.

It should be kept in mind that the use of the simplified return is at the option of the taxpayer and he elects each year whether to use this method or to file under the general provisions. However, once the return for any year has been filed under this method, the election shall be irrevocable, and if the taxpayer files under the general provisions for any year he may not thereafter elect for such year to be taxed under the simplified method. Nonresident alien individuals, estates, or trusts are not allowed to use the simplified method.

The following table taken from the bill sets out the amount of tax to be paid on specified amounts of income:

If the gross income is over—	But not over—	The tax shall be—		If the gross income is over—	But not over—	The tax shall be—	
		Single person (not head of a family).	Head of family or married person.			Single person (not head of a family).	Head of family or married person.
$1	$750	$0	$0	$1,650	$1,675	$76	$9
$750	775	1	0	$1,675	1,700	78	11
$775	800	2	0	$1,700	1,725	80	13
$800	825	3	0	$1,725	1,750	83	15
$825	850	5	0	$1,750	1,775	85	17
$850	875	7	0	$1,775	1,800	87	19
$875	900	9	0	$1,800	1,825	89	22
$900	925	11	0	$1,825	1,850	91	24
$925	950	14	0	$1,850	1,875	93	26
$950	975	16	0	$1,875	1,900	96	28
$975	1,000	18	0	$1,900	1,925	98	30
$1,000	1,025	20	0	$1,925	1,950	100	32
$1,025	1,050	22	0	$1,950	1,975	102	35
$1,050	1,075	24	0	$1,975	2,000	104	37
$1,075	1,100	26	0	$2,000	2,025	106	39
$1,100	1,125	29	0	$2,025	2,050	109	41
$1,125	1,150	31	0	$2,050	2,075	111	43
$1,150	1,175	33	0	$2,075	2,100	113	45
$1,175	1,200	35	0	$2,100	2,125	115	48
$1,200	1,225	37	0	$2,125	2,150	117	50
$1,225	1,250	39	0	$2,150	2,175	119	52
$1,250	1,275	42	0	$2,175	2,200	122	54
$1,275	1,300	44	0	$2,200	2,225	124	56
$1,300	1,325	46	0	$2,225	2,250	126	58
$1,325	1,350	48	0	$2,250	2,275	128	60
$1,350	1,375	50	0	$2,275	2,300	130	63
$1,375	1,400	52	0	$2,300	2,325	132	65
$1,400	1,425	55	0	$2,325	2,350	134	67
$1,425	1,450	57	0	$2,350	2,375	137	69
$1,450	1,475	59	0	$2,375	2,400	139	71
$1,475	1,500	61	0	$2,400	2,425	141	73
$1,500	1,525	63	1	$2,425	2,450	143	76
$1,525	1,550	65	2	$2,450	2,475	145	78
$1,550	1,575	68	3	$2,475	2,500	147	80
$1,575	1,600	70	5	$2,500	2,525	150	82
$1,600	1,625	72	6	$2,525	2,550	152	84
$1,625	1,650	74	7	$2,550	2,575	154	86

If the gross income is over—	But not over—	The tax shall be— Single person (not head of a family).	The tax shall be— Head of family or married person.	If the gross income is over—	But not over—	The tax shall be— Single person (not head of a family).	The tax shall be— Head of family or married person.
$2,575	$2,600	$156	$89	$2,800	$2,825	$177	$108
$2,600	2,625	158	91	$2,825	2,850	180	110
$2,625	2,650	160	93	$2,850	2,875	183	112
$2,650	2,675	163	95	$2,875	2,900	186	114
$2,675	2,700	165	97	$2,900	2,925	189	117
$2,700	2,725	167	99	$2,925	2,950	191	119
$2,725	2,750	169	102	$2,950	2,975	194	121
$2,750	2,775	172	104	$2,975	3,000	197	123
$2,775	2,800	174	106				

4. *Community income.*—Ever since the advent of the income tax, the disparity in the taxation of income in the community-property States as compared with that in the noncommunity-property States has caused considerable concern. This situation has become more accentuated as the graduated surtax rates have been increased from time to time. Married persons in the community-property States under existing law are able to effect substantial tax savings as compared with married persons in the other States. Remedies for this inequitable situation have been frequently recommended to the Congress by the Treasury Department and by various other tax experts. With the substantial increases in the surtax rates contained in the bill, these inequities become more apparent and their termination more desirable.

Consequently, your committee bill provides a method whereby taxpayers in community-property States are placed on a parity with all other taxpayers and will pay the same amount of tax as do individuals similarly situated in the noncommunity-property States.

The following table shows the Federal income-tax benefits which accrue to the earner of income in a community-property State as compared with the earner of income in a noncommunity-property State:

Tax on specified earned net incomes.

Earned net incomes.	Tax under Finance Committee bill.	Tax if equally divided between husband and wife.	Tax savings in community-property States.	Earned net incomes.	Tax under Finance Committee bill.	Tax if equally divided between husband and wife.	Tax savings in community-property States.
$3,500	$186	$186		$30,000	$9,339	$5,988	$3,351
$4,000	249	234	$15	$50,000	20,439	14,448	5,991
$5,000	375	330	45	$60,000	26,509	19,443	7,066
$6,000	521	441	80	$80,000	39,294	30,153	9,141
$7,000	687	567	120	$100,000	52,704	41,763	10,941
$8,000	873	693	180	$150,000	87,189	72,973	14,216
$9,000	1,079	819	260	$250,000	157,659	140,913	16,746
$10,000	1,305	965	340	$500,000	345,084	316,383	28,701
$12,000	1,817	1,297	520	$750,000	537,569	501,823	35,746
$15,000	2,739	1,855	884	$1,000,000	732,554	691,308	41,246
$18,000	3,819	2,493	1,326	$2,000,000	1,522,539	1,466,278	56,261
$20,000	4,614	2,985	1,629	$5,000,000	3,922,524	3,846,248	76,276
$25,000	6,864	4,355	2,509				

It will be noted that an individual with a net income of $10,000 saves $340 Federal tax solely by reason of being a resident of a community-property State. An individual with an income of $5,000 saves $45. An individual with an income of $30,000 saves $3,351, and an individual with an income of $500,000 saves $28,701.

There are only a few persons in the community-property States who derive any Federal tax benefit out of the community-property system. This is shown by the following tables:

Returns filed in community-property States in 1938.

	Total number of returns.	Community-property returns.	Per cent of total.
Arizona	20,447	713	3.49
California	523,696	22,859	4.36
Idaho	13,223	411	3.11
Louisiana	59,019	3,776	6.40
Nevada	8,969	339	3.78
New Mexico	13,690	608	4.44
Texas	205,254	13,375	6.52
Washington [1]	106,472	3,336	3.13
Total	950,770	45,417	4.78

[1] Includes Alaska.

Net incomes shown on returns filed in community-property States, 1938.

State.	Total net income, all returns.	Net income, community-property returns.	Per cent of total.
Arizona	$56,359,000	$6,832,000	12.12
California	1,569,974,000	274,429,000	17.48
Idaho	34,180,000	3,489,000	10.21
Louisiana	191,541,000	43,137,000	22.52
Nevada	27,989,000	3,712,000	13.26
New Mexico	39,211,000	5,472,000	10.50
Texas	683,096,000	162,973,000	23.86
Washington [1]	275,061,000	30,775,000	11.19
Total	2,877,411,000	530,819,000	18.46

[1] Includes Alaska.

Source: Statistics of Income 1938.

Comparison of number of community-property returns filed in 1938 by net-income classes total number of returns filed in the eight community-property States.

Net-income class.	Total number of returns filed.	Community-property returns.	Per cent community-property returns to total returns.
Under $5,000	838,882		0
$5,000 to $10,000	69,789	30,534	43.76
$10,000 to $15,000	10,907	7,384	67.70
$15,000 to $25,000	6,461	4,381	67.81
$25,000 to $50,000	3,487	2,331	66.85
$50,000 to $100,000	969	636	65.63
Over $100,000	275	151	54.91
Total	950,770	45,417	4.78

Source: Statistics of Income, 1938.

Not only does this tax saving benefit only a few individuals in the community-property States, but, as shown by the following table, less than 1 per cent of the total returns filed in the country represent community-property returns:

Individual returns with net income (excluding fiduciary returns), 1938, by sex and family relationship: number of returns, net income, and percentages.

Family relationship.	Returns.		Net income.	
	Number.	Per cent of total.	Amount (thousands of dollars).	Per cent of total.
Joint returns of husbands, wives, and dependent children, and returns of either husband or wife when no other return is filed	2,866,026	46.60	10,001,384	53.60
Separate returns of husbands and wives:				
Men	152,654	2.48	1,593,939	8.54
Women	153,143	2.49	693,027	3.71
Heads of families:				
Single men and married men not living with wives	395,073	6.42	1,040,372	5.58
Single women and married women not living with husbands	210,143	3.42	472,994	2.53
Not heads of families:				
Single men and married men not living with wives	1,418,385	23.06	2,611,197	13.99
Single women and married women not living with husbands	909,935	14.79	1,717,196	9.20
Community-property returns	45,417	.74	530,819	2.85
Total, individual returns with net income	6,150,776	100.00	18,660,929	100.00

Source: Statistics of Income, 1938.

5. *Alimony and separate maintenance payments.*—Under the existing law periodic payments of alimony or for separate maintenance are not deductible from the gross income of the spouse making such payments and are not taxable to the spouse receiving them. Thus, for example, a husband is taxed upon his entire income even though a considerable amount thereof may be going periodically to his spouse or to his former spouse under a court decree or under a written instrument incident to a divorce or separation. This situation has resulted in substantial hardship in certain cases. Your committee bill therefore provides that periodic payments of alimony or for separate maintenance shall, in taxable years beginning after December 31, 1941, be includible in the gross income of the recipient and shall be deductible from the gross income of the payor. Likewise, in the case of trusts for the payment of alimony or separate maintenance, the bill provides that the trust income shall be taxed to the beneficiary, rather than to the grantor.

II. Corporation Income and Excess-Profits Taxes.

1. CORPORATION NORMAL TAX.

The existing rate of normal tax applicable to corporate incomes generally is equivalent to 24 per cent. This percentage is the sum of 22.1 and 1.9, the former being the basic rate applicable to net incomes for taxable years beginning after December 31, 1939, and the latter being the 10 per cent increase over the basic rate of 19 per cent, which was made applicable by the Revenue Act of 1940 (though subsequently increased to 22.1 by the Second Revenue Act of 1940) to taxable years beginning after December 31, 1939. The integration of the defense-tax rate of 1.9 per cent with the basic rate removes considerable confusion and at the same time accomplishes the result of the House bill in making the defense tax permanent.

The existing rates (including the defense-tax rates) applicable to corporate net incomes of $25,000 or under are graduated as follows: 14.85 per cent on normal tax net incomes not in excess of $5,000; 16.5 per cent on the portion of such net income in excess of $5,000 and not in excess of $20,000; and 18.7 per cent on the excess over $20,000. The committee bill integrates the defense tax applicable to such net incomes and at the same time rounds them off to 15, 17, and 19 per cent, respectively.

These rate changes require an appropriate rate change in the tax on corporate net incomes somewhat in excess of $25,000. That tax is the lesser of an amount equivalent to 24 per cent of the total net income and an amount equivalent to the sum of $4,250 and 37 per cent of the net income in excess of $25,000. The amount of net income upon which the tax is the same, under whichever of these two methods it is computed, is $38,461.54. The purpose of this so-called notch provision is, of course, to avoid an abrupt ascent from an effective rate of 17 per cent (the tax on a net income of $25,000 is $4,250, or 17 per cent) to one of 24 per cent.

2. CORPORATION SURTAX.

The House bill imposed upon corporations a surtax of 5 per cent of the first $25,000 of surtax net income and 6 per cent of the balance. Your committee bill increases these rates to 6 and 7 per cent, respectively. As stated in the report of the Committee on Ways and Means, the surtax is employed as the only means of reaching income from the large volume of partially tax exempt Federal securities held by corporations. Of the total amount outstanding, nearly $31,000,000,000, over 51 per cent is held by banks and nearly 20 per cent by insurance companies.

Your committee also made a change in the corporate surtax base, the purpose of this change being to effect the equitable operation of the tax. Under the House bill, corporation surtax net income is defined as the net income minus the credit for dividends received provided for in section 26(b) of the Internal Revenue Code. The credit allowed is 85 per cent of the amount of such dividends but is subject to the limitation that it may not exceed 85 per cent of the adjusted net income. Adjusted net income, for the purposes of the corporate income tax, is defined as the net income minus the credit for interest on obligations of the United States and its instrumentalities which is allowed to an individual as a credit for the purposes of his normal tax. Inasmuch as such interest is included by the bill in surtax net income for the purposes of the corporate surtax, it is thought to be in the interest of the fair operation of the tax to substitute for the limitation under the House bill a limitation based on the amount of the net income.

3. EXCESS-PROFITS TAX.

Special 10 per cent excess-profits tax.—Your committee bill eliminates the provision of the House bill imposing a special tax of 10 per cent upon the excess of the adjusted excess-profits net income computed under the income credit over the adjusted excess-profits net income computed under the invested capital credit.

While in sympathy with the stated objective of the proposed tax—to reach profits which, though substantially in excess of those of the base period, escape excess-profits tax by reason of the allowance of the credit based on invested capital—your committee believes that it is inconsistent with the fundamental policy of Congress as expressed in the existing excess-profits tax law. The inconsistency would be more pronounced, in fact, under both the House and the Finance Committee bills, in view of the fact that both disallow normal tax as a deduction in determining excess profits net income. The effect of the disallowance upon the excess-profits credit, especially in the case of the credit computed on the basis of invested capital, is to improve the effectiveness of the excess-profits tax and, therefore, correspondingly to reduce the effectiveness of the invested capital credit as a relief measure.

The elimination of this special 10 per cent tax is also justifiable, in the opinion of your committee, on the ground that in many cases the earnings of the base period do not provide the proper measure for the determination of excess profits in the taxable period. Many circumstances may have existed in the base period as a result of which earnings at that time were quite abnormal. In the case of corporations organized in the first or a subsequent year of the base period, the average-earnings credit would likewise be entirely inadequate.

In the absence of this tax there is no need for the complementary provision of the House bill under which the disclaimer of credit was restricted to the invested capital credit.

Corporations mining strategic metals.—Section 206 of the House bill repeals section 731 of the Internal Revenue Code, a provision exempting from excess-profits tax income derived from the mining of tungsten, quicksilver, manganese,

platinum, antimony, chromite, or tin. In striking out this section of the House bill your committee leaves the existing exemption unchanged.

It was felt that the discontinuance of the exemption would operate unfairly to corporations which had proceeded in the establishment and extension of the mining properties affected. These enterprises, moreover, have the character largely of emergency enterprises, and the purpose of the existing provision was mainly to encourage the discovery and production of the metals mentioned. It is conceded that the production of such metals in normal times is largely in foreign countries and that after the existing emergency is over their importation will be resumed.

Reversal of the deduction for income and excess-profits taxes.—While your committee bill makes no change in this provision of the House bill, it is felt that the following explanation taken from the report of the Committee on Ways and Means relative to this provision may be of value:

"Under existing law, the income tax is allowed as a deduction in the computation of the excess-profits tax. It seems unfair to allow that part of the income tax which is computed on income which is not subject to the excess-profits tax to reduce the excess-profits net income. Canada allows only that part of the income tax which is computed upon income subject to the excess-profits tax. Under the World War Act, the excess-profits tax was allowed as a deduction in computing the normal tax, but the normal tax was not allowed as a deduction in computing the excess-profits tax. This is also the rule which is now applied by the British. The tax result in Canada is practically the same as the British rule and our 1918 rule. However, it is believed that the World War rule is much simpler in its application. Your committee has, therefore, deemed it advisable to return to the 1918 rule, and has disallowed the deduction of income taxes, both in the base period and in the taxable year, in computing the excess-profits tax. The deduction is allowed in computing both the normal tax and the surtax. The effect of the reversal of the deduction is that the 8 per cent credit on invested capital provided in the bill is equivalent to a credit on invested capital of 5.6 per cent after deduction of the normal tax and surtax, and the 7 per cent credit on invested capital is equivalent to a credit on invested capital of 4.9 per cent after deduction of the normal tax and surtax."

In lieu, however, of the example contained in the Ways and Means Committee report showing the effect of this provision, the following example is substituted so as to reflect the changes in surtax rates made by your committee bill:

Corporation with an excess-profits credit of $10,000,000, either under the average-earnings or invested capital method, and a taxable year's net income of $12,000,000, or $2,000,000 in excess of its excess-profits credit which it made from defense contracts.

WITHOUT REVERSAL OF CREDIT.

Net income		$12,000,000
Less normal tax and surtax:		
Normal tax at 24 per cent	$2,880,000	
Surtax 6 per cent on first $25,000	1,500	
7 per cent on balance	838,250	
Total normal tax and surtax		3,719,750
Net income less normal tax and surtax		8,280,250
Excess-profits credit		10,000,000
Excess-profits carry-over		1,719,750

WITH REVERSAL OF CREDIT.

Net income	12,000,000
Excess-profits credit	10,000,000
Adjusted excess-profits net income	2,000,000

TAX.

First $500,000	$254,000
Balance at 60 per cent	900,000
Total excess-profits tax	1,154,000

NORMAL TAX AND SURTAX.

Net income	$12,000,000
Less excess-profits tax	1,154,000
Normal tax net income	10,846,000
Normal tax at 24 per cent	2,603,040
Surtax, 6 per cent first $25,000	1,500
Balance at 7 per cent	757,470
Total normal tax and surtax	3,362,010
Plus excess-profits tax	1,154,000
Total tax with reversal of credit	4,516,010
Total tax without reversal of credit	3,719,750
Increased amount of tax	796,260

In the above case, it will be noted that without the reversal of credit this corporation, although it made an excess profit of $2,000,000 out of defense contracts, pays no excess-profits tax and would have a carry-over credit of $1,719,750 to apply against its excess profits in the following year, whereas under the reversal of credit it would pay $1,154,000 excess-profits tax, plus $3,362,101 normal tax and surtax, or a total of $4,516,010, or $796,260 more than it would pay without the reversal of credit.

4. EXCHANGES AND DISTRIBUTIONS IN OBEDIENCE TO ORDERS OF SECURITIES AND EXCHANGE COMMISSION.

Supplement R of Chapter 1 of the Internal Revenue Code contains provisions governing the nonrecognition of gain or loss and the basis for determining gain or loss upon exchanges and distributions in obedience to orders of the Securities and Exchange Commission. Section 373 of the Code contains a definition of such orders, and one of the limitations under that definition is that the order must be issued after May 28, 1938, and prior to January 1, 1941. The committee bill contains a new provision under which the existing period of issuance is extended to January 1, 1943. The amendment is designed to extend the advantages of the supplement to exchanges and distributions the order for which by the Securities and Exchange Commission can not be issued within the limited period provided for in existing law.

III. CAPITAL STOCK TAX AND DECLARED VALUE EXCESS PROFITS TAX.

1. CAPITAL STOCK TAX.

The House bill increased the capital stock tax rate from $1.10 ($1 plus 10 cents defense tax) per $1,000 of adjusted declared value to $1.25, effective for the year ending June 30, 1941. In addition, the Commissioner of Internal Revenue extended the time for filing returns and paying the tax for such year until September 29, 1941. This is the longest extension of time permissible under existing law.

Your committee bill retains the rate provided in the House bill. In addition, it authorizes the Commissioner to extend the time for filing returns and paying the tax for the year ending June 30, 1941, to not more than 90 days. This will permit an extension of 30 days beyond September 29, 1941.

Under existing law corporations must declare this year a capital stock valuation binding upon them for this year and the two subsequent years. Because of the great difficulty under present conditions in estimating future income, particularly in view of the possible restrictions that may result from priorities, your committee deems it equitable to allow an annual declaration of capital stock value.

2. DECLARED VALUE EXCESS-PROFITS TAX.

The House bill makes permanent the 10 per cent defense tax as applied to the declared value excess-profits tax. Here, as in the income tax, it is felt desirable to integrate the defense tax into the basic declared value excess-profits rates. Thus the basic rate of 6 per cent becomes 6⁹⁄₁₀ and the 12 per cent rate becomes 13⁹⁄₁₀. No change in the effective rate is accomplished thereby.

IV. ESTATE AND GIFT TAXES.

The House bill increased the estate and gift tax rates and made permanent the 10 per cent defense tax. The Finance Committee bill retains the rate increases but integrates in these basic rates the 10 per cent defense tax instead of having it apply as a separate computation. In adding 10 per cent to the estate tax rates in the brackets, fractions of percentages have been avoided.

The following table shows the bracket rates under the House bill and those under the Finance Committee bill, along with the cumulative tax on the higher amount shown in the bracket. It should be noted that to the tax as computed under the House bill the defense tax adds 10 per cent of the amount of the tax so computed, while under the Finance Committee bill the defense tax is integrated into the rates shown.

Net estate.	House bill.		Finance Committee bill.	
	Bracket rate.	Cumulative tax on higher amount.	Bracket rate.	Cumulative tax on higher amount.
	Per cent.		*Per cent.*	
$0 to $5,000	3	$150	3	$150
$5,000 to $10,000	7	500	7	500
$10,000 to $20,000	10	1,500	11	1,600
$20,000 to $30,000	13	2,800	14	3,000
$30,000 to $40,000	16	4,400	18	4,800
$40,000 to $50,000	20	6,400	22	7,000
$50,000 to $60,000	23	8,700	25	9,500
$60,000 to $100,000	25	18,700	28	20,700
$100,000 to $250,000	27	59,200	30	65,700
$250,000 to $500,000	29	131,700	32	145,700
$500,000 to $750,000	32	211,700	35	233,200
$750,000 to $1,000,000	34	296,700	37	325,700
$1,000,000 to $1,250,000	36	386,700	39	423,200
$1,250,000 to $1,500,000	38	481,700	42	528,200
$1,500,000 to $2,000,000	41	686,700	45	753,200
$2,000,000 to $2,500,000	45	911,700	49	998,200
$2,500,000 to $3,000,000	48	1,151,700	53	1,263,200
$3,000,000 to $3,500,000	51	1,406,700	56	1,543,200
$3,500,000 to $4,000,000	54	1,676,700	59	1,838,200
$4,000,000 to $5,000,000	58	2,256,700	63	2,468,200
$5,000,000 to $6,000,000	61	2,866,700	67	3,138,200
$6,000,000 to $7,000,000	64	3,506,700	70	3,838,200
$7,000,000 to $8,000,000	66	4,166,700	73	4,568,200
$8,000,000 to $10,000,000	69	5,546,700	76	6,088,200
Over $10,000,000	70	----------	77	----------

The following table shows a comparison of the Federal estate tax burden (before allowance of credit for State death taxes) under existing law, the House bill, and under the Finance Committee bill upon net estates (before exemption) of selected sizes:

Net estate before exemption.	Amount of tax.			Effective rate.			Increase in tax over present law.			
							Amount.		Per cent.	
	Present law.[1]	House bill.[1]	Finance Committee bill.	Present law.[1]	House bill.[1]	Finance Committee bill.	House bill.[1]	Finance Committee bill.	House bill.[1]	Finance Committee bill.
				Per cent.	*Per cent.*	*Per cent.*				
$50,000	$220	$550	$500	0.4	1.1	1.0	$330	$280	150.0	127.3
$60,000	660	1,650	1,600	1.1	2.8	2.7	990	940	150.0	142.4
$80,000	2,200	4,840	4,800	2.8	6.1	6.0	2,640	2,600	120.0	118.2
$100,000	4,620	9,570	9,500	4.6	9.6	9.5	4,950	4,880	107.1	105.6
$200,000	21,660	38,270	38,700	10.8	19.1	19.4	16,610	17,040	76.7	78.7
$400,000	63,780	99,530	100,900	15.9	24.9	25.2	35,750	37,120	56.1	58.2
$600,000	112,340	164,590	166,700	18.7	27.4	27.8	52,250	54,360	46.5	48.4
$800,000	167,340	234,330	236,900	20.9	29.3	29.6	66,990	69,560	40.0	41.6
$1,000,000	228,780	308,090	310,900	22.9	30.8	31.1	79,310	82,120	34.7	35.9
$2,000,000	588,000	727,370	735,200	29.4	36.3	36.8	139,370	147,200	23.7	25.0
$4,000,000	1,499,640	1,792,570	1,814,600	37.5	44.8	45.4	292,930	314,960	19.5	21.0
$6,000,000	2,655,140	3,075,450	3,111,400	44.3	51.3	51.9	420,310	456,260	15.8	17.2
$10,000,000	5,323,500	5,964,250	6,057,800	53.2	59.6	60.6	640,750	734,300	12.0	13.8
$20,000,000	12,532,700	13,503,890	13,757,400	62.7	67.5	68.8	971,190	1,224,700	7.7	9.8
$40,000,000	27,391,820	28,583,890	29,157,400	68.5	71.4	72.9	1,192,070	1,765,580	4.4	6.4
$60,000,000	42,361,380	43,663,890	44,557,400	70.6	72.8	74.3	1,302,510	2,196,020	3.1	5.2
$100,000,000	72,521,380	73,823,890	75,357,400	72.5	73.8	75.4	1,302,510	2,836,020	1.8	3.9

[1] Includes the defense tax which is equal to 10 per cent of the Federal tax after allowance of the credit for State death taxes (the credit for State death taxes is assumed to be 80 per cent of the tax imposed under the 1926 Act)

As under both the existing law and the House bill, the gift tax rates are fixed at three-fourths of the comparable bracket rates of the estate tax. The following table compares the gift tax rates under the House bill with those under the Finance Committee bill and shows the cumulative tax on the higher amount shown in the brackets. As under the estate tax, it should be noted here also that the 10 per cent defense tax is added to the tax as computed under the rates of the House bill, while under the Finance Committee bill the defense tax is integrated into the rates shown.

Net gift.	House bill.		Finance Committee bill.	
	Bracket rate.	Cumulative tax on higher amount.	Bracket rate.	Cumulative tax on higher amount.
	Per cent.		*Per cent.*	
$0 to $5,000	2.25	$112.5	2.25	$112.5
$5,000 to $10,000	5.25	375	5.25	375
$10,000 to $20,000	7.50	1,125	8.25	1,200
$20,000 to $30,000	9.75	2,100	10.50	2,250
$30,000 to $40,000	12.00	3,300	13.50	3,600
$40,000 to $50,000	15.00	4,800	16.50	5,250
$50,000 to $60,000	17.25	6,525	18.75	7,125
$60,000 to $100,000	18.75	14,025	21.00	15,525
$100,000 to $250,000	20.25	44,400	22.50	49,275
$250,000 to $500,000	21.75	98,775	24.00	109,275
$500,000 to $750,000	24.00	158,775	26.25	174,900
$750,000 to $1,000,000	25.50	222,525	27.75	244,275
$1,000,000 to $1,250,000	27.00	290,025	29.25	317,400
$1,250,000 to $1,500,000	28.50	361,275	31.50	396,150
$1,500,000 to $2,000,000	30.75	515,025	33.75	564,900
$2,000,000 to $2,500,000	33.75	683,775	36.75	748,650
$2,500,000 to $3,000,000	36.00	863,775	39.75	947,400
$3,000,000 to $3,500,000	38.25	1,055,025	42.00	1,157,400
$3,500,000 to $4,000,000	40.50	1,257,525	44.25	1,378,650
$4,000,000 to $5,000,000	43.50	1,692,525	47.25	1,851,150
$5,000,000 to $6,000,000	45.75	2,150,025	50.25	2,353,650
$6,000,000 to $7,000,000	48.00	2,630,025	52.50	2,878,650
$7,000,000 to $8,000,000	49.50	3,125,025	54.75	3,426,150
$8,000,000 to $10,000,000	51.75	4,160,025	57.00	4,566,150
Over $10,000,000	52.50	----------	57.75	----------

V. Excise Taxes.

1. DISTILLED SPIRITS.

Under existing law the tax on distilled spirits (other than brandy) is $3 per proof gallon and on brandy $2.75. The House bill increased these taxes by $1, making the distilled spirits tax $4 and that on brandy $3.75. Your committee bill eliminates this differential between brandy and other distilled spirits and applies the $4 rate to brandy as well as other distilled spirits.

2. WINES.

The House bill increased the tax on wines containing not more than 14 per cent of alcohol from 6 cents per gallon to 8 cents; on wines containing more than 14 per cent but not more than 21 per cent of alcohol, from 18 cents to 24 cents; and on wines containing more than 21 per cent but not more than 24 per cent of alcohol, from 30 cents to 50 cents. Wines containing more than 24 per cent of alcohol are taxed as distilled spirits.

It was pointed out by the Treasury Department that even these increases were not sufficient to bring the tax on wines to a comparable basis with the taxes on other alcoholic beverages. Consequently, your committee recommends that the 8-cent rate be increased to 10 cents, the 24-cent rate increased to 35 cents, and the 50-cent rate increased to 65 cents. Likewise, the rate of 4 cents for each one-half pint of champagne and sparkling wine, provided in the House bill, is increased to 7 cents, and the rate on artificially carbonated wine and on liqueurs and cordials is increased from 2¼ cents to 3½ cents per one-half pint.

3. ADMISSIONS TAX.

Under existing law amounts paid for admissions of less than 21 cents are exempt from the tax on admissions. The House bill reduced the exemption to amounts of less than 10 cents. Your committee bill eliminates this exemption entirely. In addition, the tax rate provided in the House bill of 1 cent for each 10 cents or fraction thereof of the amounts paid for admission has been replaced by the following schedule of rates:

If the amount charged is—	The tax shall be—
Not over 10 cents	1 cent.
Over 10 cents and not over 15 cents	2 cents.
Over 15 cents and not over 20 cents	3 cents.
Over 20 cents and not over 25 cents	4 cents.
Over 25 cents and not over 35 cents	5 cents.
Over 35 cents and not over 40 cents	6 cents.
Over 40 cents and not over 45 cents	7 cents.
Over 45 cents and not over 50 cents	8 cents.
Over 50 cents	15 per cent of the amount charged; fractions of one-half cent or more shall be increased to 1 cent; smaller fractions shall be disregarded.

Under existing law in the case of persons admitted free or at reduced rates, a tax based on the established charge applies, except when the person admitted is a bona fide employee, municipal officer on official business, or a child of less than 12 years of age. The House bill extends this category to include members of the armed forces of the United States and of the Civilian Conservation Corps when in uniform.

Because of the practice now generally followed by many motion picture theaters of admitting high-school-age boys and girls at reduced rates, the above limitation of 12 years of age has been increased to 18 years by your committee bill. Thus, with respect to persons under 18 years of age, as well as the other persons above described, the tax is based upon the amount actually paid and not upon the established price.

The House bill strikes from existing law all classes of exemptions from the admissions tax except that based only upon the amount paid. Your committee bill restores the exemption of admissions to agricultural fairs and to certain concerts conducted by civic or community membership associations.

4. CABARET, ROOF GARDEN, ETC., TAX.

While your committee has made no change in the House bill with respect to this tax, it feels that it may be desirable to clear up a misunderstanding which has arisen regarding the right of the operator of a cabaret, roof garden, or similar establishment to pass on to the patrons the amount of the tax paid. As is the case with respect to all other excise taxes imposed by the Federal Government, the law imposes no restriction upon the extent to which such taxes may be passed on in the price of the goods sold or in the payment for services rendered.

5. TAX ON TELEPHONE, TELEGRAPH, AND CABLE MESSAGES AND SERVICES.

Under existing law, telephone, telegraph, and radio or cable messages are taxed in separate categories and at separate rates. The House bill consolidates these items and applies to the charge for such messages a tax of 5 cents for each 50 cents or fraction thereof where the charge is more than 24 cents.

Your committee bill leaves the tax on telephone and radiotelephone conversations as above described, but on telegraph, cable, or radio messages imposes, in lieu of the above rates, a tax of 10 per cent of the amount charged.

The House bill continued the present rate of 5 per cent upon leased wire or talking circuit special service but added to this category certain wire and equipment services such as teletypewriter service, burglar alarm service, news ticker service, stock quotation and information services. Your committee bill places leased wire, teletypewriters, or talking circuit special service in one category and increases the tax on the amounts paid therefor from 5 to 10 per cent. It leaves in effect the 5 per cent rate with respect to other wire and equipment services such as stock quotation and information services, but specifically excludes news ticker services where a general news service similar to that contained in the public press is furnished. Likewise, amounts paid for burglar or fire alarm services are exempted.

The House bill imposed a tax of 5 per cent upon amounts paid by subscribers for local telephone service. The committee bill increases this rate to 10 per cent.

6. TAX ON SOFT DRINKS.

The House bill contains a tax on bottled soft drinks of one-sixth of a cent per bottle on bottles to be sold at retail for less than 10 cents per bottle and at corresponding rates on bottles to sell for more than 10 cents. Similarly, taxes were imposed upon finished or fountain sirups and upon carbonic-acid gas. It was demonstrated to your committee that these taxes would prove a serious hardship upon bottlers, particularly the smaller ones, and that the margin of profit in many cases was less than the tax which would have to be absorbed.

A tax reduced to a point where it could be absorbed safely would produce very little revenue but would impose the same administrative burden as the tax at the higher rate. Consequently, your committee has stricken this tax from the bill.

7. TAX ON ELECTRIC, GAS, AND OIL APPLIANCES.

The House bill imposes a tax of 10 per cent upon the manufacturer's sale of electric appliances. It was pointed out that the exclusion of gas and oil water heaters and cooking appliances created an unfair competitive situation. Consequently, these gas and oil appliances are included in the taxable category and are taxed at the 10 per cent rate.

8. WASHING MACHINES.

The House bill lays a 10 per cent tax upon the manufacturer's sale of washing machines of the kind used in commercial laundries. Your committee bill applies this tax with respect to all washing machines.

9. ELECTRIC LIGHT BULBS.

Your committee has placed a tax of 10 per cent upon the manufacturer's sale of electric light bulbs.

10. RETAILERS' EXCISE TAXES.

In connection with the consideration of these taxes, it was brought to the attention of your committee that serious competitive situations might arise where some sellers of toilet preparations, furs, or jewelry might advertise or otherwise represent that the price for which these articles are to be sold does not include the tax. Consequently, a provision has been inserted imposing a penalty of not more than $1,000 upon any person who in connection with the sale or lease of furs, jewelry, or cosmetics makes any statement intended or calculated to lead any person to believe that the price of such article does not include the tax.

11. TAX ON THE TRANSPORTATION OF PERSONS.

No change is made in this tax as contained in the House bill except to exempt amounts paid for transportation of not more than 1¼ cents per mile applicable to round-trip tickets sold to soldiers, sailors, marines, and members of the Coast Guard when in uniform and traveling at their own expense.

12. TAX ON COIN-OPERATED AMUSEMENT AND GAMING DEVICES.

The House bill places a special tax of $25 per year upon each coin-operated amusement or gaming device maintained for use on any premises.

Your committee divides these devices into two categories. Upon so-called pinball or other amusement devices operated by the insertion of a coin or token, the tax is reduced to $10 per year. Upon so-called slot machines, however, the tax is placed at $200 per year.

13. INSTALLMENT SALES.

Where any article subject to a manufacturers' excise tax is sold under an installment sale contract before the effective date of Part IV of this bill, and delivery is made before such date, the tax applicable to the installments after such date shall be at the rate in force prior to such date. As a result, the new taxes imposed by this bill or the increases in existing taxes are not applicable to such installments.

A similar rule is made applicable with respect to the new retail taxes imposed by the bill.

14. OUTDOOR ADVERTISING.

The committee eliminated from the House bill the section imposing a special tax on persons maintaining or controlling the use of billboards for outdoor advertising. The tax, an annual levy, was graduated on the basis of the advertising space area of the billboard.

In the opinion of the committee this tax would entail administrative expense and difficulties incommensurate with its value as a revenue producer. It is believed also that if such a tax were to be imposed it would be desirable to provide for an exemption of billboards the use of which is donated to the Federal Government for the purpose of aiding it in recruiting for the military and naval forces and in the sale of its securities. It is regarded also as a tax regulatory in some degree of a matter which might preferably be left in the hands of State and local authorities.

15. RADIO BROADCASTING STATIONS AND NETWORKS.

The tax imposed by the House bill on persons operating radio broadcasting stations or engaging in network broadcasting has been stricken out. The reasons in consideration of which the Ways and Means Committee recommended and the House adopted the tax are recognized as having considerable force, but it is believed that the peculiar characteristics of this possible source of revenue require careful study before either the proper basis or rate of tax can be satisfactorily determined. It is the opinion of the committee also that the tax imposed by the House bill would operate with some unjustified discrimination against this particular form of advertising.

16. COCONUT OIL.

The committee added to the House bill a section amending Chapter 21 of the Internal Revenue Code by adding at the end thereof a new section, num-

bered 2483, which provides, under certain limitations, that the processing tax provided for in that chapter collected with respect to coconut oil wholly of the production of Guam or American Samoa or produced from materials wholly of the growth or production of those islands shall be held as separate funds and paid into their respective treasuries. The collections affected are those made after the date of the enactment of the bill.

The provision is similar to an existing provision, section 2473 of the Internal Revenue Code, governing the disposition of collections from the processing tax on coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production.

VI. Nonessential Federal Expenditures.

This amendment establishes a committee to investigate nonessential Federal expenditures. The committee is to be composed of (*a*) three members of the Senate Committee on Finance and three members of the Senate Committee on Appropriations, to be appointed by the President of the Senate; (*b*) three members of the House Committee on Ways and Means and three members of the House Committee on Appropriations, to be appointed by the Speaker of the House of Representatives; and (*c*) the Secretary of the Treasury and the Director of the Bureau of the Budget. It shall be the duty of such committee to make a complete study and investigation of all expenditures of the Federal Government with a view to recommending the elimination or reduction of all such expenditures deemed to be nonessential. The committee shall report to the President and to the Congress the result of its study together with its recommendations at the earliest practicable date. It is given the authority and powers commonly given to similar committees of the Senate and will operate under an appropriation not to exceed $10,000.

Paralleling this action, your committee also adopted a committee resolution calling upon the Director of the Budget, under the Budget and Accounting Act of 1920, to submit to the chairman of your committee a report showing how nondefense and nonessential budget items may be reduced by alternative totals of (1) $1,000,000,000; (2) $1,500,000,000; (3) $2,000,000,000. Such report would be available not only to the appropriate committees of the House and Senate but to the committee established under this amendment. The action of your committee in this respect is in line with repeated recommendations of the Secretary of the Treasury before both the Committee on Ways and Means of the House and your committee.

DETAILED DISCUSSION OF THE PROVISIONS OF THE BILL.

Title I—Individual and Corporation Income Taxes.

SECTION 101. SURTAX ON INDIVIDUALS.

Under the House bill, the surtaxes apply upon the entire surtax net income and hence the exemption from surtax of the first $4,000 of surtax net income found in existing law is abolished. The lowest surtax bracket rate is 5 per cent, as compared with 4 per cent under existing law. The surtaxes are increased in all brackets up to $750,000 and from that point the rates of existing law are retained. While the rates attributable to surtax net income in excess of $750,000 are not increased, surtaxes payable by taxpayers in these upper brackets are increased by reason of the higher rates in the lower brackets.

Under the bill as reported by your committee, further increases in the surtax rates are made as the result of the integration of the defense tax and the surtax rates. The lowest surtax bracket rate is therefore 6 per cent, as compared with 5 per cent under the House bill, and the rates on income in excess of $750,000 are likewise increased, the highest rate being 77 per cent, as compared with the 75 per cent contained in existing law and in the House bill.

SECTION 102. OPTIONAL TAX ON INDIVIDUALS WITH CERTAIN GROSS INCOME OF $3,000 OR LESS.

Section 102 of the bill adds to the Internal Revenue Code a new supplement designated "Supplement T" and comprising sections 400 to 404, inclusive. No comparable provisions are contained in the House bill.

Section 400 of Supplement T imposes a tax upon individuals whose gross income is $3,000 or less and consists wholly of salary, wages, compensation for personal services, dividends, interest, rents, annuities, or royalties. The tax is imposed at the election of the taxpayer and is in lieu of the tax imposed by sections 11 and 12. If the taxpayer's gross income exceeds $3,000 or if he has income from any source, or of any class, other than those specified in section 400, he may not avail himself of the election. For instance, the section is not available to a taxpayer who has income from the conduct of a business, or from a partnership or trust, or who has realized gain from the sale or exchange of property. If a husband and wife file separate returns under the section, the limitation of $3,000 applies to the gross income of each; if they file a joint return, the limitation applies to the combined gross income of the spouses.

The amount of the tax imposed on specified amounts of gross income is determined by reference to the schedule set forth in section 400, a duplicate of which will be printed on the reverse of the form prescribed for making a return of the tax under such section. Gross incomes are grouped in blocks of $25 with the same tax payable for all incomes falling within the particular block. The tax imposed is the amount appearing in column 3 or 4 opposite the particular block. If the taxpayer is a single person who is not the head of a family, the tax imposed is the amount set forth in column 3. If the taxpayer is the head of a family or a married person, the tax imposed is the amount set forth in column 4. If a taxpayer has one or more dependents, he merely subtracts from his gross income $400 for each such dependent and finds the block in which falls the reduced amount.

The amount of the tax imposed in the various blocks is the average of the tax imposed by sections 11 and 12 on the lower and upper limits of the blocks, reduced by 10 per cent as an allowance in lieu of deductions from gross income. The schedule takes into account a personal exemption of $750 for a single person and $1,500 for a married person or the head of a family, the same as allowed by section 25 in respect of the tax imposed by sections 11 and 12.

Section 401 prescribes certain rules to be observed in the application of the schedule set forth in section 400. The section states that only a married person living with husband or wife is to be deemed a "married person" for the purposes of Supplement T, and specifically defines a "dependent." For the purposes of this Supplement, the status of a taxpayer as a "married person," "head of a family," or "dependent" is to be determined as of the last day of the taxable year. Consequently, the provisions of section 25(b)(3) relating to the apportionment of the personal exemption and credit for dependents by reason of a change of status during the taxable year have no application in ascertaining the amount of the tax under section 400. Thus, if a taxpayer has on the last day of the taxable year a dependent within the meaning of the definition contained in section 401, he is entitled to reduce his gross income by $400 in order to ascertain the amount of tax, and it is immaterial that the dependent may have occupied such status for only a portion of the taxable year.

Section 401 provides that if a husband and wife living together file separate returns under section 400, each shall be treated as a single person. Thus, in effect, each receives the benefit of one-half the personal exemption allowed a husband and wife. If they file separate returns and one spouse elects to be taxed under section 400, such spouse is taxed as a single person and in effect receives the benefit of one-half the personal exemption allowed a married person. The personal exemption and credit for dependents of the spouse who does not elect to be taxed under section 400 is determined under the provisions of section 25(b) and is not governed by his status on the last day of the taxable year. Under the provisions of section 25(b), as amended by section 111 of the bill, such spouse will be allowed for that portion of the taxable year during which he occupied the status of a married person living with husband or wife one-half of the personal exemption allowed a married person for such portion of the taxable year.

For example, H, a widower having two dependents, marries W, a single person, on July 1, 1941. For the calendar year 1941, they filed separate returns and W elects to be taxed under section 400. W is taxed as a single person and, since she receives the benefit of a $750 exemption, she in effect receives the benefit of half the marital exemption of $750 for the second half of the year by reason of her status on the last day of the taxable year. H, who is taxed under sections 11 and 12, is subject to the provisions of section 25(b)(3) requiring an apportionment of the personal exemption and credit for dependents by reason of a change of status during the taxable year. H qualifies as the head of a family for the first six months of the taxable year and as a mar-

ried person living with husband or wife for the last six months. Accordingly, his personal exemption is six-twelfths of $1,500 for the first half of the year plus six-twelfths of $750 for the second half, or $1,125. Inasmuch as his status as the head of a family arises from the fact that he maintained a home for two dependent children, the credit for one of such dependents for the first six months of the taxable year is disallowed. He is therefore entitled to a credit for one dependent for the first six months and a credit for two dependents for the last six months. His credit for dependents is therefore $600.

Section 401 also provides that a married person who is not the head of a family and is not living with husband or wife on the last day of the taxable year shall be subject to the tax imposed upon a single person.

An election to be taxed under section 400 can be made only by affirmative action of the taxpayer. Section 402 provides that the election to be taxed under section 400 shall be made by filing a return for the taxable year on the form prescribed for making a return of the tax under this section. Such an election once made is irrevocable. Consequently, such election may not be changed by an amended return. Moreover, if for any taxable year the taxpayer makes a return without regard to this supplement he may not thereafter elect for such taxable year to have his tax computed under this supplement. If the taxpayer fails to file a return for the taxable year and the Commissioner or the collector makes a return under the authority of section 3612, such return shall be made without regard to the provisions of this supplement and the taxpayer shall be deemed to have lost his right to make an election for the taxable year under this supplement.

Section 403 provides that the provisions of section 31 (relating to foreign tax credit) and section 32 (relating to taxes withheld at source) shall not apply with respect to the tax imposed by Supplement T. This provision is necessary in the interest of simplicity. If substantial amounts of either such credit are involved, the taxpayer should make his return under the general provisions of the statute.

Section 404 provides that Supplement T shall not apply to a nonresident alien individual, or an estate or trust. This provision is also necessitated in the interest of simplicity. Such taxpayers are subject to special provisions of the statute that are not readily adaptable to the method of taxation employed in Supplement T.

Section 102(b) of the bill amends sections 11 and 12 of the Code to include cross-references to section 400.

Section 102(c) of the bill amends section 4 of the Code to insert references to Supplements S and T.

SECTION 103. CORPORATION DEFENSE-TAX RATES INCORPORATED IN RATE SCHEDULE.

Section 103 of the House bill makes permanent the defense tax imposed by section 15 of the Internal Revenue Code as added by section 201 of the Revenue Act of 1940.

Section 103 of the bill as reported by your committee integrates the defense-tax rates with the rates provided in section 13(b) (1) and (2) of the Code. Under the bill the permanent normal tax rate applicable to corporations not entitled to the special treatment provided for small corporations is 24 per cent, and is thus the same as under existing law including the defense tax. The rates of tax applicable to corporations having normal tax net income of $25,000 or less are as follows:

	Per cent.
First $5,000	15
Next $15,000	17
Next $5,000	19

The alternative tax in the case of corporations the normal tax net income of which is slightly in excess of $25,000 is $4,250 plus 37 per cent of the normal tax net income in excess of $25,000. Under this provision the full tax rate of 24 per cent does not become effective until the normal tax net income of the corporation reaches $38,461.54. Integration of the defense-tax rates and the normal tax rates causes the double notch provision found in existing law to disappear.

There is a corresponding integration of the defense tax with the normal taxes on resident foreign corporations and on mutual investment companies, and with the surtax on corporations improperly accumulating surplus.

SECTION 104. SURTAX ON CORPORATIONS AND TERMINATION OF DEFENSE TAX.

Section 102 of the House bill, adding section 16 to the Internal Revenue Code, imposes upon all corporations (including insurance companies), except nonresident foreign corporations and mutual investment companies (the latter being later dealt with in the section), a surtax of 5 per cent upon the first $25,000 of corporation surtax net income and 6 per cent upon the excess of such income over $25,000. Complementary amendments are made to sections 104(b), 231(b), 251(c)(1), and 261(a). Corporation surtax net income is defined as net income minus the credit for dividends received provided in section 26(b) and thus includes interest on partially tax-exempt securities in the tax base. Such section also imposes upon mutual investment companies a surtax upon Supplement Q surtax net income of such companies at rates corresponding to those imposed upon corporations generally.

Section 104 of the bill as reported by your committee corresponds to section 102 of the House bill and, in addition, terminates the defense tax, the defense-tax rates being integrated with the other income taxes in other sections of the bill.

In lieu of the surtax rates contained in the House bill, the bill as reported by your committee provides a surtax of 6 per cent on the first $25,000 of surtax net income and 7 per cent on the remainder. Since the eredit for interest on partially tax-exempt Government securities is not allowable in computing suxtax net income, the bill as reported by your committee also provides that, for the purposes of the surtax, the dividends-received credit shall be limited to 85 per cent of the net income rather than 85 per cent of the adjusted net income.

SECTION 105. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

This section corresponds to section 104 of the House bill, which increases the rate of tax on nonresident alien individuals to 25 per cent. Such rate has been increased to 27½ per cent, thereby integrating the 10 per cent defense tax with such tax. This section also amends section 211(c) of the Internal Revenue Code by changing to $23,000 the figure at which a nonresident alien individual becomes subject to the full normal tax and surtax rates. Such figure represents the approximate point at which, under the provisions of the bill, an effective rate of 27½ per cent is reached.

SECTION 106. TAX ON FOREIGN CORPORATIONS.

Section 231(a) of the Internal Revenue Code, amended by section 105 of the House bill so as to increase the rate of tax on nonresident foreign corporations from 15 to 25 per cent, is further amended so as to integrate the defense tax by increasing such rate to 27½ per cent.

SECTION 107. WITHHOLDING OF TAX AT SOURCE.

This section is the same as section 106 of the House bill, which provides for withholding of the tax at the source (by means of which the tax in the case of nonresident aliens is very largely collected) at the rate of 27½ per cent instead of 16½ per cent under existing law. The rate of 27½ per cent represents the rate of tax imposed by section 211(a)(1) (A) after its amendment by section 105 of the bill. The increased rates of withholding will not go into effect until the tenth day after the enactment of the Act in order to afford a reasonable period within which withholding agents will be informed of the higher rates applicable to payments made to nonresident aliens or nonresident foreign corporations.

SECTION 108 (TREATY OBLIGATIONS) AND SECTION 109 (REDUCTION IN PURSUANCE OF TREATIES OF RATES OF TAX AND WITHHOLDING ON NONRESIDENT ALIEN INDIVIDUALS RESIDENT IN, AND CORPORATIONS ORGANIZED UNDER LAWS OF, WESTERN HEMISPHERE COUNTRIES).

These sections are the same as sections 108 and 109 of the House bill. Section 108 provides that no amendment made by this title shall apply in any case where its application would be contrary to any treaty obligation of the United States. Section 109 authorizes reduction by treaty in the rate of taxation and of with-

holding with respect to dividends derived from sources within the United States by nonresident foreign corporations organized under the laws of any country in North, Central, or South America, or in the West Indies, or of Newfoundland.

SECTION 110. DEFENSE TAX RATES ON PERSONAL HOLDING COMPANIES AND TRANSFERS TO AVOID INCOME TAX INCORPORATED IN RATE SCHEDULES.

This section corresponds to section 109 of the House bill, which amends section 500(b) and section 1250(b) of the Internal Revenue Code in order to make permanent the defense taxes imposed by such sections on personal holding companies and on transfers to avoid income tax. The bill as reported by your committee repeals these sections, and the taxes imposed by them are integrated with the tax on personal holding companies and the tax on transfers to avoid income tax.

SECTION 111. PERSONAL EXEMPTION.

This section, for which there is no corresponding provision in the House bill, amends section 25(b)(1) by lowering the personal exemption of married persons from $2,000 to $1,500 and the personal exemption of single persons from $800 to $750. The section also amends section 214 of the Internal Revenue Code (relating to personal exemption of nonresident alien individuals) and section 251(f) of the Internal Revenue Code (relating to personal exemption of citizens entitled to the benefits of section 251) by striking out $800 and inserting in lieu thereof $750 in conformity with the changes made in section 25(b).

This section further amends section 25(b)(1) relative to the personal exemption of a married person whose spouse files a separate return under Supplement T, added by section 102 of the bill.

SECTION 112. RETURNS OF INCOME TAX.

In accordance with the change in the personal exemption made by section 111 of the bill, this section amends section 51(a) of the Internal Revenue Code to require a return in the case of any individual whose gross income is equal to or in excess of the personal exemption as reduced by section 111. Thus, a return is required from any individual who is single or married but not living with husband or wife if his gross income is $750 or over, and from a married individual living with husband or wife if having a gross income of $1,500 or over if the other spouse has no gross income, or having a gross income together with the other spouse of $1,500 or over.

A similar change has been made with respect to fiduciary returns and with respect to the amount of payments to individuals which requires an information return from the payor of the income.

SECTION 113. CREDIT FOR DEPENDENTS.

This section is the same as section 110 of the House bill, which amends section 25(b)(2) of the Internal Revenue Code relative to the credit for dependents.

In the case of the head of a family or a married person living with husband or wife, the existing law provides as a credit against net income a personal exemption plus $400 for each dependent other than husband or wife. Under these provisions, a married person living with husband or wife and having no dependents receives as a maximum credit the personal exemption. On the other hand, an unmarried person maintaining a home for a person who also qualifies as a dependent may receive in addition to the same personal exemption a credit for $400 for such dependent. The proposed legislation disallows the credit for one dependent in cases where the taxpayer's status as head of a family is occasioned solely by the existence of one or more of such dependents. The amendment will not affect any case except one in which the taxpayer occupies the status as head of a family solely by reason of the existence of a person for whom he is also entitled to the credit for a dependent. For instance, it will not operate to reduce the credit in the case where a widower is maintaining a home for two children, only one of whom qualifies as a dependent. In such case, the status as head of a family is not occasioned solely by existence of the child in respect of whom the credit of $400 is allowed and consequently the taxpayer may be entitled to the personal exemption allowed the head of a family plus the $400 credit, the same as under existing law.

SECTION 114. NONINTEREST-BEARING OBLIGATIONS ISSUED AT DISCOUNT.

This is the same as section 111 of the House bill and provides that any taxpayer who owns any noninterest-bearing obligations issued at a discount and redeemable for fixed amounts increasing at stated intervals and who, under the method of accounting used by him in computing his net income, is not permitted to report the increment in value of such obligations as it accrues, may, at his election, treat such increment in value as constituting income to him in the year in which it accrues rather than in the year in which the obligations are disposed of, redeemed, or paid at maturity. Under existing law a taxpayer on the accrual basis who owns, for example, noninterest-bearing United States defense bonds is required to report the increment as it accrues, whereas a taxpayer on the cash basis who owns such defense bonds is required to treat the entire increment in value as being income received in the year of redemption or maturity. Therefore, with respect to such noninterest-bearing United States defense bonds, the effect of this section is to extend, at the election of the taxpayer, the accrual method to a taxpayer on the cash basis, but only for the limited purpose of reporting the increment in value of such bonds as it accrues.

The election provided for in this section must be made in the taxpayer's return, and may be made for any taxable year beginning after December 31, 1940. When so made with respect to any obligation, the election shall apply also to all obligations of the type described in this section owned by the taxpayer or thereafter acquired by him. The election applies to the taxable year for which such return is filed and is binding for all subsequent taxable years unless the Commissioner permits the taxpayer, subject to such conditions as the Commissioner deems necessary, to change to a different method of reporting income from such bonds. Although the election, once made, is binding upon the taxpayer, it would not apply to a transferee of such taxpayer. For example, A, on the cash basis, buys noninterest-bearing United States defense bonds in 1942 and elects in his return for 1942 to treat the increment in value as being income to him as it accrues. In 1943, A dies and bequeaths such bonds to B, who is also on the cash basis. B is not bound by A's election, but he may, if he so desires, make an election under this section with respect to the increment in value accruing after the acquisition of such bonds by him. If B had previously made an election under this section, such election would apply to the bonds acquired from A.

In any case in which an election is made under this section, the amount considered to accrue in any taxable year to which the election applies is measured by the actual increases in the redemption price occurring in that year. Such amount shall not be considered to accrue ratably between the dates on which the redemption price changes. Thus, if two dates on which the redemption price increases fall within the taxable year and if the redemption price increases in the amount of 50 cents on each such date, the amount deemed to accrue in that year would be $1. The preceding sentence, however, is subject to an exception in the case of the first taxable year to which the election applies. If at the beginning of the first taxable year to which the election applies the taxpayer owns noninterest-bearing bonds of the prescribed character acquired prior thereto, he is required to report in such year, in addition to the increases in the redemption price actually falling within that year, the total of the increases in such price occurring between the date of acquisition and the beginning of such year. Accordingly, if a taxpayer on the calendar year basis makes an election under this section for 1944 and if the bonds have been issued to the taxpayer on June 1, 1941, he would be required to include in his gross income for the taxable year 1944 the total of the increases in the redemption price of such bonds occurring between the acquisition on June 1, 1941, and December 31, 1944.

SECTION 115. SHORT-TERM OBLIGATIONS ISSUED ON DISCOUNT BASIS.

This section, which was not contained in the House bill, provides that the issuing discount on certain short-term Federal, State, and local government obligations issued on a discount basis on or after March 1, 1941, shall not be deemed to accrue until such obligations are paid at maturity, sold, or otherwise disposed of, and that such obligations shall not be treated as capital assets. An obligation may be issued on a discount basis even though the price paid exceeds the face amount. Thus, although the Second Liberty Bond Act pro-

vides that Treasury bills of the United States shall be issued on a discount basis, the issuing price paid for a particular bill may, by reason of competitive bidding, actually exceed the face amount of the bill. This section eliminates the necessity for making an allocation between interest and capital gain or loss and will have particular application in the case of Treasury bills of the United States issued after March 1, 1941, which are made taxable by section 4 of the Public Debt Act of 1941.

The requirements of existing law with respect to Treasury bills issued on or after March 1, 1941, impose on taxpayers the duty of making burdensome computations. The portion of the gain attributable to the original discount on such bills is considered as interest and the remainder is treated as a capital gain. Thus, where such a bill is sold by the original holder for an amount in excess of the purchase price plus the issuing discount accrued to the date of sale, allocation to interest and capital gain is required. In the case of a loss resulting from the sale of such a Treasury bill, the loss is treated as a capital loss and must be segregated as such. Being a short-term capital loss, it is allowable only to the extent of short-term capital gains. Moreover, the existing rule that the original discount on Treasury bills accrues ratably over the entire life of the bills requires each successive taxpayer holding a particular bill to ascertain the issuing discount in order that he may determine the amount of such discount which is treated as accruing during the period for which he held the bill.

Under this section a person who sells a Treasury bill issued on or after March 1, 1941, or has it paid at maturity, would need only to compare the sales price, or the amount paid at maturity, with the purchase price or other basis and account for the net gain or loss. In such case there would be two different elements, that is, interest (original discount) and ordinary gain or loss, but since no special treatment is accorded such gain or loss, allocation would be unnecessary. Only the net gain or the net loss need be taken into account. For example, if a $1,000 90-day bill is issued for $994 and the original purchaser sells it at the end of 60 days for $997, he need report only $3 as ordinary income, although there are $4 of accrued discount and a $1 loss. Under existing law he would be required to report the $4 discount as interest and the $1 loss as a short-term capital loss.

Inasmuch as the gross income of life insurance companies is limited to interest, dividends, and rents, these companies will still be required to make an allocation in respect of obligations of the prescribed character any part of the discount on which is considered as interest. But, as most of the funds of life insurance companies is invested in long-term obligations, the problem of allocation in this field is not serious.

This section is applicable to taxable years ending after February 28, 1941.

SECTION 116. INFORMATION RETURNS WITH RESPECT TO FEDERAL OBLIGATIONS.

This is the same as section 112 of the House bill.

As a consequence of the elimination of tax exemption with respect to Federal obligations brought about by the Public Debt Act of 1941, section 116 of the bill repeals, prospectively, section 147(d) of the Internal Revenue Code, which made inapplicable to interest on obligations of the United States those provisions of law relating to securing information at the source. Section 116 also makes a complementary amendment to section 147(b). Such amendments will enable the Commissioner to prescribe regulations requiring such information with respect to interest on United States obligations as he may deem necessary in the interest of good administration of the income-tax laws. Section 116 is to take effect on the day following the enactment of the bill.

SECTION 117. ALIMONY AND SEPARATE MAINTENANCE PAYMENTS.

This section amends sections 22, 23, and 25 of the Internal Revenue Code and adds a new section to Supplement E of Chapter 1 in order to provide in certain cases a new income-tax treatment for payments in the nature of or in lieu of alimony and allowance for support as between divorced or legally separated spouses. These amendments are intended to distribute the income-tax burden between such spouses by treating such payments as income to the spouse actually receiving or actually entitled to receive such payments and by relieving the other spouse from the tax burden upon whatever part of the amount of such payments is under the present law includible in his gross income. In addition, the amended

sections will produce uniformity in the treatment of amounts paid in the nature of or in lieu of alimony regardless of the variance in the laws of different States concerning the existence and continuance of any obligation to pay alimony. In this respect the amendments are designed to remove the uncertainty as to the tax consequences of payments made to a divorced spouse out of the net income of so-called irrevocable alimony trusts, arising from the recent Supreme Court decisions in *Helvering* v. *Fitch* (1940) (309 U. S., 149), *Helvering* v. *Fuller* (1940) (310 U. S., 69), and *Helvering* v. *Leonard* (1940) (310 U. S., 80), which decisions make the test of whether such income is taxable to the husband the existence of a continuing legal obligation under State law.

Section 22, relating to the definition of gross income, is amended by inserting at the end thereof a new subsection designated (k). This subsection applies only to an individual who is divorced or legally separated under a decree of divorce or of separate maintenance and to such individual's spouse or former spouse from whom such individual was divorced or legally separated by such decree. Periodic payments received (other than as beneficiary or assignee of a beneficiary of a trust) by such individual, subsequent to the decree, in discharge of, or attributable to property transferred in discharge of, a legal obligation imposed upon or incurred by such individual's spouse or former spouse under such decree or under a written instrument incident to such divorce or separation are defined by section 22(k) as gross income to such individual and are includible as such in her income. Installment payments discharging a part of an obligation the principal sum of which is, in terms of money or property, specified in the decree or instrument, are not considered periodic payments for the purposes of section 22(k), and are, therefore, not gross income to the recipient under that section.

Section 22(k) also provides that, in the case of a divorce or legal separation, periodic payments which are attributable to property transferred in discharge of the legal obligation of a spouse or former spouse shall not be includible in the gross income of such spouse or former spouse. As a complement to section 22(k), section 23, relating to deductions from gross income, is amended by adding a new subsection, designated (u), which allows a deduction by the spouse or former spouse described in section 22(k) in his taxable year in which are paid the amounts includible under section 22(k) in the gross income of the individual described in section 22(k). However, such spouse or former spouse is not allowed a deduction under section 23(u) for any periodic payments attributable to property transferred in discharge of his legal obligation which under section 22(k) or section 171 are excluded from his gross income.

Sections 22(k) and 23(u), being based upon the terms "received" and "payment of which is made," place the spouses on the cash receipts and disbursements basis with respect to their treatment of the amounts described in sections 22(k) and 23(u) for any taxable year. The provisions of section 22(k) and section 23(u) are applicable only with respect to taxable years of the spouses beginning after December 31, 1941.

The operation of sections 22(k) and 23(u) may be illustrated by the following examples (in which it is assumed that all payments are made and received within taxable years of the spouses beginning after December 31, 1941):

(1) Under the terms of a decree of separate maintenance entered by a State court, Mr. A is to pay Mrs. A $200 a month as alimony for her life. During 1942, Mr. A, pursuant to the decree, pays Mrs. A $200 a month. In computing their income taxes for 1942, Mrs. A will include in her gross income the $2,400 thus received, and Mr. A is entitled to a deduction of $2,400 from his gross income.

(2) Mrs. B filed suit for divorce from Mr. B. In consideration of Mrs. B not requesting alimony and not making public his financial affairs, Mr. B makes a legally binding promise in writing to Mrs. B to pay to her $200 a month if a final decree of divorce is granted without any provision for alimony. Accordingly, Mrs. B does not request alimony and no provision for alimony is made under the final decree of divorce. During 1942 Mr. B pays Mrs. B $200 a month, pursuant to the promise. The $2,400 thus received by Mrs. B is includible in her gross income under the provisions of section 22(k), and Mr. B is entitled to a deduction of $2,400 from his gross income.

(3) Under the provisions of a divorce decree, Mr. C is to pay $200,000 to his divorced spouse, Mrs. C, in installments of $10,000 a year. No part of the $200,000 or the installments thereof is income to Mrs. C under section 22(k) or deductible by Mr. C under section 23(u).

(4) A divorce decree requires Mr. D to pay to Mrs. D, his former wife, $500 a month. To meet this obligation, Mr. D purchases an annuity for the life of his divorced wife which will pay her $500 a month. Under the provisions of

section 22(k) and notwithstanding the provisions of section 22(b)(2), the full $500 a month received by Mrs. D is includible in her gross income and no part of such amount is includible in the gross income of Mr. D or deductible by him from his gross income.

Supplement E is amended by adding a new section, section 171, to state the rule applicable to trust income after a decree of divorce or of separate maintenance. Section 171 is designed to include in the gross income of an individual who is divorced or legally separated under a decree of divorce or separate maintenance the amount of the income of any trust such individual is entitled to receive which, except for the provisions of section 171, would be includible in the gross income of such individual, spouse, or former spouse and to exclude such amount from the gross income of such spouse or former spouse, regardless of section 166, section 167, or any other provision of Chapter 1. The taxable year for which such income is to be accounted for is to be determined under the provisions of section 164. Section 171 is applicable only with respect to taxable years beginning after December 31, 1941.

The operation of this section (and its relation to section 22(k) and section 23(u)) may be illustrated by the following examples (in which it is assumed that all payments are made and received within taxable years beginning after December 31, 1941):

(1) As part of a separation agreement, Mr. X transfers property to a trust, the net income of which is estimated by the parties to be sufficient to provide for Mrs. X's support. A few years later Mrs. X obtains a divorce from Mr. X. The final decree refers to the trust created previously under the separation agreement and provides that the transfer in trust and the income therefrom receivable by Mrs. X shall be in lieu of alimony. The court, however, retains, as is allowed under the law of the State in which the divorce is obtained, jurisdiction to provide for further payments to Mrs. X by Mr. X should the income of the trust be insufficient for her support. Under section 171 the net income of the trust is income to Mrs. X and is not income to Mr. X.

(2) Under the same facts as in the previous example the decree of the court provides that in all events Mrs. X shall receive $10,000 a year as alimony. In the first taxable year beginning after December 31, 1942, the net income of the trust is only $8,000. The trustees, therefore, pay an additional $2,000 from the corpus of the trust to Mrs. X. In such a case only $8,000 is includible in the income of Mrs. X under the provisions of section 171. No part of the trust income is includible in the gross income of Mr. X nor is he allowed any deduction for any part of the $10,000 paid to Mrs. X. However, if the additional $2,000 is not payable out of the corpus of the trust but is payable by Mr. X to Mrs. X, then the $2,000 paid by Mr. X to Mrs. X is income to her under section 22(k). Therefore, for 1942 Mrs. X includes $10,000 in her income, Mr. X does not include in his income the $8,000 paid to Mrs. X by the trust but is entitled to deduct the $2,000 paid by him to Mrs. X.

(3) Mr. Y is the beneficiary of a trust established under the will of his father. Under the terms of the trust, the trustees are to pay to Mr. Y $10,000 a year from the net income of the trust, but if the net income of the trust for any year does not equal $10,000, to pay the net income and so much more from the corpus of the trust as will total $10,000. In 1942 Mrs. Y obtains a divorce from Mr. Y. Under the divorce decree Mr. Y is to pay Mrs. Y $5,000 a year for his life. To meet this obligation under the divorce decree, Mr. Y assigns to Mrs. Y for five years one-half of the amount he is otherwise entitled to receive from the trust, promising to make another such assignment or to provide another method of payment of the $5,000 a year to her at the expiration of that period. In 1942 the net income of the trust is $8,000. Under the terms of the trust instrument and of the assignment by Mr. Y to Mrs. Y the trustees pay $5,000 to Mr. Y and $5,000 to Mrs. Y. Since only eight-tenths of the amount thus distributed represents the net income of the trust, only $4,000 of the amount received by Mrs. Y is income to her. Mr. Y will include in his income only $4,000 and will not include any amount on account of the $5,000 paid to Mrs. Y.

Section 22(k) and section 171 do not apply to that part of such periodic payments under section 22(k) and to that part of such trust income under section 171 which by the terms of the decree, or of the written instrument under section 22(k), or of the trust instrument under section 171, is specifically designated as a sum payable for the support of minor children of the spouses.

If, however, the periodic payments and the trust income are received by the wife for the support and maintenance of herself and of minor children of the spouses without such specific designation of the portion for the support of such children, then the whole of such amounts are includible in the income of the wife as provided in section 22(k) and in section 171. As a necessary complement to these provisions, section 25(b)(2), relating to credit for dependents, is amended so as to provide that payments to an individual's spouse or former spouse which are includible under section 22(k) or section 171 in the gross income of such spouse or former spouse shall not be considered payments by such individual for the support of the minor children of such persons. Thus where the portion of such payments for the support of the minor children is not specifically designated, the wife, if actually contributing to the support of the children, is entitled to the credit for dependents, unless it is established that independently of such amounts paid to the wife the husband (or some other person upon whom the children are financially dependent) is actually contributing a greater amount for the support of such children than is the wife.

These rules may be illustrated by the following examples:

(1) Under a decree of divorce which awards to Mrs. Z the custody of the two minor children of herself and Mr. Z, Mr. Z is obligated to pay $500 per month for the maintenance and support of Mrs. Z and their two children. In the calendar year 1942 Mr. Z makes such payments. The $6,000 received by Mrs. Z is to be included in her gross income, and Mr. Z is entitled to a deduction of $6,000. If such payments constitute the children's chief support, Mrs. Z is entitled to the exemption applicable to the head of a family and to a credit for one dependent.

(2) If, in the previous example, the decree had provided that Mr. Z should pay Mrs. Z $300 per month for her maintenance and support and an additional $200 per month for the maintenance and support of their children, only $3,600 would be includible in the gross income of Mrs. Z and deductible from the gross income of Mr. Z; $2,400 would be considered as payments by Mr. Z and not by Mrs. Z for the purpose of determining which of them is entitled to exemption for the head of a family and the credit for dependents.

SECTION 118. EXTENSION OF TIME OF ORDERS OF SECURITIES AND EXCHANGE COMMISSION.

Under Supplement R of the Internal Revenue Code certain transactions arising out of the simplification or geographical integration of public utility holding company systems may be treated as tax-free exchanges and various adjustments of the basis of property are made. Under Supplement R, as amended by the Revenue Act of 1939, such transactions must be in conformity with orders of the Securities and Exchange Commission issued before January 1, 1941 (instead of January 1, 1940, the date originally provided), or orders supplementary to such orders. The amendment made by section 118 extends from January 1, 1941, to January 1, 1943, the time during which such an order may be made.

SECTION 119. COMMUNITY INCOME.

This section amends the Internal Revenue Code by inserting a new section 29, applicable to taxable years beginning after December 31, 1940, and relating to the taxation of community income.

Subsection (a) provides that, in the case of earned income, the income shall be taxed to the spouse who earned the income. This rule shall apply regardless of the fact that such earnings may be treated as community property under the State law.

Subsection (b) is applicable to income derived from community property. It is provided that such income shall be taxed to the spouse who has the management and control thereof under the law of the jurisdiction in which the marital community exists.

This provision shall not be applicable to income derived from property that is considered the separate property of one of the spouses under the law of the jurisdiction in which the marital community exists, even though such income is considered community property; nor is it applicable to income derived from property which is acquired with funds which constituted income from separate property. The exception is intended to apply to all income derived from property the source of which can be traced to income from separate property, regardless of how many times such income may have been invested or reinvested, i. e., income from separate property A will not be affected by this section even

though such income is community property, and if such income is invested in property B the income from such property will also not be subject to this section, nor will any income from property in which such income is in turn invested, etc. In the case of such income, it will continue to be taxed as it was prior to this amendment.

Subsection (c) provides that if spouses elect to file separate returns, only the spouse who is required to treat the income covered by the section as his individual income will be entitled to the deductions and credits allowed under the internal-revenue laws which are properly allocable to such income.

SECTION 120. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.

This section corresponds to section 114 of the House bill and makes the amendments relative to individual and corporation income taxes contained in this title, except the amendments made by section 107 (withholding tax at source), section 115 (short-term obligations issued on discount basis), section 116 (information returns with respect to Federal obligations), and section 117 (alimony and separate maintenance payments), applicable only with respect to taxable years beginning after December 31, 1940.

TITLE II—EXCESS-PROFITS TAX.

SECTION 201. EXCESS-PROFITS TAX RATES AND CREDITS.

Section 201(a) of the House bill amends section 710(a) of existing law, relating to the imposition of the excess-profits tax, to provide for increased rates of tax, which are set forth in the table in section 710(a)(1). These rates begin at 35 per cent upon adjusted excess-profits net income of not more than $20,000 and increase upon a graduated scale to 60 per cent upon the amount of adjusted excess-profits net income in excess of $500,000. The rates of tax set forth in section 710(a)(1) represent an increase of 10 percentage points in each rate bracket as compared with the rates under the present law, which run from 25 to 50 per cent. Section 201(a) of the House bill also provides a special tax in certain cases where the invested capital credit is used, amounting to 10 per cent of the excess of the adjusted excess-profits net income computed under the income credit over the adjusted excess-profits net income computed under the invested capital credit.

Section 201(b) of the House bill amends section 714 of existing law by reducing the credit with respect to corporations using the invested capital method in cases where the invested capital exceeds $5,000,000. In such cases, the invested capital credit is reduced from 8 to 7 per cent upon so much of the invested capital as exceeds $5,000,000.

In the bill as reported by your committee the increase in excess-profits tax rates and the reduction in the percentage applicable to invested capital in excess of $5,000,000 have been retained, but for reasons set forth elsewhere in this report, the special 10 per cent tax in certain cases where the invested capital credit is used has been eliminated.

SECTION 202. DEDUCTION OF EXCESS-PROFITS TAX.

Except for the elimination of subsection (1), which is no longer necessary in view of section 301(c) of the bill, providing for an annual declaration of value for capital stock tax purposes, this section is the same as section 204 of the House bill. It provides that the income tax imposed by Chapter 1 of the Internal Revenue Code and by corresponding provisions of prior Revenue Acts shall not constitute an adjustment in determining excess-profits net income for current and base period taxable years. Section 23(c) is amended to provide for the deduction of the excess-profits tax in determining income subject to Chapter 1 tax. Furthermore, the taxpayer, if using the income method, has its excess-profits credit increased by the corresponding nondeduction of income taxes in determining its average base period net income.

It is provided that the deduction shall be allowed only in computing the income tax imposed for the taxable year for which the excess-profits tax is levied. By providing that any excess-profits tax paid after the taxable year shall be deemed to have been paid within the taxable year, the same treatment is accorded to taxpayers on the cash basis as is accorded to taxpayers on the accrual

basis. It is also provided that the excess-profits tax shall be computed, for the purposes of this deduction, without reduction by the foreign tax credit, and without regard to the adjustments provided for in section 734.

Since the excess-profits net income for a taxable year is primarily the normal-tax net income with certain adjustments, it is necessary to amend section 711(a) to require an adjustment to normal-tax net income in the form of a disallowance of the deduction of the excess-profits tax. A further adjustment is added to this section in the form of a provision stating that, for the purpose of computing any deduction or credit which is limited to a certain percentage of the taxpayer's net income—e. g., the deduction for charitable contributions or for percentage depletion—such net income (or, in the case of percentage depletion, such net income from the property) shall be computed without regard to the deduction on account of the excess-profits tax. It is also provided under section 718(c)(3) with reference to taxpayers on the invested-capital basis, that in determining whether distributions were out of earnings and profits of any excess-profits tax taxable year, the income tax shall be disregarded in the computation. Finally, in determining the presence and extent of the taxpayer's right to the benefits of section 722, dealing with abnormalities, it is provided that the excess-profits tax shall be disregarded.

Section 602 of the Internal Revenue Code, dealing with the computation of net income for the purposes of the declared value excess-profits tax, is amended to provide that the net income shall be determined without regard to the deduction on account of the excess-profits tax imposed by Subchapter E of Chapter 2.

It is also provided that, in computing the excess-profits credit carry-over, the excess-profits credit and excess-profits net income for taxable years beginning in 1940 shall be computed as if the amendments made by this bill were applicable.

SECTION 203. NEW CAPITAL.

This section is the same as section 205 in the House bill except for certain changes of a technical nature made in subparagraph (A) intended to carry out more completely the provisions of the House bill.

This section amends section 718(a) of the Internal Revenue Code, defining equity invested capital, by adding a new paragraph designated as (6). The effect of the amendment is to increase by 25 per cent the amount includible in equity invested capital on account of new capital. The term "new capital" is defined to mean the aggregate of the amount of money and property paid in for stock or as paid-in surplus, or as a contribution to capital, and the amount of taxable stock dividends made, during a taxable year beginning after December 31, 1940, subject to certain limitations. These limitations are intended, in general, to prevent a taxpayer from treating as new capital amounts resulting from mere adjustments in the existing capital, including borrowed capital, of the taxpayer, or of a controlled group of corporations.

The limitations provided by subparagraphs (A), (B), and (C) bar from the concept of new capital the amount of any equity invested capital acquired in an exchange occurring during a taxable year beginning after December 31, 1940, to which section 112(b) (3), (4), or (5), or so much of section 112 (c), (d), or (e) as refers to section 112(b) (3), (4), or (5) is applicable, or would be applicable if the term "control" had been defined in section 112(h) to mean the ownership of stock possessing more than 50 per cent of the total combined voting power of all classes of stock entitled to vote or more than 50 per cent of the total value of all classes of stock. In order to take care of exchanges under Supplement R of the Internal Revenue Code, which relates to exchanges and distributions in obedience to orders of the Securities and Exchange Commission, and to which section 112(b) (3), (4), or (5) is made inapplicable by section 371(g), that portion of subparagraph (A) of the House bill reading:

"There shall not be included money or property paid in by a corporation in an exchange to which section 112(b) (3), (4), or (5), or so much of section 112 (c), (d), or (e) as refers to section 112 (b) (3), (4), or (5) is applicable"—

has been changed to read:

"There shall not be included money or property paid in by a corporation in an exchange to which section 112(b) (3), (4), or (5), or so much of section 112 (c), (d), or (e) as refers to section 112(b) (3), (4), or (5) is applicable (or would be applicable except for section 371(g))."

These limitations also bar from the concept of new capital any equity invested capital acquired in a transaction between members of a controlled group of corporations as that term is defined in subparagraph (B).

The limitations provided by subparagraph (D) have the effect of reducing the amount of new capital as of any day by the excess of the amount of inadmissible assets held on that day over the amount of such assets held on the first day of the taxpayer's first taxable year beginning after December 31, 1940. This treatment is comparable to the treatment of excluded assets in the computation of daily capital additions under section 713(g) of the existing law.

The limitations under subparagraph (E) prevent new capital as of any day from exceeding the amount by which the total equity invested capital and borrowed capital as of such day, computed without including the 25 per cent increase, exceeds the sum of the equity invested capital and borrowed capital as of the first day of the taxpayer's first taxable year beginning after December 31, 1940. Any increase in new capital is thus prevented where the amount of borrowed capital is reduced by the same amount as that by which the equity invested capital is increased, and no increase in new capital will result from a distribution by a stock dividend of earnings and profits accumulated prior to the first day of a taxable year beginning after December 31, 1940. Subparagraph (E), however, is so worded that there is no reduction to the extent that the sum of the equity invested capital and borrowed capital as of any day is less than the sum of the equity invested capital and borrowed capital as of the first day of a taxable year beginning after December 31, 1940, due to an operating deficit occurring in any taxable year during the intervening period.

The limitations contained in subparagraphs (A) to (E) may be illustrated by the following examples:

Example (1), subparagraph (A): Corporation A issues stock during a taxable year beginning after December 31, 1940, to Corporation B in exchange for the transfer of certain property by Corporation B. Immediately after the transfer the stock acquired by Corporation B has a value of $10,000, the total value of all classes of stock of Corporation A then outstanding amounting to $18,000. Corporation A obtains no new capital, since the property for which the new stock was issued was obtained in an exchange to which section 112(b)(5) would be applicable if the term "control" had been defined in section 112(h) so as to include either the ownership of stock possessing more than 50 per cent of the total combined voting power of all classes of stock entitled to vote or more than 50 per cent of the total value of all classes of stock outstanding.

Example (2), subparagraph (B): Corporation A owns stock in Corporation B, and Corporation B owns stock in Corporation C. Corporation A transfers property to Corporation C in exchange for stock of Corporation C. Immediately after the transfer the stock owned by Corporation A in Corporation B possesses more than 50 per cent of the total combined voting power of all classes of stock entitled to vote. Also immediately after such transfer the stock owned by Corporation B in Corporation C has a value equal to more than 50 per cent of the total value of all classes of stock of Corporation C.

Corporation C obtains no new capital through the acquisition of the property from Corporation A in exchange for its stock, since immediately after the transfer Corporation A, the transferor, and Corporation C, the transferee, are members of the same controlled group.

Example (3), subparagraph (C): Corporation A makes a distribution in taxable stock dividends to Corporations B and C during a taxable year, beginning after December 31, 1940. Immediately after the distribution Corporations B and C own stock in Corporation A which has a voting power of more than 50 per cent of the combined voting power of all classes of stock entitled to vote. Also immediately after the transfer Corporation B owns stock in Corporation C, which has a value of more than 50 per cent of the total value of all classes of stock of Corporation A. The distribution made by Corporation A in the taxable stock dividend does not constitute new capital to Corporation A.

Example (4), subparagraph (D): Corporation X makes its excess-profits tax return on the calendar-year basis. On July 1, 1941, cash in the amount of $100,000 is paid in for stock. There are no other changes made in either the amount of equity invested capital or borrowed capital at any time during the year 1941. The adjusted basis of inadmissible assets as of January 1, 1941, amounts to $5,000. The adjusted basis of such assets as of July 2, 1941, is increased to $15,000. The new capital of $100,000 is reduced to $90,000 as of July 2, 1941, by subparagraph (D), as shown by the following computation:

$100,000, new capital, minus $10,000 ($15,000, amount of inadmissibles as of July 2, 1941, minus $5,000, amount of inadmissibles as of July 1, 1941) =$90,000.

Example (5), subparagraph (E): Corporation Y makes its return on the calendar-year basis. Its equity invested capital as of January 1, 1941, amounts to $30,000, consisting of money paid in for stock, $20,000, and accumulated earnings and profits, $10,000. Its borrowed capital as of January 1, 1941, consists of bonds outstanding amounting to $15,000, making the total of its equity invested capital and borrowed capital as of January 1, 1941, $45,000. The corporation has no inadmissible assets at any time during the year 1941. On January 2, 1941, the corporation makes a distribution in taxable stock dividends amounting to $5,000. On July 1, 1941, money is paid in for stock amounting to $15,000, and on July 2, 1941, bonds are retired in the amount of $10,000.

The new capital of $20,000 acquired during the year 1941 represented by a distribution in a taxable stock dividend amounting to $5,000 and by money paid in for stock amounting to $15,000 is reduced to $5,000 on July 3, 1941, due to the retirement of $10,000 of bonds on July 2, 1941, and the fact that the stock dividend is paid out of earnings accumulated before January 1, 1941, under the application of subparagraph (E), shown as follows:

The sum of the equity invested capital and borrowed capital on July 3, 1941 (computed without regard to the 25 per cent increase for new capital), amounts to $50,000. This sum exceeds the total equity invested capital and borrowed capital on January 1, 1941, amounting to $45,000, by $5,000. Under subparagraph (E) the new capital shall not be more than such excess. The new capital is thus reduced from $20,000 to $5,000.

If the accumulated earnings and profits of Corporation Y as of January 1, 1942, are reduced to zero due to the stock dividend distribution of $5,000 made on January 2, 1941, and an operating deficit of $5,000 during the taxable year 1941, the new capital includible in equity invested capital as of January 1, 1942, would remain at $5,000 under the application of subparagraph (E), as shown by the following computation:

New capital as of January 1, 1942, before application of subparagraph (E), $20,000, shall not be more than the excess of $45,000 (total capital on January 1, 1942, before adding 25 per cent under section 718(a)(6)) over $45,000 (total capital on January 1, 1941) less $5,000 (amount by which the accumulated earnings and profits as of January 1, 1941, exceed the accumulated earnings and profits (computed without regard to distributions) as of January 1, 1942), or the new capital can not exceed $45,000, minus $40,000 ($45,000 minus $5,000), or $5,000.

[NOTE.—The last two paragraphs of example (5) under section 203 are here printed as corrected on the floor of the Senate. See unbound Congressional Record of September 5, 1941, page 7545.]

SECTION 204. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.

This is the same as section 207 of the House bill and provides that the amendments relative to the excess-profits tax made by this title are applicable only with respect to taxable years beginning after December 31, 1940.

TITLE III—CAPITAL STOCK TAX AND DECLARED VALUE EXCESS-PROFITS TAX.

SECTION 301. CAPITAL STOCK TAX.

The House bill increased the capital stock tax from the defense rate of $1.10 per $1,000 to $1.25 per $1,000 of the value of the capital stock as declared by the corporation. This provision is retained in the bill as reported by your committee. In addition, your committee has revised this section to provide for an annual declaration of capital stock value. Certain technical amendments necessitated by such provision have also been made.

Section 1203(a)(2) of the Internal Revenue Code is also amended to permit a 90-day extension of time, in lieu of the 60-day extension authorized by existing law, for filing of capital stock returns for this year. However, if a return has already been filed, the filing of an amended return is not made compulsory, it being provided that the value declaration on a return filed in accordance with the statute shall constitute the declared value for purposes of the statute as amended unless another return is filed within the time prescribed by law, which includes the period of any extension granted by the Commissioner.

SECTION 302. DECLARED VALUE EXCESS-PROFITS TAX—DEFENSE-TAX RATES INCORPORATED IN RATE SCHEDULE.

The House bill made permanent the defense-tax rates of the excess-profits tax. The amendment accomplishes the same result by integrating the defense-tax rates with the basic tax.

Other technical amendments are made to accord with the amendments made by section 301 relative to the capital stock tax.

TITLE IV.—ESTATE AND GIFT TAXES.

SECTION 401. ESTATE TAX RATES.

This section of the House bill increases the rates applicable to the additional estate tax with respect to decedents dying after the date of enactment of the Act and make permanent the defense tax on net estates imposed by section 951. In the bill as reported by your committee these increases have been retained, but the rates have been further increased by reason of the integration of the defense tax and the additional estate tax.

SECTION 402. GIFT TAX RATES.

This section of the House bill increased the rates for computing the gift tax for the calendar year 1942 and each calendar year thereafter. The 75 per cent ratio previously existing between the gift tax rates and the aggregate of the estate tax and additional estate tax rates was preserved. The House bill also made permanent the defense tax imposed for five years by section 1001(d) of the Internal Revenue Code. In the bill as reported by your committee these increases have been retained, but the rates have been further increased by reason of the integration of the defense-tax and the gift-tax rates.

TITLE V.—EXCISE TAXES.

PART I. 1932 EXCISE TAXES MADE PERMANENT.

SECTION 501. 1932 EXCISE TAXES MADE PERMANENT.

This section repeals section 3452 of the Internal Revenue Code, which now provides that the manufacturers' excise taxes imposed by Chapter 29 shall terminate as of July 1, 1945. It thus makes permanent law the provisions imposing such taxes.

SECTION 502. PIPE-LINE TAX.

This section strikes out the termination date (July 1, 1945) applicable to the tax on the transportation of oil by pipe line.

SECTION 503. TECHNICAL AMENDMENT.

This section revises the title language of Subtitle C of the Internal Revenue Code to make it more descriptive of the taxes included within Subtitle C.

SECTION 504. BOND TAX.

This section makes permanent the tax on the transfer of bonds.

SECTION 505. CONVEYANCE TAX.

The two sections strike out the termination date (July 1, 1945) applicable to the bond transfer and conveyance taxes.

PART II. DEFENSE-TAX RATES MADE PERMANENT (NO INCREASE IN TAX AND NO CHANGE OF BASE).

SECTION 521. DEFENSE EXCISE-TAX RATES MADE PERMANENT WHICH ARE NOT INCREASED BY THIS ACT.

With respect to the taxes listed hereinafter section 521 incorporates, without change, in the applicable provisions of the Internal Revenue Code the defense-tax

rates imposed by the first Revenue Act of 1940 and makes such rates permanent. These tax rates were originally prescribed by the first Revenue Act of 1940 to be effective for the period prior to July 1, 1945. The particular taxes are those with respect to—

Corporate securities.
Capital stock issues.
Capital stock transfers.
Insurance policies.
Passage tickets.
Cigarettes.
Pistols and revolvers.
Fermented malt liquors.
Wholesalers of liquors.
Retailers of liquors.
Brewers.
Wholesalers of malt liquors.
Retailers of malt liquors.
Rectifiers.
Stills.
Firearms, etc.
Electrical energy.
Gasoline.
Lubricating oils.
Transportation of oil by pipe line.
Transfer of bonds.
Conveyances.

Section 521 of the House bill covered also "box seats" and "sales outside box offices," but under the committee amendment these are covered by section 541 (b) and (c) which increases the tax in each case to 15 per cent.

PART III. INCREASES IN RATES OF EXISTING EXCISE TAXES.

SECTION 531. PLAYING CARDS.

This section increases the rate of tax on the manufacture of playing cards from 11 cents per pack to 13 cents per pack.

SECTION 532. SAFE-DEPOSIT BOXES.

This section increases the rate of tax on the rental of safe-deposit boxes from 11 per cent of the amount paid to 20 per cent.

SECTIONS 533, 534. LIQUOR.

Section 533 amends section 2800(a)(1) of the Internal Revenue Code, which imposes an excise tax upon distilled spirits and imported perfumes containing distilled spirits at the rate of $4 (and on brandy at the rate of $3.75).

The existing rate of tax upon distilled spirits other than brandy, and upon imported perfumes containing distilled spirits, is $3 per proof gallon, and upon brandy $2.75 per proof gallon. These are the defense-tax rates imposed by section 213 of the Revenue Act of 1940, effective July 1, 1940. The rates proposed by the bill, therefore, represent an increase of $1 per proof gallon over the defense-tax rates. The defense-tax rates are 75 cents per proof gallon over and above the rates in effect prior to July 1, 1940.

Subsection (c) of section 533 makes a complementary amendment to section 2887 of the Internal Revenue Code, which provides for the allowance of drawback of internal-revenue tax upon the exportation of distilled spirits in distillers' original packages.

Subsection (d) will amend section 2800 of the Internal Revenue Code by adding a new subsection "(1)" to provide a floor stocks tax of $1 per proof gallon on all distilled spirits upon which the tax has been paid and which on the effective date of the new rates are held and intended for sale or for use in the manufacture or production of any article intended for sale. This subsection will have the effect of placing all distilled spirits tax-paid at the old rates and held for the purposes specified on an equal tax basis with other distilled spirits withdrawn and tax-paid at the new rates. It will preclude loss of revenue through the withdrawal and tax payment of large stocks before the new rates become effective. As in prior floor stocks tax statutes, provision is made for the filing of returns and for deferring payment of the tax upon the submission of satisfactory surety bonds.

This subsection also provides that for the purposes thereof the term "distilled spirits" shall include products produced in such manner that the person producing them is a rectifier within the meaning of section 3254(g) of the Internal Revenue Code. The object of this provision is to subject to the floor stocks tax

liqueurs, cordials, and similar compounds in the manufacture of which distilled spirits are a constituent.

The existing rates on still wines are as follows: Not more than 14 per cent of absolute alcohol, 6 cents per wine gallon; more than 14 per cent and not exceeding 21 per cent of absolute alcohol, 18 cents per wine gallon; and more than 21 per cent and not exceeding 24 per cent of absolute alcohol, 30 cents per wine gallon. Section 534(a) of the bill imposes rates of 8, 24, and 50 cents respectively. The proposed rates represent an increase of 2 cents, 6 cents, and 20 cents per gallon over existing rates.

The existing tax rates on other wines are as follows: Sparkling wines, 3 cents on each one-half pint or fraction thereof; artificially carbonated wines, 1½ cents on each one-half pint or fraction thereof; liqueurs, cordials, and similar compounds, 1½ cents on each one-half pint or fraction thereof. Section 534(b) of the bill imposes rates of 4 and 2¼ cents, respectively. The proposed rates represent an increase of 1 cent on sparkling wines and three-fourths of 1 cent on artificially carbonated wines, and liqueurs, cordials, and similar compounds, over the tax rates on such products.

Subsection (c) of section 534 will amend Subchapter F of Chapter 26 of the Internal Revenue Code by inserting at the end thereof a new section imposing a floor stocks tax on all wines on which the tax has been paid and which are held and intended for sale or for use in the manufacture or production of any article intended for sale on the effective date of the new rates. This subsection, like subsection (d) of section 533 in the case of distilled spirits, will have the effect of placing all wines tax-paid at the old rates and held for the purposes specified on a basis of equality, in so far as taxation is concerned, with other wines withdrawn and tax-paid at the new rates.

Your committee made the following changes: The differential in favor of brandy was eliminated, and brandy made subject to the same $4 rate as other distilled spirits. The rates on still wines of 8 cents, 24 cents, and 50 cents have been changed to 10 cents, 35 cents, and 65 cents, respectively. The rate of 4 cents on sparkling wines has been changed to 7 cents and the rate of 2¼ cents on artificially carbonated wines and on liqueurs, cordials, and similar compounds has been changed to 3½ cents.

SECTION 535. TIRES AND TUBES.

This section increases the rate of the manufacturers' excise tax (defense tax rates) on tires from 2½ cents per pound to 5 cents per pound and the rate of tax on inner tubes from 4½ cents per pound to 9 cents. It imposes a floor stocks tax on tires and inner tubes held for sale by any person other than the manufacturer, producer, or importer on the date the increased manufacturers' excise tax rates take effect. The floor stocks tax rates are in an amount equal to the increase in the rates of the manufacturers' tax. The floor stocks tax is restricted in its scope to tires and inner tubes for automobiles, trucks, trailers, motorcycles, etc., and will not be applicable to such miscellaneous items as bicycle tires, baby buggy tires, etc. The tax is specifically made applicable to tires and tubes held by automobile manufacturers as, or for, equipment on new automobiles. It is not made applicable to tires and tubes actually on automobiles held by new and second-hand car dealers but is applicable to the stocks of unmounted tires and tubes held by such dealers and by any person, including retailers, for sale. The floor stocks tax does not apply to any tires and tubes held by a person who must pay the increased manufacturers' excise tax rate on such articles when he sells them.

SECTION 536. EFFECTIVE DATE OF PART III.

This section applies to sections 531 to 535, inclusive, and provides, in brief, that the increased tax rates and new taxes imposed by such sections shall take effect on the 1st day of the first month which begins more than 10 days after the date of the enactment of the bill.

PART IV. CHANGES IN BASIS OF COMPUTING TAX (RATES INCREASED IN CERTAIN CASES).

SECTION 541. ADMISSIONS TAX.

The House bill subjected to tax admissions of 10 cents or more at the rate of 1 cent for each 10 cents or fraction thereof. Under existing law the admissions tax applies only to admissions of 21 cents or more.

Under the committee amendment the tax applies to all amounts paid for admission. In addition to the consideration of the increased revenue resulting from elimination of the exemption, which was strongly urged on the committee, many operators of amusement enterprises would prefer that there be no exemption of amounts less than 10 cents, as this exemption would encourage certain forms of avoidance, such as reducing a 10-cent admission charge to 9 cents.

The committee bill imposes a schedule of rates as follows: A 10-cent admission is taxable at 1 cent, a 15-cent admission at 2 cents, a 20-cent admission at 3 cents, etc. Admissions of more than 50 cents are to be subject to a tax of 15 per cent of the amount charged. Fractions of one-half cent or more are to be increased to 1 cent and smaller fractions disregarded. The rates of tax upon sales outside the box office and upon the permanent use or lease of boxes and seats are increased from 10 to 15 per cent.

Under the bill as it passed the House, the special treatment under the admissions tax with respect to so-called free or reduced rate admissions now applicable to employees, municipal officers, and children under 12 years of age, is extended to include members of the military or naval forces of the United States and of the Civilian Conservation Corps when in uniform. For example: If the established price is 50 cents and a soldier in uniform is charged only 20 cents, the tax basis is 20 cents and not 50 cents. If he is admitted free, no tax is payable.

In the case of reduced rates of admission of children under 12 years of age, the present law provides that the tax shall be computed on the amount actually charged such children and not on the regular charge for adults. Your committee recommends that the age limit of 12 years be changed to 18 years.

The bill, as it passed the House, provided that section 1701 of the Internal Revenue Code which allows a number of exemptions from the admissions tax shall not be applicable after the effective date of Part III of the bill. The amendment continues the exemptions allowed by sections 1701 (b) and (c) which the committee regards as appropriate. Section 1701(b) relates to admissions to agricultural fairs, and section 1701(c) relates to admissions to certain concerts conducted by civic or community membership associations.

SECTION 542. CABARET, ROOF GARDEN, ETC., TAX.

This section revises the base of the present "cabaret" tax. It imposes a tax of 5 per cent on amounts paid for admission, refreshment, service, and merchandise at any roof garden, cabaret, or other similar place furnishing a public performance for profit. Liability for the tax is imposed on the proprietor. The tax applies to all amounts paid. Under present law the tax is imposed on the patron under a rather complicated rate of 2 cents (including the defense tax) for each 10 cents of 20 per cent of the amount paid if 20 per cent of the amount paid exceeds 50 cents.

This section also makes certain amendments to administrative provisions of the Code applicable to the "cabaret" tax and other admission taxes.

The committee made no change in this section. It was urged before the committee that shifting of liability for the tax from the patron to the proprietor would make it unlawful for the proprietor to add the amount of the tax to the patron's bill. This contention is mistaken. The amendment merely shifts the legal incidence of the tax from the patron to the proprietor and makes the proprietor primarily liable for the payment of the tax to the Government. There is nothing in the section which would prevent the taxpayer, the proprietor, from shifting the tax burden to his customer.

By section 550 of the bill the cabaret tax imposed by section 542 is made applicable to the period beginning 10 a. m. on the effective date of Part IV of the bill. The time 10 a. m. means the standard time for the time belt.

SECTION 543. CLUB DUES.

This section reduces the amount used as a test for determining liability to the tax on club dues from $25 annual dues of an active resident annual member to $10, and redefines the term "dues" specifically to include certain privilege fees and assessments.

This section also makes permanent the defense-tax rates applicable to dues and initiation fees, as imposed by the first Revenue Act of 1940.

The committee made no change in this section. It believes the redefinition of the term "dues" to be very helpful in avoiding litigation. Under existing

law a number of privilege fees and assessments are subject to tax as club "dues." Some taxpayers have alleged either that there is an ambiguity in the present law or that it can not be construed to cover certain types of fees. It is, therefore, desirable, in order to avoid litigation, to define in very direct terms what is intended to be covered by the term "dues."

SECTION 544. AUTOMOBILE, TRUCK, BUS, AND PARTS TAX.

This section increases the rates of tax on automobile truck chassis, truck bodies, etc., from 2½ per cent to 5 per cent and brings trailers and semitrailers for trucks within the scope of the tax. Passenger busses which under present law are subject to the higher rate of tax applicable to passenger automobiles have been included within the "truck" classification, and will be subject to the new 5 per cent rate.

The rate of tax on passenger automobile chassis and bodies, motorcycles, etc., is increased from 3½ per cent to 7 per cent. Trailers and semitrailers for such vehicles are made subject to the tax. Subsection (b) of section 544 increases the rate of tax on automobile parts and accessories from 2½ per cent to 5 per cent. It excludes automobile radios which have heretofore been subject to tax as automobile "parts or accessories." Automobile radios are by section 545 made subject to the manufacturers' tax on radio sets and parts at the rate of 10 per cent.

Subsection (c) of section 544 increases the rates of credit allowable under this section to automobile manufacturers with respect to the tires and inner tubes on such vehicles from 2½ to 5 per cent in the case of trucks, busses, etc., and 3½ to 7 per cent in the case of other automobiles and motorcycles.

Subsection (d) repeals section 3403(f) of the Internal Revenue Code, which would allow a tax adjustment with respect to floor stocks of passenger automobiles, trucks, etc., held by dealers as of the termination date of the present tax on such vehicles. This is done because the termination date of such tax has been deleted and the tax made of a permanent nature. Section 3403(f), therefore, becomes unnecessary.

It was urged that this section be amended to specify that repaired, reconditioned, and rebuilt automobile parts and accessories are not subject to the "parts and accessories" tax. Your committee examined the problem very carefully. Repaired and reconditioned parts are not now subject to tax. There are several decisions of the United States circuit courts of appeals holding rebuilt parts and accessories to be subject to the manufacturers' tax. Rebuilt parts compete with new parts, and it appears appropriate that they should be subject to the same tax. Accordingly, no change has been made.

SECTION 545. RADIOS, PHONOGRAPHS, RECORDS, AND MUSICAL INSTRUMENTS.

Section 3404 of the Internal Revenue Code now imposes a tax on sales by the manufacturer of certain radio components at the rate of 5½ per cent of the sale price. Section 545 amends section 3404 of the Code so as to impose a tax at the rate of 10 per cent on—

- Radio receiving sets.
- Automobile radio receiving sets.
- Combination radio and phonograph sets.
- Phonographs.
- Certain principal components of these articles.
- Phonograph records.
- Musical instruments.

The articles listed have been included within the same section of the Code because largely related.

SECTION 546. REFRIGERATORS, AIR CONDITIONERS.

Section 3405 of the Internal Revenue Code imposes a tax on sales by the manufacturer of household-type mechanical refrigerators and certain principal components of such articles at the rate of 5½ per cent of the sales price. Section 546 amends section 3405 of the Code to increase the tax rate to 10 per cent and to make the tax applicable to the principal commercial types of refrigerators, including such articles as ice cream cabinets, food and beverage display cases, water coolers, milk cooler cabinets, and similar articles. In addition, there are brought within the scope of the tax components of refrigerating apparatus such as compressors,

condensers, evaporators, expansion units, absorbers, and controls. However, the tax with respect to such components is not limited to components for the household, commercial, and industrial type of refrigerator units referred to above. Refrigerating components will be subject to tax regardless of their intended use. For example, components for refrigerator ships and refrigerator cars, and for the refrigerating plants of breweries and cold-storage warehouses will be subject to the tax.

Section 546 also imposes a tax at the rate of 10 per cent on the sale by the manufacturer of self-contained air-conditioning units and certain principal components of such articles.

SECTION 547. MATCHES.

Section 3409 of the Internal Revenue Code now imposes a tax at the rate of 5½ cents per thousand on certain fancy wooden matches. Section 547 amends section 3409 of the Code to also impose a tax at 2 cents per thousand on other types of matches. The types of matches subject to the new tax at 2 cents per thousand include the well-known types of wooden and paper matches now in everyday use.

SECTION 548. TELEPHONE, TELEGRAPH, ETC.

Section 548 as it passed the House would impose on telephone conversations, telegraph, cable, and radio dispatches, messages, and conversations, for which the charge is more than 24 cents, a tax at the rate of 5 cents for each 50 cents or fraction thereof of the charge. Under existing law, the tax on telephone toll service does not apply to charges of less than 50 cents. Telegraph dispatches and messages are now subject to tax at the rate of 5 per cent of the amount charged, and cable and radio dispatches and messages at the rate of 10 cents per message.

The committee amendment continues the distinction made by the existing law between telephone service and telegraph service and makes the new rates fixed by the House bill applicable only to telephone or radiotelephone messages or conversations. Telegraph, cable, and radio messages and dispatches are made subject to tax at 10 per cent of the amount charged. The 10 per cent rate is double the rate provided by existing law. Your committee felt that the tax rates fixed by the House bill would place telegraph, cable, and radio service at a competitive disadvantage.

This section also amends section 3465(b), which imposes a tax with respect to leased wires and talking circuit special service, to more clearly specify the types of service subject to tax, to impose the tax where the service is rendered within a local exchange area, and to also tax like service furnished by companies other than telegraph and telephone companies. The present tax is restricted to service furnished by a telegraph or telephone company.

The bill as it passed the House continues the present 5 per cent rate. The amendment increases the rate to 10 per cent in the case of leased-wire service, teletypewriter service, and talking circuit special service (which competes with telegraph service subject to tax under the amendment at 10 per cent). Other wire and equipment service is in a somewhat different category, and as to it no change in the 5 per cent rate provided by the House bill is recommended. Burglar and fire alarm service is not taxed under the amendment. Similarly, news ticker service carrying general news has been exempted from the tax to be consistent with the like exemptions allowed in the case of newspapers with respect to the leased-wire tax.

This section also imposes a tax on amounts paid by subscribers for local telephone service and all other telephone service not otherwise within the tax with respect to telephone toll charges and the tax with respect to leased wires. For example, in addition to local subscribers' service, this tax also applies to telephone toll service where the charge is 24 cents or less. As the tax is imposed only on telephone service, special provision is made to insure that charges for installation of instruments, poles, switchboards, apparatus, and equipment are not subject to the tax. Although service through coin-operated telephones is not subject to the tax on local subscribers' service, it is subject to tax in the case of toll charges of more than 24 cents. Coin-operated telephone service can not be subject to the tax because of the impracticability of charging the patron a percentage of 5 cents and collecting the 5 per cent tax through the instrument. As the tax on telephone toll service is collected in multiples of 5 cents, it can be collected through coin-operated telephones.

The committee bill increases the rate to 10 per cent. No other change is made.

SECTION 549. INSTALLMENT, ETC., PAYMENTS.

Section 549 makes certain changes in section 3441(c) of the Internal Revenue Code, which relates to articles leased or sold under installment or conditional sales contracts. Under section 3441(c) the taxpayer is permitted to pay the tax as payments are made under the lease or conditional or installment sales contract. The provisions of section 1050(b) of the Internal Revenue Code are revised and included within section 3441(c).

Under the bill as it passed the House, payments under leases and installment and conditional sales contracts, and existing sales entered into after June 30, 1941, would be subject to tax. If an existing tax rate were increased, payments after the effective date of the increase would be subject to the increased rate of tax. If a new tax were imposed, payments after its effective date would be subject to the new tax. Your committee is opposed to making such increased rates of tax retroactive to the extent that they would cover sales and leases made during the interim period prior to the inception of the tax. Accordingly, the section has been amended so that where the particular type of contract has been entered into before the effective date of Part IV of the bill, and delivery made before such date, the increased tax rate, or the new tax, as the case may be, shall not apply.

SECTION 550. EFFECTIVE DATE OF PART IV.

Section 550 contains provisions respecting the effective date of new taxes, or increases in existing rates of tax, or changes in tax base, effected by sections 541 to 548. With certain exceptions, the provisions are the same as those described in the discussion of section 536, i. e., the 1st day of the first month which begins more than 10 days after the date of the enactment of the bill. The changes with respect to the "cabaret" tax become effective at 10 a. m. on the effective date, for considerations peculiar to that tax. Special provision is made for the effective date of the tax imposed by section 548, with respect to local subscribers' telephone service, in order to give telephone companies (who will collect the tax for the Government) an opportunity to adjust their billing practices to the tax. It was also desired to restrict the application of the tax, as far as is reasonably practicable, to service rendered after the date of the enactment of the Act. It is recognized, however, that some local service rendered prior to the date the Act is enacted (but billed after such date) will be subject to the tax. It is intended to tax such service.

PART V. NEW EXCISE TAXES.

SECTION 551. NEW MANUFACTURERS' EXCISE TAX.

As passed by the House this section imposes taxes on sales by the manufacturer, producer, or importer, of the articles listed hereinafter at the rate given:

	Per cent.		*Per cent.*
Sporting goods	10	Business and store machines	10
Luggage	10	Rubber products	10
Electrical appliances	10	Washing machines	10
Photographic apparatus	10	Optical equipment	10
Electric signs	10		

In the case of sporting goods, luggage, electrical appliances, photographic apparatus, business and store machines, and optical equipment, the particular articles the sale of which is subject to tax are named. Uniforms and sport clothing are not within the scope of the tax on sporting goods.

In the case of electric signs, the tax applies to articles falling within the general classifications of neon tube signs, electric signs, and electric advertising devices.

It is recognized that a number of articles falling within the scope of the excise taxes listed herein may also fall within the scope of the jewelry retail sales tax imposed by section 552. Provision is accordingly made that such articles will be subject to the jewelry retail sales tax and not to the manufacturers' excise taxes imposed by this section.

Your committee has made the following changes:

Sporting goods.—Artificial lures, baits, and flies have been removed from the scope of the sporting-goods tax.

Electrical appliances.—The scope of this tax has been expanded by the inclusion of gas and oil water heaters and gas and oil stoves and cooking apparatus. Such added articles are directly competitive with the electrical articles taxed by this section as it passed the House.

Photographic apparatus.—Unexposed motion-picture film for use in making news reels is exempted from the tax by a provision included in section 553, which provides for appropriate credit or refund to the manufacturer.

Business and store machines.—A clerical change has been made in the provision with respect to these machines. In this section as it passed the House certain machines were included by trade names. The trade names have been deleted, and the particular machines included by appropriate description. Included in the list of business machines are fare registers and fare boxes. Fare registers and fare boxes for use on streetcars, busses, and other vehicles are taxable under this section and not as automobile accessories.

Washing machines.—As passed by the House this section taxed only washing machines of the kind used in commercial laundries. As many other household appliances are subject to tax under the bill, this section was changed to bring within the scope of the tax all washing machines, domestic as well as commercial.

Electric-light bulbs.—Under the committee bill, a 10 per cent tax on the sale of electric-light bulbs by the manufacturer, producer, or importer is imposed. This proposed tax has been included as paragraph 10 of new section 3406 to be added to the Internal Revenue Code.

SECTION 552. NEW RETAILERS' EXCISE TAXES.

This section adds a new Chapter 19, imposing new taxes on retail sales of jewelry, furs, and toilet preparations each at the rate of 10 per cent of the price for which the article is sold. The articles falling within the jewelry tax (including clocks, watches, cases, and movements) are articles which have in former jewelry excise taxes been classified as jewelry. There are added flat ware and hollow ware made of gold or silver, or plated. The tax will not apply to religious articles, surgical instruments, or frames or mountings for eyeglasses.

The fur tax is to be imposed on the sale of articles made of fur on the hide or pelt and articles of which such fur is the component material of chief value. This is a classification which has been used in earlier manufacturers' excise taxes with respect to furs.

A tax on the sale at retail of toilet preparations is imposed in place of the existing tax on sales by the manufacturer (imposed by section 3401 of the Internal Revenue Code). Provision is made that beauty parlors and barber shops shall make monthly returns of toilet preparations used in the treatment of patrons and the quantity used during the month shall be considered to have been sold at retail by such establishments.

Section 552 contains, or makes applicable, the administrative provisions necessary to the administration of these retail sales taxes.

This section also provides that the present tax on sales of toilet preparations by the manufacturer (imposed by section 3401 of the Internal Revenue Code) shall not apply to articles sold after the effective date of the retail sales tax. Manufacturer's tax previously paid with respect to articles which will also be subject to the retail sales tax will not be refunded.

Your committee made a number of changes with respect to the retail sales taxes.

Fountain pens are excluded from the jewelry tax if the only part thereof which consists of precious metals is the point.

Relative to the tax on toilet preparations, section 552 adds section 2407(c) to the Internal Revenue Code to permit a barber shop or beauty parlor to take credit for any retail sales tax imposed by the bill which has already been paid on toilet preparations as to which the barber shop or beauty parlor is subject to tax.

A provision has also been added specifying certain rules for determining the price base on which the tax is to be computed. This provision is similar to that which has been in effect for many years in the case of the manufacturers' excise taxes. Particularly important is the provision that the amount of the retail sales tax imposed by the bill shall be excluded in determining the price base for tax purposes. Similarly, State sales taxes may be excluded provided they are stated by the retailer as a separate charge. If States sales taxes are not separately stated, but are included in the gross selling price, the tax is computed on the gross selling price. The Federal tax is to be excluded whether or not stated as a separate charge.

In the case of leases, conditional sales, and installment contracts, substantially the same treatment is given with respect to the retail sales taxes as is given with respect to the manufacturers' sales taxes, as more fully explained in the discussion of section 549. That is to say, the language of the section as it passed the House has been changed so that where the particular contract was made, delivery was made, and a part of the consideration was paid, before the effective date of the retail sales taxes, no tax is imposed.

With a view to preventing the retail sales tax from being used as a means of securing unfair competitive advantages, a penalty provision has been included imposing a fine of not more than $1,000 on any person who in connection with the sale of an article represents that the price does not include the retail sales tax imposed by the bill.

SECTION 553. ADMINISTRATIVE CHANGES IN MANUFACTURERS' EXCISE TITLE OF CODE.

This section, added by the committee amendment, contains several administrative provisions believed important in the effective administration of the excise taxes imposed by the bill.

Leases.—A number of the articles subject to manufacturers' sales tax by the bill are articles which are generally leased by the manufacturer and not sold. Section 3440 of the Code already defines the term "sale" to include a lease. In clarification of existing language, this section is amended to provide specially that a lease, including a renewal or extension of a lease, or a subsequent lease, of an article shall be considered a taxable sale.

Existing contracts.—This section also adds an existing contracts section to the Internal Revenue Code. This section is quite similar to the existing contracts section included in the Revenue Act of 1932 when the last large bloc of manufacturers' sales taxes was imposed. Your committee believes that provision should be made permitting tax liability to be shifted from the manufacturer to the vendee in the case of sales contracts entered into before the effective date of the particular sales tax or increased rate of tax, but consummated after that date, where the contract does not permit the inclusion of the tax in the sales price. This affords relief to those cases where manufacturers have not been able to protect themselves by inserting a tax clause in their sales contracts to provide that taxes, such as those included in the bill, would be passed on to their vendees. The clause in question is, in language, quite close to the text of section 625 of the Revenue Act of 1932, which now appears as section 3447 of the Internal Revenue Code.

Section 553 also includes the refund and credit provisions with respect to news-reel and motion-picture film referred to in the discussion of section 551.

SECTION 554. TRANSPORTATION OF PERSONS, ETC.

This section imposes a tax on the amount paid within the United States for the transportation of persons by rail, motor vehicle, water, or air, within or without the United States. The rate is 5 per cent of the amount paid and tax liability is imposed on the person making the payment. Where the amount paid is less than 35 cents the tax does not apply. Round-trip tickets are not subject to tax if the amount payable for a one-way trip is less than 35 cents. In the case of commutation or season tickets the tax does not apply if the particular trips the holder of the commutation or season ticket is entitled to make under the ticket are less than 30 miles. For example, a commutation ticket entitling a person to transportation for a certain number of trips between two points is not subject to tax if the distance between the two points is less than 30 miles. These provisions will exempt local streetcar, bus, and taxi service, including amounts paid for token and passes. Amounts paid for commutation tickets for one month or less are also exempt from tax.

This section also imposes a tax on amounts paid for seating or sleeping accommodations in connection with taxable transportation.

Provision is made that the time for filing returns may be extended for as much as 90 days in order that carriers may have the necessary time to assemble, from widely scattered points, necessary data for making returns. Provision is also made that the tax shall not apply to transportation facilities furnished the United States, to any State or Territory or political subdivision thereof, or the District of Columbia.

Section 554(c) provides that the stamp tax on steamship passage tickets imposed by section 3469 of the Internal Revenue Code shall not apply to any

tickets the purchase of which is subject to tax under the new transportation tax.

One change has been made in the section as it passed the House. Provision has been made to exempt from the tax, with certain qualifications, amounts paid for transportation of personnel of the Army, Navy, Marine Corps, and Coast Guard, when in uniform and while on leave, and authorized cadets and midshipmen.

SECTION 555. COIN-OPERATED AMUSEMENT AND GAMING DEVICES.

This section imposes an occupational tax of $25 per annum per machine on each person who maintains for use, or permits the use of, on premises occupied by him, a coin-operated amusement or gaming device. "Coin-operated amusement or gaming devices" are, briefly, machines which fall within the general classification colloquially referred to as "pinball" machines and "slot machines." A separate liability is incurred with respect to each machine, but if one such machine is replaced by another, such other machine will not be considered an additional machine.

By committee amendment the rate of tax on so-called pinball machines is reduced from $25 to $10 per annum and the rate of tax on so-called slot machines is increased from $25 per annum to $200 per annum.

SECTION 556. BOWLING ALLEYS, ETC.

This section imposes an occupational tax on persons operating bowling alleys, billiardrooms, or poolrooms. The rate of tax is $15 per annum for each bowling alley, billiard table, or pool table. All types of establishments maintaining such equipment, including clubs or social organizations, etc., are subject to the tax. Maintaining such equipment in a private home is not subject to tax.

As in the case of other occupational taxes, the tax year begins July 1 of each year.

However, if after payment of tax and prior to the end of the tax year, additional bowling alleys, or billiard or pool tables, are placed in operation, a supplemental return must be filed and tax paid with respect to the additional equipment for the period beginning with the day of the month in which operation of the additional equipment commenced.

By committee amendment the rate is changed from $15 per annum to $10 per annum.

SECTION 557. USE OF MOTOR VEHICLES AND BOATS.

This section imposes a tax on the use of motor vehicles and boats. In the case of motor vehicles the tax is $5 per annum. In the case of boats the rate of tax ranges from $5 per annum on boats having an over-all length of 16 feet or over but not over 28 feet to $200 per annum on boats over 200 feet in over-all length. In the case of motor vehicles the tax is to be paid by the person in whose name the motor vehicle is, or is required to be, registered. In the case of boats, the tax is to be paid by the owner of the boat. The effective date of the tax is February 1, 1942; that is, the use of motor vehicles and boats before that date is not subject to tax.

Section 3540(b)(3) of the House bill defines the term "boat" but excludes from the definition boats used "exclusively" for trade or commercial fishing. The committee bill changes "exclusively" to "chiefly." The committee bill also exempts from the tax boats used by the Sea Scouts Department of the Boy Scouts of America chiefly for training scouts in seamanship.

SECTION 558. EFFECTIVE DATE OF PART V.

This section provides that the new taxes imposed by sections 551 to 558 will take effect on the 1st day of the first month which begins more than 10 days after the date of the enactment of the Act.

SECTION 561. PAYMENT OF PROCESSING TAX TO GUAM AND AMERICAN SAMOA.

This section was added by committee amendment. It provides that the taxes collected with respect to the processing of coconut oil originating in Guam or American Samoa shall be held as separate funds and paid to the treasuries of

these possessions. A condition is imposed that such funds shall not be used to subsidize producers of cocoa, coconut oil, and allied products in such possessions.

SECTION 602. SENATE LEGISLATIVE COUNSEL.

Section 602 amends section 1303 of the Revenue Act of 1918 so as to provide that certain matters relating to the office of the legislative counsel of the Senate should be under the direction of the President pro tempore of the Senate.

TITLE VII—CREDIT AGAINST FEDERAL UNEMPLOYMENT TAXES.

SECTION 701. CREDIT AGAINST FEDERAL UNEMPLOYMENT TAXES.

This section, added by your committee to the House bill, allows further time within which a taxpayer may pay contributions into an unemployment fund under a State law and obtain credit therefor against the Federal unemployment tax for 1936, 1937, 1938, 1939, or 1940.

In each of the past three years a similar provision of law has been enacted. However, since this tax has been in effect for more than five years, a period in which taxpayers have had ample opportunity to familiarize themselves with the time limitation provided in the permanent law and to take advantage of prior relief legislation, your committee states that this relief legislation should be the last of its kind to be enacted.

Under subsection (a), paragraph (1), credit is allowable against the tax for 1936, 1937, or 1938, imposed by Title IX of the Social Security Act, for contributions paid before the sixtieth day after the date of enactment of this Act, if credit is claimed before the expiration of six months after such date of enactment. If the contributions are paid on or after December 7, 1940 (the sixtieth day after the date of enactment of the Second Revenue Act of 1940, containing similar relief provisions in section 701 thereof), the credit on account of such contributions is limited to 90 per cent of the amount which would have been allowable if they had been paid before the due date of the Federal return. Paragraphs (2) and (3) provide in certain special cases for the allowance of credit, which is not subject to the foregoing limitations. These paragraphs continue without curtailment the relief heretofore granted in these cases by section 902(a) (2) and (3) of the Social Security Act Amendments of 1939 and section 701(a) (2) and (3) of the Second Revenue Act of 1940.

Subsection (b) provides similar relief in the case of the tax for 1939 or 1940 imposed by the Federal Unemployment Tax Act (Subchapter C, Chapter 9, Internal Revenue Code).

Subsection (c) provides for refunds, credits, and abatements, without interest, based on the credit allowable under subsections (a) and (b). It also provides that on and after the date of enactment of this Act no refund, credit, or abatement shall be allowed which is based on any credit allowable under certain prior relief legislation, that is, section 810 of the Revenue Act of 1938, section 902(a) of the Social Security Act Amendments of 1939, and section 701 of the Second Revenue Act of 1940. This section does not affect any credit for contributions paid which is allowable solely by reason of the provisions of section 902 of the Social Security Act or section 1601 of the Federal Unemployment Tax Act.

1941-39-10835

THE REVENUE BILL OF 1941.

[House of Representatives Report No. 1203, Seventy-seventh Congress, First Session.]

[September 15, 1941.]

Mr. Doughton, from the committee of conference, submitted the following conference report [to accompany H. R. 5417]:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 5417) to provide revenue, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

* * * * * * *

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 5417) to provide revenue, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Amendment No. 1: This amendment changes the table of contents and the House recedes with an amendment conforming the table of contents to the bill as agreed to in conference.

Amendment No. 2: This amendment integrates the defense tax with the basic surtax rates in the House bill. The lowest surtax bracket rate is therefore 6 per cent as compared with 5 per cent under the House bill and the highest rate is 77 per cent as compared with 75 per cent under the existing law and under the House bill. The House recedes.

Amendment No. 3: The Senate amendment adds to the Internal Revenue Code a new supplement, designated Supplement T, to provide for the optional use of a simplified return where the gross income does not exceed $3,000, in order that persons in the lower income tax brackets, particularly those brought in by the reduction of the personal exemption, may be caused a minimum of difficulty in filling out their returns. There were no comparable provisions in the House bill.

If the taxpayer elects to use this simplified plan, the amount of the tax may be readily ascertained by reference to a table contained in the bill. This simplified return may be used only where the taxpayer's income is derived solely from salaries, wages, compensation for personal services, dividends, interest, rent, annuities, or royalties. If the taxpayer elects to use this method, no deductions or credits against net income are allowed. In lieu of these deductions and credits, the tax provided in the table represents a reduction, with respect to the average taxpayer in the bracket, of 10 per cent of the tax that would otherwise be payable without such deductions or credits. This 10 per cent reduction has been found to be the effect of the average amount of deductions taken by persons in these brackets. One set of rates is provided for married persons or heads of families and another is provided for single persons (not heads of families). In determining the amount payable, the taxpayer in either case reduces his gross income by $400 for each dependent; then by reference to the appropriate table he ascertains the tax set out opposite the amount so determined.

It should be kept in mind that the use of the simplified return is at the option of the taxpayer and he elects each year whether to use this method or to file under the general provisions. However, once the return for any year has been filed under this method, the election shall be irrevocable, and if the taxpayer files under the general provisions for any year he may not thereafter elect for such year to be taxed under the simplified method. Nonresident alien individuals, estates, or trusts are not allowed to use the simplified method.

The House recedes.

Amendment No. 4: The House bill made permanent the defense tax imposed by section 15 of the Internal Revenue Code as added by section 201 of the Revenue Act of 1940. The Senate amendment integrates the defense tax rates with the rates provided in section 13(b) (1) and (2) of the Code, making the basic rate 24 per cent. In the case of corporations having net incomes of $25,000 or less, the rates under existing law (including the defense tax) are graduated as follows: 14.85 per cent on normal tax net incomes not in excess of $5,000; 16.5 per cent on the portion of such net income in excess of $5,000 and not in excess of $20,000; and 18.7 per cent on the excess over $20,000. The Senate amendment integrating the defense tax applicable to such net incomes makes the rates 15, 17, and 19 per cent, respectively. Under the Senate amendment the alternative tax applicable to corporations having net incomes slightly in excess of $25,000 is $4,250 plus 37 per cent of the normal tax net income in excess of $25,000. Under this provision the full tax rate of 24 per cent does not become effective until the normal tax net income of the corporation reaches $38,461.54.

This amendment also integrates the defense tax with the normal taxes on resident foreign corporations and on mutual investment companies, and with the surtax on corporations improperly accumulating surplus.

The House recedes.

Amendments Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17: Section 102 of the House bill imposed upon all corporations (including insurance companies)

except nonresident foreign corporations, and mutual investment companies (the latter being dealt with separately) a surtax of 5 per cent upon the first $25,000 of the corporation's surtax net income and 6 per cent upon the excess of such income over $25,000. "Corporation surtax net income" was defined as net income minus the credit for dividends received provided in section 26(b) and thus includes partially tax-exempt interest in the tax base. The section also imposed upon mutual investment companies a surtax upon Supplement C surtax net income of such companies at rates corresponding to those imposed upon corporations generally.

The Senate amendments retain the surtax but in lieu of the rates provided in the House bill the amendment provides a surtax of 6 per cent on the first $25,000 surtax net income and 7 per cent on the remainder. Since the credit for interest on partially tax-exempt Government securities is not allowable in computing surtax net income, the Senate amendment also provides that for the purposes of the surtax the dividends received credit shall be limited to 85 per cent of the net income rather than 85 per cent of the adjusted net income.

These amendments also terminate the defense tax, the defense tax rates being integrated with the basic rates.

The House recedes.

Amendments Nos. 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27: The House bill increased the rates of tax on nonresident alien individuals and foreign corporations and made permanent the defense tax. These amendments retain the increased rates but terminate the defense tax and integrate the 10 per cent defense tax with the basic rates. The amendments also reduce from $23,800 to $23,000 the amount of the gross income at which a nonresident alien individual becomes subject to the full normal tax and surtax rates. The amount of $23,000 represents the approximate point at which, under the provisions of the bill, an effective rate of 27½ per cent is reached. The House recedes.

Amendments Nos. 28, 29, and 30: These are changes in section numbers; and the House recedes.

Amendment No. 31: This amendment integrates the defense tax with the basic rates of tax imposed upon personal holding companies and transfers to avoid income tax and terminates the defense tax. The House recedes.

Amendment No. 32: This amendment incorporates a new section amending section 25(b)(1) of the Code to lower the personal exemption of a married person or the head of a family from $2,000 to $1,500 and the personal exemption of a single person or a married person not living with husband or wife from $800 to $750. The section also amends section 25(b)(1) to provide a personal exemption of $750 for a married person whose spouse files a separate return under Supplement T, added by section 102 of the bill. See amendment No. 3.

The section also amends sections 214 and 251(f) of the Internal Revenue Code to provide in the case of nonresident aliens and citizens entitled to the benefits of section 251 a personal exemption of $750 in lieu of $800 to conform with the changes made in section 25(b).

The tax bill as reported by the Committee on Ways and Means contained a provision requiring a joint income tax return from a husband and wife living together. This provision was estimated to yield additional revenue of about $300,000,000. It was stricken from the bill by the House.

As reported by the Finance Committee to the Senate, the bill contained a provision taxing a husband and wife in a community property State on exactly the same basis as persons similarly situated in noncommunity property States. This provision was estimated to yield $46,800,000. It was eliminated by the Senate with the understanding that it would be the subject of hearings and action in the administrative bill.

In view of the action by the House and Senate in this regard, in order to make up this substantial loss in revenue, it is necessary to lower the personal exemption of married persons from $2,000 to $1,500 and of single persons from $800 to $750. This section will produce added revenue of $303,000,000, or approximately the amount lost by the elimination of the joint return provision.

This reduction in the personal exemption will require the filing of 4,930,000 new income tax returns and will increase the number of income-tax payers by 2,275,000. Of the 4,930,000 new returns, 4,453,000 will come from married persons and heads of families and 477,000 will come from single persons. Of the 2,275,000 new taxpayers, 1,850,000 will be married persons and 425,000 will be single.

Of the total amount of additional revenue to be secured from lowering the exemptions, approximately $47,000,000 will come from new taxpayers. Of this

amount, only $10,000,000 will come from new income tax returns. The balance of this additional revenue, $256,000,000 will be secured from persons taxable under existing law.

The question of the joint return and the treatment of community-property income will be further considered by the Committees on Ways and Means and Finance in connection with the bill dealing with administrative matters.

The House recedes.

Amendment No. 33: This amendment incorporates a new section to amend sections 51(a), 142(a), and 147(a), relating to the requirement for individual and fiduciary returns and information returns in order to conform such requirement with the changes in the personal exemption. The House recedes.

Amendment No. 34: This is a change in section number; and the House recedes.

Amendment No. 35: This is a change in section number; and the House recedes.

Amendment No. 36: This amendment makes a clerical change; and the House recedes.

Amendment No. 37: This amendment provides that the issuing discount on certain short-term Federal, State, and local government obligations issued on a discount basis on or after March 1, 1941, shall not be deemed to accrue until such obligations are paid at maturity, sold, or otherwise disposed of, and that such obligations shall not be treated as capital assets within the meaning of section 117 of the Internal Revenue Code. The principal effect of this amendment is to eliminate the necessity (except in the case of life insurance companies) for making an allocation between interest and capital gain or loss on the disposition of any such obligation and the necessity for including any portion of the original discount in income for any taxable year other than that in which such obligation is paid at maturity, sold, or otherwise disposed of. Thus, under the amendment a person owning a Treasury bill issued on or after March 1, 1941, would not be required to include any portion of the original discount in income for any taxable year until that in which it is paid at maturity, sold, or otherwise disposed of, and for such year would need only to compare the sales price, or the amount paid at maturity, with the purchase price or other basis, and account for the net gain or loss. This amendment is applicable to taxable years ending after February 28, 1941. The House recedes.

Amendment No. 38: This is a change in section number; and the House recedes.

Amendment No. 39: By this amendment, the Senate adds a new section to the bill, section 117, entitled "Alimony and separate maintenance payments." This section of the bill amended sections 22, 23, and 25 of the Internal Revenue Code and added a new section to Supplement E of Chapter 1 of the Code in order to treat periodic payments in the nature of or in lieu of alimony or an allowance for support as income to a divorced or legally separated spouse or former spouse actually receiving such payments and to allow the other spouse (or former spouse) to deduct or exclude from his income an amount on account of such payments. The confereees have deferred action on the merits of this amendment with the understanding that it will be considered in a later bill dealing with administrative matters. The Senate recedes.

Amendment No. 40: This amendment extends from January 1, 1941, to January 1, 1943, the time during which an order may be issued by the Securities and Exchange Commission, relating to certain transactions arising out of the simplification or geographical integration of public utility holding company systems, under which orders such transactions are treated as tax-free exchanges under Supplement R of the Internal Revenue Code.

The House recedes with a technical amendment.

Amendment No. 41: This amendment amends section 23(a)(1) of the Internal Revenue Code by inserting after the words "taxable year" the words 'in conserving and conducting the business affairs of the taxpayer." The conferees have deferred action on the merits of this amendment with the understanding that it will be considered in a later bill dealing with administrative matters. They were advised by the Treasury Department that wherever possible final decision by the Bureau of Internal Revenue on issues arising under the *Higgins* v. *Smith* decision would be deferred pending such later legislation. The Senate recedes.

Amendment No. 42: This is a change in section number and the House recedes with an amendment making a further change in section number.

Amendment No. 43: This is a technical amendment; and the House recedes.

Amendments No. 44, 45, 46, and 47: The House bill imposed a special 10 per cent excess-profits tax, in certain cases where the invested capital credit is used, upon the excess of the adjusted excess profits net income under the income method over the adjusted excess profits net income under the invested capital method.

These amendments strike from the House bill the provisions relating to this tax. The House recedes.

Amendment No. 48: This is a change in section number; and the House recedes.

Amendment No. 49: This is a technical amendment related to amendment No. 57. In view of the action on amendment No. 57, the Senate recedes.

Amendment No. 50: This is a change in section number; and the House recedes.

Amendment No. 51: This is a technical amendment designed to make the limitations of section 718(a)(6)(A) of the Internal Revenue Code, added by section 205 of the House bill, applicable to certain exchanges of the same character as those described in the House bill but which were technically not within such provision because they are governed by Supplement R of the Code rather than section 112(b) (3), (4) or (5). The House recedes.

Amendment No. 52: This amendment makes a clerical change; and House recedes.

Amendment No. 53: This amendment has the effect of preventing a distribution of taxable stock dividends out of pre-1941 accumulated earnings and profits from constituting new capital solely because of subsequent operating losses or because of subsequently accumulated but undistributed earnings and profits, and also has the effect of preventing money or property paid in from constituting new capital if such money or property merely takes the place of pre-1941 accumulated earnings and profits previously distributed after the beginning of the first taxable year which begins after December 31, 1940. The House recedes.

Amendment No. 54: This amendment strikes out section 206 of the House bill, which provides that section 731 of the Internal Revenue Code (exempting from excess-profits tax income derived from mining certain metals) shall not apply with respect to any taxable year beginning after December 31, 1940. The Senate recedes.

Amendment No. 55: This is a change in section number, and the House recedes with an amendment making a further change in section number.

Amendment No. 56: This is a technical amendment rendered unnecessary by the action taken on Senate amendment No. 57; and the Senate recedes.

Amendment No. 57: This amendment allows corporations subject to the capital stock tax to make a new declaration of capital stock value annually and permits the Commissioner to grant an additional extension of 30 days for the filing of capital stock tax returns for the year ending June 30, 1941. The House recedes with an amendment restoring the existing law with respect to the declaration of capital stock valuation.

Amendment No. 58: This amendment changed a subsection designation from "(e)" to "(f)." The House recedes with an amendment changing the designation to "(d)."

Amendment No. 59: This is a clerical amendment; and the House recedes.

Amendment No. 60: This amendment integrates the defense tax rate of the declared value excess profits tax with the basic rate, and makes technical changes in connection with amendment No. 57, allowing declaration of capital stock value annually for capital stock tax purposes. The House recedes with an amendment eliminating the technical changes, rendered unnecessary by the action on Senate amendment No. 57.

Amendments Nos. 61 and 62: The House bill increased the rates applicable to the additional estate tax with respect to decedents dying after the date of enactment of the Act, and made permanent the defense tax on net estates imposed by section 951 of the Internal Revenue Code. By reason of the integration of the defense tax and the additional estate tax, these amendments further increase the rates applicable to the additional estate tax, and repeal section 951 of the Internal Revenue Code, which relates to the defense tax rate. The House recedes.

Amendment No. 63: This is an administrative amendment to the estate tax provisions of the Internal Revenue Code and the Revenue Act of 1926, relating to the deduction from the gross estate of property previously taxed. The conferees have deferred action on the merits of this amendment with the understanding that it will be considered in a later bill dealing with administrative matters. The Senate recedes.

Amendment No. 64: This is an administrative amendment to the estate tax provisions of the Internal Revenue Code, relating to the determination of the deduction for charitable, etc., bequests. The conferees have deferred action with the understanding that it will be considered in a later bill dealing with administrative matters. The Senate recedes.

Amendment No. 65: This amendment makes a change in section number; and the Senate recedes.

Amendments Nos. 66 and 70: The House bill increased the rates for computing the gift tax for the calendar year 1942 and each calendar year thereafter, and made permanent the defense tax imposed for five years by section 1001(d) of the Internal Revenue Code. By reason of the integration of the defense tax and the gift tax, these amendments further increase the rates for computing the gift tax, and repeal section 1001(d) of the Internal Revenue Code, which relates to the defense tax rate. The House recedes.

Amendments Nos. 67, 68, and 69: These amendments make clerical changes; and the House recedes.

Amendments Nos. 71, 72, 73, 74, and 76: These amendments eliminate the differential in favor of brandy and subject brandy to the same $4 rate as other distilled spirits. In connection with this change a clerical amendment is made in the heading of section 533(a) and the floor stocks tax on brandy is made $1.25, the difference between the rate of $2.75 under existing law and the $4 rate under the Senate amendment. The House recedes.

Amendments Nos. 75, 77, and 78: These are clerical amendments dependent upon amendment No. 89, which changes the effective date of Part III; and the House recedes.

Amendments Nos. 79, 80, 81, 82, and 83: These amendments increase the House bill rates on still wines from 8, 24, and 50 cents to 10, 35, and 65 cents, respectively; the rate of 4 cents on sparkling wines to 7 cents; and the rate of 2¼ cents on artificially carbonated wines and on liqueurs, cordials, and similar compounds to 3½ cents. The House recedes on amendments Nos. 81, 82, and 83 and recedes on amendment No. 80 with an amendment reducing the 35 cent rate on still wines containing more than 14 per cent and not exceeding 21 per cent of absolute alcohol to 30 cents. The Senate recedes on amendment No. 79, thereby reverting to the 8 cent rate in the House bill on still wines containing not more than 14 per cent of absolute alcohol.

Amendments Nos. 84, 85, and 86: These are clerical amendments dependent upon amendment No. 89, which changes the effective date of Part III; and the House recedes.

Amendment No. 87: The House bill imposed a floor stocks tax on tires and tubes held for sale on the effective date of Part III of Title V of the Revenue Act of 1941. The amendment makes the tax applicable to tires and tubes held on October 1, 1941, the effective date of such part under amendment No. 89; and the House recedes.

Amendment No. 88: The House bill made amendments made by Part III of Title V applicable with respect to the period beginning with the effective date of this part. The amendment makes the amendments made by Part III of Title V applicable with respect to the period beginning with October 1, 1941; and the House recedes.

Amendment No. 89: The House bill provided that Part III of Title V shall take effect on the 1st day of the first month which begins more than 10 days after the date of the enactment of this Act. The amendment makes Part III effective October 1, 1941; and the House recedes.

Amendments Nos. 90 and 92: The House bill exempted from admissions tax payments for admission which are less than 10 cents. It also provided that amounts paid for admission by season ticket or subscription should be exempt only if the amount which would be charged to the holder or subscriber for a single admission would be less than 10 cents. These amendments allow the exemption with respect to charges under 10 cents only as to children under 12 years of age and eliminate the provision of the House bill relative to season tickets or subscriptions; and the House recedes.

Amendment No. 91: The House bill exempted children under 12 years of age from the provision that in the case of persons admitted free or at reduced rates an equivalent tax shall be collected based on the price charged to other persons for the same or similar accommodations. The amendment extends the exemption to persons under 18 years of age; and the Senate recedes.

Amendments Nos. 93 and 94: The House bill terminated the exemptions from admissions tax extended by section 1701 of the Internal Revenue Code with respect to, among others, certain religious, educational, or charitable entertainments; agricultural fairs; and certain concerts conducted by certain civic or community membership associations. The amendments restore these exemptions and also exempt admissions to entertainments conducted by public or parochial, elementary, or high schools; and the Senate recedes.

Amendment No. 95: This amendment makes the floor stocks tax on matches imposed by the House bill effective on October 1, 1941, the effective date of Part IV of Title V of the bill under amendment No. 103; and the House recedes.

Amendment No. 96: By section 548 the House bill imposed on telephone, telegraph, cable, and radio dispatches, messages, and conversations for which the charge is more than 24 cents, a tax at the rate of 5 cents for each 50 cents or fraction thereof of the charge. The amendment confines this tax to telephone or radio telephone messages or conversations and imposes in the case of each telegraph, cable, or radio dispatch or message a tax of 10 per centum of the amount of the charge.

Section 548 of the House bill also imposed a tax equivalent to 5 per cent of the amount paid for (A) leased wire or talking circuit special service or (B) wire and equipment service (including teletypewriter service, burglar alarm service, news ticker service, and stock quotation and information services, and all other similar services). The amendment imposes a 10 per cent tax with respect to leased wire, teletypewriter, or talking circuit special service and a 5 per cent tax with respect to amounts paid for wire and equipment service, but not including burglar or fire alarm service.

The House recedes with an amendment subjecting burglar and fire alarm service to the 5 per cent tax.

Amendment No. 97: This amendment increases the tax imposed on the amount paid by subscribers for local telephone service from 5 per cent as fixed by the House bill to 10 per cent; and the House recedes with an amendment fixing the rate at 6 per cent.

Amendments Nos. 98 and 99: The House bill, in certain cases, exempts from the taxes under section 3465 of the Internal Revenue Code, as amended by section 548 of the House bill, any payment received from any person for services or facilities utilized in the collection of news for the public press, or radio broadcasting, or in the dissemination of news through the public press. The amendments also exempt news ticker services furnishing a general news service similar to that of the public press; and the House recedes.

Amendments Nos. 100, 101, and 102: The House bill provided that in the case of leases, contracts of sale, or conditional sales and deliveries thereunder made before July 1, 1941, payments made subsequent to the effective date of Part IV of Title V were to be taxed at the rate in force prior to such effective date. The amendments apply this provision to leases, contracts of sale, and conditional sales and deliveries thereunder made prior to October 1, 1941, the effective date of such part under amendment No. 103. The House recedes.

Amendments Nos. 103, 104, 105, 106, 107, and 108: These amendments change the effective dates of certain provisions, the effective date in the case of amendments Nos. 103, 104, and 105 being October 1, 1941, and the effective date in the case of amendment No. 106 being October 5, 1941, and in the case of amendments Nos. 107 and 108 being October 6, 1941; and the House recedes.

Amendment No. 109: This amendment eliminates the taxes on soft drinks, finished or fountain sirups, and carbonic acid gas imposed by the House bill; and the House recedes.

Amendment No. 110: This is a change of section number; and the House recedes.

Amendment No. 111: This amendment eliminates the tax imposed by the House bill on artificial lures, baits, and flies; and the Senate recedes.

Amendments Nos. 112, 113, and 114: These amendments make the tax imposed by the House bill on certain electrical appliances applicable also to gas or oil water heaters and gas or oil appliances used for cooking, warming, etc.; and the House recedes.

Amendments Nos. 115 and 116: These amendments delete the names of certain business appliances made taxable by the House bill and provide appropriate descriptions for such appliances not already covered under other designations; and the House recedes.

Amendment No. 117: The House bill taxed only washing machines of the kind used in commercial laundries. The amendment extends the tax to domestic washing machines and other washing machines generally; and the Senate recedes.

Amendment No. 118: This amendment imposes a 10 per cent manufacturers' excise tax on electric light bulbs. The House recedes with an amendment excluding articles otherwise taxable, reducing the tax to 5 per cent, and making it clear that the tax applies to electric light tubes.

Amendments Nos. 119 and 124: The House bill imposed a tax on jewelry and other enumerated articles sold at retail. Amendment No. 124 deletes this tax, but amendment No. 119 substitutes a tax on similar articles sold by the manufacturer, producer, or importer with an exemption of fountain pens if the only part of the pen which consists of precious metals is the point or other essential part not used for ornamental purposes. The Senate recedes on amendment No. 119. The House recedes on amendment No. 124 with an amendment restoring the tax on articles sold at retail, and excepting fountain pens if the only parts of the pen which consist of precious metals are points or other essential parts not used for ornamental purposes.

Amendment No. 120: This amendment eliminates a provision of the House bill that an article subject to jewelry tax shall not be subject to any other tax imposed by section 551 (552 of the House bill); and the Senate recedes.

Amendment No. 121: This amendment is clerical; and the Senate recedes.

Amendment No. 122: This amendment makes the effective date of section 551, October 1, 1941, instead of the 1st day of the first month which begins more than 30 days after the enactment of the Act; and the House recedes.

Amendment No. 123: This is a change in section number; and the House recedes.

Amendments Nos. 125 and 126: These are changes in section numbers; and the Senate recedes.

Amendment No. 127: Under the House bill, toilet preparations used by a barber shop, beauty parlor, or similar establishment, in the treatment of any customer or patron were considered as sold at retail and were subject to tax at 10 per cent of their fair retail price, as determined by the Commissioner. Under the amendment, sales of toilet preparations to such establishments are treated as sales at retail. Sales by such establishments are also considered sales at retail under the amendment, but in such a case the tax imposed is credited with the tax paid on the sale to the establishment. The House recedes.

Amendment No. 128: This is a change in section number; and the Senate recedes.

Amendment No. 129: This amendment provides certain rules for determining the taxable price of an article subject to retailers' excise tax. It provides that charges for coverings and containers and for placing the article in condition packed ready for shipment shall be included, but excludes the tax itself. There is also excluded, if stated as a separate charge, the amount of any retail sales tax imposed by any State, or Territory, or political subdivision of the foregoing, or the District of Columbia. The House recedes.

Amendments Nos. 130 and 131: These amendments change section numbers; and the Senate recedes.

Amendments Nos. 132 and 133: The House bill provided that the retail excise taxes should not apply to jewelry or furs if the article was the subject of a lease, contract for sale, or conditional sale and delivery was made and part of the consideration was paid before July 1, 1941. Amendment No. 132 is a technical amendment related to amendments Nos. 124 and 126. Amendment No. 133 changes "July 1, 1941" to "October 1, 1941." The Senate recedes on amendment No. 132, in conformity with the action on amendments Nos. 124 and 126. The House recedes on amendment No. 133.

Amendments Nos. 134, 135, and 136: These amendments change section numbers; and the Senate recedes.

Amendment No. 137: This amendment prohibits, under penalty, in connection with the sale or lease, or offer for sale or lease, of any article subject to retailers' excise tax, the making of any statement, written or oral, in advertisement or otherwise, intended or calculated to lead any person to believe that the price does not include the tax. The House recedes with a clerical amendment.

Amendments Nos. 138 and 139: These amendments make the retailers' excise taxes effective as of October 1, 1941, and terminate the manufacturers' tax on toilet articles as of the same date; and the House recedes.

Amendment No. 140: This amendment, in clarification of existing language, amends section 3440 of the Internal Revenue Code to provide specifically that

a renewal or extension of a lease, or subsequent lease, shall be considered a taxable sale. The House recedes.

Amendment No. 141: This amendment permits liability for a manufacturers' excise tax imposed by the bill to be shifted from the manufacturer to the vendee in any case where, prior to the effective date of Part V of Title V of the bill (October 1, 1941, under amendment No. 156), any person has made a bona fide contract for the sale after that date of any article with respect to the sale of which a tax is imposed or an existing tax is increased by the bill and such contract does not permit the adding of the tax, unless the contract prohibits such addition. The House recedes.

Amendment No. 142: This amendment provides a refund of the tax on photographic apparatus imposed by section 551 (552 in the House bill) paid on unexposed motion picture films used or resold for use in the making of news reel motion picture films; and the House recedes.

Amendment No. 143: This amendment allows, with respect to automobile radios sold or used in connection with the sale of automobiles and similar articles, a credit similar to that allowed with respect to tires and tubes when so sold or used. The House recedes with a clarifying amendment.

Amendment No. 144: Under this amendment, refund of tax paid on distilled spirits would, under certain limitations therein provided, be allowed at the rate of $1 per proof gallon in the case of distilled spirits used in the manufacture or production of an article intended for use for nonbeverage purposes and sold for such use. The Senate recedes.

Amendment No. 145: This amendment makes the tax on payments for transportation of persons applicable with respect to payments on or after October 1, 1941, instead of the first month which begins more than 10 days after the date of the enactment of the Act, as provided in the House bill. The House recedes with an amendment changing the date to October 10, 1941.

Amendment No. 146: This amendment, in certain cases, exempts from transportation tax payments for transportation of military or naval personnel; and the House recedes.

Amendment No. 147: The House bill imposed an occupational tax of $25 per annum with respect to the operation of a pin-ball game, a slot machine, or similar amusement or gaming device. The amendment establishes two different rates of tax: $10 per annum in the case of a pin-ball game, or similar game or amusement machine, and $50 with respect to so-called slot machines, the operation of which involves an element of chance; and the House recedes.

Amendment No. 148: The House bill provided with respect to the year ending June 30, 1942, that the tax on the operation of a coin-operated game or other amusement or gaming device should not be applicable with respect to operation prior to the effective date of Part V of Title V of the Revenue Act of 1941. The amendment fixes October 1, 1941, as the date prior to which operation of such device shall not cause tax liability to be incurred. The House recedes.

Amendments Nos. 149 and 150: These amendments reduce the tax on the operation of a bowling alley, billiard table, or pool table from $15 to $10 per annum, and make the date prior to which operation shall not cause tax liability to be incurred October 1, 1941. The House recedes.

Amendment No. 151: This amendment eliminates the tax imposed by the House bill upon every person who engages in business as a lessor of billboards; and the House recedes.

Amendment No. 152: This amendment makes a change in section number; and the House recedes.

Amendments Nos. 153 and 154: The House bill exempted from the tax on the use of boats, boats used exclusively for trade, and so forth. These amendments change "exclusively" to "chiefly" and also exempt boats used by the Sea Scouts Department of the Boy Scouts of America chiefly for training scouts in seamanship. The House recedes.

Amendment No. 155: The House bill authorized the Postmaster General to cooperate with the Commissioner of Internal Revenue in the sale of stamps, stickers, or tags used for payment of the tax on the use of motor vehicles and boats. By the Senate amendment, the Secretary of the Treasury is authorized and directed to advance from time to time to the Postmaster General such sums as the Postmaster General may show shall be required in the performance of such services. The House recedes with an amendment authorizing the appropriation of such sums as may be necessary to enable the Secretary of the Treasury to make the advances to the Postmaster General.

Amendment No. 156: This amendment changes a section number; and the House recedes.

Amendment No. 157: This amendment provides that Part V of Title V of the bill shall be effective October 1, 1941; and the House recedes.

Amendment No. 158: This amendment provides that the taxes collected with respect to the processing of coconut oil originating in Guam or American Samoa shall be held as separate funds and paid to the treasuries of these possessions, with a condition that such funds shall not be used to subsidize producers of copra, coconut oil, or allied products in such possessions; and the House recedes.

Amendment No. 159: This amendment eliminates the tax imposed by the House bill with respect to the operation of a radio broadcasting station or engaging in network broadcasting; and the House recedes.

Amendment No. 160: This amendment establishes a committee to investigate nonessential Federal expenditures. The committee is to be composed of (*a*) three members of the Senate Committee on Finance and three members of the Senate Committee on Appropriations, to be appointed by the President of the Senate; (*b*) three members of the House Committee on Ways and Means and three members of the House Committee on Appropriations, to be appointed by the Speaker of the House of Representatives; and (*c*) the Secretary of the Treasury and the Director of the Bureau of the Budget. It shall be the duty of such committee to make a complete study and investigation of all expenditures of the Federal Government with a view to recommending the elimination or reduction of all such expenditures deemed to be nonessential. The committee shall report to the President and to the Congress the result of its study together with its recommendations at the earliest practicable date. It is given the authority and powers commonly given to similar committees of the Senate and will operate under an appropriation not to exceed $10,000. The House recedes.

Amendment No. 161: This amendment amends section 1303 of the Revenue Act of 1918, as amended, to strike out "President of the Senate" wherever it appears therein and insert in lieu thereof "President pro tempore of the Senate." The House recedes.

Amendment No. 162: This amendment allows further time within which a taxpayer may pay contributions into an unemployment fund under a State law and obtain credit therefor against the Federal unemployment tax for 1936, 1937, 1938, 1939, or 1940. There was no comparable provision in the House bill. In each of the past three years a similar provision of law has been enacted. Since this tax has been in effect for more than five years, a period in which taxpayers have had ample opportunity to familiarize themselves with the time limitation provided in the permanent law and to take advantage of prior relief legislation, the conferees are in agreement with the statement of the Finance Committee of the Senate that this relief legislation should be the last of its kind to be enacted. The House recedes with a clerical amendment.

Amendment No. 163: This amendment adds a new section which amends the provisions of Title II of the Labor-Federal Security Appropriation Act, 1942, relating to the appropriation available to the Social Security Board for grants to States for unemployment compensation administration. The conferees were impressed with the purpose of this amendment, but due to difficulties of working out a suitable provision, action on the merits was deferred with the understanding that it would be considered in a later bill. The Senate recedes.

Amendment No. 164: This amendment adds a new section amending section 401 of the Second Revenue Act of 1940 (relative to the suspension of the Vinson-Trammell Act in the case of contracts or subcontracts not completed before the contractors' or subcontractors' first excess profits tax taxable year) to provide that for the purposes of such section a contract or subcontract shall be deemed to be completed on the date on which final delivery and acceptance of the vessel or other article specified therein is made. The conferees have deferred action on the merits of this amendment with the understanding that it will be considered in a later bill dealing with administrative matters. The Senate recedes.

R. L. DOUGHTON,
THOS. H. CULLEN,
JERE COOPER,
JOHN W. BOEHNE, Jr.,
ALLEN T. TREADWAY,
HAROLD KNUTSON,
DANIEL A. REED,
Managers on the part of the House.

1941–47–10908

AMENDING SECTION 124 OF THE INTERNAL REVENUE CODE.

[House of Representatives Report No. 1207, Seventy-seventh Congress, First Session.]

[September 18, 1941.]

Mr. Doughton, from the Committee on Ways and Means, submitted the following report [to accompany H. J. Res. 235]:

The Committee on Ways and Means, to whom was referred the joint resolution (H. J. Res. 235) to amend section 124 of the Internal Revenue Code by extending the time for applications, and changing the procedure for certification of national-defense facilities and contracts for amortization purposes, having had the same under consideration, report favorably thereon, with amendments, and recommend that the joint resolution, as amended, do pass.

The amendments are as follows:

In line 2 on page 2 insert after the comma, the following words "which certification shall be".

In line 8 on page 4 strike out the word "and" at beginning of the line and insert the following words "which regulations shall be".

In line 9, page 1, strike out the word "have" and insert the word "has".

In line 11, page 3, strike out the word "certify" and insert the word "certifies".

Representatives of the War Department and the Navy Department appeared before the committee and urged the speedy enactment of this legislation. They pointed out that the various agencies concerned with the administration had agreed upon the changes proposed.

The purposes of the proposed legislation are to make certain changes in the procedure for applying for amortization based on experience obtained in the administration of section 124 and to clarify the meaning of certain provisions of said section. It is believed that the proposed amendments will greatly simplify the administration of this section and expedite the carrying out of the defense program.

Section 1 of the joint resolution proposes to strike out the requirement in the existing law that the Advisory Commission to the Council of National Defense act as a joint certifying agency for necessity certificates. When the present law was enacted, the Advisory Commission to the Council of National Defense was an active functioning body. At the present time, its other functions have been taken over by other governmental agencies. The War Department and the Navy Department are presently equipped to act upon applications for amortization privileges, and have secured the cooperation and assistance of other governmental agencies. Experience has shown that considerable uncertainty and delay is created by the necessity for joint action of two governmental agencies in passing upon applications for certification.

In lieu of required action by the Advisory Commission, it is now proposed that certifications be made only by the Secretary of War or the Secretary of the Navy, as the case may be, but under such regulations as may be prescribed from time to time by the Secretary of War and the Secretary of the Navy and subject to such policies and procedures as may be prescribed from time to time by the President or by such agency or officer as he may designate. It is thought that by this means control of the policy and procedure as to certification for tax purposes will be as effective as previously provided by requiring joint certification by the Advisory Commission with the Secretary of War or the Secretary of the Navy, but without the inherent delay resulting from duplication of effort by requiring in each case an agency outside of the Army or Navy to join in the certification.

Section 2 of the joint resolution proposes to change from 60 days to 6 months as the time, after the beginning of construction, installation, or acquisition of the emergency facilities, within which applications for necessity certificates must be filed. Experience has shown that in many cases it is impossible for the applicant to identify the facilities sought to be certified with any degree of accuracy within the time now prescribed. This is due to the fact that expanding emergency facilities under present conditions require the constant change of items due to the difficulty in securing some, and the changing requirements of the Government as to others. Accordingly, under the present law it is necessary for many applicants to file numerous supplemental and new

applications with additional appendixes, describing items of facilities in the process of construction. This occasions a great amount of work on the part of the applicant and a tremendous amount of time and effort on the part of Government officials. The experience of the certifying units justifies the belief that these difficulties will be obviated by extending the period for filing to six months after the beginning of the construction without prejudice to the interest of the Government.

In section 3, provision is made for clarification of the meaning of certain provisions of the existing law relating to nonreimbursement and Government protection certificates, and changing the procedure to be followed in applying for such certificates. The following indicates the changes to be effected:

(*a*) The joint resolution proposes to eliminate the necessity of certifying contracts under $15,000. In the absence of a certificate of Government protection, the present statute denies amortization deduction if the taxpayer has been reimbursed (beyond normal exhaustion, wear, and tear) by the United States for the cost of all or any part of emergency facilities pursuant to any contract with the United States regardless of amount. A large number of applications have been filed requesting certification that contracts or purchase orders, many insignificant in amount, do not so reimburse. This has necessitated a vast amount of work on the part of the War Department and the Navy Department, as well as other agencies of the Government in collecting and reviewing the facts in reference to said contracts in order to determine this question. The provision eliminating the necessity for certification of contracts under $15,000 would dispense with a large amount of work wholly unnecessary to adequately protect the interests of the Government and will eliminate unnecessary expense.

(*b*) The joint resolution proposes to limit the contracts required to be examined for reimbursement to those made on behalf of the United States with the War Department, the Navy Department, the United States Maritime Commission, or any other department or agency which the President may designate. The present law requires examination of all the applicant's contracts with all departments or agencies of the Government. The vast majority of these contracts with the departments other than the War Department, Navy Department, and the Maritime Commission, are for routine supplies having no connection with the defense program, and there is very little, if any, possibility of reimbursement therein for the cost of emergency facilities. Since in the future there may be certain departments other than the War Department, Navy Department, and the Maritime Commission whose contracts might involve such reimbursement, it is proposed to provide for the inclusion of the contracts of such departments or agencies as the President may designate.

(*c*) The joint resolution proposes to clarify the meaning of indirect reimbursement by providing that the test should be whether the contract recognizes that in fixing the price to be paid, the return of cost of facilities in excess of normal exhaustion, wear, and tear was used by the United States as a factor. The insertion of the words "by the United States" is believed to be in line with the original intent of the statute. The present wording of the statute raises the question as to whether it is necessary to ascertain the state of mind of the contractor. Establishing proof of such state of mind is difficult in any one case and, in view of the fact that many thousands of contracts have been submitted for certification, presents an extremely difficult problem of administration.

(*d*) A proviso has also been inserted to the effect that a return of cost greater than normal exhaustion, wear and tear shall not be deemed to have been used as a factor in the fixing of the price "when the negotiating or contracting officer reports that after careful consideration he is satisfied that such greater return was not included in the price." These reports are to be subject to regulations discussed below.

(*e*) The joint resolution proposes to strike out the requirement of the existing law that the Advisory Commission to the Council of National Defense should act as a joint certifying agency for nonreimbursement and Government protection certificates. The reasons given above for this proposal in connection with necessity certificates apply with even greater force to certificates of nonreimbursement and Government protection.

(*f*) The joint resolution proposes to change the provisions for certification as to Government protection by providing that such certification shall be made with reference to the emergency facilities instead of with reference to each contract.

The reason for this proposal is to eliminate the possible requirement of continued examination of later supply contracts. If the original contract, under which reimbursement is made for facilities, adequately protects the Government's interest in the future use and disposition of the facilities and is so certified, the making of subsequent supply contracts will not deprive the Government of the protection which has been afforded under the original contract.

(*g*) The joint resolution proposes to add a provision for issuance of a certificate of Government protection in cases in which the taxpayer has not been or will not be reimbursed, as well as in cases in which it has been reimbursed. This proposed change will make it possible for a taxpayer who claims that it has not been or will not be reimbursed to obtain amortization, nevertheless, by agreeing to protect the Government's interests in the future use and disposition of the facilities.

(*h*) The joint resolution proposes to extend the time for filing applications for nonreimbursement certificates and Government protection certificates from 60 days to 6 months after the making of the contract for which certification is requested, or before the expiration of 60 days after the issuance of a necessity certificate, whichever is later. There appears to be no more reason for a shorter period for filing applications for Government protection and nonreimbursement certificates than in the case of necessity certificates. The existing requirement that the application be filed within 60 days compels taxpayers to file a large number of separate applications which involve unnecessary work and expense in the departments. There are also instances in which the contractors should be entitled to file applications covering contracts, which were entered into more than 60 days, and possibly even more than 6 months, prior to the time of constructing or acquiring emergency facilities, and the proposed provision permits filing of such applications within 60 days after the issuance of a necessity certificate.

(*i*) Consistent with the proposed change with regard to certification of necessity of facilities, it is proposed to provide that reports of negotiating and contracting officers and certificates of adequate Government protection and certificates of nonreimbursement provided for in the Act shall be issued under such regulations as may be prescribed from time to time by the Secretary of War and the Secretary of the Navy, which regulations shall be subject to such policies and procedures as may be prescribed from time to time by the President, or by such agency or officer as he may designate.

Section 4 of the resolution would require that the amendments to section 124 contained in the resolution have the same force and effect as if a part of the existing law as of the date of its original enactment. By this means, it will be possible to preserve to the taxpayer the same privileges with respect to selecting the year in which to take the amortization deduction as if the certificate had been secured in accordance with the procedure provided in the present law and to preserve to taxpayers the benefit of applications filed under the limitations provided by the present law.

1941–47–10909

AMENDING SECTION 124 OF THE INTERNAL REVENUE CODE.

[Senate Report No. 688, Seventy-seventh Congress, First Session. Calendar No. 717.]

[September 29, 1941.]

Mr. George, from the Committee on Finance, submitted the following report [to accompany H. J. Res. 235]:

The Committee on Finance, to whom was referred the joint resolution (H. J. Res. 235) to amend section 124 of the Internal Revenue Code by extending the time for applications, and changing the procedure, for certification of national-defense facilities and contracts for amortization purposes, having considered the same, report favorably thereon with amendments and recommended that the joint resolution as amended do pass.

The committee amendments are as follows:

On page 2, beginning in line 4, strike out "and subject to such policies and procedures as may be prescribed from time to time by the President, or by such agency or officer as he may designate" and insert in lieu thereof a comma and the words "with the approval of the President."

On page 2, line 10, insert, before the period, the words "and by striking out 'February 6, 1941' and insert in lieu thereof 'December 1, 1941'".

On page 2, line 17, after the word "behalf", insert "after December 17, 1939,".

On page 3, line 23, strike out "February 6, 1941" and insert in lieu thereof "December 1, 1941".

On page 4, beginning with line 7, strike out "Navy which regulations shall be subject to such policies and procedures as may be prescribed from time to time by the President, or by such agency or officer as he may designate" and insert in lieu thereof "Navy, with the approval of the President".

Representatives of the War Department and the Navy Department appeared before the committee and urged the speedy enactment of this legislation. They pointed out that the various agencies concerned with the administration had agreed upon the changes proposed.

The purposes of the proposed legislation are to make certain changes in the procedure for applying for amortization based on experience obtained in the administration of section 124 and to clarify the meaning of certain provisions of said section. It is believed that the proposed amendments will greatly simplify the administration of this section and expedite the carrying out of the defense program.

Section 1 of the joint resolution proposes to strike out the requirement in the existing law that the Advisory Commission to the Council of National Defense act as a joint certifying agency for necessity certificates. When the present law was enacted the Advisory Commission to the Council of National Defense was an active functioning body. At the present time its other functions have been taken over by other governmental agencies. The War Department and the Navy Department are presently equipped to act upon applications for amortization privileges, and have secured the cooperation and assistance of other governmental agencies. Experience has shown that considerable uncertainty and delay is created by the necessity for joint action of two governmental agencies in passing upon applications for certification.

In lieu of required action by the Advisory Commission, it is now proposed that certifications be made only by the Secretary of War or the Secretary of the Navy, as the case may be, but under such regulations as may be prescribed from time to time by the Secretary of War and the Secretary of the Navy. Under the House language, such regulations were to be subject to such policies and procedures as may be prescribed from time to time by the President or by such agency or officer as he may designate. As heretofore noted, your committee, in the interest of simplification, struck out the House provision and amended the resolution to provide that such regulations shall be subject to the approval of the President. It is thought that by this means control of the policy and procedure as to certification for tax purposes will be as effective as previously provided by requiring joint certification by the Advisory Commission with the Secretary of War or the Secretary of the Navy, but without the inherent delay resulting from duplication of effort by requiring in each case an agency outside of the Army or Navy to join in the certification.

Section 2 of the joint resolution proposes to change from 60 days to 6 months as the time, after the beginning of construction, installation, or acquisition of the emergency facilities, within which applications for necessity certificates must be filed. Experience has shown that in many cases it is impossible for the applicant to identify the facilities sought to be certified with any degree of accuracy within the time now prescribed. This is due to the fact that expanding emergency facilities under present conditions require the constant change of items due to the difficulty in securing some, and the changing requirements of the Government as to others. Accordingly, under the present law it is necessary for many applicants to file numerous supplemental and new applications with additional appendixes, describing items of facilities in the process of construction. This occasions a great amount of work on the part of the applicant and a tremendous amount of time and effort on the part of Government officials. The experience of the certifying units justifies the belief that these difficulties will be obviated by extending the period for filing to six months after the beginning of the construction without prejudice to the interest of the Government. In addition to the change to six months, which was included in the resolution as it passed the House, your committee has amended the resolution to change from February 6, 1941, to December 1, 1941, the alternate date for the filing of applications. This Act was passed in October, 1940, and was amended in January, 1941, to provide that the applications must be filed before February 6, 1941, or within the above-mentioned 60-day period, whichever was later. Owing to the short time between the date of this amendment and February 6, 1941, some tax-

payers were unable to file their application within the time specified. and it is now proposed that the alternate time for filing be extended to a date subsequent to the enactment of this joint resolution, namely, December 1, 1941, so as to give an opportunity for all proper taxpayers to file timely applications.

In section 3, provision is made for clarification of the meaning of certain provisions of the existing law relating to nonreimbursement and Government protection certificates, and changing the procedure to be followed in applying for such certificates. The following indicates the changes to be effected:

(*a*) The joint resolution proposes to eliminate the necessity of certifying contracts under $15,000. In the absence of a certificate of Government protection, the present statute denies amortization deduction if the taxpayer has been reimbursed (beyond normal exhaustion, wear, and tear) by the United States for the cost of all or any part of emergency facilities pursuant to any contract with the United States regardless of amount. A large number of applications have been filed requesting certification that contracts or purchase orders, many insignificant in amount, do not so reimburse. This has necessitated a vast amount of work on the part of the War Department and the Navy Department, as well as other agencies of the Government, in collecting and reviewing the facts in reference to said contracts in order to determine this question. The provision eliminating the necessity for certification of contracts under $15,000 would dispense with a large amount of work wholly unnecessary to adequately protect the interests of the Government and will eliminate unnecessary expense.

In addition to the contracts under $15,000, which were eliminated from the scope of the examination by the joint resolution as it passed the House, the committee amended the joint resolution also to exempt from such examination contracts made prior to January 1, 1940. This is deemed advisable to make certain that contracts antedating the adoption of the amortization principle need not be examined.

(*b*) The joint resolution proposes to limit the contracts required to be examined for reimbursement to those made on behalf of the United States with the War Department, the Navy Department, the United States Maritime Commission, or any other department or agency which the President may designate. The present law requires examination of all the applicant's contracts with all departments or agencies of the Government. The vast majority of these contracts with the departments other than the War Department, Navy Department, and the Maritime Commission, are for routine supplies having no connection with the defense program, and there is very little, if any, possibility of reimbursement therein for the cost of emergency facilities. Since in the future there may be certain departments other than the War Department, Navy Department, and the Maritime Commission whose contracts might involve such reimbursement, it is proposed to provide for the inclusion of the contracts of such departments or agencies as the President may designate.

(*c*) The joint resolution proposes to clarify the meaning of indirect reimbursement by providing that the test should be whether the contract recognizes that in fixing the price to be paid, the return of cost of facilities in excess of normal exhaustion, wear, and tear was used by the United States as a factor. The insertion of the words "by the United States" is believed to be in line with the original intent of the statute. The present wording of the statute raises the question as to whether it is necessary to ascertain the state of mind of the contractor. Establishing proof of such state of mind is difficult in any one case and, in view of the fact that many thousands of contracts have been submitted for certification, presents an extremely difficult problem of administration.

(*d*) A proviso has also been inserted to the effect that a return of cost greater than normal exhaustion, wear, and tear shall not be deemed to have been used as a factor in the fixing of the price "when the negotiating or contracting officer reports that after careful consideration he is satisfied that such greater return was not included in the price." These reports are to be subject to regulations discussed below.

(*e*) The joint resolution proposes to strike out the requirement of the existing law that the Advisory Commission to the Council of National Defense should act as a joint certifying agency for nonreimbursement and Government protection certificates. The reasons given above for this proposal in connection with necessity certificates apply with even greater force to certificates of nonreimbursement and Government protection.

(*f*) The joint resolution proposes to change the provisions for certification as to Government protection by providing that such certification shall be made with reference to the emergency facilities instead of with reference to each

contract. The reason for this proposal is to eliminate the possible requirement of continued examination of later supply contracts. If the original contract, under which reimbursement is made for facilities, adequately protects the Government's interest in the future use and disposition of the facilities and is so certified, the making of subsequent supply contracts will not deprive the Government of the protection which has been afforded under the original contract.

(*g*) The joint resolution proposes to add a provision for issuance of a certificate of Government protection in cases in which the taxpayer has not been or will not be reimbursed, as well as in cases in which it has been reimbursed. This proposed change will make it possible for a taxpayer, who claims he has not been or will not be reimbursed, to obtain amortization by granting to the Government control over the future use and disposition of the facilities.

(*h*) The joint resolution as passed in the House proposed to extend the time for filing applications for nonreimbursement certificates and Government protection certificates from 60 days to 6 months after the making of the contract for which certification is requested, or before the expiration of 60 days after the issuance of a necessity certificate, whichever is later. There appears to be no more reason for a shorter period for filing applications for Government protection and nonreimbursement certificates than in the case of necessity certificates. The existing requirement that the application be filed within 60 days compels taxpayers to file a large number of separate applications which involve unnecessary work and expense in the departments. There are also instances in which the contractors should be entitled to file applications covering contracts which were entered into more than 60 days and possibly even more than 6 months prior to the time of constructing or acquiring emergency facilities, and the proposed provision permits filing of such applications within 60 days after the issuance of a necessity certificate. Your committee has amended the joint resolution to provide that applications for the certificates of Government protection and nonreimbursement provided for in subsection (i) may be filed in time before December 1, 1941. This amendment corresponds to the amendment made by your committee in section 2 of the joint resolution.

(*i*) Consistent with the proposed change with regard to certification of necessity of facilities, it is proposed to provide that reports of negotiating and contracting officers and certificates of adequate Government protection and certificates of nonreimbursement provided for in the Act shall be issued under such regulations as may be prescribed from time to time by the Secretary of War and the Secretary of the Navy. Conforming with the action of the committee with respect to the amendment made to section 1 of the joint resolution, a similar amendment is made with regard to these regulations.

Section 4 of the resolution would require that the amendments to section 124 contained in the resolution have the same force and effect as if a part of the existing law as of the date of its original enactment. By this means, it will be possible to preserve to the taxpayer the same privileges with respect to selecting the year in which to take the amortization deduction as if the certificate had been secured in accordance with the procedure provided in the present law and to preserve to taxpayers the benefit of applications filed under the limitations provided by the present law.

1941–47–10910

AMENDING SECTION 124 OF THE INTERNAL REVENUE CODE.

[House of Representatives Report No. 1261, Seventy-seventh Congress, First Session.]

[October 15, 1941.]

Mr. Doughton, from the committee of conference, submitted the following conference report [to accompany H. J. Res. 235]:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the joint resolution (H. J. Res. 235) to amend section 124 of the Internal Revenue Code by extending the time for applications, and changing the procedure, for certification of national-defense facilities and contracts for amortization purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

* * * * * * *

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the joint resolution (H. J. Res. 235) to amend section 124 of the Internal Revenue Code by extending the time for applications, and changing the procedure, for certification of national-defense facilities and contracts for amortization purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Amendment No. 1: Under existing law a taxpayer must secure a certificate that its facility is necessary in the interest of national defense in order to secure the amortization allowances provided therein. The House joint resolution provided that such certificates, to be issued either by the Secretary of War or the Secretary of the Navy, should be under such regulations as were to be prescribed by the Secretary of War and the Secretary of the Navy and subject to such policies and procedures as were to be prescribed from time to time by the President, or by such agency or officer as he might designate. The Senate amendment provided that such regulations were to be prescribed by the said Secretaries with the approval of the President. The House recedes.

Amendment No. 2: Existing law provides that applications for certificates thereunder must be filed before February 6, 1941, or within a prescribed 60-day period, whichever is later. The House joint resolution increased the 60-day period to 6 months but failed to change the alternate date of February 6, 1941. The Senate amendment extends such alternate date to December 1, 1941. The House recedes.

Amendment No. 3: This is a clarifying amendment which carries out the present interpretation of existing law by making it certain that contracts made before January 1, 1940, need not be examined. The House recedes.

Amendment No. 4: This amendment is similar to amendment No. 2 and merely extends the time for filing applications for certificates of Government protection and nonreimbursement from February 6, 1941, to December 1, 1941. The House recedes.

Amendment No. 5: This amendment is similar to amendment No. 1 and provides that reports of negotiating and contracting officers and certificates of adequate Government protection and certificates of nonreimbursement shall be issued under such regulations as may be prescribed from time to time by the Secretary of War and the Secretary of the Navy with the approval of the President. The House recedes.

R. L. DOUGHTON,
JOHN W. BOEHNE, Jr.,
ALLEN T. TREADWAY,
FRANK CROWTHER,
Managers on the part of the House.

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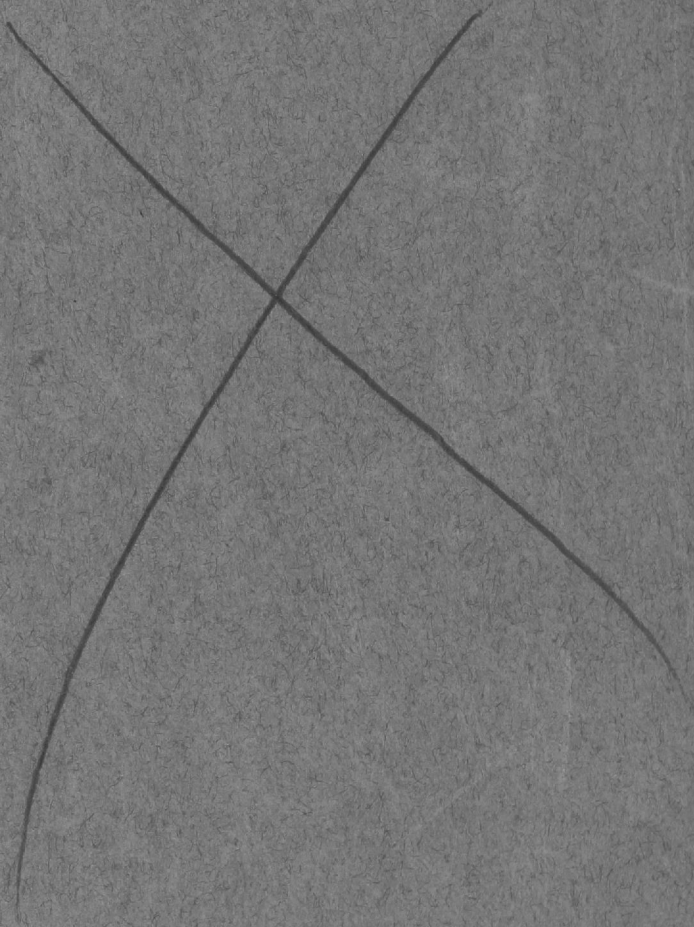
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