Treasury Department : : : Bureau of Internal Revenue

Internal Revenue Bulletin

Cumulative Bulletin 1951-1

JANUARY-JUNE 1951

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

Treasury Department : : : : Bureau of Internal Revenue

Internal Revenue Bulletin

Cumulative Bulletin 1951–1

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IN THIS ISSUE

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

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

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

UNITED STATES GOVERNMENT PRINTING OFFICE : WASHINGTON : 1951

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See back of title for prices

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

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

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

Certain issues of Cumulative Bulletins are out of print and are, therefore, not available. Persons desiring **available** Cumulative Bulletins may obtain them from the Superintendent of Documents at prices as follows:

Year	Cumulative Bulletin			
	First 6 months		Second 6 months	
1920	*2	$0.25	*3	$0.30
1928	VII-1	.35	VII-2	.50
1929	VIII-1	.50	VIII-2	.55
1930	IX-1	.50	IX-2	.50
1932	XI-1	.30	----------	------
1936	XV-1	.55	XV-2	.45
1939	1939-1—		1939-2	.60
	Part 1	.50	----------	------
	[1] Part 2	1.00	----------	------
1940	1940-1	.30	1940-2	.60
1941	1941-1	.45	1941-2	.60
1942	1942-1	.40	1942-2	.60
1943 [2]		1.25	----------	------
1944 [2]		2.25	----------	------
1945 [2]		1.50	----------	------
1946	1946-1	.50	1946-2	.75
1947	1947-1	.40	1947-2	.75
1948	1948-1	.75	1948-2	1.00
1949	1949-1	.75	1949-2	.75
1950	1950-1	.75	1950-2	1.50
1951	1951-1	.75	----------	------

*Contains only income tax rulings.

[1] House, Senate, and conference reports on revenue bills enacted as the Act of October 3, 1913, the Act of October 22, 1914, and the Revenue Acts of 1916 to 1938, inclusive, and on amendments to such Acts.

[2] Printed in one volume.

Persons desiring to obtain the service in digest form may do so at prices as follows: Digest No. 19 (income tax rulings only, April 1919 to December 1921, inclusive), 50 cents; Digest No. 13 (1922–24), 60 cents; Digest No. 22 (1925–27), 35 cents; and Digest A (income tax rulings only, April 1919 to December 1930, inclusive), $1.50.

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

INTRODUCTORY NOTES

Internal Revenue Cumulative Bulletin 1951–1, in addition to all decisions of the Treasury Department (called Treasury Decisions) pertaining to Internal Revenue matters, contains opinions of the Chief Counsel for the Bureau of Internal Revenue, rulings and decisions pertaining to income, estate, gift, sales, excess profits, employment, social security, and miscellaneous taxes, and legislation affecting the revenue statutes, as indicated on the title page of this Bulletin, published in Bulletins 1–13, inclusive, for the period January 1 to June 30, 1951. It also contains a cumulative list of announcements relating to decisions of The Tax Court of the United States, published in the Internal Revenue Bulletin Service from January 1 to June 30, 1951.

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

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

ABBREVIATIONS

The following abbreviations are used throughout the Bulletin.

A, B, C, etc.—The names of individuals.
A. R. M.—Committee on Appeals and Review memorandum.
A. R. R.—Committee on Appeals and Review recommendation.
A. T.—Alcohol 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, C, D, and E of the Internal Revenue Code.

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

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

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

CUMULATIVE CONTENTS

CONTENTS OF CUMULATIVE BULLETINS (I. T.) 1 TO 5; S. T. FOR 1920 AND 1921; INTERNAL REVENUE I-1, I-2, II-1, II-2, III-1, III-2, IV-1, IV-2, V-1, V-2, VI-1, VI-2, VII-1, VII-2, VIII-1, VIII-2, IX-1, IX-2, X-1, X-2, XI-1, XI-2, XII-1, XII-2, XIII-1, XIII-2, XIV-1, XIV-2, XV-1, XV-2, 1937-1, 1937-2, 1938-1, 1938-2, 1939-1 (PART 1 AND PART 2), 1939-2, 1940-1, 1940-2 1941-1, 1941-2, 1942-1, 1942-2; ANNUAL BULLETINS FOR 1943, 1944, AND 1945; SEMIANNUAL BULLETINS 1946-1, 1946-2, 1947-1, 1947-2, 1948-1, 1948-2, 1949-1, 1949-2, 1950-1, 1950-2, AND 1951-1

THE TAX COURT OF THE UNITED STATES

CUMULATIVE LIST OF ANNOUNCEMENTS RELATING TO DECISIONS OF THE TAX COURT OF THE UNITED STATES PUBLISHED IN THE INTERNAL REVENUE BULLETIN SERVICE FROM JANUARY 1, 1951, TO JUNE 30, 1951, INCLUSIVE

1951–13–13607

The Commissioner acquiesces in the following decisions:

Taxpayer	Docket No.	Report	
		Volume	Page
A			
Aetna-Standard Engineering Co., The	20163	15	284
Alamo Broadcasting Co., Inc	22362	15	534
B			
Baehre, Herman Frederick	18821	15	236
Bear Mill Manufacturing Co., Inc	20730	15	703
Beck, Marion A. Burt	20112	15	642
Blades, Archie L., estate of	24066	15	190
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Bluestein, A., estate of [1]	18963 19384 23228	15	770
Bluestein, Frank, independent executor of estate of A. Bluestein [1]	18963 19384 23228	15	770
Bodine, Richard A., administrator of estate of Walter J. Hill [2]	20781	15	204
Boehme, Inc., H. O	20533	15	247
C			
Calder, Jr., William M	24395	16	144
Campbell, Andrew H	15999 21393	15	312
Campbell, Charles	20484	15	355
Campbell, Joseph E	16000 21394	15	312
Campbell, Robert	15998 21392	15	312
Campbell Trust No. 1, Robert	16002 21396	15	312
Campbell Trust No. 2, Robert	16003 21397	15	312
Cohen, Morris	20869	15	261

[1] Docket No. 18963, estate tax decision.
[2] Estate tax decision.

ACQUIESCENCES—Continued

Taxpayer	Docket No.	Report	
		Volume	Page
Community Public Service Co.[1]	17066	12	893
Connelly, James A.[2]	5153 6006	6	744
Cooper, Ceska	20156	15	757
Cummer, Arthur G., estate of	16442	15	503
Cummer et al., Ninah M. H., executors of estate of Arthur G. Cummer	16442	15	503
Cummer, W. W	16489	15	503
Curran Realty Co., Inc	22705	15	341
G			
Goldblatt, Emil M., estate of [3]	23468	16	204
Goldblatt, Ruth A., executrix of estate of Emil M. Goldblatt [3]	23468	16	204
Gordon, Alice V.[4]	103900	[a] 46	1201
H			
Hannaman, George L., estate of	14194	15	327
Hannaman, Harriett, administratrix of estate of George L. Hannaman	14194	15	327
Hill, Walter J., estate of [3]	20781	15	204
Hoffman, Katherine M.[5]	96741	[a] 40	459
Hoffman, W. W.[5]	96742	[a] 40	459
Hoffman et ux., W. W.[5]	92414	[a] 40	459
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Keefe, Ernest J	17321	15	947
Krim-Ko Corporation	20394	16	31
L			
Langer, Eleanore [6]	16757	16	41
Langer, Eleanore, executrix of estate of R. L. Langer [6]	16756	16	41
Langer, R. L., estate of [6]	16756	16	41
M			
Markson Bros	11942 14302	15	839
Milliken, Seth M.[7]	19402	15	243
N			
Neustadt et al., Agnes, trustees under will of Sigmund Neustadt [8]	99935	[a] 43	848
Neustadt, Sigmund, trust under will of [8]	99935	[a] 43	848
P			
Paul, Jr., et ux., Robert H	16443	15	503

[a] Board of Tax Appeals.

[1] Nonacquiescence published in Cumulative Bulletin 1940-2, page 4, withdrawn.
[2] Nonacquiescence published in Cumulative Bulletin 1940-2, page 6, withdrawn.
[3] Estate tax decision.
[4] Nonacquiescence published in Cumulative Bulletin 1942-2, page 26, withdrawn.
[5] Nonacquiescence published in Cumulative Bulletin 1940-1, page 7, withdrawn.
[6] Acquiescence relates to the issue whether "back pay" was paid pursuant to a prior agreement or legal obligation within the meaning of section 29.107-3 of Regulations 111.
[7] Acquiescence relates to all issues except the issue with respect to whether the payment in 1942 of $33,411.29 as transferee liability of a personal holding company is deductible as an ordinary loss or as a long-term capital loss.
[8] Nonacquiescence published in Cumulative Bulletin 1941-1, page 17, withdrawn.

ACQUIESCENCES—Continued

Taxpayer	Docket No.	Report	
		Volume	Page
R			
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Roe, Sr., John L	16359	15	503
Roe, Mabel C	16358	15	503
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Ryan et ux., Jean (John) E. L	15228	15	209
S			
Sage, Henry E	22349	15	299
Sibley, Lindsay & Curr Co	20709	15	106
Smith-Bridgman & Co	21357	16	287
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Stewart Title Guaranty Co	19567	15	566
Sullivan, Priscilla M	17467	16	228
T			
Thompson et ux., Willard I.[1]	24735	15	609
Thrift, Lucille B	24106	15	366
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W			
Waggoner, Dorothy	25075	15	496
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Waggoner, Guy L	25074	15	496
Waggoner, Helen	25077	15	496
Watson et ux., Ernest A	18856	15	800
Z			
Zilmer et ux., Bertram G	26973	16	365

[1] Acquiescence relates to issues other than a deduction for Oklahoma cigarette tax.

The Commissioner does NOT acquiesce in the following decisions:

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Bauer et ux., Frederick R	24393	15	876
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Casey, Katharine Holmshaw	18883	15	344
F			
Fickert, Ethel Holmshaw	18878	15	344
L			
Langer, Eleanore [1]	16757	16	41
Langer, Eleanore, executrix of estate of R. L. Langer [1]	16756	16	41
Langer, R. L., estate of [1]	16756	16	41
M			
Milliken, Seth M.[2]	19402	15	243
O			
Oxford Paper Co	20913 20914 20915	15	361
Q			
Quirk, J. P	15673	15	709
S			
Steinman, Philip, executor of estate of Isidore Waldman	24602	15	596
T			
Thompson et ux., Willard I.[3]	24735	15	609
Title and Trust Co	21593	15	510
V			
Vivian, Mary Stewart	24394	15	876
W			
Waldman, Isidore, estate of	24602	15	596
Wright, Ollie Belle, executrix of estate of W. M. Wright	17021	15	709
Wright, W. M., estate of	17021	15	709

[1] Nonacquiescence relates to the issue whether "back pay" constituted more than 15 percent of taxpayers, gross incomes for 1944.

[2] Nonacquiescence relates only to the issue with respect to whether the payment in 1942 of $33,411.29 as transferee liability of a personal holding company is deductible as an ordinary loss or as a long-term capital loss.

[3] Nonacquiescence relates only to a deduction for Oklahoma cigarette tax.

INCOME TAX RULINGS.—PART I

INTERNAL REVENUE CODE

CHAPTER 1.—INCOME TAX

SUBCHAPTER B.—GENERAL PROVISIONS

PART II.—COMPUTATION OF NET INCOME

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

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

INTERNAL REVENUE CODE

Tax refunds. Mimeograph 6444 (C. B. 1949-2, 11) modified. (See Mim. 6597, page 20.)

SECTION 29.22(a)-3: Compensation paid other than in cash. 1951-1-13510
I. T. 4041

(Also Section 42, Section 29.42-1.)

INTERNAL REVENUE CODE

Contributions made by an employer to purchase annuity contracts for employees, not under a plan meeting the requirements of section 165(a) of the Internal Revenue Code, where the employees' rights under the contracts are nonforfeitable, constitute taxable income to the employees for the years in which the contributions are made.

I. T. 1810 (C. B. II-2, 70 (1923)) and I. T. 2891 (C. B. XIV-1, 50 (1935)) revoked.

Reconsideration has been given to I. T. 1810 (C. B. II-2, 70 (1923)) and I. T. 2891 (C. B. XIV-1, 50 (1935)) in the light of the decisions in *Renton K. Brodie et al.* v. *Commissioner* (1 T. C. 275); *J. Ferd Oberwinder et al.* v. *Commissioner* (147 Fed. (2d) 255); *D. D. Hubbell et al.* v. *Commissioner* (150 Fed. (2d) 516); and *Robert P. Hackett et al.* v. *Commissioner* (5 T. C. 1325, affirmed, 159 Fed. (2d) 121).

In I. T. 1810, *supra*, it was held that no taxable income was realized by an employee as a result of the delivery to him of an unassignable single-premium pension bond purchased by an employer where the bond became the absolute property of the employee and provided for the payment of an annual pension to the employee after attaining a certain age. In I. T. 2891, *supra*, a similar conclusion was reached with respect to contributions made by an employer toward the purchase of retirement annuity contracts for the benefit of his employees.

Section 22(a) of the Internal Revenue Code provides in part that gross income includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid. The Supreme Court of the United States stated in *Commissioner* v. *John H. Smith* (324 U. S. 177; Ct. D. 1633, C. B. 1945, 49) that "Section 22(a) of the Revenue Act [Revenue Act of 1938] is broad enough to include in taxable income any economic or financial benefit conferred on the employee as compensation, whatever the form or mode by which it is effected."

Section 29.22(b)(2)-5 of Regulations 111 provides in part that if an employer purchases an annuity contract which is not under a plan with respect to which his contribution is deductible under section 23(p)(1)(B) of the Code, the amount of such contribution shall be included in the income of the employee in the taxable year during which such contribution is made, if the employee's rights under the annuity contract are nonforfeitable.

In the above-cited Brodie, Oberwinder, Hubbell, and Hackett decisions, the courts held in general that contributions made by employers to purchase annuity contracts with nonforfeitable rights for officers and employees constitute taxable income to such officers and employees for the taxable years in which the contributions were made. (See also *United States* v. *Theodore B. Drescher*, 179 Fed. (2d) 863, certiorari denied, October 9, 1950.)

In view of the foregoing, it is held that contributions made by an employer to purchase annuity contracts for employees, not under a plan meeting the requirements of section 165(a) of the Internal Revenue Code, where the employees' rights under the contracts are nonforfeitable, constitute taxable income to the employees for the years in which the contributions are made. I. T. 1810, *supra*, and I. T. 2891, *supra*, are hereby revoked.

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

1951-3-13538
E. O. 10195

EXECUTIVE ORDER 10195—DESIGNATION OF KOREA AND WATERS ADJACENT THERETO AS A COMBAT ZONE FOR THE PURPOSES OF SECTION 22(b)(13) OF THE INTERNAL REVENUE CODE

Pursuant to the authority vested in me by section 22(b)(13) of the Internal Revenue Code, as amended by section 202(a) of the Revenue Act of 1950, approved September 23, 1950 (Public Law 814, 81st Cong.), there is hereby designated, for the purposes of paragraph (13) of section 22(b) of the Internal Revenue Code, as an area in which Armed Forces of the United States have engaged in combat:

Korea, including the waters adjacent thereto within the following-described limits: From a point at Lat. 39°30′ N., Long. 122°45′ E.

southward to Lat. 33° N., Long. 122°45′ E.; thence eastward to Lat. 33° N., Long. 127°55′ E.; thence northeastward to Lat. 37°05′ N., Long. 133° E.; thence northward to Lat. 40°41′ N., Long. 133° E.; thence northwestward to a point on the east coast of Korea at the juncture of Korea with the U. S. S. R.

The date of the commencing of combatant activities in such area is hereby designated as June 27, 1950.

HARRY S. TRUMAN.

THE WHITE HOUSE,
December 20, 1950.

(Filed with the Division of the Federal Register December 21, 1950, 9:32 a. m.)

SECTION 29.22(b)(9)-1: Income from discharge of indebtedness. 1951-10-13586
T. D. 5839
(Also Section 29.22(b)(10)-1.)

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

Regulations 111 amended to conform to section 201 of the Revenue Act of 1950, relating to extension of time in the case of discharge of indebtedness.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 111 [26 CFR, part 29] to section 201 of the Revenue Act of 1950, approved September 23, 1950, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 29.22(b)(9)-1 [26 CFR 29.22(b)(9)-1] the following:

SEC. 201. EXTENSION OF TIME IN THE CASE OF DISCHARGE OF INDEBTEDNESS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

Section 22(b)(9) * * * (relating to exclusion of certain income attributable to the discharge of indebtedness) are amended by striking out "December 31, 1950" and inserting in lieu thereof "December 31, 1951".

PAR. 2. Section 29.22(b)(9)-1, as amended by Treasury Decision 5807 [C. B. 1950-2, 18], approved September 12, 1950 [26 CFR 29.22(b)(9)-1], is further amended by striking from the first paragraph and from the third paragraph "January 1, 1951" and inserting in lieu thereof in each instance "January 1, 1952".

PAR. 3. There is inserted immediately preceding section 29.22(b)(10)-1 [26 CFR 29.22(b)(10)-1] the following:

SEC. 201. EXTENSION OF TIME IN THE CASE OF DISCHARGE OF INDEBTEDNESS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * section 22(b)(10) (relating to exclusion of certain income attributable to the discharge of indebtedness) are amended by striking out "December 31, 1950" and inserting in lieu thereof "December 31, 1951".

PAR. 4. Section 29.22(b)(10)-1, as amended by Treasury Decision 5807, approved September 12, 1950 [26 CFR 29.22(b)(10)-1], is further amended by striking from the first sentence and from the last sentence "January 1, 1951" and inserting in lieu thereof in each instance "January 1, 1952".

PAR. 5. Inasmuch as the amendments made by this Treasury Decision merely change the dates from those specified by prior law to those now specified by section 201 of the Revenue Act of 1950, which extends the application of section 22(b) (9) and (10) of the Internal Revenue Code, it is hereby found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

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

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved April 17, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register April 20, 1951, 8:51 a. m.)

SECTION 29.22(b)(10)-1: Income from discharge of indebtedness of railroad corporations.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5839, page 7.)

SECTION 29.22(b)(13)-1: Compensation of members of military and naval forces received prior to January 1, 1949.
(Also Section 29.22(b)(13)-2; Section 3797, Section 29.3797-11.)

1951-7-13565
T. D. 5832

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

Regulations 111 amended to conform to section 202(a) of the Revenue Act of 1950, relating to exclusion from gross income for members of Armed Forces serving in combat areas.

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

To Collectors of Internal Revenue and Others Concerned:

On December 13, 1950, notice of proposed rule making, regarding amendments to the income tax regulations made necessary by section 202(a) of the Revenue Act of 1950, approved September 23, 1950, was published in the Federal Register (15 F. R. 8825). No objection to the rules proposed having been received, the amendments to Regulations 111 [26 CFR, part 29] set forth below are hereby adopted:

PARAGRAPH 1. There is inserted immediately preceding section 29.22(b)(13)-1 [26 CFR 29.22(b)(13)-1] the following:

SEC. 202. INCOME TAX EXEMPTIONS FOR MEMBERS OF THE ARMED FORCES SERVING IN COMBAT AREAS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) EXCLUSION FROM GROSS INCOME.—Section 22(b)(13) (relating to exclusions from gross income) is hereby amended to read as follows:

"(13) ADDITIONAL ALLOWANCE FOR CERTAIN MEMBERS OF THE ARMED FORCES.—

"(A) Enlisted Personnel.—Compensation received for active service as a member below the grade of commissioned officer in the Armed Forces of the United States for any month during any part of which such member served in a combat zone after June 24, 1950, and prior to January 1, 1952.

"(B) Commissioned Officers.—In the case of compensation received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such officer served in a combat zone after June 24, 1950, and prior to January 1, 1952, so much of such compensation as does not exceed $200.

"(C) Definitions.—For the purposes of this paragraph—

"(i) the term 'commissioned officer' does not include a commissioned warrant officer;

"(ii) the term 'combat zone' means any area which the President of the United States by Executive order designates, for the purposes of this paragraph, as an area in which Armed Forces of the United States are or have (after June 24, 1950) engaged in combat;

"(iii) service is performed in a combat zone only if performed on or after the date designated by the President by Executive order as the date of the commencing of combatant activities in such zone, and on or before the date designated by the President by Executive order as the date of the termination of combatant activities in such zone; and

"(iv) the term 'compensation' does not include pensions and retirement pay."

* * * * * * *

PAR. 2. Section 29.22(b)(13)-1, as amended by Treasury Decision 5645 [C. B. 1948-2, 14], approved July 20, 1948 [26 CFR 29.22(b)(13)-1], is hereby further amended by changing the heading thereof to read as follows: "COMPENSATION OF MEMBERS OF MILITARY AND NAVAL FORCES RECEIVED PRIOR TO JANUARY 1, 1949."

PAR. 3. There is inserted immediately after section 29.22(b)(13)-1 [26 CFR 29.22(b)(13)-1] the following:

SEC. 29.22(b)(13)-2. COMPENSATION OF MEMBERS OF THE ARMED FORCES OF THE UNITED STATES FOR SERVICE IN A COMBAT ZONE AFTER JUNE 24, 1950, AND PRIOR TO JANUARY 1, 1952.—In addition to the exemptions and credits otherwise applicable, section 22(b)(13) provides that there shall be excluded from gross income:

(a) Compensation received for active service as a member below the grade of commissioned officer in the Armed Forces of the United States for any month during any part of which such member served in a combat zone after June 24, 1950, and prior to January 1, 1952.

(b) In the case of compensation received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such officer served in a combat zone after June 24, 1950, and prior to January 1, 1952, so much of such compensation as does not exceed $200.

The exclusions under section 22(b)(13) and this section are applicable only if active service is performed in a combat zone after June 24, 1950, and prior to January 1, 1952. Compensation is subject to exclusion whether or not it is received outside a combat zone or in a year (including a year after 1951) different from that in which such service is performed. Service is performed in a combat zone only if it is performed in an area which the President of the

United States has designated by Executive order, for the purpose of section 22(b)(13), as an area in which Armed Forces of the United States are or have (after June 24, 1950) engaged in combat, and only if it is performed on or after the date designated by the President by Executive order as the date of the commencing of combatant activities in such zone and on or before the date designated by the President by Executive order as the date of the termination of combatant activities in such zone. If a member of the Armed Forces serves in a combat zone for any part of a month, he is entitled to the exclusion for such month to the same extent as if he had served in such zone for the entire month.

The term "commissioned officer" does not include a commissioned warrant officer, and, accordingly, a commissioned warrant officer is entitled to the exclusion allowed to enlisted personnel under section 22(b)(13)(A). The term "compensation," for the purpose of this section, does not include pensions and retirement pay. As to who are members of the Armed Forces, see section 29.3797-11.

These exclusions are applicable without regard to the marital status of the recipient of the compensation, and if a husband and wife both meet the requirements of the statute, then each is entitled to the benefit of an exclusion. In the case of a husband and wife domiciled in a State recognized for Federal income tax purposes as a community-property State, any exclusion from gross income under section 22(b)(13) operates before apportionment of the gross income of the spouses in accordance with community-property law. For example, a man and his wife are domiciled in a community-property State and he is entitled, as a commissioned officer, to the benefit of the exclusion of $200 for each month under section 22(b)(13)(B). He receives $1,000 as compensation for active service for 3 months in a combat zone. Of such amount, $600 is excluded from gross income under section 22(b)(13)(B) and only $400 is taken into account in determining the gross income of both husband and wife.

A member of the Armed Forces is in active service if he is actually serving in the Armed Forces. Periods during which a member of the Armed Forces is absent from duty on account of sickness, wounds, leave, internment by the enemy, or other lawful cause are periods of active service. A member of the Armed Forces in active service in a combat zone who there becomes a prisoner of war or missing in action is deemed, for the purpose of section 22(b)(13) and this section, to continue in active service in the combat zone for the period for which he is entitled to such status for military pay purposes. These exclusions apply to compensation received by a member of the Armed Forces for services rendered while in active service even though payment is received subsequent to discharge or release from active service. Compensation credited to a decedent's account for a period subsequent to the established date of his death and received by his estate will be excluded under section 22(b)(13) from the gross income of the estate to the same extent that it would have been excluded from the gross income of the decedent if he had lived and received such compensation.

PAR. 4. Section 29.3797-11 [26 CFR 29.3797-11] is hereby amended to read as follows:

SEC. 29.3797-11. MILITARY OR NAVAL FORCES AND ARMED FORCES OF THE UNITED STATES.—The term "military or naval forces of the United States" and the term "Armed Forces of the United States" each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force. The terms also include the Coast Guard. The members of such forces include commissioned officers and the personnel below the grade of commissioned officer in such forces.

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

FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved March 8, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 13, 1951, 8:45 a. m.)

SECTION 29.22(b)(13)-2: Compensation of members of the Armed Forces of the United States for service in a combat zone after June 24, 1950, and prior to January 1, 1952.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5832, page 8.)

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

SECTION 29.22(d)-1: Inventories under elective method. 1951-11-13595 I. T. 4050

INTERNAL REVENUE CODE

Price indices for January 1951, published by the Bureau of Labor Statistics under date of March 13, 1951, for use by department stores employing the retail inventory and elective inventory methods.

The following price indices for January 1951, published by the Bureau of Labor Statistics for use by department stores employing the retail inventory and elective inventory methods, are accepted by the Bureau of Internal Revenue pursuant to Treasury Decision 5605 (C. B. 1948-1, 16), approved March 4, 1948, and Mimeograph 6244 (C. B. 1948-1, 21), dated March 9, 1948, for appropriate application to inventories for taxable years of 12 months ended on December 31, 1950, and January 31, 1951.

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

[January 1941=100]

Group	January 1950	January 1951	January 1950 to January 1951, percent change
I. Piece goods, domestics, and draperies	191.3	216.4	13.1
II. Shoes	191.5	214.0	11.7
III. Ladies' underwear	166.3	179.1	7.7
IV. Ladies' outerwear and girls' wear	169.7	174.2	2.7
V. Men's and boys' wear	183.4	197.1	7.5
VI. Furniture and bedding	184.6	204.2	10.6
VII. Home furnishings	168.6	194.0	15.1
VIII. Major appliances and electrical goods	158.6	170.5	7.5
IX. Notions and toilet articles	142.2	157.9	11.0
X. Ladies' accessories	163.5	166.2	1.7
Total, Groups I, II, III, IV V, IX, and X	174.6	189.0	8.2
Total, Groups VI, VII, and VIII	171.0	191.7	12.1
Store total	173.5	189.6	9.3

SECTION 29.22(d)-7: Involuntary liquidation and replacement. 1951-12-13601 T. D. 5841
(Also Section 19.22(d)-7, Regulations 103.)

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

Regulations 103 and 111 amended to conform to Public Law 756, Eighty-first Congress [C. B. 1950-2, 247], relating to involuntary liquidation and replacement of inventories accounted for on the last-in first-out basis.

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

To Collectors of Internal Revenue and Others Concerned:

On October 13, 1950, notice of proposed rule making regarding the amendment of Regulations 103 and 111 to conform to Public Law 756, Eighty-first Congress [C. B. 1950-2, 247], approved September 5, 1950, was published in the Federal Register (15 F. R. 6891). After consideration of all relevant matter presented by interested persons regarding the proposed amendments, the following amendments are hereby adopted:

REGULATIONS 103 [26 CFR, PART 19]

PARAGRAPH 1. There is inserted immediately preceding section 19.22(d)-1, as last amended by Treasury Decision 5756 [C. B. 1949-2, 21], approved November 2, 1949 [26 CFR 19.22(d)-1], the following:

PUBLIC LAW 756, EIGHTY-FIRST CONGRESS, APPROVED SEPTEMBER 5, 1950

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22(d)(6)(A) (relating to the involuntary liquidation and replacement of elective inventories) is hereby amended as follows:

(1) By amending that portion thereof preceding clause (i) to read as follows:

"(A) Adjustment of Net Income and Resulting Tax.—If, for any taxable year beginning after December 31, 1940, and prior to January 1, 1948, the closing inventory of a taxpayer inventorying goods under the method provided in this subsection reflects a decrease from the opening inventory of such goods for such year, and if the taxpayer elects, at such time and in such manner and subject to such regulations as the Commissioner with the approval of the Secretary may prescribe, to have the provisions of this paragraph apply, and if it [is] established to the satisfaction of the Commissioner, in accordance with such regulations, that such decrease is attributable to the involuntary liquidation of such inventory as defined in subparagraph (B), and if the closing inventory of a subsequent taxable year, ending prior to January 1, 1951, reflects a replacement, in whole or in part, of the goods so previously liquidated, the net income of the taxpayer otherwise determined for the year of such involuntary liquidation shall be adjusted as follows:".

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

PAR. 2. Section 19.22(d)-7, as added by Treasury Decision 5199 [C. B. 1942-2, 81], approved December 10, 1942, and amended by Treasury Decisions 5364 [C. B. 1944, 86], approved April 29, 1944, and 5645 [C. B. 1948-2, 14], approved July 20, 1948 [26 CFR 19.22(d)-7], is further amended as follows:

(A) By striking from the second sentence of the first paragraph the following words: "at the time of filing his income tax return for the year of the liquidation (or, with respect to liquidations occurring in a taxable year beginning in 1941, at any time prior to August 26, 1944)", and by inserting in lieu thereof the following: "at any time not later than 6 months after the time of filing his income tax return for the year of the liquidation (or, with respect to liquidations occurring in a taxable year beginning in 1941, at any time prior to August 26, 1944)".

(B) By inserting immediately after the second sentence of the first paragraph the following: "(For extensions of time, see subpart H of Regulations 111, as added by Treasury Decision 5391 [C. B. 1944, 474], approved July 14, 1944, and amended by Treasury Decision 5400 [C. B. 1944, 476], approved August 22, 1944.)."

(C) By striking from the first sentence of the fourth paragraph the following words: "at the time of filing his income tax return for the year reflecting the decrease, or, with respect to a taxable year beginning in 1941, prior to August 26, 1944", and by inserting in lieu thereof the following: "not later than 6 months after the time of filing his income tax return for the year reflecting the decrease, or, with respect to a taxable year beginning in 1941, prior to August 26, 1944".

(D) By inserting in the second sentence of the fourth paragraph, immediately after the words "the taxpayer shall attach to his return and make a part thereof", the following: ", or he shall furnish separately to the Commissioner,".

(E) By striking from the second sentence of the fourth paragraph, immediately preceding "(5)", the word "and"; by substituting a semicolon for the period at the end of such paragraph; and by adding to such paragraph the following:

and (6) in the case of an election made pursuant to an extension of time sought under subpart H more than 6 months after the filing of the return for the year of liquidation, the circumstances relied upon as justifying the election at such time, together with a disclosure of the extent, if any, to which replacements have already been made.

(F) By striking from the first sentence of the fifth paragraph the following word: "prospective".

(G) By striking the first sentence of the eighth paragraph, and inserting in lieu thereof the following:

In some cases it may appear that, at the time of the filing of the income tax return for the year of replacement, or within 3 years thereafter, an adjustment with respect to the income or excess profits taxes for the year of the involuntary liquidation, or for some prior, intervening, or subsequent taxable year, is prevented by the running of the statute of limitations, by the execution of a closing agreement, by virtue of a court decision which has become final, or by reason of some other provision or rule of law other than section 3761 relating to compromises and other than the inventory replacement provisions.

REGULATIONS 111 [26 CFR, PART 29]

PAR. 3. There is inserted immediately preceding section 29.22(d)-1, as last amended by Treasury Decision 5756 [26 CFR 29.22(d)-1], the following:

PUBLIC LAW 756, EIGHTY-FIRST CONGRESS, APPROVED SEPTEMBER 5, 1950

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22(d) (6)(A) (relating to the involuntary liquidation and replacement of elective inventories) is hereby amended as follows:

(1) By amending that portion thereof preceding clause (i) to read as follows:

"(A) Adjustment of Net Income and Resulting Tax.—If, for any taxable year beginning after December 31, 1940, and prior to January 1, 1948, the closing inventory of a taxpayer inventorying goods under the method provided in this subsection reflects a decrease from the opening inventory of such goods for such year, and if the taxpayer elects, at such time and in such manner and subject to such regulations as the Commissioner with the approval of the Secretary may prescribe, to have the provisions of this paragraph apply, and if it [is] established to the satisfaction of the Commissioner, in accordance with such regulations, that such decrease is attributable to the involuntary liquidation of such inventory as defined in subparagraph (B), and if the closing inventory of a subsequent taxable year, ending prior to January 1, 1951, reflects a replacement, in whole or in part, of the goods so previously liquidated, the net income of the taxpayer otherwise determined for the year of such involuntary liquidation shall be adjusted as follows:".

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

PAR. 4. Section 29.22(d)-7, as last amended by Treasury Decision 5645 [26 CFR 29.22(d)-7], is further amended as follows:

(A) By inserting in the second sentence of the first paragraph, immediately after the words "If the taxpayer notifies the Commissioner at", the following: "any time not later than 6 months after".

(B) By inserting immediately after the second sentence of the first paragraph the following: "(For extensions of time, see subpart H, as added by Treasury Decision 5391, approved July 14, 1944, and amended by Treasury Decision 5400, approved August 22, 1944.)".

(C) By striking from the first sentence of the fourth paragraph the following words: "at the time of filing his income tax return", and by inserting in lieu thereof the following: "not later than 6 months after the time of filing his income tax return".

(D) By inserting in the second sentence of the fourth paragraph, immediately after the words "the taxpayer shall attach to his return and make a part thereof", the following: ", or he shall furnish separately to the Commissioner,".

(E) By striking from the second sentence of the fourth paragraph, immediately preceding "(5)", the word "and"; by substituting a semicolon for the period at the end of such paragraph; and by adding to such paragraph the following:

and (6) in the case of an election made pursuant to an extension of time sought under subpart H more than 6 months after the filing of the return for the year of liquidation, the circumstances relied upon as justifying the election at such time, together with a disclosure of the extent, if any, to which replacements have already been made.

(F) By striking from the first sentence of the fifth paragraph the following word: "prospective".

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

In some cases it may appear that, at the time of the filing of the income tax return for the year of replacement, or within 3 years thereafter, an adjustment with respect to the income or excess profits taxes for the year of the involuntary liquidation, or for some prior, intervening, or subsequent taxable year, is prevented by the running of the statute of limitations, by the execution of a closing agreement, by virtue of a court decision which has become final, or by reason of some other provision or rule of law other than section 3761 relating to compromises and other than the inventory replacement provisions.

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

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved May 22, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register May 24, 1951, 8:51 a. m.)

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

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

INTERNAL REVENUE CODE

Reimbursed expenses incurred by public school teachers attending summer school. (See I. T. 4044, page 16.)

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

INTERNAL REVENUE CODE

Florida cigarette tax paid by purchaser or consumer in connection with cigarettes used in trade or business. (See I. T. 4052, page 17.)

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

SECTION 29.23(a)-1: Business expenses. 1951-1-13511
I. T. 4042

INTERNAL REVENUE CODE

Fines paid by truck operators for violations of State laws prescribing maximum weights, loads, and sizes of vehicles are penalties which are not deductible as ordinary and necessary business expenses under section 23(a)(1)(A) of the Internal Revenue Code.

Reconsideration has been given to the conclusion heretofore reached by the Bureau that fines paid by truck operators for violations of State laws prescribing maximum weights, loads, and sizes of vehicles are deductible from gross income as ordinary and necessary business expenses under section 23(a)(1)(A) of the Internal Revenue Code.

That conclusion was based upon the understanding that the fines in question were paid in lieu of fees which would have been payable for permits to operate overloaded or overlength vehicles, and that such permits were generally granted by State highway authorities. The fines were, therefore, regarded as more in the nature of tolls than penalties.

Upon reconsideration of the question involved it appears that the premise on which the Bureau's conclusion was based was erroneous. It is therefore held that fines paid by truck operators for violations of State laws prescribing maximum weights, loads, and sizes of vehicles are penalties which are not deductible as ordinary and necessary business expenses under section 23(a)(1)(A) of the Internal Revenue Code. (See *Burroughs Building Material Co.* v. *Commissioner*, 47 Fed. (2d) 178, Ct. D. 297, C. B. X-1, 397 (1931)), and G. C. M. 11358, C. B. XII-1, 29 (1933).)

Pursuant to authority contained in section 3791(b) of the Code, the instant ruling will not be applied to fines incurred or paid prior to December 1, 1950.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 30, 1950.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

SECTION 29.23(a)-1: Business expenses. 1951-2-13518
(Also Section 22(n), Section 29.22(n)-1; I. T. 4044
Section 29.23(a)-2.)

INTERNAL REVENUE CODE

Summer school expenses incurred by a public school teacher in order to maintain her position are deductible as ordinary and necessary business expenses under section 23(a)(1)(A) of the Internal Revenue Code, and such expenses may be deducted in determining adjusted gross income under section 22(n) of the Code.

O. D. 892 (C. B. 4, 209 (1921)) modified.

Reconsideration has been given to O. D. 892 (C. B. 4, 209 (1921)) in the light of the recent decision in *Nora Payne Hill* v. *Commissioner* (181 Fed. (2d) 906).

In O. D. 892, *supra*, it was held that expenses incurred by school teachers in attending summer school are in the nature of personal expenses incurred in advancing their education and are not deductible in computing net income.

In the Hill case, the taxpayer had taught in the public schools of the State of Virginia for some 27 years and had obtained the highest certificate issued to public school teachers by the State board of education. She was notified of the expiration of her certificate and that the certificate could not be renewed unless she acquired college credits or passed an examination on five selected books. She elected the former alternative and attended summer school at Columbia University. Thereafter she sought to deduct the expenses which she incurred in that connection as ordinary and necessary business expenses. The United States Court of Appeals for the Fourth Circuit held that such expenses, including tuition, room rent, cost of travel, and the difference between the cost of living while at summer school and at home, properly constituted ordinary and necessary business expenses incurred in carrying on a trade or business which are deductible under section 23(a)(1)(A) of the Internal Revenue Code.

In reaching its conclusion, the court stressed the fact that the taxpayer incurred the expenses "to maintain her position; to preserve, not to expand or increase; to carry on, not to commence." Thus it is apparent that the court did not hold that all teachers attending summer school may deduct their expenses as "ordinary and necessary business expenses." In cases in which the facts are similar to those present in the Hill case, the rule of that case will be applied. O. D. 892, *supra*, is hereby modified to conform with this conclusion.

In general, summer school expenses incurred by a teacher for the purpose of maintaining her position are deductible under section 23(a)(1)(A) of the Code as ordinary and necessary business expenses, but expenses incurred for the purpose of obtaining a teaching position, or qualifying for permanent status, a higher position, an advance in the salary schedule, or to fulfill the general cultural aspirations of the teacher, are deemed to be personal expenses which are not deductible in determining taxable net income.

Summer school expenses which are deductible under section 23(a)(1)(A) of the Code may, under appropriate circumstances, be deducted in determining the adjusted gross income of a teacher under section 22(n) of the Code. Expenses of travel, including meals and lodging, while away from home, incurred by a teacher in connection with employment, are deductible under section 22(n)(2) of the Code. To the extent that other expenses, including tuition, are reimbursed expenses which qualify as deductible items under section 23(a)(1)(A) of the Code, they may be deducted in computing adjusted gross income under section 22(n)(3) of the Code. Reimbursements or expense allowances received by a teacher are includible in gross income. (See I. T. 3978, C. B. 1949-2, 24.)

SECTION 29.23(a)-2: Traveling expenses.

INTERNAL REVENUE CODE

Summer school expenses of public school teachers. (See I. T. 4044, page 16.)

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

INTERNAL REVENUE CODE

Items of administration expenses where estate desires to deduct other items under section 812 (b), I. R. C. (See I. T. 4048, page 39.)

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

SECTION 29.23(c)-1: Taxes. 1951-13-13608
(Also Section 22(n), Section 29.22(n)-1.) I. T. 4052

INTERNAL REVENUE CODE

Deductibility for Federal income tax purposes of the Florida cigarette tax imposed by section 210.02 of the Florida Statutes of 1949, effective November 1, 1949, and the Florida tax on malt and other alcoholic beverages imposed by section 561.46 of the Florida Statutes of 1949.

Advice is requested whether the tax on cigarettes imposed by section 210.02 of the Florida Statutes of 1949, as enacted by chapter 26320 (No. 2), Extraordinary Session Laws of Florida, 1949, effective November 1, 1949, which chapter amended the prior law imposing a tax on cigarettes, and the tax on malt and other alcoholic beverages imposed by section 561.46 of the Florida Statutes of 1949 are deductible for Federal income tax purposes by the consumer.

Section 23(c)(1) of the Internal Revenue 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. Section 29.23(c)-1(*a*) of Regulations 111 provides that in general taxes are deductible only by the person upon whom they are imposed.

In I. T. 3687 (C. B. 1944, 114) it is held in part that the Florida cigarette tax imposed by House bill No. 668, Laws of Florida, 1943, approved June 5, 1943, is not deductible for Federal income tax purposes under section 23(c)(1) of the Internal Revenue Code for the reason that the tax is not imposed on the consumer.

Section 210.02 and section 210.04 of the Florida Statutes of 1949 provide in part as follows:

210.02. CIGARETTE TAX IMPOSED; COLLECTION, CREDIT FOR MUNICIPAL TAX, ETC.—

(1) An excise or privilege tax, in addition to all other taxes of every kind imposed by law, is imposed upon the sale, receipt, purchase, possession, consumption, handling, distribution and use of cigarettes in this State, in the following amounts, except as hereinafter otherwise provided, for cigarettes of standard dimensions:

* * * * * * *

(6) This tax shall be advanced and paid by the dealer to the director [director of the beverage department of the State of Florida] for deposit and distribution as hereinafter provided upon the first sale or transaction within the State, irrespective of whether or not such sale or transfer be to the ultimate purchaser or consumer. The seller or dealer shall collect the tax from the purchaser or consumer, and the purchaser or consumer shall pay the tax to the seller. The seller or dealer shall be responsible for the collection of the tax and the payment of the same to the director.

* * * * * * *

210.04. CONSTRUCTION; EXEMPTIONS; COLLECTION, ETC.—

(1) The amount of taxes * * * advanced and paid to the State aforesaid shall be added to and collected as a part of the sales price of the cigarettes sold or distributed, which amount may be stated separately from the price of the cigarettes on all display signs, sales and delivery slips, bills and statements which advertise or indicate the price of the product.

Under the foregoing provisions of the Florida statutes, the tax on cigarettes is required to be collected from the purchaser or consumer. Accordingly, it is held that the tax imposed by section 210.02 of the Florida Statutes of 1949, *supra*, being a levy upon the purchaser or consumer, is deductible on and after November 1, 1949, under section 23(c)(1) of the Internal Revenue Code by the purchaser or consumer in computing net income, except that in the case of an individual who elects the optional standard deduction (see section 23(aa) of the Code), the tax is not deductible unless paid in connection with cigarettes used in a trade or business. In that event, the tax is deductible from gross income in computing adjusted gross income. (See section 22(n)(1) of the Code.)

The Florida tax on malt and other alcoholic beverages imposed by section 561.46 of the Florida Statutes of 1949 is imposed upon the manufacturer or distributor, and it is not deductible for Federal income tax purposes by the purchaser or consumer.

PART IV.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

SECTION 41.—GENERAL RULE

SECTION 29.41-3: Methods of accounting. (Also Section 42, Section 29.42-1; Section 43, Section 29.43-1.) 1951-2-13519 Mim. 6584

Amendment of Mimeograph 6475 (C. B. 1950-1, 50), relating to treatment of blocked foreign income for Federal income tax purposes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 28, 1950.

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

1. Paragraph 9 of Mimeograph 6475 (C. B. 1950-1, 50) is amended to read as follows:

9. TIME FOR MAKING ELECTION.—(*a*) *General rule.*—An election to use the method of accounting prescribed under this mimeograph shall be made no later than the time prescribed by law (including any extension thereof) for filing the income tax return for the first taxable year for which the election is to be applicable.

(*b*) *Exception for prior open years, etc.*—Regardless of the preceding subparagraph, the election may be made with respect to open taxable years ending before December 31, 1950, subject to the following rules: (1) the election shall be made no later than the time prescribed by law (including any extension thereof) for filing the taxpayer's income tax return for its taxable year beginning in 1950 (or if more than one taxable year of the taxpayer begins in 1950, then for the taxable year last beginning in 1950), and (2) the election cannot be made with respect to any open taxable year which is prior to a taxable year (i) which is closed by any law or rule of law at the time of making the election and (ii) with respect to which there are items that would, but for the fact that such year is thus closed, be affected by such election. Subject to the foregoing rules, the taxpayer making the election (under the general rule of subparagraph (*a*) or this subparagraph) shall designate the first taxable year for which the method of accounting provided herein shall be used, and such election shall (subject to the provisions of paragraph 10) be binding for such first designated taxable year and all subsequent taxable years. If such first designated year is a taxable year prior to the taxable year for which the taxpayer's return is being filed, then the report (prescribed in paragraph 4) for such prior taxable year and for each intervening taxable year in order shall be filed at the time of making such an election. Where special circumstances exist, request may be made to the Commissioner for an extension of time beyond that prescribed in this paragraph for making the election.

GEO. J. SCHOENEMAN,
Commissioner.

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

SECTION 29.42-1: When included in gross income. 1951-4-13542
(Also Section 22(a), Section 29.22(a)-1.) Mim. 6597

Modification of Mimeograph 6444 (C. B. 1949-2, 11), relating to taxable status of refunds of taxes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., January 30, 1951.

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

1. In Mimeograph 6444 (C. B. 1949-2, 11), relating to the taxable status of refunds of taxes, it is held (first sentence of paragraph 6) that the receipt by a taxpayer of refunds of taxes, the deduction of which in prior years resulted in tax benefits, should be treated as income for the taxable year in which such refunds are received, except as otherwise provided by Federal statutes. The second sentence of paragraph 6 contains an exception to the general rule and reads as follows:

This treatment is not applicable in the case of refunds of State taxes resulting from renegotiation or reimbursements in respect of Government contracts (see section 3806, Internal Revenue Code, and I. T. 3611, C. B. 1943, 978).

2. The first sentence of paragraph 6 of Mimeograph 6444 makes no distinction, with respect to the taxable period for which income should be reported, between taxpayers reporting on the accrual basis and those reporting on the basis of cash receipts and disbursements. Furthermore, in view of the decisions in *Western Cartridge Co.* v. *Commissioner* (11 T. C. 246, acquiescence, C. B. 1950-2, 4) and *Taylor Instrument Companies* v. *Commissioner* (14 T. C. 388, acquiescence, C. B. 1950-2, 4), it has been concluded that there is no authority for the above-quoted exception set forth in the second sentence of paragraph 6. Accordingly, paragraph 6 of Mimeograph 6444 is modified to read as follows:

6. Accordingly, it is held that all refunds of taxes, the deduction of which in prior years resulted in tax benefits, should be included in gross income for the taxable year in which received by the taxpayer unless, under methods of accounting permitted under section 41 of the Internal Revenue Code, any such refunds are to be properly accounted for as of a different period, and except as otherwise specifically provided by Federal statute.

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

GEO. J. SCHOENEMAN,
Commissioner.

SECTION 29.42-1: When included in gross income. 1951-9-13577 Ct. D. 1738

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT

1. CLAIM FOR REFUND—ALLEGED OVERPAYMENT OF TAX—REFUND BY EMPLOYEE IN 1946 OF PORTION OF BONUS RECEIVED IN 1944.

In his 1944 income tax return taxpayer reported about $22,000 which he had received in that year as an employee's bonus. As the result of subsequent litigation he was compelled under the State court's judgment to return approximately $11,000 to his employer. Until payment of the judgment in 1946, taxpayer had at all times claimed and used the full amount of the bonus unconditionally as his own, in the good faith though "mistaken" belief that he was entitled to the whole bonus. *Held:* Taxpayer is not entitled to have his 1944 tax recomputed. "Mistake" as to the validity of his claim does not except him from the "claim of right" interpretation of the tax laws which has long been used to give finality to an annual accounting period.

2. DECISION REVERSED.

Decision of the United States Court of Claims, 91 Fed. Supp. 1017 (1950) reversed.

SUPREME COURT OF THE UNITED STATES

United States of America, petitioner, v. *Ellis R. Lewis*

On writ of certiorari to the United States Court of Claims

[March 26, 1951]

OPINION

Mr. Justice BLACK delivered the opinion of the Court.

Respondent Lewis brought this action in the Court of Claims seeking a refund of an alleged overpayment of his 1944 income tax. The facts found by the Court of Claims are: In his 1944 income tax return, respondent reported about $22,000 which he had received that year as an employee's bonus. As a result of subsequent litigation in a State court, however, it was decided that respondent's bonus had been improperly computed; under compulsion of the State court's judgment he returned approximately $11,000 to his employer. Until payment of the judgment in 1946, respondent had at all times claimed and used the full $22,000 unconditionally as his own, in the good faith though "mistaken" belief that he was entitled to the whole bonus.

On the foregoing facts the Government's position is that respondent's 1944 tax should not be recomputed, but that respondent should have deducted the $11,000 as a loss in his 1946 tax return. See G. C. M. 16730, XV-1 Cum. Bull. 179 (1936). The Court of Claims, however, relying on its own case, *Greenwald* v. *United States*, 57 Fed. Supp. 569, held that the excess bonus received "under a mistake of fact" was not income in 1944 and ordered a refund based on a recalculation of that year's tax. 91 Fed. Supp. 1017. We granted certiorari, 340 U. S. —, because this holding conflicted with many decisions of the courts of appeal, see, e. g., *Haberkorn* v. *United States*, 173 Fed. (2d) 587, and with principles announced in *North American Oil* v. *Burnet*, 286 U. S. 417 [Ct. D. 499, C. B. XI-1, 293 (1932)].

In the North American Oil case we said: "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." 286 U. S. at 424. Nothing in this language permits an exception merely because a taxpayer is "mistaken" as to the validity of his claim. Nor has the "claim of right" doctrine been impaired, as the Court of Claims stated, by *Freuler* v. *Helvering*, 291 U. S. 35 [Ct. D. 782, C. B. XIII-1, 242 (1934)], or *Commissioner* v. *Wilcox*, 327 U. S. 404 [Ct. D. 1668, C. B. 1946-1, 6]. The Freuler case involved an entirely different section of the Internal Revenue Code, and its holding is inapplicable here. 291 U. S. at 43.

And in *Commissioner* v. *Wilcox*, *supra*, we held that receipts from embezzlement did not constitute income, distinguishing North American Oil on the ground that an embezzler asserts no "bona fide legal or equitable claim." 327 U. S. at 408.

Income taxes must be paid on income received (or accrued) during an annual accounting period. Cf. I. R. C., sections 41, 42; and see *Burnet* v. *Sanford & Brooks Co.*, 282 U. S. 359, 363 [Ct. D. 277, C. B. X-1, 363, 364 (1931)]. The "claim of right" interpretation of the tax laws has long been used to give finality to that period, and is now deeply rooted in the Federal tax system. See cases collected in 2 Mertens, Law of Federal Income Taxation, section 12.103. We see no reason why the Court should depart from this well-settled interpretation merely because it results in an advantage or disadvantage to a taxpayer.[1]

Reversed.

Dissenting opinion by Mr. Justice DOUGLAS.

SECTION 29.42-1: When included in gross income.

INTERNAL REVENUE CODE

Contributions by an employer toward the purchase of annuity contracts for employees. (See I. T. 4041, page 5.)

SECTION 29.42-1: When included in gross income.

INTERNAL REVENUE CODE

Blocked foreign income. Mimeograph 6475 (C. B. 1950-1, 50) amended. (See Mim. 6584, page 19.)

SECTION 43.—PERIOD FOR WHICH DEDUCTIONS AND CREDITS TAKEN

SECTION 29.43-1: "Paid or incurred" and "paid or accrued."

INTERNAL REVENUE CODE

Blocked foreign income. Mimeograph 6475 (C. B. 1950-1, 50) amended. (See Mim. 6584, page 19.)

SECTION 29.43-2: When charges deductible.

1951-1-13512
I. T. 4043

INTERNAL REVENUE CODE

Property taxes levied under chapter 31, General Laws of Rhode Island, as amended by chapter 2330, Laws of Rhode Island, 1949, effective December 1, 1950, accrue, for Federal income tax purposes, on December 31 of each year.

Advice is requested with respect to the accrual date, for Federal income tax purposes, of property taxes levied under chapter 31,

[1] It has been suggested that it would be more "equitable" to reopen respondent's 1944 tax return. While the suggestion might work to the advantage of this taxpayer, it could not be adopted as a general solution because, in many cases, the 3-year statute of limitations would preclude recovery. I. R. C., section 322(b).

General Laws of Rhode Island, as amended by chapter 2330, Laws of Rhode Island, 1949, effective December 1, 1950.

Prior to amendment, section 1 of chapter 31 of the General Laws of Rhode Island provided for the assessment of property taxes on June 15 of each year, except that when the 15th day of June fell on Sunday, the law provided for assessment of the taxes on June 16.

Chapter 31 of the General Laws of Rhode Island, as amended by chapter 2330, Laws of Rhode Island, 1949, provides in part as follows:

SECTION 1. ELECTORS MAY LEVY A TAX, AND ORDER TIME OF ASSESSMENT AND PAYMENT.—A. The electors of any town qualified to vote on any proposition to impose a tax or for the expenditure of money, when legally assembled, may levy a tax for the purposes authorized by law, on the ratable property of the town, either in a sum certain, or in a sum not less than a certain sum and not more than a certain sum. Said tax shall be apportioned upon the assessed valuations as determined by the assessors of the town as of the 31st day of December in each year at 12 o'clock noon, said date being known as the date of assessment of town valuations.

* * * * * * *

SEC. 4. ASSESSMENT, WHEN TO BE MADE.—The assessors shall assess all valuations and apportion any tax levy on the inhabitants of the town and the ratable property therein according to law, and the assessed valuation of such ratable property shall be made as of the date of assessment provided in section 1 of this chapter.

* * * * * * *

SEC. 6½. [Tax roll certified to tax collector.] The tax levy shall be applied to the assessment roll and the resulting tax roll certified by the assessors to the town clerk, town treasurer or tax collector, as the case may be, not later than the 15th day of June next succeeding.

The general theory of the accrual of property taxes, since the issuance of G. C. M. 6273 (C. B. VIII-1, 168 (1929)), has been that ownership of property on the date as of which the assessment is made (frequently referred to as the assessment date) is the "event" which determines the taxpayer's liability for taxes, and, consequently, if the taxpayer's books of account are kept on the accrual basis he should accrue his property taxes as of that date. (See *United States* v. *P. Chauncey Anderson et al.*, 269 U. S. 422, T. D. 3839, C. B. V-1, 179 (1926); G. C. M. 15305, C. B. XIV-2, 80 (1935); and G. C. M. 23512, C. B 1943, 134.)

In Rhode Island, taxes assessed against any person with respect to either personal property or real estate constitute a lien which arises and attaches as of the date of assessment, and they may be collected either out of his real or personal estate. (See sections 22 and 23, chapter 32, General Laws of Rhode Island.) Thus, in Rhode Island both the lien date and the assessment date are the same and represent the "date of finality" as well as the "incidence" of the taxes. (See *Magruder* v. *Frederick M. Supplee et ux.*, 316 U. S. 394, Ct. D. 1559, C. B. 1942-1, 173.) Under the Rhode Island law before the amendment referred to herein, the accrual date of property taxes was June 15, except when that date fell on Sunday, in which case it was June 16.

It is held that property taxes levied under chapter 31, General Laws of Rhode Island, as amended by chapter 2330, Laws of Rhode Island, 1949, effective December 1, 1950, accrue, for Federal income tax purposes, on December 31 of each year. For the calendar year 1950 there will be two accrual dates of the State property taxes, one as of June 15, 1950, and the other as of December 31, 1950.

PART V.—RETURNS AND PAYMENT OF TAX

SECTION 53.—TIME AND PLACE FOR FILING RETURNS

SECTION 29.53-2: Extensions of time for filing returns. 1951-6-13563 T. D. 5835

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

Time extended for filing income and excess profits tax returns of members of a group of affiliated corporations for taxable years ending after June 30, 1950, and before March 1, 1951.

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

To Collectors of Internal Revenue and Others Concerned:

Pursuant to the authority contained in section 53(a)(2) of the Internal Revenue Code, the time for filing the return for a taxable year ending after June 30, 1950, and before March 1, 1951, by a corporation having the privilege of making a consolidated return for such taxable year under section 141 of the Code (as amended by section 301 of the Excess Profits Tax Act of 1950, approved January 3, 1951) is hereby extended to and including June 15, 1951.

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

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

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved March 13, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 13, 1951, 11:09 a. m.)

SECTION 29.53-2: Extensions of time for filing returns. 1951-13-13609 T. D. 5843

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

Time for filing returns of income for 1950 extended in the case of certain United States employees.

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

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH 1. Pursuant to the authority contained in section 53(a)(2) of the Internal Revenue Code, an extension of time for filing the return of income for the calendar year 1950 is hereby granted up to and including September 15, 1951, in the case of a citizen who during such calendar year was an employee of the United States or of any agency thereof, whether civilian, military, or naval, and who is required to file a return of income for such year solely because of the amendment made to section 251 of the Internal Revenue Code by section 220 of the Revenue Act of 1950, approved September 23, 1950. See sections 29.53-1 to 29.53-5, inclusive, of Treasury Regulations 111 for the time and place for filing returns.

PAR. 2. This Treasury Decision shall be effective upon its being filed for publication in the Federal Register.

Because this Treasury Decision merely relieves certain taxpayers from a requirement respecting the filing of returns of income for the calendar year 1950, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of such Act.

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

FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved June 6, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 8, 1951, 8:53 a. m.)

SECTION 29.53-2: Extensions of time for filing returns. 1951-13-13613
T. D. 5844

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

Time extended for filing income and excess profits tax returns of members of a group of affiliated corporations for taxable years ending after June 30, 1950, and before May 1, 1951.

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

To Collectors of Internal Revenue and Others Concerned:

Pursuant to the authority contained in section 53(a)(2) of the Internal Revenue Code, the time for filing the return for a taxable year ending after June 30, 1950, and before May 1, 1951, by a corporation having the privilege of making a consolidated return for such taxable year under section 141 of the Code (as amended by section 301 of the Excess Profits Tax Act of 1950, approved January 3, 1951) is hereby extended to and including July 31, 1951.

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

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

FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved June 13, 1951.

E. H. FOLEY,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 15, 1951, 9:00 a. m.)

SECTION 54.—RECORDS AND SPECIAL RETURNS

SECTION 29.54–1: Records and income tax forms.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5838, page 35.)

SECTION 58.—DECLARATION OF ESTIMATED TAX BY INDIVIDUALS

SECTION 29.58–8: Extension of time for filing declarations.

1951–2–13528
T. D. 5825

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

Time for filing the declaration of estimated tax for 1950 extended in the case of certain United States employees.

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

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH 1. Pursuant to the authority contained in section 58(e) of the Internal Revenue Code, an extension of time for filing the declaration of estimated tax for the calendar year 1950 is hereby granted up to and including the due date of the return for such year in the case of a citizen who is an employee of the United States or of any agency (civilian, military, or naval) of the United States and who is required to make the declaration of estimated tax for such year solely because of the amendment of section 251 of the Internal Revenue Code made by section 220 of the Revenue Act of 1950, approved September 23, 1950. If the taxpayer files his return for such calendar year on or before the due date of such return, and pays the amount of the tax shown on such return, such return shall also be considered as the declaration of estimated tax for such taxable year. See sections 29.53-1, 29.53-3, and 29.53-4 of Treasury Regulations 111 for the due date of returns.

PAR. 2. This Treasury Decision shall be effective upon its filing for publication in the Federal Register.

Because this Treasury Decision merely relieves certain taxpayers from a requirement respecting the filing of declarations of estimated tax for the calendar year 1950, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of such Act.

(This Treasury Decision is issued under the authority contained in sections 62 and 3791 (53 Stat. 32, 467; 26 U. S. C. 62, 3791); and section 58 (57 Stat. 142; 26 U. S. C. 58) of the Internal Revenue Code.)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved January 10, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register January 11, 1951, 9:42 a. m.)

SUBCHAPTER C.—SUPPLEMENTAL PROVISIONS

SUPPLEMENT A.—RATES OF TAX

SECTION 101.—EXEMPTIONS FROM TAX ON CORPORATIONS

SECTION 29.101-2: Proof of exemption on or after January 1, 1943—Annual returns for accounting periods beginning on or after January 1, 1943.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5838, page 35.)

SUPPLEMENT B.—COMPUTATION OF NET INCOME

SECTION 116.—EXCLUSIONS FROM GROSS INCOME

INTERNAL REVENUE CODE

Compensation received by employees of the United States or any agency thereof for services performed in Puerto Rico. (See I. T. 4047, page 59.)

SECTION 117.—CAPITAL GAINS AND LOSSES

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

1951-9-13578
G. C. M. 26690

INTERNAL REVENUE CODE

Real estate acquired by a financial institution by deed in lieu of foreclosure and thereafter managed and administered for the purpose of reducing the loss thereby sustained falls within the exception contained in section 117(a)(1) of the Internal Revenue Code relating to real property used in trade or business and, if held for more than 6 months, within the provisions of section 117(j) of the Code.

G. C. M. 24910 (C. B. 1946-1, 101) modified.

An opinion is requested whether real estate acquired by a financial institution by deed in lieu of foreclosure and thereafter managed and administered for the purpose of reducing the loss thereby sustained falls within the exception contained in section 117(a)(1) of the Internal Revenue Code relating to real property used in trade or business and, if held for more than 6 months, within the provisions of section 117(j) of the Code. The inquiry has caused this office to reconsider G. C. M. 24910 (C. B. 1946-1, 101), relating in part to the classification of real estate acquired by lending institutions through foreclosure proceedings.

In the instant case, a trust company acquired in 1935, by deed in lieu of foreclosure, property consisting of a lot and a six-story building. This property was managed and rented by the trust company until it was sold in 1949 at a loss. It is contended that the activity of the trust company in connection with the management of the property was clearly a part of its general business and, therefore, the property should be excluded from the definition of capital assets within the meaning of section 117(a)(1) of the Internal Revenue Code. It has been suggested that G. C. M. 24910 (C. B. 1946-1, 101) be modified by limiting it to the point decided in *The Kanawha Valley Bank* v. *Commissioner* (4 T. C. 252, acquiescence, C. B. 1946-1, 3), i. e., that properties held under such circumstances by a financial institution are not held primarily for sale to customers in the ordinary course of business.

The basic question is whether property similar to that involved in the Kanawha Valley Bank case may be "used in the trade or business" of a taxpayer within the meaning of that term as used in section 117(j) of the Code.

The leading decisions hereinafter discussed involve material statutory differences under several applicable revenue acts. The Revenue Act of 1936 excluded from capital asset classification "stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business." The Revenue Act of 1938 enlarged the exclusions by adding to the quoted provision the clause "or property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23(l)." Section 151(a) of the Revenue Act of

1942 further enlarged the exclusions by adding the clause "or real property used in the trade or business of the taxpayer." Under section 117(j) of the Code (added by section 151(b) of the Revenue Act of 1942), assets used in the trade or business, including real estate and improvements thereon, are placed in a special class. With respect to assets included in such class, gains in excess of losses are treated as capital gains, and losses in excess of gains are deductible as ordinary losses.

In the Kanawha Valley Bank case, The Tax Court of the United States held that three parcels of unimproved real estate acquired by the bank in foreclosure proceedings were capital assets within the purview of section 117(a)(1) of the Internal Revenue Code as it applied to the taxable years 1940 and 1941. The Commissioner had argued that the profit on the sale of these properties should be taxed as ordinary income, relying on G. C. M. 21497 (C. B. 1939-2, 187) which held in substance that parcels of real estate acquired by a bank, mortgage finance company, etc., by foreclosure are held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business and that the gains and losses resulting from the disposition of such property are ordinary gains and losses. As a result of the decision in the Kanawha Valley Bank case, G. C. M. 21497 was revoked by G. C. M. 24910, *supra*.

As heretofore indicated, section 117(a)(1) of the Code, as amended by section 151(a) of the Revenue Act of 1942, excludes real property used in the trade or business from the definition of capital assets. Accordingly, accepting the Tax Court decision in the Kanawha Valley Bank case to the effect that such property is not held primarily for sale to customers in the ordinary course of trade or business, the question arises with respect to taxable years beginning after December 31, 1941 (the taxable years to which the above-mentioned amendments made by the Revenue Act of 1942 are applicable), whether such property is "used in the trade or business" of a taxpayer.

The financing of loans and foreclosing of mortgages constitute an integral part of the banking business. In general and in the absence of any facts to the contrary (such as nonproductive property held after foreclosure for investment purposes), real property acquired by foreclosure should be considered as used in the trade or business of the lending institution.

The phrase "property used in the trade or business" appears also in section 23(l) of the Code, relating to the allowance for depreciation. In *A. L. Carter Co. et al.* v. *Commissioner* (143 Fed. (2d) 296), involving the years 1938 and 1939, the company was engaged in the lumber business and in financing the building of houses. It furnished the necessary materials and funds to customers who desired to build houses, taking a first lien note for indebtedness. During the years following 1929, the company frequently found it necessary to foreclose its lien in order that it might protect its investment. It thus acquired several hundred houses which it kept in repair and rented until a satisfactory sale could be made. The company contended that in computing its gain or loss upon each sale, the cost basis of the property should not be adjusted to reflect depreciation. The circuit court, in affirming the Tax Court's holding that the basis should be adjusted, said:

Petitioner's business was not restricted to the sale of building materials, for it also undertook to finance construction. The financing program was not wholly disassociated from the lumber business, for its tendency was to increase greatly the sales of building materials; but if it was a distinct business, the taxpayer, by wholesale participation, engaged in both selling building materials and financing the construction of homes. *The management and administration of foreclosed property is an essential ingredient of the business of financing.* Indeed the taxpayer so treated these properties, for it returned its rentals therefrom as ordinary income, and deducted its expenditures for repairs and maintenance as ordinary and necessary business expenses. [Italics supplied.]

The fact that banks and similar financial institutions are prohibited by statutes similar to section 3128 of the West Virginia Code of 1937, the statute involved in the Kanawha Valley Bank case, from purchasing realty (except for certain limited purposes) is not determinative of the applicability of section 117(j) of the Code. These statutes usually impose two conditions—first, the real property must be conveyed to the financial institution in satisfaction of indebtedness or purchased at a foreclosure sale and, second, the real property must be disposed of within a stated period. Such statutes merely eliminate the possibility that a financial institution may enter into real estate trading as an enterprise equal in importance to its business of taking deposits and making loans. The prohibition contained in them should not be construed in such a way as to preclude an examination of a bank's real estate activities in order to determine, as a question of fact, whether the property is used in the business of banking.

On the basis of the above, it is the opinion of this office that the real property in the instant case was used by the taxpayer in its trade or business within the meaning of that term as used in section 117(a)(1) and (j) of the Code. G. C. M. 24910, *supra*, is modified to the extent that it is inconsistent with the views expressed herein.

CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue.

SECTION 124A.—AMORTIZATION DEDUCTION

1951-3-13539
E. O. 10200

EXECUTIVE ORDER 10200—ESTABLISHING THE DEFENSE PRODUCTION ADMINISTRATION

By virtue of the authority vested in me by the Constitution and statutes, including the Defense Production Act of 1950, and as President of the United States and Commander in Chief of the Armed Forces, it is hereby ordered as follows:

PART I. DEFENSE PRODUCTION ADMINISTRATION

SECTION 1. (*a*) There is hereby created an agency which shall be known as the Defense Production Administration.

(*b*) There shall be at the head of the Defense Production Administration a Defense Production Administrator, hereinafter referred to as the Administrator, who shall be appointed by the President by and with the advice and consent of the Senate. The Administrator shall perform his duties subject to the direction, control, and coordination of the Director of Defense Mobilization.

SEC. 2. (*a*) There are hereby delegated to the Administrator the functions conferred upon the President by titles I and II and section 708 of the Defense Production Act of 1950 (relating respectively to priorities and allocations, requisitioning, and voluntary agreements) which were by the provisions of part I, section 201(a) of part II, and part VII of Executive Order No. 10161 of September 9, 1950, delegated to the Secretary of Commerce, the Secretary of the Interior, and the Commissioner of the Interstate Commerce Commission, respectively, and those which were by the provisions of section 101 of the said Executive Order No. 10161 delegated to the Secretary of Agriculture to the extent that they relate to food which has been determined to be available for industrial needs pursuant to section 3 of this order; and the said delegations made by the said Executive Order No. 10161 are hereby terminated accordingly.

* * * * * * *

(*e*) The Administrator is hereby designated as the certifying authority for the purposes of and within the meaning of subsection (e) of section 124A of the Internal Revenue Code, as added by section 216 of the Revenue Act of 1950, approved September 23, 1950.

* * * * * * *

SEC. 6. (*a*) To the extent that provisions of Executive Order No. 10161 of September 9, 1950, are inconsistent with the provisions of this order the latter shall control, and the said Executive Order No. 10161 is amended accordingly.

Except as modified or made inapplicable by the provisions of this Executive order, provisions of the said Executive Order No. 10161 relating to functions vested in the Administrator hereby shall continue to be applicable to such functions. Executive Order No. 10172 [C. B. 1950–2, 151] of October 12, 1950, is hereby revoked. Nothing in this Executive order shall affect the validity or force of anything heretofore done under the said Executive Orders Nos. 10161 or 10172.

(*b*) Any officer or agency having by delegation or otherwise any function under this order shall have all the authority conferred by sections 902 and 903 of Executive Order No. 10161, including the authority with respect to subpena.

(*c*) All orders, regulations, rulings, certificates, directives, and other actions relating to any function affected by this Executive order shall remain in effect except as they are inconsistent herewith or are hereafter amended or revoked under proper authority.

(*d*) Nothing in this Executive order shall be deemed to supersede any provision of Executive Order No. 10193 of December 16, 1950.

SEC. 7. The provisions of sections 2 to 6, inclusive, of this Executive order shall not be effective until the Administrator first appointed hereunder takes office as Administrator.

PART II. DEFENSE MOBILIZATION BOARD

SEC. 8. There is hereby established in the Office of Defense Mobilization (established by Executive Order No. 10193 of December 16,

1950) the Defense Mobilization Board, which shall consist of the Director of Defense Mobilization as Chairman, the Secretaries of Defense, the Treasury, the Interior, Commerce, Agriculture, and Labor, the Chairman of the Reconstruction Finance Corporation, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the National Security Resources Board, and such other officials as said Director may from time to time designate. The said Board shall be advisory to the Director of Defense Mobilization.

HARRY S. TRUMAN.

THE WHITE HOUSE,
January 3, 1951.

(Filed with the Division of the Federal Register January 3, 1951, 12:03 p. m.)

SUPPLEMENT C.—CREDITS AGAINST TAX

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

SECTION 29.131-1: Analysis of credit for taxes.

INTERNAL REVENUE CODE

Puerto Rican income tax with respect to compensation received by Federal employees for services performed in Puerto Rico. (See I. T. 4047, page 59.)

SECTION 29.131-2: Meaning of terms. 1951-10-13587
(Also Section 29.131-7.) I. T. 4049

INTERNAL REVENUE CODE

The tax (duty) paid pursuant to Division III of the Quebec Mining Act is a tax paid in lieu of an income tax within the meaning of section 131(h) of the Internal Revenue Code, and where such tax is paid by a Canadian subsidiary the majority of the voting stock of which is owned by a domestic corporation, it may be taken as a credit against the United States income tax of the domestic corporation under the provisions of section 131 (a) and (f) of the Code.

Advice is requested whether the tax (duty) paid pursuant to Division III of the Quebec Mining Act is a tax paid in lieu of an income tax within the meaning of section 131(h) of the Internal Revenue Code, and whether, if such a tax is paid by a Canadian subsidiary the majority of the voting stock of which is owned by a domestic corporation, it may be taken as a credit against the United States income tax of the domestic corporation under the provisions of section 131 (a) and (f) of the Code.

The pertinent provisions of Division III of the Quebec Mining Act are as follows:

SEC. 12. DUTIES.—There shall be paid to the Crown, at the time and in the manner hereinafter provided, the duties imposed by this division.

* * * * * * *

SEC. 13. SCALE OF DUTIES.—1. From and after the 1st of January, 1935, every mine in the Province of Quebec shall be liable for, and the owner, manager, holder, lessee, occupant or operator of the mine shall pay, the following duties:

(*a*) Upon annual profits in excess of $10,000 up to $1,000,000, 4 percent.

* * * * * * *

SEC. 14. ANNUAL PROFITS.—The annual profits shall be ascertained and fixed in the following manner:

Gross value.—From the gross value of the year's output, sold, utilized or shipped during the year, there shall be deducted the costs of operation and expenses incurred during the year in question, to wit:

The Quebec statute then specifies the various kinds of expenses which are deductible in computing annual profits, which deductions are similar to those listed in I. T. 2909 (C. B. XIV-2, 136 (1935)). In I. T. 2909 it was held that the tax imposed by the Quebec Mining Act as then in effect was not an income tax and could not be claimed as a credit against United States income tax under section 131 of the Revenue Act of 1934.

Section 6 of the Quebec Corporation Tax Act, reenacted with minor changes in 1947 after it was suspended during World War II, provides as follows:

In addition to the taxes on capital and upon places of business mentioned in this act, * * * every holding company and *every mining company whose annual profits are not taxed under the Quebec Mining Act* (chapter 196) * * * shall pay annually a tax equivalent to 7 per centum of the net revenue * * * [Italics supplied.]

To the extent that it is relevant, section 131(a)(1) of the Internal Revenue Code provides in part that if a domestic corporation chooses to have the benefits of section 131 of the Code, the tax imposed under chapter 1 of the Code shall be credited with the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country. Section 29.131-2 of Regulations 111 defines "foreign country" as meaning any foreign state or political subdivision thereof, or any foreign political entity, which levies and collects income, war profits, or excess profits taxes.

Section 131(f) of the Code provides in part that for the purposes of section 131 of the Code, a domestic corporation which owns a majority of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country, upon or with respect to the accumulated profits of such foreign corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits.

Section 131(h) of the Code, as added by section 158(f) of the Revenue Act of 1942, provides in part that for the purposes of sections 131 and 23(c)(1) of the Code, the term "income, war profits, and excess profits taxes" shall include a tax paid in lieu of a tax upon income, war profits, or excess profits otherwise generally imposed by any foreign country.

It appears that where a corporation pays duties on annual profits under the Quebec Mining Act, it is not subject to the 7 percent tax on net revenue imposed by section 6 of the Quebec Corporation Tax Act, *supra*. In other words, in the instant case, the tax or "duty" paid under the Quebec Mining Act was paid in lieu of the general tax on net revenue levied by the Province of Quebec.

Accordingly, it is held that the tax (duty) paid pursuant to Division III of the Quebec Mining Act is a tax paid in lieu of an income tax within the meaning of section 131(h) of the Internal Revenue Code, and where such tax is paid by a Canadian subsidiary the majority of the voting stock of which is owned by a domestic corporation, it may be taken as a credit against the United States income tax of the domestic corporation under the provisions of section 131 (a) and (f) of the Code.

SUPPLEMENT D.—RETURNS AND PAYMENT OF TAX

SECTION 148.—INFORMATION BY CORPORATIONS

SECTION 29.148-1: Return of information as to payment of dividends. 1951-4-13543 I. T. 4045

INTERNAL REVENUE CODE

Distributions of earnings by Federal savings and loan associations constitute dividend income to the members of the associations, and information returns with respect to such distributions are required to be filed by the associations under section 148 of the Internal Revenue Code.

Advice is requested whether distributions of earnings by Federal savings and loan associations constitute dividend income with respect to which information returns are required to be filed by the associations under section 148 of the Internal Revenue Code.

Section 148 of the Internal Revenue Code provides in part as follows:

(a) DIVIDEND PAYMENTS.—Every corporation shall, when required by the Commissioner, render a correct return, duly verified under oath, of its payments of dividends, stating the name and address of each shareholder, the number of shares owned by him, and the amount of dividends paid to him.

Section 29.148-1 of Regulations 111 provides in part that every domestic corporation or foreign corporation engaged in business within the United States or having an office or place of business or a fiscal or paying agent in the United States, making payments of dividends and distributions (other than distributions in liquidation) to any shareholder who is an individual (citizen or resident of the United States), a resident fiduciary, or a resident partnership any member of which is a citizen or resident, amounting to $100 or more during each calendar year, shall render an information return on Forms 1096 and 1099.

The rules and regulations for the Federal Savings and Loan System, issued by the Home Loan Bank Board, Washington, D. C., provide that upon approval by the Home Loan Bank Board of an application for permission to organize a Federal savings and loan association, temporary officers shall be elected who may thereupon secure subscriptions to such Federal association's capital consisting of amounts contracted to be paid into savings accounts. Such an association raises its capital by accepting payments on savings accounts representing share interests in the association. As of June 30 and

December 31 of each year, after payment of all expenses, credits to general reserves, and such credits to surplus as the board of directors may determine, and provision for any bonus on savings accounts authorized by regulations made by the Home Loan Bank Board, the board of directors of the association causes the remainder of the net earnings of the association for the 6 months' period to be distributed promptly on its savings accounts, ratably, as declared by the board of directors, to the withdrawal value thereof. All holders of savings accounts of the association are entitled to equal distribution of assets, pro rata to the value of their savings accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association.

In order to determine whether Federal savings and loan associations are required to file information returns on Forms 1096 and 1099 pursuant to the above-mentioned provisions of section 29.148-1 of Regulations 111, it is necessary to ascertain the exact nature of the distributions of their earnings, i. e., whether such distributions constitute dividends or interest. The distinction between the term "dividend" and the term "interest" is that interest ordinarily means a payment arising out of a debtor-creditor relationship with respect to the use of money at a fixed, predetermined rate, whereas a dividend is a distribution of profits to shareholders which is conditioned upon the existence of profits and a dividend declaration by a board of directors or similar body.

A bank depositor, as such, has no voice in the management of the bank. However, a member of a Federal savings and loan association, through participation in the election of its board of directors, has a voice in the management of the association. The relationship of its members to a Federal savings and loan association appears to be that of proprietors, rather than creditors, and no preferred treatment is accorded them upon its dissolution or liquidation.

In view of the foregoing, it is held that distributions of earnings by Federal savings and loan associations constitute dividend income to the members of the associations, and information returns with respect to such distributions are required to be filed by the associations under section 148 of the Internal Revenue Code.

SECTION 153.—INFORMATION REQUIRED FROM CERTAIN TAX-EXEMPT ORGANIZATIONS AND CERTAIN TRUSTS

SECTION 29.153-1: Information required from certain tax-exempt organizations. 1951-10-13588 T. D. 5838

(Also Sections 29.153-2, 29.153-3, 29.153-4; Section 54, Section 29.54-1; Section 101, Section 29.101-2; Section 162, Section 29.162-1.)

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

Regulations 111 amended to conform to section 153, Internal Revenue Code, as added by section 341 of the Revenue Act of 1950, relating to information from certain tax-exempt organizations and certain trusts to be made available to the public.

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

To Collectors of Internal Revenue and Others Concerned:

On February 10, 1951, notice of proposed rule making, with respect to publicity of information to be required from certain tax-exempt organizations and from certain trusts, was published in the Federal Register (16 F. R. 1287). After consideration of all such relevant matter as was presented by interested persons regarding the proposal, the amendments to Regulations 111 [26 CFR, part 29] set forth below are hereby adopted. The amendments are designed to conform Regulations 111 to section 341 of the Revenue Act of 1950 (Public Law 814, 81st Cong.), approved September 23, 1950.

PARAGRAPH 1. There is inserted after section 151 of the Internal Revenue Code as set forth immediately after section 29.150-1 [26 CFR 29.150-1] the following:

SEC. 341. INFORMATION TO BE MADE AVAILABLE TO THE PUBLIC [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) INFORMATION WITH RESPECT TO CERTAIN CHARITABLE, ETC., EXEMPTIONS AND DEDUCTIONS.—Supplement D of chapter 1 (relating to returns and payment of tax) is hereby amended by adding at the end thereof the following new section:

"SEC. 153. INFORMATION REQUIRED FROM CERTAIN TAX-EXEMPT ORGANIZATIONS AND CERTAIN TRUSTS.

"(a) CERTAIN TAX-EXEMPT ORGANIZATIONS.—Every organization described in section 101(6) which is subject to the requirements of section 54(f) shall furnish annually information, at such time and in such manner as the Secretary may by regulations prescribe, setting forth—

"(1) its gross income for the year,

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

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

"(4) its accumulation of income within the year,

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

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

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

"(b) TRUSTS CLAIMING CHARITABLE, ETC., DEDUCTIONS UNDER SECTION 162(a).—Every trust claiming a charitable, etc., deduction under section 162(a) for the taxable year shall furnish information with respect to such taxable year, at such time and in such manner as the Secretary may by regulations prescribe, setting forth—

"(1) the amount of the charitable, etc., deduction taken under section 162(a) within such year (showing separately the amount of such deduction which was paid out and the amount which was permanently set aside for charitable, etc., purposes during such year),

"(2) the amount paid out within such year which represents amounts for which charitable, etc., deductions under section 162(a) have been taken in prior years,

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

"(4) the amount paid out of principal in the current and prior years for charitable, etc., purposes, "(5) the total income of the trust within such year and the expenses attributable thereto, and

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

"(c) INFORMATION AVAILABLE TO THE PUBLIC.—The information required to be furnished by subsections (a) and (b), together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary may prescribe.

"(d) PENALTIES.—In the case of a willful failure to furnish the information required under this section, the penalties provided in section 145(a) shall be applicable."

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

SEC. 29.153-1. INFORMATION REQUIRED FROM CERTAIN TAX-EXEMPT ORGANIZATIONS.—(*a*) For accounting periods beginning after December 31, 1949, every organization described in section 101(6), except organizations specifically exempt from filing annual returns under section 54(f) (see section 29.101-2(*h*)), shall file a return of information on Form 990-A. The return shall be on the basis of the established annual accounting period of the organization. Where the organization has no established annual accounting period, the return shall be made on the basis of the calendar year. The return shall be filed on or before the 15th day of the fifth full calendar month following the close of the period for which the return is required to be filed, and it shall be filed with the collector for the district in which is located the principal place of business or principal office of the organization.

(*b*) Pages 3 and 4 of the return shall set forth the name and address of the organization, and the following information concerning the organization in such detail as may be prescribed by the Commissioner in the instructions on the form or issued by him therewith:

(1) its gross income for the year in sufficient detail to show the different categories of income,

(2) its expenses attributable to such income and incurred within the year, in sufficient detail to show the different categories of expense,

(3) its disbursements made within the year out of current or accumulated income for the purpose for which it is exempt, separately listing the total amount of disbursements for each classification of the exempt purposes of the organization,

(4) its accumulation of income within the year,

(5) its aggregate accumulation of income at the beginning of the year,

(6) (i) its disbursements made out of principal during the current year for the purpose for which it is exempt, separately listing the total amount of disbursements for each classification of the exempt purposes of the organization.

(ii) its disbursements made out of principal during prior years for the purpose for which it is exempt,

(7) the total of its administrative and operating expenses disbursed out of both principal and income,

(8) a balance sheet showing its assets, liabilities, and net worth as of the beginning of the year.

SEC. 29.153-2. INFORMATION REQUIRED OF TRUSTS CLAIMING CHARITABLE OR OTHER DEDUCTIONS UNDER SECTION 162(a).—For taxable years beginning after December 31, 1949, every trust claiming a charitable or other deduction under section 162(a) shall file, with respect to the taxable year for which such deduction is claimed, a return of information on Form 1041-A. The return shall be filed on or before the 15th day of the fourth month following the close of the taxable year of the trust with the collector for the district in which the fiduciary resides or has his principal place of business. The return shall set forth the name and address of the trust and the following information concerning the trust in such detail as may be prescribed by the Commissioner in the instructions on the form or issued by him therewith:

(1) the amount of the charitable or other deduction taken under section 162(a) for the taxable year, showing separately for each class of activity for which disbursements were made (or amounts were permanently set aside) the amounts which, during such year, were paid out (or which were

permanently set aside) for charitable or other purposes under section 162(a),

(2) the amount paid out during the taxable year which represents amounts permanently set aside in prior years for which charitable or other deductions have been taken under section 162(a), and separately listing for each class of activity, for which disbursements were made, the total amount paid out,

(3) the amount for which charitable or other deductions have been taken in prior years under section 162(a) and which had not been paid out at the beginning of the taxable year,

(4) (i) the amount paid out of principal in the taxable year for charitable, etc., purposes, and separately listing for each such class of activity, for which disbursements were made, the total amount paid out,

(ii) the total amount paid out of principal in prior years for charitable, etc., purposes,

(5) the gross income of the trust for the taxable year and the expenses attributable thereto, in sufficient detail to show the different categories of income and of expense, and

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

SEC. 29.153-3. PUBLICITY OF RETURNS.—The information furnished on pages 3 and 4 of Form 990-A and the information furnished on Form 1041-A shall be a matter of public record, and shall be open to public inspection, during regular hours of business, in the office of the collector for the district in which the forms are filed. The Commissioner may use such information for the purpose of making and publishing statistical or other studies.

SEC. 29.153-4. PENALTIES.—In the case of a willful failure to furnish the information required under section 153 and sections 29.153-1 and 29.153-2, the penalties provided in section 145(a) shall be applicable.

PAR. 2. Section 29.54-1, as amended by Treasury Decision 5381 [C. B. 1944, 188], approved June 26, 1944 [26 CFR 29.54-1], is further amended by striking out in the last sentence thereof "and 29.101-2." and inserting in lieu thereof ", 29.101-2, and 29.153-1."

PAR. 3. Section 29.101-2, as added by Treasury Decision 5381 [26 CFR 29.101-2], is amended by striking therefrom wherever it appears the expression "(Revised May 1944)".

PAR. 4. Section 29.101-2(*e*), as added by Treasury Decision 5381 [26 CFR 29.101-2(e)], is amended as follows:

(A) By inserting in the first sentence thereof after "December 31, 1942," the following: "and before January 1, 1950,".

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

For accounting periods beginning after December 31, 1949, the same requirements are applicable with respect to all of the above-mentioned organizations, except that those organizations which are exempt from tax under section 101(6) shall, in lieu of using Form 990, file an information return on Form 990-A to comply with the requirements of this section and of section 29.153-1.

(C) By adding in the last sentence thereof after "Form 990" the following: "or Form 990-A".

PAR. 5. Section 29.101-2(*f*), as added by Treasury Decision 5381 [26 CFR 29.101-2(f)], is amended as follows:

(A) By adding in the first sentence after "Form 990" the following: "or Form 990-A as may be appropriate (see subsection (*e*) of this section)".

(B) By inserting in each of the last two sentences thereof after "Form 990" the following: "or Form 990-A".

PAR. 6. Section 29.101-2(*g*), as added by Treasury Decision 5381 [26 CFR 29.101-2(g)], is amended by inserting after "Form 990" the following: "(Form 990-A where applicable for periods after 1949)".

PAR. 7. Section 29.101-2(*h*), as added by Treasury Decision 5381 [26 CFR 29.101-2(h)], is amended by inserting in the first sentence after "Form 990" the following: "and Form 990-A".

PAR. 8. Section 29.101-2(*i*), as added by Treasury Decision 5381 [26 CFR 29.101-2(i)], is amended by inserting after "Form 990" the following: "or Form 990-A".

PAR. 9. Section 29.101-2(*j*), as added by Treasury Decision 5381 [26 CFR 29.101-2(j)], is amended by inserting in the first sentence after "Form 990" the following: "or Form 990-A".

PAR. 10. Section 29.162-1(*a*) [26 CFR 29.162-1(a)], is amended by adding at the end thereof the following:

See section 29.153-2 relating to the annual information return that must be filed by every trust claiming a charitable, etc., deduction under section 162(a) for the taxable year.

(This Treasury Decision is issued under the authority contained in section 62 of the Internal Revenue Code (63 Stat. 32; 26 U. S. C. 62) and section 341 of the Revenue Act of 1950 (Public Law 814, 81st Cong.).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved April 17, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register April 20, 1951, 8:51 a. m.)

SECTION 29.153-2: Information required of trusts claiming charitable or other deductions under section 162(a).

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5838, page 35.)

SECTION 29.153-3: Publicity of returns.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5838, page 35.)

SECTION 29.153-4: Penalties.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5838, page 35.)

SUPPLEMENT E.—ESTATES AND TRUSTS

SECTION 162.—NET INCOME

SECTION 29.162-1: Income of estates and trusts. 1951-9-13579
I. T. 4048

(Also Section 23(a), Section 29.23(a)-15.)

INTERNAL REVENUE CODE

An estate is entitled to a deduction, under section 23(a)(2) of the Internal Revenue Code, in its Federal income tax return for a particular taxable year with respect to payments of administration expenses made during that year without forfeiting its right to a deduction, in determining the net estate under section 812(b) of the Code, for administration expenses paid in another taxable year, provided the estate files the statement and waiver required by section 162(e) of the Code.

Advice is requested whether an estate may elect, under section 162(e) of the Internal Revenue Code, to deduct payments of administration expenses under section 23(a)(2) of the Code in computing the net income of the estate for Federal income tax purposes for the taxable year in which such payments are made without forfeiting its right to deduct similar payments made in another taxable year in determining the net estate under section 812(b) of the Code for Federal estate tax purposes.

In the instant case, payments were made by an estate in 1949 on account of administration expenses which were not taken as a deduction in the estate's Federal income tax return for such year. Similar payments were made by the estate in 1950. The estate desires to deduct, under section 23(a)(2) of the Internal Revenue Code, the amount of such payments made in 1950 in computing its net income for the taxable year 1950, and to deduct the amount of such payments made in 1949 in determining the net estate under section 812(b) of the Code.

Section 162 of the Internal Revenue Code, relating to the computation of net income of estates and trusts, provides in part as follows:

SEC. 162. NET INCOME.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * * * *

(e) Amounts allowable under section 812(b) as a deduction in computing the net estate of a decedent shall not be allowed as a deduction under section 23, except subsection (w), in computing the net income of the estate unless there is filed, within the time and in the manner and form prescribed by the Commissioner, a statement that the items have not been claimed or allowed as deductions under section 812(b) and a waiver of the right to have such items allowed at any time as deductions under section 812(b).

Section 812(b) of the Internal Revenue Code provides for the deduction, among other things, of administration expenses in determining the value of the net estate for Federal estate tax purposes. Such expenses would also constitute allowable deductions as nontrade or nonbusiness expenses under section 23(a)(2) of the Code in determining the net income of the estate for Federal income tax purposes. The purpose of section 162(e) of the Code is to prevent an estate from obtaining a double deduction with respect to the same items of administration expenses. Administration expenses are not allowable deductions under section 23 of the Code unless there is filed a statement to the effect that the items representing such expenses have not been claimed or allowed as deductions in the estate tax return and a waiver of the right to have such items allowed at any time as deductions in the estate tax return. So long as there is no duplication of a deduction and the provisions of section 162(e) of the Code are complied with, there is nothing to prevent an estate from taking a deduction for certain items of the administration expenses in computing the net estate under section 812(b) of the Code and also taking a deduction for other items of such expenses in computing the net income of the estate for the particular taxable year in which payment of such items is made from its gross income.

Accordingly, it is held that an estate is entitled to a deduction, under section 23(a)(2) of the Internal Revenue Code, in its Federal income tax return for a particular taxable year with respect to payments of administration expenses made during that year without forfeiting its right to a deduction, in determining the net estate under section 812(b) of the Code, for administration expenses paid in another taxable year, provided the estate files the statement and waiver required by section 162(e) of the Code.

SECTION 29.162-1: Income of estates and trusts.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5838, page 35.)

SECTION 165.—EMPLOYEES' TRUSTS

SECTION 29.165-3: Requirements as to coverage. 1951-12-13602 Mim. 6641

Integration of deferred benefit plans of employers with the old-age and survivors insurance benefits provided by the Social Security Act Amendments of 1950.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., May 3, 1951.

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

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1. *Pertinent regulations.*—Section 29.165–3 of Regulations 111 provides that a classification of employees under any plan which results in relatively or proportionately greater benefits for employees earning above any specified salary amount or rate than for those below such salary amount or rate may be found to be discriminatory within the meaning of section 165(a)(3)(B) of the Internal Revenue Code unless such relative or proportionate differences in benefits as between employees resulting from such classification are approximately offset by the retirement benefits provided by the Social Security Act. It is further provided that for this purpose the total Social Security Act benefit of an employee, in view of the supplementary benefits provided by such law, may be considered as 150 percent of the primary insurance benefits provided thereby. See also the second paragraph of section 29.165–4 of Regulations 111 as to differences in proportionate benefits or contributions which may be considered nondiscriminatory within the meaning of section 165(a)(4) of the Code because of integrating with benefits provided under State or Federal law.

2. *Purpose of mimeograph.*—Mimeograph 5539 (C. B. 1943, 499) set forth the rules for determining whether a plan is integrated with the Social Security Act benefits so that it would be considered not discriminatory under the provisions of the regulations indicated in paragraph 1 on the basis of that Act as then in effect. Integration rules for this purpose on the basis of the old-age and survivors insurance (often referred to as OASI) benefits provided by the Social Security Act Amendments of 1950 are set forth in this mimeograph.

3. *Introduction.*—Under the OASI provisions as amended, the monthly old-age insurance benefits to which an insured individual will be entitled in most cases upon retirement in the future after reaching age 65 will be equal to 50 percent of the first $100 of his average monthly wage plus 15 percent of the next $200 of his average monthly wage. The maximum old-age insurance benefit, payable in the case of an eligible retired worker whose average monthly wage is $300, will be $80 a month, or 26⅔ percent of his average monthly wage. As indicated in the regulation referred to above, the total benefits under the OASI provisions with respect to an employee may be considered for integration purposes as equal in value to 150 percent of his old-age insurance benefits. Thus, the total OASI benefits with respect to an employee whose average monthly wage is $300 may be considered as equivalent to a straight life annuity beginning at age 65 (or at later retirement) of $120 a month, or 40 percent of average monthly wage.

It should be noted that employees covered under the OASI provisions must contribute under the Federal Insurance Contributions Act. Actuarial cost estimates contained in the report of the Committee on Ways and Means on H. R. 6000 (H. Rept. No. 1300, 81st Cong., 1st sess.; C. B. 1950–2, 255) and the report of the Committee on Finance (S. Rept. No. 1669, 81st Cong., 2d sess.; C. B. 1950–2, 302) indicate that the aggregate employee and employer contributions under the scale provided in that Act as amended will, in the long run, approximate the cost of the OASI benefits. Since the employee and employer contributions under that Act are equal, it may be considered that in the long run contributions of employees will in the aggregate pay approximately half the cost of the OASI benefits. It is recognized, however, that employees retiring in the near future will contribute much less than half the cost of their OASI benefits. Accordingly, in developing the rules set forth below, it was assumed that employee contributions under OASI will pay for benefits equivalent to a straight life annuity of 2½ percent of average monthly wage, only one-sixteenth of the total OASI benefits for an employee whose average monthly wage is $300.

It should also be noted that the assumption that OASI benefits are equal in value to 150 percent of the old-age insurance benefits gives due allowance in the average situation for all OASI supplementary and survivors benefits. The 150 percent referred to in the above-cited regulation allows for much more than the value of the wife's benefits, since only a fraction of the insured individuals entitled to old-age insurance benefits have wives entitled to wife's benefits. It has been estimated that on the average all OASI benefits, including those payable in case of death of the insured individual before or after age 65, have a value equal to approximately 150 percent of the old-age insurance benefits. Therefore, the integration limit developed by assuming such 150 percent of old-age insurance benefits is properly applicable only to plans which do not provide death benefits attributable to employer contributions in case of death either before or after retirement. Appropriate adjustments of such limits are set forth in paragraphs 6 and 7 of this mimeograph for plans which do provide such death benefits.

4. *Definitions.*—Certain terms used in this mimeograph will have the meaning indicated below:

(*a*) The term "plan" means a pension plan as defined in section 29.165-1(*a*) of Regulations 111, or an annuity plan as defined in section 29.23(p)-4 of Regulations 111, except when used as part of the term "profit-sharing plan."

(*b*) The term "integrated," as applied to a plan or benefits under a plan, means that differences in proportionate benefits favoring employees earning above any specified rate of compensation as compared with those earning below such rate resulting from a classification and/or difference in benefit rates under such plan will be considered approximately offset by the OASI benefits, so that the plan is not considered discriminatory under the provisions of the regulations referred to in paragraph 1 by reason of such differences.

(*c*) The term "minimum compensation level" means the minimum rate of compensation required for eligibility or below which compensation is excluded in the computation of benefits in an excess plan.

(*d*) The term "excess plan" means a plan under which employees earning below a minimum compensation level, such as $3,600 a year, are excluded, either by an eligibility requirement or by basing benefits only on compensation in excess of the level.

(*e*) The term "$3,600 excess plan" means an excess plan in which the minimum compensation level is $3,600 a year.

(*f*) The term "average annual compensation" means the average obtained by dividing the total compensation of an employee from the employer during a period of years (as explained below) by the number of years in such period. The period of years used in determining such average may include fractions of a year and may be any one of the following, or the one of two or more of the following which results in the highest average for each employee, provided that a uniform rule is used for all employees:

(1) The total period of service of each employee.

(2) The total period of participation in the plan for each employee, provided that where such period is less than 5 years a definite period of at least five consecutive years or the total period of service of the employee with the employer (if less than 5 years) must be used.

(3) A definite period of at least five consecutive years (except that if the total period of service of an employee is less than such definite period, the total period of service may be used for such employee).

For this purpose, it is not acceptable to define the 5-year period as the period which will produce the highest average. However, the 5-year period ending at actual retirement, or at the earlier of actual retirement or normal retirement age, or at the age of 5 years before normal retirement age, is acceptable.

5. *Basic rule for plans meeting certain conditions.*—A $3,600 excess plan is integrated if the normal annual retirement benefit for any employee cannot exceed 37½ percent of his average annual compensation in excess of $3,600, *provided* that the plan conforms to all of the following conditions:

(*a*) There are no benefits payable in case of death before retirement. (For other cases, see paragraph 6.)

(*b*) The normal form of retirement benefit is a straight life annuity, and if there are optional forms, the benefit payments are adjusted so that the total value of the optional form is the same as the value of the normal form of retirement benefit. (For other cases, see paragraph 7.)

(*c*) No employee can become eligible for normal retirement benefits before completion of 15 years of service with the employer. (For other cases, see paragraph 8.)

(*d*) Normal retirement age is not lower than age 65 for men and not lower than age 60 for women, and if benefits of any kind are payable in case of retirement or severance of employment before normal retirement age, such benefits are appropriately adjusted in accordance with paragraph 9. (For other cases, see paragraph 10.)

(*e*) The employees do not contribute. (For other cases, see paragraph 13.)

6. *Benefits in case of death before retirement.*—A $3,600 excess plan which conforms to the conditions listed in paragraph 5 except that it provides benefits in case of death before retirement not exceeding the higher of the reserve or the total prior contributions on a typical individual level annual premium funding method (and no other death benefits or life insurance except those for which the current cost is included in the income of the employee) is integrated if the normal annual retirement benefit for any employee cannot exceed 33⅓ percent of his average annual compensation in excess of $3,600.

Example. A $3,600 excess plan which conforms to the conditions of paragraph 5 except that the benefits are provided by means of typical retirement annuity or retirement income contracts, with the death benefits called for by the contracts payable to the employee's beneficiary in case of the employee's death before retirement, is integrated if the normal annual retirement benefit for any employee is $33\frac{1}{3}$ percent of his average annual compensation in excess of $3,600.

7. *Normal form of retirement benefit other than a straight life annuity.*—A $3,600 excess plan which conforms to the conditions listed in paragraph 5 or the conditions of paragraph 6 except that the normal form of retirement benefit is one of these listed below is integrated if the normal annual retirement benefit for any employee cannot exceed the rate determined in accordance with the next sentence applied to his average annual compensation in excess of $3,600. The maximum rate which may be applied is determined by multiplying the rate set forth in paragraph 5 ($37\frac{1}{2}$ percent) or in paragraph 6 ($33\frac{1}{3}$ percent), whichever is appropriate, by the percentage set forth below opposite the normal form of retirement benefit provided by the plan:

	Percent
Annuity for 10 years certain and life thereafter	90
Annuity for 15 years certain and life thereafter	80
Annuity for 20 years certain and life thereafter	70
Life annuity with installment refund	80
Life annuity with cash refund	75

(The term "cash refund" refers to refund of the accumulated employer contributions, and does not refer to refund of only the employee contributions, often referred to as "modified cash refund." See paragraph 13.)

Example. A $3,600 excess plan which conforms to all of the conditions listed in paragraph 5 except that the normal form of retirement benefit is an annuity for 10 years certain and for life thereafter and benefits equal to the reserve are payable in case of the employee's death before retirement is integrated if the normal annual retirement benefit for any employee is 30 percent ($33\frac{1}{3}$ percent multiplied by 90 percent) of his average annual compensation in excess of $3,600.

8. *Normal retirement with less than 15 years of service.*—A $3,600 excess plan which conforms to conditions (*d*) and (*e*) listed in paragraph 5 is integrated if the normal annual retirement benefit for any employee who retires after at least 15 years of total service cannot exceed an amount determined in accordance with paragraph 5, 6, or 7, whichever is appropriate, and the normal annual retirement benefit for any employee who retires with less than 15 years of total service cannot exceed one-fifteenth of such amount multiplied by his actual number of years of service.

Example. A $3,600 excess plan which conforms to all the conditions listed in paragraph 5 except (*c*) thereof is integrated if it provides normal annual retirement benefits of $37\frac{1}{2}$ percent of average annual compensation in excess of $3,600, reduced by $2\frac{1}{2}$ percent of such average annual compensation for each year that the employee's total service at normal retirement is less than 15 years.

9. *Optional retirement or severance before age 65 (60 for women).*—If a $3,600 excess plan provides benefits attributable to employer contributions in case of retirement or severance of employment before normal retirement age 65 for men or 60 for women, such benefits must be limited as follows in order to be integrated:

(*a*) If the early retirement or severance benefits are paid in the form of a deferred annuity beginning at such normal retirement age, the annual benefits must not exceed the maximum amounts of normal retirement benefits, determined in accordance with paragraphs 5 through 8, multiplied by the ratio that the actual number of years of service of the employee at retirement or severance bears to the total number of years of service he would have had if he had remained in service until normal retirement age.

(*b*) If the early retirement or severance benefits are paid in the form of an annuity beginning at early retirement or severance, or at any time before age 65 (60 for women), the annual benefits must not exceed the maximum amounts determined in accordance with subparagraph (*a*), above, reduced by one-fifteenth thereof for each year that the age of the employee at the time such annuity benefits begin is less than age 65 (60 for women). If the early retirement or severance benefits are paid in any other form, the value thereof must not exceed the actuarial value at the time of retirement or severance of the maximum benefits determined in accordance with subparagraph (*a*), above.

(*c*) The requirements of subparagraphs (*a*) and (*b*) as to reduction for early retirement or severance will be considered satisfied if the value of benefits provided for an employee on early retirement or severance cannot exceed the reserve at such time with respect to his normal retirement benefits, provided that such reserve is no larger than it would have been if such normal retirement benefits had been funded by level premiums payable over the entire period from his commencement of service to such normal retirement age. In plans where the normal retirement benefits are funded by typical level premium annuity or insurance contracts, this test is satisfied.

Example. A $3,600 excess plan provides for normal annual retirement benefits upon retirement at age 65 with at least 15 years of service of 30 percent of average annual compensation in excess of $3,600 on a 10 years certain and life form. The benefits are funded by means of typical level premium retirement annuity or retirement income contracts with respect to each employee. In case of death before retirement, the employee's beneficiary receives the benefits called for by the contracts with respect to him, and in case of separation from service for other reason before normal retirement age, the contracts with respect to the employee are assigned to him. Such plan is integrated.

10. *Normal retirement age lower than 65 (60 for women)*.—A $3,600 excess plan in which the normal retirement age is lower than age 65 for men or 60 for women is integrated if the normal annual retirement benefits or the early retirement or severance benefits for any employee cannot exceed the amount determined in accordance with paragraphs 5 through 9 as though normal or earlier retirement under the terms of the plan were early optional retirement in a plan providing age 65 (60 for women) as normal retirement age. Alternatively, a $3,600 excess plan with such lower normal retirement age is integrated if the normal annual retirement benefits for any employee cannot exceed the rate determined in accordance with paragraphs 5 through 8, reduced by one-tenth thereof for each year that the normal retirement age is lower than age 65 (60 for women), applied to his average annual compensation in excess of $3,600; if benefits are provided in case of retirement or severance of employment before normal retirement age, such benefits must be further reduced in the same manner as provided in paragraph 9, adapted for this purpose by substituting the normal retirement ages for "65 (60 for women)" in paragraph 9(*b*).

Example. A $3,600 excess plan provides for normal annual retirement benefits upon retirement at age 60 with 15 years of service of 15 percent of average annual compensation in excess of $3,600 on a 10 years certain and life form. In case of death or separation from service for other reason before normal retirement age, a benefit equal to the reserve accumulated under a typical level premium funding method is paid. Such plan is integrated, because the rate for normal retirement benefits is five-tenths of the maximum rate determined in accordance with paragraph 7, and the early retirement or severance benefits are appropriately reduced.

11. *Excess plans with minimum compensation level between $1,200 and $3,600 a year.*—A noncontributory excess plan in which the minimum annual compensation level is lower than $3,600 but not lower than $1,200 is integrated if the annual retirement benefits for any employee cannot exceed an amount determined as follows:

(*a*) Divide $630 by the minimum annual compensation level. The fraction thus obtained should then be multiplied by eight-ninths if the plan provides benefits in case of death before retirement described in paragraph 6, and should also be appropriately adjusted in the manner provided in paragraphs 7 and 10 where the plan contains provisions described in those paragraphs. The resulting percentage is the maximum rate which may be applied to the portion of average annual compensation in excess of the minimum compensation level but not in excess of $3,600.

(*b*) Compute the *actual* normal annual benefit (but not in excess of the amount produced by applying the maximum rate determined in (*a*)) provided by the plan on the portion of average annual compensation between the minimum annual compensation level and $3,600. Divide this amount by $3,600. Add the percentage thus obtained to the appropriate percentage set forth or determined in accordance with paragraph 5, 6, 7, or 10. The resulting percentage is the maximum rate which may be applied to the average annual compensation in excess of $3,600.

(*c*) The sum of the amounts determined in accordance with subparagraphs (*a*) and (*b*) should then be adjusted for cases of normal retirement with less than 15 years of service or early retirement or severance in the manner set forth in paragraphs 8 and 9.

Example. A noncontributory excess plan in which the minimum compensation level is $3,000 a year provides normal annual retirement benefits upon retirement at age 65 with at least 15 years of service of 15 percent of average annual compensation in excess of $3,000 but not in excess of $3,600 plus 32½ percent of average annual compensation in excess of $3,600, on a 10 years certain and life form. In case of death or severance of employment for other reason before normal retirement, benefits equal to the reserve accumulated on a typical level funding method are paid. Such plan is integrated; this is determined as follows:

(*a*) Step (1): $630 divided by $3,000 equals 0.21.
(2): 0.21 times eight-ninths times 90 percent equals 16.8 percent.

Thus, the 15 percent rate provided by the plan does not exceed the maximum permissible rate.

(*b*) Step (1): 15 percent of $600 equals $90.
(2): $90 divided by $3,600 equals 2½ percent.
(3): 2½ percent plus 30 percent equals 32½ percent.

Thus, the 32½ percent rate provided by the plan does not exceed the maximum permissible rate.

12. *Unit-benefit plans.*—An excess plan of the unit-benefit type in which normal retirement age is not lower than age 65 for men and 60 for women is integrated:

(*a*) Where the rate of normal retirement benefit for each year of credited service is applied to the *actual* compensation (or some lower amount) in excess of the appropriate minimum compensation level for each year of such service, past or future, if such rate does not exceed one-thirtieth of the rate determined in accordance with paragraph 5, 6, 7, or 11.

(*b*) Where the rate of normal retirement benefit for each year of credited service is applied to the annual compensation in excess of the appropriate minimum compensation level averaged over a limited period of years and such period is permitted under the terms of paragraph 4(*f*), if such rate does not exceed the rate determined in accordance with paragraph 5, 6, 7, or 11 divided by the number of years between the earliest possible entrance age into the plan and age 65, except that such divisor need not exceed 45.

(*c*) Where the rate of normal retirement benefit for each year of credited future service is applied to the *actual* compensation in excess of the appropriate minimum compensation level in each such year, and the rate of normal retirement benefit for each year of credited prior service is applied to the annual rate of compensation in excess of the appropriate minimum compensation as of the date of inception of the plan or as of some earlier date or to the average of such compensation for a limited period prior to the date of inception, if (1) the rate for future service credits does not exceed the maximum rate described in subparagraph (*a*), above, and (2) the rate for prior service credits does not exceed the rate determined in accordance with paragraph 5, 6, 7, or 11 divided by the maximum number of years of *total* service which can be credited under the plan for any employee who is entitled to prior service credits, except that such divisor shall not be less than 30 nor need it be greater than 45, and (3) the total prior service credits of any employee, expressed as a percentage of the compensation used for prior service credits, do not exceed nine-tenths of the rate determined in accordance with paragraph 5, 6, 7, or 11.

In case of normal or early retirement benefits beginning before age 65 (60 for women) the appropriate maximum rate or rates determined in accordance with subparagraph (*a*), (*b*), or (*c*), above, should be reduced by one-fifteenth thereof for each year that the age of the employee at the time such benefits begin is less than age 65 (60 for women). The requirements of the previous sentence will be considered satisfied with respect to benefits payable in the case of early retirement or severance of employment if the benefits on such early retirement or severance are actuarially equivalent to the normal retirement benefits accrued to the time of such early retirement or severance or are equal in value to the reserve for normal retirement benefits accumulated under a typical level premium funding method or unit credit cost method.

Example. A $3,600 excess plan which conforms to conditions (*a*), (*b*), and (*d*) listed in paragraph 5 provides normal annual retirement benefits equal to five-sixths of 1 percent of the annual rate of compensation in excess of $3,600 as of the date of inception of the plan multiplied by the number of years of credited service prior to such date plus 1¼ percent of actual compensation in excess of $3,600 during each year of credited service subsequent to such date. An employee who has prior service credits can receive more than 45 years of total credited service under the plan, but no employee has more than 40 years of prior service credited under the plan. The benefits under this plan integrate; this is determined as follows:

(1) Rate of benefit for each year of future service (1¼ percent) does not exceed one-thirtieth of 37½ percent equals 1¼ percent applied to actual compensation in excess of $3,600 each year.

(2) Rate of benefit for each year of prior service (five-sixths of 1 percent) does not exceed one forty-fifth of 37½ percent equals five-sixths of 1 percent applied to the annual rate of compensation in excess of $3,600 as of the date of inception of the plan.

(3) The largest prior service credit any employee has is 40 times five-sixths of 1 percent equals 33⅓ percent which does not exceed nine-tenths of 37½ percent.

13. *Increase for employee contributions.*—A contributory excess plan of the flat-percentage or unit-benefit type is integrated if the annual retirement benefit for any employee whose benefits do not commence before age 65 (60 for women) cannot exceed the applicable amount determined in accordance with the above rules, increased by one-tenth of his aggregate contributions *exclusive of those applicable to the current cost of insurance or death benefits in excess of the reserve or cash value.* If the benefits commence before age 65 (60 for women), such increase must be reduced by one-fifteenth for each year that the age of the employee at the time of commencement of such benefits is less than 65 (60 for women). Such increases are applicable regardless of the form of retirement benefit or provision for death benefits. It should also be noted that where the plan provides for return of only *employee* contributions and interest thereon in case of death before or after retirement, such as when the retirement benefits are on a modified cash refund form, the reductions in otherwise allowable limits as set forth in paragraphs 6 and 7 are not required.

Example. An excess plan in which the minimum compensation level is $3,600 requires 5 years of service for participation and provides for normal retirement at age 65 or upon completion of 10 years of participation, whichever is later. Normal annual retirement benefits of 33⅓ percent of annual compensation, *averaged over the entire period of participation*, in excess of $3,600, on a 10 years certain and life form, are provided and funded by means of typical annual premium retirement income contracts with respect to each participant. In case of death before retirement, the participant's beneficiary receives the death benefits called for by the contracts with respect to him. In case of other severance before retirement, the participant receives a percentage, but not more than 100 percent, of the value of the contract at such time. Each participant is required to make regular contributions of 5 percent of his annual compensation in excess of $3,600, one-third of which is applied to the cost of current insurance protection; if such cost is more than such one-third, the participant is required to make an additional contribution of the difference. Such plan is integrated, since the normal annual retirement benefit of any participant cannot exceed the applicable limit determined as follows:

$\frac{8}{9} \times 90\% \times 37\frac{1}{2}\% = 30\%$
Increase for employee contributions:
$\frac{1}{10} \times \frac{2}{3} \times 5\% \times 10$ [years] $= 3\frac{1}{3}\%$
Total, $33\frac{1}{3}\%$ of average annual participating compensation in excess of $3,600.

Note that the increase for employee contributions must be applied to the same compensation as such contributions were, even though an average over a shorter period would have been acceptable for the part of the benefit considered to have been attributable to employer contributions.

14. *Money-purchase plans.*—An excess plan which provides benefits with respect to service after the inception of the plan from employer contributions of a fixed amount or fixed percentages of each employee's compensation after the effective date of the plan is integrated if (*a*) the rate of employer *contributions* used for the benefit of any employee cannot exceed in any year one-fourth of the maximum rate of benefit determined in accordance with paragraph 5 or 11, applied to the *actual* compensation in that year in excess of the appropriate minimum compensation level (the adjustments called for by paragraphs 6 through 10 are not applicable to the rate so determined, since these will automatically be reflected in the amount of benefit produced by such contributions), and (*b*) the benefits for prior service of any employee do not exceed the amounts acceptable for prior service credits in an integrated unit-benefit excess plan, as set forth in paragraph 12(*c*) (2) and (3).

Example. An excess plan provides that the employer will contribute with respect to each employee 9 percent of his actual compensation in excess of $3,600 each year after the date of inception of the plan until he reaches age 65 for the purchase of a retirement annuity for such employee. In addition, each employee who has prior service at the date of inception of the plan will receive normal annual retirement benefits on a straight life annuity form commencing at age 65 of 1 percent of his compensation in excess of $3,600 for the 12 months prior to the inception of the plan multiplied by the number of years of such prior service rendered after age 30 and before age 65. No employee has more than 33 years of prior service credited under the plan. In case of severance or death before retirement, the employee or his beneficiary receives only the accumulation of the employer's 9 percent contributions. This plan is integrated; this determination is arrived at as follows:

(1) Rate of employer *contribution* for future service benefits (9 percent) does not exceed one-fourth of $37\frac{1}{2}$ percent equals $9\frac{3}{8}$ percent applied to the annual compensation in excess of $3,600 each year.

(2) Rate of benefit for each year of prior service (1 percent) does not exceed one thirty-fifth of $37\frac{1}{2}$ percent equals 1.07 percent applied to the annual compensation in excess of $3,600 for the 12 months prior to the inception of the plan.

(3) The maximum prior service credit to which any employee is entitled is 33 percent, which does not exceed nine-tenths of 37½ percent.

15. *Offset plans.*—A plan in which no employee and no portion of compensation is explicitly excluded by reason of a minimum compensation requirement and in which all the provisions including the benefit rates apply uniformly to all covered employees regardless of compensation except that the benefits otherwise provided by the plan formula are reduced or offset by a percentage of the employee's old-age insurance benefits under OASI is often referred to as an "offset plan." An offset plan which conforms to conditions (*a*), (*b*), and (*e*) listed in paragraph 5 is integrated if the offset does not exceed 140 percent of the old-age insurance benefits to which the employee is, or would on application be, immediately entitled. If the plan is as described in the preceding sentence except that it provides for death benefits of the form described in paragraph 6, the offset must not exceed 125 percent of such old-age insurance benefits. If the plan is as described above except that the normal form of retirement benefits is one of those listed in paragraph 7, the offset must not exceed such 140 percent or 125 percent, whichever is applicable, multiplied by the appropriate percentage set forth in paragraph 7, of such old-age insurance benefits.

If benefit payments under the plan can commence before age 65, either of the following methods of applying the offset will satisfy integration requirements:

(*a*) Apply no offset to the benefits paid before age 65, in which case the full offset (not exceeding the acceptable percentage of the employee's old-age insurance benefit as set forth above) may be applied to the benefits payable after age 65.

(*b*) Offset all benefit payments by uniform amounts not exceeding the actuarial equivalent of the acceptable percentage set forth above of the old-age insurance benefits to which the employee could become entitled at age 65, on the assumption that either:

(1) He receives no more wages from covered employment under OASI, or

(2) He continues to receive wages in covered employment until age 65 at a rate no higher than he was receiving just before benefit payments began. Where the net normal retirement benefits are funded by level annual premiums, and in case of early retirement or severance no more than the reserve accumulated at such time from such premiums is vested, this alternative is generally satisfied.

Example. A plan covering all employees regardless of earnings provides normal annual retirement benefits at age 65, on an installment refund form, of 40 percent of average annual compensation less 100 percent of the old-age insurance benefit to which the employee is, or would on filing application be, entitled. In case of death before retirement, there is a benefit equal to the reserve or the total prior contributions, whichever is greater. No other benefits are payable before age 65. Such plan is integrated because the offset of 100 percent of old-age insurance benefits does not exceed the maximum offset permissible in a plan of this type. Such maximum offset for this type of plan is determined as follows:

$$80\% \times 125\% = 100\%$$

Note that if the plan had been identical with that described in the example except that the retirement benefits were on a cash refund form instead of an installment refund form, the plan would *not* be integrated, since the 100 percent offset would be more than the maximum permissible, determined as follows:

$$75\% \times 125\% = 93.75\%$$

16. *Plans with stepped-up benefit rates.*—A plan in which no employee and no portion of compensation is excluded by reason of a minimum compensation requirement and in which all the provisions apply uniformly to all covered employees regardless of the rate of compensation, except that a higher rate of benefit or of employer contributions (and possibly of employee contributions) is applicable to compensation above a specified level, such as $3,600 a year, than to compensation below such level may be tested for satisfaction of integration requirements as though it were two separate plans—one providing the lower rate of benefit or of employer contributions (and employee contributions, if any) on all compensation, and the second providing for the balance of the higher rates on the compensation in excess of the specified level. The first "plan" then does not involve integration requirements, since it provides uniform rates and kinds of benefits on all compensation, and the second "plan" may be treated as an excess plan for conformance to the rules set forth in the preceding paragraphs.

Example 1. A plan in which all employees who have attained age 30 are covered and in which the normal retirement age is 65 provides for normal annual retirement benefits (*a*) with respect to prior service, one-half of 1 percent of the first $3,600 and 1½ percent of the excess over $3,600 of the annual rate of compensation as of the effective date of the plan multiplied by the number of years of service prior to such date, excluding service before age 30 or after age 65; and (*b*) with respect to future service, one-half of the employee's aggregate contributions. Each employee is required to contribute 1 percent of the first $3,600 plus 4 percent of the excess over $3,600 of his annual compensation during each year of participation. Thus, the normal annual retirement benefits with respect to future service are equal to one-half of 1 percent of the first $3,600 plus 2 percent of the excess over $3,600 of each year's actual annual compensation. There are no benefits payable in case of death before retirement except a return of employee contributions with interest and the only death benefit after retirement is the excess, if any, of such contributions and interest over the retirement benefits received before death, i. e., a "modified cash refund" form. No employee whose annual rate of compensation on the effective date of the plan exceeds $3,600 has more than 32 years of prior service credits. Such plan is integrated, determined as follows:

The benefit rate of one-half of 1 percent of all compensation for both past and future service and the employee contribution rate of 1 percent of all compensation may be eliminated for the purpose of testing conformance to integration requirements since they apply uniformly to all covered employees.

There remain an excess benefit rate of 1 percent of annual compensation in excess of $3,600 as of the effective date of the plan for each year of prior service and an excess benefit rate of 1½ percent of actual annual compensation in excess of \$3,600 for each year of future service and an excess employee contribution rate of 3 percent of actual annual compensation in excess of \$3,600.

The 1 percent rate for past service benefits on the excess over \$3,600 integrates, since it does not exceed one thirty-fifth of 37.5 percent equals 1.07 percent of the rate of compensation in excess of \$3,600 as of the effective date of the plan. No employee is entitled to more than 32 percent of such excess past service credits, which does not exceed nine-tenths of 37.5 percent.

The $1\frac{1}{2}$ percent rate for future service benefits integrates because it does not exceed:

$\frac{1}{30} \times 37.5\% = 1.25\%$,

plus increase for excess employee contributions:

$\frac{1}{10} \times 3\% = 0.30\%$

Total, 1.55% of actual compensation in excess of \$3,600 each year.

Note that the rule set forth above is applicable only if the lower rate of benefit applies to compensation starting from the first dollar. If a portion of the compensation is excluded even in applying the lower rate of benefit, the plan is an excess plan and must be tested for integration in accordance with the preceding paragraphs. The procedure described in paragraph 11 will usually be applicable in this type of case.

Example 2. A plan which conforms to all the conditions listed in paragraph 5 provides normal annual retirement benefits of 15 percent of average annual compensation in excess of \$1,200 a year but not in excess of \$3,600 plus 50 percent of average annual compensation in excess of \$3,600 a year. Such plan is *not* integrated; this determination is made as follows:

The 15 percent rate does not exceed the minimum rate permissible in accordance with paragraph 11(*a*). However, the 50 percent rate should be tested as follows:

15% of $(\$3{,}600 - \$1{,}200) = \$360$

$\$360 \div \$3{,}600 = 10\%$

$10\% + 37\frac{1}{2}\% = 47\frac{1}{2}\%$

Therefore, the 50 percent rate applied to average annual compensation in excess of \$3,600 is in excess of the maximum integrated rate of $47\frac{1}{2}$ percent.

It should also be noted that the rules set forth above in this paragraph do not apply to stepped-up or multiple plans in which, aside from differences in rate of retirement benefits, the benefits provided for higher paid employees are more favorable than those for lower paid employees in any respect, such as retirement age, death benefits, form of annuity, rate of vesting, funding medium, funding method, or any other factor which makes them noncomparable. In such cases, the benefits for higher paid employees must be tested for integration with OASI benefits without regard to the benefits provided for lower paid employees, unless the differences are such that they can be evaluated actuarially on a uniform basis, such as differences in retirement age or form of retirement benefits.

On the other hand, if the higher paid employees are covered by two or more plans, more than one of which involves integration with OASI benefits, the benefits under all of the plans which involve integration must be taken into account in testing for conformance with integration requirements.

17. *Permissible minimum benefits and salary or wage brackets.*—A plan is integrated if it conforms to the rules set forth in paragraphs 5 through 16 except that it provides a minimum retirement benefit not in excess of $240 a year, or $8 a year per year of service, plus increase for employee contributions as set forth in paragraph 13, or for minimum employer contributions with respect to any employee of $60 a year. However, such minimum is not to be used as a tolerance and may not be taken into account in determining whether higher benefits conform to the above rules.

A plan in which the benefits are not expressed precisely in terms of percentages of compensation but are approximately related to compensation by use of a benefit schedule whereby uniform benefits are provided for all employees whose salary falls into a particular bracket is integrated if the benefit provided in each bracket meets the requirements of the preceding paragraphs when applied to the salary at the *midpoint* of the bracket, provided that the brackets do not cover a range of more than $400 of annual compensation. Larger brackets are permissible in the higher salary ranges but only if the benefit in each bracket would meet the requirements of the preceding paragraphs when applied to the salary $200 above the *bottom* of the bracket.

Example. A $3,600 excess plan provides normal annual retirement benefits at age 65 after 15 years of service on a 10 years certain and life form, with benefits equal to the reserve accumulated in case of death before retirement. It is intended to provide normal annual retirement benefits of approximately 30 percent of average annual compensation (for the 5 years preceding retirement) in excess of $3,600, with a minimum benefit of $240 a year.

Below are set forth three scales of benefits designed to implement the benefit formula of the plan. The benefit scale in column (3) illustrates an acceptable application of the minimum benefit and salary brackets, in accordance with the rules of this paragraph. The benefit scale in column (4) is unacceptable, because the benefits have been built on top of the $240 minimum so as to use part of such minimum as a tolerance. The benefit scale in column (5) is unacceptable because, where the brackets are larger than $400, the benefits do not integrate at a point $200 above the bottom of the bracket.

(1)	(2)	(3)	(4)	(5)
		Annual retirement benefit		
Average annual salary for 5 years before retirement	Mid-point	Acceptable	Unacceptable	
$3,600.01 to $4,000	$3,800	$240	$240	$240
$4,000.01 to $4,400	4,200	240	300	240
$4,400.01 to $4,800	4,600	300	420	300
$4,800.01 to $5,200	5,000	420	540	420
$5,200.01 to $5,600	5,400	540	660	540
$5,600.01 to $6,000	5,800	660	780	660
$6,000.01 to $6,600	[1] 6,200	780	900	840
$6,600.01 to $7,200	[1] 6,800	960	1,080	1,020
$7,200.01 to $7,800	[1] 7,400	1,140	1,260	1,200
Each additional $600		180	180	180

[1] These salaries are not the actual midpoints of the brackets, but represent the salaries at which integration must be tested.

18. *Applicability of Mimeograph 5539.*—A plan will also be integrated (even if it does not conform to the above rules) if it satisfies

the requirements of Mimeograph 5539, *supra*, regardless of whether it was put into effect before or after the enactment of the Social Security Act Amendments of 1950. A plan which involves integration with OASI benefits and which the Bureau of Internal Revenue has ruled prior to the date of this mimeograph meets the requirements of section 165(a) of the Code will be considered to satisfy the requirements of Mimeograph 5539 unless such ruling is withdrawn or modified or the plan has been amended so as to affect its integration subsequent to its submission for such ruling.

A plan of the unit-benefit or money-purchase type or combination thereof will be integrated if the benefits with respect to service prior to the effective date of the plan satisfy paragraph 4 of Mimeograph 5539 and the benefits with respect to service subsequent to such date conform to the applicable rules of this mimeograph. Also, a unit-benefit or money-purchase type plan or combination thereof which is amended will be integrated if the benefits with respect to service prior to the effective date of the amendment satisfy paragraph 4 of Mimeograph 5539 and the benefits with respect to service subsequent to such date conform to the applicable rules of this mimeograph.

A plan which satisfied the requirements of Mimeograph 5539 but which is amended so that it fails to satisfy such requirements will be integrated if it conforms to the rules of this mimeograph in all respects except to the extent that benefits already vested on the effective date of the amendment (or already funded by such date on a typical level annual funding to retirement method, even if not then vested) exceed the benefits which conform to the appropriate limits of this mimeograph.

A plan which provides that the benefits will be computed in accordance with limitations of Mimeograph 5539 or the limitations of this mimeograph, whichever will produce the higher benefit in each case, is *not* integrated.

Example 1. A plan put into effect December 31, 1942, effective as of January 1, 1942, provided normal annual retirement benefits beginning at age 65 of three-fourths of 1 percent of the annual rate of compensation as of January 1, 1942, in excess of $3,000 multiplied by the number of years of service prior to such date plus 1 percent of annual compensation in excess of $3,000 for each year of service after such date. The plan is amended as of July 1, 1951, changing annual benefit credits for service subsequent to such date to 1¼ percent of the compensation in excess of $3,600. There are no benefits in case of death before retirement, and the normal form of annuity is a straight life annuity. Such plan, as amended, is integrated, because the benefits with respect to service before the effective date of the amendment satisfy the requirements of Mimeograph 5539 and the benefits with respect to service subsequent to such date satisfy the rule set forth in paragraph 12 of this mimeograph.

Example 2. A plan identical with the original plan described in example 1 is amended, retroactive to January 1, 1950, changing the annual benefit credits for service subsequent to such date to 1¼ percent of the compensation in excess of $3,000. Such plan is *not* integrated, because the benefit credits for service after the effective date of the amendment do not meet the requirements of either Mimeograph 5539 or of this mimeograph.

19. *Profit-sharing plans.*—None of the above rules applies to profit-sharing plans, as defined in section 29.165-1(*a*) of Regulations 111.

A profit-sharing plan which excludes employees or a portion of compensation by a minimum compensation requirement will be considered integrated only if either (*a*) the employer has no other plan involving integration with OASI benefits and such profit-sharing plan provides benefits only upon retirement or separation from service and all contributions are allocated on a nondiscriminatory basis when made, and the amount of *employer contributions plus forfeitures* allocated to any participant in any year does not exceed one-fourth of the benefit *rate* determined in accordance with paragraph 5 or 11 applied to the actual compensation in excess of the minimum compensation level except that a minimum allocation not exceeding $60 may be provided for each participant in any year that allocations are made; or (*b*) it was put into effect prior to the date of this mimeograph and the Bureau of Internal Revenue has ruled that such plan meets the requirements of section 165(a) of the Code and such ruling has not been withdrawn or modified as to any year and such plan continues as so ruled upon without any change which could increase the allocations with respect to higher paid employees. The reference to profit-sharing plans in paragraph 7 of Mimeograph 5539 is eliminated to the extent inconsistent herewith.

20. Correspondence from the following regarding the procedure prescribed herein should refer to the number of this mimeograph and the symbols indicated: Collectors of internal revenue, A&C: Col; internal revenue agents in charge, IT: PS; heads of field divisions of the Technical Staff, TS: CWS.

GEO. J. SCHOENEMAN,
Commissioner.

SUPPLEMENT G.—INSURANCE COMPANIES

SECTION 202.—ADJUSTED NORMAL-TAX NET INCOME

SECTION 29.202-1: Reserve and other policy liability credit for adjusted normal-tax net income. 1951-6-13561 T. D. 5831

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

Figure to be used in determining reserve and other policy liability credit for life insurance companies.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY OF THE TREASURY,
Washington, D. C., March 7, 1951.

To Officers and Employees of the Treasury Department and Others Concerned:

PARAGRAPH 1. By virtue of the authority vested in me by section 202(b) of the Internal Revenue Code, as amended by section 163 of the Revenue Act of 1942 (53 Stat. 71, 56 Stat. 870; 26 U. S. C. 1946 ed., 202(b)) and as further amended by section 401 of the Revenue Act of 1950, approved September 23, 1950, it is hereby determined that the figure to be used in computing the "reserve and other policy liability credit" of life insurance companies for the taxable year 1950 shall be .9063.

Par. 2. It is found that notice and public procedure are unnecessary, since the figure announced in this Treasury Decision is computed from information contained in the income tax returns of life insurance companies for the year 1949 which are not open to public inspection. The public accordingly cannot effectively participate in the determination of such figure.

E. H. Foley,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 9, 1951, 11:24 a. m.)

SUPPLEMENT J.—POSSESSIONS OF THE UNITED STATES

SECTION 251.—INCOME FROM SOURCES WITHIN POSSESSIONS OF UNITED STATES

Section 29.251-1: Citizens of the United States and domestic corporations deriving income from sources within a possession of the United States.

1951-6-13559
I. T. 4046

INTERNAL REVENUE CODE

A domestic corporation doing business in Guam which satisfies the conditions set forth in section 251(a) of the Internal Revenue Code is exempt from United States income tax with respect to its income derived from Guam but is required to file returns and pay income tax to the government of Guam by reason of the dual system of taxation created by the Organic Act of Guam (64 Stat. 384; C. B. 1950-2, 214).

Advice is requested whether the taxable status of a domestic corporation doing business in Guam which satisfies the conditions set forth in section 251(a) of the Internal Revenue Code is affected by the enactment of the Organic Act of Guam (64 Stat. 384; C. B. 1950-2, 214), approved August 1, 1950.

Under section 3 of the Organic Act of Guam, Guam is declared to be "an unincorporated territory" of the United States with the capital and seat of government located at the city of Agana. It is further provided in that section that the government of Guam shall consist of three branches, executive, legislative, and judicial, and its relations with the Federal Government shall be under the general administrative supervision of the head of such civilian department or agency of the Government of the United States as the President may direct. Section 31 of the Act, which was placed in operation as of January 1, 1951, by Executive Order 10211 (page 155, this Bulletin), reads as follows:

Sec. 31. The income tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam.

Section 30 of the Act provides in part that all Federal income taxes derived from Guam shall be covered into the treasury of Guam and held in account for the government of Guam and shall be expended for the benefit and government of Guam in accordance with the annual budgets.

Under section 251(a) of the Internal Revenue Code, a domestic corporation which satisfies the conditions stated therein is taxable only with respect to income from sources within the United States. Those conditions are in substance that (1) 80 percent or more of the corporation's gross income was derived from sources within a possession of the United States, and (2) 50 percent or more of its gross income was derived from the active conduct of a trade or business within a possession of the United States.

The island of Guam was ceded to the United States by Spain in accordance with article II of the Treaty of Peace between the United States and Spain (30 Stat. 1754), signed at Paris on December 10, 1898, and proclaimed April 11, 1899. Guam has been a possession of this country ever since its acquisition. Although it is declared to be an "unincorporated territory" by section 3 of the Organic Act of Guam, it has the same legal status as the Virgin Islands and as that of Puerto Rico prior to enactment of the Revenue Act of 1950, and such status is not similar to that of Alaska and Hawaii.

Section 251(d) of the Internal Revenue Code, as amended by section 221(a) of the Revenue Act of 1950, provides that, as used in section 251 of the Code, the term "possession of the United States" does not include the Virgin Islands of the United States and that such term, when used with respect to citizens of the United States, does not include Puerto Rico. Guam is not mentioned in that section of the Code. However, section 29.251–4 of Regulations 111 provides in part that the term "possession of the United States," as used in sections 251 and 252 of the Code, includes Guam but does not include the Virgin Islands. Section 3797(a)(9) of the Code provides that the term "United States," when used in a geographical sense, includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

Inasmuch as Guam is not excepted from the provisions of section 251 of the Code, the Bureau is of the opinion that it should be considered a possession of the United States, for Federal income tax purposes, regardless of its classification as an unincorporated territory by the Organic Act of Guam. It follows, therefore, that a domestic corporation which satisfies the conditions set forth in section 251(a) of the Code is taxable, for Federal income tax purposes, only with respect to income derived from sources within the United States.

The effect of section 31 of the Organic Act of Guam is to set up a separate income tax system for Guam which is a duplicate of the Federal income tax system. That section is substantially the same as a proviso contained in the Naval Appropriations Act of 1921 (42 Stat. 122), relating to the Virgin Islands, which reads as follows:

> *Provided further*, That the income tax laws now in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in the Virgin Islands of the United States, except that the proceeds of such taxes shall be paid into the treasuries of said islands.

I. T. 2946 (C. B. XIV–2, 109 (1935)) holds in part that the United States and the Virgin Islands are separate and distinct taxing jurisdictions although their income tax laws arise from an identical statute applicable to each. It is stated in that ruling that it will be necessary, in some sections of the law (Revenue Act of 1934), to substitute the words "Virgin Islands" for the words "United States" in order to give the law proper effect in those islands. It is believed that the same principles are applicable to Guam in view of the above-mentioned provisions of the Organic Act of Guam.

Accordingly, it is held that a domestic corporation doing business in Guam which satisfies the conditions set forth in section 251(a) of the Internal Revenue Code is exempt from United States income tax with respect to its income derived from Guam but is required to file returns and pay income tax to the government of Guam by reason of the dual system of taxation created by the Organic Act of Guam.

SECTION 29.251-1: Citizens of the United States and domestic corporations deriving income from sources within a possession of the United States. 1951-8-13571 I. T. 4047

(Also Section 116; Section 131, Section 29.131-1.)

INTERNAL REVENUE CODE

Federal income tax liability of employees of the United States or any agency thereof with respect to amounts received for services performed in Puerto Rico, as affected by amendments to the Internal Revenue Code contained in the Revenue Act of 1950.

Advice is requested regarding the Federal income tax liability of employees of the United States or any agency thereof with respect to amounts received by them for services performed in Puerto Rico, as affected by amendments to the Internal Revenue Code contained in the Revenue Act of 1950.

For historical reasons which are fully discussed in I. T. 3788 (C. B. 1946-1, 153), a distinction has been made, for Federal income tax purposes, between (1) those citizens of the United States whose citizenship is derived from the collective naturalization provisions of the Organic Act of Puerto Rico (39 Stat. 951) and related Acts, or by order of the District Court of the United States for Puerto Rico, and (2) those citizens of the United States whose citizenship is derived from sources other than the foregoing. The members of the first group have heretofore been subject to Federal income taxation only with respect to income derived from sources within the incorporated United States (the States, the Territories of Alaska and Hawaii, and the District of Columbia), except that when residing therein they were taxed in the same manner as other citizens of the United States. (See section 252(a) of the Internal Revenue Code prior to its amendment by section 221(b) of the Revenue Act of 1950.) The members of the second group are subject to Federal income taxation with respect to income from whatever source derived, except income which is specifically exempted by statute. A statutory exemption was heretofore provided in the case of members of the second group who derived a large portion of their income from sources within Puerto Rico (or other possessions of the United States), these individuals, like those of the first group, being subject to taxation only with respect to income derived from sources within the incorporated United States. (See section 251(d) of the Code prior to its amendment by section 221(a) of the Revenue Act of 1950.)

The exemption which was formerly applicable to amounts paid by the United States or any agency thereof to citizens of the second group for services performed in the possessions of the United States was removed by section 251(j) of the Code, as added by section 220 of the Revenue Act of 1950, effective for taxable years beginning after December 31, 1949. Section 251(j) of the Code provides as follows:

(j) EMPLOYEES OF UNITED STATES.—For the purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources within the United States.

For taxable years beginning after December 31, 1950, the distinction between the citizens of the two above-mentioned groups was removed by the indicated amendments and by section 116(l) of the Code, as added by section 221(c) of the Revenue Act of 1950. Section 116(l) of the Code provides in part as follows:

SEC. 116. EXCLUSIONS FROM GROSS INCOME.

In addition to the items specified in section 22(b), the following items shall not be included in gross income and shall be exempt from taxation under this chapter [chapter 1 of the Code]:

*　　*　　*　　*　　*　　*　　*

(l) INCOME FROM SOURCES WITHIN PUERTO RICO.—

(1) RESIDENT OF PUERTO RICO FOR ENTIRE TAXABLE YEAR.—In the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, income derived from sources within Puerto Rico (*except amounts received for services performed as an employee of the United States or any agency thereof*); but such individual shall not be allowed as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this paragraph. [Italics supplied.]

Individuals who are not citizens of the United States but who are residents of Puerto Rico during the entire taxable year are also covered by the provisions of section 116(l) of the Code. Hence, for taxable years beginning after December 31, 1950, amounts paid by the United States or any agency thereof to its employees for services performed in Puerto Rico are subject to Federal income taxation whether the employee is a member of one of the groups of citizens of the United States previously described, or is an alien resident of Puerto Rico for the entire taxable year.

Accordingly, the compensation of employees of the United States or any agency thereof who are members of the above-mentioned second group of citizens is subject to Federal income taxation for taxable years beginning on and after January 1, 1950, whereas the compensation of such employees who are members of the first group of citizens, as well as of those who are aliens resident in Puerto Rico throughout the taxable year, is subject to Federal income taxation for taxable years beginning on and after January 1, 1951. The withholding of Federal income tax at the source under section 1622 of the Code with respect to the compensation of all United States employees in Puerto Rico is required on and after January 1, 1951.

A citizen of the United States, an alien resident of the United States, or an alien resident of Puerto Rico for the entire taxable year is eligible for a credit against his Federal income tax for his income tax paid or accrued to Puerto Rico, subject to the conditions and limitations of section 131(b) of the Code. It should be noted that, by the terms of section 131(d) of the Code, taxpayers who otherwise report their income on the cash basis may nevertheless accrue the tax credit so as to apply it against the Federal tax with respect to the income for the same year as that to which the Puerto Rican income tax applies. It should be further noted, however, that by the terms of section 23(aa) of the Code, a taxpayer claiming the standard deduction (including computation of his tax by use of the tax tables) is ineligible for the tax credit under section 131 of the Code. Therefore, a taxpayer claiming this credit may not claim the standard deduction or compute his tax by use of the tax tables.

SUPPLEMENT O.—OVERPAYMENTS

SECTION 322.—REFUNDS AND CREDITS

SECTION 29.322–7: Limitations upon the crediting and refunding of taxes paid. (Also Section 19.322–7, Regulations 103.) 1951–9–13580 T. D. 5837

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

Period of limitations on claim for refund when waiver is filed—section 322(b)(3), Internal Revenue Code.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 111 [26 CFR, part 29] and Regulations 103 [26 CFR, part 19, 1940 Supp.] to Public Law 716 (81st Cong., 2d sess.) [C. B. 1950–2, 217], approved August 18, 1950, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 29.322–1 of Regulations 111 [26 CFR 29.322–1] and section 19.322–1 of Regulations 103 [26 CFR 19.322–1, 1940 Supp.] the following:

PUBLIC LAW 716 (81st CONG., 2d SESS.), APPROVED AUGUST 18, 1950

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 322(b)(3) of the Internal Revenue Code is hereby amended by striking out the last sentence and inserting in lieu thereof the following: "Notwithstanding the foregoing provisions of this paragraph, the period within which a claim for credit or refund may be filed, or credit or refund allowed or made if no claim is filed, shall not expire prior to two years after the time the tax was paid, but if a claim is filed, or credit or refund allowed or made if no claim is filed, more than six months after the expiration of the period within which the Commissioner may make an assessment pursuant to such agreement or any extension thereof, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim, or, if no claim is filed, immediately preceding the allowance of the credit or refund."

(b) The amendment made by subsection (a) shall be applicable to taxable years beginning after December 31, 1941, and, subject to the provisions of the second sentence of section 169(c) of the Revenue Act of 1942 (added by section 509(a) of the Revenue Act of 1943 and amended by section 2 of this Act), the amendment shall also be applicable to taxable years beginning after December 31, 1923, and before January 1, 1942.

SEC. 2. The second sentence of section 169(c) of the Revenue Act of 1942 is hereby amended to read as follows: "A provision having the effect of section 322(b)(3), as amended, of the Internal Revenue Code and a provision having the effect of the amendment made by subsection

(b) of this section, shall be deemed to be included in the revenue laws respectively applicable to taxable years beginning after December 31, 1923, but such provisions shall be effective with respect to taxable years beginning prior to January 1, 1942, only if at some time after February 24, 1944, the Commissioner may assess the tax for such taxable year solely by reason of having made (either before, on, or after February 24, 1944) an agreement with the taxpayer pursuant to section 276(b) of the Internal Revenue Code or the corresponding provision of the applicable prior revenue law to extend beyond the time prescribed in section 275 of such Code or the corresponding provision of such prior revenue law the date within which the Commissioner may assess the tax."

PAR. 2. Paragraph (*b*) of section 29.322–7 of Regulations 111, as amended by Treasury Decision 5816 [C. B. 1950–2, 62], approved December 5, 1950 [26 CFR 29.322–7], is further amended as follows:

(A) By striking out that part of the sentence comprising the second undesignated paragraph beginning with the word "limitations" and inserting in lieu thereof the following: "preceding provisions of this paragraph (*b*) shall apply to such credit or refund."

(B) By striking out the third undesignated paragraph and inserting in lieu thereof the following:

The period within which a claim for credit or refund may be filed, or credit or refund allowed or made if no claim is filed, shall not expire prior to 2 years after the time the tax was paid, but if a claim is filed, or credit or refund allowed or made if no claim is filed, more than 6 months after the expiration of the period within which the Commissioner may make an assessment pursuant to such agreement or any extension thereof, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim, or, if no claim is filed, immediately preceding the allowance of the credit or refund.

PAR. 3. Paragraph (*d*) of section 19.322–7 of Regulations 103, as amended by Treasury Decision 5395 [C. B. 1944, 360], approved August 11, 1944 [26 CFR 19.322–7], is further amended by adding in the first sentence thereof after "Regulations 111" the following: ", as amended,".

The amendments to section 19.322–7 of Regulations 103 and section 29.322–7 of Regulations 111 [26 CFR 29.322–7] covering taxable years beginning after December 31, 1938, set forth in this Treasury Decision are hereby made applicable to taxable years beginning after December 31, 1923, and prior to January 1, 1939 (such years being covered by Regulations 65, 69, 74, 77, 86, 94, and 101).

Because of the technical nature of the amendments made herein, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(This Treasury Decision is issued under the authority contained in section 62 of the Internal Revenue Code (53 Stat. 32, 26 U. S. C. 62) and corresponding provisions of prior internal revenue laws.)

GEO. J. SCHOENEMAN,
Commissioner.

Approved April 5, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register April 11, 1951, 8:52 a. m.)

SUBCHAPTER D.—EXCESS PROFITS TAX

PART I.—RATE AND COMPUTATION OF TAX

SECTION 446.—AVERAGE BASE PERIOD NET INCOME—DEPRESSED INDUSTRY SUBGROUPS

1951–4–13550
T. D. 5829

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 40.—EXCESS PROFITS TAXES; TAXABLE YEARS ENDING AFTER JUNE 30, 1950

Tentative determinations of depressed industry subgroups and the tentative adjusted rates of return therefor; tentative industry base period yearly rates of return and tentative industry base period rates of return.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY OF THE TREASURY,
Washington 25, D. C., February 2, 1951.

To Officers and Employees of the Treasury Department and Others Concerned:

PARAGRAPH 1. By virtue of the authority vested in me by section 446(h) of the Internal Revenue Code, added by section 101 of the Excess Profits Tax Act of 1950, approved January 3, 1951, it is hereby tentatively determined that the following industry subgroups are depressed industry subgroups, and the tentative adjusted rates of return therefor (computed to the nearest thousandth) are hereby determined as follows:

Industry subgroup	*Tentative adjusted rate of return (Percent)*
1. The Manufacture of Aircraft and Parts, including Aircraft Engines	11.3
This industry subgroup is Standard Industrial Classification No. 372,[1] consisting of the following: 3721 (Aircraft), 3722 (Aircraft engines and engine parts), 3723 (Aircraft propellers and propeller parts), and 3729 (Aircraft parts and auxiliary equipment, not elsewhere classified).	
2. The Manufacture of Engines and Turbines, except Automotive, Aircraft and Railway	12.8
This industry subgroup is Standard Industrial Classification No. 351,[1] consisting of the following: 3511 (Steam engines, Turbines, and Water Wheels), and 3519 (Diesel and semi-Diesel engines; and other internal-combustion engines, not elsewhere classified).	
3. The Manufacture of Metalworking Machinery, including Machine Tools	16.8
This industry subgroup is Standard Industrial Classification No. 354,[1] consisting of the following: 3541 (Machine tools), 3542 (Metalworking machinery, except machine tools), and 3543 (Machine tool accessories and other metal working machinery; small power-driven cutting and shaping tools and tool holders; and precision measuring tools).	
4. Ship and Boat Building and Repairing	10.4
This industry subgroup is Standard Industrial Classification No. 373,[1] consisting of the following: 3731 (Ship building and repairing), and 3732 (Boat building and repairing).	
5. The Manufacture of Wines	7.8
This industry subgroup is Standard Industrial Classification No. 2084[1] (Wines).	

See footnote at end of table.

Industry subgroup	Tentative adjusted rate of return (Percent)
6. Photographic Studios, including Commercial Photography. This industry subgroup is Standard Industrial Classification No. 723,[1] consisting of the following: 7231 (Photographic studios, except commercial photography), and 7232 (Commercial photography).	8.6
7. Telegraph Communication, Wire and Radio. This industry subgroup is Standard Industrial Classification No. 4821[1] (Telegraphic communication, wire and radio).	1.5
8. Transportation by Air. This industry subgroup is Standard Industrial Classification No. 45,[1] consisting of the following: 4512 (Certified carriers), 4513 (Uncertified carriers), 4521 (Air carriage, except common carriers), 4582 (Airports and flying fields), and 4583 (Airport terminal services).	3.0

[1] References are to the Standard Industrial Classification Manual prepared by the Division of Statistical Standards, Bureau of the Budget.

PAR. 2. By virtue of the authority vested in me by section 447(d) of the Internal Revenue Code, added by section 101 of the Excess Profits Tax Act of 1950, approved January 3, 1951, the tentative industry base period yearly rates of return and the tentative industry base period rates of return (each computed to the nearest thousandth) are hereby determined for the following industry classifications as follows:

Tentative industry base period rates of return

Major group number	Industry classification	Tentative base period yearly rates of return (percent)				Tentative base period rate of return (percent)
		1946	1947	1948	1949	
	AGRICULTURE, FORESTRY, AND FISHERIES					
01 and 07	Farms and agricultural services, hunting, trapping.	12.5	12.8	12.7	11.9	12.5
08	Forestry	6.1	8.2	9.2	10.7	8.5
09	Fisheries	9.1	2.1	4.5	4.5	4.8
	MINING					
10	Metal mining	5.2	11.8	13.8	8.7	10.1
11	Anthracite mining	6.4	5.8	8.0	4.5	6.2
12	Bituminous coal and lignite mining	6.3	14.6	15.4	7.7	11.3
13	Crude petroleum and natural gas extraction	5.1	9.7	11.8	11.2	10.0
14	Nonmetallic minerals except fuels	11.9	14.2	15.0	14.9	14.2
	CONTRACT CONSTRUCTION					
15 and 16	General contractors	8.6	10.5	13.7	14.5	12.2
17	Special trade contractors	12.6	15.2	15.1	9.7	13.1
	MANUFACTURING					
20	Food and kindred products	18.4	15.2	12.4	13.2	14.6
21	Tobacco manufactures	9.7	9.8	11.1	11.8	10.7
22	Textile mill products	24.0	23.2	20.6	10.3	19.2
23	Apparel and other finished products made from fabrics.	21.8	16.7	10.4	8.0	13.8
24	Lumber and wood products	16.0	23.0	19.6	11.5	17.5
25	Furniture and fixtures	16.4	16.4	14.6	13.7	15.3
26	Paper and allied products	17.8	23.2	18.1	13.7	18.1
27	Printing, publishing, and allied industries	18.6	15.7	13.8	13.2	15.1
28	Chemicals and allied products	17.3	17.6	16.2	15.8	16.7
29	Products of petroleum and coal	6.1	8.7	11.3	6.6	8.3
30	Rubber products	18.6	12.4	13.4	9.0	13.2
31	Leather and leather products	19.3	15.9	10.2	8.3	13.3
32	Stone, clay, and glass products	15.4	16.3	17.2	16.8	16.5

Tentative industry base period rates of return—Continued

Major group number	Industry classification	Tentative base period yearly rates of return (percent) 1946	1947	1948	1949	Tentative base period rate of return (percent)
	MANUFACTURING—continued					
33 and 34	Primary metal industries and fabricated metal products (except ordnance, machinery, and transportation equipment).	9.8	15.4	16.4	12.9	13.8
19	Ordnance and accessories	4.5	11.6	14.8	7.1	9.4
35	Machinery (except electrical)	9.4	16.0	17.2	14.7	14.6
36	Electrical machinery, equipment, and supplies	4.2	14.5	15.6	13.6	12.4
37	Transportation equipment	1.4	13.5	18.6	21.4	14.5
38 and 39	Professional, scientific, and controlling instruments; photographic and optical goods; watches and clocks; including miscellaneous manufacturing industries.	11.9	13.8	13.5	12.8	13.0
	TRANSPORTATION, COMMUNICATION, AND OTHER PUBLIC UTILITIES					
40	Railroads	2.1	3.9	5.3	4.0	3.9
41	Local and interurban railways and bus lines	4.1	[1] (2.9)	2.2	1.7	1.4
42	Trucking and warehousing	11.4	12.2	14.0	12.7	12.7
43	Highway transportation not elsewhere classified.	24.1	15.1	12.1	10.4	15.2
44	Water transportation	9.1	9.9	8.1	8.4	8.9
45	Transportation by air	[1] (2.6)	[1] (3.7)	1.3	4.3	.2
46	Pipe line transportation	11.1	10.5	10.5	9.1	10.1
47	Services incidental to transportation	8.1	10.0	7.1	7.2	8.1
48	Telecommunications	6.1	4.1	4.9	5.0	5.0
49	Utilities and sanitary services	7.0	6.3	6.1	6.5	6.4
	WHOLESALE TRADE					
50 and 51	Wholesale trade	16.5	15.3	12.6	9.7	13.3
	RETAIL TRADE					
52	Building materials and farm equipment	15.3	16.3	15.3	10.0	14.3
53	General merchandise	20.9	17.4	16.7	13.2	16.9
54	Food	15.8	13.9	12.9	15.8	14.6
55	Automotive dealers and gasoline service stations	27.5	33.0	27.3	15.7	25.0
56	Apparel and accessories	19.4	14.4	11.6	7.8	13.0
57	Furniture, home furnishings, and equipment	16.9	12.4	9.1	6.5	10.7
58	Eating and drinking places	12.6	6.6	5.7	6.2	7.5
59	Miscellaneous retail store	14.3	10.7	9.1	6.8	9.8
	FINANCE, INSURANCE, AND REAL ESTATE					
60	Banking	.9	.7	.8	.8	.8
61	Credit agencies other than banks	3.3	3.7	4.8	5.1	4.3
62	Security and commodity brokers, dealers, exchanges, and services	2.8	1.5	1.5	2.4	2.1
63	Insurance carriers	2.4	2.4	2.8	3.2	2.7
64	Insurance agents, brokers, and service	8.3	9.5	10.0	10.3	9.6
65	Real estate	5.1	5.2	5.3	5.8	5.3
67	Holding and other investment companies	5.9	5.6	6.0	5.8	5.8
	SERVICES					
70	Hotels, rooming houses, camps, and other lodging places	9.6	8.6	8.1	7.8	8.5
72	Personal services	11.7	11.1	9.1	11.5	10.8
73	Miscellaneous business services	12.8	13.1	13.0	14.2	13.3
75	Automobile repair services and garages	14.8	13.7	12.5	10.6	12.7
76	Miscellaneous repair services	10.4	13.4	13.3	14.6	13.2
77	Radio broadcasting, including facsimile broadcasting, and television	24.9	18.8	12.5	10.1	15.8
78	Motion pictures	19.4	14.6	9.2	8.4	12.7
79	Amusement and recreation services except motion pictures	21.3	13.6	11.9	12.0	14.9
80, 81, 82, 84, 86, and 89.	Other services	8.8	9.7	10.3	8.3	9.3

[1] Parentheses indicate negative rate of return.

PAR. 3. It is found that notice and public procedure are impracticable and unnecessary because the tentative determinations announced herein are computed only by specific formulae expressly prescribed in sections 446 and 447 of the Internal Revenue Code and because sections 446(h) and 447(d) of the Internal Revenue Code require that such tentative determinations be proclaimed on or before March 1, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register February 2, 1951, 2:49 p. m.)

SECTION 447.—INDUSTRY BASE PERIOD RATES OF RETURN

INTERNAL REVENUE CODE

Tentative industry base period yearly rates of return and tentative industry base period rates of return. (See T. D. 5829, page 63.)

CHAPTER 2.—ADDITIONAL INCOME TAXES

SUBCHAPTER E.—EXCESS PROFITS TAX

PART I

SECTION 736.—RELIEF FOR INSTALLMENT BASIS TAXPAYERS AND TAXPAYERS WITH INCOME FROM LONG-TERM CONTRACTS

SECTION 35.736(a)-2: Election to compute excess profits income on straight accrual basis. 1951-12-13603
I. T. 4051

INTERNAL REVENUE CODE

For the purpose of determining the excess profits credit based on invested capital pursuant to section 714 of the Internal Revenue Code, unrealized profits attributable to installment sales made in taxable years beginning after December 31, 1939, may be included in earnings and profits of taxpayers which have established eligibility for relief under section 736(a) of the Code and section 35.736(a)-1 of Regulations 112. Unrealized profits attributable to installment sales made in taxable years beginning prior to January 1, 1940, may not be included in earnings and profits for such purpose.

Reconsideration has been given the position of the Bureau with respect to the treatment of unrealized profits attributable to installment sales made in taxable years beginning after December 31, 1939, for the purpose of determining the excess profits credit based on invested capital pursuant to section 714 of the Internal Revenue Code in cases in which taxpayers have established eligibility for relief under section 736(a) of the Code and section 35.736(a)-1 of Regulations 112. Such reconsideration was necessitated by the decisions in *Kim-*

brell's Home Furnishings, Inc., v. *Commissioner* (159 Fed. (2d) 608); *Busch's Kredit Jewelry Co., Inc.*, v. *Commissioner* (179 Fed. (2d) 298, certiorari denied, 339 U. S. 967); and *John Breuner Co.* v. *Commissioner* (179 Fed. (2d) 685, certiorari denied, 339 U. S. 967).

Heretofore the Bureau has maintained the position that unrealized profits attributable to installment sales made in taxable years beginning after December 31, 1939, as well as unrealized profits attributable to such sales made in taxable years beginning prior to January 1, 1940, may not be included in earnings and profits for the purpose of determining the excess profits credit based on invested capital. In the above-cited cases it was held that unrealized profits attributable to installment sales made in taxable years beginning after December 31, 1939, may be included in earnings and profits for such purpose. However, in the decisions in *John Breuner Co.* v. *Commissioner*, *supra; May, Stern & Co.* v. *Commissioner* (181 Fed. (2d) 407, certiorari denied, 340 U. S. 814); and *Hadley Furniture Co.* v. *United States* (87 Fed. Supp. 590) the courts upheld the Bureau's position that unrealized profits attributable to installment sales made in taxable years beginning prior to January 1, 1940, are not to be included in earnings and profits for the purpose of computing the excess profits credit based on invested capital. (See also *White Brothers Co.* v. *Commissioner*, 180 Fed. (2d) 451, certiorari denied, 340 U. S. 825.)

In view of the foregoing, it is held that for the purpose of determining the excess profits credit based on invested capital pursuant to section 714 of the Internal Revenue Code, unrealized profits attributable to installment sales made in taxable years beginning after December 31, 1939, may be included in earnings and profits of taxpayers which have established eligibility for relief under section 736(a) of the Code and section 35.736(a)-1 of Regulations 112. It is held further that unrealized profits attributable to installment sales made in taxable years beginning prior to January 1, 1940, may not be included in earnings and profits for such purpose.

CHAPTER 38.—MISCELLANEOUS PROVISIONS

SECTION 3797.—DEFINITIONS

SECTION 29.3797-11: Military or naval forces and Armed Forces of the United States.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5832, page 8.)

ESTATE AND GIFT TAXES

ESTATE TAX

SECTION 811(a).—GROSS ESTATE: DECEDENT'S INTEREST

SECTION 81.13, REGULATIONS 105: Property of decedent at time of death. 1951–10–13589
Ct. D. 1739

ESTATE TAX—INTERNAL REVENUE CODE—VICTORY LIBERTY LOAN ACT—DECISION OF CIRCUIT COURT

1. GROSS ESTATE—EXEMPTIONS—VALUE OF UNITED STATES BONDS OWNED BY NONRESIDENT ALIEN DECEDENT.

The principal, plus accrued interest, of United States bonds issued after March 1, 1941, physically located in the United States and beneficially owned at the time of his death by a nonresident alien not engaged in business in the United States, is exempt from Federal estate tax by virtue of section 4 of the Victory Liberty Loan Act of March 3, 1919.

2. DECISION REVERSED.

Decision of the Tax Court (9 T. C. 338 (1947)) reversed.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Estate of Karl Jandorf, The First National Bank of Boston, Custodian and Statutory Executor, petitioner, v. *Commissioner of Internal Revenue, respondent*

[171 Fed. (2d) 464]

Petition to review a decision of The Tax Court of the United States

Before SWAN, CHASE, and FRANK, Circuit Judges

[December 21, 1948]

OPINION

SWAN, Circuit Judge: This appeal involves the Federal estate tax of the estate of Karl Jandorf, a nonresident alien not engaged in business in the United States. At the date of his death on November 19, 1943, he was the beneficial owner of $150,000 of United States bonds physically located here, of which $75,000 were issued after March 1, 1941. The question for decision is whether the principal, plus accrued interest, of the bonds issued after March 1, 1941, was properly includible in the decedent's gross estate. The Commissioner ruled that it was, producing the deficiency in suit, and the Tax Court confirmed his ruling. The petitioner contends that these bonds are exempt from the Federal estate tax by virtue of section 4 of the Victory Liberty Loan Act of March 3, 1919, which appears at 31 U. S. C., section 750. It relies upon the legislative history of this statute, a judicial determination thereof in 1927, and the long continued administrative practice of the Treasury Department prior to amendment of its regulations in 1941.

Section 4 of the Victory Liberty Loan Act of March 3, 1919, 40 Stat. 1311, reads as follows:

"SEC. 4. That section 3 of the Fourth Liberty Bond Act is hereby amended to read as follows:

"'SEC. 3. That, notwithstanding the provisions of the Second Liberty Bond Act or of the War Finance Corporation Act or of any other Act, bonds, notes, and certificates of indebtedness of the United States and bonds of the War Finance Corporation shall, while beneficially owned by a nonresident alien individual, or a foreign corporation, partnership, or association, not engaged in business in the United States, be exempt both as to principal and interest from any and 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'."

Consideration of the meaning of this statute should start with the First Liberty Bond Act of April 24, 1917, 40 Stat. 35. Section 1 thereof provided that the bonds issued thereunder

> "shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority; * * *."

Section 7 of the Second Liberty Bond Act of September 24, 1917, 40 Stat. 291, provided a similar exemption "from all taxation now or hereafter imposed" except (a) estate or inheritance, and (b) surtaxes, excess profits and war-profits taxes. It should be noted that estate or inheritance taxes are excises on the bondholder's privilege of transferring the bonds at death, while surtaxes, excess profits and war-profits taxes are direct property taxes; and that the legislators apparently thought it necessary to except both classes in order to take them out of the general words of exemption. The Third Liberty Bond Act of April 4, 1918, 40 Stat. 502, amended certain sections of the Second Liberty Bond Act but not section 7. These three Acts, while granting certain exemptions from taxation treated all bondholders alike for purposes of taxation, whether they were aliens or citizens, resident or nonresident.

The idea that a special exemption should be granted to foreign investors in United States bonds first appeared in section 3 of the Fourth Liberty Bond Act of July 9, 1918, 40 Stat. 845. This provided:

"SEC. 3. That notwithstanding the provisions of the Second Liberty Bond Act, as amended by the Third Liberty Bond Act, or of the War Finance Corporation Act, bonds and certificates of indebtedness of the United States payable in any foreign money or foreign moneys, and bonds of the War Finance Corporation payable in any foreign money or foreign moneys exclusively or in the alternative, shall, if and to the extent expressed in such bonds at the time of their issue, with the approval of the Secretary of the Treasury, while beneficially owned by a nonresident alien individual, or by a foreign corporation, partnership, or association, not engaged in business in the United States, be exempt both as to principal and interest from any and 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."

It will be observed that the exemption "from any and all taxation" granted to bonds payable in foreign money contained no exception of estate or inheritance taxes or of surtaxes, excess profits or war profits taxes. Section 3 of the Fourth Liberty Bond Act was amended by section 4 of the Victory Liberty Loan Act of March 3, 1919, 40 Stat. 1311, already quoted. This amendment struck out the requirements that the exempted bonds be payable in foreign money; in other words, it extended the exemption to all United States bonds, whether or not payable in foreign money, while beneficially owned by a nonresident alien not engaged in business in the United States. At the same time section 1 of the Victory Liberty Loan Act, 40 Stat. 1309, which added a new section to the Second Liberty Bond Act, provided that "the notes herein authorized" may be issued "exempt, both as to principal and interest, from all taxation (except estate or inheritance taxes)," and pursuant to subdivision (b)(2) graduated income taxes might also be excepted. The use of the same words of exemption in different sections of the same statute with an expressly declared exception in one case and not in the other, is a strong indication that the Congress thought the exception necessary in order to exclude estate and inheritance taxes from the broad words of the exemption provision. And this is borne out by the remarks of Senator Simmons, chairman of the Senate Finance Committee, in connection with section 3 of the Fourth Liberty Bond Act as reported in 56 Congressional

Record 8691.[1] It is further substantiated by the proposal of Congressman Parker of New Jersey to eliminate the qualifying words "except estate or inheritance taxes" from section 1 of the Victory Liberty Loan Act as an inducement to wealthy investors to lend their money to the United States.[2] The discussion and rejection of this amendment is evidence that the members of the House were aware that the inclusion or omission of this exception clause was controlling upon whether or not the exemption embraced the estate tax. And the omission of the exception in section 4 which came up before the House immediately after the vote on the Parker amendment must therefore be regarded as evidence of a deliberate intention to make the exemption applicable to the estate tax in the case of bonds, notes and certificates of indebtedness of the United States beneficially owned by nonresident aliens.

As early as 1920 the Internal Revenue Bureau had taken the position that United States bonds held in trust for a nonresident alien at the time of his death should not be included in the decedent's gross estate for the purpose of the estate tax.[3] And on January 5, 1928, shortly after Judge Knox's decision in *Farmers Loan & Trust Co.* v. *Bowers*, 22 Fed. (2d) 464 (D. C. S. D. N. Y.), that United States bonds owned by a nonresident alien not engaged in business in the United States were exempt from the Federal estate tax,[4] Treasury Regulations 70, article 11 was amended by adding the following new sentence:

> "In case the decedent was a nonresident alien not engaged in business in the United States, bonds, notes, and certificates of indebtedness of the United States, and bonds of the War Finance Corporation, beneficially owned by such alien, should not be included."

This provision continued substantially unchanged until 1941 when it was amended [5] by adding at the end

> "however, bonds, notes, and certificates of indebtedness of the United States, issued on or after March 1, 1941, which such decedent beneficially owned, should be included in the gross estate." [6]

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[1] "Mr. THOMAS. I desire to ask the Senator from North Carolina what the provision of the law is with reference to the taxation of bonds which are held by foreign nonresidents?

"Mr. SIMMONS. The present law imposes the same tax upon bonds owned by nonresident aliens that it does upon bonds owned by citizens of this country.

"Mr. THOMAS. I was unable to attend the meetings of the Finance Committee having consideration of this bill, and I therefore would like to be informed why the change is now proposed whereby this exemption is to take effect?

"Mr. SIMMONS. The Senator from Colorado will recall that in the last liberty bond bill we inserted a provision authorizing the issuance of a certain number of those bonds payable in foreign money or moneys. That was done for the purpose of stabilizing exchange and for the additional purpose of furnishing an inducement or incentive to foreign investors to buy these bonds. The testimony before the Ways and Means Committee showed that it was impracticable to induce foreigners to invest in these bonds if they were subject to Federal and State taxation, and if we were to secure such purchasers for these bonds from abroad it would be necessary to relieve them from taxation.

"Mr. THOMAS. May I ask whether any of the former issues were purchased with foreign money or by foreign investors?

"Mr. SIMMONS. I think not; but I understand none were so sold.

"Mr. THOMAS. In other words, the purpose of section 3 is to place all bonds upon an equality with regard to the exemption feature?

"Mr. SIMMONS. All bonds sold to nonresident aliens, so long as the beneficial interest in the bond is owned by them—so it is a corporation.

"Mr. THOMAS. As well as those which are to be authorized by this bill?

"Mr. SIMMONS. Yes. The bonds that are authorized by this bill to be paid for in foreign money and sold to foreigners, to nonresident aliens, would not be subject to taxation at all, while the bonds sold in our own markets are subject to the surtax and the inheritance tax."

[2] "Mr. PARKER. * * * It has been thought a great thing to relieve the first series of these notes from all taxes except estate or inheritance taxes. There are in this country several gentlemen worth a great many million dollars, one at least worth several hundreds of millions of dollars, and they are often not young, but look to the time soon when they may die and when that inheritance tax will have to be paid. I have forgotten how much it is.

"Mr. KITCHIN. Twenty-five percent is the highest.

"Mr. PARKER of New Jersey. That is enough so that if we want these men to give their millions and hundreds of millions to our loans, let the law provide that loans shall bear interest at between 2 and 3 percent, not less than 2 and not more than 3, but that they shall be free from taxation, interest and principal, that estate and inheritance taxes shall not affect them, and that the credit and obligations of the United States shall never be impeached by any foreign country, or by any market, and, least of all, by itself." 57 Cong. Rec. 4289–90.

[3] 1920 Corporation Trust Company's War Tax Service, sections 322–323.

[4] The Government took no appeal from this decision. This taxpayer appealed from adverse rulings on other issues, reported in 15 Fed. (2d) 706, and its appeal was sustained. *Farmers Loan & Trust Co.* v. *Bowers*, 2 Cir., 29 Fed. (2d) 14. Of course the exemption of the bonds was not an issue on the appeal.

[5] T. D. 4118, VII-1 Cum. Bull. 316.

[6] Treas. Reg. 105, sec. 81.13 (1942).

Despite this legislative and administrative history, the respondent contends that section 4 of the Victory Liberty Loan Act exempting the bonds "from any and all taxation" does not include, and was not intended by Congress to include, the Federal estate tax. The argument rests on the distinction between a direct tax on property and an estate tax, which is an excise tax. The respondent urges that it is the principal and interest of the bonds as property—not the bondholder's privilege of passing them on at death, which the statute exempts. He relies on *Murdock* v. *Ward*, 178 U. S. 139, relating to the Federal inheritance tax imposed by the War Revenue Act of 1898, 30 Stat. 448, and *Plummer* v. *Coler*, 178 U. S. 115, relating to the New York inheritance tax. Those cases support the proposition that a provision exempting United States bonds from taxation as to principal and interest, *without more*, relates exclusively to direct taxation of them as property. The cited cases would be persuasive, if Congress had not shown an intent to use the phrase "exempt from all taxation" to include estate taxes by expressly excepting them in one section of the statute and not in the other, and if the Treasury Department had not for 20 years construed the statute as granting exemption with respect to the estate tax.

The Commissioner has taken two completely contradictory positions in exempting bonds issued prior to March 1, 1941, while denying exemption to those issued after that date. Either the Victory Liberty Loan Act did not grant exemption with respect to the Federal estate tax, in which case the Treasury regulations prior to 1941 were invalid, or it did grant such exemption, in which case there was no legal justification for the taxing officials to differentiate between bonds issued before March 1, 1941, and those issued after that date. For reasons already stated we believe that the statute discloses the intent of Congress to grant exemption from the Federal estate tax with respect to bonds beneficially owned by a nonresident alien decedent. Sections 4 and 5 of the Public Debt Act of 1941, 55 Stat. 9, upon which the Treasury purports to base its volte face as to bonds issued after March 1, 1941,[7] dealt only with income taxes and has no bearing, in our opinion, on the extent of the exemption granted by the Victory Liberty Loan Act of 1919 with respect to estate or inheritance taxes. Consequently the 1941 change in the article 81.13 of the regulations finds no statutory support and is invalid.

The order is reversed and the cause remanded.

SECTION 930.—"EXECUTOR," "NET ESTATE," "MONTH," "COLLECTOR"

SECTION 81.2, REGULATIONS 105: Description of tax.
(Also Section 811 (c), (d), and (i); Sections 81.15, 81.16, 81.17, 81.18, 81.19, and 81.21, Regulations 105.)

1951-7-13566
T. D. 5834

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 81.—ESTATE TAX UNDER CHAPTER 3 OF THE INTERNAL REVENUE CODE, AS AMENDED

Regulations 105 amended to conform to Public Law 378 (81st Cong., 1st sess.) [C. B. 1949-2, 275] and Public Law 761 (81st Cong., 2d sess.) [C. B. 1950-2, 248].

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

To Collectors of Internal Revenue and Others Concerned:

On November 18, 1950, notice of proposed rule making, regarding the estate tax provisions of Public Law 378 (81st Cong., 1st sess.) [C. B. 1949-2, 275], approved October 25, 1949, and Public Law 761

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[7] T. D. 5040, 1941-1 Cum. Bull. 195.

(81st Cong., 2d sess.) [C. B. 1950-2, 248], approved September 6, 1950, was published in the Federal Register (15 F. R. 7880). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments set forth below are hereby adopted. Such amendments are necessary in order to conform Regulations 105 [26 CFR, part 81], relating to the estate tax, to Public Laws 378 and 761, Eighty-first Congress.

PARAGRAPH 1. There is inserted immediately before section 81.2 [26 CFR 81.2] the following:

PUBLIC LAW 378 (81st CONG., 1st SESS.), APPROVED OCTOBER 25, 1949

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

SEC. 10. EXEMPTION FROM THE ADDITIONAL ESTATE TAX FOR CERTAIN MEMBERS OF ARMED FORCES.

(a) Subchapter B of chapter 3 of the Internal Revenue Code (relating to additional estate tax) is amended by adding at the end thereof the following new section:

"SEC. 939. CERTAIN MEMBERS OF ARMED FORCES.

"The tax imposed by section 935 shall not apply to the transfer of the net estate of a citizen or resident of the United States dying on or after December 7, 1941, and before January 1, 1947, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations if such decedent—

"(1) was killed in action; or

"(2) died as a result of wounds or other injuries, or of disease, suffered while in line of duty by reason of a hazard to which he was subjected as an incident of military or naval service."

(b) If the refund of any overpayment resulting from the application of this section is prevented on the date of the enactment of this Act, or within one year from such date, by the operation of any law or rule of law (other than section 3761 of the Internal Revenue Code, relating to compromises), refund of such overpayment may, nevertheless, be made if claim therefor is filed within one year from the date of the enactment of this Act. No interest shall be paid on any overpayment resulting from the application of this section.

PAR. 2. Section 81.2, as amended by Treasury Decision 5699 [C. B. 1949-1, 181], approved May 13, 1949 [26 CFR 81.2], is further amended (A) by striking the heading thereof which reads as follows: "GENERAL DESCRIPTION.—", and by inserting in lieu thereof the following: "DESCRIPTION OF TAX.—(*a*) *In general.*"; and (B) by adding at the end of such section the following:

(*b*) *Exemption from additional estate tax for certain members of the Armed Forces.*—Section 939 of the Internal Revenue Code, as added by section 10 of Public Law 378 (81st Cong.), provides that the additional estate tax does not apply to the transfer of the net estate of a citizen or resident of the United States dying after December 6, 1941, and before January 1, 1947, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations if the decedent was either (1) killed in action or (2) died as a result of wounds or other injuries, or of disease suffered while in line of duty by reason of a hazard to which he was subjected as an incident of military or naval service.

If the official record of the military force of which the decedent was a member at the time of his death states that death resulted from wounds or injuries received or disease contracted while in line of duty, such fact shall, in the absence of evidence establishing the contrary, be presumed to be established for the purposes of the exemption. Moreover, wounds, injuries, or disease suffered while in line of duty will be considered to have been caused by a hazard to which the decedent was subjected as an incident of military or naval service unless the hazard which caused such wounds, injuries, or disease was clearly unrelated to such service.

A person was in active service as a member of the military or naval forces of the United States or of any of the other United Nations if he was at the time of his death actually serving in such forces, not necessarily in the field or in the theater of war. Personnel in the inactive reserves or on retirement are not in active service. Periods during which a person is absent from duty on account of sickness, wounds, leave, internment by the enemy, or other lawful cause are periods of active service.

For the purposes of this section the military and naval forces of the United States include (but are not necessarily limited to) the Army, the Navy, the Marine Corps, the Coast Guard, the Army Nurse Corps, Female, the Navy Nurse Corps, Female, the Women's Army Auxiliary Corps or the Women's Army Corps, the Women's Reserve Branch of the Naval Reserve, the Marine Corps Women's Reserve, and the Coast Guard Reserve, including the Coast Guard Women's Reserve. However, the exemption is not allowed to the estate of a decedent whose only military status was of a limited character, such as that of a member of the Army Specialist Corps or of certain temporary members of the Coast Guard Reserve. For the purposes of this section the term "member of the military or naval forces * * * of any of the other United Nations" includes any decedent whose duties and status in the service of any of the United Nations other than the United States corresponded to those of any member of the military or naval forces of the United States as defined in this section.

If refund of the additional estate tax paid by an estate entitled to the exemption provided by section 939 is prevented on October 25, 1949, the date of enactment of Public Law 378 (81st Cong.), or within 1 year from such date by the operation of any law or rule of law (including a prior judicial determination) other than section 3761, of the Internal Revenue Code, relating to compromises, refund of such tax may nevertheless be made if claim therefor is filed within 1 year from October 25, 1949.

No interest shall be paid on any overpayment resulting from the application of section 10 of Public Law 378.

PAR. 3. The heading of section 811(c) of the Internal Revenue Code, which section of the Code is set forth immediately after section 81.14 [26 CFR 81.14], is amended to read as follows: "(c) TRANSFERS IN CONTEMPLATION OF, OR TAKING EFFECT AT DEATH [as originally enacted; see the amendments, set forth below, made by section 7, Public Law 378, approved October 25, 1949].—".

PAR. 4. There is inserted immediately after section 351 of the Revenue Act of 1948 (inserted by Treasury Decision 5699, approved May 13, 1949) and preceding section 302(c) of the Revenue Act of 1926 (as originally enacted), which precede section 81.15 [26 CFR 81.15], the following:

PUBLIC LAW 378 (81st CONG., 1st SESS.), APPROVED OCTOBER 25, 1949

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

SEC. 6. RELINQUISHMENT OF POWERS IN CASE OF RECIPROCAL TRUSTS.

* * * * * * *

(c) In the case of a decedent who relinquished on or before December 31, 1950, a power described in section 1000(g) of the Internal Revenue Code, such relinquishment shall, for the purposes of section 811(d) of such Code, be deemed not to have been made in contemplation of the death of such decedent if such relinquishment, by virtue of the enactment of this section, is not deemed a transfer of property for the purposes of the gift tax. The provisions of this subsection shall be applicable with respect to estates of decedents dying after February 10, 1939.

SEC. 7. TRANSFERS TAKING EFFECT AT DEATH.

(a) Section 811(c) of the Internal Revenue Code (relating to transfers in contemplation of or taking effect at death) is hereby amended to read as follows:

"(c) TRANSFERS IN CONTEMPLATION OF, OR TAKING EFFECT AT, DEATH.—

"(1) GENERAL RULE.—To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise—

"(A) in contemplation of his death. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter; or

"(B) under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (i) the possession or enjoyment of, or the right to the income from, the property, or (ii) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; or

"(C) intended to take effect in possession or enjoyment at or after his death.

"(2) TRANSFERS TAKING EFFECT AT DEATH—TRANSFERS PRIOR TO OCTOBER 8, 1949.—An interest in property of which the decedent made a transfer, on or before October 7, 1949, intended to take effect in possession or enjoyment at or after his death shall not be included in his gross estate under paragraph (1)(C) of this subsection unless the decedent has retained a reversionary interest in the property, arising by the express terms of the instrument of transfer and not by operation of law, and the value of such reversionary interest immediately before the death of the decedent exceeds 5 per centum of the value of such property. For the purposes of this paragraph, the term 'reversionary interest' includes a possibility that property transferred by the decedent (A) may return to him or his estate, or (B) may be subject to a power of disposition by him, but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. The value of a reversionary interest immediately before the death of the decedent shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the Commissioner with the approval of the Secretary. In determining the value of a possibility that property may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such property may return to the decedent or his estate.

"(3) TRANSFERS TAKING EFFECT AT DEATH—TRANSFERS AFTER OCTOBER 7, 1949.—An interest in property transferred by the decedent after October 7, 1949, shall be included in his gross estate under paragraph (1)(C) of this subsection (whether or not the decedent retained any right or interest in the property transferred) if and only if—

"(A) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent; or

"(B) under alternative contingencies provided by the terms of the transfer, possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the earlier to occur of (i) the decedent's death or (ii) some other event; and such other event did not in fact occur during the decedent's life.

Notwithstanding the foregoing sentence, an interest so transferred shall not be included in the decedent's gross estate under paragraph (1) (C) of this subsection if possession or enjoyment of the property could have been obtained by any beneficiary during the decedent's life through the exercise of a power of appointment (as defined in section 811(f) (2)) which in fact was exercisable immediately prior to the decedent's death."

(b) The amendment made by subsection (a) shall be applicable with respect to estates of decedents dying after February 10, 1939. The provisions of section 811(c) of the Internal Revenue Code, as amended by subsection (a), shall (except as otherwise specifically provided in such section or in the following sentence) apply to transfers made on, before, or after February 26, 1926. The provisions of section 811(c) (1) (B) of such Code shall not, in the case of a decedent dying prior to January 1, 1950, apply to—

(1) a transfer made prior to March 4, 1931; or

(2) a transfer made after March 3, 1931, and prior to June 7, 1932, unless the property transferred would have been includible in the decedent's gross estate by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1516).

No interest shall be allowed or paid on any overpayment resulting from the application of subsection (a) with respect to any payment made prior to the date of the enactment of this Act.

(c) [as amended by Public Law 761, 81st Cong., approved September 6, 1950] If refund or credit of any overpayment resulting from the application of subsections (a) and (b) is prevented on the date of the enactment of this Act, or within one year from such date, by the operation of any law or rule of law (other than section 3760 of the Internal Revenue Code, relating to closing agreements, and other than section 3761 of such Code, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year from the date of the enactment of this Act. This subsection shall not apply with respect to a transfer of property in case (1) the decedent retained for his life or for any period not ascertainable without reference to his death or for any period which did not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who should possess or enjoy the property or the income therefrom, and (2) refund or credit of any overpayment resulting from the application of subsections (a) and (b) was prevented on or before January 16, 1949, by the operation of any law or rule of law.

SEC. 8. TAX-FREE RELEASE OF CERTAIN LIFE ESTATES.

In the case of a transfer of property made prior to June 7, 1932, under which the grantor retained (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, then an assignment by the grantor of such possession, enjoyment, or right to income, or a relinquishment by him of such right of designation, shall, * * * if made prior to 1951, not be deemed to have been made in contemplation of death within the meaning of chapter 3 of such Code. The foregoing provisions shall not apply—

(A) if the transfer was made after March 3, 1931, and prior to June 7, 1932, and if the property transferred would have been includible in the grantor's gross estate upon his death by reason of the amendatory language of the joint resolution of March 3, 1931 (45 Stat. 1516); or

(B) if the property transferred would have been includible in the grantor's gross estate under section 811(d) of the Internal Revenue Code had he died on October 7, 1949.

PAR. 5. Section 81.15, as amended by Treasury Decision 5699 [26 CFR 81.15], is further amended by changing (2) of the first sentence to read: "(2) transfers intended to take effect in possession or enjoyment at or after the decedent's death (see section 81.17);".

PAR. 6. Section 81.16, as amended by Treasury Decision 5218 [C. B. 1943, 1113], approved March 19, 1943 [26 CFR 81.16], is further amended by inserting at the end thereof the following:

Section 8 of Public Law 378 (81st Cong.) provides that in the case of property transferred by the decedent prior to June 7, 1932, with retention or reservation of the possession or enjoyment of, or the right to the income from, the property, or the right, either alone or in conjunction with any person, to designate the person or persons who shall possess or enjoy the property or the income therefrom, an assignment by the decedent of such possession, enjoyment, or right to income, or relinquishment by him of such right of designation, shall, if made during his lifetime and prior to 1951, not be deemed to have been made in contemplation of death. This provision of section 8 does not apply—

(1) to any transfer made after March 3, 1931, and before June 7, 1932, which, had the decedent died immediately prior to the time of the assignment or relinquishment, would have been considered a transfer described in section 81.18(b) (1) or 81.19(b) (1); or

(2) if the property transferred would have been includible in the decedent's gross estate under section 811(d) had he died on October 7, 1949.

PAR. 7. Section 81.17, as amended by Treasury Decision 5741 [C. B. 1949–2, 114], approved September 6, 1949 [26 CFR 81.17], is amended to read as follows:

SEC. 81.17. TRANSFERS INTENDED TO TAKE EFFECT AT OR AFTER THE DECEDENT'S DEATH—(*a*) *Introductory.*—Except in the case of a bona fide sale for an adequate and full consideration in money or money's worth and except as otherwise provided in section 811(c)(2) (applicable to transfers made prior to October 8, 1949) section 811(c)(1)(C) requires the inclusion in the gross estate of a decedent of the value of an interest in property of which he has made a transfer "intended to take effect in possession or enjoyment at or after his death." The rules applicable to transfers made after October 7, 1949, are set forth in (*b*) of this section and those applicable to transfers made prior to October 8, 1949, are set forth in (*c*) of this section.

(*b*) *Transfers made after October 7, 1949.*—A transfer of an interest in property by the decedent during his life if made after October 7, 1949, is "intended to take effect in possession or enjoyment at or after his death" if and only if—

(1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent (section 811(c)(3)(A)); or

(2) under alternative contingencies provided by the terms of the transfer, possession, or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the earlier to occur of (i) the decedent's death or (ii) some other event; and such other event did not in fact occur during the decedent's life (section 811(c)(3)(B)).

Notwithstanding the foregoing rules, an interest in property transferred by the decedent is not includible in the gross estate under this paragraph if possession or enjoyment of the property was obtainable by any beneficiary during the decedent's life through the exercise of a power of appointment, as defined in section 811(f)(2), which was in fact exercisable immediately prior to the decedent's death.

The foregoing rules are to be applied in the light of circumstances existing immediately prior to the decedent's death. For the purpose of rule (2), the expression "some other event" includes the expiration of a term of years or the happening or failure to happen of a certain or uncertain event (including the possible exercise of a power which is not a taxable power of appointment as defined in section 811(f)(2)).

Where separate interests are transferred to each of several beneficiaries, the above rules are to be separately applied to each interest. Thus, if beneficiary A receives an interest which enables him to obtain possession or enjoyment of the property only by surviving the decedent and beneficiary B obtains an interest which enables him to obtain possession or enjoyment of the property only on the occurrence of some event unrelated to the decedent's death, it is only the transfer of the interest to beneficiary A which is intended to take effect in possession or enjoyment at or after the decedent's death. See also examples (2) and (4) below. Likewise, if the decedent gave his son the immediate right to receive the income from the property until 5 years after the decedent's death, and the right to the corpus upon the expiration of such term, it is only the transfer of the latter interest which is intended to take effect in possession or enjoyment at or after the decedent's death.

The following examples illustrate the application of the foregoing principles. It is assumed that in each case the transfer is made after October 7, 1949.

Example (1). The decedent transferred property in trust, providing for an estate for life in his daughter, and a remainder to the children of the daughter. No part of the property is includible under this section. The daughter can possess and enjoy the property through ownership of the life estate without surviving the decedent. The same is true of the daughter's children with respect to their remainder interest.

Example (2). The decedent transferred property in trust, to pay the income to his wife during her life, and at her death to pay the corpus to the decedent if living, and if not, to his children. The decedent was survived by his wife. The value of the transferred property, less the outstanding life estate in the wife, is includible in the decedent's gross estate since the children cannot obtain possession or enjoyment of the property, through ownership of their interest, except by surviving the decedent.

Example (3). The decedent transferred property in trust to accumulate the income during his life and at his death to distribute the principal and accumulated income to his son or the son's estate. While the decedent retained no right or interest in the property, the transfer is taxable since possession or enjoyment of the property cannot be obtained except by surviving the decedent.

Example (4). The decedent transferred property in trust providing for payment of the income to his wife until her death, at which time the son was to receive the corpus. If the son predeceased the wife the corpus was to revert to the decedent if living at his wife's death; and if the decedent was not then living, it was to pass to X or X's estate. The decedent was survived by his wife, his son, and X. Neither the interest transferred to the wife nor to the son is includible in the decedent's gross estate under this section since each could, through ownership of his interest, obtain possession or enjoyment of the property even though the decedent was living. The interest transferred to X, however, is includible under section 811(c)(3)(A) (to the extent of the value of X's interest immediately after the decedent's death) since X's possession or enjoyment of the property, if it materializes, could be obtained only by surviving the decedent. Section 811(c)(3)(B) has no application to this example.

Example (5). The decedent transferred property in trust, to accumulate the income until his son reached the age of 30, or until the decedent's prior death. Upon the first to occur of these events the son was to receive the corpus. The decedent's death in fact occurred before his son attained the age of 30. The transfer is taxable under section 811(c)(3)(B) since the son could obtain possession or enjoyment only by surviving the earlier to occur of the decedent's death or the son's attaining age 30, and since the decedent's death in fact occurred first.

Example (6). The decedent transferred property in trust providing for accumulation of the income during his life, and at his death to pay the entire fund to his children or their issue. His wife was given the unrestricted power to alter, amend, or revoke the trust. The wife survived the decedent and did not in fact exercise her power during the decedent's life. Under the last sentence of section 811(c)(3) the transfer is not taxable since possession or enjoyment of the property was obtainable during the decedent's life through the exercise of the wife's power, which was a power of appointment as defined in section 811(f)(2) of the Internal Revenue Code, and was in fact exercisable immediately prior to the decedent's death.

(c) *Transfers made prior to October 8, 1949.*—(1) *In general.*—A transfer of an interest in property made by the decedent prior to October 8, 1949 (whether made before or after the enactment of the Revenue Act of 1916), is not "intended to take effect in possession or enjoyment at or after his death" unless possession or enjoyment of the transferred property can, through ownership of such interest, be obtained only by surviving the decedent. For the purpose of determining whether this requirement is satisfied, the principles illustrated in examples (1) to (4) of (*b*) of this section are applicable. Where possession or enjoyment of the transferred property can be obtained either by surviving the decedent or through the occurrence of some other event (as, for example, the exercise of a power), the transfer shall not be considered as intended to take effect in possession or enjoyment at or after the decedent's death unless, from a consideration of its terms and circumstances as a whole, the other event is deemed to be unreal, in which case such other event shall be disregarded.

However, not every interest in property of which the decedent made a transfer before October 8, 1949, intended to take effect in possession or enjoyment at or after his death, is includible in his gross estate under section 811(c)(1)(C). Section 811(c)(2) provides that an interest so transferred shall be included in the gross estate under section 811(c)(1)(C) only if the decedent has retained a reversionary interest in the transferred property arising by the express terms of the instrument of transfer and not by operation of law, and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of the transferred property. For example, where a decedent, prior to October 8, 1949, transferred property in trust, reserving the income to himself for life and providing that at his death the corpus should be distributed to his niece if living and, if not, to his estate, and the decedent's niece in fact survived him, the transfer is "intended to take effect in possession or enjoyment at or after his death." However, the transferred property is includible in the gross estate under section 811(c)(1)(C) if, and only if, the value of the decedent's reversionary interest immediately before his death exceeded 5 percent of the value of the transferred property. (Even though not includible under section 811(c)(1)(C), the transferred property may, depending upon the date of transfer and the date of the decedent's death, be includible under section 811(c)(1)(B); in this connection, see section 81.18.)

The term "reversionary interest" includes a possibility that property transferred by the decedent may return to him or his estate and a possibility that property transferred by the decedent may become subject to a power of disposition by him. The term "reversionary interest" is not used in a technical sense; it includes any reserved right under which the transferred property shall or may be returned to the grantor. The term does not, however, include rights to income only, such as a right to receive the income from a trust after the death of another person. (For regulations concerning the effect of reservation of rights over income from the transferred property, see sections 81.18 and 81.19.)

A reversionary interest will be considered to arise by the express terms of the instrument of transfer if the instrument contains an express disposition which affirmatively creates a reversionary interest, even though the terms of the disposition do not refer to the decedent or his estate, as such. For example, where a disposition which, in terms, is to the next of kin of the decedent constitutes, under the applicable local law, a reversionary interest in the decedent's estate, such reserved reversionary interest will be considered to arise by the express terms of the instrument and not by operation of law.

The value of the decedent's reversionary interest shall be computed as of the moment immediately before his death without regard to whether the executor elects to have the gross estate valued as provided under section 811(j) and without regard to the fact of the decedent's death. Such value shall be ascertained according to recognized valuation principles applicable in determining the value for estate and gift tax purposes of future or conditional interests in property. See section 81.10(i)(3). A possibility that the decedent may be able to dispose of property under certain conditions shall be deemed to be as valuable as a right to the return of the property to him under those conditions.

The value of the reversionary interest shall be ascertained as though the decedent were, immediately before his death, making a gift of the property and retaining the reversionary interest. See, for example, section 86.10(g) of Regulations 108, pertaining to the gift tax. If a reversionary interest does not have an ascertainable value under the applicable valuation principles, it is considered to have a value of zero. Thus, if a reversionary interest consisting of a right enforceable in equity to compel a trustee to apply trust corpus for the support and maintenance of the grantor would be considered to have a value of zero for gift tax purposes were it being retained under a transfer by gift, it is to be similarly valued for the purposes of this section.

In determining whether the value of a reversionary interest exceeds 5 percent, it is to be compared with the entire value of the transferred property, including interests which are not dependent upon survivorship of the decedent. Thus, if A transferred property in trust with the income payable to B for B's life and with the remainder payable to X unless B predeceases A, in which event the property shall return to A, and A dies during B's life, the value of A's reversionary interest immediately before his death shall be compared with the entire value of the trust corpus, without deduction of the value of B's outstanding life estate.

A reversionary interest which, for instance, exists in only one-half of the corpus of a trust shall be compared with the value of such one-half. Assume, for example, that the decedent transferred property in trust prior to October 6, 1949, providing that the income should be paid to himself for life and that, upon his death, the property should be distributed to his children. The trust instrument further provided that the decedent should have the right, upon the prior death of his wife, to request the return of one-half of the property. The decedent was survived by his wife. If the value of the decedent's reversionary interest exceeded 5 percent of the value of the one-half of the corpus in which it existed, such one-half is includible in the decedent's gross estate under section 811(c)(1)(C), but the other one-half is not includible under that section. (Such other one-half may, however, depending upon the date of transfer and the date of the decedent's death, be includible under section 811(c)(1)(B).)

(2) *Retroactive operation.*—The rule (set forth in subparagraph (1)) that an interest in property of which the decedent, prior to October 8, 1949, made a transfer "intended to take effect in possession or enjoyment at or after his death" is to be included in his gross estate only if he expressly reserved a reversionary interest having a value in excess of 5 percent of the value of the transferred property results from the addition of section 811(c)(2) of the Internal Revenue Code made by section 7(a) of Public Law 378 (81st Cong.), approved October 25, 1949, and is applicable with respect to estates of decedents dying after February 10, 1939, the date of enactment of the Internal Revenue Code.

Section 7(b) of Public Law 378 provides that no interest shall be allowed or paid on any overpayment resulting from the application of section 7(a) of such Public law with respect to any payment made prior to October 25, 1949.

Where refund or credit of any overpayment resulting from the application of section 7(a) of Public Law 378 is prevented on or before October 25, 1950, by the operation of any law or rule of law (including a judicial determination but not including section 3760, relating to closing agreements, and not including section 3761, relating to compromises), section 7(c) of such Public law provides that refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed on or before October 25, 1950:

Provided however, That in case such overpayment relates to a transfer of property under which the decedent retained for his life or for any period not ascertainable without reference to his death or for any period which did not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the transferred property, or (B) the right, either alone or in conjunction with any person, to designate the persons who should possess or enjoy such property or the income therefrom, the following condition is also met: Such refund or credit was not prevented on or before January 16, 1949, by the operation of any law or rule of law.

(3) *Certain transfers between November 11, 1935, and January 29, 1940.*—Where the transfer was made during the period between November 11, 1935 (that being the date upon which the Supreme Court of the United States rendered its decisions in the cases of *Helvering* v. *St. Louis Union Trust Co.* (296 U. S. 39) and *Becker* v. *St. Louis Union Trust Co.* (296 U. S. 48)), and January 29, 1940 (that being the date upon which such Court rendered its decisions in *Helvering* v. *Hallock* and companion cases (309 U. S. 108)), and the Commissioner, whose determination therein shall be conclusive, determines that such transfer is classifiable with the transfers involved in such two cases decided on November 11, 1935, rather than with the transfer involved in the case of *Klein* v. *United States* (283 U. S. 231), previously decided by such Court, then the property so transferred shall not be included in the decedent's gross estate under the provisions of this section, if the following condition is also met: Such transfer shall have been finally treated for all gift tax purposes, both as to the calendar year

of such transfer and subsequent calendar years, as a gift in an amount measured by the value of the property undiminished by reason of a provision in the instrument of transfer by which the property, in whole or in part, is to revert to the decedent should he survive the donee or another person, or the reverting thereof is conditioned upon some other contingency terminable by decedent's death.

PAR. 8. Section 81.18, as amended by Treasury Decision 5741 [26 CFR 81.18], is further amended as follows:

(A) By striking therefrom the heading and the first paragraph (which ends with the words "term of years") and inserting in lieu thereof the following:

SEC. 81.18. TRANSFERS WITH POSSESSION OR ENJOYMENT RETAINED.—(*a*) *General rule.*—Except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, section 811(c)(1)(B) requires the inclusion in the gross estate of the value of all property transferred by the decedent, whether in trust or otherwise, if the decedent retained or reserved the use, possession, right to the income, or other enjoyment of the transferred property (1) for his life; or (2) for any person not ascertainable without reference to his death; or (3) for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period. Except as provided in paragraph (*b*) of this section, such property is includible without regard to the date when the transfer was made, whether before or after the enactment of the Revenue Act of 1916.

A reservation for a "period not ascertainable without reference to his death" may be illustrated by a reservation of the right to receive, in quarterly payments, the income of the transferred property where none of the income between the last quarterly payment and the decedent's death was to be received by him or his estate. This expression also includes a reservation of the right to receive the income from transferred property after the death of another person who in fact survived the decedent; but in such a case the amount to be included in the gross estate under this section does not include the value of the outstanding income interest in such other person. However, if such other person predeceased the decedent, the reservation may be considered to be for the decedent's life or for such a period as to evidence his intention that it should extend at least for the duration of his life.

(B) By inserting at the end of such section the following:

(*b*) *Estates of decedents dying before January 1, 1950.*—In the case of a decedent who died before January 1, 1950, property shall not be included in the gross estate under this section unless transferred—

(1) after March 3, 1931, and before June 7, 1932, and the retention or reservation by the decedent was (A) for his life or (B) for such a period as to evidence his intention that it should extend at least for the duration of his life, and his death occurs before the expiration of such period; or

(2) on or after June 7, 1932.

PAR. 9. Section 81.19, as amended by Treasury Decision 5741 [26 CFR 81.19], is further amended as follows:

(A) By striking therefrom the heading and the first three paragraphs (including subparagraphs (1) and (2) of the third paragraph) and inserting in lieu thereof the following:

SEC. 81.19. TRANSFERS WITH RIGHT RETAINED TO DESIGNATE WHO SHALL POSSESS OR ENJOY.—(*a*) *General rule.*—Except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, section 811(c)(1)(B) requires the inclusion in the gross estate of the value of all property transferred by the decedent, whether in trust or otherwise, if there is retained by or reserved to him (1) for his life, or (2) for any period not ascertainable without reference to his death, or (3) for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period, the right either alone or in conjunction with any other person or persons to designate the person or persons who shall possess or enjoy the transferred property or the income therefrom. Except as provided in (*b*) of this section, such property is includible without regard to the date when the transfer was made, whether before or after the enactment of the Revenue Act of 1916.

The rights of designation described in section 811(c)(1)(B) include a reserved power to designate the person or persons who shall, during the decedent's life or during any lesser period described in such section, receive the income from the transferred property or who shall, during any such period, possess or enjoy non-income-producing property. Such rights of designation do not, however, include powers over the transferred property itself not affecting the enjoyment of the income during the decedent's life. (See, however, section 81.20.)

(B) By inserting at the end of such section the following:

(*b*) *Estates of decedents dying before January 1, 1950.*—In the case of a decedent who died before January 1, 1950, property shall not be included in the gross estate under this section unless transferred—

(1) after March 3, 1931, and before June 7, 1932, and the right of designation was retained by or reserved to the decedent alone (A) for his life or (B) for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period; or

(2) on or after June 7, 1932.

PAR. 10. Section 81.21 [26 CFR 81.21] is amended (A) by changing the heading to read: "POWER RELINQUISHED IN CONTEMPLATION OF DEATH.—(*a*) *In general.*" and (B) by adding at the end thereof the following:

(*b*) *Certain reciprocal trusts.*—Section 6(c) of Public Law 378 (81st Cong.) provides a special rule applicable in the case of property transferred in trust prior to January 1, 1940, if and to the extent that such property may be deemed to have been transferred in trust by the decedent instead of by the nominal grantor of such property (by reason of the fact that the decedent made a reciprocal transfer of property in trust). Under this rule, a relinquishment by the decedent, during his lifetime and prior to 1951, of a power (as described in section 81.20) or right of designation (as described in section 81.19) with respect to such property shall not be deemed to have been made in contemplation of death. This rule shall not apply unless a gift tax was paid with respect to the reciprocal transfer by the decedent and was not credited or refunded. This rule also does not apply to the assignment by the decedent of a reserved life estate or other interest (as distinguished from a power or right of designation) in the property which may be so deemed to have been transferred by him. (See, however, section 81.16.)

(This Treasury Decision is issued under authority contained in section 3791 of the Internal Revenue Code (53 Stat. 467; 26 U. S. C. 3791) and pursuant to the provisions of Public Laws 378 and 761, 81st Cong.)

FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved March 8, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 14, 1951, 8:54 a. m.)

GIFT TAX

SECTION 1000.—IMPOSITION OF TAX

SECTION 86.1, REGULATIONS 108: Imposition of tax. 1951–7–13567
(Also Sections 86.2 and 86.3, Regulations 108; Article 3, Regulations 79 (1936 edition).) T. D. 5833

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 86 AND PART 85

Regulations 108 and Regulations 79, 1936 edition, amended to conform to Public Law 378 (81st Cong., 1st sess.) [C. B. 1949–2, 275].

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

To Collectors of Internal Revenue and Others Concerned:

On November 18, 1950, notice of proposed rule making, regarding the gift tax provisions of Public Law 378 (81st Cong., 1st sess.) [C. B. 1949–2, 275], approved October 25, 1949, was published in the Federal Register (15 F. R. 7884). No objection to the rules proposed having been received, the amendments set forth below are hereby adopted. Such amendments are necessary in order to conform Regulations 108 [26 CFR, part 86] and Regulations 79, 1936 edition [26 CFR, 1938 ed., part 85], relating to the gift tax, to Public Law 378.

REGULATIONS 108

PARAGRAPH 1. There is inserted immediately preceding section 86.1 [26 CFR 86.1] the following:

PUBLIC LAW 378 (81st CONG., 1st SESS.), APPROVED OCTOBER 25, 1949

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

SEC. 6. RELINQUISHMENT OF POWERS IN CASE OF RECIPROCAL TRUSTS.

(a) Section 1000 of the Internal Revenue Code (relating to imposition of gift tax) is hereby amended by adding at the end thereof the following new subsection:

"(g) CERTAIN RECIPROCAL TRUSTS.—In the case of property in a trust created prior to January 1, 1940, if and to the extent that such property may be deemed to have been transferred to such trust by a person other than the nominal grantor of such property (by reason of the fact that such person has made a reciprocal transfer of property in trust), then a relinquishment by such person on or before December 31, 1950, of any power over such property or over the income therefrom shall not be deemed a transfer of property for the purposes of this chapter. In the event of such relinquishment, the reciprocal transfer made by the person relinquishing such power shall be deemed, for the purposes of this chapter, to have been a completed gift at the time such reciprocal transfer was made. This subsection shall apply only if, at the time such person made the aforesaid reciprocal transfer of property, a law was in effect imposing a tax upon the transfer of property by gift and a gift tax was paid with respect to such reciprocal transfer, and not credited or refunded."

* * * * * * *

SEC. 8. TAX-FREE RELEASE OF CERTAIN LIFE ESTATES.

In the case of a transfer of property made prior to June 7, 1932, under which the grantor retained (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, then an assignment by the grantor of such possession, enjoyment, or right to income, or a relinquishment by him of such right of designation, shall, if made in 1949 or 1950, not be deemed a transfer of property for the purposes of chapter 4 of the Internal Revenue Code, and shall, if made prior to 1951, not be deemed to have been made in contemplation of death within the meaning of chapter 3 of such Code. The foregoing provisions shall not apply—

(A) if the transfer was made after March 3, 1931, and prior to June 7, 1932, and if the property transferred would have been includible in the grantor's gross estate upon his death by reason of the amendatory language of the joint resolution of March 3, 1931 (45 Stat. 1516); or

(B) if the property transferred would have been includible in the grantor's gross estate under section 811(d) of the Internal Revenue Code had he died on October 7, 1949.

PAR. 2. Section 86.1, as amended by Treasury Decision 5811 [C. B. 1950–2, 76], approved October 5, 1950 [26 CFR 86.1], is further amended by striking therefrom the second sentence and inserting in lieu thereof the following:

The statute taxes all such transfers of property (to the extent that they exceed the deductions authorized by section 1004) other than the following: gifts specified in section 1003(b) (2) and (3); releases before July 1, 1951, of powers to appoint created on or before October 21, 1942, the date of enactment of the Revenue Act of 1942; certain relinquishments of powers over discretionary trusts described in section 1000(e) and over reciprocal trusts described in section 1000(g); and, as described in section 86.2(*d*), the assignment or relinquishment in 1949 or 1950 of certain reserved rights over income from property transferred before March 4, 1931, and, in certain cases, before June 7, 1932.

PAR. 3. Section 86.2, as amended by Treasury Decision 5811 [26 CFR 86.2], is further amended as follows:

(A) By striking the seventh sentence of paragraph (*a*) (including the parentheses enclosing such sentence) and inserting in lieu thereof the following:

(However, for special provisions with respect to the exercise or release of powers of appointment, see paragraph (*b*) of this section and for special provisions with respect to the assignment or relinquishment of certain reserved rights over income from property transferred before March 4, 1931, or June 7, 1932, see paragraph (*d*) of this section.)

(B) By adding at the end of such section the following:

(*d*) *Transfers of certain life estates and other rights over income.*—Section 8 of Public Law 378 (81st Cong.) provides that in the case of property transferred prior to June 7, 1932, with retention or reservation by the transferor of the possession of, or the right to the income from, the property, or the right, either alone or in conjunction with any person, to designate the person or persons who shall possess or enjoy the property or the income therefrom, an assignment by the transferor of such possession, enjoyment, or right to income, or relinquishment by him of such right of designation, shall, if made during 1949 or 1950, not be deemed a transfer of property subject to gift tax. This provision of section 8 does not apply—

(1) to any transfer made after March 3, 1931, and before June 7, 1932, which, had the transferor died immediately prior to the time of the assignment or relinquishment, would have been considered a transfer described in section 81.18(*b*)(1) or 81.19(*b*)(1) of Regulations 105; or

(2) if the property transferred would have been includible in the transferor's gross estate under section 811(*d*) had he died on October 7, 1949.

PAR. 4. Section 86.3, as amended by Treasury Decision 5606 [C. B. 1948-1, 129], approved March 4, 1948 [26 CFR 86.3], is further amended as follows:

(A) By striking therefrom the heading, which reads "CESSATION OF DONOR'S DOMINION AND CONTROL.—", and inserting in lieu thereof the following: "CESSATION OF DONOR'S DOMINION AND CONTROL—(*a*) *In general.*"

(B) By inserting immediately before the last paragraph (which paragraph begins "Section 1000(e)") the following subheading: "(*b*) *Relinquishment of powers over certain discretionary trusts.*"

(C) By adding at the end thereof the following:

(*c*) *Relinquishment of powers over certain reciprocal trusts.*—Section 1000(g), as added by section 6 of Public Law 378 (81st Cong.), provides in the case of property in a trust created before January 1, 1940, to the extent that such property may be deemed to have been transferred to such trust by a person other than the nominal grantor (by reason of the fact that such person made a reciprocal transfer of property in trust), that a relinquishment by such person (that is, by the constructive grantor) on or before December 31, 1950, of any power over such property or over the income therefrom shall not be treated as a gift for the purposes of the gift tax statute. In the event of such relinquishment, the reciprocal transfer made by the person relinquishing the power shall be deemed, for the purposes of gift tax, to have been a completed gift at the time such reciprocal transfer was made.

The provisions of section 1000(g) are applicable only if, at the time the reciprocal transfer was made by the person relinquishing the power, a gift tax law was in effect and a gift tax was paid with respect to such reciprocal transfer, and not credited or refunded. Section 1000(g) also does not apply to the assignment of a life estate or other interest in property (as distinguished from the relinquishment of a power) which has been created in a reciprocal trust. See, however, section 86.2(*d*).

REGULATIONS 79, 1936 ED.

PAR. 5. There is inserted immediately preceding article 1 [26 CFR, 1938 ed., 85.1] the following:

PUBLIC LAW 378 (81st CONG., 1st SESS.), APPROVED OCTOBER 25, 1949

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

SEC. 6. RELINQUISHMENT OF POWERS IN CASE OF RECIPROCAL TRUSTS.

* * * * * * *

(b) Section 501 of the Revenue Act of 1932 (imposing a gift tax) is hereby amended by adding at the end thereof the following new subsection:

"(d) CERTAIN RECIPROCAL TRUSTS.—In the case of property transferred in trust prior to January 1, 1940, if and to the extent that such property may be deemed to have been so transferred by a person other than the nominal grantor of such property (by reason of the fact that such person has made a reciprocal transfer of property in trust), then a relinquishment by such person of any power over such property or over the income therefrom shall not be deemed a transfer of property for the purposes of this title. In the event of such relinquishment on or before December 31, 1950, the reciprocal transfer made by the person relinquishing such power shall be deemed, for the purposes of this title, to have been a completed gift at the time such reciprocal transfer was made. This subsection shall apply only if, at the time such person made the aforesaid reciprocal transfer of property, a law was in effect imposing a tax upon the transfer of property by gift and a gift tax was paid with respect to such reciprocal transfer, and not credited or refunded."

PAR. 6. Article 3, as amended by Treasury Decision 5469 [C. B. 1945, 415], approved August 14, 1945 [26 CFR, 1938 ed., 85.3], is further amended by adding at the end thereof the following:

Section 501(d), as added by section 6 of Public Law 378 (81st Cong.), provides in the case of property transferred in trust prior to January 1, 1940, to the extent that such property may be deemed to have been transferred by a person other than the nominal grantor (by reason of the fact that such other person made a reciprocal transfer of property in trust), that a relinquishment by such person (that is, by the constructive grantor) of any power over such property or over the income therefrom shall not be treated as a gift for the purposes of the gift tax provisions. In the event of such relinquishment before January 1, 1951, the reciprocal transfer made by the person relinquishing such power shall be deemed, for the purposes of the gift tax provisions, to have been a completed gift at the time such reciprocal transfer was made.

The provisions of section 501(d) are applicable only if, at the time the reciprocal transfer was made by the person relinquishing the power, a gift tax law was in effect and a gift tax was paid with respect to such reciprocal transfer, and not credited or refunded. Section 501(d) also does not apply to the assignment of a life estate or other interest in property (as distinguished from the relinquishment of a power) which has been created in a reciprocal trust.

(This Treasury Decision is issued under authority contained in sections 1029 and 3791 of the Internal Revenue Code (53 Stat. 157, 467, 26 U. S. C. 1029, 3791), sections 501 and 530 of the Revenue Act of 1932 (47 Stat. 245, 259), approved June 6, 1932, and pursuant to Public Law 378 (81st Cong., 1st sess.), approved October 25, 1949.)

FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved March 8, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 14, 1951, 8:54 a. m.)

EMPLOYMENT TAX RULINGS

INTERNAL REVENUE CODE

CHAPTER 9, SUBCHAPTER A.—FEDERAL INSURANCE CONTRIBUTIONS ACT

REGULATIONS 128. 1951-9-13581
(Also Subchapter D (Collection of Income Tax at Mim. 6625
Source on Wages) and Subchapter E (General Provisions), Regulations 116.)

Periods of limitation. Changes effected by Social Security Act Amendments of 1950 with respect to taxes under Federal Insurance Contributions Act and income withholding tax on wages.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., March 30, 1951.

Collectors of Internal Revenue and Others Concerned:

1. The purpose of this mimeograph is to set forth the changes effected by those provisions of the Social Security Act Amendments of 1950 relating to the periods of limitation upon assessment, collection, crediting, and refunding of Federal Insurance Contributions Act taxes and income withholding tax on wages.

2. Prior to the effective date of the Social Security Act Amendments of 1950, the periods of limitation for assessment, collection, crediting, and refunding of the Federal Insurance Contributions Act taxes and income withholding tax on wages were prescribed by sections 3312 and 3313 of the Internal Revenue Code. Section 3312 prescribed generally a 4-year limitation period upon assessment of such taxes and a 5-year limitation period for bringing a proceeding in court for collection without assessment. Section 3313 prescribed a 4-year limitation period upon the crediting and refunding of the taxes erroneously or illegally assessed or collected.

3. Section 207(a) of the Social Security Act Amendments of 1950 adds new sections 1635 and 1636 to subchapter E of chapter 9 of the Code, prescribing new periods of limitation applicable to Federal Insurance Contributions Act taxes and income withholding tax on wages with respect to remuneration paid during any calendar year after 1950. The effect of these new sections is to make sections 3312 and 3313 of the Code no longer applicable to such taxes imposed with respect to remuneration paid during 1951 and subsequent years.

ASSESSMENT AND COLLECTION

4. Subsection (a) of the new section 1635 provides generally that the amount of any Federal Insurance Contributions Act taxes or income withholding tax on wages shall be assessed *within 3 years after*

the return was filed, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period. Subsections (b) and (c) of section 1635 provide that such tax may be assessed, or a proceeding in court may be begun without assessment, at any time in the case of a false or fraudulent return with intent to evade tax or a failure to file a return, and in the case of a willful attempt in any manner to defeat or evade tax. Subsection (d) thereof provides that where the assessment of any such tax is made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within 6 years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer.

REFUNDS AND CREDITS

5. Subsection (a) (1) of the new section 1636 provides generally that a claim for credit or refund must be filed within 3 years after the return is filed except that if no return is filed such claim must be filed within 2 years after the tax is paid. In any event a refund or credit may be claimed within such 2-year period. Unless a claim is filed within the applicable 2-year or 3-year period of limitation, whichever expires the later, no credit or refund may be allowed or made after the expiration of such period. Subsection (a) (2) provides that the amount of the credit or refund may not exceed the portion of the tax paid (*a*) within 3 years immediately preceding the filing of the claim, in a case where a return was filed and the claim was filed within 3 years thereafter, or (*b*) during the 2 years immediately preceding the filing of the claim, in a case where no return was filed or where the claim was not filed within 3 years from the time the return was filed. In a case where no claim is filed the amount of the credit or refund may not exceed the portion of the tax paid (*a*) during the 3 years immediately preceding the allowance of the credit or refund, where such allowance is made within 3 years from the time the return was filed; or (*b*) if no return was filed or the allowance is not made within 3 years from the time the return was filed, during the 2 years immediately preceding the allowance of the credit or refund. Subsection (*b*) of section 1636 provides that the period of limitation prescribed by subsection (*a*) of such section shall apply to any penalty or sum assessed or collected with respect to the Federal Insurance Contributions Act taxes or the income withholding tax on wages.

6. Subsections (e) and (c) of sections 1635 and 1636, respectively, provide that for purposes of the periods of limitation prescribed in such sections a return for any period ending with or within a calendar year which is filed before March 15 of the succeeding calendar year shall be considered filed (and tax with respect to such a return paid before such March 15 shall be considered paid) on March 15 of such succeeding calendar year.

7. Section 208(b) of the Social Security Act Amendments of 1950 adds to chapter 38 of the Internal Revenue Code section 3812 relating to the mitigation of the effect of the statute of limitations in case of related taxes under the Self-Employment Contributions Act (subchapter E of chapter 1 of the Code) and the Federal Insurance Contributions Act. Adjustments to amounts treated as wages under the

Federal Insurance Contributions Act may affect the tax under the Self-Employment Contributions Act by reason of the effect of such amounts on the $3,600 limitation provisions applicable in determining self-employment income subject to the tax under the latter Act, and also in view of the fact that an item of income may be reported erroneously as taxable under one Act when it should have been reported under the other Act. Section 3812 provides, in effect, that if assessment, credit, or refund, under either of the two Acts is barred by the statute of limitations or any other law (other than section 3761 of the Code, relating to compromises), then the assessment, credit, or refund, as the case may be, which is not barred under the one Act will reflect the barred adjustment which otherwise would have been made under the other Act.

8. It will be noted that the periods of limitation upon assessment, collection, crediting, and refunding of the tax imposed by the Federal Unemployment Tax Act are not affected by the Social Security Act Amendments of 1950.

9. Correspondence relating to this mimeograph should refer to the number thereof and the symbols EmT: RR.

GEO. J. SCHOENEMAN,
Commissioner.

SECTION 1401: Deduction of tax from wages.
REGULATIONS 128, SECTION 408.304: Collection of, and liability for, employee tax.

Withholding table combining Federal Insurance Contributions Act tax and Federal income tax as to weekly wages paid on and after January 1, 1951. (See Em. T. 449, page 136.)

SECTION 1426: Definitions. 1951-2-13522
REGULATIONS 128. T. D. 5823
(Also Section 1426; Regulations 106, Section 402.217.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER D, PART 408.—EMPLOYEE TAX AND EMPLOYER TAX UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT; APPLICABLE ON AND AFTER JANUARY 1, 1951

Waiver under section 1426(b)(9)(B) and section 1426(l) of the Internal Revenue Code of exemption from Federal Insurance Contributions Act taxes by an organization exempt from income tax under section 101(6) of the Internal Revenue Code.

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

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH 1. On November 17, 1950, there was published in the Federal Register (15 F. R. 7838) notice of proposed rule making regarding the proposed regulations relating to section 1426(b)(9)(B) and section 1426(l) of the Internal Revenue Code, added by section 204 of Social Security Act Amendments of 1950. No objection to the rules proposed having been received, the regulations set forth below are hereby adopted:

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SECTION 204 (a), (e), AND (g) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950

DEFINITION OF EMPLOYMENT

(a) Effective January 1, 1951, section 1426(b) of the Internal Revenue Code is amended to read as follows:

"(b) EMPLOYMENT.—The term 'employment' means * * * any service, of whatever nature, performed after 1950 * * * by an employee for the person employing him * * *; except that * * * such term shall not include—

* * * * * * *

"(9) (A) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

"(B) Service performed in the employ of a religious, charitable, educational, or other organization exempt from income tax under section 101(6), but this subparagraph shall not apply to service performed during the period for which a certificate, filed pursuant to subsection (l), is in effect if such service is performed by an employee (i) whose signature appears on the list filed by such organization under subsection (l), or (ii) who became an employee of such organization after the calendar quarter in which the certificate was filed;

* * * * * * *

"(11) (A) * * *

"(B) Service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

* * * * * * *

"(14) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;"

* * * * * * *

(e) Section 1426 of the Internal Revenue Code is amended by * * * inserting * * * the following:

* * * * * * *

"(l) EXEMPTION OF RELIGIOUS, CHARITABLE, ETC., ORGANIZATIONS.—

"(1) WAIVER OF EXEMPTION BY ORGANIZATION.—An organization exempt from income tax under section 101(6) may file a certificate (in such form and manner, and with such official, as may be prescribed by regulations made under this subchapter) certifying that it desires to have the insurance system established by title II of the Social Security Act extended to service performed by its employees and that at least two-thirds of its employees concur in the filing of the certificate. Such certificate may be filed only if it is accompanied by a list containing the signature, address, and social security account number (if any) of each employee who concurs in the filing of the certificate. Such list may be amended, at any time prior to the expiration of the first month following the first calendar quarter for which the certificate is in effect, by filing with such official a supplemental list or lists containing the signature, address, and social security account number (if any) of each additional employee who concurs in the filing of the certificate. The list and any supplemental list shall be filed in such form and manner as may be prescribed by regulations made under this subchapter. The certificate shall be in effect (for the purposes of subsection (b)(9)(B) and for the purposes of section 210(a)(9)(B) of the Social Security Act) for the period beginning with the first day following the close of the calendar quarter in which such certificate is filed, but in no case shall such period begin prior to January 1, 1951. The period for which the certificate is effective may be terminated by the organization, effective at the end of a calendar quarter, upon giving two years' advance notice in writing, but only if, at the time of the receipt of such notice, the certificate has been in effect for a period of not less than eight years. The notice of termination may be revoked by the organization by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. Notice of termination or revocation thereof shall be filed in such form and manner, and with such official, as may be prescribed by regulations made under this subchapter.

"(2) TERMINATION OF WAIVER PERIOD BY COMMISSIONER.—If the Commissioner finds that any organization which filed a certificate pursuant to this subsection has failed to comply substantially with the requirements of this subchapter or is no longer able to comply therewith, the Commissioner shall give such organization not less than sixty days' advance notice in writing that the period covered by such certificate will terminate at the end of the calendar quarter specified in such notice. Such notice of termination may be revoked by the Commissioner by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of such revocation to the organization. No notice of termination or of revocation thereof shall be given under this paragraph to an organization without the prior concurrence of the Federal Security Administrator.

"(3) NO RENEWAL OF WAIVER.—In the event the period covered by a certificate filed pursuant to this subsection is terminated by the organization, no certificate may again be filed by such organization pursuant to this subsection."

* * * * * * *

(g) The amendments made by subsections * * * (e) * * * of this section shall be applicable only with respect to services performed after 1950.

SECTION 205 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950

DEFINITION OF EMPLOYEE

(a) Section 1426(d) of the Internal Revenue Code is amended to read as follows:

"(d) EMPLOYEE.—The term 'employee' means—

"(1) any officer of a corporation; or

"(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

"(3) any individual (other than an individual who is an employee under paragraph (1) or (2) of this subsection) who performs services for remuneration for any person—

"(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

"(B) as a full-time life insurance salesman;

"(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him, if the performance of such services is subject to licensing requirements under the laws of the State in which such services are performed; or

"(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term 'employee' under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed."

(b) The amendment made by this section shall be applicable only with respect to services performed after 1950.

SECTION 408.1426(l)-1. SCOPE OF REGULATIONS.—These regulations relate to the provisions of section 1426(b)(9)(B) and section 1426(l) of the Federal Insurance Contributions Act, added by section 204 (a) and (e) of the Social Security Act Amendments of 1950, approved August 28, 1950. Such provisions relate to the waiver of exemption from the taxes imposed under the Federal Insurance Contributions Act by an organization which is exempt from income tax under section 101(6) of the Internal Revenue Code and which desires to have the insurance system established by title II of the Social Security Act extended to services performed by its employees.

SEC. 408.1426(l)-2. WHO MAY WAIVE EXEMPTION.—Any organization that is exempt from income tax under section 101(6) of the Internal Revenue Code may waive its exemption from the taxes imposed under the Federal Insurance Contributions Act by filing a certificate on Form SS-15, provided that at least two-thirds of the employees of the organization concur in the filing of the certificate. The organization must be exempt from income tax under section 101(6) for the taxable year in which the certificate is filed; otherwise, the Form SS-15 filed by the organization is void.

If the period covered by the certificate is terminated by the organization, no certificate may again be filed by the organization under section 1426(l).

SEC. 408.1426(l)-3. FORM AND EFFECT OF WAIVER.—The certificate on Form SS-15 shall be filed with the collector of internal revenue for the district in which is located the principal office or principal place of business of the organization. The organization shall certify in the certificate that it desires to have the insurance system established by title II of the Social Security Act extended to service performed by its employees and that at least two-thirds of its employees, determined on the basis of the facts existing as of the date the certificate is filed, concur in the filing of the certificate.

All individuals who are employees of the organization within the meaning of section 1426(d) of the Federal Insurance Contributions Act, as amended by section 205 of the Social Security Act Amendments of 1950, shall be included in determining whether two-thirds of the employees of the organization concur in the filing of the certificate; except that there shall not be included (1) those employees who at the time of the filing of the certificate are performing for such organization services only of the character specified in paragraphs (9)(A), (11)(B), and (14) of section 1426(b) of the Federal Insurance Contributions Act, as amended by section 204 of the Social Security Act Amendments of 1950, and (2) those alien employees who at the time of the filing of the certificate are performing services for such organization under an arrangement which provides for the performance only of services outside the United States not on or in connection with an American vessel or American aircraft. As used in the preceding sentence, the term "alien employee" does not include an employee who is a citizen of Puerto Rico or of the Virgin Islands, and the term "United States" includes Puerto Rico and the Virgin Islands.

The certificate may be filed only if it is accompanied by a list on Form SS–15a, containing the signature, address, and social security account number (if any) of each employee who concurs in the filing of the certificate. The list accompanying the certificate may be amended, at any time prior to the expiration of the first month following the first calendar quarter for which the certificate is in effect, by filing a supplemental list or lists on Form SS–15a Supplement, containing the signature, address, and social security account number (if any) of each additional employee who concurs in the filing of the certificate.

The certificate shall be in effect for the period beginning with the first day following the close of the calendar quarter in which the certificate is filed, but in no case shall the effective period begin prior to January 1, 1951. Thus, if the certificate is filed on or before December 31, 1950, it will be in effect with respect to services performed in the employ of the organization on and after January 1, 1951. For termination of the waiver, see section 408.1426(l)–4 and section 408.1426(l)–5. The certificate is not terminated if the organization loses its exemption under section 101(6) of the Internal Revenue Code, but continues effective with respect to any subsequent periods during which the organization is so exempt.

Service performed in the employ of an organization which has duly filed a certificate is not excepted from employment under section 1426(b)(9)(B) of the Federal Insurance Contributions Act, during the period for which the certificate is in effect, if such service is performed by an employee (1) whose signature appears on the list filed by the organization on Form SS–15a, or on Form SS–15a Supplement, or (2) who becomes an employee of the organization after the calendar quarter in which the certificate is filed. Consequently, the taxes imposed under the Federal Insurance Contributions Act will apply to the organization and to each employee whose services constitute employment and whose signature appears on the accompanying list or on any supplemental list or lists filed within the prescribed time, commencing with the first day following the close of the calendar quarter in which the certificate is filed (but in no event prior to January 1, 1951). Such taxes will also apply immediately with respect to services which constitute employment performed by any individual who enters the employ of the organization on or after the first day following the close of the calendar quarter in which the certificate is filed. The re-employment by the organization of a former employee after the certificate becomes effective shall be considered for the purposes of such taxes as a new employment, regardless of whether or not such individual concurred in the filing of the certificate.

In the case of a certificate filed by an organization in 1950, an individual who performed services for such organization during the calendar quarter in which the certificate was filed and who continued to perform services for such organization in the next calendar quarter shall not be considered to have begun a new employment solely by reason of the change made by section 205 of the Social Security Act Amendments of 1950 in the definition of the term "employee" in section 1426(d) of the Federal Insurance Contributions Act.

SEC. 408.1426(l)-4. TERMINATION OF WAIVER BY ORGANIZATION.—The period for which the certificate is in effect may be terminated by the organization upon giving 2 years' advance notice in writing to the Commissioner of Internal Revenue of the organization's desire to terminate the effect of the certificate at the end of a specified calendar quarter, but only if, at the time of the receipt of such notice by the Commissioner, the certificate has been in effect for a period of not less than 8 years.

In computing the effective period which must precede the date of receipt of the notice of termination, there shall be disregarded any period or periods as to which the organization is not exempt from income tax under section 101(6) of the Internal Revenue Code.

The notice of termination may be revoked by the organization by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice to the Commissioner of such revocation.

SEC. 408.1426(l)-5. TERMINATION OF WAIVER BY COMMISSIONER.—The period for which the certificate is in effect may be terminated by the Commissioner of Internal Revenue, with the prior concurrence of the Federal Security Administrator, upon a finding by the Commissioner that the organization has failed to comply substantially with the requirements of the Federal Insurance Contributions Act or is no longer able to comply therewith. The Commissioner shall give the organization not less than 60 days' advance notice in writing that the period covered by the certificate will terminate at the end of the calendar quarter specified in the notice of termination.

The notice of termination may be revoked by the Commissioner, with the prior concurrence of the Federal Security Administrator, by giving written notice of revocation to the organization prior to the close of the calendar quarter specified in the notice of termination.

PAR. 2. Effective January 1, 1951, Regulations 106, as amended [26 CFR, part 402], relating to the employees' tax and the employers' tax under the Federal Insurance Contributions Act (subchapter A of chapter 9 of the Internal Revenue Code), are modified to the extent such regulations are inconsistent with the regulations promulgated under paragraph 1 of this Treasury Decision.

Because of the short period of time remaining in 1950 and because it is contemplated by the Social Security Act Amendments of 1950 that certificates under section 1426(l) of the Internal Revenue Code may be filed in 1950 so as to be in effect commencing January 1, 1951, it is found that it is impracticable and unnecessary to issue this Treasury Decision subject to the effective date limitation of section 4(c) of the Administrative Procedure Act, approved June 11, 1946.

(This Treasury Decision is issued pursuant to the authority contained in section 1429 of the Internal Revenue Code (53 Stat. 178; 26 U. S. C. 1429).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved December 27, 1950.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 29, 1950, 8:51 a. m.)

SECTION 1426: Definitions. 1951-2-13521
REGULATIONS 128, SECTION 408.204: Who are employees. Mim. 6571
(Also Subchapter D (Collection of Income Tax at Source on Wages), Section 1621; Regulations 116, Section 405.104.)

Status after 1950 of full-time life insurance salesmen for Federal employment tax purposes including income tax withholding.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 18, 1950.

Collectors of Internal Revenue and Others Concerned:

1. The purpose of this mimeograph is to outline the changes, relating to the status of full-time life insurance salesmen, effected in the Federal Insurance Contributions Act (subchapter A, chapter 9, Internal Revenue Code) by the Social Security Act Amendments of 1950.

2. Effective with respect to services performed after 1950, section 1426(d) of the Federal Insurance Contributions Act is amended to read, in part, as follows:

EMPLOYEE.—The term "employee" means—

(1) any officer of a corporation; or

(2) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual (other than an individual who is an employee under paragraph (1) or (2) of this subsection) who performs services for remuneration for any person—

* * * * * * *

(B) as a full-time life insurance salesman;

* * * * * * *

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

3. An individual whose entire or principal business activity is devoted to the solicitation of life insurance or annuity contracts primarily for one life insurance company is a full-time life insurance salesman. To determine the status of a full-time or part-time life insurance salesman, with respect to services performed after December 31, 1950, it will first be ascertained whether the individual, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. If such is found to be the case the individual will be an employee for the purposes of the taxes imposed by the Federal Insurance Contributions Act, for the purposes of the tax imposed by the Federal Unemployment Tax Act (except in the case of an insurance salesman compensated "solely by way of commission"), and also for the purposes of income tax withholding under section 1622 of the Internal Revenue Code.

4. If, under the usual common-law rules applicable in determining the employer-employee relationship, the full-time life insurance salesman is not determined to be an employee, then the statutory test provided in section 1426(d)(3)(B) of the Federal Insurance Contributions Act (quoted above in paragraph 2) will be applicable in determining whether such salesman is an employee for purposes of that Act. In the event the salesman is found, by the application of such statutory test, to be an employee, then he will be so considered only for purposes of the Federal Insurance Contributions Act. A full-time life insurance salesman found to be an employee by the application of the statutory test provided in section 1426(d)(3)(B) will not be considered to have the status of an employee for purposes of the tax imposed by the Federal Unemployment Tax Act or for purposes of income tax withholding under section 1622 of the Internal Revenue Code inasmuch as such statutory test was not made applicable for the two latter purposes by the Social Security Act Amendments of 1950. Determinations relative to the status of full-time life insurance salesmen for purposes of the tax imposed by the Federal Unemployment Tax Act and for purposes of income tax withholding under section 1622 of the Internal Revenue Code will continue to be based on the application solely of the usual common-law rules.

5. The Social Security Act Amendments of 1950 amend chapter 1 of the Internal Revenue Code by the addition of subchapter E, Tax on Self-Employment Income, which imposes a tax on the self-employment income of every individual for each taxable year beginning after December 31, 1950. Thus, if a full-time life insurance salesman is not an employee for purposes of the Federal Insurance Contributions Act, as amended, the provisions of subchapter E, chapter 1, of the Code (Tax on Self-Employment Income) are applicable.

6. Regulations relating to the taxes imposed by the Federal Insurance Contributions Act, as amended by the Social Security Act Amendments of 1950, are now in the course of preparation and will be made available at the earliest practicable date.

7. Correspondence relating to this mimeograph should refer to its number and to the symbols EmT: RR.

GEO. J. SCHOENEMAN,
Commissioner.

SECTION 1426: Definitions. 1951-3-13532
REGULATIONS 128, SECTION 408.204: Who are employees. Mim. 6583
(Also Subchapter D (Collection of Income Tax at Source on Wages), Section 1621; Regulations 116, Section 405.104.)

Status after 1950 of traveling or city salesmen for Federal employment tax purposes including income tax withholding.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 28, 1950.

Collectors of Internal Revenue and Others Concerned:

1. The purpose of this mimeograph is to outline the changes, relating to the status of traveling or city salesmen, effected in the Federal Insurance Contributions Act (subchapter A, chapter 9, Internal Revenue Code) by the Social Security Act Amendments of 1950.

2. Effective with respect to services performed after 1950, section 1426(d) of the Federal Insurance Contributions Act is amended to read, in part, as follows:

EMPLOYEE.—The term "employee" means—

* * * * * * *

(2) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual * * * who performs services for remuneration for any person—

* * * * * * *

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

3. To determine the status of a traveling or city salesman with respect to services performed after December 31, 1950, it will first be ascertained whether the individual, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. If such is found to be the case, the individual will be an employee for purposes of the taxes imposed by the Federal Insurance Contributions Act, for purposes of the tax imposed by the Federal Unemployment Tax Act, and also for purposes of collection of income tax at source on wages.

4. If, under the usual common-law rules applicable in determining the employer-employee relationship, a traveling or city salesman is

determined not to be an employee, then the statutory test provided in section 1426(d)(3)(D) of the Federal Insurance Contributions Act (quoted above in paragraph 2) will be applicable in determining whether such salesman is an employee for purposes of that Act. In the event the salesman is found, by the application of such statutory test, to be an employee, then he will be so considered only for purposes of the Federal Insurance Contributions Act.

5. A traveling or city salesman found to be an employee by the application of the statutory test provided in section 1426(d)(3)(D) will not be considered to have the status of an employee for purposes of the tax imposed by the Federal Unemployment Tax Act or for purposes of collection of income tax at source on wages inasmuch as such statutory test was not made applicable for the two latter purposes by the Social Security Act Amendments of 1950. Determinations relative to the status of traveling or city salesmen for purposes of the tax imposed by the Federal Unemployment Tax Act and for purposes of collection of income tax at source on wages will continue to be based on the application solely of the usual common-law rules.

6. An individual who performs services after 1950 as a traveling or city salesman, other than as an agent-driver or commission-driver, and who is not an employee under the usual common-law rules, will be considered an employee of his principal (for purposes of the Federal Insurance Contributions Act only) if all of the following conditions exist:

(*a*) if his services are performed on a full-time basis for his principal, except for side-line sales activities performed on behalf of some other person;

(*b*) if his services consist of soliciting orders on behalf of, and transmitting such orders to, his principal;

(*c*) if the customers solicited by him are wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments;

(*d*) if the orders solicited by him from such customers are for merchandise for resale or for supplies for use in the business operations of the customers;

(*e*) if the arrangement under which he agrees to perform such services contemplates that substantially all of the services are to be performed by him personally;

(*f*) if he has no substantial investment in facilities used in connection with the performance of the services, other than in facilities for transportation; and

(*g*) if his services are part of a continuing relationship with his principal and not in the nature of a single transaction.

7. The following examples, in each of which it has been established from facts not stated herein that the salesman is not an employee under the usual common-law rules, illustrate the application of the foregoing tests:

Example 1. Salesman A's principal business activity is the solicitation of orders from retail pharmacies on a continuing full-time basis on behalf of the X wholesale drug company. A does, however, occasionally solicit orders for drugs on behalf of the Y and Z companies. A's contract of service with the X company contemplates that substantially all of the services to which the arrangement relates are to be performed by him personally, and he has no investment in facilities other than in an automobile. A meets all the conditions set forth in tests (*a*) to (*g*), inclusive, and is, therefore, an employee of the X company for purposes of the Federal Insurance Contributions Act, as amended, with respect to services performed after 1950. A is not an employee of either the Y or Z company.

Example 2. Salesman B's principal business activity is the solicitation of orders from retail hardware stores on behalf of the R tool company and the S cooking utensil company. B regularly solicits orders on behalf of both companies. B does not meet test (*a*) since he is not performing services on a full-time basis primarily for any one principal and, consequently, he is not an employee of either the R or S company for purposes of the Act, as amended.

Example 3. Salesman C's principal business activity is the house-to-house solicitation of orders on behalf of the T company. C occasionally solicits orders on behalf of the same company from retail stores and restaurants. C does not meet test (*c*) since he is primarily engaged in soliciting orders on a full-time basis from householders rather than from wholesalers, retailers, et al., and he is not, therefore, an employee of the T company for purposes of the Act, as amended.

8. The Social Security Act Amendments of 1950 amend chapter 1 of the Internal Revenue Code by the addition of subchapter E, Tax on Self-Employment Income, which imposes a tax on the self-employment income of every individual for each taxable year beginning after December 31, 1950. Thus, it may be stated generally if a traveling or city salesman is not an employee for purposes of the Federal Insurance Contributions Act, as amended, the provisions of subchapter E, chapter 1, of the Code (Tax on Self-Employment Income) will be considered to be applicable. Determinations whether tax liability is incurred in particular cases under subchapter E, chapter 1, of the Code should be made with due regard to the applicable income tax provisions of the Code since an individual's status as a self-employed individual is initially dependent upon whether he is engaged in a trade or business. Doubtful cases should be submitted to the Bureau for specific rulings.

9. The provisions of this mimeograph are not to be used in determining the status of full-time life insurance salesmen with respect to which section 1426(d)(3)(B) of the Federal Insurance Contributions Act, as amended by the Social Security Act Amendments of 1950, is applicable. (See Mim. 6571)page 95, this Bulletin.)

10. Correspondence relating to this mimeograph should refer to the number thereof and the symbols EmT:RR.

GEO. J. SCHOENEMAN,
Commissioner.

SECTION 1426: Definitions. 1951-4-13544
REGULATIONS 128, SECTION 408.204: Who are employees. Mim. 6586
(Also Subchapter D (Collection of Income Tax at Source on Wages), Section 1621; Regulations 116, Section 405.104.)

Status after 1950 of home workers for Federal employment tax purposes including income tax withholding.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., January 4, 1951.

Collectors of Internal Revenue and Others Concerned:

1. The purpose of this mimeograph is to outline the changes relating to the status of home workers, effected in the Federal Insurance Contributions Act (subchapter A, chapter 9, Internal Revenue Code), by the Social Security Act Amendments of 1950.

2. Effective with respect to services performed after 1950, section 1426(d) of the Federal Insurance Contributions Act is amended to read, in part, as follows:

EMPLOYEE.—The term "employee" means—

* * * * * * *

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual * * * who performs services for remuneration for any person—

* * * * * * *

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him, if the performance of such services is subject to licensing requirements under the laws of the State in which such services are performed;

* * * * * * *

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

3. Effective with respect to remuneration paid after 1950, section 1426(a) of the Federal Insurance Contributions Act is amended to read, in part, as follows:

WAGES.—The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * * * *

(10) Remuneration paid by an employer in any calendar quarter to an employee for service described in subsection (d)(3)(C) (relating to home workers), if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50.

4. To determine the status of a home worker, with respect to services performed after December 31, 1950, it will first be ascertained whether the individual, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. If such is found to be the case the individual will be an employee for the purposes of the taxes imposed by the Federal Insurance Contributions Act, for purposes of the Federal Unemployment Tax Act, and also for the purposes of collection of income tax at source on wages.

5. If, under the usual common-law rules applicable in determining the employer-employee relationship, the home worker is determined

not to be an employee, then the statutory test provided in section 1426(d)(3)(C) of the Federal Insurance Contributions Act (quoted above in paragraph 2) will be applicable in determining whether such home worker is an employee for purposes of that Act. In the event the home worker is found, by the application of such statutory test, to be an employee, then he will be so considered only for purposes of the Federal Insurance Contributions Act.

6. A home worker found to be an employee by the application of the statutory test provided in section 1426(d)(3)(C) will not be considered to have the status of an employee for purposes of the tax imposed by the Federal Unemployment Tax Act or for purposes of collection of income tax at source on wages inasmuch as such statutory test was not made applicable for the two latter purposes by the Social Security Act Amendments of 1950. Determinations relative to the status of home workers for purposes of the tax imposed by the Federal Unemployment Tax Act and for purposes of collection of income tax at source on wages will continue to be based on the application solely of the usual common law rules.

7. An individual who performs services after 1950 as a home worker, and who is not an employee under the usual common-law rules, will be considered an employee of the person for whom the services are performed (for purposes of the Federal Insurance Contributions Act only) if all of the following conditions exist:

(*a*) if the work is performed according to specifications furnished by the person for whom the services are performed on materials or goods furnished by such person which are required to be returned to such person or a person designated by him;

(*b*) if the performance of the services is subject to licensing requirements, imposed either upon the home worker or upon the person for whom the services are performed, under the laws of the State in which the services are performed;

(*c*) if the contract or arrangement under which the services as home worker are performed contemplates that substantially all of the services are to be performed personally by the home worker who enters into the contract or arrangement;

(*d*) if the home worker has no substantial investment in facilities used in connection with the performance of the services, other than in facilities for transportation; and

(*e*) if the home worker's services are a part of a continuing relationship with the person for whom the services are performed and not in the nature of a single transaction.

8. At the present time the performance of certain services by certain home workers is subject to licensing requirements under the laws of Puerto Rico and the following States:

California.	Michigan.	Rhode Island.
Connecticut.	Missouri.	Tennessee.
Illinois.	New Jersey.	Texas.
Indiana.	New York.	West Virginia.
Maine.	Ohio.	Wisconsin.
Maryland.	Oregon.	
Massachusetts.	Pennsylvania.	

9. In each case where it is determined that a home worker is an employee with respect to services performed after December 31, 1950, solely by the application of the statutory test provided in section

1426(d)(3)(C) of the Federal Insurance Contributions Act, as amended, the provisions of section 1426(a)(10) of such Act (quoted above in paragraph 3) will be applied in determining the liability, if any, which has been incurred for the taxes imposed by that Act with respect to the remuneration paid to the employee.

10. The following examples, in each of which it has been established from facts not stated herein that the home workers are not employees under the usual common-law rules, illustrate the application of the statutory test:

Example 1. The M Company, Richmond, Va., is engaged in purchasing an article in bulk, in various sizes and colors, from manufacturers. The home workers, residing in Virginia, receive at the M Company's premises the articles and certain envelopes in bulk, take these to their homes, insert one article in each envelope, and staple the envelopes together in groups of six each in accordance with instructions received from the M Company, thus assembling the final packages to be sold by the M Company. The home workers are paid on a piece-work basis, payment for the work being made upon delivery to the company of the completed packages. Since Virginia has no licensing requirements relating to home workers, the workers do not meet the conditions of test (*b*). Therefore, the home workers are not employees of the M Company within the meaning of section 1426(d)(3)(C) with respect to services performed after 1950.

Example 2. Home worker A is a former employee of the N Company, Chicago, Ill., which company is engaged in the manufacture of gloves. At the suggestion of the company she has set up a shop in her home in Gary, Ind., where experienced workers are available, and she obtains leather stitching work on a contract basis. She has an agreement with the company to stitch approximately 200 pairs of gloves per week, which both she and the company understand is more work than she can do alone. She visits the premises of the N Company once each week, obtains a quantity of cut leather gloves, and takes them to her home where she and other workers sew them. She is remunerated at the rate of $0.25 per pair of gloves finished and returned to the N Company. The equipment used by the individual consists of special leather needles and thread which are furnished to her by the N Company. A's contract of service does not contemplate that substantially all such services are to be performed personally by her, and, therefore, she does not meet the conditions of test (*c*) and is not an employee of the N Company for purposes of the Federal Insurance Contributions Act, as amended, with respect to services performed after 1950. However, A is also not an employee of the N Company because the home work licensing laws of Indiana do not apply to the manufacture of leather gloves.

Example 3. B is engaged on a continuing basis in knitting or crocheting tops for slippers manufactured by the O Company, Milwaukee, Wis. She applied to the O Company for work, was given instructions concerning the type of work to be done and the manner in which it was to be performed and was informed that the work must meet the standard of the O Company. All of the material and equipment necessary for the performance of the services are supplied by the O Company and must be returned to the company. B is required to perform personally the services connected with the knitting or crocheting of the slipper tops. The services are subject to licensing requirements under the laws of Wisconsin. She is paid for the work on a piece-work basis. B meets all the conditions of the statutory test and, therefore, she is an employee of the O Company for purposes of the Federal Insurance Contributions Act, as amended, with respect to services performed after 1950. B is paid approximately $150 during the first calendar quarter for the work completed for the O Company, but during the second quarter she is prevented by illness from working steadily and is paid by the O Company $37.50 for work completed during that quarterly period. Liability for the taxes imposed by the Federal Insurance Contributions Act is incurred with respect to the remuneration paid to B by the O Company during the first quarter, since the amount paid is more than $50. However, although her status is still that of an employee, no liability for the taxes imposed by that Act is incurred by the O Company with respect to the remuneration which is less than $50 paid to B during the second quarterly period, by reason of the provisions of section 1426 (a) (10) of the Act.

11. The Social Security Act Amendments of 1950 amend chapter 1 of the Internal Revenue Code by the addition of subchapter E, Tax on Self-Employment Income, which imposes a tax on the self-employment income of every individual for each taxable year beginning after December 31, 1950. Thus, it may be stated generally if a home worker is not an employee for purposes of the Federal Insurance Contributions Act, as amended, the provisions of subchapter E, chapter 1, of the Code (Tax on Self-Employment Income) will be considered to be applicable. Determinations whether tax liability is incurred in particular cases under subchapter E, chapter 1, of the Code should be made with due regard to the applicable income tax provisions of the Code since an individual's status as a self-employed individual is initially dependent upon whether he is engaged in a trade or business. Doubtful cases should be submitted to the Bureau for specific rulings.

12. Correspondence relating to this mimeograph should refer to its number and to the symbols EmT : RR.

GEO. J. SCHOENEMAN,
Commissioner.

SECTION 1426: Definitions. 1951–5–13553
REGULATIONS 128, SECTION 408.204: Who are employees. Mim. 6601
(Also Subchapter D (Collection of Income Tax at Source on Wages), Section 1621; Regulations 116, Section 405.104.)

Status after 1950 of agent-drivers and commission-drivers for Federal employment tax purposes including income tax withholding.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., January 31, 1951.

Collectors of Internal Revenue and Others Concerned:

1. The purpose of this mimeograph is to outline the changes relating to the status of agent-drivers and commission-drivers effected in the

Federal Insurance Contributions Act (subchapter A, chapter 9, Internal Revenue Code), by the Social Security Act Amendments of 1950.

2. Effective with respect to services performed after 1950, section 1426(d) of the Federal Insurance Contributions Act is amended to read, in part, as follows:

EMPLOYEE.—The term "employee" means—

* * * * * * *

(2) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual * * * who performs services for remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

* * * * * * *

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

3. To determine the status of an agent-driver or commission-driver with respect to services performed after December 31, 1950, it will first be ascertained whether the individual, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. If such is found to be the case, the individual will be an employee for purposes of the taxes imposed by the Federal Insurance Contributions Act, for purposes of the tax imposed by the Federal Unemployment Tax Act, and also for purposes of collection of income tax at source on wages.

4. If, under the usual common-law rules applicable in determining the employer-employee relationship, an agent-driver or commission-driver is determined not to be an employee, then the statutory test provided in section 1426(d)(3)(A) of the Federal Insurance Contributions Act (quoted above in paragraph 2) will be applicable in determining whether such driver is an employee for purposes of that Act. In the event the driver is found, by the application of such statutory test, to be an employee, then he will be so considered only for purposes of the Federal Insurance Contributions Act.

5. An agent-driver or commission-driver found to be an employee by the application of the statutory test provided in section 1426(d)(3)(A) will not be considered to have the status of an employee for purposes of the tax imposed by the Federal Unemployment Tax Act or for purposes of collection of income tax at source on wages inasmuch as such statutory test was not made applicable for the two latter purposes by the Social Security Act Amendments of 1950. Determinations relative to the status of an agent-driver or commission-driver for purposes of the tax imposed by the Federal Unemployment Tax Act and for purposes of collection of income tax at source on wages will continue to be based on the application solely of the usual common-law rules.

6. An individual who performs services after 1950 as an agent-driver or commission-driver, and who is not an employee under the usual common-law rules, will be considered an employee of his principal (for purposes of the Federal Insurance Contributions Act only) if all of the following conditions exist:

(*a*) if he is engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(*b*) if the contract or arrangement under which the services as agent-driver or commission-driver are performed contemplates that substantially all of the services are to be performed personally by the agent-driver or commission-driver who enters into the contract or arrangement;

(*c*) if he has no substantial investment in facilities used in connection with the performance of the services, other than in facilities for transportation; and

(*d*) if the services are part of a continuing relationship with the principal and not in the nature of a single transaction.

7. The term "agent-driver or commission-driver" includes an individual who operates his own truck or the truck of the person for whom he performs services, serves customers designated by his principal as well as those solicited on his own initiative, sells wholesale or retail, and whose compensation is a commission on his sales or the difference between the price he charges his customers and the price he pays to his principal for the product or service.

8. The following examples, in each of which it has been established from facts not stated herein that the agent-driver and commission-driver are not employees under the usual common-law rules, illustrate the application of the foregoing tests:

Example 1. Agent-Driver A is engaged on a continuing basis in distributing meat products for his principal, the X Company. A's contract of service with the X Company contemplates that substantially all of the services to which the arrangement relates are to be performed personally and he has no investment in facilities other than in a small delivery truck. A meets all of the conditions set forth in tests (*a*) to (*d*), inclusive, and is, therefore, an employee of the X Company for purposes of the Federal Insurance Contributions Act, as amended, with respect to services performed after 1950.

Example 2. Commission-Driver B is engaged in distributing bakery products for his principal, the Y Company. However, under the arrangement under which the services are performed it is not contemplated that the services are to be performed personally by B. Since B's arrangement for the performance of the services does not meet the conditions of test (*b*), he is not an employee of the Y Company within the meaning of section 1426(d)(3)(A).

9. The Social Security Act Amendments of 1950 amend chapter 1 of the Internal Revenue Code by the addition of subchapter E, Tax on Self-Employment Income, which imposes a tax on the self-employment income of every individual for each taxable year beginning after December 31, 1950. Thus, it may be stated generally if an agent-driver or commission-driver is not an employee for purposes of the Federal Insurance Contributions Act, as amended, the provisions of subchapter E, chapter 1, of the Code (Tax on Self-Employment In-

come) will be considered to be applicable. Determinations whether tax liability is incurred in particular cases under subchapter E, chapter 1, of the Code should be made with due regard to the applicable income tax provisions of the Code since an individual's status as a self-employed individual is initially dependent upon whether he is engaged in a trade or business. Doubtful cases should be submitted to the Bureau for specific rulings.

10. Correspondence relating to this mimeograph should refer to the number thereof and to the symbols EmT: RR.

GEO. J. SCHOENEMAN,
Commissioner.

SECTION 1426: Definitions. 1951-10-13590
REGULATIONS 128, SECTION 408.215: Ministers of churches and members of religious orders. (Also Subchapter D (Collection of Income Tax at Source on Wages), Section 1621; Regulations 116, Section 405.102.) Mim. 6633

Status after 1950 of duly ordained, commissioned, and licensed ministers of churches for purposes of the Federal Insurance Contributions Act and income tax withholding.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., April 12, 1951.

Collectors of Internal Revenue and Others Concerned:

1. Effective with respect to services performed after 1950, section 1426(b)(9)(A) of the Federal Insurance Contributions Act, as amended by the Social Security Act Amendments of 1950, provides, in part, for the exception from employment of "Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry * * *."

2. The exception applies to the services which are ordinarily the duties of such ministers. The duties of ministers include:

(*a*) the ministration of sacerdotal functions and the conduct of religious worship; and

(*b*) the control, conduct, and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations), under the authority of a religious body constituting a church or church denomination.

3. What constitutes the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of a particular religious body constituting a church or church denomination.

4. Services performed by a minister in the control, conduct, and maintenance of a religious organization relate to directing, managing, or promoting the activities of such organization. Any religious organization is deemed to be under the authority of a religious body constituting a church or church denomination if it is organized and dedicated to carrying out the tenets and principles of a faith in accordance with either the requirements or sanctions governing the creation of institutions of the faith. The term "religious organi-

zation" has the same meaning and application as is given to the term for income tax purposes.

5. The following general rules have been adopted to determine whether the services of a duly ordained, commissioned, or licensed minister of a church are performed "in the exercise of his ministry" within the meaning of section 1426(b) (9) (A):

(*a*) Where a minister is performing services in the conduct of religious worship or the ministration of sacerdotal functions, such services are considered to be "in the exercise of his ministry" and therefore excepted from "employment" whether or not they are performed for a religious organization.

(*b*) Where a minister is performing services for an organization which is operated as an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination, all services performed by the minister in the conduct of religious worship, in the ministration of sacerdotal functions, or in the control, conduct, and maintenance of such organization (as defined in paragraph 4 above), are considered to be "in the exercise of his ministry" and therefore excepted from "employment."

(*c*) Where a minister, pursuant to an assignment or designation by the religious body constituting his church, is performing services for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, all services performed by the minister, irrespective of whether or not they involve the conduct of religious worship or the ministration of sacerdotal functions, are considered to be "in the exercise of his ministry" and therefore excepted from "employment."

(*d*) Where a minister is performing services for an organization which is neither a religious organization nor operated as an integral agency of a religious organization and the services are not performed pursuant to an assignment or designation by his ecclesiastical superiors, then only the services performed by the minister in the conduct of religious worship or the ministration of sacerdotal functions are considered to be "in the exercise of his ministry."

6. For purposes of income tax withholding, the foregoing rules and principles also are applicable in determining whether the remuneration of a minister is excluded from "wages" under section 1621(a) (9) of the Internal Revenue Code, as amended by the Social Security Act Amendments of 1950.

7. The included and excluded rules contained in sections 1426(c) and 1622(g) of the Internal Revenue Code should be applied where, during the same payroll period and for the same employer, a minister performs not only services "in the exercise of his ministry" but also services which are not "in the exercise of his ministry."

8. In the event you are unable to determine the status of a duly ordained, commissioned, or licensed minister in a particular case this office will give consideration to the matter upon the submission of complete information.

9. Correspondence relating to this mimeograph should refer to its number and to the symbols EmT: RR.

GEO. J. SCHOENEMAN,
Commissioner.

SECTION 1426: Definitions. 1951-2-13520
REGULATIONS 106, SECTION 402.204: Who are employees. Mim. 6566
(Also Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Section 403.204; Subchapter D (Collection of Income Tax at Source on Wages), Section 1621; Regulations 116, Section 405.104.)

Status of certain real estate and securities salesmen for purposes of the Federal employment taxes and the income tax withholding under section 1622 of the Internal Revenue Code.

Mimeograph 5504 (C. B. 1943, 1066) revoked and Mimeograph 5857 (unpublished) revoked.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 8, 1950.

Collectors of Internal Revenue and Others Concerned:

1. In Mimeograph 5504 (C. B. 1943, 1066), it is held that real estate salesmen who perform services for brokers under the customs and practices described therein are employees of the brokers for purposes of the employment taxes imposed by titles VIII and IX of the Social Security Act, the Federal Insurance Contributions Act, and the Federal Unemployment Tax Act.

2. It was decided by the United States Court of Appeals for the Eighth Circuit in the case of *Dimmitt-Rickhoff-Bayer Real Estate Co.* v. *James P. Finnegan, Collector of Internal Revenue*, that real estate salesmen were not employees of the company under applicable common-law tests and the remuneration paid to them was not subject to Federal employment taxes. In that case each salesman was engaged pursuant to a contract under which the company agreed that it would make available to the salesman the facilities of its office and its listings of property for sale; that it would assist him by advice and cooperation; that it would furnish him with necessary business cards, forms, and stationery; and that it would divide with him, according to a fixed schedule, any commissions resulting from sales which he procured. The company furnished each salesman a manual explaining its business policies in detail. The salesman, on his part, agreed to work diligently for the company. Each salesman provided the license required of him by State law, and paid the dues for his membership in the local real estate exchange. Each salesman provided his means of transportation and paid all expenses incurred by him in the solicitation of business. The salesmen generally reported to the office daily and attended weekly sales meetings, but this was not mandatory. They took turns in keeping the office open on Saturday afternoons and Sundays. They were not required to keep fixed hours. They were not permitted to sell real estate for other brokers nor to make sales in their own names and their own behalf. All sales were closed in the name of the company and all commissions on sales were paid to the company and were divided once a month among the salesmen who had earned them. On October 9, 1950, the Supreme Court of the United States refused certiorari to review this decision.

3. Real estate salesmen are not employees for purposes of employment taxes and income tax withholding under section 1622 of the Internal Revenue Code where the facts are substantially similar to those set forth in Mimeograph 5504, *supra*, or the Dimmitt case in the absence of other substantial evidence of an employee-employer relationship.

4. Mimeograph 5504, *supra*, is hereby revoked.

5. It has been the position of the Bureau generally, as stated in Mimeograph 5857 (unpublished), that securities salesmen who perform their services for dealers pursuant to regulatory legislation and the established customs and practices in selling securities are subject to a sufficient degree of control with respect to the manner and method of the performance of their services to constitute them employees of the dealers for purposes of the taxes imposed by the Federal Insurance Contributions Act and the Federal Unemployment Tax Act. This classification was applicable also for purposes of the income tax withholding under section 1622 of the Internal Revenue Code. This position was based upon the fact that regulatory laws in most of the States contemplate that a dealer, in order to sell or purchase unlisted or over-the-counter securities, stocks, and bonds, shall be licensed. The business of the dealer is regulated by the rules of the Federal Securities and Exchange Commission, the provisions of various security acts or "blue sky" regulations of the State or States in which the dealer may operate, and the regulations of various dealer organizations. The dealer has telephone and wire connections with other securities exchange members and in the furtherance of his business he engages salesmen. The dealer furnishes the salesmen with desk space, telephone and telegraph facilities, quotation, statistical and bookkeeping services, and clerical assistance. All accounts covering transactions handled by a salesman are carried in the name of the dealer who receives and disburses all moneys collectible and payable in connection with the business. The dealer requires the salesman to conform to his policies, the major portion of which are based upon Federal, State, or local stock exchange rules and regulations. The salesman, who is usually licensed to a particular dealer, uses the services furnished by the dealer and is compensated on a commission basis for the services performed by him in the purchase and sale of securities. He usually agrees to work diligently and to abide by all laws, rules, and regulations under which the dealer operates his business.

6. The rule stated in Mimeograph 5857 has been reconsidered and it is now the position of the Bureau that generally securities salesmen who perform their services under circumstances and conditions such as those present in the Dimmitt case are not employees for purposes of the employment taxes and the income tax withholding, in the absence of other substantial evidence of an employee-employer relationship.

7. Mimeograph 5857 (unpublished) is hereby revoked.

8. If doubt exists as to the applicability of this mimeograph in any case, the complete facts in the case should be presented to the Bureau with a request for a ruling.

9. Inquiries relative to the contents of this mimeograph should refer to the number hereof and to the symbols EmT : RR.

GEO. J. SCHOENEMAN,
Commissioner.

SECTION 1426: Definitions.
REGULATIONS 106, SECTION 402.217: Organizations exempt from income tax.

Waiver of exemption by 101(6) organizations, Regulations 106 amended. (See T. D. 5823, page 89.)

CHAPTER 9, SUBCHAPTER B.—RAILROAD RETIREMENT TAX ACT

SECTION 1501: Deduction of tax from compensation. 1951–2–13523
Mim. 6564
REGULATIONS 114, SECTION 411.303: Collection of, and liability for, employees' tax.
(Also Subchapter D (Collection of Income Tax at Source on Wages), Section 1622; Regulations 116, Section 405.201.)

Rate of exchange applicable for purposes of the Railroad Retirement Tax Act and the withholding of income tax in connection with the conversion of remuneration in terms of United States dollars, where employees are compensated in Canadian currency.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 5, 1950.

Collectors of Internal Revenue and Others Concerned:

1. Where employees are compensated in Canadian currency the employer, in filing employer's tax returns, Form CT–1, must report the amount of compensation involved in terms of United States currency. Prior to October 1, 1950, the computation of the amount of compensation involved in terms of United States dollars was made by the use of the official rate of exchange. After the employees' total remuneration had been converted into terms of United States dollars, liability was incurred for the taxes imposed by the Railroad Retirement Tax Act upon so much of the total remuneration paid as was not in excess of 300 United States dollars for any calendar month.

2. The Canadian Control Board released control of exchange rates for Canadian currency effective at the beginning of business on October 2, 1950. Inasmuch as an official rate of exchange no longer exists and international exchange transactions are now based upon a free rate, inquiries have been received as to what rate should now be used in connection with the conversion of Canadian dollars to American dollars for purposes of reporting the taxable compensation of employees on employer's tax returns, Form CT–1, when such employees are compensated in Canadian currency.

3. Employers, who compensate employees in Canadian currency and who find it impracticable to utilize the rate of exchange in effect on the date compensation is paid, may compute the amount of compensation paid in terms of United States dollars by using either the opening or closing exchange rate quoted by the Federal Reserve bank serving the employer's district on the first business day of each payroll period as the conversion factor for all compensation paid during such payroll period. After the employees' total remuneration has been converted into terms of United States dollars, liability is

incurred for the taxes imposed by the Railroad Retirement Tax Act upon so much of the total remuneration paid as is not in excess of $300 in terms of United States currency for any calendar month.

4. The rule set forth in the preceding paragraph relative to the conversion of Canadian currency to United States dollars also is applicable for purposes of the income tax withholding under section 1622 of the Internal Revenue Code, as amended. The $300 limitation mentioned therein pertains only to the taxes imposed by the Railroad Retirement Tax Act and has no application to the withholding of income tax under section 1622 of the Internal Revenue Code.

5. Correspondence relative to this mimeograph should refer to its number and to the symbols EmT: RR.

GEO. J. SCHOENEMAN,
Commissioner.

CHAPTER 9, SUBCHAPTER C.—FEDERAL UNEMPLOYMENT TAX ACT

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.204: Who are employees.

Status of real estate and securities salesmen. (See Mim. 6566, page 108.)

CHAPTER 9, SUBCHAPTER D.—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

REGULATIONS 116.

Periods of limitation upon assessment, collection, crediting, and refunding of tax changed by the Social Security Act Amendments of 1950. (See Mim. 6625, page 87.)

SECTIONS 1621, 1622, 1625, 1626, AND 1627. 1951-4-13545
REGULATIONS 116 (Sections 405.101, 405.102, 405.104, 405.105, 405.107, 405.201, 405.202, 405.203, 405.209, 405.501, 405.601, 405.805 amended, 405.607, and 405.703 added.) T. D. 5828

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER D, PART 405.—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

Regulations 116 amended to conform to the Social Security Act Amendments of 1950 and to the Revenue Act of 1950.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 116 [26 CFR, part 405] to the Social Security Act Amendments of 1950, approved August 28, 1950, and to the Revenue Act of 1950, approved September 23, 1950, such regulations are hereby amended as follows:

PARAGRAPH 1. There is inserted immediately after section 1621(a) of the Internal Revenue Code as set forth preceding section 405.101 [26 CFR 405.101] the following:

SEC. 202. INCOME TAX EXEMPTIONS FOR MEMBERS OF THE ARMED FORCES SERVING IN COMBAT AREAS. [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950.]

* * * * * * *

(b) WITHHOLDING OF INCOME TAX ON WAGES.—Effective with respect to wages paid after October 31, 1950, section 1621(a) (relating to definition of wages for income tax withholding purposes) is hereby amended by inserting before paragraph (2) thereof the following:

"(1) for active service as a member of the Armed Forces of the United States performed prior to January 1, 1952, in a month during any part of which such member performed service in a combat zone as determined under section 22(b)(13), or".

* * * * * * *

SEC. 221. RESIDENTS OF PUERTO RICO. [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950.]

* * * * * * *

(f) WITHHOLDING OF TAX ON WAGES.—

(1) Section 1621(a)(6) (relating to collection of income tax at sources of wages) is hereby amended to read as follows:

"(6) for services performed by a nonresident alien individual, other than (A) a resident of a contiguous country who enters and leaves the United States at frequent intervals, or (B) a resident of Puerto Rico if such services are performed as an employee of the United States or any agency thereof, or".

(2) Section 1621(a)(8) (relating to collection of income tax at source on wages) is hereby amended by striking out subparagraph (B) thereof and inserting in lieu thereof the following:

"(B) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico), if it is reasonable to believe that at least 80 per centum of the remuneration to be paid to the employee by such employer during the calendar year will be for such services, or

"(C) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within Puerto Rico, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico, or".

* * * * * * *

(k) EFFECTIVE DATE.—The amendments made by * * * subsection (f) shall be applicable with respect to wages paid on or after January 1, 1951 * * *.

SEC. 209(c) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950 [APPROVED AUGUST 28, 1950].

(c) (1) Section 1621(a)(4) of the Internal Revenue Code is amended to read as follows:

"(4) for service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (A) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or (B) such individual was regularly employed (as determined under clause (A)) by such employer in the performance of such service during the preceding calendar quarter, or".

(2) Section 1621(a) of the Internal Revenue Code is amended by striking out paragraph (9) thereof and inserting in lieu thereof the following:

"(9) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, or

"(10) (A) for services performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, or

"(B) for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back, or

"(11) for services not in the course of the employer's trade or business, to the extent paid in any medium other than cash, or

"(12) to, or on behalf of, an employee or his beneficiary (A) from or to a trust exempt from tax under section 165(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a) (3), (4), (5), and (6)."

(3) The amendments made by paragraphs (1) and (2) shall be applicable only with respect to remuneration paid after 1950.

Par. 2. There is inserted immediately after section 1426(h) as set forth preceding section 405.101 [26 CFR 405.101] the following:

SEC. 204 (d) AND (g) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950 [APPROVED AUGUST 28, 1950].

(d) Section 1426(h) of the Internal Revenue Code is amended to read as follows:

"(h) Agricultural Labor.—The term 'agricultural labor' includes all service 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 horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

"(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

"(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

"(4) (A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed.

"(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For the purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than twenty at any time during the calendar quarter in which such service is performed.

"(C) The provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

"(5) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

"As used in this section, the term 'farm' includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards."

* * * * * * *

(g) The amendments made by subsections (c), (d), (e), and (f) of this section shall be applicable only with respect to services performed after 1950.

PAR. 3. Section 405.101 [26 CFR 405.101] is amended as follows:

(A) By inserting in the first sentence of the second paragraph of section 405.101(b), immediately after the words "No withholding is required", the following: "prior to January 1, 1951,".

(B) By adding at the end of the second paragraph of section 405.101(b) the following: "As to withholding in respect of these payments on and after January 1, 1951, see section 405.102(m)."

(C) By striking out the first and second sentences of the third paragraph of section 405.101(b) and inserting in lieu thereof the following:

Retirement pay for service in the military or naval forces of the United States is subject to withholding unless such pay is excluded from gross income under section 22(b)(5). Where such retirement pay (not excluded from gross income under section 22(b)(5)) is paid to a nonresident alien individual, withholding is required only in the case of such amounts paid on or after January 1, 1951, to a nonresident alien individual who is a resident of Puerto Rico.

(D) By revising the last sentence of section 405.101(f) to read as follows:

It is immaterial that the Internal Revenue Code, or any Act of Congress, or the law of any State or of Puerto Rico, requires or permits such deductions and the payment of the amounts thereof to the United States, a State, a Territory, Puerto Rico, or the District of Columbia, or any political subdivision of any one or more of the foregoing.

(E) By inserting in the second sentence of section 405.101(h), immediately after the words "United States", the following: "(including Puerto Rico as if a part of the United States)".

(F) By inserting at the end of section 405.101(h) the following new sentence:

See section 405.102(h)(3) for the treatment of wages paid for services performed by a citizen of the United States in Puerto Rico.

PAR. 4. Section 405.102, as amended by Treasury Decision 5759 [C. B. 1949-2, 119], approved November 10, 1949 [26 CFR 405.102], is further amended as follows:

(A) By changing section 405.102(b) to read as follows:

(b) *Compensation of members of the Armed Forces of the United States.*—Remuneration paid before January 1, 1949, for services performed as a member of the Armed Forces of the United States is excepted from the definition of the term "wages." Remuneration paid on or after November 1, 1950, for active service, as a member of the Armed Forces of the United States, performed in a month during any part of which such member served in a combat zone (as determined under section 22(b)(13)) is excepted from the definition of the term "wages" and is, therefore, not subject to withholding. For the purposes of the exceptions, the Armed Forces of the United States include the regular and reserve components thereof. Pensions and retirement pay, if includible in gross income under chapter 1 of the Internal Revenue Code, are not within the exceptions from the definition of the term "wages" and hence constitute wages subject to withholding.

All other remuneration paid on or after January 1, 1949, for services performed as a member of the Armed Forces of the United States constitutes wages subject to withholding.

(B) By striking out section 405.102(c), and by inserting in lieu thereof the following subsection:

(c) *Remuneration paid for agricultural labor*—(1) *In General.*—The term "wages" does not include remuneration for services which constitute agricultural labor as defined in section 1426(h). The term "agricultural labor" as so defined includes services performed before January 1, 1951, of a character described in paragraphs (2), (3), (4), and (5) of this subsection, and includes services performed on or after January 1, 1951, of a character described in paragraphs (2), (3), (4), (5), and (6) of this subsection. In general, however, the term "agricultural labor" does not include services performed in connection with forestry, lumbering, or landscaping.

The term "farm" as used in the regulations in this subsection includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes (for example, display, storage, and fabrication of wreaths, corsages, and bouquets) do not constitute "farms."

(2) *Services described in section 1426(h)(1).*—Remuneration paid for services performed on a farm by an employee of any person in connection with any of the following activities is excepted as remuneration for agricultural labor:

(i) The cultivation of the soil;

(ii) The raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or

(iii) The raising or harvesting of any other agricultural or horticultural commodity.

Remuneration paid for services performed on or after January 1, 1951, in connection with the production or harvesting of maple sap, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry is excepted only if such services are performed on a farm. Thus, services performed in connection with the operation of a hatchery, if not operated as part of a poultry or other farm, do not constitute agricultural labor. Services performed in the processing (as distinguished from the gathering) of maple sap into maple sirup or maple sugar do not constitute agricultural labor, even though such services are performed on a farm. See paragraph (4) of this subsection for provisions relating to such services performed before January 1, 1951.

(3) *Services described in section 1426(h)(2).*—The remuneration paid for the following services performed by an employee in the employ of the owner or tenant or other operator of one or more farms is excepted as remuneration for agricultural labor, provided the major part of such services is performed on a farm:

(i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or

(ii) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane.

The services described in (i) above may include, for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semiskilled workers, which contribute in any way to the conduct of the farm or farms, as such, operated by the person employing them, as distinguished from any other enterprise in which such person may be engaged. Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, the exception does not extend to remuneration paid for services performed by employees of a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties.

(4) *Services described in section 1426(h)(3)*.—Remuneration paid for services performed by an employee in the employ of any person in connection with any of the following operations is excepted as remuneration for agricultural labor without regard to the place where such services are performed:

(i) The ginning of cotton;

(ii) The hatching of poultry, if such services are performed before January 1, 1951;

(iii) The raising or harvesting of mushrooms, if such services are performed before January 1, 1951;

(iv) The operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying or storing water for farming purposes, but, in the case of such services performed on or after January 1, 1951, only if such ditches, canals, reservoirs, or waterways are not owned or operated for profit;

(v) The production or harvesting of maple sap or the processing of maple sap into maple sirup or maple sugar (but not the subsequent blending or other processing of such sirup or sugar with other products), if such services are performed prior to January 1, 1951; or

(vi) The production or harvesting of crude gum (oleoresin) from a living tree or the processing of such crude gum into gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such crude gum.

See paragraph (2) of this subsection for provisions relating to services performed on or after January 1, 1951, in connection with the hatching of poultry, the raising or harvesting of mushrooms, or the production or harvesting of maple sap.

(5) *Services described in section 1426(h)(4)*.—(i) Remuneration paid for services performed prior to January 1, 1951, by an employee in the employ of a farmer or a farmers' cooperative organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity, other than fruits and vegetables (see subdivision (ii) below), produced by such farmer or farmer-members of such organization or group of farmers is excepted, provided such services are performed as an incident to ordinary farming operations.

Generally services are performed "as an incident to ordinary farming operations" within the meaning of this paragraph if they are services of the character ordinarily performed by the employees of a farmer or of a farmers' cooperative organization or group as a prerequisite to the marketing, in its unmanufactured state, of any agricultural or horticultural commodity produced by such farmer or by the members of such farmers' organization or group. Services performed by employees of such farmer or farmers' organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of commodities produced by persons other than such farmer or members of such farmers' organization or group are not performed "as an incident to ordinary farming operations."

(ii) Remuneration paid for services performed prior to January 1, 1951, by an employee in the employ of any person in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of fruits and vegetables, whether or not of a perishable nature, is excepted as remuneration for agricultural labor, provided such services are performed as an incident to the preparation of such fruits and vegetables for market. For example, if services in the sorting, grading, or storing of fruits, or in the cleaning of beans, are performed as an incident to their preparation for market, remuneration paid for such services may be excepted whether the services are performed in the employ of a farmer, a farmers' cooperative, or a commercial handler of such commodities.

(iii) Remuneration paid for services performed on or after January 1, 1951, by an employee in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity is excepted as remuneration for agricultural labor if—

(A) Such services are performed by the employee in the employ of an operator of a farm or in the employ of a group of operators of farms (other than a cooperative organization);

(B) Such services are performed with respect to the commodity in its unmanufactured state; and

(C) Such operator produced more than one-half of the commodity with respect to which such services are performed during the pay period, or such group of operators produced all of the commodity with respect to which such services are performed during the pay period.

The term "operator of a farm" as used in this paragraph means an owner, tenant, or other person, in possession of a farm and engaged in the operation of such farm.

The services described in this paragraph do not constitute agricultural labor if performed in the employ of a cooperative organization. The term "organization" includes corporations, joint-stock companies, and associations which are treated as corporations under the Internal Revenue Code. For the purposes of this paragraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar quarter in which the services involved are performed.

Processing services which change the commodity from its raw or natural state do not constitute agricultural labor. For example, the extraction of juices from fruits or vegetables is a processing operation which changes the character of the fruits or vegetables from their raw or natural state and, therefore, does not constitute agricultural labor. On the other hand, services rendered in the cutting and drying of fruits or vegetables are processing operations which do not change the character of the fruits or vegetables and, therefore, constitute agricultural labor, if the other requisite conditions are met. Services performed with respect to a commodity after its character has been changed from its raw or natural state by a processing operation do not constitute agricultural labor.

The term "commodity" refers to a single agricultural or horticultural product, for example, all apples are to be treated as a single commodity, while apples and peaches are to be treated as two separate commodities. The services with respect to each such commodity are to be considered separately in determining whether the condition set forth in (C) above has been satisfied. The portion of the commodity produced by an operator or group of operators with respect to which the services described in this subparagraph are performed by a particular employee shall be determined on the basis of the pay period in which such services were performed by such employee.

(iv) The services described in subdivisions (i), (ii), and (iii), above, do not include services performed in connection with commercial canning or commercial freezing, or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the services described in such subdivisions must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm, they may be within the provisions of paragraph (3) of this subsection.

(6) *Services described in section 1426(h)(5).*—Remuneration paid for services not in the course of the employer's trade or business or for domestic services in a private home of the employer is excepted as remuneration for agricultural labor if such services are performed on or after January 1, 1951, on a farm operated for profit. For provisions with respect to remuneration paid for such services performed before January 1, 1951, see subsections (d) and (e) of this

section. Generally, a farm is not operated for profit if it is occupied by the employer primarily for residential purposes, or is used primarily for the pleasure of the employer or his family such as for the entertainment of guests or as a hobby of the employer or his family.

(C) By revising the heading of section 405.102(e) to read as follows: "(e) *Remuneration for service not in the course of employer's trade or business*—(1) *Payments made before 1951 for casual labor.*"

(D) By inserting immediately after the provisions of section 405.102(e) as so amended the following:

(2) *Payments made after 1950.*—(i) To the extent the compensation paid after 1950 for services not in the course of the employer's trade or business is paid in any medium other than cash, it is not subject to withholding under section 1622. Cash remuneration paid after 1950 for service not in the course of the employer's trade or business performed in any calendar quarter by an employee is excepted from the term "wages" if—

(A) the cash remuneration paid for such service is less than $50, or

(B) such service is performed by an individual who is not regularly employed by such employer to perform such service.

(ii) Cash remuneration for service not in the course of the employer's trade or business performed in any calendar quarter by an employee does not come within the exception if both of the following conditions are met:

(A) the cash remuneration paid for such service is $50 or more, and

(B) such service is performed by an individual who is regularly employed by such employer to perform such service.

(iii) An individual performing service not in the course of the employer's trade or business is deemed to be regularly employed by such employer during the calendar quarter only if—

(A) on each of some 24 days during such quarter such individual performs, for such employer for some portion of the day, service not in the course of the employer's trade or business, or

(B) such individual was regularly employed (as determined under clause (A)) by such employer in the performance of such service during the preceding calendar quarter.

(iv) The cash test refers to the cash paid for services performed during a calendar quarter, regardless of when paid. The term "cash remuneration" includes checks and other monetary mediums of exchange.

The term "not in the course of the employer's trade or business" includes service that does not promote or advance the employer's trade or business. Remuneration paid for service performed in the course of the employer's trade or business does not come within the exception from the term "wages."

Remuneration paid for services performed for a corporation does not come within this exception.

For provisions relating to domestic service and to service performed on a farm operated for profit, see section 405.102 (c) and (d).

(E) By inserting in the last sentence of the first paragraph of section 405.102(f)(1), immediately before the words "even though such corporation", the words "or of Puerto Rico".

(F) By striking out the words "Canada and Mexico" in the first sentence of the first paragraph of section 405.102(g) and inserting in lieu thereof the following: "Canada, Mexico, and Puerto Rico,".

(G) By inserting at the end of section 405.102(g) the following new paragraph:

Withholding is not required in the case of wages paid to a nonresident alien individual for services performed in Puerto Rico for an employer (other than the United States or any agency thereof), even though such alien individual is a resident of Puerto Rico at the time when such services are performed. Wages paid for services performed by a nonresident alien individual who is a resident of Puerto Rico are subject to withholding if such services are performed as an employee of the United States or any agency thereof. The place of performance of such services is immaterial, provided such alien individual is a resident of Puerto Rico at the time of performance. Wages representing retired pay for service in the military or naval forces of the United States are subject to withholding under the limitations specified in section 405.101(b), in the case of an alien resident of Puerto Rico.

(H) By changing the heading of section 405.102(h)(2) to read as follows: "(2) *Remuneration paid on or after January 1, 1948, to citizens resident in foreign countries.*"

(I) By striking out of section 405.102(h)(2) the fifth paragraph, which paragraph begins with the words "Remuneration paid on or after January 1, 1948, for services".

(J) By inserting immediately after the last paragraph of section 405.102(h)(2) the following:

(3) *Remuneration paid on or after January 1, 1948, to citizens in possessions of the United States.*—Remuneration paid on or after January 1, 1948, and before January 1, 1951, for services for an employer performed within a possession of the United States by a citizen of the United States is not subject to withholding, if it is reasonable to believe that at least 80 percent of the remuneration to be paid to the employee by such employer during the calendar year will be for such services.

Remuneration paid on or after January 1, 1951, for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States, other than Puerto Rico, is not subject to withholding, if it is reasonable to believe that at least 80 percent of the remuneration to be paid to the employee by such employer during the calendar year will be for such services.

Withholding is required in the case of remuneration paid on or after January 1, 1951, to a citizen of the United States for services performed as an employee of the United States or any agency thereof in any possession of the United States, including Puerto Rico.

Remuneration paid on or after January 1, 1951, for services performed within Puerto Rico for an employer (other than the United States or any agency thereof) by a citizen of the United States is not subject to withholding, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico.

The reasonable belief mentioned in section 1621(a)(8)(C) with respect to the employee's bona fide residence in Puerto Rico may be based upon any evidence reasonably sufficient to induce such belief, even though such evidence might be insufficient, upon closer examination by the Commissioner or the courts, finally to establish such bona fide residence in Puerto Rico so as to justify the exemption from tax provided for in section 116(1).

In addition, the employer may, in the absence of cause for a reasonable belief to the contrary, presume that an employee will be a bona fide resident of Puerto Rico during the entire calendar year—

(i) in every case except where the employee is known by the employer to have maintained his abode at a place outside Puerto Rico at some time during the current or the preceding calendar year; or

(ii) in every case where the employee files with the employer a statement (containing a declaration under the penalties of perjury that such statement is true to the best of the employee's knowledge and belief) that such employee has at all times during the current calendar year been a bona fide resident of Puerto Rico and that he intends to remain a bona fide resident of Puerto Rico during the entire remaining portion of such current calendar year.

The statement shall be retained by the employer and shall be available at all times for inspection by internal revenue officers.

(K) By revising the heading of section 405.102(i) to read as follows: "(i) *Compensation paid before 1951 for services performed as a minister of the gospel.*"

(L) By inserting in the first sentence of section 405.102(i), immediately after the word "Compensation", the following "paid before 1951".

(M) By inserting immediately after the provisions of section 405.102(i) the following:

(j) *Compensation paid after 1950 for services performed by a minister or by a member of a religious order.*—Compensation paid after 1950 for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, or by a member of a religious order in the exercise of duties required by such order, is not subject to withholding under section 1622. The duties of ministers include the ministration of sacerdotal functions and the conduct of religious worship, and the control, conduct, and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations), under the authority of a religious body constituting a church or church denomination.

(k) *Compensation for delivery or distribution of newspapers or shopping news.*—Compensation paid after 1950 for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution (as, for example, by a regional distributor) to any point for subsequent delivery or distribution, is not subject to withholding under section 1622. Thus, the compensation, irrespective of the form thereof, for services performed by an individual under the age of 18 in making house-to-house delivery or sale of newspapers or shopping news, including handbills and other similar types of advertising material, is excepted. The compensation for incidental services by the individual who makes a house-to-house delivery, such as services in assembling newspapers, are considered to be within the exception. The exception continues only during the time the individual is under the age of 18.

(l) *Compensation for sale of newspapers or magazines.*—Compensation paid after 1950 for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are to be charged to him, is not subject to withholding under section 1622. This compensation is excepted whether or not the individual is guaranteed a minimum amount of compensation for such services or is entitled to be credited with the unsold newspapers or magazines turned back. Moreover, the compensation is excepted without regard to the age of the individual. Compensation for services performed other than at the time of sale to the ultimate consumer are not within the exception. Thus, the compensation for the services of a regional distributor which are antecedent to but not immediately part of the sale to the ultimate consumer is not within the exception. However, compensation for incidental services by the individual who makes the sale to the ultimate consumer, such as services in assembling newspapers or in taking newspapers or magazines to the place of sale, is considered to be within the exception.

(m) *Remuneration from certain trusts or annuities.*—The remuneration paid after 1950 to or on behalf of an employee or his beneficiary, from a trust exempt from tax under section 165(a) at the time of such payment, unless such payment is made to an employee of the trust as remuneration for services performed as such employee and not as a beneficiary of the trust, and the remuneration paid after 1950 to or on behalf of an employee or his beneficiary, under an annuity plan which meets the requirements of section 165(a) (3), (4), (5), and (6) at the time of such payment, is not subject to withholding under section 1622. Remuneration paid after 1950 on behalf of an employee or his beneficiary to a trust exempt from tax under section 165(a) at the time of such payment (subject to the exception in respect of an employee of the trust) is not subject to withholding at the time of such payment under section 1622. Remuneration paid after 1950 on behalf of an employee or his beneficiary to an annuity plan which meets the requirements of section 165(a) (3), (4), (5), and (6) at the time of such payment is not subject to withholding at the time of such payment under section 1622.

PAR. 5. Section 405.104 [26 CFR 405.104] is amended by changing the second sentence of the first paragraph thereof to read as follows:

The term includes officers and employees, whether elected or appointed, of the United States, a State, Territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

PAR. 6. Section 405.105 [26 CFR 405.105] is amended as follows:

(A) By inserting in the fourth paragraph of section 405.105, immediately after the words "United States", the following: "(including Puerto Rico as if a part of the United States)".

(B) By inserting in the last paragraph of section 405.105, immediately after "the States, Territories," the following: "Puerto Rico,".

PAR. 7. Section 405.107, as amended by Treasury Decision 5760 [C. B. 1949-2, 123], approved November 10, 1949 [26 CFR 405.107], is further amended as follows:

(A) By redesignating (e) of such section as (f).

(B) By inserting immediately after section 405.107(d) the following:

(e) The term "military or naval forces of the United States" and the term "Armed Forces of the United States" each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force. The terms also include the Coast Guard. The members of such forces include commissioned officers and the personnel below the grade of commissioned officer in such forces.

PAR. 8. There is inserted immediately preceding section 405.201 [26 CFR 405.201] the following:

SEC. 141. PERCENTAGE METHOD OF WITHHOLDING. [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950.]

Section 1622(a) (relating to percentage method of withholding) is hereby amended by striking out "15 per centum" and inserting in lieu thereof "18 per centum".

SEC. 142. WAGE BRACKET WITHHOLDING. [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950.]

The tables contained in section 1622(c)(1) (relating to wage bracket withholding) are hereby amended to read as follows:

"If the payroll period with respect to an employee is weekly

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$13	18% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$13	$14	$2.40	.10	0	0	0	0	0	0	0	0	0
$14	$15	2.60	.30	0	0	0	0	0	0	0	0	0
$15	$16	2.80	.50	0	0	0	0	0	0	0	0	0
$16	$17	3.00	.70	0	0	0	0	0	0	0	0	0
$17	$18	3.20	.80	0	0	0	0	0	0	0	0	0
$18	$19	3.30	1.00	0	0	0	0	0	0	0	0	0
$19	$20	3.50	1.20	0	0	0	0	0	0	0	0	0
$20	$21	3.70	1.40	0	0	0	0	0	0	0	0	0
$21	$22	3.90	1.60	0	0	0	0	0	0	0	0	0
$22	$23	4.10	1.70	0	0	0	0	0	0	0	0	0
$23	$24	4.20	1.90	0	0	0	0	0	0	0	0	0
$24	$25	4.40	2.10	0	0	0	0	0	0	0	0	0
$25	$26	4.60	2.30	0	0	0	0	0	0	0	0	0
$26	$27	4.80	2.50	.20	0	0	0	0	0	0	0	0
$27	$28	5.00	2.60	.30	0	0	0	0	0	0	0	0
$28	$29	5.10	2.80	.50	0	0	0	0	0	0	0	0
$29	$30	5.30	3.00	.70	0	0	0	0	0	0	0	0
$30	$31	5.50	3.20	.90	0	0	0	0	0	0	0	0
$31	$32	5.70	3.40	1.10	0	0	0	0	0	0	0	0

"If the payroll period with respect to an employee is weekly—Continued

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$32	$33	$5.90	$3.50	$1.20	$0	$0	$0	$0	$0	$0	$0	$0
$33	$34	6.00	3.70	1.40	0	0	0	0	0	0	0	0
$34	$35	6.20	3.90	1.60	0	0	0	0	0	0	0	0
$35	$36	6.40	4.10	1.80	0	0	0	0	0	0	0	0
$36	$37	6.60	4.30	2.00	0	0	0	0	0	0	0	0
$37	$38	6.80	4.40	2.10	0	0	0	0	0	0	0	0
$38	$39	6.90	4.60	2.30	0	0	0	0	0	0	0	0
$39	$40	7.10	4.80	2.50	.20	0	0	0	0	0	0	0
$40	$41	7.30	5.00	2.70	.40	0	0	0	0	0	0	0
$41	$42	7.50	5.20	2.90	.50	0	0	0	0	0	0	0
$42	$43	7.70	5.30	3.00	.70	0	0	0	0	0	0	0
$43	$44	7.80	5.50	3.20	.90	0	0	0	0	0	0	0
$44	$45	8.00	5.70	3.40	1.10	0	0	0	0	0	0	0
$45	$46	8.20	5.90	3.60	1.30	0	0	0	0	0	0	0
$46	$47	8.40	6.10	3.80	1.40	0	0	0	0	0	0	0
$47	$48	8.60	6.20	3.90	1.60	0	0	0	0	0	0	0
$48	$49	8.70	6.40	4.10	1.80	0	0	0	0	0	0	0
$49	$50	8.90	6.60	4.30	2.00	0	0	0	0	0	0	0
$50	$51	9.10	6.80	4.50	2.20	0	0	0	0	0	0	0
$51	$52	9.30	7.00	4.70	2.30	0	0	0	0	0	0	0
$52	$53	9.50	7.10	4.80	2.50	.20	0	0	0	0	0	0
$53	$54	9.60	7.30	5.00	2.70	.40	0	0	0	0	0	0
$54	$55	9.80	7.50	5.20	2.90	.60	0	0	0	0	0	0
$55	$56	10.00	7.70	5.40	3.10	.80	0	0	0	0	0	0
$56	$57	10.20	7.90	5.60	3.20	.90	0	0	0	0	0	0
$57	$58	10.40	8.00	5.70	3.40	1.10	0	0	0	0	0	0
$58	$59	10.50	8.20	5.90	3.60	1.30	0	0	0	0	0	0
$59	$60	10.70	8.40	6.10	3.80	1.50	0	0	0	0	0	0
$60	$62	11.00	8.70	6.40	4.10	1.70	0	0	0	0	0	0
$62	$64	11.30	9.00	6.70	4.40	2.10	0	0	0	0	0	0
$64	$66	11.70	9.40	7.10	4.80	2.50	.20	0	0	0	0	0
$66	$68	12.10	9.80	7.40	5.10	2.80	.50	0	0	0	0	0
$68	$70	12.40	10.10	7.80	5.50	3.20	.90	0	0	0	0	0
$70	$72	12.80	10.50	8.20	5.90	3.50	1.20	0	0	0	0	0
$72	$74	13.10	10.80	8.50	6.20	3.90	1.60	0	0	0	0	0
$74	$76	13.50	11.20	8.90	6.60	4.30	2.00	0	0	0	0	0
$76	$78	13.90	11.60	9.20	6.90	4.60	2.30	0	0	0	0	0
$78	$80	14.20	11.90	9.60	7.30	5.00	2.70	.40	0	0	0	0
$80	$82	14.60	12.30	10.00	7.70	5.30	3.00	.70	0	0	0	0
$82	$84	14.90	12.60	10.30	8.00	5.70	3.40	1.10	0	0	0	0
$84	$86	15.30	13.00	10.70	8.40	6.10	3.80	1.50	0	0	0	0
$86	$88	15.70	13.40	11.00	8.70	6.40	4.10	1.80	0	0	0	0
$88	$90	16.00	13.70	11.40	9.10	6.80	4.50	2.20	0	0	0	0
$90	$92	16.40	14.10	11.80	9.50	7.10	4.80	2.50	.20	0	0	0
$92	$94	16.70	14.40	12.10	9.80	7.50	5.20	2.90	.60	0	0	0
$94	$96	17.10	14.80	12.50	10.20	7.90	5.60	3.30	.90	0	0	0
$96	$98	17.50	15.20	12.80	10.50	8.20	5.90	3.60	1.30	0	0	0
$98	$100	17.80	15.50	13.20	10.90	8.60	6.30	4.00	1.70	0	0	0
$100	$105	18.50	16.10	13.80	11.50	9.20	6.90	4.60	2.30	0	0	0
$105	$110	19.40	17.00	14.70	12.40	10.10	7.80	5.50	3.20	.90	0	0
$110	$115	20.30	17.90	15.60	13.30	11.00	8.70	6.40	4.10	1.80	0	0
$115	$120	21.20	18.80	16.50	14.20	11.90	9.60	7.30	5.00	2.70	.40	0
$120	$125	22.10	19.70	17.40	15.10	12.80	10.50	8.20	5.90	3.60	1.30	0
$125	$130	23.00	20.60	18.30	16.00	13.70	11.40	9.10	6.80	4.50	2.20	0
$130	$135	23.90	21.50	19.20	16.90	14.60	12.30	10.00	7.70	5.40	3.10	.80
$135	$140	24.80	22.40	20.10	17.80	15.50	13.20	10.90	8.60	6.30	4.00	1.70
$140	$145	25.70	23.30	21.00	18.70	16.40	14.10	11.80	9.50	7.20	4.90	2.60
$145	$150	26.60	24.20	21.90	19.60	17.30	15.00	12.70	10.40	8.10	5.80	3.50
$150	$160	27.90	25.60	23.30	21.00	18.70	16.40	14.10	11.70	9.40	7.10	4.80
$160	$170	29.70	27.40	25.10	22.80	20.50	18.20	15.90	13.50	11.20	8.90	6.60
$170	$180	31.50	29.20	26.90	24.60	22.30	20.00	17.70	15.30	13.00	10.70	8.40
$180	$190	33.30	31.00	28.70	26.40	24.10	21.80	19.50	17.10	14.80	12.50	10.20
$190	$200	35.10	32.80	30.50	28.20	25.90	23.60	21.30	18.90	16.60	14.30	12.00
		18 percent of the excess over $200 plus—										
$200 and over		36.00	33.70	31.40	29.10	26.80	24.50	22.20	19.80	17.50	15.20	12.90

"If the payroll period with respect to an employee is biweekly

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$26	18% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$26	$28	$4.90	.20	0	0	0	0	0	0	0	0	0
$28	$30	5.20	.60	0	0	0	0	0	0	0	0	0
$30	$32	5.60	1.00	0	0	0	0	0	0	0	0	0
$32	$34	5.90	1.30	0	0	0	0	0	0	0	0	0
$34	$36	6.30	1.70	0	0	0	0	0	0	0	0	0
$36	$38	6.70	2.00	0	0	0	0	0	0	0	0	0
$38	$40	7.00	2.40	0	0	0	0	0	0	0	0	0
$40	$42	7.40	2.80	0	0	0	0	0	0	0	0	0
$42	$44	7.70	3.10	0	0	0	0	0	0	0	0	0
$44	$46	8.10	3.50	0	0	0	0	0	0	0	0	0
$46	$48	8.50	3.80	0	0	0	0	0	0	0	0	0
$48	$50	8.80	4.20	0	0	0	0	0	0	0	0	0
$50	$52	9.20	4.60	0	0	0	0	0	0	0	0	0
$52	$54	9.50	4.90	.30	0	0	0	0	0	0	0	0
$54	$56	9.90	5.30	.70	0	0	0	0	0	0	0	0
$56	$58	10.30	5.60	1.00	0	0	0	0	0	0	0	0
$58	$60	10.60	6.00	1.40	0	0	0	0	0	0	0	0
$60	$62	11.00	6.40	1.70	0	0	0	0	0	0	0	0
$62	$64	11.30	6.70	2.10	0	0	0	0	0	0	0	0
$64	$66	11.70	7.10	2.50	0	0	0	0	0	0	0	0
$66	$68	12.10	7.40	2.80	0	0	0	0	0	0	0	0
$68	$70	12.40	7.80	3.20	0	0	0	0	0	0	0	0
$70	$72	12.80	8.20	3.50	0	0	0	0	0	0	0	0
$72	$74	13.10	8.50	3.90	0	0	0	0	0	0	0	0
$74	$76	13.50	8.90	4.30	0	0	0	0	0	0	0	0
$76	$78	13.90	9.20	4.60	0	0	0	0	0	0	0	0
$78	$80	14.20	9.60	5.00	.40	0	0	0	0	0	0	0
$80	$82	14.60	10.00	5.30	.70	0	0	0	0	0	0	0
$82	$84	14.90	10.30	5.70	1.10	0	0	0	0	0	0	0
$84	$86	15.30	10.70	6.10	1.50	0	0	0	0	0	0	0
$86	$88	15.70	11.00	6.40	1.80	0	0	0	0	0	0	0
$88	$90	16.00	11.40	6.80	2.20	0	0	0	0	0	0	0
$90	$92	16.40	11.80	7.10	2.50	0	0	0	0	0	0	0
$92	$94	16.70	12.10	7.50	2.90	0	0	0	0	0	0	0
$94	$96	17.10	12.50	7.90	3.30	0	0	0	0	0	0	0
$96	$98	17.50	12.80	8.20	3.60	0	0	0	0	0	0	0
$98	$100	17.80	13.20	8.60	4.00	0	0	0	0	0	0	0
$100	$102	18.20	13.60	8.90	4.30	0	0	0	0	0	0	0
$102	$104	18.50	13.90	9.30	4.70	.10	0	0	0	0	0	0
$104	$106	18.90	14.30	9.70	5.10	.40	0	0	0	0	0	0
$106	$108	19.30	14.60	10.00	5.40	.80	0	0	0	0	0	0
$108	$110	19.60	15.00	10.40	5.80	1.20	0	0	0	0	0	0
$110	$112	20.00	15.40	10.70	6.10	1.50	0	0	0	0	0	0
$112	$114	20.30	15.70	11.10	6.50	1.90	0	0	0	0	0	0
$114	$116	20.70	16.10	11.50	6.90	2.20	0	0	0	0	0	0
$116	$118	21.10	16.40	11.80	7.20	2.60	0	0	0	0	0	0
$118	$120	21.40	16.80	12.20	7.60	3.00	0	0	0	0	0	0
$120	$124	22.00	17.30	12.70	8.10	3.50	0	0	0	0	0	0
$124	$128	22.70	18.10	13.40	8.80	4.20	0	0	0	0	0	0
$128	$132	23.40	18.80	14.20	9.60	4.90	.30	0	0	0	0	0
$132	$136	24.10	19.50	14.90	10.30	5.70	1.00	0	0	0	0	0
$136	$140	24.80	20.20	15.60	11.00	6.40	1.80	0	0	0	0	0
$140	$144	25.60	20.90	16.30	11.70	7.10	2.50	0	0	0	0	0
$144	$148	26.30	21.70	17.00	12.40	7.80	3.20	0	0	0	0	0
$148	$152	27.00	22.40	17.80	13.20	8.50	3.90	0	0	0	0	0
$152	$156	27.70	23.10	18.50	13.90	9.30	4.60	0	0	0	0	0
$156	$160	28.40	23.80	19.20	14.60	10.00	5.40	.70	0	0	0	0
$160	$164	29.20	24.50	19.90	15.30	10.70	6.10	1.50	0	0	0	0
$164	$168	29.90	25.30	20.60	16.00	11.40	6.80	2.20	0	0	0	0
$168	$172	30.60	26.00	21.40	16.80	12.10	7.50	2.90	0	0	0	0
$172	$176	31.30	26.70	22.10	17.50	12.90	8.20	3.60	0	0	0	0
$176	$180	32.00	27.40	22.80	18.20	13.60	9.00	4.30	0	0	0	0
$180	$184	32.80	28.10	23.50	18.90	14.30	9.70	5.10	.50	0	0	0
$184	$188	33.50	28.90	24.20	19.60	15.00	10.40	5.80	1.20	0	0	0
$188	$192	34.20	29.60	25.00	20.40	15.70	11.10	6.50	1.90	0	0	0
$192	$196	34.90	30.30	25.70	21.10	16.50	11.80	7.20	2.60	0	0	0

"If the payroll period with respect to an employee is biweekly—Continued

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$196	$200	$35.60	$31.00	$26.40	$21.80	$17.20	$12.60	$7.90	$3.30	$0	$0	$0
$200	$210	36.90	32.30	27.70	23.10	18.40	13.80	9.20	4.60	0	0	0
$210	$220	38.70	34.10	29.50	24.90	20.20	15.60	11.00	6.40	1.80	0	0
$220	$230	40.50	35.90	31.30	26.70	22.00	17.40	12.80	8.20	3.60	0	0
$230	$240	42.30	37.70	33.10	28.50	23.80	19.20	14.60	10.00	5.40	.80	0
$240	$250	44.10	39.50	34.90	30.30	25.60	21.00	16.40	11.80	7.20	2.60	0
$250	$260	45.90	41.30	36.70	32.10	27.40	22.80	18.20	13.60	9.00	4.40	0
$260	$270	47.70	43.10	38.50	33.90	29.20	24.60	20.00	15.40	10.80	6.20	1.50
$270	$280	49.50	44.90	40.30	35.70	31.00	26.40	21.80	17.20	12.60	8.00	3.30
$280	$290	51.30	46.70	42.10	37.50	32.80	28.20	23.60	19.00	14.40	9.80	5.10
$290	$300	53.10	48.50	43.90	39.30	34.60	30.00	25.40	20.80	16.20	11.60	6.90
$300	$320	55.80	51.20	46.60	42.00	37.30	32.70	28.10	23.50	18.90	14.30	9.60
$320	$340	59.40	54.80	50.20	45.60	40.90	36.30	31.70	27.10	22.50	17.90	13.20
$340	$360	63.00	58.40	53.80	49.20	44.50	39.90	35.30	30.70	26.10	21.50	16.80
$360	$380	66.60	62.00	57.40	52.80	48.10	43.50	38.90	34.30	29.70	25.10	20.40
$380	$400	70.20	65.60	61.00	56.40	51.70	47.10	42.50	37.90	33.30	28.70	24.00
		18 percent of the excess over $400 plus—										
$400 and over		72.00	67.40	62.80	58.20	53.50	48.90	44.30	39.70	35.10	30.50	25.80

"If the payroll period with respect to an employee is semimonthly

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$28	18% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$28	$30	$5.20	.20	0	0	0	0	0	0	0	0	0
$30	$32	5.60	.60	0	0	0	0	0	0	0	0	0
$32	$34	5.90	.90	0	0	0	0	0	0	0	0	0
$34	$36	6.30	1.30	0	0	0	0	0	0	0	0	0
$36	$38	6.70	1.70	0	0	0	0	0	0	0	0	0
$38	$40	7.00	2.00	0	0	0	0	0	0	0	0	0
$40	$42	7.40	2.40	0	0	0	0	0	0	0	0	0
$42	$44	7.70	2.70	0	0	0	0	0	0	0	0	0
$44	$46	8.10	3.10	0	0	0	0	0	0	0	0	0
$46	$48	8.50	3.50	0	0	0	0	0	0	0	0	0
$48	$50	8.80	3.80	0	0	0	0	0	0	0	0	0
$50	$52	9.20	4.20	0	0	0	0	0	0	0	0	0
$52	$54	9.50	4.50	0	0	0	0	0	0	0	0	0
$54	$56	9.90	4.90	0	0	0	0	0	0	0	0	0
$56	$58	10.30	5.30	.30	0	0	0	0	0	0	0	0
$58	$60	10.60	5.60	.60	0	0	0	0	0	0	0	0
$60	$62	11.00	6.00	1.00	0	0	0	0	0	0	0	0
$62	$64	11.30	6.30	1.30	0	0	0	0	0	0	0	0
$64	$66	11.70	6.70	1.70	0	0	0	0	0	0	0	0
$66	$68	12.10	7.10	2.10	0	0	0	0	0	0	0	0
$68	$70	12.40	7.40	2.40	0	0	0	0	0	0	0	0
$70	$72	12.80	7.80	2.80	0	0	0	0	0	0	0	0
$72	$74	13.10	8.10	3.10	0	0	0	0	0	0	0	0
$74	$76	13.50	8.50	3.50	0	0	0	0	0	0	0	0
$76	$78	13.90	8.90	3.90	0	0	0	0	0	0	0	0
$78	$80	14.20	9.20	4.20	0	0	0	0	0	0	0	0

"*If the payroll period with respect to an employee is semimonthly*—Continued

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$80	$82	$14.60	$9.60	$4.60	$0	$0	$0	$0	$0	$0	$0	$0
$82	$84	14.90	9.90	4.90	0	0	0	0	0	0	0	0
$84	$86	15.30	10.30	5.30	.30	0	0	0	0	0	0	0
$86	$88	15.70	10.70	5.70	.70	0	0	0	0	0	0	0
$88	$90	16.00	11.00	6.00	1.00	0	0	0	0	0	0	0
$90	$92	16.40	11.40	6.40	1.40	0	0	0	0	0	0	0
$92	$94	16.70	11.70	6.70	1.70	0	0	0	0	0	0	0
$94	$96	17.10	12.10	7.10	2.10	0	0	0	0	0	0	0
$96	$98	17.50	12.50	7.50	2.50	0	0	0	0	0	0	0
$98	$100	17.80	12.80	7.80	2.80	0	0	0	0	0	0	0
$100	$102	18.20	13.20	8.20	3.20	0	0	0	0	0	0	0
$102	$104	18.50	13.50	8.50	3.50	0	0	0	0	0	0	0
$104	$106	18.90	13.90	8.90	3.90	0	0	0	0	0	0	0
$106	$108	19.30	14.30	9.30	4.30	0	0	0	0	0	0	0
$108	$110	19.60	14.60	9.60	4.60	0	0	0	0	0	0	0
$110	$112	20.00	15.00	10.00	5.00	0	0	0	0	0	0	0
$112	$114	20.30	15.30	10.30	5.30	.30	0	0	0	0	0	0
$114	$116	20.70	15.70	10.70	5.70	.70	0	0	0	0	0	0
$116	$118	21.10	16.10	11.10	6.10	1.10	0	0	0	0	0	0
$118	$120	21.40	16.40	11.40	6.40	1.40	0	0	0	0	0	0
$120	$124	22.00	17.00	12.00	7.00	2.00	0	0	0	0	0	0
$124	$128	22.70	17.70	12.70	7.70	2.70	0	0	0	0	0	0
$128	$132	23.40	18.40	13.40	8.40	3.40	0	0	0	0	0	0
$132	$136	24.10	19.10	14.10	9.10	4.10	0	0	0	0	0	0
$136	$140	24.80	19.80	14.80	9.80	4.80	0	0	0	0	0	0
$140	$144	25.60	20.60	15.60	10.60	5.60	.60	0	0	0	0	0
$144	$148	26.30	21.30	16.30	11.30	6.30	1.30	0	0	0	0	0
$148	$152	27.00	22.00	17.00	12.00	7.00	2.00	0	0	0	0	0
$152	$156	27.70	22.70	17.70	12.70	7.70	2.70	0	0	0	0	0
$156	$160	28.40	23.40	18.40	13.40	8.40	3.40	0	0	0	0	0
$160	$164	29.20	24.20	19.20	14.20	9.20	4.20	0	0	0	0	0
$164	$168	29.90	24.90	19.90	14.90	9.90	4.90	0	0	0	0	0
$168	$172	30.60	25.60	20.60	15.60	10.60	5.60	.60	0	0	0	0
$172	$176	31.30	26.30	21.30	16.30	11.30	6.30	1.30	0	0	0	0
$176	$180	32.00	27.00	22.00	17.00	12.00	7.00	2.00	0	0	0	0
$180	$184	32.80	27.80	22.80	17.80	12.80	7.80	2.80	0	0	0	0
$184	$188	33.50	28.50	23.50	18.50	13.50	8.50	3.50	0	0	0	0
$188	$192	34.20	29.20	24.20	19.20	14.20	9.20	4.20	0	0	0	0
$192	$196	34.90	29.90	24.90	19.90	14.90	9.90	4.90	0	0	0	0
$196	$200	35.60	30.60	25.60	20.60	15.60	10.60	5.60	.60	0	0	0
$200	$210	36.90	31.90	26.90	21.90	16.90	11.90	6.90	1.90	0	0	0
$210	$220	38.70	33.70	28.70	23.70	18.70	13.70	8.70	3.70	0	0	0
$220	$230	40.50	35.50	30.50	25.50	20.50	15.50	10.50	5.50	.50	0	0
$230	$240	42.30	37.30	32.30	27.30	22.30	17.30	12.30	7.30	2.30	0	0
$240	$250	44.10	39.10	34.10	29.10	24.10	19.10	14.10	9.10	4.10	0	0
$250	$260	45.90	40.90	35.90	30.90	25.90	20.90	15.90	10.90	5.90	.90	0
$260	$270	47.70	42.70	37.70	32.70	27.70	22.70	17.70	12.70	7.70	2.70	0
$270	$280	49.50	44.50	39.50	34.50	29.50	24.50	19.50	14.50	9.50	4.50	0
$280	$290	51.30	46.30	41.30	36.30	31.30	26.30	21.30	16.30	11.30	6.30	1.30
$290	$300	53.10	48.10	43.10	38.10	33.10	28.10	23.10	18.10	13.10	8.10	3.10
$300	$320	55.80	50.80	45.80	40.80	35.80	30.80	25.80	20.80	15.80	10.80	5.80
$320	$340	59.40	54.40	49.40	44.40	39.40	34.40	29.40	24.40	19.40	14.40	9.40
$340	$360	63.00	58.00	53.00	48.00	43.00	38.00	33.00	28.00	23.00	18.00	13.00
$360	$380	66.60	61.60	56.60	51.60	46.60	41.60	36.60	31.60	26.60	21.60	16.60
$380	$400	70.20	65.20	60.20	55.20	50.20	45.20	40.20	35.20	30.20	25.20	20.20
$400	$420	73.80	68.80	63.80	58.80	53.80	48.80	43.80	38.80	33.80	28.80	23.80
$420	$440	77.40	72.40	67.40	62.40	57.40	52.40	47.40	42.40	37.40	32.40	27.40
$440	$460	81.00	76.00	71.00	66.00	61.00	56.00	51.00	46.00	41.00	36.00	31.00
$460	$480	84.60	79.60	74.60	69.60	64.60	59.60	54.60	49.60	44.60	39.60	34.60
$480	$500	88.20	83.20	78.20	73.20	68.20	63.20	58.20	53.20	48.20	43.20	38.20
		18 percent of the excess over $500 plus—										
$500 and over		90.00	85.00	80.00	75.00	70.00	65.00	60.00	55.00	50.00	45.00	40.00

"If the payroll period with respect to an employee is monthly

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$56	18% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$56	$60	$10.40	.40	0	0	0	0	0	0	0	0	0
$60	$64	11.20	1.20	0	0	0	0	0	0	0	0	0
$64	$68	11.90	1.90	0	0	0	0	0	0	0	0	0
$68	$72	12.60	2.60	0	0	0	0	0	0	0	0	0
$72	$76	13.30	3.30	0	0	0	0	0	0	0	0	0
$76	$80	14.00	4.00	0	0	0	0	0	0	0	0	0
$80	$84	14.80	4.80	0	0	0	0	0	0	0	0	0
$84	$88	15.50	5.50	0	0	0	0	0	0	0	0	0
$88	$92	16.20	6.20	0	0	0	0	0	0	0	0	0
$92	$96	16.90	6.90	0	0	0	0	0	0	0	0	0
$96	$100	17.60	7.60	0	0	0	0	0	0	0	0	0
$100	$104	18.40	8.40	0	0	0	0	0	0	0	0	0
$104	$108	19.10	9.10	0	0	0	0	0	0	0	0	0
$108	$112	19.80	9.80	0	0	0	0	0	0	0	0	0
$112	$116	20.50	10.50	.50	0	0	0	0	0	0	0	0
$116	$120	21.20	11.20	1.20	0	0	0	0	0	0	0	0
$120	$124	22.00	12.00	2.00	0	0	0	0	0	0	0	0
$124	$128	22.70	12.70	2.70	0	0	0	0	0	0	0	0
$128	$132	23.40	13.40	3.40	0	0	0	0	0	0	0	0
$132	$136	24.10	14.10	4.10	0	0	0	0	0	0	0	0
$136	$140	24.80	14.80	4.80	0	0	0	0	0	0	0	0
$140	$144	25.60	15.60	5.60	0	0	0	0	0	0	0	0
$144	$148	26.30	16.30	6.30	0	0	0	0	0	0	0	0
$148	$152	27.00	17.00	7.00	0	0	0	0	0	0	0	0
$152	$156	27.70	17.70	7.70	0	0	0	0	0	0	0	0
$156	$160	28.40	18.40	8.40	0	0	0	0	0	0	0	0
$160	$164	29.20	19.20	9.20	0	0	0	0	0	0	0	0
$164	$168	29.90	19.90	9.90	0	0	0	0	0	0	0	0
$168	$172	30.60	20.60	10.60	.60	0	0	0	0	0	0	0
$172	$176	31.30	21.30	11.30	1.30	0	0	0	0	0	0	0
$176	$180	32.00	22.00	12.00	2.00	0	0	0	0	0	0	0
$180	$184	32.80	22.80	12.80	2.80	0	0	0	0	0	0	0
$184	$188	33.50	23.50	13.50	3.50	0	0	0	0	0	0	0
$188	$192	34.20	24.20	14.20	4.20	0	0	0	0	0	0	0
$192	$196	34.90	24.90	14.90	4.90	0	0	0	0	0	0	0
$196	$200	35.60	25.60	15.60	5.60	0	0	0	0	0	0	0
$200	$204	36.40	26.40	16.40	6.40	0	0	0	0	0	0	0
$204	$208	37.10	27.10	17.10	7.10	0	0	0	0	0	0	0
$208	$212	37.80	27.80	17.80	7.80	0	0	0	0	0	0	0
$212	$216	38.50	28.50	18.50	8.50	0	0	0	0	0	0	0
$216	$220	39.20	29.20	19.20	9.20	0	0	0	0	0	0	0
$220	$224	40.00	30.00	20.00	10.00	0	0	0	0	0	0	0
$224	$228	40.70	30.70	20.70	10.70	.70	0	0	0	0	0	0
$228	$232	41.40	31.40	21.40	11.40	1.40	0	0	0	0	0	0
$232	$236	42.10	32.10	22.10	12.10	2.10	0	0	0	0	0	0
$236	$240	42.80	32.80	22.80	12.80	2.80	0	0	0	0	0	0
$240	$248	43.90	33.90	23.90	13.90	3.90	0	0	0	0	0	0
$248	$256	45.40	35.40	25.40	15.40	5.40	0	0	0	0	0	0
$256	$264	46.80	36.80	26.80	16.80	6.80	0	0	0	0	0	0
$264	$272	48.20	38.20	28.20	18.20	8.20	0	0	0	0	0	0
$272	$280	49.70	39.70	29.70	19.70	9.70	0	0	0	0	0	0
$280	$288	51.10	41.10	31.10	21.10	11.10	1.10	0	0	0	0	0
$288	$296	52.60	42.60	32.60	22.60	12.60	2.60	0	0	0	0	0
$296	$304	54.00	44.00	34.00	24.00	14.00	4.00	0	0	0	0	0
$304	$312	55.40	45.40	35.40	25.40	15.40	5.40	0	0	0	0	0
$312	$320	56.90	46.90	36.90	26.90	16.90	6.90	0	0	0	0	0
$320	$328	58.30	48.30	38.30	28.30	18.30	8.30	0	0	0	0	0
$328	$336	59.80	49.80	39.80	29.80	19.80	9.80	0	0	0	0	0
$336	$344	61.20	51.20	41.20	31.20	21.20	11.20	1.20	0	0	0	0
$344	$352	62.60	52.60	42.60	32.60	22.60	12.60	2.60	0	0	0	0
$352	$360	64.10	54.10	44.10	34.10	24.10	14.10	4.10	0	0	0	0
$360	$368	65.50	55.50	45.50	35.50	25.50	15.50	5.50	0	0	0	0
$368	$376	67.00	57.00	47.00	37.00	27.00	17.00	7.00	0	0	0	0
$376	$384	68.40	58.40	48.40	38.40	28.40	18.40	8.40	0	0	0	0
$384	$392	69.80	59.80	49.80	39.80	29.80	19.80	9.80	0	0	0	0
$392	$400	71.30	61.30	51.30	41.30	31.30	21.30	11.30	1.30	0	0	0
$400	$420	73.80	63.80	53.80	43.80	33.80	23.80	13.80	3.80	0	0	0
$420	$440	77.40	67.40	57.40	47.40	37.40	27.40	17.40	7.40	0	0	0
$440	$460	81.00	71.00	61.00	51.00	41.00	31.00	21.00	11.00	1.00	0	0
$460	$480	84.60	74.60	64.60	54.60	44.60	34.60	24.60	14.60	4.60	0	0
$480	$500	88.20	78.20	68.20	58.20	48.20	38.20	28.20	18.20	8.20	0	0
$500	$520	91.80	81.80	71.80	61.80	51.80	41.80	31.80	21.80	11.80	1.80	0
$520	$540	95.40	85.40	75.40	65.40	55.40	45.40	35.40	25.40	15.40	5.40	0

"*If the payroll period with respect to an employee is monthly*—Continued

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$540	$560	$99.00	$89.00	$79.00	$69.00	$59.00	$49.00	$39.00	$29.00	$19.00	$9.00	$0
$560	$580	102.60	92.60	82.60	72.60	62.60	52.60	42.60	32.60	22.60	12.60	2.60
$580	$600	106.20	96.20	86.20	76.20	66.20	56.20	46.20	36.20	26.20	16.20	6.20
$600	$640	111.60	101.60	91.60	81.60	71.60	61.60	51.60	41.60	31.60	21.60	11.60
$640	$680	118.80	108.80	98.80	88.80	78.80	68.80	58.80	48.80	38.80	28.80	18.80
$680	$720	126.00	116.00	106.00	96.00	86.00	76.00	66.00	56.00	46.00	36.00	26.00
$720	$760	133.20	123.20	113.20	103.20	93.20	83.20	73.20	63.20	53.20	43.20	33.20
$760	$800	140.40	130.40	120.40	110.40	100.40	90.40	80.40	70.40	60.40	50.40	40.40
$800	$840	147.60	137.60	127.60	117.60	107.60	97.60	87.60	77.60	67.60	57.60	47.60
$840	$880	154.80	144.80	134.80	124.80	114.80	104.80	94.80	84.80	74.80	64.80	54.80
$880	$920	162.00	152.00	142.00	132.00	122.00	112.00	102.00	92.00	82.00	72.00	62.00
$920	$960	169.20	159.20	149.20	139.20	129.20	119.20	109.20	99.20	89.20	79.20	69.20
$960	$1,000	176.40	166.40	156.40	146.40	136.40	126.40	116.40	106.40	96.40	86.40	76.40
		18 percent of the excess over $1,000 plus—										
$1,000 and over		180.00	170.00	160.00	150.00	140.00	130.00	120.00	110.00	100.00	90.00	80.00

"*If the payroll period with respect to an employee is a daily payroll period or a miscellaneous payroll period*

And the wages divided by the number of days in such period are—		And the number of withholding exemptions claimed is—										
		0	1	2	3	4	5	6	7	8	9	10 or more
At least	But less than	The amount of tax to be withheld shall be the following amount multiplied by the number of days in such period—										
$0	$2.00	18% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$2.00	$2.25	$0.40	.05	0	0	0	0	0	0	0	0	0
$2.25	$2.50	.45	.10	0	0	0	0	0	0	0	0	0
$2.50	$2.75	.45	.15	0	0	0	0	0	0	0	0	0
$2.75	$3.00	.50	.20	0	0	0	0	0	0	0	0	0
$3.00	$3.25	.55	.25	0	0	0	0	0	0	0	0	0
$3.25	$3.50	.60	.30	0	0	0	0	0	0	0	0	0
$3.50	$3.75	.65	.30	0	0	0	0	0	0	0	0	0
$3.75	$4.00	.70	.35	.05	0	0	0	0	0	0	0	0
$4.00	$4.25	.75	.40	.10	0	0	0	0	0	0	0	0
$4.25	$4.50	.80	.45	.15	0	0	0	0	0	0	0	0
$4.50	$4.75	.85	.50	.15	0	0	0	0	0	0	0	0
$4.75	$5.00	.90	.55	.20	0	0	0	0	0	0	0	0
$5.00	$5.25	.90	.60	.25	0	0	0	0	0	0	0	0
$5.25	$5.50	.95	.65	.30	0	0	0	0	0	0	0	0
$5.50	$5.75	1.00	.70	.35	.05	0	0	0	0	0	0	0
$5.75	$6.00	1.05	.75	.40	.05	0	0	0	0	0	0	0
$6.00	$6.25	1.10	.75	.45	.10	0	0	0	0	0	0	0
$6.25	$6.50	1.15	.80	.50	.15	0	0	0	0	0	0	0
$6.50	$6.75	1.20	.85	.55	.20	0	0	0	0	0	0	0
$6.75	$7.00	1.25	.90	.60	.25	0	0	0	0	0	0	0
$7.00	$7.25	1.30	.95	.60	.30	0	0	0	0	0	0	0
$7.25	$7.50	1.35	1.00	.65	.35	0	0	0	0	0	0	0
$7.50	$7.75	1.35	1.05	.70	.40	.05	0	0	0	0	0	0
$7.75	$8.00	1.40	1.10	.75	.45	.10	0	0	0	0	0	0
$8.00	$8.25	1.45	1.15	.80	.50	.15	0	0	0	0	0	0
$8.25	$8.50	1.50	1.20	.85	.50	.20	0	0	0	0	0	0
$8.50	$8.75	1.55	1.20	.90	.55	.25	0	0	0	0	0	0
$8.75	$9.00	1.60	1.25	.95	.60	.30	0	0	0	0	0	0
$9.00	$9.25	1.65	1.30	1.00	.65	.35	0	0	0	0	0	0
$9.25	$9.50	1.70	1.35	1.05	.70	.35	.05	0	0	0	0	0
$9.50	$9.75	1.75	1.40	1.05	.75	.40	.10	0	0	0	0	0
$9.75	$10.00	1.80	1.45	1.10	.80	.45	.15	0	0	0	0	0
$10.00	$10.50	1.85	1.50	1.20	.85	.55	.20	0	0	0	0	0
$10.50	$11.00	1.95	1.60	1.30	.95	.60	.30	0	0	0	0	0
$11.00	$11.50	2.05	1.70	1.35	1.05	.70	.40	.05	0	0	0	0

"If the payroll period with respect to an employee is a daily payroll period or a miscellaneous payroll period—Continued

And the wages divided by the number of days in such period are—		And the number of withholding exemptions claimed is—										
		0	1	2	3	4	5	6	7	8	9	10 or more
At least	But less than	The amount of tax to be withheld shall be the following amount multiplied by the number of days in such period—										
$11.50	$12.00	$2.10	$1.80	$1.45	$1.15	$0.80	$0.45	$0.15	$0	$0	$0	$0
$12.00	$12.50	2.20	1.90	1.55	1.20	.90	.55	.25	0	0	0	0
$12.50	$13.00	2.30	1.95	1.65	1.30	1.00	.65	.30	0	0	0	0
$13.00	$13.50	2.40	2.05	1.75	1.40	1.05	.75	.40	.10	0	0	0
$13.50	$14.00	2.50	2.15	1.80	1.50	1.15	.85	.50	.15	0	0	0
$14.00	$14.50	2.55	2.25	1.90	1.60	1.25	.90	.60	.25	0	0	0
$14.50	$15.00	2.65	2.35	2.00	1.65	1.35	1.00	.70	.35	0	0	0
$15.00	$15.50	2.75	2.40	2.10	1.75	1.45	1.10	.75	.45	.10	0	0
$15.50	$16.00	2.85	2.50	2.20	1.85	1.50	1.20	.85	.55	.20	0	0
$16.00	$16.50	2.95	2.60	2.25	1.95	1.60	1.30	.95	.60	.30	0	0
$16.50	$17.00	3.00	2.70	2.35	2.05	1.70	1.35	1.05	.70	.40	.05	0
$17.00	$17.50	3.10	2.80	2.45	2.10	1.80	1.45	1.15	.80	.45	.15	0
$17.50	$18.00	3.20	2.85	2.55	2.20	1.90	1.55	1.20	.90	.55	.25	0
$18.00	$18.50	3.30	2.95	2.65	2.30	1.95	1.65	1.30	1.00	.65	.35	0
$18.50	$19.00	3.40	3.05	2.70	2.40	2.05	1.75	1.40	1.05	.75	.40	.10
$19.00	$19.50	3.45	3.15	2.80	2.50	2.15	1.80	1.50	1.15	.85	.50	.20
$19.50	$20.00	3.55	3.25	2.90	2.55	2.25	1.90	1.60	1.25	.90	.60	.25
$20.00	$21.00	3.70	3.35	3.05	2.70	2.35	2.05	1.70	1.40	1.05	.75	.40
$21.00	$22.00	3.85	3.55	3.20	2.90	2.55	2.25	1.90	1.55	1.25	.90	.60
$22.00	$23.00	4.05	3.70	3.40	3.05	2.75	2.40	2.10	1.75	1.40	1.10	.75
$23.00	$24.00	4.25	3.90	3.55	3.25	2.90	2.60	2.25	1.95	1.60	1.25	.95
$24.00	$25.00	4.40	4.10	3.75	3.40	3.10	2.75	2.45	2.10	1.80	1.45	1.10
$25.00	$26.00	4.60	4.25	3.95	3.60	3.25	2.95	2.60	2.30	1.95	1.65	1.30
$26.00	$27.00	4.75	4.45	4.10	3.80	3.45	3.15	2.80	2.45	2.15	1.80	1.50
$27.00	$28.00	4.95	4.60	4.30	3.95	3.65	3.30	3.00	2.65	2.30	2.00	1.65
$28.00	$29.00	5.15	4.80	4.45	4.15	3.80	3.50	3.15	2.85	2.50	2.15	1.85
$29.00	$30.00	5.30	5.00	4.65	4.30	4.00	3.65	3.35	3.00	2.70	2.35	2.00
		18 percent of the excess over $30 plus—										
$30.00 and over		5.40	5.05	4.75	4.40	4.10	3.75	3.45	3.10	2.75	2.45	2.10"

SEC. 143. EFFECTIVE DATE OF PART IV. [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950.]

The amendments made by this part [sections 141, 142, and 143, Revenue Act of 1950] shall be applicable only with respect to wages paid on or after October 1, 1950.

PAR. 9. Section 405.201, as amended by Treasury Decision 5685 [C. B. 1949-1, 146], approved January 7, 1949 [26 CFR 405.201], is further amended as follows:

(A) By inserting in the second sentence of the fifth paragraph of such section (which paragraph begins with the words "In using the percentage method with respect to wages paid on or after May 1, 1948"), immediately after "May 1, 1948," the following: "and before October 1, 1950,".

(B) By inserting in the first sentence of the example in such fifth paragraph, immediately after "April 30, 1948," the following: "and before October 1, 1950,".

(C) By inserting immediately preceding the last paragraph of section 405.201 the following new paragraph:

The steps in computing the tax under the percentage method with respect to wages paid on or after October 1, 1950, are identical with those in computing the tax with respect to wages paid on or after May 1, 1948, and before October 1, 1950, except that the multiplier used in step 3 must correspond to the percentage figure applicable under section 1622(a) as amended.

PAR. 10. Section 405.202, as amended by Treasury Decision 5685 [26 CFR 405.202], is further amended as follows:

(A) By inserting in examples (5) and (6) in section 405.202(a), immediately after "April 30, 1948," the following: "and before October 1, 1950,".

(B) By inserting in the last sentence of the example in section 405.202(b), immediately after "May 1, 1948," the following: "and before October 1, 1950,".

(C) By inserting in example (5) of section 405.202(d), immediately after "May 1, 1948," the following: "and before October 1, 1950,".

(D) By inserting in example (6) of section 405.202(d), immediately after "April 30, 1948," the following: "and before October 1, 1950,".

PAR. 11. Section 405.203, as amended by Treasury Decision 5685 [26 CFR 405.203], is further amended as follows:

(A) By inserting in the last sentence of section 405.203(a), immediately after "May 1, 1948," the following: "and before October 1, 1950,".

(B) By inserting the following new sentence at the end of section 405.203(a):

With respect to wages paid on or after October 1, 1950, the wage bracket tables applicable under section 1622(c) as amended are to be used.

(C) By inserting in the last sentence of the example in section 405.203(c), immediately after "May 1, 1948," the following: "and before October 1, 1950,".

(D) By inserting the following new sentence at the end of the example in section 405.203(c):

In the case of wages paid on or after October 1, 1950, the amount of the tax required to be deducted and withheld under this method shall be determined in the same manner, except that the appropriate figure in the table applicable under section 1622(c)(1) as amended shall be used.

(E) By inserting in example (5) in section 405.203(e), immediately after "April 30, 1948," the following: "and before October 1, 1950,".

(F) By inserting in example (6) in section 405.203(e), immediately after "May 1, 1948," the following: "and before October 1, 1950,".

(G) By inserting in the last sentence of section 405.203(f), immediately after "May 1, 1948," the following: "and before October 1, 1950,".

PAR. 12. Section 405.209(a), as amended by Treasury Decision 5685 [26 CFR 405.209], is further amended by striking out the last sentence of the last paragraph "a flat rate of 15 percent", and by inserting in lieu thereof the following: "the applicable rate under section 1622(a) as amended".

PAR. 13. There is inserted immediately preceding section 405.501 [26 CFR 405.501] the following:

SEC. 202. INCOME TAX EXEMPTIONS FOR MEMBERS OF THE ARMED FORCES SERVING IN COMBAT AREAS. [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950.]

* * * * * * *

(c) RECEIPTS.—Sections 1625(a) * * * (relating to receipts for employees) are hereby amended by adding at the end of each the following: "In the case of compensation paid for service as a member of the Armed Forces, the statement shall show, as wages paid during the calendar year, the amount of such compensation paid during the calendar year which is not excluded from gross income under chapter 1 (whether or not such compensation constituted wages as defined in section 1621(a)); such statement to be furnished if any tax was withheld during the calendar year or if any of the compensation paid is includible under chapter 1 in gross income."

SEC. 206(b)(3) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950 [APPROVED AUGUST 28, 1950].

(3) Section 1625 of the Internal Revenue Code is amended by adding at the end thereof the following new subsection:

"(d) APPLICATION OF SECTION.—This section shall apply only with respect to wages paid before January 1, 1951. For corresponding provisions with respect to wages paid after December 31, 1950, see section 1633."

SEC. 1633. RECEIPTS FOR EMPLOYEES [AS ADDED BY SECTION 206(a), SOCIAL SECURITY ACT AMENDMENTS OF 1950, AND AMENDED BY SECTION 202(c), REVENUE ACT OF 1950; APPLICABLE WITH RESPECT TO WAGES PAID AFTER DECEMBER 31, 1950].

(a) REQUIREMENTS.—Every person required to deduct and withhold from an employee a tax under section 1400 or 1622, or who would have been required to deduct and withhold a tax under section 1622 if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement showing the following: (1) the name of such person, (2) the name of the employee (and his social security account number if wages as defined in section 1426(a) have been paid), (3) the total amount of wages as defined in section 1621(a), (4) the total amount deducted and withheld as tax under section 1622, (5) the total amount of wages as defined in section 1426(a), and (6) the total amount deducted and withheld as tax under section 1400. In the case of compensation paid for service as a member of the Armed Forces, the statement shall show, as wages paid during the calendar year, the amount of such compensation paid during the calendar year which is not excluded from gross income under chapter 1 (whether or not such compensation constituted wages as defined in section 1621(a)); such statement to be furnished if any tax was withheld during the calendar year or if any of the compensation paid is includible under chapter 1 in gross income.

(b) STATEMENTS TO CONSTITUTE INFORMATION RETURNS.—The statements required to be furnished by this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Commissioner, with the approval of the Secretary, may by regulations prescribe. A duplicate of any such statement if made and filed in accordance with regulations prescribed by the Commissioner with the approval of the Secretary shall constitute the return required to be made in respect of such remuneration under section 147.

(c) EXTENSION OF TIME.—The Commissioner, under such regulations as he may prescribe with the approval of the Secretary, may grant to any person a reasonable extension of time (not in excess of thirty days) with respect to the statements required to be furnished under this section.

SEC. 1634. PENALTIES [AS ADDED BY SECTION 206(a), SOCIAL SECURITY ACT AMENDMENTS OF 1950; APPLICABLE WITH RESPECT TO WAGES PAID AFTER DECEMBER 31, 1950].

(a) PENALTIES FOR FRAUDULENT STATEMENT OR FAILURE TO FURNISH STATEMENT.—In lieu of any other penalty provided by law (except the penalty provided by subsection (b) of this section), any person required under the provisions of section 1633 to furnish a statement who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 1633, or regulations, prescribed thereunder, shall for each such failure, upon conviction thereof, be fined not more than $1,000, or imprisoned for not more than one year, or both.

(b) ADDITIONAL PENALTY.—In addition to the penalty provided by subsection (a) of this section, any person required under the provisions of section 1633 to furnish a statement who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 1633, or regulations prescribed thereunder, shall for each such failure be subject to a civil penalty of $50. Such penalty shall be assessed and collected in the same manner as the tax imposed by section 1410.

PAR. 14. Section 405.501, as amended by Treasury Decision 5759, approved November 10, 1949 [26 CFR 405.501], is further amended as follows:

(A) By revising the heading of section 405.501(a) to read as follows: "(a) *Wages paid before January 1, 1951.*"

(B) By inserting in the second sentence of section 405.501(a), immediately after "January 1, 1946," the following: "and before January 1, 1951,".

(C) By redesignating (b), (c), and (d) of section 405.501 as (d), (e), and (f), respectively.

(D) By inserting immediately after section 405.501(a) the following:

(b) *Wages paid after December 31, 1950.*—With respect to wages paid on or after January 1, 1951, every person required to deduct and withhold from an employee a tax under section 1622, or who would have been required to deduct and withhold a tax under section 1622 if the employee had claimed no more than one withholding exemption, is required to furnish to each such employee, in respect of the remuneration paid by such person to such employee during the calendar year, the original and duplicate of Form W–2 showing the following: (1) the name of such person, (2) the name of the employee (and his social security account number if wages as defined in section 1426(a) have been paid), (3) the total amount of wages as defined in section 1621(a), (4) the total amount deducted and withheld as tax under section 1622, (5) the total amount of wages as defined in section 1426(a), and (6) the total amount deducted and withheld as tax under section 1400.

For example, if the table method is used, a withholding statement must be furnished each employee whose earnings during any payroll period are equal to or in excess of the smallest wage for which tax must be withheld from employees claiming one exemption. If the percentage computation method is used, a withholding statement must be furnished each employee whose wages during any payroll period are in excess of one withholding exemption for such payroll period as shown in the percentage method withholding table contained in section 1622(b)(1). Statements prepared in substantially like form and size as Form W–2, but in no case larger than 8 by 3¾ inches, will be acceptable if approved by the Commissioner.

The statement on Form W–2 shall be furnished to the employee on or before January 31 of the succeeding calendar year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of wages is made.

See the regulations under the Federal Insurance Contributions Act, effective on and after January 1, 1951, for the requirements as to the furnishing of a statement in cases where such statement is required solely by reason of the tax under section 1400 of such Act.

(c) *Statements for members of the Armed Forces of the United States.*—Section 1625(a) and section 1633(a) contain certain special provisions which are applicable to calendar years after 1949 in the case of members of the Armed Forces of the United States in active service after June 24, 1950. In such case, Form W–2 shall be furnished to each such member of the Armed Forces of the United States if any tax has been withheld during the calendar year from the remuneration of such member or if any of the remuneration paid during the calendar year for such active service is includible under chapter 1 in the gross income of such member. Form W-2, in the case of such member, shall show, as wages paid during the calendar year, the amount of the remuneration paid during the calendar year which is not excludable under chapter 1, from the gross income of such member, whether or not such remuneration constitutes wages as defined in section 1621(a) and whether or not paid for such active service.

(E) By striking out of the first and second sentences of section 405.501(d) (as redesignated by subparagraph (C) of this paragraph) the words "Withholding Receipt" and by inserting in lieu thereof the following word: "statement".

(F) By inserting in the first sentence of such section 405.501(d), immediately after "required by section 1625(a)", the following: "or section 1633".

(G) By striking out of section 405.501(e) (as redesignated by subparagraph (C) of this paragraph) the words "Withholding Receipts" and by inserting in lieu thereof the following word: "statements".

(H) By revising section 405.501(f) (as redesignated by subparagraph (C) of this paragraph) to read as follows:

(f) *Penalties for fraudulent statement or failure to furnish statement.*—(1) *Wages paid after December 31, 1950.*—Section 1634 imposes criminal and civil penalties for the willful failure to furnish a statement in the manner, at the time, and showing the information required under section 1633 or regulations prescribed thereunder or for willfully furnishing a false or fraudulent statement. The criminal penalty is a fine of not more than $1,000 or imprisonment for not more than 1 year, or both, for each such violation. The civil penalty is a fine of $50 for each such violation. The civil penalty shall be assessed and collected in the same manner as the tax imposed by section 1410. These penalties are in lieu of any other penalties provided by law respecting the failure to furnish a statement or the furnishing of a false or fraudulent statement.

(2) *Wages paid before January 1, 1951.*—Section 1626 imposes criminal and civil penalties for the willful failure to furnish a statement in the manner, at the time, and showing the information required under section 1625 or regulations prescribed thereunder or for willfully furnishing a false or fraudulent statement. The criminal penalty is a fine of not more than $1,000 or imprisonment for not more than 1 year, or both, and the civil penalty is a fine of not more than $50 for each such violation. Such penalties are in lieu of any other penalties provided by law respecting the failure to furnish a statement or the furnishing of a false or fraudulent statement.

PAR. 15. Section 405.601, as amended by Treasury Decision 5795 [C. B. 1950–2, 81], approved July 12, 1950 [26 CFR 405.601], is further amended by inserting in the seventh paragraph, immediately before the words "or political subdivision", the following "Puerto Rico,".

PAR. 16. There is inserted immediately after the provisions of section 405.606, as added by Treasury Decision 5760, approved November 10, 1949 [26 CFR 405.606], the following:

SEC. 1635. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION OF CERTAIN EMPLOYMENT TAXES [AS ADDED BY SECTION 207(a), SOCIAL SECURITY ACT AMENDMENTS OF 1950, APPROVED AUGUST 28, 1950].

(a) GENERAL RULE.—The amount of any tax imposed by subchapter A of this chapter or subchapter D of this chapter shall (except as otherwise provided in the following subsections of this section) be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

(b) FALSE RETURN OR NO RETURN.—In the case of a false or fradulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) WILLFUL ATTEMPT TO EVADE TAX.—In case of a willful attempt in any manner to defeat or evade tax, the tax may be assessed; or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(d) COLLECTION AFTER ASSESSMENT.—Where the assessment of any tax imposed by subchapter A of this chapter or subchapter D of this chapter has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer.

(e) DATE OF FILING OF RETURN.—For the purposes of this section, if a return for any period ending with or within a calendar year is filed before March 15 of the succeeding calendar year, such return shall be considered filed on March 15 of such succeeding calendar year.

(f) APPLICATION OF SECTION.—The provisions of this section shall apply only to those taxes imposed by subchapter A of this chapter, or subchapter D of this chapter, which are required to be collected and paid by making and filing returns.

(g) EFFECTIVE DATE.—The provisions of this section shall not apply to any tax imposed with respect to remuneration paid during any calendar year before 1951.

SEC. 405.607. PERIOD OF LIMITATION UPON ASSESSMENT OF TAX.—Section 1635 provides, in general, for a 3-year period of limitation on the assessment of the tax required to be withheld during any calendar year after 1950. This period of limitation is measured from the date the return is filed, except that if a return for any period ending with or within a calendar year is filed before March 15 of the succeeding calendar year, such return shall be deemed filed on March 15 of such succeeding calendar year. For example, if quarterly returns are filed for the four quarters of 1951 on April 30, July 31, and October 31, 1951, and on January 31, 1952, the period of limitation for assessment with respect to the tax required to be reported on each such return is measured from March 15, 1952. However, if any of such returns is filed after March 15, 1952, the period of limitation for assessment of the tax required to be reported on that return is measured from the date it is in fact filed. In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, and in the case of a willful attempt in any manner to defeat or evade tax, the tax required to be reported on the return may be assessed at any time.

PAR. 17. There is inserted immediately preceding section 405.702 [26 CFR 405.702] the following:

SEC. 207(b)(2) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950 [APPROVED AUGUST 28, 1950].

(2) Section 3313 of the Internal Revenue Code is amended as follows:

(A) By inserting immediately after the words "and gift taxes," where those words first appear in the section, the following: "and except as otherwise provided by law in the case of employment taxes under subchapters A and D of chapter 9,"; and

(B) By inserting immediately after the words "and gift taxes", where those words appear in the parenthetical phrase, a comma and the following: "and other than such employment taxes".

SEC. 1636. PERIOD OF LIMITATION UPON REFUNDS AND CREDITS OF CERTAIN EMPLOYMENT TAXES [AS ADDED BY SECTION 207(a), SOCIAL SECURITY ACT AMENDMENTS OF 1950, APPROVED AUGUST 28, 1950].

(a) GENERAL RULE.—In the case of any tax imposed by subchapter A of this chapter or subchapter D of this chapter—

(1) PERIOD OF LIMITATION.—Unless a claim for credit or refund is filed by the taxpayer within three years from the time the return was filed or within two years from the time the tax was paid, no credit or refund shall be allowed or made after the expiration of whichever of such periods expires the later. If no return is filed, then no credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(2) LIMIT ON AMOUNT OF CREDIT OR REFUND.—The amount of the credit or refund shall not exceed the portion of the tax paid—

(A) If a return was filed, and the claim was filed within three years from the time the return was filed, during the three years immediately preceding the filing of the claim.

(B) If a claim was filed, and (i) no return was filed, or (ii) if the claim was not filed within three years from the time the return was filed, during the two years immediately preceding the filing of the claim.

(C) If no claim was filed and the allowance of credit or refund is made within three years from the time the return was filed, during the three years immediately preceding the allowance of the credit or refund.

(D) If no claim was filed, and (i) no return was filed or (ii) the allowance of the credit or refund is not made within three years from the time the return was filed, during the two years immediately preceding the allowance of the credit or refund.

(b) PENALTIES, ETC.—The provisions of subsection (a) of this section shall apply to any penalty or sum assessed or collected with respect to the tax imposed by subchapter A of this chapter or subchapter D of this chapter.

(c) DATE OF FILING RETURN AND DATE OF PAYMENT OF TAX.—For the purposes of this section—

(1) If a return for any period ending with or within a calendar year is filed before March 15 of the succeeding calendar year, such return shall be considered filed on March 15 of such succeeding calendar year; and

(2) If a tax with respect to remuneration paid during any period ending with or within a calendar year is paid before March 15 of the succeeding calendar year, such tax shall be considered paid on March 15 of such succeeding calendar year.

(d) APPLICATION OF SECTION.—The provisions of this section shall apply only to those taxes imposed by subchapter A of this chapter, or subchapter D of this chapter, which are required to be collected and paid by making and filing returns.

(e) EFFECTIVE DATE.—The provisions of this section shall not apply to any tax paid or collected with respect to remuneration paid during any calendar year before 1951 or to any penalty or sum paid or collected with respect to such tax.

PAR. 18. There is inserted immediately after the provisions of section 405.702 [26 CFR 405.702] the following:

SEC. 405.703. LIMITATIONS UPON CREDITS AND REFUNDS.—(a) *In general.*—Unless a claim for credit or refund of an overpayment is filed within 3 years from the time the return was filed, or within 2 years from the time the tax was paid, the Commissioner is prohibited, after both periods have expired, from allowing or making a credit or refund of such overpayment. If no return is filed, the Commissioner is prohibited from allowing or making a credit or refund of the overpayment after 2 years from the time the tax was paid unless before the expiration of such 2-year period a claim therefor is filed.

(b) *Limitation on amount of credit or refund.*—The limitations on the amount of credit or refund shall be determined in accordance with section 1636(a)(2).

(c) *Penalties.*—The provisions of this section as to the tax required to be deducted and withheld are also applicable to any penalty or other sum assessed or collected with respect to such tax.

(d) *Date of filing return and payment of tax.*—For the purposes of this section, if a return for any period ending with or within a calendar year is filed before March 15 of the succeeding calendar year, it shall be deemed filed on March 15 of such succeeding calendar year. Likewise, if any tax required to be deducted and withheld during any period ending with or within a calendar year is paid before March 15 of the succeeding calendar year, such tax shall be deemed paid on March 15 of such succeeding calendar year.

(e) *Applicability of section.*—The provisions of this section shall apply only to taxes required to be withheld on or after January 1, 1951.

PAR. 19. There is inserted immediately preceding section 405.805 [26 CFR 405.805] the following:

SEC. 1631. FAILURE OF EMPLOYER TO FILE RETURN [AS AMENDED BY SECTION 209(d), SOCIAL SECURITY ACT AMENDMENTS OF 1950; APPLICABLE TO RETURNS FILED AFTER DECEMBER 31, 1950].

In case of a failure to make and file any return required under this chapter within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure is due to reasonable cause and not to willful neglect, the addition to the tax or taxes required to be shown on such return shall not be less than $5.

PAR. 20. Section 405.805, as amended by Treasury Decision 5794 [C. B. 1950-2, 82], approved July 6, 1950 [26 CFR 405.805], is further amended as follows:

(A) By redesignating (a) and (b) of such section as (b) and (c), respectively.

(B) By inserting immediately after the heading of the section the following:

(a) If an employer fails to file a return within the time prescribed in section 405.601 or section 405.602, unless it is shown that the failure is due to reasonable cause and not to willful neglect, the addition to the tax or taxes required to be shown on such return shall not be less than $5. The addition to the tax or taxes shall be computed as provided by section 3612(d) and if less than $5 shall be increased to $5. The provisions of this paragraph shall be applicable only with respect to returns filed after December 31, 1950.

(C) By adding at the end of section 405.805(b) (as redesignated by subparagraph (A) of this paragraph) the following:

The provisions of this paragraph shall be applicable only with respect to returns filed before January 1, 1951, and to the tax required to be shown on such returns.

(D) By striking out of section 405.805(c) (as redesignated by subparagraph (A) of this paragraph) the letter "a" within the parentheses and by inserting in lieu of such "a" the letter "b".

(E) By adding at the end of such section 405.805(c) the following new sentence: "The provisions of this paragraph shall be applicable only with respect to returns filed before January 1, 1951, and to the tax required to be shown on such returns."

Because the amendments made by this Treasury Decision are necessary to conform Regulations 116, relating to withholding of income tax at source on wages, to the changes in law made by the Social Security Act Amendments of 1950 and by the Revenue Act of 1950, which changes are applicable in part to wage payments made on and after October 1, 1950, in part to wage payments made on and after November 1, 1950, and in part to wage payments made on and after January 1, 1951, it is found that it is impracticable to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(This Treasury Decision is issued under the authority contained in sections 1429 and 3791 (53 Stat. 178, 467; 26 U. S. C. 1429, 3791) and section 1627 (57 Stat. 138; 26 U. S. C. 1627) of the Internal Revenue Code.)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved January 22, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register January 29, 1951, 8:45 a. m.)

SECTION 1621: Definitions.
REGULATIONS 116, SECTION 405.102: Exclusions from wages.

Status after 1950 of duly ordained, commissioned, and licensed ministers. (See Mim. 6633, page 106.)

SECTION 1621: Definitions.
REGULATIONS 116, SECTION 405.104: Employee.

Status of real estate and securities salesmen. (See Mim. 6566, page 108.)

SECTION 1621: Definitions.
REGULATIONS 116, SECTION 405.104: Employee.

Status after 1950 of full-time life insurance salesmen. (See Mim. 6571, page 95.)

SECTION 1621: Definitions.
REGULATIONS 116, SECTION 405.104: Employee.

Status after 1950 of traveling or city salesmen. (See Mim. 6583, page 97.)

REGULATIONS 116, SECTION 405.104: Employee.

Status after 1950 of home workers. (See Mim. 6586, page 99.)

SECTION 1621: Definitions.
REGULATIONS 116, SECTION 405.104: Employee.

Status after 1950 of agent-drivers and commission-drivers. (See Mim. 6601, page 103.)

SECTION 1622: Income tax collected at source. 1951–8–13572
REGULATIONS 116, SECTION 405.201: Requirement of withholding. Em. T. 449
(Also Subchapter A (Federal Insurance Contributions Act), Section 1401; Regulations 128, Section 408.304.)

Table which may be used by employers in withholding Federal income tax and Federal Insurance Contributions Act tax from weekly wages paid on and after January 1, 1951.

Employers have requested permission to use a table which combines amounts to be withheld as Federal income tax and Federal Insurance Contributions Act tax on weekly wages paid on and after January 1, 1951.

Permission is hereby granted to employers to use the following table in withholding Federal income tax and Federal Insurance Contributions Act tax from weekly wages paid on and after January 1, 1951:

Weekly Withholding Table Combining Income Tax and Employees' Federal Insurance Contributions Act Tax (1½ Percent)

This table to be used only if wages for income tax withholding and wages for employees' F. I. C. A. tax are identical

If wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10
		The amount of income tax and F. I. C. A. tax to be withheld shall be—										
$0	$13.00	19½% of wages	1½% of wages	1½% of wages	1½% of wages	1½% of wages	1½% of wages	1½% of wages	1½% of wages	1½% of wages	1½% of wages	1½% of wages
$13.00	$13.67	$2.60	$0.30	$0.20	$0.20	$0.20	$0.20	$0.20	$0.20	$0.20	$0.20	$0.20
$13.67	$14.34	2.73	.39	.21	.21	.21	.21	.21	.21	.21	.21	.21
$14.34	$15.00	2.82	.52	.22	.22	.22	.22	.22	.22	.22	.22	.22
$15.00	$15.67	3.03	.73	.23	.23	.23	.23	.23	.23	.23	.23	.23
$15.67	$16.34	3.12	.78	.24	.24	.24	.24	.24	.24	.24	.24	.24
$16.34	$17.00	3.25	.95	.25	.25	.25	.25	.25	.25	.25	.25	.25
$17.00	$17.67	3.46	1.06	.26	.26	.26	.26	.26	.26	.26	.26	.26
$17.67	$18.34	3.51	1.17	.27	.27	.27	.27	.27	.27	.27	.27	.27
$18.34	$19.00	3.58	1.28	.28	.28	.28	.28	.28	.28	.28	.28	.28
$19.00	$19.67	3.79	1.49	.29	.29	.29	.29	.29	.29	.29	.29	.29
$19.67	$20.34	3.90	1.56	.30	.30	.30	.30	.30	.30	.30	.30	.30
$20.34	$21.00	4.01	1.71	.31	.31	.31	.31	.31	.31	.31	.31	.31
$21.00	$21.67	4.22	1.92	.32	.32	.32	.32	.32	.32	.32	.32	.32
$21.67	$22.34	4.29	1.95	.33	.33	.33	.33	.33	.33	.33	.33	.33
$22.34	$23.00	4.44	2.04	.34	.34	.34	.34	.34	.34	.34	.34	.34
$23.00	$23.67	4.55	2.25	.35	.35	.35	.35	.35	.35	.35	.35	.35
$23.67	$24.34	4.68	2.34	.36	.36	.36	.36	.36	.36	.36	.36	.36
$24.34	$25.00	4.77	2.47	.37	.37	.37	.37	.37	.37	.37	.37	.37
$25.00	$25.67	4.98	2.68	.38	.38	.38	.38	.38	.38	.38	.38	.38
$25.67	$26.34	5.07	2.73	.39	.39	.39	.39	.39	.39	.39	.39	.39
$26.34	$27.00	5.20	2.90	.60	.40	.40	.40	.40	.40	.40	.40	.40
$27.00	$27.67	5.41	3.01	.71	.41	.41	.41	.41	.41	.41	.41	.41
$27.67	$28.34	5.46	3.12	.78	.42	.42	.42	.42	.42	.42	.42	.42
$28.34	$29.00	5.53	3.23	.93	.43	.43	.43	.43	.43	.43	.43	.43
$29.00	$29.67	5.74	3.44	1.14	.44	.44	.44	.44	.44	.44	.44	.44
$29.67	$30.34	5.85	3.51	1.17	.45	.45	.45	.45	.45	.45	.45	.45
$30.34	$31.00	5.96	3.66	1.36	.46	.46	.46	.46	.46	.46	.46	.46
$31.00	$31.67	6.17	3.87	1.57	.47	.47	.47	.47	.47	.47	.47	.47
$31.67	$32.34	6.24	3.90	1.56	.48	.48	.48	.48	.48	.48	.48	.48
$32.34	$33.00	6.39	3.99	1.69	.49	.49	.49	.49	.49	.49	.49	.49
$33.00	$33.67	6.50	4.20	1.90	.50	.50	.50	.50	.50	.50	.50	.50
$33.67	$34.34	6.63	4.29	1.95	.51	.51	.51	.51	.51	.51	.51	.51
$34.34	$35.00	6.72	4.42	2.12	.52	.52	.52	.52	.52	.52	.52	.52
$35.00	$35.67	6.93	4.63	2.33	.53	.53	.53	.53	.53	.53	.53	.53
$35.67	$36.34	7.02	4.68	2.34	.54	.54	.54	.54	.54	.54	.54	.54
$36.34	$37.00	7.15	4.85	2.55	.55	.55	.55	.55	.55	.55	.55	.55
$37.00	$37.67	7.36	4.96	2.66	.56	.56	.56	.56	.56	.56	.56	.56
$37.67	$38.34	7.41	5.07	2.73	.57	.57	.57	.57	.57	.57	.57	.57
$38.34	$39.00	7.48	5.18	2.88	.58	.58	.58	.58	.58	.58	.58	.58
$39.00	$39.67	7.69	5.39	3.09	.79	.59	.59	.59	.59	.59	.59	.59
$39.67	$40.34	7.80	5.46	3.12	.78	.60	.60	.60	.60	.60	.60	.60
$40.34	$41.00	7.91	5.61	3.31	1.01	.61	.61	.61	.61	.61	.61	.61
$41.00	$41.67	8.12	5.82	3.52	1.12	.62	.62	.62	.62	.62	.62	.62
$41.67	$42.34	8.19	5.85	3.51	1.17	.63	.63	.63	.63	.63	.63	.63
$42.34	$43.00	8.34	5.94	3.64	1.34	.64	.64	.64	.64	.64	.64	.64
$43.00	$43.67	8.45	6.15	3.85	1.55	.65	.65	.65	.65	.65	.65	.65
$43.67	$44.34	8.58	6.24	3.90	1.56	.66	.66	.66	.66	.66	.66	.66
$44.34	$45.00	8.67	6.37	4.07	1.77	.67	.67	.67	.67	.67	.67	.67
$45.00	$45.67	8.88	6.58	4.28	1.98	.68	.68	.68	.68	.68	.68	.68
$45.67	$46.34	8.97	6.63	4.29	1.95	.69	.69	.69	.69	.69	.69	.69
$46.34	$47.00	9.10	6.80	4.50	2.10	.70	.70	.70	.70	.70	.70	.70
$47.00	$47.67	9.31	6.91	4.61	2.31	.71	.71	.71	.71	.71	.71	.71
$47.67	$48.34	9.36	7.02	4.68	2.34	.72	.72	.72	.72	.72	.72	.72
$48.34	$49.00	9.43	7.13	4.83	2.53	.73	.73	.73	.73	.73	.73	.73
$49.00	$49.67	9.64	7.34	5.04	2.74	.74	.74	.74	.74	.74	.74	.74
$49.67	$50.34	9.75	7.41	5.07	2.73	.75	.75	.75	.75	.75	.75	.75
$50.34	$51.00	9.86	7.56	5.26	2.96	.76	.76	.76	.76	.76	.76	.76
$51.00	$51.67	10.07	7.77	5.47	3.07	.77	.77	.77	.77	.77	.77	.77
$51.67	$52.34	10.14	7.80	5.46	3.12	.78	.78	.78	.78	.78	.78	.78
$52.34	$53.00	10.29	7.89	5.59	3.29	.99	.79	.79	.79	.79	.79	.79
$53.00	$53.67	10.40	8.10	5.80	3.50	1.20	.80	.80	.80	.80	.80	.80
$53.67	$54.34	10.53	8.19	5.85	3.51	1.17	.81	.81	.81	.81	.81	.81
$54.34	$55.00	10.62	8.32	6.02	3.72	1.42	.82	.82	.82	.82	.82	.82
$55.00	$55.67	10.83	8.53	6.23	3.93	1.63	.83	.83	.83	.83	.83	.83
$55.67	$56.34	10.92	8.58	6.24	3.90	1.56	.84	.84	.84	.84	.84	.84
$56.34	$57.00	11.05	8.75	6.45	4.05	1.75	.85	.85	.85	.85	.85	.85
$57.00	$57.67	11.26	8.86	6.56	4.26	1.96	.86	.86	.86	.86	.86	.86
$57.67	$58.34	11.31	8.97	6.63	4.29	1.95	.87	.87	.87	.87	.87	.87
$58.34	$59.00	11.38	9.08	6.78	4.48	2.18	.88	.88	.88	.88	.88	.88
$59.00	$59.67	11.59	9.29	6.99	4.69	2.39	.89	.89	.89	.89	.89	.89

WEEKLY WITHHOLDING TABLE COMBINING INCOME TAX AND EMPLOYEES' FEDERAL INSURANCE CONTRIBUTIONS ACT TAX (1½ PERCENT)—Continued

If wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10
		The amount of income tax and F. I. C. A. tax to be withheld shall be—										
$59.67	$60.34	$11.70	$9.36	$7.02	$4.68	$2.34	$0.90	$0.90	$0.90	$0.90	$0.90	$0.90
$60.34	$61.00	11.91	9.61	7.31	5.01	2.61	.91	.91	.91	.91	.91	.91
$61.00	$61.67	11.92	9.62	7.32	5.02	2.62	.92	.92	.92	.92	.92	.92
$61.67	$62.34	12.09	9.75	7.41	5.07	2.73	.93	.93	.93	.93	.93	.93
$62.34	$63.00	12.24	9.94	7.64	5.34	3.04	.94	.94	.94	.94	.94	.94
$63.00	$63.67	12.25	9.95	7.65	5.35	3.05	.95	.95	.95	.95	.95	.95
$63.67	$64.34	12.48	10.14	7.80	5.46	3.12	.96	.96	.96	.96	.96	.96
$64.34	$65.00	12.67	10.37	8.07	5.77	3.47	1.17	.97	.97	.97	.97	.97
$65.00	$65.67	12.68	10.38	8.08	5.78	3.48	1.18	.98	.98	.98	.98	.98
$65.67	$66.34	12.87	10.53	8.19	5.85	3.51	1.17	.99	.99	.99	.99	.99
$66.34	$67.00	13.10	10.80	8.40	6.10	3.80	1.50	1.00	1.00	1.00	1.00	1.00
$67.00	$67.67	13.11	10.81	8.41	6.11	3.81	1.51	1.01	1.01	1.01	1.01	1.01
$67.67	$68.34	13.26	10.92	8.58	6.24	3.90	1.56	1.02	1.02	1.02	1.02	1.02
$68.34	$69.00	13.43	11.13	8.83	6.53	4.23	1.93	1.03	1.03	1.03	1.03	1.03
$69.00	$69.67	13.44	11.14	8.84	6.54	4.24	1.94	1.04	1.04	1.04	1.04	1.04
$69.67	$70.34	13.65	11.31	8.97	6.63	4.29	1.95	1.05	1.05	1.05	1.05	1.05
$70.34	$71.00	13.86	11.56	9.26	6.96	4.56	2.26	1.06	1.06	1.06	1.06	1.06
$71.00	$71.67	13.87	11.57	9.27	6.97	4.57	2.27	1.07	1.07	1.07	1.07	1.07
$71.67	$72.34	14.04	11.70	9.36	7.02	4.68	2.34	1.08	1.08	1.08	1.08	1.08
$72.34	$73.00	14.19	11.89	9.59	7.29	4.99	2.69	1.09	1.09	1.09	1.09	1.09
$73.00	$73.67	14.20	11.90	9.60	7.30	5.00	2.70	1.10	1.10	1.10	1.10	1.10
$73.67	$74.34	14.43	12.09	9.75	7.41	5.07	2.73	1.11	1.11	1.11	1.11	1.11
$74.34	$75.00	14.62	12.32	10.02	7.72	5.42	3.12	1.12	1.12	1.12	1.12	1.12
$75.00	$75.67	14.63	12.33	10.03	7.73	5.43	3.13	1.13	1.13	1.13	1.13	1.13
$75.67	$76.34	14.82	12.48	10.14	7.80	5.46	3.12	1.14	1.14	1.14	1.14	1.14
$76.34	$77.00	15.05	12.75	10.35	8.05	5.75	3.45	1.15	1.15	1.15	1.15	1.15
$77.00	$77.67	15.06	12.76	10.36	8.06	5.76	3.46	1.16	1.16	1.16	1.16	1.16
$77.67	$78.34	15.21	12.87	10.53	8.19	5.85	3.51	1.17	1.17	1.17	1.17	1.17
$78.34	$79.00	15.38	13.08	10.78	8.48	6.18	3.88	1.58	1.18	1.18	1.18	1.18
$79.00	$79.67	15.39	13.09	10.79	8.49	6.19	3.89	1.59	1.19	1.19	1.19	1.19
$79.67	$80.34	15.60	13.26	10.92	8.58	6.24	3.90	1.56	1.20	1.20	1.20	1.20
$80.34	$81.00	15.81	13.51	11.21	8.91	6.51	4.21	1.91	1.21	1.21	1.21	1.21
$81.00	$81.67	15.82	13.52	11.22	8.92	6.52	4.22	1.92	1.22	1.22	1.22	1.22
$81.67	$82.34	15.99	13.65	11.31	8.97	6.63	4.29	1.95	1.23	1.23	1.23	1.23
$82.34	$83.00	16.14	13.84	11.54	9.24	6.94	4.64	2.34	1.24	1.24	1.24	1.24
$83.00	$83.67	16.15	13.85	11.55	9.25	6.95	4.65	2.35	1.25	1.25	1.25	1.25
$83.67	$84.34	16.38	14.04	11.70	9.36	7.02	4.68	2.34	1.26	1.26	1.26	1.26
$84.34	$85.00	16.57	14.27	11.97	9.67	7.37	5.07	2.77	1.27	1.27	1.27	1.27
$85.00	$85.67	16.58	14.28	11.98	9.68	7.38	5.08	2.78	1.28	1.28	1.28	1.28
$85.67	$86.34	16.77	14.43	12.09	9.75	7.41	5.07	2.73	1.29	1.29	1.29	1.29
$86.34	$87.00	17.00	14.70	12.30	10.00	7.70	5.40	3.10	1.30	1.30	1.30	1.30
$87.00	$87.67	17.01	14.71	12.31	10.01	7.71	5.41	3.11	1.31	1.31	1.31	1.31
$87.67	$88.34	17.16	14.82	12.48	10.14	7.80	5.46	3.12	1.32	1.32	1.32	1.32
$88.34	$89.00	17.33	15.03	12.73	10.43	8.13	5.83	3.53	1.33	1.33	1.33	1.33
$89.00	$89.67	17.34	15.04	12.74	10.44	8.14	5.84	3.54	1.34	1.34	1.34	1.34
$89.67	$90.34	17.55	15.21	12.87	10.53	8.19	5.85	3.51	1.35	1.35	1.35	1.35
$90.34	$91.00	17.76	15.46	13.16	10.86	8.46	6.16	3.86	1.56	1.36	1.36	1.36
$91.00	$91.67	17.77	15.47	13.17	10.87	8.47	6.17	3.87	1.57	1.37	1.37	1.37
$91.67	$92.34	17.94	15.60	13.26	10.92	8.58	6.24	3.90	1.56	1.38	1.38	1.38
$92.34	$93.00	18.09	15.79	13.49	11.19	8.89	6.59	4.29	1.99	1.39	1.39	1.39
$93.00	$93.67	18.10	15.80	13.50	11.20	8.90	6.60	4.30	2.00	1.40	1.40	1.40
$93.67	$94.34	18.33	15.99	13.65	11.31	8.97	6.63	4.29	1.95	1.41	1.41	1.41
$94.34	$95.00	18.52	16.22	13.92	11.62	9.32	7.02	4.72	2.32	1.42	1.42	1.42
$95.00	$95.67	18.53	16.23	13.93	11.63	9.33	7.03	4.73	2.33	1.43	1.43	1.43
$95.67	$96.34	18.72	16.38	14.04	11.70	9.36	7.02	4.68	2.34	1.44	1.44	1.44
$96.34	$97.00	18.95	16.65	14.25	11.95	9.65	7.35	5.05	2.75	1.45	1.45	1.45
$97.00	$97.67	18.96	16.66	14.26	11.96	9.66	7.36	5.06	2.76	1.46	1.46	1.46
$97.67	$98.34	19.11	16.77	14.43	12.09	9.75	7.41	5.07	2.73	1.47	1.47	1.47
$98.34	$99.00	19.28	16.98	14.68	12.38	10.08	7.78	5.48	3.18	1.48	1.48	1.48
$99.00	$99.67	19.29	16.99	14.69	12.39	10.09	7.79	5.49	3.19	1.49	1.49	1.49
$99.67	$100.34	19.50	17.16	14.82	12.48	10.14	7.80	5.46	3.12	1.50	1.50	1.50
$100.34	$101.00	20.01	17.61	15.31	13.01	10.71	8.41	6.11	3.81	1.51	1.51	1.51
$101.00	$101.67	20.02	17.62	15.32	13.02	10.72	8.42	6.12	3.82	1.52	1.52	1.52
$101.67	$102.34	20.03	17.63	15.33	13.03	10.73	8.43	6.13	3.83	1.53	1.53	1.53
$102.34	$103.00	20.04	17.64	15.34	13.04	10.74	8.44	6.14	3.84	1.54	1.54	1.54
$103.00	$103.67	20.05	17.65	15.35	13.05	10.75	8.45	6.15	3.85	1.55	1.55	1.55
$103.67	$104.34	20.06	17.66	15.36	13.06	10.76	8.46	6.16	3.86	1.56	1.56	1.56
$104.34	$105.00	20.07	17.67	15.37	13.07	10.77	8.47	6.17	3.87	1.57	1.57	1.57
$105.00	$105.67	20.98	18.58	16.28	13.98	11.68	9.38	7.08	4.78	2.48	1.58	1.58
$105.67	$106.34	20.99	18.59	16.29	13.99	11.69	9.39	7.09	4.79	2.49	1.59	1.59

WEEKLY WITHHOLDING TABLE COMBINING INCOME TAX AND EMPLOYEES' FEDERAL INSURANCE CONTRIBUTIONS ACT TAX (1½ PERCENT)—Continued

If wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10
		The amount of income tax and F. I. C. A. tax to be withheld shall be—										
$106.34	$107.00	$21.00	$18.60	$16.30	$14.00	$11.70	$9.40	$7.10	$4.80	$2.50	$1.60	$1.60
$107.00	$107.67	21.01	18.61	16.31	14.01	11.71	9.41	7.11	4.81	2.51	1.61	1.61
$107.67	$108.34	21.02	18.62	16.32	14.02	11.72	9.42	7.12	4.82	2.52	1.62	1.62
$108.34	$109.00	21.03	18.63	16.33	14.03	11.73	9.43	7.13	4.83	2.53	1.63	1.63
$109.00	$109.67	21.04	18.64	16.34	14.04	11.74	9.44	7.14	4.84	2.54	1.64	1.64
$109.67	$110.34	21.45	19.11	16.77	14.43	12.09	9.75	7.41	5.07	2.73	1.65	1.65
$110.34	$111.00	21.96	19.56	17.26	14.96	12.66	10.36	8.06	5.76	3.46	1.66	1.66
$111.00	$111.67	21.97	19.57	17.27	14.97	12.67	10.37	8.07	5.77	3.47	1.67	1.67
$111.67	$112.34	21.98	19.58	17.28	14.98	12.68	10.38	8.08	5.78	3.48	1.68	1.68
$112.34	$113.00	21.99	19.59	17.29	14.99	12.69	10.39	8.09	5.79	3.49	1.69	1.69
$113.00	$113.67	22.00	19.60	17.30	15.00	12.70	10.40	8.10	5.80	3.50	1.70	1.70
$113.67	$114.34	22.01	19.61	17.31	15.01	12.71	10.41	8.11	5.81	3.51	1.71	1.71
$114.34	$115.00	22.02	19.62	17.32	15.02	12.72	10.42	8.12	5.82	3.52	1.72	1.72
$115.00	$115.67	22.93	20.53	18.23	15.93	13.63	11.33	9.03	6.73	4.43	2.13	1.73
$115.67	$116.34	22.94	20.54	18.24	15.94	13.64	11.34	9.04	6.74	4.44	2.14	1.74
$116.34	$117.00	22.95	20.55	18.25	15.95	13.65	11.35	9.05	6.75	4.45	2.15	1.75
$117.00	$117.67	22.96	20.56	18.26	15.96	13.66	11.36	9.06	6.76	4.46	2.16	1.76
$117.67	$118.34	22.97	20.57	18.27	15.97	13.67	11.37	9.07	6.77	4.47	2.17	1.77
$118.34	$119.00	22.98	20.58	18.28	15.98	13.68	11.38	9.08	6.78	4.48	2.18	1.78
$119.00	$119.67	22.99	20.59	18.29	15.99	13.69	11.39	9.09	6.79	4.49	2.19	1.79
$119.67	$120.34	23.40	21.06	18.72	16.38	14.04	11.70	9.36	7.02	4.68	2.34	1.80
$120.34	$121.00	23.91	21.51	19.21	16.91	14.61	12.31	10.01	7.71	5.41	3.11	1.81
$121.00	$121.67	23.92	21.52	19.22	16.92	14.62	12.32	10.02	7.72	5.42	3.12	1.82
$121.67	$122.34	23.93	21.53	19.23	16.93	14.63	12.33	10.03	7.73	5.43	3.13	1.83
$122.34	$123.00	23.94	21.54	19.24	16.94	14.64	12.34	10.04	7.74	5.44	3.14	1.84
$123.00	$123.67	23.95	21.55	19.25	16.95	14.65	12.35	10.05	7.75	5.45	3.15	1.85
$123.67	$124.34	23.96	21.56	19.26	16.96	14.66	12.36	10.06	7.76	5.46	3.16	1.86
$124.34	$125.00	23.97	21.57	19.27	16.97	14.67	12.37	10.07	7.77	5.47	3.17	1.87
$125.00	$125.67	24.88	22.48	20.18	17.88	15.58	13.28	10.98	8.68	6.38	4.08	1.88
$125.67	$126.34	24.89	22.49	20.19	17.89	15.59	13.29	10.99	8.69	6.39	4.09	1.89
$126.34	$127.00	24.90	22.50	20.20	17.90	15.60	13.30	11.00	8.70	6.40	4.10	1.90
$127.00	$127.67	24.91	22.51	20.21	17.91	15.61	13.31	11.01	8.71	6.41	4.11	1.91
$127.67	$128.34	24.92	22.52	20.22	17.92	15.62	13.32	11.02	8.72	6.42	4.12	1.92
$128.34	$129.00	24.93	22.53	20.23	17.93	15.63	13.33	11.03	8.73	6.43	4.13	1.93
$129.00	$129.67	24.94	22.54	20.24	17.94	15.64	13.34	11.04	8.74	6.44	4.14	1.94
$129.67	$130.34	25.35	23.01	20.67	18.33	15.99	13.65	11.31	8.97	6.63	4.29	1.95
$130.34	$131.00	25.86	23.46	21.16	18.86	16.56	14.26	11.96	9.66	7.36	5.06	2.76
$131.00	$131.67	25.87	23.47	21.17	18.87	16.57	14.27	11.97	9.67	7.37	5.07	2.77
$131.67	$132.34	25.88	23.48	21.18	18.88	16.58	14.28	11.98	9.68	7.38	5.08	2.78
$132.34	$133.00	25.89	23.49	21.19	18.89	16.59	14.29	11.99	9.69	7.39	5.09	2.79
$133.00	$133.67	25.90	23.50	21.20	18.90	16.60	14.30	12.00	9.70	7.40	5.10	2.80
$133.67	$134.34	25.91	23.51	21.21	18.91	16.61	14.31	12.01	9.71	7.41	5.11	2.81
$134.34	$135.00	25.92	23.52	21.22	18.92	16.62	14.32	12.02	9.72	7.42	5.12	2.82
		19½ percent of the excess over $135 plus—										
$135.00 and over		26.33	23.99	21.65	19.31	16.97	14.63	12.29	9.95	7.61	5.27	2.93

The foregoing table conforms to the provisions of the Internal Revenue Code. Since the Code provides no table method of determining the amount of employees' tax under the Federal Insurance Contributions Act, the wage brackets shown in the table are functions of the 1½ percent Federal Insurance Contributions Act tax rate, and amounts of tax used in the table are shown to the nearest cent. The table is designed to cover weekly wages under $135, but it can be extended to wages of $135 and over by utilizing the same wage brackets and adding the Federal Insurance Contributions Act tax at 1½ percent to the income tax to be withheld. It should be noted that the income tax for wage brackets such as $124.34 to $125 and $125 to

$125.67 is determined by reference to the tax table provided by the Code (see page 20 of Circular E, Rev. Jan. 1951, Employer's Tax Handbook). However, in the case of wage brackets such as $129.67 to $130.34, which fall within more than one bracket of the income tax withholding table provided by the Code, the income tax is determined in accordance with the percentage method (see page 19 of Circular E, Rev. Jan. 1951), which permits the rounding of wages to the nearest dollar for purposes of computing the amount to be withheld.

The use of the combined withholding table results in the correct aggregate withholding only if wages for income tax and for Federal Insurance Contributions Act tax withholding are identical. The combined table should not be used with respect to wages in excess of $3,600 paid on and after January 1, 1951, or in other instances where the wages differ.

For purposes of employer's quarterly Federal tax returns (Form 941), the Bureau of Internal Revenue will interpose no objection, in the case of employers using the combined withholding table, to (1) determining the amount of Federal Insurance Contributions Act tax withheld by applying the 1½ percent Federal Insurance Contributions Act tax rate to total taxable wages for Federal Insurance Contributions Act purposes, and (2) determining the amount of income tax withheld by subtracting the amount of Federal Insurance Contributions Act tax withheld from the total tax withheld.

With respect to employees' annual receipts on Form W-2 for 1951 and thereafter, on which employers are required to show (1) total Federal Insurance Contributions Act wages paid, (2) employees' tax deducted under the Federal Insurance Contributions Act, (3) total wages subject to the income tax withholding, and (4) income tax withheld therefrom, no objection will be interposed to determining employees' tax deducted under the Federal Insurance Contributions Act from each employee's wages in the year by applying the 1½ percent rate to wages, not in excess of $3,600, under such Act, and determining the amount of income tax withheld by subtracting the employees' tax so determined from the total tax withheld from the employee's wages in the year.

SECTION 1622: Income tax collected at source.
REGULATIONS 116, SECTION 405.201: Requirement of withholding.

Rate of exchange applicable in connection with the conversion of Canadian currency to United States dollars. (See Mim. 6564, page 110.)

CHAPTER 9, SUBCHAPTER E.—GENERAL PROVISIONS

REGULATIONS 116 AND 128.

Sections 1635 and 1636, added by the Social Security Act Amendments of 1950, prescribe new periods of limitation applicable to Federal Insurance Contributions Act taxes and income withholding tax on wages with respect to remuneration paid during any calendar year after 1950. (See Mim. 6625, page 87.)

EXCISE TAX RULINGS

INTERNAL REVENUE CODE

CHANGE IN NAME OF MISCELLANEOUS TAX UNIT

1951–5–13554
Mim. 6608

Change in name of Miscellaneous Tax Unit

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., February 13, 1951.

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

1. Effective March 1, 1951, the name of the Miscellaneous Tax Unit of the Bureau is changed to the Excise Tax Unit and the unit shall be so addressed or referred to in all official correspondence, reports, forms, etc.

2. Existing stocks of stationery, forms, etc., bearing the old name of the unit will continue to be used until they are exhausted but, to the extent practicable, the designation "Miscellaneous Tax Unit" appearing thereon should be blocked out and the new name of the unit inserted in its stead.

3. Ad-Mimeograph, Coll. No. 4298, Revised, dated February 5, 1948, relating to symbols for use in correspondence, is amended by changing the symbols prescribed for use in correspondence with the Miscellaneous Tax Unit to the following:

EXCISE TAX UNIT

ExT : DC	Deputy Commissioner.
ExT : M	Miscellaneous Division.
ExT : ST	Sales Tax Division.
ExT : T	Tobacco Division.

GEO. J. SCHOENEMAN,
Commissioner.

STAMP TAXES

1951-2-13524
Mim. 6582

Special-tax stamp issued for value in excess of tax liability

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 28, 1950.

Collectors of Internal Revenue and Others Concerned:

In many instances a taxpayer files Form 11 or Form 11-B and pays special tax for a period longer than that for which liability has been incurred or files Form 11-B and pays tax for more units of the same classification than were being maintained for use or operated, and the special-tax stamp is issued accordingly. As an alternative to having the taxpayer remit special tax for the correct liability and a new stamp issued for the shorter period, or correct number of units involved, and subsequently file a claim for redemption of the original stamp, the procedure set forth below should be followed:

The taxpayer may be advised of his privilege to file a claim on Form 843 for allowance in part of the value of the special-tax stamp. If the taxpayer desires to file the claim he should be requested to file amended Form 11 or Form 11-B. The amended form should be submitted with the claim to be processed in the usual manner. The following or other appropriate endorsement should be made in ink or in type on the stamp, "Claim for refund $______ filed," followed by the name and title of the endorser and the date. The stamp should be returned immediately to the taxpayer and posted on the premises where the business is conducted. The following statements should also be made on the reverse of the claim: (1) Stamp has been properly endorsed and returned to the taxpayer. and (2) amended Form 11 or Form 11-B is on file.

Correspondence in regard to this mimeograph should be addressed to the attention of AT, if relating to occupational tax stamps for liquors, and to the attention of MT, if other occupational tax stamps are involved. Reference should also be made to this mimeograph number.

GEO. J. SCHOENEMAN,
Commissioner.

REGULATIONS 59, SECTIONS 323.0, ETC. 1951-3-13533
T. D. 5827

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 323.—SPECIAL TAXES WITH RESPECT TO COIN-OPERATED AMUSEMENT AND GAMING DEVICES, BOWLING ALLEYS, BILLIARD TABLES, AND POOL TABLES

Increase in rate of tax on coin-operated gaming devices, and liability of Federal agencies or instrumentalities.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 59 [26 CFR, part 323], relating to special taxes with respect to coin-operated amusement and gaming devices, bowling alleys, billiard tables, and pool tables, to the Revenue Act of 1950 (Public Law 814, 81st Cong., 2d sess.), approved September 23, 1950, such regulations are hereby amended as follows:

PARAGRAPH 1. Section 323.0 is amended as follows:

(A) By striking out in paragraph (*a*) "(such part being added by section 555 of the Revenue Act of 1941)," and inserting in lieu thereof the following: ", as amended,".

(B) By striking out in paragraph (*b*) "(such part being added by section 556 of the Revenue Act of 1941)," and inserting in lieu thereof the following: ", as amended,".

PAR. 2. Immediately preceding section 323.20 [26 CFR 323.20] there is inserted the following:

SEC. 603. TAX ON COIN-OPERATED GAMING DEVICES. [REVENUE ACT OF 1950 (PUBLIC LAW 814, 81st CONG., 2d SESS.), APPROVED SEPTEMBER 23, 1950.]

(a) INCREASE IN TAX ON SLOT MACHINES.—Section 3267(a) (relating to rate of tax) is hereby amended by striking out "$100" wherever appearing therein and inserting in lieu thereof "$150".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the first day of the first month which begins more than ten days after the date of enactment of this Act.

SEC. 604. FEDERAL AGENCIES OR INSTRUMENTALITIES. [REVENUE ACT OF 1950 (PUBLIC LAW 814, 81st CONG., 2d SESS.), APPROVED SEPTEMBER 23, 1950.]

Subchapter B of chapter 27 (relating to occupational taxes) is hereby amended by adding at the end thereof the following new section:

"SEC. 3283. FEDERAL AGENCIES OR INSTRUMENTALITIES.

"Any tax imposed by this chapter shall apply to any agency or instrumentality of the United States unless such agency or instrumentality is granted by statute a specific exemption from such tax."

PAR. 3. Section 323.20, as amended by Treasury Decision 5203 [C. B. 1942-2, 276], approved December 22, 1942 [26 CFR 323.20], is further amended by striking out so much of such section as precedes paragraph (*b*) and inserting in lieu thereof the following:

SEC. 323.20. EFFECTIVE DATES OF TAX.—The effective dates of the rates of tax with respect to coin-operated amusement and gaming devices imposed by section 3267, added to the Internal Revenue Code by section 555 of the Revenue Act of 1941, including changes made in such rates by section 617 of the Revenue Act of 1942 and section 603 of the Revenue Act of 1950, are as follows:

(*a*) except as indicated by (*c*) below, the rates of tax applicable with respect to gaming devices operated by means of the insertion of a coin, token, or similar object are:

(1) October 1, 1941, through June 30, 1943, $50 per annum;
(2) July 1, 1943, through October 31, 1950, $100 per annum;
(3) On and after November 1, 1950, $150 per annum.

PAR. 4. Immediately preceding section 323.30 there is inserted the following:

SEC. 604. FEDERAL AGENCIES OR INSTRUMENTALITIES. [REVENUE ACT OF 1950 (PUBLIC LAW 814, 81st CONG., 2d SESS.), APPROVED SEPTEMBER 23, 1950.]

Subchapter B of chapter 27 (relating to occupational taxes) is hereby amended by adding at the end thereof the following new section:

"SEC. 3283. FEDERAL AGENCIES OR INSTRUMENTALITIES.

"Any tax imposed by this chapter shall apply to any agency or instrumentality of the United States unless such agency or instrumentality is granted by statute a specific exemption from such tax."

PAR. 5. Section 323.21 [26 CFR 323.21] is amended, and section 323.31, as amended by Treasury Decision 5344 [C. B. 1944, 663], approved March 14, 1944 [26 CFR 323.31], is further amended, by adding at the end of each the following:

Any agency or instrumentality of the United States, such as an Army exchange, Navy exchange, etc., is liable to such special tax unless granted by statute a specific exemption therefrom.

PAR. 6. Section 323.22, as amended by Treasury Decision 5203 [26 CFR 323.22], is further amended—

(A) By striking out so much of the paragraph designated (*d*) as precedes "in the case of" and inserting in lieu thereof the following:

(*d*) Effective October 1, 1941, through June 30, 1943, \$50, effective July 1, 1943, through October 31, 1950, \$100, and effective on and after November 1, 1950, \$150, per year.

(B) By adding after the third paragraph beginning with "As the tax became effective on October 1, 1941," the following:

Those persons who prior to November 1, 1950, paid or incurred the special tax liability at the rate of \$100 per year for gaming devices and continued to maintain for use such devices on November 1, 1950, are liable for additional tax for the period November 1, 1950, through June 30, 1951, at the increased rate of \$50 per annum. The additional tax liability for the 8-month period from November 1, 1950, through June 30, 1951, shall be computed on the basis of eight-twelfths of \$50, or \$33.34, for each device.

Because this Treasury Decision makes technical amendments to the regulations, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(This Treasury Decision is issued pursuant to the authority contained in section 3791 of the Internal Revenue Code (53 Stat. 467; 26 U. S. C. 3791).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved January 16, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register January 19, 1951, 8:53 a. m.)

NARCOTICS

REGULATIONS 5 (Narcotics), ARTICLES 2, ETC. 1951–4–13546
(Narcotics) T. D. 44

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 151.—REGULATIONS UNDER THE HARRISON NARCOTIC LAW, AS AMENDED

Definition of narcotic drugs.—Forms 678A and 713 eliminated.—Oath on Form 678 not required.—Sworn statement concerning loss of narcotics not required.

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

To Collectors of Internal Revenue and Others Concerned:

Narcotic Regulations 5 [26 CFR, part 151] relating to narcotics subject to the Harrison Narcotic Law, but only as prescribed and made applicable to the Internal Revenue Code by Treasury Decision 4884 [C. B. 1939–1 (part 1), 395], approved February 11, 1939 [26 CFR Cum. Supp., page 5875] are amended as follows:

PARAGRAPH 1. Article 2(b) (26 CFR 151.2(b)) is amended by inserting immediately following the comma after the word "isonipecaine" the following: "opiate,".

PAR. 2. Article 4 (26 CFR 151.4) is amended to read as follows:

SEC. 151.4. MANNER AND TIME OF REGISTRATION.—Every person required to register shall execute and file with the collector for the district in which he proposes to engage in any activity involving use of narcotic drugs, an application for registration on Form 678 and pay the special tax or taxes enumerated in article 13 (26 CFR 151.13). Form 678 shall be executed by new applicants and approved by the collector before the activity is commenced. Renewal applications shall be executed and filed on or before the succeeding July 1, and annually thereafter as long as liability is incurred. This form may be obtained from the collector.

PAR. 3. Article 5(a) (26 CFR 151.5(a)) is amended to read as follows:

SEC. 151.5. INVESTIGATION OF APPLICANTS.—(a) All new applications on Form 678 shall be referred by the collector to the appropriate narcotic district supervisor for investigation, report, and recommendation. Renewal applications on Form 678 shall also be referred by the collector to the appropriate narcotic district supervisor for investigation, report, and recommendation, if the collector is in doubt as to the applicant's being lawfully entitled to engage in the activity for which he seeks registration.

PAR. 4. Article 6 (26 CFR 151.6) is amended to read as follows:

SEC. 151.6. EVIDENCE OF QUALIFICATION.—The application of every person shall show that, under the laws of the jurisdiction in which he is operating or proposes to operate, he is legally qualified or lawfully entitled to engage in the activities for which registration is sought.

PAR. 5. Article 9 (26 CFR 151.9) is hereby repealed.

PAR. 6. Article 10 (26 CFR 151.10) is amended to read as follows:

SEC. 151.10. INVENTORY REQUIRED.—Every person making application for registry or reregistry in any class (see art. 13, 26 CFR 151.13), except classes I and II, shall, as of December 31 preceding the date of his application or any date between December 31 and the date of application for such registry or reregistry, prepare in duplicate an inventory of all narcotic drugs and preparations on hand at the time of making such inventory. The inventories shall be prepared on the reverse side of Form 678, copies of which may be obtained from collectors upon request. If the taxpayer is engaged in business in more than one class, a separate inventory shall be prepared for each class. A class V registrant is not required to make an inventory of preparations or remedies exempt under section 6, but he is required to make an inventory of all nonexempt narcotic drugs and preparations in his possession. A duplicate copy of the inventory shall be kept on file by the maker for a period of 2 years.

PAR. 7. Article 38(a) (26 CFR 151.38(a)) is amended by striking from the second sentence thereof the number "678–A" and inserting in lieu thereof the number "678".

PAR. 8. Article 41 (26 CFR 151.41) is amended by striking from the first sentence the number "678–A" and inserting in lieu thereof the number "678."

PAR. 9. Article 93 (26 CFR 151.93) is amended by striking from the last sentence the number "713" and inserting in lieu thereof the number "678."

PAR. 10. Article 186(a) (26 CFR 151.186(a)) is amended by striking from the second sentence the number "713" and inserting in lieu thereof the number "678."

PAR. 11. Article 194 (26 CFR 151.194) is amended to read as follows:

SEC. 151.194. PROCEDURE IN CASE OF LOSS.—(a) Where, through breakage of the container or other accident, otherwise than in transit, narcotics are lost or destroyed, the person having title thereto shall make a signed statement as to the kinds and quantities of narcotics lost or destroyed and the circumstances involved, and immediately forward the statement to the narcotic district supervisor. A copy of such statement shall be retained and filed with the other narcotic records. See appendix for list of narcotic district supervisors, their headquarters and States embraced.

(b) Where narcotics are lost by theft, or otherwise lost or destroyed in transit, the consignee shall immediately upon ascertainment of the occurrence file with the narcotic district supervisor, a signed statement of the facts, including a list of the narcotics stolen, lost, or destroyed, and documentary evidence that the local authorities were notified. A copy of the statement shall be retained and filed with the other narcotic records of the consignee.

(c) A loss in transit does not authorize a vendor to duplicate a shipment on the same order form. A separate order form covering each and every shipment of narcotics is required.

This Treasury Decision is issued under the authority contained in sections 2551, 2559, and 2606 of the Internal Revenue Code (53 Stat. 270, 277, 283; 26 U. S. C. 2551, 2559, 2606).

Because the amendments made by this Treasury Decision reduce the number of forms required under certain conditions and the inclusion of opiates as part of the definition of narcotic drugs, is a matter of statutory law, it is found unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

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

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.
G. W. CUNNINGHAM,
Acting Commissioner of Narcotics.

Approved November 24, 1950.

E. H. FOLEY, Jr.,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 4, 1950, 12:20 p. m.)

TRANSPORTATION TAXES

TRANSPORTATION OF PERSONS

REGULATIONS 42 (1942), SECTION 130.63: Members of military and naval service. 1951-9-13582 T. D. 5836

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C. PART 130.—TAXES ON SAFE DEPOSIT BOXES AND ON CERTAIN TRANSPORTATION AND COMMUNICATIONS SERVICES

Exemption of furlough travel of service personnel

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 42 (1942 edition) [26 CFR, part 130], to Public Law 878, Eighty-first Congress, second session [page 177, this Bulletin], approved December 15, 1950, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 130.63 [26 CFR 130.63] the following:

PUBLIC LAW 878 (81st CONG., 2d SESS.), APPROVED DECEMBER 15, 1950

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That effective with respect to amounts paid after the date of enactment of this Act—

(a) Section 12 of the Act of August 8, 1947, entitled "An Act to terminate certain tax provisions before the end of World War II" (61 Stat. 919), is hereby repealed.

(b) Section 3469(f)(2) of the Internal Revenue Code is hereby amended to read as follows:

"(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 than 2.025 cents per mile applicable to round-trip tickets sold to personnel of the United States Army, Air Force, 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."

PAR. 2. Section 130.63, as amended by Treasury Decision 5604 [C. B. 1948-1, 140], approved February 25, 1948 [26 CFR 130.63], is further amended as follows:

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

SEC. 130.63. MEMBERS OF MILITARY AND NAVAL SERVICE.—(*a*) *Amounts paid prior to January 1, 1948.*

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

This paragraph (*a*) shall not apply with respect to amounts paid after December 31, 1947.

(*b*) *Amounts paid on or after December 16, 1950.*—Under the provisions of section 3469(f)(2), as amended by Public Law 878 (81st Cong., 2d sess.), the tax does not apply to amounts paid after December 15, 1950, for transportation or for seating or sleeping accommodations furnished under special tariffs providing for fares of not more than 2.025 cents per mile applicable to round-trip tickets sold to personnel of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, including authorized cadets and midshipmen, traveling in uniform of the United States at their own expense when on official leave, furlough, or pass. A person claiming exemption under this section will be required to exhibit to the agent of the carrier a properly executed certificate to show that he is traveling on official leave, furlough, or pass, but the submission of an exemption certificate on Form 731, revised, is not necessary in such case.

Because the amendment to section 3469(f)(2) of the Internal Revenue Code became effective on December 16, 1950, the date following the date of approval of Public Law 878 (81st Cong., 2d sess.), and because of the technical nature of the amendments made herein, it is found that it is impracticable and unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

This Treasury Decision shall be effective as of December 16, 1950.

(This Treasury Decision is issued pursuant to the authority contained in sections 3472 and 3791 of the Internal Revenue Code (53 Stat. 423, 467, 55 Stat. 722; 26 U. S. C. 3472, 3791).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved April 3, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register April 9, 1951, 8:45 a. m.)

TRANSPORTATION OF PROPERTY

REGULATIONS 113 (1943), SECTION 143.11, 143.13(*a*), AND 143.30. — 1951-3-13534 T. D. 5826

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 143.—TAX WITH RESPECT TO THE TRANSPORTATION OF PROPERTY

Tax on transportation which begins and ends in United States

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 113 [26 CFR, part 143], relating to the tax on the amount paid for the transportation of property, to the Revenue Act of 1950 (Public Law 814, 81st Cong., 2d sess.), approved September 23, 1950, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 143.10 [26 CFR 143.10] the following:

SEC. 607. TRANSPORTATION WHICH BEGINS AND ENDS WITHIN THE UNITED STATES. [REVENUE ACT OF 1950 (PUBLIC LAW 814, 81st CONG., 2d SESS.), APPROVED SEPTEMBER 23, 1950.]

* * * * * * *

(b) TRANSPORTATION OF PROPERTY.—The first sentence of section 3475(a) (relating to tax on transportation of property) is hereby amended to read as follows: "There shall be imposed upon the amount paid within or without the United States for the transportation of property by rail, motor vehicle, water, or air from one point in the United States to another, a tax equal to 3 per centum of the amount so paid, except that, in the case of coal, the rate of tax shall be 4 cents per short ton."

(c) Effective Date.—The amendments made by this section shall apply to amounts paid on or after the first day of the first month which begins more than ten days after the date of the enactment of this Act for transportation which begins on or after such first day.

Par. 2. Section 143.11 [26 CFR 143.11] is amended to read as follows:

Sec. 143.11 Scope of Tax.—Section 3475(a) imposes a tax upon (*a*) amounts paid within the United States after December 1, 1942, for transportation, originating on or after such date, of property by rail, motor vehicle, water, or air from one point in the United States to another, and (*b*) amounts paid without the United States, on or after November 1, 1950, for transportation, originating on or after such date, of property by rail, motor vehicle, water, or air from one point in the United States to another. The tax applies only to amounts paid to a person engaged in the business of transporting property for hire.

Par. 3. Section 143.13(*a*), as amended by Treasury Decision 5354 [C. B. 1944, 657], approved April 1, 1944 [26 CFR 143.13], is further amended as follows:

(A) By inserting in the second undesignated paragraph immediately following the word "within" the words "or without".

(B) By amending the fourth undesignated paragraph to read as follows:

With respect to amounts paid within the United States, the tax applies only to amounts paid after December 1, 1942, for transportation which originated on or after that date. No tax attaches to payments for transportation originating prior to the first moment of December 1, 1942. Payments made prior to December 2, 1942, are not taxable regardless of when the transportation occurs.

With respect to amounts paid without the United States, the tax applies to amounts paid on or after November 1, 1950, for transportation originating on or after that date.

(C) By inserting at the end thereof the following paragraph:

Where a payment covering the entire movement of property from a point without the United States to a point within the United States is made to the originating carrier or freight forwarder outside the United States and such carrier or freight forwarder pays an amount within the United States for that part of the transportation movement which takes place within the United States, a statement to the effect that the transportation within the United States is part of a transportation movement from without the United States and that payment covering the entire movement was made outside the United States shall be endorsed on the appropriate shipping papers. Such endorsement shall constitute authority to the carrier within the United States not to collect the tax.

Par. 4. Section 143.30 [26 CFR 143.30] is amended by striking from the first sentence the words "in the United States".

Because of the short period of time between September 23, 1950, the date of approval of the Revenue Act of 1950, and November 1, 1950, the date upon which, pursuant to such Act, the amendment of section 3475(a) becomes effective, it is found that it is impracticable to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(This Treasury Decision is issued pursuant to the authority contained in sections 3472 and 3791 of the Internal Revenue Code (53 Stat. 423 and 467, 55 Stat. 722; 26 U. S. C. 3472, 3791).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved January 12, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register January 17, 1951, 8:56 a. m.)

MANUFACTURERS' EXCISE TAXES

SECTION 3403(c), AS AMENDED.—AUTOMOBILES, ETC., PARTS OR ACCESSORIES

REGULATIONS 46 (1940), SECTION 316.55. 1951-6-13560
S. T. 937

Rebuilders of used automobile engines may, in lieu of using actual values of individual engine blocks accepted in part payment of rebuilt engines sold on an exchange basis, ascribe to blocks of all makes, types, and models so accepted a uniform value of 35 percent of the "exchange price" in the computation of tax payable under section 3403(c) of the Internal Revenue Code.

Rebuilders of used automobile engines customarily operate on an "exchange basis," that is, sales of rebuilt engines are made predominantly only to purchasers who, in addition to paying a cash amount, usually known as the "exchange price," also turn in or exchange an equivalent number of used engine blocks which are capable of being rebuilt.

In those cases where a customer does not turn in a usable engine block for each rebuilt engine purchased, the rebuilder employs various methods to encourage trade-ins, such as quoting either (1) an outright price against which a credit is allowed if a usable engine block is later furnished; (2) an "exchange price" plus a deposit charge, which charge is refunded if a usable engine block is later turned in; or (3) an "exchange price" to which is added a stated amount in the absence of a trade-in. These "credits," "deposit charges," etc., may exceed the value of the usable engine block, according to the extent to which the rebuilder wishes to "penalize" a failure to turn in an acceptable used block.

It has been the position of the Bureau that the sale of a rebuilt engine by the rebuilder is subject to manufacturers' excise tax under section 3403(c) of the Internal Revenue Code and that the tax is due on the entire sale price, that is, the sum of the cash payment plus the value of the engine block accepted in exchange. The courts have sustained this interpretation of the law. However, because of the practices in the industry recited above, difficulties have been encountered by taxpayers, as well as by the Bureau, in establishing the value of the engine block accepted in exchange for purposes of computing liability for tax.

Because of such difficulties and to avoid the necessity for each rebuilder of automobile engines to establish the values of the various makes, types, and models of traded-in blocks, the Bureau has made a thorough survey of the problem in order to provide rebuilders of used engines with a definite and uniform basis upon which to compute their liability for tax on sales of such engines.

In lieu of using actual values of individual engine blocks accepted in part payment of rebuilt engines sold on an exchange basis, rebuilders may ascribe to blocks of all makes, types, and models so accepted a uniform value of 35 percent of the exchange price. Under this method, the tax payable under section 3403(c) of the Internal Revenue Code will be computed at 5 percent of the sum of the exchange price plus 35 percent thereof where the tax is passed on as a separate item, or at one twenty-first of such sum where the tax is not billed separately.

A rebuilder electing to make returns and pay the tax due on sales of rebuilt engines under the method outlined in the preceding paragraph must (1) follow such method with respect to all makes, types, and models of engine blocks, regardless of their condition, and (2) continue to use such method until, upon request made to the Commissioner, permission is granted to do otherwise. Since under this method uniform values are ascribed to all makes, types, and models of blocks dealt in, without regard to condition, any bona fide extra charge for missing parts or defects with respect to particular blocks shall not be taken into consideration in the computation of tax liability, because such charge is then considered to be merely an adjustment of the value of the used engine block rather than a part of the exchange price.

A rebuilder not electing to utilize the foregoing method must use the actual values of each class (i. e., make, type, and model) of used engine blocks accepted in exchange in the computation of his tax liability. In this instance, a bona fide extra charge for missing parts or defects with respect to a particular block may or may not enter into the computation of tax liability, depending upon the method of operations. Thus, if the values ascribed to the various classes of blocks are applied uniformly to all blocks of each class, regardless of condition, such extra charge shall be excluded in the tax computation. However, if in making his return of tax a rebuilder places upon blocks having defects or missing parts, values lower than those applying to their respective classes, extra charges by reason of such defects or missing parts are considered adjustments of the exchange price and are properly includible in computing the tax. Moreover, in this instance the taxpayer should obtain a ruling from the Commissioner approving the valuations ascribed by him to the various classes of blocks. By so doing, the taxpayer will be assured that his payments of tax are correctly computed and thus eliminate the risk of incurring an accrued additional tax liability with respect to past transactions.

Where a sale is made at an outright price, that is, where there is no used engine block traded in on the sale of a rebuilt engine, tax is due at the rate of 5 percent of the total sale price where the tax is passed on as a separate item, or at one twenty-first of such price where the tax is not billed separately. However, where in such case a used engine block is subsequently turned in and an adjustment in the original charge is made between the parties, the transaction will be treated as a sale on an exchange basis. In that event, the ultimate tax liability of the rebuilder should be determined in accordance with whichever of the methods hereinbefore outlined is being followed by the rebuilder with respect to his sales of rebuilt engines on an exchange basis.

A rebuilder is entitled to a credit against his tax liability computed on the above bases in the amount of tax paid by the manufacturer of any new automobile parts used by him in the rebuilding process. No tax credit is allowed for used parts purchased or salvaged for use in the rebuilding process.

TAXES ON GASOLINE, LUBRICATING OIL, AND MATCHES

Regulations 44 (1944), Section 314.64: Credits and refunds. 1951-11-13596
T. D. 5840

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 314.—TAXES ON GASOLINE, LUBRICATING OIL, AND MATCHES

Credit or refund of tax paid on certain supplies for certain vessels.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 44 (1944 ed.) [26 CFR, part 314], relating to taxes on gasoline, lubricating oil, and matches under chapter 29 of the Internal Revenue Code, to the provisions of section 609 of the Revenue Act of 1950 (Public Law 814, 81st Cong., 2d sess.), approved September 23, 1950, such regulations are hereby amended as follows:

Paragraph 1. There is inserted immediately following section 3443 set forth with certain other provisions of the Internal Revenue Code preceding section 314.64 [26 CFR 314.64] the following:

SEC. 609. ARTICLES SOLD FOR USE OF AIRCRAFT ENGAGED IN FOREIGN TRADE [REVENUE ACT OF 1950, APPROVED SEPTEMBER, 23, 1950].

Effective with respect to articles purchased (by the user thereof) on or after the first day of the first month which begins more than ten days after the date of the enactment of this Act, section 3443(a)(3)(A)(ii) (relating to refunds in the case of articles used or resold for use as ships' stores, etc.) is hereby amended to read as follows:

"(ii) used or resold for use for any of the purposes, but subject to the conditions, provided in section 3451;".

Par. 2. Section 314.64, as amended by Treasury Decision 5674 [C. B. 1948-2, 187], approved November 23, 1948 [26 CFR 314.64], is further amended by striking out the third paragraph from the end (which paragraph begins with "The provisions of section 3451") and inserting in lieu thereof the following:

Under the provisions of section 3443(a)(3)(A)(ii), prior to November 1, 1950, no credit or refund was allowable with respect to tax paid on articles sold for use on certain aircraft, even though it was known at the time of the sale that the articles would be so used. By virtue of the provisions of section 609 of the Revenue Act of 1950, a manufacturer may be allowed a refund, or may take credit against the tax shown to be due upon any subsequent monthly return, in the amount of tax paid by him with respect to the sale of any article which is used, or resold for use on or after November 1, 1950, for any of the purposes, but subject to the conditions, provided in section 3451. (See section 314.28.) Refund or credit will be made or allowed in such cases only upon the submission of the evidence required by the preceding paragraphs relating to transactions within the scope of section 3443(a)(3)(A).

Where articles are sold by the manufacturer in accordance with the provisions of section 317(b) of the Tariff Act of 1930, as added by the Act approved June 25, 1938, for use as supplies (including equipment) upon, or in the maintenance or repair of, aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, the manufacturer who paid the tax to the Government may be allowed a refund or may take credit against the tax due upon any subsequent monthly return, provided he has in his possession the evidence outlined in section 314.29.

Because of the technical nature of the amendment made herein, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(This Treasury Decision is issued pursuant to the authority contained in sections 3450 and 3791 of the Internal Revenue Code (53 Stat. 419, 467; 26 U. S. C. 3450, 3791).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved May 9, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register May 15, 1951, 8:47 a. m.)

MISCELLANEOUS RULINGS

1951-4-13551
E. O. 10211

EXECUTIVE ORDER 10211—PLACING IN OPERATION THE PROVISIONS OF SECTION 31 OF THE ORGANIC ACT OF GUAM

Whereas section 31 of the Organic Act of Guam (Public Law 630, 81st Cong. [C. B. 1950-2, 214]), approved August 1, 1950, provides:

The income tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam.

And whereas section 34 of the said Organic Act of Guam provides:

Upon the 21st day of July 1950, the anniversary of the liberation of the island of Guam by the Armed Forces of the United States in World War II, the authority and powers conferred by this Act shall come into force. However, the President is authorized, for a period not to exceed one year from the date of enactment of this Act, to continue the administration of Guam in all or in some respects as provided by law, Executive order, or local regulation in force on the date of enactment of this Act. The President may, in his discretion, place in operation all or some of the provisions of this Act if practicable before the expiration of the period of one year.

Now, therefore, by virtue of the authority vested in me by section 34 of the said Organic Act of Guam, it is hereby ordered that the provisions of section 31 of the said Act shall be in operation as of January 1, 1951.

HARRY S. TRUMAN.

THE WHITE HOUSE,
February 6, 1951.

(Filed with the Division of the Federal Register February 6, 1951, 12:04 p. m.)

RENEGOTIATION ACT, AS AMENDED

1951-11-13597
Mim. 6023
(Supplement 1)

Renegotiation rebates

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., May 3, 1951.

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

1. Section 201(c), section 201(d), and section 201(k), title II, of the Renegotiation Act of 1951 (Public Law 9, 82d Cong., chapter 15, 1st sess.; page 180, this Bulletin), approved March 23, 1951, reads as follows:

SEC. 201. FUNCTIONS UNDER WORLD WAR II RENEGOTIATION ACT.

(c) AMENDMENT OF THE RENEGOTIATION ACT.—Subsection (a)(4)(D) of the Renegotiation Act is amended by inserting at the end thereof the following: "A net renegotiation rebate shall not be repaid unless a claim therefor has been filed with the Board on or before the date of its abolition, or unless a claim shall have been filed with the Administrator of General Services (i) on or before June 30, 1951, or (ii) within ninety days after the making of an agreement or the entry of an order under subsection (c)(1) determining the amount of excessive profits, whichever is later. A claim shall be deemed to have been filed when received by the Board or the Administrator, whether or not accompanied by a statement of the Commissioner of Internal Revenue showing the amortization deduction allowed for the renegotiated year upon the recomputation made pursuant to section 124(d) of the Internal Revenue Code."

(d) TRANSFER OF CERTAIN FUNCTIONS.—All powers, functions, and duties conferred upon the War Contracts Price Adjustment Board by subsection (a)(4)(D) of the Renegotiation Act, subject to the amendment thereof by subsection (c) of this section, are hereby transferred to the Administrator of General Services.

(k) EFFECTIVE DATE OF SECTION.—This section shall take effect sixty days after the date of the enactment of this Act.

2. In view of the amendment of the Renegotiation Act prescribed in section 201(c) of the Renegotiation Act of 1951, the provision contained in the last sentence of paragraph 3 of Mimeograph 6023 (C. B. 1946-2, 187), requiring the taxpayer to attach to its claim for a renegotiation rebate a statement by the office of the Commissioner of Internal Revenue showing the total amortization deduction which is allowed for the renegotiated year, will not be applicable on and after the effective date of such section (60 days after March 23, 1951). However, inasmuch as the taxpayer will be required to file such a statement in support of any claim for renegotiation rebate filed with the Board or the Administrator of General Services, the procedure under which the taxpayer may request and receive a statement of the amortization deduction allowed for a renegotiated year after there has been a recomputation of the amortization deduction in connection with a determination of income and excess profits tax liability for the renegotiated year, giving effect to an election under section 124(d) of the Code to use the shortened amortization period, and for the computation of the Federal tax benefit after there has been a determination by the Administrator of General Services of the amount of the gross renegotiation rebate, will be continued.

GEO. J. SCHOENEMAN,
Commissioner.

DISTILLED SPIRITS

INTERNAL REVENUE CODE

REGULATIONS 4, 5, 7, AND 10. 1951–2–13525
T. D. 5824

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PARTS 178, 183 184, AND 185

(Regulations 4, 5, 7, and 10)

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

To District Supervisors and Others Concerned:

1. In order to authorize the temporary use of tank trucks, as an emergency measure, upon the showing of the unavailability of tank cars, for the transportation of distilled spirits (including brandy), produced at 160° of proof or more, transferred in bond between registered distilleries, fruit distilleries, and internal revenue bonded warehouses and of brandy withdrawn from fruit distilleries or internal revenue bonded warehouses for the fortification of wine, the following regulations are hereby prescribed:

2. Regulations 4 "Production of Distilled Spirits" (26 CFR, part 183; 15 F. R. 5334) are amended as follows:

SUBPART W—TAXPAYMENT, REMOVAL, AND TRANSFER OF DISTILLED SPIRITS FROM CISTERN ROOM

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TEMPORARY USE OF TANK TRUCKS FOR TRANSFERS IN BOND

SEC. 183.506a. GENERAL.—Upon a showing of the unavailability of tank cars for the transportation of distilled spirits, produced at 160° of proof or more, authorized by sections 183.483(b)(3), 183.486(b), 183.487(c)(3), 183.491(b), 183.492(b)(2), 183.495(b), 183.496(a)(2), 183.499(b), 183.500(b)(3), and 183.503(b), the district supervisor, as an emergency measure, may authorize the temporary use of tank trucks for such transportation, subject to the provisions of sections 183.506b–183.506g and the applicable provisions of this part governing the transfer in bond of distilled spirits in tank cars. (53 Stat. 314, 335 as amended, 375; 26 U. S. C. 2820, 2883, 3176.)

SEC. 183.506b. TYPE OF MOTOR CARRIER.—Transportation by tank trucks authorized by section 183.506a shall be made (*a*) by a motor carrier licensed under the Motor Carrier Act of 1935 or an applicable State law, or a private carrier employed by, or acting as agent for, the consignor or consignee, who is actively and regularly engaged generally in the legitimate business of transportation, who possesses adequate facilities to insure safe delivery at destination of any distilled spirits transported by him, and who is approved by the district supervisor; or (*b*) by the consignor or consignee acting as a private carrier. (53 Stat. 314, 335 as amended, 375; 26 U. S. C. 2820, 2883, 3176.)

SEC. 183.506c. CONSTRUCTION OF TANK TRUCKS.—Every tank truck used to transport distilled spirits in bond must conform to the following requirements: The tank shall be securely and permanently attached to the frame or chassis of the truck or trailer and shall be securely constructed. Interior bulkheads or stiffeners must have proper drainage cut-outs. Manhole covers, outlet valves, vents or pressure relief valves, and all other openings shall be equipped for sealing so as to prevent unauthorized access to the contents of the tank. Outlets of each compartment must be so arranged that delivery of any compartment will not afford access to the contents of any other compartment. Partial delivery, by meter or otherwise, will not be permitted. There shall be but one consignor per load and the entire contents of all compartments shall be delivered to one consignee, unless the district supervisor, for good cause, authorizes the use of separate compartments for different consignors or consignees. Calibrated charts, prepared or certified by competent and recognized authorities or engineers, showing the capacity of each compartment in wine gallons for each inch of depth shall be carried in each truck. Each tank truck shall also be equipped with a route board, at least 10 by 12 inches, constructed of substantial material and permanently attached thereto by round-headed or carriage bolts, nutted and riveted, battered or welded. Each tank truck must have permanently and legibly marked or painted thereon its number, capacity in wine gallons, and the name of the owner, in letters at least 4 inches in height. If the tank truck consists of two or more compartments, each compartment must be identified by a letter of the alphabet, such as "A," "B," etc., and the capacity in wine gallons of each compartment must be marked thereon. Provision shall also be made for protection, against the weather, of the label by the use of celluloid or equally substantial material. The prescribed label (as required by section 183.506f) will be affixed to such route board. Tank trucks shall be so constructed that the contents of each compartment will drain completely, even when the ground is not perfectly level. Suitable ladders and catwalks, permanently attached, must be provided in order to permit ready examination of manholes and other openings. Provision shall be made for the proper grounding of tank trucks when filling or emptying. (53 Stat. 314, 335 as amended, 375; 26 U. S. C. 2820, 2883, 3176.)

SEC. 183.506d. BOND—TRANSPORTATION BY MOTOR CARRIER.—Motor carriers, as defined in section 183.506b, desiring to transport distilled spirits in bond, in tank trucks, must file with the district supervisor a bond on Form 49, "Bond To Transport Specially Denatured or Tax-Free Alcohol," modified to read "Bond To Transport Distilled Spirits". The penal sum of the bond shall be at the rate of $75,000 for each such tank truck and not more than $200,000 for the total of all tank trucks used. The bond shall be filed in triplicate, appropriately modified. (53 Stat. 314, 335 as amended, 375; 26 U. S. C. 2820, 2883, 3176.)

SEC. 183.506e. BOND—TRANSPORTATION BY CONSIGNOR OR CONSIGNEE.—A consignor or consignee, in order to transport distilled spirits in bond, in tank trucks controlled and operated by such consignor or consignee, must file with the district supervisor a bond on Form 49, properly modified, in the penal sum specified in section 183.506d, provided that in lieu of filing such bond, the consignor or consignee may file consent of surety, Form 1533, on his bond, Form 30, 30½, or Form 1571, as the case may be, extending the terms thereof to cover the tax, together with penalties and interest, for which he may become liable, on all distilled spirits transported by him in tank trucks. If the transportation is by the consignor or consignee distiller and the maximum of his bond is not sufficient when computed as set forth in section 183.506d, an additional bond on Form 49 in a sufficient penal sum must be furnished to cover the additional liability. If the transportation is by the consignee warehouseman and the maximum of his bond is not sufficient when computed as set forth in section 183.506d, an additional bond on Form 49 or 1571 in a sufficient penal sum must be furnished to cover the additional liability. (53 Stat. 514, 335 as amended, 375; 26 U. S. C. 2820, 2883, 3176.)

SEC. 183.506f. REMOVAL IN TANK TRUCKS.—Tank trucks used for the transportation of distilled spirits in bond must be filled in the immediate presence of the storekeeper-gauger. Prior to filling, the storekeeper-gauger shall determine whether the tank truck is properly marked and may be effectively sealed. If the tank truck does not meet such requirements, its use for the transportation of distilled spirits in bond will not be permitted. Immediately after filling, the storekeeper-gauger shall seal the tank truck in such a manner as will secure all openings affording access to the contents of the tank. The storekeeper-gauger will enter on Form 1520, covering the description and gauge of the distilled spirits, the number of inches of distilled spirits loaded into each compartment and the temperature thereof at the time of filling, the name of the carrier, the number of the tank truck, the State license number of the truck, the driver's full name, and the driver's permit number and State issuing the same, the destination, the date of shipment, and the serial numbers of the cap seals used. Forms 236 and 1520 will be disposed of in accordance with section 183.572 or 183.580, as the case may be. The consignor shall securely attach to the route board of the tank truck a label showing the name, registry number, and location (city or town and State) of the shipping registered distillery; the name, registry number, and location (city or town and State) of the receiving internal revenue bonded warehouse, fruit distillery, or other registered distillery, as the case may be, followed by the date of shipment; and the quantity in wine and proof gallons contained in each compartment. (Such label shall be destroyed upon emptying the tank truck.) (53 Stat. 314, 335 as amended, 375; 26 U. S. C. 2820, 2883, 3176.)

SEC. 183.506g. RECEIPTS IN TANK TRUCKS.—Where distilled spirits for redistillation are received in tank trucks from a distillery or from an internal revenue bonded warehouse, the seals must be broken by the storekeeper-gauger at the receiving distillery and no distilled spirits may be removed from the tank truck except in the presence of such officer. The storekeeper-gauger will carefully examine the tank truck for evidence of loss, and gauge and report the quantity received in accordance with the applicable provisions of section 183.439. When the gauge of spirits received discloses discrepancies between the shipping and receiving gauges, the applicable procedure prescribed by section 183.440 will be followed. (53 Stat. 314, 335 as amended, 375; 26 U. S. C. 2820, 2883, 3176.)

3. Regulations 5 "Production of Brandy" (26 CFR, part 184; 15 F. R. 5552) are amended as follows:

SUBPART X—TAXPAYMENT, REMOVAL AND TRANSFER OF BRANDY FROM DISTILLERY

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TEMPORARY USE OF TANK TRUCKS FOR TRANSFERS IN BOND AND REMOVALS FOR FORTIFICATION OF WINE

SEC. 184.553a. GENERAL.—Notwithstanding the prohibition in section 184.553, and upon a showing of the unavailability of tank cars for the transportation of brandy, produced at 160° of proof or more, authorized by sections 184.535(b) (2), 184.537(b), and 184.539(b), the district supervisor, as an emergency measure, may authorize the temporary use of tank trucks for such transportation, subject to the provisions of sections 184.553b–184.553g and the applicable provisions of this part governing the transfer in bond of brandy and the removal of brandy for the fortification of wine, in tank cars. (53 Stat. 316 as amended, 335 as amended, 375; 26 U. S. C. 2825, 2883, 3176.)

SEC. 184.553b. TYPE OF MOTOR CARRIER.—Transportation by tank trucks authorized by section 184.553a shall be made (*a*) by a motor carrier licensed under the Motor Carrier Act of 1935 or an applicable State law, or a private carrier employed by, or acting as agent for, a consignor or consignee, who is actively and regularly engaged generally in the legitimate business of transportation, who possesses adequate facilities to insure safe delivery at destination of any brandy transported by him, and who is approved by the district supervisor; or (*b*) by the consignor or consignee acting as a private carrier. (53 Stat. 316 as amended, 335 as amended, 375; 26 U. S. C. 2825, 2883, 3176.)

SEC. 184.553c. CONSTRUCTION OF TANK TRUCKS.—Every tank truck used to transport brandy in bond, or for removal for the fortification of wine, must conform to the following requirements: The tank shall be securely and permanently attached to the frame or chassis of the truck or trailer and shall be securely constructed. Interior bulkheads or stiffeners must have proper drainage cut-outs. Manhole covers, outlet valves, vents or pressure relief valves, and all other openings shall be equipped for sealing so as to prevent unauthorized access to the contents of the tank. Outlets of each compartment must be so arranged that delivery of any compartment will not afford access to the contents of any other compartment. Partial delivery, by meter or otherwise, will not be permitted. There shall be but one consignor per load and the entire contents of all compartments shall be delivered to one consignee, unless the district supervisor, for good cause, authorizes the use of separate compartments for different consignors or consignees. Calibrated charts, prepared or certified by competent and recognized authorities or engineers, showing the capacity of each compartment in wine gallons for each inch of depth shall be carried in each truck. Each tank truck shall also be equipped with a route board at least 10 by 12 inches, constructed of substantial material and permanently attached thereto by round-headed or carriage bolts, nutted and riveted, battered or welded. Each tank truck must have permanently and legibly marked or painted thereon its number, capacity in wine gallons, and the name of the owner, in letters at least 4 inches in height. If the tank truck consists of two or more compartments, each compartment must be identified by a letter of the alphabet, such as "A," "B," etc., and the capacity in wine gallons of each compartment must be marked thereon. Provision shall also be made for protection, against the weather, of the label by the use of celluloid or equally substantial material. The prescribed label (as required by section 184.553f) will be affixed to such route board. Tank trucks shall be so constructed that the contents of each compartment will drain completely, even when the ground is not perfectly level. Suitable ladders and catwalks, permanently attached, must be provided in order to permit ready examination of manholes and other openings. Provision shall be made for the proper grounding of tank trucks when filling or emptying. (53 Stat. 316 as amended, 335 as amended, 375; 26 U. S. C. 2825, 2883, 3176.)

SEC. 184.553d. BOND—TRANSPORTATION BY MOTOR CARRIER.—Motor carriers, as defined in section 184.553b, desiring to transport, in tank trucks, brandy in bond or for removal for fortification of wine, must file with the district supervisor a bond on Form 49, "Bond To Transport Specially Denatured or Tax-Free Alcohol," modified to read "Bond To Transport Distilled Spirits". The penal sum of the bond shall be at the rate of $75,000 for each tank truck and not more than $200,000 for the total of all tank trucks used. The bond shall be filed in triplicate, appropriately modified. (53 Stat. 316 as amended, 335 as amended, 375; 26 U. S. C. 2825, 2883, 3176.)

SEC. 184.553e. BOND—TRANSPORTATION BY CONSIGNOR OR CONSIGNEE.—A consignor or consignee, in order to transport brandy in bond, or to remove brandy for fortification of wine, in tank trucks controlled and operated by such consignor or consignee, must file with the district supervisor, a bond on Form 49, properly modified, in the penal sum specified in section 184.553d, provided that in lieu of filing such bond, the consignor distiller or consignee distiller or warehouseman may file consent of surety, Form 1533, on his bond, Form 30, Form 30½, or Form 1571, as the case may be, extending the terms thereof to cover the tax, together with penalties and interest for which he may become liable, on all brandy transported by him in tank trucks. If the transportation is by the consignor or consignee distiller and the maximum of his bond, Form 30 or Form 30½, is not sufficient when computed as set forth in section 184.553d, an additional bond on Form 49 in a sufficient penal sum must be furnished to cover the additional liability. If the transportation is by the consignee warehouseman, and the maximum of his bond, Form 1571, is not sufficient when computed as set forth in section 184.553d, an additional bond on Form 49 or on Form 1571, in a sufficient penal sum must be furnished to cover the additional liability. If the transportation is by the consignee winemaker, he may file a consent of surety on his bond, Form 700-A, and an additional bond on Form 49 in a sufficient penal sum to cover the additional liability. (53 Stat. 316 as amended, 335 as amended, 375; 26 U. S. C. 2825, 2883, 3176.)

SEC. 184.553f. REMOVAL IN TANK TRUCKS.—Tank trucks used for the transportation of brandy in bond or for removal of brandy for fortification of wine must be filled in the immediate presence of the storekeeper-gauger. Prior to filling, the storekeeper-gauger shall determine whether the tank truck is properly marked and may be effectively sealed. If the tank truck does not meet such requirements, its use for the transportation of brandy will not be permitted. Immediately after filling, the storekeeper-gauger shall seal the tank truck in such a manner as will secure all openings affording access to the contents of the tank. The storekeeper-gauger will enter on Form 1520, covering the description and gauge of the brandy, the number of inches of brandy loaded into each compartment and the temperature thereof at the time of filling, the name of the carrier, the number of the tank truck, the State license number of the truck, the driver's full name, and the driver's permit number and State issuing the same, the destination, the date of shipment, and the serial numbers of the cap seals used. Forms 236 and 1520 will be disposed of in accordance with section 184.612 or 184.620, as the case may be. The consignor shall securely attach to the route board of the tank truck a label showing the name, registry number, and location (city or town and State) of the shipping fruit distillery; the name, registry number and location (city or town and State) of the receiving internal revenue bonded warehouse, registered distillery, or other fruit distillery, or bonded winery, as the case may be, followed by the date of shipment; and the quantity in wine and proof gallons contained in each compartment. (Such label shall be destroyed upon emptying the tank truck.) (53 Stat. 316 as amended, 335 as amended, 375; 26 U. S. C. 2825, 2883, 3176.)

SEC. 184.553g. RECEIPTS IN TANK TRUCKS.—Where brandy for redistillation is received in tank trucks from a distillery or an internal revenue bonded warehouse, the seals must be broken by a storekeeper-gauger at the fruit distillery and no brandy may be removed from the tank truck except in the presence of such officer. The storekeeper-gauger will carefully examine the tank truck for evidence of loss, and gauge and report the quantity received in accordance with the applicable provisions of section 184.484. Where the gauge of brandy received discloses discrepancies between the shipping and receiving gauges, the applicable procedure prescribed by section 184.485 will be followed. (53 Stat. 335 as amended, 375; 26 U. S. C. 2883, 3176.)

4. Regulations 7 "Production, Fortification, Taxpayment, Etc., of Wines" (26 CFR, part 178; 10 F. R. 12307) are amended as follows:

SUBPART B—THE FORTIFICATION OF WINE

MANNER OF PROCURING BRANDY FROM FRUIT DISTILLERIES AND INTERNAL REVENUE BONDED WAREHOUSES

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TEMPORARY USE OF TANK TRUCKS FOR PROCUREMENT OF BRANDY

SEC. 178.467a. GENERAL.—Upon a showing of the unavailability of tank cars for the transportation of brandy, produced at 160° of proof or more, from fruit distilleries and internal revenue bonded warehouses to a bonded winery for the fortification of wine, authorized by section 178.449, the district supervisor, as an emergency measure, may authorize the temporary use of tank trucks for such transportation, subject to the provisions of Regulations 5 (26 CFR, part 184) or Regulations 10 (26 CFR, part 185), as the case may be, and the applicable provisions of this part governing the procuring of brandy from fruit distilleries and internal revenue bonded warehouses in tank cars. (53 Stat. 335 as amended, 348 as amended, 350 as amended, 351, 352 as amended, 355 as amended, 355 as amended, 375, 477; 26 U. S. C. 2883, 3031, 3032, 3033, 3036, 3044, 3045, 3176, 3901.)

SEC. 178.467b. RECEIPTS IN TANK TRUCKS.—Where brandy is received in tank trucks from a fruit distillery or internal revenue bonded warehouse the seals must be broken by a Government officer assigned to the bonded winery and no brandy may be removed from the tank truck except in the presence of such officer. The Government officer will carefully examine the tank truck for evidence of loss, and gauge and report the quantity received in accordance with the applicable provisions of section 178.466. Where the gauge of brandy received discloses discrepancies between the shipping and receiving gauges, the applicable procedure prescribed by section 178.467 will be followed. (53 Stat. 335 as amended, 340 as amended, 348 as amended, 351, 375, 477; 26 U. S. C. 2883, 2901, 3031, 3033, 3176, 3901.)

5. Regulations 10 "Warehousing of Distilled Spirits" (26 CFR, part 185; 15 F. R. 5233) are amended as follows:

SUBPART AA—WITHDRAWAL OF DISTILLED SPIRITS FROM WAREHOUSE

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TEMPORARY USE OF TANK TRUCKS FOR TRANSFERS IN BOND AND REMOVALS FOR FORTIFICATION OF WINE

SEC. 185.579a. GENERAL.—Notwithstanding the prohibition in section 185.561, and upon a showing of the unavailability of tank cars for the transportation of distilled spirits, produced at 160° of proof or more, authorized by sections 185.690(d), 185.725, and 185.868, the district supervisor, as an emergency measure, may authorize the temporary use of tank trucks for such transportation, subject to the provisions of sections 185.579b–185.579g and the applicable provisions of this part governing the transfer in bond of distilled spirits and the removal of brandy for fortification of wine, in tank cars. (53 Stat. 332, 335 as amended, 375; 26 U. S. C. 2875, 2883, 3176.)

SEC. 185.579b. TYPE OF MOTOR CARRIER.—Transportation by tank trucks authorized by section 185.579a shall be made (*a*) by a motor carrier licensed under the Motor Carrier Act of 1935 or an applicable State law, or a private carrier employed by, or acting as agent for, the consignor or consignee, who is actively and regularly engaged generally in the legitimate business of transportation, who possesses adequate facilities to insure safe delivery at destination of any distilled spirits transported by him, and who is approved by the district supervisor; or (*b*) by the consignor or consignee acting as a private carrier. (53 Stat. 332, 335 as amended, 375; 26 U. S. C. 2875, 2883, 3176.)

SEC. 185.579c. CONSTRUCTION OF TANK TRUCKS.—Every tank truck used to transport distilled spirits in bond must conform to the following requirements: The tank shall be securely and permanently attached to the frame or chassis of the truck or trailer and shall be securely constructed. Interior bulkheads or stiffeners must have proper drainage cut-outs. Manhole covers, outlet valves, vents or pressure relief valves, and all other openings shall be equipped for sealing so as to prevent unauthorized access to the contents of the tank. Outlets of each compartment must be so arranged that delivery of any compartment will not afford access to the contents of any other compartment. Partial delivery, by meter or otherwise, will not be permitted. There shall be but one consignor per load and the entire contents of all compartments shall be delivered to one consignee, unless the district supervisor, for good cause, authorizes the use of separate compartments for different consignors or consignees. Calibrated charts, prepared or certified by competent and recognized authorities or engineers, showing the capacity of each compartment in wine gallons for each inch of depth shall be carried in each truck. Each tank truck shall also be equipped with a route board, at least 10 by 12 inches, constructed of substantial material and permanently attached thereto by round-headed or carriage bolts, nutted and riveted, battered or welded. Each tank truck must have permanently and legibly marked or painted thereon its number, capacity in wine gallons, and the name of the owner in letters at least 4 inches in height. If the tank truck consists of two or more compartments, each compartment must be identified by a letter of the alphabet, such as "A," "B," etc., and the capacity in wine gallons of each compartment must be marked thereon. Provision shall also be made for protection, against the weather, of the label by the use of celluloid or equally substantial material. The prescribed label (as required by section 185.579f) will be affixed to such route board. Tank trucks shall be so constructed that the contents of each compartment will drain completely, even when the ground is not perfectly level. Suitable ladders and catwalks, permanently attached, must be provided in order to permit ready examination of manholes and other openings. Provision shall be made for the proper grounding of tank trucks when filling or emptying. (53 Stat. 335 as amended, 375; 26 U. S. C. 2883, 3176.)

SEC. 185.579d. BOND—TRANSPORTATION BY MOTOR CARRIER.—Motor carriers, as defined in section 185.579b, desiring to transport distilled spirits in bond, in tank trucks, must file with the district supervisor a bond on Form 49, "Bond To Transport Specially Denatured or Tax-Free Alcohol", modified to read "Bond To Transport Distilled Spirits". The penal sum of the bond shall be at the rate of $75,000 for each such tank truck and not more than $200,000 for the total of all tank trucks used. The bond shall be filed in triplicate, appropriately modified. (53 Stat. 335 as amended, 375; 26 U. S. C. 2883, 3176.)

SEC. 185.579e. BOND—TRANSPORTATION BY CONSIGNOR OR CONSIGNEE.—A consignor or consignee, in order to transport distilled spirits in bond, or to remove brandy for fortification of wine, in tank trucks controlled and operated by such consignor or consignee, must file with the district supervisor, a bond on Form 49, properly modified, in the penal sum specified in section 185.579d, provided that in lieu of filing such bond, the consignor warehouseman or consignee distiller or warehouseman may file consent of surety, Form 1533, on his bond, Form 30, Form 30½, or Form 1571, as the case may be, extending the terms thereof to cover the tax, together with penalties and interest, for which he may become liable, on all distilled spirits transported by him in tank trucks. If the transportation is by the consignor or consignee warehouseman and the maximum of his bond, Form 1571, is not sufficient when computed as set forth in section 185.579d, an additional bond on Form 49 or 1571 in a sufficient penal sum must be furnished to cover the additional liability. If the transportation is by the consignee distiller, and the maximum of his bond, Form 30 or Form 30½, is not sufficient when computed as set forth in section 185.579d, an additional bond on Form 49 or on Form 30, or Form 30½, as the case may be, in a sufficient penal sum must be furnished to cover the additional liability. If the transportation is by the consignee winemaker, he may file a consent of surety on his bond, Form 700–A, and an additional bond on Form 49 in a sufficient penal sum to cover the additional liability. (53 Stat. 335 as amended, 375; 26 U. S. C. 2883, 3176.)

SEC. 185.579f. REMOVAL IN TANK TRUCKS.—Tank trucks used for the transportation of distilled spirits in bond or for removal of brandy for the fortification of wine must be filled in the immediate presence of the storekeeper-gauger. Prior to filling, the storekeeper-gauger shall determine whether the tank truck is properly marked and may be effectively sealed. If the tank truck does not meet such requirements, its use for the transportation of distilled spirits (including brandy) will not be permitted. Immediately after filling, the storekeeper-gauger shall seal the tank truck in such a manner as will secure all openings affording access to the contents of the tank. The storekeeper-gauger will enter on Form 1520, covering the description and gauge of the distilled spirits, the number of inches of distilled spirits loaded into each compartment and the temperature thereof at the time of filling, the name of the carrier, the number of the tank truck, the State license number of the truck, the driver's full name, and the driver's permit number and State issuing the same, the destination, the date of shipment, and the serial numbers of the cap seals used. Forms 236 and 1520 will be disposed of in accordance with section 185.706 or 185.711, as the case may be. The consignor shall securely attach to the route board of the tank truck a label showing the name, registry number and location (city or town and State) of the shipping internal revenue bonded warehouse; the name, registry number and location (city or town and State) of the receiving internal revenue bonded warehouse, registered distillery, fruit distillery, or bonded winery, as the case may be, followed by the date of shipment; and the quantity in wine and proof gallons contained in each compartment. (Such label shall be destroyed upon emptying the tank truck.) (53 Stat. 335 as amended, 375; 26 U. S. C. 2883, 3176.)

SEC. 185.579g. RECEIPTS IN TANK TRUCKS.—Where distilled spirits are received in tank trucks from a distillery or another internal revenue bonded warehouse, the seals must be broken by a storekeeper-gauger at the warehouse and no distilled spirits may be removed from the tank truck except in the presence of such officer. The storekeeper-gauger will carefully examine the tank truck for evidence of loss, and gauge and report the quantity received in accordance with the applicable provisions of section 185.369. Where the gauge of distilled spirits received discloses discrepancies between the shipping and receiving gauges, the applicable procedure prescribed by section 185.486 will be followed. (53 Stat. 333, 335 as amended, 340 as amended, 375, 492; 26 U. S. C. 2879, 2883, 2901, 3176, 4017.)

6. It is found that compliance with the notice, public rule-making procedure, and effective date requirements of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

7. This Treasury Decision will be effective upon the date of publication in the Federal Register.

(This Treasury Decision is issued under the authority contained in 53 Stat. 314, 316 as amended, 332, 333, 335 as amended, 340 as amended, 348 as amended, 350 as amended, 351, 352 as amended, 355 as amended, 355 as amended, 375, 477, 492; 26 U. S. C. 2820, 2825, 2875, 2879, 2883, 2901, 3031, 3032, 3033, 3036, 3044, 3045, 3176, 3901, 4017.)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved December 29, 1950.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register January 5, 1951)

Regulations 7, Sections 178.143, Etc.

1951-5-13555
T. D. 5830

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 178.—PRODUCTION, FORTIFICATION, TAX-PAYMENT, ETC., OF WINES

Amending Regulations 7

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington 25, D. C.

To District Supervisors and Others Concerned:

1. Sections 178.143, 178.144, 178.145, and 178.149 of Regulations 7 (26 CFR, part 178), "Production, Fortification, Tax-Payment, Etc., of Wines," approved September 21, 1945, as amended, are hereby amended as follows:

Section 178.143(2) is amended by adding at the end thereof the sentence "The total solids content of the finished wine shall not exceed 22 grams per 100 cubic centimeters."

Section 178.144(*a*) is amended by deleting from the last sentence thereof the phrase "provided the unfermented sugar content of the wine is not increased beyond 15 percent of the weight of the wine." and inserting in lieu thereof the phrase "provided the total solids content of the wine does not exceed 22 grams per 100 cubic centimeters."

Section 178.144(*b*) is amended by deleting the phrase "nor may the wine have an unfermented sugar content in excess of 15 percent of the weight of the wine." and inserting in lieu thereof the phrase "nor may the wine have a total solids content of more than 22 grams per 100 cubic centimeters."

Section 178.145(*b*) is amended by deleting from the last sentence thereof the phrase "provided the unfermented sugar content of the wine is not increased beyond 15 percent by weight, or 20 percent by weight where the wine is made from fruit (other than grapes) having a natural acid content not less than 7.5 parts per thousand." and inserting in lieu thereof the phrase "provided the total solids content of the wine does not exceed 22 grams per 100 cubic centimeters."

Section 178.145(*c*) is amended by deleting the phrase "nor may the wine have an unfermented sugar content in excess of 15 percent by weight, or 20 percent by weight where the wine is made from fruit (other than grapes) having a natural acid content not less than 7.5 parts per thousand." and inserting in lieu thereof the phrase "nor may the wine have a total solids content of more than 22 grams per 100 cubic centimeters."

Section 178.149(*b*) is amended to read: "Wines sweetened with dry sugar in excess of the 11 percent limitation must be marked or labeled '-------- Wine, Sweetened with Excess Sugar,' the blank to be filled in with the name of the fruit, berry, or other agricultural product used."

2. The purpose of these amendments is to prescribe standards for the solids content of wines, ameliorated or sweetened with sugar or a sugar and water solution, consistent with those contained in Treasury Decision 5797 [C. B. 1950-2, 200] amending Federal Alcohol Administration Regulations 4 (27 CFR, part 4), "Labeling and Advertising of Wine," effective January 25, 1951 (15 F. R. 4746).

3. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these amendments for the reason that the changes made are of a liberalizing character.

4. This Treasury Decision shall be effective January 25, 1951, or on the date of its publication in the Federal Register, whichever date is later.

(This Treasury Decision is issued under the authority contained in 53 Stat. 355, as amended, 355, as amended, 373, 375, 477; 26 U. S. C. 3044, 3045, 3171, 3176, 3901.)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved February 14, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register February 17, 1951)

REGULATIONS 10, SECTIONS 185.588 AND 185.695. 1951-1-13515
T. D. 5822

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 185.—WAREHOUSING OF DISTILLED SPIRITS

(Regulations 10)

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

To District Supervisors and Others Concerned:

1. Regulations 10, "Warehousing of Distilled Spirits" (26 CFR, part 185; 15 F. R. 5233), are hereby amended by striking out the date "December 31, 1950" from the first sentence of section 185.588 and from the second sentence of section 185.695, and by inserting, in lieu thereof, the date "June 30, 1951".

2. The purpose of the proposed amendments is to extend the use of the average tare method of gauging packages of distilled spirits for taxpayment until the close of business June 30, 1951.

3. It is found that compliance with the notice, public rule-making procedure, and effective date requirements of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the change made is of a liberalizing character.

4. This Treasury Decision will be effective upon the date of publication in the Federal Register.

(This Treasury Decision is issued under the authority contained in 53 Stat. 300 as amended, 332, 375; 26 U. S. C. 2801, 2875, 3176.)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved December 20, 1950.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register December 27, 1950)

REGULATIONS 10, SECTIONS 185.588 AND 185.695. 1951–12–13605
T. D. 5842

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 185.—WAREHOUSING OF DISTILLED SPIRITS

(Regulations 10)

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

To District Supervisors and Others Concerned:

1. Regulations 10, "Warehousing of Distilled Spirits" (26 CFR, part 185; 15 F. R. 5233), are hereby amended by striking out the date "June 30, 1951" from the first sentence of section 185.588 and from the second sentence of section 185.695, and by inserting, in lieu thereof, the date "December 31, 1951."

2. The purpose of the proposed amendment is to extend the use of the average tare method of gauging packages of distilled spirits for withdrawal until the close of business December 31, 1951.

3. It is found that compliance with the notice, public rule-making procedure, and effective date requirements of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the change made is of a liberalizing character.

4. Treasury Decision 5822 [page 165, this Bulletin] (15 F. R. 9324) is hereby revoked.

5. This Treasury Decision will be effective upon the date of publication in the Federal Register.

(This Treasury Decision is issued under the authority contained in 53 Stat. 300, as amended, 332, 375; 26 U. S. C. 2801, 2875, 3176.)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved May 22, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register May 26, 1951)

REGULATIONS 17, SECTIONS 173.3 AND 173.5. 1951–1–13513
T. D. 5821

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 173.—DISPOSITION OF SUBSTANCES USED IN THE MANUFACTURE OF DISTILLED SPIRITS

Amending Regulations 17

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

To District Supervisors and Others Concerned:

1. Section 173.3(b) of Regulations 17 (26 CFR, part 173), approved July 11, 1945, relating to the disposition of substances used in the manufacture of distilled spirits is hereby amended to read as follows:

SECTION 173.3. DEFINITIONS. * * *

(b) "Substance" shall mean and include, but not by way of limitation, any of the following which are used in the manufacture of distilled spirits: Any grade or type of sugar, sirup, or molasses derived from sugarcane, sugar beets, corn, sorghum, or any other source; starch; potatoes; grain or corn meal, corn chops, cracked corn, rye chops, middlings, shorts, bran, or any other grain derivative; malt; malt sugar, or malt sirup; oak chips, charred or not charred; charred kegs or barrels; yeast; cider; honey; fruits; grapes; berries; fruit, grape, or berry juices or concentrates; wine; caramel; burnt sugar; gin flavor; chinese bean cake or chinese wine cake; urea; ammonium phosphate, ammonium carbonate, ammonium sulphate, or any other yeast food; or any other fermentable material of the character used in the manufacture of distilled spirits, or any chemical or other material suitable for promoting or accelerating fermentation; or any combination of such materials or chemicals.

* * * * * * *

(53 Stat. 308, 373, as amended, 375; 26 U. S. C. 2811, 3170, 3176.)

2. Section 173.5 of Regulations 17 (26 CFR, part 173), approved July 11, 1945, relating to disposition of substances used in the manufacture of distilled spirits is hereby amended to read as follows:

SEC. 173.5. RECORDS TO BE MAINTAINED.—Every person in the United States who disposes of any substance, as defined in section 173.3(b), and who has been required to render returns under the provisions of section 173.4(a), shall keep at his place of business such books, records, documents, papers, invoices, bills of lading, etc., relating to or connected with any such disposition, as will enable such person to make the return provided for by section 173.4(a). Such books, records, documents, papers, invoices, bills of lading, etc., shall be kept readily available for, and open to, inspection by any officer or employee of the Alcohol Tax Unit of the Bureau of Internal Revenue during the hours of business of such person. (53 Stat. 308, 373, as amended, 375; 26 U. S. C. 2811, 3170, 3176.)

3. The purposes of these amendments are as follows:

(*a*) To include in the definition of "Substances" the words "charred kegs and barrels," in order that returns may be required from distributors of such containers.

(*b*) To eliminate language originally included which specified minimum quantities of raw materials on which records were to be maintained by distributors. The quantities to be recorded are now designated by the "demand letters" and no records are required of persons not under demand to make returns.

4. This Treasury Decision shall be effective on the thirty-first day after the date of its publication in the Federal Register.

(This Treasury Decision is issued under the authority contained in 53 Stat. 308, 373, as amended, 375; 26 U. S. C. 2811, 3170, 3176.)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved December 12, 1950.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register December 15, 1950)

TOBACCO AND SNUFF[a]

1951-2-13529
T. 285

Tobacco and snuff manufactured in and removed from domestic factories during the month of November 1950, compared with the same month of 1949

	Manufactured		Removed			
			Tax-paid		Tax-free	
	November 1950	November 1949	November 1950	November 1949	November 1950	November 1949
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	3, 285, 855	3, 333, 502	3, 196, 587	3, 265, 321	99, 132	120, 507
Twist	447, 317	462, 102	337, 589	364, 962	56, 240	89, 194
Fine-cut chewing	232, 020	211, 043	231, 301	225, 978	----------	----------
Scrap chewing	2, 918, 784	3, 065, 554	2, 865, 893	3, 044, 746	3, 230	13, 771
Smoking	8, 894, 176	9, 055, 254	8, 763, 471	9, 086, 930	213, 719	149, 118
Snuff	3, 285, 143	3, 547. 348	3, 289, 198	3, 551, 970	1, 260	990
Total	19, 063, 295	19, 674, 803	18, 684, 039	19, 539, 907	373, 581	373, 580

1951-5-13556
T. 288

Tobacco and snuff manufactured in and removed from domestic factories during the month of December 1950, compared with the same month of 1949

	Manufactured		Removed			
			Tax-paid		Tax-free	
	December 1950	December 1949	December 1950	December 1949	December 1950	December 1949
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	2, 652, 798	2, 904, 086	2, 499, 624	2, 815, 243	140, 053	136, 910
Twist	341, 687	432, 755	269. 777	331, 097	93, 925	146, 096
Fine-cut chewing	219, 200	219, 736	218, 812	215, 906	----------	----------
Scrap chewing	2, 688, 788	3, 086, 219	2, 755, 650	2, 920, 746	15, 265	1, 247
Smoking	5, 625, 543	6, 970, 845	5, 487, 396	6, 951, 741	303, 016	146, 765
Snuff	2, 998, 062	3, 505, 234	3, 044, 170	3, 529, 912	2, 593	1, 051
Total	14, 526, 078	17, 118, 875	14, 275, 429	16, 764, 645	554, 852	432, 069

[a] All figures are subject to revision until incorporated in the total for the calendar year to be published in the Commissioner's annual report.

1951-6-13562
T. 290

Tobacco and snuff manufactured in and removed from domestic factories during the month of January 1951, compared with the same month of 1950

	Manufactured		Removed			
			Tax-paid		Tax-free	
	January 1951	January 1950	January 1951	January 1950	January 1951	January 1950
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	3, 464, 438	3, 501, 297	3, 534, 753	3, 596, 615	116, 513	22, 681
Twist	441, 408	496, 933	399, 086	402, 149	60, 520	92, 642
Fine-cut chewing	237, 347	220, 314	240, 197	219, 432		
Scrap chewing	3, 447, 976	3, 347, 138	3, 459, 021	3, 418, 347	13, 105	640
Smoking	8, 510, 062	8, 482, 642	8, 284, 336	8, 297, 768	200, 118	114, 242
Snuff	3, 708, 387	2, 933, 296	3, 717, 279	2, 923, 217	2, 306	816
Total	19, 809, 618	18, 981, 620	19, 634, 672	18, 857, 528	392, 562	231, 021

1951-8-13575
T. 293

Tobacco and snuff manufactured in and removed from domestic factories during the month of February 1951, compared with the same month of 1950

	Manufactured		Removed			
			Tax-paid		Tax-free	
	February 1951	February 1950	February 1951	February 1950	February 1951	February 1950
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	3, 344, 447	3, 098, 108	3, 053, 536	2, 985, 888	80, 400	35, 085
Twist	367, 449	455, 257	310, 333	322, 516	36, 534	84, 210
Fine-cut chewing	227, 321	208, 616	222, 133	210, 490		
Scrap chewing	3, 129, 399	3, 261, 303	3, 039, 901	3, 140, 443	13, 010	526
Smoking	7, 788, 698	7, 918, 837	7, 462, 290	7, 808, 035	233, 895	149, 915
Snuff	3, 292, 869	2, 925, 119	3, 250, 484	2, 907, 892	1, 170	475
Total	18, 150, 183	17, 867, 240	17, 338, 677	17, 375, 264	365, 009	270, 211

1951–10–13593
T. 297

Tobacco and snuff manufactured in and removed from domestic factories during the month of March 1951, compared with the same month of 1950

	Manufactured		Removed			
			Tax-paid		Tax-free	
	March 1951	March 1950	March 1951	March 1950	March 1951	March 1950
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	3, 345, 551	3, 747, 631	3, 222, 698	3, 599, 761	217, 812	93, 813
Twist	422, 992	481, 907	345, 118	379, 769	56, 630	93, 345
Fine-cut chewing	230, 710	229, 390	233, 584	226, 822	----------	----------
Scrap chewing	3, 329, 041	3, 626, 278	3, 178, 526	3, 557, 551	31, 979	922
Smoking	8, 784, 148	10, 198, 755	8, 324, 435	9, 943, 997	527, 727	199, 325
Snuff	3, 564, 523	3, 747, 117	3, 506, 497	3, 713, 236	2, 835	1, 361
Total	19, 676, 965	22, 031, 078	18, 810, 858	21, 421, 136	836, 983	388, 766

1951–12–13606
T. 300

Tobacco and snuff manufactured in and removed from domestic factories during the month of April 1951, compared with the same month of 1950

	Manufactured		Removed			
			Tax-paid		Tax-free	
	April 1951	April 1950	April 1951	April 1950	April 1951	April 1950
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	3, 045, 611	2, 903, 946	2, 928, 444	3, 020, 397	85, 306	35, 938
Twist	379, 331	414, 307	314, 992	337, 239	45, 282	93, 465
Fine-cut chewing	212, 173	207, 453	214, 572	200, 827	----------	----------
Scrap chewing	3, 036, 674	2, 828, 712	2, 934, 825	2, 907, 769	21, 941	792
Smoking	8, 732, 338	8, 390, 762	8, 106, 075	8, 282, 805	518, 036	144, 272
Snuff	3. 299, 414	3, 353, 459	3, 236, 837	3, 373, 861	2, 385	569
Total	18, 705, 541	18, 098, 639	17, 735, 745	18, 122, 898	672, 950	275, 036

CIGARETTES AND SMALL CIGARS [a]

1951-1-13514
T. 283

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of November 1950, compared with the same month of 1949

	Small cigarettes		Large cigarettes		Small cigars	
	1950	1949	1950	1949	1950	1949
Manufactured	32, 728, 862, 373	32, 158, 104, 203	43, 100	25, 200	6, 412, 830	8, 563, 210
Removed tax-paid	29, 825, 258, 705	29, 657, 366, 822	67, 500	22, 650	6, 599, 910	8, 927, 590
Removed tax-free	2, 836, 517, 513	2, 214, 860, 273			36, 000	

1951-3-13540
T. 286

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of December 1950, compared with the same month of 1949

	Small cigarettes		Large cigarettes		Small cigars	
	1950	1949	1950	1949	1950	1949
Manufactured	27, 219, 775, 739	26, 512, 991, 642	52, 600	116, 020	5, 080, 820	5, 548, 880
Removed tax-paid	25, 000, 314, 486	24, 775, 690, 646	54, 500	118, 720	5, 415, 500	6, 751, 420
Removed tax-free	2, 618, 666, 608	2, 431, 542, 453	300	200, 000	9, 000	

1951-5-13557
T. 289

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of January 1951, compared with the same month of 1950

	Small cigarettes		Large cigarettes		Small cigars	
	1951	1950	1951	1950	1951	1950
Manufactured	36, 301, 971, 073	31, 501, 824, 695	87, 000	40, 330	7, 064, 390	6, 899, 030
Removed tax-paid	33, 474, 407, 170	29, 289, 815, 210	87, 480	41, 930	6, 490, 080	5, 777, 630
Removed tax-free	2, 344, 070, 826	1, 972, 640, 943	600			2, 000

[a] All figures are subject to revision until incorporated in the total for the calendar year to be published in the Commissioner's annual report.

1951-8-13573
T. 292

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of February 1951, compared with the same month of 1950

	Small cigarettes		Large cigarettes		Small cigars	
	1951	1950	1951	1950	1951	1950
Manufactured	31, 841, 066, 595	27, 839, 445, 035	44, 900	39, 600	6, 294, 420	6, 451, 910
Removed tax-paid	28, 857, 361, 007	25, 645, 031, 815	39, 700	39, 800	4, 819, 620	3, 733, 100
Removed tax-free	3, 003, 068, 348	2, 177, 638, 228	5, 000			

1951-9-13584
T. 294

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of March 1951, compared with the same month of 1950

	Small cigarettes		Large cigarettes		Small cigars	
	1951	1950	1951	1950	1951	1950
Manufactured	33, 562, 293, 615	34, 076, 507, 793	92, 550	91, 500	5, 757, 700	3, 686, 070
Removed tax-paid	30, 160, 474, 516	32, 036, 161, 847	91, 350	83, 650	5, 052, 400	5, 166, 390
Removed tax-free	3, 599, 997, 141	2, 146, 058, 354	300	5, 000	12, 000	30, 000

1951-11-13598
T. 298

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of April 1951, compared with the same month of 1950

	Small cigarettes		Large cigarettes		Small cigars	
	1951	1950	1951	1950	1951	1950
Manufactured	32, 955, 112, 201	27, 994, 611, 379	64, 500	29, 200	4, 640, 690	2, 861, 500
Removed tax-paid	29, 523, 969, 995	25, 828, 764, 543	65, 300	30, 050	4, 092, 710	4, 582, 150
Removed tax-free	3, 158, 525, 879	1, 974, 030, 192	300		54, 000	

LARGE CIGARS [a]

1951-1-13516
T. 284

Large cigars manufactured in and removed from domestic factories during the month of October 1950, compared with the same month of 1949

	October 1950	October 1949
Manufactured	549, 322, 382	511, 450, 071
Removed:		
Tax-paid—		
Class A	2, 204, 591	2, 786, 400
Class B	15, 793, 057	17, 099, 650
Class C	189, 114, 608	176, 781, 929
Class D	59, 406, 274	53, 331, 436
Class E	222, 711, 832	225, 707, 424
Class F	11, 239, 989	10, 092, 782
Class G	8, 743, 328	7, 824, 960
Total tax-paid	509, 213, 679	493, 624, 581
Tax-free	5, 738, 543	4, 540, 648

1951-4-13549
T. 287

Large cigars manufactured in and removed from domestic factories during the month of November 1950, compared with the same month of 1949

	November 1950	November 1949
Manufactured	514, 107, 528	504, 894, 208
Removed:		
Tax-paid—		
Class A	1, 854, 510	2, 938, 450
Class B	14, 298, 475	18, 606, 985
Class C	190, 861, 665	179, 049, 422
Class D	56, 490, 068	58, 200, 727
Class E	231, 240, 276	239, 276, 075
Class F	13, 794, 909	12, 179, 211
Class G	21, 283, 010	9, 706, 037
Total tax-paid	529, 812, 913	519, 956, 907
Tax-free	3, 958, 627	3, 895, 722

[a] All figures are subject to revision until incorporated in the total for the calendar year to be published n the Commissioner's annual report.

1951–7–13569
T. 291

Large cigars manufactured in and removed from domestic factories during the month of December 1950, compared with the same month of 1949

	December 1950	December 1949
Manufactured	358, 549, 381	359, 275, 789
Removed:		
Tax-paid—		
Class A	1, 531, 269	2, 166, 333
Class B	13, 095, 463	13, 906, 641
Class C	128, 100, 667	119, 292, 192
Class D	41, 799, 364	44, 139, 119
Class E	174, 895, 151	183, 962, 593
Class F	1, 030, 783	9, 190, 442
Class G	5, 230, 196	5, 926, 503
Total tax-paid	365, 682, 893	378, 583, 823
Tax-free	6, 417, 600	1, 715, 854

1951–10–13591
T. 295

Large cigars manufactured in and removed from domestic factories during the month of January 1951, compared with the same month of 1950

	January 1951	January 1950
Manufactured	484, 377, 089	438, 030, 785
Removed:		
Tax-paid—		
Class A	1, 318, 472	1, 323, 351
Class B	15, 672, 904	16, 951, 901
Class C	174, 932, 361	140, 314, 544
Class D	46, 546, 950	40, 840, 408
Class E	188, 081, 945	181, 931, 409
Class F	11, 377, 813	7, 186, 173
Class G	3, 928, 401	4, 077, 117
Total tax-paid	441, 858, 846	392, 624, 903
Tax-free	5, 858, 650	2, 052, 095

1951–10–13592
T. 296

Large cigars manufactured in and removed from domestic factories during the month of February 1951, compared with the same month of 1950

	February 1951	February 1950
Manufactured	471, 290, 161	469, 095, 133
Removed:		
Tax-paid—		
Class A	1, 436, 838	1, 617, 720
Class B	12, 242, 940	15, 283, 260
Class C	162, 074, 593	135, 722, 303
Class D	44, 107, 439	44, 107, 990
Class E	182, 384, 515	191, 389, 276
Class F	8, 338, 679	7, 689, 316
Class G	5, 682, 493	5, 056, 857
Total tax-paid	416, 267, 497	400, 866, 722
Tax-free	6, 512, 705	3, 843, 600

1951-11-13599
T. 299

Large cigars manufactured in and removed from domestic factories during the month of March 1951, compared with the same month of 1950

	March 1951	March 1950
Manufactured	492, 092, 537	464, 314, 814
Removed:		
Tax-paid—		
Class A	1, 475, 725	1, 734, 444
Class B	11, 445, 118	16, 338, 223
Class C	157, 624, 078	149, 241, 994
Class D	45, 346, 212	49, 263, 388
Class E	177, 198, 060	197, 932, 794
Class F	8, 606, 746	10, 986, 089
Class G	5, 723, 539	6, 121, 698
Total tax-paid	407, 419, 478	431, 618, 630
Tax-free	7, 154, 599	3, 224, 804

1951-13-13614
T. 301

Large cigars manufactured in and removed from domestic factories during the month of April 1951, compared with the same month of 1950

	April 1951	April 1950
Manufactured	456, 064, 660	379, 974, 438
Removed:		
Tax-paid—		
Class A	1, 195, 939	1, 438, 714
Class B	13, 689, 322	15, 437, 201
Class C	150, 756, 924	136, 163, 998
Class D	43, 751, 626	42, 898, 508
Class E	194, 285, 300	174, 483, 870
Class F	9, 166, 484	7, 254, 753
Class G	5, 218, 656	5, 457, 552
Total tax-paid	418, 064, 251	383, 134, 596
Tax-free	10, 381, 656	3, 855, 205

LEGISLATION

1951-2-13526

H. R. 9840. PUBLIC LAW 878, EIGHTY-FIRST CONGRESS
[CHAPTER 1137, SECOND SESSION]

An Act To exempt furlough travel of service personnel from the tax on transportation of persons.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That effective with respect to amounts paid after the date of enactment of this Act—

(a) Section 12 of the Act of August 8, 1947, entitled "An Act to terminate certain tax provisions before the end of World War II" (61 Stat. 919), is hereby repealed.

(b) Section 3469(f)(2) of the Internal Revenue Code is hereby amended to read as follows:

(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 than 2.025 cents per mile applicable to round-trip tickets sold to personnel of the United States Army, Air Force, 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.

Approved December 15, 1950.

1951-2-13530

H. R. 9913. PUBLIC LAW 907, EIGHTY-FIRST CONGRESS
[CHAPTER 1195, SECOND SESSION]

An Act To prevent penalties and additions to tax in case of failure to meet requirements with respect to estimated tax by reason of increases imposed by the Revenue Act of 1950.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 145 of the Internal Revenue Code (relating to penalties with respect to failure to file returns, pay tax, etc.,) is amended by relettering subsection (e) as subsection (f) and by adding after subsection (d) a new subsection (e) as follows:

(e) In the case of taxable years beginning prior to October 1, 1950, and ending after September 30, 1950, the penalties prescribed by this section shall not be applicable if the taxpayer failed to meet the requirements of section 294(d)(2) (relating to substantial underestimate of estimated tax), by reason of the increase in normal tax and surtax on individuals imposed by section 101 of the Revenue Act of 1950.

SEC. 2. Paragraph (2) of subsection (d) of section 294 of the Internal Revenue Code is amended by adding at the end of paragraph

(2) a new sentence reading as follows: "In the case of taxable years beginning prior to October 1, 1950, and ending after September 30, 1950, the additions to tax prescribed by this subsection shall not be applicable if the taxpayer failed to meet the 80 per centum and 66⅔ per centum requirements of this paragraph by reason of the increase in normal tax and surtax on individuals imposed by section 101 of the Revenue Act of 1950."

Approved January 2, 1951.

1951-3-13535

H. J. RES. 554. PUBLIC LAW 908, EIGHTY-FIRST CONGRESS
[CHAPTER 1196, SECOND SESSION]

Joint Resolution Amending section 3804 of the Internal Revenue Code.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3804 of the Internal Revenue Code is hereby amended by adding at the end thereof the following new subsection:

(f) ADDITIONAL TIME TO BE DISREGARDED.—In the case of an individual serving in the Armed Forces of the United States, or serving in support of such Armed Forces, in an area designated by the President of the United States by Executive order as a "combat zone" for the purposes of section 22(b) (13), at any time during the period designated by the President by Executive order as the period of combatant activities in such zone for the purposes of such section, or hospitalized outside the States of the Union and the District of Columbia as a result of injury received while serving in such an area during such time, the period of time disregarded under this section, notwithstanding the limitations of subsections (a) and (c), shall include the period of service in such area, plus the period of continuous hospitalization outside the States of the Union and the District of Columbia attributable to such injury, and the next one hundred and eighty days thereafter.

Approved January 2, 1951.

1951-4-13547

H. R. 7303. PUBLIC LAW 918, EIGHTY-FIRST CONGRESS
[CHAPTER 1226, SECOND SESSION]

An Act To amend section 120 of the Internal Revenue Code

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

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

Approved January 11, 1951.

1951-4-13548

H. R. 9794. PUBLIC LAW 919, EIGHTY-FIRST CONGRESS
[CHAPTER 1227, SECOND SESSION]

An Act To amend section 22(d)(6) of the Internal Revenue Code

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22(d)(6) (relating to the involuntary liquidation and replacement of elective inventories) of the Internal Revenue Code is hereby amended as follows:

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

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

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

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

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

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

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

(i) Adjustment of Net Income and Resulting Tax.—If, for any taxable year ending after June 30, 1950, and prior to January 1, 1954, the closing inventory of a taxpayer inventorying goods under the method provided in this subsection reflects a decrease from the opening inventory of such goods for such year, and if the taxpayer elects, at such time and in such manner and subject to such regulations as the Commissioner with the approval of the Secretary may prescribe, to have the provisions of this paragraph apply, and if it is established to the satisfaction of the Commissioner, in accordance with such regulations, that such decrease is attributable to the involuntary liquidation of such inventory as defined in subparagraph (B) (as modified by clause (ii) of this subparagraph), and if the closing inventory of a subsequent taxable year, ending prior to January 1, 1956, reflects a replacement, in whole or in part, of the goods so previously liquidated, the net income of the taxpayer otherwise determined for the year of such involuntary liquidations shall be increased by an amount equal to the excess, if any, of the aggregate cost of such goods reflected in the opening inventory of the year of involuntary liquidation over the aggregate replacement cost, or decreased by an amount equal to the excess, if any, of the aggregate replacement cost of such goods over the aggregate cost thereof reflected in the opening inventory of the year of the involuntary liquidation. The taxes imposed by this chapter and by chapter 2 for the year of such liquidation, for preceding taxable years, and for all taxable years intervening between the year of liquidation and the year of replacement shall be redetermined, giving effect to such adjustments. Any increase in such taxes resulting from such adjustments shall be assessed and collected as a deficiency but without interest, and any overpayment so resulting shall be credited or refunded to the taxpayer without interest.

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

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

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

Approved January 11, 1951.

1951–7–13568

H. J. RES. 87. PUBLIC LAW 2, EIGHTY-SECOND CONGRESS
[CHAPTER 2, FIRST SESSION]

Joint Resolution Amending section 5012 of the Internal Revenue Code.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5012 of the Internal Revenue Code (relating to powers of the Joint Committee on Internal Revenue Taxation to obtain data) is hereby amended by adding at the end thereof the following new subsection:

(c) Subsections (a) and (b) shall be applied in accordance with their provisions without regard to Reorganization Plan Numbered 26 of 1950 or to any other reorganization plan becoming effective on, before, or after the date of the enactment of this subsection.

Approved February 28, 1951.

1951–8–13574

H. R. 1724. PUBLIC LAW 9, EIGHTY-SECOND CONGRESS
[CHAPTER 15, FIRST SESSION]

An Act To provide for the renegotiation of contracts, 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 may be cited as the "Renegotiation Act of 1951".

TITLE I—RENEGOTIATION OF CONTRACTS

* * * * * * *

SEC. 102. CONTRACTS SUBJECT TO RENEGOTIATION.

* * * * * * *

(d) Suspension of Certain Profit Limitations.—Notwithstanding any agreement to the contrary, the profit-limitation provisions of the Act of March 27, 1934 (48 Stat. 503, 505), as amended and supplemented, and of section 505(b) of the Merchant Marine Act, 1936, as amended and supplemented (46 U. S. C. 1155(b)), shall not apply, in the case of such Act of March 27, 1934, to any contract or subcontract if any of the receipts or accruals therefrom are subject to this title, and, in the case of the Merchant Marine Act, 1936, to any contract or subcontract entered into after December 31, 1950, if any of the receipts or accruals therefrom are subject to this title.

* * * * * * *

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. FUNCTIONS UNDER WORLD WAR II RENEGOTIATION ACT.

* * * * * * *

(c) AMENDMENT OF THE RENEGOTIATION ACT.—Subsection (a)(4)(D) of the Renegotiation Act is amended by inserting at the end thereof the following: "A net renegotiation rebate shall not be repaid unless a claim therefor has been filed with the Board on or before the date of its abolition, or unless a claim shall have been filed with the Administrator of General Services (i) on or before June 30, 1951, or (ii) within ninety days after the making of an agreement or the entry of an order under subsection (c)(1) determining the amount of excessive profits, whichever is later. A claim shall be deemed to have been filed when received by the Board or the Administrator, whether or not accompanied by a statement of the Commissioner of Internal Revenue showing the amortization deduction allowed for the renegotiated year upon the recomputation made pursuant to section 124(d) of the Internal Revenue Code."

(d) TRANSFER OF CERTAIN FUNCTIONS.—All powers, functions, and duties conferred upon the War Contracts Price Adjustment Board by subsection (a)(4)(D) of the Renegotiation Act, subject to the amendment thereof by subsection (c) of this section, are hereby transferred to the Administrator of General Services.

* * * * * * *

(f) REFUNDS.—All refunds under subsection (a)(4)(D) of the Renegotiation Act (relating to the recomputation of the amortization deduction), all refunds under the last sentence of subsection (i)(3) of such Act (relating to excess inventories), and all amounts finally adjudged or determined to have been erroneously collected by the United States pursuant to a determination of excessive profits, with interest thereon in the last mentioned case at a rate not to exceed 4 per centum per annum as may be determined by the Administrator of General Services or his duly authorized representative computed to the date of certification to the Treasury Department for payment, shall be certified by the Administrator of General Services or his duly authorized representative to the Treasury Department for payment from such appropriations as may be available therefor: *Provided*, That such refunds shall be based solely on the certificate of the Administrator of General Services or his duly authorized representative.

* * * * * * *

SEC. 203. AMENDMENT OF SECTION 3806 OF THE INTERNAL REVENUE CODE.

Section 3806(a)(1) of the Internal Revenue Code is hereby amended by striking out subparagraphs (A), (B), and (C) and inserting in lieu thereof the following:

(A) The term "renegotiation" includes any transaction which is a renegotiation within the meaning of the Federal renegotiation act applicable to such transaction, any modification of one or more contracts with the United States or any agency thereof, and any agreement with the United States or any agency thereof in respect of one or more such contracts or subcontracts thereunder.

(B) The term "excessive profits" includes any amount which constitutes excessive profits within the meaning assigned to such term by the applicable Federal renegotiation act, any part of the contract price of a contract with the United States or any agency thereof, any part of the subcontract price of a subcontract under such a contract, and any profits derived from one or more such contracts or subcontracts.

(C) The term "subcontract" includes any purchase order or agreement which is a subcontract within the meaning assigned to such term by the applicable Federal renegotiation act.

(D) The term "Federal renegotiation act" includes section 403 of the Sixth Supplemental National Defense Appropriation Act (Public 528, 77th Cong., 2d sess.), as amended or supplemented, the Renegotiation Act of 1948, as amended or supplemented, and the Renegotiation Act of 1951, as amended or supplemented.

* * * * * * *

Approved March 23, 1951.

1951-9-13583

H. R. 2268. PUBLIC LAW 12, EIGHTY-SECOND CONGRESS
[CHAPTER 19, FIRST SESSION]

An Act To authorize the payment of interest on series E savings bonds retained after maturity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 22 of the Second Liberty Bond Act (31 U. S. C. 757c(b)) is amended by inserting "(1)" after "(b)" and adding the following new paragraph:

(2) The Secretary of the Treasury, with the approval of the President, is authorized to provide by regulation that owners of series E savings bonds thereafter maturing may, at their option, retain the matured bonds and earn interest upon the maturity values thereof for not more than ten years at rates consistent with the provisions of paragraph (1).

SEC. 2. Effective with respect to taxable years ending after the date of the enactment of this Act, section 42 of the Internal Revenue Code is amended—

(1) by inserting after "stated intervals" in the first sentence of subsection (b) the following: "or owning an obligation described in paragraph (2) of subsection (d)";

(2) by inserting after "acquisition" in the last sentence of subsection (b) the following: "(or, in the case of an obligation described in paragraph (2) of subsection (d), the date of acquisition of the series E bond involved)"; and

(3) by adding at the end of such section the following new subsection:

(d) MATURED UNITED STATES SAVINGS BONDS.—In the case of a taxpayer who—

(1) holds a series E United States savings bond at the date of maturity, and

(2) pursuant to regulations prescribed under the Second Liberty Bond Act retains his investment in the maturity value of such series E bond in an obligation, other than a current income obligation, which matures not more than ten years from the date of maturity of such series E bond,

the increase in redemption value (to the extent not previously includible in gross income) in excess of the amount paid for such series E bond shall be includible in gross income in the taxable year in which the obligation is finally redeemed or in the taxable year of final maturity, whichever is earlier. The provisions of this subsection shall not apply to a corporation, and shall not apply in the case of any taxable year for which the taxpayer's net income is computed upon the basis of the accrual method of accounting or for which an election made by the taxpayer under subsection (b) is applicable.

Approved March 26, 1951.

1951–12–13604

H. R. 136. PUBLIC LAW 29, EIGHTY-SECOND CONGRESS
[CHAPTER 56, FIRST SESSION]

An Act Allowing the consumer of gasoline to deduct, for income tax purposes, State taxes on gasoline imposed on the wholesaler and passed on to the consumer.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 23(c)(3) of the Internal Revenue Code (relating to deduction of retail sales taxes) is hereby amended to read as follows:

(3) GASOLINE AND RETAIL SALES TAXES.—In the case of a tax imposed by any State, Territory, District, or possession of the United States, or any political subdivision thereof, upon persons engaged in selling tangible personal property at retail, or upon persons selling gasoline or other motor vehicle fuels either at wholesale or retail, which is measured by the gross sales price or the gross receipts from the sale or which is a stated sum per unit of such property sold, or upon persons engaged in furnishing services at retail, which is measured by the gross receipts for furnishing such services, if the amount of such tax is separately stated, then to the extent that the amount so stated is paid by the consumer (otherwise than in connection with the consumer's trade or business) to his vendor such amount shall be allowed as a deduction in computing the net income of such consumer as if such amount constituted a tax imposed upon and paid by such consumer.

SEC. 2. The amendment made by this Act shall apply to taxable years beginning after December 31, 1950.

Approved May 12, 1951.

1951–13–13610

H. R. 2654. PUBLIC LAW 34, EIGHTY-SECOND CONGRESS
[CHAPTER 92, FIRST SESSION]

An Act To amend section 10 of Public Law 378, Eighty-first Congress [C. B. 1949–2, 275].

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 10 of the Act entitled "An Act to amend certain provisions of the Internal Revenue Code", approved October 25, 1949 (Public

Law 378 [C. B. 1949-2, 275]), is hereby amended (1) by striking out "within one year from such date" and inserting in lieu thereof "at any time prior to January 1, 1952", and (2) by striking out "within one year from the date of the enactment of this Act" and inserting in lieu thereof "prior to January 1, 1952".

Approved May 17, 1951.

1951-13-13611

H. R. 3196. PUBLIC LAW 35, EIGHTY-SECOND CONGRESS
[CHAPTER 93, FIRST SESSION]

An Act To amend section 153(b) of the Internal Revenue Code

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, effective with respect to taxable years beginning after December 31, 1949, section 153(b) of the Internal Revenue Code (relating to special returns required from trusts claiming charitable, etc., deductions under section 162(a) of such Code) is hereby amended by adding at the end thereof the following:

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

Approved May 17, 1951.

1951-13-13612

H. R. 3336. PUBLIC LAW 38, EIGHTY-SECOND CONGRESS
[CHAPTER 108, FIRST SESSION]

An Act To suspend certain import taxes on copper

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the import tax imposed under section 3425 of the Internal Revenue Code shall not apply with respect to articles (other than copper sulfate and other than composition metal provided for in paragraph 1657 of the Tariff Act of 1930, as amended, which is suitable both in its composition and shape, without further refining or alloying, for processing into castings, not including as castings ingots or similar cast forms) entered for consumption or withdrawn from warehouse for consumption during the period beginning April 1, 1951, and ending with the close of February 15, 1953, or the termination of the national emergency proclaimed by the President on December 16, 1950, whichever is earlier: *Provided*, That when, for any one calendar month during such period, the average market price of electrolytic copper for that month, in standard shapes and sizes, delivered Connecticut Valley, has been below 24 cents per pound, the Tariff Commission, within fifteen days after the conclusion of such calendar month, shall so advise the President, and the President shall, by proclamation, not later than twenty days after he has been so advised by the Tariff Commission, revoke such suspension of the import tax imposed under section 3425 of the Internal Revenue Code.

In determining the average market price of electrolytic copper for each calendar month, the Tariff Commission is hereby authorized and directed to base its findings upon sources commonly resorted to by the buyers of copper in the usual channels of commerce, including, but not limited to, quotations of the market price for electrolytic copper, in standard shapes and sizes, delivered Connecticut Valley, reported by the Engineering and Mining Journal's "Metal and Mineral Markets."

Approved May 22, 1951.

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COMMITTEE REPORTS

1951–2–13527

EXCESS PROFITS TAX ACT OF 1950

[House of Representatives Report No. 3142, 81st Cong., 2d Sess.]

[December 2, 1950]

Mr. Doughton, from the Committee on Ways and Means, submitted the following report [to accompany H. R. 9827]:

The Committee on Ways and Means, to whom was referred the bill (H. R. 9827) to provide revenue by imposing a corporate excess profits tax, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. General Statement

This bill provides for raising revenue by the levying, collection, and payment of corporate excess profits taxes with retroactive effect to July 1, 1950. It thus carries out the mandate imposed upon the Committee on Ways and Means by section 701(a) of the Revenue Act of 1950 which provides as follows:

"The House Committee on Ways and Means and the Senate Committee on Finance are hereby directed to report to the respective Houses of Congress a bill for raising revenue by the levying, collection, and payment of corporate excess profits taxes with retroactive effect to October 1, or July 1, 1950, said bill to originate as required by article I, section 7, of the Constitution. Said bill shall be reported as early as practicable during the Eighty-first Congress after November 15, 1950, if the Congress is in session in 1950 after such date; and if the Congress is not in session in 1950 after November 15, 1950, said bill shall be reported during the first session of the Eighty-second Congress, and as early as practicable during said session."

The excess profits tax provided for in this bill is the second step in the financing of the vastly expanded military program resulting from hostilities in Korea.

The first step in this expanded program was taken in the Revenue Act of 1950 when corporation and individual income taxes were increased to provide an estimated increase in revenue of $4.5 billion annually. It is estimated that this bill will produce about $3 billion under the levels of corporate profits existing in the calendar year 1950 and about $4.6 billion under the levels of corporate profits which may reasonably be expected in the calendar year 1951. Since commitments and obligations are now being made at a rate considerably above current expenditures and since many items of military procurement have to be ordered long in advance of deliveries, expenditures for the fiscal year 1952 and later years will be substantially above current levels.

The Congress has just received a request for additional funds which would increase the military and atomic energy appropriations by another $18 billion. This, if added to appropriations already acted upon, will increase military appropriations for the fiscal year 1951 to a total of $41.8 billion.

One of the main objectives in imposing an excess profits tax is to reach corporate profits which have been swollen by the increased tempo of the economy. An excess profits tax selects for additional tax those corporations whose profits are higher than they probably would have been in the absence of hostilities and a large military budget. By limiting the credit based upon income to 85 percent of the base-period earnings, the bill will reach some profits which are being sustained at the relatively high levels of the base period by the increased tempo of the defense economy. To increase the ordinary corporate income tax, in lieu of imposing an excess profits tax, would create a hardship for those corporations whose profits are declining and which have realized no benefits from the defense boom. It is recognized that in a war economy there are many such corporations and your committee felt that it would be unfair to increase their tax without first collecting additional taxes from those corporations whose incomes have actually been increased or sustained by the defense program.

Your committee believes that an excess profits tax enacted at this time should not be too severe in character. It is likely that an emergency will continue for an indefinite period. Under these conditions special care must be taken not to freeze production at its present level or in its present pattern. The tax must not interfere unduly with the normal adjustments of business to changes in the demands for its products or with the expansion of the industrial capacity of the Nation. Extensive relief provisions have been incorporated in the bill which it is believed will alleviate promptly most hardship cases which may arise under this tax.

The committee opened public hearings on the excess profits tax proposal on November 15 and hearings were closed on November 22. Immediately after the enactment of the Revenue Act of 1950 the staffs of the Joint Committee on Internal Revenue Taxation and the Treasury Department began working on this tax and consulted with groups representing various industries as to the problems involved in such a tax.

II. Revenue Estimates

It is estimated that this bill will yield $3 billion in a full year of operations with corporate profits at the level existing in the calendar year 1950. It is believed that this would result in the imposition of an excess profits tax on about 70,000 corporations.

With the level of corporate profits which may reasonably be expected in the calendar year 1951, it is estimated that this bill will yield $4.6 billion in a full year of operation. On this basis about 80,000 corporations will be subject to excess profits tax.

III. Major Provisions of General Application

1. The rate, base, and years of application.

This bill has the effect of imposing an excess profits tax rate of 75 percent. This can be compared to an excess profits rate of 85½ percent at the end of World War II after allowance is made for the 10 percent postwar refund provided for by that tax. However, the combined rate of the corporate income and excess profits taxes under your committee's bill cannot exceed 67 percent of the corporation's net income. Under the World War II tax a similar ceiling limited the combined rate of the two taxes to somewhat more than 72 percent after allowance for the postwar refund.

As in the case of the World War II tax, the taxpayer is given the choice of the higher of two alternative bases in determining what proportion, if any, of his income is to be subjected to excess profits tax. The primary credit, or the credit likely to be generally used, is an average earnings credit based on average income in the 4 years 1946 to 1949. The alternative is a credit based on a rate of return on "invested capital." A similar choice was presented in the World War II tax.

Your committee conceives of this tax as primarily a tax on increased profits due to the outbreak of hostilities and to large military expenditures. This accounts for the primary emphasis upon the average earnings base. However. it is believed that a minimum rate of return free of excess profits tax should be allowed taxpayers who happened to have poor earning experience in the base period. Therefore, taxpayers are offered an invested capital credit as an alternative which places a floor on the rate of return assured before the imposition of excess profits taxes.

In section 701 of the Revenue Act of 1950 the House required this committee to report out an excess profits tax effective as of July 1, 1950, or October 1, 1950. After consideration of these two alternative effective dates your committee concluded that an excess profits tax should be effective as of July 1, 1950. This is approximately the date of the outbreak of hostilities and antedates the substantial increase in corporate profits during the third and fourth quarters of 1950 which resulted from the wave of buying following the start of hostilities. Your committee believes that this increase in purchases was in large measure in anticipation of increased military expenditures and the resulting smaller production likely to be available to the civilian economy. Increased profits arising from such causes are as properly attributable to the outbreak of hostilities as profits arising directly from additional military expenditures themselves.

This excess profits tax is made effective in 1950 for calendar year corporations by imposing an excess profits tax for that year equal to one-half the tax which would be imposed in subsequent years. The tax does not apply to fiscal years which end prior to July 1, 1950. When a fiscal year begins prior to and ends after that date, the tax imposed will be a proportion of the tax computed on the basis of the full year's income. The portion is to be determined by dividing the number of days in the taxable year which are after June 30, 1950, by the total number of days in the taxable year. Fiscal years beginning after June 30, 1950, are fully taxable. These rules are similar to those applied for 1950 in making the changes in the corporate normal tax and surtax rates in the Revenue Act of 1950.

2. Relation to corporate income tax.

The excess profits tax provided by this bill is computed as an additional tax over and above the corporate income tax. The consolidated return privilege is made available as in the World War II statute. In general the computation of the excess profits tax is as follows:

(*a*) First, the income tax is imposed on the entire amount of taxable net income.

(*b*) Second, the normal tax net income, after certain adjustments, is reduced by the excess profits credit (that is, the portion of the corporation's income which for the purposes of this tax is considered normal) and any unused excess profits credit carried forward or back to the taxable year. The result is called the adjusted excess profits net income.

(*c*) Third, an additional tax at the rate of 30 percent is imposed on this adjusted excess profits net income. This, when added to the corporate income tax rate of 45 percent on income in excess of $25,000, accounts for the 75 percent rate on excess profits.

Under the World War II excess profits tax the so-called "two-basket" approach was followed. The corporate income tax was imposed only on income which was not subject to the excess profits tax and the excess profits tax (comparable to the 75 percent tax referred to above) was imposed on income in excess of the excess profits credit.

Substantially the same tax burdens are achieved under either type of computation, but the type used in this bill is believed to be the simpler. Under this approach the income tax can be computed without regard to the excess profits tax, and subsequent adjustments in the excess profits credit will not require a recomputation of the income tax. Also, the method provided in this bill permits the complete consolidation of returns and procedures for assessing and collecting the income tax and the excess profits tax, which should reduce substantially the burden of administration and taxpayer compliance. Under the proposed provisions the income tax and the excess profits tax would be treated as one tax for the purpose of the computation of interest on refunds or deficiencies, the statute of limitations, credit and refund, the sending of 90-day letters, etc.

3. The minimum credit.

The bill provides for a minimum credit of $25,000. Any taxpayer which upon computing its excess profits tax credit under either the average earnings or invested capital method finds that its credit is less than $25,000 may raise its credit to this amount. The World War II law provided all taxpayers with a specific exemption of $10,000.

The minimum credit has a number of advantages over the specific exemption although the primary purpose of both is the same, namely, to relieve small corporations from excess profits tax and to encourage their growth, to prevent small corporations from being discriminated against as compared to their unincorporated competitors, and to make it unnecessary for them to compute an excess profits tax. A minimum credit and specific exemption of the same size are equally effective in removing these small businesses from the application of an excess profits tax. However, because the benefits arising from the minimum credit are available only to small business, this type of credit is much less costly in terms of revenue than a specific exemption. In fact a minimum credit of $25,000 is much less of a drain on revenues than a specific exemption of $10,000.

4. Average earnings credit.

For taxpayers on a calendar-year basis the base period under this bill is the 4-year interval 1946 to 1949. As a general rule taxpayers are permitted to eliminate one of the base-period years. The normal tax net income of the remaining years is then adjusted in a manner described below and averaged. The resulting average base period net income is then reduced by 15 percent for the purposes of the credit.

Under the World War II law the base period was 1936 to 1939, and the credit was 95 percent of the average earnings in this period. It was necessary to substitute the period 1946 to 1949 for the 1936 to 1939 base in this bill both because of the large number of businesses which have been started recently and because of the substantial changes which have occurred in the businesses in existence between 1936 and 1939. The period 1946 to 1949 is the only recent 4-year, nonwar period available. However, it is a period of unusual business prosperity which to a substantial degree was built on the deferred demands, the accumulated savings of World War II, and large postwar defense expenditures. Since this unprecedented level of business activity could hardly have been expected to continue permanently, the use of the income of the years 1946 through 1949, without adjustment, would produce a general overstatement of the taxpayers' earning capacity in the absence of hostilities in Korea or a large program of military expenditures. For this reason your committee believes that a 15 percent cut-back in average base period income is a moderate adjustment.

In addition to eliminating the poorest year in its base period, the taxpayer is permitted to count the earnings of any remaining deficit year as zero. The comparable World War II adjustments were considerably less liberal. Under that law the earnings of the poorest year could be raised to 75 percent of the average of the other 3 years. This is only three-fourths of the upward revision which occurs in the selection of the best 3 out of 4 years. Moreover, there was no provision in the World War II law allowing additional deficit years to be counted as zero.

This bill provides that the average earnings credit may be increased for investments made late in the base period. Although no similar provision was contained in the World War II law, an adjustment of this character is needed to place corporations where investments were made late in the base period on a comparable basis with corporations where investments were made prior to, or in the early part of, the base period. Investments early in the base period are fully, or largely, reflected in the base-period earnings, but investments made in the latter half of the base period, will at best be only partially reflected in the base period earnings and may not affect those earnings at all.

For this reason the average earnings credit is increased to reflect one-half of the net additions to capital in 1948 and all of the net additions to capital in 1949. When the additional investment takes the form of equity capital or retained earnings, the base period credit is, in effect, increased by 12 percent of the amount of the investment. This is the same rate of return allowed for net additions to capital in the years in which the excess profits tax is applicable and is the maximum rate of return allowed those using the invested capital base. When the addition takes the form of borrowed capital, the credit is increased by 133 percent of the interest payable on the new funds. This is the same adjustment allowed on borrowed capital in the case of additions during excess profits tax years and to taxpayers using the invested capital base. The theory and operation of this adjustment will be explained below.

Taxpayers using fiscal years ending after December 31 but before April 1 will use the last four taxable years ending prior to April 1, 1950. The use of the corporation's actual taxable years is desirable in itself and the inclusion of the first quarter of 1950 in the base period does not appear to be objectionable. However, taxpayers whose fiscal years end after March 31 and before December 31 are required to use as their base period the 48 months beginning on January 1, 1946, and ending December 31, 1949. In these cases the use of the corporation's actual taxable years would involve either the exclusion of a portion of the calendar year 1949 and the inclusion of a corresponding part of 1945, or the inclusion of a portion of the calendar year 1950 which includes or borders upon the months affected by the hostilities in Korea. Therefore, such corporations are required to construct by proration four calendar years in order to compute their base period credit. For instance, for base period purposes, the 1946 income of a corporation with a taxable year ending November 30, will consist of eleven-twelfths of the income of the corporation's 1946 fiscal year and one-twelfth of its 1947 fiscal year. The income of the other base period years will have a similar composition. The 1949 income for base period purposes will consist of eleven-twelfths of the corporation's income in the 1949 fiscal year and one-twelfth of the income of its 1950 fiscal year. This will reduce to a minimum the effect of the Korean hostilities upon their base period income.

5. *Invested capital credit.*

Under the bill, taxpayers using the alternative of an invested capital credit instead of the average earnings credit determine their invested capital and on this base are allowed rates of return varying with the size of the investment in the case of equity capital and retained earnings, and with the rate of interest payable in the case of borrowed capital.

(*a*) *Rates of return on equity capital and retained earnings.*—The rates of return allowed on equity capital and retained earnings under your committee's bill and the World War II statute are shown in table 1.

TABLE 1.—*Rates of return allowed on equity capital and retained earnings under your committee's bill and the World War II statute*[1]

Capital to which rate applies	Rates under this bill	Rates under World War II law
(In millions)		
Under $5	12 percent	8 percent.
$5 to $10	10 percent	6 percent.
Over $10	8 percent	5 percent.

[1] Under the World War II statute the capital in each bracket also included one-half of the borrowed capital.

It was believed necessary to provide for more liberal rates of return under your committee's bill than under the World War II law to allow for the general increase in rates of return on invested capital which has occurred since the pre-World War II period. Thus the rates of return were increased on the average by slightly more than 50 percent.

(*b*) *Rate of return on borrowed capital.*—Under this bill the rate of return allowed on borrowed capital is 133 percent of the interest rate payable on 100 percent of these borrowed funds. This is accomplished by allowing the full deduction of interest payments and by also increasing the invested capital credit by one-third of the interest payments. Under this bill the minimum amount by which the credit is to be increased is 1 percent of the borrowed capital (limited to obligations with a term of 5 years or more), and the maximum by which it is to be increased is 3 percent of the total borrowed capital, but no limitations are placed on the interest deduction.

The World War II statute provided that one-half of the taxpayer's borrowed capital be taken into consideration in computing the invested capital credit. The capital taken into account was multiplied by statutory rates of return shown above in the tabulation on equity capital and retained earnings in computing the invested capital credit. However, one-half of the interest paid on borrowed capital was disallowed in computing the excess profits tax net income. The effect of this, taking into consideration both the addition to the credit and the disallowance of one-half of the interest payments, was to allow a rate of return on borrowed capital halfway between the interest rate and the applicable statutory rate of return on invested capital. Thus, the margin allowed to the taxpayer to compensate for risk was one-half the difference between its interest rate and the statutory rate of return on invested capital. This margin became smaller as the interest rate increased, and disappeared altogether where the interest equaled or exceeded the statutory rate of return.

Under this bill, if funds are borrowed at an interest rate of 6 percent, the allowance for borrowed capital is one and one-third of 6 percent, or 8 percent. Of this 8 percent, 6 percent is allowed as an interest deduction and 2 percent as an increase in the invested capital credit. Under the World War II law, the rate of return where funds were borrowed at 6 percent varied from 7 percent where total invested capital was less than $5 million to 5½ percent where total invested capital exceeded $10 million. In this case the interest deduction was limited to 3 percent and the balance of the allowance, varying from 4 percent to 2½ percent, was reflected in an increased invested capital credit. The margin allowed in excess of the 6 percent interest payment, to compensate the taxpayer for risk, is 2 percent under this bill and varied from 1 percent to a minus ½ percent under the World War II law.

With an interest rate of 3 percent on borrowed funds the rate of return on borrowed capital is 4 percent under this bill and varied from 4 percent to 5½ percent under the World War II law. Under the relatively low interest rate of 3 percent, after allowance is made for the amount which must be paid out as interest on the borrowed funds, the remaining rate of return would be 1 percent under this bill and varied from 1 percent to 2½ percent under the World War II law.

Tables 2 and 3 compare the rate of return allowed on borrowed capital under the bill and under the World War II law for a range of interest rates which includes practically all rates at which funds are borrowed by corporations. Table 2 makes the comparison before any adjustment for the portion of the rate of return required to meet interest payments. Table 3 makes the comparison after interest payments have been deducted.

TABLE 2.—*Rate of return on borrowed capital allowed under your committee's bill and under the World War II law before interest payments*

Rate of interest payable	Bill	World War II law
2 percent	3 percent	3½ to 5 percent.
3 percent	4 percent	4 to 5½ percent.
4 percent	5⅓ percent	4½ to 6 percent.
5 percent	6⅔ percent	5 to 6½ percent.
6 percent	8 percent	5½ to 7 percent.
7 percent	9⅓ percent	6 to 7½ percent.
8 percent	10⅔ percent	6½ to 8 percent.
9 percent	12 percent	7 to 8½ percent.
10 percent	13 percent	7½ to 9 percent.

TABLE 3.—*Rate of return on borrowed capital allowed under your commitee's bill and under the World War II law after interest payments*

Rate of interest payable	Bill	World War II law
2 percent	1 percent	1½ to 3 percent.
3 percent	1 percent	1 to 2½ percent.
4 percent	1⅓ percent	½ to 2 percent.
5 percent	1⅔ percent	0 to 1½ percent.
6 percent	2 percent	−½ to 1 percent.
7 percent	2⅓ percent	−1 to ½ percent.
8 percent	2⅔ percent	−1½ to 0 percent.
9 percent	3 percent	−2 to −½ percent.
10 percent	3 percent	−2½ to −1 percent.

A comparison of the different rates of return for interest payments shown on table 2 indicates that in the case of both the provisions under this bill and under the World War II law the rate of return increases as the interest rate rises. However, under the provision in the bill the rate of return rises at a more rapid rate. The rate of return allowed here is slightly smaller than the World War II allowance for the 2 percent interest rate. However, for the 3 percent interest rate, which represents the lowest rate at which funds are usually borrowed by corporations, the rate of return is the same as that allowed under the prior law where the borrowed capital was a part of invested capital exceeding $10 million. For funds borrowed at an interest rate of 5 percent, the two methods give approximately the same rate of return. For interest rates of 6 percent and above, the rates of return under the provisions of this bill are more generous for all classes of taxpayers than those under the World War II law.

A comparison of the rate of return after reduction for the rate required for interest payments, as shown in table 3, indicates that under the bill this margin to compensate for risk is quite small where the interest rate is small but increases substantially as the interest rate, and presumably the risk, increase. Under the World War II law the reverse was true; the lower the interest rate the wider the margin given for risk. Under the World War II method when the interest rate reached 5 percent there was little or no margin for relief. When the interest rate reached 6 to 8 percent even the interest payments might not be covered and when the interest rate was above 8 percent it was never covered.

In considering the rate of return to be allowed for borrowed capital, your committee believed that the allowance should at least cover the interest payments which must be made for the use of the borrowed funds. This is generally recognized as not representing income to the borrower and is not treated as such under the income tax laws. The World War II law in many cases did not cover these interest payments.

However, it is recognized that the full deduction of interest payments is not a sufficient allowance for borrowed capital. The use of borrowed funds by a corporation increases the risk of the stockholders and therefore your committee believes it is proper to compensate the stockholders for this additional risk. Moreover, the additional risk tends to vary with the interest rate which must be paid for the use of the borrowed funds. It is primarily for these reasons that the bill provides that the interest payments are deductible and that an additional percentage based on the interest rate is added to the credit. The one-third margin is added to the credit because this gives nearly the same rate of return as under the World War II law for the lowest interest rates customarily paid.

(c) *Definition of borrowed capital.*—Borrowed capital under your committee's bill is indebtedness (not including interest) which is evidenced by a bond, note, bill of exchange, debenture, certificate of indebtedness, mortgage, deed of trust, or conditional sales contract and is employed in the trade or business. This is substantially the same as the definition appearing in the World War II statute except for the addition of conditional sales contracts. Such contracts are in reality a form of borrowing which have been used extensively and your committee believes that their omission from the definition of borrowed capital would work a hardship on taxpayers borrowing substantial amounts in this manner.

(d) *Computation of invested capital.*—Under World War II law the so-called "historical capital" approach was used to determine the invested capital of the corporation. In general this involved a determination of the money and property originally paid-in to the corporation for stock and as paid-in surplus plus net accumulations of earnings (earnings in excess of losses and dividends) less any distributions of capital.

Under your committee's bill the invested capital of a corporation is determined by deducting from its total assets, now on its books, the total of its liabilities now on its books, and restoring any net deficit in the period 1946 to 1949, or 1940 to 1949, whichever period has the greater net deficit. The value of the assets is determined by taking their "adjusted basis for gain". This is the value used for depreciation purposes and is their cost, in the case of assets acquired before March 1, 1913, or March 1, 1913, value, whichever is higher, plus or minus adjustments for depreciation and capital improvement since their acquisition or since March 1, 1913. This also is the value which is placed on an asset for tax purposes when it is sold at a gain.

Your committee's bill shifts from the historical capital approach to the asset approach because it is believed that it will be much easier for the taxpayer to determine the basis of his present assets than to determine the amount originally paid in for stock and surplus. A special advantage of the particular asset basis used is that the basis for gain is readily available for depreciable assets.

Only in one respect is there any significant difference in the valuation which will be reached for invested capital under these two approaches.

Under the historical invested capital approach of the World War II statute, a net deficit, that is, any deficit remaining after offsetting deficits of loss years against earnings of profitable years, did not decrease paid-in capital or paid-in surplus. Under the asset approach in this bill a net deficit incurred prior to 1946 or 1940 (depending on which is more advantageous to the taxpayer) does have the effect of reducing capital or surplus paid in prior to that date. However, a net deficit for the period since 1940 or 1946 reduces neither capital or surplus paid in at any time, nor earnings and profits realized prior to 1940 or 1946. Thus, under your committee's bill, corporations with recent net deficits are treated more favorably than under World War II law whereas under the World War II law corporations with net deficits over the whole span of their existence are treated more favorably than under your committee's bill. The provision in the bill is believed preferable because it removes, as to recent deficits, discrimination between corporations with previously accumulated earnings and those without such earnings, because it tends to favor new corporations somewhat more than the old law, and because current stockholders of corporations with a net-deficit position established some time ago are likely to have discounted this deficit position in buying their stock.

(e) *Admissible and inadmissible assets.*—Under the World War II statute the capital to which the various rates of return were applied to determine the invested capital credit was reduced for certain so-called inadmissible assets. These assets were excluded because the income realized from them was not subject to excess profits tax. Stock in a corporation was an inadmissible asset because dividends received on such stock were not includible in excess profits tax net income. State and local government obligations and partially tax exempt Federal obligations were also treated as inadmissibles because interest received on them was not includible in excess profits tax net income. However, in the case of these obligations the taxpayer had the option to treat them as admissible assets if it includes in its excess profits tax net income the interest received on these obligations.

This bill makes no major change in admissible and inadmissible assets except to deny the option to treat State and local government obligations and partially tax exempt Federal obligations as admissible assets. Your committee believed that the granting of this option gives an undue advantage to holders of these obligations. The interest rate payable on such obligations is quite generally around 2 percent to 3 percent. To allow rates of return of 8 percent to 12 percent, the rates provided for invested capital, gives the holders of these obligations an opportunity to apply the excess of the rate of return allowed over the rate of return received on these obligations to income on other assets.

6. Net capital changes in the tax years.

Under your committee's bill both the taxpayer using the average earnings credit and the taxpayer using the invested capital credit are allowed to increase their credit for net additions to investments since 1949. Additions in the form of equity capital or accumulated earnings are allowed a flat rate of return of 12 percent. Additions in the form of borrowed capital are allowed a rate of return of 133 percent computed in the same manner as in the case of the invested capital base.

Reductions in invested capital in the tax period under the bill are permitted to decrease prior additions in the tax period at the same rate at which these increases were previously made in the case of either the average earnings taxpayer or invested capital taxpayer. Any additional reductions in the tax years decrease the credit of both invested capital and average earnings taxpayers. For the invested capital taxpayer the rates of return used in connection with any such reductions are the rates used in building up its invested capital credit initially. For the average earnings taxpayer the rates of return used are 12 percent in the case of equity capital and retained earnings and one-third of the interest payments in the case of borrowed capital.

The World War II statute was much less generous and also was inconsistent in the allowance for additions to capital in excess profits tax years. In the case of the average earnings taxpayer no allowance was made for investments in the tax years if they took the form of borrowed capital or accumulations of retained earnings. An increase in its credit was allowed at an 8 percent rate of return if the additions took the form of paid-in capital or paid-in surplus and a 6 percent rate of return was used for reductions of this type.

In the case of the invested capital taxpayer the World War II statute provided that retained earnings and borrowed capital be included in the ordinary computation of invested capital at the regular rates for such capital. Additions to paid-in capital or paid-in surplus were also included in the credit at the ordinary rates but as a special incentive they were included at 125 percent of their value. This had the same effect as providing for them a 10 percent, 7½ percent, or 6¼ percent rate of return, depending on the invested capital bracket of the corporation.

Your committee believes that the more generous provisions provided in this bill are necessary since the emergency may be of long duration and additional productive facilities be needed.

7. Net income in the taxable year.

Net income for the purposes of the excess profits tax is an adjusted version of the net income to which the 25 percent corporate normal tax is applied. Chief among the adjustments is an exclusion of capital gains and losses, both long and short term, and gains and losses on the sale or exchange of assets used in the trade or business which fall within the scope of section 117(j) of the Code. Casualty losses are not excluded because such losses are likely to have a serious effect upon the corporation's taxpaying capacity in the year of the loss. This exclusion is based on the sporadic character of the receipts. The World War II law excluded only long-term gains and losses but logic requires the exclusion of short-term gains and losses, and losses on the sale or exchange of section 117(j) assets as well.

This bill, like the World War II law, excludes certain other types of sporadic income, such as—

1. Income arising out of the retirement or repurchase at less than the issue price of bonds, and other evidences of indebtedness, outstanding for more than 6 months;
2. Income arising from the recovery of bad debts in cases where no deduction has been claimed in a year for which an excess profits tax was imposed under the World War II law or would be imposed under this bill; and
3. Refunds of taxes paid under the Agricultural Adjustment Act of 1933.

The net income of the excess profits tax year is also corrected by the elimination of deductions arising out of the retirement at a premium of bonds and other evidences of indebtedness outstanding for more than 6 months. The adjustment was allowed under the World War II law, but only in the correction of the base period net income. Under the bill it is also used to adjust the net income of the tax period.

As in the World War II law, the net income of life insurance companies is adjusted for contributions made to policyholders' reserves so as to conform income for excess profits tax purposes with income used for the corporate normal and surtaxes. Taxpayers in certain extractive industries are also permitted to exclude a portion of their income from "excess output" as under the World War II legislation.

The bill follows the precedent of the World War II law in allowing a full 100 percent credit for dividends received from domestic corporations. While the World War II law also allowed a full credit for dividends in kind, the bill restricts the credit for such dividends to the adjusted basis of the distributed property in the hands of the distributing corporation. This conforms the treatment of dividends in kind under the excess profits tax and the corporate normal and surtaxes as revised by section 122 of the Revenue Act of 1950.

The bill contains a provision allowing the correction of the net income of the excess profits tax years for other abnormalities. This provision is similar to section 721 of the World War II law. Generally, income appearing in particular excess profits tax years is reallocated under this provision if it is attributable to events that occurred or work that was done in other years. Such an adjustment is made only if the income of the class deemed to be abnormal received in the taxable year is more than 115 percent of the average amount of the income of the same class received during the four previous taxable years. In appropriate cases such an excess will be attributed to other years under regulations to be prescribed by the Secretary of the Treasury.

Adjustments of this type are limited to income arising out of—

1. A claim, award, adjustment, or decree;
2. Exploration, discovery, or prospecting which extended over a period of more than 12 months;
3. The sale of patents, formulas, or processes developed over a period of more than 12 months; or
4. Income which is includible in the taxable year rather than another year by reason of a change in the taxpayer's method of accounting.

The equivalent provision in the World War II law (section 721) also permitted adjustments with reference to certain other types of income, particularly that resulting from the sale of tangible property arising out of research and development which extended over a period of more than 12 months. This provision in the old law was a potential loophole of major dimensions. Because there appeared to be no means of restricting such an adjustment to truly meritorious cases other than by the introduction of a large degree of administrative discretion of the type required by the general relief clause of the World War II law (section 722), and because the need for a reallocation of such income seemed to be materially less than in the other classes of income described above, this item has been omitted from the list of abnormal types of income for which a reallocation can be made under this bill.

As a result of testimony received at the recent hearings of the Committee on Ways and Means, provisions have been included in the bill designed to correct the income of taxpayers using the installment basis of accounting or taxpayers who report income under long-term contracts on the completed contract basis, lessees from contracts which obligate them to assume the taxes due on the rentals paid to the lessor, and banks using the reserve method of accounting for bad debts.

Under the installment basis method of accounting income arises when the payments made under the contracts are received. In the absence of a relief measure, many taxpayers now using this method would probably be required to pay unusually large taxes during the first years of the excess profits tax period because the receipt of payments arising out of sales made in earlier years will exceed substantially the volume of new business. This is expected to occur because the volume of installment purchases was very heavy in 1948, 1949, and 1950 and will probably diminish sharply in 1951 and subsequent years as a result of the application of controls to installment purchases and the development of scarcities among the commodities ordinarily sold by the installment method. To prevent this result, the bill permits a taxpayer which is on the installment basis for income tax purposes to elect to report its income on an accrual basis for the excess profits tax. This has the effect of excluding from the excess profits net income of the taxable years the payments arising out of sales made during the years in which the tax did not apply. Such an election when made is irrevocable.

A similar remedy is provided for taxpayers who receive payments under long-term contracts and account for such receipts under the completed contract method as income for the year in which the contract is completed. The bill permits such taxpayers to elect to report their income from long-term contracts upon the percentage of completion method of accounting for the purpose of the excess profits tax. This election when made is also irrevocable.

In certain cases railroads have entered into leases which require the lessee to pay a stated rental to the lessor free of tax. Such leases were usually entered into many years ago when taxes were not as important an item as they are now. The increase in taxes imposed automatically raises the income, before taxes, received by the lessor corporation and may serve as the basis for the imposition of an excess profits tax which the lessee will be obligated to assume. To eliminate hardship the bill provides that in such cases the amount of tax paid by the lessee shall be excluded from the income of the lessor corporation and that no deduction shall be allowed to the lessee. The provision applies only where the lease was entered into prior to December 1, 1950, for a term of more than 20 years.

For income tax purposes banks have been permitted to use the reserve method of accounting for bad debts. The banks which elected to use this method, beginning in 1947, have for the most part accumulated reserves which equal or approach the maximum allowable under the existing rulings. The fact that the reserves have reached or approached the allowable maximum, plus the probability that losses from bad debts will be abnormally low during the excess profits tax years, means that the deductions in the excess profits tax period will be comparatively low. To permit an equitable comparison between the base-period net income and the income of the excess profits tax years, the bill permits banks using the reserve method of accounting for bad debts to claim a deduction for the purpose of determining excess profits tax net income on the basis of debts which become worthless in whole or in part during the taxable year.

8. Net income in the base period.

The equitable calculation of excess profits by a comparison between a base-period experience and the income of the taxable year requires the removal of abnormalities not only from the income of the taxable year but from the income of the base period as well. Many of the provisions in the bill for adjusting the income of base-period years are similar to those used in the taxable years. Among these are the exclusion of gains and losses from the sale or exchange of short-term assets, long-term capital assets, and assets falling within the scope of section 117(j), as well as income arising from the retirement or repurchase at less than the issue price of bonds and other evidences of indebtedness outstanding for more than 6 months.

Deductions for premiums paid and expenses involved in the retirement of bonds and other evidences of indebtedness outstanding for more than 6 months are eliminated in the base period as in the taxable year and provision is made for the elimination of the deduction for the repayment of processing taxes to vendees which parallels the adjustment for processing tax refunds in the income of the excess profits tax year.

A 100 percent credit for dividends received is allowed in computing the net income of the base-period year and the rule applied to dividends in kind is the same as that now used under the corporate normal and surtaxes.

In addition the bill contains a general provision applying to judgments, intangible drilling and development costs, casualty losses and other abnormal deductions in the base-period years. For any class of such abnormal deductions, the amount in excess of 115 percent of the average amount of deductions of such class for the four previous taxable years may be eliminated under regulations prescribed by the Secretary, provided that in the base-period year the deductions of the class disallowed exceed 5 percent of the average excess profits net income for all the taxpayer's base-period years computed without the disallowance of any class of deduction under this provision. For the purposes of the latter limitation, a deficit of any of these years is counted as zero.

This provision is similar to those used in the World War II law except that the latter eliminated only the excess over 125 percent of the average of the deductions for the four previous taxable years and the 5 percent limitation described above was not used. Similarly, the World War II law does not permit the disallowance of such abnormal deductions unless the taxpayer establishes that the disallowance is not a cause or a consequence of an increase in the gross income of the taxpayer during its base period, or of a decrease in the amount of some other deduction in the base period or a cause or a consequence of a change at any time in the type, maner of operation, size or condition of the business engaged in by the taxpayer. The bill also follows the precedent of the World War II law in limiting the amount of the deductions disallowed to the excess over the deductions of the same class in the taxpayer's excess profits tax year.

The income of the base-period years is adjusted to conform to that of the taxable years in the case of taxpayers who elect to change from the installment basis to the accrual method of accounting or to substitute the percentage of completion method for the completed contract method of accounting for payments under long-term contracts. The base-period income of lessees which are obligated to pay the tax due on the payment to a lessor under a long-term contract is adjusted in the base period to conform with the tax period. Banks using the reserve method of accounting for bad debts are allowed during the base period to substitute deductions for debts, which became worthless in whole or in part within those years, for the larger deductions then made to establish such reserves.

9. *General relief.*

(*a*) *Provisions of prior law.*—Section 722, the general relief provision of the World War II law, was designed to aid hardship cases by providing such corporations with a substitute, or constructive average, base period net income. Section 722 dealt with three principal classes of cases—(1) corporations which had suffered some adversity during their base period, (2) corporations which had made changes during the base period resulting in an increase in their profit potentials, and (3) corporations which were not in existence during the base period and, therefore, had no base period net income at all.

In each instance the section provided that a hypothetical base period earnings credit be "tailor made" for the particular taxpayer and that certain assumptions be made in conection with the case. Each case was a problem in research, and the legal or tax result generally was intertwined with complicated accounting and economic problems. Almost every factor which had any influence on the particular business was pertinent to the case and the time and expense involved in reconstructing the average base period earnings credit was tremendous.

These complex relief provisions of the World War II law have resulted in extended delay in the settlement of relief claims which discriminated against taxpayers who had neither the time nor the financial resources necessary for the establishment of their cases. Moreover, the determination of what the taxpayer's base period income would have been in the absence of the claimed abnormality was largely a matter of subjective judgment, and a great deal of complaint has arisen on this account. Hence this bill reduces to a minimum the amount of administrative discretion involved in the adjustment of the hardship cases which may be expected to arise under an excess profits tax.

(*b*) *Reduction in hardship cases under the bill.*—Since corporations in general had a high level of profits during the past 4 years, and since the bill is more liberal in a number of major respects than the World War II law, the number of hardship cases which will arise should be substantially less than if the old law were reenacted under current conditions.

Provisions of the bill which may be expected to reduce the need for relief are (1) the substitution of a $25,000 minimum credit for the $10,000 specific exemption of the prior law; (2) the option granted the taxpayer to eliminate the worst year in its base period for the purpose of computing its average base period net income; (3) the treatment of a deficit in any remaining base period year as zero for the purpose of computing the average base period net income; (4) the substitution of a 5-year carry-forward and a 1-year carry-back of the unused excess profits credit and net operating losses for the 2-year carry-forward and the 2-year carry-back used under the World War II law; (5) the increase of the average base period net income for capital additions made in the latter part of the base period, for which there was no comparable adjustment in the prior law; and (6) the adjustment of the average base period net income for capital additions after the base period, on the same basis as previously allowed taxpayers on the invested capital base.

(*c*) *General relief provisions of the bill.*—The bill provides automatic formulas for each of the most important types of cases which arose under the old section 722. The use of such formulas permit an objective computation of the exact amount of relief to be granted in each case, rather than leaving the extent of relief dependent upon an attempted analysis of all the varying factors of each case, with uncertainty and disparity among taxpayers the inevitable result. It is believed that the proposed approach to the determination of relief problems will avoid in large measure the difficulties of proof and the subjective determinations which characterized the administration of section 722 and will eliminate the delays which attended the provision of relief for hardship cases under the World War II law.

(1) *Abnormalities during the base period.*—Section 722(b) (1) and (2) of the prior law provided relief in cases where the income of the taxpayer's base period years was abnormal because of a physical interruption to production, such as a fire, strike, or flood, or because of a depression in the business of the taxpayer resulting from temporary economic circumstances such as a severe price war. Your committee's bill provides relief in these same areas. However, the bill does not retain that part of section 722(b)(2) which provided relief in cases where the business of the taxpayer was depressed because of the fact that an industry of which such taxpayer was a member was depressed due to temporary economic events unusual to such industry. Your committee believes such a provision unnecessary in view of the fact that an abnormal depression in the taxpayer's own case is given as a ground for relief. Moreover, the determination of the existence, cause, and effect of a depression in any industry as a whole involves difficult questions of proof which it is believed desirable to avoid.

If the year in which an abnormality exists is the taxpayer's lowest year of earnings during the base period, it will be eliminated automatically from the average base period net income computation. However, if the year or years in which the abnormality occurs is included in the three highest years, then the taxpayer may substitute for his actual income in the year or years in which there was an abnormality of the above types an amount determined by reference to an index based on the base period yearly rate of return for the industry to which the taxpayer belonged in the year of the abnormality.

The use of industry indices eliminates the difficult task of proving what the earnings of an abnormal year would have been had the abnormality not existed. Instead the taxpayer will substitute for the actual income of the abnormal year an amount which bears the same relation to his aggregate earnings experience in the normal years of the base period as the earnings index for the industry in that year bears to the aggregate of the industry's indices in the taxpayer's normal years.

The substitution provided for in such case would not be made under the bill unless the substituted income in the year of the abnormality is more than 10 percent higher than the actual income for that year. Such a limitation is desirable in order to avoid burdening the administration of the tax with trivial claims and to limit relief to cases where hardship clearly exists.

This proposal may be illustrated by the following example:

Year	Taxpayer's earnings	Taxpayer's industry index
1946	$500	100
1947	3,000	110
1948	[1] 1,000	120
1949	4,000	125

[1] Abnormality.

In this case, the taxpayer first eliminates his 1946 experience as being the poorest of his base-period years. It then establishes that an abnormality existed in 1948 because of a strike. The earnings substituted for 1948 is the amount which bears the same relation to the sum of the taxpayer's earnings for its two normal years ($3,000 plus $4,000) as the ratio between its industry index for 1948 (120) and the aggregate of the industry indices for the two normal years (110 plus 125). The amount so computed would be approximately $3,570.

In cases where the taxpayer has two abnormal years after elimination of the worst year, substituted earnings are computed for each of the abnormal years separately, on the basis of its relation to the one normal year.

Under the bill, in order to qualify for this form of relief, the taxpayer must treat as normal at least one year in its base period, after elimination of its poorest year. This limitation is necessary in order to provide at least one year upon which to base an earnings comparison.

For the purpose of affording this form of relief, the Nation's industry will be grouped according to about 50 major classifications which will be generally in accord with the classification regularly used by the Treasury Department in compiling published statistics from corporation income tax returns. Such a classification is in preparation at this time and your committee hopes that it will be possible to include it in the bill prior to its enactment. In order to provide for the possibility of such inclusion proving impractical, the bill directs the Secretary of the Treasury to determine and proclaim the classifications not later than March 1, 1951.

It is further provided that the Secretary of the Treasury shall determine and proclaim an index for each industry classification which shall be based on the relative average rate of return of each industry in the individual calendar years of the base period. The rate of return for an industry for any period shall be obtained by dividing the sum of its aggregate net income for such period and the aggregate interest deduction for such period by the average of the aggregate total assets of the members of the industry for such period.

The Secretary shall also determine and proclaim a base-period rate of return for each industry classification. That rate will be used for the purpose of computing an average base-period income for corporations which changed their products or services during the base period and for new corporations. These additional relief provisions are described at a later point in this report.

Recognizing that there will be inevitable delays in the final determination of industry earnings statistics, your committee has provided that the Secretary shall determine and proclaim for each industry classification tentative base period yearly rates of return, tentative indices based thereon, and a tentative base-period rate of return. These tentative figures will form the basis of taxpayers' returns until such time as final figures are announced.

(2) *New products or services introduced in the base period.*—For corporations which commenced business on or before the first day in the base period and which added new products or services in the base period, for which an adjustment was authorized by section 722(b)(4) of the World War II law, your committee's bill provides relief by means of a formula.

In general, a corporation which before the end of the base period made a substantial change in its business by introducing a new product or new service is given as an alternative credit a return equal to the average of its industry. The relief provided is, in effect, the same as that discussed below for a new corporation which enters the new line of business; that is the corporation receives as an alternative earnings base a rate of return on its total assets equal to the average rate of return experienced by its industry in the base period. The industry base period rate of return determined in the manner described in connection with the adjustments provided for corporations with base period abnormalities.

To qualify for relief under this provision the change in product or service must have been substantial and must have taken place in the base period and after the taxpayer's first year in the base period. The concept of what constitutes a change in product or service was developed under the prior excess profits tax law, and it is believed that the experience thereunder was generally satisfactory.

The relief is available if the following tests are met:

(A) The new product or service produces more than one-third of the taxpayer's net income by the end of the third year (or earlier) following the year in which the product or service was introduced; and

(B) The taxpayer's net income for any one of the first three years in which it meets the qualification described in (A) is more than 25 percent greater than the taxpayer's average net income for the base period year or years preceding the year of change to the new product or service.

The credit under this formula is based on the assets used by the corporation in its business at the end of the base period, or at the end of the year for which it first qualifies under this formula, if such year is after the base period. In either case the industry rate of return to be applied is the average rate of return for the industry in the base period. The credit thus determined would be the taxpayer's credit under this formula for subsequent years. Any changes in investment after that time would be reflected in the corporation's credit in the same manner as in the case of the ordinary corporation.

Your committee believes that the measure of relief granted by this provision is proper in that in no case does it give a rate of return in excess of the average base period rate of return of the other members of the taxpayer's industry. A greater rate of return is not appropriate under a relief provision.

Your committee is aware of the fact that the relief provided by section 722(b)(4) of the prior law was available in several areas beyond that involving solely a change in products or service to which the present bill is limited. Those areas, for which special provision is not made in your committee's bill, were changes in the character of the taxpayer's business resulting from (1) a change in the operation or management of the business, (2) a difference in the capacity for production or operation, (3) a difference in the ratio of nonborrowed capital to total capital, and (4) the acquisition prior to the end of the base period of all or part of the assets of a competitor, with the result that the competition of such competitor was eliminated or diminished. A major portion of the old section 722(b)(4) was devoted to the treatment of corporations which commenced business during the base period. Your committee has combined the treatment of such corporations with the treatment of corporations which commence business subsequent to the base period. The relief to be provided in such cases is discussed below under the heading "New Corporations."

The reasons which have led your committee not to provide special relief for the other so-called hardship cases referred to above are as follows:

(A) For corporations increasing their capacity for production or operation in the base period, the bill contains three provisions heretofore discussed which are applicable as a means of providing relief. These are—

(i) The additional allowance for new equity capital, retained earnings, and new borrowed capital, added to the business in the latter part of the base period;

(ii) The alternative "growth" credit under which corporations which had less than $20 million of assets at the beginning of the base period and which meet certain qualifications evidencing growth will be given the higher of 1949 or the average of 1948 and 1949 as their base period earnings credit; and

(iii) The addition to the earnings credit on account of retained earnings and new borrowed capital (as well as new equity capital as provided under the prior law) added after the base period, which permits the expansion of capacity and operations to be reflected in the credit.

Your committee believes that the above provisions make special relief unnecessary in this area.

(B) The provision of relief in cases involving changes in management or operation has been eliminated for several reasons. Such changes do not of themselves prove that the character of the business has altered. A determination of that nature proved extremely difficult under the prior law and involved the very type of subjective judgments which your committee is convinced should be avoided in the new law. Furthermore, it is believed that the type of change in management or operation, for which the prior law was intended to provide an adjustment, will result, in the usual case, in increased earnings and profits during the base period which, of course, will be reflected in the average base period earnings without any special adjustment. Moreover, if such changes are accompanied by capital additions, which frequently will be the case, your committee has provided an adjustment for those additions to the extent that they were made in the latter part of the base period. Changes of his type are accompanied typically by a change in the taxpayer's products or services, and the bill also provides relief for such a change in the manner already discussed.

(C) Your committee has eliminated as a ground for relief the difference during the base period in the ratio of debt capital to other capital. At the time such relief was enacted as a part of the old section 722(b)(4) it was thought that there would be a substantial number of such cases because the base period of 1936–39 was characterized in part by recovery from a severe economic depression. This situation was not a characteristic of the base period, 1946–49, provided in this bill. Moreover your committee has been informed that a comparatively insignificant number of cases arose under the prior provision.

A reduction in debt in relation to other capital is accompanied either by a net increase in capital or a net decrease in capital with a resultant contraction in operations. In the former case, that of an addition to capital, another portion of the bill provides for an adjustment to base-period earnings to the extent that such additions were made in the latter part of the base period. With respect to the latter case, an actual contraction in operations, your committee is unable to discover any adequate reason for granting relief.

(D) Your committee has eliminated any special relief adjustment in the case of an acquisition by the taxpayer before the end of the base period of all or part of the assets of a competitor which resulted in the elimination or diminishment of the competition of the competitor. It is believed that such a provision imposes an almost impossible burden of proof and that an accurate evaluation, based on fact rather than opinion, of the extent to which earnings are affected by such a change in the competitive relations of any particular industry is virtually impossible. Moreover, if an acquisition of this type does in fact result in increased earnings to the taxpayer in the base period such earnings will be reflected in its average base period earnings. If the acquisition is accompanied by an addition to capital during the latter part of the base period, the bill provides an adjustment to base-period earnings for such an addition. To the extent the acquisition is not accompanied by an addition to capital but is merely the result of a shift in assets, your committee does not believe that there is any valid claim for relief.

(*d*) *Variant profit cycles and sporadic income.*—For the purpose of determining the applicable industry index or base-period rate of return for any 12-month period, a taxpayer shall be a member of that industry to which is attributable the largest amount of the taxpayer's average gross receipts (as defined in the bill) during that period.

When the period 1936–39 was selected as the base period for the previous excess profits tax, it was considered fair because it represented a period of moderate prosperity for business in general. Nevertheless, for some business it was a period during which the profits cycle of the particular industry was at its low phase and this fact was included as a ground for relief in section 722(b)(3)(A). The business cycle in general is an extremely difficult concept and the distinction between the general cycle and the cycle of an individual industry is even more difficult to use. Hence the experience with this section of the law was especially trying for taxpayers and administrators alike. The period 1946–49, recommended for the base period in the proposed tax, is a period which is so infused with temporary stimuli that the ordinary business cycle concepts will not apply. Building construction, by far the principal variant cycle industry involved in the World War II tax, was at a peak during the years 1946–49, and should need no such general relief provision now. Your committee is not aware of any other industry, which, because of variant cycle conditions during the proposed base period, requires such treatment. For these reasons and in view of the other relief measures being proposed, it is believed that no special provision for variant cycle cases need be made.

Section 722(b) (3) (B) which provided for relief in cases where the taxpayer was subject to sporadic and intermittent periods of high production and profits which were inadequately represented in the base period likewise has been omitted. Such relief was available only when such inadequate representation was due to reasons generally prevailing in the industry of which the taxpayer was a part. As has already been indicated, the determination of what is normal for an industry as a whole is a difficult task and largely conjectural in nature. For this reason, most taxpayers whose income was of a sporadic nature sought relief under section 722(b) (1) or (2). Inasmuch as your committee has made provision for relief in these latter areas, a new provision of the 722(b) (3) (B) type does not appear necessary.

(*e*) *Deferment of tax in relief cases.*—The bill provides for the deferment of a portion of the tax in cases involving claims for relief under the provisions relating to abnormalities in the base period, change of product or services in the base period and new corporations. In order for the taxpayer to qualify for such deferment, its adjusted excess profits net income computed without regard to those provisions must be more than 50 percent of its normal tax net income for the taxable year.

If the taxpayer who claims the benefits of the relief sections referred to and who qualifies in the above manner computes its tax on the basis of tentative industry indices or rates of return, it may defer 80 percent of the amount of the claimed reduction in tax. If the same computation is based on final indices or rates of return, 100 percent of the claimed reduction in tax may be deferred. When the taxpayer has satisfied the Commissioner that it has valid grounds for relief and that it has selected the proper industry for comparison the amounts deferred, if properly computed, will never be collected.

10. Alternative basis for new corporations.

Unlike the World War II law which treated the two separately, the present bill combines the relief treatment of all new corporations whether they commenced business during or subsequent to the base period.

As in the case of the relief provisions already described, an alternative credit is provided in such cases which will make it unnecessary for the taxpayer to reconstruct a hypothetical base period experience as under the old section 722. A corporation which commenced business at any time after the beginning of the base period (and which was not an acquiring corporation whose treatment is discussed with reference to part II) is permitted under the bill to use as an alternative credit an amount determined by applying the average base period rate of return for the taxpayer's industry to the amount of the taxpayer's total assets. When the taxpayer's first three taxable years ended in the base period, the industry base period rate of return applied to the taxpayer's total assets at the end of the base period and the amount so determined is the credit for subsequent excess profits tax taxable years, adjusted for retained earnings and for net additions or reductions to capital in such years. When the taxpayer's first, second, or third taxable year ends after the base period, the credit is determined for each of those years by applying the industry average base period rate of return to the taxpayer's total assets as of the end of each of such years and the credit so determined for the third year is retained in subsequent years, subject to adjustment for retained earnings and capital changes.

The taxpayer's total assets, gross receipts and industry classification for the purpose of the new corporation adjustment are identical to those previously described with reference to the adjustment for abnormalities in the base period. The base period rate of return for each industry classification is to be determined and proclaimed by the Secretary of the Treasury in the same manner as in the determination of industry indices.

Your committee is convinced that the adjustment provided for a new corporation under its bill, namely, an alternative credit equivalent to the average base period rate of return of the other members of its industry is an equitable measure of relief. First, it provides a "floor" based on the industry's average earnings experience below which the new corporation's credit will not be allowed to fall; and, secondly, it prevents the granting of a credit in excess of the industry's average earnings experience, which would be inappropriate in a relief provision.

Of course, a new corporation which has an excess profits credit, based on its actual average base period earnings or invested capital, that is higher than the credit computed under the relief adjustment described above, uses its own actual credit.

11. Alternative basis for growing corporations.

Recognizing that the excess profits credits based either on the average income of the best 3 years in the base period or on invested capital may not be satisfactory for corporations experiencing an unusually rapid growth during the base period, the committee has provided in the bill for an alternative credit for such taxpayers. This credit is computed from the income of the last 24 or the last 12 months in the taxpayer's base period whichever is higher. The alternative is available only to corporations which commenced business before the beginning of their base period since it is designed to provide relief only to established businesses experiencing unusual growth. Special treatment for new businesses is provided in another portion of the bill.

The theory upon which the alternative credit for growing business is based is that by the end of the base period the taxpayer will have reached or will be approaching maturity so that its income for the last months of the base period will be reasonably representative of its normal earnings. This logic would lead to the exclusive use of the final year in the base period, 1949. However, in many industries 1949 earnings were substantially less than those of 1948, and in these industries a growing corporation might receive a larger credit based upon the experience of the last 2 years than one based on the single year 1949. Therefore, the bill permits a taxpayer which qualifies as a growing business to use the last 2 years instead of the last year of its base period if the substitution will produce a larger alternative credit.

To qualify for the alternative credit a taxpayer commencing business before the beginning of its base period must meet two major tests. One of these is designed to exclude from the benefits of this provision large corporations whose earnings experience does not justify the provision of additional relief on account of growth during the base period. The alternative credit is available only if the taxpayer had total assets of not more than $20 million at the beginning of its base period. For this purpose "total assets" means the sum of the cash and other property used in the taxpayer's business, valued at its adjusted basis for determining gain upon sale or exchange.

The second test is designed to limit the benefits of the alternative credit to corporations experiencing a degree of growth during the base period which is substantially in excess of the growth of industry in general. For this purpose two indices are used, payrolls and gross receipts, and the taxpayer may qualify for the alternative basis under either one of them. If the taxpayer's total payroll for the last half of the base period is 130 percent or more of its total payroll during the first half of the base period, it can qualify as a growing corporation. However, a taxpayer who fails to meet this test may qualify for the alternative credit if its gross receipts for the last half of the base period are 150 percent or more of its gross receipts for the first half of its base period. The use of the alternative gross receipts test is justified by the fact that a corporation may increase its physical volume of production materially by introducing additional equipment and new operating procedures which do not involve a corresponding increase in its labor force. The percentages used in the payroll and gross receipts tests are sufficiently large so that only those taxpayers will be able to qualify for the alternative credit whose business has grown substantially more rapidly than the average during the base period years.

The World War II law contained a much more general adjustment for growth in the base period. The so-called growth formula used under that law permitted the taxpayer to use as an alternative basis a credit computed by adding to the average income of the last half of the base period 50 percent of the difference between the average income for the first and second halves of the base period, subject to the limitation that the alternative credit could not exceed the net income of the highest taxable year in the base period. While this formula may have been useful as a device for providing relief for corporations experiencing unusually rapid growth under the conditions which existed from 1936 through 1939, the application of the formula in the years 1946 through 1949 would benefit many taxpayers whose growth was no more than average and would result in the widespread use of the year 1948 as the sole basis for the calculation of the base-period income credit. The alternative bases provided in this bill will bring relief only to corporations whose assets at the beginning of the base period are not more than $20 million and which can qualify under tests which indicate clearly that the corporation was growing substantially more rapidly than business in general.

12. Carry-overs of net operating losses and unused excess profits credits.

The bill permits the use of the net operating loss carry-back and carry-forward in calculating the net income of an excess profits tax year. For this purpose the same rule is used as under the corporate normal tax and surtax, that is, the carry-back is limited to 1 year and amounts not so absorbed are carried forward until exhausted over a period of not more than 5 years. This compares with a carry-back of 2 years and a carry-forward of 2 years used under the World War II law after 1942. Thus the averaging period under the bill will be 7 years as compared with 5 years under the previous law. The change will reduce materially the discrimination that might arise against corporations experiencing unusual fluctuation in income during the excess profits tax period and cuts down the need for the reallocation of income between individual excess profits tax years.

A net operating loss in the base period may be carried forward to the excess profits tax years.

The net operating loss carry-over or carry-back is not used for computing the excess profits tax net income of the taxpayer in its base period years. Since all taxpayers are permitted to select the best 3 out of a possible 4 years in their base period, and since a number of taxpayers are permitted to base their credit on the experience of one or two of their base period years, the application of the loss carry-over would be undesirable because it would reduce the income of the years which have been selected as an appropriate test of the taxpayer's normal earning power by adjustment for losses in the other years, including years outside the base period itself.

Like the World War II law this bill provides for a carry-back and carry-forward of an unused excess profits credit. The carry-back is for 1 year and the carry-forward for 5, thus producing the same 7-year averaging period used under the net operating loss carry-over for both income and excess profits tax purposes. The unused excess profits tax credit adjustment under the World War II law was limited to a carry-back of 2 years and a carry-forward of 2 years, thus producing an averaging period of 5 years which conformed to the net operating loss carry-over provisions of that law.

For a taxable year beginning before July 1, 1950, and ending after June 30, 1950, the unused excess profits credit is a proportion of the credit based on the experience of the taxpayer during the entire year which is determined by the number of days in the taxable year after June 30, 1950, divided by the total number of days in the year.

The bill provides that a credit which is the result of the application of the $25,000 minimum credit shall not be counted for purposes of the unused excess profits carry-over.

IV. Other Important Provisions

1. Minimum credit for certain regulated industries.

Your committee's bill provides a minimum excess profits tax credit which is available for certain specified types of regulated industries. This credit is an alternative to the average earnings credit and the invested capital credit for such taxpayers.

This minimum credit consists of the corporate normal tax and surtax payable by the corporation for the taxable year in question, plus 5 percent or 6 percent of the sum of the equity capital, retained earnings, and borrowed capital of the corporation, less interest payable on the borrowed capital.

The 6 percent rate of return is available to public utilities supplying the following types of services or products:

(*a*) telephone services,
(*b*) electrical energy,
(*c*) gas,
(*d*) water,
(*e*) transportation on an intrastate, suburban, municipal, or interurban electric railroad, trolley system, or bus system, where the rates charged by such corporations are subject to regulation by a governmental body.

The 5 percent rate of return is available to public utilities supplying the following types of services or products:

(*a*) railroads regulated by the Interstate Commerce Commission;
(*b*) air transportation regulated by the Civil Aeronautics Board.

The effect of this minimum credit for certain public utilities is to give assurance that an excess profits tax will not be imposed until after the regulated industries earn a rate of return of 5 percent or 6 percent after paying corporate normal taxes and surtaxes. Your committee believes that this is appropriate in view of the fact that the profits of these industries in the base period years were held down well below the profits earned by unregulated industries. Moreover, there is considerable evidence that rate adjustments for these industries lagged considerably behind increases in their cost of doing business. Your committee also believes that where industries are regulated by other governmental bodies providing only a fair rate of return, it is undesirable to consider profits allowed by such regulated bodies as excessive for purposes of an excess profits tax. The 5 and 6 percent rates of return provided for in this minimum credit will be approximately the average rates of return customarily allowed for the regulated industries in question.

2. Strategic minerals.

The bill provides the same exemption from the excess profits tax as did the World War II law with respect to that part of the income of domestic corporations which is attributable to the mining in the United States of certain strategic minerals. The minerals concerned are: Antimony, chromite, manganese, nickel, platinum, quicksilver, sheet mica, tantalum, tin, tungsten, fluorspar, flake graphite, vermiculite, and vanadium.

3. Exempt income from certain mining and timber operations, and from natural gas properties.

The bill continues the relief which was afforded by section 735 of the World War II law with respect to certain mining, timber, and natural gas operations. Such relief is accomplished by exempting from excess profits tax a certain portion of current income. Generally, this portion is determined by multiplying the normal unit profit during a defined base period by a specified portion of current production in excess of normal output during such base period, or in the case of coal and iron mines, timber properties, and natural gas properties, by multiplying current excess production by one-half of the current net income per unit.

The bill also retains the special treatment of income derived from any agency of the Government as a bonus for production of minerals or timber in excess of a specified quota.

4. Foreign corporations and income from abroad.

For income tax purposes foreign corporations are divided into two groups: resident and nonresident foreign corporations. Nonresident foreign corporations are subject to income tax only on certain income derived from sources within the United States. This income is taxed at a uniform rate of 30 percent without deductions. Resident foreign corporations are subject to income taxes upon all income derived from sources within the United States at the rates applicable to domestic corporations.

The 30 percent gross-income tax on nonresident foreign corporations is imposed rather than the ordinary corporate-income tax since the jurisdiction of the United States over such corporations is limited to the sources of their income which are within the United States. The lack of jurisdiction over the corporation itself not only precludes the imposition of a tax upon the net income of nonresident foreign corporations but also the imposition of an excess profits tax. Therefore, the bill follows the precedent of the World War II statute and specifically exempts such corporations.

Resident foreign corporations are subject to the excess profits tax under your committee's bill as under the World War II statute. If such corporations were nonresident foreign corporations during any of the base period years, only the invested capital credit is available to them. This was also the case under the World War II statute.

Although section 251 corporations, that is corporations deriving a large portion of their income from sources within the possessions of the United States, are domestic corporations, they, like resident foreign corporations, are subject to Federal taxation only upon income derived from sources within the United States. Therefore, under your committee's bill, as under World War II statute, these corporations receive the same excess profits tax treatment as resident foreign corporations.

The World War II statute provided an exemption for domestic corporations where 95 percent or more of the income of the corporation over the last 3 years was derived from sources outside the United States, and where 50 percent or more of its gross income was derived from the active conduct of a trade or business. Although not limited to Western Hemisphere trade corporations, any such corporation, not filing a consolidated return with another domestic corporation, was effectively exempted from excess profits tax under this provision. Your committee's bill continues this exemption which is consistent with the preferential treatment conferred on Western Hemisphere trade corporations under income tax law.

Under World War II law, dividends received from foreign corporations by domestic corporations were included in the excess profits tax net income of both average-earnings and invested-capital taxpayers. In the case of average-earnings taxpayers, any such dividends received during the base period were included in computing their average-earnings credits. However, in the case of invested-capital taxpayers, stock in foreign corporations, as well as stock in domestic corporations, was excluded from invested capital. This treatment discriminated against the invested-capital taxpayer which was compelled to include in income subject to excess profits tax dividends received from foreign corporations, even though its excess profits tax credit was computed in such a manner as to exclude any return for the stock in such corporations. Another consequence of the World War II statute also appears unfortunate. The inclusion of dividends from foreign corporations in the excess profits tax net income of both the average earnings and the invested-capital taxpayers discouraged the return of this income to the United States, even though business purposes might dictate such a transfer. Your committee's bill excludes dividends from foreign corporations from excess profits tax net income, as well as the earnings on which the average-earnings credit is computed, and also excludes the stock in foreign corporations from the assets on which the invested-capital credit is computed.

Under your committee's bill, as under the World War II statute, domestic corporations operating branches abroad are subject to excess profits tax on the income derived from such branches in the year in which it is earned. However, any taxes paid a foreign country with respect to such foreign operations which is in excess of the tax credit allowed by the United States for purposes of the normal tax and surtax is allowed as a credit against excess profits tax subject to certain limitations. The tax treatment accorded branches is the same as that provided by the World War II statute.

5. Personal service corporations.

The World War II law provided that personal-service corporations could elect to be exempted from the excess profits tax if the stockholders of such corporations agreed to take up as part of their income for individual-income-tax purposes the pro rata share of the undistributed profits of the personal-service corporation. This did not, however, exempt a personal-service corporation from the corporate normal tax or surtax. A personal-service corporation was defined as a corporation whose income was to be ascribed primarily to the activities of shareholders who are regularly engaged in the active conduct of the affairs of the corporation and who are the owners of at least 70 percent of the stock of the corporation. Your committee's bill retains this provision of the World War II statute unchanged.

6. Corporations completing contracts under Merchant Marine Act.

Under section 505 of the Merchant Marine Act, 1936, as amended, if any contracting party in its taxable year completes one or more contracts or subcontracts for the construction of a vessel under such Act, such party is required to pay to the Maritime Board any profit in excess of 10 percent of the total contract prices of such contracts and subcontracts. The excess profits so paid to the Maritime Board, together with all other receipts of the Board, are placed in a revolving construction fund and are available for further ship construction.

The treatment accorded such profits by section 726 of the World War II law is continued by your committee's bill.

As a general rule the amount received by the contracting party and recaptured by the Maritime Board would be excluded in computing the excess profits tax under section 430 of the bill. In computing the alternative tax provided by section 455 of the bill the taxpayer will be required to increase its excess profits net income and its normal tax net income by the amount of the payments to the Maritime Board. The tax computed upon this basis is then reduced by the amount of such payments, and the remainder constitutes the tax which is to be paid if it is less than the tax computed under section 430.

7. *Special provisions relating to the excess profits tax credit for railroad lessor-lessee corporations.*

Your committee's bill provides that where almost all of the properties of one railroad have been leased to another railroad prior to July 1, 1950, under a lease for more than 20 years, which requires the lessee railroad to pay the Federal income taxes of the lessor railroad, the excess profits tax credit may be "equitably apportioned" between the corporations pursuant to an agreement between the corporations which is approved by the Secretary of the Treasury.

8. *Recomputation of the earnings credit in the case of corporate reorganizations.*

In the case of certain corporate reorganizations during the base period or subsequent to the base period, the experience of the corporation prior to the reorganization may be aggregated for purposes of determining excess profits credits based on earnings. This is provided for in part II of the excess profits tax subchapter. In general the reorganizations dealt with in part II are the type with respect to which gain or loss is not recognized. In addition to the general type of case where substantially all the assets of one corporation are taken over by another corporation, part II provides rules for the recomputation of base period net income in the case where substantially all the assets of a partnership or a sole proprietorship are acquired by a corporation as well as the cases where only part of the assets of a corporation are split off into a new corporation or only part of the assets of the partnership are placed in a corporation.

In general, if all the properties of the corporation are taken over by another corporation in an exchange to which part II is applicable, the old corporation is no longer entitled to use its business experience prior to the exchange for purposes of computing average base period net income. Instead, the corporation which acquires the properties may use the experience of the corporation which gave them up if this will increase the acquiring corporation's average base period net income. In a case where only part of the assets of a corporation go over to a new corporation in an exchange in which gain or loss is not recognized, the old corporation loses that portion of its base period experience which is allocable to the assets it loses in the exchange, and the acquiring corporation may utilize such experience in computing its average base period net income. The allocation is proportionate to the fair market value of the assets unless the parties to the exchange agree on a different allocation and the Secretary consents to it.

Where a corporation computes its excess profits tax credit simply on the basis of its excess profits net income during the base period, the effect on part II is to provide that after the corporation acquires assets in an exchange described in part II it shall recompute its excess profits net income for each month of the base period prior to the exchange by combining its own earnings experience during those months with the earnings experience of the corporation whose assets it acquired. If the corporation whose assets were acquired was not in existence during a month in the base period in which the acquiring corporation was in existence, then the recomputation described above is made by combining the earnings of the acquiring corporation with 1 percent of the equity capital of the corporation whose assets were acquired (after adjustment for inadmissible assets).

The alternative earnings credit based on growth is available, for purposes of the recomputation provided by part II, to a corporation (if it meets the terms of part II through an exchange of the general type in which it acquires all the assets of another corporation) if both the acquiring corporation and the corporation whose assets it acquires were in business at the beginning of the base period. Even if one of the corporations was not in business from the beginning of the base period, the provisions of part II allow the growth alternative with respect to the income of the corporation which was in business from the beginning of the base period if the part II exchange takes place after the close of the base period.

In the case of an exchange of the general type described in part II which involves a splitting of the assets of one corporation into two corporations, the two corporations are entitled to the growth alternative if the exchange takes place after the base period and the corporation in business during the base period was entitled to it. If the exchange takes place during the base period, the payroll and gross receipts are allocated between the two corporations for the period prior to the exchange for purposes of determining eligibility under the growth alternative.

In general, a corporation is permitted to use the alternative average base period net income provided for new corporations after an exchange of the type described in part II if neither it nor one of the other corporations from which it acquired assets in the exchange was in existence, or, if any such corporation had acquired assets in a prior exchange from another corporation, if that corporation was not in existence at the beginning of the base period of the acquiring corporation. The method used for determining the acquiring corporation's alternative average base period net income provided for new corporations in such a case is to combine the alternative average base period net incomes of all of the corporations determined in accordance with the provision dealing with new corporations.

In the case of the type of exchange described in part II in which the assets of one corporation are split among two corporations the base period earnings experience of the one corporation prior to the exchange is allocated among the corporations in business after the exchange in proportion to the fair market value of the assets of the old corporation which are held by each of the corporations after the exchange. However, in lieu of requiring that this determination be made, the earnings experience may be allocated in different proportions if all of the parties to the reorganization agree to the allocation and the Secretary consents to it. If no such agreement is reached or consented to, a final determination of the fair market value of the properties distributed shall be binding on all parties claiming a right to the credit of the old corporation.

In order to prevent double counting of base period earnings experience in applying the recomputation rules provided by part II, the Secretary is authorized to issue regulations providing for reduction of the average base period net income of the taxpayer and adjustments of transferred capital additions and reductions to the extent necessary in cases where, in general, the taxpayer acquired stock in a component corporation for other than its own stock.

Adjustment is provided for both net capital additions during the last 2 years of the base period and net capital additions and reductions after the close of the base period in the case of parties to an exchange described in part II. The rules for recomputation of average base period net income provided in part II do not apply in the case of a foreign corporation.

9. Basis for computation of the invested-capital credit after intercorporate liquidations.

Part III of the excess profits tax subchapter provides rules for the determination of the basis of assets acquired in "intercorporate liquidations" for purposes of the determination of the invested capital credit. As used in part III, the term "intercorporate liquidation" means the receipt of property at any time by a corporation in complete liquidation of another corporation where, in general, gain or loss is not recognized as a result of the exchange. Part III applies the general principle that where the transferee in an intercorporate liquidation receives property in exchange for stock which had a cost basis in the hands of the transferee, the property received by the transferee shall have an adjusted basis for excess profits tax purposes determined by the cost basis of the stock previously held by the transferee.

In the ordinary case this determination of the adjusted basis of the property received by the transferee is made at the time the transferee obtained ownership of 80 percent of the stock of the transferor, the basis being reduced by subsequent depreciation, etc., of the assets in the hands of the transferor. Assets acquired by the transferor after the transferee obtained control go over to the transferee on liquidation at their basis to the transferor. Provision is made for regulations to be prescribed by the Secretary with respect to the application of part III to cases where there is a series of transferees of property, cases where the transferor or transferee is a foreign corporation, cases where the stock of the transferor is acquired by the transferee from another corporation, cases where the intercorporate liquidation extends over a long period, and cases where any other determination may be necessary under part III.

The section provides specifically for the treatment of a statutory merger or consolidation as a liquidation for purposes of the part where prior to the transaction the continuing corporation acquired stock in the other corporation.

SECTION BY SECTION ANALYSIS OF THE BILL

TITLE I.—EXCESS PROFITS TAX

SECTION 101. IMPOSITION OF EXCESS PROFITS TAX

Section 101 of the bill adds to chapter 1 of the Internal Revenue Code a new subchapter D imposing an excess profits tax upon incomes of corporations, effective with respect to taxable years ending after June 30, 1950. This new subchapter is divided into three parts. The provisions of part I, entitled "Rate and Computation of Tax," are numbered as sections 430 through 455 of the Internal Revenue Code. The provisions of part II, entitled "Excess Profits Credit Based on Income in Connection With Certain Exchanges," are numbered as sections 461 through 465 of such Code. The provisions of part III, entitled "Adjusted Basis of Assets Received in Certain Intercorporate Liquidations," are numbered as section 470 of such Code.

PART I.—RATE AND COMPUTATION OF TAX

SECTION 430. IMPOSITION OF TAX

Subsection (a) of section 430 imposes for each taxable year ending after June 30, 1950, a tax upon the adjusted excess profits net income, as defined in section 431, of every corporation (except corporations exempt under section 452).

RATES

The excess profits tax imposed under subsection (a) of section 430 is an amount equal to the lesser of the following: (1) 30 percent of the adjusted excess profits net income, or (2) an amount which when added to the tax under chapter 1 (other than section 102 and subchapter D) equals 67 percent of the corporation's surtax net income computed without regard to the credit provided in section 26(h) for dividends paid on certain preferred stock and the credit provided in section 26(i) for Western Hemisphere trade corporations. The reference to the credit provided in section 26(i) will have application to those cases where a Western Hemisphere trade corporation is subject to the excess profits tax by reason of being a member of an affiliated group of corporations filing a consolidated return under section 141.

The excess profits tax is imposed in addition to the other taxes imposed by chapter 1 of the Internal Revenue Code. Such other taxes include the normal tax on corporations imposed by section 13, the tax on special classes of corporations imposed by section 14 (applicable in lieu of section 13 with respect to certain corporations for certain taxable years) and the surtax on corporations imposed by section 15. The tax on the amount representing adjusted excess profits net income is therefore the sum of the taxes imposed by chapter 1 (other than subchapter D) and the tax imposed by subchapter D. Provision for computation of the tax in the case of a short taxable year is made in section 433(a)(2).

Subsection (b) of section 430 provides that in the case of a taxable year beginning before July 1, 1950, and ending after June 30, 1950, the excess profits tax shall be the portion of a tentative tax determined under subsection (a) which the number of days in the taxable year after June 30, 1950, bears to the total number of days in the taxable year.

Subsection (c) of section 430 provides that in the case of a mutual insurance company other than life or marine, if the gross amount received from interest, dividends, rents, and premiums (including deposits and assessments) is over $75,000 but less than $125,000, the excess profits tax shall be an amount which bears the same proportion to the amount otherwise ascertained under section 430 as the excess over $75,000 of such gross amount bears to $50,000.

DEFERMENT OF PAYMENT

The payment of excess profits tax may be deferred under subsection (d) of section 430 if the taxpayer, in accordance with regulations prescribed by the Secretary, claims on its return the benefits of section 442, relating to abnormalities during the base period, section 443, relating to change in product or services, or section 444, relating to new corporations, and if without regard to the application of such sections the adjusted excess profits net income of the taxpayer for the taxable year exceeds 50 percent of its normal tax net income for such year. In such event the amount of excess profits tax payable at the time prescribed for payment may be reduced in an amount equal to the following percentages: (1) 80 percent of the amount of the reduction of tax claimed as a result of the application of sections 442, 443, or 444 if such sections are applied on the basis of tentative rates of return for industry classifications proclaimed by the Secretary in accordance with section 445(d); or (2) 100 percent of the amount of the claimed reduction in tax, if such sections are applied on the basis of the final rates of return for industry classifications proclaimed by the Secretary in accordance with sections 445 (b) and (c). The effect of this subsection is to stay collection of the amount of the claimed reduction in tax (or 80 percent thereof in cases where the tentative rates of return for the industry classifications are used), and the amount of the tax shown on the return, computed without the benefits of sections 442, 443, or 444, is the amount assessed at the time the return is filed.

Subsection (d) further provides that if the reduction in tax claimed in accordance with the subsection exceeds the reduction in tax as finally determined, the amount of such excess shall be payable within 1 year after such final determination. The statute of limitations provided in sections 275 and 276 with respect to collection of taxes is suspended, as to the reduction in tax under this subsection, for the period beginning with the date such tax would be payable but for this subsection and ending 60 days after a final determination as to the claimed reduction.

SECTION 431. DEFINITION OF ADJUSTED EXCESS PROFITS NET INCOME

Section 431 defines the term "adjusted excess profits net income." Adjusted excess profits net income in the case of any taxable year will be the excess profits net income, as defined in section 433, minus the sum of (1) the taxpayer's excess profits credit allowed under section 434 and (2) its unused excess profits credit adjustment computed in accordance with section 432. If such sum is less than $25,000, it shall be increased to $25,000.

SECTION 432. UNUSED EXCESS PROFITS CREDIT ADJUSTMENT

Section 432 provides for the unused excess profits credit adjustment and defines such adjustment as the sum of the unused excess profits credit carry-overs and carry-back to the taxable year in question.

The unused excess profits credit for any taxable year ending after June 30, 1950, is to be the excess of the taxpayer's excess profits credit for such taxable year over its excess profits net income for such year. If the taxable year is a short year (that is, one of less than 12 months), the unused excess profits credit will be that portion of the unused credit determined under the above general rules as the number of days in the taxable year is of the number of days in the 12-month period ending with the close of the taxable year. If the taxable year is one which began before July 1, 1950, and ends after June 30, 1950, the unused excess profits credit shall be an amount which is such portion of the unused excess profits credit determined under the above rules as the number of days in the taxable year after June 30, 1950, is of the total number of days in such taxable year.

The unused excess profits credit, determined in the above manner, shall first be carried back to the first preceding taxable year as an unused excess profits credit carry-back. The unused credit may then be carried over to the five succeeding taxable years as an unused excess profits credit carry-over. The unused excess profits credit carry-over to the first succeeding taxable year will be the excess of the unused credit over the adjusted excess profits net income of the first preceding taxable year. The adjusted excess profits net income for such first preceding taxable year shall be determined for such purpose by computing the unused excess profits credit adjustment for such first preceding taxable year without regard to the unused credit in question and without regard to the last sentence of section 431 which provides for a minimum excess profits credit plus unused excess profits credit adjustment of $25,000. Thus, if a calendar-year taxpayer has an unused excess profits credit of $100,000 for 1952, its unused excess profits credit carry-over to 1953, if any, will be the excess of $100,000 over its 1951 adjusted excess profits net income, such 1951 adjusted excess profits net income being determined by computing its 1951 unused excess profits credit adjustment without regard to its 1952 unused excess profits credit and by otherwise using its actual excess profits credit and unused excess profits credit adjustment.

If the preceding year is one which began prior to July 1, 1950, the amount by which the unused credit is to be reduced for purposes of computing the carry-over shall be an amount which is such part of the reduction computed under the above general rules as the number of days in such taxable year after June 30, 1950, is of the total number of days in such taxable year.

In determining the unused excess profits credit carry-over to the second, third, fourth, and fifth taxable years, the unused excess profits credit in addition shall be reduced by the adjusted excess profits net income for each of the intervening taxable years. The adjusted excess profits net income for any intervening taxable year shall be determined, for such purpose, (1) by computing the unused excess profits credit adjustment for such intervening year without regard to the unused excess profits credit in question and without regard to any unused excess profits credit for any year subsequent to the year of such unused credit, and (2) by disregarding the provisions of section 431 providing for a minimum excess profits credit plus unused excess profits credit adjustment of $25,000.

The order in which an unused credit may be used as a carry-back or a carry-over is mandatory under the provisions of section 432. The unused credit must first be carried back to the first preceding year and then forward to the first succeeding year, then to the second succeeding year, and so on till the fifth succeeding year.

There will be no unused excess profits credit carry-back to a taxable year which ends prior to July 1, 1950. Likewise, an unused excess profits credit will not be decreased by reference to any taxable year ending prior to July 1, 1950, for purposes of computing the unused excess profits credit carry-over.

SECTION 433. EXCESS PROFITS NET INCOME

Subsection (a) of section 433 defines excess profits net income. Irrespective of which of the alternative methods provided in the bill for computing the excess profits credit is used, excess profits net income is to be computed by increasing or decreasing normal tax net income by the adjustments provided in section 433(a)(1). Except as expressly provided in such section, adjustments are not required to be made in deductions which are limited, for example, by net income (such as the deduction for charitable contributions under section 23(q)).

DIVIDENDS RECEIVED

Under subparagraph (A) of section 433(a)(1), the credit for dividends received provided by section 26(b) is to be recomputed in transforming normal tax net income into excess profits net income. With respect to dividends of both domestic and foreign corporations, the credit is to be allowed without limitation, except that (1) the limitation of section 26(b) relating to dividends in kind received after August 31, 1950, shall apply, (2) no credit shall be allowed with respect to dividends (actual or constructive) on stock of foreign personal holding companies, and (3) no credit shall be allowed with respect to dividends on stock which is not a capital asset. In the case of a taxpayer using the excess profits credit based on income, a like adjustment is provided in section 433(b)(6) for the computation of excess profits net income for taxable years beginning or ending within the base period.

DISALLOWANCE OF CERTAIN CREDITS

Under subparagraph (B) of section 433(a)(1), normal tax net income is to be increased, in computing excess profits net income, by the amount allowed as credits under section 26(h) (relating to credit for dividends paid on certain preferred stock) and section 26(i) (relating to Western Hemisphere Trade Corporations).

GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

Under subparagraph (C) of section 433(a)(1), there are to be excluded, in the transformation of normal tax net income into excess profits net income, gains and losses from sales or exchanges of (1) capital assets and (2) property used in the trade or business, as that term is defined in section 117(j)(1).

In the case of a taxpayer using the excess profits credit based on income, an adjustment comparable to that of subparagraph (C) is provided in section 433(b)(2) for the computation of excess profits net income for taxable years beginning or ending within the base period. However, unlike the adjustment provided by subparagraph (C), the base period adjustment under section 433(b)(2) embraces all gains or losses (whether or not from sale or exchange) to which section 117(j) is applicable.

INCOME FROM RETIREMENT OR DISCHARGE OF BONDS, ETC.

Under subparagraph (D) of section 433(a)(1), there is excluded, in the transformation of normal tax net income into excess profits net income, income derived from the retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness which has been outstanding for more than 6 months. Where bonds were issued at a premium, the exclusion provided by subparagraph (D) relates only to premium unamortized on the date of retirement or discharge. In such case there is not to be excluded from income the accrued amortization of bond premium for that portion of the taxable year preceding such retirement or discharge. In the case of a taxpayer using the excess profits credit based on income, a like adjustment is provided in section 433(b)(3) for the computation of excess profits net income for taxable years beginning or ending within the base period.

REFUNDS AND INTEREST ON AGRICULTURAL ADJUSTMENT ACT TAXES

Under subparagraph (E) of section 433(a)(1), there is excluded, in the computation of excess profits net income, income attributable to refunds of Agricultural Adjustment Act taxes and interest upon such refunds. No similar adjustment is provided under section 433(b), relating to adjustments in base-period income.

DEDUCTIONS ON ACCOUNT OF RETIREMENT OR DISCHARGE OF BOND, ETC.

Under subparagraph (F) of section 433(a)(1), there are disallowed, in computing excess profits net income, deductions for losses and expenses resulting from the retirement or discharge by the taxpayer of any bond, debenture, note or certificate, or other evidence of indebtedness which has been outstanding for more than 6 months. Where bonds were issued at a discount, the disallowance provided by subparagraph (F) relates only to discount unamortized on the date of retirement or discharge. In the case of a taxpayer using the excess profits credit based on income, a like adjustment is provided in section 433(b)(4) for the computation of excess profits net income for taxable years beginning or ending within the base period.

RECOVERIES OF BAD DEBTS

Under subparagraph (G) of section 433(a)(1), there is excluded, in the computation of excess profits net income, income attributable to the recovery of a bad debt, unless a deduction from gross income was allowed with reference to such debt for a taxable year for which an excess profits tax was imposed under this Act or under the World War II excess profits tax. No similar adjustment is provided under section 433(b), relating to adjustments in the base period income.

LIFE INSURANCE COMPANIES

Under subparagraph (H) of section 433(a)(1), the normal tax net income of a life insurance company is to be decreased, in arriving at excess profits net income, by the excess of the product of the figure determined and proclaimed under section 202(b) and the excess profits net income computed without regard to subparagraph (F) over the adjustment for certain reserves provided in section 202(c).

NONTAXABLE INCOME OF CERTAIN INDUSTRIES WITH DEPLETABLE RESOURCES

Subparagraph (I) of section 433(a)(1) provides for exclusion, in the computation of excess profits net income, of nontaxable income from certain mining and timber operations and from natural gas properties, as described in section 451. No similar adjustment is provided under section 433(b), relating to adjustments in base period income.

NET OPERATING LOSS DEDUCTION ADJUSTMENT

Subparagraph (J) of section 433(a)(1) provides that, in transforming normal tax net income into excess profits net income, the net operating loss deduction shall be adjusted so as to coordinate it with the other adjustments required in the computation of excess profits net income.

TAXES PAID BY LESSEE

Subparagraph (K) of section 433(a)(1) requires that adjustments be made in the normal tax net income of both the lessor and the lessee in the case of a lease for a term of more than 20 years entered into prior to December 1, 1950, whereunder the lessee is obligated to pay any portion of the income taxes imposed upon the lessor with respect to rentals under the lease or to reimburse the lessor therefor. Subparagraph (K) provides (1) that such payment or reimbursement shall be excluded by the lessor in the computation of its excess profits net income, and (2) that no deduction for such payment or reimbursement shall be allowed to the lessee in the computation of its excess profits net income. In the case of either a lessor or lessee using the excess profits credit based on income, a like adjustment is provided in section 433(b)(11) for the computation of excess profits net income for taxable years beginning or ending within the base period.

BAD DEBTS IN CASE OF BANKS

Subparagraph (L) of section 433(a)(1) provides that, in computing the excess profits net income of a bank (as defined in section 104) which uses the reserve method of accounting for bad debts, there shall be allowed (in lieu of the amount allowable under the reserve method) a deduction for debts which became worthless within the taxable year, in whole or in part, within the meaning of section 23(k). In the case of a bank using the excess profits credit based on income, a like adjustment is provided in section 433(b)(12) for the computation of excess profits net income for taxable years beginning or ending within the base period. Like the other adjustments described in section 433(a)(1), this adjustment is mandatory; the use of the reserve method by a bank for the purposes of subchapter D is denied.

TAXABLE YEAR LESS THAN 12 MONTHS

Paragraph (2) of section 433(a) provides a method for placing the excess profits net income of a taxable year of less than 12 months upon an annual basis and is to apply in lieu of the provisions of section 47(c). These provisions correspond to section 711(a)(3) of the World War II excess profits tax.

TAXABLE YEAR BEGINNING IN BASE PERIOD AND ENDING AFTER JUNE 30, 1950

In the case of a taxable year beginning in the base period and ending after June 30, 1950, the excess profits net income for such taxable year will be computed under subsection (b) for purposes of computing the average base period net income, but the excess profits net income for such year will be computed under subsection (a) of section 433 for the purpose of computing adjusted excess profits net income under section 431.

TAXABLE YEARS IN BASE PERIOD

Subsection (b) of section 433 defines excess profits net income for taxable years beginning or ending within the base period; this definition is applicable for the purpose of computing the average base period net income. The adjustments provided in subsection (b) are to be applied to normal tax net income, as defined in section 13(a)(2).

The adjustments provided by paragraphs (3), (4), (6), (11), and (12) of section 433(b) are identical with adjustments provided under section 433(a) for taxable years under subchapter D, and have been discussed above. The adjustment provided in paragraph (2) is similar to that provided under section 433(a)(1)(C), with one exception: the adjustment under paragraph (2) embraces all gains or losses to which section 117(j) is applicable.

Paragraph (1) of section 433(b) provides that the net operating loss deduction shall not be allowed for the purpose of computing the average base period net income.

Paragraph (5) of section 433(b) requires exclusion of refunds by the taxpayer to its vendees of any amount attributable to taxes under the Agricultural Adjustment Act.

Paragraph (7) of section 433(b) provides a special rule applicable in computing the average base period earnings of a taxpayer using the installment basis provided in section 44, but only if the taxpayer has made the election provided under section 453(a). In such case, income from installment sales is to be recomputed for excess profits tax purposes under the accrual method as if the taxpayer had for all taxable years reported income on such method. The provisions of paragraph (7) do not apply in the computation of the base period capital addition under section 435(f).

Paragraph (8) of section 433(b) provides a special rule applicable in computing the average base period earnings of a taxpayer which elects (as provided under section 453(b)) to compute income from long-term contracts upon the percentage of completion method. In such case, income from long-term contracts is to be recomputed for excess profits tax purposes under the percentage of completion method and as if the taxpayer had for all taxable years reported such income on such method. The provisions of paragraph (8) do not apply in the computation of the base period capital addition under section 435(f).

ABNORMAL DEDUCTIONS

In the determination of excess profits net income for any year in the base period, certain deductions may be disallowed in whole or in part under the circumstances described in paragraphs (9) and (10) of subsection (b). Deductions may be disallowed only to the extent that the total deductions of a class exceed by 15 percent the average amount of deductions of the same class for four previous taxable years (or if the taxpayer was not in existence for four previous taxable years, certain succeeding taxable years).

The classification of deductions for this purpose is to be made in accordance with regulations issued by the Secretary for the determination of the classification of deductions for any taxable year or years within, or beginning or ending within, the base period. Paragraph (9) lists several types of deductions which may constitute one or more classes of deductions. Among the deductions listed are deductions attributable to a claim, award, judgment, or decree against the taxpayer, or interest on such items; deductions attributable to intangible drilling and development costs paid or incurred in or for the drilling of wells or the preparation of wells for the production of oil or gas, and for development costs in the case of mines; deductions under section 23(f) for losses arising from fires, storms, shipwreck, or other casualty, or from theft, or arising from the demolition, abandonment, or loss of useful value of property, not compensated for by insurance or otherwise. The classification of deductions is made on the basis of taxable years but must be consistently applied.

The disallowance of such deductions is subject to the following conditions:

(1) Deductions of any class to be disallowed for a taxable year must exceed 5 percent of the average excess profits net income for the taxable years in the base period, computed without the disallowance of any such class of deductions.

(2) The taxpayer must establish that the amount of the deductions of any class to be disallowed in the taxable year is not a cause or a consequence of an increase in the gross income of the taxpayer in its base period or a decrease in the amount of some other deduction in its base period, and are not a cause or a consequence of a change at any time in the type, manner of operation, size, or condition of the business engaged in by the taxpayer.

(3) The amount of deductions of any class to be disallowed for any taxable year do not exceed the amount by which deductions of such class for such taxable year exceed the deduction of such class for the taxable year for which the excess profits tax is being computed.

(4) If the taxpayer's average base period net income is determined under section 435 (e), relating to the alternative based on growth, the amount to be taken into account for the purpose of determining the total payroll of the taxpayer shall not be disallowed.

SECTION 434. EXCESS PROFITS CREDIT ALLOWANCE

DOMESTIC CORPORATIONS

Subsection (a) of this section provides that in the case of a domestic corporation the excess profits credit for any taxable year may be computed in one of two ways. It may be the amount determined under section 435 (relating to excess profits credit based on income) or the amount determined under section 436 (relating to excess profits credit based on invested capital), whichever amount results in the lesser excess profits tax for the taxable year for which the tax is being computed. Special rules are provided, under part II of subchapter D, for the determination of the excess profits credit in the case of certain reorganizations.

FOREIGN CORPORATIONS

In the case of a foreign corporation engaged in trade or business within the United States which was in existence on January 1, 1946, an option is also given to compute its excess profits credit under either section 435 or 436. The option is available, however, only if its first taxable year under this subchapter begins on or before July 1, 1950, and only if at some time during each taxable year which began or ended in the base period it was engaged in trade or business within the United States. Where a foreign corporation does not satisfy the above conditions, the excess profits credit for any taxable year shall be the excess profits credit based on its invested capital under section 436.

REGULATED PUBLIC UTILITIES

Your committee has provided an additional alternative method of computing the excess profits credit in the case of a regulated public utility (as defined in section 446). In such a case the excess profits credit for any taxable year shall be an amount computed under section 435, 436, or 446, whichever results in the lesser excess profits tax for the taxable year.

RAILROAD LESSOR-LESSEE CORPORATIONS

An exception to the rule provided for the computation of the excess profits credit under section 434(a) in the case of domestic corporations is provided for railroad corporations subject to part I of the Interstate Commerce Act, if they meet certain conditions. Where substantially all the railroad properties of such a railroad corporation have been leased for a term of more than 20 years to another such railroad corporation or corporations pursuant to an agreement entered into prior to July 1, 1950, which agreement requires the lessee to pay the taxes of the lessor, the aggregate of the excess profits credit and the unused excess profits credit adjustment of each such corporations may be equitably apportioned by agreement, if approved by the Secretary, among each of such corporations.

SECTION 435. EXCESS PROFITS CREDIT—BASED ON INCOME

AMOUNT OF CREDIT

In the case of a domestic corporation, the excess profits credit based on income for any taxable year is the sum of the following:

(*a*) 85 percent of the average base period net income.

(*b*) If the average base period net income is determined under section 435(d) or under section 442 (relating to abnormalities in the base period) the amount of the base period capital addition computed under subsection (f).

(*c*) 12 percent of the net capital addition for the taxable year as defined in subsection (g)(1).

(*d*) The credit for additions to borrowed capital provided in subsection (h)(1).

From this amount there is subtracted the sum of 12 percent of the net capital reduction (as defined in subsection (g)(2)) plus the amount of the borrowed capital reduction computed under subsection (h)(2) for the taxable year.

In the case of a foreign corporation the excess profits credit is 85 percent of the average base period net income.

BASE PERIOD AND METHOD OF COMPUTATION OF THE AVERAGE BASE PERIOD NET INCOME

Subsections (b), (c), and (d) provide rules for determining the base period and for computing a general average of the income attributable thereto.

In the usual case, the average base period net income is determined by computing the excess profits net income for each month in the base period. The excess profits net income for any month during any part of which the taxpayer was in existence is the excess profits net income for the taxable year in which such month falls divided by the number of full calendar months in such year. In no case is the excess profits net income for any month to be less than zero but where the taxpayer was not in existence for any part of a month it shall be zero for that month.

After computing the excess profits net income for each month of the base period, there is eliminated from the base period whichever of the following 12 months results in the higher average base period net income—

(*a*) The 12 consecutive months, the elimination of which produces the highest average base period net income, or

(*b*) The 12 months which remain after retaining in the base period the 36 consecutive months which produce the highest average base period net income.

The aggregate of the excess profits net income for each of the remaining 36 months is then computed and this amount is divided by 3.

The term "base period" means the period beginning January 1, 1946, and ending December 31, 1949. However, in the case of a taxpayer whose first taxable year under subchapter D was preceded by a taxable year which ended after December 31, 1949, and before April 1, 1950, and which began before January 1, 1950, the term "base period" means the period of 48 consecutive months ending with the close of such preceding year.

Rules for the computation of the average base period net income in the case of certain reorganizations are set forth in part II of subchapter D.

AVERAGE BASE PERIOD NET INCOME—ALTERNATIVE BASED ON GROWTH

Subsection (e) of section 435 provides, in general, that a corporation whose growth during the base period is demonstrated by a substantial increase in total payroll or in gross receipts may take as its average base period net income the higher of its excess profits net income for the last year in the base period or the average excess profits net income for the last 2 years in the base period.

The eligibility requirements for application of the subsection are specified in paragraph (1) of the subsection. The subsection is applicable only to taxpayers which were in business during the entire base period, and whose total assets, as of the beginning of the base period, did not exceed $20,000,000. Total assets for this purpose are defined in paragraph (3) of the subsection as the sum of cash and property other than cash used in the taxpayer's business. Property other than cash is included in an amount equal to its adjusted basis for determining gain upon sale or exchange.

A taxpayer qualifies for the benefits of this subsection only if its total payroll for the last half of its base period is 30 percent greater than its total payroll for the first half of its base period, or its gross receipts for the last half of its base period are 50 percent greater than its gross receipts for the first half of its base period. The definitions of "total payroll" and "gross receipts" for this purpose are provided in paragraphs (4) and (5) of the subsection. Total payroll includes salaries, wages, commissions, and other compensation paid or incurred by the taxpayer for personal services actually rendered by employees, but excludes any amount allowable as a deduction under section 23(p), relating to contributions to an employees' trust or annuity plan and compensation under a deferred-payment plan, and also excludes compensation paid in any medium other than cash. The term "gross receipts" is defined as the sum of—

(*a*) the total amount received or accrued from the sale, exchange, or other disposition of stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business;

(*b*) the gross income attributable to a trade or business regularly carried on by the taxpayer, received or accrued, but excluding therefrom—

(1) income from the sale, exchange, or other disposition of property,
(2) income from discharge of the taxpayer's indebtedness,
(3) dividends, and
(4) income attributable to recovery of bad debts.

In determining the amount of total payroll or gross receipts for any period, an allocation on a monthly basis is made in the case of any taxable year falling partly within and partly without the base period.

The computation of the average base period net income in the case of any taxpayer entitled to the alternative average base period net income based on growth is set forth, in paragraph (2) of subsection (e), as follows: (1) compute an excess profits net income for each of the last 24 months in the taxpayer's base period in the manner provided in the second sentence of section 435(d) (1) which allocates to each month a portion of the excess profits net income for the taxable year in which such month falls and provides that the excess profits net income for any month shall not be less than zero; (2) compute the total of the excess profits net income for such 24 months; (3) divide the total excess profits net income for such 24 months by 2; (4) compute the total excess profits net income for the last 12 months in the base period. The alternative average base period net income based on growth is the larger of the amounts determined under (3) or (4). The computation may be illustrated as follows: Assuming that a taxpayer reporting income on a calendar year basis, which has met the requirements of the subsection, has an excess profits net income of $96,000 for the calendar year 1948, and an excess profits net income of $120,000 for the calendar year 1949, the alternative average base period net income is computed under this subsection as follows:

(1) The excess profits net income for each month in 1948 is $8,000, and for each month in 1949 is $10,000.

(2) The total excess profits net income for the 24 months is $216,000.

(3) One-half of such total excess profits net income is $108,000.

(4) The total excess profits net income for the last 12 months amounts to $120,000.

The sum ascertained under (4) is greater than the sum ascertained under (3) and therefore the former (i. e., $120,000) constitutes the alternative average base period net income determined under this subsection.

Taxpayers using the alternative average base period net income determined under this subsection are not entitled to the base period capital addition computed under subsection (f).

CAPITAL ADDITIONS IN BASE PERIOD

In general, the purpose of subsection (f) of section 435 is to provide an upward adjustment, reflecting an increase in capital prior to the tax period, in the average base period net income of the taxpayer determined under section 435(d) or section 442. This adjustment is not available where the average base period net income is determined under section 443, 444, or 446. The bill does not provide a comparable downward adjustment to reflect a decrease in capital prior to the tax period.

The capital changes for which adjustment is provided in subsection (f) is limited to those occurring in the last two taxable years of the taxpayer which precede its first taxable year under the new subchapter D. In general, the capital changes in the later of these 2 years are given greater weight than those in the earlier year. In the case of a taxpayer on a calendar-year basis, the 2 years covered by subsection (f) are the calendar years 1948 and 1949; for convenience, these calendar years are used in this discussion.

The principal steps in the determination of the addition provided by subsection (f) are as follows: (1) An adjustment is computed at the rate of 12 percent of the "net base period capital addition or reduction" as defined in subsection (f)(2). (2) The "base period borrowed capital addition or reduction" is computed as provided in subsection (f)(3). (3) The adjustments computed in steps (2) and (3) are combined as provided in subsection (f)(1); if the net adjustment is greater than zero, it is added, as provided in subsection (a)(1)(B), to the average base period net income determined under section 435(d) or section 442.

In computing the adjustment described above as step (1) it is first necessary to determine for each of 3 periods (the 2-year period 1948 and 1949, 1948 alone, and 1949 alone; or for the periods described in subsection (f) if the taxpayer was not in existence and on the calendar year basis throughout 1948 and 1949) the net increase in equity capital as defined in section 437(c) (reduced by any net increase in inadmissible assets as defined in section 440) or the net decrease in equity capital (reduced by any net decrease in inadmissible assets). If there is a net increase over the 2-year period, this adjustment is positive, and is 12 percent of (A) the amount of that net increase, reduced by (B) one-half of so much of the net increase (if any) for 1948 as is not offset by any net decrease for 1949. Conversely, if there is a net decrease over the 2-year period, this adjustment is negative, and is 12 percent of the difference between (A) that net decrease and (B) one-half of so much of the net decrease (if any) for 1948 as is not offset by any net increase for 1949.

The computation of the adjustment for changes in borrowed capital described above as step (2) requires the determination of the increase or decrease in borrowed capital, as defined in section 439(c), in the same 3 periods. The adjustment for each of these periods is then determined by dividing the amount of the increase or decrease in the period by 3, and multiplying the quotient by the average interest rate on borrowed capital for the first day of the period (if a decrease) or for the day following the close of the period (if an increase). If the adjustment so determined for the 2-year period is positive it is reduced by one-half of so much of the adjustment for 1948 (if positive) as is not offset by any negative adjustment for 1949; or, if the adjustment for the 2-year period is negative it is reduced by one-half of so much of the adjustment for 1948 (if negative) as is not offset by any positive adjustment for 1949.

CAPITAL CHANGES

Subsection (g) of section 435 provides rules for the computation of net capital additions and reductions during excess profits tax years. In computing the excess profits credit based on income for any taxable year, 12 percent of the net capital addition for the taxable year is includible. However, as provided in section 435(a)(1), the excess profits credit so computed shall be reduced by 12 percent of the net capital reduction for the taxable year.

Paragraphs (1) and (2) provide that for purposes of section 435 the net capital addition or reduction for the taxable year shall be the excess, divided by the number of days in the taxable year, of the aggregate of the daily capital additions or reductions, as the case may be, for each day of the taxable year over the aggregate of the daily capital reductions or additions, respectively, for each day of the taxable year.

Paragraph (3) provides that for the purposes of section 435 the daily capital addition for any day of the taxable year shall be the sum of: (A) the aggregate of the amounts of money and property paid in for stock, or as paid-in surplus, or as a contribution to capital, after the beginning of the taxable year and prior to such day, and (B) the amount, if any, by which the equity capital (as defined in section 437(c)) at the beginning of the taxable year exceeds the equity capital at the beginning of the taxpayer's first taxable year under subchapter D of chapter 1. Where property is paid in it shall be included in an amount equal to its basis (unadjusted) for determining gain upon sale or exchange. If the unadjusted basis of the property is a substituted basis, such basis shall be adjusted, with respect to the period before the property was paid in, by an amount equal to the adjustments proper under section 113(b)(2).

Paragraph (4) provides that for the purposes of section 435 the daily capital reduction for any day of the taxable year shall be the sum of: (A) distributions to shareholders previously made during such taxable year which are not out of the earnings and profits of such taxable year, and (B) the amount, if any, by which the amount of the equity capital (as defined in section 437(c)) at the beginning of the taxpayer's first taxable year under subchapter D of chapter 1 exceeds the amount of the equity capital at the beginning of the taxable year.

The amount ascertained under paragraph (3) or (4) shall be reduced by the increase or decrease, as the case may be, in inadmissible assets (as defined in section 440) of the taxpayer from the beginning of its first taxable year under subchapter D of chapter 1 to the beginning of such day.

Section 437(g) provides special rules applicable to subsection (g) with respect to distributions to shareholders.

ADDITIONS AND REDUCTIONS IN BORROWED CAPITAL

Subsection (h)(1) of section 435 describes the computation of the credit for additions to borrowed capital which, under section 435(a)(1)(D), is to be included in computing the excess profits credit based on income. This addition is an amount equal to (1) one-third of the excess of the average borrowed capital for the taxable year (as determined under section 439(c)) over the daily borrowed capital for the first day of the taxpayer's first taxable year under subchapter D, multiplied by (2) the average interest rate for the taxable year. This addition to the credit is limited, however, to an amount equal to 3 percent of such excess.

Under section 435(a)(1) the amount of the excess profits credit based on income is to be reduced by the amount of the borrowed capital reduction for the taxable year. Subsection (h)(2) of section 435 describes the computation of this reduction. The borrowed capital reduction is computed in a manner which is, in effect, the reverse of the computation of the borrowed capital addition. The reduction is subject to the same 3 percent limitation as in the case of the borrowed capital addition.

Subsection (h)(3) of section 435 provides that the average interest rate for any taxable year shall be computed by dividing the total interest accrued for such year with respect to borrowed capital by the amount of the average borrowed capital for such year.

SECTION 436. EXCESS PROFITS CREDIT—BASED ON INVESTED CAPITAL

This section provides that the excess profits credit for any taxable year computed under this section shall be the sum of the following:

(1) The basic equity capital credit computed under section 437. This credit is determined by applying the rate schedule in the table in section 437(a) to the adjusted equity capital for the year.

(2) The new capital credit, if any, computed under section 438(a). This credit is an amount equal to 12 percent of the net new capital addition for the taxable year, and is allowed to those taxpayers which, under the rate schedule in section 437(a) with respect to their adjusted equity capital, would otherwise be given a credit with respect to such new capital of less than 12 percent.

(3) The borrowed capital credit, if any, computed under section 439.

The credit so computed is reduced by the amount computed under section 440, relating to inadmissible assets.

SECTION 437. BASIC EQUITY CAPITAL CREDIT

Subsection (a) of this section provides that the basic equity capital credit for any taxable year (the amount included in the excess profits credit under section 436) shall be determined by applying the rates specified in such subsection to the adjusted equity capital for the year. Such rates are 12 percent of the adjusted equity capital which is not over \$5 million, 10 percent of the adjusted equity capital over \$5 million but not over \$10 million, and 8 percent of the excess of the adjusted equity capital over \$10 million.

Subsection (b) defines adjusted equity capital, which is the amount to which the rates specified in subsection (a) are applied. The adjusted equity capital is the sum of the equity capital, as defined in subsection (c), the capital addition for the taxable year computed under subsection (d), and the recent loss adjustment computed under subsection (f). Such sum is reduced by the capital reduction for the taxable year computed under subsection (e). If the adjusted equity capital so computed is over \$5 million, such amount is further reduced by the net new capital addition computed under section 438. The amount of such net new capital addition is, therefore, not subject to the 10 percent or 8 percent rate under section 437(a), but is only subject to the 12 percent rate under section 437(a) (by remaining in the adjusted equity capital, if the amount thereof is less than \$5 million) or the 12 percent rate under section 438(a) (if subtracted from the adjusted equity capital subject to the rate schedule under section 437(a)). Accordingly, any corporation with adjusted equity capital of \$5 million or less will not have to compute the net new capital addition under section 438, since it will receive the 12 percent rate under section 437(a).

Subsection (c) defines equity capital as of any time as the total of the taxpayer's assets held at such time reduced by the total of its liabilities at such time. For this purpose, the amount attributable to each asset is the adjusted basis of such asset for determining gain upon sale or exchange under the law applicable to the taxable year for which the excess profits credit is being determined, or in the case of money, the amount thereof. The term "liabilities" means all liabilities of the corporation, absolute and not contingent, and includes liabilities assumed by the corporation, whether or not in connection with assets held by the taxpayer, and any liabilities to which property held by the taxpayer is subject, but does not include the obligation of the corporation on its capital stock. The term also includes such reserves as the reserve for bad debts referred to in section 23(k). The determination of the equity capital under this section shall be made in accordance with sound accounting principles, and shall be consistent with the proper method of accounting used in determining the taxpayer's net income.

In the case of an insurance company, its reserves shall be treated as liabilities and not as assets.

Ordinarily the equity capital as of the beginning of the taxable year may readily be determined from the balance sheet of the corporation as of the close of the preceding taxable year. Provision is further made in determining adjusted equity capital for capital additions and capital reductions during the taxable year. It may be noted that the earnings of the current taxable year are not reflected in the capital addition for that year, but that such earnings, to the extent retained by the taxpayer, will be reflected in the assets held by the taxpayer at the beginning of its next taxable year, and will therefore be included in determining the equity capital under subsection (c) as of the beginning of the next taxable year. However, in determining such equity capital as of the beginning of such next taxable year, subsection (g)(2) requires that an adjustment be made to reduce the equity capital by certain distributions made in the first 60 days of such year.

Under subsection (d), the capital addition for the taxable year is the aggregate of the daily capital addition for each day of the taxable year divided by the number of days in such year. The daily capital addition for each day of the taxable year is the aggregate of the money and property paid in after the beginning of such taxable year and prior to such day for stock, or as paid-in surplus, or as a contribution to capital. Such property is included in determining the daily capital addition in a manner consistent with its inclusion in determining equity capital under subsection (c). After the close of the taxable year in which such addition is made, the equity capital (as of the beginning of the next taxable year) used in determining the adjusted equity capital for the next taxable year will reflect any such addition remaining in the hands of the corporation.

Under subsection (e), the capital reduction for the taxable year is the aggregate of the daily capital reduction for each day of the taxable year, divided by the number of days in such year. The daily capital reduction for each day of the taxable year is the amount of the distributions previously made during the taxable year which are not out of the earnings and profits of such taxable year. The determination of the amount of such distribution shall be consistent with the effect of such distribution on the amount of the equity capital determined under subsection (c). After the close of the taxable year, the equity capital (as of the beginning of the next taxable year) used in determining the adjusted equity capital for the next taxable year will reflect the effect of such previous distributions.

Subsection (f) provides for the determination of the recent loss adjustment, which is a fixed amount included in determining adjusted equity capital. The recent loss adjustment is determined by reference to a "recent loss period" which consists of the base period or the period beginning January 1, 1940, and ending December 31, 1949, whichever period produces the higher recent loss adjustment. The recent loss adjustment is the excess of the net operating losses for the taxable years during the recent loss period over the net incomes for the taxable years during such period. The net operating losses are those determined under section 122(a), under the law applicable to the year in which the loss was sustained, and the net income for each such year is the net income computed with the exceptions, additions, and limitations provided in section 122(d) (but without regard to paragraph (6) of section 122(d)) under the law applicable to such taxable year. If only part of a taxable year is included in the recent loss period, provision is made for the proration to the recent loss period, on the basis of the number of months in such taxable year falling within the recent loss period, of the net operating loss or net income for such taxable year. Further provision is made in the case of component corporations as defined in section 461(b). The recent loss adjustment for such corporations, determined without regard to any period after the date of the transaction in which such corporation became a component corporation of the taxpayer, is made available to the taxpayer, and the amount so made available to the taxpayer is not allowed to the component corporation, or to any other corporation with respect to the component corporation, for any taxable year ending after the date such corporation became a component corporation of the taxpayer. The determination of the recent loss period for the taxpayer shall be made with respect to both the recent loss adjustment of the taxpayer itself and to the recent loss adjustment available to it with respect to its component corporation; the recent loss period used by the taxpayer must be the same for both the computations relating to its own recent losses and the computations relating to those of its component corporation.

Subsection (g) provides rules for the application of this section, section 438 (relating to capital changes), and section 435(g) (relating to capital changes in the case of the excess profits credit based on income).

Paragraphs (1), (2), and (3) of this subsection, relating to distributions to shareholders, distributions in first 60 days of the taxable year, and the computation of earnings and profits of the taxable year (for the purpose of determining the capital reduction for the taxable year), correspond to section 718(c) (1), (2), and (3) of the former excess profits tax law.

Paragraph (4), relating to exchanges, provides rules for the determination of the amount of property paid in for stock or as paid-in surplus or as a contribution to capital. The purpose of this paragraph is to make the determination of the capital addition resulting from such paid-in property consistent with the treatment such property will receive at the beginning of the next taxable year in the determination of equity capital under subsection (c). Subparagraph (A) thereof corresponds in principle to section 760 of the former law. An example of the application of this subparagraph is the case of property paid in for stock in a transaction to which section 112(b)(5) is applicable. Assuming that the property has a basis of $100,000 in the hands of the transferor, is subject to a mortgage for $60,000, and is received by the corporation subject to the mortgage, this subparagraph provides that the amount of property paid in for the stock shall be the $100,000 basis in the hands of the transferor, reduced by the $60,000 mortgage to which the property is subject, or a net amount of $40,000 which will be treated as the property paid in for the stock.

Subparagraph (B) provides a rule applicable in a case in which bonds of the taxpayer are paid in for stock. For example, assume that bonds of the taxpayer are paid in for stock in a transaction in which, if property other than bonds were paid in, such property would have the same basis in the hands of the taxpayer as in the hands of the transferor. The face amount of the bonds, rather than their basis in the hands of the bondholder, is treated as the amount paid in for such stock.

Paragraph (5) provides a special rule in the case of a taxpayer electing under section 453 to use a method of accounting for excess profits tax purposes different from the method used for income tax purposes. In the case of such a taxpayer, invested capital is determined in a manner consistent with the method of accounting elected for excess profits tax purposes under section 453, except with respect to installment sales made prior to the first excess profits tax taxable year in the case of a taxpayer electing under section 453(a), and except as to contracts begun before the first excess profits tax taxable year in the case of a taxpayer electing under section 453(b). For example, if a taxpayer on the calendar year basis elects under section 453(a) to use the accrual method of accounting for excess profits tax purposes, its equity capital as of the beginning of its 1950 taxable year is computed by treating its accounts receivable with respect to installment sales as having an adjusted basis determined under section 44(d), and its equity capital as of the beginning of its taxable year 1951 would be computed by determining the adjusted basis of its accounts receivable with respect to installment sales made before 1950 in the same manner as the computation for 1950, and by determining the adjusted basis of its accounts receivable with respect to installment sales made after 1949 (which are reported on the accrual basis for excess profits tax purposes) in the same manner as in the case of a taxpayer reporting on the accrual basis for all purposes.

SECTION 438. CAPITAL CHANGES

NEW CAPITAL CREDIT

Section 438(a) provides, in effect, that the credit for new equity investment and retained earnings during the excess profits tax taxable years shall be determined at a 12 percent rate and not at any lesser rate provided in section 437(a). The new capital credit which is added to the basic equity capital credit in determining the excess profits tax credit of a taxpayer which elects the invested capital method is 12 percent of the "net new capital addition" which is defined in section 438(b) as the excess, divided by the number of days in the taxable year, of the aggregate of the daily new capital additions for each day of the taxable year over the aggregate of the daily capital reductions. The net new capital addition subject to such 12 percent rate is not also subject to the rate specified in section 437. Section 438 limits the availability of the new capital credit to those corporations with adjusted equity capital in excess of $5,000,000 for the taxable year, since corporations with adjusted equity capital of $5,000,000 or less are not subject to a rate of less than 12 percent.

DAILY NEW CAPITAL ADDITION DEFINED

The term "daily new capital addition" is defined in section 438(c) to mean the aggregate of the amounts of money or property (other than excluded capital) paid in for stock, or as paid-in surplus, or as a contribution to capital after the beginning of the excess profits tax taxable year and prior to the day of computation, plus the amount by which the equity invested capital (other than the excluded capital), exceeds the equity capital at the beginning of the taxpayer's first excess profits tax taxable year. It is further provided that the property paid in shall be included for the purpose of determining the daily new capital addition in an amount equal to its unadjusted basis for determining gain upon sale or exchange, and that if such basis is a substituted basis it shall be adjusted with respect to the period before it was paid, by an amount equal to the adjustments proper under section 113(b)(2).

EXCLUDED CAPITAL

As indicated, certain capital is excluded in determining the daily new capital addition, both from the amounts of money and property paid in after the beginning of the excess profits tax taxable year and from the amount of increase in the taxpayer's equity invested capital over that of its first excess profits tax taxable year. "Excluded capital" is defined by section 438(d). It constitutes capital which has been added as a result of various types of intercorporate transactions which result in mere rearrangements of capital structure and do not actually increase the amount of capital employed in the production of income subject to excess profits tax. Included among these, for example, are transactions whereby a corporation has acquired additional capital (money or property) from another corporation in a nontaxable exchange under section 112(b)(3), (4), (5), or (10), or section 371 of the Code, if both the taxpayer and the transferor corporation are members of the same controlled group. Another example is where the taxpayer has acquired additional capital (as money or property paid in) from another corporation, if both the other corporation and the taxpayer are members of the same "controlled group" of corporations.

It is further provided that in determining the amount to be excluded on account of property paid in pursuant to intercorporate transactions of the kind mentioned, the basis of the property shall be its unadjusted basis for determining gain upon sale or exchange and if such unadjusted basis is a substituted basis it shall be adjusted with respect to the period before the property was paid in by an amount equal to the adjustment proper under section 113(b)(2).

SECTION 439. BORROWED CAPITAL CREDIT

GENERAL RULE

Subsection (a) of section 439 provides the general rule for the allowance of the credit for borrowed capital (as defined in subsection (c)). The credit is equal to one-third of the deduction allowable for the taxable year with respect to interest on the borrowed capital plus one-third of the interest element accrued or paid on conditional sales contracts, if not allowable as an interest deduction.

The credit, however, may not exceed an amount equal to 3 percent of the average borrowed capital for such year. The credit also may not be less than an amount equal to 1 percent of the average borrowed capital for such year as computed by taking into account only indebtedness evidenced by obligations the original maturity of which were for a term of 5 years or more. Thus, if the average borrowed capital for the year is $100,000 and interest which is allowable as a deduction amounts to $6,000, the amount of the credit is $2,000. However, such credit may not exceed $3,000 (3 percent of $100,000) regardless of the actual amount of the allowable interest deduction.

INSURANCE COMPANIES

Subsection (b) provides a special rule for computing the borrowed capital credit of insurance companies. In the case of such companies, the credit is that allowed in subsection (a) for interest on borrowed capital plus an amount equal to 1 percent of the mean of the pro rata unearned premiums (determined at the beginning and end of the taxable year) plus, in the case of life insurance companies, an amount equal to one-third of the product of the mean of the amount of the adjusted life insurance reserves and the average rate of interest assumed in computing such reserves and one-third of the product of the mean of the amount of reserves on insurance and annuity contracts (or contracts arising out of insurance and annuity contracts) which do not involve, at the time with reference to which the computation is made, life, health, or accident contingencies, and the average rate of interest assumed in computing such reserves. The mean of the adjusted life insurance reserves and the mean of the reserves on contracts which do not involve life, health, or accident contingencies shall be determined at the beginning and end of the taxable year, and the rate of interest assumed in computing such reserves shall be calculated as provided in section 201(c)(4).

DEFINITION OF BORROWED CAPITAL

Subsection (c) defines "average borrowed capital" and "daily borrowed capital." Average borrowed capital is the aggregate of the daily borrowed capital for each day of the taxable year, divided by the number of days in such year. Daily borrowed capital for any day of the taxable year is the amount, as of the beginning of the day, of the outstanding indebtedness (not including interest) of the taxpayer evidenced by a bond, note, bill of exchange, debenture, certificate of indebtedness, deed of trust, or conditional sale contract. Where property of the taxpayer is subject to a mortgage or other lien, the indebtedness secured by the mortgage or lien is considered as the indebtedness of the taxpayer whether or not the taxpayer assumed the mortgage or agreed to pay the indebtedness.

SECTION 440. ADMISSIBLE AND INADMISSIBLE ASSETS

Under sections 436 and 440 of the bill, the excess profits credit based on invested capital shall be reduced by an amount which is the same percentage of invested capital as the inadmissible assets are of the total of admissible and inadmissible assets. The terms "admissible" and "inadmissible assets" are defined in section 440 and the computation to determine the percentage of reduction is made in accordance with the provisions of such section.

Inadmissible assets are—

(1) Stock in corporations, except stock in a foreign personal holding company, and except stock which is not a capital asset; and

(2) Obligations described in section 22(b)(4) any part of the interest from which is excludable from gross income or allowable as a credit against net income.

Admissible assets are all assets other than inadmissible assets.

For the purpose of determining the ratio of inadmissibles to the total of admissibles and inadmissibles, section 440(b) provides that the amount attributable to each asset shall be determined, under regulations prescribed by the Secretary, by ascertaining the adjusted basis thereof for each day of the taxable year and adding such daily amounts. The adjusted basis shall be the adjusted basis for determining gain upon sale or exchange under the law applicable to the taxable year.

SECTION 441. FOREIGN CORPORATIONS—INVESTED CAPITAL

In the case of a foreign corporation or a corporation entitled to the benefits of section 251 which computes its excess profits credit by the invested capital method under section 436, the invested capital is to be based only on the assets of the taxpayer held by it in the United States. This section provides that the excess profits credit shall be the basic equity capital credit computed under section 437, reduced by the amount computed under section 440, relating to inadmissible assets. In computing the basic equity capital credit, the adjusted equity capital for any taxable year is the aggregate of the equity capital as of the beginning of each day of such taxable year divided by the number of days in such year. In arriving at the excess profits credit of such corporations, the term "United States assets" means assets held by the taxpayer in the United States determined in accordance with rules and regulations prescribed by the Secretary, and "United States liabilities" are those directly related to such United States assets.

If the Secretary determines that the United States assets of the taxpayer cannot satisfactorily be segregated from its other assets, or that the United States liabilities of the taxpayer cannot satisfactorily be segregated from its other liabilities, then the adjusted equity capital of the taxpayer shall be an amount which is the same percentage of the equity capital of the taxpayer, determined under section 437(c) as of the last day of the taxable year, which the net income for the taxable year from sources within the United States is of the total net income of the taxpayer for such year.

SECTION 442. AVERAGE BASE PERIOD NET INCOME—ABNORMALITIES DURING BASE PERIOD

Corresponding in scope generally to section 722(b) (1) and (2) of the prior excess profits tax law, section 442 is a relief measure which provides a means for adjusting certain abnormalities in the taxpayer's net income for a base period year or years.

ELIGIBILITY

The eligibility requirements are set forth in subsection (a) and provide first, that the taxpayer must have commenced business prior to January 1, 1946, thereby being ineligible for the new corporation formula provided by section 444; second, that the taxpayer establish either (1) that its normal base period production, output, or operation was interrupted or diminished because of events unusual and peculiar in its experience, or (2) that its base period business was depressed because of temporary economic circumstances unusual in its experience; and third, that an adjustment under this section will increase the net income for the year or years in question by at least 10 percent. The abnormalities involved are those generally associated with section 722(b)(1) of prior law, such as the fire, strike, or flood which interrupts or diminishes production or operation; and those under section 722(b)(2), such as a severe price war. In order for the section to be applicable, it is necessary that one year of the base period be considered as unaffected by an abnormality.

COMPUTATION OF AVERAGE BASE PERIOD NET INCOME

In general, the computation of an average base period net income under this section is made as follows:

(*a*) The taxpayer is placed on a calendar year basis for the years 1946 through 1949;

(*b*) There is eliminated that calendar year the elimination of which will result in the highest average excess profits net income (or the lowest average deficit) for the remaining three calendar years;

(*c*) If any of the remaining three calendar years is affected by an abnormality, an amount of substitute excess profits net income for such year or years (but not more than 2 years) is determined by application of industry indices;

(*d*) The result obtained by dividing the aggregate of the excess profits net income and the substituted excess profits net income for the three calendar years by three is the average base period net income under this section.

If, after elimination of the poorest calendar year, one of the three remaining calendar years is affected by an abnormality, the substitute excess profits net income for such calendar year is determined by applying to the average excess profits net income of the two remaining calendar years the ratio of the industry index for such year to the average of the industry indices for the two remaining calendar years.

This may be illustrated by assuming a case in which the years 1946 and 1947 were affected by an abnormality and the excess profits net income for 1946 was the lowest for the 4 years. The year 1946 would be eliminated and a substitute excess profits net income would be determined for the year 1947. Assuming that the industry index for 1947 is 100 and that the average of the indices for 1948 and 1949 is 125, the ratio of the index for 1947 to the average of the indices for 1948 and 1949 is 100/125. The substitute excess profits net income for 1947 would be an amount equal to 100/125ths of the average excess profits net income for 1948 and 1949.

DETERMINATION OF APPLICABLE INDEX

In the application of this section the taxpayer is to employ the index proclaimed by the Secretary, in accordance with section 445, for that industry classification to which the largest portion of the taxpayer's gross receipts is attributable. Gross receipts are defined in subsection (e) in terms substantially similar to those used in section 435(e)(5), relating to the alternative average base period net income based on growth.

Subsection (f) provides that the return shall be filed and the tax computed without regard to this section and that the taxpayer may withhold payment of the amount of indicated reduction in tax liability in accordance with the provisions of section 430(d).

SECTION 443. CHANGE IN PRODUCT OR SERVICES

Section 443 is comparable to parts of section 722(b)(4) of the prior excess profits law and provides a means whereby the taxpayer which introduced a different product or service during the last 3 years of the base period may compute an alternative average base period net income.

ELIGIBILITY

In subsection (a) a taxpayer is entitled to the benefits of this section if it commenced business on or before January 1, 1946, and if during the period beginning January 1, 1947, and ending December 31, 1949, it made a substantial change in the products or services furnished. The taxpayer is required by paragraph (2) to establish that during one of the three consecutive taxable years immediately following the change, its net income attributable to the new product or service exceeded one-third of its total net income for such year. Paragraph (3) imposes a requirement, to the effect that the taxpayer's net income, for any one of the taxable years in which it also meets the requirement of paragraph (a)(2), must be more than 125 percent of its net income for the taxable year preceding the year of change.

AVERAGE BASE PERIOD NET INCOME

Under the provisions of subsection (b), the taxpayer computes its average base period net income by multiplying the amount of its total assets, taken as of the last day of the taxable year in which it first concurrently meets the tests provided in subsection (a) (2) and (3), by the average base period rate of return for its industry. In the event that it satisfies these requirements prior to the beginning of 1950, the total of its assets as of December 31, 1949, is used rather than at any earlier date. Consistent with the other provisions of the law, subsection (c) provides that the taxpayer's assets shall be valued at their basis for determining gain upon sale or exchange and the taxpayer, as provided in subsection (e) and (f), respectively will use rates of return based upon statistics proclaimed by the Secretary and will determine its industry classification upon the basis of gross receipts in a manner similar to that used in other relief provisions and in section 435(e)(5) relating to the average base period net income based upon growth.

In order to prevent duplication of benefit, subsection (g) disallows any capital additions or reductions, which were made prior to the date upon which the taxpayer's total assets were determined for the purpose of computing its average base period net income under this section.

SECTION 444. AVERAGE BASE PERIOD NET INCOME—NEW CORPORATION

Under the provisions of this section, every corporation subject to the excess profits tax which commenced business during its base period, or during the excess profits tax period, may compute an average base period net income based upon the average base period rate of return for its industry.

COMPUTATION OF AVERAGE BASE PERIOD NET INCOME

The average base period net income for a new corporation is computed as follows:

(*a*) For each of the first three taxable years following the commencement of business, if such year is a year subject to tax under subchapter D, the amount determined by multiplying the total assets at the end of such year by the base period rate of return for the taxpayer's industry classification for such year.

(*b*) For succeeding taxable years, the amount determined by multiplying the total assets at the end of the taxpayer's third taxable year following the commencement of business as of December 31, 1949, whichever date is later, by the base period rate of return for the taxpayer's industry classification.

Assets are included for purposes of this computation in an amount equal to the basis for gain upon sale or exchange. The rate of return to be used is that proclaimed by the Secretary, in accordance with section 445, for the industry classification to which is attributable the major portion of the taxpayer's gross receipts for the particular taxable year in which falls the date as of which the total assets are determined.

To prevent duplication of benefit, provision is made in subsection (f) for the elimination of any base period capital additions or reductions and capital changes made prior to the date upon which the taxpayer's total assets are taken into account. Capital additions and reductions, made after the date on which total assets are computed, are, however, available to the taxpayer as in any other case. In common with sections 442 and 443, gross receipts are defined in subsection (g) to conform with the concept set out in section 435(e), relating to the alternative average based upon growth, and the rules for the deferment of payment of tax are similar to those employed in section 442(f) and 443(h).

SECTION 445. INDUSTRY BASE PERIOD RATES OF RETURN

This section provides for the determination of industry classifications and industry rates of return to be applied in determining an average base period net income in the case of taxpayers entitled to the benefits of section 442, relating to abnormalities during the base period, section 443, relating to change in product or services, and section 444, relating to new corporations.

INDUSTRY CLASSIFICATION

Subsection (a) of section 445 provides that the Secretary, not later than March 1, 1951, shall determine and proclaim a classification of corporate taxpayers by industry, such classification to be generally in accord with the classification regularly used by the Treasury Department in compiling published statistics from corporation income tax returns.

INDUSTRY RATES OF RETURN

Subsection (b) of section 445 provides that the Secretary shall determine and proclaim for each industry classification the rate of return for each of the four calendar years 1946 through 1949 and indices based thereon. The rate of return for each industry is obtained by dividing the sum of the aggregate net income and aggregate interest deductions shown on the returns of all corporations in the particular industry classification filing income tax returns for such a year by the average of the aggregate total assets of such corporations for such year.

Subsection (c) of section 445 provides that the Secretary shall determine and proclaim for each industry classification a rate of return for the 48-month period ending December 31, 1949, obtained by dividing the sum of the aggregate net income for such period and the aggregate interest deduction for such period shown on the returns of all corporations in the particular industry classification filing income tax returns for taxable years in such period by the average of the aggregate total assets of such corporations for such period.

Prior to such time as the yearly rates of return and the base period rate of return for each industry classification are determined and proclaimed, tentative rates of return for each industry classification proclaimed by the Secretary not later than March 1, 1951, shall be in effect for the purposes of deferment of tax under section 430(d).

SECTION 446. REGULATED PUBLIC UTILITIES

Regulated public utilities are given an alternative excess profits credit for any taxable year under this section. This credit for any taxable year is an amount which is the sum of the normal and surtaxes imposed for the taxable year on the regulated public utility, plus a specified rate of return on the sum of the adjusted equity capital and the average borrowed capital for such taxable year, less the deduction allowed for the year with respect to interest on indebtedness included in borrowed capital. The rate applied in determining the credit is 6 percent in the case of a corporation engaged in the furnishing or sale of telephone service, electric energy, gas, water, transportation on an intrastate, municipal, suburban, or interurban electric railroad or an intrastate, municipal, or suburban trackless trolley system or municipal or suburban bus system, but only if the rates of such furnishing or sale have been established or proved by State or political subdivision thereof or by an agency or instrumentality of the United States or by a public service or public utility commission. In the case of railroads or airlines, subject to the jurisdiction of the Interstate Commerce Commission or Civil Aeronautics Board, respectively, the rate shall be 5 percent.

The excess profits credit so computed for any taxable year shall be reduced by the amount computed under section 440 relating to inadmissible assets.

SECTION 447. PERSONAL-SERVICE CORPORATIONS

Section 447 provides special treatment for personal-service corporations. Such corporations may elect not to be subject to the excess profits tax, and in such event the undistributed income of the corporation will be taxed to its shareholders. Section 447(a) defines a personal-service corporation as a corporation whose income is attributable primarily to the activities of shareholders who are regularly engaged in the active conduct of the affairs of the corporation and are the owners at all times during the taxable year of at least 70 percent in value of each class of the stock of the corporation, and in which capital (whether invested or borrowed) is not a material income producing factor. For the purpose of the stock-ownership requirement an individual is considered as owning, at any time, the stock owned at such time by his spouse or minor child. The term "personal-service corporation" does not include any foreign corporation, nor any corporation 50 percent or more of whose gross income consists of gains, profits, or income derived from trading as a principal.

Subsection (b) of section 447 provides that a personal-service corporation may elect in its income tax return under chapter 1 for any taxable year not to be subject to the excess profits tax and in such event it will be exempt from such tax for such taxable year. A new election must be made for each taxable year and may be made only in its income tax return for such year. If the corporation so elects for any taxable year its undistributed net income is required to be included in the gross income of the persons who were shareholders of the corporation on the last day of the corporation's taxable year for which such election was made. If a corporation is a member of an affiliated group of corporations filing consolidated returns under section 141 of the Code, it shall not be exempt under section 447 for such year.

The treatment of the undistributed income of the corporation for tax purposes both with respect to the corporation and its shareholders is prescribed in supplement S.

SECTION 448. EXEMPTION FROM TAX FOR MINING OF STRATEGIC MINERALS

This section exempts from excess profits tax that portion of the adjusted excess profits net income which is attributable to the mining by a domestic corporation in the United States of antimony, chromite, manganese, nickel, platinum, quicksilver, sheet mica, tantalum, tin, tungsten, fluorspar, flake graphite, vermiculite, and vanadium. The tax on the remaining portion of the adjusted excess profits net income is an amount which bears the same ratio to the tax computed without regard to this section as such remaining portion bears to the entire adjusted excess profits net income.

SECTION 449. CAPITALIZATION OF ADVERTISING, ETC., EXPENDITURES

Section 449 permits a taxpayer, under certain limitations, to capitalize expenditures for advertising and good-will promotion made in the base period which the taxpayer had previously deducted as an expense. Only expenditures which, under rules and regulations prescribed by the Secretary, may be determined to be in the nature of a capital investment are allowed to be capitalized.

If a taxpayer makes an election under this section, its normal-tax net income for each base-period taxable year in which advertising and good-will expenditures were deducted shall be recomputed as if that portion of such expenditures which is permitted to be capitalized had been capitalized in such taxable year. Hence, the net income for each such year will be increased by the amount of the deduction disallowed, and, in the case of a corporation electing the invested capital credit, the capitalized expenditures will be reflected in equity capital.

Since the revenue laws applicable to each taxable year are retroactively amended by this section in order to make the election here provided govern the deductibility of advertising and good-will expenditures in such prior taxable years, the deductions taken are deemed to have been disallowed, and the taxpayer must pay the additional income tax which would have been due if the treatment in the prior income tax taxable year had been in accordance with the election provided for in this section, plus interest thereon. This prevents a taxpayer from obtaining the benefits of both a deduction and a capitalization with respect to the same item.

If no provision or rule of law prevents correction of the effect of disallowing such deductions, any additional income tax, which would have been due if such deductions had been capitalized, will be collected as a deficiency for the particular base-period taxable year. If, however, correction of the effect of such treatment is barred, correction will be made by means of the adjustment provided under section 450(b).

A taxpayer electing under this section must capitalize all such expenditures deducted for base-period taxable years which may be regarded as a capital investment. It is further provided that amounts allowed as a deduction on account of such expenditures in taxable years prior to the base period may not, under any circumstances, be capitalized.

In order to secure a treatment of expenditures for advertising and good-will promotion in taxable years subject to tax under subchapter D of chapter 1, uniform with the treatment accorded similar expenditures in base-period years, subsection (b) provides that a taxpayer which has elected to capitalize expenditures which it has shown to be properly considered capital investments, must capitalize for income and excess profits tax purposes any similar capital expenditures in subsequent taxable years.

The election provided by section 449 is available with respect to expenditures to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical notwithstanding the provisions of section 204(b)(2) of the Revenue Act of 1950.

SECTION 450. ADJUSTMENT IN CASE OF POSITION INCONSISTENT WITH PRIOR INCOME TAX LIABILITY

This section authorizes the same adjustment to the excess profits tax imposed by the bill as section 734 of the Code (as amended by section 227, R. A. 1942) authorized to the excess profits tax imposed by chapter 2 E of the Code. The adjustment is to be made in certain cases in which the treatment of an item or transaction for excess profits tax purposes is inconsistent with the prior erroneous treatment of such item or transaction for income tax purposes, and correction of the error is prevented by some provision or rule of law such as the statute of limitations, res adjudicata, etc.

SECTION 451. NONTAXABLE INCOME FROM CERTAIN MINING AND TIMBER OPERATIONS AND FROM NATURAL-GAS PROPERTIES

This section provides special treatment, like that contained in section 735 of the World War II excess profits tax, for the increased production over normal output in the case of certain minerals, timber, and natural gas. In general, the section provides a special deduction in computing the excess profits net income where the production in excess of normal exceeds 5 percent of the estimated reserves. In ascertaining the amount of the special deduction the taxpayer (1) determines the units of excess output, which is defined as the excess of production for the taxable year over the normal output; (2) ascertains the percentage ratio of the excess output to recoverable reserves; (3) ascertains the units of exempt excess output which is a prescribed percentage (ranging from 20 to 100 percent) of the excess output, increasing as the ratio of excess output to recoverable reserves increases; and (4) multiplies the units of exempt excess output by the normal unit profit which is defined as the average profit for the base period per unit of output. The amount so ascertained is deductible in computing the excess profits net income.

The percentages of the excess production multiplied by the normal unit of profit to be allowed are as follows:

100 percent of the excess output exceeds 50 percent of the estimated recoverable units.

95 percent if such excess output exceeds 33⅓ but not 50 percent of such estimated recoverable units.

90 percent if such excess output exceeds 25 but not 33⅓ percent of such estimated recoverable units.

85 percent if such excess output exceeds 20 but not 25 percent of such estimated recoverable units.

80 percent if such excess output exceeds 16⅔ but not 20 percent of such estimated recoverable units.

60 percent if such excess output exceeds 14²⁄₇ but not 16⅔ percent of such estimated recoverable units.

40 percent if such excess output exceeds 12½ but not 14²⁄₇ percent of such estimated recoverable units.

30 percent if such excess output exceeds 10 but not 12½ percent of such estimated recoverable units.

20 percent if such excess output exceeds 5 but not 10 percent of such estimated recoverable units.

The following example will illustrate the method of computation as applied to a particular case:

EXAMPLE

Company X

Unit output:	
Normal unit output ____ tons__	200, 000
Taxable year unit output ____ do____	500, 000
Excess over normal ____ do____	300, 000
Normal unit profit, per ton ____	$1
Profit on excess unit output ____	$300, 000
Recoverable units: Estimated recoverable units, as defined in the bill ____ tons__	2, 300, 000
Exempt excess output: Percent excess unit output of estimated recoverable units, as defined in the bill ____ percent__	13. 04

Since the excess unit output (300,000 tons) exceeds 12½ percent but not 14²⁄₇ percent of estimated recoverable units (2,300,000), 40 percent of such excess units output measured in terms of normal unit of profit ($300,000), or $120,000, will be allowed as a deduction in computing excess profits net income.

The section also prescribes additional special rules for computing the deduction in the case of coal and iron mines, timber properties, and natural gas properties. Finally, the section provides special treatment for the amount of income derived from bonus payments made by any agency of the United States Government on account of production of minerals or timber in excess of a specified quota. In any case in which income attributable to excess output includes such bonus payments, the taxpayer may elect either to receive the benefits provided with respect to exempt excess output or to treat such bonus income as nontaxable.

SECTION 452. EXEMPT CORPORATIONS

Section 452 exempts from the tax imposed by subchapter D of chapter 1: (*a*) corporations exempt from income tax under section 101 (whether or not subject to tax under Supp. U); (*b*) foreign personal holding companies as defined in section 331; (*c*) regulated investment companies, as defined in section 361 without the application of section 361(b)(4); (*d*) personal holding companies, as defined in section 501; (*e*) foreign corporations not engaged in trade or business within the United States; (*f*) domestic corporations satisfying the following conditions: (1) 95 percent or more of the gross income of such domestic corporation for the 3-year period immediately preceding the close of the taxable year (or for such part of such period during which the corporation was in existence) was derived from sources other than sources within the United States; and (2) 50 percent or more of its gross income for such period or such part thereof was derived from the active conduct of a trade or business; and (*g*) any corporation subject to the provisions of title IV of the Civil Aeronautics Act of 1938, in the gross income of which for any taxable year ending after June 30, 1950, there is includible compensation received from the United States for the transportation of mail by aircraft if, after excluding from its gross income such compensation, its adjusted excess profits net income for such year is zero or less. Such exclusion from gross income for such year shall also be made in computing the unused excess profits credit adjustment for any other taxable year, but only for the purpose of determining whether the corporation is exempted by section 452(g) from the tax imposed by subchapter D for such other taxable year.

SECTION 453. INSTALLMENT BASIS TAXPAYERS AND TAXPAYERS WITH INCOME FROM LONG-TERM CONTRACTS

Subsection (a) of this section provides that in the case of a taxpayer which reports income on the installment basis, such taxpayer may elect, in its return for the taxable year for the purposes of subchapter D of chapter 1, to compute its income from installment sales on the basis of the taxable period for which such income is accrued. The election is irrevocable when once made and applies to all subsequent taxable years to which this subchapter is applicable. If the taxpayer elects to come within this provision the income from installment sales for each taxable year under this subchapter shall, for the purpose of computing the tax under this subchapter for all taxable years (including prior taxable years), be adjusted to conform to such election. However, no amount shall be included in computing excess profits net income for any excess profits taxable year on account of installment sales made in taxable years ending before July 1, 1950.

Subsection (b) of section 453 provides that any taxpayer computing income from contracts the performance of which requires more than 12 months may elect, in its return for the taxable year, for the purposes of the tax imposed by subchapter D of chapter 1, to compute, in accordance with regulations prescribed by the Secretary, such income upon the percentage of completion method of accounting. Such election is to be made in accordance with such regulations and shall be irrevocable when once made, and shall also apply to all subsequent taxable years to which such subchapter is applicable. The net income of the taxpayer for each year to which such subchapter is applicable prior to the year with respect to which the election is made shall be adjusted for the purpose of computing the tax under such subchapter for all taxable years (including prior taxable years). Income described in section 453(b) shall not be considered abnormal income under section 454.

Subsection (c) of section 453 provides that if an adjustment specified in subsection (a) or subsection (b) of section 453 is, with respect to any taxable year, prevented, on the date of the election by the taxpayer under subsection (a) or subsection (b), as the case may be, or within 2 years from such date, by any provision or rule of law (other than subsection (c) and other than section 3761, relating to compromises), such adjustment shall nevertheless be made if in respect of the taxable year for which adjustment is sought a notice of deficiency is mailed or a claim for refund is filed, as the case may be, within 2 years after the date such election is made. If at the time of the mailing of such notice of deficiency or the filing of such claim for refund, the adjustment is so prevented, then the amount of the adjustment authorized by subsection (c) shall be limited to the increase or decrease in any tax imposed by chapter 1 previously determined for such taxable year which results solely from the effect of subsection (a) or subsection (b), as the case may be, and such amount shall be assessed and collected, or credited or refunded, in the same manner as if it were a deficiency or an overpayment, as the case may be, for such taxable year and as if on the date of such election, 2 years remain before the expiration of the period of limitation upon the assessment or the filing of claim for refund for the taxable year. The tax previously determined shall be ascertained in accordance with section 450(d). The amount to be assessed and collected under this section in the same manner as if it were a deficiency or to be refunded or credited in the same manner as if it were an overpayment, shall not be diminished by any credit, exemption, gain or loss, other than one resulting from the effect of subsection (a) or subsection (b), as the case may be. Such amount, if paid, shall not be recovered by a claim or suit for refund, or suit for erroneous refund based upon any item, inclusion, deduction, credit, exemption, gain or loss, other than one resulting from the effect of subsection (a) or subsection (b), as the case may be.

SECTION 454. ABNORMALITIES IN INCOME IN TAXABLE PERIOD

Section 454 makes adjustments with respect to certain abnormalities in income in the taxable period. In general, the provision corresponds to section 721, as amended, in the World War II excess profits tax law. The principal changes include redefinition of the classes of income described in subsection (a)(2), the reduction of the percentage of gross income referred to in subsection (a) (1) and (3) to 115 percent, clarification of the technical provisions of subsection (a)(3), and the elimination of subsection (f) of the prior law which is obsolete in view of other provisions of this bill.

The separate classes of income defined in subsection (a)(2) have been reduced to four classes, as follows: (A) income arising out of a claim, award, judgment, or decree, or interest on any of the foregoing; (B) income resulting from exploration, discovery, or prospecting, or any combination thereof, extending over a period of more than 12 months; income from the sale of patents, formulas, or processes, or any combination thereof, developed over a period of more than 12 months; and (C) income includible in gross income for the taxable year rather than for a different taxable year by reason of a change in the taxpayer's method of accounting. Subparagraph (C) of subsection (a)(2) of the prior law has been redefined and restricted as appears in subparagraphs (B) and (C) of subsection (a)(2) of this section. The classifications under the prior law with respect to income from long-term contracts, income to a lessor upon termination of a lease, and income consisting of dividends on stock of foreign corporations were eliminated as obsolete.

SECTION 455. CORPORATIONS COMPLETING CONTRACTS UNDER MERCHANT MARINE ACT, 1936

Under section 505 of the Merchant Marine Act, 1936, as amended, if any contracting party within an income tax taxable year completes one or more contracts or subcontracts for the construction of a vessel under such Act, such party is required to pay to the Federal Maritime Board profit in excess of 10 percent of the total contract prices of such contracts and subcontracts.

Section 455 provides, in cases where excess amounts are required to be repaid to the Federal Maritime Board under the above Merchant Marine Act, an alternative tax which is to be paid if it is less than the tax computed under section 430.

As a general rule the amounts received by the contracting party and recaptured by the Federal Maritime Board would be excluded from net income in computing the excess profits tax under section 430. In computing the alternative tax provided for by section 455 the taxpayer will be required to increase its normal tax net income by the amount of the payments to the Federal Maritime Board. The tax computed upon his basis is then reduced by the amount of the payments to the Federal Maritime Board, and the remainder constitutes the tax which is to be paid if it is less than the tax computed under section 435.

PART II. EXCESS PROFITS CREDIT BASED ON INCOME IN CONNECTION WITH CERTAIN EXCHANGES

This part, which is comparable to the supplement A of the World War II law, is directed essentially at the problem of providing for a proper determination of the average base period net income of a taxpayer which is a continuing corporation in a reorganization involving the transfer to it of properties from other corporations in whose hands the properties had a base period experience. Essentially part II provides that, in the type of transactions specified in the part, the income experience of the properties in the base period in the hands of the transferor corporations shall be considered as the income experience of the transferee for those years. In view of the adoption under section 435 (which section determines the amount of the excess profits credit based on income and the manner in which the average base period net income is computed) of several methods of determining a taxpayer's average base period net income which are alternative to the determination of average base period net income based solely upon excess profits net income (whether the excess profits net income was earned during the base period, or is attributed to an acquiring corporation under this part), special rules are provided in order that an acquiring corporation under this part may determine its eligibility for such alternative methods after the reorganization and, in such a case, the manner in which those methods are then to be made available to it. Rules having a similar purpose were incorporated in Supplement A of the World War II law but they have had to be superseded by the above referred to special rules in view of the changes which have been made in the nature of the alternative methods themselves. In other respects this part differs from Supplement A of the World War II law only in that one additional type of transaction has been added to the list of transactions set forth as giving use to an application of the part and in that a number of the sections of the supplement have had to be revised in order to conform them to some of the detailed changes which have been made by this subchapter in the World War II law.

SECTION 461. DEFINITIONS

Section 461(a) defines the term "acquiring corporation" for purposes of part II. An acquiring corporation is defined as a corporation which has acquired property from one or more other corporations in a statutory merger or consolidation, in a tax-free liquidation, or in any one of six listed types of transactions which, generally, have the same practical effect as a statutory merger or consolidation. These transactions are referred to in this report, unless otherwise noted, as part II transactions. Except for one addition, part II transactions are the same as and are defined in the same terms as the transactions specified in supplement A of the World War II law. The one addition made by your committees is the inclusion in the six listed transactions of a transaction in which a corporation acquires part, as distinguished from substantially all, of the properties of one or more corporations or partnerships in an exchange to which section 112(b)(5), or so much of section 112 (c) or (e) as refers to section 112(b)(5), is applicable. Since all part II transactions involve a sufficient continuity of interest to justify treating the acquiring corporation as standing in the place of its predecessors, such transactions must satisfy the requirements of section 112 with respect to such transactions in order that the transferee corporation may be treated as an acquiring corporation.

With respect to the six listed types of transactions, it is to be noted that in two of them, including the case where substantially all of the properties of a corporation are transferred solely in exchange for voting stock of the transferee, the transferor corporation must be completely liquidated in pursuance of the plan under which the transfer is made and the transfer must have the effect of a statutory merger or consolidation. Similarly, it is provided in the case just described, that the voting stock requirement can be met even though liabilities are assumed by the acquiring corporation or property is taken subject to a liability in connection with the transaction.

In the case of two of the six listed types of transactions, the transfer may be made by a partnership, the transfer in one case being of substantially all of the partnership's assets, the transfer in the other case being of a part of the partnership assets. Subsection (f) of section 461 provides, in connection with the former type of transfer, that a business owned by a sole proprietorship shall be considered a partnership. Section 462(g) provides, with respect to both types of transfers, that computations with respect to a partnership are to be made as if the partnership had been a corporation.

For purposes of part II and, therefore, for purposes of the definition of "acquiring corporation," section 465 defines the term "corporation" as not including a foreign corporation.

Section 461(b) defines the term "component corporation" to mean the corporation or partnership which is absorbed or the properties of which are transferred in a transaction described in connection with the definition of an "acquiring corporation" in section 461(a).

Section 461(d) specifically provides, for purposes of the excess profits credit and for purposes of the section prescribing an alternative average base period net income in the case of new corporations, that an acquiring corporation shall be considered to have been in existence for any period during which it or any of its component corporations was in existence. A sentence has been added to this section providing, for purposes of the alternative average base period net income in the case of new corporations, that in any part II transaction, other than the transfer by a corporation of part of its properties, the component corporation shall be deemed not to have been in existence prior to the day after the transaction. It is the purpose of this sentence to entitle the transferring corporation, in the event that it again commences business, to new corporation treatment in the computation of its average base period net income.

The provision of the old law with respect to "component corporations of component corporations" has also been retained. This provision (section 461(e)) provides that the term component corporation, with respect to a given transaction, includes a corporation which, in an earlier transaction, was a component corporation of the corporation which, in the transaction in question, becomes a component corporation.

Section 461(c) incorporates the substance of section 740(c) of supplement A of the World War II law, with certain additions made necessary by the inclusion in the list of permitted transactions of the transaction in which a corporation acquires a part of the property of another corporation. In general, it is the purpose of the section to provide that a corporation which transfers substantially all its properties in a part II transaction shall take no account of its excess profits net income for any part of its base period prior to the day of the transaction, or its capital additions or capital reductions of the tax period prior to the day of the transaction, in computing its excess profits credit for any year after the year of the transaction. An addition has been made to the section to provide for a similar loss by the component corporation of its alternative average base period net income computed as a new corporation. In the case of a transaction involving a transfer by a corporation of part of its properties, the rule has been modified to provide that the transferring corporation loses only that portion of its excess profits net income for the base period or of its alternative average base period net income computed as a new corporation which is allocable to the particular properties transferred. A similar provision relates to the capital addition or capital reduction of the tax period of the transferring corporation. Section 462(e) provides the rule of allocation applicable to these provisions.

Subsection (c), as under the World War II law, also provides the rule for the determination of the excess profits credit of the component corporation for the year of the part II transaction, where that year is a year subject to the excess profits tax. A similar rule is provided in the case of a transfer by a corporation of only part of its properties. Under this rule so much of the component corporation's average base period net income as was available to it prior to the day after the transaction can be used by it as the number of days in the taxable year prior to the day after the transaction bears to the total number of days in the year. In the case of a transfer by a corporation of only part of its properties, it is provided, in effect, that the amount of the average base period net income made available for purposes of this computation shall be such part of the corporation's total average base period net income as is allocable to the properties transferred. The determination of the effect of a part II transaction on the excess profits credit of an acquiring corporation for the year in which the transaction occurred is provided for in section 462(f)(2).

Section 461(c) provides, finally, that the excess profits net income of the component corporation for any part of the base period after the day of the transaction, where such transaction occurred during the base period, shall not be available for use in any manner by the acquiring corporation.

SECTION 462. RECOMPUTATION OF EXCESS PROFITS NET INCOME

Section 462 provides the rules applicable to an acquiring corporation in a part II transaction in the determination of its average base period net income for purposes of computing its excess profits credit based on income. Section 462(a) provides that the average base period net income of an acquiring corporation shall be its average base period net income computed under section 435 without reference to the recomputation of its excess profits net income provided for by section 462, or its average base period net income computed under section 435 after such recomputation, whichever is the greater. Section 432(b) provides for the recomputation of the excess profits net income of the acquiring corporation for any month of its base period prior to the transaction for purposes of the general average provided for by section 435(d). Section 462 (c) and (d) provides special rules applicable to the determination of the acquiring corporation's alternative average base period net income based, respectively, on growth, under section 435(e), or as a new corporation under section 444.

Section 462(a) provides, in general, that the excess profits net income of an acquiring corporation recomputed under the section is the excess profits net income for each month of the acquiring corporation's base period increased or decreased, as the case may be, by the addition or reduction resulting from including the excess profits net income for that month of all component corporations.

Section 462(b) provides the method in which this recomputation is to be effected. The recomputed excess profits net income of the acquiring corporation for each month in its base period shall be its excess profits net income for that month computed under section 435(d)(1) (without regard to that part of that section which provides that the excess profits net income for any month shall not be less than zero) plus the excess profits net income of the component corporation for such month of the acquiring corporation's base period, likewise computed under section 435(d)(1). The excess profits net income of the acquiring corporation for any month as thus recomputed in no event shall be less than zero. In making this determination, if, for any full month of the acquiring corporation's base period during which such corporation was in existence, either actually or, under section 461(d) by reason of a component corporation's existence, either the acquiring corporation or any component was not actually in existence, the excess profits net income of that corporation for such month shall be 1 percent of its equity capital at the close of the day before the transaction or at the close of the base period, whichever is earlier, reduced by the ratio of its inadmissible assets.

Under the method of recomputation provided above a number of difficult problems presented by the World War II law will necessarily be removed. The method is dependent in the first instance on the definition of base period contained in section 435(b). The manner in which the excess profits net income for any month is determined is prescribed by section 435(d)(1) by reference to the excess profits net income for the taxable year in which such month falls.

There is incorporated in the above method of recomputation a provision, applicable to the section contained in the World War II law which provided for a similar construction of income in certain cases, designed to provide for an adjustment where, by reason of the acquisition by one corporation of stock in another, the equity capital of the corporation whose stock is acquired is increased without a corresponding decrease in the equity capital of the owning corporation. In such cases the Secretary is given authority to prescribe regulations adjusting the excess profits net incomes of such corporations.

USE BY ACQUIRING CORPORATION OF ALTERNATIVE AVERAGE BASE PERIOD NET INCOME BASED ON GROWTH PROVIDED FOR IN SECTION 435(E)

Section 462(c) deals with the effect of a part II transaction upon the right of either an acquiring corporation or, in the case of a transfer by a component corporation of a part of its properties, of its right to the use of the growth alternative provided in section 435(e).

(1) In the case of a part II transaction (other than one in which a component corporation transfers only a part of its assets), if the acquiring corporation and all of the component corporations were in actual existence and had commenced business more than 48 months before the close of the acquiring corporation's base period, the acquiring corporation may be entitled to the use of the growth alternative. For purposes of determining its qualification to use the growth alternative, the acquiring corporation shall combine with its total payroll and gross receipts for any portion of its base period preceding such transaction the total payroll and gross receipts of the component corporations for such period, and it shall also combine its total assets at the beginning of the base period with those of the component corporations. The acquiring corporation shall not, in the event the transaction occurred during its base period, be entitled to the use of the growth alternative in its computation of average base period net income unless it recomputes its excess profits net income in the manner provided for by section 462(b).

(2) In the case of a part II transaction (other than one in which a component corporation transfers only a part of its assets), if some but not all of the corporations which were parties to the transaction were in actual existence and had commenced business more than 48 months before the close of the acquiring corporation's base period and were entitled to the growth alternative prior to the transaction, the acquiring corporation shall not be entitled to the use of the growth formula, whether or not it recomputes its excess profits net income under section 462(b), where the transaction occurs during its base period. However, if the transaction occurs after the close of the acquiring corporation's base period, the acquiring corporation shal be entitled to retain the growth alternative with respect to the excess profits net income of any corporation entitled to it for purposes of the recomputation of its excess profits net income provided for by section 462(b).

(3) In the case of a part II transaction in which the component corporation transfers only a part of its assets, where the component corporation was in existence and had commenced business more than 48 months before the close of the acquiring corporation's base period and was entitled to the use of the growth alternative prior to such transaction (if such transaction occurred after the close of the base period of the component corporation), both the component corporation and the acquiring corporation shall be entitled to the use of the growth formula without reference to the tests with respect to qualifying thereunder. If such a transaction occurred during the base period of the acquiring corporation, the component's payroll and gross receipts for the period prior to the transaction are to be allocated between the parties in the same ratio as that provided in section 462(e) for the allocation of excess profits net income and average base period net income computed under section 444 (the new corporation provision). The acquiring corporation is to be considered as having commenced business at the time the component corporation commenced business for purposes of qualifying for the growth alternative, and for the purposes of the total assets limitation on use of the growth alternative. Both the component and the acquiring corporation are to be considered as having the total assets of the component corporation as of the date applicable for purposes of the growth formula.

(4) The Secretary is authorized to prescribe by regulations such rules as may be necessary to insure that gross receipts, for purposes of the tests prescribed by section 435(e), are not distorted by reason of transactions between companies in cases described in paragraphs (1) and (2) above.

USE BY ACQUIRING CORPORATION OF ALTERNATIVE AVERAGE BASE PERIOD NET INCOME PROVIDED FOR NEW CORPORATIONS IN SECTION 444

Section 462(d) provides that an acquiring corporation in a part II transaction (other than a transaction described in section 461 (a) (1) (E)) shall be entitled to determine its average base period net income as provided in section 444 (relating to new corporations) if it was not in existence (either actually or constructively) prior to January 1, 1946. However, the rules provided in section 444 are modified with respect to such acquiring corporations to the following extent:

(1) Where all the corporations which are parties to the transaction have completed at least three taxable years prior to the transaction, the average base period net income of the acquiring corporation is determined, for purposes of section 444, by adding together the average base period net incomes previously determined for the corporations under section 444.

(2) Where one or more but not all of the corporations which are parties to the part II transaction have completed three taxable years before the transaction, the average base period net income of the acquiring corporation is determined, for purposes of section 444, by totaling the average base period net incomes (previously determined under section 444) of the corporations which have completed three taxable years, and adding to this total an average base period net income amount for each corporation which had not completed three taxable years. The average base period net income amount for these latter corporations is computed by applying the industry rate of return to the total assets of each immediately prior to the part II transaction, using the method specified in section 444.

Section 462(d) also provides that an acquiring corporation in a transaction described in section 461(a)(1)(E) may compute its average base period net income by reference to section 444 only to the extent provided in section 462(e) (relating to the allocation rule for such acquiring corporation).

ALLOCATION RULE

Section 462(e) provides a rule, applicable to those part II transactions in which a corporation transfers only a part of its properties, under which that portion of the component corporation's total excess profits net income for any month of the base period which is allocable to the properties transferred and which is to be used by the acquiring corporation in the recomputation of its excess profits net income can be determined. This rule is to the effect that that portion of the component corporation's total excess profits net income for any month shall be used which the fair market value of the assets transferred bears to the fair market value of the total assets of the component corporation as they existed at the close of the day before the transaction. In lieu of this rule, the subsection specifically provides that an amount agreed upon by the acquiring corporation, by the component corporation and by any other corporation a party to the transaction shall be used, provided the Secretary consents thereto. In cases where such agreement is not obtained, it is provided that a final determination of the fair market values upon which the allocation rests shall be binding upon all parties claiming a right to the credit of the component corporation.

Rules similar to the above are set forth applicable to the allocation, in the case of such a transaction, of the alternative average base period net income computed for the component corporation as a new corporation and available to it as of the close of the day before the transaction.

In the event that the parties and the Secretary agree to an allocated amount of either the component corporation's excess profits net income or of its alternative average base period net income as a new corporation, the section provides that the total of such allocated items applicable to all of the parties to the transaction shall not be in excess of 100 percent.

PROVISION AGAINST DUPLICATION OF BASE PERIOD EARNINGS AND CAPITAL ADDITIONS AND REDUCTIONS

Section 462(f)(1) is designed to prevent improper duplications of base period income and capital additions and reductions in cases in which, prior to the transaction which constitutes a corporation an acquiring corporation for purposes of part II and subsequent to December 31, 1945 (whether or not during its base period), such corporation uses its assets to acquire some or all of the stock of the corporation which becomes the component corporation of such acquiring corporation. The section contemplates, for example, that, after the absorption of the corporation whose stock was so acquired, the part of its base period income for the base period years before the acquisition of its stock which is attributable to such stock shall be excluded by the taxpayer in the recomputation by it of its excess profits net income as provided in section 462(b), and that, in determining the amount of the daily capital addition and reduction of the corporation whose stock was acquired which is to be transferred to the acquiring corporation, such daily capital addition and reduction shall be adjusted by the portion thereof attributable to the previously acquired stock. The specific situations presented are complex. Both the manner in which the excess profits net income of the acquiring corporation is to be reduced and the transferred capital addition and reduction adjusted, and the amounts of such reduction and adjustment, are, therefore, to be determined in accordance with regulations prescribed by the Secretary. The Secretary is authorized to prescribe in such regulations the specific situations in which specified adjustments under this section are to be made. If the acquisition of such stock by the corporation is in exchange solely for its own stock, no eliminations or adjustments are necessary, and accordingly section 462(f)(1) is made inapplicable. In case the acquisition is in exchange partly for its own stock and partly for other property, section 462(f)(1) is applicable only to the part of the acquisition attributable to such other property. There are not included in the operation of this provision cases in which the taxpayer acquires stock which has in the hands of the taxpayer a basis determined by reference to the basis of stock previously acquired by the issuance of the taxpayer's own stock.

MINIMUM LIMITATIONS ON AVERAGE BASE PERIOD NET INCOME OF ACQUIRING CORPORATION UNDER PART II

Section 462(h) provides, as did a similar provision of the World War II law, that, in certain limited cases, the average base period net income of the acquiring corporation shall not be less than that of its qualified component having the greatest average base period net income, or than that of its own, computed without regard to the recomputation of its excess profits net income in the manner provided in section 462(b). This provision is limited to part II transactions occurring in taxable years ending after June 30, 1950, and requires that at the beginning of the first taxable year of the taxpayer ending after June 30, 1950, and at all times thereafter until such transaction, either the taxpayer or one of the qualified component corporations in the transaction must have owned at least 75 percent of each class of stock of each of the other corporations involved. The term "qualified component corporation" is defined as a component corporation in existence at the beginning of taxpayer's base period.

SECTION 463. COMPUTATION OF DAILY CAPITAL ADDITIONS AND REDUCTIONS AFTER THE TRANSACTION

In the case of an acquiring corporation whose average base period net income is computed under section 435, based upon the redetermination of the excess profits net income of the acquiring corporation in the manner provided in section 462(b), section 463(a) provides that its daily capital additions and daily capital reductions for each day after the part II transaction are computed by taking into account the transferred capital additions or reductions of the component corporation as if they were capital additions or reductions of the acquiring corporation. The section is essentially similar to the one contained in the World War II law.

The transferred capital addition of the component corporation is its daily capital addition before reduction on account of inadmissible assets, but computed by disregarding money or property paid into the component by the acquiring corporation or any other component corporation and disregarding stock in the acquiring corporation or any other component corporation paid in by shareholders of the acquiring corporation or other component corporation. The transferred capital reduction of the component corporation is its daily capital reduction before reduction on account of inadmissible assets, but computed by disregarding distributions to the acquiring corporation or any other component corporation.

In addition to providing for the carry-over to the acquiring corporation of the daily capital additions and reductions of the component corporation, adjusted as described above, section 463(a) also provides that, in computing the daily capital addition of the acquiring corporation, money or property paid in by any of its component corporations and stock in any of its component corporations paid in by their shareholders shall be disregarded. Also, in computing the daily capital reduction of the acquiring corporation, distributions by it to any of its component corporations which are not out of earnings and profits are disregarded.

The adjustments provided in this section are to be made to the daily capital additions and daily capital reductions of the acquiring corporation as computed before reduction on account of inadmissible assets.

Section 463(b) provides that the rules outlined above shall also apply in computing the daily capital additions or reductions of a component corporation which was, itself, an acquiring corporation in an earlier transaction which occurred in a taxable year of such component corporation ending after June 30, 1950.

SECTION 464. ADJUSTMENT OF BASE PERIOD CAPITAL ADDITIONS

Section 464 provides that where one or more of the corporations which were parties to a part II transaction had previously had base period capital additions (as defined in section 435(f)), for purposes of the recomputation provided in section 462, the Secretary shall prescribe regulations for the treatment of these capital additions in a manner consistent with section 435(f).

PART III

SECTION 470. ADJUSTED BASIS OF ASSETS RECEIVED IN CERTAIN INTERCORPORATE LIQUIDATIONS

Section 470 provides rules applicable to the determination of equity capital in the case of a corporation whose assets and liabilities have been affected by certain intercorporate liquidations. The rules here developed are substantially the same as those appearing in section 761 of the Internal Revenue Code for use in computing invested capital under World War II excess profits tax provisions. They have been adapted, however, to the "net asset" concept of equity capital presented by the bill.

If one corporation purchases for cash all or a part of the capital stock of another corporation, or otherwise acquires such stock at a gain or loss basis determined to be a "cost" basis, and thereafter liquidates in a tax-free transaction the corporation whose stock was so acquired, the distributee in the liquidation will be considered as having acquired for equity capital purposes the assets of the liquidated corporation as a basis for determining gain equal to the cost to the distributee of the stock involved in the liquidation.

Under subsection (a)(1), the bases of the several corporate assets affecting the liquidation are to be rewritten, for equity capital purposes only, to conform to the cost basis of the stock to which they lend value. This rewriting of basis is to be effected with respect to the cost of all shares acquired as of the date on which the acquiring corporation procures control of the other corporation. Subsection (e) defines control to be based upon 80 percent ownership. If additional shares are acquired subsequent to the date of acquisition of control, the bases of corporate assets are to be rewritten further with respect to the cost of such subsequent acquisitions. If the acquiring corporation never attains control as defined in the section, the rewriting of basis with respect to the cost of such shares as were acquired shall be effected as of the moment immediately prior to the liquidation.

Under subsection (a)(2), the rewritten basis shall, for equity capital purposes, become the equity capital basis of any property acquired in a tax-free exchange for the property on which the basis was rewritten.

Under subsection (a)(3), any adjustment of basis in the hands of the liquidated corporation subsequent to the acquisition of control of its stock and prior to its liquidation shall, for equity capital purposes, be made with respect to the rewritten basis.

Under subsection (a)(4), the rewritten basis in the hands of the liquidated corporation will become the equity capital basis in the hands of the distributee in liquidation.

Subsection (c) is devoted to the purpose of rendering statutory mergers and consolidations subject to the rules spelled out in the section with respect to liquidations.

It is intended to vest in the Secretary broad regulatory powers under which detailed rules and regulations may be developed such as would adequately implement the provisions of the section and render them effective within the purpose to which they are devoted regardless of the variations or complexities presented by particular cases.

TITLE II.—MISCELLANEOUS AMENDMENTS AND PROVISIONS

Title II of the bill, consisting of sections 201, 202, 203, 204, and 205, amends existing provisions of the Internal Revenue Code in respect of consolidated returns, foreign tax credit, and expenditures for advertising and good will, and makes certain technical amendments to such Code.

SECTION 201. CONSOLIDATED RETURNS

Section 201 of the bill amends section 141 of the Internal Revenue Code, relating to consolidated returns, effective with respect to taxable years ending after June 30, 1950. Section 141 as so amended would provide an affiliated group of corporations the privilege of filing a consolidated return for each taxable year in lieu of separate returns by each corporation. This differs from existing law only in that such groups will no longer be required to file a consolidated income tax return separately from a consolidated excess profits tax return. The corporate income taxes currently imposed by chapter 1 of the Code and the excess profits tax imposed by new section 430 (added to the Code by section 101 of the bill) will be reported on a single return.

Under new section 431 (added to the Code by section 101 of the bill), the taxpayer is afforded a credit to be applied against its excess profits net income in arriving at its adjusted excess profits net income. If such credit, consisting of the sum of the excess profits credit allowable and unused excess profits credit adjustment allowable, is less than $25,000, section 431 provides that it shall be increased to $25,000. Section 141(c) as amended provides that, in the case of an affiliated group of corporations filing a consolidated return, such sum, if it is less than $25,000 for the entire group, shall not be increased under section 431 to an amount in excess of $25,000 for such entire group. This corresponds to the rule under the World War II law allowing an affiliated group of corporations filing consolidated returns only one specific exemption.

Aside from these substantive changes in section 141 for taxable years ending after June 30, 1950, and several clerical amendments to the section, the other general rules and provisions of the section are continued unchanged.

SECTION 202. FOREIGN TAX CREDIT

This section amends section 131 of the Code so that where a credit for the tax paid to a foreign country or possession of the United States is allowed against the corporate normal and surtaxes, the portion, if any, of such foreign tax not used as a credit against the corporate normal and surtaxes by reason of the limitations of section 131(b), will be available as a credit against the excess profits tax subject to substantially the same principles of limitation as are applicable for normal and surtax purposes.

SECTION 203. EXPENDITURES FOR ADVERTISING AND GOOD WILL

Section 203 of the bill makes appropriate amendments to section 23(a)(1)(C) of the Code to conform it with the addition of section 449 to the Internal Revenue Code.

SECTION 204. TECHNICAL AMENDMENTS

This section of the bill amends section 3779 of the Internal Revenue Code (relating to extention of time for payment of taxes by corporations expecting carry-backs) and section 3780(a) (relating to tentative carry-back provisions) in order to make those sections applicable to the excess profits tax imposed under this bill in the same manner as those sections were applicable to the excess profits tax during World War II. A similar amendment is made to section 114(b)(4)(B) (relating to definition of gross income from property with respect to percentage depletion in certain cases). This section of the bill also repeals section 3807 of the Code, relating to period of limitations in case of related taxes under chapter 1 and chapter 2 of the Code, and section 122(d)(6), relating to an exception in the computation of the net operating loss deduction. The amendments made by this section are applicable with respect to taxable years ending after June 30, 1950, that is, taxable years subject to the excess profits tax.

SECTION 205. FILING OF RETURNS FOR TAXABLE YEARS ENDING AFTER JUNE 30, 1950, AND BEFORE DECEMBER 31, 1950

This section of the bill provides that, in the case of a corporation subject to the excess profits tax for a taxable year ending after June 30, 1950, but prior to December 31, 1950, the date for filing the return and paying the tax imposed by chapter 1 for such taxable year shall be March 15, 1951.

Under these provisions every such corporation subject to the taxes imposed by chapter 1 of the Code is required to file a return for its taxable year ending after June 30, 1950, but before December 31, 1950, even though under existing law it may have filed a return for such year. The return required by this section of the bill shall constitute the return for the taxable year for all purposes of the Code, must meet the requirements of section 52(a), and shall be filed as required by section 53(b)(2) and other relevant provisions of the Code. Thus, such a return shall constitute the return for the purposes of supplement L, relating to the assessment and collection of deficiencies; supplement M, relating to interest and additions to the tax; and supplement O, relating to overpayments. No return with respect to the taxes imposed by chapter 1 for such taxable year which is filed on or before the date of the enactment of this Act shall be considered for any of such purposes, or for any other purpose, of the Code as the return for such year.

The provisions of section 56(a) of the Code (relating to the time of payment) will not be applicable to the payment of taxes for such taxable year. Instead, such taxes shall be due and payable on March 15, 1951. The provisions of section 56(b) of the Code (relating to installment payments) are, however, not affected and the taxes for the taxable year required by this section of the bill to be paid on March 15, 1951, can, at the election of the taxpayer, be paid in four equal installments. The amendment made to section 56(b) of the Code by section 205(a) of the Revenue Act of 1950, effective with respect to taxable years ending on or after December 31, 1950, will not apply in computing the amount of the installment payments, since this section of the bill deals only with taxable years ending prior to December 31, 1950.

Section 206 further provides that all payments, if any, made prior to the enactment of this Act with respect to the taxes for such a taxable year imposed by chapter 1 of the Code, to the extent that they have not been credited or refunded, shall be deemed to be payments made at the time of the filing of the return required by this Act on account of the taxes for such year determined with the amendments made by this Act. The amount which will be so credited will include, in addition to the tax itself, any amounts paid as interest, penalties, or additions to the tax.

In treating such taxes as paid at the time of the filing of the return required by this section, such payment (in the event the return is filed before the due date prescribed by this section) will be subject to the provisions of section 322(b)(4) of the Code, which section provides special rules applicable for certain purposes where a tax payment is made at the time of filing a return which is filed before its due date.

1951-3-13536

EXCESS PROFITS TAX ACT OF 1950

[Senate Report No. 2679, Eighty-first Congress, Second Session. Calendar No. 2676]

[December 18, 1950]

Mr. George, from the Committee on Finance, submitted the following report [to accompany H. R. 9827]:

The Committee on Finance, to which was referred the bill (H. R. 9827) to provide revenue by imposing a corporate excess profits tax and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

I. General Statement

Your committee's bill provides for the raising of revenue by the levying, collection, and payment of a corporate excess profits tax effective as of July 1, 1950, and for a 2 percentage point increase in the corporate income tax rate with respect to taxable years beginning on and after July 1, 1950. This bill is the second step in the financing of the vastly expanded military program resulting from hostilities in Korea and the critical international situation, and carries out the mandate imposed on the Committee on Finance by section 701(a) of the Revenue Act of 1950, which provided as follows:

"The House Committee on Ways and Means and the Senate Committee on Finance are hereby directed to report to the respective Houses of Congress a bill for raising revenue by the levying, collection, and payment of corporate excess profits taxes with retroactive effect to October 1, or July 1, 1950, said bill to originate as required by article I, section 7, of the Constitution. Said bill shall be reported as early as practicable during the Eighty-first Congress after November 15, 1950, if the Congress is in session in 1950 after such date; and if the Congress is not in session in 1950 after November 15, 1950, said bill shall be reported during the first session of the Eighty-second Congress, and as early as practicable during said session."

It is estimated that your committee's bill will produce about $3,200,000,000 under the levels of corporate profits existing in the calendar year 1950 and between $4,000,000,000 and $5,000,000,000 under the levels of corporate profits which may reasonably be expected in the calendar year 1951. The comparable estimate for the House bill is about $3,000,000,000 under the levels of corporate profits existing in the calendar year 1950.

The substantial increases made since July in the military and related programs indicate that budgetary expenditures in the fiscal year 1952 will be very substantially above the current level of receipts. The lag in expenditures behind appropriations may well keep expenditures in the fiscal year 1951 close to the level of receipts which will be available after the passage of your committee's bill. However, further substantial increases in taxes must be made next year if receipts are even to approach the anticipated levels of expenditures.

The first step in increasing receipts to meet the expansion in expenditures was taken in the Revenue Act of 1950 when corporation and individual income taxes were increased to provide an estimated $4,500,000,000 of additional annual revenue. Your committee's bill represents the second step. Additional revenues will, no doubt, be required next year.

One of the main advantages of an excess profits tax in periods of large military expansion is that it selects for additional tax those corporations whose profits are higher than they probably would have been in the absence of hostilities and a large military budget. By limiting the average earnings credit to 85 percent of the base period earnings, your committee's bill will also reach some profits which have been sustained at the relatively high levels of the base period by the increased tempo of the defense economy. The 2 percentage point increase in the corporation income tax rate, however, will also give assurance that all corporations with incomes of $25,000 and over will share, at least to some extent, in the additional tax burden resulting from the present emergencies.

Your committee believes that an excess profits tax enacted at this time should be so framed as not to interfere unduly with the normal expansion of the industrial capacity of the Nation. Your committee's bill has attempted to alleviate most of the hardship cases under the excess profits tax by providing automatic relief provisions. In addition your committee's bill provides an over-all limitation so that the income tax and excess profits tax together will not take more than 60 percent of any taxpayer's income. This provision will aid substantially those taxpayers with inadequate credits where the automatic relief provisions are not available or are inadequate.

II. Revenue Estimates

It is estimated that your committee's bill will yield $3,200,000,000 in a full year of operations with corporate profits at the level existing in the calendar year 1950. The House bill under similar assumptions as to corporate profits would have yielded about $3,000,000,000. It is believed that with such a level of corporate profits an excess profits tax would be imposed on about 70,000 corporations.

With the level of corporate profits which may reasonably be expected in the calendar year 1951, it is estimated that your committee's bill will yield between $4,000,000,000 and $5,000,000,000 in a full year of operation. On this basis about 80,000 corporations will be subject to excess profits tax.

III. Major Provisions of General Application

1. The rate, the base, and the years of application.

Your committee's bill increases the surtax rate under the regular corporate income tax by 2 percentage points. Thus the total corporate income tax rate on income in excess of $25,000 is to be 47 percent for years beginning on and after July 1, 1950. Since no increase is made in the corporate normal tax rate, the total tax rate on income of $25,000 and less remains at 25 percent, the rate provided by present law for 1951 and subsequent years.

The House bill provided for no increase in the corporate surtax rate. Thus, the total corporate rate would have remained at 45 percent for 1951 and subsequent years. Your committee deemed it desirable to increase the income tax rate from 45 percent to 47 percent in order to provide more revenue and to give assurance that all corporations with incomes in excess of $25,000 will share in the additional tax burdens it is necessary to impose on corporations at this time.

Your committee's bill also imposes an additional excess profits tax rate of 30 percent which together with the regular corporate normal tax and surtax represents a total rate of 77 percent when fully effective. This 30 percent additional tax on excess profits represents no change from the House bill. The combined rate of 77 percent on adjusted excess profits net income is comparable to the excess profits tax rate of 85½ percent at the end of World War II after allowance is made for the 10 percent postwar refund provided by that tax. However, the combined rate of the corporate income tax and the excess profits tax, under your committee's bill, cannot exceed 60 percent of the corporation's income. This 60 percent rate can be compared to the 67 percent ceiling on corporation surtax net income provided by the House bill. Your committee's bill provides a lower ceiling rate than the House bill because your committee realized that, despite its care in providing for relief in hardship cases, some corporations will have inadequate excess profits credits. Under the World War II tax a similar ceiling limited the combined rate of the corporate income tax and excess profits tax to slightly more than 72 percent after allowance for the postwar credit.

As in the case of the World War II tax, the taxpayer is given the choice under your committee's bill of the higher of two alternative bases in determining what proportion, if any, of its income is to be subjected to excess profits tax. The primary credit, that is, the credit likely to be generally used, is an average earnings credit, based on average income in the 4 years 1946 to 1949. The alternative is a credit based on a rate of return on "invested capital." A similar choice is presented in the House bill and was provided in the World War II tax.

Your committee conceives of this tax as primarily a tax on increased profits due to the outbreak of hostilities and to large military expenditures. This accounts for the primary emphasis upon the average earnings base. However, it is believed that a minimum rate of return, free of excess profits tax, should be allowed taxpayers who happened to have poor earning experience in the base period. Therefore, taxpayers are offered an invested capital credit as an alternative which places a floor on the rate of return assured before the imposition of excess profits taxes.

In section 701 of the Revenue Act of 1950 the Senate required this committee to report out an excess profits tax effective as of July 1, 1950, or October 1, 1950. After consideration of these alternative effective dates, your committee has concluded that an excess profits tax should be effective as of July 1, 1950. This date is the same effective date as provided by the House bill. This is approximately the date of the outbreak of hostilities in Korea and antedates the substantial increase in corporate profits during the third and fourth quarters of 1950 which resulted from the wave of buying following the start of hostilities.

The excess profits tax is made effective in 1950 for calendar-year corporations by imposing for that year one-half the additional taxes which will be imposed for subsequent years. Thus, the excess profits tax rate applicable to these calendar-year corporations in 1950 is 15 percent which, when combined with the corporate normal tax and surtax, will represent a total rate of 57 percent on those calendar-year corporations in 1950.

The excess profits tax does not apply to fiscal-year corporations with respect to years ending prior to July 1, 1950. In the case of a fiscal-year corporation with a year beginning prior to and ending after July 1, 1950, the excess profits tax imposed will be a percentage of the 30 percent excess profits tax rate computed on the basis of the full year's income. The percentage is to be determined on a pro rata basis by dividing the number of days in the fiscal year which are after June 30, 1950, by the total number of days in the fiscal year. These rules are similar to those applied for 1950 in making the changes in the corporate normal tax and surtax rates in the Revenue Act of 1950.

The 2 percentage point increase in the regular corporate surtax rate is made effective under your committee's bill with respect to taxable years beginning on and after July 1, 1950. Thus the total normal tax and surtax rate for the calendar year 1950 remains at 42 percent. However, the total normal tax and surtax rate of 45 percent provided by the Revenue Act of 1950 is raised to 47 percent for taxable years beginning on or after July 1, 1950.

Your committee's bill provides that the excess profits tax shall terminate as of December 31, 1952. The House bill provided no termination date. Your committee believes that a termination date of this type is desirable in order to assure the review of the excess profits tax in the near future. For fiscal-year corporations with years beginning before January 1, 1953, and ending after December 31, 1952, the same procedures will be used with respect to the termination of the tax as have previously been described in the case of the initial imposition of the excess profits tax for these corporations.

2. *Relationship of the excess profits tax to the income tax.*

The excess profits tax provided by your committee's bill is computed as an additional tax over and above the other corporate income taxes. The consolidated return privilege is made available as in the World War II statute. In general the computation of the excess profits tax is as follows:

(*a*) First, the income tax is imposed on the entire amount of taxable net income.

(*b*) Second, the normal tax net income, after certain adjustments, is reduced by the excess profits credit (that is, the portion of the corporation's income which for the purposes of this tax is considered normal) and any unused excess profits credit carried forward or back to the taxable year. The result is called the adjusted excess profits net income.

(*c*) Third, an additional tax at the rate of 30 percent is imposed on this adjusted excess profits net income. This, when added to the corporate income tax of 47 percent represents a 77 percent rate on adjusted excess profits net income.

This is the same approach as was used under the House bill. Under the World War II excess profits tax the so-called "two-basket" approach was followed. The corporate income tax was imposed only on income which not subject to the excess profits tax, and the excess profits tax (comparable to the 77 percent tax referred to above) was imposed on income in excess of the excess profits credit.

Substantially the same tax burdens are achieved under either type of computation, but the type used in your committee's bill and in the House bill is believed to be the simpler. Under this approach the other income taxes can be computed without regard to the excess profits tax, and subsequent adjustments in the excess profits credit will not require a recomputation of the other income taxes. Also this method permits the complete unification of procedures for assessing and collecting the other income taxes and the excess profits tax, which should reduce substantially the burden of administration and taxpayer compliance. Under the provisions of your committee's bill and the House bill the income tax and the excess profits tax will be treated as one tax for the purpose of the computation of interest on refunds or deficiencies, the statute of limitations, credit and refund, the sending of 90-day letters, etc.

3. The minimum credit under the excess profits tax.

Your committee's bill and the House bill provide for a minimum credit of $25,000. Any taxpayer which upon computing its excess profits tax credit under either the average earnings or invested capital method finds that its credit is less than $25,000 may raise its credit to this amount. As distinguished from this procedure the World War II law provided all taxpayers with a specific exemption of $10,000.

The minimum credit has a number of advantages over the specific exemption, although the primary purpose of both is the same; namely, to relieve small corporations from excess profits tax and to encourage their growth, to prevent small corporations from being discriminated against as compared to their unincorporated competitors, and to make it unnecessary for them to compute an excess profits tax. A minimum credit and specific exemption of the same size are equally effective in removing these small businesses from the application of an excess profits tax. However, because the benefits arising from a minimum credit are available only to small corporations, it is possible to provide a much larger minimum credit than specific exemption with no additional drain on revenues. A $25,000 minimum credit, for example, is less expensive in terms of revenue than a $10,000 specific exemption.

4. Average earnings credit under the excess profits tax.

For taxpayers on a calendar-year basis the base period under your committee's bill is the 4-year interval 1946 to 1949. Taxpayers are permitted to eliminate the poorest of the base-period years. The normal tax net income of the remaining years is then adjusted in a manner described subsequently and averaged. The resulting average base period net income is then reduced by 15 percent for the purposes of the credit. These provisions are the same as in the House bill.

(*a*) *Selection of the base period and percent of earnings taken into account.*—Under the World War II law the base period was 1936 to 1939, and the credit was 95 percent of the average earnings in this period. It was necessary to substitute the period 1946 to 1949 for the 1936 to 1939 base in your committee's bill both because of the large number of businesses which have been started recently and because of the substantial changes which have occurred in the businesses currently in operation which were in existence in the period 1936 to 1939. The period 1946 to 1949 is the only recent 4-year nonwar period available. However, it is a period of unusual business prosperity which to a substantial degree was built on the deferred demands, the accumulated savings of World War II, and large postwar defense expenditures. Since this unprecedented level of business activity could hardly have been expected to continue permanently, the use of the income of the years 1946 through 1949, without adjustment, would produce a general overstatement of the taxpayers' earning capacity in the absence of hostilities in Korea or a large program of military expenditures. For this reason your committee believes that a 15 percent cut-back in average base period income is a moderate adjustment.

(*b*) *Counting deficit years as zero years.*—In addition to eliminating the poorest year in its base period, the taxpayer is permitted to count the earnings of any remaining deficit year as zero under both your committee's bill and the House bill. The comparable World War II adjustments were considerably less liberal.

Under that law the earnings of the poorest year could be raised to 75 percent of the average of the other 3 years. This is only three-fourths of the upward revision which occurs in the selection of the best 3 out of 4 years. Moreover, there was no provision in the World War II law allowing additional deficit years to be counted as zero.

(*c*) *Capital additions during the latter base period years.*—Under your committee's bill and the House bill the average earnings credit may be increased for investments made late in the base period. Although no similar provision was contained in the World War II law, an adjustment of this character is needed to place corporations where investments were made late in the base period on a comparable basis with corporations where investments were made prior to, or in the early part of, the base period. Investments early in the base period are fully, or largely, reflected in the base period earnings, but investments made in the latter half of the base period would at best be only partially reflected in the base period earnings and may not affect those earnings at all.

For this reason the average earnings credit is increased to reflect one-half of the net additions to capital in 1948 and all of the net additions to capital in 1949. Under your committee's bill the average earnings credit is increased by 12 percent of such investments, irrespective of whether they take the form of equity capital, retained earnings, or borrowed capital. This is the same rate of return allowed for net additions to capital in the years in which the excess profits tax is applicable and is the maximum rate of return allowed those using the invested capital base. This provision of your committee's bill differs from the comparable provision in the House bill only in the rate of return accorded borrowed capital. Under your committee's bill a 12 percent rate of return is provided for such capital. Under the House bill the credit was increased by 133 percent of the interest payable on the new funds. This change is in conformance with the change made by your committee in the rate of return on borrowed capital included in an invested capital credit. The reasons for this change are discussed below.

(*d*) *Fiscal-year corporations.*—Taxpayers using fiscal years ending after December 31 but before April 1 will use the last four taxable years ending prior to April 1, 1950, as their base period. The use of the corporation's actual taxable years is desirable in itself, and the inclusion of the first quarter of 1950 in the base period does not appear to be objectionable because profits in that quarter were not materially out of line. However, taxpayers whose fiscal years end after March 31 and before December 31 are required to use as their base period the 48 months beginning on January 1, 1946, and ending December 31, 1949. In these cases the use of the corporation's actual taxable years would involve either the exclusion of a portion of the calendar year 1949 and the inclusion of a corresponding part of 1945, or the inclusion of a portion of the calendar year 1950 which includes or borders upon the months affected by the hostilities in Korea. Therefore, such corporations are required to construct by proration four calendar years in order to compute their base period credit. For instance, for base period purposes, the 1946 income of a corporation with a taxable year ending November 30 will consist of eleven-twelfths of the income of the corporation's 1946 fiscal year and one-twelfth of its 1947 fiscal year. The income of the other base period years will have a similar composition. The 1949 income for base period purposes will consist of eleven-twelfths of the corporation's income in the 1949 fiscal year and one-twelfth of the income of its 1950 fiscal year. This will reduce to a minimum the effect of the Korean hostilities upon base period income. Similarly, a corporation having a fiscal year ending on May 31, will have a 1949 income consisting of five-twelfths of its 1949 fiscal year and seven-twelfths of its 1950 fiscal year. The provision of your committee's bill dealing with the base period of fiscal-year taxpayers is the same as under the House bill.

5. Invested capital credit.

Under your committee's bill the excess profits credit of a corporation computing its credit by reference to invested capital is the sum of the invested capital credit reduced by inadmissible assets plus the new capital credit. The invested capital of a corporation includes equity capital, retained earnings, and borrowed capital.

(*a*) *Rates of return on invested capital.*—The rates of return under your committee's bill for equity capital, retained earnings, and borrowed capital are shown in table 1.

TABLE 1.—*Rates of return allowed on equity capital, retained earnings, and borrowed capital under your committee's bill and the World War II statute*

Equity capital, retained earnings, and borrowed capital[1] rate brackets	Rates under Finance Committee bill	Rates under World War II law
(In millions)		
Under $5	12 percent	8 percent.
$5 to $10	10 percent	6 percent.
Over $10	8 percent	5 percent.

[1] Under the World War II statute the capital in each bracket included only one-half of the borrowed capital.

As in the House bill, it is believed necessary to provide for more liberal rates of return than under the World War II law to allow for the general increase in rates of return on invested capital which has occurred since the pre-World War II period.

The rates of return allowed on equity capital and retained earnings are the same as those allowed under the House bill. The rates of return allowed on borrowed capital, however, differ from those provided in the House bill. Your committee's bill treats borrowed capital in the same manner as other forms of invested capital; that is, 100 percent of such capital is included along with the other forms of invested capital in computing the 12 percent, 10 percent, or 8 percent rate applicable. However, the interest payment on such borrowed capital is not allowed as a deduction in computing excess profits tax net income. This differs from the procedure followed under the World War II statute only in two respects. Under the World War II statute 50 percent, instead of 100 percent, was included with the other forms of invested capital, and one-half of the interest payments, instead of no interest payments, was allowed as a deduction in computing excess profits tax net income.

Under the House bill the rate of return on borrowed capital would have been computed entirely separately from other forms of invested capital. The rate of return would have been 133 percent of the interest rate payable on 100 percent of these borrowed funds. This would have been accomplished by allowing the full deduction of interest payments and by also increasing the invested capital credit by one-third of the interest payments. Under the House bill the minimum amount by which the credit would have been increased was 1 percent of the borrowed capital (limited to obligations with a term of 5 years or more), and the maximum by which it would have been increased was 3 percent of the total borrowed capital, without limitations on the interest deduction.

Your committee has shifted the method of computing the rate of return to be allowed on borrowed capital from that of the House bill because it was believed that, after corporate normal taxes and surtaxes are taken into consideration, the rate of return allowed under the House bill for borrowed capital will provide little incentive for a corporation to expand during the excess profits tax period by the use of borrowed capital.

(*b*) *Definition of equity capital and retained earnings.*—Under your committee's bill the invested capital of a corporation is generally determined by deducting from its total assets on its books at the end of the base period the total of its liabilities on its books at the same time, plus any "recent loss" adjustment. The determination of the date upon which a liability is incurred is to follow sound accounting principles and rules similar to those applicable in the computation of the taxpayer's earnings or profits. Except for cash, the term "assets" applies only to property having a basis for gain or loss upon sale or exchange. The value of the assets is determined in the case of all assets other than intangible assets by taking their "adjusted basis for gain."

The value of intangible assets under your committee's bill is determined without regard to the value of the property as of March 1, 1913. This represents a change from the House bill. Under the House bill the value of these assets was determined by taking their "adjusted basis for gain" which would have been the March 1, 1913, value where this was higher than cost. Your committee changed this because most of these assets, not being subject to depreciation, have not been valued as of March 1, 1913, and to do so would be quite difficult. Intangible assets are defined as "secret processes and formulae, good will, trademarks, trade brands, franchises, and other like property."

Your committee has also added a provision which excludes from invested capital the assets which are not held in good faith for the purposes of the business. The purpose of this limitation is to disallow in computing invested capital those assets which are not required in the business and which have the principal effect of reducing excess profits tax.

The recent loss adjustment referred to above, which is added to the net assets, is any net deficit in the period 1946 to 1949, or 1940 to 1949. The net deficit is the excess, if any, of operating losses over net income in the period. This provision is the same as in the House bill.

In addition to continuing the House provision relating to the computation of equity capital and retained earnings by deducting liabilities from assets, and adding the "recent loss adjustment," your committee's bill provides the taxpayer with the alternative of computing its invested capital under the so-called historical capital approach provided in the World War II statute. This alternative was not provided under the House bill. Under this historical capital approach, the equity capital and retained earnings represent the money and property previously paid in for stock or paid in for surplus plus the accumulated earnings and profits of the corporation as of the beginning of its taxable year. The major difference between this approach and that of the asset approach is the treatment of deficits. Under the historical capital approach a net deficit—that is, any deficit remaining after offsetting deficits of loss years against earnings of profitable years—does not decrease paid-in capital or paid-in surplus. Under the asset approach, also in this bill, a net deficit incurred prior to 1946 or 1940 (depending on which is more advantageous to the taxpayer) has the effect of reducing capital or surplus paid in prior to that date. However, a net deficit under the asset approach for the period since 1940 or 1946 reduces neither capital nor surplus paid in at any time, nor earnings and profits realized prior to 1940 or 1946. Thus, under the asset approach, corporations with recent losses are treated more favorably than under the historical capital approach, while taxpayers with net deficits over the whole span of their existence are treated more favorably under the historical capital approach. Your committee recognized that it was desirable to provide favorable treatment for corporations with net deficits since 1940 or 1946 even though they had earnings prior to that time which would offset these deficits, since such corporations are likely to have a very unfavorable average earnings base and also are likely to find their invested capital base depleted as a result of these losses. For these reasons the provisions of the House bill permitting corporations to use the asset approach was continued. However, it was also recognized that there were certain classes of corporations having losses over the entire span of their existence which would lose the advantage of adding back their net deficit merely because most of the losses were incurred prior to 1940. Furthermore, the asset approach is less favorable to corporations adopting percentage depletion. For this reason your committee also gives corporations the alternative of computing their capital under the historical capital approach.

In the case of insurance companies other than life, your committee amended the bill to provide that 50 percent of their reserves should be treated as borrowed capital in computing the invested capital base. Your committee also added a specific provision which provides for the inclusion of organization expenses in the case of these insurance companies in the computation of equity capital for purposes of computing their invested capital credit. A provision has also been added which permits face-amount certificate companies to include 50 percent of the mean of the amount of their reserves on their outstanding investment certificates.

(c) *Definition of borrowed capital.*—Borrowed capital, under your committee's bill, is indebtedness (but not including interest) which is evidenced by a bond, note, bill of exchange, debenture, certificate of indebtedness, mortgage, deed of trust, bank loan agreement, or conditional sales contract. This is substantially the same definition as appears in the House bill. However, your committee's bill limits the amount to be considered as borrowed capital to outstanding indebtedness "incurred in good faith for the purposes of the business." No such limitation was contained in the House bill although the report of the House committee indicated that it was intended to limit indebtedness treated as borrowed capital to indebtedness "employed in the trade or business." The definition of borrowed capital in both the House bill and your committee's bill is substantially the same as the definition appearing in the World War II statute except for the addition of conditional sales contracts and bank loan agreements.

Conditional sales contracts are a form of borrowing which has been used extensively, and your committee believes that their omission from the definition of borrowed capital would work a hardship on taxpayers borrowing substantial amounts in this manner. The category of indebtedness evidenced by a bank loan agreement, added by your committee's bill, includes such indebtedness owing to a bank, and does not include the indebtedness of a bank to its depositors.

(*d*) *Admissible and inadmissible assets.*—Under the World War II statute the capital to which the various rates of return were applied to determine the invested capital credit was reduced for certain so-called inadmissible assets. These assets were excluded because the income realized from them was not subject to excess profits tax. Stock in a corporation was an inadmissible asset because dividends received on such stock were not includible in excess profits tax net income. State and local government obligations and partially tax-exempt Federal obligations were also treated as inadmissibles because interest received on them was not includible in excess profits tax net income. However, in the case of these obligations the taxpayer had the option to treat them as admissible assets if it included in its excess profits tax net income the interest received on these obligations.

The House bill makes no major change in admissible and inadmissible assets except to deny the option to treat State and local government obligations and partially tax-exempt Federal obligations as admissible assets. The granting of this option gives an undue advantage to holders of these obligations. The interest rate payable on such obligations is quite generally around 2 percent to 3 percent. To allow rates of return of 8 percent to 12 percent, the rates provided for invested capital, gives the holders of these obligations an opportunity to apply the excess of the rate of return allowed over the rate of return received on these obligations to income on other assets. Your committee's bill makes no significant change in this provision of the House bill.

6. Net capital changes in the tax years.

Under your committee's bill, both the taxpayer using the average earnings credit and the taxpayer using the invested capital credit, if the latter is computed under the asset approach, are allowed to increase their credit for net additions to investments since 1949. Additions to invested capital in the case of the average earnings taxpayer and in the case of the invested capital taxpayer computing its equity capital and retained earnings under the asset approach are allowed a flat rate of return of 12 percent. The taxpayer computing its invested capital base under the historical capital approach adds any net capital additions in the tax period to the invested capital which it had at the end of 1949 and receives a rate of return on these net capital additions of 12 percent, 10 percent, or 8 percent, depending upon its rate bracket.

Reductions in invested capital in the tax period, under your committee's bill, are permitted to decrease prior additions in the tax period at the same rate at which these increases were previously made. Thus, in the case of the average earnings taxpayer and the invested capital taxpayer using the asset approach the excess profits credit is reduced by 12 percent of any reductions which offset additions previously made in the tax period. In the case of the invested capital taxpayer using the historical capital approach, the rate of return by which the excess profits tax is reduced depends upon its top invested capital rate bracket which may be 12 percent, 10 percent, or 8 percent. Any reductions in excess of the additions in the tax years decrease the credit of both types of invested capital taxpayers and also average earnings taxpayers. For all invested capital taxpayers the rates of return used in connection with any such reductions are the rates used in building up their invested capital credit initially. For the average earnings taxpayer, the rate of return used is 12 percent in the case of these additional reductions.

The provisions of your committee's bill, described above, differ from those of the House bill in two important respects. First, under your committee's bill borrowed capital receives the same rate of return as other forms of invested capital while under the House bill its rate of return depends on the interest rate at which it was borrowed. Second, the invested capital taxpayer using the historical asset approach is not given the flat 12 percent rate of return with respect to additions made during the tax years but rather is required to use the rate of return it last used in computing its invested capital credit. Both of these changes in your committee's bill arise from changes made in the method of computing the invested capital credit and have been previously discussed.

The World War II statute was much less generous than either your committee's bill or the House bill, and also was inconsistent in the allowance for additions to capital in excess profits tax years. In the case of the average earnings taxpayer no allowance was made for investments in the tax years if they took the form of borrowed capital or accumulations of retained earnings. An increase in its credit was allowed at an 8 percent rate of return if the additions took the form of paid-in capital or paid-in surplus and a 6 percent rate of return was used for reductions of these types.

In the case of the invested capital taxpayer the World War II statute provided that retained earnings and borrowed capital be included in the ordinary computation of invested capital at the regular rates for such capital. Additions to paid-in capital or paid-in surplus were also included in the credit at the ordinary rates but as a special incentive they were included at 125 percent of their value. This had the same effect as providing for them a 10 percent, 7½ percent, or 6¼ percent rate of return, depending on the invested capital bracket of the corporation.

Your committee believes that the more generous provisions provided in this bill are necessary since the emergency may be of long duration requiring substantial increases in productive facilities.

7. *Net income in the taxable year.*

(*a*) *General.*—The net income used in the excess profits tax is an adjusted version of the net income to which the 25 percent corporate normal tax is applied. Chief among the adjustments is an exclusion of capital gains and losses, both long- and short-term. This exclusion is based upon the sporadic character of the receipts. The World War II law excluded only long-term gains and losses. Logic requires the exclusion of short-term gains and losses as well.

Although casualty losses are also sporadic they are not excluded because they are likely to have a serious effect upon the corporation's taxpaying capacity in the year of the loss. For similar reasons net losses on the sale or exchange of assets used in a trade or business falling within the scope of section 117(j) of the Code are not excluded from the excess profits tax net income under the committee's bill although they were excluded under the House bill.

Like the World War II law, the committee's bill excludes certain other types of sporadic income, such as—

1. Income arising out of the retirement or repurchase at less than the issue price of bonds, and other evidences of indebtedness, outstanding for more than 6 months;
2. Income arising from the recovery of bad debts in cases where no deduction has been claimed in a year for which an excess profits tax was imposed under the World War II law or would be imposed under this bill; and
3. Refunds of taxes paid under the Agricultural Adjustment Act of 1933.

The committee's bill excludes so much of the taxpayer's interest deduction as represents interest on the indebtedness included in the taypayer's borrowed capital if it uses the invested capital basis. Interest reductions were allowed in full in the House bill. The difference reflects the change in the treatment of borrowed capital under the invested capital credit. The disallowance of the interest deduction in the Finance Committee bill is consistent with the inclusion of 100 percent of borrowed capital in the taxpayer's invested capital base.

The net income of the excess profits tax year is also corrected by the elimination of deductions arising out of the retirement at a premium of bonds and other evidences of indebtedness outstanding for more than 6 months. Such an adjustment was allowed under the World War II law, but only in the correction of the base period net income. Under the bill the adjustment is also made in the income of the tax period.

As in the World War II law, the net income of life insurance companies is adjusted for contributions to policyholders' reserves so as to conform income for excess profits tax purposes with income used for the corporate normal and surtaxes. If the company computes its excess profits credit on the invested capital basis, the adjustment for contributions to policyholders' reserves is reduced by 50 percent because half such reserves are included in borrowed capital used in calculating the invested capital credit.

Taxpayers in certain extractive industries are permitted to exclude a portion of their income from "excess output," as under the World War II legislation, as well as amounts received as incentive payments to encourage exploration, development, and mining for defense purposes.

The bill follows the precedent of the World War II law in allowing a full 100 percent credit for dividends received from domestic corporations. While the World War II law also allowed a full credit for dividends in kind, the bill restricts the credit for such dividends to the adjusted basis of the distributed property in the hands of the distributing corporation. This conforms the treatment of dividends in kind under the excess profits tax with that under the corporate normal and surtaxes as revised by section 122 of the Revenue Act of 1950.

The bill contains a provision allowing the correction of the net income of the excess profits tax years for other abnormalities. This provision is similar to section 721 of the World War II law. Generally, income appearing in particular excess profits tax years is reallocated under this provision if it is attributable to events that occurred or work that was done in other years. Such an adjustment is made only if the income of the class deemed to be abnormal received in the taxable year is more than 115 percent of the average amount of the income of the same class received during the four previous taxable years. In appropriate cases such an excess will be attributed to other years under regulations to be prescribed by the Secretary of the Treasury.

Adjustments of this type are limited to income arising out of—

1. A claim, award, judgment, or decree;
2. Exploration, discovery, or prospecting which extended over a period of more than 12 months;
3. The sale of patents, formulas, or processes developed over a period of more than 12 months; or
4. Income which is includible in the taxable year rather than another year by reason of a change in the taxpayer's method of accounting.

The equivalent provision in the World War II law (section 721) also permitted adjustments with reference to certain other types of income, particularly that resulting from the sale of tangible property arising out of research and development which extended over a period of more than 12 months. This provision in the old law was a potential loophole of major dimensions. Because there appeared to be no means of restricting such an adjustment to truly meritorious cases other than by the introduction of a large degree of administrative discretion of the type required by the general relief clause of the World War II law (section 722), and because of the need for a reallocation of such income seemed to be materially less than for the other classes of income described above, the bill omits this item from the list of abnormal types of income for which a reallocation can be made.

The bill also contains a number of other provisions designed to adjust the excess profits tax net income of specific classes of taxpayers.

(*b*) *Installment basis taxpayers.*—The bill permits taxpayers using the installment basis method of accounting for income tax purposes to elect to report their income on an accrual basis for the excess profits tax. Under the House bill this election is open only to taxpayers receiving income from installment sales. The Finance Committee bill also permits such an election in the case of taxpayers whose principal business consists of the purchasing of installment sales obligations.

Under the installment basis method of accounting, income arises when the payments made under the contracts are received. In the absence of the election provided in this bill, many taxpayers using this method would probably be required to pay unusually large taxes during the first years of the excess profits tax period because the receipt of payments arising out of sales in earlier years will exceed substantially the volume of new business. This is expected to occur because the volume of installment purchases was very heavy in 1948, 1949, and 1950, and is expected to diminish sharply in 1951 and subsequent years as a result of the application of controls to installment purchases and the development of scarcities among the commodities ordinarily sold by the installment method. A similar result would obtain in the case of taxpayers whose principal business consists of purchasing installment sales obligations.

The election provided under the bill permits such taxpayers to exclude from the excess profits net income of the taxable years payments arising out of sales made during the years in which the tax did not apply. Such an election when made is irrevocable and applies to all subsequent taxable years to which the excess profits tax is applicable.

(c) *Long-term contracts.*—A similar election is provided for taxpayers who receive payments under long-term contracts and who, under the completed contract method, account for such receipts as income for the year in which the contract is completed. The bill permits such taxpayers to elect to report their income from long-term contracts under the percentage of completion method of accounting for the purpose of the excess profits tax. This election when made is also irrevocable and applies to subsequent taxable years.

(d) *Long-term leases.*—A special adjustment is provided in the case of long-term leases which require the lessee to pay a stated rental to the lessor free of tax. Such leases are found in the railroad industry and were usually entered into many years ago when taxes were not as important an item as now. Under such leases an increase in taxes automatically raises the income before taxes received by the lessor corporation and may serve as the basis for the imposition of an excess profits tax, which the lessee will be obligated to assume. To eliminate the resulting hardship the bill provides that the amount of tax paid by the lessee be excluded from the income of the lessor corporation, and that no deduction be allowed to the lessee.

As under the House bill, this adjustment is available only in the case of a lease for a term of more than 20 years. The committee's bill also provides that an agreement for the lease of railroad properties shall be considered to be a lease for such term as the total number of years during which the lease may be renewed and continued automatically.

To qualify for this adjustment it is necessary that the lease be entered into prior to December 1, 1950.

(e) *Bad debt reserves of banks.*—Banks which have elected to use the reserve method of accounting for bad debts for income tax purposes substitute for excess profits tax purposes a deduction for debts which became worthless in whole or in part within the taxable year. This is desirable because the banks which elected to use the reserve method for income tax purposes beginning in 1947 have for the most part accumulated reserves that equal or approach the maximum allowable under the existing rulings. In view of this situation and because of the probability that losses from bad debts will be comparatively low during the excess profits tax years it is likely that the deductions under the reserve method will be abnormally low during the excess profits tax period. The deduction of such losses as they occur will provide a more equitable result.

(f) *Blocked income.*—Special rules are provided under the bill for the treatment of "blocked income" arising prior to 1951. These rules are discussed below.

8. Net income in the base period.

The calculation of excess profits by a comparison between base period income and the income of the taxable year requires the removal of abnormalities not only from the income of the taxable year but from the income of the base period years as well. Many of the provisions in the bill for adjusting the income of base period years are similar to those used in the taxable years. Among these are the exclusion of gains and losses from the sale or exchange of both long- and short-term capital assets, and income arising from the retirement or repurchase at less than the issue price of bonds and other evidences of indebtedness outstanding for more than 6 months.

However, gains and losses from the sale or exchange of assets used in the trade or business (section 117(j) assets) are excluded from the taxpayer's base period net income, as under the House bill, even though they are not excluded in the determination of income in the excess profits tax years. The exclusion of such gains and losses in the base period years is justified because it is desired to obtain a "normal" earnings experience for the taxpayer. Since such gains and losses are apt to be sporadic and frequently are sizable, their inclusion would distort the taxpayer's base period net income. On the other hand the exclusion of such items from the income of the excess profits tax years would lead to the disallowance of substantial losses which, because of the high rate imposed, might prove to be a serious embarrassment to a hard-pressed taxpayer.

Deductions for premiums paid and expenses involved in the retirement of bonds and other evidences of indebtedness outstanding for more than 6 months are eliminated from the income of the base period years as from the income of the taxable year. Provision is made for the elimination of the deduction based on the repayment of processing taxes to vendees, which parallels the adjustment for processing tax refunds in the income of the excess profits tax year.

A 100 percent credit for dividends received is allowed in computing the net income of the base-period year and the rule applied to dividends in kind is the same as that now used under the corporate normal and surtaxes.

In addition the bill contains a general provision applying to claims, awards, and judgments against the taxpayer, intangible drilling and development costs of oil or gas wells, development costs in the case of mines, casualty losses, and deductions of other classes subject to regulations prescribed by the Secretary. For any class of such abnormal deductions, the amount in excess of 115 percent of the average amount of deductions of such class for the four previous taxable years is to be eliminated under regulations prescribed by the Secretary, provided that in the base-period year the deductions of the class disallowed exceed 5 percent of the average excess profits net income for all the taxpayer's base-period years computed without the disallowance of any class of deduction under this provision. For the purposes of the latter limitation, a deficit in any of these years is counted as zero.

This provision is similar to the corresponding portion of the World War II law except that the latter eliminated only the excess over 125 percent of the average of the deductions for the four previous taxable years, and did not include the 5 percent limitation described above.

The bill, like the World War II law, does not permit the disallowance of such abnormal deductions unless the taxpayer establishes that the increase in the deduction is not (*a*) a cause or a consequence of either (1) an increase in the taxpayer's gross income in its base period or (2) a decrease in the amount of some other deduction in its base period, which increase or decrease is substantial in relation to the amount of the increase in the deductions of such class, or (*b*) a consequence of a change at any time in the type, manner of operation, size, or condition of the business engaged in by the taxpayer.

The bill also follows the precedent of the World War II law in limiting the amount of the deductions disallowed to the excess over the deductions of the same class in the taxpayer's excess profits tax year.

The income of the base-period years is adjusted to conform to that of the taxable years in the case of taxpayers who elect to change from the installment basis to the accrual method of accounting, or to substitute the percentage of completion method for the completed contract method of accounting for payments under long-term contracts. The base-period income of lessees which are obligated to pay the tax due on the payment to a lessor under a long-term contract is adjusted in the base period to conform with the tax period. Banks using the reserve method of accounting for bad debts during the base period substitute deductions for debts which became worthless in whole or in part within those years for the larger deductions made to establish such reserves.

Life insurance companies deduct their contributions to policyholder's reserves in computing their base period net income as in computing the income of their excess profits tax years.

In addition to the foregoing provisions which follow, in general outline the corresponding provisions of the House bill, the Finance Committee bill permits an adjustment of the assessments paid by banks during the base period to the Federal Deposit Insurance Corporation. Public Law 797 of the Eighty-first Congress, second session, recognized that the assessments paid in prior years had resulted in the accumulation of a sufficient reserve and made provision for a credit which would be counted against the gross assessments due in later years. This credit is computed by reference to the operating experience of the FDIC in the preceding year. As a result of its use, the FDIC assessments actually payable in the excess profits tax years probably will be much less than those paid in the base period years. Under the committee's bill the deduction for FDIC assessments in the taxpayer's base period years will be reduced proportionally with the credit allowed against the FDIC assessment in the excess profits tax year.

9. General relief.

(*a*) *Provisions of World War II law.*—Section 722, the general relief provision of the World War II law, was designed to aid hardship cases by providing such corporations with a substitute, or constructive average, base period net income. Section 722 dealt with three principal classes of cases—(1) corporations which had suffered some adversity during their base period, (2) corporations which had made changes during the base period resulting in an increase in their profit potentials, and (3) corporations which were not in existence during the base period and, therefore, had no base period net income at all.

In each instance the section provided that a hypothetical base period earnings credit be "tailor made" for the particular taxpayer and that certain assumptions be made in connection with the case. Each case was a problem in research, and the legal or tax result generally was intertwined with complicated accounting and economic problems. Almost every factor which had any influence on the particular business was pertinent to the case and the time and expense involved in reconstructing the average base period earnings credit were tremendous.

These complex relief provisions of the World War II law have resulted in extended delay in the settlement of relief claims which discriminated against taxpayers who had neither the time nor the financial resources necessary for the establishment of their cases. Moreover, the determination of what the taxpayer's base period income would have been in the absence of the claimed abnormality was largely a matter of subjective judgment, and a great deal of complaint has arisen on this account. Hence this bill reduces to a minimum the amount of administrative discretion involved in the adjustment of the hardship cases which may be expected to arise under an excess profits tax.

(*b*) *Reduction in hardship cases under the bill.*—Since corporations in general had a high level of profits during the past 4 years, and since the bill is more liberal in a number of major respects than the World War II law, the number of hardship cases which will arise should be substantially less than if the old law were reenacted under current conditions.

Provisions of the bill which may be expected to reduce the need for relief are (1) the substitution of a $25,000 minimum credit for the $10,000 specific exemption of the prior law; (2) the option granted the taxpayer to eliminate the worst year in its base period for the purpose of computing its average base period net income; (3) the treatment of a deficit in any remaining base period year as zero for the purpose of computing the average base period net income; (4) the substitution of a 5-year carry-forward and a 1-year carry-back of the unused excess profits credit and net operating losses for the 2-year carry-forward and the 2-year carry-back used under the World War II law; (5) the privilege of carrying over to 1950 and 1951 operating losses incurred during the base period which have not been utilized to offset the income of other years; (6) the increase of the average base period net income for capital additions during the latter part of the base period; (7) the adjustment of the average base period net income for capital additions after the base period with a broader application and higher rates than the equivalent provision of the World War II law; and (8) the provision that the combined rate of the corporate income tax and the excess profits tax cannot exceed 60 percent of the corporation's income.

(*c*) *General relief provisions in the bill.*—The bill provides automatic formulas for each of the most important types of cases which arose under section 722 of the World War II law. These formulas permit an objective computation of the amount of relief granted in each case, thus avoiding the practice of making the extent of the relief dependent upon an attempted analysis of all the varying factors in the individual case with the resulting uncertainty, delays, and disparity of treatment among taxpayers which characterized the application of the general relief provisions of the World War II law.

(*i*) *Abnormalities during the base period.*

Section 722(b) (1) and (2) of the prior law provided relief when the income of the taxpayer's base period years was substantially abnormal because of a physical interruption to production, such as a fire, strike, or flood, or because of a depression in the business of the taxpayer resulting from temporary economic circumstances unusual in the case of the taxpayer, such as a severe price war. Your committee's bill provides relief in these same areas. However, the bill does not retain that part of section 722(b)(2) which provided relief in cases where the business of the taxpayer was depressed because the industry of which the taxpayer was a member was depressed due to temporary economic events unusual to such industry. Provision is made in another portion of the bill for the relief of taxpayers whose industry was depressed during the base period.

If an abnormality existed in the taxpayer's lowest year of earnings during the base period, this year will be eliminated automatically from the average base period net income computation. However, if an abnormality occurs in one of the remaining periods of 12 months or less in the base period, the taxpayer may, if it was in business at the beginning of its base period, substitute for its actual excess profits net income for the period of the abnormality an amount determined by multiplying its total assets for the last day of the period of the abnormality by the rate of return for its industry for that period. This formula provides relief without introducing the difficult task of proving what the taxpayer's earnings would have been in the abnormal period had the abnormality not existed.

If an abnormality is present in more than one of the three best years in the taxpayer's base period, a different formula is used. In such cases, a substitute average base period net income is computed by multiplying the average of the amounts of the taxpayer's total assets on the last day of each of its base period years preceding its first excess profits tax taxable year by the base period rate of return for the taxpayer's industry.

The substitute average base period net income described above would be available only if the taxpayer's average base period net income in the event of the substitution exceeded 110 percent of the taxpayer's average base period net income computed without adjustment for the abnormality. Similarly, a substitute excess profits net income may be used for a single abnormal year only if it exceeds 110 percent of the taxpayer's excess profits net income for that year computed without such substitution. Such a limitation is desirable in order to avoid burdening the administration of the tax with trivial claims.

Taxpayers having abnormalities in more than one of their best 3 years may not adjust their substitute average base period net income for changes in capital during the last 2 years of the base period, since their substitute income is not dependent primarily upon their own earnings record. However, the taxpayer which has only one abnormal year remaining after the elimination of its worst year, and, therefore, which uses an average base period net income computed largely from its own earnings record, may claim the adjustment for capital additions, provided the year of the abnormality is 1946 or 1947, and may claim an adjustment for capital additions in 1949 where the year of the abnormality is 1948.

The House bill used a somewhat different formula which allowed the taxpayer to substitute for the actual income of the year or years of the abnormality an amount which bore the same relation to the taxpayer's earnings in its "normal" years during the base period as an earnings index for the taxpayer's industry in that year bore to the aggregate of the industry indexes in the taxpayer's normal years. The House formula could not be applied unless one of the taxpayer's base period years was free of abnormality. Moreover, the substituted amounts might be inappropriate if the year to year changes in the taxpayer's earnings during the base period were not similar to the changes in the index of the taxpayer's industry. Finally, the system of indexes used under the House bill was somewhat complex.

The formulas contained in the Finance Committee's bill are simpler since they merely apply an industry average rate of return to the taxpayer's total assets. The possibility of erratic results arising out of the difference between the year to year changes in the taxpayer's profits and those of his industry is eliminated, and relief is available even in the case where each of the taxpayer's base period years contains an abnormality.

The industry rates of return used under this and other provisions of the bill will be determined and proclaimed by the Secretary of the Treasury. For this purpose the Nation's industry will be grouped into the 64 classes shown in appendix A. This is a slightly modified version of a classification developed by the Bureau of the Budget for general use in the Federal Government, and the description of the classes appears in the Standard Industrial Classification Manual prepared by the Bureau's Division of Statistical Standards.

The computation will be based on data regularly compiled from income tax returns by the Treasury Department in preparing the Statistics of Income.

The industry rate of return for an individual year will be computed by dividing the sum of the aggregate net income and the aggregate interest deduction shown on the income tax returns filed by the corporations in the industry by the aggregate total assets of such corporations as of the close of the taxable year for which the returns were filed. Since interest is added to net income in the calculation of the rate of return which the taxpayer applies to his assets, the amount of interest accrued by the taxpayer during a single year of abnormality is subtracted in determining his substituted income of that year. Similarly, when the taxpayer uses a substituted average base period net income it makes an appropriate adjustment to eliminate 1 year's interest.

The industry base period rates of return will be computed by aggregating the net income and the interest deductions reported by the corporations in the industry during the 4-year period 1946 through 1949 and dividing by the aggregate of the sum of the total assets of these corporations for the 4 years in question.

Since it will not be possible to assemble immediately the data necessary for computing the final rates of return for the last year or years in the base period, or for the entire base period, provision is made in the bill for the calculation of tentative rates of return. These are to be proclaimed prior to March 1, 1951, and will be used until the final rates have been proclaimed. The final rates will, of course, supersede the tentative rates and applications for adjustments based on the latter will be redetermined when the final rates are available.

The taxpayer adjusting only one of his three best years will use the rate of return for the industry to which is attributable the largest amount of its gross receipts in that year. The taxpayer using the industry rate of return for the entire base period will use the rate for the industry accounting for the largest amount of the taxpayer's gross receipts in the appropriate period.

Fiscal year taxpayers adjusting a taxable year beginning in 1945 and ending in 1946 will use the rate of return for the taxpayer's industry classification for the calendar year 1946. Those adjusting a taxable year beginning in 1949 and ending in 1950 will use the rate of return for the calendar year 1949. In other cases fiscal year taxpayers will use the index for the calendar year in which falls the greater number of days in such taxable year.

Since the rates of return are computed on the basis of "total assets," the taxpayer using such rates will apply them to its "total assets." The latter means the sum of the cash and property other than cash or inadmissible assets used by the taxpayer for a bona fide business purpose. Such property is to be valued at its adjusted basis for determining gain on sale or exchange except that in the case of certain intangible property the basis shall be determined without reference to the value on March 1, 1913.

The taxpayer desiring to adjust its base period net income under these provisions will make an application with its return, or file a claim for refund within the period of limitations applicable to claims for refund, or file an application to offset a deficiency proposed against it. If a taxpayer files a petition with the Tax Court for redetermination of a deficiency, such application must be filed not later than the date of the filing of the original petition. The purpose of requiring the taxpayer to file an application or make a claim is to provide the Treasury Department with full and timely knowledge of the taxpayer's grounds for relief. This replaces a provision contained in the House bill which would have deferred a percentage of the adjustment in the tax claimed by the taxpayer on the basis of the abnormality.

The definitions of total assets, gross receipts, industry classification, and base period rate of return described above are generally similar under the formulas developed for other hardship cases. The taxpayer's claim for adjustment under those provisions will be made in the same manner and will be subject to the same special rule concerning the statute of limitations which applies when an adjustment is made for abnormal years.

(ii) New products or services introduced in the base period.

Corporations which commenced business before the base period and made substantial changes in their products or services during the last 36 months of the base period may elect a substitute base period net income. This provision is intended to replace the "new products" adjustment authorized under section 722(b)(4) of the World War II law. Corporations which commenced business after the beginning of the base period are not eligible under this provision, but may qualify for a substitute net income under the "new corporation" rules described below.

The concept of a change in product or service was developed under the World War II law and it is believed that the experience thereunder was generally satisfactory.

To qualify for relief under the "new product" provision the change in products or services must have been "substantial" in the sense that by the end of the third year (or earlier) following the year in which the products or services were introduced, the gross income from such products must aggregate to more than 40 percent of the taxpayer's gross income in that year. The House bill used a test of 33 percent of the taxpayer's net income. Witnesses appearing at your committee's hearings pointed out the difficulties involved in the allocation of net income to particular products and services. Hence a test using gross rather than net income has been substituted.

To qualify for relief under this provision the taxpayer must also demonstrate that its net income in any one of the taxable years in which it has met the percentage of gross income test was in excess of 125 percent of the average excess profits net income during the base period year or years preceding the first change in product or service used in qualifying under the "gross income" test.

The taxpayer who qualifies under the afore-mentioned test prior to January 1, 1950, may use a substitute average base period net income computed by multiplying its total assets for the last day of its last pre-excess profits tax year or of the earliest year in which the taxpayer qualifies for relief, whichever day is later by the base period rate of return in its industry and adjusting for 1 year's interest. If the year in which the taxpayer first meets these tests ends after the base period, the substitute average base period net income is computed by multiplying the total assets for the last day of such taxable year by the base period rate of return for the taxpayer's industry classification.

A taxpayer who obtained relief under the new product provision may obtain an adjustment for new capital additions in the tax period only in those years which follow the year in which the taxpayer qualifies for relief under the new product provision but is given no adjustment for capital additions in the base period.

It is intended that, where a taxpayer establishes that it has made several substantial changes in products or services during the last 36 months of its base period, the aggregate effect of such changes may be considered in determining whether the eligibility requirements of the section are met. The gross income and net income tests can be met in a particular year by considering all such substantial changes which were made during the three preceding years.

(*iii*) *Increase in capacity during the base period.*

A corporation which commenced business before its base period and made substantial changes in its capacity during the last 36 months of the base period may also elect a substitute average base period net income. This provision is intended to replace the equivalent portion of section 722(b)(4) of the World War II law.

To qualify for relief the taxpayer must have added to its facilities in a manner which—

(*a*) resulted in an increase of 100 percent or more in its productive capacity, *or*

(*b*) resulted in an increase of 50 percent or more in its productive capacity *and* the adjusted basis of the taxpayer's total facilities after the addition or replacement exceeds by 50 percent or more the adjusted basis of the taxpayer's total facilities prior to such addition or replacement, *or*

(*c*) the unadjusted basis of the taxpayer's total facilities after such addition or replacement exceeded by 100 percent or more the unadjusted basis of the taxpayer's total facilities prior to such addition or replacement.

These tests must be complied with prior to the end of the taxpayer's base period.

For the purpose of these tests the term "facilities" means real property and tangible depreciable property held by the taxpayer for a bona fide business purpose.

These tests will confine relief to taxpayers whose capacity has undergone a change which is sufficiently great to make its base period earnings experience a poor basis for evaluating its earnings during the excess profits tax period.

Taxpayers who qualify under one of the afore-mentioned tests may elect to use an average base period net income calculated by multiplying the base period rate of return for the taxpayer's industry classification by the taxpayer's total assets for the last day in its last pre-excess profits tax year. Since the alternative net income is computed on the basis of the assets as of the close of the base period, no adjustment need be made for capital additions during the base period. Since the rate of return of the taxpayer's industry classification is calculated by adding the sum of the net profits and the interest paid during the base period years and dividing by the total assets of the industry in those years, the alternative average base period net income is reduced by an amount equal to the total interest paid or accrued by the taxpayer in the final year of its base period.

There was no equivalent provision in the House bill, but numerous witnesses who appeared before the committee pointed out the need for an adjustment based on substantial changes in capacity and stressed the discrimination which would result if an alternative basis were provided in the new product cases while no adjustment was made for substantial changes in capacity.

(*iv*) *Depressed industries.*

The bill provides a substitute average base period net income in cases where the taxpayer's industry was depressed during the base period. The World War II law contained section 722(b)(3)(A) which permitted the reconstruction of a hypothetical base period income when the taxpayer could show that the industry of which it was a part was depressed during the base period. Relief was available only when the depression was characteristic of the entire industry to which the taxpayer belonged, and this is also true of the provision contained in this bill.

The House bill made no special provision for relief for depressed industries, and it was brought to the attention of the committee that because of this omission some vital industries would have a very poor base period earnings record. Moreover, in many cases the individual firms in these industries would have an inadequate invested capital credit. Hence it appeared desirable to make special provision for the depressed industry cases.

The existence of a depression in the taxpayer's industry during the base period is to be determined by comparing the industry's average rate of return during the years 1946 through 1949 with its average rate of return during the period 1936 through 1949.

Under the bill a depressed industry is one in which the average rate of return on total assets during the years 1946 through 1949 is less than 60 percent of the average rate of return for the industry over the period 1936 through 1949. It is believed that this entrance test will confine the application of the provision to taxpayers in industries whose base period earnings were substantially below normal.

Taxpayers in such industries are permitted to use a substitute average base period net income computed by multiplying their average total assets during the base period by 80 percent of the depressed industry's average rate of return during the period 1936 through 1949.

The special alternative average base period net income for taxpayers in depressed industries is, of course, available on an elective basis.

For purposes of the depressed industry test, taxpayers will be classified in general conformity to the three-digit classification of industries used by the Treasury Department in compiling its Statistics of Income data for the years 1938 through 1947, using such combinations of subgroups as the Secretary determines are necessary to provide reasonably comparable data over the period 1936 through 1949. The taxpayer's industry classification will be the one from which it derives the majority of its gross receipts.

Since the rate of return of the taxpayer's industry classification is calculated by adding the sum of the net profits and the interest paid during the base period years and dividing by the total assets of the industry in those years, the alternative average base period net income is reduced for the average yearly interest paid or accrued by the taxpayer.

The depressed industry formula also provides relief for the type of case covered under 722(b)(3)(B) of the World War II law. These are cases in which the industry is characterized by sporadic and intermittent periods of high profits and such profits fail to appear in the base period. Hence the industry rate of return in the base period years may be expected to fall well below its long-term average. The House bill did not provide relief in cases of this type.

(v) *Other types of abnormalities in the base period.*

Section 722 of the World War II law also permitted the reconstruction of the taxpayer's base period experience on the basis of (*a*) changes in management or methods of operation (722(b)(4)), (*b*) changes in the ratio of debt capital to other capital (722(b)(4)) and (*c*) cases where a taxpayer acquired, prior to the end of the base period, all or part of the assets of a competitor with a resulting elimination or diminishment of the competition of the competitor (722(b)(4)). No specific formulas are provided for such cases under the committee's bill or under the House bill.

The construction of a relief formula for cases involving changes in management or methods of operation involves extreme technical difficulties, since the existence of changes of this type does not itself prove that the character or earning capacity of the business has been altered materially. The determination of the effect of such changes proved extremely difficult under the World War II law and involved the very type of subjective judgments which are being avoided in this bill. When changes of this type actually do result in substantially increased earnings, the effects usually appear comparatively quickly and as a result will be reflected in the average base period income of the taxpayer without special adjustment. Moreover, if such changes are accompanied by the introduction of new products or a change in plant capacity, relief is available under specific formulas contained in the bill.

Your committee has not included in this bill a relief formula based on the changes during the base period in the ratio of debt capital to other capital. At the time such relief was enacted as a part of the old section 722(b)(4), it was thought that there would be a substantial number of such cases because the base period, 1936–39, was characterized in part by recovery from a severe economic depression. This situation was not a characteristic of the base period, 1946–49, used in this bill. Moreover, your committee has been informed that a comparatively insignificant number of cases arose under the prior provision.

A reduction in debt in relation to other capital is accompanied either by a net increase in capital or a net decrease in capital with a resultant contraction in operations. In the former case, that of an addition to capital, another portion of the bill provides for an adjustment to base-period earnings to the extent that such additions were made in the latter part of the base period. With respect to the latter case, an actual contraction in operations, your committee is unable to discover any adequate reason for granting relief.

Your committee has not provided a special relief adjustment in the case of an acquisition by the taxpayer before the end of the base period of all or part of the assets of a competitor which resulted in the elimination or diminishment of the competition of the competitor. It is believed that an accurate evaluation, based on fact rather than opinion, of the extent to which earnings are affected by such a change in the competitive relations of any particular industry is virtually impossible. Moreover, if an acquisition of this type does in fact result in increased earnings to the taxpayer in the base period such earnings will be reflected in its average base period net income. If the acquisition is accompanied by an addition to capital during the latter part of the base period or a change in product or capacity, the bill provides specific relief formulas. To the extent the acquisition is not accompanied by an addition to capital but is merely the result of a shift in assets no valid claim for relief exists.

10. Alternative basis for new corporations.

Unlike the World War II law, the present bill combines the relief treatment for new corporations which commenced business during the base period with those which commenced business subsequent to the base period. In both cases an alternative average base period net income is provided which will make it unnecessary for the taxpayer to reconstruct a hypothetical base period experience as he did under section 722 of the World War II law.

Except in the case of an acquiring corporation, which is dealt with in part II of the bill, and certain ineligible corporations, an alternative average base period net income is provided for a corporation which commenced business at any time after the beginning of its base period. The alternative is computed by applying the average base period rate of return for the taxpayer's industry classification to the amount of the taxpayer's total assets. If the taxpayer's first three taxable years ended in the base period, the industry rate of return is applied to the taxpayer's total assets on the last day of the base period. This alternative net income may then be adjusted for retained earnings or net capital additions or reductions subsequent to the close of the base period. When the taxpayer's first, second, or third taxable year ends after the base period, the credit is determined for each of these years by applying the industry average base period rate of return to the taxpayer's total assets for each of such years. The credit for subsequent years is determined in a simlar manner on the basis of total assets at the close of the taxpayer's third year or its last pre-excess profits tax year, whichever is later. A new corporation also receives an adjustment for subsequent capital additions in the tax period.

Since the rate of return of the taxpayer's industry classification is calculated by adding the sum of the net profits and the interest paid during the base period years and dividing by the total assets of the industry in those years, the alternative average base period net income is reduced for 1 year's interest paid or accrued by the taxpayer.

This adjustment is, of course, available to the taxpayer at his election and provides a "floor" based on the average earnings experience of the taxpayer's industry during the base period.

The provision contained in the Finance Committee bill differs from that found in the House bill primarily because of the denial of the new corporation adjustment in certain cases where taxpayers might transfer assets between corporations in order to obtain the benefit of the industry average rate of return available to new corporations.

11. Alternative basis for growing corporations.

Recognizing that the excess profits credit based either on the average income of the best 3 years in the base period or on invested capital may not be satisfactory for corporations experiencing an unusually rapid growth during the base period, the Finance Committee bill, like the House bill, provides an alternative average base period net income for such taxpayers. This alternative is available only to a corporation which commenced business before the beginning of its base period. Corporations commencing business at a later date are provided for under the "new corporations" alternative described above.

The House bill provided that growing corporations might compute their average base period net income from the income of the last 24 or the last 12 months in the base period, whichever is higher. The Finance Committee bill contains a third alternative consisting of an amount determined on the basis of 40 percent of the taxpayer's earnings in 1950 and 50 percent of the taxpayer's earnings in 1949.

The theory upon which the alternative credit for growing business is based is that by the end of the base period taxpayers who have been in business since 1945 will have reached or be approaching maturity. This logic clearly justifies the development of an alternative average base period net income from the experience of the final year in the base period, 1949. The House report indicates that the option to use instead an average based on 1948 and 1949 resulted from recognition of the fact that in many industries the 1949 earnings were substantially lower than those for 1948. Testimony at the hearings of this committee brought out the fact that in some cases corporations which were obviously experiencing substantial growth during the base period did not reach a profitable status until 1950 and, therefore, could not obtain a real benefit under the House provision. Hence, the option permitting the taxpayer to develop an average base period net income from his experience in the years 1949 and 1950 was added, but since the committee recognized that the 1950 earnings might be inflated by the business boom which occurred during 1950 the taxpayer is required to discount its 1950 earnings experience by 20 percent.

Under the Finance Committee bill, as under the House bill, the alternative based on growth is available only if the taxpayer had total assets of not more than $20,000,000 at the beginning of its base period. This restriction is designed to exclude from the benefits of the growth provision large corporations whose earnings experience does not justify additional relief on account of growth.

A floor amendment will be offered to provide further liberalization as to the qualification for determining growth under this provision.

The committee bill has added to the limitation based on size the proviso that, when the taxpayer is one of a group of corporations meeting the test of affiliation provided in section 141 of the Internal Revenue Code, the assets of the taxpayer shall be added to those of the other "affiliated" corporations for the purpose of the limitation in question. Corporations which are "affiliated" in this manner are eligible to file consolidated returns, and the aggregation of their assets for the purpose of this test is necessary in order to prevent discrimination against affiliated corporations which elect to file consolidated returns.

In addition to meeting the assets test described above, a corporation desiring to use the alternative based on growth must qualify under a test designed to limit the benefits of the provision to corporations experiencing a degree of growth during the base period substantially in excess of the growth of industry in general. For this purpose two indices are used: Payrolls and gross receipts. If the taxpayer's total payroll for the last half of the base period is 130 percent or more of its total payroll during the first half of the base period, it can qualify as a growing corporation. However, a taxpayer who fails to meet the payroll test may qualify if its gross receipts for the last half of its base period are 150 percent or more of its gross receipts for the first half of its base period. The use of the alternative gross receipts test is justified by the fact that a corporation may increase its physical volume of production materially by introducing additional equipment and new operating procedures which do not involve a corresponding increase in its labor force. The percentages used in the payroll and gross receipts tests are sufficiently large so that only those taxpayers will be able to qualify whose business has grown substantially more rapidly than the average during the base period years.

The World War II law contained a much more general adjustment for growth in the base period. The so-called growth formula used under that law permitted the taxpayer to use as an alternative credit computed by adding to the average income of the last half of the base period 50 percent of the difference between the average income for the first and second halves of the base period, subject to the limitation that the alternative credit could not exceed the net income of the highest taxable year in the base period. While this formula may have been useful as a device for providing relief for corporations experiencing unusually rapid growth under the conditions which existed from 1936 through 1939, the application of the formula in the years 1946 through 1949 would benefit many taxpayers whose growth was no more than average and would result in the widespread use of the year 1948 as the sole basis for the calculation of the base-period income credit. The alternative bases provided in this bill will bring relief only to corporations which can qualify under tests which indicate clearly that the corporation was growing substantially more rapidly than business in general.

12. Carry-overs of net operating losses and unused excess profits credits.

The bill permits the use of the net operating loss carry-back and carry-forward in calculating the net income of an excess profits tax year. With the exceptions discussed below the same rule is used as under the corporate normal tax and surtax, that is, the carry-back is limited to 1 year and amounts not so absorbed are carried forward until exhausted over a period of not more than 5 years. This compares with a carry-back of 2 years and a carry-forward of 2 years used under the World War II law after 1942. Thus the averaging period under the bill will be 7 years as compared with 5 years under the previous law. The change will reduce materially the discrimination that might arise against corporations experiencing unusual fluctuations in income during the excess profits tax period and cuts down the need for the reallocation of income between individual excess profits tax years.

Generally, a net operating loss in the base period can be carried forward to the excess profits tax period under the formula described above. This follows the provision in the House bill. However, it was pointed out at your committee's hearings that in some cases taxpayers incurring substantial operating losses in the early years of the base period have not been able to offset such losses against the earnings of prior years. They would thus be unable to carry them forward into the excess profits tax period because the change from a 2-year carry-forward to a 5-year carry-forward was not made until 1950. Therefore, the committee's bill provides, at the election of any taxpayer using the base period credit, for the carry-forward to the years 1950 and 1951 of losses during the base period which have not otherwise been offset against the income of later years.

The net operating loss carry-over or carry-back is not used for computing the excess profits tax net income of the taxpayer in its base period years. Since all taxpayers are permitted to select the best 3 out of a possible 4 years in their base period, and since a number of taxpayers are permitted to base their credit on the experience of one or two of their base period years, the application of the loss carry-over would be undesirable because it would reduce the income of the years which have been selected as an appropriate test of the taxpayer's normal earning power by adjustment for losses in the other years, including years outside the base period itself.

Like the World War II law this bill provides for a carry-back and carry-forward of an unused excess profits credit. The carry-back is for 1 year and the carry-forward for 5, thus producing the same 7-year averaging period used under the net operating loss carry-over for both income and excess profits tax purposes. The unused excess profits tax credit adjustment under the World War II law was limited to a carry-back of 2 years and a carry-forward of 2 years, thus producing an averaging period of 5 years which conformed to the net operating loss carry-over provisions of that law.

For a taxable year beginning before July 1, 1950, and ending after June 30, 1950, the unused excess profits credit is the same percentage of such credit, computed as if all of such year were subject to the excess profits tax, which the number of days in the taxable year after June 30, 1950, bears to the total number of days in the year.

The bill provides that any unused portion of the $25,000 minimum credit shall not be counted for purposes of the unused excess-profits carry-over.

An unused excess-profits credit cannot be carried back from a period after a corporation has distributed substantially all of its assets.

IV. Other Important Provisions

1. Minimum credit for certain regulated industries.

Your committee's bill provides a minimum excess profits tax credit which is available for taxpayers in certain specified types of regulated industries. This credit is an alternative to the average earnings credit and the invested capital credit for such taxpayers.

In general, this minimum credit consists of 6 percent or 7 percent of the sum of the equity capital, retained earnings, borrowed capital, the corporate normal tax and surtax payable by the corporation for the taxable year in question, less interest payable on the borrowed capital. Equity capital and retained earnings of the regulated industries availing themselves of this alternative credit are reduced by the so-called inadmissible assets (discussed elsewhere in this report). However, the normal tax and surtax under your committee's bill are not reduced by inadmissible assets.

The 6 percent rate of return is available to regulated industries supplying the following types of services or products:

(*a*) electric energy,

(*b*) gas,

(*c*) water,

(*d*) transportation on an intrastate, suburban, municipal, or interurban electric railroad, trolley system, or bus system, or

(*e*) transportation by trucks or busses,

where the rates charged by such corporations are subject to regulation by a governmental body.

The 6 percent rate of return is also available to a regulated industry supplying the following types of services or products:

(*a*) transportation of oil or other petroleum products or gas by pipeline if the corporation is subject to the jurisdiction of the Interstate Commerce Commission or the Federal Power Commission, and

(*b*) railroads regulated by the Interstate Commerce Commission.

(*c*) transportation by water subject to the jurisdiction of the Interstate Commerce Commission or the Federal Maritime Board under the Intercoastal Shipping Act of 1933.

The 7 percent rate of return is available to regulated industries supplying the following types of services or products:

(*a*) telephone and telegraph services where the rates charged are subject to regulation by a governmental body, or

(*b*) air transportation subject to the jurisdiction of the Civil Aeronautics Board.

In the case of interstate trucking, busses and railroads, and in the case of air transportation the equity capital and retained earnings on which the rate of return is computed under this alternative credit is the same as that of an ordinary corporation determining the value of its assets under the "asset approach." In the case of all other regulated industries receiving the benefits of this provision where the corporate books of account are maintained in accordance with systems prescribed by a regulatory body or maintained in accordance with the uniform systems prescribed by the Federal Power Commission or the National Association of Railway and Utilities Commissioners, the equity capital and retained earnings are the sum of the average outstanding common and preferred capital stock accounts and the capital surplus and earned surplus accounts as shown on the corporation's books.

The use of this alternative credit, in addition to being limited to corporations supplying the types of services or products described above, is limited to corporations deriving 80 percent or more of their gross income from regulated sources. Where a public utility supplies services or products in one or more "interconnected and coordinated" systems and where the regulation to which the corporation is subject in part of its operating territory in effect controls rates in the unregulated territory, and these rates are as favorable to the users in the unregulated territories as the rates in the regulated territory, the whole "interconnected and coordinated" system or systems are considered to be regulated.

Since only some of the members of an affiliated group eligible to file a consolidated return may be regulated industries to which the special alternative credit is available, your committee found it necessary to specify in the bill how consolidated returns should be handled in such cases. In the case described above the regulated industries which are eligible for the minimum credit may be split-off and one consolidated return may be filed for one of the groups. If, however, all the members of the affiliated group in such a case file a single consolidated return, none of the regulated industries involved may claim the special minimum credit.

Although maintaining the basic structure of the alternative credit provided in the House bill for regulated industries, your committee has revised the House provision considerably as the result of testimony on this provision of witnesses appearing in the committee hearings. Probably the most important change is that raising the rate of return allowed airlines from 5 percent to 7 percent, that allowed telephone and telegraph services from 6 percent to 7 percent, and that allowed railroads from 5 percent to 6 percent. Your committee believes that this revision of rates is more nearly in line with the rates provided by the respective regulating agencies than the rates provided by the House bill. Another major change from the House bill is that providing that most of the utilities may compute their equity capital and retained earnings in the manner provided by their regulating bodies rather than by the means provided for ordinary corporations using the invested capital base. Your committee believes that it is desirable to allow corporations to compute their rate of return in this manner since this is a basis on which their rate of return is computed for regulatory purposes by other governmental bodies and also because these corporations are more familiar with this type of computation.

Your committee also found that in some States regulation of utilities is delegated to local authorities with the result that some utilities are regulated in urban but not rural areas. Nevertheless, in these cases the rates charged in the regulated areas generally determine the rates in the unregulated areas. This accounts for the fact that your committee has changed the House bill to provide that utilities of this type are to be considered regulated utilities for the purposes of this alternative credit. In other cases utilities carry on one or more of the regulated services described previously but also carry on some subsidiary activity which is not subject to regulation. For example, an electric utility may well carry on a small coal-mining operation along with the supplying of electrical energy. It was to provide for such cases that your committee changed the House bill to grant the minimum credit to industries where the regulated services represent 80 percent or more of the total gross receipts of such a company.

The effect of this minimum credit is to give assurance that an excess profits tax will not be imposed on the specified regulated industries until after they earn a rate of return of 6 percent or 7 percent after paying corporate normal taxes and surtaxes (including the 2 percent additional tax for consolidated returns). Your committee believes that this is appropriate in view of the fact that the profits of these industries in the base period years were held down well below the profits earned by unregulated industries. Moreover, there is considerable evidence that rate adjustments for these industries lagged considerably behind increases in their costs of doing business. Your committee also believes that where industries are regulated by governmental bodies providing only a fair rate of return it is undesirable to consider profits allowed by such regulatory bodies as excessive for purposes of an excess profits tax, especially where the corporations are held to a relatively low rate of return. However, it should be clear that in establishing the rates of return provided by this minimum credit your committee is not in any way attempting to set a rate of return which would be proper for regulative purposes but only is concerned with the problem of establishing uniformity for purposes of determining income which should be subjected to excess profits tax.

2. Exemption of strategic minerals from the excess profits tax.

An exemption is provided under your committee's bill for domestic corporations mining "strategic" minerals with respect to the income attributable to such mining in the United States.

"Strategic" minerals as used in this provision include antimony, chromite, manganese, nickel, platinum (including the platinum group metals), quicksilver, sheet mica, tantalum, tin, tungsten, vanadium, fluorspar, flake graphite, vermiculite, long-fiber asbestos in the form of amosite, chrysolite or crocidolite, beryl, cobalt, columbite, corundum, diamonds, kyanite (if equivalent in grade to Indian kyanite), molybdenum, monazite, quartz crystals, and uranium. In addition "strategic" minerals include any other minerals which the agency created to carry out the duties under section 303(a) of the Defense Production Act of 1950 certifies as being essential to the defense effort of the United States and as not being normally produced in appreciable quantities in the United States.

This provision is the same as that in the House bill except that molybdenum has been added to the list of exempt minerals by your committee because of its strategic importance to defense production.

The World War II statute provided for the exemption of antimony, chromite, manganese, nickel, platinum, quicksilver, sheet mica, tantalum, tin, tungsten, fluorspar, flake graphite, vermiculite, and vanadium. The additional minerals exempted by the House bill were included after consultation with the National Security Resources Board.

The House bill also provided for the exemption of certain "critical" minerals. "Critical" minerals under the House bill were described as minerals which the agency administering the Defense Production Act of 1950 certifies as essential to the defense effort and which are mined from—

(1) Mineral properties developed and brought into production after June 25, 1950, or

(2) Mineral properties not in production on June 25 but in production prior to that date, or

(3) Mineral properties from which during the period 1946 to 1949 the income was less than the deductions.

Your committee's bill includes no provision for the exemption of any critical minerals, because it is believed that marginal producers of critical minerals, with which the House bill was primarily concerned, can better be provided an incentive to produce by provision for subsidies or bonus payments. Moreover, the provision described below dealing with the exemption of a portion of the income from the so-called excess output of mining properties will provide substantial relief for these critical minerals.

3. Exempt income from certain mining and timber operations and from natural gas properties.

Your committee's bill, like the House bill, continues the relief which was provided by section 735 of the World War II statute with respect to certain mining, timber, and natural gas properties. The relief under this provision is provided by exempting from excess profits tax a certain portion of the current income from these properties. Generally this portion is determined by multiplying the normal unit profit during the normal period 1946 to June 30, 1950 (1936 to 1939 in the case of the World War II statute) by a specified proportion of current production in excess of normal output during the base period. In the case of coal and iron mines, timber properties, and natural gas properties, the exempt portion is determined by multiplying current excess production by one-half of the current net income per unit.

The World War II statute also contained a provision providing partial exemption for coal and iron mines and timber properties not in operation during the base period. One-sixth of the net income in the current taxable year of these properties was exempt from excess profits tax. The House bill continued this provision without change. Your committee's bill makes several changes in this provision. The exemption from excess profits tax for properties coming under the provision is increased from one-sixth to one-third of the net income from such property in order to provide a greater incentive for the opening up of new properties. Natural gas and metal mining properties not in operation during the normal period (the taxable years included in the period January 1, 1946, to June 30, 1950) also are given the benefits of this provision in order to place them in a similar tax position with competitive properties in operation during the base period. Metal mining properties in operation in the normal period but having an aggregate loss for this period are also given the relief provided by this provision.

The House bill contained a provision which duplicated section 735(c) of the World War II law. The effect was to exempt from the excess profits tax certain bonus payments made by agencies of the United States Government for the production of minerals and timber in excess of a specified quota or for the recovery of mineral products from mine tailings in certain specified cases. The language used in the House bill obviously reflects the system of incentive payments used during World War II. Since the methods of stimulating the extractive industries during the current emergency have not yet been spelled out, the committee's bill substitutes a provision which is couched in much more general language. The provision referred to is section 433(a)(1)(P), which exempts amounts paid to the taxpayer by the United States or any of its agencies for the encouragement of exploration, development, or the mining of critical and strategical minerals or metals. This exemption is applicable whether the payment is made by grant or loan and whether or not it is repayable.

4. Foreign corporations and income from abroad.

(*a*) *Resident and nonresident foreign corporations.*—For income tax purposes foreign corporations are divided into two groups: Resident and nonresident foreign corporations. Nonresident foreign corporations are subject to income tax only on certain income derived from sources within the United States. This income is taxed at a uniform rate of 30 percent without deductions. Resident foreign corporations are subject to income taxes upon all income derived from sources within the United States at the rates applicable to domestic corporations.

The 30 percent gross income tax on nonresident foreign corporations is imposed rather than the ordinary corporate income tax since the jurisdiction of the United States over such corporations is limited to the sources of their income which are within the United States. The lack of jurisdiction over the corporation itself not only precludes the imposition of a tax upon the net income of nonresident foreign corporations but also the imposition of an excess profits tax. Therefore, your committee's bill, like the House bill, follows the precedent of the World War II statute and specifically exempts such corporations.

Resident foreign corporations are subject to the excess profits tax under your committee's bill and the House bill as under the World War II statute. If such corporations were nonresident foreign corporations during any of the base period years, only the invested capital credit is available to them. This was also the case under the World War II statute.

(*b*) *Corporations deriving most of their income from United States possessions.*—Although section 251 corporations—that is, corporations deriving a large portion of their income from sources within the possessions of the United States—are domestic corporations, they, like resident foreign corporations, are subject to Federal taxation only upon income derived from sources within the United States. Therefore, your committee's bill like the House bill follows the precedent of the World War II statute and gives these corporations the same excess profits tax treatment as resident foreign corporations.

(*c*) *Western Hemisphere trade and similar corporations.*—The World War II statute provided an exemption for a domestic corporation where 95 percent or more of its income over the last 3 years was derived from sources outside the United States, and where 50 percent or more of its gross income was derived from the active conduct of a trade or business. Although not limited to Western Hemisphere trade corporations, any such corporation, not filing a consolidated return with another domestic corporation, was effectively exempted from excess profits tax under this provision. Your committee's bill like the House bill continues this exemption. This is consistent with the preferential treatment conferred on Western Hemisphere trade corporations under income tax law.

Your committee's bill has also amended the provision relating to the filing of consolidated returns to provide groups of affiliated corporations with the opportunity to make a new decision as to whether or not they desire to file a consolidated return with respect to taxable years ending after June 30, 1950. While this provision is not limited to affiliated groups including a Western Hemisphere trade corporation, its primary effect will be to give such groups an opportunity to file a separate return for their Western Hemisphere trade corporation, and thus receive an exemption from the excess profits tax with respect to the income of such a corporation.

(*d*) *Dividends received from foreign corporations.*—Under World War II law, dividends received from foreign corporations by domestic corporations were included in the excess profits tax net income of average-earnings taxpayers both for the base and tax period. On the other hand, they were not included in the excess profits net income of invested capital taxpayers in the tax period but the stock in the foreign corporation was excluded from invested capital. The inclusion of dividends from foreign corporations in the excess profits tax net income of the average earnings taxpayer tends to discourage the return of this income to the United States, even though business purposes might dictate such a transfer. Your committee believes that both the average earnings credit taxpayer and the invested capital taxpayer should be treated the same. Accordingly foreign dividends are excluded from excess profits net income in the tax period in both cases. In addition, such dividends are excluded from the base period income of the average earnings taxpayer, and the foreign stock is excluded from invested capital in the case of the taxpayer computing his tax in this manner.

(*e*) *Foreign tax credit.*—Under your committee's bill, as under the World War II statute, domestic corporations operating branches abroad are subject to excess profits tax on the income derived from such branches in the year in which it is earned. However, any taxes paid a foreign country with respect to such foreign operations which is in excess of the tax credit allowed by the United States for purposes of the normal tax and surtax is allowed as a credit against excess profits tax subject to certain limitations. The tax treatment accorded branches is the same as that provided by the House bill and the World War II statute.

(*f*) *Blocked income.*—Taxpayers deriving income from sources within a foreign country are permitted under the bill to exclude such portion of the income as would, but for monetary, exchange, or other restrictions imposed by the foreign country, have been includible in the gross income of the taxpayer prior to its first excess profits tax year. Because of the practice of foreign nations in past years to impose restrictions on the conversion of foreign earnings into dollars, income properly attributable to the base period years would be included in net income for excess profits tax purposes in the event that such income becomes convertible into dollars. Your committee believes that it would be unfair to subject such past profits to excess profits tax.

The Secretary is directed to prescribe rules for a reasonable allocation of the blocked income which arose prior to the end of the base period in cases where specific identification cannot be made.

A special rule is provided for the reallocation of income which arose during the first excess profits tax year but became "unblocked" in later years. Such an adjustment is necessary because of a difference in the amount of tax imposed.

Deductions properly allocable to income which is excluded under this provision are not allowed.

The "blocked income" provision was added to the bill by a floor amendment in the House. With the exception of the clarifying amendment permitting the Secretary to establish rules for the allocation of income in doubtful cases, the provision in the committee bill conforms with the floor amendment.

5. *Optional exemption for certain air-mail subsidies in the case of airlines.*

Airlines, under your committee's bill, may exclude air-mail subsidies paid by the Federal Government if the airlines have no adjusted excess profits tax net income when these air-mail subsidies are not taken into consideration. It has been pointed out that a 7 percent rate of return on total assets, which is the rate provided for airlines under the minimum credit for regulated industries, is substantially below the rate of return allowed by the Civil Aeronautics Board in the case of overseas airlines. The exclusion of air-mail subsidies as described above was a part of the World War II statute. Therefore, your committee has restored this World War II provision. The House bill contains no such provision.

6. *Personal-service corporations.*

The World World War II law provided that personal-service corporations could elect to be exempted from the excess profits tax if the stockholders of such corporations agreed to take up as part of their income for individual-income-tax purposes the pro rata share of the undistributed profits of the personal-service corporations. This did not, however, exempt a personal-service corporation from the corporate normal tax or surtax. A personal-service corporation was defined as a corporation whose income was to be ascribed primarily to the activities of shareholders who are regularly engaged in the active conduct of the affairs of the corporation and who are the owners of at least 70 percent of the stock of the corporation. Your committee's bill, like the House bill, retains this provision of the World War II statute unchanged.

7. *Merchant Marine Act.*

(*a*) *Corporations completing contracts under this Act.*—Under section 505 of the Merchant Marine Act, 1936, as amended, if any contracting party in its taxable year completes one or more contracts or subcontracts for the construction of a vessel under this Act, it is required to pay to the Maritime Board any profit in excess of 10 percent of the total contract prices of the contracts and subcontracts. These profits paid to the Maritime Board, together with all other receipts of the Board, are placed in a revolving construction fund and are available for further ship construction.

As a general rule under your committee's bill the amount received by the contracting party and recaptured by the Maritime Board will be excluded in computing the excess profits tax. An alternative computation requires the taxpayers to increase their excess profits net income and normal tax net income by the amount of the payments to the Maritime Board. The tax computed upon this basis is then reduced by the amount of such payments, and the remainder constitutes the tax which is to be paid, if it is less than the tax computed under the first method. This tax treatment is the same as that accorded by the House bill and the World War II statute.

(*b*) *Tax treatment of shipper's funds authorized under the Act.*—Under titles V and VII of the Merchant Marine Act, certain statutory reserve and construction funds are authorized wherein shippers are required or permitted to make deposits of vessel earnings and certain gains from the requisitioning, sinking, or other disposition of vessels. These deposits are intended to provide for the replacement of American merchant vessels and to insure performance of certain contractual obligations under agreements with the Maritime Administration and other agencies of the Government. Under the House bill, these funds are not included in the shippers' invested capital credits or their average earnings bases. Since these funds belong to the shippers, your committee believes that it is inequitable to exclude them in the computation of their excess profits credits. Therefore, your committee's bill has amended the House bill to provide that deposits of this type (other than capital gains) made during the base period shall be included in the taxpayer's income to the extent that they exceed the deposits by each such taxpayer in the current taxable year. In the case of the invested capital credit, your committee's bill provides that all of these deposits made by any taxpayer prior to its current taxable year shall be included in computing its invested capital credit in the same manner as retained earnings of the ordinary corporation using the invested capital credit. However, the invested capital credit with respect to such additions is to be reduced to the extent that the additional credit is offset by additional deposits during the current taxable year.

8. Special provisions relating to the excess profits tax credit for railroad corporations.

The House bill provides that where substantially all of the properties of one railroad have been leased to another railroad prior to July 1, 1950, under a lease for more than 20 years, which requires the lessee railroad to pay the Federal income taxes of the lessor railroad, the excess profits tax credit may be "equitably apportioned" between the corporations pursuant to an agreement between the corporations which is approved by the Secretary of the Treasury. Your committee's bill has retained this provision but amended it to provide the same treatment for leases where the leases are automatically renewed and where the whole term, including the renewal period, exceeds 20 years. Where such leases have been first entered into prior to December 31, 1950 (changed from July 1, 1950, in the House bill), they are to be considered as having been entered into prior to such date even though renewed after such date. Your committee's bill also makes the benefits of this provision available where more than one lessee is involved.

Your committee has added another provision to the bill providing that the invested capital credit of a railroad (formerly a lessor) shall include the fair value of betterments and additions made by a lessee railroad to property of the lessor railroad if the lease has been canceled.

9. Recomputation of the earnings credit in the case of corporate reorganizations.

In the case of certain corporate reorganizations during the base period or subsequent to the base period, the experience of the corporation prior to the reorganization may be aggregated for purposes of determining excess profits credits based on earnings. This is provided for in part II of the excess profits tax subchapter. In general the reorganizations dealt with in part II are the type with respect to which gain or loss is not recognized. In addition to the general type of case where substantially all the assets of one corporation are taken over by another corporation, part II provides rules for the recomputation of base period net income in the case where substantially all the assets of a partnership or a sole proprietorship are acquired by a corporation and in cases where only part of the assets of the partnership are placed in a corporation or where only part of the assets of the corporation are split off into a new corporation.

Your committee's amendment of part II makes it clear that part II also covers those corporate reorganizations under section 112(g)(1)(D) which are commonly known as split-ups, where the assets of a corporation are split up among two or more new corporations followed by the liquidation of the corporation originally transferring the assets. The inclusion by your committee in the definition of this type of transaction in section 461(a) of a reference to section 112(b)(4) is sufficiently broad to cover this type of a case, as well as the case where the transferring corporation, following a transfer in a reorganization of only a part of its properties in exchange for the stock of the acquiring corporation, retains that stock as its own. Your committee's amendment also changes the above definition so as to exclude transfers of assets by a corporation which is exempt from income tax under section 101 of the Code.

The House bill provided that a corporation did not meet the definition of an acquiring corporation within the meaning of part II even though it acquired substantially all the properties of another corporation and the sole consideration for the transfer was voting stock in the corporation which acquired the properties unless the corporation transferring the assets was forthwith completely liquidated in pursuance of the plan under which the acquisition was made. Your committee's amendment of part II drops the requirements that the corporation transferring the properties be forthwith liquidated.

In general, if all the properties of the corporation are taken over by another corporation in an exchange to which part II is applicable. the old corporation is no longer entitled to use its business experience prior to the exchange for purposes of computing average base period net income. Instead, the corporation which acquires the properties may use the experience of the corporation which gave them up if this will result in a lower tax for the acquiring corporation. In a case where only part of the assets of a corporation go over to a new corporation in an exchange in which gain or loss is not recognized, the old corporation loses that portion of its base period experience which is allocable to the assets it loses in the exchange, and the acquiring corporation may utilize such experience in computing its average base period net income.

Where a corporation computes its excess profits tax credit simply on the basis of its excess profits net income during the base period, the effect on part II is to provide that, after the corporation acquires assets in an exchange described in part II, it shall recompute its excess profits net income for each month of the base period prior to the exchange by combining its own earnings experience during those months with the earnings experience of the corporation whose assets it acquired. If the corporation whose assets were acquired was not in existence during a month in the base period in which the acquiring corporation was in existence, then the recomputation described above is made by combining the earnings of the acquiring corporation with 1 percent of the equity capital of the corporation whose assets were acquired (after adjustment for inadmissible assets).

In addition to providing rules for the recomputation of excess profits net income for purposes of the earnings credit, part II also provides for the recomputation of excess profits net income and the attribution of payroll, gross receipts, and total assets in the case of the alternative earnings credit based on growth. It provides rules for the recomputation of excess profits net income and rules for the determination of average base period net income in the case of part II transactions involving corporations with base period abnormalities. It also provides rules for the computation of average base period net income in the case of part II transactions involving corporations which have had changes in the products or services furnished during the base period, corporations which have had increases in capacity for production or operation during the base period, new corporations, and corporations which were members of depressed industries during the base period. Your committee's amendment has added the provisions dealing with base period abnormalities, changes in products or services, increases in capacity, and depressed industries, and it has also revised the treatment in the House bill with respect to the growth alternative and with respect to new corporations. In one particular, the treatment of acquiring corporations in part II transactions with respect to the growth alternative has been revised so as to make it clear that a corporation which is created incident to a part II transaction is not denied the growth alternative by reason of being a new corporation.

In the case of the type of exchange described in part II in which the assets of one corporation are split among two corporations the base period earnings experience of the one corporation prior to the exchange is allocated among the corporations in business after the exchange in proportion to the fair market value of the assets of the old corporation which are held by each of the corporations after the exchange. The House bill permitted allocation of the earnings experience in different proportion if all the parties to the reorganization agreed to the different allocation and the Secretary consented to it. Your committee's amendment of part II clarifies the allocation provisions by permitting the determination of the fair market value of the properties involved and the determination of the division of such value among the parties by agreement between the parties to the transaction with the Secretary's consent and by permitting, in lieu of an allocation based on fair market value, an allocation based on the earnings experience of the assets transferred where the parties to the transaction agree to the allocation and it is established to the satisfaction of the Secretary that the allocation fairly represents an identifiable earnings experience of each group of assets transferred or retained. Your committee's amendment retains the provision of the House bill that the allocation as among the component corporation and any acquiring corporations shall not exceed 100 percent of the excess profits net income (or average base period net income) of the corporation whose assets are transferred, but your committee's amendment provides an exception to this rule in the case where part of the assets of a partnership were transferred to a component corporation or corporations in a part II exchange which occurred before December 1, 1950. In such a case the earnings experience of the assets transferred may be used in the determination of excess profits net income by the acquiring corporation even though this earnings experience may represent an amount in excess of the net income of the partnership while it held the assets, if it is established to the satisfaction of the Secretary that such an allocation represents an identifiable earnings experience of such transferred assets.

In order to prevent double counting of base period earnings experience in applying the recomputation rules provided by part II, the Secretary is authorized to issue regulations providing for reduction of the average base period net income of the taxpayer and adjustments of transferred capital additions and reductions to the extent necessary in cases where, in general, the taxpayer acquired stock in a component corporation for other than its own stock. This provision is carried over from the World War II law and serves to prevent a taxpayer using assets which have had a base period earnings experience in its hands from purchasing stock of a corporation holding other assets which have similarly had a base period earnings experience and subsequently acquiring that latter experience by reason of a part II transaction. The situations where the possibility of double counting may arise are complex. Certain cases have been brought to the attention of your committee where, despite the complexity of the facts, it would appear that double counting was not involved. In view of the difficulty of this question, however, the matter can only be determined in accordance with regulations.

Your committee's amendment extends the principle of carrying over to an acquiring corporation the experience of a component corporation during the base period by providing that, in the case of part II transactions before December 1, 1950, abnormal income received in the tax period which is attributable to a year of the component corporation during or prior to the base period shall be treated in the same manner as though the business of the component during such period had been the business of the acquiring corporation.

Adjustment is provided for both net capital additions during the last 2 years of the base period and net capital additions and reductions after the close of the base period in the case of parties to an exchange described in part II. Your committee's amendment revises the provisions of the House bill dealing with net capital additions and net capital reductions in the case of part II transactions so as to conform them with the other amendments of your committee dealing with the treatment of capital additions and reductions of taxpayers using the earnings credit. The amendment also revises the treatment of the base period capital conditions in the case of part II transactions so as to provide more specific rules and so as to conform with the amendments dealing with the treatment of base period capital additions of earnings credit taxpayers in general.

10. Basis for computation of the invested-capital credit after intercorporate liquidations.

Part III of the excess profits tax subchapter provides rules for the determination of the invested capital in the case of certain exchanges and liquidations. These rules correspond to those provided by supplement C of the World War II law.

(No section-by-section analysis of the bill is presented.)

1951-3-13537

EXCESS PROFITS TAX ACT OF 1950

[House of Representatives Report No. 3231, Eighty-first Congress, Second Session]

[December 22, 1950]

Mr. Doughton, from the committee of conference, submitted the following conference report [to accompany H. R. 9827]:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 9827) to provide revenue by imposing a corporate excess profits tax, 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. 9827) to provide revenue by imposing a corporate excess profits tax, 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 provides that the excess profits tax imposed by the bill shall not apply to taxable years beginning on or after January 1, 1953. The House recedes with an amendment providing that the tax shall not apply to taxable years beginning on or after July 1, 1953.

Amendments Nos. 2 and 3: These amendments are clerical. The House recedes.

Amendment No. 4: The House bill provided that the excess profits tax shall not exceed an amount which when added to the normal tax and surtax for the taxable year is equal to 67 percent of the corporation's surtax net income. The Senate amendment provides that the tax shall not exceed an amount equal to the excess of 60 percent of the excess profits net income for the taxable year over the normal tax and surtaxes which would be imposed for the taxable year if the tax base applicable to the normal tax and surtax were the amount of the excess profits net income. The House recedes with an amendment substituting 62 percent for the 60 percent provided in the Senate amendment.

Amendment No. 5: This amendment is clerical. The House recedes.

Amendment No. 6: The Senate amendment provided for computation of the tax in the case of a fiscal year beginning before January 1, 1953, and ending after December 31, 1952. The House recedes with an amendment conforming to the action taken on amendment No. 1.

Amendment No. 7: This amendment is clerical. The House recedes.

Amendment No. 8: This amendment strikes out the provision in the House bill which provided certain rules with respect to payment of the tax in the case of taxpayers claiming the benefit of certain relief provisions contained in the House bill. The rules to be applied in such case are contained in the provisions inserted by Senate amendment No. 144. The House recedes.

Amendment No. 9: This amendment provides a number of cross references. The House recedes.

Amendments Nos. 10 and 11: These amendments are clerical. The House recedes.

Amendment No. 12: This amendment provides that there shall be no unused excess profits credit for a taxable year beginning after the last taxable year for which the excess profits tax is imposed. The House recedes with an amendment conforming to the action taken on amendment No. 1.

Amendment No. 13: This amendment provides that the unused excess profits credit for any taxable year shall be computed without regard to the deduction allowed for the year under section 23(s) of the Internal Revenue Code, relating to net operating losses. The House recedes.

Amendment No. 14: This amendment provides for the computation of the unused excess profits credit for a taxable year beginning before January 1, 1953, and ending after December 31, 1952. The House recedes with an amendment conforming to the action taken on amendment No. 1.

Amendment No. 15: This is a technical amendment. The House recedes.

Amendment No. 16: This amendment provides, in effect, that there shall not be an unused excess profits credit carry-back for any period during which the taxpayer has distributed substantially all of its assets in liquidation or for any period during which the taxpayer has converted substantially all of its assets into assets not held in good faith for the purposes of the business. The House recedes.

Amendment No. 17: This amendment strikes the provision of the House bill which excluded, for purposes of computing excess profits net income for taxable years ending after June 30, 1950, certain gains and losses to which section 117(j) of the Internal Revenue Code is applicable. Under the House bill, there would be excluded losses, as well as gains, from the voluntary sale of property used in the trade or business, but losses resulting from fire, theft, flood, and similar casualties would be allowed. The effect of the Senate amendment is to allow certain losses from the voluntary sale of business properties as ordinary losses, which the House provision would have disallowed. The House recedes. The conferees, however, have agreed that the treatment for excess profits tax purposes of section 117(j) losses is a subject matter which must have further study.

Amendment No. 18: This amendment makes a clarifying change in the provision of the House bill dealing with exclusions of income attributable to the recovery of bad debts. The House recedes.

Amendment No. 19: This amendment provides for the amount of the adjustment to be made of the normal-tax net income in the case of an insurance company computing the excess profits credit based upon invested capital. The House recedes.

Amendments Nos. 20, 21, 22, 23, 24, 25, 26, and 27: These are clerical amendments. The House recedes.

Amendment No. 28: The House bill provided an adjustment, in computing excess profits net income, for the net operating loss adjustment. The Senate amendment (1) strikes out this provision of the House bill, (2) makes appropriate amendments in the adjustment to reflect the changes made by the Senate with respect to borrowed capital, and (3) provides, at the election of any taxpayer using the base period credit, for the carry forward to the years 1950 and 1951 of losses during the base period which have not otherwise been offset against the income of other years.

The House recedes with an amendment to allow any taxpayer computing invested capital by means of the historical credit also to carry forward to 1950 and 1951 losses during the base period which have not otherwise been offset in other years.

Amendment No. 29: The House bill provides that in the case of long-term leases, where the lessee is obligated to pay taxes imposed upon the lessor with respect to the rentals thereunder, such taxes shall be excluded by the lessor, and shall not be deducted by the lessee, in computing excess profits net income. The Senate amendment provides that the term of a lease of railroad properties entered into prior to December 1, 1950, shall include the years for which such lease may be renewed or continued. The House recedes.

Amendment No. 30: This is a clerical amendment. The House recedes.

Amendment No. 31: This amendment makes a clarifying change in the provisions relating to the treatment of blocked income. The House recedes.

Amendment No. 32: This is a clerical amendment. The House recedes.

Amendments Nos. 33 and 34: These are conforming amendments to the treatment accorded borrowed capital under Senate Amendment No. 124. The House recedes with an additional conforming amendment.

Amendment No. 35: This amendment provides that, in computing excess profits net income, adjustment shall be made to exclude any payments made to a taxpayer by the United States or any agency or instrumentality thereof for the encouragement of exploration, development, or mining of critical and strategic minerals or metals for defense purposes. The House recedes.

Amendments Nos. 36 and 37: These are clerical amendments. The House recedes.

Amendments Nos. 38, 39, and 40: These are conforming amendments to Senate amendments Nos. 190 to 195. The House recedes.

Amendment No. 41: This is a clerical amendment. The House recedes.

Amendment No. 42: This amendment strikes out a provision of the House bill, the principle of which is set forth in section 441(h), as added by Senate amendment No. 128.

Amendment No. 43: This is a clerical amendment. The House recedes.

Amendment No. 44: This amendment strikes out a provision of the House bill, the principle of which is set forth in section 441(h), as added by Senate amendment 128.

Amendment No. 45: This is a clarifying amendment. The House recedes with an amendment relating to the treatment of abnormal deductions arising in different taxable years from the same extraordinary event (such as claims and awards arising in different taxable years from a single fire).

Amendment No. 46: This is a clarifying amendment. The House recedes.

Amendment No. 47: This is a technical amendment striking out as unnecessary a House provision. The principle expressed in this provision, of not treating as an abnormal deduction increased payrolls in the case of a growing corporation, is covered by other provisions of the same section of the bill with respect to all types of deductions which may be the cause or consequence of increased income. The House recedes.

Amendment No. 48: The House bill provides that in the case of long-term leases, where the lessee is obligated to pay taxes imposed upon the lessor with respect to the rentals thereunder, such taxes shall be excluded by the lessor, and shall not be deducted by the lessee, in the computation of average base period net income. The Senate amendment provides that the term of a lease of railroad properties entered into prior to December 1, 1950, shall include the years for which such lease may be renewed or continued. The House recedes.

Amendment No. 49: This amendment provides that with respect to banks the deduction for FDIC assessments in the taxpayer's base period years will be reduced proportionally with the credit allowed, pursuant to Public Law 797 of the Eighty-first Congress, against the FDIC assessment in the excess profits tax year. The House recedes.

Amendment No. 50: This amendment adds to section 433(b) of the bill as it passed the House a new paragraph (14) which provides, for purposes of computing average base period net income in the case of a life insurance company, that there be deducted from the normal-tax net income an amount equal to the excess of (1) the product of (A) the figure determined and proclaimed under section 202(b) of the Internal Revenue Code and (B) the excess profits net income computed without regard to the paragraph, over (2) the adjustment for certain reserves provided in section 202(c) of the Code. This provision is comparable to section 433(a)(1)(H) (applicable to excess profits tax taxable years) of the bill as it passed the House. The House recedes.

Amendments Nos. 51, 52, 53, 54, 55, and 56: These amendments are of a technical and clerical nature and the House recedes.

Amendment No. 57: This amendment relates to the action on amendment No. 219 (adding a new paragraph (8) to section 141(e) of the Code) and amendment No. 221 (adding a new subsection (j) to section 141 of the Code) relating to the filing of consolidated returns. It provides that in the case of a regulated public utility which has made and filed a consent described in section 141(e)(8) or (j) applicable to the taxable year, the excess profits credit is, for purposes of filing a consolidated return, to be determined in accordance with such consent. The House recedes.

Amendments Nos. 58, 59, 60, 61, 62, 63, and 64: These amendments are clerical or clarifying in nature. The House recedes.

Amendment No. 65: This amendment corresponds to amendment No. 29 and amendment No. 48. The House recedes.

Amendment No. 66: This amendment added a provision under which the excess profits credit based on income would be computed under section 713 (but without the benefit of subsection (f) or section 722) of the Code for the last taxable year of the taxpayer beginning prior to January 1, 1946, if the amount so computed is greater than 85 percent of the average base period net income computed as provided in the bill. There was no comparable provision in the House bill. The Senate recedes.

Amendment No. 67: This is a technical conforming amendment. The House recedes with a clarifying amendment.

Amendments Nos. 68, 69, 70, 71, and 72: These are technical conforming amendments. The House recedes.

Amendment No. 73: This amendment provides for cross references. The House recedes with a conforming amendment.

Amendment No. 74: This is a technical drafting amendment. The House recedes.

Amendment No. 75: This amendment affects section 435(e) which is to be added to the Code and which provides for an alternative average base period net income for growing corporations. Under the House bill this provision was available only to corporations which commenced business before the beginning of the base period. The Senate amendment made the provision applicable if the taxpayer commenced business before May 1, 1946.

The House bill also made the growth provision available only if (1) the taxpayer had total assets of not more than $20,000,000 at the beginning of its base period and if (2) the total payroll of the taxpayer for the last half of its base period was 130 percent or more of its total payroll for the first half of its base period or its gross receipts for the last half of its base period were 150 percent or more of its gross receipts for the first half of its base period.

The Senate amendment retains the above gross receipts and payrolls tests, and modifies the $20,000,000 asset test by requiring that there be added to the assets of the taxpayer, for the purposes of this test, the assets of other affiliated corporations with which the taxpayer has the privilege of filing consolidated returns for its first excess profits tax taxable year under the new law.

The Senate amendment also added a second set of tests (as an alternative to the $20,000,000 assets, payrolls and gross receipts tests) which if met qualify the taxpayer for relief under this section. These tests are based on growth as evidenced primarily by increased sales of a product or class of products of a kind not generally available to the public at any time prior to 1946. Television sets are an example of such a product. A product which is a modification of an old product, such as an improvement or change in style, is not a product of the type referred to. A product which was generally available prior to 1946, although not available at all times prior thereto, is also not intended to be covered.

The House recedes with amendments reinstating the requirement that the taxpayer must have commenced business prior to the beginning of its base period and reducing somewhat the qualifications for growth corporations based on sales of a new product.

Amendments Nos. 76 and 77: These amendments relate to the relief provided corporations which qualify as "growth" corporations.

The House bill provided that in the case of a corporation qualifying for relief under the growth provision, its average base period net income under this provision might be based on its income for the last 12 months of its base period or the average for the last 24 months of its base period, whichever is higher. Amendment No. 76 strikes out the provision for taking the higher of these two alternatives and amendment No. 77 provides for two additional alternatives, making four in all under this provision. The third alternative, as added by the Senate amendment, is based on the taxpayer's excess profits net income for the last 6 months of 1949 and 80 percent of the taxpayer's excess profits net income for the first 6 months of 1950 (or in the case of a taxpayer on a fiscal year basis, a weighted part of the taxpayer's excess profits net income for the first 6 months of 1950). The fourth alternative, as added by the Senate amendment, is based on the excess profits net income for the last 6 months of 1948 and the first 6 months of 1950 (weighted as above described).

The House recedes as to amendment No. 76 and also recedes as to amendment No. 77 with an amendment restricting the use of the fourth method as an alternative for computing average base period net income under this provision to only those corporations which qualify as growth corporations under the provision relating to a new product and whose excess profits net income for 1949 is 25 percent or less than the excess profits net income for 1948.

Amendment No. 78: This amendment relates to the definition of "total assets" for the purposes of the growth provision test based on $20,000,000 of total assets. Under the House bill only such assets were counted as were "used in the taxpayer's business." The Senate amendment substitutes for this expression the requirement that the assets be "held by such taxpayer for the purposes of the business." The House recedes.

Amendment No. 79: This amendment is made necessary by the provisions of Senate amendment No. 75 under which the $20,000,000 asset test for purposes of the growth formula is to be determined with reference to the assets of an affiliated group. The House recedes.

Amendments Nos. 80, 81, 82, and 83: These are clerical amendments. The House recedes.

Amendment No. 84: Under the House bill, the base period capital addition was determined by treating borrowed capital in a manner similar to its treatment in determining the invested capital credit. This amendment strikes out the provisions of the House bill and substitutes provisions which, in the treatment of borrowed capital, correspond to the treatment of borrowed capital for the purpose of determining the net capital addition or reduction under the Senate bill. The House recedes with amendments conforming to the 75 percent limitation on the inclusion of borrowed capital (see amendment No. 124).

Amendments Nos. 85 to 95, inclusive: These amendments relate to the determination of the net capital addition or reduction applicable in determining the excess profits credit based on income. Amendments Nos. 85 and 91 are clerical amendments. Amendments Nos. 86, 87, 90, and 93 relate to the adjustment for an increase or decrease in inadmissible assets. Under the House bill, this adjustment was made on a daily basis. Under the Senate bill, amendment No. 95 provides rules for determining such increase or decrease for the taxable year, amendments 86 and 87 provide for the adjustment based on such determination, and amendments 90 and 93 strike out the provisions for a daily adjustment. Amendment 88 strikes out a provision in the House bill for the determination of the amount of property paid in as a capital addition, a similar rule being included in section 441 of the Senate bill (see amendment No. 128), and amendment 94 strikes out a cross-reference which appears in the provisions inserted by amendment No. 95. Amendments Nos. 89 and 92 provide for the inclusion of borrowed capital in determining the net capital addition or reduction. Amendments Nos. 92 and 95 also provide special rules in the case of an increase in inadmissible assets by, or loans to, a member of a controlled group. The House recedes with amendments necessary to reflect the inclusion of only 75 percent of the borrowed capital.

Amendment No. 96: This amendment is made necessary by amendments 85 to 95, inclusive, which include borrowed capital in determining net capital addition or reduction. Under the House bill, borrowed capital was not so included, but subsection (h) of section 435 provided special rules for additions and reductions in borrowed capital. Amendment No. 96 strikes out subsection (h), borrowed capital being included under amendments 85 to 95 in computing net capital addition or reduction. The House recedes.

Amendment No. 97: This amendment provides the general rule for determining the excess profits credit based on invested capital. Under the House bill, the invested capital credit is the sum of the basic equity capital credit, the new capital credit, and the borrowed capital credit adjusted for inadmissible assets. The Senate bill provides that the invested capital credit shall be the sum of (1) the invested capital credit, reduced by the inadmissible asset adjustment, and (2) the new capital credit. These changes are made necessary by the change made in the treatment of borrowed capital and by the provision in section 437(b) relating to the election of the historical invested capital method. The House recedes.

Amendment No. 98: This amendment provides rules for the computation of the excess profits credit based on invested capital in the case of foreign corporations engaged in a trade or business in the United States and corporations entitled to the benefits of section 251. The House recedes, with a clarifying amendment to section 436(b)(1)(A) and technical amendments to section 436(b)(1)(A) and 436(b)(1)(B) to conform with the 75 per centum inclusion for borrowed capital.

Amendments Nos. 99, 100, 101, 102, and 103: These are technical amendments made necessary by amendment 104. Under these amendments, the rates for determining the invested capital credit apply to the invested capital determined for the taxpayer; under the House bill these rates applied only to the adjusted equity capital. The House recedes.

Amendment No. 104: This amendment relates to section 437(b), which in the House bill defined adjusted equity capital. Under the House bill, the rates provided in section 437(a) applied to the amount so determined under section 437(b). Amendment No. 104 strikes out section 437(b) of the House bill and inserts a new section 437(b), paragraph (1) of which provides that the invested capital shall be, except in the case of a mutual insurance company (other than life or marine), the adjusted invested capital determined under paragraph (2) of section 437(b), or at the election of the taxpayer in its return for the taxable year the historical invested capital determined under section 458 (see amendment No. 206), paragraph (2) of which provides that the adjusted invested capital is determined in a manner similar to that used in determining adjusted equity capital under section 437(b) of the House bill, but with the addition thereto of the average borrowed capital for the taxable year, and paragraph (3) of which provides the manner for determining the invested capital in the case of a mutual insurance company (other than life or marine). The House recedes with an amendment providing for the inclusion, in determining adjusted invested capital, of only 75 percent of the average borrowed capital for the taxable year, and with an amendment conforming to the action on amendment No. 205.

Amendment No. 105: This amendment clarifies the provisions of section 437(c) of the House bill, defining equity capital as the excess of the adjusted basis of the total assets held by the taxpayer over the total of its liabilities, by providing that such assets should include only those held in good faith for the purposes of the taxpayer's business. The purpose of this limitation is to disallow in computing invested capital those assets which are not required in the business and which have the principal effect of reducing excess profits tax. Similar provisions are contained elsewhere in the bill with respect to the other determinations made in computing the excess profits credit. The House recedes.

Amendment No. 106: This amendment provides special rules for determining the equity capital of an insurance company (other than mutual and other than life or marine). The House recedes with a clarifying amendment.

Amendment No. 107: This amendment excludes from the definition of "liabilities" for purposes of determining equity capital of a bank, as defined in section 104, the reserves for bad debts. The House recedes.

Amendments Nos. 108 and 109: These are clerical amendments to conform to amendment No. 128. The House recedes.

Amendment No. 110: This is a clerical amendment. The House recedes.

Amendment No. 111: This amendment conforms to amendment No. 104, and provides that the new capital credit shall not be allowed in the case of a taxpayer using the historical invested capital determined under section 458 (see amendment No. 206), or in the case of a mutual insurance company (other than life or marine). The House recedes.

Amendment No. 112: This amendment relates to the determination of the net new capital addition under section 437(b). Under the House bill, the daily capital reduction used in determining the net new capital addition was determined under section 437(e) and there was no adjustment in such determination for any increase in inadmissible assets. The amendment by the Senate provides for such adjustment, and further provides that the daily capital reduction used for purposes of section 438(b) shall be determined under section 438(d) (see amendment No. 119). The House recedes with an amendment made necessary by the amendment to amendment No. 104 with respect to the inclusion of only 75 per centum of the average borrowed capital.

Amendments Nos. 113 and 114: These are clerical amendments. The House recedes.

Amendment No. 115: This is a clerical amendment to conform to amendment No. 128. The House recedes.

Amendments Nos. 116 and 117: These are clerical amendments. The House recedes.

Amendment No. 118: This is a technical amendment to conform to the change in the treatment of borrowed capital provided by amendment No. 124. It further provides for treatment of excluded borrowed capital similar to that accorded excluded equity capital in determining the daily new capital reduction. The House recedes, with an amendment reducing the amount of the excess in the increase in daily borrowed capital to be taken into account to 75 per centum.

Amendment No. 119: This amendment inserts a new subsection (d) in section 438 to provide the rules for determining the daily capital reduction for purposes of section 438. The House recedes with an amendment conforming to the change to amendment No. 104 with respect to average borrowed capital.

Amendment No. 120: This amendment is a change in the designation of a subsection. The House recedes.

Amendment No. 121: This is a clerical amendment. The House recedes.

Amendment No. 122: This is a conforming amendment (see amendment No. 128). The House recedes.

Amendment No. 123: This is a conforming amendment made necessary by amendment No. 118, and provides, for borrowed capital, a definition of excluded borrowed capital. The House recedes.

Amendment No. 124: This amendment strikes out section 439 of the House bill, which related to the determination of the borrowed capital credit, and inserts a new section 439, relating to borrowed capital. Under the House bill, the borrowed capital credit generally was an amount equal to one-third of the amount of interest paid or incurred with respect to borrowed capital for the current taxable year, with certain maximum and minimum limitations and with certain special provisions relating to insurance companies. Under the Senate amendment, section 439 defines average borrowed capital for the taxable year and daily borrowed capital for any day. Under other Senate amendments, 100 percent of the indebtedness constituting borrowed capital is includible in the same manner as equity capital in computing the borrowed capital credit, and provision is made for the disallowance of the interest deduction attributable to such borrowed capital (see, for example, amendments Nos. 33 and 34, and 104). Under section 439(b)(1) of the bill as amended by the Senate, the definition of borrowed capital includes only indebtedness incurred in good faith for the purposes of the business. The Senate amendment includes in borrowed capital the amount of the taxpayer's indebtedness to a bank which is evidenced by a bank loan agreement. It also contains special provisions for a 50 percent inclusion with respect to unearned premiums of insurance companies, certain reserves of life insurance companies, and certain reserves of face-amount certificate companies. In the case of the other Senate amendments with respect to borrowed capital, the House has, in general, receded with amendments providing for only 75 percent inclusion with respect to borrowed capital. The House recedes with respect to Amendment No. 124, with amendments providing for an increase from 50 percent to 66⅔ percent with respect to insurance company unearned premiums, life insurance company reserves, and face-amount certificate company reserves. The effect of these amendments is to retain as borrowed capital taken into account in computing the excess profits credit in such cases the original 50 percent amount (75 percent of 66⅔ percent).

Amendment No. 125: This is a technical amendment. The House recedes.

Amendment No. 126: This is a clarifying amendment. The House recedes.

Amendment No. 127: Under the House bill, section 441 contained the provisions with respect to the computation of the invested capital credit in the case of foreign corporations and corporations entitled to the benefits of section 251. Under the Senate amendment, provisions with respect to such corporations are contained in section 436(b) (see amendment No. 98). Amendment No. 127 strikes out section 441 of the House bill. The House recedes.

Amendment No. 128: This amendment is a new section containing definitions and rules applicable to section 435, relating to the excess profits credit based on income; section 437, relating to the invested capital credit; section 438, relating to the new capital credit; and section 440, relating to admissible and inadmissible assets. Subsection (a) provides a definition of equity capital as the equity capital defined in section 437(c). Subsection (b) corresponds to a portion of section 437(d) of the House bill, stricken by amendment No. 108. Subsection (c) is designed to prevent tax avoidance by including only money and property paid in good faith for the purposes of the taxpayer's business. Subsection (d), (e), (f), and (g), respectively, correspond to section 437(g) of the House bill, stricken by amendment No. 109. Subsection (i) modifies the general rule for valuation of certain intangible assets, and subsection (j) provides a special rule for certain railroad properties acquired upon rejection of a lease. The House recedes.

Amendment No. 129: The House bill provided that in the case of certain abnormalities in net income during base period years, the year affected by a substantial abnormality might be reconstructed by applying to the taxpayer's net income in normal years in the base period the ratio of the industry rate of return for the abnormal years to the industry rate of return for the taxpayer's normal years. The Senate amendment (1) strikes out these provisions of the House bill and (2) provides, in general, for relief in the case of abnormalities by applying the industry rate of return for the period of abnormality to the taxpayer's total assets. In the event that no more than 12 months are affected by an abnormality (other than the period eliminated under section 435(d)) a substitute excess profits net income is determined for the period of the abnormality by the use of the applicable industry rate of return. In the event that more than 12 months in the taxpayer's base period (other than the period eliminated under section 435(d)) are affected by an abnormality, the average base period net income is determined by applying the base period rate of return for the 4 years 1946 through 1949 to the taxpayer's average assets during the base period. The provision is intended to be applicable only to periods in which the excess profits net income of the taxpayer is affected by an abnormality. The House recedes.

Amendment No. 130: The House bill provided that taxpayers which introduced a different product or service during the last 3 years of the base period might compute an alternative credit on the basis of the industry rate of return as applied to their assets. The Senate amendment (1) strikes out the provisions of the House bill and (2) substitutes provisions designed, in general, to provide similar relief. The application of the provisions has been clarified in order to permit a taxpayer who introduces more than one new product or service to aggregate the income from all such products or services for the purpose of qualifying under the section. Other changes have been made in the qualification requirements, in the method of computing average base period net income, and in provisions relating to capital additions and reductions. The House recedes.

Amendment No. 131: This amendment, for which there is no corresponding provision in the House bill, in general permits a taxpayer which has effected a substantial increase in its capacity for production or operation during the last 36 months of the base period to compute an average base period net income by applying the industry base period rate of return to its assets as of the end of the base period. The House recedes with an amendment eliminating a provision relating to a change in operations and management.

Amendment No. 132: This is a clerical amendment. The House recedes.

Amendment No. 133: This is a technical amendment. The House recedes.

Amendment No. 134: This amendment strikes out certain provisions of section 444 of the House bill relating to the method of computing average base period net income for new corporations, and inserts new rules for the computation. The House recedes.

Amendments Nos. 135, 136, 137, 138, and 139: These are technical amendments to the provisions relating to rules for application of the new corporation section. The House recedes.

Amendment No. 140: This amendment, for which there is no corresponding provision in the House bill, provides that certain corporations, under certain circumstances, are not eligible for the benefits of the new corporation provision. The House recedes.

Amendment No. 141: This amendment adds cross-references. The House recedes.

Amendment No. 142: This amendment strikes out section 445 of the House bill, relating to industry base period rates of return, for which provision is made in Senate amendment No. 144. The House recedes.

Amendment No. 143: This amendment adds a new section providing relief for depressed industry subgroups. Under the Senate amendment a depressed industry subgroup is one in which the average rate of return on total assets during the years 1946 through 1949 is less than 60 percent of the average rate of return of the industry subgroup over the period 1936 through 1949. The Senate amendment would permit a taxpayer in such an industry subgroup to use an average base period net income computed by multiplying its average total assets during the base period by 80 percent of the depressed industry subgroup's average rate of return during the period 1936 through 1949. There was no corresponding provision in the House bill. The House recedes with amendments having the following effect. The comparative periods for determining whether the industry subgroup was depressed and the rate of return to be allowed in computing the average base period net income are limited to the periods 1938 through 1948 (instead of 1936 through 1949) and 1946 through 1948 (instead of 1946 through 1949). Under the Senate amendment the industry rate of return for the short period was required to be less than 60 percent of the rate of return for the long period. This is changed to 63 percent. A clarifying amendment is also made with respect to the effect of renegotiation in connection with the statistics to be used.

Amendment No. 144: This amendment replaces section 445 of the House bill, relating to industry rates of return and industry classifications. The amendment clarifies the method of rate determination and prescribes the industry classifications to be used in providing relief for abnormalities in the base period, change in product, increase in capacity, and new corporations. The industry classifications are the same (to the extent available statistical data will permit) as the Standard Industrial classifications developed by the Bureau of the Budget. The classification of individual corporations is to be made in accordance with the specifications shown in the Standard Industrial Classification Manual (prepared by the Division of Statistical Standards, Bureau of the Budget). The amendment requires the taxpayer to make application with his return, or within a prescribed period, for the benefits of sections 442 to 446. The House recedes with an amendment with respect to the effect of renegotiation in connection with the statistics to be used.

Amendment No. 145: This amendment relates to the minimum excess profits credit for regulated public utilities. The amendment applies to all utilities covered by the House bill and also to regulated public utilities engaged in the furnishing or sale of (1) sewerage disposal services, (2) transportation by motor vehicle, and (3) transportation by common carrier by water, subject to the jurisdiction of the Interstate Commerce Commission or Federal Maritime Board.

Under the House bill the percentage used in computing the credit for common carriers by railroad, and for common carriers by air, was 5 percent. Under the Senate amendment this was increased to 7 percent in the case of air carriers and 6 percent in the case of railroads. Under the House bill the percentage for telephone and telegraph companies was 6 percent, which is increased to 7 percent by the Senate amendment. The utilities added by the Senate amendment use the 6 percent rate.

Under the House bill adjusted equity capital was computed in the manner provided in section 437(b) of the House bill. Under the Senate amendment, in certain cases where corporate books of account are maintained in accordance with systems of accounts prescribed by an appropriate regulatory body, the adjusted invested capital is the sum of the average outstanding common and preferred stock accounts and the capital surplus and earned surplus accounts as recorded on the corporate books of account.

The amendment also (1) made technical and clarifying changes, (2) expanded and clarified the definition of the term "regulated public utility", and (3) included provisions relating to consolidated returns of regulated public utilities.

The House recedes with clarifying amendments.

Amendments Nos. 146 and 147: These amendments change section numbers. The House recedes.

Amendment No. 148: This amendment conforms to amendment No. 152. The House recedes.

Amendment No. 149: This amendment includes "perlite" as a strategic mineral. The House recedes.

Amendment No. 150: This amendment includes molybdenum and beryllium as strategic minerals. The House recedes with an amendment limiting the inclusion to molybdenum.

Amendment No. 151: This amendment includes trona as a strategic mineral. The Senate recedes.

Amendment No. 152: The House bill extended the benefits of section 448 of the House bill (section 450 of the Senate bill) to corporations engaged in mining critical minerals as defined in subsection (b)(2). This amendment strikes out subsection (b)(2), and conforming changes are made by amendments Nos. 148 and 154. The House recedes.

Amendment No. 153: This is a clerical amendment. The House recedes.

Amendment No. 154: This amendment conforms to the change made by amendment No. 152. The House recedes.

Amendments Nos. 155, 156, and 157: These are clerical amendments. The House recedes.

Amendments Nos. 158 to 185, inclusive: These are amendments to section 451 of the House bill, relating to nontaxable income from certain mining and timber operations, and from natural gas properties. Amendment No. 158 changes the section number. Amendments Nos. 159, 160, 161, 162, 163, 164, 165, 166, 168, 169, 170, 179, 182, 183, and 185 are clarifying amendments. Under the House bill the taxable years beginning after December 31, 1945, and not ending after June 30 1950, are referred to as the "base period" for the purposes of this section. Under these amendments, such period is referred to as the "normal period." Amendment No. 167 adds "shell" to the list of nonmetallic substances designated as "minerals" for the purposes of this section. Amendments Nos. 172, 173, 174, and 180 are clerical amendments. Amendment No. 171 permits a taxpayer with more than one mineral property to elect to treat its properties as one mineral property. Amendments Nos. 175, 176, 177, 178, and 181 apply to a metal or coal mining property the rule, applicable under the House bill in the case of a coal mining or iron mining property, for the determination by reference to unit net income of the nontaxable income from exempt excess output. Amendment No. 184 relates to nontaxable income from exempt excess output in the case of a property not in operation during the normal period. Under the House bill, such nontaxable income was one-sixth of the net income (computed with the allowance for depletion) in the case of a coal mining or iron mining property or from a timber block. Under the Senate amendment, it is one-third of such net income in the case of a metal or coal mining property or a timber block or a natural gas property, and a special rule is provided for considering certain metal mining properties as not having been in operation during the normal period. The House recedes.

Amendment No. 186: This is a clerical amendment. The House recedes.

Amendment No. 187: This is a clarifying amendment. The House recedes.

Amendment No. 188: This amendment exempts from the excess profits tax any corporation subject to certain provisions of the Civil Aeronautics Act of 1938 if, after excluding from gross income the amount of certain compensation for the transportation of mail by aircraft, its adjusted excess profits net income for the year is zero or less. The House recedes.

Amendment No. 189: This is a clerical amendment. The House recedes.

Amendments Nos. 190, 191, 192, and 193: These amendments extend the scope of section 455(a) (section 453(a) of the House bill) so as to permit dealers in installment sales obligations the same election with respect to reporting income on the accrual basis for excess profits tax purposes as is afforded other taxpayers computing income on the installment basis. The House recedes.

Amendments Nos. 194, 195, 196, 197, 198, 199, and 200: These are clerical amendments. The House recedes.

Amendment No. 201: This amendment relates to classes of abnormal income attributable to other taxable years. The Senate recedes.

Amendments Nos. 202, 203, and 204: These are clerical amendments. The House recedes.

Amendment No. 205: This amendment provides for adjustments in the determination of excess profits credits with respect to deposits under the Merchant Marine Act of 1936. The Senate recedes.

Amendment No. 206: This amendment makes available a historical invested capital credit similar to that provided for under the World War II excess profits tax law. Section 458 (a), (b), and (c) corresponds to sections 715, 716, and 717, respectively. Section 458(d), providing for the addition to equity invested capital, corresponds to section 718(a) of prior law and section 458(e), describing the reductions in equity invested capital, is the counterpart of section 718(b). Rules for the application of the section, comparable to section 718(c) of prior law, are set forth in section 458(f). The House recedes, with an amendment reducing the daily borrowed capital to 75 percent in conformity with the amendment to section 437(b)(2).

Amendment No. 207: This amendment substitutes a new part II for part II (of subchapter D of chapter 1 of the Internal Revenue Code) contained in the House bill, dealing with excess profits credit based on income in connection with certain exchanges. The Senate amendment revises the provisions of the House part, with additions made necessary by other Senate amendments. The Senate amendment also makes a number of technical and clarifying changes. The House recedes with technical and clarifying amendments.

Amendments Nos. 208, 209, and 210: These are technical amendments. The House recedes.

Amendment No. 211: This amendment adds to the bill two new sections (sections 471 and 472) relating to exchanges and to the invested capital adjustment at the time of tax-free intercorporate liquidations, respectively. These sections relate to the historical invested capital provisions, and correspond to the provisions of supplement C of chapter 2E of the Code. The House recedes.

Amendment No. 212: This amendment adds a new title II—"Increase in corporation surtax"—to the bill. This title increases the rate of surtax upon the corporation surtax net income of corporations for taxable years beginning on or after July 1, 1950, from 20 to 22 percent, and makes the necessary conforming changes in the law with respect to mutual insurance companies other than life or marine, regulated investment companies, business income of certain tax-exempt organizations, and the credits of corporations. Section 203 of title II amends section 108(f)(2) (relating to fiscal year taxpayers) to make it clear that the increased surtax rate has no effect in the case of taxpayers with taxable years beginning before July 1, 1950, and ending after June 30, 1950. The House recedes.

Amendments Nos. 213, 214, 215, 216, and 217: These are clerical amendments. The House recedes.

Amendment No. 218: Under the House bill personal service corporations and certain corporations (otherwise exempt from the excess profits tax imposed by the bill) which were members of an affiliated group of corporations filing a consolidated return under section 141 were included within the definition of the term "includible corporation" if such corporations made and filed consents, for the taxable year or any prior taxable years beginning after December 31, 1943, to be treated as includible corporations. This amendment changes the reference to taxable years beginning after December 31, 1943, to taxable years ending after June 30, 1950. The effect of the amendment is to permit such corporations to make a new election as to whether they will be members of an affiliated group for taxable years ending after June 30, 1950. The House recedes.

Amendments Nos. 219 and 221: These amendments relate to the inclusion of regulated public utilities in an affiliated group of corporations making a consolidated return for a taxable year in lieu of separate returns.

Amendment No. 219 adds to section 141(e) a new paragraph (8) which provides that the term "includible corporation" does not include regulated public utilities entitled to compute their excess profits credit under section 448 except such a utility which has made and filed a consent to compute its excess profits credit without regard to section 448.

Amendment No. 221 adds to section 141 a new subsection (j) which, despite the provisions of the paragraph added by amendment No. 219, permits two or more regulated public utilities to be considered as includible corporations for the purposes of the application of subsection (d) (relating to definition of "affiliated group") to such regulated public utilities alone if each such regulated public utility has made and filed a consent to compute its excess profits credit under section 448 only.

A consent under section 441 (e) (8) or (j) is to be made and filed at such time and in such manner as may be prescribed by the Secretary and is to be applicable to the taxable year for which filed and to each consecutive subsequent taxable year for which a consolidated return is filed.

The House recedes.

Amendments Nos. 220, 222, 223, 224, 225, 226, 227, and 228: These are clerical amendments. The House recedes.

Amendment No. 229: This amendment relates to the amortization of emergency facilities. The Senate recedes.

Amendment No. 230: This is a clerical amendment. The House recedes with a clerical amendment.

Amendment No. 231: This amendment relates to the same subject as amendment No. 35, namely payments made by the United States for the encouragement of exploration, development, or mining, of strategic or critical minerals for defense purposes, but amends section 22(b) of the Code so as to exclude such payments from normal tax net income and surtax net income. The House recedes with a clerical amendment and with an amendment making this provision applicable to taxable years beginning after December 31, 1950.

R. L. Doughton,
Jere Cooper,
John D. Dingell,
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