Internal Revenue Bulletin

CUMULATIVE BULLETIN 1959–1

JANUARY–JUNE 1959

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UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1959

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*Denotes Revenue Procedure.

ABBREVIATIONS

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A, *B*, *C*, *etc.*—The names of individuals.
A.T.—Alcohol and tobacco tax ruling.
B.T.A.—Board of Tax Appeals.
C.B.—Cumulative Bulletin.
C.F.R.—Code of Federal Regulations.
Ct.D.—Court Decision.
Del. Order—Delegation Order.
D.C.—Treasury Department circular.
E.O.—Executive Order.
E.T.—Estate and gift tax ruling.
Em.T.—Employment tax ruling.
F.A.A.A.—Federal Alcohol Administration Act.
F.R.—Federal Register.
G.C.M.—Chief Counsel's memorandum (formerly General Counsel's memorandum).
I.R.B.—Internal Revenue Bulletin.
IR-Min.—Published IR-Mimeograph.
I.T.—Income tax ruling.
M, *N*, *X*, *Y*, *Z*, *etc.*—The names of corporations, places or businesses, according to context.
M.T.—Miscellaneous tax ruling.
Mim.—Published mimeograph.
O.D.—Office Decision.
P.L.—Public Law.
P.S.—Pension, profit-sharing, stock bonus or annuity plan ruling.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
R.S.—Revised Statute.
S.M.—Solicitor's Memorandum.
Sol. Op.—Solicitor's Opinion.
S.P.R.—Statement of Procedural Rules.
S.R.—Solicitor's Recommendation.
S.S.T.—Social Security tax.
S.T.—Sales tax ruling.
Stat.—Statutes at Large.
T.C.—The Tax Court of the United States.
T.D.—Treasury Decision.
TIR—Technical Information Release.
U.S.C.—United States Code.
x and *y* used to represent certain numbers and when used with the word "dollars" represents sums of money.

FOREWORD

The Cumulative Bulletin is prepared in five parts, as follows:

I. Part I includes rulings and decisions which are based on the application of provisions of the Internal Revenue Code of 1954 and, unless otherwise stated in the ruling or decision, are published without consideration as to any application of the provisions of the Internal Revenue Code of 1939 or other related public laws.

II. Part II includes rulings and decisions which are based on the application of the Internal Revenue Code of 1939 and other public laws except those pertaining to the various alcohol taxes; and, unless otherwise noted therein, they are published without consideration as to any application of the provisions of the Internal Revenue Code of 1954.

III. Part III contains rulings and decisions pertaining to the various alcohol taxes. This part is subdivided into three subparts according to matters issued under the Internal Revenue Code of 1954 as amended by the Excise Tax Technical Changes Act of 1958 (Subpart A), the Internal Revenue Code of 1954 prior to amendment by the Excise Tax Technical Changes Act of 1958 (Subpart B), and the Federal Alcohol Administration Act (Subpart C).

IV. Part IV contains Tax Conventions.

V. Part V is devoted to administrative, procedural, and miscellaneous matters. The weekly Internal Revenue Bulletins contained Part VI consisting of items of general interest; those items are not reproduced herein.

INTRODUCTION

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for the announcement of official rulings and procedures of the Internal Revenue Service, and for the publication of Treasury Decisions, Executive Orders, tax conventions, legislation, and court decisions pertaining to internal revenue matters. Other items considered to be of general interest are also published in the Bulletin, such as announcements relating to proposed regulations published with notice of proposed rulemaking, announcements relating to decisions of the Tax Court of the United States, announcements of the disbarment and suspension of attorneys and agents from practice before the Treasury Department, Delegation Orders, etc.

It is the policy of the Service to publish in the Bulletin all substantive and procedural rulings of importance or of general interest, the publication of which is considered necessary to promote a uniform application of the laws administered by the Service. It is also the policy to publish all rulings and statements of procedures which supersede, revoke, modify, or amend any published ruling or procedure. Except where otherwise indicated, published rulings and procedures apply retroactively. Rulings and statements of procedures relating solely to matters of internal management are not published. However, statements of internal practices and procedures affecting rights or duties of taxpayers, or industry regulation, which appear in internal management documents, are published. Revenue Rulings and Revenue Procedures are based upon rulings and internal management documents prepared in the various divisions of the National Office, including the Office of the Chief Counsel for the Internal Revenue Service. In the preparation of these, caution is exercised to conceal the identity of the taxpayer, as well as any confidential personal and business information. All Revenue Rulings published in the Bulletin have received the consideration and concurrence of the Chief Counsel.

Revenue Rulings and Revenue Procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations (including Treasury Decisions), but are published to provide precedents to be used in the disposition of other cases, and may be cited and relied upon for that purpose. Since each published ruling represents the conclusion of the Service as to the application of the law to the entire state of facts involved, Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same. In applying rulings and procedures published in the Bulletin, personnel of the Service and others concerned must consider the effect of subsequent legislation, regulations, court decisions, rulings and procedures.

Each published ruling is designated as a "Revenue Ruling," and each published procedure is designated as a "Revenue Procedure." These should be cited by reference to the year of issuance and the Bulletin and page where reported. Thus, Revenue Ruling No. 10 for 1959 should be cited as "Rev. Rul. 59–10, C.B. 1959–1, 302." Similarly, Revenue Procedure No. 5 for 1959 should be cited as "Rev. Proc. 59–5, C.B. 1959–1, 811." Revenue Rulings are keyed to the applicable sections of the Internal Revenue Code and regulations.

Internal Revenue Cumulative Bulletin 1959–1 contains all rulings, decisions, and procedures pertaining to Internal Revenue matters published in the weekly Internal Revenue Bulletins 1–26, inclusive, for the period January 1 to June 30, 1959. It also contains a cumulative list of announcements relating to decisions of The Tax Court of the United States published in the Internal Revenue Bulletins.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the *Cumulative Bulletin* as the source would be appropriate.

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 FROM JANUARY 1, 1959, TO JUNE 30, 1959, INCLUSIVE

It is the policy of the Internal Revenue Service to announce in the Internal Revenue Bulletin at the earliest practicable date the determination of the Commissioner to acquiesce or not to acquiesce in a decision of The Tax Court of the United States which disallows a deficiency in tax determined by the Commissioner to be due. 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. Actions of acquiescences in adverse decisions should be relied on by Revenue officers and others concerned as conclusions of the Service only to the application of the law to the facts in the particular case. Caution should be exercised in extending the application of the decision to a similar case unless the facts and circumstances are substantially the same, and consideration should be given to the effect of new legislation, regulations, and rulings as well as subsequent court decisions and actions thereon. Acquiescence in a decision means acceptance by the Service of the conclusion reached, and does not necessarily mean acceptance and approval of any or all of the reasons assigned by the Court for its conclusions. No announcements are made in the Bulletin with respect to memorandum opinions of The Tax Court.

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Lewis, H. D., et ux [17]	57437		
McCullough Transfer Co	55209	27	822
Mercantile National Bank at Dallas	57631	30	84
	65927		
Morgan, J. I., et ux.[18]	61346	30	881
Morgan, Inc., J. I.[18]	61345		
Phillips, Percy W., et ux	60084	30	866
Pittsburgh Milk Co	40271	26	707
Pittsburgh Milk Co., dissolved	48226		
Quartzite Stone Co	64668	30	511
Remer, Charles H	57594	28	85
Remer, Charles H., et ux	57593		
	59035		
Vinocur, David A., transferee of Pittsburgh Milk Co	40273	26	707
Vinocur, David A., transferee of Pittsburgh Milk Co., dissolved	48223		
	48226		
Vinocur, David A., et al., trustees for benefit of Judy Tucker and Shirley Tucker, transferees of Pittsburgh Milk Co., dissolved	48228		
	48226		
Vinocur, Louis M., transferee of Pittsburgh Milk Co	40275		
Vinocur, Louis M., transferee of Pittsburgh Milk Co., dissolved	48224		
	48226		
Vinocur, Morris, transferee of Pittsburgh Milk Co	40274		
Vinocur, Morris, transferee of Pittsburgh Milk Co., dissolved	48225		
	48226		

[a] United States Board of Tax Appeals.

[1] See Rev. Rul. 59-97, page 684.

[2] Acquiescence relates to the issue whether interest on overassessments attributable to section 722 of the 1939 Code, which was held includable in the corporation's 1951 income, constituted abnormal income within the meaning of section 456 of the 1939 Code.

[3] Estate tax decision.

[4] Gift tax decision.

[5] Acquiescence in result only. Acquiescence "in result only" means acceptance of the decision of the court but disagreement with some or all of the reasons assigned for the decision.

[6] Acquiescence does not imply that an allocation of the expenses concerned might not be required.

[7] Nonacquiescence published in C.B. 1956-2, 10, relating to the issue of the includability in the value of decedent's partnership interest of one-half of the partnership earnings to date of death, is withdrawn and acquiescence is substituted therefor. Nonacquiescence simultaneously published relating to the issue of the includability in the gross estate of the proceeds of certain insurance policies, is withdrawn and acquiescence in result only is substituted therefor. Acquiescence "in result only" means acceptance of the decision o f

the court but disagreement with some or all of the reasons assigned for the decision. Acquiescence concerning the issue of certain accrued interest published in C.B. 1956–2, 6, remains unchanged.

[8] Acquiescence relates to the issues whether taxpayers were entitled to deduct depreciation on their personal automobiles and a residence as a business expense; and whether taxpayers were entitled to additional entertainment expenses.

[9] Nonacquiescence published in C.B. 1952–1, 5, relating to the issue whether an annual payment of $5,000 to the mother of petitioner's divorced wife is deductible under section 23(u) of the 1939 Code, is withdrawn and acquiescence is substituted therefor. Acquiescence in the issue whether a partnership in which petitioner had an interest realized ordinary income on January 1, 1944, when restrictions terminated on stock theretofore received by the partnership for services rendered, published in C.B. 1952–1, 3, remains unchanged

[10] Acquiescence regarding the issues whether the corporation's acquisition of assets under an installment sales contract was a bona fide sale; whether the basis to the corporation of the assets acquired by it is their cost; the allowability of corporate deductions for interest paid on the installment contract; and whether payments pursuant to such contract were taxable dividends to J. I. Morgan, et ux.

[11] Nonacquiescence published in C.B. 1957–2, 8, is withdrawn and acquiescence is substituted therefor.

[12] Nonacquiescence published in C.B. 1955–2, 11, is withdrawn and acquiescence in result only is substituted therefor. Acquiescence "in result only" means acceptance of the decision of the court but disagreement with some or all of the reasons assigned for the decision.

[13] Nonacquiescence published in C.B. XIII–2, 27 (1934), is withdrawn and acquiescence is substituted therefor.

[14] See Rev. Rul. 59–72, page 203.

[15] Nonacquiescence relates to the issue whether the amounts of $50,500 and $4,200 received by the petitioner during the years in issue from its tenants constituted payments for the use of the property or proceeds from the sale of "goodwill."

[16] Acquiescence published in C.B. 1945, 3, is withdrawn and nonacquiescence is substituted therefor.

[17] Nonacquiescence relates to the issue whether the "total contract price" should be reduced by the amount of the mortgage in determining the percentage of income reported from installment sales.

[18] Nonacquiescence relates to the issue whether the annual increment in the cash value of an "Accumulative Investment Certificate" was taxable as ordinary income to J. I. Morgan during the years in issue or as a capital gain upon retirement at maturity.

PART I

RULINGS AND DECISIONS UNDER THE INTERNAL REVENUE CODE OF 1954

Rulings and decisions published in Part I of the Internal Revenue Bulletin are based on the application of provisions of the Internal Revenue Code of 1954 and, unless otherwise stated in the rulings or decisions, are published without consideration as to any application of the provisions of the Internal Revenue Code of 1939 or related public laws.

SUBTITLE A.—INCOME TAXES

CHAPTER 1.—NORMAL TAXES AND SURTAXES

SUBCHAPTER A.—DETERMINATION OF TAX LIABILITY

PART I.—TAX ON INDIVIDUALS

SECTION 1.—TAX IMPOSED

26 CFR 1.1: Income tax on individuals.

Election by a wife to file a separate return when husband's income is exempt from tax. See Rev. Rul. 59–82, page 43.

SECTION 3.—OPTIONAL TAX IF ADJUSTED GROSS INCOME IS LESS THAN $5,000

26 CFR 1.3–1: Application of optional tax.

A wife who files a separate return for the reason that husband's income is exempt from tax under section 931 of the Code. See Rev. Rul. 59–82, page 43.

SECTION 4.—RULES FOR OPTIONAL TAX

26 CFR 1.4–3: Husband and wife filing separate returns.

Election to file separate returns by husband and wife. See Rev. Rul. 59–82, page 43.

PART II.—TAX ON CORPORATIONS

SECTION 11.—TAX IMPOSED

26 CFR 1.11: Statutory provisions; tax on corporations. T.D. 6350 [1]

(Also Section 21; 1.21–1.)

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Income Tax Regulations amended to conform to certain provisions of the Tax Rate Extension Act of 1958 (72 Stat. 259), relating to corporate normal tax under section 11(b) of the Internal Revenue Code of 1954.

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

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

In order to conform the Income Tax Regulations (26 CFR Part 1) to those amendments made to the Internal Revenue Code of 1954 by the Tax Rate Extension Act of 1958 (72 Stat. 259) [P.L. 85–475, C.B. 1958–3, 73], which relate to the extension of corporation normal-tax rate under section 11(b), such regulations are amended as follows:

PARAGRAPH 1. Section 1.11, as amended by Treasury Decision 6237, approved June 5, 1957 [C.B. 1957–1, 7], is further amended by revising section 11(b)(1) and (2) and the historical note to read as follows:

§ 1.11 STATUTORY PROVISIONS; TAX ON CORPORATIONS.

SEC. 11. TAX IMPOSED. * * *

(b) NORMAL TAX—

(1) TAXABLE YEARS BEGINNING BEFORE JULY 1, 1959.—In the case of a taxable year beginning before July 1, 1959, the normal tax is equal to 30 percent of the taxable income.

(2) TAXABLE YEARS BEGINNING AFTER JUNE 30, 1959.—In the case of a taxable year beginning after June 30, 1959, the normal tax is equal to 25 percent of the taxable income.

* * * * * * *

[Sec. 11 as amended by sec. 2, Tax Rate Extension Act 1955 (69 Stat. 14) [P.L. 18, C.B. 1955–1, 619]; sec. 2, Tax Rate Extension Act 1956 (70 Stat. 66) [P.L. 458, C.B. 1956–1, 869]; sec. 2, Tax Rate Extension Act 1957 (71 Stat. 9) [P.L. 85–12, C.B. 1957–1, 666]; sec. 2, Tax Rate Extension Act 1958 (72 Stat. 259) [P.L. 85–475, C.B. 1958–3, 773]]

PAR. 2. Paragraph (c) of § 1.11–1, as amended by Treasury Decision 6237, is further amended by striking out "1958" each time it occurs and inserting in lieu thereof "1959".

PAR. 3. Paragraph (a) and example (2) in paragraph (n) of § 1.21–1, as amended by Treasury Decision 6237, is further amended by striking out "1958" each time it occurs and inserting in lieu thereof "1959".

Because this Treasury Decision merely provides for the extension of the corporate normal-tax rate under the Tax Rate Extension Act of 1958 (72 Stat. 259), it is found unnecessary to issue the Treasury Decision with notice and public procedure thereon under section

[1] 24 F.R. 127.

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 section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

O. GORDON DELK,
Acting Commissioner of Internal Revenue.

Approved December 31, 1958.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on January 6, 1959, 8:49 a.m., and published in the issue of the Federal Register for January 7, 1959, 24 F.R. 127.)

PART III.—CHANGES IN RATES DURING A TAXABLE YEAR

SECTION 21.—EFFECT OF CHANGES

26 CFR 1.21–1: Changes in rate during taxable year.

The regulations relating to corporate normal tax are amended. See T.D. 6350, page 10.

PART IV.—CREDITS AGAINST TAX

SECTION 34.—DIVIDENDS RECEIVED BY INDIVIDUALS

26 CFR 1.34–1: Credit against tax and exclusion from gross income in cases of dividends received by individuals.

Use of dividends received credit and dividend exclusion by a beneficiary of a trust having deductions in excess of gross income in its last taxable year. See Rev. Rul. 59–100, page 165.

SUBCHAPTER B.—COMPUTATION OF TAXABLE INCOME

PART I.—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, AND TAXABLE INCOME

SECTION 61.—GROSS INCOME DEFINED

Rev. Rul. 59–92

The entire amount of a grant made to an individual as principal investigator and administrator of a research program, which he expended as required by the grantor to cover the costs connected with the investigations and from which he received no salary or other economic benefit, is not required to be included in his gross income for Federal income tax purposes.

Advice has been requested whether funds granted to an individual to pay the costs connected with a research program are includible in his gross income for Federal income tax purposes.

The taxpayer, who is the chief pathologist and a member of the staff of a certain hospital, applied for and received from the local county heart association, an organization exempt from Federal income taxes, a research grant made specifically to pay the costs of conducting specific investigations in the field of pathology. Under the terms of the grant, the work on the project was to be done in the hospital laboratory; the taxpayer was designated the principal investigator for the project; and the funds granted to him were to be expended for the salary of a part-time laboratory technician and for certain supplies and equipment, with any unexpended portion to be returned to the grantor. Title to any permanent equipment purchased with such funds remained in the grantor. The taxpayer, under the terms of the grant, did not receive any salary or other economic benefit from the funds granted to him.

Gross income, as defined in section 61 of the Internal Revenue Code of 1954, means all income from whatever source derived, unless exempt from tax by law. However, where a taxpayer receives funds burdened with an obligation to be expended for a specific purpose and earmarked for such purpose, the funds so held do not constitute gain or income to the taxpayer.

In the instant case, the taxpayer clearly did not receive the funds granted as his own property. He was burdened with the obligation to use them for the purposes and in the manner set forth in the terms of the grant.

Accordingly, the entire amount of a grant made to an individual as principal investigator and administrator of a research program, which he expended as required by the grantor to cover the costs connected with the investigations and from which he received no salary or other economic benefit, is not includible in his gross income for Federal income tax purposes. No determination is made on the facts submitted with respect to the taxability of the amounts paid to the part-time laboratory technician.

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26 CFR 1.61–1: Gross income. Rev. Rul. 59–5
(Also Section 162; 1.162–1.)

Unemployment benefits derived from a private fund, as distinguished from a union established fund, established and contributed to by members who receive the benefits of such fund, constitute gross income to the member when received to the extent they exceed the amount which the member personally contributed to the fund. Contributions to the fund are not deductible, for Federal income tax purposes, by the contributors.

Advice has been requested as to the treatment, for Federal income tax purposes, of contributions to and benefits derived from a private unemployment fund.

In the instant case, a private unemployment fund was established. Membership in the fund is limited to individuals engaged in a particular type of occupation. However, the fund was not established by a trade union. Participating members pay certain amounts into the fund, depending on the type of membership desired, and in the event of unemployment receive specified cash payments depending on their class of membership.

Section 61(a) of the Internal Revenue Code of 1954 provides, in part, that "except as otherwise provided in this subtitle, gross income means all income from whatever source derived, * * *." In *Commissioner* v. *Glenshaw Glass Company et al.*, 348 U. S. 426, Ct. D. 1783, C. B. 1955–1, 207, the Supreme Court of the United States in referring to the broad scope of section 22(a) of the Internal Revenue Code of 1939, which is substantially similar to section 61 of the 1954 Code, pointed out that Congress applied no limitations as to the source of taxable receipts, nor restrictive labels as to their nature.

Revenue Ruling 57–383, C. B. 1957–2, 44, involving a situation similar to that in the present case, holds that unemployment benefits derived from a union established fund, contributed to by members of a trade union, constitute gross income to the recipient to the extent they exceed contributions made by him to the fund, and that amounts paid into the fund by members are not deductible.

In the absence of any provision in the Code which expressly excludes unemployment benefits derived from private sources from Federal income taxation, the rationale of the above-cited case and Revenue Ruling is applicable in the instant case.

In the instant case, each member must contribute to the fund an amount in relation to the benefits which he desires ultimately to receive. Therefore, the benefits, when received, do not constitute amounts gratuitously paid or received so as to be considered gifts within the meaning of section 102 of the Code. See Revenue Ruling 54–190, C. B. 1954–1, 46.

Accordingly, it is held that unemployment benefits derived from a private fund, as distinguished from a union established fund, established and contributed to by members who receive the benefits of such fund, constitute gross income to the member when received to the extent they exceed the amount which the member personally contributed to the fund. Further, contributions to the fund are not deductible, for Federal income tax purposes, by the contributors.

(Also Section 103; 1.103–1.) Rev. Rul. 59–41

Income to be earned by a nonprofit corporation formed, under the general laws of a state at the request of the governing body of a city, to purchase a water system by means of a bond issue with the city's approval and advice on operations and to supply water to a municipality and its environs, will not be subject to Federal income tax where (1) no part of the earnings or other assets of the corporation may inure to the benefit of any private shareholder or individual,, (2) title to the water system will vest in the municipality when the bonded indebtedness has been paid in full, and (3) the municipality, by resolution, has agreed to take title to the water system at that time. Mortgage bonds and other evidences of indebtedness to be issued by the corporation, to finance the purchase of the water system and improvements will be considered as issued on behalf of the municipality, and the interest thereon will be exempt from Federal income tax.

Advice has been requested (1) whether income to be received by a nonprofit corporation, to be organized under the applicable provisions of the general laws of a state, is includible in gross income and (2) whether interest to be paid on bonds issued by the corporation is exempt from Federal income tax.

Corporation *M* was incorporated under the non-profit corporation law of the State at the request of the governing body of the City of *N*. The corporation was organized for the exclusive purpose of purchasing and operating a water system to supply and distribute water for municipal, domestic, and industrial uses in and near the City of *N*. The City of *N*, which had the right pursuant to law to purchase such water system, waived such right and by contract with the *M* corporation ratified and approved the purchase of the water system by the corporation. Under such contract the City of *N* ratified the terms of an indenture under which the company proposed to incur debt and issue bonds to finance the purchase and construction of the water system. The contract expressly set forth the terms of an option under which the City of *N* might at any time purchase the water system for an amount equal to the indebtedness then outstanding, together with interest, and also expressly provided that, without demand or further action of any kind, the City of *N* should become the owner in fee and entitled to immediate exclusive possession of the properties when the debt of the company is fully paid. The contract created an advisory board composed of the members of the commission council of the City, who were to be notified of meetings and have the right to attend and participate and make recommendations. Periodic reports are to be made, open to the City and bondholders.

All funds used for the acquistion of the water system will be borrowed through the issuance of the corporation's long-term first mortgage revenue bonds. At the same time additional bonds will be issued for extension and improvements of the water system. The bonds will be callable prior to maturity.

The indenture which secures the bond provides that all monies received by the corporation for the sale of water to its customers shall be used by the corporation, first, to pay reasonable and proper operating expenses, second, to pay the interest on and the principal of the bonds, and, third, to establish the reserves required under the indenture securing the bonds. So long as these payments are current, surplus receipts are to be paid to the general fund of the City of *N*.

Title to the system shall vest in the City of *N* free of all liens, claims, and encumbrances at the time the bonds and the accrued interest thereon have been paid in full. No part of the net earnings or other assets of the corporation shall inure to the benefit of any private shareholder or individual. The commission council of the City of *N*, by resolution approved by the mayor, stated its intention to purchase the system from the corporation or to take title to the system when the indebtedness of the corporation is paid in full.

In view of the above, including the responsibility which the City of *N* has assumed by reason of its actions, and the substantial control which it in effect has over the management and operation of the water system, it is held that income to be earned by corporation *M* from the operation of the water system will not constitute gross income within the meaning of section 61 of the Internal Revenue Code of 1954 and will not be subject to Federal income tax. See *Keokuk and Hamilton Bridge, Inc.* v. *Commissioner*, 180 Fed. (2d) 58. The mortgage bonds and other bonds to be issued to finance the purchase of the water system and the improvements to be made will be considered issued in behalf of the municipality and interest paid thereon will be exempt

from Federal income tax under the provisions of section 103 of the Code. See Revenue Ruling 54–296, C.B. 1954–2, 59; I.T. 3772, C.B. 1945, 367; and Revenue Ruling 57–151, C.B. 1957–1, 64, each of which holds that interest on bonds issued under similar circumstances is exempt from Federal income tax.

(Also Section 301; 1.301–1.) Rev. Rul. 59–79 [1]
(Also Part II, Sections 22(a), 115(a); Regulations 118, Sections 39.22(a)–1, 39.115(a)–1.)

The Internal Revenue Service will follow the decisions of the United States Court of Appeals in *Oreste Casale* v. *Commissioner*, 247 Fed. (2d) 440; *Robert V. Sanders et al.* v. *Charles I. Fox*, 253 Fed. (2d) 855; and *Henry E. Prunier et al.* v. *Commissioner*, 248 Fed. (2d) 818. The issue in each case was whether the payment of premiums by a corporation on an insurance contract on the life of an employee-shareholder, in which the corporation possessed rights of ownership, resulted in income to the insured employee-shareholder.

In the *Casale* case, the corporation purchased a policy of insurance on the life of its controlling stockholder and president. The court found that the insurance contract was owned by and payable to the corporation and had been purchased to fund a contract which had been entered into by the corporation with the employee-shareholder. The court held that the payment of the premiums did not represent taxable dividends to the employee-stockholder since he received no immediate personal benefit from the corporate purchase of the policy, whereas the corporation had acquired a valuable corporate asset available to creditors in the event of insolvency.

In the *Sanders* and *Prunier* cases, the facts were that the insurance contracts were owned by the corporation, but the insured stockholders had the right to designate the beneficiaries to receive the proceeds on the condition that their stock be transferred to the corporation upon their deaths. In each case, the court held that the effect of the payment of premiums by the corporation was merely a conversion of cash into another corporate asset, an insurance policy, and that such action did not result in income to the individual taxpayers.

(Also Sections 1221, 1231; 1.1221–1; 1.1231–1.) Rev. Rul. 59–91

For Federal income tax purposes, where section 1237 of the Internal Revenue Code of 1954 is inapplicable, gain realized by a corporation from the sale of lots subdivided from land which it had held as an investment and on which it made sizeable improvements in order to facilitate the sale of the lots, such as the construction of streets or the installation of utilities, constitutes ordinary income to the corporation.

Advice has been requested whether gain realized by a corporation from the sale of lots which it subdivided from land held for investment constitutes capital gain or ordinary income.

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[1] Based on Technical Information Release 115, dated December 8, 1958.

The taxpayer corporation is engaged in, and derives its income from, the purchase, improvement, and rental of real estate. It has never in the past bought or held any of its assets primarily for sale to customers, and such sales as it has made have been casual and isolated.

During the taxable year, the taxpayer found it necessary to sell a tract of its nonproductive land which had not been acquired in a foreclosure and which had been held as an investment. In order to derive the maximum proceeds from the sale, the taxpayer subdivided the land into residential lots, graded and surfaced the streets, and installed the required drainage and utilities. An independent real estate broker advertised and negotiated the sales of the lots.

Sections 1221 and 1231 of the Internal Revenue Code of 1954, in setting forth the rules for the determination of capital gains and losses, exclude from the definition of a capital asset and from the definition of property used in trade or business, property held by a taxpayer primarily for sale to customers in the ordinary course of its trade or business.

In the case of *R. J. Richards* v. *Commissioner*, 81 Fed. (2d) 369, it was held that gain from the subdivision and sale of land, originally purchased for farming purposes, constituted ordinary income, not capital gain. This decision was based on the fact that, at the time of the sales, the subdivided land was held by the taxpayers primarily for sale to customers in the ordinary course of trade or business. See also *C. W. Oliver* v. *Commissioner*, 138 Fed. (2d) 910; *Myra C. Brown* v. *Commissioner*, 143 Fed. (2d) 468; *Robert Swanston* v. *Commissioner*, Tax Court Memorandum Opinion, entered April 28, 1943.

A similar conclusion was reached in *C. E. Mauldin* v. *Commissioner*, 195 Fed. (2d) 714, wherein it was held that ordinary income resulted from the subdivision and sale of land originally purchased for cattle raising. The court, in affirming the decision of the Tax Court of the United States in that case, stated, in part, as follows:

> Admittedly, Mauldin originally purchased the property for purposes other than sale in the ordinary course of trade or business. When, however, he subdivided and offered it for sale, he was undoubtedly engaged in the vocation of selling lots from this tract * * *

The facts of the instant case indicate that the taxpayer subdivided land and made improvements thereon in order to facilitate the sale and derive the maximum proceeds from the disposition of the property. After such division and improvement, the lots were held by the taxpayer primarily for sale to customers in the ordinary course of trade or business.

The provisions of section 1237 of the Code are inapplicable in the instant case inasmuch as that section applies to a corporation only if no shareholder of such corporation directly or indirectly holds property for sale to customers in the ordinary course of trade or business, and the property subdivided is acquired in a foreclosure, as defined in section 1237(b)(3). Here, such real property was not acquired through foreclosure.

Accordingly, it is held that for Federal income tax puruposes, where section 1237 of the Code is inapplicable, gain realized by a corporation from the sale of lots subdivided from land which it had

held as an investment and on which it made sizeable improvements in order to facilitate the sale of the lots, such as the construction of streets or the installation of utilities, constitutes ordinary income to the corporation.

Rev. Rul. 59–141 [1]

The Internal Revenue Service will not follow the decision in the case of *William F. Perry et ux.* v. *United States*, 160 Fed. Supp. 270, as a precedent in the disposition of similar cases. In this case, the United States Court of Claims held that the return to the grantor of the corpus of a charitable trust constituted a nontaxable return of capital even though the grantor had realized full tax benefits from charitable deductions allowed for transfers to the trust in prior tax years. The court stated that the taxpayer should only add to the tax otherwise due in the year of repayment the amount of the taxes which had been saved as a result of the deductions previously taken.

This approach is contrary in principle to a long line of judicial authority holding that recovery of previously deducted items constitutes taxable income in full in the year of recovery if the taxpayer had realized a full tax benefit from deductions taken in prior tax years. See *Rothensies* v. *Electric Storage Battery Co.*, 329 U. S. 296, Ct. D. 1679, C.B. 1947–1,109, and *Estate of William H. Block*, 39 BTA 338. It is also contrary to the Internal Revenue Service's published position on the matter. See Revenue Ruling 54–566, C.B. 1954–2, 96. Accordingly, similar cases will be disposed of in conformity with established judicial doctrine and the prior published ruling, pending further judicial development of the issue.

Trust income distribution to a nonresident alien. See Rev. Rul. 59–177, page 229.

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26 CFR 1.61–2: Compensation for services, including fees, commissions, and similar items.
(Also Sections 162, 3121, 3306, 3401; 1.162–10, 31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1.)

Rev. Rul. 59–58

Advice has been requested whether the value of a turkey, ham, or other item of merchandise purchased by an employer and distributed generally to each of the employees engaged in his business at Christmas, or a comparable holiday, constitutes wages subject to income tax withholding or income subject to tax for income tax purposes, and whether the cost of such items is deductible by the employer as an ordinary and necessary business expense.

Section 31.3401(a)–1(b)(10) of the Withholding Tax Regulations provides that, ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished by an employer to his employees generally, are not considered as wages subject to withholding if such facilities or

[1] Based on Technical Information Release 128, dated February 2, 1959.

privileges are of relatively small value and are furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees. Similar provisions are contained in the regulations pertaining to the employment taxes imposed by the Federal Insurance Contributions Act and the Federal Unemployment Tax Act (Chapters 21 and 23 of the Internal Revenue Code of 1954). See sections 31.3121(a)-1(f) and 31.3306(b)-1(f) of such regulations.

It is accordingly held that the value of a turkey, ham, or other item of merchandise of similar nominal value, distributed by an employer to an employee at Christmas, or a comparable holiday, as part of a general distribution to employees engaged in the business of the employer as a means of promoting their good will, does not constitute wages subject to income tax withholding or wages for Federal Insurance Contributions Act or Federal Unemployment Tax Act purposes.

In view of the small amounts involved, and since it may reasonably be contended in many cases that such items constitute excludable gifts, it is similarly held that the value of such an item of merchandise need not be treated as taxable income by the employee who receives it.

The foregoing rules will not apply to distributions of cash, gift certificates, and similar items of readily convertible cash value, regardless of the amount involved.

It is further held that the cost to the employer of turkeys, hams, and other merchandise of similar nominal value which are distributed generally to the employees engaged in his business, primarily for the business purpose of promoting good relations with his employees, is deductible by the employer under section 162 of the Code as an ordinary and necessary business expense.

Rev. Rul. 59-195

Where an employer purchases and pays the premiums on an insurance policy on the life of one of its employees and subsequently sells such policy, on which further premiums must be paid, to the employee, the value of the policy, for computing taxable gain to the employee in the year of purchase, is its interpolated terminal reserve value at the date of the sale, plus the proportionate part of any premium paid by the employer prior to the date of the sale which is applicable to a period subsequent to the date of the sale.

Advice has been requested as to the manner of computing the value of an insurance policy acquired under the circumstances described below.

In the instant case, a corporation purchased an insurance policy on the life of one of its employees. The corporation designated itself as the beneficiary under the policy and paid the premiums thereon for several years.

During the taxable year under consideration, the corporation sold the aforementioned insurance policy, on which further premiums were to be paid, to the insured employee for the cash surrender value of the policy at the date of sale. By purchasing the policy, the insured employee acquired the right to designate a beneficiary of his own choosing.

The specific issue in this case is whether the case surrender value is a proper basis of valuation of this type of insurance policy in computing taxable gain to the employee on the purchase transaction.

In *Charles Cutler Parsons* v. *Commissioner*, 16 T.C. 256, the Tax Court of the United States concluded that the taxpayer, by exchanging one type of insurance contract for another, received property having a value in excess of the cash surrender value. The court held that, for the purpose of computing the taxable gain, the fair market value of a single premium life insurance policy issued on the date the transaction took place was its cost, rather than its cash surrender value.

This basis of valuation was also prescribed by the Supreme Court of the United States for gift tax purposes where gifts of single premium life insurance contracts were made at the time of their purchase. See *Florence Guggenheim* v. *Martha E. Rasquin*, 312 U.S. 254, Ct. D. 1487, C.B. 1941–1, 445.

In a case involving gifts of paid-up life insurance contracts long after their purchase, so that the original single premium purchase price no longer represented their value, the Supreme Court of the United States held that the cost of replacement of the policy at the then attained age of the insured is the best available criterion of the value of the policies at the date of the gift. See *United States* v. *Joseph T. Ryerson et al*, 312 U.S. 260, Ct. D. 1488, C.B. 1941–1, 447.

Based on the foregoing court decisions, the computation of the value of the policy, in the instant case, at the date of purchase would be relatively simple if it were a single premium or paid-up policy. However, the instant case involves an insurance policy on which further premiums are to be paid by the taxpayer. With respect to the valuation of insurance contracts which have been in force for some time and on which further premiums are to be paid, for Federal gift tax purposes, section 25.2512–6 of the Gift Tax Regulations provides, in part, as follows:

> * * * The value of a life insurance contract * * * issued by a company regularly engaged in the selling of contracts of that character is established through the sale of the particular contract by the company, or through the sale by the company of comparable contracts. As valuation of an insurance policy through sale of comparable contracts is not readily ascertainable when the gift is of a contract which has been in force for some time and on which further premium payments are to be made, the value may be approximated by adding to the interpolated terminal reserve at the date of the gift the proportionate part of the gross premium last paid before the date of the gift which covers the period extending beyond that date. If, however, because of the unusual nature of the contract such approximation is not reasonably close to the full value, this method may not be used. * * *

It is the position of the Internal Revenue Service that, in order to avoid the possible inconsistency of two different valuations of the same insurance contract for Federal income tax and for Federal gift tax purposes, the method of valuation prescribed by section 25.2512–6 of the Gift Tax Regulations should be followed for Federal income tax purposes in situations similar to the instant case.

Accordingly, it is held that where an employer purchases and pays the premiums on an insurance policy on the life of one of its employees and subsequently sells such policy, on which further premiums must be paid, to the employee, the value of the policy, for computing taxable gain to the employee in the year of purchase, is its interpolated terminal reserve value at the date of the sale, plus the proportionate part of any premium paid by the employer prior to the date of the sale which is applicable to a period subsequent to the date of the sale.

Amounts paid by the Veterans Administration for services rendered by psychology trainees at Veterans Administration hospitals. See Rev. Rul. 59–118, page 41.

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26 CFR 1.61–5: Allocations by cooperative associations; tax treatment as to patrons. (Also Section 522; 1.522–3.) Rev. Rul. 59–107

When, as part of the price support program, money is loaned to a farmer-producer on his warehouse receipt for grain stored in a nonexempt cooperative, storage charges paid by the Commodity Credit Corporation for the period prior to default are income allocable to members as patronage dividends and are excludable from the cooperative's income if there was a preexisting obligation to allocate such patronage income.

The storage charges paid by the Commodity Credit Corporation for the period following default constitutes income not derived from patronage, as the grain at that time belongs to the Commodity Credit Corporation. A nonexempt cooperative for taxable years beginning after December 31, 1951, is taxable on such income whether or not it is allocated to patrons.

In either case, allocations to the patron are taxable income to the patron.

Advice has been requested with respect to the Federal income tax treatment to be accorded the handling and storage charges applicable to the first year's storage of grain delivered to a taxable cooperative by a member (farmer-producer) who has received a Commodity Credit Corporation loan.

By legislation, the United States Government makes or insures loans to farmer-producers as part of the price support program. Since these loans are made without recourse to the farmer, the lender looks to the pledged commodity as the sole collateral for the satisfaction of the loan in case of default by the farmer. During the period of the loan, the farmer stores the pledged commodity. Sometimes he pays the storage in advance, but more often he does not.

If the farmer wishes a price-supported loan with respect to a crop, he usually delivers the grain in July or August of the given crop year. When the grain is delivered to the taxable cooperative, the farmer obtains a negotiable warehouse receipt for the amount of grain delivered. This receipt shows whether or not the storage charges have been prepaid. The farmer-producer may obtain his loan from a local lending agency approved by the Commodity Credit Corporation. The Corporation agrees to purchase on demand any note in approved form from the lending agency from which the producer has obtained a loan, if the note is presented within the specified time of redemption. Storage and handling charges to the date of maturity are deducted from the proceeds of the loan unless such charges have been paid or prepaid by the farmer. In a large percentage of the cases, the Commodity Credit Corporation has to take title to the grain. It pays the lending agency for the note and pays all storage and handling charges on the grain covered by the note.

Some of the cooperatives are of the opinion that the portion of the Commodity Credit Corporation payment received by them which is attributable to storage and handling of a member's grain for the period before the take-over date (usually March 31) should be treated as business done with the member and that the resulting income should

be treated as patronage income subject to allocation to the member. On the other hand, some cooperatives are of the opinion that the Commodity Credit Corporation payment received by them which is attributable to storage and handling of a member's grain for both the period before and the period after the take-over date should be treated as business done with the member and the resulting income for both periods should be treated as patronage income subject to allocation to the member. The pertinent part of Senate Report No. 781, C. B. 1951–2, 458, at 472, relating to amendments by the Revenue Act of 1951 to section 101(12) of the Internal Revenue Code of 1939 with respect to farmers' cooperatives, states that "nonoperating income such as interest, dividends, rents, and capital gains and also the income from certain business done with the United States Government or its agencies, is taxable to the ordinary cooperative even when allocated to the accounts of patrons * * *." The above-quoted language indicates that Congress intended income from business transactions with a governmental agency like Commodity Credit Corporation to be taxable to a nonexempt cooperative whether or not such income is allocated to the accounts of patrons.

Under the pertinent provisions of the Revenue Act of 1951, continued under section 521 and section 522 of the Internal Revenue Code of 1954, tax-exempt farmers' cooperatives are taxable substantially to the same extent as non-exempt farmers' cooperatives. The only distinction between the tax-exempt and the nonexempt cooperatives is that exempt cooperatives are allowed a statutory deduction for their limited dividends on capital stock and for allocations of incidental nonpatronage receipts to patrons on a patronage basis.

Generally, storage and handling charges to the date of maturity or default are deducted from the proceeds of the loan unless they have been prepaid by the farmer-producer. The Commodity Credit Corporation takes title upon default and payments for the period after default are made on its own account.

A pre-existing obligation to allocate patronage dividends, rebates, or refunds to a member is necessary before a cooperative can exclude such amounts from its taxable income. The following statement regarding the exclusion of patronage dividends from the Federal income tax of a nonexempt cooperative appears in *Farmers Cooperative Company* v. *Birmingham*, 86 Fed. Supp. 201, at 213:

> * * * The exclusion of patronage dividends for federal income tax purposes has not been placed upon the ground that cooperatives are special creatures of statutes under the tax laws, but is justified rather upon the theory that patronage dividends are in reality rebates on purchases or deferred payments on sales, allocated or distributed pursuant to a pre-existing obligation of the cooperative, and thus do not constitute taxable income to the cooperative. * * *

A cooperative may allocate to its patrons on the basis of business done with such patrons margin which otherwise would be its own income and its income may be reduced to the extent of the allocation on the theory that the amounts allocated were not income to the cooperative. The fact that the exclusion is allowable if it is made pursuant to a pre-existing obligation is emphasized in Revenue Ruling 54–10, C. B. 1954–1, 24, 25.

Accordingly, it is held that when, as part of the price support program, money is loaned to a farmer-producer on his warehouse receipt

for grain stored in a nonexempt cooperative, storage charges paid by the Commodity Credit Corporation for the period prior to default are income allocable to members as patronage dividends and are excludable from the cooperative's income if there was a pre-existing obligation to allocate such patronage income.

The storage charges paid by the Commodity Credit Corporation for the period following default constitutes income not derived from patronage, as the grain at that time belongs to the Commodity Credit Corporation. A nonexempt cooperative for taxable years beginning after December 31, 1951, is taxable on such income whether or not it is allocated to patrons.

In either case, allocations to the patron are taxable income to the patron.

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26 CFR 1.61–7: Interest.

Sale of discounted promissory notes during a liquidation under section 337 of the Code. See Rev. Rul. 59–120, page 74.

PART II.—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

SECTION 71.—ALIMONY AND SEPARATE MAINTENANCE PAYMENTS

26 CFR 1.71–1: Alimony and separate maintenance payments; income to wife or former wife.
(Also Section 215; 1.215–1.)

Rev. Rul. 59–93 [1]

> The decision in *Charles S. Weil, et al.* v. *Commissioner*, 240 Fed. (2d) 584, certiorari denied, 353 U.S. 958, relating to the treatment of certain periodic payments made to a wife for the support of herself and minor children, will be followed by the Internal Revenue Service only in cases involving similar facts and circumstances. In determining whether payments made under a divorce decree or separation agreement are to be treated as alimony or a portion is for the support of minor children, the Service will continue to follow the rationale of the decision in *Jo Eisinger et ux.* v. *Commissioner*, 250 Fed. (2d) 303, certiorari denied, 356 U.S. 913, Ct. D. 1834, page 661, this Bulletin.

The Internal Revenue Service has been requested to state its position with respect to the decisions of the United States Courts of Appeals in *Charles S. Weil, et al.* v. *Commissioner*, 240 Fed. (2d) 584, certiorari denied, 353 U.S. 958, and *Jo Eisinger et ux.* v. *Commissioner*, 250 Fed (2d) 303, certiorari denied, 356 U.S. 913. The problem involved in each case is the determination of the portion of a periodic payment that will be treated as alimony where the payment is made in one amount to the wife pursuant to court decree or agreement for the support of both the wife and minor children. While these cases were decided under sections 22(k) and 23(u) of the Internal Revenue Code of 1939, they are equally applicable to sections 71 and 215 of the Internal Revenue Code of 1954.

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[1] Based on Technical Information Release 119, dated December 16, 1958.

Section 71(a) of the 1954 Code provides in general, that if a wife is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, the wife's gross income includes periodic payments received after such decree in discharge of a legal obligation which, because of the marital or family relationship, is imposed on or incurred by the husband under the decree or under a written instrument incident to such divorce or separation. Section 71(a) of the Code does not apply to that part of any periodic payment which the terms of the decree, instrument, or agreement fix as a designated sum payable for the support of minor children of the husband. See section 71(b) of the Code.

Section 215 of the Code provides that, in the case of a husband described in section 71, there shall be allowed as a deduction amounts includible under section 71 in the gross income of his wife. Payments for the support of the children are not deductible by the husband since such amounts are not includible in the gross income of the wife under section 71 of the Code.

In the *Weil* case, the agreement between the parties provided for periodic payments to the wife with which she was to support their children and herself. The only designation of any specific portion of the payments allocated for the support of the children was contingent on the wife's remarriage. The United States Court of Appeals for the Second Circuit held that the entire amount paid was deductible as alimony.

In the *Eisinger* case, the payments were to be reduced by one-fourth when either of the two children reached majority or died, and to be reduced by one-half if the wife remarried. The United States Court of Appeals for the Ninth Circuit held that the agreement in the *Eisinger* case allocated the payments between alimony and support for the children with sufficient certainty. It distinguished the *Weil* case on factual grounds, noting that the *Weil* agreement earmarked a specific sum for the support of the children only upon remarriage of the wife, an event which might never occur.

The Service will follow the decision of the United States Court of Appeals in the *Weil* case on this issue in cases involving similar facts and circumstances. However, in determining whether payments made under a divorce decree or separation agreement are to be treated as alimony or whether a portion is for the support of minor children, the Service will continue to follow its position as set forth in the rationale of the decision of the United States Court of Appeals in the *Eisinger* case. See Ct. D. 1834, page 661 of this bulletin.

Acquiescences in the Tax Court's decision in the *Charles S. Weil, Beulah Weil* and *Charles S.* and *Adreana Weil* cases, C.B. 1957–2, 7, are hereby withdrawn.

(Also Section 215; 1.215–1.) Rev. Rul. 59–190

The common law principle that the obligation to pay alimony terminates upon the death of either spouse, which is applicable in the State of Washington, and the possibility of a change in alimony payments by the court under section 26.08.110 of the Revised Code of Washington, constitute contingencies imposed by local law within the meaning of section 1.71–1(d) of the Income Tax Regulations. Alimony payments subject to any of the foregoing contingen-

cies qualify as periodic payments and are includible in the wife's gross income under section 71(a) of the Internal Revenue Code of 1954 and deductible by the husband under section 215 of the Code.

Advice has been requested whether the common law principle that the obligation to pay alimony terminates upon the death of either spouse, which is applicable in the State of Washington, and the possibility of a change in alimony payments by the court under section 26.08.110 of the Revised Code of Washington constitute contingencies imposed by local law within the meaning of section 1.71–1(d) of the Income Tax Regulations.

The terms of a divorce decree issued by the State of Washington provided that a husband pay to his wife a stated sum per month as alimony for a period of four years without any specific provision for continuing the payments after the death of either spouse.

Section 71(a) of the Internal Revenue Code of 1954 provides that if a wife is divorced or legally separated from her husband under a decree of divorce or separate maintenance, the alimony or separate maintenance payments are includible in the wife's gross income if such payments are (1) imposed on or incurred by the husband under the decree of divorce or separation, or a written instrument incident to such decree, (2) made in discharge of a legal obligation based on the marital relation, and (3) if such payments qualify as periodic payments. Section 215 of the Code provides that such payments are generally deductible by the husband.

Periodic payments are payments of a fixed amount for an indefinite period, or payments of an indefinite amount for a fixed or indefinite period. See *Roland K. Young* v. *Commissioner*, 10 T.C. 724, acquiescence, C.B. 1948–2, 4. Section 1.71–1(d) of the regulations provides that, in general, installment payments discharging a part of an obligation the principal sum of which is, in terms of money or property, specified in the decree, instrument, or agreement are not considered "periodic payments" except where the principal sum is payable over a period ending more than 10 years from the date of such decree, instrument, or agreement, and only to the extent that it does not exceed in each year 10 percent of the principal sum. However, where the principal sum is payable over a period ending 10 years or less from the date of such decree, instrument, or agreement, such payments are considered periodic payments if the payments meet the requirements set forth in section 1.71–1(d)(3)(i) of the regulations as follows:

(a) Such payments are subject to any one or more of the contingencies of death of either spouse, remarriage of the wife, or change in the economic status of either spouse, and

(b) Such payments are in the nature of alimony or an allowance for support.

Section 1.71–1(d)(3)(ii) of the regulations provides, in part, as follows:

(ii) Payments meeting the requirements of subdivision (i) are considered periodic payments for the purposes of section 71(a) regardless of whether—

(a) The contingencies described in subdivision (i)(a) are set forth in the terms of the decree, instrument, or agreement, or are imposed by local law * * *.

Section 26.08.110 of the Revised Code of Washington provides, in part, as follows:

DECREE OF DIVORCE OR ANNULMENT.—Finality. * * * Such decree as to alimony and the care, custody, support and education of children may be modified, altered and revised by the court from time to time as circumstances may require. * * *

Since the courts of Washington have the power under the foregoing section of the Revised Code of Washington to modify, alter, and revise alimony payments, the possibility that such changes will be made constitutes a contingency imposed by local law. Furthermore, where the courts of the State of Washington have adopted the common law, the principle under common law that the obligation to pay alimony terminates upon the death of either spouse is also considered to be a contingency imposed by local law.

In view of the foregoing, it is held that the common law principle that the obligation to pay alimony terminates upon the death of either spouse, which is applicable in the State of Washington, and the possibility of a change in alimony payments by the court under section 26.08.110 of the Revised Code of Washington constitute contingencies imposed by local law within the meaning of section 1.71–1(d) of the regulations. Therefore, payments subject to any of the foregoing contingencies qualify as periodic payments and are includible in the wife's gross income under section 71(a) of the Code and deductible by the husband under section 215 of the Code.

Monthly payments by a husband to his former wife under a decree where payments for a period of less than ten years are contingent. See Rev. Rul. 59–45, page 666.

Care and maintenance payments pursuant to annulment decree under section 7(5) of the Domestic Relations Law of New York. See Rev. Rul. 59–130, page 61.

SECTION 72.—ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.

26 CFR 1.72–12: Effect of taking an annuity in lieu of a lump sum upon the maturity of a contract. Rev. Rul. 59–94

Under an employees' profit-sharing trust qualified under section 401(a) of the Internal Revenue Code of 1954 and exempt under section 501(a), an employee, upon termination of services, has the unrestricted right to an immediate lump sum payment of his interest in such trust. The trust agreement also provides that, in lieu of such lump sum payment, the employee may elect, within 60 days after the lump sum first becomes payable, to have the trustee purchase an annuity contract with the amount representing the employee's interest in the trust and distribute such contract to him. *Held*, where the employee exercises the election, within 60 days after termination of his services, to have the trustee purchase for and transfer to him an annuity in lieu of a lump sum distribution of the balance credited to his account, section 72(h) of the Code is applicable, and no part of such lump sum shall be includible in gross income at the time such sum first became payable.

PART III.—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

SECTION 103.—INTEREST ON CERTAIN GOVERNMENTAL OBLIGATIONS

26 CFR 1.103–1: Interest upon obligations of a State, Territory, etc.

Taxability of interest on bonds issued in behalf of a political subdivision of a state. See Rev. Rul. 59–41, page 13.

SECTION 104.—COMPENSATION FOR INJURIES OR SICKNESS

26 CFR 1.104–1: Compensation for injuries or sickness.

Amounts received by a husband in a community property state through an accident or health insurance plan. See Rev. Rul. 59–159, below.

SECTION 105.—AMOUNTS RECEIVED UNDER ACCIDENT AND HEALTH PLANS

(Also Section 104; 1.104–1.) Rev. Rul. 59–159

Where a husband and wife are domiciled in Arizona, a community property State, the husband's salary received pursuant to a wage continuation plan, attributable to a period during which the husband was absent from work on account of personal injuries or sickness, constitutes community income and is excludable from gross income to the extent provided in section 105(d) of the Internal Revenue Code of 1954. The amount received to the extent it exceeds the amount so excludable, must be included in gross income, one-half to the husband and one-half to the wife.

Where a husband and wife are domiciled in Arizona, the husband's salary attributable to a period during which the wife, who was unemployed, was hospitalized for illness was not received through accident or health insurance, under an accident or health plan for employees, or from a sickness and disability fund maintained under a state law, but constitutes compensation which is includible in the gross income of the husband and of the wife as community income.

Advice has been requested relative to the application of sections 104(a)(3) and 105(d) of the Internal Revenue Code of 1954 to amounts received through accident or health insurance, or treated as so received under section 105(e) of the Code, by *H* and *W*, husband and wife, who are residents of and domiciled in Arizona, a community property State.

Throughout 1957, *H* was employed by the *M* company at a salary of $150 per week. *W* is a housewife and during 1957 her only income was her share of the community income. *H* was absent from work on account of a personal injury (not incurred in the course of employment) from Monday, March 4, 1957, through Sunday, March 31, 1957, a period of four weeks. Pursuant to the provisions of a noncontrib-

utory accident or health plan for employees, the *M* company paid *H* his regular salary for the period during which he was absent from work on account of the injury. *W* was incapacitated by an illness, for which she was hospitalized, from Tuesday, June 11, 1957, through Monday, June 24, 1957, a period of two weeks. During the period that *W* was incapacitated, *H* earned and was paid his regular salary of $150 per week.

Section 63–301 of the Arizona Code Annotated (1939), Volume 5, provides, in part, that all property acquired by either husband or wife during the marriage, except that which is acquired by gift, devise or descent, or earned by the wife and her minor children, while she has lived or may live, separate and apart from her husband, shall be the community property of the husband and wife.

Under the Arizona law of community property there is such equal interest in community income as to entitle each spouse to treat one-half the community income as his or her income and to file a separate return thereof. *Goodell* v. *I. B. Koch*, 282 U.S. 118, Ct. D. 262, C.B. IX–2, 199 (1930). For purposes of Federal income taxation, each spouse is liable for payment of the tax on his or her respective equal share of the community income. *Marjorie Hunt* v. *Commissioner*, 22 T.C. 228, acquiescence, C.B. 1954–2, 4.

The Supreme Court of the State of Arizona has held that amounts received as damages for a personal injury sustained by a wife during coverture are community property, and that amounts received from the Industrial Commission for personal injuries sustained by a husband during coverture are community property. See *Fox Tucson Theatres Corp.* v. *Emma Lindsay*, 56 Pac. (2d) 183; and *Timothy T. Dawson* v. *Bertha May McNaney*, 223 Pac. (2d) 907.

Therefore, the amounts paid to *H* by virtue of his employment by the *M* company, including the amounts paid to him pursuant to the provisions of the accident or health plan for employees while he was absent from work on account of personal injuries or sickness, constitute community income, one-half of which must be included in the gross income of *H* and one-half in the gross income of *W*, unless it is specifically excluded from gross income by some provision of the Internal Revenue Code.

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, section 104(a)(3) of the Code excludes from gross income "amounts received through accident or health insurance for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer)."

Section 105(a) of the Code provides that amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent such amounts are paid by the employer, unless such amounts are excluded from gross income by sections 105 (b), (c), or (d) of the Code. Sections 105 (b) and (c) are not applicable to the instant case.

Section 105(d) of the Code excludes from gross income amounts referred to in section 105(a) "if such amounts constitute wages or payments in lieu of wages for a period during which the employee

is absent from work on account of personal injuries or sickness." However, the exclusion under this section may not exceed a weekly rate of $100, and, if the absence is due to sickness (as distinguished from injury), the exclusion does not apply to amounts attributable to the first seven calendar days of the period of absence unless the employee is hospitalized on account of sickness for at least one day during the period of absence.

Section 105(e) of the Code provides that, for purposes of sections 104 and 105, amounts received under an accident or health plan for employees, and amounts received from a sickness and disability fund for employees maintained under the laws of a State, a Territory, or the District of Columbia, shall be treated as amounts received through accident or health insurance.

While community property laws cause income constituting community property to be "received" one-half by each spouse, such laws do not change the nature or character of the income. The character of community income is established by the circumstances under which it is obtained. See Rev. Rul. 55–246, C.B. 1955–1, 92. For example, one-half of the income earned by one spouse in a community property state is "earned income" of the other spouse for purposes of sections 37 (b) and (d) (2) of the Code. See section 1.37–2 of the Income Tax Regulations and Revenue Ruling 55–597, C.B. 1955–2, 15. See also *Hallie Graham* v. *Commissioner*, 95 Fed. (2d) 174, in which it is stated, "* * * said community income—petitioner's half as well as her husband's half—was 'received as compensation for personal services actually rendered' and was, therefore, within the statutory definition of 'earned income'."

All of the husband's salary attributable to the period during which *H* was absent from work on account of a personal injury was received under an accident or health plan for employees, and, in accordance with section 105(e) of the Code, it is treated as amounts received through accident or health insurance for purposes of sections 104 and 105. The total amount of such salary received for this period was $600 ($150 per week for 4 weeks). Section 104(a)(3) of the Code excepts from its exclusion amounts received by an employee which are paid by the employer. Accordingly, no portion of the $600 may be excluded under that section. However, such amount constitutes "wages * * * for a period during which the employee is absent from work on account of personal injuries" and may be excluded from gross income under section 105(d) to the extent that it does not exceed a weekly rate of $100. The amount received which exceeds a weekly rate of $100 must be included in gross income as required in section 105(a). Since such amount is community income, one-half is the income of *H* and one-half the income of *W*. Accordingly, for the period of four weeks during which *H* was absent from work, *H* and *W* will each include $100 in gross income (*i.e.*, one-half of the $200 excess over $400 excludable from gross income under section 105(d) of the Code).

The husband's salary attributable to the period during which *W* was incapacitated was not received through accident or health insurance, under an accident or health plan for employees, or from a sickness and disability fund for employees maintained under the law of a State, a Territory or the District of Columbia. Accordingly,

sections 104(a)(3) and 105(d) of the Code are inapplicable to such income and neither *H* nor *W* is entitled to exclude from gross income under section 104(a)(3) or section 105(d) any portion of such community income received for the period *W* was incapacitated. Such income constitutes compensation which must be included in the gross income of *H* and of *W*.

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26 CFR 1.105–4: Wage continuation plans. Rev. Rul. 59–26

"Retirement Age" which, for the purpose of section 105(d) of the Internal Revenue Code of 1954, relating to the exclusion from gross income of certain amounts received under a wage continuation plan, is to be used by members of the Armed Forces and other uniformed services who were placed on the retired list because of physical disability incurred in active service.

Revenue Ruling 58–43, C. B. 1958–1, 45, and Revenue Ruling 57–76, C. B. 1957–1, 66, amplified.

Numerous inquiries have been received by the Internal Revenue Service for a determination of the "retirement age" for members of the Armed Forces and other uniformed services for the purposes of the provisions of section 105(d) of the Internal Revenue Code of 1954 and Revenue Ruling 58–43, C. B. 1958–1, 45.

Section 105(d) of the Code provides, in part, that wages or payments in lieu of wages received by an employee pursuant to the provisions of a wage continuation plan for a period during which the employee is absent from work on account of personal injuries or sickness are excluable from gross income, subject to the limitations stated in that section.

Section 1.105–4(a)(3)(i) of the Income Tax Regulations provides, in part, as follows:

Section 105(d) applies only to amounts attributable to periods during which the employee would be at work were it not for a personal injury or sickness. Thus, an employee is not absent from work if he is not expected to work because, for example, he has reached retirement age.

Revenue Ruling 58–43, *supra*, provides, in part, that the provisions of section 402 of the Career Compensation Act of 1949, 63 Stat. 802, and chapter 61 of Title 10 of the United States Code, constitute wage continuation plans for the purpose of section 1.105–4(a)(3)(i) of the Income Tax Regulations. It further holds that disability retirement pay received by a member on the retired list pursuant to those provisions, which is in excess of the amount excluded under section 104(a)(4) of the Code, may be excluded from gross income to the extent provided in section 105(d) of the Code if received before the member reaches retirement age.

The term "retirement age" is defined in Revenue Ruling 57–76, C. B. 1957–1, 66, as the lowest age specified in the appropriate written plan at which the employee, had he not been disabled and had he continued in such employment, would have had the right to retire without the consent of the employer and receive retirement benefits based on service to the date of retirement computed at the full rate set forth in the plan, that is, without actuarial or similar reduction because of retirement before some later specified age.

For the purposes of section 105(d) of the Code, the term "retirement age" as defined in the preceding paragraph, for personnel retired

for a physical disability incurred in active service is the time or age indicated in the following tables:

Army and Air Force: [1]

Enlisted:

30 years service, regardless of age. (Army, section 3917; Air Force, section 8917.)

Warrant Officers, Male:

30 years service (section 1305) or age 62 with 20 years service, whichever is earlier (section 1263).

Warrant Officers, Female:

30 years service (section 1305) or age 55 with 20 years service, whichever is earlier (section 1255).

Commissioned Officers, Male:

40 years service (Army, section 3924; Air Force, section 8924) or age 60 [2] whichever is earlier. (Army, section 3883; Air Force, section 8883).

Commissioned Officers, Female: [3]

30 years service, Lieutenant Colonels and above. (Army, section 3916(b); Air Force, section 8916(b), as amended by Public Law 85–155, 71 Stat. 380).

Commissioned Officers, Female:

28 years service, Nurse Majors and below. (Army, section 3915(b); Air Force, section 8915(b), as amended by Public Law 85–155, 71 Stat. 379, 389).

Commissioned Officers, Female: [3]

25 years service, other Majors and below. (Army, section 3915(a); Air Force, section 8915(a), as amended by Public Law 85–155, 71 Stat. 379, 389).

Navy, Including Marine Corps: [4]

Enlisted:

30 years service regardless of age (section 6326).

Warrant Officers, Male:

30 years service (section 1305) or age 62 with 20 years service whichever is earlier (section 1263).

Warrant Officers, Female:

30 years service (section 1305) or age 55 with 20 years service whichever is earlier (section 1255).

Commissioned Officers, Male:

40 years service (section 6321) or age 62,[5] whichever is earlier (section 6390).

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[1] All statutory references to Army and Air Force are to Title 10, United States Code, 70 A Stat.

[2] Exceptions to age 60. For Major Generals who at the times of retirement for physical disability have not reached 62 years, the age factor is 62. For Major Generals who at such time have reached 62 years and are serving in a temporary grade above Major General or in a position carrying such higher grade, the age factor is 64. For officers above the rank of Major General, the age factor will be determined by individual rulings where necessary. For Professors in the Military and Air Force Academies, the age factor is 64. (Army, sections 3885, 3886; Air Force, sections 8885, 8886.)

[3] Air Force only. The rules applicable to male commissioned officers are also applicable to female commissioned officers designated at time of retirement to perform medical, dental, medical service, judge advocate, or chaplain functions under section 8067.

[4] All statutory references to Navy, including Marine Corps are to Title 10, United States Code, 70 A. Stat.

[5] Except that for Naval officers below the rank of Fleet Admiral who are retired for physical disability after the first day of the month following the month in which they have reached age 62, the age factor is 64 (section 6390).

Commissioned Officers, Nurses:
30 years service or age 55, whichever is earlier, for Lieutenant Commanders and above at time of retirement for disability (section 6377(d) and section 6396 as amended by Public Law 85–155, 71 Stat. 384, 385).
Commissioned Officers, Nurses:
20 years service or age 50, whichever is later, for below Lieutenant Commander at time of retirement for disability (section 6396(b) as amended by P. L. 85–155, 71 Stat. 384, 385).
Commissioned Officers, Others, Female:
30 years service or age 55, whichever is earlier, for Commanders and above, at time of retirement for disability (section 6398); age 50 for below Commander (section 6399).

United States Coast Guard:
Enlisted:
Age 62 (section 353, Title 14, U.S.C.).
Warrant Officers, Male:
30 years service (section 1305, Title 10, U.S.C.) or age 62 with 20 years service, whichever is earlier (section 1263, Title 10, U.S.C., and section 303, Title 14, U.S.C.).
Warrant Officers, Female:
30 years service (section 1305, Title 10, U.S.C.) or age 55 with 20 years service, whichever is earlier (section 1255, Title 10, U.S.C.).
Commissioned Officers:
Age 62 (section 230, Title 14, U.S.C.).

United States Coast and Geodetic Survey:
Commissioned Officers:
Age 60 below rank of Rear Admiral (section 853(k)(a), Title 33, U.S.C.). Age 62, Rear Admiral and above (section 853(k)(b), Title 33, U.S.C.).

United States Public Health Service:
Commissioned Officers:
30 years service or age 64, whichever is earlier (section 212(a), Title 42, U.S.C.).

Revenue Rulings 57–76 and 58–43, *supra*, are amplified for the purpose of determining the retirement ages for various ranks of members in the uniformed services.

(Also Sections 691, 3121, 3402; 1.691(a)–1, 31.3121(a)–1, 31.3402(a)–1.) Rev. Rul. 59–64

Payments made to the estate or beneficiary of an employee, representing the employee's wages during his last illness and his salary for the remainder of the month in which he died, are payments made pursuant to a plan or system of the type described in section 3121(a)(2) of the Federal Insurance Contributions Act which are excluded from "wages" and are not subject to the taxes imposed under that Act. However, the payments representing vacation pay made to the estate or beneficiary of such employee constitute "wages" subject to tax under that Act.

Death benefit payments made to the estate or the beneficiary of a deceased employee and payments made to the estate or beneficiary of a deceased employee which represent unpaid compensation for

services rendered by the decedent are not wages subject to withholding of income tax at source.

The portion of the monthly salary paid for the period up to decedent's death that represents sick pay, which would have been excludable from gross income of the decedent to the extent provided by section 105(d) of the Internal Revenue Code of 1954, is not "income in respect of a decedent," nor is it gross income in the hands of the recipient.

Advice has been requested as to the treatment for Federal employment and income tax purposes of the amounts received from a company by the beneficiary of one of its employees under the circumstances described below.

An employee, who was paid on a monthly basis, was absent from work for a period of 15 days prior to his death on June 15, 1957. His absence from work was due to an illness for which he was hospitalized. He had been paid all of his regular earnings through May 31, 1957. Under the established company policy, the employee, while he was absent from work due to illness, continued to receive wages under his employer's wage continuation plan and, when he died, salary or illness benefits were paid to the employee's beneficiary through the current pay period in which death occurred. Accordingly, the beneficiary received the employee's salary of $600 for the month of June and $500 representing vacation allowances earned by the employee prior to his death.

Along with hospitalization and disability plans, the employer grants illness benefits to all regular employees with 24 or more weeks of service. The number of weeks an employee may receive these benefits increases with the length of his continuous service in accordance with a written plan which was furnished to the employees. The employee pays no premiums toward this plan, the employer bearing the entire cost thereof.

Section 3121 of the Federal Insurance Contributions Act (chapter 21, subtitle C, Internal Revenue Code of 1954) provides, in part, as follows:

(a) Wages.—For purposes of this chapter, 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—

* * * * * * *

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) retirement, or

(B) sickness or accident disability, or

(C) medical or hospitalization expenses in connection with sickness or accident disability, or

(D) death;

The payments made to the beneficiary of the employee representing his wages during his last illness and his salary for the remainder of the month of June are payments made pursuant to a plan or system of the type described in section 3121(a)(2) of the Federal Insurance Contributions Act. Thus, the taxes imposed by the Fed-

eral Insurance Contributions Act are not applicable to the $600 paid to the employee's beneficiary. However, the payments representing vacation pay made to the beneficiary of such employee constitute "wages" subject to such taxes.

I.T. 3737, C.B. 1945, 319, holds that death benefit payments made to the beneficiaries or to the estates of deceased employees and payments made to the beneficiaries or to the estates of deceased employees which represent unpaid compensation for services rendered by the decedent are not wages subject to withholding of income tax at the source under section 1622 of the Internal Revenue Code of 1939, as amended, now section 3402 of the Internal Revenue Code of 1954. Therefore, no withholding of income tax is required to be made by the company from the $600 June salary or from the vacation allowance paid to the beneficiary of the company's former employee.

Under the provisions of section 105(d) of the Code, wages or payments in lieu of wages, received by an employee pursuant to the provisions of a wage continuation plan for a period during which the employee is absent from work on account of personal injuries or sickness, are excludable from gross income, subject to the following limitations: (1) the exclusion does not apply to the extent that the payments received exceed the weekly rate of $100; and (2) if the absence is due to sickness (as distinguished from injury) the exclusion does not apply to amounts attributable to the first seven calendar days of the period of absence unless the employee is hospitalized on account of sickness for at least one day during the period of absence.

That portion of the $600 paid for the period up to the decedent's death would have been excludable from the gross income of the decedent, to the extent provided in section 105(d) of the Code, had he received it prior to his death. Accordingly, that portion is not "income in respect of a decedent," nor is it taxable income in the hands of the recipient. However, to the extent it would not have been excluded under section 105(d) of the Code, it is income in respect of a decedent and includible in the gross income of the recipient under section 691(a) of the Code.

That portion of the $600 paid for the period from the decedent's death to the end of the month was not an amount to which he possessed a nonforfeitable right while living but was paid solely by reason of the death of the employee. It, therefore, qualifies as a death benefit under section 101(b) of the Code and, since it does not exceed $5,000, it is excludable from the gross income of the recipient to the extent provided therein.

The beneficiary acquiring the right from the decedent to receive the vacation allowances is required to take the amount thereof into account in computing his taxable income for the period in which such amount is received. Under section 691(a)(3) of the Code, such amount is considered to have the same character in the hands of the beneficiary which it would have had in the hands of the decedent had he lived.

The employer in the instant case is required, under section 6041(a) of the Code, to report on Form 1096, U.S. Annual Information Return, accompanied by U.S. Information Return, Form 1099, all payments of $600 or more made to the estate or beneficiary of the employee.

A retirement plan which contains no specific provision for early retirement because of disability is not an accident or health plan within the meaning of section 1.105–5 of the Income Tax Regulations. Amounts received under such plan may not be excluded from gross income under section 105(d) of the Internal Revenue Code of 1954. The fact that the plan is operated in conjunction with the taxpayer's overall benefit plan does not bring it within the provisions of section 1.105–5 of the regulations.

Advice has been requested whether the amounts received for early retirement because of disability under a contributory annuity plan of a company may be excluded from the gross income of the recipients under section 105(d) of the Internal Revenue Code of 1954 under the circumstances described below.

The various plans of the company consist of a non-contributory retirement plan, the company's pension plan, awards by the company of a special allowance to certain managerial personnel, and a contributory annuity plan.

Under the non-contributory retirement plan an employee with at least $15X$ years of credited service is eligible for a disability pension upon becoming totally and permanently disabled regardless of age. When such a disability pensioner reaches 65 years of age, his pension benefits are recalculated and thereafter he receives a normal retirement pension. All the benefits under this plan are paid for by the company.

The pension plan covers only those employees who had at least X years of service with the company prior to a specified date. It provides for a special pension to employees who by reason of physical or mental incapacity are unable to perform their work. This special pension is paid regardless of age. Unlike the non-contributory retirement plan, there is no recalculation of benefits at age 65. The benefits provided by this plan are paid for by the company.

The company occasionally awards a "special allowance" to certain managerial personnel who are certified as being totally and permanently disabled or whose health is such that continued employment is inadvisable. The allowance is recalculated at age 65. The practice of granting "special allowances" to managerial personnel, although not published in any form, is one of long standing and is well known among the persons who may be concerned. The employees make no contributions toward such allowances.

The contributory annuity plan provides that normal retirement of an employee is the first day of the month coincident with or next following the employee's sixty-fifth birthday. There is provision in the plan that the early retirement date of an employee may be the first day of any month within a ten-year period prior to normal retirement date. An employee who retires at an early retirement date is entitled to receive an annuity of such amount as the total of the employee's own contributions and the contributions of the company on the employee's behalf up to such early retirement date will buy under the terms of the group annuity contract as of the date such annuity payments are to commence. Such annuity payments will begin on the employee's early retirement date or on the first day of any month thereafter as he may elect, but not later than the employee's

normal retirement date. An employee electing early retirement may also elect to receive payment under an optional form of annuity called a contingent annuitant option. The election of this option is subject to certain restrictions, one of which is that the employee must furnish evidence of good health. After the option is in effect, the insurance companies may require evidence of good health before granting early retirement.

All employees who are eligible to receive benefits under the contributory annuity plan are also eligible to receive benefits under the non-contributory retirement plan. If an employee retires early for disability, he receives the annuity plan benefits plus benefits, computed on the basis of $4X$ dollars a month for each year of credited service, under the non-contributory retirement plan. If he retires early for any other reason, he receives the same annuity plan benefits and reduced non-contributory retirement plan benefits. The contributory annuity plan contains no specific language concerning disability.

Section 105(a) of the Code provides that, except as otherwise provided in section 105 of the Code, amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent such amounts are attributable to contributions by the employer which were not includible in the gross income of the employee, or are paid by the employer.

Section 105(d) of the Code provides, with certain limitations, that gross income does not include amounts referred to in subsection (a) if such amounts constitute wages or payments in lieu of wages for a period during which the employee is absent from work on account of personal injuries or sickness.

Section 1.105–4(a) of the Income Tax Regulations provides in part, as follows:

> (1) Subject to the limitations provided in this section, section 105(d) provides an exclusion from gross income with respect to amounts refered to in section 105(a) which are paid to an employee through a wage continuation plan and which constitute wages or payments in lieu of wages for a period during which the employee is absent from work on account of personal injuries or sickness.
>
> (2) (i). Section 105(d) is applicable only if the wages or payments in lieu of wages are paid pursuant to a wage continuation plan. The term "wage continuation plan" means an accident or health plan, as defined in section 1.105–5, under which wages, or payments in lieu of wages, are paid to an employee for a period during which he is absent from work on account of personal injury or sickness. * * *
>
> (ii). Section 105(d) is applicable if, and only if, the employee is absent from work and such absence is due to a personal injury or sickness. * * *
>
> (3) (i). Section 105(d) applies only to amounts attributable to periods during which the employee would be at work were it not for a personal injury or sickness. Thus, an employee is not absent from work if he is not expected to work because, for example, he has reached retirement age. * * *

Section 1.105–5 of the Income Tax Regulations, provides that, in general, an accident or health plan is an arrangement for the payment of amounts to employees in the event of personal injuries or sickness.

Section 1.105–4(a) of the regulations is applicable only if an employee is absent from work and such absence is due to a personal injury or sickness, and where payments are made under a wage con-

tinuation plan. An employee is not absent from work if he is not expected to work because, for example, he has elected to take an early retirement under a plan which does not provide for wage continuation payments in the case of disability or sickness.

Accordingly, it is held that the amounts received by employees who are absent from work on account of personal injuries or sickness under the non-contributory retirement plan, the company's pension plan and the plan to pay managerial personnel, prior to the time they reach retirement age, may be excluded from gross income to the extent provided by section 105(d) of the Code. See Rev. Rul. 58–43, C.B. 1958–1, 45, and Rev. Rul. 57–76, C.B. 1957–1, 66.

However, the contributory annuity plan is not an arrangement for the payment of amounts to employees in the event of personal injuries or sickness, nor does it contain any specific provision for early retirement because of disability. The employee may retire at any time provided by the plan without regard to his physical ability to continue working and the plan makes no provision for payments during a temporary disability prior to an age at which the employee can retire.

Thus, the contributory annuity plan is not an accident or health plan within the meaning of section 1.105–5 of the Income Tax Regulations. Amounts paid thereunder may not be excluded from the gross income of the recipients insofar as section 105(d) of the Code is concerned.

Rev. Rul. 59–170

For the purposes of section 105(d) of the Internal Revenue Code of 1954, "sickness" exists from commencement of labor to the termination of a period during which a woman is physically incapacitated as a result of childbirth or miscarriage, regardless of the place of delivery. Wages, or payments in lieu of wages, received by the taxpayer during such period of incapacity are excludable from gross income in the manner and to the extent provided under section 105(d) of the Code.

A written statement by a physician that the condition of the taxpayer is such that she should remain at home because of substantial danger of miscarriage, or a written statement by a physician that the taxpayer was so advised during the period of the pregnancy in question, will generally be treated as sufficient evidence that a period of absence from work is due to actual sickness within the purview of Revenue Ruling 55–263, C. B. 1955–1, 16, and wages for such period may therefore be excludable under section 105(d) of the Code.

Revenue Ruling 55–263, C. B. 1955–1, 16, amplified.

The Internal Revenue Service has been requested to clarify its position in Revenue Ruling 55–263, C. B. 1955–1, 16, as applied to the factual situations relating to, (1) a taxpayer who received wages, or payments in lieu of wages, during the period of a normal pregnancy, hospital confinement for delivery, and a normal convalescent period in her own home; (2) a taxpayer who received wages, or payments in lieu of wages, for a period of normal pregnancy, delivery of the child at her own residence, and a period of convalescence; and (3) a taxpayer who received wages, or payments in lieu of wages, during a period of pregnancy in which she was absent from work on the advice of her physician that there was a substantial danger of miscarriage unless she remained at home.

Revenue Ruling 55–263 holds that the amounts received by an employee during a period of absence from work on account of pregancy do not constitute sick pay, excludible from gross income under section 105(d) of the Internal Revenue Code of 1954, unless there is actual sickness during such period.

It is the position of the Service that, for the purposes of Revenue Ruling 55–263, a period of pregnancy may be considered to be terminated with the onset of labor, and the taxpayer will from that time be considered to be absent from work on account of sickness. Amounts received by a taxpayer as wages, or payments in lieu of wages, for a period of absence from work incident to and following pregnancy shall accordingly be excluded from her gross income to the extent provided by section 105(d) of the Code, from the commencement of labor to the termination of the period during which she is physically incapacitated as a result of childbirth or miscarriage, regardless of the place of delivery.

Whether absence from work on the advice of a physician that a miscarriage might otherwise occur constitutes absence on account of sickness, for the purposes of section 105(d) of the Code, is a question of fact as to the existence of a physical incapacity to work which is to be determined by proper evidence. A written statement by a physician that the taxpayer should remain at home for a specified time or times during pregnancy because a substantial danger of miscarriage is indicated by her physical condition, or a written statement by a physician that the taxpayer was so advised during the pregnancy in question, may be accepted as evidence of physical incapacity to work during the periods or periods covered by the statement and, in the absence of conflicting evidence, will generally be treated as sufficient to establish "sickness" for the purposes of section 105(d) of the Code.

The instant Revenue Ruling does not preclude the exclusion of wages, or payments in lieu of wages, for absence due to other actual sickness occurring during a period of pregnancy as provided for in Revenue Ruling 55–263.

Revenue Ruling 55–263, C. B. 1955–1, 16, is amplified.

SECTION 116.—PARTIAL EXCLUSION OF DIVIDENDS RECEIVED BY INDIVIDUALS

26 CFR 1.116-1: Partial exclusion of dividends.

Use of dividends received credit and dividend exclusion by a beneficiary of a trust having deductions in excess of gross income in its last taxable year. See Rev. Rul. 59–100, page 165.

SECTION 117.—SCHOLARSHIPS AND FELLOWSHIP GRANTS

Rev. Rul. 59–81

The entire amount of a grant received by an individual to cover expenses for travel and study in a foreign country, is considered as received incident to a fellowship grant where the recipient is not a candidate for a degree and the grant is from a tax exempt or-

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ganization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954. The amount received is excludable from the gross income of the recipient to the extent expended subject only to the 36-months limitation period provided in section 117(b)(2)(B) of the Code.

Advice has been requested whether a grant received by a taxpayer from a tax-exempt organization, covering only his expenses for travel, including meals and lodging, while in a foreign country for research and study, is excludable from his gross income as a fellowship grant under section 117 of the Internal Revenue Code of 1954.

The taxpayer, a language professor at a university, applied to an educational foundation for a cash grant to enable him to visit a foreign country for a period of three months for the purpose of doing some specific research and study pertaining to the language of such country. In his application for the grant, the taxpayer estimated his expenses for a round trip airplane ticket to the foreign country, his expenses for travel, meals, and lodging and for train fare required during the trip. The amount was specifically designated to cover only the travel expenses specified above and was made subject to the condition that any amount not expended as indicated in his application would be returned to the grantor; that a complete accounting of his expenditures be made to the university with which he was affiliated; and that he submit a brief report of his trip to the grantor upon his return to the United States. The taxpayer was not a candidate for a degree and the grantor was a tax exempt organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954.

Section 117(a) of the Code provides that gross income does not include (1) any amount received as a fellowship grant and (2) any amount received and expended to cover expenses of travel which are incident to such fellowship grant. In order to be excludable as an amount received and expended to cover expenses for travel (including meals and lodging while traveling) incident to a fellowship grant, section 1.117–1(b) of the Income Tax Regulations provides that the amount must be specifically designated to cover such expenses.

In the case of a taxpayer not a candidate for a degree, section 117(b)(2)(B) of the Code provides that no exclusion shall be allowed under subparagraph (a) after the recipient has been entitled to exclude amounts received as a fellowship grant for a period of 36 months, whether or not consecutive.

A fellowship grant is defined in section 1.117–3(c) of the Income Tax Regulations as an amount paid or allowed to or for the benefit of an individual to aid him in the pursuit of study or research.

In the instant case, the grant was specifically designated for travel expenses to enable the taxpayer to visit the foreign country and conduct his research and study of its language. Thus, the requirements of section 117 of the Code and the Income Tax Regulations thereunder are satisfied.

Accordingly, in the instant case, the entire amount of the grant is considered as received incident to a fellowship grant and is excludable from the gross income of the recipient to the extent so expended, subject only to the 36-month limitation period provided in section 117(b)(2)(B) of the Code.

26 CFR 1.117–1: Exclusion of amounts received as a scholarship or fellowship grant. Rev. Rul. 59–80

A prize awarded by a business firm as part of an advertising campaign is excludable from the gross income of the recipient when the prize consists of a scholarship to be used by the winner only when enrolled as a candidate for a degree at a college.

Advice has been requested as to the taxability of amounts received as a scholarship prize in a contest sponsored by a business firm as part of an advertising campaign.

The taxpayer was the winner of a contest conducted by a business firm. The prize was in the form of a two-year scholarship to a person pursuing a course of study leading to a degree at one of two colleges specified in the contest. According to the contest rules, the winner was required to meet all the entrance and scholastic requirements of the college selected. The prize money could only be used to pay tuition for two consecutive years and at no time could any of the money be paid directly to the winner for any other use. Thus, if only one year was needed to complete his college training, the winner would not receive the equivalent cash for the unexpended portion of the prize. No employee of the grantor or its advertising agency was eligible to compete in this contest.

The winner was employed full time during the day, but not by the grantor, and he pursued a course of study leading to a Bachelor of Arts degree by attending evening classes at one of the specified colleges. The grantor agreed to modify the rules to allow the money to be used over a four or five-year period of night study.

Section 74(a) of the Internal Revenue Code of 1954 provides as follows:

* * * Except as provided in subsection (b) and in section 117 (relating to scholarships and fellowship grants), gross income includes amounts received as prizes and awards.

Section 1.74–1 of the Income Tax Regulations provides, in part, that prizes and awards includible in the gross income of the recipient include amounts received from participation in contests of all types, unless such prizes or awards qualify as an exclusion from gross income under section 74(b), or unless such prize or award is a scholarship or fellowship grant excluded from gross income by section 117 of the Code.

Section 117 of the Code provides as follows:

(a) GENERAL RULE—In the case of an individual, gross income does not include—

(1) any amount received—

(A) as a scholarship at an educational institution (as defined in section 151(e)(4)) * * *.

The term "scholarship" is defined in section 1.117–3(a) of the regulations as an amount "paid to or allowed to, or for the benefit of, a student, * * * to aid such individual in pursuing his studies." An exception is made by section 1.117–4(c) of the regulations which provides, in part, that amounts paid as compensation for past, present, or future employment services are not considered as scholarship grants.

The foregoing sections of the Code and regulations make it clear that if an award can properly be classified as a scholarship the provisions of section 117 apply and those of section 74 do not, even if the

award could also be properly classified as a prize or award for the purposes of section 74. Since under the facts of this case the award meets the definition of a scholarship and the recipient was not an employee of the grantor at the time of the award and is not obligated to perform employment services for the grantor while attending college or after graduation, the exception of section 1.117–4(c) of the regulations is not applicable to this case.

Accordingly, it is held that this award is excludable from gross income as a scholarship within the meaning of section 117(a) of the Code.

Rev. Rul. 59–191

A cash award granted on a competitive basis by a corporation to a former employee to assist him in pursuing his education at college, qualifies as a scholarship under section 117(a)(1)(A) of the Internal Revenue Code of 1954 where the recipient of the award incurred no obligation to render future services to the corporation by accepting the award.

Advice has been requested whether a cash award received from a corporation by a high school graduate as an outstanding science and mathematics student, following summer employment at its plant, qualifies as a scholarship grant under section 117(a)(1)(A) of the Internal Revenue Code of 1954, where the recipient of the award was also paid for his summer employment and incurred no obligation to render future services to the corporation by accepting the award.

The taxpayer, while he was a high school senior, was selected to receive an award to help pay for his education at a college of his own choice. The award was paid to him by a corporation under its educational award program after he had been nominated by the faculty of his high school as an outstanding science and mathematics student and after he had been employed at the corporation's plant for ten weeks during the summer preparing a scientific paper. During the ten-week period, he did not perform any of the duties normally performed by regular employees of the corporation, although he received a regular weekly salary from the corporation during that period. He incurred no obligation to render future services to the corporation by accepting the award. The corporation is engaged in research and the development of scientific equipment. The primary objective of the award program is to help alleviate the shortage of scientists and engineers by stimulating interest in science and engineering among high school students who have scientific aptitude.

Section 117(a)(1)(A) of the Code excludes from an individual's gross income any amount received by such individual as a scholarship at an educational institution, or as a fellowship grant, subject to certain limitations not material here.

Section 1.117–3(a) of the Income Tax Regulations defines a scholarship as "an amount paid or allowed to, or for the benefit of, a student, whether an undergraduate or a graduate, to aid such individual in pursuing his studies."

Section 1.117–3(e) of the regulations provides, in part, as follows:

* * * The term "candidate for a degree" means an individual, whether an undergraduate or a graduate, who is pursuing studies or conducting research to meet the requirements for an academic or professional degree conferred by

colleges or universities * * * A student who receives a scholarship for study at a secondary school or other educational institution is considered to be a "candidate for a degree".

The award received by the instant taxpayer at the end of the ten-week period was to enable him to continue his education at a college of his own choice. The taxpayer was separately paid for his summer work. The primary interest of the corporation was to further the education of the taxpayer as a select science and mathematics student. Neither the benefits which may be derived by the corporation from the taxpayer's education nor the temporary employer-employee relationship are considered substantial enough to nullify the gratuitous character of the award, particularly in view of the fact that the taxpayer incurred no future employment obligation to the corporation. Moreover, the fact that the taxpayer had not yet entered college does not impair his qualification under section 1.117–3(e) of the regulations as a candidate for a degree.

Accordingly, it is held that a cash award granted on a competitive basis by a corporation to a former employee to assist him in pursuing his education at college qualifies as a scholarship grant under section 117(a)(1)(A) of the Code, where the recipient of the award incurred no obligation to render services to the corporation by accepting the award.

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26 CFR 1.117–4: Items not considered as scholarships or fellowship grants. (Also Section 61; 1.61–2.) Rev. Rul. 59–118

Amounts paid by the Veterans Administration to graduate students while serving a training period at Veterans Administration hospitals as staff assistants, as a condition to receiving a doctoral degree from a university, represent compensation for services rendered and not nontaxable scholarships or fellowship grants under section 117 of the Internal Revenue Code of 1954. Such amounts are includible in gross income under section 61 of the Code.

Revenue Ruling 57–560, C. B. 1957–2, 108, distinguished.

Advice has been requested whether amounts received from the Veterans Administration by an individual, who is enrolled at a university as a candidate for a doctoral degree in psychology and who is required to serve a training period at Veterans Administration hospitals as a staff assistant, are excludable from gross income under section 117 of the Internal Revenue Code of 1954.

The Veterans Administration conducts a unified psychology training program in cooperation with universities approved for doctoral training in psychology by the American Psychological Association. The dual purpose of the program is to furnish a continuing source of qualified staff psychologists for the Administration's Department of Medicine and Surgery and to provide needed services for which psychological technicians would otherwise have to be employed. Throughout the training period, trainees pursue their academic studies at the university and give part-time service toward meeting hospital and clinic needs, under the joint jurisdiction and supervision of university and Veterans Administration staffs. While preparing for full-time staff positions, the trainees serve as a part of the work force of the hospitals and render service to patients. The trainees, functioning

as junior staff members, constitute an essential part of psychology services at the stations to which they are assigned.

All candidates for such traineeship are initially selected by the department of psychology of an approved university, and such individual must have at least a bachelor's degree from a college or university of recognized standing. The candidate must submit to the university and to the Veterans Administration Standard Form 57, Application for Federal Employment. Individuals who already have an advanced degree in psychology, but lack necessary experience, may apply for training if they are sponsored by one of the participating universities. During the training period the trainees are paid for the number of hours actually worked at Veterans Administration stations to which assigned at such compensation rates as are established with reference to the base full-time applicable pay levels of the Federal civil service. They are employees of the United States Government.

Section 1.117–4(c) of the Income Tax Regulations provides, in part, that if any amount paid or allowed to, or on behalf of, an individual to enable him to pursue studies or research, represents compensation for past, present, or future employment services, or represents either payment for services which are subject to the direction or supervision of the grantor, or research primarily for the benefit of the grantor, such payments or allowances shall not be considered as amounts received as a scholarship or a fellowship grant for the purpose of section 117 of the Code.

The fact that such individuals are also attending graduate school at a university does not change their status as employees of the Veterans Administration. Revenue Ruling 57–386, C.B. 1957–2, 107, holds that stipends received by interns and residents at a training hospital who assisted in the care of patients as a part of their training represented compensation for services and not nontaxable fellowship grants. They were primarily performing services for the hospital even though in the process they were acquiring training and experience in their particular specialties. See also Revenue Ruling 56–101, C.B. 1956–1, 89, and Revenue Ruling 57–385, C.B. 1957–2, 109.

Revenue Ruling 57–560, C.B. 1957–2, 108, holds that amounts received from the Mayo Foundation and Mayo Properties Association as fellowship grants and cost-of-living allowances by doctors of medicine, who are studying for graduate degrees at a clinic or hospital, are excludable from gross income under section 117 of the Code, where the doctors rendered no services to the hospital or clinic, replaced no personnel who would be employed on a salary basis, and performed no functions for the benefit of the grantor or training institution. None of these conditions exist in the instant case.

Accordingly, it is held that the amounts paid by the Veterans Administration to graduate students while serving a training period at Veterans Administration hospitals as staff assistants, as a condition to receiving a doctorate degree in psychology from a university, represent compensation for services rendered and not nontaxable scholarship or fellowship grants. Such amounts are includible in the student-employees gross income under section 61 of the Code.

Revenue Ruling 57–560, C.B. 1957–2, 108, distinguished.

SECTION 120.—STATUTORY SUBSISTENCE ALLOWANCE RECEIVED BY POLICE

(Repealed October 1, 1958 by P.L. 85–866)

26 CFR 1.120–1: Statutory subsistence allowance received by police. Rev. Rul. 59–96 [1]

In view of the court decisions in *United States* v. *W. J. Shirah, et ux.*, 253 Fed. (2d) 798, and *J. W. Parrish et ux.* v. *United States*, 158 Fed. Supp. 238, section 1.120–1(a) of the Income Tax Regulations has been amended. That section defined a statutory subsistence allowance received by police as "an established amount, apart from salary or other compensation, which is authorized under the laws of a State, a Territory, or a possession of the United States, by any political subdivision of any of the foregoing, or by the District of Columbia, to be paid to an individual who is employed as a police official of such governmental unit for meals and other incidental expenses in connection with his official duties." The amendment is contained in Treasury Decision 6318, C.B. 1958–2, 52, and it eliminates the requirements that such allowance be an amount "apart from salary or other compensation" and that it be paid "for meals and other incidental expenses in connection with his official duties." It provides, instead, that a statutory subsistence allowance is any such amount which is designated as a subsistence allowance by such a governmental unit. Accordingly, Revenue Ruling 57–46, C.B. 1957–1, 22, is modified to hold that gross income does not include an amount which is not in excess of $5 per day and is designated as a "subsistence allowance" pursuant to a statutory enactment of a State, a Territory or a possession of the United States, by any political subdivision of any of the foregoing, or by the District of Columbia, paid to an individual, who is employed as a police official by such governmental unit, before October 1, 1958, in a taxable year subject to the Internal Revenue Code of 1954. See section 3 of the Technical Amendments Act of 1958, 26 U.S.C. 120, which repealed section 120 of the Code, effective October 1, 1958, P.L. 85–866, C.B. 1958–3, 254. Also see section 1.120–1(d) of the regulations.

PART IV.—STANDARD DEDUCTIONS FOR INDIVIDUALS

SECTION 141.—STANDARD DEDUCTION

26 CFR 1.141–1: Standard deduction. Rev. Rul. 59–82
(Sections 1, 3, 4, 142; 1.1–1, 1.3–1, 1.4–3, 1.142–1.)

Where one spouse has no gross income for the taxable year, by reason of having no income other than that which is excludable under section 931(a) of the Internal Revenue Code of 1954, and, therefore, is not required to file a return of income on which to determine a liability for tax imposed, the other spouse, who has no income excludable under section 931 of the Code and who elects to file a separate return, may, under section 141 of the Code, claim the standard deduction which may not exceed $500, or, if eligible, may determine her tax under section 3 of the Code.

[1] Based on Technical Information Release 84, dated July 8, 1958.

Advice has been requested whether a wife, whose husband filed no return because all of his income was exempt under section 931 of the Internal Revenue Code of 1954, is entitled to use the standard deduction under section 141 of the Code or, if eligible, may determine her tax under section 3 of the Code.

The individuals are citizens of the United States. The wife filed a separate return and reported thereon gross income subject to tax. The husband had no gross income from sources within the United States, and his income from sources within a possession of the United States is exempt from tax because he met the requirements of section 931 of the Code. He did not file a Form 1040 U.S. Individual Income Tax Return, or Form 1040E, Schedule for citizens entitled to the benefits of section 931 of the Code.

If, for the taxable year, the income of a citizen of the United States from sources without the United States is excludable from gross income under section 931 of the Code and he received no income from sources within the United States, he does not meet the requirement for filing a Federal income tax return under section 6012 of the Code. See section 1.931–1(b)(4) of the Income Tax Regulations.

Section 141 of the Code provides as follows:

> The standard deduction referred to in section 63(b) (defining taxable income in case of individual electing standard deduction) shall be an amount equal to 10 per cent of the adjusted income or $1,000, whichever is the lesser, except that in the case of a separate return by a married individual the standard deduction shall not exceed $500.

Section 142 of the Code provides, in part, as follows:

> (a) HUSBAND AND WIFE.—The standard deduction shall not be allowed to a husband or wife if the tax of the other spouse is determined under section 1 on the basis of the taxable income computed without regard to the standard deduction.
>
> (b) CERTAIN OTHER TAXPAYERS INELIGIBLE.—The standard deduction shall not be allowed in computing the taxable income of—
>
> * * * * * * *
>
> (2) a citizen of the United States entitled to the benefits of section 931 * * *.

Section 3 of the Code provides for an optional tax if adjusted gross income is less than $5000. Section 1.3–1 of the Income Tax Regulations provides that an individual whose adjusted gross income is less than $5000 (or a husband and wife filing a joint return whose combined adjusted gross income is less than $5000) may elect to pay the tax imposed by section 3 in place of the tax imposed by section 1 (a) or (b), of the Code.

In accordance with section 4 of the Code, a husband or wife may not elect to pay the optional tax imposed by section 3 of the Code if the tax of the other spouse is determined under section 1 of the Code on the basis of taxable income computed without regard to the standard deduction. Section 4 of the Code provides further that section 3 of the Code shall not apply to a citizen of the United States entitled to the benefits of section 931 of the Code.

It is held that where one spouse has no gross income for the taxable year, by reason of having no income other than that which is excludable under section 931(a) of the Code, and, therefore, is not

required to file a return of income on which to determine a liability for tax imposed, the other spouse, who has no income excludable under section 931 of the Code, and who elects to file a separate return, may, under section 141 of the Code, claim the standard deduction which may not exceed $500, or, if eligible, may determine her tax liability under section 3 of the Code. See Revenue Ruling 56–284, C.B. 1956–1, 89.

SECTION 142.—INDIVIDUALS NOT ELIGIBLE FOR STANDARD DEDUCTION

26 CFR 1.142–1: Husband and wife.

The restriction on the right of a married person to elect the standard deduction. See Rev. Rul. 59–82, page 43.

PART VI.—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

SECTION 162.—TRADE OR BUSINESS EXPENSES

26 CFR 1.162–1: Business expenses. Rev. Rul. 59–110

Reasonable wages paid by a father to his children, two of whom are minors and the third a university student, for services rendered in his trade or business may be deductible as ordinary and necessary expenses for Federal income tax purposes, even though the children use the wages for part of their own support.
I.T. 3812, C.B. 1946–2, modified.

Advice has been requested whether reasonable wages paid by a father to his children are deductible as ordinary and necessary expenses for Federal income tax purposes where the children use the money for part of their own support.

The taxpayer owns and operates a "Drive Inn" restaurant. During the summer months of 1958, he employed his three children to work in the restaurant. Each child worked an average of seven and one-half hours per day. Each child was paid approximately $.75 per hour. Two of the children were minors and the third, who was 21, was a full-time university student during the regular college sessions. All the money earned by the children was expended for clothing, education and miscellaneous personal expenditures.

Section 162 of the Internal Revenue Code of 1954 provides, in part, as follows:

(a) IN GENERAL.—There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—
(1) a reasonable allowance for salaries or other compensation for personal services actually rendered. * * *

Section 1.162–1 of the Income Tax Regulations provides that business expenses which are deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business and lists as an example labor costs.

Reasonable wages paid by a father to his child for personal services actually rendered as a bona fide employee in the conduct of a trade or

business have been held deductible as ordinary and necessary expenses. See I.T. 3767, C.B. 1945, 101; *Estate of K. Threefoot* v. *Commissioner*, 9 BTA 499, acquiescence, C.B. VII–1, 31 (1928). The fact that there may be a legal obligation to support the person to whom the wages are paid and that such person utilizes the wages for his own support is not determinative of their deductibility as a business expense by the employer. These circumstances merely subject the relationship to a closer scrutiny to determine whether there is in fact a bona fide employment situation. It is the nature of the wages as an ordinary and necessary expense in the operation of a business, as well as the character of the relationship between the parties as that of employer and employee, which are controlling for purposes of the deduction of wages paid as a business expense.

The facts in this case show that actual services were rendered by each of the taxpayer's children as a bona fide employee in the operation of the taxpayer's business, and that the compensation paid each child for such service was reasonable and constituted an ordinary and necessary expense of carrying on such business. Hence, such wage payments are deductible from gross income as provided in section 162 of the Code. To hold otherwise would be tantamount to penalizing the father for employing his own children inasmuch as the deduction would be allowable if he had employed someone else's children under the same circumstances.

Accordingly, it is held that reasonable wages paid by a father to his children for services rendered by them as his employees in his trade or business are deductible as ordinary and necessary business expenses for Federal income tax purposes even though the children use the wages for part of their own support. For the circumstances under which a parent may also claim a dependency exemption by reason of his contribution to the support of such children, see sections 151 and 152 of the Code.

I.T. 3812, C.B. 1946–2, 29, held that the value of meals and lodging furnished by a father to his unemancipated minor child is not includible, for Federal income tax purposes, in the gross income of the child and is not deductible as wages in computing the net income of the father, even though an employer-employee relationship exists between them. It also held that if the father takes the child's earnings and utilizes them for his own purposes, or if the father requires the child to purchase his own clothing or other necessities which the father is obligated to furnish, the deduction of the child's earnings as a business expense should be disallowed.

I.T. 3812, C.B. 1946–2, 29, is hereby modified to the extent that it may be construed to mean that regardless of the bona fides of an employment relationship between a parent and a child, the deductibility of wages paid as an ordinary and necessary business expense shall be conditioned upon the use to which the child puts such wages.

Rev. Rul. 59–219

Amounts expended by civilian faculty and staff members of a military school for the purchase and maintenance of uniforms which they are required to wear while on duty, and which are not suitable for ordinary wear, are deductible in computing taxable income as ordinary and necessary business expenses under section 162(a) of

the Internal Revenue Code of 1954. Such expenditures are deductible in computing taxable income only if the taxpayer itemizes his deductions on his U.S. Individual Income Tax Return, Form 1040.

Advice has been requested whether amounts expended by civilian faculty and staff members of a military school for the purchase and maintenance of uniforms which they are required to wear while on duty are deductible for Federal income tax purposes.

In the instant case, the faculty and staff members of a military school are predominantly civilians. They are required to wear, while on duty, uniforms prescribed by the school. All costs incurred for the purchase and maintenance of such uniforms are borne by the faculty and staff members. The uniforms are of general military style, but the buttons, insignia of rank, and component designations are those established by the school.

Section 162(a) of the Internal Revenue Code of 1954 provides that there shall be allowed as a deduction in computing taxable income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

Mimeograph 6463, C.B. 1950–1, 29, provides that where uniforms (1) are specifically required as a condition of a taxpayer's employment and (2) are not of a type adaptable to general or continued usage to the extent that they take the place of ordinary clothing, a deduction for the cost and maintenance of such uniforms will be allowed. Such a deduction is allowable in the cases of police officers generally, firemen, letter carriers, bus and railway men who are required to wear distinctive types of uniforms while at work which are not suitable for ordinary wear.

Since the uniforms here under consideration meet both of the tests set forth in Mimeograph 6463, *supra*, it is held that the amounts expended by civilian faculty and staff members of the military school for the purchase and maintenance of such uniforms are deductible in computing taxable income as ordinary and necessary business expenses under section 162(a) of the Code. Such expenditures are deductible in computing taxable income only if the taxpayer itemizes his deductions on Form 1040, U.S. Individual Income Tax Return.

Contributions to a privately established unemployment fund. See Rev. Rul. 59–5, page 12.

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26 CFR 1.162–10. Certain employee benefits.

Hams and turkeys, or other merchandise of similar nominal value, distributed by an employer to his employees. See Rev. Rul. 59–58, page 17.

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26 CFR 1.162–12: Expenses of farmers. Rev. Rul. 59–42
(Also Section 175; 1.175–4.)

Expenditures for clearing brush from productive land are not considered expenditures for soil or water conservation deductible under section 175 of the Internal Revenue Code of 1954, but represent ordinary and necessary expenses of a trade or business deductible under section 162 of the Code.

Advice has been requested whether expenditures for brush control on productive land are considered expenditures for soil or water

conservation deductible under section 175 of the Internal Revenue Code of 1954, or whether such expenditures represent ordinary and necessary expenses of a trade or business deductible under section 162 of the Code.

The taxpayer owns and operates a cattle ranch on land which had been cleared and used continuously for the grazing of cattle. In order to maintain the proper growth of grass for grazing, encroaching brush and other undesirable plants were periodically cleared from the land.

Section 162 of the Code provides, in part, that there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

Section 175 of the Code provides, in part, that, subject to certain conditions and limitations, a taxpayer engaged in the business of farming may deduct expenditures which are paid or incurred during the taxable year for the purpose of soil or water conservation. Section 175(b) of the Code provides, in part, that the amount deductible under section 175 of the Code shall not exceed 25 percent of the gross income derived from farming during the taxable year. However, section 175(c)(1)(B) of the Code specifically provides that an expenditure which is allowable as a deduction under another section of the Code may not be considered under this section of the Code.

In the case of land which had reached the productive state, the cost of clearing brush from such land in order to maintain production constitutes an allowable deduction as a business expense. However, where the land had never been productive, the cost of clearing brush from such land constitutes a capital expenditure. See Mim. 6030, C.B. 1946–2, 45, as amended by Mim. 6030, Supplement 1, C.B. 1948–1, 42; *Gifford A. Cochran* v. *Commissioner*, T.C. Memo. 1955–66; *Thompson & Folger Co.* v. *Commissioner*, 17 T.C. 722; *H. L. McBride* v. *Commissioner*, 23 T.C. 901, acquiescence C.B. 1955–2, 7.

In the instant case, since the land had been cleared and used continuously for grazing cattle, the cost of periodically clearing encroaching brush and other undesirable plants from such land for the purpose of restoring and maintaining the proper growth of grass for grazing constitutes an ordinary and necessary business expense within the meaning of section 162 of the Code.

Accordingly, it is held that expenditures for clearing brush from productive land are not considered expenditures for soil or water conservation deductible under section 175 of the Code, but are deductible as ordinary and necessary business expenses under section 162 of the Code.

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26 CFR. 1.162–17: Reporting and substantiation of traveling and other business expenses of employees. — Rev. Rul. 58–453 Supplement IV

Revenue Ruling 58–453, C.B. 1958–2, 67, relating to certain fixed mileage allowances or per diem allowances received by employees, refers to the Standardized Government Travel Regulations in connection with the maximum per diem allowance in lieu of subsistence authorized to be paid by the Federal Government while traveling outside the continental United States. The following rates, obtained from official Government sources, are published as a supplement to Revenue Ruling 58–453, and may be amended or supplemented from time to time.

STANDARDIZED GOVERNMENT TRAVEL REGULATIONS

Appendix I, Revised—Maximum Per Diem Rates in Lieu of Subsistence for Travelers Beyond the Limits of the Continental United States and in Alaska

* * * * * * *

The changes, identified by asterisk, are effective March 1, 1959.

Locality	*Maximum per diem rates*
Aden	$13.00
Afghanistan	6.00
*Alaska:	
*Anchorage	21.00
*Fairbanks	21.00
*Juneau	21.00
*Other	15.00
Albania	10.00
Algeria	15.00
American Samoa	11.00
Andorra	8.00
Anglo-Egyptian Sudan (See Sudan)	
*Angola	13.00
Argentina	12.00
Australia:	
Melbourne	14.00
Sydney	14.00
Other	10.00
Austria	12.00
*Bahamas:	
(May–Nov. incl.)	17.00
(Dec.–Apr. incl.)	24.00
Basutoland	8.00
Bechuanaland	8.00
Belgian Congo	14.00
Belgium	14.00
Bermuda	20.00
Bolivia	13.00
Bonin Islands	6.00
Brazil	15.00
British Guiana	10.00
British Honduras	16.00
British Somaliland	7.00
*British West Indies (See "Bahamas" and "West Indies")	
*Brunei	13.00
Bulgaria	14.00
Burma:	
Mandalay	12.00
Rangoon	16.00
Other	6.00
Cambodia	12.00
Cameroun	17.00
Canada	15.00
Canton Island	15.00
*Ceylon:	
*Colombo	16.00
Other	12.00
Chile	13.00
China:	
Taipei	13.00
Other	9.00
Columbia	12.00
Costa Rica	15.00
*Cuba:	
*Havana:	
*(Apr.–Nov. incl.)	$18.00
(Dec.–Mar. incl.)	22.00
Other	15.00
Cyprus	9.00
Czechoslovakia	15.00
Denmark	12.00
Dominican Republic:	
Ciudad Trujillo:	
(Apr. 16–Dec. 15 incl.)	16.00
(Dec. 16–Apr. 15 incl.)	20.00
Other	11.00
Ecuador:	
Guayaquil	15.00
Other	10.00
*Egypt (see United Arab Republic).	
El Salvador	20.00
Eritrea	10.00
Estonia	16.00
Ethiopia	10.00
Fiji Islands	10.00
Finland	12.00
France:	
Paris	15.00
Suresnes	15.00
Other	11.00
French Equatorial Africa	11.00
French Guiana	11.00
French Somaliland	9.00
*French West Africa:	
*Abidjan	23.00
Senegal	16.00
Other	13.00
French West Indies	13.00
Gambia	7.00
Germany:	
Saarland	12.00
Other	11.00
Ghana	15.00
Gibraltar	7.00
Gozo	9.00
Great Britain and North Ireland:	
London including Middlesex County, Bushey Hall, and Denham	14.00
Other	12.00
Greece	11.00
Greenland	6.00
Guam	15.00
Guatemala	14.00
Haiti:	
Cap-Haitien	11.00
Port-au-Prince	14.00
Other	8.00

Locality	Maximum per diem rates
Hawaii	$16.00
*Honduras	14.00
Hong Kong	14.00
Hungary	6.00
*Iceland	11.00
India:	
Bombay	13.00
Calcutta	17.00
New Delhi	13.00
Other	9.00
*Indonesia	6.00
Iran	11.00
Iraq	14.00
Ireland	10.00
Israel	14.00
Italy:	
Rome	15.00
Other	12.00
Iwo Jima	6.00
Japan	14.00
Jerusalem (Palestine)	14.00
Jordan	10.00
Kenya	9.00
Korea:	
Seoul	20.00
Other	6.00
Kuwait	12.00
Laos	15.00
Latvia	16.00
Lebanon	12.00
Liberia:	
Monrovia	18.00
Other	8.00
Libya	11.00
Liechtenstein	12.00
Lithuania	16.00
Luxembourg	14.00
Madagascar	13.00
*Malaya	12.00
Malta	9.00
*Mexico:	
*Chihuahua, Ciudad Juarez, Ensenada, *Guaymas, Matamoros, Mexicali, Mexico, D.F., Monterrey, Nogales, Nuevo Laredo, Piedras Negras, and Tijuana	12.00
Other	9.00
Midway	15.00
Morocco	14.00
Mozambique	10.00
Nepal	11.00
Netherlands	12.00
Netherlands West Indies	15.00
New Caledonia	14.00
New Zealand:	
*Auckland	12.00
*Wellington	12.00
Other	9.00
Nicaragua	14.00

Locality	Maximum per diem rates
*Nigeria:	
*Lagos	$18.00
Other	8.00
*North Borneo	13.00
Norway	12.00
Nyasaland	6.00
Pakistan	11.00
Panama, including Canal Zone	13.00
Paraguay	11.00
Peru	13.00
Philippines:	
Manila	16.00
Other	12.00
*Poland	6.00
Portugal:	
Azores	7.00
Madeira Islands	7.00
Other	12.00
Portuguese Guinea	10.00
*Puerto Rico:	
*San Juan	24.00
Other	18.00
Rhodesia, Northern	8.00
Rhodesia, Southern	13.00
Rumania	13.00
Ryukyu Islands	6.00
Saarland (see Germany).	
*Sarawak	16.00
*Saudi Arabia:	
*Dharan	14.00
Jidda	14.00
Other	11.00
Sierra Leone	7.00
Singapore	16.00
Southwest Africa	8.00
Spain:	
Canary Islands	6.00
Other	10.00
Spanish Morocco (see Morocco).	
Spanish Sahara	7.00
*Sudan	12.00
Surinam	12.00
Swaziland	8.00
Sweden	12.00
Switzerland	12.00
*Syria (see United Arab Republic).	
Tanganyika	8.00
Tangier International Zone (see Morocco).	
Thailand:	
Bangkok	18.00
Other	8.00
Togo	9.00
Trust Territories:	
Somaliland	12.00
The Pacific Islands	11.00
Tunisia	13.00
*Turkey:	
*Istanbul	13.00
*Other	9.00

Locality	Maximum per diem rates
*Uganda	$10.00
Union of South Africa	9.00
Union of Soviet Socialist Republics	16.00
*United Arab Republic:	
*Egypt	11.00
*Syria	11.00
Uruguay	13.00
Vatican City	12.00
Venezuela	22.00
Viet-Nam:	
Saigon-Cholon Area	16.00
Other	10.00
Virgin Islands:	
(May–Nov. incl.)	$20.00
(Dec.–Apr. incl.)	30.00
Wake	15.00
West Indies, The:	
Jamaica:	
(Apr.–Nov. incl.)	12.00
(Dec.–Mar. incl.)	18.00
Trinidad	15.00
Other	10.00
*Yugoslavia	8.00
Zanzibar	7.00
Other Localities	9.00

SECTION 164.—TAXES

26 CFR 1.164–1: Deduction for taxes. Rev. Rul. 59–65
(Also Part II, Section 23(c); Regulations 118, Section 39.23(c)–1.)

The tax imposed by the State of Georgia by section 2 of the Georgia Retailers' and Consumers' Sales and Use Tax, Georgia Laws, 1951, 360, effective April 1, 1951, is a tax imposed upon the dealers who engage in the business of selling tangible personal property at retail in the State of Georgia. Such tax is deductible by the dealer under section 23(c) of the Internal Revenue Code of 1939, or section 164(a) of the Internal Revenue Code of 1954, whichever is applicable. Where the dealers collect the tax from the vendees, the total amounts so collected are includible in their gross income for Federal income tax purposes.

Revenue Ruling 55–139, C.B. 1955–1, 277, is revoked, and I.T. 4058, C.B. 1951–2, 22, reinstated.

In view of the decision of the Supreme Court of Georgia in the case of *T. V. Williams, State Revenue Commissioner* v. *Bear's Den, Inc.*, 104 S.E. (2d) 230, reconsideration has been given to Revenue Ruling 55–139, C.B. 1955–1, 277, which modified I.T. 4058, C.B. 1951–2, 22, relating to the tax imposed by the State of Georgia under section 2 of the Georgia Retailers' and Consumers' Sales and Use Tax Act, Georgia Laws, 1951, 360, approved on February 20, 1951, effective April 1, 1951.

Revenue Ruling 55–139, *supra*, holds that the Georgia Retailers' and Consumers' Sales and Use Tax is a tax imposed upon the purchaser or consumer and is paid by such taxpayer as a tax and, therefore, is deductible under section 23(c)(1) of the Internal Revenue Code of 1939, corresponding to section 164(a) of the Internal Revenue Code of 1954, regardless of whether or not it is imposed with respect to property used in a trade or business. The Revenue Ruling further provides that, since the dealers are agents of the state for collection purposes, amounts collected by them as tax and paid to the state are not includible in their gross income.

The conclusion reached in Revenue Ruling 55–139, *supra*, was based upon an interpretation of section 12(a) of the Act. There is, however, an apparent conflict between sections 2 and 12(a) of the Act. Section 2 of the Act imposes the retail sales tax on the dealer, whereas section 12(a) of the Act provides, in part, as follows:

Notwithstanding any other provision, it is the purpose and intent of the Act that the tax imposed hereunder is, in fact, a levy on the purchaser or consumer * * * and the levy on the dealers as specified is merely as agent of the State for collection of the said tax.

The conflict between sections 2 and 12(a) of the Act was resolved by the recent decision in *Williams* v. *Bear's Den, Inc., supra.* In the course of its opinion, the court stated:

From a review of the whole act, we are of the opinion that it was the intent and purpose of the legislature to levy the tax against the dealer. The levy of the tax is against him and the responsibility of collecting the tax on each sale from the purchaser and remitting to the Commissioner is solely upon him. * * * Sec. 12(a) of the act is merely descriptive of the relationship between the dealer and the purchaser to be that as agent for the State in the collection of the tax imposed upon the dealer and passed on to the purchaser.

Accordingly, it is held that the tax imposed by the State of Georgia by section 2 of the Georgia Retailers' and Consumers' Sales and Use Tax, Georgia Laws, 1951, 360, approved February 20, 1951, effective April 1, 1951, is a tax imposed upon dealers who engage in the business of selling tangible personal property at retail in the State of Georgia. Such tax is deductible by the dealer under section 23(c)(1) of the Internal Revenue Code of 1939 or section 164(a) of the Internal Revenue Code of 1954, whichever is applicable. Where the dealers collect the tax from the vendees, the total amounts so collected are includible in their gross income for Federal income tax purposes.

Revenue Ruling 55–139, C.B. 1955–1, 277, is revoked, and I.T. 4058, C.B. 1951–2, 22, is reinstated.

SECTION 166.—BAD DEBTS

Rev. Rul. 59–83

The word "minimum" as used in Mimeograph 6209, relating to the reserve method of accounting for bad debts permitted by that Mimeograph in the case of banks, does not preclude a bank from deducting, as an addition to its reserve for bad debts for a taxable year, an amount less than that which would result from the method shown in the Mimeograph.

This principle is equally applicable under Revenue Ruling 54–148, which supplements Mimeograph 6209, for taxable years beginning after December 31, 1953.

Advice has been requested whether banks using the reserve method of accounting for bad debts permitted by Mimeograph 6209, C.B. 1947–2, 26, for Federal income tax purposes may deduct, as an addition to such reserve, an amount less than that which would result from the method shown in paragraph 3 of that Mimeograph.

The method of computing a reasonable addition to the reserve for bad debts provided banks in paragraph 3, of Mimeograph 6209, involves a moving average experience factor for the determination of the ratio of losses to outstanding loans for taxable years beginning after December 31, 1946. Such a moving average is to be determined on a basis of 20 years of experience, including the taxable year, as representing a sufficiently long period of a bank's experience to constitute a reasonable cycle of good and bad years. The percentage so obtained, applied to loans outstanding at the close of the taxable

year, determines the amount of permissible reserve in the case of a bank changing to the reserve method in such year and the minimum reserve which the taxpayer will be entitled to maintain in future years.

A bank, following a change to the reserve method of accounting for bad debts and, until it reaches the prescribed ceiling, may continue to take deductions from taxable income equal to the current moving average percentage of actual bad debts times the outstanding loans at the close of the year, or an amount sufficient to bring the reserve at the close of the year to the minimum mentioned above, whichever is greater.

The word "minimum" as used in paragraph 3 of Mimeograph 6209, was not intended to prevent a bank from deducting, as an addition to a reserve for bed debts, an amount less than that which would result from the method shown in paragraph 3, of that Mimeograph. The effect of claiming a smaller deduction currently is to postpone the date when the reserve will reach the prescribed ceiling. Nor is there any requirement that the "minimum" reserve to which a bank is entitled, be maintained. For example, in the illustration shown in paragraph 3, Mimeograph 6209, the bank could have properly added lesser amounts to the reserve in the first two years and still be in compliance with the Mimeograph.

This principle is equally applicable under Revenue Ruling 54–148, C.B. 1954–1, 60, which supplements Mimeograph 6209, for taxable years beginning after December 31, 1953.

SECTION 167.—DEPRECIATION

26 CFR 1.167(a)–6: Depreciation in special cases.

Depreciation of a purchased patent. See Rev. Rul. 59–210, page 217.

SECTION 170.—CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS

26 CFR 1.170–1: Charitable, etc., contributions and gifts; allowance of deduction. Rev. Rul. 59–151

> Contributions made to an organization, which is essentially a war veterans organization, are deductible by the donors in computing their taxable income in the manner and to the extent provided by section 170 of the Internal Revenue Code of 1954. The fact that a small percentage of the members of the organization, who have served in an established branch of the armed forces, have not served during a period of war will not of itself, preclude such organization from being classified as a war veterans organization under section 170(c)(3) of the Code.

Advice has been requested whether contributions made to a veterans organization are deductible by the donors for Federal income tax purposes even though a small percentage of its members have not

served in the Armed Forces during a period of war. The question requires a prior determination as to whether such organization constitutes a war veterans organization within the meaning of section 170(c)(3) of the Internal Revenue Code of 1954.

In the instant case the organization was incorporated pursuant to an Act of Congress to, among other things, further, encourage, promote, and maintain comradeship among those persons who are or have been in the active service of the United States Navy, the United States Marine Corps, or the United States Coast Guard; to honor and perpetuate the memory of those persons who have been such members; to encourage further public interest in the United States Navy, the United States Marine Corps and the United States Coast Guard; and to uphold the spirit and ideals of these organizations.

The organization's constitution provides that any American born or naturalized citizen of the United States who has served, or is serving in the United States Navy, Marine Corps, Marine Corps Reserve (State or Federal), Coast Guards, Naval Reserve (State or Federal) under honorable conditions, or has an honorable discharge, is eligible to membership in the organization. Practically all of its members are war veterans although that status is not a requirement of membership in the organization.

Section 170(c)(3) of the Code provides that, for the purpose of section 170 of the Code, the term "charitable contribution" means, among other things, a contribution or gift to or for the use of—

A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or an organization—

(A) organized in the United States or any of its possessions, and

(B) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

It is the position of the Internal Revenue Service that, if an organization is essentially a war veterans organization, the fact that a small percentage of members who have served in an established branch of the Armed Forces have not served during a period of war will not, of itself, preclude the organization from being classified as a war veterans organization under the provisions of section 170(c)(3) of the Code. The facts in the instant case disclose that the organization is essentially a war veterans organization.

Accordingly, contributions made to the organization are deductible by the donors in computing their taxable income in the manner and to the extent provided by section 170 of the Code.

(Also Sections 2055, 2522; 20.2055–1, 25.2522(a)–1.) Rev. Rul. 59–152

Contributions made by members and other donors to or for the use of a State Bar which exercises governmental functions and is not subject to Federal income tax are deductible by the donors in computing their taxable income in the manner and to the extent provided by section 170 of the Internal Revenue Code of 1954. Such contributions are deductible for Federal estate tax and gift tax purposes under the provisions of section 2055(a)(1) and 2522(a)(1), respectively, of the Code.

G.C.M. 4805, C.B. VII–2, 58 (1928), distinguished.

Advice has been requested whether, under the circumstances described below, contributions made to the State Bar of a certain state are deductible for Federal income tax purposes under section 170 of the Internal Revenue Code of 1954.

The State Bar of a certain state was created by statute as a public corporation. Its membership, by law, consists of all persons admitted and licensed to practice law in the state except justices and judges of courts of record during their continuance in office. The statute provides for its governing body, known as the board of governors of the State Bar, and provides for the election of its members and confers powers and duties upon it. The statute empowers the board to create local administrative committees and authorizes the board or its committees to initiate and conduct investigations of all matters affecting or related to the State Bar or its affairs, the practice of law, the discipline of members of the State Bar and any other matter within the jurisdiction of the State Bar. For purposes of such investigation, the statute empowers the board or committee to administer oaths or affirmations and to compel, by subpoena, the attendance of witnesses and the production of books, papers and documents relating to the proceeding. Refusal by any person to comply with such subpoena is made a contempt of the board or committee and subject to the same proceedings and the same penalties as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court.

The board is also authorized to establish an examining committee having the power to examine all applicants for admission to practice law, to administer the requirements for admission to practice, and to certify to the supreme court of the state for admission those applicants who fulfill the requirements of the statute. Applicants for admission to practice shall pay such reasonable fees, fixed by the board, as may be necessary to defray the expense of administering the provisions of the law relating to admission to practice, and such fees are to be collected by the committee and paid into the treasury of the State Bar. The board of governors is empowered, with the approval of the supreme court of the state, to formulate and enforce rules of professional conduct for members of the bar, and, after hearing, to recommend to the supreme court disbarment or suspension from practice of members, or to discipline them by reproval, public or private, without such recommendation.

The State Bar has been held exempt from Federal income tax as an instrumentality of the state.

Section 170(a) of the Code allows as a deduction any charitable contribution, as defined in subsection (c) of section 170, payment of which is made within the taxable year.

Section 170(c) of the Code provides, in part:

> * * * For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—
>
> (1) A State, a Territory, a possession of the United States, or any political subdivision of any of the foregoing, * * * but only if the contribution is made for exclusively public purposes.

The State Bar performs functions of a public nature customarily performed by government instrumentalities and is an administrative arm of the supreme court of the state. Contributions to it for its

public purposes are deductible by members or other donors under the above-quoted provisions.

The State Bar is distinguishable from the *R* Bar Association considered in G. C. M. 4805, C. B. VII–2, 58 (1928), in which it was held that the association was not exempt as a charitable or educational organization under the provisions of the section of the Revenue Act of 1928, corresponding to section 501(c)(3) of the 1954 Code, and that contributions to it were not deductible. The *R* Bar Association was a voluntary association, similar to other professional associations organized for the mutual interest and benefit to members and designed to elevate the standards of the profession, to promote reforms in the law, and to cultivate the science of jurisprudence. Such organizations have no power or authority to exercise governmental functions.

In view of the foregoing, it is held that contributions made by members and other donors to or for the use of a State Bar which exercises governmental functions and is not subject to Federal income tax are deductible in computing their taxable income in the manner and to the extent provided by section 170 of the Code. Further, such contributions are deductible for Federal estate tax and gift tax purposes under the provisions of sections 2055(a)(1) and 2522(a)(1), respectively, of the Code.

G. C. M. 4805, C. B. VII–2, 58 (1928) is distinguished.

Rev. Rul. 59–196

The measure of the contribution of an undivided interest in oil and gas leases, donated to an organization described in section 170(c) of the Internal Revenue Code of 1954, is the fair market value of the property at the time of contribution. The fair market value of the donated interest is not includible in the gross income of the taxpayer. The amount of the charitable contribution is not required to be reduced by any intangible drilling and development costs previously deducted by the donor.

Advice has been requested as to the deductibility of a gift of an undivided interest in oil and gas leases and whether certain intangible drilling and development costs connected with the leases, which had been deducted on prior income tax returns, must be deducted from the charitable contribution reported by the donor.

A gift of an undivided five percent interest in certain oil and gas leases was made by an individual taxpayer to an organization of the type described in section 170(c) of the Internal Revenue Code of 1954. In previous years the donor had incurred and deducted certain intangible drilling and development costs in connection with the drilling of wells involved in the leases.

A deduction is allowed in the manner and under the limitations prescribed by section 170 of the Code for contributions and gifts to organizations of the type described in subsection (c) of that section.

If a contribution is made in property other than money, section 1.170–1(c) of the Income Tax Regulations states that the amount of the deduction is determined by the fair market value of the property at the time of the contribution. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. This

section of the regulations further states that costs and expenses incurred in the year of contribution in producing or acquiring the contributed property are not deductible and are not a part of the cost of goods sold. To the extent that costs and expenses incurred in a prior taxable year in producing or acquiring the contributed property are reflected in the cost of goods sold in the year of contribution, cost of goods sold must be reduced by such costs and expenses.

While the above section of the regulations states the manner of determining the amount of the deduction where the contribution is made in property which the taxpayer sells in the course of his business, it does not cover contributions of capital items. Furthermore, it has been the long-standing interpretation of the Internal Revenue Service that the full fair market value without adjustment for deductions, such as depreciation, shall be allowed as a charitable deduction, for example, L.O. 1118, C.B. II–2, 148 (1923).

The regulations cited above are limited in coverage and refer only to an adjustment or reduction in the cost of goods sold in the year of contribution. However, since the property interest, in oil and gas leases, donated does not constitute property for sale in the course of the taxpayer's business and the intangible drilling and development costs are not part of the cost of goods sold, no adjustment to the fair market value of the property is required.

Accordingly, it is held that the measure of the contribution of an undivided interest in oil and gas leases, donated to an organization described in section 170(c) of the Code, is the fair market value of the property at the time of the contribution. The fair market value of the donated interest is not includible in the gross income of the taxpayer. The amount of the charitable contribution is not required to be reduced by any intangible drilling and development costs previously deducted by the donor.

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26 CFR 1.170–2: Charitable deductions by individuals; limitations. Rev. Rul. 59–27

An organization, whose purposes and functions are raising funds needed by hospitals and public agencies for the care of crippled children and operating a medical treatment center does not constitute a hospital within the meaning of section 170(b)(1)(A)(iii) of the Internal Revenue Code of 1954. Contributions to such organization do not qualify for the additional deduction of ten percent of adjusted gross income provided by section 170(b)(1)(A) of the Code.

Advice has been requested whether an organization, whose purposes and functions are raising funds needed by public agencies and hospitals for the care of crippled children, and which, as a secondary activity, operates a medical treatment center, constitutes a hospital within the meaning of section 170(b)(1)(A)(iii) of the Internal Revenue Code of 1954 for purposes of the special deduction for contributions provided by that section.

The instant organization was incorporated under state law for the purpose of providing funds for the care of crippled children who otherwise could not receive medical attention, and to aid the department of health of the state in the problems of crippled chil-

dren. The organization's principal activities consist of raising funds needed by the department of health to obtain matching Federal funds for the care of crippled children and hospitals for the care of such children. As a secondary activity, it operates a diagnostic and treatment center. All of its income, after operating expenses, is turned over to the department of health, various hospitals, and other organizations for use in carrying on the programs of aiding and assisting crippled children.

The Internal Revenue Service has held that the organization is exempt from Federal income tax under section 501(c)(3) of the Code, and that under section 170(b)(1)(B) of the Code contributions by individuals to the organization are deductible by the donors subject to the limitation of 20 percent of adjusted gross income computed without regard to any net operating loss carryback to the taxable year under Section 172 of the Code.

Section 170(b)(1)(A) of the Code provides, among other things, for an additional deduction for individuals under a special rule, whereby any charitable contribution to a hospital referred to in section 503(b)(5) of the Code shall be allowed to the extent that the aggregate of such additional contributions does not exceed ten percent of the taxpayer's adjusted gross income computed without regard to any net operating loss carryback to the taxable year under section 172 of the Code.

Section 503(b)(5) of the Code refers to an organization the principal purposes or functions of which are the providing of medical or hospital care. Section 1.170–2(b)(4) of the Income Tax Regulations provides that the term "hospital," as used in section 170(b)(1)(A)(iii) of the Code, means an organization the principal purposes or functions of which are providing hospital or medical care.

In the instant case, the principal purposes and functions of the organization are raising funds for the care of crippled children, as distinguished from providing hospital or medical care as required by section 1.170–2(b)(4) of the Income Tax Regulations. See Rev. Rul. 56–262, C. B. 1956–1, 131.

Accordingly, it is held that the organization does not constitute a hospital within the meaning of section 170(b)(1)(A)(iii) of the Code. Therefore, contributions to the organization do not qualify for the additional deduction of ten percent of adjusted gross income provided by section 170(b)(1)(A) of the Code.

Rev. Rul. 59–129

The Salvation Army is a church or a convention or association of churches within the meaning of section 170(b)(1)(A)(i) of the Internal Revenue Code of 1954. Accordingly, contributions made by individuals to such organization will be deductible in computing their taxable income to the extent that the aggregate of the contributions allowed as a deduction under section 170(b)(1)(A) of the Code does not exceed ten percent of the individual donor's adjusted gross income. Any such contributions in excess of ten percent of adjusted gross income should be taken into account in computing the amount allow-

able as a deduction subject to the general limitation of 20 percent of adjusted gross income provided in section 170(b)(1)(B) of the Code.

Rev. Rul. 59–160

To the extent that mayors, councilmen, and/or other elected or appointed officials, who render the services of such offices for cities or other municipal governments without compensation, can establish that they actually incurred unreimbursable expenses directly connected with and solely attributable to the performance of their official duties (i.e., are not personal expenses), the amount of such out-of-pocket expenses constitute contributions within the meaning of section 170 of the Internal Revenue Code of 1954 and are deductible in computing taxable income, subject to the limitations imposed by that section. See Rev. Rul. 56–508, C.B. 1956–2, 126; Rev. Rul. 56–509, C.B. 1956–2, 129; and Rev. Rul. 57–38, C.B. 1957–1, 96.

SECTION 175.—SOIL AND WATER CONSERVATION EXPENDITURES

26 CFR 1.175–3: Definition of "the business of farming". Rev. Rul 59–12

> The term "farming" as used in section 175 of the Internal Revenue Code of 1954 includes the operation of a nursery. A taxpayer who is engaged in the nursery business may deduct from gross income, for Federal income tax purposes, subject to the limitations and conditions in section 175 of the Code, expenditures made for soil and water conservation in respect of land used in that business.

Advice has been requested whether a taxpayer who is engaged in the business of operating a nursery, which specializes in the growing of ornamental plants, is considered to be in the business of farming for the purposes of section 175 of the Internal Revenue Code of 1954.

Section 175(a) of the Code provides that a taxpayer engaged in the business of farming may treat as expenses which are not chargeable to capital account, expenditures which are paid or incurred by him during the taxable year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming. The expenditures so treated are allowable as deductions.

Section 175(c)(2) of the Code defines the term "land used in farming" as land used by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

Section 1.175–3 of the Income Tax Regulations states that section 175 of the Code is available only to a taxpayer engaged in "the business of farming" and that a taxpayer is so engaged if he cultivates, operates, or manages a farm for gain or profit, either as owner or tenant. The regulations also state that, for the purpose of the section, the term "farm" is used in its ordinary, accepted sense and includes stock, dairy, poultry, fruit and truck farms, and also plantations, ranches, ranges, and orchards.

The Internal Revenue Service holds that in the "ordinary, accepted sense," the term "farm" includes a "nursery." See section 1.61–4(d) of the Income Tax Regulations and *W. Cleve Stokes* v. *Commissioner*, 22 T. C. 415, 425, acquiescence, C. B. 1954–2, 5, holding a horticultural nursery to be a "farm" within the "ordinary accepted sense" of that term. Also, compare *United States* v. *Louis A. Chemell*, 243, Fed. (2d) 944; O. D. 995, C. B. 5, 63 (1921); and I. T. 1368, C. B. I–1, 72 (1922).

Accordingly, a taxpayer who is engaged in the nursery business may deduct from gross income, subject to the limitations and conditions in section 175, expenditures made for soil and water conservation in respect of land used in that business.

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26 CFR 1.175–4: Definition of land used in farming.

Expenditures for clearing brush from land which had reached the productive state. See Rev. Rul. 59–42, page 47.

PART VII.—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

SECTION 213.—MEDICAL, DENTAL, ETC., EXPENSES

26 CFR 1.213–1: Medical, dental, etc., expenses. Rev. Rul. 59–66

Amounts paid for the medical care of a taxpayer, her husband and their son and daughter, all residing in a non-community property state, with funds deposited in a joint checking account in which the husband and wife have an equal interest are presumed to be paid equally by the taxpayer and her husband for the purpose of computing the deduction, allowable under section 213 of the Internal Revenue Code of 1954, that each is entitled to take into account in the filing of a separate Federal income tax return.

Advice has been requested whether the taxpayer, who files a separate Federal income tax return, may claim as a deduction under section 213 of the Internal Revenue Code of 1954 the expenses paid from a joint checking account during the taxable year for the medical care of herself, her husband and her children.

The taxpayer and her husband reside in a noncommunity property state where they maintain a joint checking account into which they deposit their separate earnings. In most instances, doctors' and dentists' bills, as well as the cost of medicines and drugs, are paid for by checks drawn by the taxpayer upon their joint account. The taxpayer and her husband state that when these items are paid for by checks drawn by the husband upon their joint account, it is with the understanding that he is using his wife's separate funds for this purpose. There was no further evidence that these items were paid for by the taxpayer alone.

Section 213 of the Code allows as a deduction (subject to certain limitations) expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse and his dependents, as defined in section 152 of the Code.

A dependent, as defined in section 152 of the Code, includes a son or daughter of the taxpayer over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection (c) of that section as received from the taxpayer.)

When a husband and wife elect to file separate Federal income tax returns, each becomes a separate and distinct taxpayer and each will be allowed a deduction under section 213 of the Code only for expenses actually paid by him or her for the medical care of that person or his or her spouse or dependents as defined in section 152 of the Code. Where the husband and wife maintain a joint checking account in which each apparently has an identical interest, there is a presumption that the expenses paid from such account for medical care are paid equally by each of the two parties. This presumption may be rebutted by competent evidence to the contrary and one of the parties may claim and be allowed a deduction for the expenses paid for the medical care of that party, his or her spouse or a person qualifying as that party's dependent if such expenses can be shown to have been paid by that party alone. See *Mark B. Higgins* v. *Commissioner*, 16 T.C. 140.

Accordingly, it is held that amounts paid for the medical care of a taxpayer, her husband and their son and daughter, all residing in a noncommunity property state, with funds deposited in a joint checking account in which the husband and wife apparently have an equal interest are, in the absence of competent evidence to the contrary, presumed to be paid equally by the husband and wife for the purpose of computing the deduction allowable under section 213 of the Code, when the husband and wife elect to file separate Federal income tax returns.

Payments by a husband of medical care of former wife where marriage was annulled by court order on grounds of wife's insanity. See Rev. Rul. 59–130, below.

SECTION 215.—ALIMONY, ETC., PAYMENTS

26 CFR 1.215–1: Periodic alimony, etc., payments. Rev. Rul. 59–130

(Also Sections 71, 213; 1.71–1, 1.213–1.)

> Payments made for the care and maintenance of a former wife, under a decree annulling the marriage on the grounds of incurable insanity as provided in section 7(5) of the Domestic Relations Law of the State of New York, constitute "periodic payments" within the meaning of sections 215 and 71 of the Internal Revenue Code of 1954, and such payments are includible in the gross income of the former wife and are deductible by the husband.

Advice has been requested as to the treatment, for Federal income tax purposes, of payments made for the medical care and maintenance of a former wife under the circumstances described below.

The taxpayer, during the taxable year, made payments for the medical care and maintenance of his former wife. The payments were made to the New York State Department of Mental Hygiene pursuant to a decree of annulment granted him under section 7 of the Domestic

Relations Law of the State of New York, McKinney's Consolidated Laws of New York, Annotated, Book 14, page 30, which provides, in part, as follows:

> A marriage is void from the time its nullity is declared by a court of competent jurisdiction if either party thereto:
>
> * * * * * * *
>
> (5) Has been incurably insane for a period of five years or more; provided, however, that in an action to annul a marriage on such grounds,
>
> (a) If the marriage be annulled on the ground of the insanity of the wife, the court shall include in the judgment an order directing the husband to provide for her suitable support, care and maintenance during life, specifying the amount thereof and, before rendering judgment, must exact security to be approved by a judge of the court for her suitable support, care and maintenance during life * * *.

Section 215 of the Internal Revenue Code of 1954, relating to the income tax treatment of periodic alimony and separate maintenance payments described in section 71 of the Code, provides that in the case of a husband described in section 71 of the Code, there shall be allowed as a deduction amounts includible under section 71 in the gross income of his wife, payment of which is made within the husband's taxable year.

Section 71(a)(1) of the Code provides for the inclusion in the gross income of the wife of periodic payments, whether or not made at regular intervals, received by her after a decree of divorce or of separate maintenance.

Annulments, generally speaking, are awarded for causes which existed prior to marriage and which are of such legal consequence as to render the marriage void or voidable from its inception, whereas a decree of dissolution of a marriage for cause occurring subsequent to the marriage is not, strictly speaking, for annulment but rather for divorce.

In *Harold J. Ambruster* v. *Clara M. Ambruster*, 170 Misc. 387, 8 N.Y.S. 2(d) 821, the court, in applying section 7(5) of the Domestic Relations Law of New York, *supra*, stated in part as follows:

> * * * Subdivision 5 [of section 7] relates to a marriage subject to dissolution for a cause arising after the marriage. That it is lumped together under section 7 of the Domestic Relations Law with marriages subject to annulment for causes existing at the time of marriage does not mean that it is to be treated as an action to annul a marriage. *Stevens* v. *People's Bank of Hamburg*, 246 App. Div. 481, 284, N.Y.S. 929. * * *

A similar conclusion was reached in *Alfred Kuphal* v. *Augusta G. Kuphal*, 177 Misc. 255, 29 N.Y.S. 2(d) 868.

The fact that the New York law denominates the decree in the instant case an annulment is not controlling in the interpretation of its effect for Federal income tax purposes. Inasmuch as the decree of annulment granted under section 7(5) of the Domestic Relations Law, *supra*, would be a decree of divorce under the general rules of law, and has been so considered by courts of the State of New York, such a decree is considered a decree of divorce for the purposes of sections 215 and 71 of the Code.

Accordingly, it is held that payments made for the care and maintenance of a former wife, under a decree annulling the marriage on the grounds of incurable insanity as provided in section 7(5) of the Domestic Relations Law of the State of New York, constitute "periodic pay-

ments" within the meaning of sections 215 and 71 of the Code and such payments are includible in the gross income of the former wife and are deductible by the husband.

Since the former wife does not occupy the status of a spouse or dependent of the taxpayer at the time the medical services were rendered or the expenses paid, section 213 of the Code, authorizing a deduction for certain medical expenses, has no applicability to this situation.

Monthly payments by a husband to his former wife under a decree where payments for a period of less than ten years are contingent. See Rev. Rul. 59–45, page 666.

Treatment by husband of alimony payments and payment for support of children. See Rev. Rul. 59–93, page 22.

Alimony payments subject to the common law principle that payments terminate upon the death of either spouse. See Rev. Rul. 59–190, page 23.

PART VIII.—SPECIAL DEDUCTIONS FOR CORPORATIONS

SECTION 243.—DIVIDENDS RECEIVED BY CORPORATIONS

Small business investment company at least 80 percent of whose income consists of interest and dividends. See Rev. Rul. 59–69, page 142.

PART IX.—ITEMS NOT DEDUCTIBLE

SECTION 266.—CARRYING CHARGES

26 CFR 1.266–1: Taxes and carrying charges chargeable to capital account and treated as capital items. T.D. 6380 [1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Amendment of regulations under section 266 of the Internal Revenue Code of 1954, relating to carrying charges.

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

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

In order to restore to the regulations under section 266, relating to taxes and carrying charges, the election to capitalize Federal social security taxes paid or accrued in connection with the construction or

[1] 24 F.R. 4223.

acquisition of a capital asset, as previously provided in § 39.24(a)-6 of Regulations 118 and corresponding provisions of prior regulations, § 1.266-1 of the Income Tax Regulations (26 CFR Part 1) is hereby amended as follows for taxable years beginning after December 31, 1953, and ending after August 16, 1954:

Section 1.266-1 is amended as follows:

(A) By striking the last sentence of paragraph (b)(2).

(B) By amending paragraph (d) to read as follows:

§ 1.266-1 Taxes and Carrying Charges Chargeable to Capital Account and Treated as Capital Items.

* * * * * * *

(d) The following examples are illustrative of the application of the provisions of this section:

Example (1). In 1956 and 1957 A pays annual taxes and interest on a mortgage on a piece of real property. During 1956, the property is vacant and unproductive, but throughout 1957 A operates the property as a parking lot. A may capitalize the taxes and mortgage interest paid in 1956, but not the taxes and mortgage interest paid in 1957.

Example (2). In February 1957, B began the erection of an office building for himself. B in 1957, in connection with the erection of the building, paid $6,000 social security taxes, which in his 1957 return he elected to capitalize. B must continue to capitalize the social security taxes paid in connection with the erection of the building until its completion.

Example (3). Assume the same facts as in example (2) except that in November 1957, B also begins to build a hotel. In 1957 B pays $3,000 social security taxes in connection with the erection of the hotel. B's election to capitalize the social security taxes paid in erecting the office building started in February 1957 does not bind him to capitalize the social security taxes paid in erecting the hotel; he may deduct the $3,000 social security taxes paid in erecting the hotel.

Example (4). In 1957, M Corporation began the erection of a building for itself, which will take three years to complete. M Corporation in 1957 paid $4,000 social security taxes and $8,000 interest on a building loan in connection with this building. M Corporation may elect to capitalize the social security taxes although it deducts the interest charges.

Example (5). C purchases machinery in 1957 for use in his factory. He pays social security taxes on the labor for transportation and installation of the machinery, as well as interest on a loan to obtain funds to pay for the machinery and for transportation and installation costs. C may capitalize either the social security taxes or the interest, or both, up to the date of installation or until the machinery is first put into use by him, whichever date is later.

Because this Treasury Decision merely restores an election given to taxpayers under former regulations, and because it is desirable to restore such election promptly, it is found that it is unnecessary and 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 section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

Dana Latham,
Commissioner of Internal Revenue.

Approved May 22, 1959.

Fred C. Scribner, Jr.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on May 26, 1959, 8:49 a.m., and published in the issue of the Federal Register for May 27, 1959, 24 F.R. 4223.)

SECTION 267.—LOSSES, EXPENSES, AND INTEREST WITH RESPECT TO TRANSACTIONS BETWEEN RELATED TAXPAYERS

26 CFR 1.267(b)–1: Relationships. Rev. Rul. 59–171

Where two persons are trustees of separate trusts of a common grantor, deductions for losses sustained on the purchase and sale of securities between the trustees in their capacity as individuals rather than in their capacity as fiduciaries, are not prohibited by section 267 of the Internal Revenue Code of 1954.

Advice has been requested whether section 267(b)(5) of the Internal Revenue Code of 1954 prohibits a deduction of a loss sustained as a result of a sale of personally owned securities between individuals who are fiduciaries of trusts established by the same grantor.

B and *C* are trustees of separate trusts created by the same grantor. Solely for his own account, *B* sold at a loss certain securities owned by him personally to *C*. *C* made the purchase for his own account, and not as a fiduciary.

Section 267 of the Code provides, in part, that in computing taxable income no deduction shall be allowed in respect of losses from sales or exchanges of property, directly or indirectly, between a fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts.

The legislative history of this section of the Code clearly shows that Congress intended to prevent the original grantor of certain funds from creating artificial deductions for tax avoidance purposes, choosing by artificial means the time for realizing tax losses, or otherwise exercising control over certain trust assets for such Federal tax purpose. To the same effect, Congress intended to prohibit transactions between fiduciaries acting in their capacity as fiduciaries. See House of Representatives Report No. 1546, C.B. 1939–1 (Part 2), 723. However, so long as the trustees of the common grantor are dealing with personal funds, or property not derived from the original grantor, deductions for any losses so sustained are not prohibited by section 267 of the Code.

Accordingly, the deduction of the loss sustained by taxpayer *B* upon the sale of securities owned by him solely for his own account to the personal account of *C* is not prohibited by section 267 of the Code.

SUBCHAPTER C.—CORPORATE DISTRIBUTIONS AND ADJUSTMENTS

PART I.—DISTRIBUTIONS BY CORPORATIONS

Subpart A.—Effects on Recipients

SECTION 301.—DISTRIBUTION OF PROPERTY

26 CFR 1.301–1: Rules applicable with respect to distributions of money and other property. Rev. Rul. 59–184 [1]

Where a corporation purchases life insurance on the lives of its stockholders, the proceeds of which are to be used in payment for the stock of stockholder, the premiums on such insurance do not

[1] Based on Technical Information Release 115, dated December 8, 1958.

constitute income to the stockholder, even though the stockholder has the right to designate a beneficiary, provided such right of the beneficiary to receive the proceeds is conditioned upon the transfer of the corporate stock to the corporation.

The decisions of the United States Courts of Appeals in the cases of *Oreste Casale* v. *Commissioner*, 247 Fed. (2d) 440, *Henry E. Prunier et al.* v. *Commissioner*, 248 Fed. (2d) 818, and *Robert V. Sanders et al.* v. *Charles I. Fox*, 253 Fed. (2) 855, involving similar factual situations, will be followed by the Internal Revenue service.

Revenue Ruling 59–79, page 15, this Bulletin, superseded.

The Internal Revenue Service has been requested to state its position with respect to whether payments made by a corporation of premiums on insurance contracts on the lives of its stockholders constitute constructive dividends to the insured stockholders, where the proceeds of the policies are to be used to purchase their stock.

A closely held corporation, prior to 1954, was the named beneficiary of two life insurance contracts insuring the respective lives of two of its stockholders who owned a majority interest in the corporation. The corporation paid the annual premiums on these contracts and reported them as unallowable deductions in its corporate income tax returns through the years.

In 1954, an insurance agreement was entered into by and between the two stockholders, the corporation, and other persons who were designated the trustees of an insurance trust created by the agreement. Under the terms of the agreement, the corporation ceased to be the beneficiary of the above two life insurance policies and in its place trustees were named as the beneficiaries of each of such contracts.

Pertinent provisions of the agreement are that: (1) Upon the death of an insured, the proceeds of the contract are to go to the trustees or the survivors of them; (2) the corporation reserves the right of revocation of the beneficiaries; (3) upon the receipt of the proceeds from either of the contracts, and upon written request by the executors or administrators, the trustees are to purchase with the insurance proceeds the corporation's stock held by deceased at the time of his death; (4) in the event that the insurance proceeds are insufficient to purchase the stock, the corporation is to pay the balance thereof, either to the trustees, executors or administrators; (5) the trustees are to deliver such stock to the corporation and the stock is to be retired; (6) in the event the executors or administrators of the estate of the decedent fail to notify the trustees of their election to sell the stock within one year from the date of receipt of the proceeds from the contract, then such proceeds are to be paid over to the corporation by the trustees and the proceeds are to become a part of the corporation's general assets; (7) the purchase price of the corporation's stock held by deceased is to be computed at its book value at the time of death; (8) in the event that the corporation defaults in payment of any premiums on the contracts for five days after the due date of such premiums, the insured may purchase such contract at its then cash surrender value, and in the event of such purchase, the insured has full power with respect to the substitution of beneficiaries; (9) the trustees are to make no payments of premiums but are only to collect the proceeds of the policies; (10) the agreement may be re-

voked or modified by either the corporation or the officers by written agreement.

Sections 301 (a) and (c) of the Internal Revenue Code of 1954 provide, in part, that a distribution of property by a corporation to a shareholder with respect to its stock shall be included in gross income to the extent the amount distributed is considered a dividend under section 316 of the Code. However, section 1.301–1(c) of the Income Tax Regulations states that section 301 of the Code is not applicable to an amount paid by a corporation to a shareholder unless the amount is paid to the shareholder in his capacity as such.

The instant case involves a rather common situation in which two or more stockholders of a closely held corporation arrange for the orderly sale and purchase of the stock of a stockholder who dies. These so-called "buy and sell" agreements are very often funded with insurance policies in view of the fact that in the early years of the corporation's existence proceeds for the consummation of the agreement, in the event of the stockholder's death, would not be available.

There are many methods by which buy and sell agreements can be arranged. Each stockholder could take out insurance on the life of each other stockholder and use the proceeds at death to pay for the stock of the deceased stockholder. In such a case, the corporation itself would not be a party to the agreement. Under such a plan, if the premiums are paid by the corporation, they are considered distributions of dividends to the various stockholders who are the owners and beneficiaries of the policies. See *Thomas F. Doran* v. *Commissioner*, 246 Fed. (2d) 934.

However, it is well recognized that a buy and sell arrangement can be prepared with the corporation acting as the prime purchaser of the stock of a deceased stockholder. Such arrangements are quite common and are in effect recognized by the Code in that section 302(b)(3) provide for a capital gain treatment in the event of a complete redemption by the corporation itself of all the stock actually and constructively owned by a stockholder. For purposes of this discussion it is assumed that the obligation to purchase the stock is solely that of the corporation so that the question of the corporation undertaking the obligation of another stockholder is not raised. *H. F. Wall* v. *Commissioner*, 164 Fed. (2d) 462.

In the case of *Henry E. Prunier et al.* v. *Commissioner*, 248 Fed. (2d) 818, the Commissioner of Internal Revenue contended that where a corporate employee or stockholder, or someone related to him, is the beneficiary, and not the corporation, of a policy of life insurance on such employee or stockholder, payment of the premiums on such policy by the corporation constitutes income to the insured individual. See *Paramount-Richards Theatres, Inc., et al.* v. *Commissioner*, 153 Fed. (2d) 602. However, the United States Court of Appeals for the First Circuit, in vacating the decision of the Tax Court of the United States in that case, which had held for the Commissioner, stated that where a corporation was the beneficial owner of the policies on the lives of its officers-shareholders, and such proceeds were to be used to purchase the stock of such shareholders, no income to the shareholders resulted from the payment of the premiums by the corporation. The appellate court concluded that the corporation

equitably owned the policies under the law of Massachusetts and was entitled to recover the proceeds of the policies in the event of the death of one of the insured. In its decision, the appellate court said:

> Certainly the fact that the corporation may have been contractually bound to apply any proceeds of the policies, had they matured in 1950, to buy out the stock interest of a deceased stockholder, does not mean that the corporation would not have been "enriched" by collecting the face amount of the policies. All that would then have been involved would have been a change in the form of the assets from cash to treasury stock.

The Revenue Service will follow the *Prunier* decision and will also follow the decisions of the United States Court of Appeals for Tenth Circuit in the case of *Robert V. Sanders et al.* v. *Charles I. Fox*, 253 Fed. (2d) 855, involving a similar factual situation, as well as *Oreste Casale* v. *Commissioner*, 247 Fed. (2d) 440.

In view of the foregoing court decisions, it is held that whenever a corporation purchases life insurance on the lives of its stockholders, the proceeds of which are to be used in payment for the stock of any stockholder, the premiums on such insurance do not constitute income to any stockholder, even though the stockholder has the right to designate a beneficiary, if such right of the beneficiary to receive the proceeds is conditioned upon the transfer of the corporate stock to the corporation. The payment of premiums by the corporation is merely an independent act by the corporation by which it converts one asset, cash, into another asset, an insurance policy, and such action has no relationship whatsoever to the receipt of income by the stockholders.

Therefore, in the instant case, premiums paid by the corporation on the contracts insuring the lives of its two principal stockholders are not equivalent to dividends to the insured stockholders.

Revenue Ruling 59–79, page 15, this Bulletin, is hereby superseded.

A payment of premiums by a corporation on an insurance contract on the life of an employee-shareholder. See Rev. Rul. 59–79, page 8.

A sale by a shareholder to the corporation of all of its stock in the corporation. See Rev. Rul. 59–119, below.

SECTION 302.—DISTRIBUTION IN REDEMPTION OF STOCK

26 CFR 1.302–4: Termination of shareholder's interest. (Also Section 301, 1.301–1.) — Rev. Rul. 59–119

> In a redemption of stock otherwise qualifying as a distribution under section 302(a) of the Internal Revenue Code of 1954 by reason of a termination of interest under sections 302(b)(3) and (c)(2) of the Code, an agreement between the taxpayer (shareholder) and the remaining shareholders of the corporation calling for a member of the taxpayer's law firm to be appointed to the board of directors to protect the interest of the taxpayer as a creditor of the corporation

will be in violation of section 302(c)(2)(A)(i) of the Code. In that event, the redemption shall be treated as a distribution of property to which section 301 of the Code applies.

However, if the taxpayer designates a representative of his law firm to attend the board of director's meeting of the corporation solely for the purpose of determining whether the provisions of the stock redemption agreement have been complied with, such action will not adversely effect section 302(c)(2) of the Code.

Advice has been requested whether a shareholder all of whose stock of a corporation is redeemed, may, by agreement with the remaining shareholders, nominate a member of his law firm as a director of the corporation to protect his interests as a creditor of the corporation without violating sections 302(b)(3) and (c)(2)(A)(i) of the Internal Revenue Code of 1954. The redemption in question qualifies as a distribution in full payment for the stock under section 302(a) by reason of a termination of interest under section 302(b)(3) of the Code only if the shareholder files the agreement described in section 302(c)(2)(A)(iii) and subject to the conditions stated in section 302(c)(2)(A)(i) and (ii).

A stock redemption agreement between the corporation and the instant shareholder provides that a total of $350x$ dollars will be paid to such shareholder for all his stock interest in the corporation, $100x$ dollars to be paid on the closing date and $250x$ dollars to be paid by the corporation within eight years, payable in quarter-annual installments. The corporation executed an installment judgment note to the shareholder and the judgment note and shares of stock of the corporation to be redeemed are retained by an escrow holder as security for installment payments due. In the event the installment and interest payments are in default, then pursuant to the agreement the escrow holder, upon notice from the taxpayer, may sell the stock of the corporation held by him at public or private sale to satisfy such obligations, however, in no event will the taxpayer become the purchaser of said stock at such sale.

The stock redemption agreement also states that so long as the corporation owes funds to such shareholder it will not, without first receiving the written consent of the shareholder, declare dividends: pay salaries in excess of a certain amount to officers; sell its assets except in the ordinary course of business; or engage in a reorganization, recapitalization, merger, consolidation or liquidation.

Because of the substantial sums due the shareholder, because he plans to reside permanently in another state and will be far removed from the base of operations of the corporation, and pursuant to the advice of persons skilled in creditor protection matters, he considers it advisable to have a member of the law firm representing him serve on the board of directors of the corporation. Therefore, the instant shareholder and the remaining shareholders, all related, entered into a second agreement whereby a nominee of his law firm will serve on the board of directors as long as the corporation is indebted to the shareholder. Such nominee will be paid x dollars by the corporation for each meeting he attends and such additional sums as determined in the sole discretion of the instant shareholder for other services which may be reasonably necessary to determine that his interests as a creditor are being protected in accordance with the agreements.

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The sole purpose of this arrangement is to protect the shareholder as a creditor by determining that the aforementioned conditions are being met rather than running the risk of having to engage in extended litigation at some future date if it is then determined that the conditions of the stock redemption agreement were violated.

Section 302 of the Code, relating to distributions in redemption of stock, provides, in part:

> (a) GENERAL RULE.—If a corporation redeems its stock * * * and if paragraph * * * (3) * * * of subsection (b) applies, such redemption shall be treated as a distribution in part or full payment in exchange for the stock.
>
> * * * * * * *
>
> (b) REDEMPTION TREATED AS EXCHANGES.—
>
> * * * * * * *
>
> (3) TERMINATION OF SHAREHOLDER'S INTEREST—Subsection (a) shall apply if the redemption is in complete redemption of all of the stock of the corporation owned by the shareholder.
>
> * * * * * * *
>
> (c) CONSTRUCTIVE OWNERSHIP OF STOCK.—
>
> * * * * * * *
>
> (2) FOR DETERMINING TERMINATION OF INTEREST.—
>
> (A) In the case of a distribution described in subsection (b)(3), section 318(a)(1) shall not apply if—
>
> (i) immediately after the distributee has no interest in the corporation (including an interest as officer, director, or employee), other than an interest as a creditor, * * *.

According to the agreement in question, the remaining shareholders and the instant shareholder will appoint, indirectly through the law firm representing such shareholder, a member of that law firm to serve on the board of directors of the corporation. Such a nominee director will be acting solely on the taxpayer's behalf and, therefore, will in effect be his agent. The fact that the nominee director will receive remuneration for his service from someone other than the taxpayer does not make him any less the taxpayer's agent, for the source of remuneration to an agent is only one factor to be considered in determining whether an agency exists between two parties. Such an appointment of an agent to the board of directors is contrary to the condition prescribed in section 302(c)(2) of the Code. For the purposes of section 302(c)(2), it is immaterial whether an interest in the corporation is asserted directly or through an agent.

The fact that the director is a "limited" director in that his only duty will be to determine whether the conditions set forth in the stock redemption agreement are being observed is not material, for section 302(c)(2) of the Code does not make any exception for such directors. Furthermore, that section of the Code does not make an exception for a director whose power is limited because he is a minority member of a board.

In view of the foregoing, it is held that the agreement between the instant shareholder and the remaining shareholders of the corporation, under which a nominee is appointed to serve on the board of directors of the corporation, violates the condition prescribed in section 302(c)(2)(A)(i) of the Code. Accordingly, in the event of such an agreement, the redemption of the taxpayer's stock of the corporation shall be treated as a distribution of property to which section 301 of the Code applies.

However, if the taxpayer-shareholder designates a representative of his law firm to attend the board of director's meetings of the corporation solely for the purposes of determining whether the provisions of the agreement described above have been complied with, and not in the capacity of a director, officer or employee, or advisor, such action will not adversely affect section 302(c)(2) of the Code.

SECTION 306.—DISPOSITIONS OF CERTAIN STOCK

26 CFR 1.306–3: Section 306 stock defined. Rev. Rul. 59–84

For bona fide business reasons a corporation issued new common and new non-voting, non-participating, cumulative preferred stock for all its old common stock in a recapitalization. For each share of the old common stock surrendered either one share of the new common or one share of the new preferred was received. The old common, the new common and the new preferred all had the same fair market value per share at the time of the exchange. In the exchange some of the 10 shareholders received only new common or preferred while others received shares of both issues. The entire stock ownership in the corporation before and after the recapitalization exchanges was as follows:

SHAREHOLDERS	SURRENDERED	RECEIVED		% OF COMMON STOCK	
(All unrelated)	Common shares	New common shares	New preferred shares	Before exchange	After exchange
A	2,790	None	2,790	55.8	None
B	470	80	390	9.4	8.0
C	440	80	360	8.8	8.0
D	360	100	260	7.2	10.0
E	280	150	130	5.6	15.0
F	220	150	70	4.4	15.0
G	140	140	None	2.8	14.0
H	140	140	None	2.8	14.0
K	140	140	None	2.8	14.0
M	20	20	None	.4	2.0
Totals	5,000	1,000	4,000	100.0	100.0

Held, the recapitalization constitutes a reorganization under section 368(a)(1)(E) of the Internal Revenue Code of 1954 and the exchanges of stock are nontaxable under section 354(a)(1) of such Code. The preferred stock received by *A* is not section 306 stock since after the exchange he owns no common stock, no voting stock and no participating stock. On the other hand, after the transaction each of the other shareholders (*B*, *C*, *D*, *E* and *F*) who received preferred stock owns a percentage interest in the common stock equity which is greater or not substantially less than his percentage interest in such equity before the transaction. In these circumstances the transaction is substantially the same as the receipt of a stock dividend under section 306(c)(1)(B) of the 1954 Code. The preferred stock received by *B*, *C*, *D*, *E* and *F* is therefore section 306 stock.

Preferred stock of a new corporation issued to a majority stockholder in exchange for his common stock of an old corporation in a "split-off" reorganization as defined in section 368(a)(1)(D) of the Code. See Rev. Rul. 59–197, page 77.

PART II.—CORPORATE LIQUIDATIONS

Subpart B.—Effects on Corporation

SECTION 337—GAIN OR LOSS ON SALES OR EXCHANGES IN CONNECTION WITH CERTAIN LIQUIDATIONS

26 CFR 1.337–2: Sales or exchanges within the scope of section 337. Rev. Rul. 59–108

Where the Supreme Court of the State of New York, in a condemnation proceeding brought by the City of New York, issued an order on December 6, 1954, vesting title to most of a corporation's real estate in the City of New York, the condemnation and vesting of title constituted a sale of the property by the corporation as of December 6, 1954, within the meaning of section 337(a) of the Internal Revenue Code of 1954, notwithstanding that the payment of the condemnation award did not occur until over one year later. Therefore, since the corporation had adopted a plan of complete liquidation on December 4, 1954, and distributed all of its assets (including the claim for the condemnation award) to its stockholders in complete liquidation within the 12-month period beginning on that date, the condemnation did not result in the recognition of gain or loss to the corporation.

Advice has been requested as to whether the condemnation of real estate of a corporation and the vesting of title to the property in the condemning authority pursuant to a court order issued within the 12-month period beginning on the date of the adoption of a plan of complete liquidation by the corporation, constituted a sale of the property as of the date of the court order within the meaning of section 337(a) of the Internal Revenue Code of 1954, although the payment of the condemnation award did not occur until after the close of the 12-month period.

A certain corporation owned beach front property. In 1953, the City of New York on the basis of an engineering survey, determined to acquire the corporation's property through a condemnation proceeding and to create a new public beach. Realizing that the condemnation could not be prevented and that the City of New York would take over substantially all of the corporation's property, the stockholders of such corporation at a stockholders' meeting held on December 4, 1954, adopted a plan of complete liquidation of the corporation.

On December 6, 1954, the appropriate local department of the Supreme Court of the State of New York in the condemnation proceeding brought by the City of New York issued an order granting the application of the city to condemn most of the corporation's real estate. In that connection, the law applicable to condemnations by the City of New York provides, subject to exceptions not here applicable, that when the application of the city to condemn is granted by such a decree,

title to the real estate immediately passes, together with all the rights of ownership, possession, beneficial enjoyment, rights to collect the rents, as well as the obligations to pay taxes which thereafter may become a lien upon the premises. The date of vesting is also the date as of which the fair market value of the property is subsequently fixed by the court as the basis of the just compensation which the city is thereupon obligated to pay.

On or before December 3, 1955, the corporation transferred all of its cash, real property, claims, and other assets subject to its liabilities, to its stockholders in complete redemption of its outstanding stock. The assets distributed included the claim for the condemnation award which had not been agreed upon or paid as of December 3, 1955.

It has been well established by various courts that condemnation proceedings should be treated as sales for purposes of Federal tax law. See *Hawaiian Gas Products, Ltd.* v. *Commissioner*, 126 Fed. (2d) 4, cert. den. 817 U.S. 653. Cf. *Helvering* v. *Hammel, et al.*, 311 U.S. 504, Ct. D. 1480, C.B. 1949–1, 375; G.C.M. 23646, C.B. 1943, 372. As to the distinction between condemnation and destruction by fire, see Rev. Rul. 56–372, C.B. 1956–1, 187. Section 1.337–2(a) of the income tax regulations provides, in part:

"In ascertaining whether a sale or exchange occurs on or after the date on which the plan of complete liquidation is adopted, the fact that negotiations for sale may have been commenced, either by the corporation or its shareholders or both shall be disregarded. Moreover, an executory contract to sell is to be distinguished from a contract of sale. Ordinarily, a sale has not occurred when a contract to sell has been entered into but title and possession of the property have not been transferred and the obligation of the seller to sell or the buyer to buy is conditional."

The condemnation sale differs from an ordinary sale of property in that title may vest and possession be transferred before a determination of price has been made. Since the determination of price is normally a part of the negotiation in an ordinary sale, it might be contended that the first sentence of the quoted regulations applies and that until negotiations are concluded no sale occurs. However, because of the difference in nature of a condemnation proceeding, it is the view of the Revenue Service that once title and possession have passed to the condemning authority, "negotiations" have been concluded for purposes of section 1.337–2(a) of the regulations.

Determining when a sale occurs in the condemnation of real property is complicated by the fact that condemnation statutes vary as to the procedure for the vesting of title in the condemning authority and the fixing of an unconditional obligation on its part to pay just compensation for the taking. Such is the case not only as between one state and another but usually even as regards different condemnation statutes within the state. The State of New York is a good example in that its general condemnation law follows the more traditional procedure under which title vests and the obligation to pay just compensation is fixed only at the end of the proceeding. Under the law of the City of New York, on the other hand, title vests upon the entry of the court order granting the City's application to condemn, which is generally before any determination of the just compensation to be paid, unless the Board of Estimate by a three-fourths vote has directed that title shall be vested upon a specified date after the date of the court order.

It is accordingly necessary in each instance to examine the particular statute under which the condemnation has taken place in relation to such court orders as may be involved in order to determine whether the vesting of title and the fixing of the obligation to pay just compensation (whenever determined as to amount) has occurred at the beginning or at the end or at some intermediate point of the proceeding. It is the general rule that private property may constitutionally be taken for public use prior to the determination and payment of just compensation therefor only where there arises upon the taking an enforceable obligation to pay just compensation, when allowed under a procedure for its reasonably prompt ascertainment and payment. See *Yearsley et al.* v. *Ross Construction Co.*, 309 U.S. 18; *Joslin Manufacturing Company* v. *City of Providence*, 262 U.S. 677; *Crosier* v. *Fried, Krupp Optiengesellschaft*, 224 U.S. 290. The obligation of the condemning authority should therefore be treated as fixed upon any such taking which transfers the title to the property and creates an immediate obligation upon the condemning authority to pay just compensation, even though the amount of the compensation remains to be determined and paid at a later date.

In view of the facts presented, in accordance with the principles set forth above, the Revenue Service holds as follows:

(A) The date of adoption of the plan of liquidation of the corporation, for the purpose of determining the 12-month period referred to in section 337(a) of the Internal Revenue Code of 1954, is December 4, 1954, the date of the stockholders' meeting at which the stockholders adopted the plan of liquidation.

(B) The condemnation and vesting in the City of New York of title to certain of the corporation's property on December 6, 1954, constituted a sale of such property on that date within the meaning of section 337(a) of the 1954 Code.

(C) Pursuant to the provisions of section 337(a) of the Code, no gain or loss is recognized to the corporation as a result of the condemnation of its property and the simultaneous arising of the right of the corporation to receive fair and just compensation, as of December 6, 1954, for the property condemned, followed by the complete liquidation of the corporation on or before December 3, 1955.

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26 CFR 1.337–3: Property defined. Rev. Rul. 59–120
(Also Section 61; 1.61–7.)

Where a corporation employing the cash receipts and disbursements method of accounting adopted a plan of complete liquidation pursuant to section 337 of the Internal Revenue Code of 1954 and, within 12 months from the date of adoption of the plan, sold all of its assets in bulk to another corporation, ordinary income is recognized to the selling corporation upon that portion of the sale pertaining to interest income on discounted promissory notes which had been earned but not received by the seller at the time of the sale.

Advice has been requested whether ordinary income is recognized to a corporation using the cash receipts and disbursements method of accounting upon its sale of discounted promissory notes during a period of liquidation under a plan adopted pursuant to section 337 of the Internal Revenue Code of 1954.

A corporation adopted a plan of complete liquidation in accordance with section 337 of the Code. Within the 12-month period commencing on the date of adoption of the plan, it sold all of its assets in bulk to another corporation. The taxpayer employed the cash receipts and disbursements method of accounting.

Among the assets transferred to the buyer were promissory notes held by and payable to the taxpayer, evidencing loans (and the obligation to repay them) made by the taxpayer to certain of its customers. Income from the notes which had been earned before the date of sale had not yet been collected. It was the taxpayer's customary business practice, for example, to receive a $1,000 note, payable one year from the date of the loan (in a lump sum and not by installments), in return for a loan of $950, the $50 difference representing advance interest at five percent per annum. The taxpayer did not report interest on the note until it was received at the date of maturity by payment in full.

Since the buyer of these notes from the taxpayer will only be required to report interest income accruing from the date of his purchase, any interest income earned prior to the date of sale will escape taxation to the extent that it is not reported as income by the seller. However, interest income earned before the date of sale would have been taxed had the taxpayer employed the accrual method of accounting.

Under the method of accounting used by the taxpayer, interest income resulted to the taxpayer upon the sale of the notes to the extent of the interest accrued at the date of sale. See section 1.61–7(d) of the Income Tax Regulations. The fact that the taxpayer is in liquidation at the time of the sale is immaterial since, here, an actual cash sale took place.

Section 337 of the Code provides, in effect, that no gain or loss will be recognized to a corporation from its sale or exchange of property within a 12-month period after it adopts a plan of complete liquidation. However, section 337(b)(1) of the Code excludes from the term "property" stock in trade of the corporation which would properly be included in its inventory, property held primarily for sale to customers in the ordinary course of its trade or business, and installment obligations, except if substantially all of its inventory is sold or exchanged to one person in one transaction. The term "property" includes property so sold or exchanged or installment obligations acquired in respect of such sale or exchange. Essentially, section 337 applies to all assets except those specifically excluded in section 337(b)(1) of the Code. To the same effect, section 1.337–3(a) of the regulations states, in part, that: "With the exceptions listed above, the term 'property' includes all assets owned by a corporation."

Thus, section 337 of the Code is intended to exclude gain resulting from the unrealized appreciation of business property. However, the notes in question were not sold for more than their cost because of any appreciation in their value. On the contrary, the notes were sold for their original cost plus interest. Thus, in part, the sale of the above items is in reality the assignment of the claim for interest. In the case of an accrual method taxpayer, no problem arises since the accrued interest would have been included in income as it accrued. However, in the case of a cash method taxpayer, the interest is included in income

when it is converted into cash or paid by the assignee of the claim, in other words, when the note is sold.

In view of the foregoing, it is held that ordinary income is recognized to the selling corporation within the meaning of section 61 of the Code upon its sale of discounted notes to the extent of the interest income earned but not collected pursuant to its sale of such items during complete liquidation under the provisions of section 337 of the Code.

PART III.—CORPORATE ORGANIZATIONS AND REORGANIZATIONS

Subpart B.—Effects on Shareholders and Security Holders

SECTION 354.—EXCHANGES OF STOCK AND SECURITIES IN CERTAIN REORGANIZATIONS

26 CFR 1.354–1: Exchanges of stock and securities in certain reorganizations. Rev. Rul. 59–98
(Also Section 368; 1.368–2.)

> Where a corporation in financial difficulties issued newly authorized common stock in exchange for all of its first mortgage bonds (having an average term of six and one-half years) and the unpaid accrued interest thereon, the transaction qualifies as a nontaxable reorganization (recapitalization) under the provisions of section 368(a)(1)(E) of the Internal Revenue Code of 1954, since such mortgage bonds constitute "securities" within the meaning of section 354(a) of the Code.

Advice has been requested whether the exchange of bonds and accrued interest thereon for stock of the corporation which issued such bonds is a recapitalization under the terms of section 368(a)(1)(E) of the Internal Revenue Code of 1954 and whether such bonds constitute "securities" within the meaning of section 354(a)(1) of the Code.

In 1957, the corporation here involved, which had been in serious financial difficulties for several years, exchanged newly issued common stock for all its outstanding first mortgage bonds and the accrued unpaid interest thereon, so that after the exchange the former bondholders owned 40 percent of the common stock outstanding. The bonds surrendered had been issued in 1946 and had originally been payable in from three to ten years, the average time to maturity at issuance being six and one-half years. The corporation had not deducted any of the unpaid interest, either in its computation of income or in its computation of earnings and profits. Before the bonds were surrendered none of the bondholders owned any of the common stock. The exchange of stock for bonds was arranged in order to bring the corporation out of the financial difficulties which had made it unable to pay the principal and interest of the bonds when due. The fair market value of the stock issued for each bond was substantially less than the principal amount of the bond. All of the bonds were purchased at issuance by various individuals as investments.

Section 354(a)(1) of the Code states, in part, that no gain or loss shall be recognized if *securities* in a corporation a party to a re-

organization are, in pursuance of a plan of reorganization, exchanged solely for stock in such corporation. Section 368(a)(1)(E) states that a "reorganization" includes a *recapitalization.*

The meaning of the word "securities" is not defined in the Internal Revenue Code of 1939 and is similarly not defined in the Internal Revenue Code of 1954. However, in *Camp Wolters Enterprises, Inc.* v. *Commissioner*, 22 T.C. 737, affirmed, 230 Fed. (2d) 555, the Tax Court of the United States discussed the meaning of the term as it appeared in section 112(b)(5) of the 1939 Code, saying, in part, as follows:

* * * The test as to whether notes are securities is not a mechanical determination of the time period of the note. Though time is an important factor, the controlling consideration is an over-all evaluation of the nature of the debt, degree of participation and continuing interest in the business, the extent of proprietary interest compared with the similarity of the note to a cash payment, the purpose of the advances, etc.

In view of the foregoing, since in the instant case the bonds were secured by a mortgage on the corporate property, since they had an average life of six and one-half years when issued, and since they were purchased for investment purposes by persons other than the stockholders, it is held that these bonds constitute securities for purposes of subchapter C, chapter 1, of the Code. Thus the change in the capital structure of the corporation constitutes a recapitalization and, therefore, a reorganization as defined in section 368(a)(1)(E) of the Code. Accordingly, under section 354(a) of the Code, no gain or loss is recognized to the bondholders from the exchange of the mortgage bonds, together with the unpaid accrued interest thereon, for capital stock of the corporation.

Holders of subordinated debentures of an insolvent corporation exchanged for common stock of the acquiring corporation. See Rev. Rul. 59–222, page 80.

SECTION 355.—DISTRIBUTION OF STOCK AND SECURITIES OF A CONTROLLED CORPORATION

26 CFR 1.355–2: Limitations. Rev. Rul. 59–197
(Also Sections 306, 368, 1.306–3, 1.368–1.)

For bona fide business reasons, a family owned corporation engaged in the active conduct of two businesses for many years transferred the assets of one of the businesses to a new corporation in exchange for preferred and common stock. The stock was then exchanged by the transferor corporation for some of its own stock. Immediately prior to the transfer, a key employee of the business transferred was permitted to purchase a minority stock interest in the transferor corporation and this stock was exchanged for one-half of the common stock of the new corporation. At the same time, another person exchanged all his stock in the transferor corporation for the other half of the common and all of the preferred stock of the new corporation. The one-half of the common stock received by the key employee represented 18 percent of the entire stock equity of the new company and had one-third of the voting power. *Held*, the transactions constitute a reorganization under section 368(a)(1)(D) and exchanges under section 355 of the Internal Revenue Code of 1954. The prior sale to the key employee will not disqualify

the transactions under section 1.355–2 of the Income Tax Regulations since this sale does not make them a device to distribute a dividend nor cause them to violate the continuity of interest requirement. *Held further,* that the preferred stock of the new corporation is "section 306 stock" in the hands of the shareholder receiving it.

Advice has been requested (1) whether a "split off" transaction will qualify under section 355 of the Internal Revenue Code of 1954 where a key employee participates through stock purchased in anticipation of the transaction, and (2) whether certain preferred stock received in a section 355 exchange will be "section 306 stock."

A corporation had been engaged in the manufacturing business and the brokerage business for more than five years. All the outstanding stock was owned by a husband and wife and their son. The husband owned 1,398 shares of stock, the son owned 1,150 shares and the wife owned 1,650 shares.

Because of pressure on the corporation by customers of the brokerage business who objected to their products being handled by a company which manufactured similar products, it was determined to separate the two businesses. The brokerage business was successful largely because of a valuable key employee who had been active in it for many years. In order to induce him to continue to work in this business, it was necessary to permit him to acquire a proprietary interest in it. To achieve this, he was permitted to buy, for cash, 207 shares of the stock of the corporation, as then constituted, from the wife so that he would be able to participate in the division of the existing corporation and acquire an interest in the corporation which would own the brokerage business.

Immediately after the acquisition of stock by the key employee, a new corporation was organized to carry on the brokerage business. Assets and liabilities pertaining to the brokerage activity were transferred to the new corporation in exchange for 2,500 shares of preferred stock having one vote per share and 5,000 shares of common stock having one vote per share. Thereafter, the husband surrendered all of his stock in the old corporation (1,398 shares) for 2,500 shares of preferred stock and 2,500 shares of common stock in the new corporation, and the key employee surrendered his newly acquired stock in the old corporation (207 shares) for the remaining 2,500 shares of common stock in the new corporation. The fair market value of the stock received was the same as the fair market value of that surrendered. The fair market value of all the common stock of the new corporation was $36x$ dollars while the fair market value and redemption price of all the preferred stock of the new corporation was $64x$ dollars.

After the transactions described, both corporations continued to engage in the active conduct of their respective businesses. The son and wife continued to own the manufacturing business and the husband and the key employee continued to own the brokerage business, to which they devoted all of their time and efforts. None of the shareholders intended to dispose of their stock in the old corporation or the new corporation, and no stock was sold except that sold to the key employee immediately before the transaction.

The assets which remained in each corporation after the transaction were those attributable to that corporation's business. The division of

interests among the shareholders was in accord with the value of the interests of the stock formerly owned. The par value and redemption price of the preferred stock received by the father was such that it reflected his allocable share of the earnings and profits in the old corporation immediately before the distribution. The common stock in the new corporation correctly reflected the capital interests of the husband and the key employee.

In general, section 355 of the Code provides for the tax-free distribution of stock and securities of a controlled corporation to shareholders and security holders of the distributor corporation, provided that both the distributor corporation and the controlled corporation's underlying businesses have been operated for more than five years and will be continued after the transaction. There must be good business reasons for the transaction and it must not be a device for the distribution of earnings and profits. However, an arrangement agreed upon in advance to dispose of the stock received raises special questions. Section 1.355–2(b)(1) of the Income Tax Regulations provides that such an arrangement is evidence that the transaction is a device to distribute earnings and profits and further provides that the continuity of interest requirement under section 1.355–2(c) of the Regulations must be met. In determining whether a transaction was used principally as a device to distribute earnings and profits, all the facts and circumstances must be considered. Section 1.355–2(b)(3) of the regulations.

In the instant case, while there was no arrangement or contract to sell some of the stock distributed immediately after the transaction, some of the stock of the distributor corporation was sold immediately before the transaction in order to enable the buyer of such stock to participate in the transaction. Obviously, such a sale has exactly the same effect as a binding contract to sell some of the stock after the transaction. Therefore, it is necessary to consider whether or not this sale has the effect of making the transaction a device to distribute earnings and profits. In considering this question, it must be borne in mind that the sale was made at fair market value, for cash, to a person who had been a bona fide and important employee for many years, and who expected to remain an employee. This person did not purchase to make a speculative profit but solely in order to acquire and retain a common stock interest in the business to which he devoted his efforts. Furthermore, this employee acquired only a one-third interest in the vote, an 18 percent interest in the entire stock equity, and a 50 percent interest in the common stock equity. The person selling did not intend to acquire any interest in the corporation split-off. No money came out of the old corporation or the split-off corporation either directly or indirectly. The separation of the two businesses was motivated by good business reasons and the assets were divided in strict accordance with the businesses to which they were attributable. Each corporation continued one of the existing businesses after the transaction and both continued to be owned by former owners with the sole exception of the interest acquired by the key employee.

Under all the facts and circumstances, it is held that despite the cash sale to the key employee, the entire transaction does not constitute a device to distribute earnings and profits and does satisfy the continuity of interest requirement for section 355 purposes. Therefore, the

exchange of stock for stock is tax-free under that section. The transfer of assets to the new corporation will constitute a reorganization under section 368(a)(1)(D) of the Code and no gain or loss will be realized to the old corporation under section 361(a) of the Code.

However, the issuance of preferred stock to the husband is within the terms of section 1.306–3(r) of the regulations. That section provides that preferred stock shall be "section 306 stock" when cash received in lieu thereof would have been taxable as a dividend. Since, if the husband had received cash instead of preferred stock, this would clearly have been a dividend under section 365(b)(2) of the Code the preferred stock received by him is held to be "section 306 stock."

SECTION 358.—BASIS TO DISTRIBUTEES

26 CFR 1.358–1: Basis to distributees.

The basis to the holders of subordinated debentures of stock of the acquiring corporation. See Rev. Rul. 59–222, below.

Subpart C.—Effects on Corporation

SECTION 362.—BASIS TO CORPORATIONS

26 CFR 1.362.–1: Basis to corporations.

The basis to the acquiring corporation of the insolvent corporation thus acquired. See Rev. Rul. 59–222, below.

Subpart D.—Special Rule: Definitions

SECTION 368.—DEFINITIONS RELATING TO CORPORATE REORGANIZATIONS

26 CFR 1.368–1: Purpose and scope of exception of reorganization exchanges.

A transfer by a corporation of part of its assets to another corporation. See Rev. 59–197, page 77.

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26 CFR 1.368–2: Definition of terms. (Also Sections 354, 358, 362; 1.354–1, 1.358–1, 1.362–1.) Rev. Rul. 59–222

The acquisition by one corporation, in exchange solely for its voting stock, of all of the newly issued stock of an insolvent corporation pursuant to a plan of reorganization under Chapter X of the Bankruptcy Act constitutes a reorganization under section

368(a)(1)(B) of the Internal Revenue Code of 1954, where the creditors receiving stock in the reorganization were in reality the owners of the equity in the insolvent corporation and, in effect, surrendered their claims for the newly issued stock which was then exchanged for the acquiring corporation's stock. The satisfaction of the creditors' claims pursuant to such plan of reorganization does not require any reduction in the basis of the corporation's property by reason of section 270 of the Bankruptcy Act or any provision of the Code.

Advice has been requested whether an exchange of common stock of a corporation pursuant to a plan of reorganization under Chapter X of the Bankruptcy Act is within the purview of the nontaxable reorganization provisions of the Internal Revenue Code of 1954.

An insolvent corporation, *M*, filed in the current year a voluntary petition for reorganization under Chapter X of the Bankruptcy Act. The United States District Court appointed two trustees and authorized them to operate and manage the corporation's property. At the time of the petition, the corporation's liabilities included four and one-half percent first mortgage bonds (principal amount 6,000x dollars), six percent subordinated debentures (principal amount, 7,300x dollars), a bank loan of 250x dollars, and general unsecured claims of approximately 1,100x dollars. The capital stock consisted of 1,000x shares of common stock, plus outstanding stock options and stock purchase warrants. The balance sheet disclosed a deficit of 4,000x dollars.

The *N* corporation desired to acquire the *M* corporation for its expansion program. At the time of the transaction *N* was neither a stockholder nor a creditor of *M* corporation. Consequently, *N* corporation made an offer to the trustee of *M*, which is summarized as follows:

(1) The acquiring corporation will issue part of its common stock to *M* corporation in exchange for a new issue of common stock of the latter which will constitute all of its outstanding capital stock.

(2) All liabilities of *M* corporation, other than its first mortgage bonds, will be satisfied or otherwise discharged through the use of its assets in the hands of the trustees.

This offer formed the basis of a plan of reorganization proposed by the trustees in their report to the court. The plan as finally accepted by the court provides that:

(a) *M* corporation will emerge as a wholly-owned subsidiary of *N* corporation with 1,000x shares of common stock.

(b) Obligations incurred or assumed by the trustees and preferred claims will be paid in full out of the funds in the hands of the trustees.

(c) The first mortgage bonds will remain outstanding.

(d) (1) The bank loan will be paid in cash.

(2) The general unsecured creditors will receive their proportionate share of *N*'s stock in satisfaction of their claims.

(3) The debenture holders will receive the balance of *N*'s stock. Such stock will represent between 30 and 35 percent of the principal amount of the debenture holders' claims.

(e) The holders of the old common stock, stock options and purchase warrant will receive nothing.

The facts in the instant case disclose that, due to the insolvency of *M* corporation the holders of the subordinated debentures and unsecured claims are, in reality, the owners of the equity remaining in *M* after giving effect to the lien of the first mortgage bonds. The effect of the transaction is the same as though the debenture holders and unsecured creditors surrendered their claims, received the new issue of *M* common stock and then exchanged such stock for the stock of *N*.

In view of the above, it is the position of the Internal Revenue Service that:

(A) The acquisition by *N* corporation of all of the capital stock of *M* corporation in exchange solely for part of the voting stock of *N* constitutes a reorganization within the meaning of sections 368(a)(1)(B) of the Code. No gain or loss is recognized to *N* or *M* as a result of the exchange.

(B) The basis to *N* corporation of the stock of *M* corporation is the same as the cost or other basis of the subordinated debentures, in the hands of those persons deemed to have received stock of *M* in exchange therefor and to have exchanged such stock for stock of *N*, plus the fair market value of the portion of the stock of *M* deemed to have been given in exchange for unsecured claims prior to the exchange for stock of *N* corporation. See section 362(b) of the Code. The acquisition does not constitute a purchase by *N* as defined in section 382(a)(4) of the Code.

(C) The satisfaction of the claims of *M*'s creditors pursuant to the plan of reorganization does not require any reduction in the basis of *M's* property by reason of section 270 of the Bankruptcy Act or any provision of the Code. The substitution of common stock for debentures and unsecured claims does not effect a cancellation, reduction or discharge of indebtedness, but rather amounts to a transformation from a fixed indebtedness to a capital stock liability. See *Tower Building Corporation* v. *Commissioner*, 6 T.C. 125, acquiescence, C.B. 1947–1, 4.

(D) No gain or loss is recognized to the holders of subordinated debentures of *M* corporation as a result of the exchange of such debentures for shares of common stock of *N* corporation, since it is considered that such debenture holders first exchanged such debentures for common stock of *M* and then exchanged the stock of *M* for stock of *N* corporation. As such, the exchanges fall within the provisions of section 354(a)(1) of the Code.

(E) The basis to the holders of subordinated debentures of the stock of *N* corporation received is the same as the cost or other basis of the debentures surrendered under section 358(a) of the Code.

(F) Gain or loss is recognized to the general creditors upon the receipt of stock of *N* corporation in satisfaction of their claims measured by the difference between the fair market value of the stock received and the cost or other basis of their claims.

Mortgage bonds and unpaid accrued interest exchanged for common stock in a recapitalization. See Rev. Rul. 59–98, page 76.

SUBCHAPTER D.—DEFERRED COMPENSATION, ETC.

PART I.—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

SECTION 401.—QUALIFIED PENSION, PROFIT-SHARING AND STOCK BONUS PLANS

26 CFR 1.401–1: Qualified pension, profit-sharing and stock bonus plans. Rev. Rul. 59–13

Amounts contributed by an employer to a deferred payment employees' bonus or profit-sharing plan and credited to the accounts of the participants in a nondiscriminatory manner may be used as part of the basis upon which pension benefits may be computed.

Advice has been requested whether contributions made to a deferred payment employees' bonus or profit-sharing plan and credited to the accounts of the participants in a nondiscriminatory manner may be used as part of the basis upon which pension benefits may be computed.

An employer established an integrated pension plan and a deferred payment profit-sharing plan, each of which have been held to qualify under section 401(a) of the Internal Revenue Code of 1954 for exemption under section 501(a). Benefits under the pension plan are based upon "annual compensation" which is defined to include "bonuses whether or not pursuant to a profit-sharing plan."

Although section 1.401–1(b) of the Income Tax Regulations mentions "compensation received" as one of the factors generally used in measuring retirement benefits and sections 404(a)(1)(A), (a)(3) and (a)(7) of the Code provide that the limitation on deductions for amounts paid into qualified plans are "tied into" compensation paid or accrued, there is nothing in the Code or the regulations which specifically prohibits an employer from using the amounts contributed to an exempt profit-sharing plan as a basis for determining benefits to be provided under an exempt pension plan. Of course, if such use would, in a particular case, create conditions otherwise prohibited by the Code or the regulations, then the plan would fail of qualification.

The intent of the provisions specified in section 404(a) of the Code, relating to the use of "compensation paid or accrued" as one of the elements or bases to be used in applying the limitations on deductions, is that amounts receiving deferred tax treatment under employees' pension, profit-sharing, and stock bonus plans should be held to a certain ratio of the total compensation "otherwise paid or accrued during the taxable year to the persons who are the beneficiaries of the trusts or plans." Whether benefits under the pension plan shall be increased by the use of certain types of compensation or by increased rate would not, of itself, affect the plan's qualification so long as the method used would not result in prohibited discrimination. In determining whether discrimination exists, reference will be had to whether the total of pension benefits and allocation of employer contributions under the profit-sharing plan, taken together, constitutes discrimination. Prohibited discrimination could arise, for example, (1) if the contributions made to the profit-sharing plan were not fully vested in all cases at the time paid into the trust; (2) if the employer's contributions to the profit-sharing trust were allocated

to the accounts of the employees on a basis other than proportionately to current compensation (for example, by giving effect to years of prior service); (3) where the basis of the pension to be provided would depend upon the total compensation paid during a particular period of years (such as the average annual compensation for the five years immediately prior to retirement); etc. On the other hand, if the qualified profit-sharing plan provides a definite and continuing contribution formula and full immediate vesting, inclusion of the amounts allocated and vested in each participant in the compensation upon which the benefits are based would not create the prohibited discrimination. This principle would have equal application where the profit-sharing plan is one failing to qualify under section 401(a) of the Code, since contributions made thereto would constitute currently taxable compensation for services rendered.

Amounts contributed to a qualified exempt employee's trust do not constitute "wages" for purposes of the Federal social security program. In cases where the current annual "wages" are less than $4,800, the employee will not receive credit for social security benefit purposes on the difference between that part of his compensation constituting "wages" and his total compensation, which would include amounts paid into the profit-sharing plan for him. Therefore, pension plan benefits based on such "non-wage" compensation can not involve integration with Social Security benefits, and a uniform rate of plan benefit should be applied thereto, regardless of whether total compensation exceeds $4,800.

Accordingly, it is held that amounts contributed by an employer to a deferred payment employees' bonus or profit-sharing plan and credited to the accounts of the participants in a nondiscriminatory manner, may be used as part of the basis upon which pension benefits shall be computed.

Funds of an exempt employees' trust deposited in a checking account with the employer-grantor bank. See Rev. Rul. 59–29, page 123.

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26 CFR 1.401–3: Requirements as to coverage. Rev. Rul. 59–14

A trust established under an employees' profit-sharing plan, which is intended to qualify under section 401(a) of the Internal Revenue Code of 1954 for exemption from tax under section 501(a) and which limits coverage to a class of employees who are not entitled to overtime pay under the provisions of the Fair Labor Standards Act of 1938, as amended, will not automatically satify the nondiscriminatory requirements of section 401(a)(3)(B) and (4) of the Code.

Advice has been requested with respect to the qualification under section 401(a) of the Internal Revenue Code of 1954 of an employees' profit-sharing plan and trust which limits coverage to a class of employees who are not entitled to overtime pay.

An employer established an employees' profit-sharing plan and trust which limited the employees eligible for participation to those who are not entitled to overtime pay as set forth under the provisions of the Fair Labor Standards Act of 1938, as amended, 29 U. S. C. 201–219.

Section 13(a)(1) of the Act provides that the overtime pay provisions shall not apply to any employee employed in a bona fide executive, administrative, professional or local retailing capacity, or in the capacity of outside salesman, as such terms are defined and delimited by regulations of the Administrator of the Wage and Hour Division of the Department of Labor.

In order to be classified as a bona fide executive employee, as set forth in the regulations of the Administrator, an individual must be compensated for his services on a salary basis at a rate of not less than $55 per week. In order to be classified as a bona fide administrative or professional employee, an individual must be compensated for his services on a salary or a fee basis at a rate of not less than $75 per week. See section 541.1(f), section 541.2(e) and section 541.3(e) of Part 541 of Title 29 (Labor) of the Code of Federal Regulations. Thus, in general, salaried or clerical employees cannot be exempt from the overtime provisions of the Act if they are compensated at a rate of less than $55 or $75 per week, as the case may be. The Administrator under amended regulations, issued effective February 2, 1959, has increased these rates to $80 and $95, respectively.

Section 401(a) of the Internal Revenue Code of 1954 provides, in part, that a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust if it benefits such employees as qualify under a classification set up by the employer and found not to be discriminatory in favor of employees who are officers, shareholders, supervisory personnel, or highly compensated employees; and if the contributions or benefits provided under the plan do not discriminate in favor of employees who are officers, shareholders, supervisory personnel, or highly compensated employees.

A plan which covers only such employees as qualify under the classification set forth in the instant case will not automatically meet the requirements of either section 401(a)(3)(B) of the Code concerning the classification of employees benefitted, or section 401(a)(4) of the Code concerning contributions or benefits. However, in a particular case, such a classification may be acceptable if the coverage meets the percentage requirements of section 401(a)(3)(A) or is found to be nondiscriminatory within the meaning of section 401(a)(3)(B) and if the contributions or benefits under the plan are nondiscriminatory within the meaning of section 401(a)(4). In determining whether or not such plans are discriminatory, attention will be given to the particular facts and circumstances of each case.

A plan which explicitly covers only salaried or clerical employees earning above a certain minimum amounts of compensation may be considered discriminatory unless it satisfies (in addition to the other requirements for qualification) the requirements for integration with social security benefits set forth in section 1.401–3(e) of the Income Tax Regulations and in Revenue Ruling 56–692, C. B. 1956–2, 287 (which extends certain provisions of Mimeograph 6641, C. B. 1951–1, 41, to plans with a minimum compensation level of $4,200). Similarly, a plan which covers only employees exempt from the overtime provisions of the Fair Labor Standards Act, if such classification has

the effect of covering substantially only salaried and clerical employees earning above a certain amount of minimum compensation, is subject to like integration requirements in order to qualify. Furthermore, such classification must be found not to be discriminatory in favor of officers, shareholders, supervisors, or highly compensated employees. Such a classification may be considered to be discriminatory if those covered consist primarily of officers, etc., or if, in any event, there are relatively many salaried or clerical employees earning in excess of such minimum amounts who are not exempt from the overtime provisions of the Fair Labor Standards Act, and for that reason are excluded from the plan.

Accordingly, it is held that a profit-sharing plan which limits coverage to a classification of employees who are exempt from the overtime provisions of the Fair Labor Standards Act will not automatically satisfy the nondiscriminatory requirements of section 401(a)(3)(B) and (4) of the Code.

The considerations set forth in this Revenue Ruling are also applicable to pension, annuity and stock bonus plans which limit coverage to such a classification of employees.

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26 CFR 1.401–4: Discrimination as to contributions or benefits. Rev. Rul. 59–185

An employees' pension, profit-sharing, or stock bonus plan will not fail to meet the requirements of section 401(a) of the Internal Revenue Code of 1954 merely because it provides for voluntary contributions by employees of up to ten percent of their compensation, provided employer contributions or the benefits are not geared to employee contributions.

Revenue Ruling 57–163, C.B. 1957–1, 128, amplified.

Advice has been requested regarding the application of Part 4(g) of Revenue Ruling 57–163, C.B. 1957–1, 128, at 141, concerning the limitation on employee contributions to pension, profit-sharing, or stock bonus plans.

An employer established an employees' profit-sharing plan and trust whereby the employer's contributions to the plan were allocated among the participating employees on the basis of annual compensation. Employees may make voluntary contributions to the trust of up to ten percent of their compensation. Employee contributions and earnings thereon are nonforfeitable. Forfeitures of employer contributions, arising from termination of services of employees before becoming eligible for a distribution of such funds from the trust, are allocated among the remaining participants on the basis of years of service.

Section 401(a)(4) of the Internal Revenue Code of 1954 provides that an employees' trust will not qualify for tax exemption, if contributions or benefits discriminate in favor of officers, stockholders, supervisory or highly compensated employees.

In Revenue Ruling 57–163, *supra*, Part 4(g) states that, as a general rule, employee contributions of six percent or less are not deemed to be burdensome. The ruling illustrates that if, in order to participate in the benefits of a plan, an employee is required to make contributions which are so large as to be burdensome for lower paid

employees, the classification will be considered discriminatory in favor of highly paid employees. A requirement of employee contributions in excess of six percent of compensation will be deemed presumptively burdensome and is unacceptable unless the plan in operation indicates that the lower paid employees participate in substantially the same proportion as the higher paid employees.

It is further stated in Revenue Ruling 57–163, *supra*, that if a plan provides for optional rates of contribution by employees, and employer contributions or the benefits are geared to the employee contributions in such a way that a higher rate of employee contribution will result in larger benefits from employer contributions, the employee contributions may be found to be burdensome and result in discrimination in contributions or benefits under section 401(a) of the Code, but generally only if the highest rate of employee contribution permitted is in excess of six percent of compensation.

The instant case is to be distinguished from the examples given above. Here, the benefits derived by employee-participants from contributions of the company to the trust are not geared to employee contributions. Thus, there is not present in the plan a potential disproportionate allocation of employer contributions by reason of the voluntary contributions.

The tax advantages provided under a qualified employees' plan were not intended by Congress to be extended to unlimited contributions by employees which are made primarily to escape tax on the increments thereon. However, where the purpose of such a feature in a plan is to encourage savings by participants, the Internal Revenue Service permits employee contributions to such plans provided the contributions are kept within reasonable bounds. In this respect, employee contributions are deemed to be reasonable where they are not in excess of ten percent of compensation. Of course, the additional contributions voluntarily contributed by the employees must be used only for the purpose of providing benefits to the individual contributor in addition to the benefits to be provided by the employer's contributions.

Accordingly, it is held that an employees' pension, profit-sharing or stock bonus plan will not fail to qualify under section 401(a) of the Code merely because it provides for voluntary contributions by employees of up to ten percent of their compensation, provided employer contributions or the benefits are not geared to employee contributions.

Part 4(g) of Revenue Ruling 57–163, *supra*, is hereby amplified.

SECTION 404.—DEDUCTION FOR CONTRIBUTIONS OF AN EMPLOYER TO AN EMPLOYEES' TRUST OR ANNUITY PLAN AND COMPENSATION UNDER A DEFERRED-PAYMENT PLAN

26 CFR 1.404(a)–6: Pension and annuity plans; limitations under section 404 (a)(1)(C). Rev. Rul. 59–67

An extra contribution of an employer, under a qualified employees' money purchase pension plan made on account of service rendered prior to the year in which contributed, shall be considered as amounts paid to fund the cost of past service credits, even

though the amount contributed is allocated among the participants on the basis of compensation for the current year. A deduction of only ten percent of the extra amount contributed, plus the amount of the regular annual contribution shall be allowed in the year contributed, in accordance with section 404(a)(1)(C) of the Internal Revenue Code of 1954.

Advice has been requested whether an extra contribution of an employer under a qualified employees' money purchase pension plan may be considered to be part of the normal cost of the plan and deductible as such under section 404(a)(1)(C) of the Internal Revenue Code of 1954, when such contribution was in addition to the employer's regular contribution under the plan and was made on behalf of those employees who were participants under a prior plan of the employer.

An employer established a contributory employees' money purchase pension plan which was designed to replace a then existing plan. Both plans were held to meet the requirements of section 401(a) of the Code. Participants under the plan are required to contribute a stated percentage of compensation and the employer makes a similar uniform contribution for each participant of an amount equal to the regular normal cost of the plan. In the first year of the newly established plan, the employer agreed to make an extra contribution in addition to the regular contribution for that year. This extra contribution was to be allocated among participants in the new plan who were participants in the old plan, and was made on account of service which was rendered prior to the establishment of the new plan, and for which credit had not been granted under the old plan. The allocation was to be made in proportion to the compensation earned by such participants during the first three months of operation of the new plan.

Section 404(a) of the Code allows a deduction for contributions of an employer to an employees' trust or annuity plan. Section 404(a)(1)(C) of the Code limits the amount deductible in any year to an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary of the Treasury or his delegate, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount not in excess of ten percent of the cost which would be required to completely fund or purchase such pension or annuity credits as of the date when they are included in the plan.

Section 1.404(a)-6(a) of the Income Tax Regulations defines "normal cost" for any year as the amount actuarially determined which would be required as a contribution by the employer in such year to maintain the plan if it had been in effect from the beginning of service of each then included employee and if such costs for prior years had been paid and all assumptions as to interest, mortality, time of payment, etc., had been fulfilled.

Past service or supplementary cost at any time is the amount actuarially determined which would be required at such time to meet all the future benefits provided under the plan which would not be met by future normal costs and employee contributions with respect to the employees covered under the plan at such time.

Section 1.404(a)-6(b) of the regulations provides, in part, that the normal costs of a plan may be determined by any generally accepted actuarial method and may be expressed either as (1) the

aggregate of level amounts with respect to each employee covered under the plan, (2) a level percentage of payroll with respect to each employee covered under the plan, or (3) the aggregate of the single premium or unit costs for the unit credits accruing during the year with respect to each employee covered under the plan.

In this case, the extra contribution of the employer was allocated among only those employees who had been participants under the prior plan. Thus, the payment represented a past service cost within the meaning of section 404(a)(1)(C) of the Code and as defined in section 1.404(a)-6(a) of the regulations. It cannot be considered as a normal cost under section 404(a)(1)(C) of the Code since it would not reasonably come within the definition of normal cost in terms of level amounts, level percentages of payrolls, or single premium costs of level units of benefits credited for each year of service under the plan.

Accordingly, it is held that an extra contribution of an employer, under a qualified employees' money purchase pension plan, which is in addition to the regular contribution and which is made on account of service rendered prior to the current year shall be considered as the cost required to fund past service or other supplementary pension or annuity credits, for the purpose of determining the limitation on deductions under section 404(a)(1)(C) of the Code, even though the extra amount contributed is allocated among the participants on the basis of current compensation.

Rev. Rul. 59-153

An acceptable method is provided for adjusting for "gains" arising in the current taxable year in the determination of the deductible limit for contributions under an employees' exempt pension trust as provided by section 404(a)(1) of the Internal Revenue Code of 1954.

Advice has been requested concerning a method of adjusting for "gains" in determining the deductible limits of an employer's contribution to a pension trust under section 404(a)(1)(C) of the Internal Revenue Code of 1954.

An employer established an employees' pension plan and trust which meets the requirements of section 401(a) of the Code and is exempt under section 501(a) of the Code. The plan provides, among other things, that the costs are to be calculated under the "Entry Age Normal Method." Under this method, annual (or normal) costs are determined as a level percentage of payroll as indicated in section 1.404(a)-6 of the Income Tax Regulations. The excess of total cost over the present value of future normal costs and employee contributions is treated as past service cost. The difference between the past service cost as of the valuation date and assets at that date is the unfunded past service cost. Deductible limits under the plan are determined under section 404(a)(1)(C) of the Code.

Referring to the determination of deductible limits for contributions to employees' pension trusts under section 404(a)(1) of the Code, section 1.404(a)-3(b) of the regulations states in part, that, in any case, in determining the costs and limitations, an adjustment shall be made on account of any experience more favorable than that assumed in the basis of limitations for prior years. Unless such adjustments

are consistently made every year by reducing the limitations otherwise determined by any decrease in liability or cost arising from experience in the next preceding taxable year which was more favorable than the assumptions on which the costs and limitations were based, the adjustment shall be made by some other method approved by the Commissioner. Such decreases in liability or cost are generally referred to as "gains." The occurence of "gains" indicates that previous costs were overestimated. If the factors and assumptions used as a basis for determining costs and deductible limits in prior years are acceptable, the adjustment for "gains" required by the regulations take the place of a retroactive revision of costs and deductions for prior years, which would otherwise be required when "gains" arise.

For the purpose of the adjustments required by the regulations, the amount of "gains" arising in any year is determined as the excess of the expected over the actual unfunded cost at the end of the year. Where deductions are determined under section 404(a)(1)(C) of the Code, the unfunded cost means the unfunded past service cost (including any unfunded cost of supplementary and previous membership credits), and the expected unfunded cost at the end of the year is equal to:

> (1) the sum of (a) the unfunded cost at the beginning of the year, plus (b) normal cost for the year, plus (c) interest on item (a) for one year, and (d) interest on item (b) from the date it is assumed to be due to the end of the year, where items (b), (c) and (d) are based on the factors and assumptions used in determining item (a), less
>
> (2) the sum of (a) contributions made during the year, plus (b) interest on such contributions from the dates of contribution to the end of the year at the rate used in item (1).

Where costs are determined by the entry age normal method, as in this case, the adjustment for gains is generally made by deducting the amount of gains arising in any year from the next year's deductible limit under section 404(a)(1)(C) of the Code as determined before reference to such "gains." In the method under consideration and outlined below, "gains" arising in any year are not always applied directly in this manner, but instead are first reduced by the sum, for all prior years including the year in which the gains arise, of each year's excess of (a) deductible limit determined without regard to the existence of deductible contributions over (b) amount deducted, to the extent that such sum has not already been used as an offset to gains.

The limit in (a) in the preceding paragraph is equal to normal cost plus ten percent of the "special ten percent base" less any required adjustment for gains. The "special ten percent base" is equal to the discounted value (discounted back to the date the past service liability was originally included in the plan) of the unfunded past service cost at the valuation date in the current taxable year, and of any employer contributions toward past service cost before the valuation date. For this purpose, the employer contribution toward past service cost in any year is considered equal to the excess of the employer contribution in that year (to the extent that it did not produce overfunding of liabilities) over the normal cost for the year. Where the normal cost applicable to a taxable year is not all funded on the due date assumed in determining the cost, the normal cost includes interest on unfunded portions thereof accruing from the assumed due date to the date such portions are funded (but not beyond the end of the taxable year) and

should be reduced by discount for any portions funded in advance of the assumed due date.

The method of adjusting for gains is outlined as follows:

(1) Gains during the current year.

(2) Balance carried forward from prior years as offset to gains (Item (8) below of prior year).

(3) Tax deductible limit for current year (equal to limit under section 404(a)(1)(C) of the Code as determined before adjustment for gains, and without regard to existence of deductible employer contributions, less Item (7) for previous year).

(4) Total contribution (including carryover under section 404(a)(1)(D)) deductible in current year subject to tax deductible limit.

(5) Tax deductible contribution allowable for current year (smaller of Item (3) and Item (4)).

(6) Total offset to be applied to gains arising in current year, for determination of tax deductible limit in succeeding year (equal to Item (2) plus Item (3) less Item (5), but not less than zero).

(7) Adjustment for gains to be applied in succeeding year against tax deductible limit as determined before adjustment for gains (equal to Item (1) less Item (6) but not less than zero).

(8) Balance to be carried forward to following year as offset to gains arising in that year (equal to Item (6) less Item (1) but not less than zero).

The use of this method of adjusting for gains is reasonable in plans where the employer's liability has not been substantially reduced, since the aggregate deductions for years through the current taxable year will not exceed the aggregate of the limitations for each of such years as adjusted for gains. Where the employer's accrued liability has been substantially reduced, as, for example, by amendment or by automatic reduction of plan benefits due to an increase in Social Security benefits used as an offset in the plan's benefit formula, a further adjustment will generally be required in applying the method outlined above, in order that the cumulative deductible limits will correspond to the reduced liability under the plan.

Accordingly, where plan costs are determined by the entry age normal method, the foregoing constitutes an acceptable adjustment for gains if used consistently in conjunction with the limitations of section 404(a)(1)(C) of the Code provided, as noted above, the employer's liability has not been substantially reduced. However, in accordance with sections 1.404(a)–3 and 1.404(a)–6 of the Regulations, no deduction will be allowed for contributions which, together with other assets of the fund, result in overfunding the cost of service credits up to the end of the taxable year.

PART II.—MISCELLANEOUS PROVISIONS

SECTION 421.—EMPLOYEE STOCK OPTIONS

26 CFR 1.421–2: Restricted stock option. Rev. Rul. 59–198

A corporation's stock option plan provides that the option price to one of its employees, who, directly or indirectly, owns more than ten percent of its stock, will be 110 percent of the fair market value of the stock at the time the option is granted, while the price to all other participating employees, who do not individually own, either directly or indirectly, more than ten percent of the corporation's stock, will be

100 percent of the fair market value of the stock as of the date of granting the option. *Held*, the individual options granted under the plan will not be disqualified as restricted stock options, provided they otherwise qualify as restricted stock options under section 421(d) of the Internal Revenue Code of 1954. There is no provision in the Code which would indicate that the granting of an option to one employee would have any tax effect upon the granting of an option to another employee. Restricted stock options may be granted to one employee, several employees, or all employees in any manner as the corporation desires. Each option can be entirely separate and distinct in its terms from each other option granted to the other employees of the corporation.

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26 CFR 1.421–3: Exercise of restricted stock option. Rev. Rul. 59–140

(Also Part II, Section 130A; Regulations 118, Section 39.130A–3.)

The employer-employee relationship required in respect of restricted stock options under section 421 of the Internal Revenue Code of 1954 is affected by active military service, as follows: (1) an option granted while the optionee is on extended active military duty does not qualify as a restricted stock option; (2) an option granted before the optionee enters active military service but exercised while he is on leave of absence on active military duty, or by his estate following his death while on such duty, may be a restricted stock option, and the optionee may qualify for the beneficial tax treatment provided for in section 421, provided other statutory tests are met; and (3) the benefits of section 421 treatment extend equally to a restricted stock option granted before the optionee enters active military service and exercised after return to civilian employment with the optionor corporation, if the employment relationship is unbroken by virtue of a statutory right of reemployment or under a leave of absence.

The foregoing principles are equally applicable in cases involving bona fide leaves of absence for reasons other than military service.

Advice has been requested concerning the effect that active military service has upon the employer-employee relationship for purposes of a restricted stock option.

For the purpose of section 421 of the Internal Revenue Code of 1954, the effect that active military service of an optionee has upon the employer-employee relationship varies according to the following situations:

The first situation involves an option which is granted while the optionee is on extended active military duty. Section 1.421–2(a)(3) of the Income Tax Regulations provides, in general, that at the time the option is granted the relationship between the optionor corporation (or its parent or subsidiary corporation) and the optionee must be the legal and bona fide relationship of employer and employee and that whether the employer-employee relationship exists is to be determined in accordance with section 3401(c) of the Code and the regulations thereunder. The regulations under section 3401(c) of the Code make the right of direction and control by the employer the primary test in determining whether the employer-employee relationship exists. See section 31.3401(c)–1(b). Since it cannot be said that an individual in active military service is subject to the direction and

control of a former employer, an option granted while the individual is in such service for an extended period does not qualify as a restricted stock option because the optionee is not then an employee for the purposes of section 421.

In the second situation the option is granted before the optionee enters active military service and is exercised by him (or his estate, in case of his death) at a time when the optionee is (or at his death was) on leave of absence from the optionor corporation while on active duty in the Armed Forces of the United States. Section 1.421–3(c)(1) of the regulations provides that an option which is a restricted stock option when granted does not lose its character as such by reason of subsequent events. Thus, if the option is granted prior to the optionee's entry into military service, it may be a restricted stock option (provided that the other applicable statutory tests are met), and it then becomes necessary only to determine whether the optionee, at the time he exercises the option, is an employee of the grantor, or was an employee within three months of the date of exercise, as required by section 421(a) of the Code and section 1.421–3(b)(1) of the regulations, if the optionee is to receive the favorable tax treatment provided therein.

Section 1.421–3(b)(1) of the regulations, which contains no reference to section 3401 of the Code or to the regulations thereunder relating to the right of direction and control of the employee by his employer, requires only that at the time of exercise the optionee be a "bona fide employee" of the optionor corporation. For purposes of the second situation, therefore, the question comes down to whether the strict test of the employer-employee relationship under the regulations pursuant to section 3401(c) should be read into section 1.421–3(b)(1) of the regulations as a matter of interpretation.

In the view of the Internal Revenue Service, it fits the underlying purposes of section 421 to conclude that the test of an employer-employee relationship at the time when an option is exercised may be less strict than the test prescribed by the regulations for determining the relationship at the time of grant. Section 421 is designed to allow a tax benefit in respect of corporate growth or prosperity which may in some degree be attributable to the employee's efforts under the stimulus of the option. It is consistent with that purpose to allow the benefit to an option granted during a period of service with the grantor notwithstanding a subsequent leave of absence for bona fide reasons such as military service, whereas its allowance in the converse situation first considered would go beyond the statutory purpose. There is hence a clear statutory policy behind the strict employment test of section 1.421–2(a)(3) of the regulations which is not present in the area dealt with in section 1.421–3(b)(1).

The third situation arises where an option is granted prior to the optionee's entry into active military service and exercised after return to civilian employment with the optionor corporation. For the reasons stated above with respect to the second situation, the benefits of section 421 extend equally to a restricted stock option so exercised, if the employment relationship may be considered unbroken during the military service either by virtue of a continuing right of reemployment under the Universal Service and Training Act, 62 Stat. 604, 50 App. U.S.C. 454, or under a leave of absence.

It is accordingly held that (1) an option granted while the optionee is on extended active military duty does not qualify as a restricted stock option; (2) an option granted before the optionee enters active military service and exercised while he is on leave of absence on active military duty, or by his estate following his death while on such duty, may be a restricted stock option, and the optionee may qualify for the beneficial tax treatment provided for in section 421, provided the other statutory tests are met; and (3) the benefits of section 421 treatment extend equally to a restricted stock option granted before the optionee enters active military service and exercised after return to civilian employment with the optionor corporation if the employment relationship is unbroken by virtue of a statutory right of re-employment or under a leave of absence.

The principles discussed above are equally applicable in cases involving bona fide leaves of absence for reasons other than military service, such as civilian employment by a governmental agency.

Since section 39.130A–2(a)(2) and section 39.130A–3(c) of Regulations 118, the sections of the regulations under the 1939 Code which deal with the employer-employee relationship as it affects restricted stock options, are substantially similar to those of the 1954 Code regulations cited herein which deal with that relationship, the principles of this ruling also apply for the purposes of section 130A of the 1939 Code.

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26 CFR 1.421–4: Modification, extension, or renewal. Rev. Rul. 59–55

Where an optionee of a restricted stock option does not accept an invitation of the corporation to surrender his option in the hope of receiving a new option at a more favorable price, but retains his old option with no change in its terms, there is no modification of his option within the meaning of section 421(e) of the Internal Revenue Code of 1954. New options issued at the more favorable price will qualify as restricted options provided they comply with the provisions of section 421 of the Code.

Advice has been requested whether, under the circumstances below, the issuance of new stock options under a restricted option plan will cause unexercised options previously issued under the plan to be modified within the meaning of section 421(e) of the Internal Revenue Code of 1954.

The shareholders of a corporation in 1954 adopted a stock option plan the terms of which complied with the requirements of section 421 of the Code. In 1957, after an extended period during which the market price of the corporation's stock was below the price stated in the outstanding options, the corporation proposed the issuance of new options under the plan. To make available a sufficient number of shares of stock for this proposed issuance of new options, the corporation invited holders of outstanding, unexercised options to surrender those options to the corporation. The terms of the invitation to surrender were that optionholders who accepted would then, and only then, be considered along with other employees as recipients of new options. It was emphasized in this invitation that optionholders who accepted had no legal right, by virtue of their surrender of old options, to receive new options. Consequently, holders of old options who did

not accept the invitation to surrender and thereby be reconsidered, retained their old options the terms of which remained unchanged.

Section 421(e)(2) of the Code, in part, defines the term "modification" to mean any *change in the terms of the option* which gives an employee additional benefits under the option. This same definition is contained in section 1.421–4(c)(1) of the Income Tax Regulations.

Accordingly, it is held that where an optionee of a restricted stock option does not accept an invitation of the corporation to surrender his option in the hope of receiving a new option at a more favorable price, but retains his old option with no change in its terms, there is no modification of his option for the purpose of section 421(e) of the Code. New options issued at the more favorable price will qualify as restricted stock options provided that they comply with the provisions of section 421 of the Code.

Rev. Rul. 59–68

An employment relationship, existing by reason of the particular employment agreement between an employee and his employing company is not considered terminated when such employee is directed by the employing company to serve as an officer of an affiliated company. The action of the company in construing the terms of a stock option granted the employee so as to hold that the employment was not terminated, does not constitute a modification of the restricted stock option.

Advice has been requested whether employment was terminated when an officer of one company became an officer of an affiliated corporation, under the condition described below, and whether the action of the stock option committee in construing the provisions of the agreement to hold that the employment was not terminated constitutes a modification of the stock option granted the employee, within the meaning of section 421(e) of the Internal Revenue Code of 1954.

The *M* company and *N* company each own fifty percent of the stock of *P* corporation. Officers of *M* and *N* have served as officers of *P* since its organization. An officer of *M* who is the holder of an option to purchase common stock of that company pursuant to a qualified employee restricted stock option, was elected to an officer's position in the *P* corporation. Under the option agreements the options will terminate upon termination of the officer's employment with *M* company, except in the case of death or retirement with the consent of the company.

M company and the employee entered into an employment agreement which provided that the company would employ him to perform such duties of an executive character for that company and its subsidiary and affiliated corporations as would be designated and assigned to him from time to time by the board of directors or president of the company. The employee accepted such employment and agreed that he would devote his best efforts and entire business time thereto and that he would resign any office to which he was elected if directed to do so by the board of directors or the president of the *M* company. Pursuant to such agreement the employee was assigned by *M* to perform services, in an executive capacity, for *P*.

The stock option plan committee, interpreting *M*'s plan and stock option agreement, decided that the officer's employment with *M* was not terminated when he became an officer of *P*, and consequently the stock options did not terminate.

Section 421(e)(2) of the Code provides that the term "modification" means any change in the terms of the option which gives the employee additional benefits under the option.

Under the employment agreement *M* company has the right to discharge the officer. *M* pays him and retains the right to direct and control him through the employment agreement entered into prior to his election as officer of the affiliated corporation.

Accordingly, it is held that the fact that the officer renders services to *P* corporation has not terminated his employment with *M* company, and he has therefore received no additional benefits under the option. It is further held that the action of the stock option plan committee in so construing the terms of the stock option issued to him does not constitute a modification of the stock option within the meaning of section 421(e) of the Code.

SUBCHAPTER E.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

PART II.—METHODS OF ACCOUNTING

Subpart B.—Taxable Year for Which Items of Gross Income Included

SECTION 451.—GENERAL RULE FOR TAXABLE YEAR OF INCLUSION

26 CFR 1.451–1: General rule for taxable year of inclusion.
(Also Section 455.)

Rev. Rul. 59–142 [1]

Prepaid subscription income received by a taxpayer in taxable years beginning before January 1, 1958, is includible in gross income for the taxable year in which received unless, under the authority of I.T. 3369, C.B. 1940–1, 46, the taxpayer was permitted to continue to use the method of reporting an aliquot part of subscription income for each year of the subscription period, because such method had consistently been followed by the taxpayer over a period of years prior to publication of I.T. 3369. Section 455 of the Internal Revenue Code of 1954, relating to the reporting of prepaid subscription income for Federal income tax purposes, which was added to the Internal Revenue Code by section 28 of the Technical Amendments Act of 1958 (Public Law 85–866), enacted September 2, 1958, C.B. 1958–3, 254, is effective only for taxable years beginning after December 31, 1957, and has no effect on the method of reporting prepaid subscription income by taxpayers for taxable years beginning before January 1, 1958.

SECTION 455.—PREPAID SUBSCRIPTION INCOME

Effect of section 455 of the Internal Revenue Code of 1954 on the method of reporting prepaid subscription income received in taxable years beginning before January 1, 1958. See Rev. Rul. 59–142, above.

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[1] Based on Technical Information Release 106, dated October 13, 1958.

Subpart C.—Taxable Year for Which Deductions Taken

SECTION 461.—GENERAL RULE FOR TAXABLE YEAR OF DEDUCTION

26 CFR 1.461–1: General rule for taxable year of deduction. Rev. Rul. 59–59

Where, prior to May 1, 1957, in the case of a taxpayer, computing taxable income under an accrual method of accounting, an audit of the taxpayer's return results in an increased allowance of the deduction for State taxes in the year to which such taxes relate rather than the year in which properly accrued, the Internal Revenue Service will take no affirmative action to reopen such returns.

Revenue Ruling 57–105, C.B. 1957–1, 193, clarified.

Advice has been requested concerning clarification of Revenue Ruling 57–105, C.B. 1957–1, 193, regarding the treatment for Federal income tax purposes of increases of State taxes resulting in adjustments of Federal income tax returns filed by taxpayers, computing taxable income under an accrual method of accounting.

Revenue Ruling 57–105, holds that in the case of an accrual method taxpayer, an increase in the amount of the State tax accrues and is allowed as a deduction for Federal income tax purposes when the amount is finally determined by litigation or default, or when the taxpayer acknowledges his liability to the State for the amount of such increase. However, cases closed by audits prior to May 1, 1957, are not to be reopened by the Internal Revenue Service merely to apply this ruling.

In order to clarify this ruling and to remove any ambiguity that may exist as well as to insure a uniform application of the Revenue Ruling, the last paragraph thereof is hereby deleted and the following paragraph substituted therefor:

Where, prior to May 1, 1957, audit has been made of a taxpayer's return and, as a result, there has been an allowance in the deduction for increased State taxes in the year to which such taxes related rather than the year in which they properly accrued under this Revenue Ruling, the Internal Revenue Service will take no affirmative action to reopen such returns. However, should the taxpayer, in returns filed after completion of the audit, claim the benefits of this Revenue Ruling and seek to deduct in the later years the additional taxes previously allowed as a deduction, the Service will, insofar as permitted by the Code, assert deficiencies for the earlier years to the extent that the taxpayer's liability for the earlier years was reduced by the prior allowance.

Subpart D.—Inventories

SECTION 472.—LAST-IN, FIRST-OUT INVENTORIES

26 CFR 1.472–1: Last-in, first-out inventories. Rev. Rul. 59–186

Price indexes for January 1959, published by the Bureau of Labor Statistics on March 6, 1959, for use by department stores employing the retail inventory and last-in, first-out inventory methods.

The following price indexes for January 1959, published by the Bureau of Labor Statistics on March 6, 1959, for use by department stores employing the retail inventory and last-in, first-out inventory methods, are accepted by the Internal Revenue Service pursuant to Treasury Decision 5605, C.B. 1948–1, 16, and Mimeograph 6244, C.B. 1948–1, 21, for appropriate application to inventories for taxable years of 12 months ended December 31, 1958, and January 31, 1959.

Indexes are given on a national basis for the store total, for 20 major groups of departments, and for two special group combinations. The store total includes all departments in the store, both those listed in the groups and those not specifically listed, except for candy, foods, liquor, tobacco, and paints and wall paper. Contract departments are also excluded.

Bureau of Labor Statistics, Department Store Inventory Price Indexes, by Department Groups

[January 1941=100]

Department group		January 1959	January 1958	Percent change from January 1958 to January 1959
I	Piece goods	199. 5	200. 1	−0. 3
II	Domestics and draperies	194. 9	194. 7	+0. 1
III	Women's and children's shoes	245. 9	240. 0	+2. 5
IV	Men's and boys' shoes	233. 1	231. 1	+0. 9
V	Infants' wear	174. 9	175. 7	−0. 5
VI	Women's underwear	177. 3	175. 2	+1. 2
VII	Women's and girls' hosiery	158. 3	160. 6	−1. 4
VIII	Women's and girls' accessories	178. 7	177. 8	+0. 5
IX	Women's outerwear and girls' wear	182. 7	181. 3	+0. 8
X	Men's clothing	214. 4	213. 7	+0. 3
XI	Men's furnishings	198. 9	199. 6	−0. 4
XII	Boys' clothing and furnishings	205. 1	206. 1	−0. 5
XIII	Jewelry	171. 6	173. 3	−1. 0
XIV	Notions	164. 2	166. 1	−1. 1
XV	Toilet articles and drugs	192. 6	184. 0	+4. 7
XVI	Furniture and bedding	222. 5	219. 7	+1. 3
XVII	Floor covering	191. 0	195. 7	−2. 4
XVIII	Housewares	223. 3	224. 9	−0. 7
XIX	Major appliances	134. 7	135. 8	−0. 8
XX	Radios and television sets	131. 4	135. 9	−3. 3
Groups I–XV: Soft goods		195. 3	194. 1	+0. 6
Groups XVI–XX: Durable goods		194. 7	195. 9	−0. 6
Store Total		195. 2	194. 6	+0. 3

PART III.—ADJUSTMENTS

SECTION 481.—ADJUSTMENTS REQUIRED BY CHANGES IN METHOD OF ACCOUNTING

26 CFR 1.481: Statutory provisions; adjustments required by changes in method of accounting. T.D. 6366[1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Regulations under section 481 of the Internal Revenue Code of 1954.

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

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

On December 6, 1958, notice of proposed rule making regarding the regulations for taxable years beginning after December 31, 1953, and ending after August 16, 1954, except where otherwise provided, under section 481 of the Internal Revenue Code of 1954, relating to adjustments required by changes in method of accounting, was published in the Federal Register (23 F.R. 9486). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following regulations are hereby adopted.

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1.481–4 Adjustments attributable to pre-1954 Code years where change was initiated by taxpayer.
1.481–5 Adjustments taken into account with consent.
1.481–6 Election to return to former method of accounting.

AUTHORITY: §§ 1.481 to 1.481–6, incl., issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

SEC. 481. ADJUSTMENTS REQUIRED BY CHANGES IN METHOD OF ACCOUNTING.

(a) GENERAL RULE.—In computing the taxpayer's taxable income for any taxable year (referred to in this section as the "year of the change")—

(1) If such computation is under a method of accounting different from the method under which the taxpayer's taxable income for the preceding taxable year was computed, then

(2) There shall be taken into account those adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted, except there shall not be taken into account any adjustment in respect of

[1] The publication of this Treasury Decision in 24 F. R. 1307, dated February 20, 1959, contains (1) instructions for modifying the notice of proposed rulemaking published in 23 F.R. 948b, dated December 6, 1958, and (2) the full context of the regulations with such modifications. As here published, the Treasury Decision reflects the full context of such regulations, with modifications. The individual instructions have been omitted.

any taxable year to which this section does not apply unless the adjustment is attributable to a change in the method of accounting initiated by the taxpayer.

(b) LIMITATION ON TAX WHERE ADJUSTMENTS ARE SUBSTANTIAL—

(1) THREE YEAR ALLOCATION.—If—

(A) The method of accounting from which the change is made was used by the taxpayer in computing his taxable income for the 2 taxable years preceding the year of the change, and

(B) The increase in taxable income for the year of the change which results solely by reason of the adjustments required by subsection (a)(2), other than the amount of such adjustments to which paragraph (4) or (5) applies, exceeds $3,000, then the tax under this chapter attributable to such increase in taxable income shall not be greater than the aggregate increase in the taxes under this chapter (or under the corresponding provisions of prior revenue laws) which would result if one-third of such increase in taxable income were included in taxable income for the year of the change and one-third of such increase were included for each of the 2 preceding taxable years.

(2) ALLOCATION UNDER NEW METHOD OF ACCOUNTING.—If—

(A) The increase in taxable income for the year of the change which results solely by reason of the adjustments required by subsection (a)(2), other than the amount of such adjustments to which paragraph (4) or (5) applies, exceeds $3,000, and

(B) The taxpayer establishes his taxable income (under the new method of accounting) for one or more taxable years consecutively preceding the taxable year of the change for which the taxpayer in computing taxable income used the method of accounting from which the change is made,

then the tax under this chapter attributable to such increase in taxable income shall not be greater than the net increase in the taxes unnder this chapter (or under the corresponding provisions of prior revenue laws) which would result if the adjustments required by subsection (a)(2), other than the amount of such adjustments to which paragraph (4) or (5) applies, where allocated to the taxable year or years specified in subparagraph (B) to which they are properly allocable under the new method of accounting and the balance of the adjustments required by subsection (a)(2), other than the amount of such adjustments to which paragraph (4) or (5) applies, was allocated to the taxable year of the change.

(3) SPECIAL RULES FOR COMPUTATIONS UNDER PARAGRAPHS (1) AND (2).—For purposes of this subsection—

(A) There shall be taken into account the increase or decrease in tax for any taxable year preceding the year of the change to which no adjustment is allocated under paragraph (1) or (2) but which is affected by a net operating loss (as defined in section 172) or by a capital loss carryover (as defined in section 1212), determined with reference to taxable years with respect to which adjustments under paragraph (1) or (2) are allocated.

(B) The increase or decrease in the tax for any taxable year for which an assessment of any deficiency, or a credit or refund of any overpayment, is prevented by any law or rule of law, shall be determined by reference to the tax previously determined (within the meaning of section 1314(a)) for such year.

(C) In applying section 7807(b)(1), the provisions of chapter 1 (other than subchapter E, relating to self-employment income) and chapter 2 of the Internal Revenue Code of 1939 shall be treated as the corresponding provisions of the Internal Revenue Code of 1939.

(4) SPECIAL RULE FOR PRE-1954 ADJUSTMENTS GENERALLY.—Except as provided in paragraphs (5) and (6)—

(A) AMOUNT OF ADJUSTMENTS TO WHICH PARAGRAPH APPLIES.—The net amount of the adjustments required by subsection (a), to the extent that such amount does not exceed the net amount of adjustments which would have been required if the change in method of accounting had been made in the first taxable year beginning after December 31, 1953, and ending after August 16, 1954, shall be taken into account by the taxpayer in computing taxable income in the manner provided in subparagraph (B), but only if such net amount of such adjustment would increase the taxable income of such taxpayer by more than $3,000.

(B) YEARS IN WHICH AMOUNTS ARE TO BE TAKEN INTO ACCOUNT.—One-tenth of the net amount of the adjustments described in subparagraph (A) shall (except as provided in subparagraph (C)) be taken into account in each of the 10 taxable years beginning with the year of the change. The amount to be taken into account for each taxable year in the 10-year period shall be taken into account whether or not for such year the assessment of tax is prevented by operation of any law or rule of law. If the year of the change was a taxable year ending before January 1, 1958, and if the taxpayer so elects (at such time and in such manner as the Secretary or his delegate shall by regulations prescribe), the 10-year period shall begin with the first taxable year which begins after December 31, 1957. If the taxpayer elects under the preceding sentence to begin the 10-year period with the first taxable year which begins after December 31, 1957, the 10-year period shall be reduced by the number of years, beginning with the year of the change, in respect of which assessment of tax is prevented by operation of any law or rule of law on the date of the enactment of the Technical Amendments Act of 1958.

(C) LIMITATION ON YEARS IN WHICH ADJUSTMENTS CAN BE TAKEN INTO ACCOUNT.—The net amount of any adjustments described in subparagraph (A), to the extent not taken into account in prior taxable years under subparagraph (B)—

(i) In the case of a taxpayer who is an individual, shall be taken into account in the taxable year in which he dies or ceases to engage in a trade or business,

(ii) In the case of a taxpayer who is a partner, his distributive share of such net amount shall be taken into account in the taxable year in which the partnership terminates, or in which the entire interest of such partner is transferred or liquidated, or

(iii) In the case of a taxpayer who is a corporation, shall be taken into account in the taxable year in which such corporation ceases to engage in a trade or business unless such net amount of such adjustment is required to be taken into account by the acquiring corporation under section 381(c)(21).

(D) TERMINATION OF APPLICATION OF PARAGRAPH.—The provisions of this paragraph shall not apply with respect to changes in methods of accounting made in taxable years beginning after December 31, 1963.

(5) SPECIAL RULE FOR PRE-1954 ADJUSTMENTS IN CASE OF CERTAIN DECEDENTS.—A change from the cash receipts and disbursements method to the accrual method in any case involving the use of inventories, made on or after August 16, 1954, and before January 1, 1958, for a taxable year to which this section applies, by the executor or administrator of a decedent's estate in the first return filed by such executor or administrator on behalf of the decedent, shall be given effect in determining taxable income (other than for the purpose of computing a net operating loss carryback to any prior taxable year of the decedent), and, if the net amount of any adjustments required by subsection (a) in respect

of taxable years to which this section does not apply would increase the taxable income of the decedent by more than $3,000, then the tax attributable to such net adjustments shall not exceed an amount equal to the tax that would have been payable on the cash receipts and disbursements method for the years for which the executor or administrator filed returns on behalf of the decedent, computed for each such year as though a ratable portion of the taxable income for such year had been received in each of 10 taxable years beginning and ending on the same dates as the taxable year for which the tax is being computed.

(6) APPLICATION OF PARAGRAPH (4).—Paragraph (4) shall not apply with respect to any taxpayer, if the taxpayer elects to take the net amount of the adjustments described in paragraph (4)(A) into account in the manner provided by paragraph (1) or (2). An election to take the net amount of such adjustments into account in the manner provided by paragraph (1) or (2) may be made only if the taxpayer consents in writing to the assessment, within such period as may be agreed on with the Secretary or his delegate, of any deficiency for the year of the change, to the extent attributable to taking the net amount of the adjustments described in paragraph (4)(A) into account in the manner provided by paragraph (1) or (2), even though at the time of filing such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law. An election under this paragraph shall be made at such time and in such manner as the Secretary or his delegate shall by regulations prescribe.

(c) ADJUSTMENTS UNDER REGULATIONS.—In the case of any change described in subsection (a), the taxpayer may, in such manner and subject to such conditions as the Secretary or his delegate may by regulations prescribe, take the adjustments required by subsection (a)(2) into account in computing the tax imposed by this chapter for the taxable year or years permitted under such regulations.

(d) EXCEPTION FOR CHANGE TO INSTALLMENT BASIS.—This section shall not apply to a change to which section 453 (relating to change to installment method) applies.

[Sec. 481 as amended by sec. 29, Technical Amendments Act of 1958 (72 Stat. 1626)]

§ 1.481–1 ADJUSTMENTS IN GENERAL.—(a)(1) Section 481 prescribes the rules to be followed in computing taxable income in cases where the taxable income of the taxpayer is computed under a method of accounting different from that under which the taxable income was previously computed. A change in method of accounting to which section 481 applies includes a change in the over-all method of accounting for gross income or deductions, or a change in the treatment of a material item. For rules relating to changes in methods of accounting, see section 446(e) and paragraph (e) of § 1.446–1. In computing taxable income for the taxable year of the change, there shall be taken into account those adjustments which are determined to be necessary solely by reason of such change in order to prevent amounts from being duplicated or omitted. The "year of the change" is the taxable year for which the taxable income of the taxpayer is computed under a method of accounting different from that used for the preceding taxable year.

(2) Unless the adjustments are attributable to a change in method of accounting initiated by the taxpayer, no part of the adjustments required by subparagraph (1) of this paragraph shall be based on amounts which were taken into account in computing income (or which should have been taken into account had the new method of

accounting been used) for taxable years beginning before January 1, 1954, or ending before August 17, 1954.

(b) The adjustments specified in section 481(a) and this section shall take into account inventories, accounts receivable, accounts payable, and any other item determined to be necessary in order to prevent amounts from being duplicated or omitted.

(c)(1) The term "adjustments", as used in section 481, has reference to the net amount of the adjustments required by section 481(a) and paragraph (b) of this section. In the case of a change in the over-all method of accounting, such as from the cash receipts and disbursements method to an accrual method, the term "net amount of the adjustments" means the consolidation of adjustments (whether the amounts thereof represent increases or decreases in items of income or deductions) arising with respect to balances in various accounts, such as inventory, accounts receivable, and accounts payable, at the beginning of the taxable year of the change in method of accounting. With respect to the portion of the adjustments attributable to pre-1954 Code years, it is immaterial that the same items or class of items with respect to which adjustments would have to be made (for the first taxable year to which section 481 applies) do not exist at the time the actual change in method of accounting occurs. For purposes of section 481, only the net dollar balance is to be taken into account. In the case of a change in the treatment of a single material item, the amount of the adjustment shall be determined with reference only to the net dollar balances in that particular account.

(2)(i) If the change in method of accounting is voluntary (that is, initiated by the taxpayer), the entire amount of the adjustments required by section 481(a) is to be taken into account in computing taxable income for the taxable year of the change, except as otherwise provided by section 481(b)(4) and (5). However, in such a case, if the portion of the adjustments which is attributable to taxable years subject to the Internal Revenue Code of 1954 increases taxable income by more than $3,000, the limitations on tax provided in section 481(b)(1) or (2) apply.

(ii) The portion of the adjustments arising from a voluntary change in method of accounting and attributable to taxable years not subject to the 1954 Code is determined in accordance with section 481(b)(4)(A) and § 1.481-4(a). If such portion increases taxable income by more than $3,000 for the first taxable year to which section 481 applies, such portion may be taken into account over the period prescribed in section 481(b)(4)(B). If the total increase in taxable income arising from the adjustments required by section 481(a) is more than $3,000 for the taxable year of the change, but the portion of such adjustments attributable to pre-1954 Code years under section 481(b)(4)(A) increases taxable income by $3,000 or less for the first taxable year to which section 481 applies, then the limitations provided in section 481(b)(1) or (2) apply to the total adjustments. On the other hand, if the portion of such adjustments attributable to pre-1954 Code years increases taxable income by more than $3,000 for the first taxable year to which section 481 applies, and the portion attributable to 1954 Code years increases taxable income by $3,000 or less for the taxable year of the change, then the portion of the adjustments attributable to pre-1954 Code years may be taken into ac-

count over the period prescribed in section 481(b)(4)(B), and the portion of the adjustments attributable to 1954 Code years is to be taken into account in the taxable years of the change.

(3) If the change in method of accounting is not voluntary (that is, not initiated by the taxpayer), then only the adjustments required by section 481(a) which are attributable to taxable years subject to the Internal Revenue Code of 1954 are taken into account in computing taxable income for the taxable year of the change. If the amount of such adjustments increases taxable income by more than $3,000 for the taxable year of the change, the limitations on tax provided in section 481(b) (1) or (2) apply.

(4) If the adjustments required by section 481(a) as a result of a change in method of accounting decrease taxable income for the taxable year of the change, such decrease is taken into account for that year and the provisions of section 481(b) do not apply. In the case of an involuntary change in method of accounting, no adjustments attributable to pre-1954 Code years are taken into account, whether or not such adjustments would decrease taxable income.

(5) A change in the method of accounting initiated by the taxpayer includes not only a change which he originates by securing the consent of the Commissioner, but also a change from one method of accounting to another made without the advance approval of the Commissioner. A change in the taxpayer's method of accounting required as a result of an examination of the taxpayer's income tax return will not be considered as initiated by the taxpayer. On the other hand, a taxpayer who, on his own initiative, changes his method of accounting in order to conform to the requirements of any Federal income tax regulation or ruling shall not, merely because of such fact, be considered to have made an involuntary change.

(6) Where the total adjustments required by section 481(a) include both—

(i) An amount attributable to 1954 Code years to which the limitations on tax provided by section 481(b) (1) or (2) apply, and

(ii) An amount attributable to pre-1954 Code years of which all or a pro rata portion thereof is to be taken into account under section 481(b)(4) (A) or (B),

two separate computations of tax must be made for the taxable year of the change. The tax for such year must first be computed under section 481(b) (1) or (2) in respect of the portion of the adjustments attributable to 1954 Code years, without regard to amounts taken into account under section 481(b)(4) (A) or (B). Then the tax for such year must be computed in respect of the portion of the adjustments attributable to pre-1954 Code years, taking into account the portion of the adjustments attributable to 1954 Code years. The total tax for the taxable year of the change will be the aggregate of the tax computed under section 481(b) (1) or (2) and the increase in tax attributable to taking into account the portion of the adjustments attributable to pre-1954 Code years under section 481(b)(4) (A) or (B).

(7) For rules relating to the limitations on tax provided by section 481(b) (1) and (2), see § 1.481–2. For rules relating to the adjustments attributable to taxable years beginning before January 1, 1954, or ending before August 17, 1954, see §§ 1.481–3 and 1.481–4.

(d) In determining the amount of any item of gain, loss, deduction, or credit which depends upon gross income, adjusted gross income, or taxable income for the taxable year of the change, the full amount of the adjustments required under section 481(a) shall be taken into account for such year if such adjustments increase taxable income by $3,000 or less, or decrease taxable income. However, if the amount of the adjustments increase taxable income by more than $3,000, the provisions of section 481(b) apply. Since section 481(b) (1) and (2) merely provide for limitations on the tax for the taxable year of the change, the entire amount of the adjustments which is subject to section 481(b) (1) and (2) is taken into account in such year. See § 1.481–2. Where section 481(b)(4) applies and the taxpayer does not elect to have the 10-year period begin with the first taxable year beginning after December 31, 1957, the pro rata portion of the adjustments attributable to pre-1954 Code years is also taken into account in the taxable year of the change. See § 1.481–4.

(e) The provisions of section 481 shall not apply in the case of a change from an accrual method to the installment method of accounting. In such case the rules provided in section 453 shall apply. However, section 481 does apply in the case of a change from the installment method of accounting to any other method.

§ 1.481–2 Limitation on Tax—(a) *Three-year allocation.*—Section 481(b)(1) provides a limitation on the tax for the taxable year of the change attributable to the adjustments required under section 481(a) and § 1.481–1 (other than the amount of adjustments to which section 481(b) (4) or (5) applies). If such adjustments increase the taxpayer's taxable income for the taxable year of the change by more than $3,000 then the tax for such taxable year under chapter 1 of the Internal Revenue Code of 1954 attributable to the adjustments shall not exceed the lesser of (1) the tax attributable to taking such adjustments into account in computing taxable income for the taxable year of the change under section 481(a) and § 1.481–1, or (2) the aggregate of the increases in tax under chapter 1 or under corresponding provisions of prior revenue laws) which would result if the adjustments were included ratably in the taxable year of the change and the two preceding taxable years. For the purpose of computing the limitation on tax under section 481(b)(1), the adjustments shall be allocated ratably to the taxable year of the change and the two preceding taxable years, whether or not the adjustments are in fact attributable in whole or in part to such years. The limitation on the tax provided in this paragraph shall be applicable only if the taxpayer used the method of accounting from which the change was made in computing taxable income for the two taxable years preceding the taxable year of the change.

(b) *Allocation under new method of accounting.*—Section 481(b) (2) provides a second alternative limitation on the tax for the taxable year of the change under chapter 1 attributable to the adjustments required under section 481(a) and § 1.481–1 which are not subject to section 481(b) (4) or (5) where such adjustments increase taxable income for the taxable year of the change by more than $3,000. If the taxpayer establishes from his books of account and other records what his taxable income would have been under the new method of accounting for one or more consecutive taxable years immediately

preceding the taxable year of the change, and if the taxpayer in computing taxable income for such years used the method of accounting from which the change was made, then the tax attributable to the adjustments shall not exceed the smallest of the following amounts:

(1) The tax attributable to taking the adjustments into account in computing taxable income for the taxable year of the change under section 481(a) and § 1.481–1;

(2) The tax attributable to such adjustments computed under the 3-year allocation provided in section 481(b)(1), if applicable; or

(3) The net increase in the taxes under chapter 1 (or under corresponding provisions of prior revenue laws) which would result from allocating that portion of the adjustments to the one or more consecutive preceding taxable years to which properly allocable under the new method of accounting and from allocating the balance thereof to the taxable year of the change.

(c) *Rules for computation of tax.*—(1) The first step in determining whether either of the limitations described in section 481(b)(1) or (2) applies is to compute the increase in tax for the taxable year of the change which is attributable to the increase in taxable income for such year resulting solely from the adjustments required under section 481(a) and § 1.481–1 which are not subject to section 481(b)(4) or (5). This increase in tax is the excess of the tax for the taxable year computed by taking into account such adjustments under section 481(a) over the tax computed for such year without taking the adjustments into account.

(2) The next step is to compute under section 481(b)(1) the tax attributable to the adjustments referred to in subparagraph (1) of this paragraph for the taxable year of the change and the two preceding taxable years as if an amount equal to one-third of the net amount of such adjustments had been received or accrued in each of such taxable years. The increase in tax attributable to the adjustments for each such taxable year is the excess of the tax for such year computed with the allocation of one-third of the net adjustments to such taxable year over the tax computed without the allocation of any part of the adjustments to such year. For the purpose of computing the aggregate increase in taxes for such taxable years, there shall be taken into account the increase or decrease in tax for any taxable year preceding the taxable year of the change to which no adjustment is allocated under section 481(b)(1) but which is affected by a net operating loss under section 172 or by a capital loss carryover under section 1212, determined with reference to taxable years with respect to which adjustments under section 481(b)(1) are allocated.

(3) In the event that the taxpayer satisfies the conditions set forth in section 481(b)(2), the next step is to determine the amount of the net increase in tax attributable to the adjustments referred to in subparagraph (1) of this paragraph for:

(i) The taxable year of the change,

(ii) The consecutive taxable year or years immediately preceding the taxable year of the change for which the taxpayer can establish his taxable income under the new method of accounting, and

(iii) Any taxable year preceding the taxable year of the change to which no adjustment is allocated under section 481(b)(2), but

which is affected by a net operating loss or by a capital loss carryover determined with reference to taxable years with respect to which such adjustments are allocated.

The net increase in tax for the taxable years specified in subdivisions (i), (ii), and (iii) of this subparagraph shall be computed as if the amount of the adjustments for the prior taxable years to which properly allocable in accordance with section 481(b)(2) had been received or accrued, or paid or incurred, as the case may be, in such prior years and the balance of the adjustments in the taxable year of the change. The amount of tax attributable to such adjustments for the taxable years specified in subdivisions (i), (ii), and (iii) of this subparagraph is the aggregate of the differences (increases and decreases) between the tax for each such year computed by taking into account the allocable portion of the adjustments in computing taxable income and the tax computed without taking into account any portion of the adjustments in computing taxable income. Generally, where there is an increase in taxable income for a preceding consecutive taxable year established under the new method of accounting, computed without regard to adjustments attributable to any preceding taxable year, the amount of the adjustments to be allocated to each such year shall be an amount equal to such increase. However, where the amount of the adjustments to be allocated to a prior taxable year is less than the increase in taxable income for such year established under the new method of accounting, the amount of the increase in such taxable income for purposes of determining the increase in tax under section 481(b)(2) for such year shall be considered to be the amount so allocated. For example, if the amount of the adjustments required by section 481(a) for 1958 (the taxable year of the change) is $60,000, and the increase in taxable income is determined by the taxpayer to be $40,000, $5,000, and $35,000, computed under the new method of accounting, for the taxable years 1957, 1956, and 1955, respectively, then the amount of the adjustments to be allocated to 1955 will be the balance of the adjustments, or $15,000.

(4) The tax for the taxable year of the change (determined without regard to adjustments under section 481(b)(4) or (5)) shall be the tax for such year, computed without taking any of the adjustments referred to in subparagraph (1) of this paragraph into account, increased by the smallest of the following amounts:

(i) The amount of tax for the taxable year of the change attributable solely to taking into account the entire amount of the adjustments required by section 481(a) and § 1.481–1 which are not subject to section 481(b)(4) or (5);

(ii) The sum of the increases in tax liability for the taxable year of the change and the two immediately preceding taxable years which would have resulted solely from taking into account one-third of the amount of such adjustments required for each of such years as though such amounts had been properly attributable to such years (computed in accordance with subparagraph (2) of this paragraph); or

(iii) The net increase in tax attributable to allocating such adjustments under the new method of accounting (computed in accordance with subparagraph (3) of this paragraph).

(5) In the case of a change in method of accounting by a partnership, the adjustments required by section 481 shall be made with respect to the taxable income of the partnership but the limitations on tax under section 481(b) shall apply to the individual partners. Each partner shall take into account his distributive share of the partnership items, as so adjusted, for the taxable year of the change. Section 481(b) applies to a partner whose taxable income is so increased by more than $3,000 as a result of such adjustments to the partnership taxable income. It is not necessary for the partner to have been a member of the partnership for the two taxable years immediately preceding the taxable year of the change of the partnership's accounting method in order to have the limitation provided by section 481(b)(1) apply. Further, a partner may apply section 481(b)(2) for the purpose of limiting the increase in the partner's tax attributable to the increase in the taxable income of the partnership.

(6) For the purpose of the successive computation of the limitation on tax under section 481(b) (1) or (2), if the treatment of any item under the provisions of the Internal Revenue Code of 1954 (or corresponding provisions of prior internal revenue laws) depends upon the amount of gross income, adjusted gross income, or taxable income (for example, medical expenses, charitable contributions, or credits against the tax), such item shall be determined for the purpose of each such computation by taking into account the proper portion of the amount of any adjustments required to be taken into account under section 481 in each such computation.

(7) The increase or decrease in the tax for any taxable year for which an assessment of any deficiency, or a credit or refund of any overpayment, is prevented by any law or rule of law, shall be determined by reference to the tax previously determined (within the meaning of section 1314(a)) for such year.

(8) In applying section 7807(b)(1), the provisions of chapter 1 (other than subchapter E, relating to tax on self-employment income) and chapter 2 of the Internal Revenue Code of 1939 shall be treated as the corresponding provisions of the Internal Revenue Code of 1939.

(d) *Example.*—The application of section 481(b) (1) and (2) may be illustrated by the following examples. Although the examples in this paragraph are based upon adjustments required in the case of a change in the over-all method of accounting, the principles illustrated would be equally applicable to adjustments required in the case of a change in method of accounting for a particular material item, provided the treatment of such adjustments is not specifically subject to some other provision of the Internal Revenue Code of 1954.

Example (1). An unmarried individual taxpayer using the cash receipts and disbursements method of accounting for the calendar year is required by the Commissioner to change to an accrual method effective with the year 1958. As of January 1, 1958, he had an opening inventory of $11,000. On December 31, 1958, he had a closing inventory of $12,500. Merchandise purchases during the year amounted to $22,500, and net sales were $32,000. Total deductible business expenses were $5,000. There were no receivables or payables at January 1, 1958. The computation of taxable income for 1958, assuming no other adjustments, using the new method of accounting follows:

Net sales		$32,000
Opening inventory	$11,000	
Purchases	22,500	
Total	$33,500	
Less closing inventory	12,500	
Cost of goods sold		$21,000
Gross profit		$11,000
Business expenses		5,000
Business income		$6,000
Personal exemption and itemized deductions		1,600
Taxable income		$4,400

Under the cash receipts and disbursements method of accounting, only $9,000 of the $11,000 opening inventory had been included in the cost of goods sold and claimed as a deduction for the taxable years 1954 through 1957; the remaining $2,000 had been so accounted for in pre-1954 Code years. In order to prevent the same item from reducing taxable income twice, an adjustment of $9,000 must be made to the taxable income of 1958 under the provisions of section 481(a) and § 1.481–1. Since the change in method of accounting was not initiated by the taxpayer, the $2,000 of opening inventory which had been included in cost of goods sold in pre-1954 Code years is not taken into account. Taxable income for 1958 is accordingly increased by $9,000 under section 481(a) to $13,400. Assuming that the tax on $13,400 is $4,002 and that the tax on $4,400 (income without the adjustment) is $944, the increase in tax attributable to the adjustment, if taken into account for the taxable year of the change, would be the difference between the two, or $3,058. Since the adjustment required by section 481(a) and § 1.481–1 ($9,000) increases taxable income by more than $3,000, the increase in tax for the taxable year 1958 attributable to the adjustment of $9,000 (i.e., $3,058) may be limited under the provisions of section 481(b) (1) or (2). See examples (2) and (3).

Example (2). Assume that the taxpayer in example (1) used the cash receipts and disbursements method of accounting in computing taxable income for the years 1956 and 1957 and that the taxable income for these years determined under such method was $4,000 and $6,000, respectively. The section 481(b)(1) limitation on tax with a pro rata three-year allocation of the $9,000 adjustment is computed as follows:

Taxable year	Taxable income before adjustment	Taxable income with adjustment	Assumed total tax	Assumed tax before adjustment	Increase in tax attributable to adjustment
1956	$4,000	$7,000	$1,660	$840	$820
1957	6,000	9,000	2,300	1,360	940
1958	4,400	7,400	1,780	944	836
Total					$2,596

Since this increase in tax of $2,596 is less than the increase in tax attributable to the inclusion of the entire adjustment in the income for the taxable year of the change ($3,058), the limitation provided by section 481(b)(1) applies, and the total tax for 1958, the taxable year of the change, if section 481(b)(2) does not apply, is determined as follows:

Tax without any portion of adjustment	$944
Increase in tax attributable to adjustment computed under section 481(b)(1)	2,596
Total tax for taxable year of the change	$3,540

Example (3). (i) Assume the same facts as in example (1) and, in addition, assume that the taxpayer used the cash receipts and disbursements method of accounting in computing taxable income for the years 1953 through 1957; that he established his taxable income under the new method for the taxable years 1953, 1954, and 1957, but did not have sufficient records to establish his taxable income under such method for the taxable years 1955 and 1956. The original taxable income and taxable income as redetermined are as follows:

TAXABLE INCOME

Taxable year	Determined under cash receipts and disbursements method	Established under new method	Increase or (decrease) in taxable income
1953	$5,000	$7,000	$2,000
1954	6,000	7,000	1,000
1955	5,500	[1]	
1956	4,000	[1]	
1957	6,000	10,000	4,000

[1] Undetermined.

As in examples (1) and (2), the total adjustment under section 481(a) is $9,000. Of the $9,000 adjustment, $4,000 may be allocated to 1957, which is the only year consecutively preceding the taxable year of the change for which the taxpayer was able to establish his income under the new method. Since the income cannot be established under the new method for 1956 and 1955, no allocation may be made to 1954 or 1953, even though the taxpayer has established his income for those years under the new method of accounting. The balance of $5,000 ($9,000 minus $4,000) must be allocated to 1958.

(ii) The limitation provided by section 481(b)(2) is computed as follows: The tax for 1957, based on taxable income of $6,000, is assumed to be $1,360. Under the new method, based on taxable income of $10,000, the tax for 1957 is assumed to be $2,640, the increase attributable to $4,000 of the $9,000 section 481(a) adjustment being $1,280, ($2,640 minus $1,360). The tax for 1958, computed on the basis of taxable income of $4,400 (determined under the new method), is assumed to be $944. The tax computed for 1958 on taxable income of $9,400 ($4,400 plus the $5,000 adjustment allocated to 1958) is assumed to be $2,436, leaving a difference of $1,492 ($2,436 minus $944) attributable to the inclusion in 1958 of the portion of the total adjustment to be taken into account which could not be properly allocated to the taxable year or years consecutively preceding 1958.

(iii) The tax attributable to the adjustment is determined by selecting the smallest of the three following amounts:

Increase in tax attributable to adjustment computed under section 481 (b)(2) ($1,280+$1,492)	$2,772
Increase in tax attributable to adjustment computed under section 481 (b)(1) (example (2))	2,596
Increase in tax if the entire adjustment is taken into account in the taxable year of the change (example (1))	3,058
The final tax for 1958 is then $3,540 computed as follows:	
Tax before inclusion of any adjustment	$944
Increase in tax attributable to adjustments (smallest of $2,772, $2,596 or $3,058)	2,596
Total tax for 1958 (limited in accordance with section 481(b)(1))	$3,540

Example (4). Assume that X Corporation has maintained its books of account and filed its income tax returns using the cash receipts and disbursements method of accounting for the years 1953 through 1957. The corporation secures permission to change to an accrual method of accounting for the calendar year 1958. The following tabulation presents the data with respect to the taxpayer's income for the years involved:

Year	Taxable income under the cash receipts and disbursements method		Taxable income established under accrual method	Increase or (decrease) attributable to change	Changes in taxable income due to changes in net operating loss carry-back
	Before application of net operating loss carry-back	After application of net operating loss carry-back			
1953	$2,000	0	[1]		$2,000
1954	4,000	$1,000	[1]		3,000
1955	(5,000)		$1,000	$6,000	
1956	80,000	80,000	77,000	(3,000)	
1957	90,000	90,000	96,000	6,000	
1958			100,000		

[1] Not established.

As indicated above, taxable income for 1953 and 1954, as determined under the cash receipts and disbursements method of accounting, was $2,000 and $4,000, respectively, and after application of the net operating loss carryback from 1955, the taxable income was reduced to zero in 1953 and to $1,000 in 1954. The taxpayer was unable to establish taxable income for these years under an accrual method of accounting; however, under section 481(b)(3)(A), increases or decreases in the tax for taxable years to which no adjustment is allocated must, nevertheless, be taken into account to the extent the tax for such years would be affected by a net operating loss determined with reference to taxable years to which adjustments are allocated. The total amount of the adjustments required under section 481(a) and attributable to the taxable years 1953 through 1957 in this example is assumed to be $10,000. The redetermination of taxable income established by the taxpayer for the taxable years 1955,

1956, and 1957 appears under the heading "Taxable income established under accrual method" in the above tabulation. The tabulation assumes that the taxpayer has been able to recompute the income for those years so as to establish a net adjustment of $9,000, which leaves a balance of $1,000 unaccounted for. In accordance with the requirements of section 481(b)(2), the $1,000 amount is allocated to 1958, the taxable year of the change. The following computations are necessary in order to determine the tax attributable to the adjustments under section 481(a):

INCREASE IN TAX ATTRIBUTABLE TO INCLUSION IN 1958 OF THE ENTIRE $10,000 ADJUSTMENT

Tax on income of 1958 increased by entire amount of adjustment ($100,000+$10,000)	$51,700
Tax on income of 1958 without adjustment ($100,000)	46,500
Increase in tax attributable to inclusion of entire adjustment in year of the change	$5,200

Increase in tax attributable to adjustment computed under section 481(b)(1)

Year	Amount of adjustment	Tax before adjustment	Tax after adjustment	Increase in tax liability attributable to adjustment
1958	$3,334	$46,500	$48,234	$1,734
1957	3,333	41,300	43,033	1,733
1956	3,333	36,100	37,833	1,733
Increase in tax attributable to adjustment computed under section 481(b)(1)				$5,200

Increase in tax attributable to adjustment computed under section 481(b)(2)

Year	Amount of adjustment	Tax before adjustment	Tax after adjustment	Increase or (decrease) in tax liability
1953	*$2,000	0	*$600	$600
1954	*3,000	$300	*1,200	900
1955	6,000	0	300	300
1956	(3,000)	36,100	34,540	(1,560)
1957	6,000	41,300	44,420	3,120
1958	**1,000	46,500	**47,020	520
Increase in tax attributable to the adjustment computed under section 481(b)(2)				$3,880

*Attributable to recomputations of net operating loss carrybacks determined with reference to net operating loss in 1955.

**Attributable to the inclusion of $1,000 in the year of the change which represents the portion of the $10,000 adjustment not allocated to taxable years prior to the year of the change for which taxable income is established under the new method.

Since the limitation under section 481(b)(2) ($3,880) on the amount of tax attributable to the adjustments is applicable, the final tax for the taxable year of the change is computed by adding such

amount to the tax for that year computed without the inclusion of any amount attributable to the adjustments, that is, $46,500 plus $3,880, or $50,380.

§ 1.481–3 ADJUSTMENTS ATTRIBUTABLE TO PRE-1954 CODE YEARS WHERE CHANGE WAS NOT INITIATED BY TAXPAYER.—If the adjustments required by section 481(a) and § 1.481–1 are attributable to a change in method of accounting which was not initiated by the taxpayer, no portion of any adjustments which is attributable to pre-1954 Code years shall be taken into account in computing taxable income. For example, if the total adjustments in the case of a change in method of accounting which is not initiated by the taxpayer amount to $10,000, of which $4,000 is attributable to pre-1954 Code years, only $6,000 of the $10,000 total adjustments is required to be taken into account under section 481 in computing taxable income. The portion of the adjustments which is attributable to pre-1954 Code years is the net amount of the adjustments which would have been required if the taxpayer had changed his method of accounting in his first taxable year which began after December 31, 1953, and ended after August 16, 1954. See section 481(b)(4)(A).

§ 1.481–4 ADJUSTMENTS ATTRIBUTABLE TO PRE-1954 CODE YEARS WHERE CHANGE WAS INITIATED BY TAXPAYER.—(a) *Amount of adjustments to be taken into account.*—If the adjustments required by section 481(a) and § 1.481–1 are attributable to a change in method of accounting initiated by the taxpayer, the amount of such adjustments, to the extent such amount does not exceed the net amount which would have been required if the change had been made in the first taxable year beginning after December 31, 1953, and ending after August 16, 1954, shall be taken into account by the taxpayer in computing taxable income in the manner provided in section 481(b)(4)(B) and paragraph (b) of this section. The preceding sentence shall apply only if such amount would increase taxable income for such year by more than $3,000. For example, if the total adjustments amount to $19,000, and the portion of the adjustments attributable to pre-1954 Code years is $10,000 and the balance of $9,000 is attributable to taxable years subject to the 1954 Code, the adjustments shall be taken into account as follows:

(1) The portion attributable to pre-1954 Code years ($10,000) shall be taken into account in the manner provided in section 481(b)(4)(B) and paragraph (b) of this section, and the limitations provided in section 481(b) (1) or (2) will apply to the balance of $9,000; or

(2) If the taxpayer elects under section 481(b)(6) to take the adjustments attributable to pre-1954 Code years into account under section 481(b) (1) or (2), the limitations provided in section 481(b) (1) or (2) will apply to the entire amount of the adjustments ($19,000).

The provisions of section 481(b)(4), section 481(b)(6), and paragraphs (b), (c), (d), and (e) of this section shall not apply with respect to changes in methods of accounting made in taxable years beginning after December 31, 1963.

(b) *Years for which amounts are to be taken into account.*—(1) If the amount of the adjustments determined in accordance with sec-

tion 481(b)(4)(A) and paragraph (a) of this section would increase the taxable income of the taxpayer for the first taxable year to which section 481 applies by more than $3,000, the amount of such adjustments shall, except as provided in paragraphs (c), (d), (f), and (g) of this section, be taken into account—

(i) One-tenth in each of the 10 taxable years beginning with the taxable year of the change, or

(ii) If the taxable year of the change was a taxable year beginning after December 31, 1953, and ending after August 16, 1954, but before January 1, 1958, and if the taxpayer makes the election under section 481(b)(4)(B) in the manner provided in subparagraph (4) of this paragraph, one-tenth in each of the 10 taxable years beginning with the first taxable year which begins after December 31, 1957.

(2)(i) The 10-year period which begins with the taxable year of the change shall be reduced by the number of years in respect of which assessment of the tax is prevented by operation of any law or rule of law. In the case of a taxpayer whose taxable year of the change ended before January 1, 1958, and who elects to use the period provided for in subparagraph (1)(ii) of this paragraph, the 10-year period which begins with the first taxable year beginning after December 31, 1957, shall be reduced by the number of years which corresponds to the number of taxable years, beginning with the taxable year of the change in respect of which assessment of the tax was prevented by the operation of any law or rule of law on September 2, 1958.

(ii) In the case of such a shortened period, the portion of the adjustments to be taken into account in any one taxable year within such shortened period shall be one-tenth of such adjustments, that is, the same pro rata portion which would have been taken into account in such taxable year if the 10-year period beginning with such first taxable year had not been shortened. If, for example, in a case where the 10-year period is properly used, assessment of a deficiency is prevented with respect to 1 of the 10 taxable years in which one-tenth of the adjustments would otherwise be required to be taken into account, then only nine-tenths of such adjustments is to be taken into account ratably in the other 9 taxable years. Thus, if the adjustments required under section 481(a) amounts to $10,000 and assessment of a deficiency for the calendar year 1954 (the taxable year of the change) is prevented, only nine-tenths of the adjustments, or $9,000, is to be taken into account in 1955 and the eight following taxable years at the rate of $1,000 a year. Similarly, if the taxpayer elects to begin the 10-year period with the taxable year 1958, only nine-tenths, or $9,000, is to be taken into account in 1958 and the eight following taxable years at the rate of $1,000 a year.

(3) If assessment of a deficiency is prevented with respect to a taxable year for which a prorated part would otherwise be required to be taken into account under subparagraphs (1) and (2) of this paragraph, section 481(b)(4)(B) does not reopen that year for assessment purposes.

(4) The election provided in section 481(b)(4)(B) and subparagraph (1) of this paragraph shall be made—

(i) In cases where the taxpayer requests the Commissioner's permission to change his method of accounting, at the time such

request is made or at such other time as the Commissioner, prior to granting the taxpayer permission to make the change, may afford the taxpayer an opportunity to make such election; or

(ii) In cases where the taxpayer changed his method of accounting without the advance approval of the Commissioner and has not made an election to return to his former method of accounting in accordance with § 1.481–6, at any time before the ninetieth day after publication in the Federal Register of the final regulations under section 481.

The election shall be in the form of a written statement to the effect that the taxpayer elects under section 481(b)(4)(B) to take the adjustments determined in accordance with section 481(b)(4)(A) into account in the 10-year period beginning with the first taxable year beginning after December 31, 1957, and that the taxpayer agrees to include one-tenth of such adjustments in taxable income for such years in the manner provided in subparagraph (2) of this paragraph. In the case of a partnership, the election shall be made by the individual partners. In the case of a taxpayer referred to in subdivision (i) of this subparagraph, the statement of election shall be filed with the Commissioner of Internal Revenue, Attention: T:R, Washington 25, D.C. In the case of a taxpayer referred to in subdivision (ii) of this subparagraph, the statement of election shall be filed with the district director with whom he filed his income tax return for the taxable year of the change.

(1) *Limitation on years in which adjustments can be taken into account.*—The amount of any adjustments determined in accordance with section 481(b)(4)(A) and paragraph (a) of this section, to the extent not taken into account in prior taxable years under section 481(b)(4)(B) and paragraph (b) of this section, shall be taken into account as follows:

(1) In the case of an individual taxpayer, such amount shall be taken into account in the taxable year in which he dies or ceases to engage in a trade or business;

(2) In the case of a partner, his distributive share of such amount shall be taken into account in his taxable year in which the partnership terminates or in which his entire interest in such partnership is transferred or liquidated; or

(3) In the case of a corporation, such amount shall be taken into account in the taxable year in which the corporation ceases to engage in a trade or business, unless the amount is required to be taken into account by the acquiring corporation under section 381(c)(21) and the regulations thereunder.

(d) *Election under section 481(b)(6).*—(1) Under section 481(b)(6) a taxpayer may elect to take the adjustments determined in accordance with section 481(b)(4)(A) and paragraph (a) of this section into account in the manner provided in section 481(b) (1) or (2) and paragraphs (a) or (b) of § 1.481–2 in lieu of taking such adjustments into account under the 10-year allocation rule provided in section 481(b)(4)(B) and paragraph (b) of this section. If a taxpayer makes the election under section 481(b)(6), such taxpayer may not take any portion of the adjustments into account under the 10-year allocation rule provided in section 481(b)(4)(B). In such cases, the entire amount of the adjustments required by section 481(a)

is to be taken into account in computing taxable income for the taxable year of the change, subject to the limitations on tax provided in section 481(b) (1) or (2). For example, if the adjustments resulting from a change in method of accounting which occurred in 1956 amount to $25,000, of which $10,000 is attributable to pre-1954 Code years, and the taxpayer elects under section 481(b)(6) to take such adjustments into account in the manner provided by section 481(b) (1) or (2), the limitations on tax provided in section 481(b) (1) or (2) shall apply to the entire $25,000 adjustments.

(2) The election under section 481(b)(6) may be made only if the taxpayer consents in writing to the assessment, within such period as may be agreed upon with the Commissioner or district director, of any deficiency for the taxable year of the change in the method of accounting which results from taking such adjustments into account in the manner so elected, even though at the time of filing such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

(3) The election provided in section 481(b)(6) shall be made within the time prescribed by law for filing the return (including extensions of time therefor) for the taxable year of the change, or within 90 days after the date on which the Commissioner grants permission to the taxpayer to change his method of accounting, or at any time before the ninetieth day after publication in the Federal Register of the regulations under section 481, whichever is later. The statement shall be filed with the district director with whom the taxpayer files his income tax return for the taxable year of the change and shall be attached to the return for such year or, in the case of returns previously filed, the statement shall be attached to the necessary amended return or returns.

(e) *Example.*—The application of the provisions of this section may be illustrated by the following examples:

Example (1). X Corporation has been filing its income tax returns and keeping its books on the cash receipts and disbursements method of accounting for the calendar year. It requests, and is granted, the permission of the Commissioner, effective with the calendar year 1960, to change to an accrual method of accounting. As of January 1, 1954, the taxpayer had an opening inventory of $20,000, accounts receivable of $22,000, and accounts payable of $14,000. As of January 1, 1960, its records reflect an opening inventory of $34,000, accounts receivable of $32,000, and accounts payable of $19,000. The corporation has no other items which require adjustment under section 481(a). The adjustments required to be made by X Corporation in 1960 under section 481(a) amount to $47,000 ($34,000 plus $32,000 less $19,000). The amount of the adjustments which X Corporation would have been required to make if it had changed its method of accounting for the calendar year 1954 is $28,000 ($20,000 plus $22,000 less $14,000). Since such $28,000 of adjustments in respect of pre-1954 Code years would increase the taxable income for 1954 by more than $3,000, and since the adjustments are attributable to change in method of accounting initiated by the taxpayer, such $28,000 of adjustments shall be taken into account under section 481(b)(4)(B) and paragraph (b) of § 1.481–4, unless X Corporation elects under section 481(b)(6) to have the

limitations on tax provided by section 481(b) (1) or (2) apply to such adjustments. The remaining portion ($19,000) of the adjustments required by section 481(a) is to be taken into account in 1960 subject, however, to the tax limitation applicable under the 3-year allocation method of section 481(b)(1) or the new-accounting-method allocation under section 481(b)(2).

Example (2). If the facts in example (1) were the same except that as of January 1, 1960, the three adjustments are such that only $20,000 of adjustments is required to be taken into account under section 481(a) for 1960, then the entire amount of adjustments ($20,000) is to be taken into account in the manner provided by section 481(b)(4) or section 481(b)(6) since such amount does not exceed the $28,000 of adjustments that would have been required if the taxpayer had changed its method of accounting for the calendar year 1954.

(f) *Special rule for pre-1954 adjustments in case of certain decedents.*—Section 481(b)(5) provides a special rule in respect of the tax attributable to pre-1954 adjustments in the case of a change from the cash receipts and disbursements method to an accrual method involving the use of inventories made on or after August 16, 1954, and before January 1, 1958, for a taxable year to which section 481 applies, by the executor or administrator of a decedent's estate in the first income tax return filed by such executor or administrator on behalf of the decedent. Such rule provides that—

(1) Such a change shall be given effect in determining taxable income (other than for the purpose of computing a net operating loss carryback to any prior taxable year of the decedent); and

(2) If the adjustments required by section 481(a) in respect of taxable years to which section 481 does not apply would increase taxable income of the decedent by more than $3,000, then the tax attributable to such adjustments shall not exceed an amount equal to the tax that would have been payable on the cash receipts and disbursements method for the years for which the executor or administrator filed income tax returns on behalf of the decedent, computed for each such year as though a ratable portion of the taxable income for such year had been received in each of 10 taxable years beginning and ending on the same dates as the taxable year for which the tax is being computed.

(g) *Exception for certain agreements.*—(1) Section 29(d)(2) of the Technical Amendments Act of 1958 provides as follows:

> (d) EFFECTIVE DATE.
>
> * * * * * * *
>
> (2) EXCEPTION FOR CERTAIN AGREEMENTS.—The amendments made by subsections (a), (b)(1) and (c) shall not apply if before the date of the enactment of this Act—
>
> (A) The taxpayer applied for a change in the method of accounting in the manner provided by regulations prescribed by the Secretary of the Treasury or his delegate, and
>
> (B) The taxpayer and the Secretary of the Treasury or his delegate agreed to the terms and conditions for making the change.
>
> [Sec. 29(d)(2), Technical Amendments Act of 1958 (72 Stat. 1629)]

(2) The amendments made to section 481 by section 29 (other than paragraphs 2 through 5 of subsection (b)) of the Technical Amend-

ments Act of 1958 shall not apply if, before September 2, 1958, the taxpayer applied for a change in method of accounting in the manner provided by any Federal income tax regulation and the taxpayer and the Commissioner agreed to the terms and conditions for making the change.

(3) A taxpayer who, in accordance with any provision of the Internal Revenue Code or of any Federal income tax regulation permitting such action, elected to change his method of accounting with regard to one or more material items, such as research and experimental expenditures (section 174), soil and water conservation expenditures (section 175), last-in, first-out inventories (section 472), and exploration expenditures (section 615), and who satisfied the requirements of the regulations dealing with such elections, shall be treated for purposes of section 29(d)(2) of the Technical Amendments Act of 1958 as a taxpayer who applied for and changed his method of accounting in the manner provided by regulations and who agreed to the terms and conditions for making the change.

§ 1.481–5 Adjustments Taken Into Account With Consent.—(a) In addition to the methods of allocation described in section 481(b), the adjustments required by section 481(a) may be taken into account in computing the tax under chapter 1 for such taxable years, in such manner and subject to such conditions as may be agreed upon between the Commissioner and the taxpayer. See section 481(c). Requests for approval of a method of allocation differing from those described in section 481(b) shall be addressed to the Commissioner of Internal Revenue, Attention: T:R, Washington 25, D.C., and shall set forth in detail the facts and circumstances upon which the taxpayer bases his request. Permission will be granted only if the taxpayer and the Commissioner agree to the terms and conditions under which the allocation is to be effected.

(b) The agreement shall be in writing and shall be signed by the Commissioner and the taxpayer. It shall set forth the items to be adjusted, the amount of the adjustments, the taxable year or years for which the adjustments are to be taken into account, and the amount of the adjustments allocable to each such year. The agreement shall be binding on the parties except upon a showing of fraud, malfeasance, or misrepresentation of a material fact.

§ 1.481–6 Election to Return to Former Method of Accounting.—(a) Section 29 (e) of the Technical Amendments Act of 1958 provides as follows:

> (e) Election to Return to Former Method of Accounting
>
> (1) election.—Any taxpayer who for any taxable year beginning after December 31, 1953, and ending after August 16, 1954, and before the date of enactment of this Act, computed his taxable income under a method of accounting different from the method under which his taxable income for the preceding taxable year was computed, may elect to recompute his taxable income, beginning with the taxable year for which taxable income was computed under such different method of accounting, under the method of accounting under which taxable income was computed for such preceding taxable year. An election under this paragraph shall be made within 6 months after the date of the enactment of the Act, and shall be made in such manner as the Secretary of the Treasury or his delegate may provide. This paragraph shall not apply to any taxpayer—
>
> (A) To whom subsection (d)(2) applies, or

(B) Who was required, before the date of the enactment of this Act, by the Secretary of the Treasury or his delegate to change his method of accounting.

(2) STATUTE OF LIMITATIONS.—If assessment of any deficiency for any taxable year resulting from an election under paragraph (1) is prevented on the date on which such election is made, or at any time within one year after such date, by the operation of any law or rule of law, such assessment may, nevertheless, be made if made within one year after such date. An election by a taxpayer under paragraph (1) shall be considered as a consent to the assessment pursuant to this paragraph of any such deficiency. If refund or credit of any overpayment of income tax resulting from an election under paragraph (1) is prevented on the date on which such election is made, or at any time within one year after such date, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year after such date.

[Sec. 29(e), Technical Amendments Act of 1958 (72 Stat. 1629)]

(b) Except as provided in paragraph (e) of this section, a taxpayer who for any taxable year beginning after December 31, 1953, and ending after August 16, 1954, but before September 2, 1958, computed his taxable income under a method of accounting different from the method used for the immediately preceding taxable year may elect to recompute his taxable income, beginning with the taxable year for which such method was first used, under the method used for such preceding taxable year.

(c) The election referred to in paragraph (b) of this section shall be made in the following manner:

(1) On or before March 2, 1959, the taxpayer shall file with the district director with whom he filed his income tax return for the taxable year of the change a statement to the effect that he elects to recompute his taxable income, beginning with the first taxable year for which he computed his taxable income under a method of accounting different from the preceding taxable year, under the method used for such preceding taxable year. The statement shall indicate the first taxable year for which taxable income was computed under a different method of accounting; and

(2) On or before June 1, 1959, the taxpayer shall file amended income tax returns for all taxable years affected by the election with a statement attached thereto showing the recomputation of taxable income for such taxable years under the method of accounting which he used in computing taxable income for the taxable year immediately preceding the taxable year of the change. The taxpayer shall also compute the amount of deficiency or overassessment in tax resulting from such recomputation of taxable income.

(d) (1) If assessment of a deficiency for any taxable year resulting from an election under this section is prevented on the date on which the election is made, or at any time within one year after such date, by the operation of any law or rule of law, such assessment may, nevertheless, be made within one year after such date. An election under this section shall be considered as a consent to the assessment of any such deficiency.

(2) If refund or credit of any overpayment of income tax resulting from an election under this section is prevented on the date on which such election is made, or at any time within one year after such date, by the operation of any law or rule of law, refund or credit of

such overpayment may, nevertheless, be made or allowed if a claim for such refund or credit is filed within one year after such date.

(e) An election under this section may not be made by a taxpayer—

(1) To whom paragraph (g) of § 1.481–4, relating to exception for certain agreements, applies, or

(2) Who was required, before September 2, 1958, by the Commissioner or district director to change his method of accounting.

For purposes of subparagraph (2) of this paragraph, a taxpayer, who on his own initiative, changed his method of accounting in order to conform to the requirements of any Federal income tax regulation or ruling shall not, merely because of such fact, be considered to be a taxpayer who was required, for purposes of section 481, to change his method of accounting.

DANA LATHAM,
Commissioner of Internal Revenue.

Approved February 16, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on February 19, 1959, 8:49 a.m., and published in the issue of the Federal Register for February 20, 1959, 24 F.R. 1307.)

SUBCHAPTER F.—EXEMPT ORGANIZATIONS

PART I.—GENERAL RULE

SECTION 501.—EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

Rev. Rul. 59–28

An association created under a declaration of trust which provides for the payment of life, sick, accident, or other benefits to persons other than employees and their dependents (such as individual proprietors, partners, self-employed persons or trustees designated to administer the fund from which such benefits are to be paid) does not qualify for exemption from Federal income tax as a voluntary employees' beneficiary association under the provisions of section 501(c)(9) of the Internal Revenue Code of 1954.

Advice has been requested whether an association is, under the circumstances set forth below, entitled to exemption from Federal income tax as a voluntary employees' beneficiary association under the provisions of section 501(c)(9) of the Internal Revenue Code of 1954.

The association in the instant case was created under a declaration of trust which provides for the payment of life, sick, accident, or other benefits to the employees of any person, firm, or corporation participating in the plan. In addition to covering the employees of organizations participating in the plan, the trust instrument provides that full-time owners and partners, as well as the members of the board of trustees (who are not employees of participating employers) administering the fund from which such benefits are to be paid, may qualify for the receipt of similar benefits under the plan.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

> (9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if—
>
> (A) no part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and
>
> (B) 85 percent or more of the income consists of amounts collected from members and amounts contributed to the association by the employer of the members for the sole purpose of making such payments and meeting expenses.

It is the position of the Internal Revenue Service that an organization which includes employers or individuals other than employees, among its membership, or otherwise provides for the payment of life, sick, accident, or other benefits to such individuals and their dependents, is not a voluntary employees' beneficiary association within the intendment of section 501(c)(9) of the Code.

The trustees designated by the trust instrument to administer the trust perform their duties in a fiduciary capacity and, as such, are not subject to the supervision or control of any employer. Since the trustees are not employees of either an employer or the trust, they do not qualify as beneficial members of the trust. Consequently, the inclusion of a provision in the trust instrument entitling the nonemployee trustees of the trust to the same benefits as those granted employees would not be within the scope of the basic requirements for exemption contained in section 501(c)(9) of the Code.

In view of the foregoing, it is held that an association created under a declaration of trust which provides for the payment of life, sick, accident, or other benefits to persons other than employees and their dependents (such as individual proprietors, partners, self-employed persons or trustees designated to administer the fund from which such benefits are to be paid) does not qualify for exemption from Federal income tax as a voluntary employees' beneficiary association under the provisions of section 501(c)(9) of the Internal Revenue Code of 1954.

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26 CFR 1.501(a)–1: Exemption from taxation.

Status of organizations unable to furnish information required by section 6033 of the Internal Revenue Code of 1954. See Rev. Rul. 59–95, page 627.

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26 CFR 1.501(c)(5)–1: Labor, agricultural, and horticultural organizations. Rev. Rul. 59–6

> An apprenticeship committee organized primarily to establish standards of employment concerning apprentices in various skilled crafts, determine the qualifications necessary to become a journeyman, aid in adjusting and settling disputes between the employer and the apprentice, and also cooperate with the local board of education in establishing supplementary classroom instruction pertaining to the apprentice's vocation, is exempt from taxation as a labor organization under section 501(c)(5) of the Internal Revenue Code of 1954.

Advice has been requested whether a committee organized for the purpose of supervising the enforcement of apprenticeship standards in various skilled crafts is exempt from taxation under the provisions of section 501(c)(5) of the Internal Revenue Code of 1954.

An apprenticeship committee was organized for the purpose of establishing standards of employment concerning apprentices in various skilled crafts. The committee establishes standards as to the appropriate wages to be paid the apprentices, the amount of time to be spent under a journeyman in learning a particular phase of work, and the number of apprentices who shall be employed in a trade by an employer. The committee aids in adjusting and settling disputes between the employer and the apprentice. The committee also establishes or cooperates with local boards of education in establishing supplemental classroom instruction pertaining to the apprentice's vocation.

Committees of this type have been established pursuant to collective bargaining agreements or have been promoted by state encouragement of cooperation between employer and employee groups and are usually composed of an equal number of employer and employee representatives. They are organized in various forms, such as, corporations, associations, and trusts. Their operational expenses are met by various methods of financing, primarily by contributions from the employers and the labor union, although funds may be solicited from the public. These committees, whether established pursuant to state law or pursuant to a collective bargaining agreement, are the same.

Section 501(c)(5) of the Code provides for the exemption from income tax of labor, agricultural and horticultural organizations. Section 1.501(c)(5)–1 of the Income Tax Regulations provides in part, that the organizations contemplated by section 501(c)(5) as entitled to exemption from income taxation are those which (1) have no net earnings inuring to the benefit of any member and (2) have as their objects the betterment of the conditions of those engaged in such pursuit and the improvement of the grade of their products and the development of a higher degree of efficiency in their respective occupations.

The problem in the instant case resolves itself into a consideration of the primary purpose of the committee as established. Its purpose appears to be an attempt to improve the lot of the apprentices by establishing standards as to wage requirements, improving working conditions, helping to settle disputes between apprentices and employers, establishing the number of apprentices which shall be employed in trade, and providing for on-the-job training with required supplemental education in the classroom.

It is apparent that the apprenticeship committee is not operated for the profit of any individual. It has educational aspects because of its close relationship to the education and training of the apprentice, but, since providing education is not its primary purpose or function, there is no apparent basis for exempting the committee as being organized and operated exclusively for educational purposes within the intendment of section 501(c)(3) of the Code. Its main purpose is the betterment of the conditions of those engaged in the trades governed and the development of a higher degree of efficiency in their respective

occupations. As a result of these programs the products of the employer are improved in grade.

It is to be noted that since the membership of the apprenticeship committee consists of equal representation of employers and employees, such committee is not within the usual meaning of a "labor organization." Ordinarily, a "labor organization" is composed of representatives of the employees in the form of collective bargaining agents and similar employee groups. However, the inclusion of such a committee in the term is warranted because of the fulfillment by the committee of the tests established for labor, agricultural and horticultural organizations and the further fact that the committee is similar in character to many of the organizations exempted from income taxation as agricultural or horticultural organizations under section 501(c)(5) of the Code. See, for example, Rev. Rul. 54–282, C. B. 1954–2, 126.

In view of the foregoing, it is held that since the primary objectives of the apprenticeship committee in the instant case is to establish standards of employment concerning apprentices in various skilled crafts, determine the qualifications necessary to become a journeyman, aid in adjusting and settling disputes between the employer and the apprentice, and also cooperate with the local board of education in establishing supplementary classroom instruction pertaining to the apprentice's vocation, such committee is exempt from taxation as a labor organization under section 501(c)(5) of the Internal Revenue Code of 1954.

An organization may not consider itself exempt from tax merely because it falls within the scope of this Revenue Ruling. In order to establish its exemption, it is necessary that every organization claiming exemption under section 501(c)(5) of the Code file an application on Form 1024, Exemption Application, with the District Director of Internal Revenue for the internal revenue district in which is located the principal place of business or principal office of the organization. See section 1.501(a)–1 of the Income Tax Regulations.

SECTION 503.—REQUIREMENTS FOR EXEMPTION

26 CFR 1.503 (c)–1: Prohibited transactions. Rev. Rul. 59–29
(Also Section 401; 1.401–1.)

> The deposit of funds of an exempt employees' trust, in a checking account with the employer-grantor bank, will not constitute a "prohibited transaction" within the purview of section 503(c)(1) of the Internal Revenue Code of 1954. Nor will the interim deposit of surplus funds in an ordinary checking account, even where such an account is maintained with the employer-grantor bank, be held to violate the provisions of section 401(a) or section 503(c)(6) of the Code.

Advice has been requested whether deposits of trust funds of a bank's employees' profit-sharing trust, in a checking account with the employer-grantor, will constitute a "prohibited transaction" within the meaning of section 503(c) of the Internal Revenue Code of 1954.

A bank established a profit-sharing trust for the benefit of its employees which has been held to meet the requirements of section 401(a) of the Code for exemption from Federal income tax under section 501(a). Funds of the trust have been placed on deposit, in an amount in excess of the amount for which insurance is provided by the Federal Deposit Insurance Corporation, in a checking account with the employer-grantor bank.

Under the provisions of section 503(a)(1) of the Code, a trust described in section 401(a) shall not be exempt from taxation under section 501(a) "if it has engaged in a prohibited transaction after March 1, 1954." "Prohibited transation" is defined, in subparagraphs (1) and (6), respectively, of sections 503(c) of the Code, as a transaction in which such a trust lends any part of its income or corpus to its creator without the receipt of adequate security and a reasonable rate of interest, or which results in a substantial diversion of its income or corpus to the creator of the trust. In addition, an employees' trust is not exempt under section 401(a) unless "it is impossible * * * for any part of the corpus or income to be * * * used for, or diverted to, purposes other than for the exclusive benefit of his [the employer's] employees or their beneficiaries."

However, section 503, as made applicable to pension, profit-sharing, and stock bonus trusts which are qualified under section 401(a), was not directed against the maintenance of funds on deposit in an ordinary checking account, in the bank creating the trust, during the interim period period to reasonably prompt disbursement for investment or other purposes which are themselves consistent with exemption of the trust concerned.

Accordingly, it is held that the deposit of funds of an exempt employees' trust, in a checking account with the employer-grantor bank, will not constitute a "prohibited transaction" within the purview of section 503(c)(1) of the Code. Nor will the deposit of funds in such a checking account, during the interim described above, be held to violate the provisions of section 401(a) or section 503(c)(6) of the Code.

PART III.—FARMERS' COOPERATIVES

SECTION 522.—TAX ON FARMERS COOPERATIVES

26 CFR 1.522–3: Patronage dividends, rebates, or refunds; treatment as to cooperative associations entitled to tax treatment under section 522.

Deductibility of amounts allocated to patrons with respect to cooperative's income not derived from patronage. See Rev. Rul. 59–107, page 20.

SUBCHAPTER G.—CORPORATIONS USED TO AVOID INCOME TAX ON SHAREHOLDERS

PART I.—CORPORATIONS IMPROPERLY ACCUMULATING SURPLUS

SECTION 531.—IMPOSITION OF ACCUMULATED EARNINGS TAX

26 CFR 1.531: Statutory provisions; imposition of accumulated earnings tax. (Also Section 1551; 1.1551.) T. D. 6377 [1]

TITLE 26—INTERNAL REVENUE, 1954—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Regulations under sections 531 through 537 of the Internal Revenue Code of 1954, as amended; Income Tax Regulations (26 CFR Part 1) under section 1551 amended.

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

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

On January 15, 1958, notice of proposed rulemaking regarding the regulations under sections 531 through 537 of the Internal Revenue Code of 1954, as amended by the Act of August 11, 1955 (Public Law 367, 84th Cong., 69 Stat. 689) [C.B. 1955–2, 768], relating to corporations improperly accumulating surplus, was published in the Federal Register (23 F.R. 271). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted subject to the changes to reflect such consideration and to incorporate those changes required by sections 31 and 89(b) of the Technical Amendments Act of 1958 (72 Stat. 1631 and 1665) and by section 205 of the Small Business Tax Revision Act of 1958 (72 Stat. 1680). In addition paragraphs 2 and 3 below amend the Income Tax Regulations (26 CFR Part 1) to conform §§ 1.1551 and 1.1551–1 of such regulations to section 205 of the Small Business Tax Revision Act of 1958 (72 Stat. 1680). The regulations adopted by this Treasury decision are effective for taxable years beginning after December 31, 1953, and ending after August 16, 1954, except as otherwise expressly provided.

PARAGRAPH 1. The following regulations are prescribed under sections 531 through 537 of the Internal Revenue Code of 1954, as amended.

[1] The publication of this Treasury Decision in 24 F.R. 3819, dated May 13, 1959, contains (1) instructions for modifying the notice of proposed rulemaking published in 23 F.R. 271, dated January 15, 1958, and (2) the full context of the regulations with such modifications. As here published, the Treasury Decision reflects the full context of such regulations, with modifications. The individual instructions have been omitted.

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AUTHORITY: §§ 1.531 to 1.537–3, incl., issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

CORPORATIONS USED TO AVOID INCOME TAX ON SHAREHOLDERS

CORPORATIONS IMPROPERLY ACCUMULATING SURPLUS

§ 1.531 STATUTORY PROVISIONS; IMPOSITION OF ACCUMULATED EARNINGS TAX.

SEC. 531. IMPOSITION OF ACCUMULATED EARNINGS TAX.

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of every corporation described in section 532, an accumulated earnings tax equal to the sum of—

(1) 27½ percent of the accumulated taxable income not in excess of $100,000, plus

(2) 38½ percent of the accumulated taxable income in excess of $100,000.

§ 1.531–1 IMPOSITION OF TAX.—Section 531 imposes (in addition to the other taxes imposed upon corporations by chapter 1 of the Internal Revenue Code of 1954) a graduated tax on the accumulated taxable income of every corporation described in section 532 and § 1.532–1. In the case of an affiliated group which makes, or is required to make, a consolidated return, see paragraph (a) of § 1.1502–30. All of the taxes on corporations under chapter 1 are treated as one tax for purposes of assessment, collection, payment, period of

limitations, etc. See section 535 and § § 1.535–1, 1.535–2, and 1.535–3 for the definition and determination of accumulated taxable income.

§ 1.532 STATUTORY PROVISIONS; CORPORATIONS SUBJECT TO ACCUMULATED EARNINGS TAX.

SEC. 532. CORPORATIONS SUBJECT TO ACCUMULATED EARNINGS TAX.

(a) GENERAL RULE.—The accumulated earnings tax imposed by section 531 shall apply to every corporation (other than those described in subsection (b)) formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

(b) EXCEPTIONS.—The accumulated earnings tax imposed by section 531 shall not apply to—

(1) A personal holding company (as defined in section 542).

(2) A foreign personal holding company (as defined in section 552), or

(3) A corporation exempt from tax under subchapter F (section 501 and following).

§ 1.532–1 CORPORATIONS SUBJECT TO ACCUMULATED EARNINGS TAX.—(a) *General rule.*—(1) The tax imposed by section 531 applies to any domestic or foreign corporation (not specifically excepted under section 532(b) and paragraph (b) of this section) formed or availed of to avoid or prevent the imposition of the individual income tax on its shareholders, or on the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of dividing or distributing them. See section 533 and § 1.533–1, relating to evidence of purpose to avoid income tax with respect to shareholders.

(2) The tax imposed by section 531 may apply if the avoidance is accomplished through the formation or use of one corporation or a chain of corporations. For example, if the capital stock of the M Corporation is held by the N Corporation, the earnings and profits of the M Corporation would not be returned as income subject to the individual income tax until such earnings and profits of the M Corporation were distributed to the N Corporation and distributed in turn by the N Corporation to its shareholders. If either the M Corporation or the N Corporation was formed or is availed of for the purpose of avoiding or preventing the imposition of the individual income tax upon the shareholders of the N Corporation, the accumulated taxable income of the corporation so formed or availed of (M or N, as the case may be) is subject to the tax imposed by section 531.

(b) *Exceptions.*—The accumulated earnings tax imposed by section 531 does not apply to a personal holding company (as defined in section 542), to a foreign personal holding company (as defined in section 552), or to a corporation exempt from tax under subchapter F of chapter 1 of the Internal Revenue Code of 1954.

(c) *Foreign corporations.*—Section 531 is applicable to any foreign corporation, whether resident or nonresident, with respect to any income derived from sources within the United States, if any of its shareholders are subject to income tax on the distributions of the corporation by reason of being (1) citizens or residents of the United States, or (2) nonresident alien individuals to whom section 871 is

applicable, or (3) foreign corporations if a beneficial interest therein is owned directly or indirectly by any shareholder specified in (1) or (2).

§ 1.533 Statutory Provisions; Evidence of Purpose To Avoid Income Tax.

SEC. 533. EVIDENCE OF PURPOSE TO AVOID INCOME TAX.

(a) Unreasonable Accumulation Determinative of Purpose.—For purposes of section 532, the fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary.

(b) Holding or Investment Company.—The fact that any corporation is a mere holding or investment company shall be prima facie evidence of the purpose to avoid the income tax with respect to shareholders.

§ 1.533–1 Evidence of Purpose To Avoid Income Tax.—(a) *In general.*—(1) The Commissioner's determination that a corporation was formed or availed of for the purpose of avoiding income tax with respect to shareholders is subject to disproof by competent evidence. Section 533(a) provides that the fact that earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders unless the corporation, by the preponderance of the evidence, shall prove to the contrary. The burden of proving that earnings and profits have been permitted to accumulate beyond the reasonable needs of the business may be shifted to the Commissioner under section 534. See §§ 1.534–1 through 1.534–4. Section 533(b) provides that the fact that the taxpayer is a mere holding or investment company shall be prima facie evidence of the purpose to avoid income tax with respect to shareholders.

(2) The existence or nonexistence of the purpose to avoid income tax with respect to shareholders may be indicated by circumstances other than the conditions specified in section 533. Whether or not such purpose was present depends upon the particular circumstances of each case. All circumstances which might be construed as evidence of the purpose to avoid income tax with respect to shareholders cannot be outlined, but among other things, the following will be considered:

(i) Dealings between the corporation and its shareholders, such as withdrawals by the shareholders as personal loans or the expenditure of funds by the corporation for the personal benefit of the shareholders,

(ii) The investment by the corporation of undistributed earnings in assets having no reasonable connection with the business of the corporation (see § 1.537–3), and

(iii) The extent to which the corporation has distributed its earnings and profits.

The fact that a corporation is a mere holding or investment company or has an accumulation of earnings and profits in excess of the reasonable needs of the business is not absolutely conclusive against it if the

taxpayer satisfies the Commissioner that the corporation was neither formed nor availed of for the purpose of avoiding income tax with respect to shareholders.

(b) *General burden of proof and statutory presumptions*—The Commissioner may determine that the taxpayer was formed or availed of to avoid income tax with respect to shareholders through the medium of permitting earnings and profits to accumulate. In the case of litigation involving any such determination (except where the burden of proof is on the Commissioner under section 534), the burden of proving such determination wrong by a preponderance of the evidence, together with the corresponding burden of first going forward with the evidence, is on the taxpayer under principles applicable to income tax cases generally. For the burden of proof in a proceeding before the Tax Court with respect to the allegation that earnings and profits have been permitted to accumulate beyond the reasonable needs of the business, see section 534 and § 1.534–2 through 1.534–4. For a definition of a holding or investment company, see paragraph (c) of this section. For determination of the reasonable needs of the business, see section 537 and §§ 1.537–1 through 1.537–3. If the taxpayer is a mere holding or investment company, and the Commissioner therefore determines that the corporation was formed or availed of for the purpose of avoiding income tax with respect to shareholders, then section 533(b) gives further weight to the presumption of correctness already arising from the Commissioner's determination by expressly providing an additional presumption of the existence of a purpose to avoid income tax with respect to shareholders. Further, if it is established (after complying with section 534 where applicable) that earnings and profits were permitted to accumulate beyond the reasonable needs of the business and the Commissioner has therefore determined that the corporation was formed or availed of for the purpose of avoiding income tax with respect to shareholders, then section 533(a) adds still more weight to the Commissioner's determination. Under such circumstances, the existence of such an accumulation is made determinative of the purpose to avoid income tax with respect to shareholders unless the taxpayer proves to the contrary by the preponderance of the evidence.

(c) *Holding or investment company.*—A corporation having practically no activities except holding property and collecting the income therefrom or investing therein shall be considered a holding company within the meaning of section 533(b). If the activities further include, or consist substantially of, buying and selling stocks, securities, real estates, or other investment property (whether upon an outright or marginal basis) so that the income is derived not only from the investment yield but also from profits upon market fluctuations, the corporation shall be considered an investment company within the meaning of section 533(b).

§ 1.533–2 STATEMENT REQUIRED.—The corporation may be required to furnish a statement of its accumulated earnings and profits, the payment of dividends, the name and address of, and number of shares held by, each of its shareholders, the amounts that would be payable to each of the shareholders if the income of the corporation were distributed, and other information required under section 6042.

§ 1.534 Statutory Provisions; Burden of Proof.

SEC. 534. BURDEN OF PROOF.

(a) General Rule.—In any proceeding before the Tax Court involving a notice of deficiency based in whole or in part on the allegation that all or any part of the earnings and profits have been permitted to accumulate beyond the reasonable needs of the business, the burden of proof with respect to such allegation shall—

(1) If notification has not been sent in accordance with subsection (b), be on the Secretary or his delegate, or

(2) If the taxpayer has submitted the statement described in subsection (c), be on the Secretary or his delegate with respect to the grounds set forth in such statement in accordance with the provisions of such subsection.

(b) Notification by Secretary.—Before mailing the notice of deficiency referred to in subsection (a), the Secretary or his delegate may send by certified mail or registered mail a notification informing the taxpayer that the proposed notice of deficiency includes an amount with respect to the accumulated earnings tax imposed by section 531. In the case of a notice of deficiency to which subsection (e)(2) applies and which is mailed on or before the 30th day after the date of the enactment of this sentence, the notification referred to in the preceding sentence may be mailed at any time on or before such 30th day.

(c) Statement by Taxpayer.—Within such time (but not less than 30 days) after the mailing of the notification described in subsection (b) as the Secretary or his delegate may prescribe by regulations, the taxpayer may submit a statement of the grounds (together with facts sufficient to show the basis thereof) on which the taxpayer relies to establish that all or any part of the earnings and profits have not been permitted to accumulate beyond the reasonable needs of the business.

(d) Jeopardy Assessment.—If pursuant to section 6861(a) a jeopardy assessment is made before the maling of the notice of deficiency referred to in subsection (a), for purposes of this section such notice of deficiency shall, to the extent that it informs the taxpayer that such deficiency includes the accumulated earnings tax imposed by section 531, constitute the notification described in subsection (b), and in that event the statement described in subsection (c) may be included in the taxpayer's petition to the Tax Court.

(e) Application of Section.

(1) Notwithstanding any other provision of law, this section shall apply with respect to taxable years to which this subchapter applies and (except as provided in paragraph (2)) to taxable years to which the corresponding provisions of prior revenue laws apply.

(2) In the case of a notice of deficiency for a taxable year to which this subchapter does not apply, this section shall apply only in the case of proceedings tried on the merits after [August 11, 1955] the date of the enactment of this paragraph.

[Sec. 534, as amended by secs. 4 and 5, Act of Aug. 11, 1955, (Pub. Law 367, 84th Cong., 69 Stat. 689); sec. 89(b), Technical Amendment Act of 1958 (72 Stat. 1665)]

§ 1.534–1 Burden of Proof as to Unreasonable Accumulations Generally.—For purposes of applying the presumption provided for in section 533(a) and in determining the extent of the accumulated earnings credit under section 535(c)(1), the burden of proof with respect to an allegation by the Commissioner that all or any part of the earnings and profits of the corporation have been permitted to accumulate beyond the reasonable needs of the business may vary under section 534 as between litigation in the Tax Court and that in any other court. In case of a proceeding in a court other than the Tax Court, see paragraph (b) of § 1.533–1.

§ 1.534–2 Burden of Proof as to Unreasonable Accumulations in Cases Before the Tax Court.—(a) *Burden of proof on Commis-*

sioner.—Under the general rule provided in section 534(a), in any proceeding before the Tax Court involving a notice of deficiency based in whole or in part on the allegation that all or any part of the earnings and profits have been permitted to accumulate beyond the reasonable needs of the business, the burden of proof with respect to such allegation is upon the Commissioner if—

(1) A notification, as provided for in section 534(b) and paragraph (c) of this section, has not been sent to the taxpayer; or

(2) A notification, as provided for in section 534(b) and paragraph (c) of this section, has been sent to the taxpayer and, in response to such notification, the taxpayer has submitted a statement, as provided win section 534(c) and paragraph (d) of this section, setting forth the ground or grounds (together with facts sufficient to show the basis thereof) on which it relies to establish that all or any part of its earnings and profits have not been permitted to accumulate beyond the reasonable needs of the business. However, the burden of proof in the latter case is upon the Commissioner only with respect to the relevant ground or grounds set forth in the statement submitted by the taxpayer, and only if such ground or grounds are supported by facts (contained in the statement) sufficient to show the basis thereof.

(b) *Burden of proof on the taxpayer.*—The burden of proof in a Tax Court proceeding with respect to an allegation that all or any part of the earnings and profits have been permitted to accumulate beyond the reasonable needs of the business is upon the taxpayer if—

(1) A notification, as provided for in section 534(b) and paragraph (c) of this section, has been sent to the taxpayer and the taxpayer has not submitted a statement, in response to such notification, as provided in section 534(c) and paragraph (d) of this section; or

(2) A statement has been submitted by the taxpayer in response to such notification, but the ground or grounds on which the taxpayer relies are not relevant to the allegation or, if relevant, the statement does not contain facts sufficient to show the basis thereof.

(c) *Notification to the taxpayer.*—Under section 534(b) a notification informing the taxpayer that the proposed notice of deficiency includes an amount with respect to the accumulated earnings tax imposed by section 531 may be sent by registered mail (or by certified or registered mail, if the notification is mailed after September 2, 1958) to the taxpayer at any time before the mailing of the notice of deficiency in the case of a taxable year beginning after December 31, 1953, and ending after August 16, 1954. See § 1.534–4 for rules relating to taxable years subject to the Internal Revenue Code of 1939. See section 534(d) and § 1.534–3 with respect to a notification in the case of a jeopardy assessment.

(d) *Statement by taxpayer.*—(1) A taxpayer who has received a notification, as provided in section 534(b) and paragraph (c) of this section, that the proposed notice of deficiency includes an amount with respect to the accumulated earnings tax imposed by section 531, may, under section 534(c), submit a statement that all or any part of the earnings and profits of the corporation have not been permitted to accumulate beyond the reasonable needs of the business. Such statement shall set forth the ground or grounds (together with facts sufficient to show the basis thereof) on which the taxpayer relies to

establish that there has been no accumulation of earnings and profits beyond the reasonable needs of the business. See paragraphs (a) and (b) of this section for rules concerning the effect of the statement with respect to burden of proof. See § § 1.537–1 to 1.537–3, inclusive, relating to reasonable needs of the business.

(2) The taxpayer's statement, under section 534(c) and this paragraph, must be submitted to the Internal Revenue office which issued the notification (referred to in section 534(b) and paragraph (c) of this section) within 60 days after the mailing of such notification. If the taxpayer is unable, for good cause, to submit the statement within such 60-day period, an additional period not exceeding 30 days may be granted upon receipt in the Internal Revenue office concerned (before the expiration of the 60-day period provided herein) of a request from the taxpayer, setting forth the reasons for such request. See section 534(d) and § 1.534–3 with respect to a statement in the case of a jeopardy assessment.

§ 1.534–3 JEOPARDY ASSESSMENTS IN TAX COURT CASES.—In the case of a jeopardy assessment, a notice of deficiency is required to be sent to the taxpayer by registered mail (or by certified or registered mail, if the notice is mailed after September 2, 1958) within 60 days after the making of the assessment. See section 6861. If a jeopardy assessment is made before the mailing of the deficiency notice, then in the case of a proceeding in the Tax Court, if the deficiency notice informs the taxpayer that an amount of accumulated earnings tax is included in the deficiency, such notice shall constitute the notification provided for in section 534(b) and paragraph (c) of § 1.534–2. Under such circumstances the statement described in section 534(c) and paragraph (d) of § 1.534–2 shall instead be included in the taxpayer's petition to the Tax Court, if the taxpayer desires to submit such statement. See paragraph (b) of § 1.534–2, relating to burden of proof on the taxpayer.

§ 1.534–4 TAXABLE YEARS SUBJECT TO THE INTERNAL REVENUE CODE OF 1939.—The rules prescribed in § § 1.534–1 to 1.534–3, inclusive, apply in any proceeding tried on the merits after August 11, 1955, before the Tax Court and involving a notice of deficiency in surtax imposed by section 102 of the Internal Revenue Code of 1939, for a taxable year subject to such Code, based in whole or in part on the allegation that all or any part of the earnings and profits of the taxpayer have been permitted to accumulate beyond the reasonable needs of the business. If a notice of deficiency for a taxable year described in the preceding sentence was mailed before September 11, 1955, a notification mailed before that date shall be effective as fully as though such notification had been mailed before the notice of deficiency was mailed.

§ 1.535 STATUTORY PROVISIONS; ACCUMULATED TAXABLE INCOME.

SEC. 535. ACCUMULATED TAXABLE INCOME.

(a) DEFINITION.—For purposes of this subtitle, the term "accumulated taxable income" means the taxable income, adjusted in the manner provided in subsection (b), minus the sum of the dividends paid deduction (as defined in section 561) and the accumulated earnings credit (as defined in subsection (c)).

(b) ADJUSTMENTS TO TAXABLE INCOME.—For purposes of subsection (a), taxable income shall be adjusted as follows:

(1) TAXES.—There shall be allowed as a deduction Federal income and excess profits taxes (other than the excess profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code of 1939 for taxable years beginning after December 31, 1940) and income, war profits, and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 164(b)(6)), accrued during the taxable year, but not including the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law.

(2) CHARITABLE CONTRIBUTIONS.—The deduction for charitable contributions provided under section 170 shall be allowed without regard to section 170(b)(2).

(3) SPECIAL DEDUCTIONS DISALLOWED.—The special deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.) shall not be allowed.

(4) NET OPERATING LOSS.—The net operating loss deduction provided in section 172 shall not be allowed.

(5) CAPITAL LOSSES.—There shall be allowed as deductions losses from sales or exchanges of capital assets during the taxable year which are disallowed as deductions under section 1211(a).

(6) LONG-TERM CAPITAL GAINS.—There shall be allowed as a deduction the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year (determined without regard to the capital loss carryover provided in section 1212) minus the taxes imposed by this subtitle attributable to such excess. The taxes attributable to such excess shall be an amount equal to the difference between—

(A) The taxes imposed by this subtitle (except the tax imposed by this part) for such year, and

(B) Such taxes computed for such year without including in taxable income the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year (determined with regard to the capital loss carryover provided in section 1212).

(7) CAPITAL LOSS CARRYOVER.—No allowance shall be made for the capital loss carryover provided in section 1212.

(8) BANK AFFILIATES.—There shall be allowed the deduction described in section 601 (relating to bank affiliates).

(c) ACCUMULATED EARNINGS CREDIT.—

(1) GENERAL RULE.—For purposes of subsection (a), in the case of a corporation other than a mere holding or investment company the accumulated earnings credit is (A) an amount equal to such part of the earnings and profits for the taxable year as are retained for the reasonable needs of the business, minus (B) the deduction allowed by subsection (b)(6). For purposes of this paragraph, the amount of the earnings and profits for the taxable year which are retained is the amount by which the earnings and profits for the taxable year exceed the dividends paid deduction (as defined in section 561) for such year.

(2) MINIMUM CREDIT.—The credit allowable under paragraph (1) shall in no case be less than the amount by which $100,000 exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year.

(3) HOLDING AND INVESTMENT COMPANIES.—In the case of a corporation which is a mere holding or investment company, the accumulated earnings credit is the amount (if any) by which $100,000 exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year.

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(4) ACCUMULATED EARNINGS AND PROFITS.—For purposes of paragraphs (2) and (3), the accumulated earnings and profits at the close of the preceding taxable year shall be reduced by the dividends which under section 563(a) (relating to dividends paid after the close of the taxable year) are considered as paid during such taxable year.

CROSS REFERENCE.—For denial of credit provided in paragraph (2) or (3) where multiple corporations are formed to avoid tax, see section 1551.

[Sec. 535 as amended by sec. 31, Technical Amendments Act 1958 (72 Stat. 1631); sec. 205, Small Business Tax Revision Act 1958 (72 Stat. 1680)]

§ 1.535–1 DEFINITION.—(a) The accumulated earnings tax is imposed by section 531 on the accumulated taxable income. Accumulated taxable income is the taxable income of the corporation with the adjustments prescribed by section 535(b) and § 1.535–2, minus the sum of the dividends paid deduction and the accumulated earnings credit. See pargaraph (a)(18) of § 1.1502–31 for definition of consolidated accumulated taxable income. See section 561 and the regulations thereunder, relating to the definition of the deduction for dividends paid, and section 535(c) and § 1.535–3, relating to the accumulated earnings credit.

(b) In the case of a foreign corporation, whether resident or nonresident, which files or causes to be filed a return, the accumulated taxable income shall be the taxable income from sources within the United States with the adjustments prescribed by section 535(b) and § 1.535–2 minus the sum of the dividends paid deduction and the accumulated earnings credit. In the case of a foreign corporation which files no return, the accumulated taxable income shall be the gross income from sources within the United States without allowance of any deductions (including the accumulated earnings credit).

§ 1.535–2 ADUSTMENTS TO TAXABLE INCOME.—(a) *Taxes.*—(1) *United States taxes.*—In computing accumulated taxable income for any taxable year, there shall be allowed as a deduction the amount by which Federal income and excess profits taxes accrued during the taxable year exceed the credit provided by section 33 (relating to taxes of foreign countries and possessions of the United States), except that no deduction shall be allowed for (i) the accumulated earnings tax imposed by section 531 (or a corresponding section of a prior law), (ii) the personal holding company tax imposed by section 541 (or a corresponding section of a prior law), and (iii) the excess profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code of 1939, for taxable years beginning after December 31, 1940. The deduction is for taxes accrued during the taxable year, regardless of whether the corporation uses an accrual method of accounting, the cash receipts and disbursements method, or any other allowable method of accounting. In computing the amount of taxes accrued, an unpaid tax which is being contested is not considered accrued until the contest is resolved.

(2) *Taxes of foreign countries and United States possessions.*—In computing accumulated taxable income for any taxable year, a deduction is allowed for income, war profits, and excess profits taxes accrued during such taxable year to foreign countries or possessions of the United States if the taxpayer chooses the benefits of section 901 for

such taxable year. The credit for such taxes provided by section 901 is not allowed against the accumulated earnings tax imposed by section 531. See section 901(a).

(b) *Charitable contributions.*—Section 535(b)(2) provides that, in computing the accumulated taxable income of a corporation, the deduction for charitable contributions shall be computed without regard to section 170(b)(2). Thus, the amount of charitable contributions made during the taxable year not allowable as a deduction under section 170 by reason of the limitations imposed by section 170(b)(2) shall be allowed as a deduction in computing accumulated taxable income for the taxable year. However, any excess of the amount of the charitable contributions made in a prior taxable year over the amount allowed as a deduction under section 170 for such year shall not be allowed as a deduction from taxable income in computing accumulated taxable income for the taxable year.

(c) *Special deductions disallowed.*—Sections 241 through 248 provide for the allowance of special deductions for such items as partially tax-exempt interest, certain dividends received, dividends paid on certain preferred stock of public utilities, and organizational expenses. Such special deductions, except the deduction provided by section 248 (relating to organizational expenses) shall be disallowed in computing accumulated taxable income.

(d) *Net operating loss.*—The net operating loss deduction provided in section 172 is not allowed for purposes of computing accumulated taxable income.

(e) *Capital losses.*—(1) Losses from sales or exchanges of capital assets during the taxable year, which are disallowed as deductions under section 1211 (a) in computing taxable income, shall be allowed as deductions in computing accumulated taxable income.

(2) The computation of the capital losses allowable as a deduction in computing accumulated taxable income may be illustrated by the following example:

Example. X Corporation has capital losses of $30,000 which are disallowed under section 1211(a) for the taxable year ended December 31, 1956. This amount represents a loss of $25,000 from the sale or exchange of capital assets during the taxable year ended December 31, 1956, plus a $5,000 capital loss carryover resulting from the sale or exchange of capital assets during the taxable year ended December 31, 1955. In computing accumulated taxable income for the taxable year ended December 31, 1956, only the loss of $25,000 arising from the sale or exchange of capital assets during that taxable year will be allowed as a deduction.

(f) *Long-term capital gains.*—(1) There is allowed as a deduction in computing accumulated taxable income, the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year (determined without regard to the capital loss carryover provided in section 1212) minus the taxes attributable to such excess as provided by section 535(b)(6). The tax attributable to such excess is the difference between—

(i) The taxes (except the accumulated earnings tax) imposed by substitle A for such year, and

(ii) The taxes (except the accumulated earnings tax) imposed by subtitle A computed for such year as if taxable income were

reduced by the excess of the net long-term capital gain over net short-term capital loss (including the capital loss carryover to such year).

Where the tax (except the accumulated earnings tax) imposed by subtitle A includes an amount computed under section 1201(a)(2), the tax attributable to such excess is such amount computed under section 1201(a)(2).

(2) The application of the rule in subparagraph (1) of this paragraph may be illustrated by the following example:

Example. Assume that D Corporation, for the taxable year ended December 31, 1956, has taxable income of $103,000 of which $3,000 is the excess of net long-term capital gain of $12,000 over a net short-term capital loss of $9,000. The $9,000 net short-term capital loss includes a capital loss carryover of $5,000. The amount allowable as a deduction under section 535(b)(6) and subparagraph (1) of this paragraph is $7,250, computed as follows: Net long-term capital gain less net short-term capital loss (computed without regard to the capital loss carryover) is $8,000 (that is, $12,000 net long-term capital gain less $4,000 net short-term capital loss computed without regard to the capital loss carryover of $5,000). The tax attributable to the excess of net long-term capital gain over net short-term capital loss (computed by taking the capital loss carryover into account) is $750, that is, 25 percent of such excess of $3,000, computed under section 1201(a)(2). The difference of $7,250 ($8,000 less $750) is the amount allowable as a deduction in computing accumulated taxable income.

(3) Section 631(c) (relating to gain or loss in the case of disposal of coal) shall have no application in determining the amount of the deduction allowable under section 535(b)(6).

(g) *Capital loss carryover.*—The capital loss carryover provided in section 1212 is not allowed for purposes of computing accumulated taxable income.

(h) *Bank affiliates.*—There is allowed the deduction provided by section 601 in the case of bank affiliates (as defined in section 2 of the Banking Act of 1933; 12 U.S.C. 221a(c)).

§ 1.535–3 Accumulated Earnings Credit.—(a) *In general.*—As provided in section 535(a) and § 1.535–1, the accumulated earnings credit, provided by section 535(c), reduces taxable income in computing accumulated taxable income. In the case of a corporation, not a mere holding or investment company, the accumulated earnings credit is determined as provided in paragraph (b) of this section and, in the case of a holding or investment company, as provided in paragraph (c) of this section. See paragraph (a)(19) of § 1.1502–31 for the consolidated accumulated earnings credit.

(b) *Corporation which is not a mere holding or investment company.*—(1) *General rule.*—(i) In the case of a corporation, not a mere holding or investment company, the accumulated earnings credit is the amount equal to such part of the earnings and profits of the taxable year which is retained for the reasonable needs of the business, minus the deduction allowed by section 535(b)(6) (see paragraph (f) of § 1.535–2, relating to the deduction for long-term capital gains). In no event shall the accumulated earnings credit be less

than the minimum credit provided for in section 535(c)(2) and subparagraph (2) of this paragraph. The amount of the earnings and profits for the taxable year retained is the amount by which the earnings and profits for the taxable year exceed the dividends paid deduction for such taxable year. See section 561 and the regulations thereunder, relating to the definition of the deduction for dividends paid. See section 561 and §§ 1.561–1 and 1.561–2, relating to the deduction for dividends paid.

(ii) In determining whether any amount of the earnings and profits of the taxable year has been retained for the reasonable needs of the business, the accumulated earnings and profits of prior years will be taken into consideration. Thus, for example, if such accumulated earnings and profits of prior years are sufficient for the reasonable needs of the business, then any earnings and profits of the current taxable year which are retained will not be considered to be retained for the reasonable needs of the business. See section 537 and §§ 1.537–1 and 1.537–2.

(2) *Minimum credit.*—Section 535(c)(2) provides for the allowance of a minimum accumulated earnings credit in the case of a corporation which is not a mere holding or investment company. In the case of such a corporation, this minimum credit shall in no case be less than the amount by which $100,000 ($60,000 if the credit is computed for a taxable year beginning before January 1, 1958) exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year. See paragraph (d) of this section for the effect of dividends paid after the close of the taxable year in determining accumulated earnings and profits at the close of the preceding taxable year. In determining the amount of the minimum credit allowable under section 535(c)(2), the needs of the business are not taken into consideration. If the taxpayer has accumulated earnings and profits at the close of the preceding taxable year equal to or in excess of $100,000 ($60,000 if the credit is computed for a taxable year beginning before January 1, 1958), the credit, if any, is determined without regard to section 535(c)(2). It is not intended that the provision for the minimum credit shall in any way create an inference that an accumulation in excess of $100,000 ($60,000 if the credit is computed for a taxable year beginning before January 1, 1958) is unreasonable. The reasonable needs of the business may require the accumulation of more or less than $100,000 ($60,000 if the credit is computed for a taxable year beginning before January 1, 1958) depending upon the circumstances in the case, but such needs shall not be taken into consideration to any extent in cases where the minimum accumulated earnings credit is applicable. For a discussion of the reasonable needs of the business, see section 537 and §§ 1.537–1, 1.537–2, and 1.537–3.

(3) *Illustrations of accumulated earnings credit.*—The computation of the accumulated earnings credit provided by section 535(c) may be illustrated by the following examples:

Example (1). The X Corporation, which is not a mere holding or investment company, has accumulated earnings and profits in the amount of $75,000 as of December 31, 1955; it has earnings and profits for the taxable year ended December 31, 1956, in the amount of $100,000 and has a dividends paid deduction under section 561 in the

amount of $30,000 so that the earnings and profits for the taxable year which are retained in the business amount to $70,000. Assume that it has been determined that the earnings and profits for the taxable year which may be retained for the reasonable needs of the business amount to $55,000 and that a deduction has been allowed under section 535(b)(6) in the amount of $5,000. Since the earnings and profits at the close of the preceding taxable year, December 31, 1955, exceed $60,000, the minimum credit provided by section 535(c)(2) will not apply and the accumulated earnings credit must be computed under section 535(c)(1) on the basis of the reasonable needs of the business. In this case, the accumulated earnings credit for the taxable year ended December 31, 1956, will be $50,000, computed as follows:

Earnings and profits of the taxable year determined to be retained for the reasonable needs of the business	$55,000
Less: The deduction for long-term capital gains (less applicable tax) allowed under section 535(b)(6)	5,000
Accumulated earnings credit allowable under section 535(c)(1)	$50,000

Example (2). The Z Corporation which is not a mere holding or investment company, has accumulated earnings and profits in the amount of $15,000 as of December 31, 1958; it has earnings and profits for the taxable year ended December 31, 1959, in the amount of $115,000 and has a dividends paid deduction under section 561 in the amount of $10,000, so that the earnings and profits for the taxable year which are retained amount to $105,000. Assume that it has been determined that the accumulated earnings and profits of the taxable year which may be retained for the reasonable needs of the business amount to $20,000 and that no deduction is allowable for long-term capital gains under section 535(b)(6). The accumulated earnings credit allowable under section 535(c)(1) on the basis of the reasonable needs of the business is determined to be only $20,000. However, since the amount by which $100,000 exceeds the accumulated earnings and profits at the close of the preceding taxable year is more than $20,000, the minimum accumulated earnings credit provided by section 535(c)(2) is applicable. The allowable credit will be the amount by which $100,000 exceeds the accumulated earnings and profits at the close of the preceding taxable year, i.e., $85,000 ($100,000 less $15,000 of accumulated earnings and profits at the close of the preceding taxable year).

(c) *Holding and investment companies.*—Section 535(c)(3) provides that, in the case of a mere holding or investment company, the accumulated earnings credit shall be the amount, if any, by which $100,000 ($60,000 if the credit is computed for a taxable year beginning before January 1, 1958) exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year. Thus, if such a corporation has accumulated earnings equal to, or in excess of, $100,000 ($60,000 if the credit is computed for a taxable year beginning before January 1, 1958) at the close of its preceding taxable year, no accumulated earnings credit is allowable in computing the accumulated taxable income. See paragraph (c) of § 1.533–1 for a definition of a holding or investment company.

(d) *Accumulated earnings ond profits.*—For the purposes of determining the minimum credit provided by section 535(c)(2) and

paragraph (b)(2) of this section, and the credit provided by section 535(c)(3) and paragraph (c) of this section, dividends paid after the close of any taxable year which are considered paid during such taxable year, shall be deducted from the earnings and profits accumulated at the close of such taxable year. See section 563 and §§ 1.563–1 and 1.563–3, relating to dividends paid after the close of the taxable year.

§ 1.536 STATUTORY PROVISIONS; INCOME NOT PLACED ON ANNUAL BASIS.

SEC. 356. INCOME NOT PLACED ON ANNUAL BASIS.

Section 443(b) (relating to computation of tax on change of annual accounting period) shall not apply in the computation of the accumulated earnings tax imposed by section 531.

§ 1.536–1 SHORT TAXABLE YEARS.—Accumulated taxable income for a taxable year consisting of a period of less than 12 months shall not be placed on an annual basis for the purpose of the accumulated earnings tax imposed by section 531. In such cases accumulated taxable income shall be computed on the basis of the taxable income for such period of less than 12 months, adjusted in the manner provided by section 535(b) and § 1.535–2.

§ 1.537 STATUTORY PROVISIONS; REASONABLE NEEDS OF THE BUSINESS.

SEC. 537. REASONABLE NEEDS OF THE BUSINESS.

For purposes of this part, the term "reasonable needs of the business" includes the reasonable anticipated needs of the business.

§ 1.537–1 REASONABLE NEEDS OF THE BUSINESS.—(a) *In general.*—The term "reasonable needs of the business" includes the reasonably anticipated needs of the business. An accumulation of the earnings and profits (including the undistributed earnings and profits of prior years) is in excess of the reasonable needs of the business if it exceeds the amount that a prudent businessman would consider appropriate for the present business purposes and for the reasonably anticipated future needs of the business. The need to retain earnings and profits must be directly connected with the needs of the corporation itself and must be for bona fide business purposes. See § 1.537–3 for a discussion of what constitutes the business of the corporation. The extent to which earnings and profits have been distributed by the corporation may be taken into account in determining whether or not retained earnings and profits exceed the reasonable needs of the business. See § 1.537–2, relating to grounds for accumulation of earnings and profits.

(b) *Reasonable anticipated needs.*—

(1) In order for a corporation to justify an accumulation of earnings and profits for reasonably anticipated future needs, there must be an indication that the future needs of the business require such accumulation, and the corporation must have specific, definite, and feasible plans for the use of such accumulation. Such an accumulation need not be used immediately, nor must the plans for its use be consummated within a short period after the close of the taxable year, provided that such accumulation will be used within a reasonable time depending upon all the facts and circumstances relating to the future needs of the business. Where the future needs of the business are un-

certain or vague, where the plans for the future use of an accumulation are not specific, definite, and feasible, or where the execution of such a plan is postponed indefinitely, an accumulation cannot be justified on the grounds of reasonably anticipated needs of the business.

(2) Consideration shall be given to reasonably anticipated needs as they exist on the basis of the facts at the close of the taxable year. Thus, subsequent events shall not be used for the purpose of showing that the retention of earnings or profits was unreasonable at the close of the taxable year if all the elements of reasonable anticipation are present at the close of such taxable year. However, subsequent events may be considered to determine whether the taxpayer actually intended to consummate or has actually consummated the plans for which the earnings and profits were accumulated. In this connection, projected expansion or investment plans shall be reviewed in the light of the facts during each year and as they exist as of the close of the taxable year. If a corporation has justified an accumulation for future needs by plans never consummated, the amount of such an accumulation shall be taken into account in determining the reasonableness of subsequent accumulations.

§ 1.537–2 GROUNDS FOR ACCUMULATION OF EARNINGS AND PROFITS.—(a) *In general.*—Whether a particular ground or grounds for the accumulation of earnings and profits indicate that the earnings and profits have been accumulated for the reasonable needs of the business or beyond such needs is dependent upon the particular circumstances of the case. Listed below in paragraphs (b) and (c) of this section are some of the grounds which may be used as guides under ordinary circumstances.

(b) *Reasonable accumulation of earnings and profits.*—Although the following grounds are not exclusive, one or more of such grounds, if supported by sufficient facts, may indicate that the earnings and profits of a corporation are being accumulated for the reasonable needs of the business provided the general requirements under §§ 1.537–1 and 1.537–3 are satisfied:

(1) To provide for bona fide expansion of business or replacement of plant;

(2) To acquire a business enterprise through purchasing stock or assets;

(3) To provide for the retirement of bona fide indebtedness created in connection with the trade or business, such as the establishment of a sinking fund for the purpose of retiring bonds issued by the corporation in accordance with contract obligations incurred on issue;

(4) To provide necessary working capital for the business, such as, for the procurement of inventories; or

(5) To provide for investments or loans to suppliers or customers if necessary in order to maintain the business of the corporation.

(c) *Unreasonable accumulations of earnings and profits.*—Although the following purposes are not exclusive, accumulations of earnings and profits to meet any one of such objectives may indicate that the earnings and profits of a corporation are being accumulated beyond the reasonable needs of the business:

(1) Loans to shareholders, or the expenditure of funds of the corporation for the personal benefit of the shareholders;

(2) Loans having no reasonable relation to the conduct of the business made to relatives or friends of shareholders, or to other persons;

(3) Loans to another corporation, the business of which is not that of the taxpayer corporation, if the capital stock of such other corporation is owned, directly or indirectly, by the shareholder or shareholders of the taxpayer corporation and such shareholder or shareholders are in control of both corporations;

(4) Investments in properties, or securities which are unrelated to the activities of the business of the taxpayer corporation; or

(5) Retention of earnings and profits to provide against unrealistic hazards.

§ 1.537–3 BUSINESS OF THE CORPORATION.—(a) The business of a corporation is not merely that which it has previously carried on but includes, in general, any line of business which it may undertake.

(b) If one corporation owns the stock of another corporation and, in effect, operates the other corporation, the business of the latter corporation may be considered in substance, although not in legal form, the business of the first corporation. However, investment by a corporation of its earnings and profits in stock and securities of another corporation is not, of itself, to be regarded as employment of the earnings and profits in its business. Earnings and profits of the first corporation put into the second corporation through the purchase of stock or securities or otherwise, may, if a subsidiary relationship is established, constitute employment of the earnings and profits in its own business. Thus, the business of one corporation may be regarded as including the business of another corporation if such other corporation is a mere instrumentality of the first corporation; that may be established by showing that the first corporation owns at least 80 percent of the voting stock of the second corporation. If the taxpayer's ownership of stock is less than 80 percent in the other corporation, the determination of whether the funds are employed in a business operated by the taxpayer will depend upon the particular circumstances of the case. Moreover, the business of one corporation does not include the business of another corporation if such other corporation is a personal holding company, an investment company, or a corporation not engaged in the active conduct of a trade or business.

PAR. 2. Section 1.1551 is amended as follows:

(A) Section 1551 is changed by striking out "$60,000" and inserting in lieu thereof "$100,000".

(B) The following historical note is added at the end thereof:

[Sec. 1551 as amended by sec. 205, Small Business Tax Revision Act 1958 (72 Stat. 1680)]

PAR. 3. Paragraph (a) of § 1.1551–1 is amended by striking out "$60,000" and inserting in lieu thereof "$100,000 ($60,000 for taxable years beginning before January 1, 1958)".

(Paragraphs 2 and 3 of this Treasury Decision are issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

Because the changes in regulations previously published as a notice of proposed rule making and the amendments of existing regula-

tions made by this Treasury Decision are merely of a clarifying or liberalizing nature or are required by sections 31 and 89(b) of the Technical Amendments Act of 1958 and by section 205 of the Small Business Tax Revision Act of 1958, it is hereby found that it is unnecessary, with respect to such changes and amendments, 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.

DANA LATHAM,
Commissioner of Internal Revenue.

Approved May 8, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on May 12, 1959, 8:50 a.m., and published in the issue of the Federal Register for May 13, 1959, 24 F.R. 3819.)

PART II.—PERSONAL HOLDING COMPANIES

SECTION 541.—IMPOSITION OF PERSONAL HOLDING COMPANY TAX

26 CFR 1.541–1: Imposition of tax. Rev. Rul. 59–69 [1]
(Also Sections 243, 542, 543, 1242, 1243; 1.542–1, 1.543–1.)

A small business investment company operating under the provisions of the Small Business Investment Act of 1958 is subject to personal holding company tax under section 541 of the Internal Revenue Code of 1954, if at least 80 percent of its gross income for the taxable year is personal holding company income as defined in section 543 of the Code, such as interest and dividends from debentures and stock acquired pursuant to the Small Business Investment Act of 1958, and if at any time during the last half of the taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals.

Advice has been requested whether a small business investment company operating under the provisions of the Small Business Investment Act of 1958, 72 Stat. 689, is subject to the provisions of sections 541 through 547 of the Internal Revenue Code of 1954, pertaining to personal holding companies, if at least 80 percent of its gross income for the taxable year is personal holding company income as defined in section 543 of the Code, such as interest and dividends from debentures and stock acquired from small business concerns under the provisions of the Small Business Investment Act of 1958.

The purpose of the Small Business Investment Act of 1958 is to establish a program to stimulate and supplement the flow of private

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[1] Based on Technical Information Releases 99 and 110, dated October 2, 1958, and November 21, 1958, respectively.

equity capital and long-term loans to small business concerns. The Act provides for the operation of small business investment companies organized to provide such capital through the purchase of debenture bonds convertible into the stock of the borrowing corporation. Thus, much of the income of a small business investment company will consist of interest and dividends.

Section 541 of the Code, in general, imposes a personal holding company tax on the undistributed personal holding company income of any corporation 80 percent of the income of which consists of personal holding company income, as defined in section 543 of the Code, if at any time during the last half of the taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals. Among the types of income which are defined by section 543 of the Code as personal holding company income are dividends and interest.

Three specific provisions dealing with small business investment companies were added to the Internal Revenue Code of 1954 by the Technical Amendments Act of 1958, 72 Stat. 1606. One of two new sections, section 1242, provides, in effect, that investors in the stock of small business investment companies shall be allowed an ordinary loss deduction, rather than a capital loss, on losses from the worthlessness or sale of such stock. A small business investment company is allowed, under the provisions of the second new section, section 1243 of the Code, an ordinary loss deduction, rather than a capital loss deduction, on losses sustained through the worthlessness or sale of convertible debenture, or stock converted therefrom, acquired on the lending of equity and long-term capital to small business. The third feature relating to these companies is embodied in amended section 243 of the Code, which allows such a company a deduction for 100 percent of the dividends received from a taxable domestic corporation, other than dividends on preferred stock of a public utility company for which deduction under section 244 of the Code is allowable, instead of the 85 percent deduction generally allowed corporate taxpayers.

A small business investment company, like all corporations, may be subject to the provisions of section 541 of the Code, unless it is specifically excluded from those provisions. Since none of the additions and changes to the Code, relating to small business investment companies, made by the Technical Amendments Act of 1958 specifically excluded such companies from the personal holding company tax, they are subject to that tax if they are otherwise within the provisions of sections 541 through 547 of the Code.

Accordingly, it is held that a small business investment company is subject to the personal holding company tax under section 541 of the Code, if at least 80 percent of its gross income for the taxable year is personal holding company income as defined in section 543 of the Code, such as interest and dividends from debentures and stock acquired in small business concerns under the provisions of the Small Business Investment Act of 1958, and if at any time during the last half of the taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals.

SECTION 542.—DEFINITION OF PERSONAL HOLDING COMPANY

26 CFR 1.542–1: General rule.

Small business investment company at least 80 percent of whose income consists of interest and dividends. See Rev. Rul. 59–69, page 142.

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26 CFR 1.542–3: Stock ownership requirement.

Stock in a corporation owned by collateral relatives for purpose of applying stock ownership requirements of a personal holding company. See Rev. Rul. 59–43, page 146.

SECTION 543.—PERSONAL HOLDING COMPANY INCOME

26 CFR 1.543–1: Personal holding company income. Rev. Rul. 59–172

> Insurance commissions received by an authorized corporate agent of various insurance companies from the writing of insurance policies by two officer-shareholders of the corporation do not qualify as personal holding company income within the meaning of section 543(a)(5) of the Internal Revenue Code of 1954, since on the facts presented in this case such individuals were not named or designated in the agency contracts and the insurance companies did not reserve the right to name or designate the individuals who were to perform such services.

Advice has been requested whether commissions received by a corporation as an authorized agent of various insurance companies, where the policies are written by two principal officer-shareholders not named or designated in the agency contracts, constitute personal holding company income for Federal income tax purposes.

X corporation is engaged in the business of writing fire and casulty insurance policies as agent for various insurers. Two individuals, *A* and *B*, who are officers of the corporation, own, respectively, 73 percent and 27 percent of the stock of the corporation. Under the laws of the state in which the corporation operates, only an individual may be licensed as an insurance broker or agent. Accordingly, *A* and *B* are individually licensed and devote their full time to the selling of insurance as employees of the corporation. One other employee who is neither a stockholder nor an officer of the corporation is licensed as an insurance solicitor. He handles routine small policy applications which are made directly at the offices of the corporation. All agency agreements are executed on behalf of the corporation. Every policy, including those written by the licensed officers, is issued under the name of the corporation as agent for the particular company involved. The insurance commissions earned from the sale of the insurance are payable to the corporation. The agency contract, which is typical of the contracts between the corporation and the insurance companies, neither names nor describes the individual in the corporation who is to perform the selling services. Furthermore, the

contract does not indicate that any person other than the corporation has the right to name or designate such individual.

Section 543(a) of the Internal Revenue Code of 1954, which defines personal holding company income, provides, in part, as follows:

> (a) GENERAL RULE.—For purposes of this subtitle, the term "personal holding company income" means the portion of the gross income which consists of:
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> * * * * * * *
>
> (5) PERSONAL SERVICE CONTRACTS.—
>
> (A) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and
>
> (B) amounts received from the sale or other disposition of such a contract.
>
> This paragraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

The instant situation is distinguishable on the facts from that in Revenue Ruling 54–34, C. B. 1954–1, 175, which held that commissions received by a corporation engaged in the business of selling fire insurance pursuant to certain agency agreements constitute personal holding company income. There, the corporation was the assignee of agency agreements to which a father and a son were parties. The father owned more than 25 percent in value of the outstanding stock of the corporation. The fire insurance company with which the contract was made had "not relinquished its right to name the individual who may accept insurance risks in its behalf under the contract." The contracts between *X* corporation in this case and the insurance companies contain no such provision.

The personal services involved in the instant agency contracts are not unique and might conceivably be substituted without apparent effect on the contractual relationship with the insurance companies represented by the agency. Thus, additional licensed agents could be brought into the agency. There is no contract provision enabling the insurance companies to cancel the agreement if additional agents are brought in, or even in the case of substitution for the principal shareholders, which would occur upon transfer of the agency; and, it is assumed for purposes of this ruling that a standard cancellation clause which the contract contains was not included for the purpose of enabling the company to cancel upon the occurrence of such events. Therefore, the principal participants of the agency need not be limited to or even include the two shareholders.

Accordingly, it is held that insurance commissions received by an authorized corporate agent of various insurance companies from the writing of insurance policies by two officer-shareholders of the corporation do not qualify as personal holding company income within the meaning of section 543(a)(5) of the Code, since, on the facts presented in this case, such individuals were not named or designated

in the agency contracts and the insurance companies did not reserve the right to name or designate the individuals who were to perform such services.

Small business investment company at least 80 percent of whose income consists of interest and dividends. See Rev. Rul. 59–69, page 142.

SECTION 544.—RULES FOR DETERMINING STOCK OWNERSHIP

26 CFR 1.544–3: Constructive ownership by reason of family and partnership ownership.
(Also Sections 542, 552; 1.542–3, 1.552–3.)
(Also Part II, Section 24(b); Regulations 118, Section 39.24(b)–1.)

Rev. Rul. 59–43

In determining whether a corporation is a personal holding company or a foreign personal holding company, insofar as such determination is based on the stock ownership requirement of section 542(a)(2) of the Internal Revenue Code of 1954, an individual shall be considered as owning the stock owned, directly or indirectly, by or for his family, which, under section 544(a)(2) of the Code, includes *only* his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants. Under section 554 of the Code, the rules provided in section 544 of the Code, with regard to the stock ownership requirement, are also applicable in determining whether a foreign corporation is a foreign personal holding company. *Held*, stock in a domestic or foreign corporation, owned by a relative other than one specified in section 544(a)(2) of the Code, such as an aunt or an uncle of an individual stockholder in such corporation, may not be considered as owned by such individual stockholder under the constructive stock ownership rule in determining the personal holding company status of a foreign or domestic corporation. See *Graves Brothers Company* v. *Commissioner*, 17 T.C. 1499, acquiescence, C. B. 1953–1, 4. This principle is equally applicable in determining whether a foreign corporation satisfies the stock ownership requirement of a foreign personal holding company within the meaning of section 552(a)(2) of the Code, where the facts are otherwise identical.

The number of shareholders for the purpose of determining whether a corporation is a small business corporation as defined in section 1371 of the Internal Revenue Code of 1954 where the shareholders are members of the same family. See Rev. Rul. 59–187, page 224.

SECTION 545.—UNDISTRIBUTED PERSONAL HOLDING COMPANY INCOME

26 CFR 1.545: Statutory provisions; undistributed personal holding company income. T. D. 6376[1]

(Also Section 556; 1.556.)

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Amendment of regulations relating to the determination of undistributed personal holding company income and undistributed foreign personal holding company income to reflect the amendments made by sections 32 and 33 of the Technical Amendments Act of 1958 (72 Stat. 1631 and 1632).

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

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

On February 18, 1959, notice of proposed rule making regarding the amendment of the Income Tax Regulations (26 CFR Part 1) for taxable years beginning after December 31, 1953, and ending after August 16, 1954, to reflect the changes made by sections 32 and 33 of the Technical Amendments Act of 1958 (72 Stat. 1631 and 1632), was published in the Federal Register (24 F.R. 1253). No objection to the rules proposed having been received during the 30-day period prescribed in the notice, the amendments as so published are hereby adopted.

PARAGRAPH 1. Section 1.545 is amended—

(A) By striking out section 545(b)(2) and inserting in lieu thereof the following:

> (2) CHARITABLE CONTRIBUTIONS.—The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A) and (B) shall apply, and section 170(b)(2) shall not apply. For purposes of this paragraph, the term "adjusted gross income" when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the 5-percent limitation) provided in the first sentence of section 170(b)(2) and without deduction of the amount disallowed under paragraph (8) of this subsection.

(B) By inserting before the period at the end of section 545(b)(4) "computed without the deductions provided in part VIII (except section 248) of subchapter B".

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

[Sec. 545 as amended by sec. 32, Technical Amendments Act 1958 (72 Stat. 1631)]

As so amended section 545(b)(2) and (4) and the historical note in § 1.545 will read as follows:

§ 1.545 STATUTORY PROVISIONS; UNDISTRIBUTED PERSONAL HOLDING COMPANY INCOME.

SEC. 545. UNDISTRIBUTED PERSONAL HOLDING COMPANY INCOME. * * *

(b) ADJUSTMENTS TO TAXABLE INCOME.—For the purposes of subsection (a), the taxable income shall be adjusted as follows:

* * * * * * *

[1] 24 F.R. 3693.

(2) CHARITABLE CONTRIBUTIONS.—The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1) (A) and (B) shall apply, and section 170(b)(2) shall not apply. For purposes of this paragraph, the term "adjusted gross income" when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the 5-percent limitation) provided in the first sentence of section 170(b)(2) and without deduction of the amount disallowed under paragraph (8) of this subsection.

* * * * * * *

(4) NET OPERATING LOSS.—The net operating loss deduction provided in section 172 shall not be allowed, but there shall be allowed as a deduction the amount of the net operating loss (as defined in section 172(c)) for the preceding taxable year computed without the deductions provided in part VIII (except section 248) of subchapter B.

* * * * * * *

[Sec. 545 as amended by sec. 32, Technical Amendments Act 1958 (72 Stat. 1631)]

PAR. 2. Paragraphs (b) and (d) of § 1.545–2 are amended to read as follows:

§ 1.545–2 ADJUSTMENTS TO TAXABLE INCOME.

* * * * * * *

(b) *Charitable contributions.*—(1) Section 545(b)(2) provides that, in computing the deduction for charitable contributions for purposes of determining the undistributed personal holding company income of a corporation, the limitations in section 170(b)(1) (A) and (B) (relating to charitable contributions by individuals) shall apply and section 170(b)(2) (relating to charitable contributions by corporations) shall not apply.

(2) Although the limitations of section 170(b)(1) (A) and (B) are 10 and 20 percent, respectively, of the individual's adjusted gross income, the limitations are applied for purposes of section 545(b)(2) by using 10 and 20 percent, respectively, of the corporation's taxable income as adjusted for purposes of section 170(b)(2) (that is, the same amount of taxable income to which the 5-percent limitation applied). Thus, the term "adjusted gross income" when used in section 170(b)(1) means the corporation's taxable income computed with the adjustments (other than the 5-percent limitation) provided in the first sentence of section 170(b)(2). However, a further adjustment for this purpose is that the taxable income shall also be computed without the deduction of the amount disallowed under section 545(b)(8) (relating to expenses and depreciation applicable to property of the taxpayer). The carryover of charitable contributions made in a prior year, otherwise allowable as a deduction in computing taxable income to the extent provided in section 170(b)(2), shall not be allowed as a deduction in computing undistributed personal holding company income for any taxable year.

(3) See the regulations under section 170(b)(1) (A) and (B) with respect to the charitable contributions to which the 10-percent limitation is applicable and the charitable contributions to which the 20-percent limitation is applicable.

* * * * * * *

(d) *Net operating loss.*—The net operating loss deduction provided in section 172 is not allowed for purposes of the computation of undistributed personal holding company income. For purposes of such a computation, however, there is allowed as a deduction the amount of the net operating loss (as defined in section 172(c)) for the preceding taxable year, except that, in computing undistributed personal holding company income for a taxable year beginning after December 31, 1957, the amount of such net operating loss shall be computed without the deductions provided in part VIII (except section 248, relating to organizational expenditures) of subchapter B of chapter 1 of the Code.

* * * * * * *

PAR. 3. Section 1.556 is amended—

(A) By striking out the first sentence of section 556(b)(2) and inserting in lieu thereof the following:

The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A) and (B) shall apply, and section 170(b)(2) shall not apply.

(B) By striking out "the taxable income computed with the adjustments provided in section 170(b)(2)" appearing in the second sentence of section 556(b)(2) and inserting in lieu thereof "the taxable income computed with the adjustments (other than the 5-percent limitation) provided in the first sentence of section 170(b)(2)".

(C) By striking out "sections 242 and 248" appearing in section 556(b)(3) and inserting in lieu thereof "section 248".

(D) By inserting before the period at the end of section 556(b)(4) "computed without the deductions provided in part VIII (except section 248) of subchapter B".

(E) By adding the following historical note at the end thereof:

[Sec. 556 as amended by sec. 33, Technical Amendments Act 1958 (72 Stat. 1632)]

As so amended section 556(b)(2), (3), and (4) and the historical note in § 1.556 will be as follows:

§ 1.556 STATUTORY PROVISIONS; UNDISTRIBUTED FOREIGN PERSONAL HOLDING COMPANY INCOME.

SEC. 556. UNDISTRIBUTED FOREIGN PERSONAL HOLDING COMPANY INCOME. * * *

(b) ADJUSTMENTS TO TAXABLE INCOME.—For the purposes of subsection (a), the taxable income shall be adjusted as follows:

* * * * * * *

(2) CHARITABLE CONTRIBUTIONS.—The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A) and (B) shall apply, and section 170(b)(2) shall not apply. For purposes of this paragraph, the term "adjusted gross income" when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the 5-percent limitation) provided in the first sentence of section 170(b)(2) and without the deduction of the amounts disallowed under paragraphs (5) and (6) of this subsection or the inclusion in gross income of the amounts includible therein as dividends by reason of the application of the provisions of section 555(b) (relating to the inclusion in gross income of a foreign personal holding company of its distributive share of the undistributed foreign personal holding company income of another company in which it is a shareholder).

(3) SPECIAL DEDUCTIONS DISALLOWED.—The special deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.) shall not be allowed.

(4) NET OPERATING LOSS.—The net operating loss deduction provided in section 172 shall not be allowed, but there shall be allowed as a deduction the amount of the net operating loss (as defined in section 172(c)) for the preceding taxable year computed without the deductions provided in part VIII (except section 248) of subchapter B.

* * * * * * *

[Sec. 556 as amended by sec. 33, Technical Amendments Act 1958 (72 Stat. 1632)]

PAR. 4. Paragraphs (b), (c), and (d) of § 1.556–2 are amended to read as follows:

§ 1.556–2 ADJUSTMENTS TO TAXABLE INCOME.

* * * * * * *

(b) *Charitable contributions.*—(1) Section 556(b)(2) provides that, in computing the deduction for charitable contributions for purposes of determining the undistributed foreign personal holding company income of a corporation, the limitations in section 170(b)(1) (A) and (B) (relating to charitable contributions by individuals) shall apply and section 170(b)(2) (relating to charitable contributions by corporations) shall not apply.

(2) Although the limitations of section 170(b)(1) (A) and (B) are 10 and 20 percent, respectively, of the individual's adjusted gross income, the limitations are applied for purposes of section 556(b)(2) by using 10 and 20 percent, respectively, of the corporation's taxable income as adjusted for purposes of section 170(b)(2) (that is, the same amount of taxable income to which the 5-percent limitation applied). Thus, the term "adjusted gross income" when used in section 170(b)(1) means the corporation's taxable income computed with the adjustments (other than the 5-percent limitation) provided in the first sentence of section 170(b)(2). However, a further adjustment for this purpose is that the taxable income shall also be computed without the deduction of the amount disallowed under section 556(b)(5) (relating to expenses and depreciation applicable to property of the taxpayer), and section 556(b)(6) (relating to taxes and contributions to pension trusts), and without the inclusion of the amounts includible as dividends under section 555(b) (relating to the inclusion in gross income of a foreign personal holding company of its distributive share of the undistributed foreign personal holding company income of another company in which it is a shareholder). The carryover of charitable contributions made in a prior year, otherwise allowable as a deduction in computing taxable income to the extent provided in section 170(b)(2), shall not be allowed as a deduction in computing undistributed foreign personal holding company income for any taxable year.

(3) See the regulations under section 170(b)(1) (A) and (B) with respect to the charitable contributions to which the 10-percent limitation is applicable and the charitable contributions to which the 20-percent limitation is applicable.

(c) *Special deductions disallowed.*—Part VIII of subchapter B of chapter 1 of the Code allows corporations special deductions in computing taxable income for such matters as partially tax-exempt interest, certain dividends received, dividends paid on certain preferred stock of public utilities, organizational expenses, etc. See section 241. For purposes of computing undistributed foreign personal holding company income, such special deductions, except the deduction provided by section 248 (relating to organizational expenditures) and, with respect to such a computation for a taxable year ending before January 1, 1958, the deduction provided by section 242 (relating to partially tax-exempt interest), shall be disallowed.

(d) *Net operating loss.*—The net operating loss deduction provided in section 172 is not allowed for purposes of the computation of undistributed foreign personal holding company income. For purposes of such a computation, however, there is allowed as a deduction the amount of the net operating loss (as defined in section 172(c)) for the preceding taxable year, except that, in computing undistributed foreign personal holding company income for a taxable year ending after December 31, 1957, the amount of such net operating loss shall be computed without the deductions provided in part VIII (except section 248, relating to organizational expenditures) of subchapter B of chapter 1 of the Code.

* * * * * * *

PAR. 5. The following new section is inserted immediately after § 1.557:

§ 1.558 STATUTORY PROVISIONS; RETURNS OF OFFICERS, DIRECTORS, AND SHAREHOLDERS OF FOREIGN PERSONAL HOLDING COMPANIES.

SEC. 558. RETURNS OF OFFICERS, DIRECTORS, AND SHAREHOLDERS OF FOREIGN PERSONAL HOLDING COMPANIES.

For provisions relating to returns of officers, directors, and shareholders of foreign personal holding companies, see section 6035.

[Sec. 558 as added by sec. 33(d), Technical Amendments Act 1958 (72 Stat. 1632)]

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).)

CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

Approved May 1, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on May 6, 1959, 8:49 a.m., and published in the issue of the Federal Register for May 7, 1959, 24 F.R. 3693.)

SECTION 547.—DEDUCTIONS FOR DEFICIENCY DIVIDENDS

Procedure as to the suspension of assessment of personal holding company tax deficiencies in order to provide taxpayers with sufficient time for making payments of deficiency dividends where an agreement has been signed under the provisions of section 547(c)(3) of the 1954 Code. See Rev. Proc. 59–1, page 799.

PART III.—FOREIGN PERSONAL HOLDING COMPANIES

SECTION 552.—DEFINITION OF FOREIGN PERSONAL HOLDING COMPANY

26 CFR 1.552–3: Stock ownership requirement.

Stock in a foreign corporation owned by collateral relatives for purpose of applying stock ownership requirements of a foreign personal holding company. See Rev. Rul. 59–43, page 146.

SECTION 556.—UNDISTRIBUTED FOREIGN PERSONAL HOLDING COMPANY INCOME

26 CFR 1.556: Statutory provisions; undistributed foreign personal holding company income.

Amended regulations under the Internal Revenue Code of 1954 relating to adjustments to taxable income with respect to undistributed foreign personal holding company income. See T. D. 6376, page 147.

SUBCHAPTER H.—BANKING INSTITUTIONS

PART I.—RULES OF GENERAL APPLICATION TO BANKING INSTITUTIONS

SECTION 582.—BAD DEBT AND LOSS DEDUCTION WITH RESPECT TO SECURITIES HELD BY BANKS

26 CFR 1.582–1: Bad debt and loss deduction with respect to securities held by banks. T.D. 6362 [1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Statutory provisions of the Income Tax Regulations amended to conform to the amendments made by sections 34, 55, and 56 of the Technical Amendments Act of 1958.

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

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

In order to conform the Income Tax Regulations (26 CFR Part 1) to amendments made by sections 34, 55, and 56 of the Technical Amendments Act of 1958 (72 Stat. 1632, 1645), such provisions are amended as follows:

PARAGRAPH 1. Section 1.582 is amended—

(A) By striking out the words "with interest coupons or in registered form," in section 582(c).

(B) By adding at the end of section 582 the following historical note:

[Sec. 582 as amended by sec. 34, Technical Amendments Act of 1958 (72 Stat. 1632)]

PAR. 2. Paragraph (c) of § 1.582–1 is amended by striking "with interest coupons or in registered form,".

PAR. 3. Section 1.1237 is amended as follows:

(A) By striking out "or, in the same taxable year" immediately following the parenthetical clause in section 1237(a)(1) and by inserting in lieu thereof "and, in the same taxable year".

(B) By amending the historical footnote to read as follows:

[Sec. 1237 as amended by Act of April 27, 1956 (Pub. Law 495, 84th Cong., 70 Stat. 118), and sec. 55, Technical Amendments Act of 1958 (72 Stat. 1645)]

PAR. 4. In § 1.1239, immediately after subsection (b) of section 1239, the following is inserted:

(c) SECTION NOT APPLICABLE WITH RESPECT TO SALES OR EXCHANGES MADE ON OR BEFORE MAY 3, 1951.—This section shall apply only in the case of a sale or exchange made after May 3, 1951.

[Sec. 1239 as amended by sec. 56, Technical Amendments Act of 1958 (72 Stat. 1645)]

Because this Treasury Decision makes no changes except with respect to the statutory provisions of regulations, which changes are necessary to conform such regulations to amendments of the respec-

[1] 24 F.R. 1178.

tive amendatory statutes, 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 that Act.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

DANA LATHAM,
Commissioner of Internal Revenue.

Approved February 11, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on February 16, 1959, 8:47 a.m., and published in the issue of the Federal Register for February 17, 1959, 24 F.R. 1178.)

SUBCHAPTER I.—NATURAL RESOURCES

PART I.—DEDUCTIONS

SECTION 613.—PERCENTAGE DEPLETION

26 CFR 1.613–6: Application of percentage depletion rates provided in section 613(b) to certain taxable years ending in 1954. T.D. 6361[1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Regulations under section 613(d) of the Internal Revenue Code of 1954, relating to percentage depletion rates for certain taxable years ending in 1954.

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

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

Regulations are hereby prescribed under section 613(d) of the Internal Revenue Code of 1954 as added by section 36 of the Technical Amendments Act of 1958 (72 Stat. 1633). Concurrently with the adoption of these regulations, a notice of proposed rulemaking is being published setting forth in tentative form regulations modifying the definition of certain minerals appearing in § 39.23(m)–5(b) of Regulations 118 (26 CFR (1939) Part 39) and § 29.23(m)–5 of Regulations 111 (26 CFR (1939) Part 29).[2] Since these proposed modifications may affect the applicable depletion rates for such minerals, they should be considered in determining whether or not the election provided for in section 613(d) should be made. In some cases, this election must be exercised not later than March 2, 1959.

[1] 24 F.R. 967.
[2] 24 F.R. 975.

§ 1.613 Statutory Provisions; Percentage Depletion.

SEC. 613. PERCENTAGE DEPLETION.

(a) General Rule.—In the case of the mines, wells, and other natural deposits listed in subsection (b), the allowance for depletion under section 611 shall be the percentage, specified in subsection (b), of the gross income from the property, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 percent of the taxpayer's taxable income from the property (computed without allowance for depletion). In no case shall the allowance for depletion under section 611 be less than it would be if computed without reference to this section.

(b) Percentage Depletion Rates.—The mines, wells, and other natural deposits, and the percentages, referred to in subsection (a) are as follows:

(1) 27½ percent—oil and gas wells.

(2) 23 percent—

(A) Sulfur and uranium; and

(B) If from deposits in the United States—Anorthosite (to the extent that alumina and aluminum compounds are extracted therefrom), asbestos, bauxite, beryl, celestite, chromite, corundum, fluorspar, graphite, ilmenite, kyanite, mica, olivine, quartz crystals (radio grade), rutile, block steatite talc, and zircon, and ores of the following metals: antimony, bismuth, cadmium, cobalt, columbium, lead, lithium, manganese, mercury, nickel, platinum and platinum group metals, tantalum, thorium, tin, titanium, tungsten, vanadium, and zinc.

(3) 15 percent—ball clay, bentonite, china clay, sagger clay, metal mines (if paragraph (2)(B) does not apply), rock asphalt, and vermiculite.

(4) 10 percent—asbestos (if paragraph (2)(B) does not apply), brucite, coal, lignite, perlite, sodium chloride, and wollastonite.

(5) 5 percent—

(A) Brick and tile clay, gravel, mollusk shells (including clam shells and oyster shells), peat, pumice, sand, scoria, shale, and stone, except stone described in paragraph (6); and

(B) If from brine wells—bromine, calcium chloride, and magnesium chloride.

(6) 15 percent—all other minerals (including, but not limited to, aplite, barite, borax, calcium carbonates, refractory and fire clay, diatomaceous earth, dolomite, feldspar, fullers earth, garnet, gilsonite, granite, limestone, magnesite, magnesium carbonates, marble, phosphate rock, potash, quartzite, slate, soapstone, stone (used or sold for use by the mine owner or operator as dimension stone or ornamental stone), thenardite, tripoli, trona, and (if paragraph (2)(B) does not apply) bauxite, beryl, flake graphite, fluorspar, lepidolite, mica, spodumene, and talc, including pyrophyllite), except that, unless sold on bid in direct competition with a bona fide bid to sell a mineral listed in paragraph (3), the percentage shall be 5 percent for any such other mineral when used, or sold for use, by the mine owner or operator as rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes. For purposes of this paragraph, the term "all other minerals" does not include—

(A) Soil, sod, dirt, turf, water, or mosses; or

(B) Minerals from sea water, the air, or similar inexhaustible sources.

(c) Definition of Gross Income From Property.—For purposes of this section—

(1) gross income from the property.—The term "gross income from the property" means, in the case of a property other than an oil or gas well, the gross income from mining.

(2) mining.—The term "mining" includes not merely the extraction of the ores or minerals from the ground but also the ordinary treatment processes normally applied by mine owners or operators

in order to obtain the commercially marketable mineral product or products, and so much of the transportation of ores or minerals whether or not by common carrier) from the point of extraction from the ground to the plants or mills in which the ordinary treatment processes are applied thereto as is not in excess of 50 miles unless the Secretary or his delegate finds that the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills.

(3) EXTRACTION OF THE ORES OR MINERALS FROM THE GROUND.—The term "extraction of the ores or minerals from the ground" includes the extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining. The preceding sentence shall not apply to any such extraction of the mineral or ore by a purchaser of such waste or residue or of the rights to extract ores or minerals therefrom.

(4) ORDINARY TREATMENT PROCESSES.—The term "ordinary treatment processes" includes the following:

(A) In the case of coal—cleaning, breaking, sizing, dust allaying, treatment to prevent freezing, and loading for shipment;

(B) In the case of sulfur recovered by the Frasch process—pumping to vats, cooling, breaking, and loading for shipment;

(C) In the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and minerals which are customarily sold in the form of a crude mineral product—sorting, concentrating, and sintering to bring to shipment grade and form, and loading for shipment;

(D) In the case of lead, zinc, copper, gold, silver, or fluorspar ores, potash, and ores which are not customarily sold in the form of the crude mineral product—crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization, precipitation (but not including as an ordinary treatment process electrolytic deposition, roasting, thermal or electric smelting, or refining), or by substantially equivalent processes or combination of processes used in the separation or extraction of the product or products from the ore, including the furnacing of quicksilver ores; and

(E) The pulverization of talc, the burning of magnesite, and the sintering and nodulizing of phosphate rock.

(d) APPLICATION OF PERCENTAGE DEPLETION RATES TO CERTAIN TAXABLE YEARS ENDING IN 1954—

(1) GENERAL RULE.—At the election of the taxpayer in respect of any property (within the meaning of the Internal Revenue Code of 1939), the percentage specified in subsection (b) in the case of any mine, well, or other natural deposit listed in such subsection shall apply to a taxable year ending after December 31, 1953, to which the Internal Revenue Code of 1939 applies.

(2) METHOD OF COMPUTATION.—The allowance for depletion, in respect of any property for which an election is made under paragraph (1) for any taxable year, shall be an amount equal to the sum of—

(A) That portion of a tentative allowance, computed under the Internal Revenue Code of 1939 without regard to paragraph (1) of this subsection, which the number of days in such taxable year before January 1, 1954, bears to the total number of days in such taxable year; plus

(B) That portion of a tentative allowance, computed under the Internal Revenue Code of 1939 (as modified solely by the application of paragraph (1) of this subsection), which the number of days in such taxable year after December 31, 1953, bears to the total number of days in such taxable year.

[Sec. 613 as amended by sec. 36, Technical Amendments Act of 1958 (72 Stat. 1633)]

§ 1.613–6 Applications of Percentage Depletion Rates Provided in Section 613(b) to Certain Taxable Years Ending in 1954.—

(a) *Election of taxpayer*—In the case of any taxable year ending after December 31, 1953, to which the Internal Revenue Code of 1939 is applicable, the taxpayer may elect in accordance with section 613(d) and this section to apply the appropriate percentage depletion rate specified in section 613 in respect of any mineral property (within the meaning of the 1939 Code). In the case of mines, wells, or other natural deposits listed in section 613(b), the election may be made by the taxpayer irrespective of whether his depletion allowance with respect to the property for the taxable year was computed upon the basis of cost, discovery value, or upon a percentage of gross income from the property. Once made, the election shall be irrevocable with respect to the property for which it is exercised. The election may be made for any mineral property of the taxpayer and need not be made for all such properties. "Gross income from the property" and "net income from the property" shall have the same meaning as those terms are used in § 39.23(m)–1 of Regulations 118 (26 CFR (1939) Part 39).

(b) *Computation of depletion allowance.*—The depletion allowance for any taxable year with respect to any property for which the taxpayer makes the election under section 613(d) shall be an amount equal to the sum of—

(1) That portion of a tentative allowance, computed under the provisions of the Internal Revenue Code of 1939 (without regard to paragraph (1) of section 613(d)), which the number of days in the taxable year prior to January 1, 1954, bears to the total number of days in such taxable year; plus

(2) That portion of a tentative allowance, computed by using the appropriate percentage depletion rate specified in section 613(b) (but otherwise computed under the provisions of the Internal Revenue Code of 1939), which the number of days in the taxable year after December 31, 1953, bears to the total number of days in such taxable year.

In the case of any taxable year beginning after December 31, 1953, and ending before August 17, 1954, the depletion allowance with respect to any property for which the taxpayer makes the election under section 613(d) shall be computed under the provisions of the Internal Revenue Code of 1939, except that the appropriate percentage depletion rate specified in section 613(b) shall be used. In making such computation, "gross income from the property" and "net income from the property" shall be determined in the same manner as specified in paragraph (a) of this section.

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). A is a taxpayer who reports income on the basis of a taxable year ending June 30. For the taxable year ended June 30, 1954, A had gross income from a uranium property in the amount of $100,000 and his depletion allowance was computed with reference to percentage depletion. His net income from this property, for purposes of limiting the depletion allowance, was $40,000. The 15-percent rate of depletion provided for in the Internal Revenue Code of 1939 for metal mines resulted in a depletion allowance for the taxable year of $15,000. Percentage depletion computed with reference to

the 23-percent rate provided for uranium under section 613(b) is $23,000 ($100,000 times 23 percent). However, the allowance computed on this basis is limited to $20,000 (50 percent of A's net income from the property). If A exercises the election provided for in section 613(d) his depletion allowance for the taxable year is the aggregate of $7,561.64 (84/365 times $15,000) plus $9,917.80 (181/365 times $20,000) or $17,479.44.

Example (2). Assume the same facts as in example (1) except that A's depletion allowance was computed on the basis of cost and amounted to $17,500. If the election is made, A's allowance for the taxable year is the aggregate of $8,821.92 (184/365 times $17,500) plus $9,917.80 (181/365 times $20,000) or $18,739.72.

(d) *Requirement for making election.*—(1) The election under section 613(d) shall be made by filing a statement with the district director with whom the income tax return was filed for the taxable year to which the election is applicable. Such statement shall indicate that an election is being made under section 613(d), shall contain a recomputation of the depletion allowance and the tax liability for all taxable years affected by the exercise of the election, and shall be accompanied either by a claim for refund or credit or by an amended return or returns, whichever is appropriate.

(2) If the treatment of any item upon which a tax previously determined was based, or if the application of any provisions of the internal revenue laws with respect to such tax, depends upon the amount of income (e.g., charitable contributions, foreign tax credit, dividends received credit, and medical expenses), readjustment in these particulars will be necessary as part of any recomputation in conformity with the change in the amount of the income which results solely from the making of the election under section 613(d).

(e) *Administrative provisions; etc.*—(1) Section 36(b) of the Technical Amendments Act of 1958 provides as follows:

> (b) STATUTE OF LIMITATIONS, ETC.; INTEREST.—If refund or credit of any overpayment resulting from the application of the amendment made by subsection (a) of this section is prevented on the date of the enactment of this Act, or within 6 months from such date, by the operation of any law or rule of law (other than section 3760 of the Internal Revenue Code of 1939 or section 7121 of the Internal Revenue Code of 1954, relating to closing agreements, and other than section 3761 of the Internal Revenue Code of 1939 or section 7122 of the Internal Revenue Code of 1954, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within 6 months from such date. No interest shall be paid on any overpayment resulting from the application of the amendment made by subsection (a) of this section.

(2) If refund or credit of any overpayment resulting from the application of section 613(d) is prevented on September 2, 1958, or on or before March 2, 1959, by the operation of any law or rule of law (other than section 3760 of the Internal Revenue Code of 1939 or section 7121 of the Internal Revenue Code of 1954, relating to closing agreements, and other than section 3761 of the Internal Revenue Code of 1939 or section 7122 of the Internal Revenue Code of 1954, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed on or before March 2, 1959. If such refund or credit is not prevented on or before March 2, 1959, the time for filing claim therefor shall be governed by the rules of law generally applicable to credits and refunds.

(3) The amount of any refund or credit which is allowable by reason of section 613(d) shall not exceed the decrease in income tax liability resulting solely from the application of the percentage rates specified in section 613(b). No interest shall be allowed or paid on any overpayment resulting from the application of section 613(d).

(4) For purposes of this section the "decrease in income tax liability" shall be the amount by which the tax previously determined (as defined in section 3801(d) of the Internal Revenue Code of 1939) exceeds the tax as recomputed under section 613(d) and this section.

(f) *Adjustment to basis.*—Proper adjustment shall be made to the basis of any property as required by section 113(b)(1) of the Internal Revenue Code of 1939 and § 39.113(b)(1)–1(c) of Regulations 118 (26 CFR (1939) Part 39) to reflect any change in the depletion allowance resulting from the application of section 613(d) of the Internal Revenue Code of 1954.

Because certain taxpayers to which this Treasury Decision applies must file a claim for credit or refund on or before March 2, 1959, it is found impracticable to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

DANA LATHAM,
Commissioner of Internal Revenue.

Approved February 5, 1959.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on February 9, 1959, 8:51 a.m., and published in the issue of the Federal Register for February 10, 1959, 24 F.R. 967.)

SUBCHAPTER J.—ESTATES, TRUSTS, BENEFICIARIES, AND DECEDENTS

PART I.—ESTATES, TRUSTS, AND BENEFICIARIES

Subpart A.—General Rules for Taxation of Estates and Trusts

SECTION 641.—IMPOSITION OF TAX

26 CFR 1.641(a)–2: Gross income of estates and trusts. Rev. Rul. 59–99

Where, in a court proceeding under a Michigan statute, a court-appointed trustee receives the proceeds of a sale of real estate (the court permitting the life tenant in the first instance to sell the property), such a trustee should report the gain from the sale on a U.S. Fiduciary Income Tax Return, Form 1041, and pay the tax thereon in the year of the sale, since section 641(a)(1) of the Internal Revenue Code of 1954 comprehends income realized on a sale of property when such income is held for future distribution.

Advice has been requested as to whether the gain from the sale of real estate must be reported in the year of sale and, if so, whether

the life tenant or the court-appointed trustee should be required to pay the tax under the circumstances described below.

An individual received, under the will of his father, a life estate in a farm located in the State of Michigan. The remainder in the estate was given by the will to the son's surviving children. The farm has barely returned sufficient income to pay the real estate taxes.

The laws of Michigan provide that a life tenant in land may file a petition in a chancery court of the county in which land is situated asking for authority to sell the property, have the court appoint a trustee to take charge of the proceeds received from the sale, and have such proceeds reinvested by the trustee under the order of the court.

In the instant case, the life tenant filed such a petition and the court entered an order authorizing him to sell the property. After the sale, the court appointed a trustee to receive the funds from the sale of the farm.

Section 641 of the Internal Revenue Code of 1954, relating to the imposition of tax on the income of estates and trusts, provides, in part as follows:

> (a) APPLICATION OF TAX.—The taxes imposed by this chapter on individuals shall apply to the taxable income of estates or of any kind of property held in trust, including—
>
> (1) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust; * * *

It has been held under similar circumstances that a court-appointed trustee charged with reinvesting the funds, paying the income therefrom to a life tenant, and finally distributing the principal to the remaindermen (unascertainable at the time of filing of the petition) should file and pay the tax on the gain, if any, from the sale of the property. See *United States* v. *National City Bank of New York, et al.*, 21 Fed. Supp. 791. In that case, the court held that the term "including" as used in section 219 of the Revenue Act of 1926, which is similar to section 641 of the 1954 Code, was a term of enlargement and that, therefore, the section required the person holding the income for future distribution under the terms of the will or trust to pay the tax, regardless of whether the trust existed at the time of sale from which the income was realized. Thus, the section was held to apply both to the income of an estate or trust and income held for future distribution under the terms of a will or trust. The income being held in the instant case is considered to be income held for future distribution under the terms of the will. The effect of section 641(a)(1) of the Code is to tax the holder of such property as if such holder was a trustee or fiduciary regardless of whether the local law constituted the holder of the income as a trustee or fiduciary.

In view of the foregoing, it is held in the instant case that the trustee should report the gain from the sale of the property on a U.S. Fiduciary Income Tax Return, Form 1041, and pay the tax due thereon in the year of sale. Payment of the tax should not be made by the life tenant nor should it await distribution of the estate to the remaindermen.

(Also Section 6012; 1.6012-3.) Rev. Rul. 59-154

Where the legal title to a decedent's property passes to beneficiaries, but complete control over the property and its income is retained by trustees for a term of years under a power in trust, the income from such property will be treated as income of a trust for which the trustees are required to file fiduciary income tax returns for the taxable years in which such income is received by them.

Advice has been requested as to the proper treatment, for Federal income tax purposes, of income from property of a decedent held by trustees under a power in trust, where the legal title to the property is vested in beneficiaries.

By trust indenture, the decedent provided that the income from certain property was to be paid to his son for life and at the son's death the property was to be distributed to those of the son's children living at the time of his death. The trust indenture provided further that if any portion of the property should vest in any person before such person attained his or her majority, then such portion would be retained by the trustees under a power in trust to invest and reinvest the principal, to collect the income and apply the net income, or as much thereof as the trustees should in their sole discretion determine, to the support and maintenance of such person during his or her minority.

The life income beneficiary, the decendent's son, died in the year 1958 leaving minor children. Under the law of the state governing the trust, legal title to property held under a power in trust is in the beneficiaries, in this case, the minor children.

The specific issue is whether the income derived from the property held subject to the power in trust is the income of a trust or of the children, for Federal income tax purposes.

Section 641 of the Internal Revenue Code of 1954 provides, in part, that the taxes imposed on individuals shall apply to the taxable income of any kind of property held in trust, including income accumulated in trust for the benefit of persons with contingent interests, income accumulated or held for future distribution under the terms of a will or trust and income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated. The tax on such taxable income shall be paid by the fiduciary. See section 1.641(a)-2 of the Income Tax Regulations.

Generally, a power in trust involves a form of express fiduciary obligation similar to that of an express trust, and it therein differs from a mere agency, revocable at pleasure, which imposes no duty, but merely grants an authority to act. A power in trust places on the grantee a duty to execute a trust in favor of a person or persons other than himself and involves the idea of a trust as much as does a trust estate. See *Brooklyn Trust Company*, 295 N.Y.S. 1007.

S.M. 4945, C.B. V-1, 68(1926), involves, in part, the question of whether certain trustees were required to file income tax returns, as fiduciaries, reporting income from property over which they had complete control for a number of years, but where the legal title to such property had passed to the testator's heirs by will. S.M. 4945 holds that the trustees were required to file tax returns for such income and states, in part, as follows:

It is immaterial for a determination of this case whether the executors named in the will acted as trustees under the terms of the will or as the executors of the estate. It is true that the will in the instant case passes the legal title of the testator's real estate to the heirs. However, it is manifest that complete control over such realty is given to the trustees. The heirs can not collect the rent themselves, nor have they the right to receive the rents or profits of the real estate except in the discretion of the trustees. * * *, regardless of where the bare legal title to the real estate might vest upon his death, it was the testator's intent that complete control over such realty, and the rents and profits arising from it, should be in the hands of the trustees until January, 1925.

The minor children in the instant case, although they hold legal title to the property from which the income is derived, have no control over the property held under the power in trust or the income derived therefrom until they attain their majority, except to the extent that the income is actually applied, in the discretion of the trustees, to their maintenance and support. Under the rationale of S.M. 4945, *supra*, if the requirements for filing are met, it is held that the trustees must file fiduciary income tax returns (Form 1041) reporting therein the income from the property held under the power in trust for the taxable years in which they receive such income. See section 6012(b)(4) of the Code. Also, see sections 661 and 662 of the Code and section 1.662(a)–4 of the Income Tax Regulations, relating to the deduction for trusts accumulating income or distributing corpus, and the inclusion of amounts in gross income of beneficiaries of trusts accumulating income or distributing corpus.

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26 CFR 1.641(b)–1: Computation and payment of tax; deductions and credits of estates and trusts. Rev. Rul. 59–30

Where a contract is entered into between a cemetery corporation and a local bank, designating the bank as trustee, to provided for perpetual care of cemetery lots through the creation of a perpetual care fund, the agreement is considered a trust instrument within the meaning of section 641 of the Internal Revenue Code of 1954. Since the income of the trust is used for the general care of all of the lots and the general care of the cemetery, the trust is taxable as a single trust.

Advice has been requested whether an agreement entered into by and between a cemetery corporation and a certain bank is considered as creating a trust, and, if so, whether it creates a single trust or multiple trusts for Federal income tax purposes.

A cemetery corporation entered into a contract with a local bank in the State of South Carolina whereby the bank agreed to accept certain funds turned over to it irrevocably by the corporation for investment under the direction of the corporation. The income of the fund is to be paid over to the corporation quarterly to be used in carrying out its obligation to purchasers of cemetery lots to provide for the perpetual care and maintenance of the cemetery in general, including the specific lots purchased. Each burial lot that has been sold by the corporation is sold with the oral or written understanding that not less than ten percent of the purchase price, when paid in full, would be turned over to the trustee (the bank) of the perpetual care fund.

The duties of the trustee are limited to the receipt of the trust funds turned over to it by the corporation and the payment of the trust income to the corporation quarterly. When the principal and/or collected interest of the fund amounts to 1*xx* dollars, the designated agent of the corporation directs the trustee as to the manner in which such amounts are to be invested. However, the trustee may make investments, when the same are designated, of less than 1*xx* dollars. Upon the direction of the corporation, the trustee shall sell any investment theretofore made upon such terms as may be directed by the corporation. Under the contract, no owner of any lot sold by the corporation shall be considered as having any vested benefit or other interest in the perpetual care fund, the corporation being considered to be the sole beneficiary of such funds.

With respect to the first inquiry, Title 9, Chapter 7, Article I, Section 9–557 of the Code of Laws of South Carolina, 1952, provides that all cemeteries, whether operated for profit or otherwise, which advertise, hold out to the public, or sell perpetual care or endowment care in connection with the sale or lease of burial lots or grave spaces, shall establish and maintain with a state or national bank or trust company doing business in that state an irrevocable trust fund, only the income of such fund to be available to the cemetery corporation in the furnishing of perpetual care.

In the instant case, it appears that under state law, there is a requirement to create an irrevocable trust for the perpetual care of the grave spaces. Therefore, since there is an intention under the trust instrument to create a trust and the legal title to the investments is vested in the trustee, with the corporation as the designated beneficiary, a trust rather than an agency coupled with an interest exists under section 641 of the Internal Revenue Code of 1954.

Relative to the second question, under certain circumstances so-called bequests and special care funds are taxable as individual trusts. For example, a cemetery may provide general care and maintenance of burial plots as part of its service to lot owners, but some lot owners may desire more care than is proveded under the general care fund. To provide such special care the cemetery may be authorized under the laws of the particular state to accept and act as trustee of funds, which are designated as "bequests and special care trusts." The principal of the trusts must be kept intact and may not be used to defray any costs of care or upkeep, and the income earned by each individual trust fund must, under the law, be kept separate and may be used only for the "special" care of the particular endowed lot.

However, in the instant case, the income from the trust has always been treated as income to the beneficiary (the corporation), and such income has been commingled with other corporate funds. Hence, payments for cemetery lot care are not distinguishable from other expenses, except by the nature of the expenditures.

The provisions of the trust instrument providing that the income of the trust is to be used for the general care of all the lots sold by the corporation, as well as for the general care of the cemetery, indicate that it was the intention of the parties to create a single trust. Accordingly, it is held that the trust constitutes a single trust for Federal income tax purposes.

26 CFR 1.641(b)-3: Termination of estates and trusts. T.D. 6353 [1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER A, PART I.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Amendments of regulations under section 641(b) of the Internal Revenue Code of 1954.

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

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

On August 28, 1957, notice of proposed rule making regarding amendment to the Income Tax Regulations (26 CFR Part 1) under section 641(b) of the Internal Revenue Code of 1954 was published in the Federal Register (22 F.R. 6917). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, paragraph (c) of § 1.641(b)-3 of the Income Tax Regulations (26 CFR Part 1) is amended to read as follows:

§ 1.641(b)-3 TERMINATION OF ESTATES AND TRUSTS.

(c) (1) Except as provided in subparagraph (2) of this paragraph, during the period between the occurrence of an event which causes a trust to terminate and the time when the trust is considered as terminated under this section, whether or not the income and the excess of capital gains over capital losses of the trust are to be considered as amounts required to be distributed currently to the ultimate distributee for the year in which they are received depends upon the principles stated in § 1.651(a)-2. See § 1.663 *et seq.* for application of the separate share rule.

(2) (i) Except in cases to which the last sentence of this subdivision applies, for taxable years of a trust ending before September 1, 1957, subparagraph (1) of this paragraph shall not apply and the rule of subdivision (ii) of this subparagraph shall apply unless the trustee elects to have subparagraph (1) of this paragraph apply. Such election shall be made by the trustee in a statement filed on or before April 15, 1959, with the district director with whom such trust's return for any such taxable year was filed. The election provided by this subdivision shall not be available if the treatment given the income and the excess of capital gains over capital losses for taxable years for which returns have been filed was consistent with the provisions of subparagraph (1) of this paragraph.

(ii) The rule referred to in subdivision (i) of this subparagraph is as follows: During the period between the occurrence of an event which causes a trust to terminate and the time when a trust is considered as terminated under this section, the income and the excess of capital gains over capital losses of the trust are in general considered as amounts required to be distributed for the year in which they are received. For example, a trust instrument provides for the payment of income to A during her life, and upon her death for the payment of the corpus to B. The trust reports on the basis of the calendar year. A dies on November 1, 1955, but no distribution is made to B until January 15, 1956. The income of the trust and the excess of capital gains over capital losses for the entire year 1955, to the extent not paid, credited, or required to be distributed to A or A's estate, are treated under section 661 and 662 as amounts required to be distributed to B for the year 1955.

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[1] 24 F.R. 300.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

DANA LATHAM,
Commissioner of Internal Revenue.

Approved January 8, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on January 13, 1959, 8:48 a. m., and published in the issue of the Federal Register for January 14, 1959, 24 F.R. 300.)

SECTION 642.—SPECIAL RULES FOR CREDITS AND DEDUCTIONS

26 CFR 1.642(c)-1: Charitable contributions deductions. Rev. Rul. 59-15

Payments to charity, made by the executor of an estate out of estate income, which payments are attributable to that part of the estate transferred to charity, under the terms of a settlement agreement resulting from the contest of a will, are deductible by the estate as gifts of income to charity under section 642(c) of the Internal Revenue Code of 1954.

Revenue Ruling 55-122, C. B. 1955-1, 390, revoked.

In view of the decision in *Herbert L. Emanuelson Jr., Administrator of the Estate of William D. Fitch* v. *United States*, 159 Fed. Supp. 34, reconsideration has been given to Revenue Ruling 55-122, C. B. 1955-1, 390.

In Revenue Ruling 55-122 the decedent left two wills. The first will left a portion of the residue of the estate to specified charities, while the second will left the entire residue of the estate to non-charitable legatees. A controversy among the beneficiaries under the two wills was finally resolved by a written compromise which provided for a fractional share of the residue of the estate to pass to the charities named in the first will. Income was earned by the estate during the period the two wills were being contested and during the period immediately following the signing of the compromise agreement. The charities were paid their fractional share of the residue with its aliquot share of the net income earned by the estate during the above-mentioned period. Based upon the above facts, the Revenue Ruling holds that the estate is not allowed a deduction, under section 162(a) of the Internal Revenue Code of 1939 (now section 642(c) of the 1954 Code), which provides for the deduction by an estate of gifts of income to charities, under certain conditions, for any of the money which passed to the charities under the agreement. This follows from the conclusion that the settlement agreement merely provided that the residue of the estate should include net income and did not specifically provide for gifts of "income" to charity as required to satisfy the provisions of the above-cited section of the Internal Revenue Code.

However, in the *Emanuelson* case, under circumstances identical to those considered in Revenue Ruling 55-122, the court held that,

under the compromise agreement, the charities received a right to a portion of the residue which included a right to their pro rata share of the estate income. The court found that the estate administrator was compelled, under the terms of the compromise agreement, to pay to the charities their aliquot share of the estate's income, and therefore, such share was deductible by the estate as gifts of estate income to charity.

Accordingly, payments to charity, made by the executor of an estate out of estate income, which payments are attributable to that part of the estate transferred to charity, under the terms of a settlement agreement resulting from the contest of a will, are deductible by the estate as gifts of income to charity under section 642(c) of the Internal Revenue Code of 1954.

Revenue Ruling 55–122, C. B. 1955–1, 390, is revoked.

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26 CFR 1.642(g)–1: Disallowance of double deductions; in general.

Deduction of administration expense attributable to tax-exempt income. See Rev. Rul. 59–32, page 245.

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26 CFR 1.642(h)–2: Excess deductions on termination of an estate or trust. Rev. Rul. 59–100

(Also Sections 34, 116, 643, 651, 652; 1.34–1, 1.116–1, 1.643(a)–1, 1.651(a)–1, 1.652(b)–1.)

A beneficiary of a trust may not avail himself of the dividend received credit and the dividend exclusion provided in sections 34 and 116, respectively, of the Internal Revenue Code of 1954, where the trust in its last taxable year has excess deductions within the meaning of section 642(h)(2) of the Code.

Advice has been requested whether a beneficiary of a trust may avail himself of the dividend received credit and the dividend exclusion provided in sections 34 and 116, respectively, of the Internal Revenue Code of 1954, where the trust in its last taxable year has excess deductions within the meaning of section 642(h)(2) of the Code.

Section 642 of the Code, which provides special rules for credits and deductions allowed to a trust, at subsection (h) states, in part as follows:

If on the termination of an estate or trust, the estate or trust has—

* * * * * * *

(2) for the last taxable year of the estate or trust deductions * * * in excess of gross income for such year,

then * * * such excess shall be allowed as a deduction, in accordance with regulations prescribed by the Secretary or his delegate, to the beneficiaries, succeeding to the property of the estate or trust.

Section 1.642(h)–2 of the Income Tax Regulations prescribes, in part, as follows:

* * * The deduction is allowed only in computing taxable income; it is not allowed in computing adjusted gross income. The deduction is allowable only in the taxable year of the benficiary in which or with which the estate or trust terminates, whether the year of termination of the estate or trust is of normal duration or is a short taxable year * * *

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Section 652(b) of the Code transfers from the trust to the beneficiary the character of the amounts received and, in effect, allows the beneficiary the dividend exclusion and the dividend received credit to the extent of the qualifying corporate dividends received by the beneficiary and required to be included in his gross income. If a trust is required to distribute all its income currently and so distributes to a beneficiary the dividends it receives for the taxable year, the beneficiary and not the trust will be entitled to the dividends received credit and the dividend exclusion.

With respect to simple trusts, section 652(a) of the Code requires the inclusion in the beneficiary's gross income of the amount required to be distributed to such beneficiary or, if such amount exceeds "distributable net income" as defined in section 643 of the Code, an amount which is equal to the beneficiary's proportionate share of distributable net income. At the same time, section 651 allows a simple trust "as a deduction in computing the taxable income of a trust the amount of the income for the taxable year which is required to be distributed currently * * *." But if this exceeds the distributable net income, the deduction is limited to distributable net income. Thus, the amount required to be distributed under the trust or the distributable net income, as the case may be, is the measure both of the deduction which the trust may take and of the amount which the beneficiary is required to include in his gross income.

Both the pertinent sections of the Code and the regulations presuppose that the income and deductions of the trust during the last taxable period of the trust are to be computed separately from the income and deductions of the trust beneficiary, and that any excess of income or deductions is thereafter passed on to the beneficiary. Thus, if the estate or trust for its last taxable year has deductions in excess of its gross income, it will have no income to pass on to the beneficiary. Hence, there will be no dividend income attributable to such taxable year of the trust which would be includible in the beneficiary's return to which the dividend exclusion or dividend credit may be applied.

Accordingly, it is held that a beneficiary of a trust may not avail himself of the dividend received credit and the dividend exclusion provided in sections 34 and 116, respectively, of the Code where the trust in its last taxable year has excess deductions within the meaning of section 642(h)(2) of the Code.

SECTION 643.—DEFINITIONS APPLICABLE TO SUBPARTS A, B, C AND D

26 CFR 1.643(a)-1: Deduction for distributions.

Use of dividends received credit and dividend exclusion by a beneficiary of a trust having deductions in excess of gross income in its last taxable year. See Rev. Rul. 59-100, page 165.

Subpart B.—Trusts Which Distribute Current Income Only

SECTION 651.—DEDUCTIONS FOR TRUSTS DISTRIBUTING CURRENT INCOME ONLY

26 CFR 1.651(a)–1: Simple trusts; deduction for distributions.

Use of dividends received credit and dividend exclusion by a beneficiary of a trust having deductions in excess of gross income in its last taxable year. See Rev. Rul. 59–100, page 165.

SECTION 652.—INCLUSION OF AMOUNTS IN GROSS INCOME OF BENEFICIARIES OF TRUSTS DISTRIBUTING CURRENT INCOME ONLY

26 CFR 1.652(a)–1: Simple trusts; inclusion of amounts in income of beneficiaries.

Withholding of tax on trust distributions to nonresident aliens. See Rev. Rul. 59–177, page 229.

26 CFR 1.652(b)–1: Character of amounts.

Use of dividends received credit and dividend exclusion by a beneficiary of a trust having deductions in excess of gross income in its last taxable year. See Rev. Rul. 59–100, page 165.

Subpart C.—Estates and Trusts Which May Accumulate Income or Which Distribute Corpus

SECTION 662.—INCLUSION OF AMOUNTS IN GROSS INCOME OF BENEFICIARIES OF ESTATES AND TRUSTS ACCUMULATING INCOME OR DISTRIBUTING CORPUS

26 CFR 1.662(a)–1: Inclusion of amounts in gross income of beneficiaries of estates and complex trusts; general.

Withholding of tax on trust distributions to nonresident aliens. See Rev. Rul. 59–177, page 229.

PART II.—INCOME IN RESPECT OF DECEDENTS

SECTION 691.—RECIPIENTS OF INCOME IN RESPECT OF DECEDENTS

26 CFR 1.691(a)–1: Income in respect of a decedent.

Salary of a decedent employee. See Rev. Rul. 59–64, page 31.

Renewal commissions on the sale of life insurance policies by an individual which are paid to his widow after his death. See Rev. Rul. 59–162, page 224.

SUBCHAPTER K.—PARTNERS AND PARTNERSHIPS

PART I.—DETERMINATION OF TAX LIABILITY

SECTION 705.—DETERMINATION OF BASIS OF PARTNER'S INTEREST

26 CFR 1.705–1: Determination of basis of partner's interest.

Sale of a part of a partner's interest in a partnership. See Rev. Rul. 59–109, below.

PART II.—CONTRIBUTIONS, DISTRIBUTIONS, AND TRANSFERS

Subpart C.—Transfers of Interests in a Partnership

SECTION 741.—RECOGNITION AND CHARACTER OF GAIN OR LOSS ON SALE OR EXCHANGE

26 CFR 1.741–1: Recognition and character of gain or loss on sale or exchange. (Also Sections 705, 751; 1.705–1, 1.751–1.) Rev. Rul. 59–109

> The sale of a part of a partner's interest in a partnership constitutes the sale of a capital asset within the meaning of section 741 of the Internal Revenue Code of 1954, except as otherwise provided in section 751 of the Code with respect to unrealized receivables and inventory items which have appreciated substantially in value.

Advice has been requested whether the sale of a part of a partner's interest in a partnership constitutes the sale of a capital asset within the meaning of section 741 of the Internal Revenue Code of 1954.

Section 741 of the Code provides that, in the case of a sale or exchange of an interest in a partnership, a gain or loss shall be recognized to the transferor partner. Such gain or loss shall be considered as gain or loss from the sale or exchange of a capital asset except as otherwise provided in section 751 of the Code, relating to unrealized receivables and inventory items which have appreciated substantially in value.

Section 741 of the Code does not indicate whether the same result would follow upon the sale of a part of a partner's interest in a partnership. However, section 1.741–1(a) of the Income Tax Regulations, implementing that section, provides that the sale or exchange of an interest in a partnership shall, except to the extent of section 751(a) of the Code applies, be treated as the sale or exchange of a capital asset, resulting (except as further provided in section 706 (c)(2)) in capital gain or loss measured by the difference between

the amount realized and the adjusted basis of the partnership interest as determined under section 705 of the Code. Section 1.705–1 of the regulations, which sets forth rules for determining the adjusted basis of a partner's interest in a partnership, specifically refers to "a sale or exchange of all or a part of a partnership interest." See section 751(a) of the Code and section 1.751–1(a) of the regulations. Such regulations clearly recognize that the sale of a part of a partner's interest in a partnership is to be treated in the same manner as the sale of an entire partnership interest for purposes of section 741 of the Code.

Accordingly, the sale of a part of a partner's interest in a partnership constitutes the sale of a capital asset within the meaning of section 741 of the Code, except as otherwise provided in section 751 of the Code with respect to unrealized receivables and inventory items which have appreciated substantially in value.

Subpart D.—Provisions Common to Other Subparts

SECTION 751.—UNREALIZED RECEIVABLES AND INVENTORY ITEMS

26 CFR 1.751–1: Unrealized receivables and inventory items.

Sale of a part of a partner's interest in a partnership. See Rev. Rul. 59–109, page 168.

SUBCHAPTER L.—INSURANCE COMPANIES

PART I.—LIFE INSURANCE COMPANIES

Subpart A.—1955 Formula

SECTION 803.—INCOME AND DEDUCTIONS

26 CFR 1.803–4: Taxable income and deductions. Rev. Rul. 59–209

Servicing fees retained by mortgage bankers, for servicing mortgage loans after their acquisition by life insurance companies from or through such bankers, do not constitute premiums amortizable under section 803(e) of the Internal Revenue Code of 1954, even though the bankers remit only the net proceeds (collections less service charges) to the insurance companies. The interest on the loans received by the bankers in behalf of the companies is includible in full in the gross income of the companies. The service charges are deductible by the companies as investment expenses under and within the limitations of section 803(c)(2) of the Code. Revenue Ruling 258, C.B. 1953–2, 143, clarified.

The Internal Revenue Service has been requested to clarify the portion of its holding in Revenue Ruling 258, C.B. 1953–2, 143, which deals with the treatment for Federal income tax purposes of premiums paid by life insurance companies in purchasing Federal Housing Administration insured mortgage loans from original lenders.

Such portion of Revenue Ruling 258 holds that *premiums* paid by life insurance companies to purchase Federal Housing Administration insured mortgage loans from original lenders may be amortized by the companies under section 201(e) of the Internal Revenue Code of 1939 (corresponding to section 803(e) of the 1954 Code, as amended by the Life Insurance Company Tax Act for 1955).

The specific issue for clarification herein is whether the term "premiums", as used in the above-stated holding, includes amounts retained from interest and/or principal payment collections by mortgage bankers, from or through whom loans were acquired, for servicing the loans after acquisition by the life insurance companies. The statement of facts, in Revenue Ruling 258, *supra*, may seem to indicate that amortizable premium would include such servicing fees.

The second paragraph of Revenue Ruling 258 states as follows:

> Such mortgages are made initially to a "mortgagee approved by the Administrator as responsible and able to service the mortgage properly" (secs. 203(b)(1) and 603(b)(1) of the National Housing Act, as amended), and loans secured by such mortgages, thereupon insured, were purchased from the original lenders at a "premium" (i.e., at a price in excess of the principal amount of the mortgage notes). In appears that such premiums were paid primarily in view of these mortgage loans being insured and serviced."

The fifth paragraph of the Revenue Ruling states as follows:

> Section 201(e) of the Code provides for certain adjustments on account of amortization of premiums and accrual of discount on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company. Section 29.201–9 of Regulations 111 provides for amortization of the premium on such bonds and notes over the period from the date of their acquisition to their maturity or earliest interest payment date, if payable at such date, or such other payment date, prior to maturity, specified in the security as may be selected by the life insurance companies. The service has held that such provision in the regulations for premium amortization is applicable to Federal Housing Administration insured mortgage loans.

The ruling could not, under such Code and regulations provisions for "amortization of premiums * * * on bonds, notes, debentures, or other evidences of indebtedness," authorize allowances of deductions for amortization of "premiums" paid primarily for insurance and servicing, inasmuch as the word "premiums" as used in such provisions (in conjunction with "discounts") plainly has reference only to true investment costs of bonds, notes, debentures, or other evidences of indebtedness in excess of their "maturity value", which commonly is their principal (face) amount. Therefore, the ruling, insofar as it relates to life insurance companies, is properly applicable only to any premiums paid by them for Federal Housing Administration insured mortgage loans which constitute true investment costs thereof to them in excess of their principal amounts.

Accordingly, general application of that portion of the ruling is limited to cases where the true investment cost to life insurance companies of mortgage loan notes or other evidences of indebtedness is in excess of their "maturity value", as defined in such regulations. The portion of any "premium" properly allocable to investment expenses such as servicing expenses would properly be taken into account by a life insurance company under the provisions of section 803(c)(2) of the 1954 Code and corresponding sections of prior revenue laws.

The background of Revenue Ruling 258 indicates the Service's desire to reach an equitable and realistic result taxwise where taxpayers (particularly banks) purchased Federal Housing Administration insured mortgage loans at *insurance and service premiums*, and still to abide by the decision in *New York Life Insurance Co.* v. *Edwards*, 271 U.S. 109, T.D. 3872, C.B. V–1, 305 (1926). That decision held that, for Federal income tax purposes, except where special provision is made, (true investment) premiums paid upon the purchase of "bonds, etc." constitute to the purchaser an integral and inseparable part of the cost of the security. Section 125 of the 1939 Code, corresponding to section 171 of the 1954 Code, relating to amortization of (true investment) bond premiums, is not applicable where the Federal Housing Administration mortgage loan notes involved were not issued by a corporation or by a government or political subdivision thereof. In other words, Revenue Ruling 258, insofar as it relates to the Federal Housing Administration insured mortgage loans involved therein purchased by banks, was based on the premise that the premiums paid thereon by them were not part of true investment cost but, as stated in the ruling, "were paid primarily in view of the loans being insured and serviced." Upon that premise, as the loan is paid off, in installments, banks were permitted to deduct for each taxable year the same proportion of the total of such premium as the payment on the principal of a loan during the year bears to its principal (face) amount when purchased.

Thus, distinction was made in such Revenue Ruling between the treatment of true investment cost premiums paid for Federal Housing Administration mortgage loans by life insurance companies and insurance and service premiums paid by banks when they acquired the particular Federal Housing Administration insured mortgage loans concerned. Section 803(e) of the 1954 Code (and corresponding provisions of prior revenue laws), relating to amortization of premiums and accrual of discount, and section 803(c)(2) (and corresponding provisions of prior revenue laws), relating to specific deduction for investment expenses, are applicable only to life insurance companies and have no counterpart in the statute applicable to banks or other corporations in general.

It is common practice for life insurance companies at times to purchase mortgage loans from or through loan correspondents or mortgage bankers, who frequently are the original lenders. The mortgage loans involved may include uninsured conventional, government insured, and government guaranteed loans. Under such mortgage loan purchase transactions, the mortgage banker receives a specified amount from the life insurance company for the mortgage loan which he holds and, usually, also enters into an agreement with the company, generally designated "Service Agreement", to service the mortgage loan during its period for the insurance company. The term "servicing" in such cases generally includes collection by the banker of interest and/or principal payments from the mortgagor when due and periodic inspection of the mortgaged property by the banker to ensure that the loan security is properly maintained. In return for this "service", the service agreement generally provides that the banker retain a specified portion of each payment which he collects from the mortgagor and remit the remainder thereof to the life insurance company.

Section 803(e) of the 1954 Code provides, in substance, that the gross investment income of life insurance companies, and certain specified deductions with respect to wholly and partially tax exempt interest, shall be decreased to reflect the appropriate amortization of premium and increased to reflect the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company.

The term "premium", as used with respect to the purchase of such obligations by a life insurance company, is defined in section 1.803–6 (b) of the Income Tax Regulations, section 39.201–9(b) of Regulations 118, and section 29.201–9(b) of Regulations 111, to mean the excess of the "acquisition value" thereof over their "maturity value". Conversely, the term "discount" is generally accepted to mean the excess of such an obligation's maturity value over its acquisition value. The use of the term "premium" in conjunction with the term "discount" in section 803(e) of the 1954 Code, and in its predecessor section 201(e) of the 1939 Code, plainly has reference only to true investment costs of such obligations in excess of their maturity values, which values commonly are their principal (face) amounts. While such premiums might include such items as purchase brokerage commissions, they would not include *amounts charged for collection of interest or principal payments on a mortgage loan or for otherwise servicing it.* Since amounts expended in collection of mortgage loan payments, if the payments were collected directly by the insurance company, would constitute an investment expense, there is no reason such expenditures would have a different character when retained by an independent party for making the collections for the company. Further, the mortgage banker after the loan is acquired by the insurance company retains no rights of ownership therein. Therefore, since the entire ownership of the mortgage loan is in the insurance company, any income from such mortgage loan constitutes income to the insurance company. The fact that part of mortgage loan payments is retained by the mortgage banker for services rendered does not change its character, for that part was constructively received by the insurance company. See, generally, I.T. 3504, C.B. 1941–2, 93; *Burnet* v. *Frederick B. Wells*, 289 U.S. 670, Ct. D. 688, C.B. XII–1, 261 (1933); *Isadore Brown*, 22 T.C. 147, affirmed 220 Fed (2d) 12, and *Acer Realty Company* v. *Commissioner*, 132 Fed (2d) 512.

Based on the foregoing, it is held that the amounts of servicing fees retained by mortgage bankers, representing a portion of interest payments collected by them from the mortgagor on mortgage loans they have sold to an insurance company to compensate them for servicing such loans, are includible in the gross income of the insurance company. Such fees, representing an item of expense related to the realization of investment income, are deductible by the insurance company under and within the limitations imposed by section 803 (c)(2) of the 1954 Code and corresponding sections of prior revenue laws.

The term "premium" as used in section 803(e) of the 1954 Code with respect to life insurance companies is applicable only to any premium paid by them in purchasing bonds, notes, debentures, or other evidences of indebtedness which constitutes true investment cost in excess of the "maturity value" (as defined in the applicable regu-

lations) of the evidences of indebtedness acquired. Likewise, the term "premium" as used in Revenue Ruling 258, as it applies to life insurance companies, would be applicable only in cases where the true investment cost of the mortgage loan is in excess of such maturity value of the loan.

Revenue Ruling 258, C.B. 1953–2, 143, clarified.

SUBCHAPTER M.—REGULATED INVESTMENT COMPANIES

SECTION 852.—TAXATION OF REGULATED INVESTMENT COMPANIES AND THEIR SHAREHOLDERS

26 CFR 1.852: Statutory provisions; taxation of regulated investment companies and their shareholders. T.D. 6369 [1]

TITLE 26—INTERNAL REVENUE. 1954.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Amendment of regulations under sections 851–855 of the Internal Revenue Code of 1954, relating to regulated investment companies.

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

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

On October 28, 1958, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under sections 851–855 of the Internal Revenue Code of 1954 (relating to regulated investment companies) to reflect the changes made by section 2 of the Act of July 11, 1956 (Public Law 700, 84th Cong., 70 Stat. 530) [C.B. 1956–2, 1169], and by sections 38 and 101 of the Technical Amendments Act of 1958 (72 Stat. 1638, 1674) was published in the Federal Register (23 F.R. 8299). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following amendments of the regulations are hereby adopted.

PARAGRAPH 1. Section 1.851 is amended—

(A) By striking out "not less than 60 days" in the first sentence of subsection (e)(1) of section 851 and inserting in lieu thereof "not earlier than 60 days";

(B) By striking out "issues" in subsection (e)(2) of section 851 and inserting in lieu thereof "issuer"; and

(C) By adding a historical note at the end thereof as follows:

[Sec. 851 as amended by sec. 38, Technical Amendments Act 1958 (72 Stat. 1638)]

PAR. 2. The second sentence of paragraph (a)(1) of § 1.851–6 is amended by striking out "not less than 60 days" and inserting in lieu thereof "not earlier than 60 days".

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[1] The publication of this Treasury Decision in 24 F.R. 1902, dated March 17, 1959, contains (1) instructions for modifying the notice of proposed rulemaking published in 23 F.R. 8299, dated October 28, 1958, and (2) the full context of the regulations with such modifications. As here published, the Treasury Decision reflects the full context of such regulations, with modifications. The individual instructions have been omitted.

PAR. 3. Section 1.852 is amended to read as follows:

§ 1.852 STATUTORY PROVISIONS OF TAXATION OF REGULATED INVESTMENT COMPANIES AND THEIR SHAREHOLDERS.

SEC. 852. TAXATION OF REGULATED INVESTMENT COMPANIES AND THEIR SHAREHOLDERS.

(a) REQUIREMENTS APPLICABLE TO REGULATED INVESTMENT COMPANIES.—The provisions of this subchapter (other than subsection (c) of this section) shall not be applicable to a regulated investment company for a taxable year unless—

(1) The deduction for dividends paid during the taxable year (as defined in section 561, but without regard to capital gains dividends) equals or exceeds 90 percent of its investment company taxable income for the taxable year (determined without regard to subsection (b)(2)(D)), and

(2) The investment company complies for such year with regulalations prescribed by the Secretary or his delegate for the purpose of ascertaining the actual ownership of its outstanding stock.

(b) METHOD OF TAXATION OF COMPANIES AND SHAREHOLDERS.—

(1) IMPOSITION OF NORMAL TAX AND SURTAX ON REGULATED INVESTMENT COMPANIES.—There is hereby imposed for each taxable year upon the investment company taxable income of every regulated investment company a normal tax and surtax computed as provided in section 11, as though the investment company taxable income were the taxable income referred to in section 11. For purposes of computing the normal tax under section 11, the taxable income and the dividends paid deduction of such investment company for the taxable year (computed without regard to capital gains dividends) shall be reduced by the deduction provided by section 242 (relating to partially tax-exempt interest).

(2) INVESTMENT COMPANY TAXABLE INCOME.—The investment company taxable income shall be the taxable income of the regulated investment company adjusted as follows:

(A) There shall be excluded the excess, if any, of the net long-term capital gain over the net short-term capital loss.

(B) The net operating loss deduction provided in section 172 shall not be allowed.

(C) The deductions for corporations provided in part VIII (except section 248) in subchapter B (section 241 and following, relating to the deduction for dividends received, etc.) shall not be allowed.

(D) The deduction for dividends paid (as defined in section 561) shall be allowed, but shall be computed without regard to capital gains dividends.

(E) The taxable income shall be computed without regard to section 443(b) (relating to computation of tax on change of annual accounting period).

(3) CAPITAL GAINS—(A) IMPOSITION OF TAX.—There is hereby imposed for each taxable year in the case of every regulated investment company a tax of 25 percent of the excess, if any, of the net long-term capital gain over the sum of—

(i) The net short-term capital loss, and

(ii) The deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

(B) TREATMENT OF CAPITAL GAIN DIVIDENDS BY SHAREHOLDERS.—A capital gain dividend shall be treated by the shareholders as a gain from the sale or exchange of a capital asset held for more than 6 months.

(C) DEFINITION OF CAPITAL GAIN DIVIDEND.—A capital gain dividend means any dividend, or part thereof, which is designated by the company as a capital gain dividend in a written notice mailed to its shareholders not later than 30 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including capital gains dividends paid after the close of the

taxable year described in section 855) is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate amount so designated.

(D) TREATMENT BY SHAREHOLDERS OF UNDISTRIBUTED CAPITAL GAINS.—(i) Every shareholder of a regulated investment company at the close of the company's taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of the company's taxable year falls, such amount as the company shall designate in respect of such shares in a written notice mailed to its shareholders at any time prior to the expiration of 30 days after close of its taxable year, but the amount so includible by any shareholder shall not exceed that part of the amount subjected to tax in subparagraph (A) which he would have received if all of such amount had been distributed as capital gain dividends by the company to the holders of such shares at the close of its taxable year.

(ii) For purposes of this title, every such shareholder shall be deemed to have paid, for his taxable year under clause (i), the tax of 25 percent imposed by subparagraph (A) on the amounts required by this subparagraph to be included in respect of such shares in computing his long-term capital gains for that year; and such shareholder shall be allowed credit or refund, as the case may be, for the tax so deemed to have been paid by him.

(iii) The adjusted basis of such shares in the hands of the shareholder shall be increased by 75 percent of the amounts required by this subparagraph to be included in computing his long-term capital gains.

(iv) In the event of such designation the tax imposed by subparagraph (A) shall be paid by the regulated investment company within 30 days after close of its taxable year.

(v) The earnings and profits of such regulated investment company, and the earnings and profits of any such shareholder which is a corporation, shall be appropriately adjusted in accordance with regulations prescribed by the Secretary or his delegate.

(c) EARNINGS AND PROFITS.—The earnings and profits of a regulated investment company for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income for such taxable year. For purposes of this subsection, the term "regulated investment company" includes a domestic corporation which is a regulated investment company determined without regard to the requirements of subsection (a).

[Sec. 852 as amended by sec. 2, Act of July 11, 1956 (Pub. Law 700, 84th Cong., 70 Stat. 530); sec. 101, Technical Amendments Act 1958 (72 Stat. 1674)]

PAR. 4. Section 1.852–1 is amended to read as follows:

§ 1.852–1 TAXATION OF REGULATED INVESTMENT COMPANIES.—(a) *Requirements applicable thereto.*—(1) *In general.*—Section 852(a) denies the application of the provisions of subchapter M of chapter 1 of the Internal Revenue Code of 1954 (other than section 852(c), relating to earnings and profits) to a regulated investment company for a taxable year beginning after February 28, 1958, unless—

(i) The deduction for dividends paid for such taxable year as defined in section 561 (computed without regard to capital gain dividends) is equal to at least 90 percent of its investment company taxable income for such taxable year (determined without regard to the provisions of section 852(b)(2)(D) and paragraph (d) of § 1.852–3); and

(ii) The company complies for such taxable year with the provisions of § 1.852–6 (relating to records required to be maintained by a regulated investment company).

See section 853(b)(1)(B) and paragraph (a) of § 1.853–2 for amounts to be added to the dividends paid deduction, and section 855 and § 1.855–1, relating to dividends paid after the close of the taxable year.

(2) *Special rule for taxable years of regulated investment companies beginning before March 1, 1958.*—The provisions of subchapter M of chapter 1 of the Internal Revenue Code of 1954 (including section 852(c)) are not applicable to a regulated investment company for a taxable year beginning before March 1, 1958, unless such company meets the requirements of section 852(a) and subparagraph (1)(i) and (ii) of this paragraph.

(b) *Failure to qualify.*—If a regulated investment company does not meet the requirements of section 852(a) and paragraph (a)(1)(i) and (ii) of this section for the taxable year, it will, even though it may otherwise be classified as a regulated investment company, be taxed in such year as an ordinary corporation and not as a regulated investment company. In such case, none of the provisions of subchapter M of chapter 1 of the Internal Revenue Code of 1954 (other than section 852(c) in the case of taxable years beginning after February 28, 1958) will be applicable to it. For the rules relating to the applicability of section 852(c), see § 1.852–5.

PAR. 5. Section 1.852–2 is amended by striking paragraph (b) and inserting the following in lieu thereof:

§ 1.852–2 METHOD OF TAXATION OF REGULATED INVESTMENT COMPANIES. * * *.—

(b) *Taxation of capital gains.*—(1) *In general.*—Section 852(b)(3)(A) imposes a tax of 25 percent for each taxable year on the excess, if any, of the net long-term capital gain of a regulated investment company (subject to tax under subchapter M of chapter 1 of the Internal Revenue Code) over the sum of its net short-term capital loss and its deduction for dividends paid (as defined in section 561) determined with reference to capital gain dividends only. For the definition of capital gain dividend paid by a regulated investment company, see section 852(b)(3)(C) and paragraph (c) of § 1.852–4. See section 855 and § 1.855–1, relating to dividends paid after the close of the taxable year.

(2) *Undistributed capital gains.*—(i) *In general.*—A regulated investment company (subject to tax under subchapter M) may, for taxable years beginning after December 31, 1956, designate under section 852(b)(3)(D) an amount of undistributed capital gains to each shareholder of the company. For the definition of the term "undistributed capital gains" and for the treatment of such amounts by a shareholder s,ee paragraph (b)(2) of § 1.852–4. For the rules relating to the method of making such designation, the returns to be filed, and the payment of the tax in such cases, see paragraph (a) of § 1.852–9.

(ii) *Effect on earnings and profits of a regulated investment company.*—If a regulated investment company designates an amount as undistributed capital gains for a taxable year, the earnings and profits of such regulated investment company for such taxable year shall be reduced by the total amount of the undistributed capital gains so designated and its capital account shall be increased by 75 percent of such amount. The earnings and profits of a regulated investment company shall not be reduced by the amount of tax which is imposed by section 852(b)(3)(A) on an amount designated as undistributed capital gains and which is paid by the corporation but deemed paid by the shareholder.

PAR. 6. Paragraph (d) of § 1.852–3 is amended by striking the reference to "paragraph (b) of § 1.852–4" therein and inserting in lieu thereof "paragraph (c) of § 1.852–4".

PAR. 7. Section 1.852–4 is amended to read as follows:

§ 1.852–4 METHOD OF TAXATION OF SHAREHOLDERS OF REGULATED INVESTMENT COMPANIES.—(a) *Ordinary income.*—(1) Except as otherwise provided in paragraph (b) of this section (relating to capital gains), a shareholder receiving dividends from a regulated investment company shall include such dividends in gross income for the taxable year in which they are received.

(2) See section 853(b)(2) and (c) and paragraph (b) of § 1.853–2 and § 1.853–3 for the treatment by shareholders of dividends received from a regulated investment company which has made an election under section 853(a) with respect to the foreign tax credit. See section 854 and §§ 1.854–1 through 1.854–3 for limitations applicable to dividends received from regulated investment companies for the purpose of the credit under section 34, the exclusion from gross income under section 116, and the deduction under section 243. See section 855 (b) and (d) and paragraph (c) and (f) of § 1.855–1 for treatment by shareholders of dividends paid by a regulated investment company after the close of the taxable year in the case of an election under section 855 (a).

(b) *Capital gains.*—(1) *In general.*—Under section 852(b)(3)(B), shareholders of a regulated investment company who receive capital gain dividends (as defined in paragraphs (c) of this section), in respect of the capital gains of an investment company for a taxable year for which it is taxable under subchapter M of chapter 1 of the Internal Revenue Code as a regulated investment company, shall treat such capital gain dividends as gains from the sale or exchange of capital assets held for more than 6 months and realized in the taxable year of the shareholder in which the dividend was received.

(2) *Undistributed capital gains.*—(i) A person who is a shareholder of a regulated investment company at the close of a taxable year of such company for which it is taxable under subchapter M shall include in his gross income as a gain from the sale or exchange of a capital asset held for more than 6 months any amount of undistributed capital gains. The term "undistributed capital gains" means the amount designated as undistributed capital gains in accordance with paragraph (a) of § 1.852–9, but such amount shall not exceed the shareholder's proportionate part of the amount subject to tax under section 852(b)(3)(A). Such amount shall be included in gross income for the taxable year of the shareholder in which falls the last day of the taxable year of the regulated investment company in respect of which the undistributed capital gains were designated. For certain administrative provisions relating to undistributed capital gains, see § 1.852–9.

(ii) Any shareholder required to include an amount of undistributed capital gains in gross income under section 852(b)(3)(D) and subdivision (i) of this subparagraph shall be deemed to have paid a tax equal to 25 percent of such amount for his taxable year for which such amount is so includible. Such shareholder is entitled to a credit or refund of the tax so deemed paid in accordance with the rules provided in paragraph (c)(2) of § 1.852–9.

(iii) Any shareholder required to include an amount of undistributed capital gains in gross income under section 852(b)(3)(D) and subdivision (i) of this subparagraph shall increase the adjusted basis of the shares of stock with respect to which such amount is so includible by 75 percent of such amount.

(3) *Partners and partnerships.*—If the shareholder required to include an amount of undistributed capital gains in gross income under section 852(b)(3)(D) and subparagraph (2) of this paragraph is a partnership, such amount shall be included in the gross income of the partnership for the taxable year of the partnership in which falls the last day of the taxable year of the regulated investment company in respect of which the undistributed capital gains were designated. The amount so includible by the partnership shall be taken into account by the partners as distributive shares of the partnership gains and losses from sales or exchanges of capital assets held for more than 6 months pursuant to section 702(a)(2) and paragraph (a)(2) of § 1.702–1. The tax with respect to the undistributed capital gains is deemed paid by the partnership (under section 852(b)(3)(D)(ii) and subparagraph (2)(ii) of this paragraph), and the credit or refund of such tax shall be taken into account by the partners in accordance with section 702(a)(8) and paragraph (a)(8)(ii) of § 1.702–1 and paragraph (c)(2) of §1.852–9. In accordance with section 705(a), the partners shall increase the basis of their partnership interests under section 705(a)(1) by the distributive shares of such gains, and shall decrease the basis of their partnership interests by the distributive shares of the amount of the tax under section 705(a)(2)(B) (relating to certain nondeductible expenditures) and paragraph (a)(3) of § 1.705–1.

(4) *Nonresident alien individuals.*—If the shareholder required to include an amount of undistributed capital gains in gross income under section 852(b)(3)(D) and subparagraph (2) of this paragraph is a nonresident alien

individual, such shareholder shall be treated, for purposes of section 871 and the regulations thereunder, as having realized a long-term capital gain in such amount on the last day of the taxable year of the regulated investment company in respect of which the undistributed capital gains were designated.

(5) *Effect on earnings and profits of corporate shareholders of a regulated investment company.*—If a shareholder required to include an amount of undistributed capital gains in gross income under section 852(b)(3)(D) and subparagraph (2) of this paragraph is a corporation, such corporation, in computing its earnings and profits for the taxable year for which such amount is so includible, shall treat such amount as if it had actually been received and the taxes paid shall include any amount of tax liability satisfied by a credit under section 852(b)(3)(D) and subparagraph (2) of this paragraph.

(c) *Definition of capital gain dividend.*—A capital gain dividend, as defined in section 852(b)(3)(C), is any dividend or part thereof which is designated by a regulated investment company as a capital gain dividend in a written notice mailed to its shareholders not later than 30 days after the close of its taxable year. If the aggregate amount so designated with respect to the taxable year (including capital gain dividends paid after the close of the taxable year pursuant to an election under section 855) is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate amount so designated. For example, a regulated investment company making its return on the calendar year basis advised its shareholders by written notice mailed December 30, 1955, that of a distribution of $500,000 made December 15, 1955, $200,000 constituted a capital gain dividend, amounting to $2 per share. It was later discovered that an error had been made in determining the excess of the net long-term capital gain over the net short-term capital loss of the taxable year and that such excess was $100,000 instead of $200,000. In such case each shareholder would have received a capital gain dividend of $1 per share instead of $2 per share.

PAR. 8. Section 1.852–5 is amended by designating the existing paragraph as paragraph (b) and by inserting immediately after the heading of such section the following new paragraph:

§ 1.852–5 EARNINGS AND PROFITS OF A REGULATED INVESTMENT COMPANY.—(a) Any regulated investment company, whether or not such company meets the requirements of section 852(a) and paragraph (a)(1)(i) and (ii) of § 1.852–1, shall apply paragraph (b) of this section in computing its earnings and profits for a taxable year beginning after February 28, 1958. However, for a taxable year of a regulated investment company beginning before March 1, 1958, paragraph (b) of this section shall apply only if the regulated investment company meets the requirements of section 852(a) and paragraph (a)(1)(i) and (ii) of § 1.852–1.

(b) * * *

PAR. 9. The following section is inserted after § 1.852–8:

§ 1.852–9 SPECIAL PROCEDURAL REQUIREMENTS APPLICABLE TO DESIGNATION UNDER SECTION 852(b)(3)(D).—(a) *Regulated investment company.*—(1) *Notice to shareholder.*—A designation of undistributed capital gains under section 852(b)(3)(D) and paragraph (b)(2)(i) of § 1.852–2 shall be made by notice on Form 2439 mailed by the regulated investment company to each person who is a shareholder of the company at the close of the company's taxable year. The notice on Form 2439 shall show the name and address of the regulated investment company, the taxable year of the company for which the designation is made, the name and address of the shareholder, the amount designated by the company for inclusion by the shareholder in computing his long-term capital gains, and the tax paid with respect thereto by the company, which tax is deemed to have been paid by the shareholder. Form 2439 shall be prepared in triplicate, and copies B and C of the form shall be mailed to the shareholder on or before the 30th day following the close of the company's taxable year.

Copy A of each Form 2439 must be associated with the undistributed capital gains tax return of the company (Form 2438), as provided in subparagraph (2) of this paragraph.

(2) *Return of undistributed capital gains tax.*—(i) *Form 2438.*—Every regulated investment company which designates undistributed capital gains for any taxable year beginning after December 31, 1956, in accordance with subparagraph (1) of this paragraph, shall file for such taxable year an undistributed capital gains tax return on Form 2438 including on such return the total of its undistributed capital gains so designated and the tax with respect thereto. The return on Form 2438 shall be prepared in duplicate and shall set forth fully and clearly the information required to be included therein. The original of Form 2438 shall be filed on or before the 30th day after the close of the company's taxable year with the district director with whom the company is required to file its income tax return on Form 1120 for such year. The duplicate copy of Form 2438 for the taxable year shall be attached to and filed with the income tax return of the company on Form 1120 for such taxable year.

(ii) *Copies A of Form 2439.*—There shall be submitted with the company's return on Form 2438 all copies A of Form 2439 furnished by the company to its shareholders in accordance with subparagraph (1) of this paragraph. The copies A of Form 2439 shall be accompanied by lists (preferably in the form of adding machine tapes) of the amounts of undistributed capital gains and of the tax paid with respect thereto shown on such forms. The totals of the listed amounts of undistributed capital gains and of tax paid with respect thereto must agree with the corresponding entries in the return on Form 2438.

(3) *Payment of tax.*—The tax required to be returned on Form 2438 shall be paid by the regulated investment company on or before the 30th day after the close of the company's taxable year to the district director with whom the return on Form 2438 is required to be filed.

(b) *Shareholder of record not actual owner.*—(1) *Notice to actual owner.*—In any case in which a notice on Form 2439 is mailed pursuant to paragraph (a)(1) of this section by a regulated investment company to a shareholder of record who is a nominee of the actual owner or owners of the shares of stock to which the notice relates, the nominee shall furnish to each such actual owner notice of the owner's proportionate share of the amounts of undistributed capital gains and tax with respect thereto, shown on the Form 2439 received by the nominee from the regulated investment company. The nominee's notice to the actual owner shall be prepared in triplicate on Form 2439 and shall contain the information prescribed in paragraph (a)(1) of this section, except that the name and address of the nominee, identified as such, shall be entered on the form in addition to, and in the space provided for, the name and address of the regulated investment company, and the amounts of undistributed capital gains and tax with respect thereto entered on the form shall be the actual owner's proportionate share of the corresponding items shown on the nominee's notice from the regulated investment company. Copies B and C of the Form 2439 prepared by the nominee shall be mailed to the actual owner on or before the 60th day (120th day if the nominee is a resident of a foreign country) following the close of the regulated investment company's taxable year.

(2) *Transmittal of Form 2439.*—The nominee shall enter the word "Nominee" in the upper right hand corner of copy B of the notice on Form 2439 received by him from the regulated investment company, and on or before the 60th day (120th day if the nominee is a resident of a foreign country) following the close of the regulated investment company's taxable year shall transmit such copy B, together with all copies A of Form 2439 prepared by him pursuant to subparagraph (1) of this paragraph, to the internal revenue officer with whom his income tax return is required to be filed.

(c) *Shareholders.*—(1) *Return requirements.*—The copy B of the Form 2439 furnished to a shareholder by the regulated investment company or by a nominee, as provided in paragraph (a) or (b), respectively, of this section, shall be attached to the return of income made by the shareholder for his taxable year in which the amount of undistributed capital gains is includible in gross income, as provided in paragraph (b)(2) of § 1.852–4.

(2) *Credit or refund.*—(i) *In general.*—The amount of the tax paid by the regulated investment company with respect to the undistributed capital gains required under section 852(b)(3)(D) and paragraph (b)(2) of § 1.852–4 to be included by a shareholder in his computation of long-term capital gains for any taxable year is deemed paid by such shareholder under section 852(b)(3)(D)(ii) and such payment constitutes, for purposes of section 6513(a) (relating to time tax considered paid), an advance payment in like amount of the tax imposed under chapter 1 of the Code for such taxable year. In the case of an overpayment of tax within the meaning of section 6401, see section 6402 and the regulations thereunder for rules applicable to the treatment of an overpayment of tax and section 6511 and the regulations thereunder with respect to the limitations applicable to the credit or refund of an overpayment of tax.

(ii) *Form to be used.*—Claim for refund or credit of the tax deemed to have been paid by a shareholder with respect to an amount of undistributed capital gains shall be made on the shareholder's income tax return for the taxable year in which such amount of undistributed capital gains is includible in gross income. In the case of a shareholder which is a partnership, claim shall be made by the partners on their income tax returns for refund or credit of their distributive shares of the tax deemed to have been paid by the partnership. In the case of a shareholder who is a nonresident alien individual or a nonresident foreign corporation claiming credit or refund of the tax deemed paid by such shareholder on undistributed capital gains, see section 6012 and the regulations thereunder. In the case of a shareholder which is exempt from tax under section 501(a) and to which section 511 does not apply for the taxable year, claim for refund of the tax deemed to have been paid by such shareholder on an amount of undistributed capital gains for such year shall be made on Form 843 and copy B of Form 2439 furnished to such shareholder shall be attached to its claim. For other rules applicable to the filing of claims for credit or refund of an overpayment of tax, see § 301.6402–2 of the Regulations on Procedure and Administration (Part 301 of this chapter), relating to claims for credit or refund, and § 301.6402–3 of such regulations, relating to special rules applicable to income tax.

(d) *Penalties.*—For criminal penalties for willful failure to file a return, supply information, or pay tax, and for filing a false or fraudulent return, statement, or other document, see sections 7203, 7206, and 7207.

PAR. 10. The first sentence of § 1.853–3 is amended by striking the words "not less than" contained therein and inserting in lieu thereof "not later than".

PAR. 11. Paragraph (b) of § 1.854–1 is amended by striking the reference to "paragraph (b) of § 1.852–4" therein and inserting in lieu thereof "paragraph (c) of § 1.852–4".

PAR. 12. Section 1.855–1 is revised as follows:

(A) Paragraph (a)(3) is amended by striking the reference to "paragraph (b) of § 1.852–4" therein and inserting in lieu thereof "paragraph (c) of § 1.852–4".

(B) Paragraph (e) is amended by striking the reference to "paragraph (b) of § 1.852–4" wherever it appears therein and inserting in lieu thereof "paragraph (c) of § 1.852–4" in each such place.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

Approved March 11, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on March 16, 1959; 8:49 a.m. and published in the issue of the Federal Register for March 17, 1959, 24 F.R. 1902.)

SUBCHAPTER N.—TAX BASED ON INCOME FROM SOURCES WITHIN OR WITHOUT THE UNITED STATES

PART I.—DETERMINATION OF SOURCES OF INCOME

SECTION 863.—ITEMS NOT SPECIFIED IN SECTION 861 OR 862

26 CFR 1.863–1: Allocation of gross income under section 863(a). T. D. 6348

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Amendment of regulations under section 863 of the Internal Revenue Code of 1954, relating to allocation or apportionment of income to sources within or without the United States.

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

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

On October 16, 1958, notice of proposed rule making regarding an amendment of § 1.863–1(b) of the Income Tax Regulations (26 CFR Part 1), relating to allocation or apportionment of income from production and sale of certain natural resources, effective for taxable years beginning after December 31, 1957, was published in the Federal Register (23 F. R. 7997). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment set forth below is hereby adopted:

PARAGRAPH (b) of § 1.863–1 is amended by inserting "(1)" immediately before the expression "The income derived" and by adding the following new subparagraph (2) at the end thereof:

(2) If the Commissioner determines that the application of the provisions of subparagraph (1) of this paragraph does not result in a proper allocation or apportionment of income, the Commissioner may make such other allocation or apportionment as will, in his opinion, more clearly reflect the proper source of the income to which such subparagraph applies. This subparagraph shall apply with respect to taxable years beginning after December 31, 1957.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).)

O. GORDON DELK,
Acting Commissioner of Internal Revenue.

Approved December 31, 1958.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on December 31, 1958, 3:28 p.m., and published in the issue of the Federal Register for January 3, 1959, 24 F.R. 53.)

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PART II.—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Subpart A.—Nonresident Alien Individuals

SECTION 871.—TAX ON NONRESIDENT ALIEN INDIVIDUALS

26 CFR 1.871–2: Determining residence of alien individuals.

Income tax return in the case of a trustee of a trust, a nonresident alien entity, created by and for the benefit of a nonresident alien individual not engaged in trade or business in the United States. See Rev. Rul. 59–167, page 623.

SECTION 872.—GROSS INCOME

26 CFR. 1.872–1: Gross income of nonresident alien individuals. (Also Sections 6012, 6013; 1.6012.1–1.6013–1.) Rev. Rul. 59–199

> Husband and wife, citizens and residents of the Netherlands, may, for Federal income tax purposes, divide the income received from sources within the United States, and file separate Federal income tax returns where the income constitutes community income under the laws of the Netherlands. For this purpose the same principles will be applied as are applied to residents of the United States who are domiciled in community property states.

Advice has been requested whether a husband and wife, citizens and residents of the Netherlands, may file separate Federal income tax returns with respect to income received from sources within the United States.

A husband and wife, citizens and residents of the Netherlands, received income from sources within the United States. Under the community property laws of such foreign country, the wife has an immediate vested interest in the property and income of the marital community as opposed to that of an interest inchoate, a mere expectancy.

Section 872(a) of the Internal Revenue Code of 1954 provides that, in the case of a nonresident alien individual, gross income includes only the gross income from sources within the United States.

Section 6012(a)(1) of the Code provides the general rule that returns with respect to income taxes under subtitle A of the Code, relating to income taxes, shall be made by every individual having for the taxable year a gross income of $600 or more.

Section 6013(a)(1) of the Code provides that no joint return shall be made if either husband or wife at any time during the taxable year is a nonresident alien.

G.C.M. 2892, C.B. VII–1, 158(1928), holds that a husband and wife, citizens and residents of Switzerland, may divide the income from sources within the United States, which constitutes community income under the laws of Switzerland, under the same principle accept-

able for residents of the United States whose state of domicile is that of a community property state.

Accordingly, it is held that a husband and wife, citizens and residents of the Netherlands, may, for Federal income tax purposes, divide the income received from sources within the United States, and file separate Federal income tax returns where the income constitutes community income under the laws of such foreign country. For this purpose, the same principles are to be applied as are applied to residents of the United States who are domiciled in community property states.

PART III.—INCOME FROM SOURCES WITHOUT THE UNITED STATES

Subpart A.—Foreign Tax Credit

SECTION 901.—TAXES OF FOREIGN COUNTRIES AND OF POSSESSIONS OF UNITED STATES

26 CFR 1.901–1: Allowance of credit for taxes. Rev. Rul. 59–7
(Also Section 903; 1.903–1.)

The taxes imposed by the Republic of Cuba on (1) gross receipts of certain foreign corporations under Chapter VI, Article III of the Emergency Tax Law of January 29, 1931, as modified by Law of September 23, 1932, and regulated by Decree No. 2366 of September 25, 1935; (2) interest and dividends by Chapter VI, Article III, Tariff Second of the Emergency Tax Law of January 29, 1931, as amended by Law No. 7 of April 5, 1943; and (3) royalties by Chapter VI, Article III, Tariff Second, of the Emergency Tax Law of January 29, 1931, as amended by Article 52, Chapter X, Law No. 7 of April 5, 1943, are income taxes or taxes imposed in lieu of income or excess profits taxes within the meaning of section 901 or section 903 of the Internal Revenue Code of 1954 and are allowable as a credit against United States income tax under section 901 of the Code, subject to the limitation provided by section 904 of the Code.

Advice has been requested whether the taxes described below and imposed by the Republic of Cuba qualify as income taxes under section 901 of the Internal Revenue Code of 1954, or as taxes paid in lieu of a tax on income, war profits, or excess profits within the meaning of section 903 of the Code, with respect to which credit is allowable against United States income taxes, subject to the limitation imposed by section 904 of the Code.

Section 901 of the Internal Revenue Code of 1954 provides for the allowance of a credit against United States income taxes for taxes paid to a foreign country or a possession of the United States. Subsection (b) thereof provides, in part, as follows:

(b) AMOUNT ALLOWED.—Subject to the limitation of section 904, the following amounts shall be allowed as the credit under subsection (a):

(1) Citizens and Domestic Corportations.—In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; * * *.

Section 903 of the Code provides that:

> For purposes of this subpart and of section 164(b), the term "income, war profits, and excess profits taxes" shall include a tax paid in lieu of a tax on income, war profits, or excess profits otherwise generally imposed by any foreign country or by any possession of the United States.

The Republic of Cuba, under the provisions of Article III of Chapter VI of the Emergency Tax Law of January 29, 1931, imposed a tax on the net profits of commercial, industrial and banking enterprises operating in that country, whether a corporation, partnership or individually owned. Article VII of such law defines net profits, in general, as gross income less ordinary and necessary expenses, and those of management and conservation and a reasonable allowance for depreciation. Article III of the law provides that individual merchants and manufacturers and all commercial and industrial companies or organizations shall pay a tax on net income at the rates designated as Tariff Third; and that corporations, silent partnerships, the investment in which is represented by shares of stock, and those of limited liability with respect to the profit on the shares, if any, and banks and bankers and all associations under the general law, whether industrial or mercantile, organized in Cuba or abroad, for the manufacture of sugar, and individuals who engage in that industry, shall be taxed at the rates designated as Tariff Fourth. This law, which embodies certain provisions for the computation of tax by special classes of taxpayers who do not pay a tax on net profits at the rates provided in Tariff Third or Tariff Fourth, continues in effect. However, by Article I of the Law of September 23, 1932 (regulations for which were issued as Decree No. 2366 of September 25, 1935), there was added to Tariff Fourth a provision which requires that a tax of three percent (increased to three and six-tenths percent by the Law of December 20, 1939) shall be imposed on:

> * * * the gross revenues obtained from all sources * * *, in substitution for the tax on net profits, by those foreign companies which do business in Cuba through the medium of branches, subsidiary companies, agents or lawful representatives, and which fix, by contract or otherwise, the cost and selling prices of the merchandise in which they deal, but which do not, in a reliable manner and one fully satisfactory to the Administration, show or demonstrate the correctness of those prices, * * *. The foregoing paragraph shall likewise include radio-telegraph, cable and radio-telephone companies. This tax shall likewise be paid instead of the present tax on profits, by those foreign companies which engage in the sale, rental, exhibition or operation in any manner of the motion picture film business and which have contracts with companies formed to do business in Cuba and with which they make an agreement whereby the foreign companies are to receive a percentage of the revenues obtained in Cuban territory, for the sale, lease, exhibition or otherwise of the films furnished, even though the company formed or which may be formed is a Cuban company. * * *.

The tax on net profits imposed by Chapter VI, Article III, Tariff Fourth, of the Emergency Tax Law of January 29, 1931, as amended, is an income tax by Federal tax standards. Therefore, since the tax imposed by the Emergency Tax Law of January 29, 1931, as amended by the Law of September 23, 1932, for which regulations were issued by Decree No. 2366 of September 25, 1935, on the gross revenues of certain foreign enterprises relieved these entities from the obligation to pay the profits tax at the normal rates and on the normal net income basis provided by the Law of January 29, 1931, as amended, to which

tax these entities would otherwise be subject, it is a tax imposed in lieu of an income tax within the meaning of section 903 of the code.

Under Chapter VI, Article III, Tariff Second, of the Emergency Tax Law of January 29, 1931, as amended by Law No. 7, April 5, 1943, taxes are imposed on dividends and on interest received on various types of indebtedness. Section one, Tariff Second, of such law imposes a tax on interest received in Cuba on securities issued by foreign governments, or by mercantile or industrial enterprises who do not have their business in Cuba. Section two imposes a tax on the interest on loans secured by real estate, section three imposes a tax on dividends or interest on bonds, and section four imposes a tax on interest on loans evidenced by documents but not secured by real estate. Regulations for the administration of the tax are provided by Decree No. 1117 of May 15, 1939. The law provides that these taxes shall fall primarily upon the recipients of the taxable dividends or interest.

The taxes on dividends have been held to qualify as income taxes under section 131 of the Internal Revenue Code of 1939 and they also qualify as income taxes under section 901 of the 1954 Code. See I. T. 3998, C. B. 1950–51, 64. Since the law contains no definition of interest, as used in the Cuban law, the term is assumed to have the character implicit in the normal use of that term. It is concluded, therefore, that the tax on interest on the various of indebtedness also constitutes a tax on income within the meaning of section 901 of the Code.

Article 52, Chapter X, Law No. 7 of April 5, 1943, amended Tariff Second of Article III of Chapter VI of the Emergency Tax Law of January 29, 1931, by adding thereto a provision which imposed a tax on royalty or compensation for the use of trade marks, patents, processes or any other rights utilized in Cuba. The tax is collected by withholding by the payor, or if the payor fails to withhold, directly from the recipient.

Therefore, since royalties are in Cuban law a form of compensation, whether or not a fixed amount, for a scientific, technical, publishing or advertising use or for exhibit or utilization in business, which is paid to the owner of a right of the above-described type which is protected by law, a tax on royalties constitutes a tax on income within the meaning of section 901 of the Code.

Accordingly, it is held that the taxes imposed by the Republic of Cuba on (1) gross receipts of certain foreign corporations under Chapter VI, Article III, of the Emergency Tax Law of January 29, 1931, as modified by the Law of September 23, 1932, and regulated by Decree No. 2366 of September 25, 1935, in substitution for a tax on net profits; (2) interest and on dividends by Chapter VI, Article III, Tariff Second of the Emergency Tax Law of January 29, 1931, as amended by Law No. 7, of April 5, 1943; and (3) royalties by Chapter VI, Article III, Tariff Second, of the Emergency Tax Law of January 29, 1931, as amended by Article 52, Chapter X, Law No. 7, of April 5, 1943, are income taxes or taxes paid in lieu of income or excess profits taxes within the meaning of section 901 or section 903 of the Code and are allowable as a credit against United States income tax under section 901 of the Code, subject to the limitation provided by section 904 of the Code.

Rev. Rul. 59–70

The tax of 25 percent on royalties withheld pursuant to Brazilian Decree No. 36,773 of January 13, 1955, ratifying Regulations for the Collection and Auditing of Income Taxes, is allowable as a credit against United States income tax, under section 901 of the Internal Revenue Code of 1954, subject to the limitation of section 904 of the Code. However, the additional "tax" imposed by Article 3 of Brazilian Law No. 1474, regulated by Article 4, Brazilian Decree No. 30,812 of May 2, 1952, and Article 210 of the Regulations ratified by Decree No. 36,773, does not constitute an income tax and is not allowable as a credit under section 901 of the Code.

Advice has been requested whether the tax on royalties withheld pursuant to Brazilian Decree No. 36,773 of January 13, 1955, and the regulations ratified therein, and the additional "tax" imposed by Article 3 of Brazilian law No. 1,474 are allowable as a credit against United States Federal income taxes under section 901 of the Internal Revenue Code of 1954.

The taxpayer, a domestic corporation, has contracts with licensees in Brazil under which royalties are paid to it. In connection with such royalty payments, deductions are made by the licensees for taxes required to be withheld at source under Brazilian income tax law and the regulations thereunder. The corporation is also subject to an income tax which it pays directly and to an additional "tax" or surtax imposed by Article 3 of Law No. 1,474.

Section 901 of the Code, relating to taxes of foreign countries and possessions of the United States, provides, in part, as follows:

* * * If the taxpayer chooses to have the benefits of this subpart [relating to foreign tax credits], the tax imposed by this chapter shall, subject to the limitation of section 904, be credited witth the amounts provided in the applicable paragraph of subsection (b) * * *.

Section 1.901–1 of the Income Tax Regulations provides, in general, as follows:

* * * Citizens of the United States, domestic corporations, and certain aliens resident in the United States or Puerto Rico may choose to claim a credit, as provided in section 901, against the tax imposed by chapter 1 for taxes paid or accrued to foreign countries and possessions of the United States * * *.

Under Revenue Ruling 54–14, C.B. 1954–1, 129, the taxes imposed on corporations by Article 96 of Brazilian Law No. 4178, as amended by Law No. 1,474 of November 26, 1951, are allowable as a credit against United States income tax to the extent provided by section 131(a) of the Internal Revenue Code of 1939, which corresponds to section 901(a) of the Internal Revenue Code of 1954. I.T. 4013, C.B. 1950–1, 65, holds that the taxes imposed under Articles 96 and 97 of Brazilian Income Tax Law No. 4178, dated March 13, 1942, as amended, revised, and consolidated by Decree Law No. 5844 of September 23, 1943, and Law No. 154 of November 25, 1947, are allowable as a credit against the United States income tax under section 131(a) of the 1939 Code. Article 96 provides that certain types of income are subject to withholding of tax at the source and at the rates specified therein, such rates to be imposed upon the gross earnings. Article 97 provides that the income received by individuals or corporate bodies, among others, residing or domiciled abroad, is subject to withholding of tax at the rate of 15 percent.

By Decree No. 36,773 of January 13, 1955, which was published in the "Official Bulletin" of January 17, 1955, the President of Brazil ratified new regulations for the collection and auditing of the income tax. The Regulations for the Collection and Auditing of the Income Taxes, ratified by Decree No. 36,773, *supra*, provides as follows:

> From the Income of Parties Residing or Domiciled in Foreign Countries
> Art. 97—There shall be subject to the tax discount (Law No. 2,354):
> 2. At the rate of 25% (twenty-five percent)—the income of the persons mentioned in the preceding paragraph, which falls under "royalties," such as payments on the exploitation of trademarks (literally "marks of industry and commerce"), on patents of invention, on manufacturing processes or formulas.

Article 3 of Law No. 1,474, *supra*, provides, in part as follows:

> The tax dealt with in Law No. 154 of November 25, 1947 and governed by decree No. 24,239 of December 22, 1947 shall, during the fiscal years of 1952 to 1956, be increased by a surtax which shall be calculated on the amounts due by the taxpayers, * * * as follows:
> (a) 15% (fifteen percent) on the tax amount to be paid;
> (b) 3% (three percent) on the reserves and profits pending or undistributed, in possession of legal persons * * *.
>
> * * * * * * *
>
> No. 3. The amounts originating from the collection of the surtax dealt with in this Article shall, after the sixth fiscal year be elapsed and after the year of the respective collection, be restituted with a bonus in the form of federal bonds * * *.

Regulations for Article 3 of Law No. 1,474 were promulgated by Article 4 of Decree No. 30,812 of May 2, 1952. Chapter IV of the Regulations for the Collection and Auditing of the Income Taxes, ratified by decree No. 36,773, *supra*, provides as follows:

> Art. 210—The collection of the repayable surcharge mentioned in Art. 3 of Law No. 1,474 of November 28, 1951 shall continue in force.

Under Brazilian law, the taxpayer pays the income tax in four installments. The additional "tax" of 15 percent imposed by Article 3 of Law No. 1,474, *supra* is payable as a fifth installment. The latter amount constitutes a special fund and is used for the execution of the program of re-equiping ports and railroads, enhancing warehouse, cold storage and other facilities, increasing the electric power potential and developing basic industries and agriculture. Economic re-equipment bonds, issued by the Brazilian Government in the sixth year to taxpayers who have paid the additional "tax," bear five percent interest and are redeemable by the government in 20 annual installments beginning with the first installment in the year in which the bonds are issued. Taxable entities, but not individuals, may deduct income taxes in determining their taxable income for Brazilian tax purposes. The additional tax of 15 percent is not allowed as a deduction but is carried on the taxpayers' books as an asset.

In view of the above, it is held that the Brazilian tax of 25 percent on royalties withheld pursuant to Brazilian Decree No. 36,773 of January 13, 1955, ratifying Regulations for the Collection and Auditing of the Income Taxes, constitutes an income tax and is allowable as a credit against United States income tax under section 901 of the Code, subject to the limitation contained in section 904 of the Code. However, the additional "tax" imposed by Article 3, Law No. 1,474, regulated by Article 4, Decree No. 30,812 of May 2, 1952, and Article

210 of the Regulations ratified by Decree No. 36,773 of January 15, 1955, is refundable with interest (or, "restituted with a bonus in the form of federal bonds") and, therefore, is not allowable as a credit against United States income tax within the meaning of section 901 of the Code. See I.T. 3624, C.B. 1943, 438.

Rev. Rul. 59–85

Belgium does not satisfy the similar credit requirements of section 901(b)(3) of the Internal Revenue Code of 1954 with respect to income taxes paid to France.

Advice has been requested whether income taxes paid to France on income arising in that country, by a Belgian citizen who is a resident of the United States, may be credited against United States income taxes under the provisions of section 901(b)(3) of the Internal Revenue Code of 1954.

Section 901(b)(3) of the Internal Revenue Code of 1954 provides for the allowance of a credit for income taxes paid or accrued during the taxable year to any foreign country by an alien resident of the United States or an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, provided the foreign country of which the alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country.

Article XII (3) of the Income Tax Convention between the United States and Belgium, C.B. 1954–2, 626, allows a citizen of the United States who is residing in Belgium a credit against Belgium tax only with respect to income from sources within and taxed by the United States. It does not allow a credit for taxes paid on income derived from sources within any other foreign country.

Section 1.901–1(b)(2) of the regulations under the 1954 Code reads as follows:

Taxes of foreign country other than one of which alien resident is citizen or subject. An alien resident of the United States may claim a credit for income taxes paid or accrued by him to a foreign country other than the one of which he is a citizen or subject if the country of which he is a citizen or subject either—

(i) Allows a credit to a United States citizen residing therein for income taxes paid or accrued by him to such other foreign country; or

(ii) In imposing its income taxes, exempts from taxation the income of a United States citizen residing therein from sources within such other foreign country.

Pursuant to the "Convention for the Prevention of Double Taxation and the Settlement of Certain Fiscal Questions" between France and Belgium, signed on May 16, 1931, impersonal direct taxes of the two countries are levied on some items of income by the country of source of income whereas other items of income are taxed by the country of the domicile of the recipient. By administrative agreement the Belgian complementary tax and the French progressive surtax are generally imposed only by the country in which the taxpayer is domiciled.

Under the tax convention and the administrative agreement certain items of income derived from sources within France by residents of Belgium are exempt from taxation by France and taxed by Belgium.

Exemption from taxation by France of income derived from sources within France which is subject to taxation by Belgium is equivalent, however, neither to allowance by Belgium of credit for income taxes paid to France nor to exemption from taxation by Belgium of income taxed in France.

Accordingly, it is held that Belgium does not satisfy the similar credit requirement of section 901(b)(3) of the Internal Revenue Code of 1954 with respect to income taxes paid to France, and a Belgian citizen who is residing in the United States is not allowed a credit against his United States income tax for income taxes paid to France on income arising within that country.

Rev. Rul. 59-101

Various questions are discussed pertaining to the allowance of credit under the provisions of section 901 of the Internal Revenue Code of 1954 for taxes paid or accrued to Puerto Rico under the "pay as you go" provisions of the Puerto Rican Income Tax Act of 1954.

Advice has been requested relative to the allowance of credit under the provisions of section 901 of the Internal Revenue Code of 1954 for taxes paid or accrued to Puerto Rico under the "pay as you go" provisions of the Puerto Rican Income Tax Act of 1954.

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 United States income tax under the provisions of section 901 of the Internal Revenue Code of 1954 for any income tax paid or accrued to Puerto Rico, subject to the conditions and limitation of Code section 904. See I.T. 4047, C.B. 1951-1, 59.

The Commonwealth of Puerto Rico, in its Income Tax Act of 1954, effective June 29, 1954, inaugurated a "pay as you go" or current system of income taxation. This was accomplished with respect to individuals by providing for the withholding of income tax from wages and for the voluntary payment of estimated income tax. In order to relieve individual taxpayers from the burden of paying final tax for 1954 while also paying estimated tax or having tax withheld for 1955, the Puerto Rican Income Tax Act of 1954 (also referred to as the Commonwealth Income Tax Act) provides that a taxpayer who elects under section 60(d) of that Act to pay estimated tax is relieved, under the provisions of sections 60A thereof, from the payment of that part of his final tax for 1954 which is not in excess of his final tax for 1955, and that a taxpayer having tax withheld from his wages for 1955 is relieved, under the provisions of section 141A of the Puerto Rican Act, from the payment of that part of his final tax for 1954 attributable to income derived from wages which is not in excess of his tax on income derived from wages during 1955. The excess, in either instance, must be paid within a period of 18 months from the date of the termination of the taxpayer's 1954 taxable year, which is the calendar year 1954 or any fiscal year beginning in such calendar year.

The questions with respect to which advice has been requested, together with the replies thereto, are set forth below. For convenience

this material is divided on the basis of questions covering individuals who claim credit for taxes "accured" during the year, and those relating to individuals who clam credit for taxes "paid" during the year.

Taxpayers Claiming Section 901 Credit on "Accrued" Basis.

A. Must the foreign tax credit of an individual who claims such credit on an "accrued" basis reflect the relief from 1954 Puerto Rican income tax available under sections 141A and 60A of the Commonwealth Income Tax Act?

The relief afforded a taxpayer from whose wages Commonwealth tax is withheld under section 141 of the Commonwealth Act is allowed automatically by the terms of the Act and is not on an elective basis. Likewise, the relief afforded by section 60A of the Commonwealth Act to a taxpayer who elects to pay estimated Commonwealth tax is automatic and not elective. Subject to the qualification that there appears to be no basis for requiring a taxpayer to make an election to pay estimated Commonwealth tax, the relief afforded by the cited sections of the Commonwealth Act must be reflected in the foreign tax credit for Federal income tax purposes.

B. Should a taxpayer claiming credit on his 1954 Federal income tax return for tax accrued to Puerto Rico in 1954 be allowed credit, as limited by section 904 of the Code, for the total amount of the tax shown on the Puerto Rican return, even though, because tax is being withheld during 1955 from his wages, he is relieved from the payment of such part of the 1954 tax as is attributable to his income derived from wages; or shall he be allowed credit only on the amount shown due on the return subsequent to deducting the part attributable to income from wages?

There is no accrual of a liability when the existence of the liability is uncertain. Passage of the Puerto Rican Income Tax Act of 1954 prevented accrual in 1954 of liability with respect to tax on income derived from wages earned in 1954 to the extent such tax did not exceed the tax on wages to be withheld in 1955. Accordingly, only the net amount of the tax for 1954 which constitutes the taxpayer's liability, will, subject to the limitation of section 904, be allowed as a credit on his United States return.

C. Should a taxpayer claiming credit for tax accrued to Puerto Rico in 1954 be allowed credit, as limited by section 904, for the total amount of the tax shown on the return even though, because he has elected to pay estimated tax for 1955, he is relieved from the payment of 1954 tax which is not in excess of his tax for 1955?

Any part of the Puerto Rican tax with respect to which relief has been granted to the taxpayer cannot be claimed as a credit against his United States tax. No liability exists with respect to the part of the tax of which he has been relieved, and, as explained in the answer to question B, above, there is no accrual in 1954 of such part of the tax.

D. Would a taxpayer who has claimed credit each year since 1951 for tax accrued to Puerto Rico for the taxable year be allowed to file amended returns back to 1951 (if within the statute of limitations) claiming credit on the basis of tax paid during the taxable year?

Under the provisions of section 131(d) of the Internal Revenue Code of 1939, where a taxpayer has made an election to claim a credit against his United States income tax for income tax accrued during the taxable year to a possession of the United States, the credit for all subsequent years must be taken upon the same basis. These provisions have been carried through to the Internal Revenue Code

of 1954 as a part of section 905(a). There is no provision in the Internal Revenue Code whereby a taxpayer who elected on his original return to claim credit for foreign tax "accrued" may change his original election and file amended returns on which he claims credit for foreign taxes "paid."

E. If a taxpayer who claims credit against his United States tax for tax accrued to Puerto Rico has been relieved from the payment of part or all of the 1954 Commonwealth tax, and at the end of 1955 finds that his 1954 tax (or that part of it attributable to income from wages) is greater than his 1955 tax (or that part of it attributable to income from wages) and is required to pay the excess in 1956, when does the accrual of the excess take place?

At the end of the taxpayer's taxable year 1955 all (as defined in section 60A of the Commonwealth Act) events which fix the liability for payment of the excess tax and its amount will have occurred. Before that time the amount of the liability for excess tax, and in many instances the existence of the liability, will be incapable of determination. Under these circumstances the excess tax will accrue in the taxpayer's taxable year 1955. See *U.S.* v. *P. Chauncey Anderson et al.*, 269 U.S. 422, T.D. 3839, C.B. V-1, 179 (1926).

Taxpayers Claiming Section 901 Credit on "Paid" Basis.

F. May a taxpayer who has always claimed credit against his United States income tax for income tax "paid" to Puerto Rico continue to claim credit not only for final tax payments to the Commonwealth but also for estimated tax actually paid during the year in question?

Section 901 of the Internal Revenue Code of 1954 allows the credit provided therein for income, war profits, and excess profits taxes "paid or accrued" during the taxable year.

Section 59(d) of the Puerto Rican Income Tax Act provides "Payment of the estimated tax, or any installment thereof, shall be considered payment on account of the tax for the taxable year."

A taxpayer who has always claimed credit against his United States income tax for income tax "paid" to Puerto Rico may credit against his United States income tax the amount of Puerto Rican Commonwealth income tax withheld from his wages or salary and/or the amount thereof paid by such taxpayer as estimated tax during the taxable year, to the extent such amount represents a legal and actual tax liability. Compare Rev. Rul. 57-516, C.B. 1957-2, 435; Rev. Rul. 56-124, C.B. 1956-1, 97.

(Also Section 902; 1.902-1.) Rev. Rul. 59-192

Cuban taxes imposed under Article 2(b) of Law Decree No. 1005 of July 26, 1953 (Rural Housing Tax) constitute income taxes for which a credit is allowable under sections 901 and 902 of the Internal Revenue Code of 1954.

Advice has been requested whether the Cuban taxes imposed under Article 2(b) of Law Decree No. 1005 of July 26, 1953, known as the Rural Housing Tax, which were paid by a Cuban sugar company may be claimed as a foreign tax credit for Federal income tax purposes by a company incorporated under the laws of the United States which owned the entire voting stock of the Cuban company.

A translation of Article 2(b) of Law Decree No. 1005, *supra*, which imposes the tax under consideration, reads as follows:

> A National Tax consisting of an addition on the net rental of the rural properties wherein mills manufacturing sugar, syrups and invert molasses are located, which is established as the basic rental for the collection of the Public Works Law tax, according to the rules contained in Decree number 4050 of September 9, 1949, referred to in Law Decree No. 118 of 1952; said addition comprising 4% on the item of "owned cane" and 2% on the item of "cane owned by others," which is to be paid in the respective Tax Office at the same time as the quotas of the national tax created by Law of July 15, 1925 (Article XVIII, paragraph b), as amended by Article 59 of Law number 7 of April 5, 1943 ("Ampliacion Tributaria"), the collection of which shall be undertaken directly by the Government through its tax offices, independently from the aforementioned Public Works Law tax.

Decree No. 4050 of September 9, 1949, provides in part that the value to be considered as net rental or proceeds shall be the price of a cartload of 100 arrobas of cane ground at the mill in the crop preceding the tax year (such price being obtained by multiplying the average price of a pound of sugar for the three-year period preceding the crop being liquidated by the average number of pounds paid by the mill for each 100 arrobas of cane ground in that crop) multiplied by the number of cartloads of cane classified as "owned," and from this total 80 percent shall be deducted for cultivation and processing expenses. To that net taxable amount shall be added the one resulting from cane classified as "owned by others," obtained by multiplying the same price of the cartload of cane by the number of cartloads of cane of that classification, deductnig from the result thereof 60 percent for processing expenses.

In order for a tax paid to a foreign country to be allowable as a credit against United States income tax under section 901 of the Internal Revenue Code of 1954, it must be shown that the tax imposed by the foreign law is a tax on income within the United States concept thereof, or is a tax paid in lieu of income tax under section 903 of the Code. See Rev. Rul. 56–658, C. B. 1956–2, 501, at 502.

The Cuban tax here involved is based on "net income" computed under the identical formula used for computing the statutory net income for the National Tax (Law of July 15, 1925, increased in rate by Law No. 7 of April 5, 1943). This National Tax was held to be an income tax within the meaning of sections 901 and 902 or the 1954 Code. See Rev. Rul. 56–658, *supra*.

Accordingly, it is held that Cuban taxes imposed under Article 2(b) of Law Decree No. 1005 of July 26, 1953 (Rural Housing Tax) constitute income taxes for which a credit is allowable under sections 901 and 902 of the Code.

Rev. Rul. 59–208

> A foreign tax credit under section 901 of the Internal Revenue Code of 1954 is allowable for German trade taxes paid insofar as such taxes constitute a tax on business earnings; however, a credit is not allowable insofar as such taxes constitute a tax on business capital or wages paid.

Advice has been requested whether a foreign tax credit under section 901 of the Internal Revenue Code of 1954 is allowable for payment of the German Trade Tax, or Business Enterprise Tax (Gewerbesteuergesetz).

The pertinent provisions of the German trade tax law, submitted for consideration, are contained in Section I, paragraphs 1 and 6, which read as follows:

AUTHORITY TO TAX.—The communities are authorized to collect the business tax as a communal tax.

* * * * * * *

TAX BASE.—(1) The business tax will be assessed on the basis of business returns and of business capital. (2) Next to business returns and to business capital, the total of wages paid may be chosen as the basis for tax assessment. A tax based on wages paid may be collected only with the approval of the State government; the State government may delegate the power to approve such a tax to the agencies established for such action under State law.

These provisions indicate that the German Federal government has authorized communities to levy a tax and to choose as a basis for assessment either business returns (earnings) and business capital, or wages paid.

The determination of whether a foreign levy qualifies as an income tax within the meaning of section 901 of the Code is to be made under the criteria established by the internal revenue laws of the United States, rather than by the classification under foreign statute. *Mary D. Biddle* v. *Commissioner*, 302 U.S. 573, Ct. D. 1303 C.B. 1938–1, 309; *Keasbey & Mattison Co.* v. *Rothensies*, 133 Fed. (2d) 894, certiorari denied, 320 U.S. 739; *Lanman & Kemp-Barclay & Co. of Colombia* v. *Commissioner*, 26 T.C. 582. This determination is to be made from an examination of the foreign tax law itself. I.T. 2620, C.B. XI–1, 44 (1932).

The German trade tax is imposed on business returns and business capital and may be consolidated for purposes of assessment and payment, as provided by the terms of the statute. However, the components have separate basis and are separately computed. Because the tax is "divisible into separate parts," its components should be considered individually. *Lanman & Kemp-Barclay & Co. of Colombia, supra.*

Section II, Subsection 1, of the German law reads as follows:

BUSINESS RETURNS.—The earnings from a business enterprise measured in accordance with the Income Tax and Corporate Tax laws are business returns * * *.

The rate of taxation under this section, as provided in paragraph 11, Subsection 1, Section II, varies from 0 percent for the first 1,200 Deutsche marks of business earnings, up to a maximum of five percent. It is concluded that this tax is an income tax within the meaning of section 901 of the Code and, therefore, may be included in a foreign tax credit computation. See I.T. 4014, C.B. 1950–1, 67.

Business capital, as defined in Subsection 2, Section II, of the German statute, "is the assessed value * * * of a business establishment as defined by the law regulation appraisal for tax purposes * * *." As provided in the subsection, there is an exemption for business enterprises employing a capital of less than 6,000 Deutsche marks, and "the tax rate for the taxation of business capital is 20/00 (two per mille)." The business tax based on business capital bears no relation to the income or profits of the corporation and is not a tax paid in lieu of an income tax within the meaning of section 903 of the Internal Revenue Code of the United States. Therefore, it may

not be claimed as a credit under section 901 of the Code. *Lanman & Kemp-Barclay & Co. of Columbia, supra.* See also I.T. 4014, *supra.*

Section III, Tax Based on Wages Paid, of the German law provides as follows:

BASIS OF TAXATION.—(1) The sum of wages paid in each calendar month to the wage earners of the business establishment located in the community, forms the basis of taxation the community may, in individual instances, or generally, select the sum of wages paid in any of the quarters of the calendar and make it the basis of taxation.

Thus, the tax on wages paid, like the tax based on business capital, bears no relation to the income or profits of the corporation. Furthermore, it is not a tax paid in lieu of an income tax. Therefore, it may not be claimed as a credit under section 901.

Effect of a "saving clause" as found in most of the tax conventions to which the United States is a party. See Rev. Rul. 59–56, page 737.

SECTION 902.—CREDIT FOR CORPORATE STOCKHOLDER IN CORPORATION

26 CFR 1.902–1: Taxes of foreign corporation.

Cuban taxes imposed under Article 2(b) of Law Decree No. 1005 of July 26, 1953 (Rural Housing Tax). See Rev. Rul. 59–192, page 191.

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26 CFR 1.902–2: Special rules for payments from certain wholly-owned foreign corporations. Rev. Rul. 59–71

Determination of the amount of foreign tax deemed to have been paid by a domestic corporation, under section 902(d) of the Internal Revenue Code of 1954, where the amounts received by the domestic corporation, from its wholly-owned foreign subsidiary, were allowed as a deduction to the subsidiary in computing its income subject to tax in the foreign country.

Advice has been requested relating to the determination of the foreign tax credit, under the special rules provided in section 902(d) of the Internal Revenue Code of 1954, with respect to distributions (in lieu of dividends) made by a wholly-owned foreign subsidiary corporation to its domestic parent corporation under the circumstances described below.

A wholly-owned foreign subsidiary corporation has, for a period of years, paid both dividends and certain other service fees in substantial amounts to its domestic parent corporation. In 1954, under section 902(d)(2) of the Internal Revenue Code of 1954, the domestic parent entered into a "contractual arrangement" with its foreign subsidiary under which the fees were accepted in lieu of dividends, and no dividends, as such, were thereafter paid by the subsidiary. In 1955, the domestic parent corporation received $50x$ dollars in service fees from its wholly-owned foreign subsidiary, the amount of which was allowed as a deduction for income tax purposes by the foreign

country in which the subsidiary was located and, thus, no foreign tax was paid on such amount. The total profits of the foreign subsidiary were $500x$ dollars and the foreign taxes paid were $300x$ dollars. Cost of the service fees to the domestic parent was $2x$ dollars.

Section 902(d) of the Code provides as follows:

> SPECIAL RULES FOR CERTAIN WHOLLY-OWNED FOREIGN CORPORATIONS.—For the purposes of this subtitle, if—
>
> (1) a domestic corporation owns, directly or indirectly, 100 percent of all classes of outstanding stock of a foreign corporation engaged in manufacturing, production or mining,
>
> (2) such domestic corporation receives property in the form of a royalty or compensation from such foreign corporation pursuant to any form of contractual arrangement under which the domestic corporation agrees to furnish services or property in consideration for the property so received, and
>
> (3) such contractual arrangement provides that the property so received by such domestic corporation shall be accepted by such domestic corporation in lieu of dividends and that such foreign corporation shall neither declare nor pay any dividends of any kind in any calendar year in which such property is paid to such domestic corporation by such foreign corporation,
>
> then the excess of the fair market value of such property so received by such domestic corporation over the cost to such domestic corporation of the property and services so furnished by such domestic corporation shall be treated as a distribution by such foreign corporation to such domestic corporation, and for the purposes of section 301, the amount of such distribution shall be such excess, in lieu of any amount otherwise determined under section 301 without regard to this subsection; and the basis of such property so received by such domestic corporation shall be the fair market value of such property, in lieu of the basis otherwise determined under section 301(d) without regard to this subsection.

The essential problem involved in the instant case is the proper determination of the "accumulated profits" of the foreign subsidiary for the purpose of applying the formula under section 902(a) of the Code, since, even in a case to which the special rules of section 902(d) of the Code apply, the computation of the tax deemed paid must be made as provided in section 902(a) of the Code.

Section 902(d) of the Code provides a limitation of the amount which will be treated as a dividend and does not make inapplicable the provisions of section 902(a) of the Code. Thus, in computing the amount of foreign tax deemed to have been paid with respect to a section 902(d) "dividend," such amount of foreign tax deemed to have been paid shall be the same proportion of taxes paid by the foreign corporation to a foreign country on or with respect to its accumulated profits from which the dividend was paid, which the amount of such dividend bears to the amount of such accumulated profits. Further, section 1.902–2(b) of the Income Tax Regulations provides that the amount which may be treated as a distribution subject to the special rules under section 902(d) of the Code cannot exceed the amount which would constitute a dividend for the purposes of subtitle A of the Internal Revenue Code of 1954 relating to income taxes and thus as if, for the purpose of section 902(a) of the Code, such excess (of the fair market value of the property received in lieu of dividends by the domestic corporation over the cost to it of the property and services furnished) had been declared and paid as a dividend by the foreign corporations.

Regardless of the fact that the service fees, in the instant case, are treated as deductions in computing the income of the foreign sub-

sidiary that is subject to tax in the foreign country, such fees, for Federal income tax purposes (in the instant case, for the purpose of the foreign tax credit), must be treated in the manner prescribed in section 902(a) of the Code.

In *Mary D. Biddle* v. *Commissioner*, 302 U.S. 573, Ct. D. 1303, C.B. 1938–1, 309, the Supreme Court of the United States, in analyzing the credit for taxes under section 131 of the Internal Revenue Code of 1939 (the counterpart of sections 901–905 of the 1954 Code), stated:

> Section 131 does not say that the meaning of its words is to be determined by foreign taxing statutes and decisions, and there is nothing in its language to suggest that in allowing the credit for foreign tax payments, a shifting standard was adopted by reference to foreign characterizations and classifications of tax legislation. * * *.

Therefore, in cases where the service fees (like any other item of expense) are allowed as a deduction to the foreign corporation in computing its taxable income for the purposes of the foreign income tax, the amount of such fees cannot, at one and the same time, be a deductible expense and also a distribution from accumulated earnings and profits when applying the provisions of section 902(d) of the Code. In the instant case, the domestic parent corporation is deemed to have paid, to the extent provided in section 902(a) of the Code, foreign taxes imposed on its foreign subsidiary on or with respect to the subsidiary's accumulated profits from which the dividend of $48x$ dollars was paid ($50x$ dollars minus $2x$ dollars). Since $48x$ dollars of the service fees is treated as a dividend distribution under section 902(d) of the Code, such amount must be added back to the amount of $500x$ dollars (profits of the subsidiary before taxes) in order to arrive at the correct amount of accumulated profits under section 902(a) of the Code. Based upon the facts in the instant case, the computation of the foreign subsidiary's accumulated profits under United States Law, that is, for the application of section 902 of the Code, is as follows:

Total profits of the foreign subsidiary before taxes ($500x$ dollars plus $48x$ dollars)	$548x$ dollars
Foreign income taxes paid	$300x$ dollars
Accumulated profits of the foreign subsidiary for the purpose of applying section 902 of the Code	$248x$ dollars

The formula for computing the foreign tax deemed to have been paid by the domestic parent corporation with respect to the "dividend" of $48x$ dollars would therefore be:

$$\frac{48x \text{ dollars (dividend)}}{248x \text{ dollars (accumulated profits)}} \times \frac{248x \text{ dollars (accumulated profits)}}{548x \text{ dollars (total profits before foreign taxes)}} \times 300x \text{ dollars (foreign income taxes paid)}$$

See section 902(a) and 902(c) of the Code. Also, see *American Chicle Co.* v. *United States*, 316 U.S. 450, Ct. D. 1561, C.B. 1942–1, 161. Subject to the limitation of section 904, the amount, thus computed, of foreign tax deemed to have been paid by the domestic parent is allowable as a credit.

One of the conditions for qualifying for the special rule under section 902(d) of the Code is that, where a domestic parent corporation accepts property in the form of a royalty or compensation from its

foreign subsidiary under some form of contractual arrangement, the foreign corporation shall neither declare nor pay any dividend of any kind in any calendar year in which such property is paid to the domestic parent. The lack of this condition would preclude the allowance of a foregn tax credit with respect to a section 902(d) "dividend" but would not affect the regular dividends pursuant to section 902(a) of the Code.

SECTION 903.—CREDIT FOR TAXES IN LIEU OF INCOME, ETC., TAXES

26 CFR 1.903–1: Definition of taxes in lieu of income war profits, or excess profits taxes.

Credit for certain taxes paid to Cuba. See Rep. Rul. 59–7, page 183.

SECTION 904.—LIMITATION ON CREDIT

26 CFR 1.904–1: Limitation on credit for foreign taxes.

Effect of a "saving clause" as found in most of the tax conventions to which the United States is a party. See Rev. Rul. 59–56, page 737.

Subpart B.—Earned Income of Citizens of the United States

SECTION 912.—EXEMPTION FOR CERTAIN ALLOWANCES

26 CFR 1.912–1: Exclusion of certain cost-of-living allowances. T.D. 6365[1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Amendments to section 1.912–1 of the Income Tax Regulations relative to the exclusion from gross income of cost-of-living allowances received by Government civilian personnel stations in Alaska.

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

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

In order to clarify the regulations relating to the exclusion from gross income of certain cost-of-living allowances received by Government civilian personnel stationed outside the continental United States in view of the admission of Alaska to the Union, § 1.912–1 of the Income Tax Regulations (26 CFR 1.912–1) is amended by striking out all of paragraph (b) and inserting in lieu thereof the following:

[1] 24 F.R. 1206.

(b) For purposes of section 912(1), the term "continental United States" includes only the 48 States existing on February 25, 1944 (the date of the enactment of the Revenue Act of 1943) and the District of Columbia.

Because this Treasury Decision merely clarifies the application of a provision of existing regulations in the light of the admission of Alaska to the Union, 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 that Act.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

DANA LATHAM,
Commissioner of Internal Revenue.

Approved February 12, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on February 13, 1959, 12:30 p.m., and published in the issue of the Federal Register for February 17, 1959, 24 F.R. 1206.)

SUBCHAPTER O.—GAIN OR LOSS ON DISPOSITION OF PROPERTY

PART I.—DETERMINATION OF AMOUNT OF AND RECOGNITION OF GAIN OR LOSS

SECTION 1002.—RECOGNITION OF GAIN OR LOSS

26 CFR 1.1002–1: Sales or exchanges. Rev. Rul. 59–47

The transfer of securities to a trust, under a separation agreement, results in income to the transferor to the extent of the amount of any appreciation in their value over the basis of the transferor, where his obligation to make payments to the wife is terminated when he has transferred a specific aggregate amount to the trust. However, where such transfer can never serve any purpose other than to act as a conduit by which he makes payments to the wife and, of itself, does not discharge any obligation of the transferor, the appreciation in value does not result in income to him.

Revenue Ruling 57–506, C.B. 1957–2, 65, distinguished from Revenue Ruling 57–507, C.B. 1957–2, 511.

The Internal Revenue Service has been requested to distinguish between its holding in Revenue Ruling 57–506, C.B. 1957–2, 65 and that in Revenue Ruling 57–507, C.B. 1957–2, 511, with respect to the issue presented in both rulings relative to the Federal income tax consequences to a husband who, pursuant to a separation agreement transfers property, which has appreciated in value in his hands, to a trust, to make payments toward the discharge of his marital obligations to his wife.

In both Revenue Ruling 57–506 and 57–507, *supra*, the husband transferred to a trust stock which had greatly appreciated in value

in his hands, with the provision that the trust income be used to make specified payments to the wife. In both instances, if trust income was not sufficient to make the payments, the husband was obligated to contribute the deficit from his own income. After death or remarriage of the wife, the stock comprising trust corpus was to be transferred to charitable or educational institutions.

The relevant issue in both rulings is whether the transfer of the stock to the trust results in income to the husband inasmuch as such stock had greatly appreciated in value in his hands since he originally acquired it. Revenue Ruling 57–507 holds that the husband did realize income from the transfer, whereas Revenue Ruling 57–506 holds that he did not.

Although the factual situations presented in both rulings under consideration appear, upon a casual reading, to be substantially the same, one important factual difference resulted in the opposite holdings in the two cases. In the situation presented in Revenue Ruling 57–507, there was a provision in the separation agreement to the effect that if the husband, at any time prior to the death of the wife, had transferred securities or other property of a specified aggregate amount to the trust, then his obligation to make periodic payments ceased and the wife was entitled to receive only the trust income. Therefore, each transfer of property to the trust was in effect a partial payment toward his eventual discharge of a fixed obligation and each such transfer constituted a taxable event. The use of appreciated property to discharge a money obligation results in taxation of the amount of the appreciation to the transferor. See *International Freighting Corporation, Inc.* v. *Commissioner*, 135 Fed. (2d) 310.

On the other hand, under the facts stated in Revenue Ruling 57–506, the trust created by the husband can never serve any purpose other than to act as a conduit by which he makes payments to his wife. Thus, inasmuch as the payments into the trust do not discharge any obligation of the husband, the appreciation in the value of the stock before the transfer is not income to him.

PART II.—BASIS RULES OF GENERAL APPLICATION

SECTION 1014.—BASIS OF PROPERTY ACQUIRED FROM A DECEDENT

26 CFR 1.1014–1: Basis of property acquired from a decedent.

Holding period of a capital asset acquired by gift. See Rev. Rul. 59–86, page 209.

Deceased spouse's share of community property received by surviving spouse. See Rev. Rul. 59–220, page 210.

PART III.—COMMON NONTAXABLE EXCHANGES

SECTION 1033.—INVOLUNTARY CONVERSIONS

26 CFR 1.1033(a)–1: Involuntary conversions; nonrecognition of gain. (Also Part II, Section 112(f); Regulations 118, Section 39.112(f)–1.) Rev. Rul. 59–102

For the purpose of section 1033 of the Internal Revenue Code of 1954 and section 112(f) of the Internal Revenue Code of 1939, relating to involuntary conversions involving the "destruction" of property, it is not necessary that the taxpayer satisfy the test of "suddenness" if the causes of destruction otherwise fall within the general concept of a casualty. Such test is mainly significant for casualty loss deduction purposes.

I.T. 3696, C.B. 1944, 241, and Revenue Ruling 54–395, C.B. 1954–2, 143, are modified.

Reconsideration has been given to I.T. 3696, C.B. 1944, 241, and Revenue Ruling 54–395, C.B. 1954–2, 143.

Section 1033 provides, in part, that if property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted into money or into property not similar or related in service or use to the converted property, the gain (if any) shall be recognized. However, if the taxpayer during the period specified in section 1033(a)(3)(B), for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, then the gain, at the election of the taxpayer, shall be recognized only to the extent that the amount realized upon such conversion exceeds the cost of such other property.

I.T. 3696, C.B. 1944, 241, holds in part that "destruction," as that term is used in section 112(f) of the Internal Revenue Code of 1939, relating to nonrecognition of gain upon the involuntary conversion of property, is equivalent to a "casualty" in the sense of section 23(e)(3) of the 1939 Code. Sections 1033 and 165(c)(3) of the Internal Revenue Code of 1954 are essentially the same as sections 112(f) and 23(e)(3) of the 1939 Code, respectively.

Revenue Ruling 54–395, C.B. 1954–2, 143, discussed the tests to be applied in cases involving a casualty loss deduction in considering whether an involuntary conversion had occurred for purposes of section 112(f) of the 1939 Code. Implicit in that Revenue Ruling is the premise that the tests to be applied in order to ascertain the presence of a "destruction" of property for involuntary conversion purposes must include all of the tests required to be met for casualty loss deductions, including the test of "suddenness."

The term "casualty" denotes an accident, a mishap, some sudden invasion by a hostile agency; it excludes the progressive deterioration of property through a steadily operating cause. *Charles J. Fay.* v. *Helvering*, 120 Fed. (2d) 253. Also, an accident or casualty proceeds from an unknown cause, or is an unusual effect of a known cause. Either may be said to occur by chance and unexpectedly. *Chicago, St. Louis & New Orleans Railroad Co.* v. *Pullman Southern Car Co.*,

139 U.S. 79. To be of the same nature or kind as fires, storms and shipwreck for purposes of section 165(c)(3) of the code, an event must first be unexpected and, second, be identifiable as the cause of a provable loss. There must be a provable event which not only has a casual relation to the diminution in value of the damaged property but can be isolated from other events or sequences leading to changes in value in the damaged property. The primary significance of the latter requirement is that generally the amount of a casualty loss deduction is in part determined with reference to the value of the property before the casualty and its value immediately after the casualty so that it is necessary to fix a time at which the casualty took place.

In determining the applicability of section 1033 of the 1954 Code, or section 112(f) of the 1939 Code, to a claimed destruction, the underlying necessity of the "suddenness" test for casualty loss purposes is not present. For the purposes of those sections, the meaning of the term "destruction" in its statutory context is the sole question to be decided. The legislative history does suggest a strong association with "casualties" so far as concerns the causes of the claimed destruction. See, for example, H.R. Report 486, 67th Cong., C.B. 1939–1 (part 2), 206, at 209, and Senate Report 275, 67th Cong., C.B. 1939–1 (part 2), 181, at 191. There is nothing in that history to suggest, however, that all of the tests required to be satisfied for casualty loss deduction purposes were necessarily required to be met, for involuntary conversion purposes. So long as the causes of destruction otherwise fall within the general concept of a casualty, it is accordingly considered that the taxpayer need not satisfy also the test of "suddenness" which must be met for casualty loss deduction purposes. So far as the test of "suddenness' is concerned, this conclusion is consistent with the apparent understanding of Congress in enacting section 1033(e), relating to livestock destroyed by or on account of "disease," which frequently would involve no sudden event.

Accordingly, for the purpose of section 1033 of the Internal Revenue Code of 1954 and section 112(f) of the Internal Revenue Code of 1939, relating to involuntary conversions involving the "destruction" of property, it is not necessary that a taxpayer satisfy the test of "suddenness" if the causes of destruction otherwise fall within the general concept of a casualty. Such test is mainly significant for casualty loss deduction purposes.

I.T. 3696, C.B. 1944, 241, and Revenue Ruling 54–395, C.B. 1954–2, 143, are modified to the extent that the "suddenness" tests of a casualty loss is not a requisite for the purpose of establishing an involuntary conversion involving the "destruction" of property.

Rev. Rul. 59–173

An award received from a condemning authority may be considered as having been received as severance damages only where such designation has been stipulated by both contracting parties. When it is not clearly shown that the award includes a specific amount as severance damages it will be presumed that the proceeds were given in

consideration of the property taken by the condemning authority. See G. C. M. 23698, C. B. 1943, 340; and *Marshall C. Allaben et al. v. Commissioner*, 35 B. T. A. 327.

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26 CFR 1.1033(a)–2: Involuntary conversions where disposition of the converted property occurred after December 31, 1950. Rev. Rul. 59–8

The destruction by hail of a standing crop of wheat constitutes an involuntary conversion within the meaning of section 1033 of the Internal Revenue Code of 1954, and gain from the insurance proceeds is not recognized where an amount equal to such proceeds is used to purchase another standing crop of wheat or a harvested crop within the replacement period specified in section 1033(a)(3)(B) of the Code. The use of the insurance proceeds to cover costs of planting a new crop does not constitute the acquisition of replacement property within the meaning of the statute.

Advice has been requested whether the nonrecognition of gain provisions of section 1033 of the Internal Revenue Code of 1954 are applicable to insurance proceeds received for hail-destroyed crops and reinvested as described below.

For a number of years, a taxpayer had been carrying over his wheat crop for one year and selling it in the early part of the next succeeding year and reporting income on the cash method of accounting in the year of sale. Thus, the 1956 crop was sold in 1957. At the time the 1957 crop was ready for harvesting, it was completely destroyed by hail. Insurance proceeds to cover the loss were received in 1957. To avoid reporting the income from the 1956 crop and the insurance proceeds in the same year, he immediately used the proceeds from the insurance to purchase another standing crop of wheat.

The nonrecognition of gain provisions of section 1033 of the Code provide, in part, that if property (as a result of its destruction in whole or in part, theft, seizure or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted after December 31, 1950, and the taxpayer purchases other property similar or related in service or use to the property so converted, at the election of the taxpayer the gain shall be recognized for tax purposes only to the extent that the amount realized from such conversion exceeds the cost of replacement property.

Accordingly, it is held that the destruction by hail of a standing crop of wheat constitutes an involuntary conversion within the meaning of section 1033 of the Code, and gain from the insurance proceeds is not recognized where an amount equal to such proceeds is used to purchase another standing crop of wheat or a harvested crop within the replacement period specified in section 1033(a)(3)(B) of the Code. The use of the insurance proceeds to cover costs of planting a new crop does not constitute the acquisition of replacement property within the meaning of the statute.

26 CFR 1.1033(e)–1: Destruction or disposition of livestock because of disease. Rev. Rul. 59–174

The condition of dwarfism in beef cattle does not constitute a disease within the meaning of section 1033(e) of the Internal Revenue Code of 1954. Therefore, sales of cattle due to dwarfism do not qualify as involuntary conversions under such section of the Code.

Advice has been requested whether sales of cattle due to dwarfism qualify as involuntary conversions under section 1033 of the Internal Revenue Code of 1954.

A herd of cattle owned by the taxpayer for breeding purposes developed the dwarf gene. Since cattle with the dwarf gene produces dwarf cattle, they are no longer suitable or desirable as breeders. To avoid producing dwarf cattle, the taxpayer sold the herd and purchased other cattle to establish a new breeding herd.

Section 1033 of the Code provides for the nonrecognition of gain, under prescribed conditions, resulting from certain involuntary conversions of property into money or other property. Under the provisions of section 1033(e) of the Code, if livestock are destroyed by or on account of disease, or are sold or exchanged because of disease, such destruction or such sale or exchange is treated as an involuntary conversion.

Dwarfism in beef cattle is hereditary and is transmitted as the result of the recessive dwarf gene. *Dwarfism in Beet Cattle; A Literature Review*, Carl B. Roubicek, R. T. Clark and O. F. Pahnish, Agricultural Research Service, Publication, July, 1955, United States Department of Agriculture and University of Arizona; *Dwarfism in Beef Cattle*, Bulletin 268, Agricultural Experiment Station, University of Arizona. The problem seems one of genetics and nowhere in the foregoing publications is the condition of dwarfism in beef cattle referred to as a disease.

Accordingly, it is held that the condition of dwarfism in beef cattle does not constitute a disease within the meaning of section 1033(e) of the Code. Sales of cattle due to dwarfism do not qualify as involuntary conversions under such section of the Code.

SECTION 1034.—SALE OR EXCHANGE OF RESIDENCE

26 CFR 1.1034–1: Sale or exchange of residence. (Also Part II; Section 112(n); Regulations 118, Section 39.112(n)–1.) Rev. Rul. 59–72

Where all the facts and circumstances indicate that property sold by a taxpayer was used by him as his principal residence, he will be entitled to relief provided for by section 1034 of the Internal Revenue Code of 1954, notwithstanding the fact that he temporarily rented out the residence prior to its sale.

Revenue Ruling 55–222, C.B. 1955–1, 349, revoked.

Further consideration has been given to the position taken with regard to nonrecognition of gain upon the sale of a residence after extended rental of the property as expressed in Revenue Ruling 55–

222, C.B. 1955–1, 349, in view of the decision of the Tax Court of the United States in the case of *Ralph L. Trisko* and *Mildred E. Trisko* v. *Commissioner*, 29 T.C. 515 (1957).

In the *Trisko* case the Tax Court found that the petitioner built a home for his family residence and lived there for many years; that he and his family left it when he received a temporary assignment overseas, but that at all times he intended to return to the United States and reoccupy the home; that he leased the property with a view of obaining responsible persons to maintain and care for it; that lease initially extended for a period of one year and subsequently on a month-to-month basis; that when he returned he found it impossible to regain immediate possession of the home because of rent control regulations and consequently, the court said, he was compelled to purchase another home, while the tenants occupied his former residence; and that he sold it subject to the lease. The court held that the property was the taxpayer's principal residence, within the meaning of section 112(n) of the Internal Revenue Code of 1939 (substantially similar to section 1034 of the Internal Revenue Code of 1954), and that the sale qualified for treatment under that section notwithstanding the rental circumstance. The court based its decision on section 29.112 of Regulations 111 under which the determination depends upon the facts of a case, the good faith of the taxpayer, and on the Congressional intent as expressed in House Report No. 586, 82d Congress, 1st Session (1951), p. 109, C.B. 1951–2, 357 at 436, which states in part as follows:

> The term "residence" is to be used in contradistinction to property used in trade or business or property held for production of income. Nevertheless, the mere fact that taxpayer temporarily rents out either the old or new residence may not, in light of all the facts and circumstances in the case, prevent the gain from being not recognized. * * *

Limiting its observations strictly to the facts, the court stated in the *Trisko* case as follows:

> In our opinion "all the facts and circumstances" in the instant case "including the bona fides of the taxpayer", indicate to our satisfaction that the property sold by the taxpayer was used by him as a residence "in contradistinction to property used in trade or business and property held for production of income" in spite of the fact that the "taxpayer temporarily rent[ed] out * * * the old * * * residence".

Accordingly, where all the facts and circumstances indicate that property sold by a taxpayer was used by him as his principal residence, he will be entitled to relief provided for by section 1034 of the Internal Revenue Code of 1954, notwithstanding the fact that he temporarily rented out the residence prior to its sale.

The Commissioner has acquiesced (page 5, this Bulletin) in the *Trisko* decision. However, since that case was limited in the manner indicated, it will be followed only in those cases which are factually similar.

Revenue Ruling 55–222, *supra*, revoked.

PART VII.—WASH SALES OF STOCK OR SECURITIES

SECTION 1091.—LOSS FROM WASH SALES OF STOCK OR SECURITIES

26 CFR 1.1091–1: Losses from wash sales of stock or securities. Rev. Rul. 59–44

Bonds of different local housing authorities, issued under agreement with the Federal Public Housing Administration, are not "substantially identical" securities within the meaning of section 1091 of the Internal Revenue Code of 1954.

Advice has been requested whether bonds issued by different local housing authorities under agreement with the Federal Public Housing Administration are "substantially identical" securities within the meaning of section 1091 of the Internal Revenue Code of 1954.

A taxpayer sold certain securities, namely:

Los Angeles, California, Housing Authority 2⅜ percent bonds, due November 1, 1979;

Boston, Massachusetts, Housing Authority 2⅜ percent bonds, due April 1, 1982; and

Kansas City, Missouri, Housing Authority 2½ percent bonds, due December 1, 1969.

Within 30 days of the sale, he purchased the following securities:

Dallas, Texas, Housing Authority 2⅜ percent bonds, due December 1, 1980;

Jersey City, New Jersey, Housing Authority 2⅜ percent bonds, due April 1, 1982; and

Memphis, Tennessee, Housing Authority 2½ percent bonds, due July 1, 1969.

Section 1091 of the Code provides, in part, as follows:

(a) DISALLOWANCE OF LOSS DEDUCTION.—In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange on which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, *substantially identical* stock or securities, then no deduction for the loss shall be allowed under section 165(c)(2); nor shall such deduction be allowed a corporation under section 165(a) unless it is a dealer in stocks or securities, and the loss is sustained in a transaction made in the ordinary course of its business. (Italics supplied.)

It appears that whether the respective bonds sold and purchased in the instant case are "substantially identical securities" within the meaning of section 1091 of the Code depends primarily upon whether the Public Housing Administration (an instrumentality of the Federal Government) is common primary obligor on all the bonds involved although they were issued by various local public housing agencies under state housing authority laws.

Under the United States Housing Act of 1937, as amended, 42 U.S.C. 1403, Congress created an agency of the United States now known as the Public Housing Administration (PHA) to assist the several states and their political subdivisions in developing low-rent housing projects. Under the various state housing authority laws, the local public housing agency (the local authority) is created as a distinct political

subdivision of cities, counties, etc. The local authority is empowered to contract with PHA in meeting Federal statutory requirements for obtaining necessary financial assistance in issuing bonds and incurring indebtedness. Financial assistance is rendered by PHA to the local authority under an agreement known as an "Annual Contributions Contract." In addition, the local authority executes a "Bond Resolution" which constitutes a contract between itself and the holders of its bonds. Both the Annual Contributions Contract and the Bond Resolution are standard-form agreements prepared by PHA.

Each bond provides that the local authority for value received promises to pay the bearer, or registered holder, the principal amount of the bond plus interest. Each bond further provides that such bond and all other bonds of the issue of which it is a part are secured by (1) a first pledge of a specific portion of the annual contributions payable to the local authority and (2) by a first pledge of and lien on the rents, revenues, fees and income of the local authority derived from the operation of such projects. Under the indenture the bond is not a debt of the city, county, state or any of its political subdivisions, nor is it payable out of any funds or properties other than those of the local authority.

The Annual Contributions Contract provides, in part, for a loan to the local authority of up to 90 percent of the development cost of the project and obligates PHA to pay a fixed annual contribution equal to the level debt service on the bonds established under the contract, such contribution to be reduced by the amount of the net rental revenues derived by the local authority from operating the project. Thus, its annual contribution may vary from zero to the full level debt service on the bonds concerned. The faith of the United States is pledged to the payment of the annual contribution. As to the rights of third parties under the contract, the PHA covenants and agrees therein with and for the benefit of the holders from time to time of the bonds and of interest claims thereupon, that it will pay the annual contributions pledged as security for such bonds and interest pursuant to the contract, and it provides that, to enforce performance by the PHA of this covenant, such holders, as well as the local authority, shall have the right to proceed against the PHA by action at law or in equity.

The Bond Resolution sets forth the contract between the local authority and the bondholders and also recites the covenants and agreements to be performed by the local authority for the benefit, protection and security of the bondholders. The Resolution specifically provides that the bonds issued thereunder shall be direct and general obligations of the local authority, the full faith and credit of which are pledged for the punctual payment of the principal of and interest on said bonds, and shall be additionally secured in the manner provided in the Resolution. In the more important covenants of the Resolution, the local authority agrees (1) not to transfer, mortgage, or otherwise encumber the projects; (2) to collect rentals at rates to produce revenues which, together with the accruing annual contributions, will be sufficient to pay the principal and interest on the bonds, meet operating expenses and discharge all other obligations; (3) not to issue any other obligations; (4) to pay all charges, assessments, etc., imposed; and (5) to insure the projects. The Resolution also provides that the bondholders may, by suit in law or equity, compel the local authority

to (1) perform its covenants in the Resolution, (2) perform its part of the Annual Contributions Contract, and (3) fulfill all duties imposed upon it. Furthermore, the holders of 20 percent or more of the principal amount of the bonds may, upon default of the local authority to pay any installment of principal or interest, by suit require it and its officers to account as if it and its officers were trustees of an express trust.

Manifestly, holders of these local authority bonds derive considerable comfort from the fact that the faith of the United States is pledged to the payment of all annual contributions which may become due from the PHA under pertinent contracts. However, the Internal Revenue Service is following decisions wherein the Tax Court of the United States has declined to characterize the Government as primary obligor in certain cases which involved similar types of Federal Government supported financing and guarantees. In *Brann & Stuart Company*, 9 T.C. 614, acquiescence, CB 1948–2, 1, the Tax Court held that the obligation to repay advances made by certain banks to the petitioner to enable it to perform Government war contracts was "indebtedness" of the petitioner, within the meaning of section 719(a)(1) of the Internal Revenue Code of 1939, so that they represented "borrowed invested capital" to it, even though the petitioner had assigned to the banks its rights to receive payments from the Government under the contracts. The Commissioner of Internal Revenue argued that the alleged borrowed capital items should be disallowed because they actually represented advances by the bank on the faith and credit of the United States Government and that, while the indebtedness for the advances was in form that of the petitioner, it was in substance and reality that of the United States Government. *McDonnell Aircraft Corporation* v. *Commissioner*, 16 T.C. 189, appeal dismissed, 191 Fed. (2d) 733, involved financing arrangements in making so-called "V-Loans" under which the Government guaranteed 90 percent of the loan. The Tax Court refused to adopt the Commissioner's position that the petitioner was not entitled to the allowance of borrowed capital on account of advances made pursuant to such financing arrangements except to the extent that the petitioner was reasonably relied upon as obligor for the unguaranteed portion of the advances. In the instant case, it reasonably appears that the local authorities have very substantial credit standings of their own, insofar as the bonds involved are concerned, in view of their ownership of the housing projects and the requirement that the net revenues derived therefrom become a part of the debt service fund for payment of bond principal and interest. Moreover, the differing respective credit standings of the various local authorities are reflected by the varying prices for which the bonds are sold as well as the varying interest rates they yield.

In the instant case it also appears that the various local authorities are separate political entities unassociated with each other and with no secondary liability with respect to each other's bonds. The case is, therefore, distinguishable from the situation involved in Issue 3 in *Marie Hanlin, et al., Executors of the Estate of Belle C. Hershman Martinek* v. *Commissioner*, 38 B.T.A. 811, nonacquiescence C.B. 1939–1 (Part 1), 55, affirmed, 108 Fed. (2d) 429. There it was held that bonds of the Federal Land Bank of Louisville sold were not "subtantially

identical," within the meaning of the "wash sales" provisions (section 118) of the Revenue Act of 1932, with bonds of the Federal Land Bank of St. Louis and the Federal Land Bank of Wichita, respectively, purchased. The Board of Tax Appeals reached its such decision on the ground that those Federal Land Banks were not alike liable on the individual bonds of each other because one bank's liability on the bonds of another was only contingent and not joint and several. The Court of Appeals grounded its affirmance thereof on physical differences in collateral security underlying the bonds of the respective Federal Land Banks concerned, although stating that they were "at least secondarily liable on each other's bonds, 12 U.S.C.A. sec. 872." Accordingly, the Service's nonacceptance of such decision is not controlling in the instant case.

In view of the foregoing, it is concluded that in the instant case the Federal Government is not common primary obligor on the bonds involved of the local authorities concerned and that each of such authorities is a separate and distinct entity, independent of the others, and the primary obligor itself on the bonds involved issued by it. Therefore, it is held that the bonds involved of each of the local authorities concerned are not "substantially identical," within the meaning of the "wash sales" provisions (section 1091) of the Code, with those involved of any of the other local authorities concerned.

SUBCHAPTER P.—CAPITAL GAINS AND LOSSES

PART I.—TREATMENT OF CAPITAL GAINS

SECTION 1202.—DEDUCTION FOR CAPITAL GAINS

26 CFR 1.1202–1: Deduction for capital gains.

Transfer of an undivided one-half interest in all substantial rights to a patent. See Rev. Rul. 59–175, page 213.

PART III.—GENERAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

SECTION 1221.—CAPITAL ASSET DEFINED

26 CFR 1.1221–1: Meaning of terms.

Investment land subdivided and sold in trade or business. See Rev. Rul. 59–91, page 15.

SECTION 1222.—OTHER TERMS RELATING TO CAPITAL GAINS AND LOSSES

26 CFR 1.1222–1: Other terms relating to capital gains and losses.

Holding period of a capital asset acquired by gift. See Rev. Rul. 59–86, page 209.

Holding period of community property before and after death of one spouse. See Rev. Rul. 59-220, page 210.

SECTION 1223.—HOLDING PERIOD OF PROPERTY

26 CFR 1.1223-1: Determination of period for which capital assets are held. Rev. Rul. 59-86

(Also Sections 1014, 1222; 1.1014-1, 1.1222-1.)

> Where a capital asset is acquired by valid gift, the holding period of the donee commences on the date of the gift even though the donor dies subsequent to making such gift and the asset is required to be included in his taxable estate as a gift made in contemplation of death, provided that none of the provisions of section 1223 of the Internal Revenue Code of 1954 is applicable to the acquisition.

Advice has been requested as to the commencement date of the holding period of a capital asset, for capital gain or loss purposes, in the hands of a person who acquired the asset by gift under the circumstances described below.

In September 1957, the taxpayer received shares of stock as a gift from a relative. In March 1958, the donor died and the stock was required to be included in his taxable estate for Federal estate tax purposes as a gift made in contemplation of death. Four months after the death of the donor, the taxpayer sold the stock.

The specific issue in this case is whether the taxpayer's holding period is to be computed from the date he received the gift of stock, thereby qualifying the subsequent sale for long-term capital gain or loss treatment, or from the date of the donor's death, which would qualify the sale for short-term capital gain or loss treatment.

Section 1222 of the Internal Revenue Code of 1954 provides, in part, that the term "short-term capital gain" means gain from the sale or exchange of a capital asset held for not more than six months. The term "long-term capital gain" means gain from the sale or exchange of a capital asset held for more than six months.

Section 1223 of the Code provides several instances in which, under specified circumstances, the actual holding period of property may be extended by "tacking on" additional holding periods.

In *Nancy K. McFeely* v. *Commissioner*, 296 U.S. 102, Ct. D. 1040, C.B. XIV-2, 209 (1935), the Supreme Court of the United States, in determining the holding period of a certain property in the hands of a legatee, construed the word "held" to mean "acquired and held," and concluded that the date of acquisition is the date from which to compute the duration of ownership or length of holding period of a capital asset. The Court stated, in part, as follows:

> In common understanding to hold property is to own it. In order to own or hold one must acquire. The date of acquisition is then, that from which to compute the duration of ownership or the length of holding. * * *

In the instant case, the stock was acquired by valid gift in September 1957, when all incidents of ownership of the stock were relinquished to the taxpayer. Under the rationale of the *McFeely* case, the taxpayer's holding period of the stock commenced on the date of the gift. None of the provisions of section 1223 of the Code is applicable here. Therefore, the proceeds from the subsequent sale of

the stock by the taxpayer constitute gain or loss from the sale of a capital asset held for more than six months.

The provisions of law which govern the instant question are to be distinguished from those contained in section 1014 of the Code, relating to the factors to be considered in determining the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent. The commencement date of a donee's holding period of a capital asset, for capital gain or loss purposes, need not coincide with the basis valuation date of the property as determined under section 1014 of the Code.

Accordingly, it is held that where a capital asset is acquired by valid gift, the holding period of the donee commences on the date of the gift even though the donor dies subsequent to making such gift and the asset is required to be included in his taxable estate as a gift made in contemplation of death, provided that none of the provisions of section 1223 of the Code are applicable to the acquisition.

(Also Sections 1014, 1222, 1.1014–1, 1.1222–1.) Rev. Rul. 59–220

The holding period of a surviving spouse's share of community property dates from the date of acquisition by the community, where the surviving spouse's interest vests at the time of such acquisition.

The holding period of property which is a deceased spouse's share of the community property, inherited by the surviving spouse, dates from the date of the decedent's death.

Subject to certain limitations, the income tax basis of the entire community upon the death of one of the spouses is its fair market value at the date of the decedent's death, or, in the case of an election under either Section 2032 of the Internal Revenue Code of 1954, or Section 811(j) of the Internal Revenue Code of 1939 where the decedent died after October 21, 1942, its value at the appropriate valuation date.

Advice has been requested concerning the holding period and basis of property where such property is partly a surviving spouse's share of community property which vested at the time of the acquisition by the community and a deceased spouse's share of the community inherited by the surviving spouse.

At the time of her husband's death, the taxpayer and her husband were residents of the State of Texas, a community property State. In his will, the taxpayer's husband devised and bequeathed his share of the community to the taxpayer. Between the date of her husband's death and distribution of the estate to the taxpayer, there were no sales or other dispositions of assets comprising the community estate. However, shortly after the distribution, several assets were sold. At least one-half of the whole of the community property was includible in determining the value of the decedent's gross estate for Federal estate tax purposes.

Section 1014 of the Internal Revenue Code of 1954, subject to certain limitations, provides, in part, as follows:

(a) * * * the basis of the property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, * * * be the fair market value of the property at the date of the decedent's death, or, in the case of an election under either section 2032 or section 811(j) of the

Internal Revenue Code of 1939 where the decedent died after October 21, 1942, its value at the applicable valuation date prescribed by those sections.

(b) * * * For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

* * * * * * *

(6) In the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, * * * if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) or section 811 of the Internal Revenue Code of 1939;

(7) In the case of decedents dying after October 21, 1942, and on or before December 31, 1947, such part of any property, representing the surviving spouse's one-half share of property held by a decedent and the surviving spouse under the community property laws of any State, Territory, or possession of the United States or any foreign country, as was included in determining the value of the gross estate of the decedent, if a tax under chapter 3 of the Internal Revenue Code of 1939 was payable on the transfer of the net estate of the decedent. In such case, nothing in this paragraph shall reduce the basis below that which would exist if the Revenue Act of 1948 had not been enacted;

Section 1222 of the Code, in defining short and long-term capital gains and losses, states that such gains and losses arise from the sale of a capital asset "held" for a period of not more than six months or for more than six months, as the case may be.

In determining the period for which a taxpayer has "held" property for income tax purposes, section 1223 of the Code provides, in part, as follows:

(2) * * * there shall be included the period for which such property was held by any other person, if under this chapter such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

The holding period of property dates from the day of acquisition. See *Nancy K. McFeely* v. *Commissioner*, 296 U.S. 102, Ct. D. 1040, C.B. XIV–2, 209 (1935). The basis of property, if "acquired" from a decedent, is its value at the decedent's death or, where such date is applicable, on the alternate valuation date. Section 1014(a) of the Code. However, the concept of "acquisition" employed in determining holding periods has no relationship to the statutory concept of "acquisition" employed in section 1014(b) of the Code for basis purposes. These concepts are separate and distinct and each should be read as affecting only the subject to which it relates. See *McFeely* v. *Commissioner*, *supra;* Rev. Rul. 59–86, page 209, this Bulletin.

For holding purposes, acquisition occurs when ownership of the property in question is obtained (*Howell* v. *Commissioner*, 140 Fed. (2d) 765) and the concept of ownership employed is found in applicable state law.

Normally, under state law, ownership is obtained upon the passage of title. See *Patterson* v. *C. B. Hightower et ux.*, 245 Fed. (2d) 765. Thus, the holding period is ordinarily to be computed from that date. However, in stated circumstances, section 1223 of the Code requires the "tacking on" of the holding period of a prior holder. Thus, through the operation of the latter rule, the holding period of property acquired by inheritance from a decedent commences at the date of the

decedent's death regardless of whether title has passed directly to the heir or whether the property has been subject to administration. See *McFeely* v. *Commissioner*, *supra*, and *Helvering* v. *Marjorie K. Campbell*, 313 U.S. 15, Ct. D. 1504, C.B. 1941–1, 360.

In the instant case, according to the laws of Texas, the taxpayer obtained a vested proprietary interest in her share of the community on acquisition of the property by the community. *Hopkins* v. *Bacon*, 282 U.S. 122, C.B. IX–2, 201 (1930). With regard to her husband's share of the community, she acquired no interest therein until after her husband's death, and then acquired an interest only by inheritance.

In light of the foregoing, it is held that the holding period of the property under consideration dates, in the case of the surviving spouse's share of the community, from the date of acquisition by the community and, in the case of property acquired, by inheritance, from the deceased spouse's share of the community, from the date of the decedent's death. The basis of the entire community is its fair market value at the date of the deceased spouse's death or at the appropriate alternate valuation date.

PART IV.—SPECIAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

SECTION 1231.—PROPERTY USED IN THE TRADE OR BUSINESS AND INVOLUNTARY CONVERSIONS

26 CFR 1.1231–1: Gains and losses from the sale or exchange of certain property used in the trade or business. Rev. Rul. 59–121

> The consideration received for the granting of an easement with respect to land constitutes the proceeds from a sale of an interest in real property. The amount received should be applied as a reduction of the cost or other basis of the land subject to the easement. Any excess over basis constitutes recognized gain. Where the land affected was used by the taxpayer in his trade or business and held for more than six months, any recognized gain from the granting of the easement is to be treated in the manner provided in section 1231 of the Internal Revenue Code of 1954.

Advice has been requested as to the treatment for Federal income tax purposes of amounts received from the granting of easements under the circumstances described below.

The taxpayer is the owner in fee of certain land which he has used for many years for the grazing of livestock raised for sale. During the taxable year, the taxpayer entered into a contract with an industrial company by which the company was granted easements, of indefinite duration, with respect to specified portions of the taxpayer's land in return for a designated amount of money. The easements in question provide (1) for the construction of a dam across a creek located on the taxpayer's property in order to create a reservoir and impound water for industrial purposes, and (2) for the use of portions of the taxpayer's land as depositories for waste material produced as a by-product of the company's industrial process.

The easements further provide that the taxpayer retains all rights to explore for and produce oil, gas, or other minerals upon and from

the land upon which easement rights are granted and shall have the rights of ingress and egress over and across such land in connection with such exploration and production. The taxpayer also retains the right to use and enjoy the land and any buildings thereon provided he does not interfere with the easement rights granted.

In I.T. 2621, C.B. XI–1, 67 (1932), it was held that the amount received from the sale of an easement to construct and maintain power transmission lines across farm land, where the owner retained more than the naked legal title to the land affected, should be applied against the cost or other basis of the land, and any excess over such basis for determining gain or loss would be taxable gain. See also G.C.M. 23162, C.B. 1942–1, 106, and Rev. Rul. 54–575, C.B. 1954–2, 145; *Raytheon Production Co.* v. *Commissioner*, 144 Fed. (2d) 110, certiorari denied, 323 U.S. 779; *Farmers and Merchants Bank of Catlettsburg, Ky.* v. *Commissioner*, 59 Fed. (2d) 912; *Telefilm, Inc.* v. *Commissioner*, 21 T.C. 688.

The facts of the instant case indicate that the taxpayer retains more than naked legal title to the property affected by the easements, inasmuch as he retains all oil, gas, and mineral rights and the use of buildings situated on the land for the entire period of the easements. Therefore, the contract between the taxpayer and the company constitutes the grant of easements in land and not the transfer of the ownership of such land. See I.T. 2621, *supra*. Since the easement is with respect to land, it constitutes an interest in real property. Compare I.T. 3693, C.B. 1944, 272, which holds that the interest of a lessee in oil and gas constitutes an interest in "real property" for Federal income tax purposes. Inasmuch as the land has been used for many years in conjunction with the taxpayer's business, such land constitutes property used in the trade or business.

Accordingly, the consideration received for the granting of an easement with respect to land constitutes the proceeds from a sale of an interest in real property. The amount received should be applied as a reduction of the cost or other basis of the land subject to the easement. Any excess over basis constitutes recognized gain. Where the land affected was used by the taxpayer in his trade or business and held for more than six months, any recognized gain from the granting of the easement is to be treated in the manner provided in section 1231 of the Code.

Investment property subdivided and sold in trade or business. See Rev. Rul. 59–91, page 15.

SECTION 1235.—SALE OR EXCHANGE OF PATENTS

26 CFR 1.1235–1: Sale or exchange of patents. Rev. Rul. 59–175
(Also Section 1202; 1.1202–1.)

A transfer of a fraction of a whole patent which includes a share in each of the substantial rights under the patent equal to that fraction constitutes a transfer of an "undivided interest" in all substantial rights to a patent within the meaning of section 1235(a) of the Internal Revenue Code of 1954. Such a transfer when made (other than through gift, inheritance, or devise) by any "holder,"

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as defined in section 1235(b), to a person other than a "related person," as defined in section 1235(d), qualifies for the capital gains treatment afforded by section 1235(a) of the Code.

Advice has been requested whether a transfer of an undivided interest in a patent under the circumstances described below constitutes a sale of a capital asset under section 1235 of the Internal Revenue Code of 1954.

The taxpayer, an inventor, entered into an agreement transferring an undivided one-half interest in an invention, patent application, and letters patent to issue, to a certain manufacturing corporation. Under the terms of the agreement, the taxpayer assigned an undivided one-half interest in the invention, and any subsequent improvements or modifications thereon, to the corporation. Both the taxpayer and the corporation have the right to sell, assign and transfer their respective undivided one-half interest or any part thereof, or to grant any licenses thereunder, without the prior consent of the other party. Either party may institute an infringement suit or proceeding relative to the invention, and each party appoints the other as his or its agent for the purpose of joining him or it as party plaintiff in any suit or proceeding which the other party may wish to bring on account of the infringement of the patent. In consideration of the receipt of the one-half interest in the patent, the purchasing corporation will pay the taxpayer ten percent of the gross selling price of all products sold which it manufactures under the process of or embodying the invention. None of the stockholders of the corporation are related by blood or marriage to the taxpayer, nor is any of the stock of the corporation, directly or indirectly, owned by the taxpayer or any person related to the taxpayer.

Section 1235(a) of the Code provides that a transfer (other than by gift, inheritance or devise) of property consisting of all substantial rights to a patent, or an undivided interest therein which includes a part of all such rights, by any holder shall be considered the sale or exchange of a capital asset held for more than six months, regardless of whether or not payments in consideration of such transfer are payable periodically over a period generally coterminous with the transferee's use of the patent, or are contingent on the productivity, use or disposition of the property transferred.

Section 1.1235–2(b) of the Income Tax Regulations provides, in part, that the term "all substantial rights to a patent" means all rights which are of value at the time the rights to the patent (or an undivided interest therein) are transferred. The circumstances of the whole transaction shall be considered in determing whether or not all substantial rights to a patent are transferred in a transaction.

In the instant case, the taxpayer has transferred to the corporation the right to make, use, and sell the invention, and to sell, transfer, and grant licenses under an undivided one-half interest in the patent for the life of the patent. Under these circumstances, the taxpayer has transferred all rights which were of value at the time of the transfer within the meaning of section 1.1235–2(b) of the regulations.

Under section 1235(a) of the Code, an inventor, or other qualified holder, may receive capital gains treatment on the transfer of a fraction of a whole patent where he also transfers to the purchaser a share

in each of the substantial rights under the patent equal to that fraction.

A transfer of a fraction of a whole patent which includes a share in each of the substantial rights under the patent equal to that fraction constitutes a transfer of an "undivided interest" in all substantial rights to a patent within the meaning of section 1235(a) of the Code. Such a transfer when made (other than through gift, inheritance or devise) by any "holder," as defined in section 1235(b), to a person other than a "related person," as defined in section 1235(d), qualifies for the capital gains treatment afforded by section 1235(a) of the Code. Accordingly, it is held that the transaction in this case qualifies as a sale of a capital asset held for more than six months within the meaning of section 1235 (a) of the Code.

Amounts realized on the sale or exchange of a patent to a controlled corporation. See Rev. Rul. 59–210, page 217.

SECTION 1237.—REAL PROPERTY SUBDIVIDED FOR SALE

26 CFR 1.1237–1: Real property subdivided for sale. Rev. Rul. 59–31

> Where a taxpayer is assessed for paving expenses on a parcel of land which he donated to a city government and the paving increases the basis of adjacent land which he retains, he will be deemed to have made improvements to such retained land for the purposes of section 1237 of the Internal Revenue Code of 1954. However, for purposes of sale of the adjacent property, the improvement will not be considered substantial if the requirements of section 1237(b) (3) of the Code, relating to necessary improvements, are otherwise met.

Advice has been requested whether a taxpayer is deprived of the benefits of section 1237 of the Internal Revenue Code of 1954 as a result of the improvement of property subdivided and held for sale under the circumstances described below.

The taxpayer is the owner of a tract of undeveloped real estate, which he has held for more than ten years, situated within the limits of a city. During the taxable year, the taxpayer donated a center strip of this land to the city in order to facilitate the extension of a city street which came to a dead end at his property line. When the street extension was made by the city, the taxpayer was assessed for paving expenses inasmuch as the extension bisected and abutted the remainder of his tract of land. Subsequently the taxpayer subdivided such remainder into lots for sale.

Section 1237(a) of the Code, relating to real property subdivided for sale, provides, in relevant part, that any lot or parcel which is part of a tract of real property in the hands of a taxpayer shall not be deemed to be held primarily for sale to customers in the ordinary course of trade or business at the time of sale solely because of the taxpayer's having subdivided such tract for purposes of sale, or because of any activity incident to such subdivision or sale, if—

(2) no substantial improvement that substantially enhances the value of the lot or parcel sold is made by the taxpayer on such tract while held by the taxpayer * * *. For purposes of this paragraph, an improvement shall be deemed to be made by the taxpayer if such improvement was made by—

* * * * * * *

(C) Federal, State, or local government, or political subdivision thereof, but only if the improvement constitutes an addition to basis for the taxpayer; and

(3) such lot or parcel, except in the case of real property acquired by inheritance or devise, is held by the taxpayer for a period of 5 years.

Section 1.1237–1(c)(2)(i)(e) of the Income Tax Regulations provides that, for the purposes of section 1237(a)(2) of the Code, the taxpayer is deemed to have made any improvements on the tract while he held it which are made by a Federal, State, or local government, or political subdivision thereof, if the improvement results in an increase in the taxpayer's basis for the property, as it would, for example, from a special tax assessment for paving streets.

Section 1.1237–1(c)(5)(i) of the regulations, relating to the special rules for "necessary" improvements under section 1237(b)(3) of the Code, provides, in part, that an individual taxpayer may elect to have improvements treated as "necessary" and not substantial, thereby obtaining the benefits of section 1237 of the Code, if he has held the property for ten years and the improvements consist of the building or installation of water, sewer, or drainage facilities, or roads. In addition, the District Director of Internal Revenue, with whom the taxpayer files his return, must be satisfied that the improvements were necessary to enable the taxpayer to get the prevailing local price for the type of property which he sold. Further, the taxpayer must elect not to adjust the basis of the lot sold, or any other property held by him, for any part of the cost of the improvement, and not to deduct any part of the cost as an expense. This election should be made in the manner prescribed under section 1.1237–1(c)(5)(iii) of the regulations.

In the instant case, the street paving, for which the taxpayer was assessed, constitutes an improvement, within the meaning of section 1237(a)(2) of the Code, which results in an increase in the basis of the property in the taxpayer's hands. However, since the taxpayer has held the tract of land for more than ten years, the improvement (paving of the street) will be considered as a necessary improvement and not a substantial improvement for purposes of sale of the adjacent property, provided that there is compliance with the other requirements of section 1237(b)(3) of the Code.

Accordingly, it is held that where a taxpayer is assessed for paving expenses on a parcel of land which he donated to a city government and the paving increases the basis of adjacent land which he retains, he will be deemed to have made improvements to such retained land for purposes of section 1237 of the Code. However, for purposes of sale of the adjacent property, the improvement will not be considered substantial if the requirements of section 1237(b)(3) of the Code, relating to necessary improvements, are otherwise met.

SECTION 1239.—GAIN FROM SALE OF CERTAIN PROPERTY BETWEEN SPOUSES OR BETWEEN AN INDIVIDUAL AND A CONTROLLED CORPORATION

26 CFR 1.1239–1: Gain from sale or exchange of certain property between spouses or between an individual and a controlled corporation. (Also Sections 167, 1235; 1.167(a)–6, 1.1235–1.)

Rev. Rul. 59–210

Where the holder of a patent transfers all of the substantial rights in the patent to a corporation in which he owns more than 80 percent in value of the outstanding stock and the patent in the hands of the transferee is property of a character which is subject to an allowance for depreciation, the transaction and the amounts realized therefrom do not fall within the scope of section 1235 of the Internal Revenue Code of 1954. The transaction constitutes a sale of property described in section 1239 of the Code, and the proceeds are taxable as ordinary income.

Advice has been requested concerning the appropriate income tax treatment of amounts realized by the holder of a patent from a transfer of the patent to a corporation in which the holder owns more than 80 percent in value of the outstanding stock.

The taxpayer is the inventor of a coupling device for which letters patent have been issued. In July, 1956, he entered into an agreement whereby he transferred all the substantial rights in the patent to a corporation in exchange for a percentage of the gross receipts realized by the corporation from the sale of the patented product for a period coterminous with the remaining life of the patent.

The corporation is a manufacturing concern engaged in the manufacture and sale of patented products. On the date of the transfer, more than 80 percent of the corporation's outstanding stock, in value, was owned by the taxpayer.

Section 1235 of the Internal Revenue Code of 1954 provides that the transfer of the substantial rights to a patent by the holder shall be considered, except in the event of a transfer to certain related persons, as the sale or exchange of a capital asset held for more than six months. A corporation, in which a holder owns a percentage in value of the outstanding shares to the extent specified in section 267(b), as made applicable and modified by section 1235(d) of the Code, is a person who is related to the holder within the meaning of section 1235 of the Code.

In the event of a transfer of a patent between certain related persons as set forth in section 1235(d) of the Code, section 1.1235–1(b) of the Income Tax Regulations provides that the tax consequences of the transfer shall be determined under the other applicable provisions of the internal revenue laws.

Section 1239 of the code provides, in part, as follows:

(a) TREATMENT OF GAIN AS ORDINARY INCOME.—In the case of a sale or exchange, directly or indirectly, of property described in subsection (b)—

* * * * * * *

(2) Between an individual and a corporation more than 80 percent in value of the outstanding stock of which is owned by such individual, * * *;

any gain recognized to the transferor from the sale or exchange of such property shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231.

(b) SECTION APPLICABLE ONLY TO SALES OR EXCHANGES OF DEPRECIABLE PROPERTY.—This section shall apply only in the case of a sale or exchange by a transferor of property which in the hands of the transferee is property of a character which is subject to the allowance of depreciation provided in section 167.

Section 167 of the Code allows a depreciation deduction, subject to certain limitations, for property used in a trade or business or for property held for the production of income. Section 1.167(a)–6 of the regulations provides that the cost of other basis of a patent shall be depreciated over its remaining useful life.

The corporation holds all the substantial rights in the patent and makes use of the rights in its trade or business. The patent in the hands of the corporation constitutes property of a character which is subject to an allowance for depreciation.

In light of the foregoing, it is held that the amounts realized by the taxpayer from the sale of the patent are not within the scope of section 1235 of the Code. Such amounts constitute a gain from the sale or exchange of property described in section 1239 of the Code, and are taxable as ordinary income.

SECTION 1242.—LOSSES ON SMALL BUSINESS INVESTMENT COMPANY STOCK

Small business investment company at least 80 percent of whose income consists of interest and dividends. See Rev. Rul. 59–69, page 142.

SECTION 1243.—LOSS OF SMALL BUSINESS INVESTMENT COMPANY

Small business investment company at least 80 percent of whose income consists of interest and dividends. See Rev. Rul. 59–69, page 142.

SUBCHAPTER Q.—READJUSTMENT OF TAX BETWEEN YEARS AND SPECIAL LIMITATIONS

PART I.—INCOME ATTRIBUTABLE TO SEVERAL TAXABLE YEARS

SECTION 1301.—COMPENSATION FROM AN EMPLOYMENT

26 CFR 1.1301–2: Compensation from an employment. Rev. Rul. 59–161

A lump-sum payment received by an attorney for the trustees of an estate as a fee for preparing the final formal account of the estate may not be treated separately from other amounts received as attorney for the trustees during the administration of the estate for the purpose of qualifying under section 1301 of the Internal Revenue Code of 1954.

Advice has been requested whether a lump-sum fee paid for the preparation of the final account of an estate by an individual who had served as attorney for the trustees of the estate for several years,

may be computed as if the lump-sum compensation had been received ratably over the period of services and, if so, how the fee should be prorated.

For ten years an attorney for the trustees of an estate was paid from income an annual fee covering such matters as servicing, closing and extension of mortgages, preparing the income tax returns of the trust, and for other miscellaneous services. He also received a lump-sum payment for preparing the final account of the trustees.

Section 1301(a) of the Internal Revenue Code of 1954 provides that if an individual or partnership engages in an employment which covers a period of 36 months or more from the beginning to the completion of such employment, and the gross compensation from the employment received or accrued in the taxable year of the individual is not less than 80 percent of the total compensation from such employment, then the tax attributable to any part of the compensation which is included in his gross income shall not be greater than the aggregate of the taxes attributable to such part had it been included in his gross income ratably over that part of the period which precedes the date of such receipt or accrual.

Under section 1301(b) of the Code and section 1.1301–2(b) of the Income Tax Regulations, the term "an employment" means an arrangement or series of arrangements for the performance of personal services by an individual or partnership to effect a particular result regardless of the number of sources from which compensation therefor is obtained.

All the services performed in the instant case, including those for which an annual fee was received, were performed to accomplish one particular result and therefore all of such services fall within the meaning of the term "an employment."

Accordingly, it is held that a lump-sum payment received by an attorney for the trustees of the estate as a fee for preparing the final formal account of the estate may not be treated separately from other amounts received as attorney for the trustees during the administration of the estate for the purpose of qualifying under section 1301 of the Code.

Rev. Rul. 59–176

The services rendered by an officer of a real estate firm in the management of a building leased by the firm, for which he was paid at the expiration of 20 years according to an agreement with the firm, are in the nature of a general performance of personal services inseparable from his regular duties as an officer, rather than an arrangement for the performance of personal services to effect a particular result as required by section 1301 of the Internal Revenue Code of 1954. Therefore, the tax limitation provisions of section 1301 are not applicable to the lump-sum payment received upon termination of the contract.

Advice has been requested whether a lump-sum payment received by an officer of a real estate firm for 20 years' service as manager of an office building leased by the firm comes within the income tax limitation provisions of section 1301 of the Internal Revenue Code of 1954.

The taxpayer in the instant case was the principal officer of *M* company, a real estate firm. In 1937, *N* company leased part of a building to *M* for a 20-year period in consideration of an annual rental and an agreement that *M* would operate and maintain the building, pay all taxes and assessments, water rent and charges made by any public authority against the property, maintain fire and other insurance and, at its own cost, keep in good order and repair the premises including all alterations, additions and improvements, as well as complying with and executing all laws, ordinances and orders of public authorities relating to the leased premises or the fixtures. *M* entered into a 20-year contract with the taxpayer for him to manage the building, under which the company would pay him, in addition to his regular yearly salary, a lump-sum amount payable at the end of the 20 years upon the termination of the contract for his management services. In 1957, the taxpayer received the lump-sum payment for his services under the contract.

Section 1301 of the Code provides for a limitation on tax if an individual (1) engages in an employment as defined in subsection (b) of that section, (2) the employment covers a period of 36 months or more, and (3) the gross compensation from the employment received or accrued in the taxable year of the individual is not less than 80 percent of the total compensation from such employment.

The term "an employment" in section 1301(b) of the Code means an arrangement or series of arrangements for the performance of personal services by an individual to effect a particular result. An employment exists because of a definite project undertaken to effect a particular result as distinguished from an agreement for the general performance of personal services or for the rendering of such services with respect to casual and unrelated results not confined to a continuing particular project.

The principal business of the *M* company was the real estate business, and the taxpayer derived a salary from his employment as an officer of that firm. In performing additional management services under the management agreement he did not undertake a special task separate and distinct from all other tasks and duties as an officer of the real estate firm. See *Moe A. Lesser et ux.* v. *Commissioner*, 17 T. C. 1479. The services he rendered to the *M* company under the management agreement are not separable from other services rendered that company for which he received compensation. The amount received under the management contract may not be treated separately from the other amounts received during the 20-year duration of the agreement for the purpose of determining whether he received 80 percent or more for such services in 1957. Furthermore, the services performed in connection with the management of the property were in the nature of a general performance of personal services rather than an arrangement for the performance of personal services to effect a particular result as required by section 1301(b) of the Code. Unless the services themselves are divisible, the compensation therefor, regardless of the source, must be lumped together. See *George J. Hoffman, Jr., et al.*, v. *Commissioner*, 11 T. C. 1057.

Accordingly, it is held that the services rendered by an officer of a real estate firm in the management of a building, for which he was paid at the expiration of 20 years according to an agreement with the

firm, are not separable from other services rendered the firm for which he received compensation, and the amount paid at the expiration of 20 years may not be treated separately from other amounts received by the officer during the 20-year duration of the agreement for the purpose of determining whether he received 80 percent or more for such services in the taxable year as required by section 1301(a)(3) of the Code. Furthermore, the services rendered were in the nature of a general performance of personal services inseparable from his regular duties as an officer rather than an arrangement for the performance of personal services to effect a particular result, as required by section 1301(a) of the Code. Therefore, the tax limitation provisions of section 1301 are not applicable to the lump-sum payment received upon termination of the contract.

Rev. Rul. 59–211

The change in status of an individual from that of a sub-contractor performing services on a particular project to that of a prime contractor under a new contract where the terms of the contracts are identical does not interrupt a single employment carried on under both contracts so long as the services are rendered on a particular project and directed to the attainment of a particular result. Where the period covered from the beginning to the completion of the employment is more than 36 months and the gross compensation received therefor exceeds 80 percent of the total compensation from the employment, the entire amount of compensation received in the taxable year qualifies as income from "an employment" under section 1301(a) of the Internal Revenue Code of 1954.

Advice has been requested whether a fee received by an individual upon completion of services performed under a prime contract which replaced a subcontractor contract for the same services qualifies as compensation from "an employment" within the meaning of section 1301 of the Internal Revenue Code of 1954.

A consulting engineer was engaged in engineering services in an individual capacity as an independent contractor. In 1954, he accepted a contract, offered by an engineering firm, whereby he undertook to carry out the engineering services which that firm had contracted to perform for an oil company which intended to construct a pipeline. The contract called for the surveys that were necessary in the preparation of data to be used for the application to the Federal Power Commission for authorization to construct the pipeline and to the Securities Exchange Commission in connection with approval for its financing. It also called for all the engineering data required up to and including the letting of the construction contract. The fee was a percentage of the estimated construction cost but was contingent upon the oil company's obtaining the authorization from the Federal Power Commission and the necessary financing to carry out the project.

The engineering firm later withdrew from its contract with the intent that the oil company would enter into a contract directly with the taxpayer for continuing the engineering services. In 1956, the taxpayer entered into an identical contract with the oil company. The new contract called for the performance of the same services on the same fee basis; however, no reference was made therein to the prior

contract. In 1958, the taxpayer was paid by the oil company for services rendered during the period from 1954 to 1956, the period of the sub-contract, and from 1956 to the completion of the services under the new contract.

Section 1301(a) of the Code provides that if an individual or partnership engages in "an employment", as defined in section 1301(b), the employment covers a period of 36 months or more from the beginning to the completion of such employment, and the gross compensation from the employment received or accrued in the taxable year is not less than 80 percent of the total compensation from such employment, then the tax attributable to the compensation included in gross income for the taxable year shall be computed in accordance with that section.

Section 1301(b) of the Code provides as follows:

> Definition of an Employment.—For the purpose of this section, the term "an employment" means an arrangement or series of arrangements for the performance of personal services by an individual or partnership to effect a particular result, regardless of the number of sources from which compensation therefor is obtained.

Section 1.1301–2(b) of the Income Tax Regulations further provides that there must be an understanding for the performance of services to accomplish a particular result. An arrangement to perform general services is not an employment within the meaning of section 1301 of the Code either as to any particular project on which services are performed or as to the general services since there is no understanding that the services are to accomplish a particular result. The individual steps performed by a taxpayer in connection with his project do not each constitute an employment. The services rendered by the taxpayer with respect to the entire project represent the employment.

The principal criterion used by the courts for determining the existence of a single employment is the divisibility of the personal services rendered rather than the divisibility of the source of the compensation. See *George J. Hoffman, Jr.* v. *Commissioner*, 11 T.C. 1057.

In the instant case, the arrangements for compensation under each contract were identical. No compensation was to be received until the project had been brought to the point where it had received the necessary authorization from the Federal Power Commission and the oil company had also received financing from the financing companies. When the taxpayer's status was changed from a subcontractor to prime contractor, his services were at the midpoint in the work required to obtain the necessary authorizations. This had no effect upon the performance of his services, and it did not alter in any way the services he was required to perform.

In *Guy C. Myers* v. *Commissioner*, 11 T.C. 447, acquiescence C.B. 1949–2, 3, it was established that a change in parties to a contract, or even a change in contract terms, would not interrupt a principal employment as long as personal services were directed to the attainment of a particular result.

Accordingly, it is held that the change in status of an individual from that of a sub-contractor performing services on a particular project to that of a prime contractor under a new contract where the terms of the contracts are identical does not interrupt a single em-

ployment carried on under both contracts so long as the services are rendered on a particular project and directed to the attainment of a particular result. Where the period covered from the beginning to the completion of the employment is more than 36 months and the gross compensation received therefor in a taxable year exceeds 80 percent of the total compensation from the employment, the entire amount of compensation received in the taxable year qualifies as income from "an employment" under section 1301(a) of the Code.

SECTION 1303.—INCOME FROM BACK PAY

26 CFR 1.1303–1: Income from back pay. Rev. Rul. 59–48

The amount paid to a Federal civil service employee, in accordance with a Congressional private law, representing a retroactive pay adjustment to reimburse him for loss resulting from an administrative error, constitutes back pay and is subject to the treatment provided by section 1303 of the Internal Revenue Code of 1954 if the amount received is in excess of 15 percent of his gross income for the year paid.

Advice has been requested whether the sum received by a Federal civil service employee in accordance with a private law passed by Congress to reimburse him for salary loss resulting from administrative error is subject to the back pay treatment provided by section 1303 of the Internal Revenue Code of 1954.

In the instant case, a Federal agency offered a civil service employee a position at an annual salary of $4,000 effective in July, 1947, which he accepted, but he was transferred to that position at a salary of $3,000. The employee attempted to have the agency adjust his salary to the larger amount during a period of five years but was unsuccessful. He sought legislative action. A private law was enacted authorizing and directing a payment to him representing the difference between the amount he should have received and the amount he did receive for his services during the period in question. Such amount was received in 1956.

Section 1303 of the Code provides, in part, as follows:

(b) DEFINITION OF BACK PAY.—For purposes of this section, the term "back pay" means amounts includible in gross income under this subtitle which are one of the following—

(1) Remuneration, including wages, salaries, retirement pay, and other similar compensation, which is received or accrued during the taxable year by an employee for services performed before the taxable year for his employer and which would have been paid before the taxable year except for the intervention of one of the following events:

* * * * * * *

(B) dispute as to the liability of the employer to pay such remuneration, which is determined after the commencement of court proceedings;

* * * * * * *

(D) Any other event determined to be similar in nature under regulations prescribed by the Secretary or his delegate.

Section 1.1303–1 of the Income Tax Regulations provides that if the amount of "back pay," as defined in section 1303(b) of the Code, received or accrued by an individual during the taxable year exceeds 15 percent of the individual's gross income for such year it may be allocated as provided in that section of the regulations.

The use in section 1303(b)(1)(D) of the Code of the expression "similar in nature" in referring to events other than those specified, and the broad interpretation to which it lends itself, indicates that it was the intention of Congress that the provisions of section 1303(b) of the Code should be liberally applied. See Rev. Rul. 57–566, C.B. 1957–2, 589.

In the instant case, the employee had two possible ways of recovery—(1) by bringing legal action, or (2) by a private law through the Congress of the United States. The alternative that he choose comes within the provisions of section 1303 of the Code as an event "similar in nature."

Accordingly, it is held the amount paid to a Federal civil service employee, in accordance with a Congressional private law, representing a retroactive pay adjustment to reimburse him for loss resulting from an administrative error, constitutes back pay and is subject to such treatment provided by section 1303 of the Code if the amount received is in excess of 15 percent of his gross income for the year paid.

SUBCHAPTER S.—ELECTION OF CERTAIN SMALL BUSINESS CORPORATIONS AS TO TAXABLE STATUS

SECTION 1371.—DEFINITIONS

(Also Section 544; 26 CFR 1.544–3.) Rev. Rul. 59–187

Section 544 of the Internal Revenue Code of 1954, relating to the constructive ownership of stock for the purposes of determining whether a corporation, under section 542 of the Code, is a personal holding company, has no application for the purpose of determining the number of shareholders of a corporation under section 1371 of the Code. Where there are more than ten shareholders of a corporation, the corporation does not qualify as a small business corporation under section 1371 of the Code, even though the shares are held by related individuals. For this purpose, each individual is considered as a shareholder.

CHAPTER 2.—TAX ON SELF-EMPLOYMENT INCOME

SECTION 1402.—DEFINITIONS

26 CFR 1.1402(a)–1: Net earnings from self-employment. Rev. Rul. 59–162

(Also Section 691; 1.691(a)–1.)

A trade or business must be *carried on* by an individual, either personally or through agents or employees, in order for the income to be included in "net earnings from self-employment" for purposes of the Self-Employment Contributions Act of 1954. Accordingly, renewal commissions paid to a surviving widow, pursuant to a con-

tract entered into by the husband as a self-employed agent for an insurance company and the insurance company, do not constitute self-employment income for the widow, since the commissions do not represent income derived from a trade or business carried on by her but rather a trade or business carried on by her husband prior to his death.

However, under section 691(a)(3) of the Internal Revenue Code of 1954, which relates to Federal income taxes, the renewal commissions are includible in the income of the widow.

Advice has been requested whether insurance renewal commissions paid to a surviving widow, pursuant to a prior contract entered into between her husband, as a self-employed agent, and the insurance company, constitutes self-employment income for the widow.

A sold life insurance policies for a company under a contract which called for the payment to him over a specified number of years of renewal commissions on all policies sold by him. *A*'s status in relation to the company was that of a self-employed individual and the renewal commissions received by him constituted net earnings from self-employment for purposes of the tax imposed by the Self-Employment Contributions Act of 1954. After *A*'s death in 1955, the renewal commissions were paid to his widow in accordance with the terms of his contract with the company.

Section 1401 of the Self-Employment Contributions Act of 1954 (chapter 2, subtitle A, Internal Revenue Code of 1954) imposes a tax upon the self-employment income of every individual. Self-employment income means the net earnings from self-employment as defined in section 1402(a) of the Act. The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by substitle A of the Code which are attributable to such trade or business, plus his distributive share of the ordinary net income or loss from any trade or business carried on by a partnership of which he is a member, with certain exclusions and deductions therefrom as defined in section 1402(c) of the Act. The trade or business must be *carried on* by the individual, either personally or through agents or employees, in order for the income to be included in his "net earnings from self-employment." Rev. Rul. 56–22, C.B. 1956–1, 558. Therefore, any renewal commissions received by *A*'s widow with respect to periods subsequent to his death are not derived from a trade or business carried on by her. Accordingly, such commissions do not constitute "net earnings from self-employment" and the widow is not liable for the tax imposed by the Self-Employment Contributions Act of 1954 with respect to such commissions.

However, under section 691(a) of the Code, which relates to Federal income taxes, the renewal commissions are includible in the gross income of the widow.

Rev. Rul. 59–221

Where a small business corporation elects under section 1372 of the Internal Revenue Code of 1954 not to be subject to Federal income tax, the amounts of its income which are required to be included in each shareholder's gross income do not constitute "net earnings from self-employment" to such shareholder for Self-Employment Contributions Act purposes.

Advice has been requested whether the undistributed taxable income required to be included in the gross income of shareholders of a small business corporation which has made an election pursuant to subchapter S of the Internal Revenue Code of 1954 not to be subject to Federal income tax, constitutes net earnings from self-employment to the shareholders for purposes of the tax imposed under the Self-Employment Contributions Act of 1954 (chapter 2, subtitle A, Internal Revenue Code of 1954.)

Section 64 of the Technical Amendments Act of 1958, Public Law 85–866, 72 Stat. 1606, at 1650, added subchapter S to chapter 1 of the Internal Revenue Code of 1954, effective for taxable years beginning after December 31, 1957. This subchapter contains sections 1371–1377 of the Code which pertain to the election of certain small business corporations as to taxable status.

Section 1372 of this subchapter provides, in effect, that any small business corporation, as defined in section 1371, may elect not to be subject to the income tax imposed by chapter 1 of the Code.

Section 1373 of the Code provides that each person who is a shareholder of an electing small business corporation on the last day of a taxable year of such corporation shall include in his gross income, for his taxable year in which or with which the taxable year of the corporation ends, the amount he would have received as a dividend, if on such last day there had been distributed pro rata to its shareholders by such corporation an amount equal to the corporation's undistributed taxable income for its taxable year. This section provides further that an amount so included in a shareholder's income shall be treated as an amount distributed as a dividend on the last day of the taxable year of the corporation.

Section 1402 of the Self-Employment Contributions Act of 1954 (chapter 2, subtitle A, Internal Revenue Code of 1954) provides in part as follows:

(a) NET EARNINGS FROM SELF-EMPLOYMENT.—The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle [subtitle A] which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(9) from any trade or business carried on by a partnership of which he is a member; * * *

* * * * * * *

(c) TRADE OR BUSINESS.—The term "trade or business," when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 * * *

From the above-defined terms it is apparent that income not resulting from the conduct of a trade or business by an individual or by a partnership of which he is a member is not includible in computing the individual's net earnings from self-employment. Amounts which must be taken into account in computing a shareholder's income tax by reason of the provisions of section 1373 of the Code, are not derived from a trade or business carried on by such shareholder. Neither the election by a corporation as to the manner in which it will be taxed for Federal income tax purpose nor the consent thereto by the persons

who are shareholders results in the consenting shareholder's being engaged in carrying on the corporation's trade or business. Accordingly, amounts which a shareholder is required to include in his gross income by reason of the provisions of section 1373 of the Code should not be included in computing his net earnings from self-employment for Self-Employment Contributions Act purposes.

Self-employment income from a business which is taken over and operated by the wife after husband's death. See Rev. Rul. 59-168, page 625.

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26 CFR 1.1402(c)-1: Trade or business. Rev. Rul. 59-1

An accountant whose professional services were excluded from the term "trade or business" under the Self-Employment Contributions Act of 1954, for years ending prior to 1955, filed his income tax return on a fiscal year basis from September 1, 1954, to August 31, 1955. The fiscal year of the accounting partnership of which he is a member was from December 1, 1953, to November 30, 1954. *Held*, the partnership was engaged in an excluded profession during its fiscal year which ended in 1954; consequently, his distributive share of the partnership's profit (or loss) described in section 702 (a) (9) of the Internal Revenue Code of 1954 from the accounting practice carried on by it for such period are not includible in computing his net earnings from self-employment.

Advice has been requested relative to the treatment, for purposes of the tax imposed under the Self-Employment Contributions Act of 1954 (chapter 2, subtitle A, Internal Revenue Code of 1954) of income received, under the circumstances set forth below, from an accounting practice.

A certified public accountant who is a partner in an accounting firm filed his individual Federal income tax return on a fiscal year basis as of September 1, 1954, through August 31, 1955. The fiscal year of the partnership was from December 1, 1953 through November 30, 1954.

Section 1402 of the Self-Employment Contributions Act, applicable for taxable years ending before 1955, provides in part as follows:

(c) TRADE OR BUSINESS.—The term "trade or business," when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 (relating to trade or business expenses), except that such term shall not include—

* * * * * * *

(5) The performance of service by an individual in the exercise of his profession as a * * * certified public accountant, accountant registered or licensed as an accountant under State or municipal law, full-time practicing public accountant * * * or the performance of such service by a partnership.

Under the provisions of section 1402(c)(5) of the Act, as amended by the Social Security Amendments of 1954, services performed in the exercise of the profession of accountancy are not excluded from the term "trade or business" with respect to taxable years ending after 1954.

The question to be decided in this case is whether the accountant's distributive share of income or loss described in section 702(a)(9) from the accounting practice carried on by the partnership for the partnership taxable year ending November 30, 1954, is includible in computing net earnings from self-employment on his 1954–1955 return as income from a "trade or business."

Section 1.1402(c)-1(f)(5) of the Income Tax Regulations (adopted August 13, 1956 by Treasury Decision 6196) provides, in part, that in case of a partnership engaged in the practice of any of the designated excluded professions, the partnership shall not be considered as carrying on a trade or business for the purpose of the tax on self-employment income, and none of the distributive shares of the income or loss, described in section 702(a)(9) of the code, of such partnership shall be included in computing net earnings from self-employment of any member of the partnership.

The fact that the partnership's taxable year in question ended on November 30, 1954, is determinative of the question of whether the partnership was engaged in a "trade or business" for self-employment tax purposes. The Social Security Amendments of 1954 which, in effect, extended social security coverage with respect to services performed in the practice of accountancy are applicable only to taxable years ending after 1954. Since the partnership year in question did not end after 1954 and since the partnership was engaged in the profession of accountancy, the partnership itself could not be considered as carrying on an included "trade or business" for self-employment tax purposes during the year in question.

Consequently, in accordance with the regulations referred to above, it is held that none of the distributive shares of the income of the partnership may be included in computing the net earnings from self-employment of a member of the partnership for the year in question, irrespective of the termination date of the individual partner's fiscal year.

The above conclusion is also applicable in like situations involving other professions which, prior to the Social Security Amendments of 1954 and/or 1956, were excluded from the term "trade or business" for self-employment tax purposes for taxable years ending prior to 1955 and 1956, respectively, but which were not thereafter excluded.

An insurance salesman soliciting life, and accident and health insurance contracts for one life insurance company. See Rev. Rul. 59–103, page 259.

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26 CFR 1.1402(e)–1: Election by ministers, members of religious orders, and Christian Science practitioners for self-employment coverage.

Earnings of ministers, members of religious orders, and Christian Science practitioners who have filed waiver certificates. See Rev. Rul. 59–50, page 253.

CHAPTER 3.—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS AND TAX-FREE COVENANT BONDS

SUBCHAPTER A.—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

SECTION 1441.—WITHHOLDING OF TAX ON NONRESIDENT ALIENS

26 CFR 1.1441–1: Requirement for withholding of tax on nonresident aliens and foreign corporations.
(Also Sections 61, 652, 662; 1.61–1, 1.652(a)–1, 1.662(a)–1.)

Rev. Rul. 59–177

Where under the terms of a trust instrument, a resident fiduciary of a trust in the United States pays, credits or is required to distribute amounts to a nonresident alien beneficiary which constitute income from sources within the United States, the fiduciary is not required to withhold income tax at the source on the amount of the distribution which exceeds the beneficiary's share of the distributable net income of the trust.

Advice has been requested as to the extent to which income of a trust in the United States distributed to a nonresident alien beneficiary is subject to withholding of income tax by the trustee under section 1441 of the Internal Revenue Code of 1954, where all of the trust income is from sources within the United States.

An individual is the resident trustee of a trust which was created in, and owes its existence to the laws of, the United States. Some of the trust beneficiaries are United States citizens and others are nonresident aliens not engaged in trade or business in the United States. All of the trust income is received from sources within the United States. The sum of the amounts properly paid, credited, or required to be distributed to the beneficiaries of the trust for the taxable year are in excess of the distributable net income of the trust.

Section 1441 of the Code provides, in general, that all persons having the control, receipt, custody, or payment of any fixed or determinable annual or periodical income from sources within the United States of any nonresident alien individual, with certain exceptions not pertinent here, shall deduct and withhold from such gross income a specified percentage of tax. See also section 1.1441–3(f) of the Income Tax Regulations.

Section 662 of the Code provides, in general, that the amount of income required to be distributed currently by a trust shall be included in the gross income of the beneficiaries to whom the income is required to be distributed, whether distributed or not. If such amounts exceed the distributable net income of the trust for the taxable year, then a beneficiary is required to include in his gross income only his proportionate share of the distributable net income of the trust. There shall also be included all other amounts properly paid, credited, or required to be distributed to such beneficiaries for the tax-

able year. If the sum of the amount of income required to be distributed currently and all other amounts properly paid, credited, or required to be distributed to all beneficiaries exceeds the distributable net income of the trust for the taxable year, then a beneficiary will include in his gross income (a) the amount of income required to be distributed to him currently, and (b) only so much of such other amounts that the sum of (a) and (b) will equal his share of the distributable net income of the trust. For a definition of "distributable net income," see section 643(a) of the Code.

Accordingly, it is held that where under the terms of a trust instrument, a resident fiduciary of a trust in the United States pays, credits or is required to distribute amounts to a nonresident alien beneficiary which constitute income from sources within the United States, the fiduciary is not required to withhold income tax at the source on the amount of the distribution which exceeds the beneficiary's proportionate share of the distributable net income of the trust.

This conclusion is equally applicable if for the taxable year the trust may be classified as a "simple trust" coming within the provisions of section 652(a) of the Code.

CHAPTER 6.—CONSOLIDATED RETURNS

SUBCHAPTER A.—RETURNS AND PAYMENT OF TAX

SECTION 1503.—COMPUTATION AND PAYMENT OF TAX

26 CFR 1.1503–1: Computation and payment of tax. Rev. Rul. 59–122

> In determining whether 80 percent or more of a corporation's gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in section 1503(c) of the Internal Revenue Code of 1954, which defines a regulated public utility, any refunds or repayments made pursuant to an order promulgated by the Federal Power Commission, or other governmental body, instrumentality or agency as specified in such section, are not to be taken into account in computing gross income, such refunds having once been used as deductions from gross income in computing taxable income.

Advice has been requested whether, in determining the extent to which a company's gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in section 1503(c) of the Internal Revenue Code of 1954, any refunds or repayments made pursuant to an order promulgated by the Federal Power Commission, or other governmental body, instrumentality or agency as defined in such section, must be taken into account in determining gross income.

During the year 1957, the *M*, *N* and *O* companies were an affiliated group of corporations within the meaning of section 1504 of the Code and filed a consolidated return for such year. The *M* company was engaged in the business of transporting natural gas, which it either

produced or purchased, by long distance pipeline. It sold its gas at various points along the pipeline system to local distributing utilities for resale and to industrial consumers. It also produced oil and extracted natural gasoline and other heavier hydrocarbons from the gas stream. The rates for gas sold for resale in interstate commerce were subject to the jurisdiction of the Federal Power Commission. Direct sales to industrial purchasers and intrastate sales were subject to jurisdiction by state regulatory bodies.

In 1952 and 1955, the *M* company had placed in effect increased tariffs for its jurisdictional customers and had begun collecting, under bond, the resulting increased revenues pending determination by the Federal Power Commission as to the justice of such rates. During the period of collection under bond, the increased revenues were included in taxable income under the "claim of right doctrine." See *North American Oil Consolidated* v. *Burnet*, 286 U.S. 417, Ct. D. 499, C.B. XI–1, 293 (1932), and G.C.M. 16730, C.B. XV–1, 179 (1936).

Pursuant to an opinion handed down by the Federal Power Commission, the *M* company effected a series of partial refunds in the succeeding years and took deductions for such refunds in the respective years of repayment in computing taxable income. During 1957, the *M* company's gross income from gas sales entirely regulated by the Federal Power Commission constituted an amount in excess of 80 percent of the gross income for such year, without taking into account any refunds made during that year pursuant to the opinion of the Federal Power Commission.

Section 1503(a) of the Internal Revenue Code of 1954 provides, as far as here pertinent, that the tax imposed under section 11(c) of the Code shall be increased for any taxable year by two percent of the consolidated taxable income of the affiliated group of includible corporations filing a consolidated return.

Section 1503(b) of the Code provides, in part, as follows:

> (b) LIMITATION.—If the affiliated group includes * * * one or more regulated public utilities (as defined in subsection (c), the increase of 2 percent provided in subsection (a) shall be applied only on the amount by which the consolidated taxable income of the affiliated group exceeds the portion (if any) of the consolidated taxable income attributable to * * * regulated public utilities in such group.

Section 1503(c)(2) of the Code, which defines "regulated public utility," provides, as far as here pertinent, as follows:

> For purposes of subsection (b), the term "regulated public utility" does not (except as provided in paragraph (3)) include a corporation described in paragraph (1) unless 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in paragraph (1).

Thus, section 1503(c) of the Code provides that the additional tax of two percent of the consolidated taxable income of an affiliated group filing consolidated returns is not applicable to that portion of the consolidated taxable income of the group which is attributable to a "regulated public utility," as defined in such section. In the instant case, if the *M* corporation meets the 80 percent requirement of section 1503(c) of the Code, it constitutes a "regulated public utility," and the additional tax of two percent provided for in section 1503(c) of the Code would in effect not apply to that portion of the consolidated taxable income attributable to it.

Section 1341(b)(2) of the Code, relating to the computation of tax where a taxpayer restores a substantial amount held under a claim of right, provides in part as follows:

> This paragraph shall not apply if the deduction arises out of refunds or repayments made by a regulated public utility (as defined in section 1503(c) without regard to paragraph (2) thereof) if such refunds or repayments are required to be made by the government, political subdivision, agency, or instrumentality referred to in such section.

The above quotation, as far as here pertinent, stands for the proposition that such refunds or repayments are considered as deductions. As such, they are not amounts to be taken into account in the determination of gross income.

Accordingly, it is held that, in determining whether 80 percent or more of the *M* company's gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in section 1503(c) of the Code, any refunds or repayments made pursuant to an order promulgated by the Federal Power Commission, or other governmental body, instrumentality or agency as defined in such section shall not be taken into account in determining gross income, such refunds having been taken as a deduction from gross income in computing taxable income.

SUBCHAPTER B.—RELATED RULES

SECTION 1551.—DISALLOWANCE OF SURTAX EXEMPTION AND ACCUMULATED EARNINGS CREDIT

26 CFR 1.1551: Statutory provisions; disallowance of surtax exemption and accumulated earnings credit.

Regulations under the Internal Revenue Code of 1954 amended to conform to section 205 of the Small Business Tax Revision Act of 1958. See T.D. 6377, page 125.

SUBTITLE B.—ESTATE AND GIFT TAXES

CHAPTER 11.—ESTATE TAX

SUBCHAPTER A.—ESTATES OF CITIZENS OR RESIDENTS

PART II.—CREDITS AGAINST TAX

SECTION 2013.—CREDIT FOR TAX ON PRIOR TRANSFERS

26 CFR 20.2013–1: Credit for tax on prior transfers. Rev. Rul. 59–9

> The value of a life estate, without more, qualifies for the credit for tax on prior transfers authorized by section 2013 of the Internal Revenue Code of 1954, notwithstanding the fact that it is not included in the gross estate of the transferee decedent.

Advice has been requested whether the estate of a decedent who had been the beneficiary of a life estate in a testamentary trust may be credited with all or any part of the amount of the Federal estate tax paid with respect to the transfer of such property in the estate of a prior decedent.

In the instant case the decedent and her sister were the lifetime income beneficiaries of a residual trust created under the will of their father. Under the terms of the will the decedent and her sister were to receive the income from the trust in equal shares during their lifetimes and, at the death of either, the income was to be paid to the survivor. At the death of the last to survive, the income was to be paid to their children. The decedent died in the year 1955 which was within ten years after the death of her father. The value of the property included in the residual trust was included in the father's gross estate and a Federal estate tax was paid thereon. Since the interest which the decedent possessed in the residual trust terminated at her death, the life estate which she had in the trust was not included in her gross estate for Federal estate tax purposes. The specific question presented is whether the life estate qualifies for the credit for tax on prior transfers authorized by section 2013 of the Internal Revenue Code of 1954 even though it is not included in the gross estate of the transferee decedent.

Section 2013 of the Code provides that the estate of a deceased who had received property from another decedent shall be credited with all or a part of the amount of the Federal estate tax paid with respect to such property in the transferor decedent's estate, provided that the decedents died within the statutory period.

In determining whether the credit authorized by section 2013 of the Code is allowable, it is not necessary that the property transferred be identified in or traced through the transferee's estate. If the property was included in the gross estate of the transferor and a Federal estate tax paid thereon, the credit for tax on prior transfers may be applied to the interest received by the transferee, notwithstanding the fact that such interest is not included in the transferee decedent's estate for Federal estate tax purposes. Furthermore, the right of survivorship which the decedent possessed in the life tenancy also constitutes an interest in property which passed to her from her father and, as such, qualifies for the credit authorized by section 2013 of the Code.

The amount to be used in computing the amount of credit which may be allowed is the value of the life estate plus the value of the secondary life estate determined as of the date of the transferor-decedent's death on the basis of recognized actuarial principles and without regard to the amount of income actually received by the life tenant.

In view of the foregoing, it is held that the value of a life estate, without more, qualifies for the credit for tax on prior transfers authorized by section 2013 of the Code, notwithstanding the fact that it is not included in the gross estate of the transferee decedent.

Rev. Rul. 59-73

The credit allowable under section 2013(b) of the Internal Revenue Code of 1954 for tax on prior transfers is not limited to the actual tax paid by the estate of the immediately preceeding transferor but may, in cases where a credit or deduction was allowed in the prior estate under section 2012 (or corresponding provisions of prior laws), section 2013 of the 1954 Code, or section 812(c) of the Internal Revenue Code of 1939, be smaller, the same, or greater than the actual Federal estate tax paid.

Advice has been requested concerning the method to be used for the computation of the credit allowable under section 2013(b) of the Internal Revenue Code of 1954, where a decedent's estate includes property which has previously been taxed in the estates of transferor decedents.

A died on October 1, 1952, bequeathing all his property to *B*. This property was taxed in *A*'s estate. *B* died January 1, 1953, bequeathing his entire estate to *C* who died December 1, 1954. *B*, the second transferor, possessed a gross estate of $400,000, of which $100,000 was property previously taxed in the estate of *A*. Debts and charges amounted to $40,000. All property was subject to general claims. State death taxes were paid in the amount of $3,480, the maximum credit allowable.

Inasmuch as *B* died prior to August 16, 1954, the provisions of the Internal Revenue Code of 1939 governed the computation of his estate tax. The computation was as follows:

For Basic Tax			
B's total gross estate			$400,000
Debts and charges		$40,000	
Specific exemption		100,000	
Total deductions, except property previously taxed		$140,000	
Deduction for property previously taxed without proportionate reduction	$100,000		
Proportionate reduction $\frac{100,000}{400,000} \times 140,000$	35,000		
Net deduction for property previously taxed		65,000	
Total deductions			205,000
Net estate for basic tax			$195,000
For Additional Tax			
B's total gross estate			$400,000
Debts and charges		$40,000	
Specific exemption		60,000	
Total deductions, except property previously taxed		$100,000	
Deduction for property previously taxed without proportionate reduction	$100,000		
Proportionate reduction $\frac{100,000}{400,000} \times 100,000$	25,000		
Net deduction for property previously taxed		75,000	
Total deductions			175,000
Net estate for additional tax			$225,000

Basic tax, gross	$4,350	
Credit for State death taxes	3,480	
Net basic tax		$870
Total gross taxes, basic and additional	$58,200	
Less: Basic tax, gross	4,350	
Net additional tax		53,850
B's net estate tax		$54,720

Since *C* died on December 1, 1954, his tax would be computed under the provisions of the 1954 Code. The computation of credit for *C*'s estate tax under section 2013(b) of the Code is as follows:

Net value of transfers		
Transferor's (*B*'s) gross estate		$400,000
Debts and charges	$40,000	
Federal estate tax	54,720	
State death taxes	3,480	98,200
Net value of transfers		$301,800
Value of transferor's (B's) estate, adjusted		
Net estate for basic tax		$195,000
Specific exemption		100,000
		$295,000
Federal estate tax	$54,720	
State death taxes	3,480	58,200
Value of transferor's estate, basic tax		$236,800
Net estate for additional tax		$225,000
Specific exemption		60,000
		$285,000
Federal estate tax	$54,720	
State death taxes	3,480	58,200
Value of transferor's estate, additional tax		$226,800
Tax on transferor's (B's) estate		
Basic tax		$870
Additional tax		$53,850
Transferor's (B's) tax on prior transfers		
Basic tax:		
$\frac{301,800}{236,800} \times 870 =$	$1,108.81	
Additional tax:		
$\frac{301,800}{226,800} \times 53,850 =$	71,657.54	
Credit under section 2013(b) for *C*'s estate tax		$72,766.35

It should be noted that, under the circumstances of this case, the credit to *C*'s estate under section 2013(b) exceeds the Federal estate tax actually paid in the estate of *B*, the transferor. It should also be noted that a similar result (credit larger than tax paid in estate of transferor) would be obtained had *B* died on September 1, 1954, in which case his estate would have received the benefit of a credit for tax on prior transfers, under section 2013 of the 1954 Code, instead of a deduction for property previously taxed, under section 812(c) of the 1939 Code.

If *B* died on September 1, 1954, the 1954 Code provisions would apply. Assuming that the limitation under section 2013(c) of the Code is applicable and that State death taxes are $5,520, the maximum credit allowable, the computation of tax in *B*'s estate would be as follows:

B's total gross estate		$400,000	
Debts and charges	$40,000		
Specific exemption	60,000	100,000	
Taxable estate		300,000	
Net tax			$76,180
Reduced gross estate:			
Total gross estate	$400,000		
Transfers	100,000	$300,000	
Debts and charges	40,000		
Specific exemption	60,000	100,000	
Reduced taxable estate		200,000	
Net tax			48,060
Credit allowable			$28,120
Net tax payable			
Tax before credit		$76,180	
Credit allowable		28,120	
Net tax			$48,060

In that case, the computation of credit under section 2013(b) of the 1954 Code in *C*'s estate is as follows:

Net value of transfers			
Transferor's (*B*'s) gross estate			$400,000
Debts and charges		$40,000	
Federal estate tax		48,060	
State death taxes		5,520	93,580
Net value of transfers			$306,420
Value of transferor's estate, adjusted			
Taxable estate			$300,000
Specific exemption			60,000
			$360,000
Federal estate tax		$48,060	
State death taxes		5,520	53,580
Value of transferor's estate			$306,420
Tax on transferor's estate, adjusted			
Federal estate tax paid		$48,060	
Credit for tax on prior transfers		28,120	$76,180
Transferor's tax on prior transfers			
$\frac{306,420}{306,420} \times 76,180 =$			$76,180
306,420			
Credit allowable under section 2013(b) of the Code for *C*'s estate			$76,180

Whether the estate tax marital deduction can be waived. See Rev. Rul. 59–123, page 248.

PART III.—GROSS ESTATE

SECTION 2031.—DEFINITION OF GROSS ESTATE

26 CFR 20.2031–2: Valuation of stocks and bonds. Rev. Rul. 59–60
(Also Section 2512.)
(Also Part II, Sections 811 (k), 1005, Regulations 105, Section 81.10.)

In valuing the stock of closely held corporations, or the stock of corporations where market quotations are not available, all other available financial data, as well as all relevant factors affecting the fair market value must be considered for estate tax and gift tax purposes. No general formula may be given that is applicable to the many different valuation situations arising in the valuation of such stock. However, the general approach, methods, and factors which must be considered in valuing such securities are outlined.

Revenue Ruling 54–77, C.B. 1954–1, 187, superseded.

SECTION 1. PURPOSE.

The purpose of this Revenue Ruling is to outline and review in general the approach, methods and factors to be considered in valuing shares of the capital stock of closely held corporations for estate tax and gift tax purposes. The methods discussed herein will apply likewise to the valuation of corporate stocks on which market quotations are either unavailable or are of such scarcity that they do not reflect the fair market value.

SEC. 2. BACKGROUND AND DEFINITIONS.

.01 All valuations must be made in accordance with the applicable provisions of the Internal Revenue Code of 1954 and the Federal Estate Tax and Gift Tax Regulations. Sections 2031(a), 2032 and 2512(a) of the 1954 Code (sections 811 and 1005 of the 1939 Code) require that the property to be included in the gross estate, or made the subject of a gift, shall be taxed on the basis of the value of the property at the time of death of the decedent, the alternate date if so elected, or the date of gift.

.02 Section 20.2031–1(b) of the Estate Tax Regulations (section 81.10 of the Estate Tax Regulations 105) and section 25.2512–1 of the Gift Tax Regulations (section 86.19 of Gift Tax Regulations 108) define fair market value, in effect, as the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts. Court decisions frequently state in addition that the hypothetical buyer and seller are assumed to be able, as well as willing, to trade and to be well informed about the property and concerning the market for such property.

.03 Closely held corporations are those corporations the shares of which are owned by a relatively limited number of stockholders. Often the entire stock issue is held by one family. The result of this situation is that little, if any, trading in the shares takes place. There is, therefore, no established market for the stock and such sales as occur at irregular intervals seldom reflect all of the elements of a representative transaction as defined by the term "fair market value."

SEC. 3. APPROACH TO VALUATION.

.01 A determination of fair market value, being a question of fact, will depend upon the circumstances in each case. No formula can be devised that will be generally applicable to the multitude of different valuation issues arising in estate and gift tax cases. Often, an appraiser will find wide differences of opinion as to the fair market value of a particular stock. In resolving such differences, he should maintain a reasonable attitude in recognition of the fact that valuation is not an exact science. A sound valuation will be based upon all the relevant facts, but the elements of common sense, informed judgment and reasonableness must enter into the process of weighing those facts and determining their aggregate significance.

.02 The fair market value of specific shares of stock will vary as general economic conditions change from "normal" to "boom" or "depression," that is, according to the degree of optimism or pessimism with which the investing public regards the future at the required date of appraisal. Uncertainty as to the stability or continuity of the future income from a property decreases its value by increasing the risk of loss of earnings and value in the future. The value of shares of stock of a company with very uncertain future prospects is highly speculative. The appraiser must exercise his judgment as to the degree of risk attaching to the business of the corporation which issued the stock, but that judgment must be related to all of the other factors affecting value.

.03 Valuation of securities is, in essence, a prophesy as to the future and must be based on facts available at the required date of appraisal. As a generalization, the prices of stocks which are traded in volume in a free and active market by informed persons best reflect the consensus of the investing public as to what the future holds for the corporations and industries represented. When a stock is closely held, is traded infrequently, or is traded in an erratic market, some other measure of value must be used. In many instances, the next best measure may be found in the prices at which the stocks of companies engaged in the same or a similar line of business are selling in a free and open market.

SEC. 4. FACTORS TO CONSIDER.

.01 It is advisable to emphasize that in the valuation of the stock of closely held corporations or the stock of corporations where market quotations are either lacking or too scarce to be recognized, all available financial data, as well as all relevant factors affecting the fair market value, should be considered. The following factors, although not all-inclusive are fundamental and require careful analysis in each case:

(a) The nature of the business and the history of the enterprise from its inception.

(b) The economic outlook in general and the condition and outlook of the specific industry in particular.

(c) The book value of the stock and the financial condition of the business.

(d) The earning capacity of the company.

(e) The dividend-paying capacity.

(f) Whether or not the enterprise has goodwill or other intangible value.

(g) Sales of the stock and the size of the block of stock to be valued.

(h) The market price of stocks of corporations engaged in the same or a similar line of business having their stocks actively traded in a free and open market, either on an exchange or over-the-counter.

.02 The following is a brief discussion of each of the foregoing factors:

(a) The history of a corporate enterprise will show its past stability or instability, its growth or lack of growth, the diversity or lack of diversity of its operations, and other facts needed to form an opinion of the degree of risk involved in the business. For an enterprise which changed its form of organization but carried on the same or closely similar operations of its predecessor, the history of the former enterprise should be considered. The detail to be considered should increase with approach to the required date of appraisal, since recent events are of greatest help in predicting the future; but a study of gross and net income, and of dividends covering a long prior period, is highly desirable. The history to be studied should include, but need not be limited to, the nature of the business, its products or services, its operating and investment assets, capital structure, plant facilities, sales records and management, all of which should be considered as of the date of the appraisal, with due regard for recent significant changes. Events of the past that are unlikely to recur in the future should be discounted, since value has a close relation to future expectancy.

(b) A sound appraisal of a closely held stock must consider current and prospective economic conditions as of the date of appraisal, both in the national economy and in the industry or industries with which the corporation is allied. It is important to know that the company is more or less successful than its competitors in the same industry, or that it is maintaining a stable position with respect to competitors. Equal or even greater significance may attach to the ability of the industry with which the company is allied to compete with other industries. Prospective competition which has not been a factor in prior years should be given careful attention. For example, high profits due to the novelty of its product and the lack of competition often lead to increasing competition. The public's appraisal of the future prospects of competitive industries or of competitors within an industry may be indicated by price trends in the markets for commodities and for securities. The loss of the manager of a so-called "one-man" business may have a depressing effect upon the value of the stock of such business, particularly if there is a lack of trained personnel capable of succeeding to the management of the enterprise. In valuing the stock of this type of business, therefore, the effect of the loss of the manager on the future expectancy of the business, and the absence of management-succession potentialities are pertinent factors to be taken into consideration. On the other hand, there may be factors which offset, in whole or in part, the loss of the manager's services. For instance, the nature of the business and of its assets may be such that they will not be impaired by the loss of the manager. Furthermore, the loss may be adequately covered by life insurance, or competent management might be employed on the basis of the consideration paid for the former manager's services. These, or other

offsetting factors, if found to exist, should be carefully weighed against the loss of the manager's services in valuing the stock of the enterprise.

(c) Balance sheets should be obtained, preferably in the form of comparative annual statements for two or more years immediately preceding the date of appraisal, together with a balance sheet at the end of the month preceding that date, if corporate accounting will permit. Any balance sheet descriptions that are not self-explanatory, and balance sheet items comprehending diverse assets or liabilities, should be clarified in essential detail by supporting supplemental schedules. These statements usually will disclose to the appraiser (1) liquid position (ratio of current assets to current liabilities); (2) gross and net book value of principal classes of fixed assets; (3) working capital; (4) long-term indebtedness; (5) capital structure; and (6) net worth. Consideration also should be given to any assets not essential to the operation of the business, such as investments in securities, real estate, etc. In general, such nonoperating assets will command a lower rate of return than do the operating assets, although in exceptional cases the reverse may be true. In computing the book value per share of stock, assets of the investment type should be revalued on the basis of their market price and the book value adjusted accordingly. Comparison of the company's balance sheets over several years may reveal, among other facts, such developments as the acquisition of additional production facilities or subsidiary companies, improvement in financial position, and details as to recapitalizations and other changes in the capital structure of the corporation. If the corporation has more than one class of stock outstanding, the charter or certificate of incorporation should be examined to ascertain the explicit rights and privileges of the various stock issues including: (1) voting powers, (2) preference as to dividends, and (3) preference as to assets in the event of liquidation.

(d) Detailed profit-and-loss statements should be obtained and considered for a representative period immediately prior to the required date of appraisal, preferably five or more years. Such statements should show (1) gross income by principal items; (2) principal deductions from gross income including major prior items of operating expenses, interest and other expense on each item of long-term debt, depreciation and depletion if such deductions are made, officers' salaries, in total if they appear to be reasonable or in detail if they seem to be excessive, contributions (whether or not deductible for tax purposes) that the nature of its business and its community position require the corporation to make, and taxes by principal items, including income and excess profits taxes; (3) net income available for dividends; (4) rates and amounts of dividends paid on each class of stock; (5) remaining amount carried to surplus; and (6) adjustments to, and reconciliation with, surplus as stated on the balance sheet. With profit and loss statements of this character available, the appraiser should be able to separate recurrent from nonrecurrent items of income and expense, to distinguish between operating income and investment income, and to ascertain whether or not any line of business in which the company is engaged is operated consistently at a loss and might be abandoned with benefit to the company. The percentage of earnings retained for business expansion should be

noted when dividend-paying capacity is considered. Potential future income is a major factor in many valuations of closely-held stocks, and all information concerning past income which will be helpful in predicting the future should be secured. Prior earnings records usually are the most reliable guide as to the future expectancy, but resort to arbitrary five-or-ten-year averages without regard to current trends or future prospects will not produce a realistic valuation. If, for instance, a record of progressively increasing or decreasing net income is found, then greater weight may be accorded the most recent years' profits in estimating earning power. It will be helpful, in judging risk and the extent to which a business is a marginal operator, to consider deductions from income and net income in terms of percentage of sales. Major categories of cost and expense to be so analyzed include the consumption of raw materials and supplies in the case of manufacturers, processors and fabricators; the cost of purchased merchandise in the case of merchants; utility services; insurance; taxes; depletion or depreciation; and interest.

(e) Primary consideration should be given to the dividend-paying capacity of the company rather than to dividends actually paid in the past. Recognition must be given to the necessity of retaining a reasonable portion of profits in a company to meet competition. Dividend-paying capacity is a factor that must be considered in an appraisal, but dividends actually paid in the past may not have any relation to dividend-paying capacity. Specifically, the dividends paid by a closely held family company may be measured by the income needs of the stockholders or by their desire to avoid taxes on dividend receipts, instead of by the ability of the company to pay dividends. Where an actual or effective controlling interest in a corporation is to be valued, the dividend factor is not a material element, since the payment of such dividends is discretionary with the controlling stockholders. The individual or group in control can substitute salaries and bonuses for dividends, thus reducing net income and understating the dividend-paying capacity of the company. It follows, therefore, that dividends are less reliable criteria of fair market value than other applicable factors.

(f) In the final analysis, goodwill is based upon earning capacity. The presence of goodwill and its value, therefore, rests upon the excess of net earnings over and above a fair return on the net tangible assets. While the element of goodwill may be based primarily on earnings, such factors as the prestige and renown of the business, the ownership of a trade or brand name, and a record of successful operation over a prolonged period in a particular locality, also may furnish support for the inclusion of intangible value. In some instances it may not be possible to make a separate appraisal of the tangible and intangible assets of the business. The enterprise has a value as an entity. Whatever intangible value there is, which is supportable by the facts, may be measured by the amount by which the appraised value of the tangible assets exceeds the net book value of such assets.

(g) Sales of stock of a closely held corporation should be carefully investigated to determine whether they represent transactions at arm's length. Forced or distress sales do not ordinarily reflect fair market value nor do isolated sales in small amounts necessarily con-

trol as the measure of value. This is especially true in the valuation of a controlling interest in a corporation. Since, in the case of closely held stocks, no prevailing market prices are available, there is no basis for making an adjustment for blockage. It follows, therefore, that such stocks should be valued upon a consideration of all the evidence affecting the fair market value. The size of the block of stock itself is a relevant factor to be considered. Although it is true that a minority interest in an unlisted corporation's stock is more difficult to sell than a similar block of listed stock, it is equally true that control of a corporation, either actual or in effect, representing as it does an added element of value, may justify a higher value for a specific block of stock.

(h) Section 2031(b) of the Code states, in effect, that in valuing unlisted securities the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange should be taken into consideration along with all other factors. An important consideration is that the corporations to be used for comparisons have capital stocks which are actively traded by the public. In accordance with section 2031(b) of the Code, stocks listed on an exchange are to be considered first. However, if sufficient comparable companies whose stocks are listed on an exchange cannot be found, other comparable companies which have stocks actively traded in on the over-the-counter market also may be used. The essential factor is that whether the stocks are sold on an exchange or over-the-counter there is evidence of an active, free public market for the stock as of the valuation date. In selecting corporations for comparative purposes, care should be taken to use only comparable companies. Although the only restrictive requirement as to comparable corporations specified in the statute is that their lines of business be the same or similar, yet it is obvious that consideration must be given to other relevant factors in order that the most valid comparison possible will be obtained. For illustration, a corporation having one or more issues of preferred stock, bonds or debentures in addition to its common stock should not be considered to be directly comparable to one having only common stock outstanding. In like manner, a company with a declining business and decreasing markets is not comparable to one with a record of current progress and market expansion.

SEC. 5. WEIGHT TO BE ACCORDED VARIOUS FACTORS.

The valuation of closely held corporate stock entails the consideration of all relevant factors as stated in section 4. Depending upon the circumstances in each case, certain factors may carry more weight than others because of the nature of the company's business. To illustrate:

(a) Earnings may be the most important criterion of value in some cases whereas asset value will receive primary consideration in others. In general, the appraiser will accord primary consideration to earnings when valuing stocks of companies which sell products or services to the public; conversely, in the investment or holding type of company, the appraiser may accord the greatest weight to the assets underlying the security to be valued.

(b) The value of the stock of a closely held investment or real estate holding company, whether or not family owned, is closely related to the value of the assets underlying the stock. For companies of this type the appraiser should determine the fair market values of the assets of the company. Operating expenses of such a company and the cost of liquidating it, if any, merit consideration when appraising the relative values of the stock and the underlying assets. The market values of the underlying assets give due weight to potential earnings and dividends of the particular items of property underlying the stock, capitalized at rates deemed proper by the investing public at the date of appraisal. A current appraisal by the investing public should be superior to the retrospective opinion of an individual. For these reasons, adjusted net worth should be accorded greater weight in valuing the stock of a closely held investment or real estate holding company, whether or not family owned, than any of the other customary yardsticks of appraisal, such as earnings and dividend paying capacity.

SEC. 6. CAPITALIZATION RATES.

In the application of certain fundamental valuation factors, such as earnings and dividends, it is necessary to capitalize the average or current results at some appropriate rate. A determination of the proper capitalization rate presents one of the most difficult problems in valuation. That there is no ready or simple solution will become apparent by a cursory check of the rates of return and dividend yields in terms of the selling prices of corporate shares listed on the major exchanges of the country. Wide variations will be found even for companies in the same industry. Moreover, the ratio will fluctuate from year to year depending upon economic conditions. Thus, no standard tables of capitalization rates applicable to closely held corporations can be formulated. Among the more important factors to be taken into consideration in deciding upon a capitalization rate in a particular case are: (1) the nature of the business; (2) the risk involved; and (3) the stability or irregularity of earnings.

SEC. 7. AVERAGE OF FACTORS.

Because valuations cannot be made on the basis of a prescribed formula, there is no means whereby the various applicable factors in a particular case can be assigned mathematical weights in deriving the fair market value. For this reason, no useful purpose is served by taking an average of several factors (for example, book value, capitalized earnings and capitalized dividends) and basing the valuation on the result. Such a process excludes active consideration of other pertinent factors, and the end result cannot be supported by a realistic application of the significant facts in the case except by mere chance.

SEC. 8. RESTRICTIVE AGREEMENTS.

Frequently, in the valuation of closely held stock for estate and gift tax purposes, it will be found that the stock is subject to an agreement restricting its sale or transfer. Where shares of stock were acquired by a decedent subject to an option reserved by the issuing corporation to repurchase at a certain price, the option price is usually accepted as the fair market value for estate tax purposes. See Rev. Rul. 54–76, C.B. 1954–1, 194. However, in such case the option price is not de-

terminative of fair market value for gift tax purposes. Where the option, or buy and sell agreement, is the result of voluntary action by the stockholders and is binding during the life as well as at the death of the stockholders, such agreement may or may not, depending upon the circumstances of each case, fix the value for estate tax purposes. However, such agreement is a factor to be considered, with other relevant factors, in determining fair market value. Where the stockholder is free to dispose of his shares during life and the option is to become effective only upon his death, the fair market value is not limited to the option price. It is always necessary to consider the relationship of the parties, the relative number of shares held by the decedent, and other material facts, to determine whether the agreement represents a bonafide business arrangement or is a device to pass the decedent's shares to the natural objects of his bounty for less than an adequate and full consideration in money or money's worth. In this connection see Rev. Rul. 157 C.B. 1953–2, 255, and Rev. Rul. 189, C.B. 1953–2, 294.

SEC. 9. EFFECT ON OTHER DOCUMENTS.

Revenue Ruling 54–77, C.B. 1954–1, 187, is hereby superseded.

SECTION 2032.—ALTERNATE VALUATION

26 CFR 20.2032–1: Alternate valuation. Rev. Rul. 59–213

Where jointly owned property, included in the decedent's gross estate for Federal estate tax purposes, is transferred in trust by the surviving joint tenant, who retains therein an unrestricted power of disposition, such transfer does not constitute a "disposition" of such property within the meaning of section 2032 of the Internal Revenue Code of 1954.

If the alternate valuation is elected in a timely filed estate tax return and the jointly owned property still forms a part of the trust estate as of the date one year after death, such property will be valued for Federal estate tax purposes as of the date one year after the decedent's death.

Advice has been requested whether the valuation date of securities held by the decedent and his wife in joint tenancy with rights of survivorship, which property is included in the decedent's gross estate for Federal estate tax purposes, is the date of the creation of a revocable trust into which the securities are placed by the surviving spouse during the year following the decedent's death or the date one year after the decedent's death.

A husband and his wife owned all of their securities in joint tenancy with rights of survivorship. The husband died and the surviving spouse entered into a revocable trust agreement with a bank, placing in this revocable trust all the securities which the decedent and the surviving spouse held as joint tenants.

Section 2032(a) of the Internal Revenue Code of 1954 provides that where the executor elects to value the estate under this section of the Code the value of the gross estate shall be determined by valuing all the property included in the gross estate as follows:

(1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within 1 year after the decedent's death such property shall be valued as of the date of distribution, sale, exchange, or other disposition.

(2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within 1 year after the decedent's death such property shall be valued as of the date 1 year after the decedent's death.

In section 20.2032–1(c) of the Estate Tax Regulations, it is stated that the phrase "distributed, sold, exchanged, or otherwise disposed of," as used in the quoted provisions of the statute, comprehends all possible ways by which property ceases to form a part of the gross estate of the decedent. These regulations further state that property may be "sold, exchanged, or otherwise disposed of" by (1) the executor; (2) a trustee or other donee to whom the decedent during his lifetime transferred property included in his gross estate under sections 2035 through 2038, or section 2041; (3) an heir or devisee to whom title to property passes directly under local law; (4) a surviving joint tenant or tenant by the entirety; or (5) any other person.

The term "otherwise disposed of" is construed as not applicable to a transfer of jointly owned property which is subject to an unrestricted power of disposition retained therein by the surviving joint tenant, since, in effect, the joint tenant or tenant by the entirety is not relinquishing any authority or power of ownership over the property.

Accordingly, it is held that where jointly owned property, included in the decedent's gross estate for Federal estate tax purposes, is transferred in trust by the surviving joint tenant, who retains therein an unrestricted power of disposition, such transfer does not constitute a disposition of such property within the meaning of section 2032 of the Code. If the alternate valuation is elected in a timely filed estate tax return and the jointly owned property still forms a part of the trust estate as of the date one year after death, such property will be valued for Federal estate tax purposes as of the date one year after the decedent's death.

PART IV.—TAXABLE ESTATE

SECTION 2053.—EXPENSES, INDEBTEDNESS, AND TAXES

26 CFR 20.2053–3: Deductions for expenses of administering estate. Rev. Rul. 59–32

(Also Section 642; 1.642(g)–1.)

The portion of any administration expenses attributable to the earning of tax-exempt income, which is not deductible by a decedent's estate for income tax purposes, is allowable as a deduction for estate tax purposes.

Advice has been requested whether the portion of any administration expenses attributable to the earning of tax-exempt income, which is not deductible by an estate for Federal income tax purposes, is allowable as a deduction for Federal estate tax purposes.

The decedent died in 1956. For the current taxable year, his estate received income of approximately $200,000. $25,000 of that was derived from interest on municipal bonds and is exempt from income tax. The value of the bonds is includible in the gross estate for Federal estate tax purposes. In this same period, the estate disbursed $50,000 for attorneys' fees and $30,000 for miscellaneous administration expenses neither of which are attributable to either the taxable or the tax exempt income. The executor desires to deduct the maximum amount allowable on the income tax return and to deduct the balance from the decedent's gross estate on the estate tax return.

In computing the taxable income of the estate for purposes of filing the income tax return, the maximum amount deductible from gross income, assuming the disbursements of $80,000 to be otherwise deductible, is limited by virtue of the provisions of section 265(1) of the Internal Revenue Code of 1954 to that portion of such expenses which is attributable to includible gross income. Thus, of the total amount of $80,000, the taxpayer will comply with section 265(1) by apportioning to the exempt income the expenses attributable to that income ($10,000), this will leave a maximum deduction of $70,000 for income tax purposes and is computed in the following manner:

$$\frac{\$200,000-25,000}{\$200,000} \times 80,000 = \$70,000$$

Under the provisions of section 642(g) of the Code, the amount of $70,000 will be deductible by the estate for income tax purposes, provided there is duly filed (1) the statement therein required, to the effect that such amount has not been allowed as a deduction under section 2053(a)(2), relating to administration expenses, in computing the taxable estate of the decedent, and (2) the required waiver of the right to such deduction at any time.

It is recognized that for estate tax purposes, the entire amount of the $80,000 would be allowable as a deduction from the decedent's gross estate, whereas, for income tax purposes, only $70,000 is deductible. To hold that the filing of the statement of waiver under section 642(g) of the Code constitutes a relinquishment of the right to deduct, for estate tax purposes, the balance of $10,000 in administration expenses would not give proper effect to the intent of Congress in enacting the statute. Section 642(g) of the Code is primarily concerned with the prohibition of double deductions, *i. e.*, disallowing the same deduction for the estate tax return and the income tax return. As was stated in Revenue Ruling 240, C. B. 1953–2, 79,

> In the event that administrative expenses are such that they would be allowable for either income or estate tax purposes, the taxpayer may allocate the expenses to either the estate tax return or the income tax return for the year in which payment is made, or to both in such proportions as he desires, provided there is no duplication of deduction and provided the terms of section 162(e) of the Code [section 642(g) of the 1954 Code] are complied with.

The facts herein are different from the factual situations on which Revenue Ruling 240 is based, but the rationale of the ruling is considered in point. It is held, therefore, that the $10,000 of disbursements not allowable as a deduction for income tax purposes are deductible from the gross estate under section 2053 of the Code.

SECTION 2055.—TRANSFERS FOR PUBLIC, CHARITABLE, AND RELIGIOUS USES.

26 CFR 20.2055–1: Deduction for transfers for public, charitable, and religious uses; in general.

Contributions made to a State Bar. See Rev. Rul. 59–152, page 54.

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26 CFR 20.2055–2: Transfers not exclusively for charitable purposes. Rev. Rul. 59–143

Under terms of a will, income of a trust is payable to two daughters during their respective lives. Upon the death of the survivor the corpus of the trust is to be paid to the daughters' bodily issue then living. If there are no issue then living, the corpus is to be paid to a charitable corporation. At the time of decedent's death one daughter was 59 years old and unmarried. The other daughter was 55 years old and married. Neither daughter had ever had any children. *Held*, since the statistical probability of children being born to a woman, aged 55 years or older, is so remote as to be negligible, a charitable deduction is allowable.

Advice has been requested whether a deduction is allowable under section 2055 of the Internal Revenue Code of 1954 for a charitable bequest contingent upon the failure of issue by decedent's daughters whose ages were 55 and 59 years, respectively, at the time of the decedent's death.

A decedent, under the terms of her will, set up a trust in which the income is payable equally to her two daughters during their respective lives. Upon the death of the survivor the corpus of the trust is to be paid to the daughters' bodily issue then living. If there are no issue living at the death of the surviving daughter, the corpus is to be paid to *M* Association, a charitable corporation. At the time of decedent's death, one daughter was 59 years old and unmarried. The other daughter was 55 years old and married. Neither daughter had ever had any children.

Section 2055 of the Code allows a deduction from the gross estate for Federal estate tax purposes of the amount of bequests to a charitable organization. Section 20.2055–2(b) of the Estate Tax Regulations provides in part that the charitable deduction will be disallowed if, as of the date of decedent's death, a transfer for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order that it may become effective, unless the possibility that the charitable transfer will not become effective is so remote as to be negligible.

For tax purposes the common law presumption that a woman can have children is rebuttable. See *United States* v. *Provident Trust Co.*, 291 U.S. 272. According to the most recent United States Vital Statistics and Census data, the statistical probability that a woman aged 55 years and older will ever have bodily issue is remote. In a case similar to that presented here, it was stated that the chances that a woman of 59 (who had never had issue) will have children are negligible and an "impossible contingency." See *City Bank Farmers Trust Co.* v. *United States*, 74 Fed. (2d) 692.

In view of the foregoing, it is held that the statistical probability of children being born to a woman, aged 55 years or older, is so remote as to be negligible. Accordingly, a deduction for the value of the remainder interest bequeathed to charity by the decedent is allowable under section 2055 of the Code.

SECTION 2056.—BEQUESTS, ETC., TO SURVIVING SPOUSE

26 CFR 20.2056(a)–1: Martial deductions; in general. Rev. Rul. 59–123

(Also Section 2013; 20.2013–1.)

The estate tax marital deduction authorized by section 2056 of the Internal Revenue Code of 1954 may not be waived in order to obtain a Federal estate tax benefit otherwise authorized by the Code, or for any other purpose.

Advice has been requested whether the benefits of the estate tax marital deduction authorized by section 2056 of the Internal Revenue Code of 1954 may be waived.

In the instant case the decedents, husband and wife, died testate with only a short period of time elapsing between the two deaths. The husband bequeathed all the rest and residue of his estate to his surviving spouse, out of which all death taxes were to be paid. The estate tax marital deduction provided by section 2056 of the Code reduced the decedent's gross estate to a net estate of zero with the result that no Federal estate tax liability was due for his estate. The net value of the interest passing to the surviving spouse was included in her gross estate for Federal estate tax purposes. The question presented is whether the benefits of section 2056 of the Code may be waived and a tax liability established for the estate of the first decedent in order that (1) the gross estate of the wife may be smaller and (2) at the same time the estate of the wife may obtain the credit for tax on prior transfers provided by section 2013 of the Code.

Section 2056(a) of the Internal Revenue Code of 1954 provides, in part, as follows:

For purposes of the tax imposed by section 2001, the value of the taxable estate *shall* * * * be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse * * *. (Italics supplied)

In view of the mandatory language contained in section 2056(a) of the Code, the benefits provided by that section may not be waived by the estate of the first of two spouses to die in order that, in the instant case, (1) the gross estate of the wife may be smaller and (2) at the same time the estate of the wife may obtain the credit for tax on prior transfer provided by section 2013 of the Code.

Accordingly, it is held that the estate tax marital deduction authorized by section 2056 of the Internal Revenue Code of 1954 may not be waived in order to obtain a Federal estate tax benefit otherwise authorized by the Code, or for any other purpose.

CHAPTER 12.—GIFT TAX

SUBCHAPTER A.—DETERMINATION OF TAX LIABILITY

SECTION 2503.—TAXABLE GIFT

26 CFR 25.2503–4: Transfer for the benefit of a minor. Rev. Rul. 59–144

> A gift to a minor by means of a trust, which confers upon its beneficiary the right, upon attaining age 21, either to compel immediate distribution of the trust or to elect to extend the term of the trust and receive distribution of the corpus according to the provisions in the trust instrument, is not considered to be a gift of a present interest qualifying for the statutory exclusion.

Advice has been requested whether a gift to a minor by means of a trust is considered to be a gift of a present interest qualifying under the provisions of section 2503(c) of the Internal Revenue Code of 1954 for the exclusion provided for in section 2503(b), where the minor-donee upon attaining age 21 will have an option either to require an immediate distribution of the trust corpus or to extend the trust and receive distribution according to the provisions set forth in the trust.

The trust instrument provides that the income and corpus may be expended for the benefit of the donee before he reaches the age of 21 and that, upon reaching that age, he may compel immediate distribution of the trust corpus or he may elect to extend the term of the trust, in which case he will receive a distribution of one third of the corpus upon attaining age 25, one third upon attaining age 29, and the balance upon attaining age 33.

Section 2503(b) of the Code provides, in part, that the first $3,000 of gifts (other than gifts of future interests in property) made to any person by the donor shall not be included in the total amount of gifts made during the calendar year.

Section 2503(c) of the Code provides, in part, that no part of a gift to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property if the property and the income therefrom will pass to the donee on his attaining the age of 21 years, and, in the event the donee dies before attaining the age of 21 years, such property and income will be payable to the estate of the donee or as he may appoint under a general power of appointment.

Section 25.2503–4(b)(2) of the Gift Tax Regulations provides that a transfer does not fail to satisfy the conditions of section 2503(c) by reason of the mere fact that the donee, upon reaching age 21, has the right to extend the term of the trust.

The above regulation was designed to permit the extension by the donee of the terms of the trust upon such conditions as the donee may freely choose. It was not designed to permit extension of the trust upon conditions set forth by the donor in the trust instrument. The basic purpose of the statute is to allow the statutory exclusion if the property involved in the transfer to the minor-donee will pass to

him as absolute owner upon his reaching age 21. To permit the donor to set forth conditions under which the property may be handled after the donee reaches age 21 would be inconsistent with absolute ownership by the donee and, hence, inconsistent with the purpose of the statute.

A power conferred, as in the instant case, upon a donee to require immediate distribution of the property to him upon attaining the age of 21 years does not meet the statutory requirement that the property must pass to him upon attaining the age of 21 years as such power amounts to no more than a general power of appointment exercisable upon reaching that age. Such power, not being exercisable before the donee reaches the age of 21, does not meet the conditions set forth in the statute.

Accordingly, it is held that a gift to a minor by means of a trust, which provides that the beneficiary, upon reaching age 21, may compel immediate distribution of the trust or may elect to extend the term of the trust and receive distribution of the corpus according to the provisions set forth in the trust instrument, is not considered to be a gift of a present interest so as to qualify under the provisions of section 2503(c) of the Code for the exclusion provided for in section 2503(b) of the Code.

SUBCHAPTER B.—TRANSFERS

SECTION 2512.—VALUATION OF GIFTS

Valuation of stock of closely held corporations in Federal gift tax returns. See Rev. Rul. 59–60, page 237.

SECTION 2513.—GIFTS BY HUSBAND OR WIFE TO THIRD PARTY

26 CFR 25.2513–1: Gifts by husband or wife to third party considered as made one-half by each.

Contributions or gifts to a political party or to a candidate running for public office. See Rev. Rul. 59–57, page 626.

SUBCHAPTER C.—DEDUCTIONS

SECTION 2521.—SPECIFIC EXEMPTION

26 CFR 25.2521–1: Specific exemption.

Contributions or gifts to a political party or to a candidate running for public office. See Rev. Rul. 59–57, page 626.

SECTION 2522.—CHARITABLE AND SIMILAR GIFTS

26 CFR 25.2522(a)–1: Charitable and similar gifts; citizens or residents.

Contribution or gifts to a political party or to a candidate running for public office. See Rev. Rul. 59–57, page 626.

Contributions made to a State Bar. See Rev. Rul. 59–152, page 54.

SUBTITLE C.—EMPLOYMENT TAXES

CHAPTER 21.—FEDERAL INSURANCE CONTRIBUTIONS ACT

SUBCHAPTER C.—GENERAL PROVISIONS

SECTION 3121.—DEFINITIONS

(Also Sections 3306, 3401; 26 CFR 31.3306(i)–1, 31.3401(c)–1.) Rev. Rul. 59–104

Whether individuals performing tutoring services for clients of a tutoring agency are employees of the agency depends upon the facts and circumstances of the case. Where, as here, the agency exercises no control over the tutors in the performance of their services, and where the tutors set their own rates for the services to be rendered and the agency merely receives a percentage commission of the tutors' fees, the tutors are not employees of the agency.

Advice has been requested whether individuals who perform tutoring services for student clients of a tutoring agency, under the circumstances set forth below, are employees of the agency for Federal employment tax purposes.

The agency maintains a list of individuals who have registered with it. These individuals are qualified to perform tutoring services in specific subjects. They are mostly school teachers, engineers and other professional people who are regularly employed elsewhere and who desire to earn extra money after their regular working hours. When a client requests the agency to furnish a tutor in a specific subject, the agency selects one from its register who is qualified to teach the particular subject in which instruction is desired and then arranges for the initial contact between the tutor selected and the client. The agency attempts to select a tutor who lives in the vicinity of the home of the client making the request.

The services may be performed either at the tutor's home or at the client's home, in accordance with mutual arrangements between them. The tutor is free to set his hourly rates and may refuse to perform tutoring services at any other rates or under conditions not satisfactory to him. The agency does not furnish any materials, such as books, outlines, etc., does not select any materials to be covered, and does not designate the period of instruction. The tutor is not given

any instructions regarding the manner in which he is to conduct his activities or regarding his personal appearance and conduct. He furnishes the agency a weekly report on each client instructed setting forth the client's name, the number of hours of instruction given on each day of the week and whether the tutoring services were performed in the home of the client or in that of the tutor. The agency bills each client on the basis of the number of hours of instruction reported by the tutor and upon receipt of payment deducts its commission and pays the tutor the balance. The agency neither guarantees the tutor a minimum number of assignments nor prevents him from accepting similar assignments from other agencies. The tutor furnishes his own transportation when performing services away from his home. The arrangement between the tutor and the agency may be terminated at any time by either party.

Under section 3121(d)(2) of the Federal Insurance Contributions Act (chapter 21, subtitle C, Internal Revenue Code of 1954), the term "employee" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. The guides for determining whether, under such rules, an employer-employee relationship exists are found in section 31.3121(d)-1(c) of the Employment Tax Regulations.

It is pointed out in paragraph (2) of section 31.3121(d)-1(c) of the regulations that an employer-employee relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as the result to be accomplished by the work but also as to the details and means by which that result is accomplished, that is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so.

It appears that the tutors are not subject to the direction and control of the agency. The tutors specify the hourly rates to be charged for their services and may stipulate the conditions under which they will perform their services. The agency merely arranges for the initial meeting between the tutor and the student and does not enter into the arrangements for any future meetings between such individuals. The tutors determine their work schedules and make their own arrangements as to time and period of instruction. The facts that the tutor makes a weekly report to the agency and the agency, based on it, bills the client and receives payment from him are not conclusive as to the relationship involved in the instant case.

It is concluded, on the basis of the information presented, that the agency neither exercises nor has the right to exercise such control over the tutors in the performance of their services as is necessary under the usual common law rules to establish the relationship of employer and employee for purposes of the taxes imposed by the Federal Insurance Contributions Act. Accordingly, liability for such taxes is not incurred by the agency with respect to remuneration paid to such individuals for their services.

This conclusion is also applicable with respect to the tax imposed by the Federal Unemployment Tax Act and for purposes of the Collection of Income Tax at Source on Wages (chapters 23 and 24, respectively, subtitle C, Internal Revenue Code of 1954).

However, see Revenue Ruling 56–502, C.B. 1956–2, 688, which holds, on the facts, that individuals engaged by an agency to perform *domestic services* for its clients are considered to be the employees of such agency.

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26 CFR 31.3121(a)–1: Wages.

Hams and turkeys, or other merchandise of similar nominal value, distributed by an employer to his employees. See Rev. Rul. 59–58, page 17.

Wages paid a decedent employee's beneficiary, partly attributable to a period of illness and the partly regular monthly salary after death. See Rev. Rul. 59–64, page 31.

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26 CFR 31.3121(b)(8)–1: Services performed by a minister of a church or a member of a religious order. (Also Section 1402; 1.1402(e)–1.) — Rev. Rul. 59–50

An ordained minister performs services for a religious organization, which is under the authority of a religious body constituting a church. His services are in connection with locating and purchasing sites for churches, planning and erecting new church buildings, maintaining the minutes and records of the organization, and attending to correspondence. He also engages in the writing of religious books through the sales of which he receives royalty payments. *Held*, the services rendered by the minister are services in connection with the control, conduct, and maintenance of the religious organization and are, therefore, in the exercise of his ministry. Accordingly such services are excepted from employment for purposes of the Federal Insurance Contributions Act. *Held further*, the services performed in writing religious books are also considered to be in the exercise of his ministry and are excluded from the term "trade or business" for purposes of the Self-Employment Contributions Act of 1954.

The minister may, if he has not taken the vow of poverty as a member of a religious order, elect to have the insurance system established by Title II of the Social Security Act extended to services which he performs in the exercise of his ministry pursuant to the provisions of section 1402(e) of the Self-Employment Contributions Act of 1954.

An inquiry has been received whether certain services performed by an ordained minister of a church for a religious organization are excepted from "employment" under section 3121(b)(8)(A) of the Federal Insurance Contributions Act (chapter 21, subtitle C, Internal Revenue Code of 1954). Advise has also been requested relative to the minister's status for purposes of the Self-Employment Contributions Act of 1954 (chapter 2, subtitle A, Internal Revenue Code of 1954), with respect to his activities in the writing of bona fide religious books or articles (that is, books or articles which are religious in

nature and are designed for the dissemination of religious ideas) through the sale of which he receives royalty payments.

The minister in question is engaged by the organization, which is under the authority of a religious body constituting a church, to perform services in attending to the business of the organization. Such services are in connection with locating and purchasing sites for churches, planning and erecting new church buildings, keeping and filing the minutes and records of the organization, attending to correspondence, etc. Occasionally he performs emergency ministerial services, separate and apart from his regular duties. Such emergency services are admittedly in the exercise of his ministry.

Section 31.3121(b)(8)-1 of the Employment Tax Regulations provides that services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry are excepted from employment. The above section further provides, with exceptions not here material, that service performed by a minister in the exercise of his ministry includes 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.

Section 31.3121(b)(8)-1(b)(2) of the regulations provides that service performed by a minister in the control, conduct, and maintenance of a religious organization relates to directing, managing, or promoting the activities of such organization.

The organization for which the minister performs services is a religious organization of the type contemplated by section 31.3121(b)(8)-1 of the above regulations. His services are considered to be in connection with the control, conduct, and maintenance of the organization and are in the exercise of his ministry. Therefore, they are excepted from "employment" for purposes of the Federal Insurance Contributions Act by reason of section 3121(b)(8)(A) of such Act. See Rev. Rul. 56-187, C.B. 1956-1, 483, and Rev. Rul. 57-129, C.B. 1957-1, 313.

Section 1402(c) of the Self-Employment Contributions Act of 1954 provides that the term "trade or business," when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 of the Code (relating to trade or business expenses), except that such term shall not include—

* * * * * * *

(4) the performance of service 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

(5) the performance of service by an individual in the exercise of his profession as a * * * Christian Science practitioner * * *.

In view of the above-quoted provisions of the law, the performance of service by duly ordained, commissioned, or licensed ministers of churches in the exercise of their ministry, members of religious orders in the exercise of duties required by such orders, and individuals in the exercise of their profession as Christian Science practitioners is specifically excluded from the term "trade or business" for pur-

poses of the tax imposed by the Self-Employment Contributions Act of 1954. Consequently, the minister in question may remain exempt from compulsory liability for the self-employment tax with respect to such services. However, section 1402(e) of the Self-Employment Contributions Act of 1954 provides, among other things, that a duly ordained, commissioned or licensed minister of a church, etc., may, under the circumstances stated therein, certify that he elects to have the insurance system established by Title II of the Social Security Act extended to services performed in the exercise of his ministry. If he elects such coverage his remuneration, if any, for employee services performed as a minister must be taken into account in determining liability for the self-employment tax. In this connection, the writing of bona fide religious books or articles by the minister is also considered to be service performed in the exercise of his ministry and if the minister has elected Social Security coverage royalties and other income received from the sale of such books or articles should be taken into consideration in computing net earnings from self-employment for the period in which such amounts are received. An election which has become effective in accordance with the provisions of the law may not be revoked.

Form 2031, Waiver Certificate For Use By Ministers, Certain Members Of Religious Orders, And Christian Science Practitioners Electing Coverage Under Title II Of The Social Security Act, may be obtained from the office of any District Director of Internal Revenue.

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26 CFR 31.3121(d)-1: Who are employees. Rev. Rul. 59-49
(Also Sections 3306, 3401; 31.3306(i)-1.)

> An individual is engaged by a title company to perform services as a title searcher or examiner. The company assigns him titles to be searched, determines the price to be charged its customers, reviews his work and assumes all responsibility therefor, and furnishes him office space, a desk, and a telephone. The individual is remunerated on a fee basis, determines his own hours of work, is not required to do any routine office work in connection with his job, and is not entitled to paid vacations, sick leave, or overtime pay. *Held*, the individual is an employee of the company for Federal employment tax purposes.

Advice has been requested relative to the status, for Federal employment tax purposes, of an individual performing services as a title searcher or examiner for an abstract and title company.

The individual examines titles solely for the company and is paid at a given rate for each title examination he completes. The company determines the amount to be charged its customers for all titles searched. The fee paid to the searcher for each title examined is a certain percentage of the amount paid the company by its customers, irrespective of the difficulty of the examination or the amount of time spent in making the title search. The individual devotes approximately forty hours per week to the performance of services for the company at times of his own choosing during hours when the courthouse is open, since his findings are based primarily on public records kept at the courthouse.

The titles to be searched are assigned to the individual by an official of the company and his work is subject to review by the company's title officer, whose primary duty is to review all title work done for the company irrespective of whether such work is performed by salaried or nonsalaried personnel, since the company is liable under title guaranty or policy issued. Admittedly, the salaried personnel are employees of the company. When an error is discovered, the individual responsible therefor is expected to correct it in the manner directed by and to the satisfaction of the title officer. The services performed for the company by the salaried and nonsalaried individuals are similar, the main difference being that the salaried employees have definite hours of work and are occasionally called upon to do special work for the company on jobs where it does not receive its usual fee. The nonsalaried individuals devote all their efforts to completing the search of the title and giving their report with respect thereto and are not required to help in the usual routine business required in operating a title company. They are not entitled to paid vacations, sick leave, or overtime pay. The company provides the individual with a desk and telephone for use in its office together with all necessary forms and business papers. The individual does not furnish any facilities or supplies for the work and performs the services personally under the company's name, and without helpers. He does not hold himself out to the public as available to do similar work for others. His services can be terminated at any time at the will of either party.

Section 3121(d) of the Federal Insurance Contributions Act (chapter 21, subtitle C, Internal Revenue Code of 1954) provides, among other things, that the term "employee" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. The guides for determining, under such rules, whether an employer-employee relationship exists are found in section 31.3121(d)–1(c) of the Employment Tax Regulations.

From the facts set forth above, it appears that the individual in question is not engaged in the pursuit of an independent business enterprise on his own behalf but rather devotes all of his working time to the performance of services in the furtherances of company business. An officer of the company assigns to him the titles to be searched; his work is subject to review by the company's title officer; the company determines the prices to be charged the customers; and it provides the individual with office facilities and equipment necessary for the performance of his services. The main difference in the facts and circumstances surrounding the performance of services by examiners paid on a fee basis, (as is the individual in question) and those paid on a salary basis who are conceded to be employees, are (1) the method of payment, (2) the examiners paid by fees determine their own hours of work, and (3) the assignment of some routine work to the examiners paid on a salary basis.

Section 31.3121(a)–1 of the Employment Tax Regulations provides that the term "wages" means all remuneration for employment; that the name by which the remuneration for employment is designated is immaterial; and that therefore, salaries, fees, bonuses, etc., are wages

within the meaning of the Federal Insurance Contributions Act, if paid as wages for employment.

In view of the foregoing, it is concluded that, while the company may not exercise control to the fullest degree possible over the services performed for it by the individual in question, it nevertheless has retained the right to exercise such control to the degree deemed necessary to establish the relationship of employer and employee between the company and such individual. Accordingly, it is held that the individual is the employee of the company for purposes of the Federal Insurance Contributions Act.

The conclusion expressed in this Revenue Ruling is also applicable with respect to the Federal Unemployment Tax Act and the Collection of Income Tax at Source on Wages (chapters 23 and 24, respectively, subtitle C, Internal Revenue Code of 1954).

(Also 3402; 31.3402(a)-1.) Rev. Rul. 59-51

A dairy herd improvement association engages an individual called a supervisor, or tester, to perform certain services for its dairy farm members in connection with the operation of their dairy herd improvement programs. The activities of the association, including the work of the supervisor or tester, is under the auspices and general direction of the state extension service dairyman of the state agricultural college. The association requires the supervisor to produce a minimum quota of work in testing milk and keeping feed and production records; to perform the services personally; to cover a specified territory within a given time; and to follow a regular routine. The association usually furnishes all necessary equipment and has preferred call on the supervisor's time. The supervisor retains all fees collected from farmers for his services. His services may be terminated by either party upon proper notice. *Held*, the individual is an employee of the association for purposes of the Federal Insurance Contributions Act.

The Internal Revenue Service has been requested to determine whether an individual, called a supervisor or tester, engaged by a dairy herd improvement association to perform certain services for its diary farm members in connection with the operation of their dairy herd improvement programs is an employee of the association for purposes of the taxes imposed by the Federal Insurance Contributions Act (chapter 21, subtitle C, Internal Revenue Code of 1954).

The association was organized for the purpose of furnishing its dairy farm members with information necessary to cull, feed and breed their dairy herds intelligently and economically. The association engages the individual under a verbal agreement to make milk tests and to maintain a feed consumption and milk production record for each cow in a member's herd. He visits each herd in the association once a month, usually arriving at the farm in the late afternoon. During the evening and morning milkings he samples and weighs each cow's milk, determines the butterfat content, and ascertains the amount and cost of the feed consumed. He enters these records in a herd-record book which the herd owner keeps and uses as a guide in his management operations. From the data thus obtained, the individual calculates each cow's milk and butterfat production for the month and, at the end of the year, compiles the annual records for

each cow and for each herd. The individual also assists the owner in keeping a complete record of the progeny of each cow, and he eartags those animals in the herd that are not otherwise identified. He aids the dairyman in every possible way to improve his herd; and, he frequently is able to suggest suitable changes in feeding or the management of the herd or individual cows when the records indicate the need for a change. This work is carried on under the auspices and general direction of the state extension service dairyman of the state agricultural college.

The supervisor is required to perform his services personally; to cover a specified territory within a stated time; to follow a regular routine; and to produce a designated minimum quota of work. In addition to the services performed on the members' farms, the supervisor does some of the testing and record keeping in a laboratory and office maintained in his own home. He submits written reports to the state extension service dairyman who summarizes them and forwards the analyses to the association's members. The association does not issue instructions to the supervisor, but he reports to its representative as the need arises relative to schedules or other problems encountered in his day-to-day activities. The association furnishes most of the equipment used by the supervisor in performing his services. It charges each member a monthly testing fee, depending on the size of his herd. The supervisor collects the fee from each member at the time he performs the services and retains it as his remuneration. In addition, each member pays him a bonus of x dollars upon the satisfactory completion of a year's work. He is not guaranteed a minimum amount of compensation per month, or year, nor is he allowed advances or a drawing account. He is paid a nominal amount for lodging and meals if these are not furnished by the dairy farm member. Otherwise, the supervisor pays all of his own expenses. The association has preferred call on his services and carries workmen's compensation and liability insurance covering him. The supervisor spends approximately 95 percent of his total working time in performing services under the general supervision of the association. He or the association may terminate the relationship at any time upon the giving of proper notice to the other party.

Section 3121(d) of the Federal Insurance Contributions Act provides, among other things, that the term "employee" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. The guides for determining whether, under such rules, an employer-employee relationship exists are found in section 31.3121(d)-1(c) of the Employment Tax Regulations.

On the basis of those guides, in the circumstances stated above, it is concluded that the supervisor in question performs personal services for the association on a continuing basis and that the association exercises or has the right to exercise over such individual in the performance of his services the direction and control necessary to establish the relationship of employer and employee. This is so even though the supervisor is permitted to collect the fees from the dairy farmers and retain them as compensation for his services, for the reason that such remuneration may be properly ascribed to the associ-

ation. Accordingly, it is held that the individual is an employee of the association for purposes of the taxes imposed by the Federal Insurance Contributions Act.

Services performed on a farm by the supervisor in connection with weighing the feed and milk, testing the milk, keeping the dairy farm records, etc., as described above, constitute agricultural labor within the meaning of section 3121(g) of the Act. However, nonfarm services and those relating to the business affairs of the association, such as time spent at the association's office, or in the supervisor's home or office in doing laboratory work, keeping the association's records, making reports and collecting fees, do not constitute agricultural labor. "Agricultural labor" as defined in section 3121(g), *supra*, is no longer excepted from "employment" as that term is defined in section 3121(b) of the Act. Accordingly, cash remuneration paid for such labor is subject to the taxes imposed by the Federal Insurance Contributions Act if the tests provided in section 3121(a)(8)(B) thereof are met.

The employer-employee determination made above for purposes of the taxes imposed by the Federal Insurance Contributions Act also is applicable for purposes of the Collection of Income Tax at Source on Wages (chapter 24, subtitle C, Internal Revenue Code of 1954). For purposes of withholding under section 3402(a) of the Code, remuneration for "agricultural labor," as defined in section 3121(g), is excepted from "wages" under section 3401(a). Accordingly, it will be necessary to apply the "Included and Excluded Wages" rule as provided in section 3402(e) of the Code to determine whether the association is liable for the withholding of income tax from the supervisor's remuneration for services performed for it. See section 31.3402(e)-1 of the Employment Tax Regulations for information with respect to the application of such rule.

Under the ruling in this case, the association is responsible for collecting, reporting and paying any taxes due with respect to "wages" paid its supervisor, and for maintaining proper records. It should, therefore, make appropriate arrangements with its member herd owners and its supervisor to enable it to comply with the requirements of the applicable laws.

(Also Section 1402; 1.1402(c)-1.) Rev. Rul. 59-103

An insurance salesman who, under the usual common law rules applicable in determining the employer-employee relationship, does not have the status of an employee, and who contracts with a life insurance company to sell both its life and accident and health insurance policies, but who is primarily engaged in selling accident and health insurance, is not a "full time life insurance salesman" and, consequently, not an employee for Federal Insurance Contributions Act purposes. The individual is engaged in a "trade or business" and his commissions should be taken into consideration in computing "net earnings from self-employment" under the Self-Employment Contributions Act of 1954.

Revenue Ruling 54-312, C.B. 1954-2, 327, clarified.

Advice has been requested whether an insurance salesman performing services under the circumstances set forth herein qualifies as a "full-time life insurance salesman" as contemplated by section

3121(d)(3)(B) of the Federal Insurance Contributions Act (chapter 21, subtitle C, Internal Revenue Code of 1954).

The *M* life insurance company engaged the salesman to sell insurance pursuant to two separate contracts. Under one contract, he is authorized to sell accident and health insurance for the company. The second contract authorizes him to sell life insurance. Under the second contract the salesman agrees not to write life insurance for any other company without *M* company's consent unless it is insurance which *M* company has declined. Both contracts provide that the salesman shall be free in his assigned territory to exercise his own judgment as to the persons from whom he will solicit applications for insurance and the time and place of solicitation, and that he is to be paid by commissions on the insurance sold by him under such contracts according to schedules contained therein. He is not required to perform his services for the company during regular working hours, to follow a definite routine in his work, or to produce a minimum quota of business. He is, however, expected to perform the services personally. The salesman does not maintain an office for the conduct of his insurance sales activities and does not perform similar services for others.

At the time the salesman entered into the contracts with the *M* company it was the intent of the parties that he devote his full business time to the sale of life and accident and health insurance for the company. The arrangements between the parties further contemplated that (1) the salesman would defray all expenses incurred by him in the performance of his duties and functions under the contracts; (2) he would not be required to make a substantial investment in facilities for use in connection with the performance of his services (other than in facilities for transportation); and (3) his services would be part of a continuing relationship and not in the nature of a single transaction. The salesman spends approximately seventy-five percent of his time in soliciting accident and health insurance. For two of the past four years, his commissions on life insurance contracts sold amounted to less than ten percent of his annual income from the insurance business.

Section 3121(d) of the Federal Insurance Contributions Act reads, in part, as follows:

> Employee.—For purposes of this chapter, 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)) 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.

The first question to be decided is whether the insurance salesman has such independence in his operations that, under the usual common law rules applicable in determining the employer-employee relationship, he should be classified as an independent contractor rather than an employee. From the information set forth above, it is evident that the *M* life insurance company neither exercises, nor has the right to exercise, the degree of direction and control over the services performed by the salesman necessary to establish the relationship of employer and employee under such common law rules. Accordingly, it is held that the salesman is not an employee of the *M* insurance company under section 3121(d)(2) of the Federal Insurance Contributions Act.

In Revenue Ruling 54–312, C.B. 1954–2, 327, it was concluded that an individual engaged by the *N* life insurance company to solicit applications for life insurance, annuities, and accident and health insurance, performed his services under circumstances which qualified him as a "full time life insurance salesman" and as an employee under section 1426(d)(3)(B), now section 3121(d)(3)(B) of the Federal Insurance Contributions Act. In that Revenue Ruling a "full-time life insurance salesman" is defined as an individual (other than an employee under the usual common law rules) whose entire or principal business activity is devoted to the solicitation of life insurance or annuity contracts (or the solicitation of such contracts and accident and health insurance contracts) primarily for one life insurance company.

In Senate Report No. 1669, 81st Cong., C.B. 1950–2, 302, at 347, with respect to full-time life insurance salesmen, it is stated that any individual who is not an employee under the usual common-law rules and whose entire or principal business activity is devoted to the solicitation of life insurance and annuity contracts primarily for one life-insurance company is deemed to be an employee of such company or of its general agent under paragraph (3) of the predecessor of section 3121(d). It is further stated therein that an individual who is engaged in the general insurance business under a contract or contracts of service which do not contemplate that the individual's principal business activity will be the solicitation of life insurance and annuity contracts for one company, or any individual who devotes only part time to the solicitation of life insurance or annuity contracts but is principally engaged in other endeavors, is not an employee within the scope of the cited section.

In administering the provisions of section 3121(d)(3)(B) *supra*, the Internal Revenue Service has taken this position that Congress intended to include as employees under such statutory test only those individuals engaged primarily in the sale of life insurance and annuity contracts and not individuals engaged primarily in the sale of accident and health insurance.

In order to clarify Revenue Ruling 54–312, *supra*, it should be pointed out that, while the published ruling did not specifically so state, the reference to accident and health insurance was intended to relate to the incidental sale of that type of insurance.

Under the agreements entered into between the *M* company and the salesman in the instant case, it was neither agreed nor contemplated that the salesman's entire or principal business activity would be the

solicitation of life insurance or annuity contracts. Accordingly, it is held that the insurance salesman in question does not qualify as a full-time life insurance salesman within the meaning of section 3121 (d) (3) (B) of the Federal Insurance Contributions Act. Hence, he is not a statutory employee under that section of the Act.

The salesman is engaged in a "trade or business" as a full-time agent of a life insurance company. The commissions (including deferred or renewal commissions) paid to him should be taken into consideration in computing "net earnings from self-employment" for purposes of the Self-Employment Contributions Act of 1954 (chapter 2, subtitle A, Internal Revenue Code of 1954.)

Revenue Ruling 54–312, C.B. 1954–2, 327, clarified.

CHAPTER 23.—FEDERAL UNEMPLOYMENT TAX ACT

SECTION 3306.—DEFINITIONS

26 CFR 31.3306(b)–1: Wages.

Hams and turkeys, or other merchandise of similar nominal value, distributed by an employer to his employees. See Rev. Rul. 59–58, page 17.

26 CFR 31.3306(i)–1: Who are employees.

An individual performing services for a company as a title searcher or examiner. See Rev. Rul. 59–49, page 255.

Services performed for student clients of a tutoring agency. See Rev. Rul. 59–104, page 251.

CHAPTER 24.—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

SECTION 3401.—DEFINITIONS

Fees received by a title searcher for services performed for an abstract and title company on a percentage basis. See Rev. Rul. 59–49, page 255.

26 CFR 31.3401(a)–1: Wages.

Hams and turkeys or other merchandise of similar nominal value, distributed by an employer to his employees. See Rev. Rul. 59–58, page 17.

26 CFR 31.3401(c)–1: Employee.

Amounts paid for services performed for student clients of a tutoring agency. See Rev. Rul. 59–104, page 251.

SECTION 3402.—INCOME TAX COLLECTED AT SOURCE

26 CFR 31.3402(a)-1: Requirement of withholding.

Remuneration paid for supervisory and testing services performed for members of a dairy herd improvement association under the direction of the association. See Rev. Rul. 59–51, page 257.

Payments of salary and vacation allowance to beneficiary of a decedent employee. See Rev. Rul. 59–64, page 31.

CHAPTER 25.—GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES

SECTION 3502.—NONDEDUCTIBILITY OF TAXES IN COMPUTING TAXABLE INCOME

26 CFR 31.3502: Statutory provisions; nondeductibility of taxes in computing taxable income. T. D. 6354 [1]

(Also Sections 6001, 6011, 6071, 6081, 6151, 6302; 31.6001, 31.6011(a), 31.6071(a), 31.6081(a), 31.6151, 31.6302(c).)

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER C, PART 31.—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

Subpart A of the Employment Tax Regulations amended to insert certain introductory material; regulations prescribed under chapter 25 (General Provisions Relating to Employment Taxes) of the Internal Revenue Code of 1954, as amended; and regulations of special application to the employment taxes imposed by subtitle C (chapters 21 to 25, inclusive) of such Code prescribed under sections 6001, 6011(a), 6071(a), 6081(a), 6151, and 6302(c) of such Code.

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

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

On September 12, 1958, notice of proposed rulemaking with respect to the amendment of Subpart A of the Employment Tax Regulations (26 CFR Part 31), in order to supersede the Regulations on Monthly Returns and Payment of Employment Taxes (26 CFR Part 39) and insert certain other introductory material, and with respect to certain administrative regulations of special application to the employment taxes imposed by subtitle C (chapters 21 to 25, inclusive) of the Internal Revenue Code of 1954 was published in the Federal

[1] The publication of this Treasury Decision in 24 F.R. 301, dated January 14, 1959 contains (1) instructions for modifying the notice of proposed rule making published in 23 F.R. 7071, dated Sept. 12, 1958, and (2) the full context of the regulations with such modifications. As here published, the Treasury Decision reflects the full context of such regulations, with modifications. The individual instructions have been omitted.

Register (23 F.R. 7071). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of Subpart A of the Employment Tax Regulations, and the administrative regulations of special application to the employment taxes, are hereby adopted.

PARAGRAPH 1. Subpart A of the Employment Tax Regulations (26 CFR Part 31) is amended as follows:

(A) By revising paragraph (a)(7) of § 31.0–2 to read as follows:

(7) District director means district director of internal revenue. The term also includes the Director of International Operations in all cases where the authority to perform the functions which may be performed by a district director has been delegated to the Director of International Operations.

(B) By striking the parenthetical material at the end of paragraph (e) of § 31.0–3 and inserting in lieu thereof the following:

(For prior regulations on the subject matter of section 3503, see §§ 411.802 and 408.803 of Regulations 114 and Regulations 128, respectively; 26 CFR (1939) Parts 411 and 408. For prior regulations on the subject matter of section 3504, see §§ 406.807 and 408.906 of Regulations 120 and Regulations 128, respectively; 26 CFR (1939) Parts 406 and 408.)

(C) By adding the following at the end of § 31.0–4:

The Regulations on Monthly Returns and Payment of Employment Taxes (26 CFR Part 39) are also superseded.

AUTHORITY: Amendment of Subpart A of the Employment Tax Regulations (26 CFR Part 31), issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805).

PAR. 2. The following regulations are prescribed under chapter 25 of the Internal Revenue Code of 1954 and under selected provisions of subtitle F of such Code:

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31.3501	Statutory provisions; collection and payment of taxes.
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31.3503	Statutory provisions; erroneous payments.
31.3503–1	Tax under chapter 21 or 22 paid under wrong chapter.
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31.6011(a)-2 Returns under Railroad Retirement Tax Act.
31.6011(a)-3 Returns under Federal Unemployment Tax Act.
31.6011(a)-4 Returns of income tax withheld from wages.
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31.6081(a)-1 Extensions of time for filing returns and other documents.
31.6151 Statutory provisions; time and place for paying tax shown on returns.
31.6151-1 Time for paying tax.
31.6302(c) Statutory provisions; mode or time of collection; use of Government depositaries.
31.6302(c)-1 Use of Government depositaries in connection with taxes under Federal Insurance Contributions Act and income tax withheld.
31.6302(c)-2 Use of Government depositaries in connection with employee and employer taxes under Railroad Retirement Tax Act.
31.6302(c)-3 Cross references.

AUTHORITY: §§ 31.3501 to 31.6302(c)-3, incl., issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; U.S.C. 7805.

Subpart F.—General Provisions Relating to Employment Taxes (Chapter 25, Internal Revenue Code of 1954)

§ 31.3501 STATUTORY PROVISIONS; COLLECTION AND PAYMENT OF TAXES.

SEC. 3501. COLLECTION AND PAYMENT OF TAXES.

The taxes imposed by this subtitle shall be collected by the Secretary or his delegate and shall be paid into the Treasury of the United States as internal-revenue collections.

§ 31.3502 STATUTORY PROVISIONS; NONDEDUCTIBILITY OF TAXES IN COMPUTING TAXABLE INCOME.

SEC. 3502. NONDEDUCTIBILITY OF TAXES IN COMPUTING TAXABLE INCOME.

(a) The taxes imposed by section 3101 of chapter 21, and by sections 3201 and 3211 of chapter 22 shall not be allowed as a deduction to the taxpayer in computing taxable income under subtitle A.

(b) The tax deducted and withheld under chapter 24 shall not be allowed as a deduction either to the employer or to the recipient of the income in computing taxable income under subtitle A.

§ 31.3502-1 NONDEDUCTIBILITY OF TAXES IN COMPUTING TAXABLE INCOME.—For provisions relating to the nondeductibility, in computing taxable income under subtitle A, of the taxes imposed by sections 3101, 3201, and 3211, and the tax deducted and withheld under chapter 24, see the provisions of the Income Tax Regulations (Part 1 of this chapter) under section 164. For provisions relating to the credit allowable to the recipient of the income in respect of the tax deducted and withheld under chapter 24, see the provisions of the Income Tax Regulations under section 31.

§ 31.3503 STATUTORY PROVISIONS; ERRONEOUS PAYMENTS.

SEC. 3503. ERRONEOUS PAYMENTS.

Any tax paid under chapter 21 or 22 by a taxpayer with respect to any period with respect to which he is not liable to tax under such chapter shall be credited against the tax, if any, imposed by such other chapter upon the taxpayer, and the balance, if any, shall be refunded.

§ 31.3503–1 TAX UNDER CHAPTER 21 OR 22 PAID UNDER WRONG CHAPTER.—If, for any period, an amount is paid as tax.—

(a) Under chapter 21 or corresponding provisions of prior law by a person who is not liable for tax for such period under such chapter or prior law, but who is liable for tax for such period under chapter 22 or corresponding provisions of prior law, or

(b) Under chapter 22 or corresponding provisions of prior law by a person who is not liable for tax for such period under such chapter or prior law, but who is liable for tax for such period under chapter 21 or corresponding provisions of prior law,

the amount so paid shall be credited against the tax for which such person is liable and the balance, if any, shall be refunded. Each claim for refund or credit under this section shall be made on Form 843 and in accordance with the applicable provisions of the regulations in this part and the applicable provisions of the Regulations on Procedure and Administration (Part 301 of this chapter) under section 6402.

§ 31.5304 STATUTORY PROVISIONS; ACTS TO BE PERFORMED BY AGENTS.

SEC. 3504. ACTS TO BE PERFORMED BY AGENTS.

In case a fiduciary, agent, or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the Secretary or his delegate, under regulations prescribed by him, is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this title and as the Secretary or his delegate may specify. Except as may be otherwise prescribed by the Secretary or his delegate, all provisions of law (including penalties) applicable in respect of an employer shall be applicable to a fiduciary, agent, or other person so designated but, except as so provided, the employer for whom such fiduciary, agent, or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers.

[Sec. 3504 as amended by sec. 71, Technical Amendments Act 1958 (72 Stat. 1660)]

§ 31.3504–1 ACTS TO BE PERFORMED BY AGENTS.—(a) *In general.*—In the event wages as defined in chapter 21 or 24 of the Internal Revenue Code of 1954, or compensation as defined in chapter 22 of such Code, of an employee or group of employees, employed by one or more employers, is paid by a fiduciary, agent, or other person, or if such fiduciary, agent, or other person has the control, receipt, custody, or disposal of such wages or compensation, the district director may, subject to such terms and conditions as he deems proper, authorize such fiduciary, agent, or other person to perform such acts as are required of such employer or employers under those provisions of the Internal Revenue Code of 1954 and the regulations thereunder which have application, for purposes of the taxes imposed by such chapter or chapters, in respect of such wages or compensation. If the fiduciary, agent, or other person is authorized by the district director to perform such acts, all provisions of law (including penalties) and of the regulations prescribed in pursuance of law applicable to employers in respect of such acts shall be applicable to such fiduciary, agent, or other person. However, each employer for whom such fiduciary, agent, or other person performs such acts shall remain subject to all

provisions of law (including penalties) and of the regulations prescribed in pursuance of law applicable to an employer in respect of such acts. Any application for authorization to perform such acts, signed by such fiduciary, agent, or other person, shall be filed with the district director with whom the fiduciary, agent, or other person will, upon approval of such application, file returns in accordance with such authorization.

(b) *Prior authorizations continued.*—An authorization in effect under section 1632 of the Internal Revenue Code of 1939 on December 31, 1954, continues in effect under section 3504 and is subject to the provisions of paragraph (a) of this section.

Subpart G.—Administrative Provisions of Special Application to Employment Taxes (Selected Provisions of Subtitle F, Internal Revenue Code of 1954)

§ 31.6001 STATUTORY PROVISIONS; NOTICE OR REGULATIONS REQUIRING, RECORDS, STATEMENTS, AND SPECIAL RETURNS.

SEC. 6001. NOTICE OR REGULATIONS REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS.

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

§ 31.6001–1 RECORDS IN GENERAL.—(a) *Form of records.*—The records required by the regulations in this part shall be kept accurately, but no particular form is required for keeping the records. Such forms and systems of accounting shall be used as will enable the district director to ascertain whether liability for tax is incurred and, if so, the amount thereof.

(b) *Copies of returns, schedules, and statements.*—Every person who is required, by the regulations in this part or by instructions applicable to any form prescribed thereunder, to keep any copy of any return, schedule, statement, or other document, shall keep such copy as a part of his records.

(c) *Records of claimants.*—Any person (including an employee) who, pursuant to the regulations in this part, claims a refund, credit, or abatement, shall keep a complete and detailed record with respect to the tax, interest, addition to the tax, additional amount, or assessable penalty to which the claim relates. Such record shall include any records required of the claimant by paragraph (b) of this section and by §§ 31.6001–2 to 31.6001–5, inclusive, which relate to the claim.

(d) *Records of employees.*—While not mandatory (except in the case of claims), it is advisable for each employee to keep permanent, accurate records showing the name and address of each employer for whom he performs services as an employee, the dates of beginning and termination of such services, the information with respect to himself which is required by the regulations in this subpart to be kept by employers, and the receipts furnished in accordance with the provisions of § 31.6051–1.

(e) *Place and period for keeping records.*—(1) All records required by the regulations in this part shall be kept, by the person required to keep them, at one or more convenient and safe locations accessible to internal revenue officers, and shall at all times be available for inspection by such officers.

(2) Except as otherwise provided in the following sentence, every person required by the regulations in this part to keep records in respect of a tax (whether or not such person incurs liability for such tax) shall maintain such records for at least four years after the due date of such tax for the return period to which the records relate, or the date such tax is paid, whichever is the later. The records of claimants required by paragraph (c) of this section shall be maintained for a period of at least four years after the date the claim is filed.

(f) *Cross reference.*—See §§ 31.6001–2 to 31.6001–5, inclusive, for additional records required with respect to the Federal Insurance Contributions Act, the Railroad Retirement Tax Act, the Federal Unemployment Tax Act, and the collection of income tax at source on wages, respectively.

§ 31.6001–2 Additional Records Under Federal Insurance Contributions Act.—(a) *In general.*—(1) Every employer liable for tax under the Federal Insurance Contributions Act shall keep records of all remuneration, whether in cash or in a medium other than cash, paid to his employees after 1954 for services (other than agricultural labor which constitutes or is deemed to constitute employment, domestic service in a private home of the employer, or service not in the course of the employer's trade or business) performed for him after 1936. Such records shall show with respect to each employee receiving such remuneration—

(i) The name, address, and account number of the employee and such additional information with respect to the employee as is required by paragraph (c) of § 31.6011(b)–2 when the employee does not advise the employer what his account number and name are as shown on an account number card issued to the employee by the Social Security Administration.

(ii) The total amount and date of each payment of remuneration (including any sum withheld therefrom as tax or for any other reason) and the period of services covered by such payment.

(iii) The amount of each such remuneration payment which constitutes wages subject to tax. See §§ 31.3121(a)–1 to 31.3121(a)–(10)–1, inclusive, of Subpart B of the regulations in this part.

(iv) The amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected. See paragraph (b) of § 31.3102–1 of Subpart B of the regulations in this part for provisions relating to collections of amounts equivalent to employee tax.

(v) If the total remuneration payment (subdivision (ii) of this subparagraph) and the amount thereof which is taxable (subdivision (iii) of this subparagraph) are not equal, the reason therefor.

(2) Every employer shall keep records of the details of each adjustment or settlement of taxes under the Federal Insurance Contri-

butions Act made pursuant to the regulations in this part. The employer shall keep as a part of his records a copy of each statement furnished pursuant to paragraph (c) of § 31.6011(a)–1.

(b) *Agricultural labor, domestic service, and service not in the course of employer's trade or business.*—(1) Every employer who pays cash remuneration after 1954 for the performance for him after 1950 of agricultural labor which constitutes or is deemed to constitute employment, of domestic service in a private home of the employer not on a farm operated for profit, or of service not in the course of his trade or business shall keep records of all such cash remuneration with respect to which he incurs, or expects to incur, liability for the taxes imposed by the Federal Insurance Contributions Act, or with respect to which amounts equivalent to employee tax are deducted pursuant to section 3102(a). See §§ 31.3101–3, 31.3111–3, and 31.3121(a)–2 of Subpart B of the regulations in this part for provisions relating, respectively, to the liability for employee tax which is incurred when wages are received, the liability for employer tax which is incurred when wages are paid, and the time when wages are paid and received. Such records shall show with respect to each employee receiving such cash remuneration—

(i) The name of the employee.

(ii) The account number of each employee to whom wages for such services are paid within the meaning of § 31.3121(a)–2 of Subpart B of the regulations in this part, and such additional information as is required by paragraph (c) of § 31.6011(b)–2 when the employee does not advise the employer what his account number and name are as shown on an account number card issued to the employee by the Social Security Administration.

(iii) The amount of such cash remuneration paid to the employee (including any sum withheld therefrom as tax or for any other reason) for agricultural labor which constitutes or is deemed to constitute employment, for domestic service in a private home of the employer not on a farm operated for profit, or for service not in the course of the employer's trade or business; the calendar month in which such cash remuneration was paid; and the character of the services for which such cash remuneration was paid. When the employer incurs liability for the taxes imposed by the Federal Insurance Contributions Act with respect to any such cash remuneration which he did not previously expect would be subject to the taxes, the amounts of any such cash remuneration not previously made a matter of record shall be determined by the employer to the best of his knowledge and belief.

(iv) The amount of employee tax, or any amount equivalent to employee tax, collected with respect to such cash remuneration and the calendar month in which collected. See paragraph (b) of § 31.3102–1 of Subpart B of the regulations in this part for provisions relating to collection of amounts equivalent to employee tax.

(v) To the extent material to a determination of tax liability, the number of days during each calendar year after 1956 on which agricultural labor which constitutes or is deemed to constitute employment is performed by the employee for cash remuneration computed on a time basis.

(2) Every person to whom a "crew leader", as that term is defined in section 3121(o), furnishes individuals for the performance of agricultural labor after December 31, 1958, shall keep records of the name; permanent mailing address, or if none, present address; and identification number, if any, of such "crew leader".

§ 31.6001-3 Additional Records Under Railroad Retirement Tax Act.—(a) *Records of employers.*—(1) Every employer liable for tax under the Railroad Retirement Tax Act shall keep records of all remuneration (whether in money or in something which may be used in lieu of money) other than tips, paid to his employees after 1954 for services rendered to him (including "time lost") after 1954. Such records shall show with respect to each employee—

(i) The name and address of the employee.

(ii) The total amount and date of each payment of remuneration to the employee (including any sum withheld therefrom as tax or for any other reason) and the period of service (including any period of absence from active service) covered by such payment.

(iii) The amount of such remuneration payment with respect to which the tax is imposed.

(iv) The amount of employee tax collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected.

(v) If the total payment of remuneration (subdivision (ii) of this subparagraph) and the amount thereof with respect to which the tax is imposed (subdivision (iii) of this subparagraph) are not equal, the reason therefor.

(2) The employer shall keep records of the details of each adjustment or settlement of taxes under the Railroad Retirement Tax Act made pursuant to the regulations in this part.

(b) *Records of employee representatives.*—Every individual liable for employee representative tax under the Railroad Retirement Tax Act shall keep records of all remuneration (whether in money or in something which may be used in lieu of money) paid to him after 1954 for services rendered (including "time lost") by him as an employee representative after 1954. Such records shall show—

(1) The name and address of each employee organization employing him.

(2) The total amount and date of each payment of remuneration for services rendered as an employee representative (including any sum withheld therefrom as tax or for any other reason) and the period of service (including any period of absence from active service) covered by such payment.

(3) The amount of such remuneration payment with respect to which the employee representative tax is imposed.

(4) If the total payment of remuneration (subparagraph (2) of this paragraph) and the amount thereof with respect to which the employee representative tax is imposed (subparagraph (3) of this paragraph) are not equal, the reason therefor.

§ 31.6001-4 Additional Records Under Federal Unemployment Tax Act.—(a) *Records of employers.*—Every employer liable for tax under the Federal Unemployment Tax Act for any calendar year

shall, with respect to each such year, keep such records as are necessary to establish—

(1) The total amount of remuneration (including any sum withheld therefrom as tax or for any other reason) paid to his employees during the calendar year for services performed after 1938.

(2) The amount of such remuneration which constitutes wages subject to the tax. See § 31.3306(b)–1 through § 31.3306(b)–(8)–1 of Subpart D of the regulations in this part.

(3) The amount of contributions paid by him into each State unemployment fund, with respect to services subject to the law of such State, showing separately (i) payments made and neither deducted nor to be deducted from the remuneration of his employees, and (ii) payments made and deducted or to be deducted from the remuneration of his employees.

(4) The information required to be shown on the prescribed return and the extent to which the employer is liable for the tax.

(5) If the total remuneration paid (subparagraph (1) of this paragraph) and the amount thereof which is subject to the tax (subparagraph (2) of this paragraph) are not equal, the reason therefor.

(6) To the extent material to a determination of tax liability, the dates, in each calendar quarter, on which each employee performed services not in the course of the employer's trade or business, and the amount of cash remuneration paid at any time for such services performed within such quarter. See §31.3306–(c)(3)–1 of Subpart D of the regulations in this part.

The term "remuneration," as used in this paragraph, includes all payments whether in cash or in a medium other than cash, except that the term does not include payments in a medium other than cash for services not in the course of the employer's trade or business. See § 31.3306(b)(7)–1 of Subpart D of the regulations in this part.

(b) *Records of persons who are not employers.*—Any person who employs individuals in employment (see § 31.3306(c)–2 through § 31.3306(c)(17)–1 of Subpart D of the regulations in this part) during any calendar year but who considers that he is not an employer subject to the tax (see § 31.3306(a)–1 of such Subpart D) shall, with respect to each such year, be prepared to establish by proper records (including, where necessary, records of the number of employees employed each day) that he is not an employer subject to the tax.

§ 31.6001–5 Additional Records in Connection With Collection of Income Tax at Source of Wages.—(a) Every employer required under section 3402 to deduct and withhold income tax upon the wages of employees shall keep records of all remuneration paid to such employees. Such records shall show with respect to each employee—

(1) The name and address of the employee.

(2) The total amount and date of each payment of remuneration (including any sum withheld therefrom as tax or for any other reason) and the period of services covered by such payment.

(3) The amount of such remuneration payment which constitutes wages subject to withholding.

(4) The amount of tax collected with respect to such remuneration payment and, if collected at a time other than the time such payment was made, the date collected.

(5) If the total remuneration payment (subparagraph (2) of this paragraph) and the amount thereof which is taxable (subparagraph (3) of this paragraph) are not equal, the reason therefor.

(6) Copies of any statements furnished by the employee pursuant to paragraph (b)(12) of § 31.3401(a)–1 of Subpart E of the regulations in this part (relating to permanent residents of the Virgin Islands).

(7) Copies of any statements furnished by the employee pursuant to § 31.3401(a)(7)–1 of Subpart E of the regulations in this part (relating to nonresident alien individuals who are residents of a contiguous country).

(8) Copies of any statements furnished by the employee pursuant to § 31.3401(a)(8)(A)–1 of Subpart E of the regulations in this part (relating to residence or physical presence in a foreign country).

(9) Copies of any statements furnished by the employee pursuant to § 31.3401(a)(8)(C)–1 of Subpart E of the regulations in this part (relating to citizens resident in Puerto Rico).

(10) The fair market value and date of each payment of noncash remuneration, made to an employee after August 9, 1955, for services performed as a retail commission salesman, with respect to which no income tax is withheld by reason of § 31.3402(j)–1 of Subpart E of the regulations in this part.

(11) With respect to payments made in 1955 under a wage continuation plan (as defined in § 1.105–4(a) of the Income Tax Regulations (Part 1 of this chapter), the records required to be kept in respect of such payments are those prescribed under paragraph (b)(8) of § 31.3401(a)–1 of Subpart E of the regulations in this part.

(12)

NOTE: For regulations under this subparagraph (12) (26 CFR 31.6001–5(a)(12)), see Treasury Decision 6155 [C.B. 1956–1, 493], approved December 27, 1955 (20 F.R. 10097).

(13) The withholding exemption certificates (Form W–4) filed with the employer by the employee.

(14) The agreement, if any, between the employer and the employee for the withholding of additional amounts of tax pursuant to § 31.3402(i)–1 of Subpart E of the regulations in this part.

(15) To the extent material to a determination of tax liability, the dates, in each calendar quarter, on which the employee performed services not in the course of the employer's trade or business, and the amount of cash remuneration paid at any time for such services performed within such quarter. See § 31.3401(a)(4)–1 of Subpart E of the regulations in this part.

The term "remuneration," as used in this paragraph, includes all payments whether in cash or in a medium other than cash, except that the term does not include payments in a medium other than cash for services not in the course of the employer's trade or business. See § 31.3401(a)(11)–1 of Subpart E of the regulations in this part.

(b) The employer shall keep records of the details of each adjustment or settlement of income tax withheld under section 3402 made pursuant to the regulations in this part.

§ 316011(a) STATUTORY PROVISIONS; GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST; GENERAL RULE.

SEC. 6011. GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

(a) GENERAL RULE.—When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

§ 31.6011(a)–1 RETURNS UNDER FEDERAL INSURANCE CONTRIBUTIONS ACT.—(a) *Requirement.*—(1) *In general.*—Except as otherwise provided in § 31.6011(a)–5, every employer required to make a return under the Federal Insurance Contributions Act, as in effect prior to 1955, for the calendar quarter ended December 31, 1954, in respect of wages other than wages for agricultural labor, shall make a return for each subsequent calendar quarter (whether or not wages are paid in such quarter) until he has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in § 31.6011(a)–5, every employer not required to make a return for the calendar quarter ended December 31, 1954, shall make a return for the first calendar quarter thereafter in which he pays wages, other than wages for agricultural labor, subject to the taxes imposed by the Federal Insurance Contributions Act as in effect after 1954, and shall make a return for each subsequent calendar quarter (whether or not wages are paid therein) until he has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in subparagraphs (3) and (4) of this paragraph, Form 941 is the form prescribed for making the return required by this subparagraph. Such return shall not include wages for agricultural labor required to be reported on any return prescribed by subparagraph (2) of this paragraph.

(2) *Employers of agricultural workers.*—(i) *Quarterly returns for 1955.*—Every employer who, at any time before October 1 of the calendar year 1955, incurs liability of $100 or more for the taxes imposed by the Federal Insurance Contributions Act with respect to wages paid in such year for agricultural labor shall make a return—

(*a*) For the first calendar quarter of such year if the liability for such taxes incurred in such quarter is $100 or more,

(*b*) For the period consisting of the first and second calendar quarters of such year if the liability for such taxes incurred in those quarters totals $100 or more, except that such return shall be made only for the second calendar quarter if a return was required under (*a*) of this subdivision and if the liability for

such taxes incurred in the second calendar quarter is $100 or more, and

(*c*) For the period consisting of the first, second, and third calendar quarters of such year if the liability for such taxes incurred in those quarters totals $100 or more, except that such return shall be made (*1*) only for the period consisting of the second and third calendar quarters if a return was required under (*a*) of this subdivision but not under (*b*) of this subdivision, and if the total liability for such taxes incurred in the second and third calendar quarters totals $100 or more; or (*2*) only for the third calendar quarter if a return was required under (*b*) of this subdivision, and if the liability for such taxes incurred in the third calendar quarter is $100 or more.

Form 943A is the form prescribed for making the return required by this subdivision, except that, if the return is required to be filed with the office of the United States Internal Revenue Service in Puerto Rico, the return shall be made on Form 943A–PR if the Internal Revenue Service furnishes Form 943A–PR to the employer for use in lieu of Form 943A (see § 31.6091–1).

(ii) *Annual returns for 1955 and subsequent years.*—Every employer who pays wages after 1954 for agricultural labor with respect to which taxes are imposed by the Federal Insurance Contributions Act shall make a return for the first calendar year in which he pays such wages and for each calendar year thereafter (whether or not wages are paid therein) until he has filed a final return in accordance with § 31.6011(a)–6. Form 943 is the form prescribed for making the annual return required by this subdivision, except that, if the return is required to be filed with the office of the United States Internal Revenue Service in Puerto Rico, the return shall be made on Form 943PR if the Internal Revenue Service furnishes Form 943PR to the employer for use in lieu of Form 943 (see § 31.6091–1).

(3) *Employers of domestic workers.*—Form 942 is the form prescribed for use by every employer in making a return as required under subparagraph (1) of this paragraph in respect of wages, as defined in the Federal Insurance Contributions Act, paid by him in any calendar quarter for domestic service in a private home of the employer not on a farm operated for profit. If, however, the employer is required under subparagraph (1) of this paragraph to make a return on Form 941 for such calendar quarter, such employer, at his election, may—

(i) Report all wages on Form 941, or

(ii) Report on Form 942 the wages for domestic service in a private home of the employer not on a farm operated for profit and omit such wages from the return on Form 941.

An employer entitled to make the election referred to in the preceding sentence who has chosen one method shall not change to the other method without first notifying the district director with whom he is required to file his returns that he will thereafter use such other method. See, however, § 31.6011(a)–6 relating to final returns on Form 941. The provisions of this subparagraph shall not apply to any employer required to file the return prescribed under subparagraph (1) of this paragraph with the office of the United States Internal Revenue Service in Puerto Rico (see § 31.6091–1).

(4) *Employers in Puerto Rico or the Virgin Islands.*—Form 941PR is the form prescribed for use in making the return required under subparagraph (1) of this paragraph in the case of every employer who is required to file such return with the office of the United States Internal Revenue Service in Puerto Rico, except that the return shall be made on Form 941VI if the Internal Revenue Service furnishes Form 941VI to the employer for use in lieu of Form 941PR. However, Form 941 is the form prescribed for making such return in the case of every such employer who is required pursuant to § 31.6011(a)–4 to make a return of income tax withheld from wages.

(b) *When to report wages.*—Wages with respect to which taxes are imposed by the Federal Insurance Contributions Act shall be reported in the return of such taxes required under this section or § 31.6011(a)–5 for the return period in which they are actually paid unless they were constructively paid in a prior return period, in which case such wages shall be reported only in the return for such prior period. However, if such wages are deemed to be paid in a later return period, they shall be reported only in the return for such later period. See § 31.3121(a)–2 of Subpart B of the regulations in this part relating to the time when wages are paid or deemed to be paid.

(c) *Correction of returns or schedules.*—If in a return required under this section or § 31.6011(a)–5, or in any other manner, the employer fails to report, or incorrectly reports, to the district director, the name, account number, or wages of an employee, the employer shall furnish to the district director a written statement fully explaining the omission or error; except that such statement is not required by this paragraph if correction of the omission or error is made in connection with a supplemental return, adjustment, credit, refund, or abatement. The employer shall include in such statement his identification number (except that an identification number need not be included if the omission or error is with respect to information required to be reported on a return on Form 942), each return period for which the data were omitted or for which the incorrect data were furnished, the data incorrectly reported for each period, and the data which should have been reported. A copy of such statement shall be retained by the employer as a part of his records under § 31.6001–2. No particular form is prescribed for making such statement, but if printed forms are desired, the district director will supply copies of Form 941c or Form 941c PR, whichever is appropriate, upon request.

(d) *Time and place for filing returns.*—For provisions relating to the time and place for filing returns, see §§ 31.6071(a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–2 Returns Under Railroad Retirement Tax Act.—(a) *Requirement.*—(1) *Employers.*—Every employer shall make a return for the first calendar quarter after 1954 within which compensation taxable under the Railroad Retirement Tax Act is paid to his employee or employees for services rendered after 1954, and for each subsequent calendar quarter (whether or not taxable compensation is paid therein) until he has filed a final return in accordance with § 31.6011(a)–6. Form CT–1 is the form prescribed for making

the return required under this subparagraph. One original and a duplicate of each return on Form CT–1 shall be filed with the district director.

(2) *Employee representatives.*—Every employee representative shall make a return for the first calendar quarter after 1954 within which he is paid taxable compensation for services rendered after 1954 as an employee representative, and for each subsequent calendar quarter (whether or not he is paid taxable compensation therein) until he has filed a final return in accordance with § 31.6011(a)–6. Form CT–2 is the form prescribed for making the return required under this subparagraph. One original and a duplicate of each return on Form CT–2 shall be filed with the district director.

(b) *When to report compensation.*—(1) *In general.*—Except as otherwise provided in subparagraph (2) of this paragraph, compensation taxable under the Railroad Retirement Tax Act shall be reported in the return required under this section for the period in which it is deemed, under paragraph (d) of § 31.3231(e)–1 of Subpart C of the regulations in this part, to be said, unless under such section the compensation may be deemed to be paid in more than one return period, in which case it shall be reported only in the return for the first return period in which it is deemed to be paid.

(2) *Returns of employers required by State law to pay compensation on weekly basis.*—(i) *In general.*—If any employer is required by the laws of any State to pay compensation weekly, the return of tax with respect to such compensation may, at the election of such employer, cover all payroll weeks which, or the major part of which, fall within the period for which a return of tax is required by paragraph (a)(1) of this section. This provision shall not apply, however, to any payroll week which falls in two calendar years. Any employer who elects to file a return as provided in this subparagraph shall notify the district director in writing of such election and shall include therein a statement setting forth the facts which entitle him to make the election. Such notice shall be in duplicate and shall be attached to the original and duplicate of the return for the first period to which such election applies. Any election so made shall be binding upon the employer with respect to all returns subsequently made by him until the district director authorizes or directs the employer to make a return on a different basis. For the purpose of determining the time when compensation is deemed to be paid in accordance with paragraph (d) of § 31.3231(e)–1 of Subpart C of the regulations in this part, and of determining the due date of a return in accordance with paragraph (b) of § 31.6071(a)–1, the calendar month following the period covered by the return of an employer making such election is the same calendar month which would be determinative for such purposes if the employer had not made the election.

(ii) *Prior elections.*—An election made by an employer, pursuant to the provisions of article 501(b) of Regulations 100 (26 CFR (1939) 1949 ed. 410.501(b)), or of § 411.601(b) of Regulations 114 (26 CFR (1939) 411.601(b)), which is in force and effect at the time the employer makes his first return under this section shall satisfy the requirements of subdivision (i) of this subparagraph with respect to

the making of an election and shall be binding upon the employer with respect to all returns made by him under this section until the district director authorizes or directs the employer to make a return on a different basis.

(iii) *Example.*—Employer X is required by State law to pay his employees within 6 days after the compensation is earned. In compliance with the State law, employer X, for services rendered to him for the payroll week of June 27 to July 2, 1955, pays his employees on the last-named date. June 1955 is the last month of a period for which a return of tax is required by paragraph (a)(1) of this section. Employer X may elect to include in the return required by paragraph (a)(1) of this section for the period April 1 to June 30, 1955, the compensation paid to his employees for the payroll week of June 27 to July 2, 1955, inclusive, although the compensation for July 1 and 2 falls within another period for which a return is required by paragraph (a)(1) of this section. If, in this example, the payroll week ended on July 5, 1955, the compensation paid for the payroll week of June 29 to July 5 would be included in the return period in which July falls although the compensation earned for June 29 and 30 fell in a prior return period under the general rule.

(c) *Time and place for filing returns.*—For provisions relating to the time and place for filing returns, see §§ 31.6071(a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–3 Returns Under Federal Unemployment Tax Act.—(a) *Requirement.*—Every person shall make a return of tax under the Federal Unemployment Tax Act for each calendar year with respect to which he is an employer as defined in § 31.3306(a)–1 of Subpart D of the regulations in this part. Form 940 is the form prescribed for use in making the return.

(b) *When to report wages.*—Wages taxable under the Federal Unemployment Tax Act shall be reported in the return required under this section for the return period in which they are actually paid unless they were constructively paid in a prior return period, in which case such wages shall be reported only in the return for such prior period.

(c) *Time and place for filing returns.*—For provisions relating to the time and place for filing returns, see §§ 31.6071(a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–4 Returns of Income Tax Withheld From Wages.—(a) *In general.*—Except as otherwise provided in § 31.6011(a)–5, every person required to make a return of income tax withheld from wages pursuant to section 1622 of the Internal Revenue Code of 1939 for the calendar quarter ended December 31, 1954, shall make a return for each subsequent calendar quarter (whether or not wages are paid therein) until he has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in § 31.6011(a)–5, every person not required to make a return for the calendar quarter ended December 31, 1954, shall make a return of income tax withheld from wages pursuant to section 3402 for the first calendar quarter thereafter in which he is required to deduct and withhold such tax and for each subsequent calendar quarter (whether or not wages are

paid therein) until he has filed a final return in accordance with § 31.6011(a)–6. Form 941 is the form prescribed for making the return required under this paragraph.

(b) *District director's copies of Form W–2.*—(1) Every employer who is required under paragraph (a) of this section to make a return of income tax withheld from wages for a period ending December 31, or for any period for which such return is made as a final return, shall submit as part of such return the district director's copy of each withholding statement on Form W–2 required under § 31.6051–1 to be furnished by the employer with respect to wages paid during the calendar year. For the penalty provided in case of each failure to file Form W–2, see the provisions of the Regulations on Procedure and Administration (Part 301 of this chapter) under section 6652.

(2) The copies of withholding statements for the current calendar year transmitted with the return required under paragraph (a) of this section shall be accompanied by an information statement on Form W–3. This subparagraph has no application to any return filed under this section in 1955.

(3) The copies of withholding statements for the current calendar year transmitted with the return shall be accompanied by a list (preferably in the form of an adding machine tape) of the amounts of income tax withheld shown on such statements. If an employer's total payroll is made up on the basis of a number of separate units or establishments, the statements may be assembled accordingly and a separate list or tape submitted for each unit. In such case, a summary list or tape should be submitted, the total of which will agree with the corresponding entry to be made on Form W–3. If the number of statements is large, they may be forwarded in packages of convenient size. When this is done, the packages should be identified with the name of the employer and consecutively numbered, and Form W–3 should be placed in package No. 1. The number of packages should be indicated immediately after the employer's name on Form W–3. The return, Form 941, and remittance in cases of this kind should be submitted in the usual manner, accompanied by a brief statement that the district director's copies of Form W–2 and Form W–3 are in separate packages.

(4) The district director's copies of corrected Forms W–2 for a prior calendar year shall be submitted to the district director on or before the date fixed for filing the employer's return of income tax withheld from wages for the period ending December 31 of the year in which the correction is made, or for any period in such year for which the return is made as a final return. Such copies of corrected Forms W–2 shall be accompanied by a statement explaining the corrections and, if submitted with the employer's return for such period ending December 31 or with such final return, shall be assembled separately from the district director's copies of Forms W–2 for the current calendar year (see subparagraph (1) of this paragraph).

(5) For provisions relating to extensions of time for filing the district director's copies of Form W–2 and Form W–3, see paragraph (a)(3) of § 31.6081(a)–1.

(c) *Time and place for filing returns.*—For provisions relating to the time and place for filing returns, see §§ 31.6071(a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–5 MONTHLY RETURNS.—(a) *In general.*—(1) *Requirement.*—The provisions of this section are applicable in respect of the taxes reportable on Form 941, Form 941PR, or Form 941VI pursuant to § 31.6011(a)–1 or § 31.6011(a)–4. An employer who is required by § 31.6011(a)–1 or § 31.6011(a)–4 to make quarterly returns on any such form shall, in lieu of making such quarterly returns, make returns of such taxes in accordance with the provisions of this section if he is so notified in writing by the district director. The district director may so notify any employer (i) who, by reason of notification as provided in § 301.7512–1 of the Regulations on Procedure and Administration (Part 301 of this chapter), is required to comply with the provisions of such § 301.7512–1, or (ii) who has failed to (*a*) make any such return on Form 941, Form 941PR, or Form 941VI, (*b*) pay tax reportable on any such form, or (*c*) deposit any such tax as required under the provisions of § 31.6302(c)–1. Every employer so notified by the district director shall make a return for the calendar month in which the notice is received and for each calendar month thereafter (whether or not wages are paid in any such month) until he has filed a final return or is required to make quarterly returns pursuant to notification as provided in subparagraph (2) of this paragraph. However, if the notice provided for in this subparagraph is received after the close of the first calendar month of a calendar quarter, the first return under this section shall be made for the period beginning with the first day of such quarter and ending with the last day of the month in which the notice is received. Each return required under this section shall be made on the form prescribed for making the return which would otherwise be required of the employer under the provisions of § 31.6011(a)–1 or § 31.6011(a)–4, except that, if some other form is furnished by the district director for use in lieu of such prescribed form, the return shall be made on such other form.

(2) *Termination of requirement.*—The district director, in his discretion, may notify the employer in writing that he shall discontinue the filing of monthly returns under this section. If the employer is so notified, the last month for which a return shall be made under this section is the last month of the calendar quarter in which such notice of discontinuance is received. Thereafter, the employer shall make quarterly returns in accordance with the provisions of § 31.6011(a)–1 or § 31.6011(a)–4.

(b) *Information returns or statements.*—(1) *Federal Insurance Contributions Act.*—Every employer who is required under paragraph (a) of this section to make a return of tax under the Federal Insurance Contributions Act for any period with a calendar quarter shall make an information return for such calendar quarter. Such return shall be made on Schedule A of Form 941, or the equivalent schedule of Form 941PR or Form 941VI, except that, if some other form or schedule is furnished by the district director for the purpose of making such return, the return shall be made on such other form or schedule. The information reported on such return shall include, with respect to each employee to whom the employer pays wages as defined in the Federal Insurance Contributions Act, the account number of the employee, the employee's name, the total amount of wages paid by

the employer to the employee during the calendar quarter, and such other information as may be called for on the form provided for making such return.

(2) *Income tax withheld from wages.*—(i) Every employer who is required under paragraph (a) of this section to make a return of income tax withheld from wages for a period ending December 31, or for any period for which such return is made as a final return, shall make an information statement for the calendar year which includes such period. Such information statement shall be made on Form W–3, except that, if some other form is furnished by the district director for use in lieu of Form W–3, the information statement shall be made on such other form. The information statement shall be accompanied by the district director's copy of each withholding statement on Form W–2 required under § 31.6051–1 to be furnished by the employer with respect to wages paid during the calendar year. The provisions of paragraph (b)(3) of § 31.6011(a)–4 shall be applicable in respect of such withholding statements. For provisions relating to the submission of the district director's copies of corrected Forms W–2 for a prior year, see paragraph (b)(4) of § 31.6011(a)–4. For the penalty provided in case of each failure to file Form W–2, see the provisions of the Regulations on Procedure and Administration (Part 301 of this chapter) under section 6652.

(ii) For provisions relating to extensions of time for filing the district director's copies of Form W–2 and Form W–3, or such other form as may be furnished for use in lieu of Form W–3, see paragraph (a)(3) of § 31.6081(a)–1.

(c) *Time and place for filing returns.*—For provisions relating to the time and place for filing returns, see §§ 31.6071(a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–6 FINAL RETURNS.—(a) *In General.*—(1) *Federal Insurance Contributions Act; income tax withheld from wages.*—An employer who is required to make a return on a particular form pursuant to § 31.6011(a)–1, § 31.6011(a)–4, or § 31.6011(a)–5, and who in any return period ceases to pay wages in respect of which he is required to make a return on such form, shall make such return for such period as a final return. Each return made as a final return shall be marked "Final return" by the person filing the return. Every such person filing a final return (other than a final return on Form 942 or Form 943) shall furnish information showing the date of the last payment of wages, as defined in section 3121(a) or section 3401(a). An employer (other than an employer making returns on Form 942) who has only temporarily ceased to pay wages, because of seasonal activities or for other reasons, shall not make a final return but shall continue to file returns. If (i) for any return period an employer makes a final return on a particular form, and (ii) after the close of such period the employer pays wages, as defined in section 3121(a) or section 3401(a), in respect of which the same or a different return form is prescribed, such employer shall make returns on the appropriate return form. For example, if an employer who has filed a final return on Form 941 pays wages only for domestic service in his private home not on a farm operated for profit, the employer is required to make returns on Form 942 in respect of such wages.

(2) *Railroad Retirement Tax Act.*—(i) *Form CT–1.*—An employer required to make returns on Form CT–1 who in any calendar quarter ceases to pay taxable compensation shall make the return on Form CT–1 for such quarter as a final return. Such return shall be marked "Final return" by the person filing the return, and such person shall furnish information showing the date of the last payment of taxable compensation. An employer who has only temporarily ceased to pay taxable compensation shall continue to file returns on Form CT–1.

(ii) *Form CT–2.*—An employee representative required to make returns on Form CT–2 who in any calendar quarter ceases to be paid taxable compensation for services as an employee representative shall make the return on Form CT–2 for such quarter as a final return. Such return shall be marked "Final return" by the person filing the return, and such person shall furnish information showing the date of the last payment of taxable compensation. An employee representative who only temporarily ceases to be paid taxable compensation for services as an employee representative shall continue to file returns on Form CT–2.

(3) *Federal Unemployment Tax Act.*—An employer required to make a return on Form 940 for a calendar year in which he ceases to be an employer, as defined in § 31.3306(a)–1 of Subpart D of the regulations in this part, because of the discontinuance, sale, or other transfer of his business, shall make such return as a final return. Such return shall be marked "Final return" by the person filing the return.

(b) *Statement to accompany final return.*—There shall be executed as a part of each final return, except in the case of a final return on Form 942, a statement showing the address at which the records required by the regulations in this part will be kept, the name of the person keeping such records, and, if the business of an employer has been sold or otherwise transferred to another person, the name and address of such person and the date on which such sale or other transfer took place. If no such sale or transfer occurred or the employer does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement. Such statement shall include any information required by this section as to the date of the last payment of wages or compensation. If the statement is executed as a part of a final return on Form CT–1 or Form CT–2, such statement shall be furnished in duplicate.

(c) *Time and place for filing returns.*—For provisions relating to the time and place for filing returns, see §§ 31.6071(a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–7 Execution of Returns.—(a) *In general.*—Each return required under the regulations in this part, together with any prescribed copies or supporting data, shall be filled in and disposed of in accordance with the forms, instructions, and regulations applicable thereto. The return shall be carefully prepared so as fully and accurately to set forth the data required to be furnished therein. Returns which have not been so prepared will not be accepted as meeting the requirements of the regulations in this part. The return may be made by an agent in the name of the person required to make the return if an acceptable power of attorney is filed with the district director and if such return includes all taxes required to be reported by such person on such return for the period covered by the return.

Only one return on any one prescribed form for a return period shall be filed by or for a taxpayer. Any supplemental return made on such form in accordance with § 31.6205–1 shall constitute a part of the return which it supplements. Consolidated returns of two or more employers are not permitted, as for example, returns of a parent and a subsidiary corporation. For provisions relating to the filing of returns of the taxes imposed by the Federal Insurance Contributions Act and of income tax withheld under section 3402 in the case of governmental employers, see § 31.3122 of Subpart B, and § 31.3404–1 of Subpart E, of the regulations in this part.

(b) *Use of prescribed forms.*—Copies of the prescribed return forms will so far as possible be regularly furnished taxpayers by district directors. A taxpayer will not be excused from making a return, however, by the fact that no return form has been furnished to him. Taxpayers not supplied with the proper forms should make application therefor to the district director in ample time to have their returns prepared, verified, and filed with the district director on or before the due date. See §§ 31.6071(a)–1 and 31.6091–1, relating, respectively, to the time and place for filing returns. In the absence of a prescribed return form, a statement made by a taxpayer disclosing the aggregate amount of wages or compensation reportable on such form for the period in respect of which a return is required and the amount of taxes due may be accepted as a tentative return. If filed within the prescribed time, the statement so made will relieve the taxpayer from liability for the addition to tax imposed for the delinquent filing of the return, provided that without unnecessary delay such tentative return is supplemented by a return made on the proper form. For additions to the tax in case of failure to file a return within the prescribed time, see the provisions of the Regulations on Procedure and Administration (Part 301 of this chapter) under section 6651.

(c) *Signing and verification.*—For provisions relating to the signing of returns, see § 31.6061–1. For provisions relating to the verifying of returns, see the provisions of the Regulations on Procedure and Administration (Part 301 of this chapter) under section 6065.

§ 31.6071(a) Statutory Provisions; Time for Filing Returns and Other Documents.

SEC. 6071. TIME FOR FILING RETURNS AND OTHER DOCUMENTS.

(a) General Rule.—When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

§ 31.6071(a)–1 Time for Filing Returns and Other Documents.—(a) *Federal Insurance Contributions Act and income tax withheld from wages.*—(1) *Quarterly or annual returns.*—Each return required to be made under § 31.6011(a)(1), in respect of the taxes imposed by the Federal Insurance Contributions Act, or required to be made under § 31.6011(a)(4), in respect of income tax withheld, shall be filed on or before the last day of the first calendar month following the period for which it is made. However, any such return may be filed on or before the tenth day of the second calendar month following such period if such return is accompanied by depositary

receipts, Form 450, showing timely deposits in full payment of such taxes due for such period. For the purpose of the preceding sentence, a deposit which is not required to be made within such return period may be made on or before the last day of the first calendar month following the close of such period, and the timeliness of the deposit for any month will be determined by the earliest date stamped on the validated Form 450 by an authorized commercial bank or by a Federal Reserve bank.

(2) *Monthly tax returns.*—Each return in respect of the taxes imposed by the Federal Insurance Contributions Act or of income tax withheld is required to be made under paragraph (a) of § 31.6011 (a)–5 shall be filed on or before the fifteenth day of the first calendar month following the period for which it is made.

(3) *Information returns or statements.*—(i) *Federal Insurance Contributions Act.*—Each information return in respect of wages as defined in the Federal Insurance Contributions Act which is required to be made under paragraph (b)(1) of § 31.6011(a)–5 shall be filed on or before the fifteenth day following the calendar quarter for which it is made, except that, if a tax return under paragraph (a) of § 31.6011 (a)–5 is made as a final return for a period ending prior to the last day of a calendar quarter, the information return shall be filed on or before the fifteenth day of the first calendar month following the period for which the tax return is filed.

(ii) *Income tax withheld from wages.*—Each information statement in respect of income tax withheld from wages which is required to be made under paragraph (b)(2) of § 31.6011(a)–5 shall be filed on or before January 31 following the calendar year for which it is made, except that, if a tax return under paragraph (a) of § 31.6011 (a)–5 is filed as a final return for a period ending prior to December 31, the information statement shall be filed on or before the last day of the first calendar month following the period for which the tax return is filed.

(b) *Railroad Retirement Tax Act.*—Each return of the taxes imposed by the Railroad Retirement Tax Act required to be made under § 31.6011(a)–2 shall be filed on or before the last day of the second calendar month following the period for which it is made.

(c) *Federal Unemployment Tax Act.*—Each return of the tax imposed by the Federal Unemployment Tax Act required to be made under § 31.6011(a)–3 shall be filed on or before the last day of the first calendar month following the period for which it is made.

(d) *Last day for filing.*—For provisions relating to the time for filing a return when the prescribed due date falls on Saturday, Sunday, or a legal holiday, see the provisions of the Regulations on Procedure and Administration (Part 301 of this chapter) under section 7503.

(e) *Late filing.*—For additions to the tax in case of failure to file a return within the prescribed time, see the provisions of the Regulations on Procedure and Administration (Part 301 of this chapter) under section 6651.

(f) *Cross reference.*—For extensions of time for filing returns and other documents, see § 31.6081(a)–1.

§ 31.6081(a) STATUTORY PROVISIONS; EXTENSION OF TIME FOR FILING RETURNS.

SEC. 6081. EXTENSION OF TIME FOR FILING RETURNS.

(a) GENERAL RULE.—The Secretary or his delegate may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

§ 31.6081(a)–1 EXTENSION OF TIME FOR FILING RETURNS AND OTHER DOCUMENTS.—(a) *Federal Insurance Contributions Act; income tax withheld from wages; and Railroad Retirement Tax Act.*—(1) *In general.*—Except as otherwise provided in subparagraphs (2) and (3) of this paragraph, no extension of time for filing any return or other document required in respect of the Federal Insurance Contributions Act, income tax withheld from wages, or the Railroad Retirement Tax Act will be granted.

(2) *Information returns of employers required to file monthly returns of tax under the Federal Insurance Contributions Act.*—The district director may, upon application of the employer, grant an extension of time in which to file any information return required under paragraph (b)(1) of § 31.6011(a)–5. Such extension of time shall not extend beyond the last day of the calendar month in which occurs the due date prescribed in paragraph (a)(3)(i) of § 31.6071(a)–1 for filing the information return. Each application for an extension of time for filing an information return shall be made in writing, properly signed by the employer or his duly authorized agent; shall be addressed to the district director with whom the employer will file the return; and shall contain a full recital of the reasons for requesting the extension, to aid the district director in determining the period of the extension, if any, which will be granted. Such a request in the form of a letter to the district director will suffice as an application. The application shall be filed on or before the due date prescribed in paragraph (a)(3)(i) of § 31.6071(a)–1 for filing the information return.

(3) *Information statements of employers required to file returns of income tax withheld from wages.*—For good cause shown upon application by an employer, the district director may grant an extension of time not exceeding 30 days in which to file (i) the district director's copies of Form W–2 pursuant to paragraph (b)(1) of § 31.6011(a)–4 or paragraph (b)(2) of § 31.6011(a)–5, and (ii) Form W–3 pursuant to paragraph (b)(2) of § 31.6011(a)–4 or paragraph (b)(2) of § 31.6011(a)–5, or such other form as may be furnished pursuant to paragraph (b)(2) of § 31.6011(a)–5 for use in lieu of Form W–3. Each application for an extension of time under this subparagraph shall be made in writing, properly signed by the employer or his duly authorized agent; shall be addressed to the district director with whom the employer will file the Forms W–2 and Form W–3, or such other form as may be furnished for use in lieu thereof, and shall contain a full recital of the reasons for requesting the extension, to aid the district director in determining the period of the extension, if any, which will be granted. Such a request in the form of a letter to the district director will suffice as an application.

The application shall be filed on or before the date on which the employer is required to file the Forms W–2 and Form W–3, or such other form as may be furnished for use in lieu thereof, without regard to this subparagraph.

(b) *Federal Unemployment Tax Act.*—The district director may, upon application of the employer, grant a reasonable extension of time (not to exceed 90 days) in which to file any return required in respect of the Federal Unemployment Tax Act. Any application for an extension of time for filing the return shall be in writing, properly signed by the employer or his duly authorized agent; shall be addressed to the district director with whom the employer will file the return; and shall contain a full recital of the reasons for requesting the extension, to aid the district director in determining the period of the extension, if any, which will be granted. Such a request in the form of a letter to the district director will suffice as an application. The application shall be filed on or before the due date prescribed in paragraph (c) of § 31.6071(a)–1 for filing the return, or on or before the date prescribed for filing the return in any prior extension granted. An extension of time for filing a return does not operate to extend the time for payment of the tax or any part thereof.

(c) *Duly authorized agent.*—In any case in which an employer is unable, by reason of illness, absence, or other good cause, to sign a request for an extension, any person standing in close personal or business relationship to the employer may sign the request on his behalf, and shall be considered as a duly authorized agent for this purpose, provided the requests sets forth the reasons for a signature other than the employer's and the relationship existing between the employer and the signer.

§ 31.6151 Statutory Provisions; Time and Place for Paying Tax Shown on Returns.

SEC. 6151. TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.

(a) General Rule.—Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the principal internal revenue officer for the internal revenue district in which the return is required to be filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) Exceptions. * * *

(2) use of government depositaries.—For authority of the Secretary or his delegate to require payments to Government depositaries, see action 6302(c).

(c) Date Fixed for Payment of Tax.—In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

§ 31.6151–1 Time for Paying Tax.—(a) *In general.*—The tax required to be reported on each tax return required under this subpart is due and payable to the district director at the time prescribed in § 31.6071(a)–1 for filing such return. See the applicable sections of the Regulations on Procedure and Administration (26 CFR Part

301), for provisions relating to interest on underpayments, additions to tax, and penalties.

(b) *Use of Government depositaries.*—For provisions relating to the use of Federal Reserve banks and authorized commercial banks in depositing the taxes see §§ 31.6302(c)–1 and 31.6302(c)–2.

§ 31.6302(c) STATUTORY PROVISIONS; MODE OR TIME OF COLLECTION; USE OF GOVERNMENT DEPOSITARIES.

SEC. 6302. MODE OR TIME OF COLLECTION. * * *

(c) USE OF GOVERNMENT DEPOSITARIES.—The Secretary or his delegate may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the Secretary or his delegate.

§ 31.6302(c)–1 USE OF GOVERNMENT DEPOSITARIES IN CONNECTION WITH TAXES UNDER FEDERAL INSURANCE CONTRIBUTIONS ACT AND INCOME TAX WITHHELD.—(a) *Requirement.*—(1) *In general.*—Except as provided in paragraph (b) of this section, if during any calendar month, other than the last month of a calendar quarter, the aggregate amount of—

(i) The employee tax withheld under section 3102,

(ii) The employer tax for such month under section 3111, and

(iii) The income tax withheld under section 3402,

exclusive of taxes with respect to wages for agricultural labor or for domestic service in private home of the employer, exceeds $100 in the case of an employer, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with a Federal Reserve bank.

(2) *Employees of agricultural workers.*—(i) *Requirement for 1955.*—If during any calendar month, other than the last month of a calendar quarter, in 1955 the aggregate amount of—

(*a*) The employee tax withheld under section 3102 with respect to wages for agricultural labor, and

(*b*) The employer tax under section 3111 for such month with respect to wages for agricultural labor,

exceeds $100 in the case of an employer, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with a Federal Reserve bank.

(ii) *Requirement for 1956 and subsequent years.*—Except as provided in paragraph (b) of this section, if during any calendar month other than December, in any calendar year after 1955, the aggregate amount of—

(*a*) The employee tax withheld under section 3102 during such month with respect to wages for agricultural labor, plus any such employee tax which was previously withheld in the same calendar year with respect to such wages but which was neither deposited nor required to be deposited on or before the last day of such month, and

(*b*) The employer tax under section 3111 for such month with respect to wages for agricultural labor, plus any such employer tax, which was neither deposited nor required to be deposited on

or before the last day of such month, for any prior month of the same calendar year with respect to wages for agricultural labor, exceeds $100 in the case of an employer, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with a Federal Reserve bank.

(3) *Depositary receipts.*—Any deposit required to be made by an employer under subparagraph (1) of this paragraph shall be made separately from any deposit required to be made by him under subparagraph (2) of this paragraph. However, an employer required to make deposits under subparagraph (1) or subparagraph (2) may make one, or more than one, remittance of the amount required by such subparagraph to be deposited for a calendar month. Each such remittance shall be accompanied by a Federal Depositary Receipt (Form 450) which shall be prepared in accordance with the instructions applicable thereto. The employer shall forward such remittance, together with such depositary receipt, to a Federal Reserve bank or, at his election, to a commercial bank authorized in accordance with Treasury Department Circular No. 848 to accept remittances of the taxes for transmission to a Federal Reserve bank. After the Federal Reserve bank has validated the depositary receipt, such depositary receipt will be returned to the employer. Every employer making deposits pursuant to this section shall attach to his return for the period with respect to which such deposits are made, in part or in full payment of the taxes shown thereon, depositary receipts so validated, and shall pay to the district director the balance, if any, of the taxes due for such period. An amount of tax which is not required to be deposited may nevertheless be deposited if the employer so desires. If a deposit is made for the last month of a return period, the employer shall make it in ample time (whether before, on, or after the fifteenth day of the succeeding month) to enable the Federal Reserve bank to return the validated receipt to the employer so that it can be attached to and filed with the employer's return.

(4) *Procurement of prescribed forms.*—Initially, Form 450, Federal Depositary Receipts, will so far as possible be furnished the employer by the district director. An employer not supplied with the proper form should make application therefor to the district director in ample time to have such form available for use in making his initial deposit within the time prescribed in this paragraph. Thereafter, a blank form will be sent to the employer by the Federal Reserve bank when returning the validated depositary receipt. An employer may secure additional forms from a Federal Reserve bank by applying therefor and advising the bank of his identification number. The employer's identification number and name, as entered on each depositary receipt, shall be the same as they are required to be shown on the return to be filed with the district director. The address of the employer, as entered on each depositary receipt, should be the address to which the receipt should be returned following validation by the Federal Reserve bank.

(b) *Monthly returns.*—The provisions of this section are not applicable with respect to taxes for the month in which the employer receives notice from the district director that returns are required under § 31.6011(a)–5, or for any subsequent month for which such a return is required.

§ 31.6302(c)-2 USE OF GOVERNMENT DEPOSITARIES IN CONNECTION WITH EMPLOYEE AND EMPLOYER TAXES UNDER RAILROAD RETIREMENT TAX ACT.—(a) *Requirement.*—If during any calendar month the aggregate amount of—

(1) The employee tax withheld under section 3202 or under corresponding provisions of prior law, and

(2) The employer tax for such month under section 3221 or under corresponding provisions of prior law,

exceeds $100 in the case of an employer, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with a Federal Reserve bank, except that the deposit for the last month of a return period shall be made on or before the last day of the first month following such period. If a portion of the taxes for a calendar month is reportable under § 31.6011(a)-2 on the return on Form CT-1 for the return period immediately preceding such month, the employer is required to deposit such portion in the same manner as if it were for the last calendar month in such return period.

(b) *Depositary receipts.*—The employer may make one, or more than one, remittance of the amounts required by paragraph (a) of this section to be deposited for a calendar month. Each such remittance shall be accompanied by a Railroad Retirement Depositary Receipt (Form 515), which shall be prepared in accordance with the instructions applicable thereto. The employer shall forward such remittance, together with such depositary receipt, to a Federal Reserve bank or, at his election, to a commercial bank authorized in accordance with Treasury Department Circular No. 848 to accept remittances of the taxes for transmission to a Federal Reserve bank. After the Federal Reserve bank has validated the depositary receipt, such depositary receipt will be returned to the employer. Every employer making deposits pursuant to this section shall attach to his return for the period with respect to which such deposits are made, in part or in full payment of the taxes shown thereon, depositary receipts so validated and shall pay to the district director the balance, if any, of the taxes due for such period. If the aggregate amount of the taxes deposited, as shown on the depositary receipt or receipts attached to such return, is in excess of the taxes shown on such return, a credit or refund may be obtained; and in the event the excess is applied as a credit against taxes reported by the employer on a return on Form CT-1 for a subsequent return period, the employer shall reduce the amount of the deposit otherwise required under paragraph (a) of this section for one of the months of such subsequent return period by the amount of such credit.

(c) *Procurement of prescribed form.*—Initially, Form 515, Railroad Retirement Depositary Receipt, will so far as possible be furnished the employer by the district director. An employer not supplied with the proper form should make application therefor to the district director in ample time to have such form available for use in making his initial deposit within the time prescribed in paragraph (a) of this section. Thereafter, a blank form will be sent to the employer by the Federal Reserve bank when returning the validated depositary receipt. An employer may secure additional forms from a Federal Reserve bank by applying therefor and advising the bank of the identification

number to be shown on his depositary receipts. The identification number, as entered on each depositary receipt, shall be the same as the identification number assigned to the employer pursuant to § 31.6011 (b)–1. The address of the employer, as entered on each depositary receipt, should be the address to which the receipt should be returned following validation by the Federal Reserve bank.

§ 31.6302(c)–3 CROSS REFERENCES.—(a) *Failure to deposit.*—For provisions relating to the penalty for failure to make a deposit within the prescribed time, see the provisions of the Regulations on Procedure and Administration (Part 301 of this chapter) under section 6656.

(b) *Saturday, Sunday, or legal holiday.*—For provisions relating to the time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday, see the provisions of the Regulations on Procedure and Administration (Part 301 of this chapter) under section 7503.

O. GORDON DELK,
Acting Commissioner of Internal Revenue.

Approved January 8, 1959.

FRED C. SCRIBNER, JR.
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on January 13, 1959, 8:48 a.m., and published in the issue of the Federal Register of January 14, 1959, 24 F.R. 301.)

SUBTITLE D.—MISCELLANEOUS EXCISE TAXES
CHAPTER 31.—RETAILERS EXCISE TAXES

SUBCHAPTER A.—JEWELRY AND RELATED ITEMS

SECTION 4001.—IMPOSITION OF TAX

(Also Sections 4011, 4021, 4031, 4041, 4061, 4071, 4081, 4091, 4111, 4121, 4131, 4141, 4151, 4161, 4171, 4181, 4191, 4201, 4211, 4231, 4241, 4251, 4261, 4271, 4286, 4301, 4311, 4321, 4331, 4361, 4371.) Rev. Rul. 59–61

Revenue Ruling 296, C.B. 1953–2, 325, extends an exemption from certain Federal excise taxes to diplomatic representatives of foreign governments and to certain members of their households. To be entitled to the exemption, members of the households must be "nationals of the country of the diplomatic mission where employed." *Held*, a national of one of the member nations of the British Commonwealth of Nations who is employed by some other member nation of the British Commonwealth of Nations is considered, for purposes of this exemption, to be a national of the country of the diplomatic mission by which employed.

Rev. Rul. 59–62

In an advertising and promotional plan sponsored by an association of jewelers, the winners in a contest are awarded a certificate entitling them to an unmounted diamond which must be mounted in some article of jewelry the winner already owns or in some article of jewelry which he may purchase at the store awarding the certificate. As an alternative, the certificate may be applied as a credit toward the purchase price of any article of jewelry in the store. *Held*, the certificate is, in effect, a gift certificate or a trade discount; accordingly, the retailers excise tax on jewelry and related items attaches to the net amount charged the customer for whatever he may purchase with the certificate. *Held further*, where the winner accepts the diamond and purchases a mounting for such diamond which the jeweler assembles into a complete article, the retailers excise tax on jewelry and related items applies to the total amount charged for the mounting and setting of the diamond.

Advice has been requested as to the basis for computing the retailers excise tax on jewelry and related items when articles are sold in connection with a promotional contest under the circumstances described below.

As an advertising and sales promotional plan, an association of jewelers sponsors a public contest. Through an advertisement in the local newspapers, contestants are invited to count the number of diamonds shown in a picture and mail the entry blank to the association. Each of the winners of the contest is awarded an unmounted diamond. The entry blank specifies that the diamond must be set and there will be a setting charge. After the entry blanks are submitted, the numerous winners in the contest receive the prizes in the form of certificates for a $50 diamond. In a letter, the winners are given instructions as to the name and address of the authorized jeweler who will select and award the diamond. In order to obtain the diamond, the winner must have it mounted in some article of jewelry he already owns or in some article of jewelry purchased at the authorized store. In either case, the jeweler makes a charge for the setting of the diamond. As an alternative, the winner may apply the $50 as a credit toward the purchase price of any article of jewelry in the store.

Section 4001 of the Internal Revenue Code of 1954 imposes a tax on the sale of jewelry and related items when sold at retail. Section 320.5(a) of Regulations 51, make applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, provides that the retailer's sales price is the basis for the tax and that, in general, this should be the retailer's actual price at the point of distribution or sale.

Where a contest winner is awarded a certificate entitling him to an unmounted diamond worth $50 and the certificate may be applied toward the purchase of other articles of jewelry, it is held that the certificate is, in effect, a gift certificate or trade discount. Accordingly, the retailers excise tax imposed by section 4001 of the Code attaches to the net amount charged the customer for whatever he may purchase with the certificate. For example, if the selling price of a diamond ring, watch, or other article of jewelry is $125 and the customer, in lieu of accepting an unmounted diamond, is allowed a $50 credit toward the purchase of the ring or other article, the retailers excise tax is based on $75 ($125 less the $50 allowance), which is the net amount the customer pays the jeweler. Thus, in accordance with

the regulations, the tax is computed on the actual price charged the customer at the point of sale, the discount being made at the time of the sale.

Revenue Ruling 56–454, C.B. 1956–2, 787, holds that a mounting is an article made of, or ornamented, mounted, or fitted with, precious metals or imitations thereof, the sale of which is subject to the retailers excise tax imposed by section 4001 of the Code. A diamond supplied by a jeweler is a precious stone, the sale of which likewise is subject to the tax. Any additional charge for setting the diamond in the mounting is considered to be attributable to the cost and labor involved in producing the mounting and is also subject to the tax. On the other hand, the tax will not apply to any separate charge for setting a customer's diamonds, provided it is shown as a separate item on the jeweler's records or on the customer's invoice.

In the instant case, where the winner, in order to receive the diamond which he won in the contest, purchases from the authorized store a mounting into which the diamond is to be set and there is a charge for the setting, the customer is not considered to have received the diamond as a gift. Instead the transaction is regarded as a sale of a diamond and a mounting at a combined price or the sale of a diamond ring at a reduced price. Therefore, in accordance with Revenue Ruling 56–454, the retailers excise tax attaches to the total amount paid for the mounting and setting of the diamond. However, where the winner in the contest accepts the diamond and has it mounted in an article of jewelry which he already owns, the retailers excise tax will not apply to any separate charge for setting the diamond, provided it is identified as a charge for labor on the jeweler's records or on the customer's invoice.

(Also Sections 4011, 4021, 4031.) Rev. Rul. 59–124

The retailers excise tax applies to sales by so-called "gift clubs" of articles coming within the scope of sections 4001, 4011, 4021, or 4031 of the Internal Revenue Code of 1954, where such articles are shipped by foreign suppliers direct to customers in the United States.

Advice has been requested whether liability for the retailers excise tax is incurred by so-called "gift clubs" under the circumstances described below.

Ordinarily "gift clubs" operate in a similar manner, in that they maintain an established place of business in the United States, members are obtained through newspaper and magazine advertisements, payments described as "dues" are made on a monthly basis, and members receive a "gift" that is mailed from a foreign country for each month that they are "members" in good standing. The operators of the clubs select "gifts" from samples received from foreign suppliers and execute contracts with the suppliers for the "gifts" to be mailed to members. Payment for the articles is made by the operators from "dues" received from the members.

The member deals only with the club and looks only to the club for delivery of the articles to which he has become entitled by payment of the so-called "dues." Any adjustments in cases of dissatisfaction on the part of the members are made by the club. While the club does not physically handle the articles delivered to its members, it

exercises complete domination over the articles which it directs the foreign suppliers to ship to its members.

Sections 4001, 4011, 4021, and 4031 of the Internal Revenue Code of 1954 impose a tax upon jewelry and related items, furs, toilet preparations, and luggage, handbags, etc., respectively, sold at retail. Section 320.3 of Regulations 51, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, provides that every person who sells at retail any taxable article is liable for the tax. Section 320.1(b) provides that the phrase "every person who sells at retail" means any person engaged in the business of selling articles at retail.

Upon a consideration of all the facts, it is held that the "gift clubs" described above are engaged in the business of selling articles to a purchaser at retail within the United States. Therefore, such "gift clubs" are liable for retailers excise tax with respect to sales of articles coming within the scope of sections 4001, 4011, 4021, and 4031 of the Code. The tax is based on that portion of the "dues" which is allocable to a particular taxable article. For example, if a member receives one "gift" for each month of membership and if the "dues" are $5.00 for two months, $9.00 for four months, or $12.00 for six months, the tax base for the taxable articles received by the members, computed on a per gift per month basis, would vary from $2.50 to $2.00.

(Also Sections 4011, 4291, 4031.) Rev. Rul. 59–155

The retailers excise tax applies to the sale at retail of items of jewelry, furs, toilet preparations, and luggage, handbags, etc., by an organization which is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, although such articles are received and sold on a consignment basis.

Revenue Ruling 56–331, C.B. 1956–2, 786, amplified.

Advice has been requested whether an organization, which is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, is liable for reporting and paying retailers excise taxes on its sales of taxable articles, where such articles are received and sold on a consignment basis.

An organization which is exempt from Federal income tax under section 501(c)(3) of the Code for the reason that it is organized and operated exclusively for educational purposes sells various types of articles at its yearly bazaar. The articles include items of jewelry, furs, toilet preparations, luggage, handbags, etc. It receives such articles on a consignment basis from local merchants. The organization controls and determines the prices for which the articles are sold.

Sections 4001, 4011, 4021, and 4031 of the Code impose a tax on the sale at retail of articles of jewelry and related items, furs, toilet preparations, and luggage, handbags, etc., respectively.

Section 320.4(d) of Regulations 51, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, provides that where an article is consigned to any person for sale at retail and the consignor maintains control over the terms and prices for which the article may be sold by the consignee, the consignor is considered to be the "person who sells at retail" when the consignee sells the taxable article.

Section 320.4(e) of the regulations provides that where an article is consigned to any person for sale at retail and the consignor main-

tains no control over the terms and prices for which the article may be sold at retail by the consignee, such consignee is considered the "person who sells at retail" when such article is sold by him.

Revenue Ruling 56–331, C.B. 1956–2, 786, holds that the retailers excise tax applies to the sale at retail of items of jewelry, furs, toilet preparations, or luggage, etc., by a charitable organization which is exempt from Federal income tax under section 501(c)(3) of the Code. As stated in that Revenue Ruling, there is no provision of law which exempts from the tax sales at retail of articles merely because such sales are made by an organization operated exclusively for charitable purposes. While that Revenue Ruling relates primarily to sales of articles by an organization which has title to the articles which it sells, the conclusion expressed therein is not affected by the fact that the articles sold by the organization are on consignment, provided, of course, the circumstances are such as will bring the case within the ambit of section 320.4(e) of the regulations.

Accordingly, the retailers excise tax applies to the sale at retail of items of jewelry, furs, toilet preparations, luggage, handbags, etc., by an organization which is exempt from Federal income tax under section 501(c)(3) of the Code, although such articles are received on a consignment basis. Therefore, it is held that the educational organization in the instant case is liable for reporting and paying the retailers excise tax due on its sales of jewelry and related items, furs, toilet preparations, luggage, handbags, etc., since that organization controls and determines the prices for which the articles are sold.

Revenue Ruling 56–331 is hereby amplified.

Rev. Rul. 59–214

Sales of a rhinestone-decorated lipstick holder or a rhinestone-decorated nonprecious metal perfume bottle container which are intended and designed for use only in the home and are not suitable for carrying on the person are not subject to the retailers excise tax imposed by section 4001 of the Internal Revenue Code of 1954.

Advice has been requested whether the retailers excise tax on jewelry and related items applies to sales of certain articles ornamented with precious or semi-precious stones or imitations thereof which are designed and intended for use only in the home.

A company sells rhinestone-decorated plastic lipstick holders which have five holes or compartments to accommodate five lipstick cases. The company also sells rhinestone-decorated nonprecious metal containers for glass perfume bottles. These articles are intended and designed for use on a dressing table in the home. They are not suitable for carrying on the person. Sales of these articles are made at cosmetic or jewelry counters of retail stores.

Section 4001 of the Internal Revenue Code of 1954 imposes a tax upon the sale at retail of (a) all articles commonly or commercially known as jewelry, whether real or imitation, (b) pearls, precious and semi-precious stones, and imitations thereof, and (c) articles made of, or ornamented, mounted or fitted with precious metals or imitations thereof. Effective January 1, 1959, this section was amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, C.B.

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1958–3, 92, by striking out "pearls, precious and semi-precious stones, and imitations thereof" and by substituting therefor a list of stones.

Section 320.31(a) of Regulations 51, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, states that jewelry in general includes articles designed to be worn on the person or apparel for the purpose of adornment and which in accordance with custom or ordinary usage are worn so as to be displayed, such as rings, chains, brooches, bracelets, cuff buttons, necklaces, earrings, beads, etc. The tax is imposed on the sale of any such articles at retail, regardless of the substance of which made and without reference to their utilitarian value or purpose, unless for a purpose specifically exempted by law.

Section 320.31(b) of the regulations states that jewelry also includes articles to be carried in the hand, or hung on the arm, or carried or worn on the person, whether in pocket or bag or under the outer garments, such as cigarette cases, eyeglass cases, pencils, powder boxes, garter buckles, canes, purses or handbags, if made of, or ornamented, mounted or fitted with, pearls, precious or semiprecious stones, or imitations thereof. Such articles are likewise subject to tax without regard to their utilitarian value or purpose.

Section 320.33 of the regulations provide that the retailers excise tax is imposed on the sale at retail of any article, as distinguished from those articles commonly or commercially known as jewelry as described in section 320.31 of the regulations, which are made of, or ornamented, mounted or fitted with, precious metals or imitations thereof.

Articles which are not commonly or commercially known as jewelry as described in section 320.31 of the regulations are not made taxable by reason of their being ornamented with pearls, precious or semi-precious stones, or imitations thereof. On the other hand, articles made of, or ornamented, mounted or fitted with precious metals or imitations thereof are taxable without regard to whether they are commonly or commercially known as jewelry.

Since the lipstick holder and the perfume bottle container described above are intended and designed for use only in the home and are not suitable for carrying on the person, they are not articles commonly or commercially known as jewelry within the meaning of section 4001 of the Code. Accordingly, it is held that the retailers excise tax imposed by that section does not apply to sales of such articles.

However, it is further held that, should the perfume bottle and metal container therefor be sold at retail containing perfume, cologne, or other toilet preparation taxable under section 4021 of the Code, the tax imposed by that section would apply to the total selling price including the bottle and metal container.

Taxability of cuff links made of fur pieces. See Rev. Rul. 59–2, below.

SUBCHAPTER B.—FURS

SECTION 4011.—IMPOSITION OF TAX

(Also Section 4001.)

Rev. Rul. 59–2

A company sells bow ties and cuff links made of mink pieces. *Held*, the bow ties are articles of fur within the meaning of section

4011 of the Internal Revenue Code of 1954 and the cuff links fall within the classification of jewelry under section 4001 of the Code. The taxes imposed under these sections attach when the articles are sold at retail.

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

Applicability of the retailers excise tax to taxable articles sold by "gift clubs." See Rev. Rul. 59–124, page 291.

Applicability of the retailers excise tax to the sale of articles made of fur by an organization, exempt from Federal income tax under section 501(c)(3) of the Code, where such articles are received on a consignment basis. See Rev. Rul. 59–155, page 292.

SUBCHAPTER C.—TOILET PREPARATIONS

SECTION 4021—IMPOSITION OF TAX

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

Applicability of the retailers excise tax to taxable articles sold by "gift clubs." See Rev. Rul. 59–124, page 291.

Applicability of the retailers excise tax to the sale of toilet preparations by an organization, exempt from Federal income tax under section 501(c)(3) of the Code, where such articles are received on a consignment basis. See Rev. Rul. 59–155, page 292.

SUBCHAPTER D.—LUGGAGE, HANDBAGS, ETC.

SECTION 4031.—IMPOSITION OF TAX

Rev. Rul. 59–4

Information for use by retailers as a guide in determining their liability on and after January 1, 1959, for the retailers excise tax on luggage, handbags, etc., imposed by section 4031 of the Internal Revenue Code of 1954 as amended by the Excise Tax Technical Changes Act of 1958 (Public Law 85–859).

The Internal Revenue Service has been asked to publish an illustrative list of taxable and nontaxable articles for use by retailers as a guide in determining their liability on and after January 1, 1959, for the retailers excise tax on luggage, handbags, etc.

Section 4031 of the Internal Revenue Code of 1954 as amended by section 103 of the Excise Tax Technical Changes Act of 1958 (Public Law 85–859) effective January 1, 1959, C.B. 1958–3, 92, provides as follows:

> There is hereby imposed upon the following articles, by whatever name called, sold at retail (including in each case fittings or accessories therefor sold on or in connection with the sale thereof) a tax equivalent to 10 percent of the price for which so sold—* * *

[The various articles specifically named in the law are designated by asterisks in the list below.]

The list is illustrative of determinations made by the National Office of the Service on questions of classification. The "taxable" column lists the articles specifically named in the law as indicated by asterisks, together with some alternative names by which certain of the articles may be called for merchandising or other reasons. The "nontaxable" column includes certain articles which, while taxable if sold at retail prior to January 1, 1959, will no longer be taxable when sold on and after that date. The fact that an article may be called by one of the names appearing in the list of nontaxable articles is not conclusive of its status if, in reality, it is one of the taxable articles enumerated in the statute.

TAXABLE	NONTAXABLE
Attaché cases	Beverage bottle carriers
*Bathing suit bags	Bowling ball bags with or without space for shoes or other wearing apparel.
*Beach bags or kits	
*Billfolds	
Boy Scout packs Duffel bags #1072, 1073 and 1386 Official haversack #573 Official musette bag #1320 Official yucca bag #574 Rover pack #1434	
	Boy Scout packs Cub pack #1024 Official day hike bag #1225
*Brief cases of any material	
*Brief bags of any material	
*Camping bags	
*Card cases	
Carry-all bags	
Coin purses	
*Collar cases	
	Comb cases
*Cosmetic bags and kits	
	Diaper bags
Ditty bags	
*Dressing cases	
*Dufflebags	
*Furlough bags	
*Garment bags designed for use by travelers	
Gladstone bags	

TAXABLE	NONTAXABLE
*Handbags	Glove cases
*Hatboxes designed for use by travelers	Handkerchief cases
*Haversacks	Hosiery cases
	Insulated bags for keeping food or liquids hot or cold
*Key cases or containers	
*Knapsacks	
*Knitting bags (suitable for use as purses or handbags)	Laundry mailing cases
	Lingerie cases
Locker trunks	
*Makeup boxes	
*Manicure set cases	
*Memorandum pad cases (suitable for use as card or pass cases, billfolds, purses or wallets)	
Messenger satchels	Military discharge cases
	Mirror cases
Money satchels	
*Musette bags	Nail file cases
	Nursery bags
*Overnight bags	
*Pass cases	
*Pocketbooks	
Pocket secretary cases	
Portmanteaus	
*Purses	Raincoat and rain wear cases
Religious vestment cases	
*Ring binders of any material capable of closure on all sides	
Roll-up toilet kits	Saddle bags (including bicycle and motorcycle saddle bags)
*Salesmen's sample or display cases, bags, or trunks	
*Satchels	School bags (not otherwise taxable as briefcases, brief bags, or ring binders)
*Shoe and slipper bags	
*Shopping bags (suitable for use as purses or handbags)	Skate cases
*Suitcases	
*Tie cases	
*Toilet kits and cases	
Tote bags	
Train cases	
*Traveling bags	
*Trunks	
*Valises	
*Vanity bags or cases	
*Wallets	
*Wardrobe cases	

The above lists are not all-inclusive but are merely designed to illustrate the application of the law with respect to sales at retail on and after January 1, 1959. In any case where the classification of a particular article is in question, a specific ruling or a determination thereon should be requested from the Service.

Rev. Rul. 59–133

A company manufactures plastic covers which it advertises and sells primarily as protective all weather covers for automobiles. Because of the special shape of the covers, the company in its advertising states that these covers will fit all automobiles. However, they may be used to cover and protect boats, farm machinery, building materials, etc. *Held*, the plastic covers, by reason of their size, shape, and construction, are primarily designed and adapted for use on automobiles and are automobile accessories within the meaning of section 4061(b) of the Internal Revenue Code of 1954. Accordingly, the manufacturers excise tax imposed by that section of the Code applies to the sales of such covers by the manufacturer, producer, or importer.

Rev. Rul. 59–178

The retailers excise tax on luggage, handbags, etc., imposed by section 4031 of the Internal Revenue Code of 1954 as amended by the Excise Tax Technical Changes Act of 1958, does not apply to sales of cases designed to hold only an electric shaver and a cord for the shaver.

Advice has been requested whether a case which is designed to hold only an electric shaver is subject to the retailers excise tax on luggage, handbags, etc., imposed by section 4031 of the Internal Revenue Code of 1954 as amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, effective January 1, 1959, C.B. 1958–3, 92. A manufacturer sells a new model electric shaver which is packaged in a case that is designed to hold only the electric shaver and the cord for the shaver.

Section 4031 of the Code, as amended, provides that a tax shall be imposed upon the sale at retail of certain enumerated articles, by whatever name called, including toilet kits and cases.

It is held that cases designed to hold only an electric shaver and a cord for the shaver are not toilet kits and cases within the meaning of section 4031 of the Code as amended by the Excise Tax Technical Changes Act of 1958. Furthermore, such cases do not fall within the classification of any of the other articles enumerated in section 4031 of the Code as amended. Accordingly, sales of such cases are not subject to the retailers excise tax on luggage, handbags, etc., imposed by section 4031 of the Code as amended.

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

Applicability of the retailers excise tax to taxable articles sold by "gift clubs." See Rev. Rul. 59–124, page 291.

Applicability of the retailers excise tax to the sale of articles of luggage, handbags, etc., by an organization, exempt from Federal income tax under section 501(c)(3) of the Code, where such articles are received on a consignment basis. See Rev. Rul. 59–155, page 292.

Taxability of a portable radio carrying case. See Rev. Rul. 59–202, page 331.

SUBCHAPTER E.—SPECIAL FUELS

SECTION 4041.—IMPOSITION OF TAX

Rev. Rul. 59–33

The retailers excise tax imposed by section 4041(a) of the Internal Revenue Code of 1954 does not apply to diesel fuel sold for use or used as fuel in certain logging vehicles which are not generally used on the highway but, by certain modifications, may qualify for a special permit for emergency highway use.

Advice has been requested concerning the applicability of the retailers excise tax on diesel fuel to sales for use or use of such fuel in certain types of logging vehicles.

Certain diesel-powered logging vehicles are operated on private roads within the confines of company-owned timber lands. These vehicles are not registered for use on highways because their width is in excess of that prescribed for highway use by the laws of the state in which they are operated. However, by certain modifications, the width of the vehicle may be changed to such an extent that they qualify for a special permit for highway use which is authorized by the state. On several occasions some of the vehicles have been temporarily converted for emergency use on the highway, under the special permit provisions. However, it is not economically feasible to continuously operate them on the highway, as the unloaded vehicles are close to state weight limitations, leaving very little load-carrying capacity.

Section 4041(a) of the Internal Revenue Code of 1954 imposes a tax upon diesel fuel (1) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, for use as a fuel in such vehicle; or (2) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of such liquid under paragraph (1). Section 324.10(c) of Regulations 119, made applicable to the 1954 Code by Treasury Decision 6091, C. B. 1954–2, 47, provides that the term "diesel-powered highway vehicle" has reference to the type of vehicle and not to the use which is made of the vehicle. The term includes any vehicle powered or propelled by a diesel motor or engine and of the type which is capable of general use upon public highways, such as automobile trucks, busses, highway tractors, etc. The term does not, however, include equipment designed primarily for off-highway use, such as road graders, bulldozers, power shovels, earth movers, farm tractors, etc.

The logging vehicles, in the instant case, are of the type primarily designed and adapted for purposes predominantly other than general use upon public highways. Consequently, the logging vehicles are not considered to be diesel-powered highway vehicles within the meaning of section 4041(a) of the Code. Therefore, it is held that the retailers excise tax imposed by that section does not apply to diesel fuel sold for use or used as a fuel in such vehicles.

Rev. Rul. 59–179

So-called "JP–4" jet fuel, which is produced in compliance with official military specifications, meets the distillation test for special motor fuel. Therefore, it is subject to the retailers excise tax imposed by section 4041(b) of the Internal Revenue Code of 1954 when sold for use, or used, as fuel in the propulsion of motor vehicles, motorboats, or airplanes, subject to applicable statutory exemptions.

Advice has been requested whether the retailers excise tax on special motor fuels applies to the sale or use of so-called "JP–4" jet fuel.

So-called "JP–4" jet fuel is produced and sold by a petroleum refining company for use as a fuel in jet-propelled airplanes. This liquid is produced in compliance with official military specifications. These specifications require that the distillation range of the liquid conform to 20 percent evaporated at 290 degrees Fahrenheit (143.3 degrees centigrade), 50 percent evaporated at 370 degrees Fahrenheit (187.8 degrees centigrade), 90 percent evaporated at 470 degrees Fahrenheit (243.3 degrees centigrade), and that the vapor pressure range be not less than two or more than three pounds per square inch.

Section 4041(b) of the Internal Revenue Code of 1954 imposes a tax upon certain special motor fuels, but not upon kerosene, gas oil, or fuel oil, sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or airplane for use as a fuel for the propulsion of such motor vehicle, motorboat, or airplane. That section further provides that unless there was a taxable sale of the liquid, the tax will apply to such liquid used by any person as a fuel for the propulsion of a motor vehicle, motorboat, or airplane.

Pending the issuance of regulations on the provisions of section 4041(b) of the 1954 Code, the Internal Revenue Service considers that the distillation ranges contained in section 314.30(b)(2) and 314.30(c) of Regulations 44 still provide an acceptable guide for classification of products as special motor fuels, or as kerosene, gas oil, or fuel oil. See Revenue Ruling 58–398, C.B. 1958–2, 754.

While there is no excise tax on jet fuels, as such, the liquid produced by the refining company in the instant case meets the distillation test for special motor fuel. Therefore, it is held that such liquid is subject to the retailers excise tax imposed by section 4041(b) of the Code when sold for use, or used, as fuel for the propulsion of motor vehicles, motorboats, or airplanes, subject to certain statutory exemptions, including that for sales for use as fuel supplies for certain vessels or aircraft.

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

SUBCHAPTER F.—SPECIAL PROVISIONS APPLICABLE TO RETAILERS TAX

SECTION 4051.—DEFINITION OF PRICE

Rev. Rul. 59–87

The retailers excise tax imposed by various sections of Chapter 31 of the Internal Revenue Code of 1954 on sales of taxable articles applies to the actual sale price, which includes a so-called "service charge" that is added to the established sales price if a customer orders taxable articles in smaller quantities than a stated minimum, unless it can be shown that the additional charge, or some portion thereof, is excludable under the provisions of section 4051 of the Code.

Advice has been requested whether the retailers excise tax applies to a so-called "service charge" made by a retailer where a customer purchases less than a prescribed number of taxable articles.

A retail dealer sells articles primarily through a mail order system. The retail dealer advertises his articles at selling prices which are established for stated minimum quantities of articles, with a provision for an additional charge where smaller quantities are ordered. The so-called "service charge" covers the labor and other costs of repacking as well as the cost of and drayage of the articles to the post office. Orders received from customers are to be accompanied by payment in full for the order, including the "service charge" and the Federal excise tax if applicable.

Section 4051 of the Internal Revenue Code of 1954 provides that, in determining the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature and any charge incident to placing the article in condition packed ready for shipment. That section further provides that a transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Secretary of the Treasury or his delegate, in accordance with the regulations.

Section 320.8 of Regulations 51, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, states that charges for transportation, delivery, insurance, installation, and other charges actually incurred in connection with the delivery of an article to a purchaser pursuant to a bona fide sale, are to be excluded in computing the tax.

Accordingly, it is held that the so-called "service charge," which is added to the established sale price where the customer orders taxable articles in smaller quantities than a stated minimum, is to be included

in the sale price of the articles for purposes of computing the retailers excise tax, unless it can be shown that the additional charge, or some portion thereof, is excludable under the provisions of section 4051 of the Code. In the instant case, the portion of the "service charge" which is directly attributable to drayage, or transportation, may be excluded from the price on which the retailers excise tax is computed, provided that portion of the charge is satisfactorily established by adequate records.

SECTION 4052.—LEASE CONSIDERED SALE

Rev. Rul. 59–111

The retailers excise tax applies to charges made by a retailer to a broadcasting company for the use of taxable articles as "props" on television shows, regardless of the length of time for which the articles are leased or rented.

Advice has been requested whether the retailers excise taxes imposed by Chapter 31 of the Internal Revenue Code of 1954 apply to charges for the use of certain articles by a broadcasting company.

A person engaged in the business of selling articles at retail furnishes to a broadcasting company certain articles for use as "props" on television shows. The articles are generally retained by the company for periods of not more than twenty-four hours and are then returned to the retailer, who makes a charge for their use. Included among these articles are some which are of the type that are subject to tax when sold at retail.

Section 4052 of the Code provides that, for purposes of the retailers excise taxes, the lease of an article shall be considered the sale of such article. Section 320.10(a) of Regulations 51, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, provides that the term "lease" means a continuous right to possession or use of a particular article for a period of time. It does not include the use of an article merely as the occasion demands, but the contract must give the lessee the right to possess or use the article, without interruption, for a period of time.

Since, under the circumstances stated, the broadcasting company has a continuous right to possession or use of the articles for a period of time, it is held that the retailers excise tax applies to any charges made by the retailer for the use of articles of the type which are subject to the tax when sold at retail. The length of time for which the articles are leased or rented is considered immaterial.

SECTION 4053.—COMPUTATION OF TAX ON INSTALLMENT SALES, ETC.

Rev. Rul. 59–10

For purposes of reporting the retailers excise tax, sales made under a contract, peculiar to Louisiana law, which vests immediate title in the purchaser, provides for installment payments, and gives the seller a lien against the article sold, are considered sales under a chattel mortgage arrangement within the meaning of section 4053 (a) (4) of the Internal Revenue Code of 1954.

Advice has been requested whether, for purposes of reporting the retailers excise tax, sales made under a particular contract peculiar to Louisiana law are sales under a chattel mortgage arrangement within the meaning of section 4053(a)(4) of the Internal Revenue Code of 1954.

The retail dealer in the instant case is located in Louisiana and is engaged in the business of selling jewelry at retail. The retailer sells articles under the agreement described below, delivering title and possession of the article and taking back from the customer as security for payment a chattel mortgage on the article sold. The retailer does not record the chattel mortgages in all cases.

The agreement is quoted as follows:

THIS AGREEMENT WITNESSETH: The undersigned acknowledges as having received from *X* the merchandise listed on the dates set forth herein, the terms of payment being as follows:

1. It is agreed all installments are to be paid promptly and punctually as indicated by this contract.

2. It is agreed any violation of this agreement on my part or default in making payments, shall at the option of *X* cause the entire unpaid balance due under the terms of this contract to at once become due and exigible together with 25 percent attorney fees added in event the contract and account is placed with an attorney or other agency for collection. This contract states our entire agreement, which no agency has authority to modify or waive. This contract has been read and the undersigned understands it and no alteration or modification, either written or verbal, of any terms thereof exists.

3. It is specifically agreed the merchandise covered by this contract is not to be disposed of to the prejudice of *X*.

And now in order to secure the punctual payment of said indebtedness, together with interest, attorney fees, premiums of insurance and costs, and all other obligations hereunder, the vendor's lien and privilege granted by law is hereby retained by the vendor upon the property sold, and the Purchaser does by these presents specially mortgage, affect, and hypothecate unto and in favor of *X*, its successors or assigns, the property herein described and herein sold.

Section 4053(a) of the Code provides that if an article subject to the retailers excise tax is (1) leased, (2) sold under a contract providing for payment of the sale price in installments with the seller retaining title to the article until full payment has been made, (3) sold on a conditional sale basis, or (4) sold under a chattel mortgage arrangement with the sale price to be paid in installments, the tax is to be paid on an installment basis proportionate to the total price represented by each payment.

In the civil law jurisdiction of Louisiana, the effect of the contract described above is to vest immediate title in the mortgagor-buyer at the time of sale. The civil law or lien theory of mortgages, which regards a mortgage contract between a buyer and seller as a security for a debt creating a privilege or lien on the property with title remaining in the purchaser, is to be contrasted with the old common law or title theory of mortgages which regards the contract as a sale vesting legal title in the mortgagee subject to the defeasance by the performance of the conditions of the mortgage. A number of common law jurisdictions have adopted the civil law lien theory of mortgages.

Since Louisiana law vests immediate title in the mortgagor-buyer at the time of sale, the types of installment contracts described in section 4053(a)(2) and (3) of the Code by which the seller reserves

title to the article until a future date or until the performance of the conditions prescribed in the contract, are not recognized in Louisiana. However, Louisiana law does recognize a chattel mortgage arrangement entered into within that state providing for installment payments under which the seller has a lien against the article sold, which serves to protect his interest in the sale price, and if the mortgage is executed and recorded according to statutory requirements, the lien protects him against claims of third parties. La. Rev. Stats., Vol., 1, T. T. 9, Part III, Secs. 5351–5365.

Accordingly, it is held that for purposes of the retailers excise tax, sales made under the kind of contract described above are sales under a chattel mortgage arrangement within the meaning of section 4053 (a) (4) of the Code, and the tax attributable to such sales shall be computed and paid in accordance with that section.

SECTION 4057.—EXEMPTION FOR NONPROFIT EDUCATIONAL ORGANIZATIONS

Temporary rules implementing the provisions of the Excise Tax Technical Changes Act of 1958 which accord an exemption from the retailers excise tax to certain nonprofit educational organizations. See T.D. 6344, page 776.

CHAPTER 32.—MANUFACTURERS EXCISE TAXES

SUBCHAPTER A.—AUTOMOTIVE AND RELATED ITEMS

PART I.—MOTOR VEHICLES

SECTION 4061.—IMPOSITION OF TAX

Rev. Rul. 59–11

Certain kits, known as "prefabricated truck body frames," from which truck bodies may be constructed by assembling the frame components and adding certain materials, are considered to be automobile parts or accessories, and the sales of such kits are subject to the manufacturers excise tax imposed by section 4061(b) of the Internal Revenue Code of 1954. The person who purchases such kits and produces truck bodies by adding panels, floors, etc., is considered to be the manufacturer of complete truck bodies and is liable for the manufacturers excise tax imposed by section 4061 (a) (1) of the Code on his sales or use of the complete bodies.

Advice has been requested concerning the applicability of the manufacturers excise tax to sales of certain kits, known as "prefabricated truck body frames."

These kits contain five prefabricated components; namely, a floor frame, two side frames, a front end frame, and a roof frame. The kits are sold to truck body builders who assemble them into body frames which are further manufactured by attaching panels, laying the floors, adding roof materials, and finishing the trimmings to produce complete truck bodies.

Section 4061(b) of the Internal Revenue Code of 1954 imposes a tax upon sales by the manufacturer, producer, or importer of parts or accessories (with certain exceptions not here material) for any of the articles enumerated in section 4061(a) of the Code. Automobile truck bodies are among the articles enumerated in section 4061(a) of the Code. Section 316.55 of Regulations 46, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, provides, in part, that the term "parts or accessories" for an automobile truck or other automobile chassis or body includes any article the primary use of which is to improve, repair, replace, or serve as a component part of such vehicle or article.

Components such as those described above, the primary use of which is to serve as component parts of automobile truck bodies, are considered to be parts or accessories for such truck bodies. Therefore, it is held that the manufacturer's sale of the kit containing the prefabricated components, which may be assembled by the purchaser into a body frame, is subject to the tax on parts or accessories imposed by section 4061(b) of the Code.

However, under the provisions of section 4220 of the Code (Section 4221 (a) (1) as amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, C.B. 1958–3, 92) and the applicable regulations, these kits may be sold by the manufacturer tax-free to truck builders for use in manufacturing of truck bodies.

It is further held that the person who purchases such kits and builds truck bodies by adding panels, floors, etc., is considered to be the manufacturer of the complete bodies and is liable for the manufacturers excise tax imposed by section 4061(a)(1) of the Code on his sales or use of such complete bodies.

Rev. Rul. 59–34

A single unit battery meter sold for use on automobiles, trucks, tractors, boats, and industrial engines, etc., constitutes an automobile part or accessory within the meaning of section 4061(b) of the Internal Revenue Code of 1954 and is subject to the manufacturers excise tax upon its sale by the manufacturer, producer, or importer thereof.

Advice has been requested whether the battery meter described below is subject to the manufacturers excise tax on automobile parts or accessories.

A company manufactures and sells a single unit battery meter for installation on automobiles, trucks, tractors, boats, and industrial engines, or wherever a 12-volt battery is used in a charging or starting electrical system. Each meter is equipped with a calibrated dial and an indicating pointer which shows the amount of voltage applied to an electrical system under various operating conditions. If the pointer moves outside the range on the dial designated for a particular operating condition, this indicates the improper functioning of the system and the need for inspection of the battery and the charging system.

Section 4061(a) of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of certain motor vehicle articles, including automobile and truck chassis

and bodies. Section 4061(b) of the Code imposes a tax on the sale by the manufacturer, producer, or importer of parts of accessories (other than tires and tubes and other than automobile radio and television receiving sets) for any of the articles enumerated in section 4061(a).

Section 316.55 of Regulations 46, made applicable to the 1954 Code by Treasury Decision 6091, C. B. 1954–2, 47, defines the term "parts or accessories" for an automobile truck or other automobile chassis or body, as including any article the primary use of which is in connection with such vehicle or article whether or not essential to its operation or use.

It is held that the single unit battery meter described above is an automobile part or accessory within the meaning of section 4061(b) of the Code and is subject to the manufacturers excise tax imposed by that section upon its sale by the manufacturer.

Rev. Rul. 59–46

Where an automobile truck tank and trailer tank body manufacturer sells so-called "manhole covers" on or in connection with taxable tank bodies, the manufacturers excise tax imposed by section 4061(a)(1) of the Internal Revenue Code of 1954 attaches to the entire price for which the covers and bodies are sold. Where a manufacturer sells manhole covers separately, the manufacturers excise tax on parts or accessories imposed by section 4061(b) of the Code attaches to the price for which the covers are sold.

Advice has been requested concerning the applicability of the manufacturers excise tax on automobile parts or accessories to sales by the manufacturer of so-called "manhole covers" for tank bodies for certain automobile trucks or trailers, such as, the tank bodies for bulk milk-hauling vehicles.

Section 4061(b) of the Internal Revenue Code of 1954 imposes a tax upon sales by the manufacturer, producer, or importer of parts or accessories (with certain exceptions not here material) for any of the articles enumerated in section 4061(a) of the Code. Automobile truck bodies and truck trailer and semitrailer bodies are among the articles enumerated in section 4061(a) of the Code.

Section 316.55 of Regulations 46, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, provides that the term "parts or accessories" for an automobile truck or other automobile chassis or body includes (1) any article the primary use of which is to improve, repair, replace, or serve as a component part of such vehicle or article, (2) any article designed to be attached to or used in connection with such vehicle or article to add to its utility or ornamentation, and (3) any article the primary use of which is in connection with such vehicle or article whether or not essential to its operation or use.

Since the manhole covers, in the instant case, are constructed primarily for use on automobile truck tank and trailer tank bodies, it follows that such covers are parts or accessories for such bodies. Accordingly, it is held that when a body manufacturer sells manhole covers on or in connection with taxable tank bodies, the manufacturers excise tax imposed by section 4061(a)(1) of the Code attaches to the entire price for which the covers and bodies are sold. Where a manu-

facturer sells the covers separately, the manufacturers excise tax on parts or accessories imposed by section 4061(b) of the Code attaches to the price for which the covers are sold.

Since the previous position of the Internal Revenue Service as to the applicability of the tax to sales of the manhole covers described above has not been consistent with the conclusion set forth above, and by virtue of the authority contained in section 7805(b) of the Code, this Revenue Ruling will be applied only to sales made on and after March 1, 1959.

Rev. Rul. 59–112

Sales by the manufacturer of a so-called "spring stabilizer," which is primarily designed and adapted for use on taxable automobile coil springs as a spacer or expander, are subject to the manufacturers excise tax imposed by section 4061(b) of the Internal Revenue Code of 1954.

Advice has been requested concerning the applicability of the manufacturers excise tax on automobile parts or accessories to sales of a so-called "spring stabilizer."

A company manufactures an article which it sells to automobile distributors and garages as an automobile "coil spring stabilizer." This article is designed for use in the coil springs of an automobile suspension system. It may be inserted between the coils of a spring to compensate for sag and to restore the automobile to its original position, thereby giving the automobile an even ride. The insertion may be accomplished by jacking up the automobile to spread the coils of the spring.

Section 4061(b) of the Internal Revenue Code of 1954 imposes a tax on the sale by the manufacturer, producer, or importer of parts or accessories, with certain exceptions not here material, for any of the articles enumerated in section 4061(a) of the Code.

Section 316.55(a) of Regulations 46, made applicable to the 1954 Code by Treasury Decision 6091, C. B. 1954–2, 47, defines the term "parts or accessories" for an automobile truck or other automobile chassis or body, or taxable tractor, to include (1) any article the primary use of which is to improve, repair, replace, or serve as a component part of such vehicle or article, (2) any article designed to be attached to or used in connection with such vehicle or article to add to its utility, or (3) any article the primary use of which is in connection with such vehicle or article whether or not essential to its operation or use.

Since the spring stabilizer described above is primarily designed and adapted for use on taxable automobile coil springs as a spacer or expander, it is considered to be an automobile part or accessory within the meaning of section 4061(b) of the Code. Accordingly, sales of the spring stabilizer by the manufacturer thereof are subject to the manufacturers excise tax imposed by that section.

Since the prior position of the Internal Revenue Service relating to "spring stabilizers" has not been consistent with the conclusion stated in this Revenue Ruling and since such prior position is well-known and has been followed by members of the industry involved, under the authority of section 7805(b) of the Code, this Revenue Ruling will not be applied to sales by manufacturers made prior to May 1, 1959.

Rev. Rul. 59–125

When a body manufacturer, such as an ambulance, hearse, or automobile truck body manufacturer, sells a complete vehicle which consists of a chassis which he purchased tax-paid and a body of his own manufacture mounted thereon, he shall, for purposes of computing the manufacturers excise tax on motor vehicles imposed by section 4061(a) of the Internal Revenue Code of 1954, determine his taxable sale price of the body by applying to his sale price of the complete vehicle the ratio which his established sale price of the body bears to the sum of his established sale price of the body and his established sale price of the chassis. If the body manufacturer does not have an established practice of selling both the chassis and bodies separately, he may substitute his costs of the body and the chassis in the above ratio.

Advice has been requested concerning the proper method of determining the manufacturers excise tax liability incurred by a body manufacturer, such as an ambulance, hearse, or automobile truck body manufacturer, who purchases a chassis on a tax-paid basis and mounts thereon a body of his own manufacture, selling the complete vehicle for a single price.

Section 4061(a) of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of certain motor vehicle articles, including bodies and chassis for automobile trucks and other automobiles. This section further provides that the sale of a vehicle shall be considered to be a sale of a chassis and of a body.

Section 316.50(c) of Regulations 46, made applicable to the 1954 Code by Treasury Decision 6091, C.B., 1954–2, 47, provides, in part, that if the purchaser of a tax-paid chassis attaches thereto a body manufactured by him and sells the completed vehicle, he is liable for tax on the sale price of the body. However, if the completed vehicle is sold for a lump sum, the tax attaches to such lump sum, unless the sale price of the body is stated as a separate item on the invoice to the customer, or unless such sale price can be established by adequate records to the satisfaction of the Commissioner.

When a body manufacturer sells a complete vehicle consisting of a body of his own manufacture which he has mounted upon a chassis purchased by him on a tax-paid basis and upon which he has not performed any act of further manufacture, he is considered to be a distributor, rather than a manufacturer, insofar as the chassis is concerned. Therefore, he is liable for the manufacturers excise tax only on that portion of his sale price of the complete vehicle which is allocable to the body, provided he maintains adequate records to establish the proper allocation. However, all operations performed by the body manufacturer in assembling the complete vehicle for sale, including the mounting of the body upon the chassis, are considered to be incidental to preparing both the body and the chassis of the complete vehicle for sale, and any increase in the sale price of the vehicle which is attributable to such operations must be included in the allocation.

Therefore, it is held that if the body manufacturer has an established practice of selling separately both the bodies and the chassis, he shall determine that portion of his sale price of the complete vehicle which is allocable to the body by applying to his sale price

of the complete vehicle the ratio which his separate sale price of the body bears to the sum of his separate sale price of the body and his separate sale price of the chassis.

However, where the body manufacturer does not have an established practice of selling separately both the body and the chassis, he may determine the portion of the sale price of the complete vehicle which is allocable to the body by applying to the sale price of the complete vehicle the ratio which his cost of the body bears to the sum of his cost of the body and his cost of the chassis. Thus, for example, if his cost of the body represents four-ninths of the sum of his costs of the body and chassis, the manufacturers excise tax applies at the prescribed rate to four-ninths of the sale price of the complete vehicle.

Where the cost ratio method of allocation is used, the body manufacturer's costs are determined by standard accepted accounting methods. The cost of the chassis to the body manufacturer means the cost of acquisition. This includes the tax-included purchase price of the chassis and any freight or other items properly includible in the cost. The cost of producing the body includes labor, materials, and overhead expenses attributable to the manufacture of the body, as such, but not including the cost of mounting the body upon the chassis.

Because the position of the Internal Revenue Service as to the method of determining an automobile truck body manufacturer's excise tax liability under similar circumstances has not been consistent with that expressed in this ruling, and pursuant to the authority granted by section 7805(b) of the Code, this Revenue Ruling will be applied only to sales made on or after July 1, 1959.

Rev. Rul. 59–131

A device which is designed to be mounted on the rear of a truck for use in unloading concrete pipe from the truck is an automobile part or accessory within the meaning of section 4061(b) of the Internal Revenue Code of 1954.

Advice has been requested whether sales by the manufacturer of a device which is used in the unloading of concrete pipe from a truck are subject to the manufacturers excise tax on automobile parts and accessories.

A company manufactures and sells a device which is designed to be mounted upon the rear of a truck for use in unloading concrete pipe from the truck upon which the device is mounted. This device, which operates on a friction and hydraulic principle and requires no power source, utilizes two steel arms against which the concrete pipe is rolled. The weight of the pipe then causes the upper ends of the arms to swing in an arc to the ground, allowing the pipe to roll down and off the arms.

Section 4061(b) of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of parts or accessories (with certain exceptions not here material) for any of the motor vehicle articles enumerated in section 4061(a) of the Code, which include automobile truck chassis and bodies.

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Section 316.55(a) of Regulations 46, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, defines the term "parts or accessories" for an automobile truck or other automobile chassis or body as including (1) any article the primary use of which is to improve, repair, replace, or serve as a component part of such vehicle or article, (2) any article designed to be attached to or used in connection with such vehicle or article to add to its utility or ornamentation, and (3) any article the primary use of which is in connection with such vehicle or article whether or not essential to its operation or use.

It is held that, since the device described above is primarily designed and adapted for use on a truck, it is an automobile part or accessory within the meaning of section 4061(b) of the Code. Therefore, the sale of such device by the manufacturer thereof is subject to the manufacturers excise tax on automobile parts or accessories.

Rev. Rul. 59–132

A company manufactures and sells a wheel spinner knob consisting of a knob part made from a hard, solid material and a metal ring or loop with an adjustable screw by which the knob may be attached to a steering wheel. The knob is designed, sold, and primarily adapted for use on the steering wheel of an automobile or an automobile truck; however, the company also sells the knob for use on other vehicles such as boats, tractors, lift trucks, or any machinery on which the operator uses the wheel method of turning. *Held*, since the wheel spinner knob is primarily designed and adapted for use on the steering wheel of an automobile or an automobile truck, it is an automobile part or accessory within the meaning of section 4061(b) of the Internal Revenue Code of 1954. Accordingly, the manufacturers excise tax imposed by that section of the Code applies to the sale of such article by the manufacturer, producer, or importer.

Rev. Rul. 59–180

The manufacturers excise tax on automobile parts or accessories, imposed by section 4061(b) of the Internal Revenue Code of 1954, does not apply to the sale of a so-called "mechanics tray" which is designed and primarily adapted for use as an article of garage or service station equipment rather than as a part or accessory for a particular vehicle.

Advice has been requested whether sales by a manufacturer of a so-called "mechanics tray" are subject to the manufacturers excise tax on automobile parts or accessories.

Manufacturers produce and sell a so-called "mechanics tray" for use in general service garages or service stations. The device serves as a tool tray for a mechanic when he is working on the engine of an automobile. The tray is made of metal with rolled edges and with a metal arm affixed to its bottom surface. The open end of the arm has a metal cap fastened to it by which the tray may be attached to the radiator filler neck of the automobile. Once attached, the tray swings 360 degrees to a desired position and provides an ample tool area within easy reach of the mechanic.

Section 4061(a) of the Internal Revenue Code of 1954 imposes a tax on the sale by the manufacturer, producer, or importer of certain motor vehicle articles, including chassis and bodies for automobile trucks and other automobiles.

Section 4061(b) of the Code imposes a tax on the sale by the manufacturer, producer, or importer of parts or accessories (other than tires and tubes and other than automobile radio and television receiving sets) for any of the articles enumerated in section 4061(a) of the Code. Section 316.55 of Regulations 46, made applicable to the 1954 Code by Treasury Decision 6091, C. B. 1954–2, 47, defines the term "parts or accessories" for an automobile truck or other automobile chassis or body, as including (1) any article the primary use of which is to improve, repair, replace, or serve as a component part of such vehicle or article, (2) any article designed to be attached to or used in connection with such vehicle or article to add to its utility or ornamentation, and (3) any article the primary use of which is in connection with such vehicle or article whether or not essential to its operation or use.

It is held that the so-called "mechanics tray" described above does not come within the meaning of the term "parts or accessories," as defined by the regulations, since it is designed and primarily adapted for use as an article of garage or service station equipment rather than as a part or accessory for a particular vehicle. Accordingly, sales of such "mechanic trays" by a manufacturer, producer, or importer are not subject to the manufacturers excise tax on automobile parts or accessories imposed by section 4061(b) of the Code.

Rev. Rul. 59–193

The manufacturers excise tax on automobile parts and accessories imposed by section 4061(b) of the Internal Revenue Code of 1954 applies to sales of a load carrying scale which is used in connection with certain highway trucks and trailers.

Advice has been requested concerning the applicability of the manufacturers excise tax on automobile parts or accessories to the sale of a load carrying scale which is installed on certain trucks and trailers. The scales are mounted on the vehicle frame in a position to carry the load at all times. The device gives the vehicle operator an approximate weight of his load to prevent overload violations.

Section 4061(a) of the Internal Revenue Code of 1954 imposes a tax on the sale by the manufacturer, producer, or importer of certain motor vehicle articles, including automobiles and automobile trucks. Section 4061(b) of the Code imposes a tax on the sale by the manufacturer, producer, or importer of parts or accessories (other than tires and tubes and other than automobile radio and television receiving sets) for any of the articles enumerated in section 4061(a) of the Code.

It is held that, since the load carrying scale described above is primarily used on highway trucks and trailers, it is an automobile part or accessory within the meaning of section 4061(b) of the Code. Accordingly, the manufacturer is liable for the tax imposed by that section in connection with his sales of these articles.

Rev. Rul. 59–194

The manufacturers excise tax on automobile parts or accessories imposed by section 4061(b) of the Internal Revenue Code of 1954, applies to the sale of an automatic throttle control which is designed and primarily adapted for use in a taxable automobile.

Advice has been requested concerning the applicability of the manufacturers excise tax on automobile parts or accessories to sales of automatic throttle controls.

Various companies manufacture and sell automatic throttle controls which are designed for use as speed control devices. A control may be attached to the carburetor of an automobile for the purpose of automatically maintaining a predetermined speed. The desired speed is preset by means of a push-button or other type of speed selector mounted on the dashboard of the automobile. These devices are intended to provide greater comfort for the vehicle operator during long continuous trips.

Section 4061(b) of the Internal Revenue Code of 1954 imposes a tax on the sale by the manufacturer, producer, or importer of parts or accessories (other than tires and tubes and other than automobile radio and television receiving sets) for any of the articles enumerated in section 4061(a) of the Code. Section 316.55(a) of Regulation 46, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, defines the terms "parts or accessories" for an automobile truck or other automobile chassis or body to include (1) any article the primary use of which is to improve, repair, replace, or serve as a component part of such vehicle or article, (2) any article designed to be attached to or used in connection with such vehicle or article to add to its utility or ornamentation, and (3) any article the primary use of which is in connection with such vehicle or article whether or not essential to its operation or use.

The throttle controls described above are considered to be designed and primarily adaptable for use on or in connection with taxable automobiles. Accordingly, it is held that they are automobile parts or accessories within the meaning of section 4061(b) of the Code and sales of such controls by a manufacturer, producer, or importer are subject to the manufacturers excise tax imposed by that section of the Code.

Rev. Rul. 59–223

Fire truck chassis which are especially designed and sold to carry fire-fighting apparatus and which are not suitable for use as automobile truck chassis without making major changes are not subject to the manufacturers excise tax on motor vehicle articles imposed by section 4061(a)(1) of the Internal Revenue Code of 1954.

Advice has been requested whether the manufacturers excise tax on motor vehicle articles applies to sales of certain fire truck chassis.

A manufacturer sells chassis which are especially designed and adapted to carry fire-fighting apparatus. The fire truck chassis differ from automobile truck chassis in that they are equipped with engines which are much larger than those used in vehicles designed primarily for the transportation of persons or property over the highway. The engines propel the vehicles and also drive the fire-fighting pumps.

Since fire trucks are not subject to the same kind of load-carrying requirements for which highway transportation vehicles must be designed, the fire truck chassis are constructed with smaller axles and smaller units behind the engines. These chassis are sold only to fire truck manufacturers or to municipalities that arrange to have a fire equipment manufacturer install the fire-fighting apparatus.

Section 4061(a)(1) of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of certain motor vehicle articles, including automobile truck chassis.

Since the chassis described above are especially designed and sold for use in carrying fire-fighting apparatus and are not suitable for use as automobile truck chassis without making major changes thereon, they are not taxable chassis within the meaning of section 4061(a)(1) of the Code. Accordingly, the manufacturer's sales of such chassis are not subject to the manufacturers excise tax imposed by that section. Compare Revenue Ruling 56–275, C.B. 1956–1, 505, which holds that the mounting of fire-fighting apparatus upon a *taxable* chassis does not relieve the chassis manufacturer from payment of the tax.

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

PART II.—TIRES AND TUBES

SECTION 4071.—IMPOSITION OF TAX

26 CFR 40.4071: Statutory provisions; imposition of tax; imposition and rate of tax. T. D. 6343 [1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER D, PART 40.—MANUFACTURERS AND RETAILERS EXCISE TAXES

Regulations under sections 4071 to 4073, inclusive, of the Internal Revenue Code of 1954, as amended, relating to the tax on the sale of tires, inner tubes, and tread rubber.

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

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

On October 18, 1958, notice of proposed rulemaking regarding the regulations under sections 4071 to 4073, inclusive, of the Internal Revenue Code of 1954, as amended, relating to the excise taxes imposed on the sale of tires, inner tubes, and tread rubber was published in the Federal Register (23 F. R. 8061). No objection to the rules proposed having been received during the 30-day period prescribed in the notice, the regulations as so published are hereby adopted.

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[1] 23 F.R. 10181.

The Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 40) set forth in paragraph 2 below are hereby prescribed under part II of subchapter A of chapter 32 of the Internal Revenue Code of 1954, as amended, relating to manufacturers excise tax on tires, inner tubes, and tread rubber.

PARAGRAPH 1. Section 40.0–3 of the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 40) is hereby amended by striking paragraph (g) and inserting in lieu thereof the following:

(g) *Subpart H.*—The regulations in Subpart H of this part, unless otherwise specified in such subpart, relate to:

(1) *Motor vehicles.*—[Reserved].

(2) *Tires, tubes, and tread rubber.*—Sales made by the manufacturer, producer, or importer on or after July 1, 1956, of tires, tubes, and tread rubber.

(3) *Gasoline.*—[Reserved].

(4) *Lubricating oil.*—[Reserved].

PAR. 2. The following regulations are prescribed under part II of subchapter A of chapter 32 of the Internal Revenue Code of 1954, as amended, relating to tires, tubes, and tread rubber:

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SUBPART H—MOTOR VEHICLES, TIRES, TUBES, TREAD RUBBER, GASOLINE, AND LUBRICATING OIL

TIRES, TUBES, AND TREAD RUBBER

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40.4073–4 Other tax-free sales.

AUTHORITY: §§ 40.4071 to 40.4073–4, incl., issued under sec. 7805, I. R. C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

TIRES, TUBES, AND TREAD RUBBER

§ 40.4071 STATUTORY PROVISIONS; IMPOSITION OF TAX.

SEC. 4071. IMPOSITION OF TAX.

(a) IMPOSITION AND RATE OF TAX.—There is hereby imposed upon the following articles, if wholly or in part of rubber, sold by the manufacturer, producer, or importer, a tax at the following rates:

(1) Tires of the type used on highway vehicles, 8 cents a pound.
(2) Other tires, 5 cents a pound.
(3) Inner tubes for tires, 9 cents a pound.
(4) Tread rubber, 3 cents a pound.

(b) DETERMINATION OF WEIGHT.—For purposes of this section, weight shall be based on total weight, except that in the case of tires such total weight shall be exclusive of metal rims or rim bases. Total weight of the articles shall be determined under regulations prescribed by the Secretary or his delegate.

(c) RATE REDUCTION.—On and after July 1, 1972—
(1) The tax imposed by paragraph (1) of subsection (a) shall be 5 cents a pound; and
(2) Paragraph (4) of subsection (a) shall not apply.

[Sec. 4071 as amended by sec. 204(a), Highway Revenue Act 1956 (70 Stat. 388) P. L. 627, C. B. 1956–2, 1150]

§ 40.4071–1 IMPOSITION AND RATES OF TAX.—(a) *Imposition of tax.*—Section 4071 imposes a tax upon the following articles sold by the manufacturer, producer, or importer thereof:

(1) Tires made wholly or in part of rubber,
(2) Inner tubes (for tires) made wholly or in part of rubber, and
(3) Tread rubber.

For definitions of the terms "tires", "inner tubes", "tread rubber", and "rubber", see § 40.4072–1.

(b) *Rates and computation of tax*—(1) *Rates of tax.*—Tax is imposed upon each of the above mentioned taxable articles at the rate applicable on the date on which the article is sold, as specified below:

(i) *Tires*	
(*a*) Of the type used on highway vehicles—	
(A) For the period July 1, 1956 to June 30, 1972, inclusive	8 cents per pound
(B) On or after July 1, 1972	5 cents per pound
(*b*) Of the type used on other than highway vehicles	5 cents per pound
(ii) *Inner tubes*	9 cents per pound
(iii) *Tread rubber*— For the period July 1, 1956 to June 30, 1972, inclusive	3 cents per pound

For definition of the term "tires of the type used on highway vehicles", see paragraph (c) of § 40.4072–1.

(2) *Computation of tax.*—The tax on tires, inner tubes, and tread rubber is computed by applying to the total weight (including a fractional part of a pound) of the article the rate in effect at the time the article is sold. See § 40.4071–2, relating to determination of weight.

(c) *Liability for tax.*—The tax imposed by section 4071 is payable by the manufacturer, producer, or importer making the sale.

§ 40.4071–2 DETERMINATION OF WEIGHT.—(a) *In general.*—(1) *Tires.*—(i) The metal rims or rim bases are not to be included in determining the total weight of a tire. However, the wire, staples, darts, clips, and other material or fastening devices which form a part of the tire or are required for its use must be included in determining the total weight of the tire. In the case of a tubeless tire, the total weight includes the weight of the air valve and stem or any other mechanism which may be used for inflating the tire or maintaining

air pressure when sold by the tire manufacturer with the tubeless tire.

(ii) When tires are sold with metal rims or rim bases attached, the manufacturer must maintain records which will establish what portion of the total weight of the finished product represents the tire exclusive of the metal rim or rim base.

(2) *Inner tubes.*—The total weight of an inner tube shall include the weight of the air valve and stem or any other mechanism attached to the inner tube which may be used for inflating the tube or maintaining air pressure.

(b) *Alternative method of determining weight of tires and inner tubes.*—(1) A manufacturer who has received permission from the Commissioner may, subject to such conditions as the Commissioner may prescribe, determine total weight of tires and inner tubes manufactured and sold by him on the basis of the average weight for each type, size, grade, and classification shown in schedules published by the tire industry. The average weights shall be established in accordance with the method approved by the Commissioner and shall apply for such periods as the Commissioner may prescribe. The Commissioner may terminate the approval granted any manufacturer. In the case of the termination of the approval granted any manufacturer, the termination shall become effective 10 days from the date of the receipt by the manufacturer of the notice of termination. A manufacturer may effect termination, as of a specified date, of the privilege to determine total weight in accordance with provisions of this paragraph by giving no less than 10 days written notice of such intention to the Commissioner. The termination of the approval given a manufacturer shall not affect a manufacturer's tax liability for tires and inner tubes sold prior to the effective date of the notice of termination.

(2) An agreement authorizing a manufacturer, for purposes of the tax imposed by section 3400 of the Internal Revenue Code of 1939 or corresponding provisions of prior revenue laws, to determine total weight of tires and inner tubes on the basis of schedules of average weight continues in effect for purposes of the tax imposed by section 4071 and the regulations in this part unless and until terminated in accordance with the terms of such agreement or the provisions of this paragraph.

§ 40.4072 Statutory Provisions; Definitions; Rubber; Tread Rubber; Tires of the Type Used on Highway Vehicles.

SEC. 4072. DEFINITIONS.

(a) Rubber.—For purposes of this chapter, the term "rubber" includes synthetic and substitute rubber.

(b) Tread Rubber.—For purposes of this chapter, the term "tread rubber means any material—

(1) Which is commonly or commercially known as tread rubber or camelback; or

(2) Which is a substitute for a material described in paragraph (1) and is of a type used in recapping or retreading tires.

(c) Tires of the Type Used on Highway Vehicles.—For purposes of this part, the term "tires of the type used on highway vehicles" means tires of the type used on—

(1) Motor vehicles which are highway vehicles, or

(2) Vehicles of the type used in connection with motor vehicles which are highway vehicles.

[Sec. 4073 as amended by sec. 204(b) Highway Revenue Act 1956 (70 Stat. 389)]

§ 40.4072–1 DEFINITIONS.—For purposes of the regulations in this part, unless otherwise expressly indicated:

(a) *Rubber.*—The term "rubber", for purposes of chapter 32 of the Code, includes synthetic and substitute rubber.

(b) *Tread rubber.*—The term "tread rubber", for purposes of chapter 32 of the Code, means any material (1) which is commonly or commercially known as tread rubber or camelback, or (2) which is a substitute for any material commonly or commercially known as tread rubber or camelback and is of a type used in recapping or retreading tires. The term includes, for example, strips of material, wholly or partially of rubber, natural or synthetic, intended to be vulcanized or otherwise affixed to a tire casing to form the outside perimeter of the tire, smooth or treaded. It further includes treading material produced by reprocessing scrap, salvage, or junk rubber. Tread rubber loses its identity as such when it has been used in the recapping or retreading of a tire.

(c) *Tires of the type used on highway vehicles.*—(1) The term "tires of the type used on highway vehicles", for purposes of §§ 40.4071 through 40.4073–3 of the regulations in this subpart, includes (i) all tires of the type which are used on motor vehicles which are highway vehicles including but not limited to motor trucks, buses, passenger automobiles, highway tractors, trolley buses or coaches, and motorcycles, and (ii) all tires of the type which are used on vehicles of the type used in connection with highway motor vehicles including but not limited to truck or bus trailers and truck semitrailers. The term "tires of the type used on highway vehicles" does not include bicycle tires. Bicycle tires, however, are included in the term "other tires" as used in section 4071(a)(2).

(2) Mobile homes, house trailers, or utility trailers are vehicles of the type used in connection with highway motor vehicles. Thus, tires for mobile homes, house trailers, or utility trailers are included in the term "tires of the type used on highway vehicles".

(d) *Inner tubes.*—The term "inner tubes" includes air containers of all types made wholly or in part of rubber and designed and manufactured for use in pneumatic tires.

(e) *Tires.*—(1) The term "tires" includes rubber casings, hoops and strips or bands of all kinds designed and shaped or built to form the tread of or to fit a vehicle wheel. Tires of either the pneumatic or solid type which fit or form the tread for wheels of any article which is capable of use as a means of transporting a person or burden are taxable as tires. Examples of articles which have taxable tires are motor scooters, industrial trucks, farm tractors, wheelbarrows, and similar articles. See section 4073(a) and § 40.4073–1 with respect to the exemption of tires of certain sizes and section 4073(b) and § 40.4073–2 with respect to the exemption of tires with internal wire fastenings.

(2) The term "tires", for purposes of the tax imposed by section 4071, does not include a recapped or retreaded tire except when the recapping or retreading is from bead to bead whether or not the original tire has lost its identity.

(f) *Cross references.*—For other definitions, see §§ 40.0–2 and 40.7701.

§ 40.4073 STATUTORY PROVISIONS; EXEMPTIONS.

SEC. 4073. EXEMPTIONS.

(a) TIRES OF CERTAIN SIZES.—The tax imposed by section 4071 shall not apply to tires which are not more than 20 inches in diameter and not more than 1¾ inches in cross-section, if such tires are of all-rubber construction (whether hollow center or solid) without fabric or metal reinforcement.

(b) TIRES WITH INTERNAL WIRE FASTENING.—The tax imposed by section 4071 shall not apply to tires of extruded tiring with an internal wire fastening agent.

(c) EXEMPTION FROM TAX ON TREAD RUBBER IN CERTAIN CASES.—Under regulations prescribed by the Secretary or his delegate, the tax imposed by section 4071(a)(4) shall not apply to tread rubber sold by the manufacturer, producer, or importer, to any person for use by such person otherwise than in the recapping or retreading of tires of the type used on highway vehicles.

[Sec. 4073 as amended by sec. 204(c) Highway Revenue Act 1956 (70 Stat. 389)]

§ 40.4073–1 EXEMPTION OF TIRES OF CERTAIN SIZES.—The tax does not apply to sales of tires of all-rubber construction (whether hollow center or solid) if they have no fabric or metal reinforcement and do not exceed either of these measurements: (a) 20 inches in diameter measured to the outside circumference and (b) 1¾ inches in cross-section.

§ 40.4073–2 EXEMPTION OF TIRES WITH INTERNAL WIRE FASTENING.—The tax does not apply to sales of tires of any size or dimension manufactured or produced from extruded tiring fastened or held together by means of internal wire or other metallic material.

§ 40.4073–3 EXEMPTION OF TREAD RUBBER USED FOR NONHIGHWAY TIRES.—(a) *Sold direct by manufacturer for nontaxable use.*—The tax does not apply to the sale of tread rubber by the manufacturer to any person for use by such person otherwise than in the recapping or retreading of tires of the type used on highway vehicles. In determining whether tread rubber is sold for a taxable or nontaxable use, the type of vehicle on which the recapped or retreaded tire is to be used or the actual or intended use of the recapped or retreaded tire is immaterial. The controlling factor is whether the tire resulting from the recapping or retreading is a type which is not used on a highway vehicle. For definition of "tires of the type used on highway vehicles," see paragraph (c) of § 40.4072–1.

(b) *Sales for resale for nontaxable use.*—No sale of tread rubber may be made tax free for resale even though it is known at the time of such sale that the tread rubber will be resold for use otherwise than in the recapping or retreading of tires of the type used on highway vehicles. However, where the tread rubber is resold for such use, the manufacturer, producer, or importer who paid the tax on his sale of the tread rubber may secure a refund or credit in accordance regulations in Subpart N of this part).

(c) *Evidence required to establish exemption.*—(1) To establish the right to sell tread rubber tax free under section 4073 (c), the manufacturer must obtain from the purchaser and retain in his possession a properly executed exemption certificate.

(2) Where only occasional sales of tread rubber for exempt use are made to a purchaser, a separate exemption certificate should be furnished in each order. However, where sales are regularly and frequently made to a purchaser for exempt use, a certificate cover-

ing all orders for a specified period not to exceed 4 calendar quarters will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free sales must be kept for inspection by the district director as provided in section 6001 and the regulations in Subpart N of this part.

(d) *Acceptable form of exemption certificate.*—The following form of exemption certificate will be acceptable for the purposes of this section and must be adhered to in substance:

EXEMPTION CERTIFICATE

(For use by persons who purchase tread rubber from the manufacturer, producer, or importer thereof for use otherwise than in recapping or retreading tires of the type used on highway vehicles (section 4073(c) of the Internal Revenue Code).)

_____, 19—
(DATE)

The undersigned certifies that he himself, or the_____
_____ of
(NAME OF PURCHASER IF OTHER THAN THE UNDERSIGNED)
which he is _____, is the
(TITLE)
purchaser of the tread rubber specified in the accompanying order or contract and that such tread rubber will not be used in the recapping or retreading of tires of the type used on highway vehicles, but will be used for the following purposes:

_____
_____
_____

The undersigned understands that if the tread rubber is used for the recapping or retreading of tires of the type used on highway vehicles, or is sold or otherwise disposed of, such fact must be promptly reported to the manufacturer. The undersigned also understands that the fraudulent use of this certificate for the purpose of securing this exemption will subject him and all guilty parties to a fine of not more than $10,000, or to imprisonment for not more than 5 years, or both, together with costs of prosecution. The purchaser also understands that he must be prepared to establish by satisfactory evidence the purpose for which the tread rubber was used.

_____
(SIGNATURE)
_____
(ADDRESS)

(e) *Exemption certificate not obtained prior to filing of manufacturer's excise tax return.*—If the sale is otherwise exempt but the exemption certificate is not obtained prior to the time the manufacturer files a return covering taxes due for the period during which the sale was made, the manufacturer must include the tax on such sale in his return for that period. However, if the certificate is later obtained, a claim for refund of the tax paid on such sale may be filed, or a credit for such amount may be taken upon a subsequent return, as provided by section 6416(b)(2)(M) and the regulations in Subpart N of this part.

§ 40.4073–4 OTHER TAX-FREE SALES.—For provisions relating to tax-free sales of articles referred to in section 4071, see—

(a) Section 4220, relating to sales or resales to manufacturers for further manufacture;

(b) Section 4222, relating to sales for use as supplies for certain vessels and airplanes;

(c) Section 4224, relating to articles sold for the exclusive use of a State or local government; and

(d) Section 4225, relating to sales for export;
and the regulations thereunder contained in Subpart M of this part.

DANA LATHAM,
Commissioner of Internal Revenue

Approved December 18, 1958.

NELSON P. ROSE,
Acting Secretary of the Treasury

(Filed by the Division of the Federal Register on December 23, 1958, 8:51 a. m., and published in the issue of the Federal Register for December 24, 1958, 23 F. R. 10181.)

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

SECTION 4072.—DEFINITIONS

Rev. Rul. 59–35

The manufacturers excise tax imposed on tires and tubes by section 4071 of the Internal Revenue Code of 1954 applies to the sales or use by the manufacturer of tires made of a newly developed material, which is "substitute rubber" within the meaning of section 4072 of the Code, for use on casters and wheels of industrial material handling trucks, with the exception of those tires which are specifically exempt under section 4073(a) of the Code.

Advice has been requested whether the manufacturers excise tax on tires and tubes applies to the sales by a manufacturer of tires made of the newly developed material described below.

A company manufactures casters and wheels for industrial equipment, using as the tire material a newly developed compound which is neither rubber nor synthetic rubber. However, the material has characteristics which are similar to those of rubber. For example, it returns approximately to its initial shape after deformation and it returns energy imparted to it. The material was developed for use as tire material for floor protective type wheels, especially when heavy loads are hauled and where rough floor conditions are encountered. For this purpose, the material is claimed to be superior to natural or synthetic rubber with respect to tensile strength, abrasion resistance, and oil and fuel resistance.

Section 4071 of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of tires made wholly or in part of rubber. Section 4072 of the Code provides that the term "rubber" includes synthetic and substitute rubber.

Section 4073(a) of the Code provides that the tax imposed by section 4071 shall not apply to tires which are not more than 20 inches in diameter and not more than one and three-fourths inches in cross-section, if such tires are of all-rubber construction (whether hollow center or solid) without fabric or metal reinforcement.

Section 316.30(a)(3) of Regulations 46, made applicable to the 1954 Code by Treasury Decision 6091 C. B. 1954–2, 47, provides that

the term "tires" includes rubber casings, rubber hoops, and rubber strips or bands, of all kinds, designed and shaped or built to form the tread of or to fit a vehicle wheel. Tires of either the pneumatic or solid type which fit or form the tread for the wheels of any article which is capable of use as a means of transporting a person or burden, are taxable as tires. Examples of such articles are a toy so constructed that it will carry a child, wheel chairs, tea tables, doll carriages, scooters, velocipedes, tricycles, baby walkers, bassinets, industrial trucks of either the push or motor-driven type, boys' wagons, wheelbarrows, and similar articles. However, tires attached to imitations of such articles such as miniature toys of cast iron, tin, wood, or other materials, are not subject to tax.

The term "substitute" used in section 4072 of the Code is considered to be broader in scope than the term "synthetic" used in that section. "Substitute rubber" contemplates additional or alternate substances which could not be considered "synthetic" due to chemical composition but which are similar to natural or synthetic rubber in physical characteristics. It is an elementary rule of construction that effect must be given, if possible, to every word, clause, and sentence of the statute, and one portion should not be placed in antagonism to the other. See *Petri* v. *Commercial National Bank*, 142 U. S. 644. It appears reasonable to assume that Congress was fully aware of the technical meaning of the term "synthetic" and foresaw that other materials or chemical compounds might be devised as a substitute for rubber in the manufacture of tires. Thus, the phrase "and substitute rubber" must be viewed as having some purpose or meaning as distinguished from natural or synthetic rubber. If the phrase "and substitute rubber" is interpreted to mean no more than some type of synthetic rubber it becomes superfluous and meaningless.

Therefore, it is held that tires made of any material or product which constitutes "substitute rubber" within the above meaning are tires made wholly or in part of rubber within the meaning of section 4071 of the Code. When the material described above is used as a material in the manufacture of vehicle tires, it is "substitute rubber" as contemplated by law. Accordingly, the sales or use by the manufacturer of tires made of such material, except those sizes which are specifically exempt under section 4073(a) of the Code, are subject to the manufacturers excise tax imposed by section 4071 of the Code on tires and tubes.

PART III.—PETROLEUM PRODUCTS

Subpart A.—Gasoline

SECTION 4081.—IMPOSITION OF TAX

(Also Sections 4091, 4218.) Rev. Rul. 59–126

The manufacturers excise taxes on the sale of gasoline and on the sale of lubricating oil, imposed by sections 4081 and 4091 of the Internal Revenue Code of 1954, do not apply to gasoline and lubricating oil which are given away by the producer thereof for use in stock car races. Moreover, the giving away of such gasoline and lubricating oil does not constitute a taxable "use" by the producer under section 4218(a) of the Code.

Advice has been requested whether the manufacturers excise taxes on the sale of gasoline and on the sale of lubricating oil apply to gasoline and lubricating oil which are given away by a producer for use in stock car races for promotional purposes.

Section 4081 of the Internal Revenue Code of 1954 imposes a tax on gasoline sold by the producer or importer thereof, or by any producer of gasoline. Section 4091 of the Code imposes a tax upon cutting oils and other lubricating oils sold in the United States by the manufacturer or producer.

Section 42818(a) of the Code provides, with certain exceptions not here material, that if any person manufactures, produces, or imports a taxable article and uses it, otherwise than as material in the manufacture or production of, or as a component part of another taxable article manufactured or produced by him, he shall be liable for the tax in the same manner as if such article was sold by him.

S.T. 592, C.B. XI–2, 509 (1932), holds that no tax liability is incurred where samples of taxable articles are distributed by the manufacturer free of charge to the consumer for advertising purposes.

In the instant case, since the producer receives no payment or consideration for the gasoline and the lubricating oil furnished free of charge for use in stock car races, other than the indirect benefits derived from advertising and sales promotion, such gasoline and lubricating oil are not considered "sold" by the producer. Accordingly, the producer is not liable for the manufacturers excise taxes imposed by sections 4081 and 4091 of the Code. Moreover, the provisions of section 4218(a) of the Code are not applicable, since a gift of gasoline and lubricating oil, under such circumstances, is not considered to be a "use" of the products as contemplated by that section. However, where tax-paid gasoline and lubricating oil are given away by a dealer or distributor, there is no basis for allowing a credit or refund of the tax paid to the United States Government by the producer on his sale of the products to the dealer or distributor.

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomat mission where employed. See Rev. Rul. 59–61, page 289.

Subpart B.—Lubricating Oil

SECTION 4091.—IMPOSITION OF TAX

Rev. Rul. 59–134

The manufacturers excise tax on lubricating oils, imposed by section 4091 of the Internal Revenue Code of 1954, applies to an oil additive consisting of a mixture of U.S.P. white mineral oil and finely ground mica which is added to lubricating oil for use in lubricating food machinery.

Advice has been requested concerning the applicability of the manufacturers excise tax on lubricating oils to sales of an oil additive for use in lubricating food machinery.

A manufacturer uses U.S.P. white mineral oil of higher than 30 saybolt color as a carrying agent for a dry lubricant made from finely ground mica. The resulting product is sold as an oil additive to be mixed with lubricating oil for use in lubricating food machinery. The additive contains a mixture of eight ounces of mica to one gallon of mineral oil.

Section 4091 of the Internal Revenue Code of 1954 imposes a tax upon lubricating oils sold in the United States by the manufacturer or producer. Section 314.40 of Regulations 44, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, provides that the term "lubricating oils" includes all oils, regardless of their origin, which are sold as lubricating oil and all oils which are suitable for use as a lubricant.

The white mineral oil described is not normally considered as a lubricating oil due to its high cost of purification. However, when it is used for lubricating purposes, it is considered to be suitable for use as a lubricant and is taxable as a lubricating oil. See S.T. 844, C.B. XV–2, 330 (1936). In the instant case, both the white mineral oil, which constitutes the bulk of the additive, and the dry lubricant perform a lubricating function when mixed with lubricating oil and used to lubricate food machinery. Accordingly, it is held that the manufacturers excise tax on lubricating oils applies to the sale by the manufacturer of the oil additive described above.

Rev. Rul. 59–215

Sales of lubricating oils by the manufacturer thereof to purchasers for use solely as a coolant in grinding or honing metal with stone, as a component material in the manufacture of rubber, and for application on the outside of calender rolls solely to prevent paper from adhering to the rolls, are not subject to the manufacturers excise tax imposed by section 4091 of the Internal Revenue Code of 1954, provided the manufacturer obtains the necessary exemption certificates from the purchasers.

Advice has been requested whether the manufacturers excise tax on lubricating oils applies to sales of lubricating oils, by the manufacturer thereof, for use solely as coolants in grinding or honing metal with stone, as component materials in the manufacture of rubber, and for application on the outside of calender rolls solely to prevent paper from adhering to the rolls.

Section 4091 of the Internal Revenue Code of 1954 imposes a tax on lubricating oils sold by the manufacturer or producer thereof. Section 314.40 of Regulations 44, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, provides that the term "lubricating oils" includes all oils, regardless of their origin, which are sold as lubricating oil and all oils which are suitable for use as a lubricant.

Section 314.43(a) of the regulations provides that no tax attaches where oil is sold by the manufacturer direct to a purchaser who uses it for nonlubricating purposes. No sale of oil may be made tax-free by the manufacturer to a dealer for resale for nonlubricating uses even though it is known at the time of sale that the oil will be so resold.

However, where any dealer resells tax-paid oil for nonlubricating uses, the manufacturer who paid the tax to the United States on his sale of the oil, may secure a credit in accordance with the provisions of section 314.64 of the regulations. Section 314.43(b) of the regulations provides that in order to establish the right to exemption from tax with respect to lubricating oil sold by the manufacturer direct for nonlubricating purposes, it is necessary that the manufacturer have definite knowledge, prior to or at the time of sale, that the product is purchased for such purposes, and he obtain from the purchaser and retain in his possession the prescribed exemption certificate.

It is held that lubricating oils used solely as coolants in grinding or honing metal with stone, as component materials in the manufacture of rubber, and for application on the outside of calender rolls solely to prevent paper from adhering to the rolls are used for nonlubricating purposes. Accordingly, sales of lubricating oils by the manufacturer thereof to be used by the purchaser for any of the above-named purposes are not subject to the manufacturers excise tax imposed by section 4091 of the Code, provided the manufacturer obtains from the purchaser the exemption certificate prescribed by section 314.43 of the regulations. However, where lubricating oils used as coolants, or for application on calendar rolls to prevent paper from adhering to the rolls, also serve as lubricants, the sales of the oils for such purposes are properly subject to the excise tax. S.T. 905, C. B. 1940–2, 305, enumerates other lubricating oils which are not subject to the manufacturers excise tax when sold by the manufacturer to the consumer for nonlubricating uses under the conditions prescribed in the regulations.

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national is one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

Applicability of the manufacturers excise tax on lubricating oil to lubricating oil which is given away by a producer for use in stock car races. See Rev. Rul. 59–126, page 321.

Applicability of the manufacturers excise tax on lubricating oils to sales of oil for use by a manufacturer in an enclosed assembly or housing of a taxable article. See Rev. Rul. 59–204, page 358.

SUBCHAPTER B.—HOUSEHOLD TYPE EQUIPMENT, ETC.

PART I.—REFRIGERATION EQUIPMENT

SECTION 4111.—IMPOSITION OF TAX

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British

Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

PART II.—ELECTRIC, GAS, AND OIL APPLIANCES

SECTION 4121.—IMPOSITION OF TAX

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

PART III.—ELECTRIC LIGHT BULBS

SECTION 4131.—IMPOSITION OF TAX

Rev. Rul. 59–88

The manufacturers excise tax on electric light bulbs imposed by section 4131 of the Internal Revenue Code of 1954 applies to sales by the importer of so-called "super pressure" mercury lamps which are designed for the diffusion of artificial visible light through the use of electricity.

Advice has been requested whether the manufacturers excise tax on electric light bulbs applies to sales by the importer of so-called "super pressure" mercury lamps described below.

These lamps which are operated by electricity have been described as follows:

These lamps are discharge lamps which contain a basic gas and a specific quantity of mercury. When the lamp is in operation, both the basic gas and the mercury vapor are subjected to a high pressure. This produces an exceptionally high brightness, and a very high intensity of radiation in the medium and long wave ultra-violet ranges. The lamps are particularly suitable for (1) photography: making films (especially for scientific purposes), fluorescence microscopy, photomicroscopy and photomicrography, and luminous recording instruments; (2) illumination and projection: searchlights and floodlights, standard and miniature films, and epidiascopes; and (3) industry and science; examinations in connection with fast moving proceedings, and electro-acoustic purposes.

Section 4131 of the Internal Revenue Code of 1954 imposes a tax on the sale of electric light bulbs and tubes by a manufacturer, producer or importer. Section 316.180 of Regulations 46, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, defines an electric light bulb or tubes as any device designed for the diffusion of artificial light for illuminative or decorative purposes through the use of electricity.

Any electric bulb or tube which is designed for the diffusion of artificial visible light for use in photography, illumination, or projection of films is considered to be a taxable electric light bulb or tube within the meaning of the law and regulations.

It is held that the so-called "super pressure" mercury lamps described above are designed for the diffusion of artificial visible light for illuminative purposes. Therefore, the manufacturers excise tax imposed by section 4131 of the Code applies to sales of such lamps by the importer. Compare Revenue Ruling 55–761, C.B. 1955–2, 656, which holds that the tax does not apply to electric bulbs or tubes primarily designed for certain applications in which ultraviolet radiation is essential.

Rev. Rul. 59–145

The manufacturers excise tax on electric light bulbs imposed by section 4131 of the Internal Revenue Code of 1954 applies to sales of a so-called "satellite bulb" consisting of an electric light bulb with a firmly attached covering glass crystal.

Advice has been requested whether the manufacturers excise tax imposed on the sale of electric light bulbs applies to the sale of a so-called "satellite bulb."

A company imports a so-called "satellite" electric light bulb in various sizes. This "satellite bulb" consists of an electric light bulb with a covering glass crystal firmly attached so as to be considered a part of the bulb itself. The glass crystal has numerous glass "antennae," the only purpose of which is to add to the ornamental effect of the light bulb.

Section 4131 of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of electric light bulbs and tubes. Section 316.180 of Regulations 46, made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, C.B. 1954–2, 47, defines an electric light bulb or tube as being any device designed for the diffusion of artificial light for illuminative or decorative purposes through the use of electricity.

It is held that the "satellite bulb" is an electric light bulb within the meaning of section 4131. Therefore, sales of that article are subject to the manufacturers excise tax on electric light bulbs and tubes.

Whether, for purpose of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

SUBCHAPTER C.—ENTERTAINMENT EQUIPMENT

PART I.—RADIO AND TELEVISION SETS, PHONOGRAPHS AND RECORDS, ETC.

SECTION 4141.—IMPOSITION OF TAX

Rev. Rul. 59–113

The person who owns or leases a master recording and controls the production and sale of phonograph records produced therefrom is considered to be the manufacturer of such records for the purpose of the manufacturers excise tax on phonograph records, imposed by section 4141 of the Internal Revenue Code of 1954.

Advice has been requested whether the owner or a lessee of a master recording is liable for the manufacturers excise tax on phonograph records when records are produced from such master recording under the circumstances described below.

Situation (*1*). *X* company is the owner of certain master recordings. Under an agreement between *X* company and *Y* corporation, *Y* corporation "presses" phonograph records from these master recordings. *Y* corporation uses its own equipment, furnishes the necessary materials, affixes labels containing information furnished by *X* company, and ships the finished records to *X* company, making a specified charge for each record. *X* company then sells the phonograph records either to a distributor or directly to consumers.

Situation (*2*). *Z* company leases master recordings from the owner thereof and "presses" phonograph records from them. *Z* company uses its own equipment and furnishes all of the materials necessary to produce the finished phonograph records. The phonograph records are then sold by *Z* company to a distributor.

Section 4141 of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of certain enumerated articles, including phonograph records.

Generally, the person who owns or leases the master recording and controls the production and sale of phonograph records manufactured therefrom is considered to be the manufacturer of such records.

Accordingly, in *situation* (*1*), since *X* company owns the master recordings and controls the production and sale of the phonograph records produced therefrom, it is held that it is the manufacturer of such records and is liable for the manufacturers excise tax on its sale of the records. No manufacturers excise tax is incurred by *Y* corporation with respect to its charge for "pressing" the records.

Likewise, in *situation* (*2*), since *Z* company leases the master recordings and produces and sells the phonograph records produced therefrom, it is held that it is the manufacturer of such records and is liable for the manufacturers excise tax on its sale of the records. The owner of the master recording does not incur liability for the manufacturers excise tax with respect to the lease of the master recording.

Rev. Rul. 59–114

The person who owns a master record and controls the production and sale of phonograph records produced therefrom is the manufacturer of such records for the purpose of the manufacturers excise tax on phonograph records imposed by section 4141 of the Internal Revenue Code of 1954. This is true, even though the magnetic tape from which the music or message is transmitted to the master record is owned by another person who permits its use under special arrangements.

For purposes of determining liability for the manufacturers excise tax, advice has been requested with respect to who is the manufacturer of phonograph records which are produced and distributed under the circumstances described below.

Situation (1). *X* corporation is engaged in manufacturing phonograph records for various customers. Under a special contract, *X* agrees to produce for *Y* company a specified number of records which will reproduce a message contained in a magnetic tape recording fur-

nished by *Y*. *X* corporation sends *Y* company's tape recording to a processing firm, which transcribes the message on a steel plate, usually called a "master record." A so-called "printer" then is made from the master record. The processing firm sends this printer to *X* corporation, which uses the printer in "pressing" the phonograph records which are shipped to *Y* company. *Y* company either sells the records or uses them in its business.

X corporation pays the processing firm for making the master record and the printer, this cost being one of the factors which *X* takes into account in establishing its charge to *Y* company. The master record is stored by the processing firm in the name of *X* corporation for possible further use in making additional printers. However, *Y* company retains the right of ownership of the tape recording, the master record, and the printer.

Situation (2). *A* owns certain copyrighted magnetic tape recordings. Under a contract with *Z* corporation, *A* authorized *Z* to have a record company produce master records and a specified number of phonograph records from these tape recordings. In accordance with the terms of the contract, the distribution and sale of the phonograph records are controlled by *Z* corporation, and *Z* pays *A* a royalty on each record produced. Title to the master records is vested in *Z* corporation, but the tape recordings remain the property of *A*.

Section 4141 of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of certain enumerated articles, including phonograph records.

Generally, the ownership of a master record vests in the owner the right to control the production and sale of any phonograph records which are produced from that master record. In the absence of arrangements whereby the owner of the master record transfers that right to someone else, he is considered to be the manufacturer of the phonograph records for purposes of the manufacturers excise tax. Likewise, the ownership of a tape recording vests in the owner the right to control the production and use of any master records which are produced from that tape recording. In the absence of a transfer of that right, it is considered to remain with the owner of the tape recording.

The manufacturers excise tax is imposed upon the sale of phonograph records by the manufacturer, producer, or importer thereof. The person who controls the production and sale of phonograph records often is not the person who actually presses the records. Liability for the manufacturers excise tax is incurred by the person who has the right to control the production and sale of the phonograph records. The right to that control is usually determined by the ownership of the master record. Where a tape recording is utilized as the medium for transmitting sound to a master record, the ownership of the tape recording and any arrangement regarding its use are factors to be considered in establishing who is the owner of the master record.

In *situation* (1), since *Y* company retains title to the master record and does not transfer its right to control the production and sale of the phonograph records produced from the master record, it is held that *Y* company is the manufacturer of the phonograph records.

Therefore, upon its sale or use of the phonograph records, *Y* company becomes liable for the manufacturers excise tax imposed by section 4141 of the Code. *X* corporation incurs no manufacturers excise tax liability with respect to its charge for labor and materials used in producing the phonograph records from the master record owned by *Y* company.

However, in *situation* (2), it is held that *Z* corporation is the manufacturer of the phonograph records produced under the contract with *A*, since *Z* becomes the owner of the master record and controls the production and sale of the phonograph records. Therefore, *Z* corporation is liable for the manufacturers excise tax upon its sale of the phonograph records. *A* does not incur any liability for the manufacturers excise tax upon the royalties which he receives under the contract.

(Also Section 4216.) Rev. Rul. 59–181

The manufacturers excise tax on phonograph records, imposed by section 4141 of the Internal Revenue Code of 1954, applies to certain booklets and selecticators which are sold by the manufacturer with phonograph records. Furthermore, under the provisions of section 4216(a) of the Code, the taxable selling price includes any charge for albums which are designed as containers for the particular phonograph records with which they are sold.

Advice has been requested whether the manufacturers excise tax on phonograph records applies to albums, booklets, and selecticators which are sold with phonograph records.

A manufacturer sells albums, booklets, and selecticators with phonograph records of his manufacture. The albums are specially designed or labeled to hold a particular record or a series of related records. A descriptive background of the recorded material is contained in the booklets. The selecticators are time-saving devices which enable a person to locate a desired selection or passage without playing an entire record.

Section 4141 of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of certain enumerated articles, including phonograph records. The tax also applies to parts or accessories for such articles sold on or in connection with the sale thereof. Section 4216(a) of the Code provides, in part, that in determining the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature.

Since the booklets and selecticators are designed to be used in connection with and to augment the utility of the particular phonograph records with which they are sold, they are considered to be accessories for such records under the provisions of section 4141 of the Code.

Furthermore, since the albums are designed as containers for the particular phonograph records with which they are sold, any charge for those albums must be included in determining the price for which the records are sold, under the provisions of section 4216(a) of the Code.

Accordingly, under the circumstances stated, it is held that the manufacturers excise tax on phonograph records, imposed by section

4141 of the Code, applies to the total price for which the phonograph records, albums, booklets, and selecticators are sold, regardless of whether the albums, booklets, and selecticators are billed separately.

(Also Section 6416.) Rev. Rul. 59–201

The conversion of high fidelity phonographs into stereophonic phonographs constitutes the further manufacture of such phonographs, sales of which are subject to the manufacturers excise tax imposed by section 4141 of the Internal Revenue Code of 1954. Where the manufacturers excise tax was paid previously on the sale of the high fidelity phonographs, a credit or refund may be allowed under the provisions of section 6416(b)(3) of the Code.

The Internal Revenue Service has been asked whether the manufacturers excise tax upon sales of phonographs applies to sales of stereophonic phonographs converted from high fidelity phonographs on which the manufacturers excise tax previously had been paid.

A wholesale dealer purchased a large quantity of high fidelity phonographs from a manufacturer who paid the manufacturers excise tax upon the sale. Later on, because of increased consumer interest in stereophonic sound, the wholesale dealer arranged to return the high fidelity phonographs to the original manufacturer for conversion into stereophonic phonographs. The wholesale dealer retained title to the phonographs. Conversion from high fidelity into stereophonic sound reproduction necessitated adding new power amplifiers and speaker jacks, revising the pre-amplifiers and record changers, and exchanging escutcheon plates. Upon completion of the converting operation, the phonographs were returned to the wholesale dealer for resale.

Section 4141 of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of certain enumerated articles, including phonographs. Section 6416(b) of the Code, as amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, C.B. 1958–3, 92, provides for allowance of a credit or refund (without interest) of certain excise taxes determined to be overpayments. Section 6416(b)(3)(A) of the Code provides that where the manufacturers excise taxes have been paid with respect to sales by the manufacturer, producer, or importer of certain articles, including phonographs, to a second manufacturer or producer and such articles are used by the second manufacturer or producer as material in the manufacture or production of, or as component parts of, other articles subject to the manufacturers excise taxes, the tax paid by the first manufacturer shall be deemed to be an overpayment by the second manufacturer.

It is held that the conversion operation described above constitutes the manufacture of stereophonic phonographs from high fidelity phonographs. Therefore, sales of the stereophonic phonographs are subject to the manufacturers excise tax imposed by section 4141 of the Code. It is further held that under the arrangement whereby the wholesale dealer retains title to the phonographs he becomes the manufacturer of the stereophonic phonographs and is liable for payment of the manufacturers excise tax when the phonographs are sold.

However, pursuant to section 6416(b)(3)(A) of the Code, a credit or refund may be allowed the dealer-manufacturer in the amount of tax paid on the first manufacturer's original sale of the high fidelity phonographs used in the manufacture of the stereophonic phonographs. Likewise, under the provisions of section 6416(b)(3)(B) of the Code, the dealer is entitled to a credit or refund in the amount of any tax which may have been paid on radio or television components used in the manufacture of the stereophonic phonographs.

(Also Sections 4031, 4142.) Rev. Rul. 59-202

A certain carrying case which is designed and sold for carrying a portable radio is not considered as a part or accessory therefor or a radio or television component, for purposes of the manufacturers excise tax imposed by section 4141 of the Internal Revenue Code of 1954. Furthermore, the case is not subject to the retailers excise tax on luggage, handbags, etc., imposed by section 4031 of the Code.

Advice has been requested whether a certain carrying case is subject to either the manufacturers excise tax on radio and television sets, etc., or the retailers excise tax on luggage, handbags, etc.

A company manufactures and sells a leather carrying case which is designed and sold for carrying a portable radio which is complete as to all component parts, including a cabinet. The carrying case measures ten and one-quarter inches from side to side, seven and one-quarter inches from top to bottom with the top closed, and three and one-half inches from front to back. It is equipped with a shoulder strap for carrying, and the front of the case has a number of small openings, in a rectangular formation, which permit the use of the radio while the top of the case is closed.

Section 4141 of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of, among other things, radio receiving sets and radio and television components (including in each case parts or accessories therefor sold on or in connection with the sale thereof). Section 4142 of the Code defines the term "radio and television components" to include, among other things, cabinets which are suitable for use on or in connection with, or as component parts of, any of the articles enumerated in section 4141, whether or not primarily adapted for such use.

Section 4031 of the Code imposes a tax upon the sale at retail of various enumerated articles, by whatever name called.

The question of taxability in the instant case, for purposes of the manufacturers excise tax, is twofold. It is held that the carrying case described above is not a part or accessory for a radio receiving set; neither is it a cabinet of the type defined in section 4142 of the Code as a radio and television component. Accordingly, the carrying case is not subject to the manufacturers excise tax imposed by section 4141 of the Code, whether sold separately or with a radio receiving set.

It is further held that, since this carrying case is designed especially for use in carrying a radio and is suitable only for that purpose, it is not an article such as is contemplated in section 4031 of the Code. Therefore, sales of the carrying case are not subject to the retailers excise tax imposed by that section.

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

Applicability of the manufacturers excise tax to a phonograph record importer's charges for import duties, customs handling fees, ocean freight and other expenses incurred by the importer. See Rev. Rul. 59–139, page 352.

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26 CFR 40.4141: Statutory provisions; imposition of tax.
(Also Section 4151, 40.4151.)

T.D. 6372 [1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER D, PART 40.—MANUFACTURERS AND RETAILERS EXCISE TAXES

Regulations under sections 4141, 4142, 4151, and 4152 of the Internal Revenue Code of 1954, as amended, relating to the sale of radio and television receiving sets, phonographs, phonograph records, and musical instruments.

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

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

On October 10, 1958, notice of proposed rule making with respect to regulations under sections 4141, 4142, 4151, and 4152 of the Internal Revenue Code of 1954, as amended, relating to the tax imposed on the sale of radio and television receiving sets, phonographs, combinations of any of the foregoing, phonograph records, radio and television components, and musical instruments was published in the Federal Register (23 F.R. 7853). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of section 40.0–3 (26 CFR Part 40) of the Manufacturers and Retailers Excise Tax Regulations and the following regulations under the 1954 Code are hereby adopted.

PARAGRAPH 1. Section 40.0–3 of the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 40) is hereby amended by striking paragraph (i) and inserting in lieu thereof the following:

(i) *Subpart J.*—The regulations in Subpart J of this part relate to sales made by the manufacturer, producer, or importer on or after September 1, 1955, of the articles specified in that subpart.

PAR. 2. The following regulations are prescribed under subchapter C of chapter 32 of the Internal Revenue Code of 1954, as amended.

[1] The publication of this Treasury Decision in 24 F.R. 3109, dated April 22, 1959, contains (1) instructions for modifying the notice of proposed rulemaking published in 23 F.R. 7853, dated October 10, 1958, and (2) the full context of the regulations with such modifications. As here published, the Treasury Decision reflects the full context of such regulations, with modifications. The individual instructions have been omitted.

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AUTHORITY: §§ 40.4141 to 40.4142–1, incl. and §§ 40.4151 to 40.4152–2, incl., are issued under sec. 7805, I.R.C. 1954, 68A Stat. 917; 26 U.S.C. 7805.

Subpart J—Radio and Television Sets, Phonographs, Phonograph Records, and Musical Instruments

RADIO AND TELEVISION SETS, PHONOGRAPHS, AND RECORDS

§ 40.4141 STATUTORY PROVISIONS; IMPOSITION OF TAX.

SEC. 4141. IMPOSITION OF TAX.

There is hereby imposed upon the sale by the manufacturer, producer, or importer of the following articles (including in each case parts or accessories therefor sold on or in connection with the sale thereof), a tax equivalent to 10 percent of the price for which so sold:

Radio receiving sets.
Automobile radio receiving sets.
Television receiving sets.
Automobile television receiving sets.
Phonographs.
Combinations of any of the foregoing.
Radio and television components.
Phonograph records.

Except in the case of radio and television components and phonograph records, the tax imposed by this section shall apply only to articles of the entertainment type.

[Sec. 4141 as amended by sec. 2(a), Act of Aug. 11, 1955 (Pub. Law 367, 84th Cong., 69 Stat. 690) [C.B. 1955–2, 768]

§ 40.4141–1 IMPOSITION OF TAX.—(a) *In general.*—Section 4141 imposes a tax upon the sale by the manufacturer, producer, or importer of the following articles (including in each case parts or accessories therefor sold on or in connection with the sale thereof):

(1) Radio receiving sets,
(2) Automobile radio receiving sets,
(3) Television receiving sets,
(4) Automobile television receiving sets,
(5) Phonographs,
(6) Combinations of any of the foregoing,
(7) Radio and television components, and
(8) Phonograph records.

In the case of a sale of a radio receiving set, automobile radio receiving set, television receiving set, automobile television receiving set,

phonograph, or any combination of the foregoing, the tax attaches only if the article is of the entertainment type. The tax attaches upon the sale of phonograph records and radio and television components without regard to whether such articles are of the entertainment type. For a description of articles of the entertainment type, see paragraph (c) of this section. For provisions relating to (i) phonograph records, and (ii) parts or accessories sold on or in connection with the sale of any article specified in subparagraphs (1) through (8) of this paragraph, see paragraphs (d) and (e), respectively, of this section. For definition of the term "radio and television components", and other provisions relating thereto, see section 4142 and § 40.4142–1.

(b) *Rate of tax.*—Tax is imposed upon the sale of the above-mentioned taxable articles at the rate of 10 percent of the price for which sold. For definition of the term "price", see section 4216 and the regulations thereunder.

(c) *Articles of the entertainment type.*—(1) *Radio receiving sets.*—(i) Except as provided in either subdivision (ii) or (iii) of this subparagraph, a radio receiving set shall be considered of the entertainment type when the circuitry of the set is such that the set can receive radio transmissions on the Standard Commercial Amplitude Modulation (AM) or Frequency Modulation (FM) broadcast frequencies. It is immaterial whether the set is designed, intended, or sold for use in a private home or a commercial establishment, such as a restaurant, retail store, etc.

(ii) A radio receiving set shall be deemed not an article of the entertainment type when it contains all of the following items and such items are incorporated in the circuitry for a functional purpose:

(*a*) A band change mechanism permitting reception on two or more short wave bands;

(*b*) A variable beat frequency oscillator or other equipment designed to receive code transmission on Continuous Wave (CW) operated by means of a "front panel" control;

(*c*) A fine tuning or band spread or Vernier tuning mechanism that is calibrated with a subdividing logging scale;

(*d*) Provisions for earphones;

(*e*) A meter incorporating a moving coil or armature indicating relative field strength of the signal received; and

(*f*) A primary conversion oscillator, the frequency of which is controlled by a quartz crystal oscillator.

(iii) A radio receiving set of the type designed and manufactured primarily for the performance of communication, navigation, or detection services for industrial, commercial, marine, or governmental use generally may be considered not of the entertainment type. Services coming within the scope of the preceding sentence include, but are not limited to, safety, transportation, or disaster.

(2) *Television receiving sets.*—A television receiving set shall be considered of the entertainment type when the circuitry of the set is such that it can receive television transmissions on the Standard Commercial Ultra High Frequency (UHF) or Very High Frequency (VHF) channels. It is immaterial whether the set is designed, intended, or sold for use in a private home or a commercial establishment, such as a restaurant, retail store, etc. A television receiving set

which has incorporated in its circuitry for a functional purpose all the features described in subparagraph (1)(ii) of this paragraph is deemed not an article of the entertainment type. A television receiving set designed and manufactured primarily to perform any of the services listed in subparagraph (1)(iii) of this paragraph generally may be considered not of the entertainment type.

(3) *Phonographs.*—A phonograph shall be considered of the entertainment type if it is designed to reproduce sounds from phonograph records (as defined in paragraph (d) of this section). It is immaterial whether the phonograph is designed, intended, or sold for use in a private home or a commercial establishment, such as a restaurant, retail store, etc.

(d) *Phonograph records.*—The term "phonograph records" means all disks, cylinders, or other articles, regardless of the material from which they are made, upon which are recorded music, speech, or other sounds which are capable of reproduction by means of a phonograph, regardless of whether such records are or are not of the entertainment type. The term does not include tape or wire recordings.

(e) *Parts or accessories.*—The tax attaches in respect of parts or accessories sold on or in connection with the sale of a radio receiving set, automobile radio receiving set, television receiving set, automobile television receiving set, phonograph, or any combination of the foregoing which is of the entertainment type (as defined in paragraph (c) of this section). The tax attaches in respect of parts or accessories sold on or in connection with the sale of phonograph records or radio and television components (see section 4142 and § 40.4142–1) without regard to whether such records or components are suitable for use on or in connection with an article of the entertainment type. Tax is not imposed in respect of parts or accessories sold separately by the manufacturer, producer, or importer, that is, not sold on or in connection with the sale of any radio or television receiving set, phonograph, any combination of the foregoing, or any phonograph record, or radio or television component.

§ 40.4141–2 TAX-FREE SALES.—For provisions relating to tax-free sales of articles referred to in section 4141, see—

(a) Section 4220, relating to sales or resales to manufacturers for further manufacture;

(b) Section 4222, relating to sales for use as supplies for certain vessels and airplanes;

(c) Section 4224, relating to articles sold for the exclusive use of a State or local government; and

(d) Section 4225, relating to sales for export;

as applicable to sales made prior to January 1, 1959.

§ 40.4142 STATUTORY PROVISIONS; DEFINITION OF RADIO AND TELEVISION COMPONENT.

SEC. 4142. DEFINITION OF RADIO AND TELEVISION COMPONENT.

As used in section 4141 the term "radio and television components" means chassis, cabinets, tubes, speakers, amplifiers, power supply units, antennae of the "built-in" type, and phonograph mechanisms, which are suitable for use on or in connection with, or as component parts of any of the articles enumerated in section 4141, whether or not primarily adapted for such use.

§ 40.4142–1 Radio and Television Components.—(a) *In general.*—The term "radio and television components" means chassis, cabinets, tubes, speakers, amplifiers, power supply units, antennae of the "built-in" type, and phonograph mechanisms. However, an article specified in the preceding sentence constitutes a radio or television component, for purposes of the tax imposed by section 4141, if it is suitable for use on or in connection with, or as a component part of, any radio receiving set, automobile radio receiving set, television receiving set, automobile television receiving set, phonograph, or a combination of the foregoing, without regard to whether such set, phonograph, or combination is of the entertainment type.

(b) *Suitable for use defined.*—Radio or television components are suitable for use, within the meaning of section 4142 and paragraph (a) of this section, if the components are commonly used with any of the articles enumerated in section 4141 and paragraphs (a) (1) through (6) of § 40.4141–1 or if the components possess actual, practical commercial fitness for such use. It is immaterial whether the radio or television component is primarily adapted for such use.

(c) *Definitions*—(1) *Chassis.*—The term "chassis" includes any assembly of parts into circuits for the reception and conversion of radio or television signals into impulses suitable for the reproduction of (i) sound by a radio receiving set, or (ii) a picture, either with or without its associated sound, by a television receiving set.

(2) *Cabinets.*—The term "cabinets" includes containers suitable for housing a chassis for any radio or television receiving set, phonograph, or any combination of the foregoing.

(3) *Tubes.*—The term "tubes" includes tubes of all types suitable for use on or in connection with, or as component parts of, any radio or television receiving set, phonograph, or any combination of the foregoing.

(4) *Speakers.*—The term "speakers" includes all devices for use in converting electrical impulses to sound whether or not equipped with coupling units (but not including earphones) which are suitable for use on or in connection with, or as component parts of, any radio or television receiving set, phonograph, or any combination of the foregoing.

(5) *Amplifiers.*—The term "amplifiers" includes all apparatus for the amplification of audio frequency or video frequency impulses which are suitable for use on or in connection with, or as component parts of, any radio or television receiving set, phonograph, or any combination of the foregoing.

(6) *Power supply units.*—The term "power supply units" includes all devices which are suitable for use on or in connection with, or as component parts of, any radio or television receiving set, phonograph, or any combination of the foregoing and which convert electric current of ordinary commercial and domestic voltages into electric current voltages suitable for operating any such articles.

(7) *Antennae of the "built-in" type.*—The term "antennae of the 'built-in' type" includes all types of aerials designed to be contained in any radio or television receiving set, or combination of the foregoing.

(8) *Phonograph mechanism.*—A "phonograph mechanism" is a combination of a motor, pick-up arm, and turntable. A pick-up

cartridge or record changer sold on or in connection with a phonograph mechanism is a part or accessory for the phonograph mechanism.

MUSICAL INSTRUMENTS

§ 40.4151 STATUTORY PROVISIONS; IMPOSITION OF TAX.

SEC. 4151. IMPOSITION OF TAX.

There is hereby imposed upon the sale of musical instruments by the manufacturer, producer, or importer a tax equivalent to 10 percent of the price for which so sold.

§ 40.4151–1 IMPOSITION OF TAX.—(a) *In general.*—Section 4151 imposes a tax upon the sale of musical instruments by the manufacturer, producer, or importer thereof.

(b) *Rate of tax.*—The tax is imposed upon the sale of musical instruments at the rate of 10 percent of the price for which sold. For definition of the term "price", see section 4216 and the regulations thereunder.

(c) *Definition of musical instruments.*—The term "musical instruments" includes all wind, reed, string, percussion or electronic instruments used to produce music, including but not limited to all types of pianos and organs, trombones, saxophones, violins, drums, xylophones, chimes, cymbals, bongos, castanets, maracas, claves, etc. The term does not include articles in the nature of toys or novelties which simulate musical instruments and which are unsuitable for use in playing musical compositions or in teaching music.

§ 40.4152 STATUTORY PROVISIONS; EXEMPTION FOR RELIGIOUS OR EDUCATIONAL USE.

SEC. 4152. EXEMPTION FOR RELIGIOUS OR EDUCATIONAL USE.

The tax imposed by section 4151 shall not apply to musical instruments sold for the use of any religious or nonprofit educational institution for exclusively religious or educational purposes. The right to exemption under this section shall be evidenced in such manner as the Secretary or his delegate may prescribe by regulations.

§ 40.4152–1 SALES OF MUSICAL INSTRUMENTS NOT SUBJECT TO TAX.—(a) *Sold direct by manufacturers for religious or educational use.*—The tax imposed by section 4151 does not attach to the sale of a musical instrument by the manufactuer, producer, or importer direct to a religious or nonprofit educational institution for exclusively religious or educational purposes.

(b) *Sales for resale.*—No sale of a musical instrument may be made tax free by a manufacturer to a dealer for resale to a religious or nonprofit educational institution for exclusively religious or educational purposes even though it is known at the time of such sale that the musical instrument will be resold for such purpose. However, where any dealer resells a tax-paid musical instrument to a religious or nonprofit educational institution for exclusively religious or educational purposes, the manufacturer who paid the tax on his sale of such musical instrument may secure a refund or credit in accordance with the provisions of section 6416(b)(2).

(c) *Religious or nonprofit educational institutions.*—To constitute a a religious or nonprofit educational institution within the meaning of section 4152, (1) there must be a definite organization with officers,

directors, or trustees, and the usual essential features (incorporation not being necessary) of an organization of its class; (2) the organization must have a purpose which as put into practice is religious or educational; and (3) in the case of an educational institution its funds must be used solely in furtherance of such purpose, none of the funds being paid or otherwise distributed to any of its members or other persons except as reasonable compensation for services actually rendered or in furtherance of the educational purposes of the organization.

(d) *Evidence required to establish exemption*—(1) *In general.*—To establish that a sale of a musical instrument is exempt from the tax imposed by section 4151, it is necessary that the manufacturer obtain from the purchaser and retain in his possession a properly executed exemption certificate in the form prescribed by subparagraph (4) of this paragraph.

(2) *Sales covered by certificates; records.*—Where only occasional sales of musical instruments for exempt use are made to a purchaser, a separate exemption certificate should be furnished for each order. However, where sales are regularly and frequently made to a purchaser for exempt use, a certificate covering all orders for a specified period not to exceed 4 calendar quarters will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free sales must be kept for inspection by the district director as provided in section 6001.

(3) *Evidence required to establish that the purchaser is a religious or nonprofit educational institution*—(i) *Churches.*—In the case of a church, no evidence is necessary to establish the fact that such an institution is a religious institution.

(ii) *Other religious institutions or nonprofit educational institutions.*—In the case of a religious institution other than a church and in the case of a nonprofit educational institution, a properly executed exemption certificate showing that the institution has received a determination letter from a district director or a ruling from the Commissioner holding the institution—

(*a*) To be a religious institution or a nonprofit educational institution of the type described n secton 501(c)(3), and

(*b*) Exempt from income tax under section 501(a) or not entitled to exemption from income tax under section 501(a) by reason of the provisions of section 503, relating to prohibited transactions, or section 504, relating to accumulations out of income,

or that it has received such determination letter or ruling under the corresponding provisions of prior revenue laws) is acceptable to support a tax-free sale thereto. The exemption certificate must show the date of such determination letter or ruling and that such determination letter or ruling is still in effect and has not been withdrawn or revoked. Where the exempt character of the institution has not been established by a determination letter or ruling, or in some other manner as previously indicated in this section, the institution, in order to enable the manufacturer to establish his right to sell tax-free, may apply to the district director for the district in which its principal office is located for a determination of its status. Application for a determination should be made by filing Form 1023 with such district

director. Copies of the form and instructions as to the appropriate procedure to be followed in filing it may be obtained from the appropriate district director.

(4) *Acceptable form of exemption certificate.*—The following form of exemption certificate will be acceptable for the purposes of this section and must be adhered to in substance:

EXEMPTION CERTIFICATE

(For use by a religious or nonprofit educational institution purchasing musical instruments subject to tax under section 4151 of the Internal Revenue Code of 1954 for exclusively religious or educational purposes.)

_____, 19__
(DATE)

The undersigned hereby certifies that he is _____
(TITLE)

of _____ and
(RELIGIOUS OF NONPROFIT EDUCATIONAL INSTITUTION)

is authorized to execute this certificate; and that the musical instruments specified in the accompanying order or on the reverse side hereof are purchased by such institution for exclusively religious or educational purposes.

It is understood that this exemption certificate is for use only by a religious or nonprofit educational institution in the tax-free purchase of musical instruments for exclusively religious or educational purposes; and it is agreed that if the musical instruments purchased tax free are used otherwise than as set forth in this certificate, such fact will be reported to the manufacturer, producer, or importer from whom the instruments were purchased tax free.

The institution (if other than a church) claiming exemption under this certificate has received a determination letter or ruling from the Internal Revenue Service holding the institution (1) to be a religious or nonprofit educational institution of the type described in section 501(c)(3) of the Internal Revenue Code of 1954, and (2) exempt from income tax under section 501(a) thereof or not entitled to exemption from income tax under section 501(a) by reason of the provisions of section 503 or 504 of such Code, relating to prohibited transactions and to accumulations out of income, respectively (or corresponding provisions of prior revenue laws). The date of such determination letter or ruling is _____ and such determination letter or ruling has not been withdrawn or revoked.

The undersigned also understands that the fraudulent use of this certificate for the purpose of securing this exemption will subject him and all guilty parties to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

_____
(SIGNATURE)

_____
(ADDRESS)

(5) *Evidence required to establish that the musical instrument is purchased for exclusively a religious or educational purpose.*—In the absence of circumstances indicating a different use, the exemption certificate procured by the manufacturer from the purchasing religious or nonprofit educational institution will be acceptable as prima facie proof that the musical instrument is purchased for exclusively a religious or educational purpose.

(e) *Exemption certificate not obtained prior to filing of manufacturer's excise tax return.*—If the sale is otherwise exempt but the exemption certificate is not obtained prior to the time the manufacturer files a return covering taxes due for the period during which the sale was made, the manufacturer must include the tax on such sale in his return for that period. However, if the certificate is later obtained, a claim for refund of the tax paid on such sale may be filed on Form 843, or a credit for such amount may be taken upon a subsequent return, as provided by section 6416(b)(2).

§ 40.4152–2 OTHER TAX-FREE SALES.—For provisions relating to tax-free sales of musical instruments, see—

(a) Section 4220, relating to sales or resales to manufacturers for further manufacture;

(b) Section 4222, relating to sales for use as supplies for certain vessels and airplanes;

(c) Secton 4224, relating to articles sold for the exclusive use of a State or local government; and

(d) Section 4225, relating to sales for export;

as applicable to sales made prior to January 1, 1959.

CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

Approved April 16, 1959.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on April 21, 1959, 8:45 a.m. and published in the issue of the Federal Register for April 22, 1959, 24 F.R. 3109.)

SECTION 4142.—DEFINITION OF RADIO AND TELEVISION COMPONENTS

Taxability of a portable radio carrying case. See Rev. Rul. 59–202, page 331.

PART II.—MUSICAL INSTRUMENTS

SECTION 4151.—IMPOSITION OF TAX

(Also Section 4216.) Rev. Rul. 59–16

The manufacturers excise tax on musical instruments, imposed by section 4151 of the Internal Revenue Code of 1954, applies to that portion of the manufacturer's sale price of a music kit containing a recorder (a wood-wind instrument), a swab, a case, and a song book, which is allocable to the recorder.

Advice has been requested concerning the applicability of the manufacturers excise tax on musical instruments to a recorder music kit, which is considered by the manufacturer to be a toy because of its low price. The kit consists of a recorder (a wood-wind instrument), a swab, a case, and a song book, all contained in a common carton.

Section 4151 of the Internal Revenue Code of 1954 provides that a tax shall be imposed upon the sale of musical instruments by the manufacturer, producer, or importer.

Section 316.63 of Regulations 46, made applicable to the 1954 Code by Treasury Decision 6091, C. B. 1954–2, 47, states that the term "musical instruments" includes, among other things, "all string, wind, reed, or percussion instruments used in producing music, or in reproducing it, except radios and phonographs."

Revenue Ruling 57–111, C. B. 1957–1, 376, holds in part that the term "musical instruments" as used in the statute includes all component elements of musical instruments essential to their operation.

In determining whether a particular article is a musical instrument, the Internal Revenue Service takes into consideration the primary purpose for which the article is designed and the quality of the construction of the article, that is, whether it is a type of instrument used in the rendition of musical compositions, whether in solo presentation or in connection with other musical instruments, or for the teaching of music.

Upon examination of the recorder in this case in relation to these factors, it has been determined to be a taxable musical instrument. The price for which such an article is sold is not of itself determinative of whether the article is a musical instrument or a toy.

The swab, case, and song book sold with the recorder do not constitute component elements essential to the operation of the recorder and, therefore, are not subject to tax whether sold separately or with the recorder. See Revenue Ruling 57–147, C. B. 1957–1, 377, relating to a carrying case for a musical instrument.

Where a carton contains taxable and nontaxable articles, any charge attributable to the carton is allocable to both the taxable and nontaxable contents. In such a combination sale, where the taxable and the nontaxable articles are sold separately in substantial quantities at established prices, the tax base should be determined by applying to the manufacturer's sale price of the combination (including the carton) the ratio which the manufacturer's separate sale price of the taxable article bears to the sum of the sale prices of the taxable and nontaxable articles. However, where the articles were not sold separately by the manufacturer and do not have established sales prices, the tax base may be determined by applying to the manufacturer's sale price of the combination (including the carton) the ratio that the manufacturer's cost of the taxable article bears to the sum of his costs of the taxable and nontaxable contents of the carton. Accordingly, if the manufacturer's cost of the taxable recorder is four-fifths of his total cost of the complete combination excluding the carton, the tax attaches to four-fifths of the price charged by the manufacturer for the entire kit including the carton.

Rev. Rul. 59–135

Section 4151 of the Internal Revenue Code of 1954 imposes a tax upon the sale of musical instruments by the manufacturer, producer, or importer. No tax is imposed by this section upon parts or accessories sold on or in connection with the sale of musical instruments. *Held*, a violin bow is considered to be an accessory for a violin rather than a component element of a violin. Therefore, the manufacturer's sale of a violin bow, whether separately or in connection with the sale of a violin, is not subject to the manufacturers excise tax on musical instruments. Compare Revenue Ruling 57–111, C.B. 1957–1, 376, in which it was held that the tax on musical instruments applies to the sale of a complete instrument including all *component* elements essential to the operation of the instrument, such as a mouthpiece, a reed, and a ligature sold with a saxophone.

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Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

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26 CFR 40.4151: Statutory provisions; imposition of tax.

Regulations under the Internal Revenue Code of 1954 relating to the manufacturers tax on musical instruments. See T.D. 6372, page 332.

SUBCHAPTER D.—RECREATIONAL EQUIPMENT

PART I.—SPORTING GOODS

SECTION 4161.—IMPOSITION OF TAX

Rev. Rul. 59–136

The manufacturers excise tax on sporting goods does not apply to sales of fishing rod "blanks" with ferrules attached, but the tax does apply to such blanks when sold with handles and reel seats affixed. Furthermore, the tax applies to the sale of a fishing rod kit which contains a rod blank and a handle and reel seat. The tax does not apply to sales of detachable handles which may be used on any type fishing rod.

A distributor who purchases fishing rod blanks and sends them to a shop to have handles and reel seats attached is considered to be the manufacturer of fishing rods for purposes of the manufacturers excise tax.

Advice has been requested concerning the applicability of the manufacturers excise tax on sporting goods, imposed by section 4161 of the Internal Revenue Code of 1954, in the situations described below.

Situation (1). A manufacturer cuts fibre glass rods, either solid or tubular, into sections of desired lengths and attaches ferrules to the ends of some of the sections. The manufacturer then sells these fishing rod "blanks" to other companies which produce complete fishing rods.

Situation (2). A manufacturer sells detachable handles which may be used on any type of fishing rod.

Situation (3). A manufacturer sells fishing rod blanks with handles and reel seats affixed. Some of these blanks have guides attached while others do not.

Situation (4). A manufacturer sells a fishing rod kit, consisting of a rod blank, a handle and reel seat, thread, guides, and varnish.

Situation (5). A local distributor purchases fishing rod blanks with ferrules, such as are described in *situation* (1), and sends these blanks to a local shop to have handles and reel seats attached. The local shop returns the blanks to the local distributor and charges him only for the material and labor in attaching the handles and reel seats. The local distributor then sells them to his customers.

Section 4161 of the Code imposes a tax upon the sale by the manufacturer, producer, or importer of certain sporting goods, including fishing rods, creels, reels, and artificial lures, baits and flies.

Section 316.4 of Regulations 46, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, states that the term "manufacturer" includes a person who produces a taxable article from scrap, salvage, or junk material, as well as from new or raw material, (1) by processing, manipulating, or changing the form of the article, or (2) by combining or assembling two or more articles.

A rod constitutes a fishing rod within the meaning of section 4161 of the Code where it is designed by the manufacturer for fishing purposes and is suitable for such purposes. See Rev. Rul. 58–425, C.B. 1958–2, 804.

It is held that since the fishing rod blanks, in *situation* (1), have not reached such a stage of manufacture that they are suitable for fishing purposes, they are not fishing rods within the meaning of section 4161 of the Code, regardless of whether the blanks are solid or tubular in design. Accordingly, sales by the manufacturer of such rod blanks, with or without ferrules attached, are not subject to the manufacturers excise tax on sporting goods imposed by section 4161 of the Code. In *situation* (2), the detachable handles are not subject to the manufacturers excise tax imposed by section 4161 of the Code.

It is further held that a fishing rod blank with a handle and reel seat affixed constitutes a fishing rod within the meaning of section 4161 of the Code. Accordingly, in *situation* (3), sales by the manufacturer of fishing rod blanks with handles and reel seats affixed are subject to the manufacturers excise tax on sporting goods.

Similarly, in *situation* (4), since the kit contains all the necessary parts for the assembly of a fishing rod, it is a fishing rod within the meaning of section 4161 of the Code. Accordingly, sales by the manufacturer of such kits are subject to the manufacturers excise tax imposed by that section of the Code. However, if the manufacturer sells a kit consisting only of the guides, silk thread, and varnish, such a sale is not subject to tax.

In *situation* (5), it is held that the distributor is the manufacturer and is liable for the manufacturers excise tax imposed by section 4161 of the Code on his sales of such fishing rods.

Rev. Rul. 59–137

The manufacturers excise tax on sporting goods, imposed by section 4161 of the Internal Revenue Code of 1954, does not apply to separate sales by the manufacturer, producer, or importer of stakes which are for use with badminton standards for keeping the net taut. However, where such stakes are sold on or in connection with, or with the sale of badminton standards, they are considered to be parts or accessories of the standards and are subject to the manufacturers excise tax on sporting goods.

Advice has been requested whether the manufacturers excise tax on sporting goods is applicable to the sale of stakes which are for use with badminton standards. The stakes are made of wood or metal and are used in conjunction with badminton standards for the purpose of keeping the badminton net taut when it is set up.

Section 4161 of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of certain enumerated articles of sporting goods, including in each case parts or accessories of such articles sold on or in connection therewith, or with the sale thereof. Included in the articles enumerated are "badminton nets, rackets and racket frames (measuring 22 inches overall or more in length), racket string, shuttlecocks, and standards".

Stakes for badminton standards are not included in the articles enumerated in section 4161 of the Code; therefore, separate sales of such stakes are not subject to the manufacturers excise tax on sporting goods. However, where the stakes are sold on or in connection with, or with the sale of badminton standards, they are considered to be parts or accessories of such standards. Accordingly, sales of stakes by the manufacturer, producer, or importer on or in connection with, or with the sale of badminton standards are subject to the manufacturers excise tax on sporting goods.

Rev. Rul. 59–224

Where a fishing reel is equipped with a fishing line and sold as a unit, the manufacturers excise tax on sporting goods, imposed by section 4161 of the Internal Revenue Code of 1954, applies only to that portion of the manufacturer's sale price of the unit which is properly allocable to the fishing reel, since fishing lines are not enumerated in section 4161 of the Code and are in the nature of supplies rather than parts or accessories.

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

PART II.—PHOTOGRAPHIC EQUIPMENT

SECTION 4171.—IMPOSITION OF TAX

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

PART III.—FIREARMS

SECTION 4181.—IMPOSITION OF TAX

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation

of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

SUBCHAPTER E.—OTHER ITEMS

PART I.—BUSINESS MACHINES

SECTION 4191.—IMPOSITION OF TAX

Rev. Rul. 59–36

The manufacturers excise tax on business machines imposed by section 4191 of the Internal Revenue Code of 1954 applies to parts or accessories, as distinguished from supplies, when sold in connection with watchmen's clocks or other time recording devices. However, the tax does not apply if the parts or accessories are sold separately.

Advice has been requested whether the manufacturers excise tax on business machines applies to sales of keys and other articles for use with watchmen's clocks or with other time recording devices.

A company which manufactures time recording devices also manufactures and sells metal card racks, station boxes and station keys for use with the time recording devices.

Section 4191 of the Internal Revenue Code of 1954 imposes a tax on the sale by the manufacturer, producer, or importer of certain business machines including time recording devices. The tax also applies to parts or accessories of such articles sold on or in connection therewith, or with the sale thereof.

Watchmen's clocks are considered to be time recording devices within the meaning of section 4191 of the Code. Accordingly, it is held that the manufacturers excise tax applies to the manufacturer's sales of watchmen's clocks.

Card racks, station boxes and station keys are not themselves taxable articles but are parts or accessories for the time recording devices. Therefore, the tax does not apply to the manufacturer's separate sales of such articles. However, when any of these articles are sold on or in connection with, or with the sale of a taxable article, such as a watchmen's clock or other time recording device, the manufacturers excise tax applies to the entire selling price of the taxable time recording device and the parts or accessories regardless of whether the charges for the parts or accessories may be shown separately on the invoice.

On the other hand, articles such as time cards and cardboard dials are considered to be supplies for, rather than parts or accessories for, the taxable watchmen's clocks. The manufacturers excise tax does not apply to sales of such supplies, even though they may be sold with taxable business machines, provided they are billed separately on the invoice or the manufacturer's records are sufficient to establish the selling price of the business machines.

Rev. Rul. 59–138

A card punch device, which is operated manually and has no mechanical parts, is not a card punch machine or punch card machine subject to the manufacturers excise tax on business machines, which is imposed by section 4191 of the Internal Revenue Code of 1954

The Internal Revenue Service has been asked whether the manufacturers excise tax on business machines applies to the sale of a device which provides a manual means of punching holes in pre-scored data cards.

A manufacturer produces and sells a device which is used for manually punching cards of the type used in business machines. The device consists of a pocket-size card holder and a separate stylus. The card holder has a transparent plastic top with guide holes to assist in punching the proper space. The cards, on which the punching positions previously have been scored, are inserted by hand into the holder and then manually punched with the stylus. When the cards have been punched and removed from the holder, they can be processed through data system machines.

Section 4191 of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of certain types of business machines and specifically names card punch machines and punch card machines.

Even though this device is used for punching data cards, it does not have the characteristics of an ordinary business machine. Its lack of mechanical parts and its complete manual operation indicate that it is not a machine for purposes of the manufacturers excise tax imposed by section 4191 of the Code.

Accordingly, it is held that the device described above is not a card punch machine or punch card machine as contemplated by section 4191 of the Code. Therefore, sales of this device are not subject to the manufacturers excise tax on business machines.

Rev. Rul. 59–225

The manufacturers excise tax on business machines, imposed by section 4191 of the Internal Revenue Code of 1954, does not apply to sales of an inserting machine when sold separately or in combination with a taxable folding machine which is so constructed that the machines can be coupled for joint operation by merely pushing both units together.

Advice has been requested as to the applicability of the manufacturers excise tax on business machines to sales of the inserting machine described below.

A manufacturer produces a one-station inserting machine which conveys one enclosure from a station exterior to the machine into an envelope and thence to a bin-type stacker. This machine is basically an inserting machine without any facility for feeding paper and does not seal, stamp, open or close envelope flaps. The addition of a simple feed plate to the basic machine enables the machine to insert a single piece of paper into an envelope which is then ejected unstamped and unsealed with its flap still extended straight out.

The inserting machine is manufactured in such a manner that it can be used jointly with a folding machine by merely pushing the two machines together. With the addition of the folding machine, paper is folded before being fed to the inserting machine which otherwise operates as described above. The inserting machine usually is sold separately but sometimes is sold in combination with a folding machine.

Section 4191 of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of all business machines of the type enumerated in that section (including in each case parts or accessories of such articles sold on or in connection therewith, or with the sale thereof). Among the business machines enumerated in section 4191 are mailing machines, folding machines, and sealing machines. Inserting machines, as such, are not included in that enumeration of articles.

It is held that the inserting machine described above does not come within the scope of any of the articles enumerated in section 4191 of the Code. Accordingly, the manufacturers excise tax imposed by that section is not applicable to sales of the inserting machines. Furthermore, sales of the inserting machine in combination with a taxable folding machine do not affect the taxability of either machine since each machine is an individual or separate unit. Compare Revenue Ruling 56–664, C.B. 1956–2, 813, which holds that the tax applies to an "inserting machine" which combines the functions of a mailing machine and a sealing machine.

Rev. Rul. 59–226

The manufacturers excise tax on business machines, imposed by section 4191 of the Internal Revenue Code of 1954, does not apply to the separate sale of a color unit which is designed for use on a duplicating machine. However, where such a unit is sold by a duplicating machine manufacturer on or in connection with a taxable duplicating machine of his own manufacture, the charge for the color unit, as well as the charge for the duplicating machine, is subject to the tax imposed by section 4191 of the Code.

Advice has been requested concerning the applicability of the manufacturers excise tax on business machines to sales of a color printing unit which is designed for use with certain duplicating machines.

Manufacturers produce and sell color printing units for use as attachments to duplicating machines. A color unit is described as a separate and complete attachment that is used when it is desirable to print two colors with a single impression of the duplicating machine. The units are sold to duplicating machine owners, to dealers for resale with or without duplicating machines, and to duplicating machine manufacturers for resale on or in connection with duplicating machines of their manufacture. The color units are not sold for use with other types of business machines.

Section 4191 of the Internal Revenue Code of 1954 imposes a tax on the sale by the manufacturer, producer, or importer of the various business machines enumerated therein, including in each case parts or accessories of such machines sold on or in connection therewith, or with the sale thereof. Duplicating machines are included in that enumeration. No tax is imposed on the separate sales of parts or

accessories for the machines, unless such parts or accessories are in themselves taxable business machines.

It is held that the color unit described above does not of itself constitute a taxable business machine. However, it is considered to be a part or accessory for a taxable business machine. Accordingly, the manufacturers excise tax does not apply (1) to the separate sale of a color unit by a manufacturer, producer, or importer, or (2) to the sale of a color unit by any person in connection with the sale of a taxable duplicating machine which was not manufactured by that person. On the other hand, where the color unit is sold on or in connection with the sale of a taxable duplicating machine by a manufacturer, producer, or importer of such duplicating machine, the tax imposed by section 4191 of the Code attaches to the entire price charged for the taxable duplicating machine and the color unit, regardless of whether the charge for the color unit may be shown separately on the sales invoice.

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59-61, page 289.

PART II.—PENS AND MECHANICAL PENCILS AND LIGHTERS

SECTION 4201.—IMPOSITION OF TAX

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59-61, page 289.

PART III.—MATCHES

SECTION 4211.—IMPOSITION OF TAX

Rev. Rul. 59-182

Wooden matches with stems stained merely to hide the natural discoloration of the wood and which are sold in books are subject to the manufacturers excise tax at the rate of five and one-half cents per 1,000 matches imposed by section 4211 of the Internal Revenue Code of 1954. However, wooden matches with plain stems sold in boxes which contain matches with tips of various colors, no color of which would make an individual match "fancy," are subject to the manufacturers excise tax at the rate of two cents per 1,000 matches. The fact that the matches in the box have tips of various colors would not make them "fancy wooden matches" by reason of that fact alone.

Advice has been requested concerning the application of the manufacturers excise tax on the sale of matches by an importer in the two situations described below.

Situation (1). A company imports and sells matches with wooden stems which are stained so as to hide the natural discoloration of the wood. These matches are sold in books.

Situation (2). A company imports and sells wooden matches having plain stems but with colored tips, which are sold in boxes or books. Some of the boxes or books contain matches with tips of different colors. None of the colors involved would make any one match more ornamental or more attractive than an ordinary match. The question here is whether the packaging in one box of matches having tips of assorted colors is sufficient to bring the matches within the term "fancy wooden matches."

Section 4211 of the Internal Revenue Code of 1954 imposes upon the sale by the manufacturer, producer, or importer of matches, a tax of two cents per 1,000 matches but not more than ten per cent of the price for which so sold, except that in the case of fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem, packed in boxes or in bulk, the tax is five and one-half cents per 1,000 matches.

Section 314.50 of Regulations 44, made applicable to the 1954 Code by Treasury Decision 6091, C. B. 1954–2, provides, in part, that the tax applies to all types of matches, regardless of whether sold in bulk, boxes, books, or in any other manner. Section 314.51 of the regulations provides that a fancy wooden match, within the meaning of the law, is one which has a wooden stem and which, in addition to serving the purpose of the ordinary match, is colored, or decorated, or manufactured in such a manner as to be more ornamental or more attractive than the ordinary match.

With respect to the matches described in *situation* (1) above, the fact that the stems are stained is sufficient to bring them within the scope of the term "wooden matches having a stained, dyed, or colored stick or stem." That determination is not affected by the fact that the stems are stained merely to hide the natural discoloration of the wood. Furthermore, the applicability of the tax at the higher rate of five and one-half cents per 1,000 matches is not affected by the fact that the matches are sold in books rather than in boxes.

With respect to determining whether the matches described in *situation* (2) above are "fancy wooden matches" the provisions of the regulations indicate that the taxable unit is the individual match, not the box or book of matches. The fact that matches with tips of various colors are contained in the same box would not make them "fancy wooden matches" by reason of that fact alone.

On the basis of the rationale stated, it is held that the matches described in *situation* (1) above, are subject to the manufacturers excise tax at the rate of five and one-half cents per 1,000 matches. On the other hand, the matches described in *situation* (2) are subject to the tax at the rate of two cents per 1,000 matches.

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British

Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

Whether a weighted average formula for computing excludable transportation and delivery charges may be used in determining the basis for the manufacturers tax with respect to sales of matches in those instances where the tax computed at two cents per 1,000 is more than ten percent of the manufacturers selling price. See Rev. Rul. 59–203, page 354.

SUBCHAPTER F.—SPECIAL PROVISIONS APPLICABLE TO MANUFACTURERS TAX

SECTION 4216.—DEFINITION OF PRICE

(Also Section 4219.) Rev. Rul. 59–74

M company, a corporation, was an importer of foreign automobiles and parts and accessories therefor. Eventually, *M* stopped importing and sold its inventory of automobile parts and accessories, upon which no manufacturers excise tax had been paid, to *O* company, a corporation, at cost. *M* and *O* are owned and managed by the same stockholders. *Held*, the sale is at less than the fair market price in a transaction which is otherwise than at arms' length, and the manufacturers excise tax must be computed on the fair market price or constructive sale price of the articles. Under the circumstances of this case, the fair market price used in computing the tax is 40 percent off the retail list price of the parts, which was the price for which such parts were sold by *M* in the ordinary course of trade.

Advice has been requested concerning the determination of the basis for computing the manufacturers excise tax on automobile parts and accessories sold under the circumstances described below.

M company, a corporation, was an importer and distributor of a certain make foreign automobile and parts and accessories therefor. Ninety percent of its sales of parts and accessories were at wholesale at a price 40 percent off the retail list price, and ten percent of its sales of parts and accessories were at retail. On June 1, 1958, *M* ceased importing, retaining its unsold inventory of imported parts. At the same time the stockholders of *M* formed *O* company, an entirely new corporation, to distribute the foreign automobiles formerly imported and distributed by *M*, which then engaged in other business activities. Both *M* and *O* are owned and managed by the same stockholders. Subsequently, *M* sold its inventory of imported automobile parts and accessories, upon which no manufacturers excise tax had been paid, to *O* at cost.

Section 4061(a) of the Internal Revenue Code of 1954 imposes a tax upon automobile chassis and bodies (including in each case parts or accessories thereof sold on or in connection therewith or with the sale thereof) sold by the manufacturer, producer, or importer. Section 4061(b) of the Code imposes a tax upon parts or accessories (other

than tires and inner tubes and other than automobile radio and television receiving sets) for any of the articles enumerated in subsection (a) sold by the manufacturer, producer, or importer.

Section 4219 of the Code provides that in case any person acquires from the manufacturer, producer, or importer of an article, by operation of law or as a result of any nontaxable transaction, the right to sell such article, the sale of such article by such person shall be taxable as if made by the manufacturer, producer, or importer, and such person shall be liable for the tax. Section 316.6 of Regulations 46, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, provides that if the property (that is, the title or the substantial incidents of ownership) in an article is transferred from the manufacturer thereof, and, under the law, no tax attaches to such transfer, the subsequent sale, lease, or use of the article by the transferee is subject to the tax. As an example which illustrates this rule, a corporation which results from a statutory consolidation is liable for tax on all taxable articles sold.

Section 4216(b) of the Code provides that, if an article is sold (otherwise than through an arm's length transaction) at less than the fair market price, the manufacturers excise tax shall (if based on the price for which the article is sold) be computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary of the Treasury or his delegate.

Section 316.15(a) of the regulations provides for a special basis of tax computation where sales are at less than fair market price and not at arm's length. The fair market price is the price for which articles are sold by manufacturers at the place of distribution or sale in the ordinary course of trade and in the absence of special arrangements. A sale is not at arm's length when made pursuant to special arrangements between a manufacturer and a purchaser (as in the case of intercompany transactions). When a sale is not at arm's length and the price is less than the fair market price (as in the case of intercompany transactions at cost), the tax is to be based on a fair market price computed by the Commissioner of Internal Revenue.

In the instant case, there was not a transfer of ownership such as occurs in the consolidation or merger of companies. Therefore, the case does not come within the provisions of section 4219 of the Code. Instead, there was a *sale* of parts by *M* to *O*, at cost, which was less than the fair market price. Furthermore, the sale was not at arm's length because *M* and *O* are owned and managed by the same stockholders. Therefore, the case comes within the purview of section 4216(b) of the Code.

In the instant case, *M* is considered to be the importer of the automobile parts in the inventory sold to *O* at cost. Since the transaction was not at arm's length and the price for which the parts were sold was less than the fair market price, the manufacturers excise tax must be computed on the fair market price, or constructive sale price, of the articles. Under the circumstances stated, it is held that the fair market price, or constructive sale price, to be used in computing the tax due on such sale is 40 percent off the retail list price of the parts, which was the price for which such parts were sold by *M* in the ordinary course of trade. Accordingly, a taxable transaction occurred at

the time of the sale by *M* to *O*, and *M* incurs liability for the tax at the time such sale was made, and the tax is computed on the basis of 40 percent off the retail list price of the parts sold.

(Also Section 4141.) Rev. Rul. 59–139

For purposes of computing the manufacturers excise tax, import duties, customs handling fees, ocean freight, and other expenses incurred in connection with the purchase and importation of phonograph records are considered merely elements of the cost of such imported records. Therefore any separate charges made by an importer for such expenses with respect to the sale of the records must be included in the tax base. However, charges for expenses actually incurred by the importer for freight and insurance in connection with the shipment of the records from the point of importation in this country direct to the customer may be excluded in determining the price for which the records are sold by the importer.

Advice has been requested whether the manufacturers excise tax on the sale of phonograph records by the importer thereof applies to charges for expenses incurred in connection with the purchase and importation of the records, when those charges are billed separately by the importer.

A domestic company offers for sale imported phonograph records. When an order for such records is received from a customer, it is relayed by the company from this country to a foreign manufacturer with instructions to ship the records direct to the customer. The company bills the customer separately for the sale price of the records and for the expenses incurred in connection with the importation of the records such as import duties, customs handling fees, and ocean freight.

Section 4141 of the Internal Revenue Code of 1954 imposes upon the sale of phonograph records by the manufacturer, producer, or importer thereof, a tax equivalent to a stated percentage of the price for which sold. For the purpose of determining the price for which an article is sold, section 4216(a) of the Code provides that a transportation, delivery, insurance, installation, or other charge shall be excluded from the price only if the amount thereof is established to the satisfaction of the Secretary of the Treasury or his delegate.

In any case involving two movements, either actual or constructive, of the taxable goods from the supplier to the taxpayer vendor, in the instant case the importer, and the other from the vendor to his vendee, no exclusion would be allowable for the charges for the first of these movements but an exclusion would be allowable for the charges for the second.

It is held that import duties, customs handling fees, ocean freight, and other expenses incurred by a taxpayer in connection with the purchase and importation of phonograph records are considered merely elements of the cost of the imported records. Therefore, any separate charges made by the importer for such expenses with respect to the sale of the records must be included in the tax base. However, charges made by the importer for expenses actually incurred by the importer for freight and insurance in connection with the shipment of the records from the point of importation in this country direct to the customer may be excluded in determining the sale price for the purpose of computing the tax.

Rev. Rul. 59–163

M company, a corporation, manufactures articles which are subject to the manufacturers excise tax. *N* company, a corporation, handles all of the domestic sales of the articles produced by *M*. The two companies have the same stockholders, they occupy the same premises, and the same employees maintain the books and records of both companies. No sales invoices are made for transactions between *M* and *N*, but a journal entry is made at the end of each month to account for such transactions. *Held*, under these circumstances, there is no actual sale of articles by *M* to *N*, but only a bookkeeping transaction. The taxable sale occurs when title to the articles passes to the first independent distributor or jobber. Furthermore, advertising and selling expenses are not to be excluded from the selling price in computing the manufacturers excise tax irrespective of whether these expenses are incurred by *M* or *N*.

Advice has been requested concerning the determination of the taxable selling price of certain articles which are subject to the manufacturers excise tax and are sold under the circumstances described below.

M company, a corporation, manufactures articles, which are subject to the manufacturers excise tax, for sale in both domestic and foreign markets. The officers and stockholders of *M* formed *N* company, a corporation, to handle all of the domestic sales. The two companies have the same stockholders. The books and records of the two companies are maintained by the same employees in the same office space. No sales invoices are prepared for transactions between *M* and *N*, but a journal entry is made at the end of each month to account for the transactions between the two companies. The articles are not delivered by *M* to *N*, but are delivered to carriers for shipment to customers directly from *M*'s production line. *N* purportedly incurs advertising and selling expenses in promoting the sale of the articles.

In setting forth special provisions applicable to the manufacturers excise tax, section 4216(a) of the Internal Revenue Code of 1954 provides that in determining the price for which an article is sold, a transportation, delivery, insurance, installation or other charge (not otherwise required to be included) shall be excluded from the price for which an article is sold. Section 4216(b) of the Code provides that, if an article is sold (otherwise than through an arm's length transaction) at less than fair market price, the manufacturers excise tax shall (if based on the price for which the article is sold) be computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary of the Treasury or his delegate.

Section 316.1(f) of Regulations 46, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, defines the term "sale" as an agreement whereby the seller transfers the property (that is, the title or the substantial incidents of ownership) in goods to the buyer for a consideration called the price, which may consist of money, services, or other things. Section 316.15(c) of the regulations provides that all sales at wholesale are subject to tax on the basis of the actual sale price of each article so sold.

In the case of *Kin-Septic Co.* v. *United States*, 64 Fed. Supp. 142, the United States Court of Claims held that the Commissioner of Internal Revenue could treat two corporations as one organization

for purposes of computing the manufacturers excise tax where the same stockholder owned and managed both corporations and both corporations used the same premises and the same employees.

In refuting the petitioner's contention that certain advertising and selling expenses fall within the term "other charge" as used in language similar to that now included in section 4216(a) of the Code, the Supreme Court of the United States held in the case of *The F. W. Fitch Co.* v. *United States of America*, 323 U.S. 582, Ct. D. 1625, C.B. 1945, 433, that such expenses incurred by the manufacturer clearly fall within the class of charges which Congress intended to be included in the tax base. The Court stated, "Regardless of whether we consider such expenses technically as manufacturing costs, it is obvious that they are incurred prior to the actual shipment of articles to wholesale purchasers and that they enter into the composition of the wholesale selling price. Even if the purchaser accepts delivery at the factory, he pays for the advertising and selling expenses. Thus, they must be included in the taxable sales price."

Accordingly, under the circumstances set forth above, it is held that there is no actual sale of articles by *M* to *N* but only a bookkeeping transaction; and the taxable sale or transaction occurs when title to the articles passes to the first independent distributor or jobber, and the manufacturers excise tax is based upon the actual wholesale price for which the articles are sold in each instance. It is further held that advertising and selling expenses incurred by *M* and *N* are not to be excluded from the selling price in determining the price for which the articles are sold.

(Also Section 4211.) Rev. Rul. 59–203

A weighted average formula for computing excludable transportation and delivery charges may be used in determining the basis for the manufacturers excise tax imposed by section 4211 of the Internal Revenue Code of 1954, with respect to sales of matches in those instances where the tax computed at two cents per 1,000 is more than ten percent of the manufacturer's selling price.

The Internal Revenue Service has been asked to approve the use of a weighted average formula for computing excludable transportation and delivery charges in determining the basis for the manufacturers excise tax with respect to sales of matches in those instances where the tax computed at two cents per 1,000 is more than ten percent of the manufacturer's selling price.

Section 4211 of the Internal Revenue Code of 1954 imposes upon the sale by the manufacturer, producer, or importer of matches, a tax of two cents per 1,000 matches *but not more than ten percent of the price for which so sold*, except that in the case of fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem, packed in boxes or in bulk, the tax shall be five and one-half cents per 1,000 matches. Under the provisions of section 4216(a) of the Code, in determining the price for which an article is sold there shall be excluded charges for transportation and delivery costs actually incurred in connection with the delivery of an article to a purchaser pursuant to a bona fide sale. Thus, in determining whether the ten percent limitation will apply, the manufacturer may exclude the applicable transportation or delivery costs in determining the price for which the matches are sold.

A company manufactures several types of matches. The matches are sold on a tax-included, delivered basis. In order to reduce the clerical expense involved in computing the excludable transportation and delivery expense in determining the adjusted price for which the matches are sold, the manufacturer proposes to use a weighted average cost of such expenses for each type of matches sold. This weighted average cost, which would be excluded from the tax-included, delivered selling price of matches in those instances where the tax computed at two cents per 1,000 is more than ten percent of the price for which sold, would be determined as follows:

Total transportation and delivery costs for the preceding calendar year	$1,000,000
Deduct: Nonexcludable transportation costs	100,000
Net excludable transportation and delivery costs	$900,000
Total weight of matches shipped during the preceding year	50,000,000 pounds
Average excludable transportation and delivery cost per pound of matches shipped ($900,000÷50,000,000 pounds)	$0.18 per pound

Determination of excludable transportation and delivery costs:

Kind of matches	Pounds per case	Rate per pound	Amount excludable per case
"A" matches	26	$0.018	$0.468
"B" matches	26	.018	.468
"C" matches	29	.018	.522
"D" matches	18.8	.018	.338

This resulting cost per case for each kind of matches would be deducted from the tax-included, delivered selling price of each case of such matches sold during the current calendar year in arriving at the portion of the selling price subject to tentative computation of the ad valorem tax for comparison with the computation of tax at the rate of two cents per 1,000 matches.

Therefore, if a case of type "A" matches were sold for $10.25 and contained 50,000 matches, the tax would be computed as follows:

(1) Tentative tax at 2¢ per 1,000 matches (.02 x 50)		$1.00
(2) Charge for matches, including transportation and tax	$10.25	
Less: Excludable charges for transportation (weighted average cost)	.468	
Tax-included sale price of matches	9.782	
(3) Tentative ad valorem tax (10/110 x 9.78)		.89

Thus, since the tax computed at two cents per 1,000 would exceed ten per cent of the selling price, the tax due on this sale would be 89 cents.

The Service will approve the use of a weighted average cost formula similar to the one described above for determining the excludable transportation and delivery charges on an individual basis for each match manufacturer, producer, or importer. This formula may be used in determining the basis for the manufacturers excise tax imposed by section 4211 of the Code, with respect to the sale of matches in those instances where the tax computed at two cents per 1,000 would exceed ten percent of the manufacturer's selling price. The weighted average cost of transportation and delivery should be computed by using the applicable sales, transportation, and delivery

cost figures for the preceding calendar year. The resulting transportation and delivery cost per case for each kind of matches should be deducted from the tax-included, delivered selling price of each case sold during the current calendar year. A new formula should be developed for each subsequent year based upon the prior year's transportation and delivery costs. Each year's formula must be forwarded for approval to the office of the District Director of Internal Revenue for the district in which the manufacturer is located.

In determining the net excludable transportation and delivery costs for a given year, the following items should be eliminated:

1. All shipping expense up to the time of delivery of the merchandise to the carrier.
2. All freight charges on returned goods.
3. All freight charges on matches subject to tax at the rate of two cents per thousand.
4. All freight charges on nontaxable sales.

See G.C.M. 21114, C.B. 1939–1 (Part I), 351, which sets forth guides governing the inclusion or exclusion of cost of transportation and delivery charges in determining the prices for which certain articles are sold.

Applicability of the manufacturers excise tax where a taxable musical instrument is sold in combination with certain nontaxable articles in a common carton. See Rev. Rul. 59–16, page 340.

Applicability of the manufacturers excise tax on phonograph records to specially-designed albums sold in connection with phonograph records. See Rev. Rul. 59–181, page 329.

Regulations under the Internal Revenue Code of 1939 supplemented and made applicable to the 1954 Code. See T. D. 6340, page 694.

Regulations under the Internal Revenue Code of 1954. See T. D. 6355, page 795.

SECTION 4218.—USE BY MANUFACTURER OR IMPORTER CONSIDERED SALE

Rev. Rul. 59–63

The manufacturers excise tax on the use by the manufacturer of a taxable article in the further manufacture of a nontaxable article, imposed by section 4218 of the Internal Revenue Code of 1954 prior to its amendment by the Excise Tax Technical Changes Act of 1958, is not affected by the fact that the nontaxable end-product article may be sold by the manufacturer for the exclusive use of a State or political subdivision thereof.

Advice has been requested concerning the applicability of the manufacturers excise tax to a manufacturer's use, prior to January 1, 1959, of electric light bulbs in the manufacture of nontaxable articles

which, in turn, are sold by the manufacturer to States or political subdivisions thereof.

For example, a manufacturer of electric light bulbs uses some of those bulbs in the manufacture of scoreboards, information boards, or motion picture projectors which are not of the household type. The manufacturer sells some of the end-product articles to a political subdivision of a State.

Section 4131 of the Internal Revenue Code of 1954 imposes a tax upon the sale by the manufacturer, producer, or importer of electric light bulbs and tubes. Under the provisions of section 4218 of the Code, as it applies to the use of taxable articles prior to the effective date of the Excise Tax Technical Changes Act, Public Law 85–859, C.B. 1958–3, 92, if any person manufactures, produces, or imports an article, with certain exceptions not material here, and uses it insead of selling it, he is liable for the manufacturers excise tax with respect to the use of such article in the same manner as if it were sold by him. This provision does not apply if the article is used as material in the manufacture or production of, or as a component part of, another article to be manufactured or produced by such person which will be subject to the manufacturers excise taxes or will be sold free of tax by virtue of section 4220 or 4224 of the Code.

Pursuant to section 4220 of the Code, no manufacturers excise tax shall be imposed with respect to the sale of any article, with certain exceptions not material here, for use by the vendee as material in the manufacture or production of, or as a component part of, a taxable article, or for resale by the vendee for such use by his vendee, if such article is in due course so resold. Section 4224 of the Code provides that the manufacturers excise taxes shall not be imposed upon the sale of any article for the exclusive use of any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia.

Section 4224 of the Code is not applicable in the instant case, because that section provides exemption from the tax when *taxable articles are sold* for the purpose specified and not when *nontaxable articles are sold.* Moreover, section 4220 of the Code is inapplicable since the manufacturer did not sell the light bulbs to a vendee for further manufacture of a taxable article.

Therefore, it is held that, subject to certain exceptions not material here, the liability for the manufacturers excise tax imposed by section 4218 of the Code upon the use of taxable articles by the manufacturer thereof in the production of nontaxable articles is not affected by the fact that the nontaxable articles may be sold by the manufacturer for the exclusive use of a State or political subdivision thereof. Accordingly, the manufacturers excise tax applies to the manufacturer's use of electric light bulbs in the production of scoreboards, information boards, and motion picture projectors not of the household type, even though these nontaxable articles may be sold for the exclusive use of a State or political subdivision thereof.

Applicability of the manufacturers excise taxes on gasoline and lubricating oil to gasoline and lubricating oil which are given away by a producer for use in stock car races. See Rev. Rul. 59–126, page 321.

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SECTION 4219.—APPLICATION OF TAX IN CASE OF SALES BY OTHER THAN MANUFACTURER OR IMPORTER

Applicability of the manufacturers excise tax to the taxable sale by an importer to its newly formed and wholly owned affiliate. See Rev. Rul. 59–74, page 350.

SUBCHAPTER G.—EXEMPTIONS, REGISTRATION, ETC.

SECTION 4221.—CERTAIN TAX-FREE SALES

(Also Section 4091.) Rev. Rul. 59–204

Lubricating oil which is placed by a manufacturer in an enclosed assembly or housing of a taxable article, whether or not it is sealed in, is a component material used in the manufacture of such article. Therefore, by virtue of section 4221(a)(1) of the Internal Revenue Code of 1954, lubricating oil may be sold by the manufacturer thereof for such use, or for resale for such use, free of the manufacturers excise tax imposed by section 4091 of the Code.

S.T. 581, C.B. XI–2, 451 (1932), and Revenue Ruling 58–477, C.B. 1958–2, 782, modified; S.T. 571, C.B. XI–2, 451 (1932), revoked.

Advice has been requested whether sales of lubricating oil by the manufacturer or producer thereof may be made tax-free, direct to a manufacturer or to a distributor for resale to a manufacturer, for use in the manufacture of a taxable article, such as, for example, a phonograph mechanism. The oil is to be placed in an enclosed assembly or housing for the purpose of providing lubrication for gears, bearings, etc.

Section 4091 of the Internal Revenue Code of 1954 imposes a tax on cutting oils and other lubricating oils sold by the manufacturer or producer thereof. Under the provisions of section 4221(a)(1) of the Code, no manufacturers excise tax shall be imposed on the sale by the manufacturer or producer of an article for use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture.

Section 4221(d)(6)(A) of the Code provides that an article shall be treated as sold for use in further manufacture if such article is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another article subject to the manufacturers excise tax to be manufactured or produced by him.

S.T. 571, C.B. XI–2, 451 (1932), holds that lubricating oil sold to a manufacturer of automobiles who furnished this oil in the crankcase of automobiles when sold to consumers is not a component part of the automobiles. However, in S.T. 581, C.B. XI–2, 451 (1932), it is held that oil which is sealed in the crankcase of the compressor of a mechanical refrigerator is a component material in the manufacture of such compressor. Moreover, Revenue Ruling 58–477, C.B. 1958–2, 782, holds that oil placed in automatic transmissions by the manufacturer of new automobiles for the purpose of serving as a hydraulic medium and lubricant, and which is contained in the automatic transmissions at the time the automobiles are sold by the manufacturer, is used as material in the manufacture of, or as a component part of, the new automobiles.

In the case of *Chrysler Corporation* v. *The United States*, 149 F. Supp. 381, relating to a claim for credit of the manufacturers excise tax paid on gasoline and oil used in the manufacture of automobiles, the United States Court of Claims held as follows:

* * * But the gasoline and oil used for testing, in spraying the pistons and rings, in propelling intraplant lift trucks, and in lubricating manufacturing machinery, were no part of the automobile sold. They had been consumed in the manufacturing process.

* * * * * * *

The only oil that could be said to have been sold was the oil left in the engine and other parts when the finished automobile was sold. * * * We are of opinion that the manufacturer is entitled to a credit for the amount of the oil in the automobile when sold. This was the oil "to fill the crankcases of tested engines," "to fill tested transmissions," "to fill rear-axle assemblies," and "to fill carburetor air cleansers."

* * * * * * *

* * * * Component parts were sold with the automobile, and any material that went into its construction were sold with it; but things that were consumed in the manufacturing process were not sold.

* * * * * * *

Consequently, where the manufacturer of a taxable article places lubricating oil in an enclosed assembly or housing of that taxable article in such a manner that it is a part of the taxable article which is sold by the manufacturer, the oil is considered as being used as a component material in the manufacture of the taxable article, regardless of whether it is sealed in or whether it serves as a power transmission medium. Therefore, under the provisions of section 4221(a)(1) of the Code, it is held that lubricating oil may be sold by the manufacturer or producer thereof, free of the tax imposed by section 4091, for use in the manufacture of a *taxable* article, or for resale for such use, provided the requirements of the applicable regulations with respect to tax-free sales and registration are met. On the other hand, the exemption provided by section 4221(a)(1) of the Code does not apply where oil is sold for use as a component material in the manufacture of a nontaxable article.

However, it should be noted that, under the provisions of section 314.43 of Regulations 44, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, oil may be sold tax free for use as a *nonlubricating* component material in the manufacture of a nontaxable article.

S.T. 581, C.B. XI–2, 451 (1932), and Revenue Ruling 58–477, C.B. 1958–2, 782, are modified. S.T. 571, C.B. XI–2, 451 (1932), is hereby revoked.

Rev. Rul. 59–205

The exemption from the manufacturers excise tax of certain supplies for vessels and aircraft, provided by section 4221(a)(3) of the Internal Revenue Code of 1954, as redesignated and amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, applies to the sale of articles for use on vessels and aircraft of the United States Coast Guard.

Advice has been requested whether the exemption from the manufacturers excise tax of certain supplies for vessels and aircraft, provided by section 4221(a)(3) of the Internal Revenue Code of 1954 (section 4222 prior to its redesignation and amendment by the Excise

Tax Technical Changes Act of 1958, Public Law 85–859, C.B. 1958–3, 92), applies to the sale of taxable articles for use on vessels and aircraft of the United States Coast Guard.

Section 4221(a)(3) of the Code, as amended, provides that no manufacturers excise tax shall be imposed on the sale of an article for use by the purchaser as supplies for vessels or aircraft, if such use is to occur before any other use. Section 4221(d)(3) of the Code defines the term "supplies for vessels or aircraft" to mean fuel supplies, ships' stores, sea stores or legitimate equipment on vessels of war of the United States or of any foreign nation, and certain other types of vessels not pertinent here.

Section 316.28(e) of Regulations 46, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, provides that the term "vessels of war of the United States" includes (1) every description of watercraft or other contrivance used, or capable of being used as a means of transportation on water and constituting a part of the armed forces of the United States and (2) aircraft owned by the United States and constituting a part of the armed forces thereof.

Prior to August 1949, Section 1 of Title 14 of the United States Code provided that the Coast Guard should be a military service and constitute a branch of the land and naval forces of the United States at all times and should operate under the Treasury Department in time of peace and operate as a part of the Navy, subject to the orders of the Secretary of the Navy, in time of war or when the President should so direct.

Accordingly, it was held in S.T. 724, C.B. XIII–1, 390 (1934), that sales made to vessels of the Coast Guard were not exempt as sales made to "vessels of war of the United States," within the purview of section 630 of the Revenue Act of 1932, except when such vessels were operating as a part of the Navy, subject to orders of the Secretary of the Navy, in time of war or by direction of the President.

However, the Act of August 4, 1949, Public Law 207, 81st Congress, 14 U.S.C. 1, changed the term "land and naval forces" to "armed forces" and provided that the Coast Guard, as established January 28, 1915, shall be a military service and a branch of the armed forces of the United States at all times. That Act also provided that the Coast Guard shall be a service in the Treasury Department, except when operating as a service in the Navy. Moreover, section 7701(a)(15) of the Internal Revenue Code of 1954 provides that the term "armed forces of the United States" includes the Coast Guard.

Prior to the amendment of section 1 of Title 14 of the United States Code by the Act of August 4, 1949, the applicability of the exemption to sales of articles for use as supplies for vessels or aircraft of the United State Coast Guard depended upon whether the vessels were operating as a part of the Navy. However, in view of that amendment and in view of the provisions of section 7701(a)(15) of the Internal Revenue Code of 1954, this distinction is no longer controlling and S.T. 724 is no longer applicable.

Accordingly, it is held that, since the Coast Guard is considered to be a part of the armed forces of the United States, the exemption from manufacturers excise taxes provided by section 4221(a)(3) of the Code, applies to the sale of articles for use as fuel supplies, ships'

stores, sea stores, or legitimate equipment on vessels and aircraft of the United States Coast Guard. Similarly, the exemption provided by section 4041(e) of the Code would apply to the sale of special motor fuels for use as supplies for vessels or aircraft of the United States Coast Guard.

Temporary rules implementing the provisions of the Excise Tax Technical Changes Act of 1958 which accord an exemption from the manufacturers excise taxes to certain nonprofit educational organizations. See T.D. 6344, page 776.

SECTION 4222.—EXEMPTION FROM TAX OF CERTAIN SUPPLIES FOR VESSELS AND AIRPLANES

Rev. Rul. 59–17

A piano sold for use on a United States Navy ship, under an exemption certificate signed by a ship's officer, is in the nature of ships' stores, sea stores, or legitimate equipment for use on a vessel of the type named in section 4222 of the Internal Revenue Code of 1954, prior to its redesignation by the Excise Tax Technical Changes Act of 1958, Public Law 85–859. Accordingly, where a dealer resells a piano for use on a United States Navy ship, the manufacturer of the piano, upon compliance with the regulations, will be entitled to a credit or refund in the amount of the manufacturers excise tax paid on his sale of the piano.

Advice has been requested whether a manufacturer is entitled to a credit or refund of the manufacturers excise tax, imposed on sales of musical instruments, which was paid on the sale of a piano to a dealer who resold the piano for use on a United States Navy ship.

A dealer who sold a piano for use on a United States Navy ship has requested that the manufacturer of the piano refund to him an amount equal to the manufacturers excise tax paid on the sale of the piano by the manufacturer. The dealer has a purchase order for the piano and an exemption certificate signed by an officer of the ship. The manufacturer feels that credit or refund of the tax will not be allowable since sales of articles for the exclusive use of the United States are no longer exempt from the manufacturers excise tax.

Section 4151 of the Internal Revenue Code of 1954 imposes a tax upon the sale of musical instruments by the manufacturer, producer, or importer.

The general exemption from the manufacturers excise tax previously provided under section 3442 of the Internal Revenue Code of 1939 with respect to articles sold for the exclusive use of the United States was terminated by the Revenue Act of 1943, effective June 1, 1944, except in those cases where the articles are sold to the United States pursuant to a contract entered into prior to that date. See Treasury Decision 5418, C. B. 1944, 609, and Mimeograph 5681, C. B. 1944, 589.

However, section 4222 of the 1954 Code, prior to its redesignation by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, C. B. 1958–3, 92, provided that, under regulations prescribed by the Secretary of the Treasury or his delegate, no manufacturers excise tax shall be imposed on articles sold for use as fuel supplies, ships'

stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade, or trade between the Atlantic and Pacific ports of the United States, or between the United States and any of its possessions.

Section 316.28(g) of Regulations 46, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, provides that no sale may be made tax free to a dealer for resale for use as fuel supplies, ships' stores, sea stores, or legitimate equipment for the vessels enumerated, even though it is known at the time of the sale that the article will be resold. However, where any dealer resells a tax paid article for such use, the manufacturer who paid the tax to the United States on his sale of the article may file a claim for credit or refund under section 6416(b)(2)(B) of the Code by complying with the provisions of section 316.204 of the regulations.

It is held that a piano sold for use on a United States Navy ship, under an exemption certificate signed by a ship's officer, is in the nature of ships' stores, sea stores, or legitimate equipment for use on a vessel of the type named in section 4222 of the Code. Accordingly, where a dealer resells a piano for use on a United States Navy ship, the manufacturer of the piano, upon compliance with section 316.204 of Regulations 46, will be entitled to a credit or refund in the amount of the manufacturers excise tax paid on his sale of the piano.

Temporary rules relating to the registration requirements of section 4222 of the 1954 Code, as added by the Excise Tax Technical Changes Act of 1958. See T.D. 6344, page 776.

CHAPTER 33.—FACILITIES AND SERVICES

SUBCHAPTER A.—ADMISSIONS AND DUES

PART I.—ADMISSIONS

SECTION 4231.—IMPOSITION OF TAX

Rev. Rul. 59–18

For purposes of the admissions tax, the exclusion of the first dollar paid for admission provided for in section 4231(1) of the Internal Revenue Code of 1954, as amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, is applicable only to payments for admission made after December 31, 1958. Accordingly, the exclusion does not apply to payments for admission made prior to January 1, 1959, even though the admissions do not occur until January 1, 1959, or after that date.

Advice has been requested concerning the applicability of the admissions tax to payments made for admission prior to January 1, 1959, where the admissions do not take place until January 1, 1959, or after that date.

Section 4231(1) of the Internal Revenue Code of 1954, as amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859,

C.B. 1958–3, 92, imposes a tax of one cent for each ten cents or major fraction thereof of the amount in excess of one dollar paid for admission to any place. In the case of a season ticket or subscription for admisison to any place, a tax is imposed of one cent for each ten cents or major fraction thereof of the amount paid for such season ticket or subscription which is in excess of one dollar multiplied by the number of admissions provided by such ticket or subscription. The amendment made to section 4231(1) of the Code by the Excise Tax Technical Changes Act of 1958 takes effect on January 1, 1959.

Section 101.4(a) of Regulations 43, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, provides, in part, that the tax applies to the payment for admission, not to the admission itself, and as soon as payment for admission is made the tax attaches, whether or not the admission ever takes place.

It is held that the exclusion of the first dollar paid for admission, provided by the Excise Tax Technical Changes Act of 1958, is applicable only to payments for admission made after December 31, 1958. Accordingly, the exclusion does not apply to payments for admission made prior to January 1, 1959, even though the admissions do not occur until January 1, 1959, or after that date. See S.T. 904, C.B. 1940–2, 320, for a similar conclusion relating to a change in the admission tax rates under prior law.

Rev. Rul. 59–19

Under section 4231(1) of the Internal Revenue Code of 1954, as amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, admission tickets may not be printed showing the established price for admission to be $1.45 and the Federal tax to be five cents in order to obtain a total charge of $1.50, since the sale of such tickets would result in a collection of a greater amount of admissions tax than that which is legally due.

Advice has been requested whether admission tickets to be sold on or after January 1, 1959, may be printed showing the established price for admission to be $1.45 and the Federal tax to be five cents in order to obtain a total charge of $1.50.

Section 4231(1) of the Internal Revenue Code of 1954, as amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, effective January 1, 1959, C.B. 1958–3, 92, imposes a tax of one cent for each ten cents or major fraction thereof of the amount in excess of one dollar paid for admission to any place.

Under the prescribed tax rate, the tax on admission would be four cents on an established price of $1.45 and five cents on an established price of $1.46; therefore, it is impossible to have a properly computed total charge of $1.50. Likewise, it is not possible to devise combinations that will result in total charges for admission and tax of $2.05, $2.60, $3.15, and certain larger amounts.

Accordingly, it is held that under section 4231(1) of the Code, as amended, admission tickets may not be printed showing the established price of admission to be $1.45 and the Federal tax to be five cents. The sale of such tickets would result in a collection of a greater amount of admissions tax than that which is legally due. See Mimeograph 5656, C.B. 1944, 635, relating to similar circumstances under prior law.

The computation of the tax on admissions on amounts paid for season tickets of admission sold on or after January 1, 1959.

Advice has been requested concerning the computation of the admissions tax on amounts paid for season tickets of admission on or after January 1, 1959. A baseball club encourages preseason ticket sales by offering for sale a season ticket for a box seat at $100. The team plays 75 home games during the season, and the cost of a single admission ticket for a box seat, including the admissions tax, is $2.25.

Section 4231(1) of the Code, as amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, effective January 1, 1959, C.B. 1958–3, 92, imposes a tax of one cent for each ten cents or major fraction thereof of the amount in excess of one dollar paid for admission to any place. In the case of a season ticket or subscription for admission to any place, that section imposes a tax of one cent for each ten cents or major fraction thereof of the amount paid for such season ticket or subscription which is in excess of one dollar multiplied by the number of admissions provided by such season ticket or subscription.

Accordingly, where a season ticket for admission to 75 games is sold on or after January 1, 1959, and the price of the season ticket is $100, excluding the admissions tax, the taxable portion of the charge is computed as follows:

$100.00	Established Price of the Season Ticket
—75.00	(75 games × $1.00 exclusion)
$25.00	Taxable Amount

At the rate of one cent for each ten cents or major fraction thereof, the tax on admissions with respect to a taxable amount of $25.00 is $2.50. Therefore, the club should collect $100 plus the admissions tax of $2.50, or a total of $102.50, from the purchaser of a season ticket.

Where the season ticket for admission to 75 games is sold on or after January 1, 1959, and its tax-included price is $100, the tax can be computed generally as follows:

$100.00	Established Price of the Season Ticket, including the Admission Tax
—75.00	Exclusion (75 games × $1 per game)
$25.00	Excess Amount, including the Admission Tax

Since the rate of tax is one cent on each ten cents or major fraction thereof of the amount paid for a season ticket which is in excess of one dollar multiplied by the number of admissions provided by such season ticket, one-eleventh of the excess tax-included amount would, in general, represent the correct tax. Therefore, the tax is $2.27 ($\frac{1}{11}$ × $25). Compare Revenue Ruling 59–19, page 363, this Bulletin, which holds that admission tickets may not be printed properly showing a total charge for admission and tax of $1.50, $2.05, $2.60, and certain larger amounts since the sale of such tickets would result in the collection of an incorrect amount of tax.

Rev. Rul. 59–164

An amount paid to gain admission to an auction sale represents a payment for admission subject to the tax on admissions, imposed by section 4231(1) of the Internal Revenue Code of 1954. The fact that the admission payment may be refunded or credited to the purchase of an article at the sale does not change the nature of the charge. However, if the amount of the admission payment is refunded when the person making the payment makes a purchase at the sale or if the amount of the payment is credited to the purchase made at the sale, then the amount of the admissions tax should also be refunded or credited.

Advice has been requested whether, under the circumstances described below, amounts paid to enter a room in which an auction sale is being conducted are subject to the tax on admissions.

Due to space limitations, an auctioneer makes a charge of two dollars a person for admission to the room in which an auction is being conducted in order to discourage people who are not interested in making a purchase from attending the auction. The admission fee is collected at the door of the auction room and all persons entering the room must pay the charge. When a spectator is a successful bidder, his admission payment is refunded to him or credited against his purchase. Where a spectator does not make a purchase, he receives no refund and the auctioneer keeps the admission payment.

Section 4231(1) of the Internal Revenue Code of 1954, as amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, C.B. 1958–3, 92, imposes a tax of one cent for each ten cents or major fraction thereof of the amount in excess of one dollar paid for admission to any place.

Section 101.2(a) of Regulations 43, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, provides, in part, that the tax is imposed on "the amount paid for admission to any place," and applies to the amount which must be paid in order to gain admission to a place. The term "admission" means the right or privilege to enter into a place.

Section 6415(d) of the Code provides that any person making a refund of any payment on which tax imposed by certain enumerated sections of the Code, including section 4231(1), has been collected may repay therewith the amount of tax collected on such payment.

Section 101.43 of the regulations provides, in part, that where an amount paid for admission is refunded it will be treated, as far as tax liability is concerned, as not having been paid, and the tax collected should be refunded to the taxpayer at the same time the payment for admission is refunded.

It is held that an amount paid to gain admission to an auction represents a payment for admission within the meaning of section 4231 of the Code. The fact that the payment for admission may be refunded or credited to the purchase of an article at the sale does not change the nature of the payment. Accordingly, in the instant case, the tax on admissions will apply to the payment for admission at the time it is made, that is, when it is collected at the door of the auction room. However, if the amount of the payment for admission is refunded when the person making the payment makes a purchase

at the sale or if the amount of the payment is credited to the purchase made at the sale, then the amount of the admissions tax should also be refunded or credited. The tax collected on the payments for admission which are not so refunded or credited should be reported and paid over to the Internal Revenue Service in the manner prescribed in the Code and regulations.

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

Temporary rules relating to collection by proprietors of the cabaret tax from concessionaires under section 4231(6) of the 1954 Code, as amended by the Excise Tax Technical Changes Act of 1958. See T.D. 6347, page 788.

PART II.—CLUB DUES

SECTION 4241.—IMPOSITION OF TAX

Whether for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

Applicability of the limitations on assessment to the direct assessment of the club dues tax against members of social, athletic, or sporting clubs who fail or refuse to pay the tax on initiation fees and the tax on dues or membership fees. See Rev. Rul. 59–127, page 656.

Temporary rules relating to payment of club dues tax by life member. See T.D. 6349, page 792.

SECTION 4243.—EXEMPTION

Rev. Rul. 59–147

An organization which has been granted an exemption from Federal income tax under the provisions of section 501(c)(7) of the Internal Revenue Code of 1954 may qualify for the exemption from

the excise tax on club dues as a fraternal organization under the provisions of section 4243 of the Code.
Revenue Ruling 56–334, C.B. 1956–2, 831, amplified.

The Internal Revenue Service has been asked whether an organization which has been granted an exemption from Federal income tax under the provisions of section 501(c)(7) of the Internal Revenue Code of 1954 can qualify for the exemption from the excise tax on club dues as a fraternal organization under the provisions of section 4243 of the Code.

The organization consists of a national chapter and local chapters in various cities. Under the organization's constitution, the national chapter is empowered to grant dispensation and charters to the local chapters and for good cause to suspend, annul, or revoke the same. The constitutions and bylaws of the local chapters are drafted along the lines of the national constitution and bylaws. It is also required that each member of a local chapter be initiated according to the ritual of the national chapter. However, each local chapter makes its own decisions concerning the matter of dues. The national chapter and some of its local chapters have been granted an exemption from Federal income tax under section 501(c)(7) of the Code as clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes.

Under the provisions of section 4241(a)(1) and (2) of the Code, a tax is imposed upon the amounts paid as dues or membership fees and initiation fees to any social, athletic, or sporting club or organization. Revenue Ruling 56–334, C.B. 1956–2, 831, holds that an organization which has been held exempt from Federal income tax under section 501(c)(7) of the Code, as a club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder, is considered to be a social, athletic, or sporting club or organization for the purpose of the excise tax on club dues imposed by section 4241 of the Code. Accordingly, the dues, membership, and initiation fees paid to the instant organization fall within the scope of section 4241 of the Code.

However, section 4243 of the Code exempts from the provisions of section 4241 of the Code all amounts paid as dues or fees to a fraternal society, order, or association, operating under the lodge system. Section 101.25 of Regulations 43, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, states, in part, that most fraternal organizations are in effect social clubs, but if they are operating under the lodge system, payments to them are expressly exempt from the tax. Section 101.30 of the regulations defines the term "operating under the lodge system" as carrying on activities under a form of organization that comprises local branches, chartered by a parent organization and largely self-governing, called "lodges," "chapters," or the like. Accordingly, it is held that the organization in the instant case qualifies as a fraternal organization within the scope of section 4243 of the Code and, therefore, that all amounts paid to such organization as dues and fees are exempt from the tax on club dues under section 4243 of the Code.

Revenue Ruling 56–334, *supra*, is amplified.

SUBCHAPTER B.—COMMUNICATIONS

SECTION 4251.—IMPOSITION OF TAX

26 CFR 42.4251: Statutory provisions; imposition of tax. T. D. 6356 [1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER D, PART 42.—FACILITIES AND SERVICES EXCISE TAXES

Regulations under sections 4251 to 4254, inclusive, of the Internal Revenue Code of 1954, as amended, relating to taxes on communications services or facilities.

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

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

On October 18, 1958, notice of proposed rulemaking regarding the regulations under sections 4251 to 4254, inclusive, of the Internal Revenue Code of 1954, as amended, relating to taxes on communications services or facilities, was published in the Federal Register (23 F. R. 8063). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted without change.

PARAGRAPH 1. Section 42.0–3 of the Facilities and Services Excise Tax Regulations (26 CFR Part 42) is hereby amended by striking paragraph (b) and inserting in lieu thereof the following:

(b) *Subpart C.* The regulations in subpart C of this part apply, unless otherwise specified in such subpart, to all amounts paid on or after January 1, 1955, for communications services or facilities.

PAR. 2. The following regulations are hereby prescribed under sections 4251 to 4254, inclusive, of the Internal Revenue Code of 1954, as amended:

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[1] 24 F. R. 358.

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Subpart C.—Communications

§ 42.4251 Statutory Provisions; Imposition of Tax.

SEC. 4251. IMPOSITION OF TAX.

There is hereby imposed on amounts paid for the communication services or facilities enumerated in the following table a tax equal to the percent of the amount so paid as is specified in such table:

Taxable Service	*Rate of tax*
	Percent
Local telephone service	10
Long distance telephone service	10
Telegraph service	10
Leased wire, teletypewriter or talking circuit special service	10
Wire and equipment service	8

The taxes imposed by this section shall be paid by the person paying for the services or facilities.

§ 42.4251–1 Imposition and Rates of Tax.—(a) *Imposition of tax.*—Section 4251 imposes a tax on amounts paid for local telephone service; long distance telephone service; telegraph service; leased wire, teletypewriter or talking circuit special service; and wire equipment service.

(b) *Rates of tax.*—Tax is imposed on amounts paid for each of the following services and facilities furnished at the rate specified below:

Taxable Service	*Rate of tax*
	Percent
Local telephone service	10
Long distance telephone service	10
Telegraph service	10
Leased wire, teletypewriter or talking circuit special service	10
Wire and equipment service	8

(c) *Amounts paid.*—The term "amounts paid" means the amounts collected for the communication services and facilities specified in paragraph (a) of this section, without regard to whether the charge therefor is paid or satisfied in money, service, or other valuable consideration. See also paragraph (c) of § 42.4252–1.

(d) *Liability for, and return of, tax.*—The taxes imposed by section 4251 are payable by the person paying for the services and facilities furnished, and shall be paid to the person furnishing the services and facilities who is required to collect the tax and return and pay over the tax in accordance with the applicable provisions of the regulations contained in subparts H and I of this part.

§ 42.4252 Statutory Provisions; Definitions.

SEC. 4252. DEFINITIONS.

(a) Local Telephone Service.—

As used in section 4251 the term, "local telephone service" means any telephone service not taxable as long distance telephone service; leased wire, teletypewriter or talking circuit special service; or wire and equipment service. Amounts paid for the installation of instruments, wires,

poles, switchboards, apparatus, and equipment shall not be considered amounts paid for service. This subsection shall not be construed as defining as local telephone service, amounts paid for services and facilities which are exempted from other communication taxes by section 4253(b).

(b) LONG DISTANCE TELEPHONE SERVICE.—As used in section 4251 the term "long distance telephone service" means a telephone or radio telephone message or conversation for which the toll charge is more than 24 cents and for which the charge is paid within the United States.

(c) TELEGRAPH SERVICE.—As used in section 4251 the term "telegraph service" means a telegraph, cable, or radio dispatch or message for which the charge is paid within the United States.

(d) LEASED WIRE, TELETYPEWRITER OR TALKING CIRCUIT SPECIAL SERVICE.—As used in section 4251 the term "leased wire, teletypewriter or talking circuit special service" does not include any service used exclusively in rendering a service taxable as wire and equipment service. The tax imposed by section 4251 with respect to a leased wire, teletypewriter or talking circuit special service shall apply whether or not the wires or services are within a local exchange area.

(e) WIRE AND EQUIPMENT SERVICE.—As used in section 4251 the term "wire and equipment service" shall include stock quotation and information services, burglar alarm or fire alarm service, and all other similar services, but not including service described in subsection (d) of this section. The tax imposed by section 4251 with respect to wire and equipment service shall apply whether or not the wires or services are within a local exchange area.

§ 42.4252–1 LOCAL TELEPHONE SERVICE.—(a) The term "local telephone service" means telephone service furnished within a local service area, and any telephone call between points which are not within the same local service area if the toll charge for such call is 24 cents or less. Such term includes generally the ordinary residential and business or commercial telephone service within a local service area, and includes all types of such service, such as individual line and party line telephones, and extension telephones. Where, in addition to the basic periodic charge for telephone service within the local service area, there are additional charges, for example, for calls in excess of a certain number or for calls between certain points within the same local service area, the telephone service for which such additional charges are made is included within the term "local telephone service" regardless of the amount of the total charge for any particular call within the local service area. These additional charges for services within a local service area, generally referred to as "message units", are not considered to be "toll charges". The term "local telephone service" includes any service furnished which is telephonic in nature, regardless of the commercial or other name or term by which such service may be known or designated, and which is not taxable as long distance telephone service; leased wire, teletypewriter or talking circuit special service; or wire and equipment service. For the definition of the term "toll charge", see paragraph (a) of § 42.4252–2. For provisions relating to coin-operated telephones, see section 4253(a) and § 42.4253–1.

(b) Notwithstanding the provisions of paragraph (a) of this section, the term "local telephone service" does not include any service which is included in the term "long distance telephone service", "leased wire, teletypewriter or talking circuit special service", or "wire and equipment service" (see §§ 42.4252–2, 42.4252–5, and 42.4252–6) and which is exempt from the tax imposed on any such service. For pro-

visions relating to such exemptions, see sections 4253, 4292, and 4293 and the regulations thereunder contained in this part.

(c) For purposes of the tax in respect of local telephone service, the term "amounts paid" means the amounts collected for the service, whether the charge for the service is paid or satisfied in money, service, or other valuable consideration, and whether the charge is made on a monthly or other periodic basis, or is based on the number of calls made, or is in the form of an assessment as in the case of a mutual telephone system. Where a basic periodic charge is made for the service, with additional charges for all calls or additional calls above a certain number, the additional charges are also subject to the tax.

(d) Where the charge for telephone service includes an additional charge for not making payment within a specified time, the total amount paid including the additional charge is the basis for computing the amount of tax due. Similarly, where a discount is allowed for the payment within a specified time of a charge for service rendered, the tax is to be computed on the amount actually paid.

(e) Assessments or charges paid by members or subscribers of a mutual or cooperative telephone company, association, or system for switching services or facilities, or for the repair or replacement of instruments, poles, wires, equipment, etc., incidental to ordinary maintenance, are subject to the tax.

(f) All amounts paid by subscribers for private branch exchange service, for the use of switchboard, switching, and other telephone equipment, for the use of trunk line facilities, for tie lines (within the local service area) connecting private branch exchanges within a local service area, are subject to the tax on local telephone service.

(g) Where a subscriber to local telephone service is outside the local service area and an additional charge is made on a mileage or other basis, the additional charge is regarded as a charge for leased wire service and is subject to the tax imposed by section 4251 on leased wire service. For provisions relating to the tax on leased wire service, see § 42.4252–5.

(h) The tax attaches to the total charge made to a hotel or similar subscriber for local telephone service furnished to the hotel or its guests, but no tax attaches to any charge made by the hotel for service rendered in placing the calls for its guests.

(i) No tax is imposed on amounts paid by subscribers as charges for the installation of instruments, wires, poles, switchboards, apparatus, and equipment.

(j) For other provisions relating to local telephone service, see § 42.4252–4.

§ 42.4252–2 Long Distance Telephone Service.—(a) The term "long distance telephone service" means any telephone or radio telephone message or conversation for which the toll charge is more than 24 cents and for which the charge is paid within the United States. A toll charge is a charge made for such a message or conversation to a place beyond the local service area. For the meaning of the term "United States", see paragraph (d) of § 42.4252–4. For provisions relating to any telephone or radio telephone message or conversation for which the toll charge is 24 cents or less, see paragraph (a) of § 42.4252–1.

(b) Any additional charge made for "overtime" in connection with a telephone or radio telephone message or conversation shall be added to the basic toll charge for the purpose of determining whether or not the toll charge is more than 24 cents. The tax is imposed on the total amount paid for the service including any such additional charge.

(c) For other provisions relating to long distance telephone service, see § 42.4252–4.

§ 42.4252–3 TELEGRAPH SERVICE.—(a) The term "telegraph service" means a telegraph, cable, or radio dispatch or message for which the charge is paid within the United States regardless of the amount of the charge therefor. For the meaning of the term "United States", see paragraph (d) of § 42.4252–4.

(b) A charge made for a telephone toll call used by a telegraph company in effecting delivery of a telegraph message shall be added to the basic charge for the transmission of the telegraph message for the purpose of determining the amount subject to tax. In such case, the telegraph company is not liable for tax on the amount paid by it to the telephone company for the toll call whether or not the charge therefor is in excess of 24 cents.

(c) A charge made for a telephone call which is used to reach a telegraph office for the purpose of sending a telegraph message should not be added to the basic charge for the transmission of the telegraph message, as the telegraph message is considered to begin at the telegraph office.

(d) For other provisions relating to telegraph service, see § 42.4252–4.

§ 42.4252–4 PROVISIONS COMMON TO TELEPHONE AND TELEGRAPH SERVICES.—(a) *In general.*—The tax applies to all amounts paid for services rendered and for facilities provided which are incidental to the transmission of a message or conversation. Where dispatches, messages, or conversations are transmitted by telephone, radio telephone, telegraph, cable, or radio free of any charge whatsoever, no tax attaches, but where the carrier in fact makes some charge for the transmission, either in money, service, or other valuable consideration, such charge is subject to the tax upon the basis of the amount of the charge computed in money or money's worth. The tax is payable by the person paying the transmission charge and is to be collected by the person receiving the payment. If a message, dispatch, or conversation is transmitted "collect", the person who pays the charge therefor is liable for the tax. All telephone and telegraph transmission services when rendered for hire are subject to tax whether or not the agency furnishing such services is a common carrier. For provisions relating to the computation of tax with respect to charges for telephone and telegraph services, see section 4254 and §§ 42.4254–1 and 42.4254–2.

(b) *When transmission begins and ends.*—Transmission begins when the message is delivered by the sender to the carrier, or its agent, and continues until receipt by the addressee or his agent. Thus, an amount paid to a telephone, telegraph, radio, or cable company for messenger service in bringing the recipient of a message to the telephone, or in delivering a dispatch or message, must be included in determining the total amount subject to tax. However, an amount paid for messenger service rendered by a hotel or similar establishment

is not to be included in the total charge on which the tax is computed.

(c) *Services rendered under contract.*—(1) Where, under the provisions of a contract, dispatches, messages or conversations are transmitted by telephone, radio telephone, telegraph, cable or radio in consideration of the payment of a lump sum of money or the performance of services, the amounts paid for such transmissions are subject to tax regardless of whether such dispatches, messages or conversations relate to the operation of the business of a common carrier and whether they are "on line" or "off line."

(2) Where a telegraph company agrees to transmit over its wires dispatches or messages relating to the business of a carrier free or at reduced rates in consideration of services to be performed by the carrier in transporting men or materials of the telegraph company, all such dispatches or messages are subject to tax.

(d) *Meaning of the term "United States".*—For purposes of section 4252 (b) and (c), the term "United States" includes the States, the Territories of Alaska and Hawaii, and the District of Columbia. Such term also includes inland waters (such as rivers, lakes, bays, etc.) lying wholly within the United States, and, where an international boundary line divides inland waters, such parts of such inland waters as lie within the boundary of the United States, and also the waters known as a marine league from low tide on the coast line. Ships within these limits whether of foreign or domestic registry are considered to be within the United States.

§ 42.4252–5 Leased Wire, Teletypewriter, or Talking Circuit Special Service.—(a) In general the term "leased wire, teletypewriter, or talking circuit special service" relates to private line or private channel service where channels, equipment, and other facilities are furnished (usually, but not necessarily, on a contractual basis), to enable users to communicate between specified locations continuously or for specified periods, as distinguished from the sending of single dispatches, messages, and conversations by telephone, radio telephone, telegraph, cable, or radio for which tolls are charged by the carrier. The communications may be telephonic, in Morse or similar code, or may be reproduced at the terminating end in the form of a typewritten page or tape, or picture or facsimile. In certain instances it may be necessary to utilize the switchboards and exchanges of a carrier to connect the sending and receiving terminals of the service.

(b) The term "leased wire, teletypewriter, or talking circuit special service" does not include any service which is used exclusively in rendering a service taxable as wire and equipment service.

(c) Examples of leased wire, teletypewriter, or talking circuit special services are: (1) Channels and equipment for private telephone service, (2) channels and equipment for private Morse or similar code service, (3) channels and equipment for private teletypewriter or teleprinter service, (4) channels and equipment for teletypewriter or teleprinter exchange service, (5) channels and equipment for program transmission, and (6) channels and equipment for photograph, picture or facsimile transmission, etc.

§ 42.4252–6 Wire and Equipment Service.—(a) In general, the term "wire and equipment service" relates to lines or channels and

equipment by means of which information or services are furnished to the subscriber. Tax is imposed on the amounts paid for such lines or channels, equipment, and information or services.

(b) Wire and equipment services include, but are not limited to, the following services:

(1) Burglar, fire, or other alarm service, where the service consists of channels furnished between a remote point and the subscriber's office, or a police or fire station, or a central station, and over which a signal is transmitted in the case of illegal entry, fire, leakage, etc.

(2) Wires and equipment installed on the subscriber's premises for burglar, fire, or other alarm service, not owned by the subscriber, but for the use and maintenance of which he pays a periodic fee, whether or not the wires and equipment are located wholly within his premises.

(3) Channels furnished between a point of origin and the subscriber's premises over which are given stock and bond market quotations and reports, racing results, baseball scores, and other sporting results, news items, musical programs, weather reports, the time, etc.

(4) Metering services, including channels and equipment, furnished between a remote point and the subscriber's office, over which signals are transmitted so that the subscriber may obtain information as to a given condition at the remote point, such as water level, water pressure, gas pressure, etc.

(5) Remote control channels furnished between a remote point and the subscriber's premises over which signals are transmitted which will actuate an instrument at the remote point, such as the starting and stopping of a radio transmitter, etc.

(c) Where the services rendered include the furnishing of information or programs such as stock market quotations, baseball scores, racing results, weather reports, or musical programs, etc., the total amount paid, including any amounts charged for information or programs furnished, shall be the basis for determining the tax due, whether or not individual items are charged or billed separately.

(d) The tax on leased wire, teletypewriter, or talking circuit special service does not apply in respect of any service which is used exclusively in rendering a service taxable as wire and equipent service. See paragraph (c) of § 42.4252–5.

§ 42.4252–7 Provisions Common to Leased Wire, Teletypewriter, Talking Circuit Special Service, and Wire and Equipment Service.—(a) In determining the amount of tax due, there shall be included all charges made in connection with the furnishing of any of the services enumerated, such as salaries of operators, if in the employ of the person furnishing such services, charges for equipment, instruments, and other apparatus, and installation charges.

(b) The tax imposed with respect to leased wire, teletypewriter, talking circuit special service, and wire and equipment service applies whether or not the wires or services are within a local service area.

(c) For exemptions from the tax imposed on leased wire, teletypewriter, talking circuit special service, and wire and equipment service, see sections 4253, 4292, 4293 and the regulations thereunder contained in this part.

§ 42.4253 STATUTORY PROVISIONS; EXEMPTIONS.

SEC. 4253. EXEMPTIONS.

(a) CERTAIN COIN-OPERATED SERVICE.—Services paid for by inserting coins in coin-operated telephones available to the public shall not be subject to the tax imposed by section 4251 with respect to local telephone service, except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.

(b) NEWS SERVICES.—No tax shall be imposed under section 4251, except with respect to local telephone service, upon any payment received from any person for services or facilities utilized in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such services or facilities is billed in writing to such person.

(c) CERTAIN ORGANIZATIONS.—No tax shall be imposed under section 4251 upon any payment received for services or facilities furnished to an international organization, or any organization created by act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864.

(d) SERVICEMEN IN COMBAT ZONE.—No tax shall be imposed under section 4251 with respect to long distance telephone service upon any payment received for any telephone or radio telephone message which originates within a combat zone, as defined in section 112, from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate, setting forth such facts as the Secretary or his delegate may by regulations prescribe, is furnished to the person receiving such payment.

(e) FOR ITEMS OTHERWISE TAXED.—Only one payment of tax under section 4251 shall be required with respect to the tax on long distance telephone service or telegraph service notwithstanding the lines or stations of one or more persons are used in the transmission of such dispatch, message or conversation.

(f) SPECIAL WIRE SERVICE IN COMPANY BUSINESS.—No tax shall be imposed under section 4251 on the amount paid for so much of the service described in sections 4252 (d) and (e) as is utilized in the conduct, by a common carrier or a telephone or telegraph company or radio broadcasting station or network, of its business as such.

§ 42.4253–1 EXEMPTION FOR CERTAIN COIN-OPERATED SERVICE.—(a) Except as provided in paragraph (b) of this section, the tax imposed on local telephone service is not applicable to a single telephone conversation paid for by inserting coins in public coin-operated telephones regardless of the total charge for such conversation. However, the exemption is not applicable to a single telephone conversation for which a toll charge is made (see paragraph (a) of § 42.4252–2) if such toll charge, including any additional charge for overtime service, is more than 24 cents. In such case, the tax imposed on long distance telephone service is applicable.

(b) Where coin-operated telephone service is furnished for a guaranteed amount, the amount paid under such guarantee plus any fixed monthly or other periodic charge is subject to the tax imposed on local telephone service. The tax applies to the full amount of the guarantee whether such amount is paid out of receipts from the coin-box of the telephone or from funds of the subscriber.

§ 42.4253–2 EXEMPTION FOR NEWS SERVICES.—(a) The exemption for news services provided by section 4253(b) is applicable to payments for services and facilities of the kind described in section 4251, except

local telephone service. The exemption will apply only with respect to payments for services and facilities which are utilized exclusively (1) in the collection of news for the public press or radio or television broadcasting or in the dissemination of news through the public press or by means of radio or television broadcasting, or (2) in the collection or dissemination of news by a news ticker service furnishing a general news service similar to that of the public press. For the exemption to apply, the charge for the services or facilities must be billed in writing to the person paying for the services or facilities and such person must certify in writing that the services or facilities are so utilized.

(b) The exemption applies to amounts charged for messages from any newspaper, press association, radio or television news broadcasting agency, or news ticker service, to any other newspaper, press association, radio or television news broadcasting agency, or news ticker service or to or from their bona fide correspondents, which messages deal exclusively with the collection of news items for, or the dissemination of news items through, the public press, radio or television broadcasting, or a news ticker service furnishing a general news service similar to that of the public press. The exemption does not extend to messages of an administrative nature such as messages transmitting funds to correspondents, messages to correspondents relating to assignments or hotel accommodations, etc.

(c) The exemption does not extend to the collection and dissemination of information or matters for publication in magazines, periodicals, and trade and scientific publications issued to supply information on certain subjects of interest to particular groups; or to amounts paid by newspapers, press associations, radio or television news broadcasting agencies or networks, or news ticker services, for local telephone service taxable under section 4251.

§ 42.4253–3 Exemption for Certain Organizations.—(a) The taxes imposed by section 4251 do not apply to amounts paid for services or facilities furnished to any organization created by act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864 (The American National Red Cross).

(b) The taxes imposed by section 4251 do not apply to amounts paid for services or facilities furnished to an international organization. See section 7701(a)(18) for the definition of "international organization". An international organization is designated as such by the President through an Executive order or orders. When an organization has been designated by the President as entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act, or part thereof, including exemption from tax, the exemption applies to the taxes imposed by section 4251 on amounts paid for services and facilities unless the President otherwise provides. The exemption is subject to withdrawal or revocation by the President. In case of withdrawal or revocation, unless otherwise provided by the President, the exemption is inapplicable to payments made on or after the date of issuance of the order of withdrawal or the date of revocation.

(c) No exemption certificate is required under this section where the payment for the services or facilities furnished is made by the American National Red Cross direct to the person furnishing the services or facilities. In all other cases the right to exemption under

section 4253(c) shall be evidenced by properly executed exemption certificates in substantially the following form:

EXEMPTION CERTIFICATE

_____ 19____
(Date)

I certify that _____
(Name of service or facility)
have been furnished by _____ to
(Telephone, telegraph company, etc.)
_____; that the charges of
(International Organization, etc.)
$_____ will be paid from _____
(International Organization, etc.)
funds; and that the charges are exempt from tax under section 4253(c) of the Internal Revenue Code.

_____
(Signature of Officer or Employee)

_____
(Address) (Title)

NOTE—Penalty for fraudulent use, $10,000 or imprisonment or both.

(d) See § 42.4253–7 for further provisions relating to exemption certificates.

§ 42.4253–4 EXEMPTION FOR SERVICEMEN IN COMBAT ZONE.—(a) The exemption provided by section 4253(d) is applicable to any payment received for any telephone or radio telephone message or call which originates within a combat zone, as defined in section 112, from a member of the Armed Forces of the United States performing service in such combat zone, if a properly executed certificate of exemption substantially in the form shown in paragraph (c) of this section is furnished to the person receiving such payment.

(b) Service is performed in a combat zone only if it is performed in an area which the President of the United States has designated by Executive order, for the purpose of section 112, as an area in which Armed Forces of the United States are or have 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.

(c) The exemption certificate shall be in substantially the following form:

Exemption Certificate

(Overseas Telephone Calls)

_____, 19____
(Date)

I certify that the toll charges of $_____ are for telephone or radio telephone messages originating at _____ within a combat
(Point of origin)
zone from _____ a member of the Armed Forces
(Name)
of the United States performing service in such combat zone; that the transmission facilities were furnished by _____; that the charges
(Name of carrier)
are exempt from tax under section 4253(d) of the Internal Revenue Code.

_____
(Signature of Subscriber)

_____
(Address)

NOTE—Penalty for fraudulent use, $10,000 or imprisonment or both.

(d) See § 42.4253–7 for further provisions relating to exemption certificates.

§ 42.4253–5 EXEMPTION FOR ITEMS OTHERWISE TAXED.—A dispatch, message, or conversation transmitted by long distance telephone or by telegraph over the combined facilities of several lines or stations of one or more persons is considered to be one dispatch, message, or conversation, and is subject to only one payment of tax under section 4251.

§ 42.4253–6 EXEMPTION FOR SPECIAL WIRE SERVICE IN COMPANY BUSINESS.—(a) The taxes imposed by section 4251 on leased wire, teletypewriter, or talking circuit special service, or wire and equipment service do not apply to amounts paid for any such service which is utilized by a common carrier, telephone or telegraph company, or radio broadcasting station, television station, or network in the conduct of its business as such.

(b) This particular exemption is not applicable in the case of the taxes imposed on other services by section 4251, even though such services are utilized by the companies described in the conduct of their business as such.

§ 42.4253–7 USE AND RETENTION OF EXCEMPTION CERTIFICATES.—(a) An agent of a telegraph, telephone, radio, or cable company should not accept an exemption certificate unless satisfied, on the basis of proper credentials or otherwise, that the person who signed it is the person whom he represents himself to be and that the exemption claimed is allowable under the law.

(b) A separate exemption certificate will be required for each message paid for as a separate item, but where periodic payments are made, a blanket certificate (for a period not to exceed one month) may be accepted as evidence of the right to exemption.

(c) Exemption certificates should be retained with the record of the services rendered or the facilities furnished for inspection by internal revenue officers as provided in section 6001 and the regulations in subpart I of this part.

§ 42.4253–8 CROSS REFERENCE.—For regulations pertaining to the exemptions applicable to amounts received as payment for services or facilities furnished to the government of the United States, the government of any State, Territory of the United States, any political subdivision of a State or Territory, or the District of Columbia, see §§ 42.4292 and 42.4293 contained in subpart H of this part.

§42.4254 STATUTORY PROVISIONS; COMPUTATION OF TAX.

SEC. 4254. COMPUTATION OF TAX.

(a) IN GENERAL.—If a bill is rendered the taxpayer for telephone services or telegraph services with respect to which a tax is imposed by section 4251, the amount upon which the tax shall be based shall be the sum of all such charges included in the bill, and the tax shall not be based upon the charge for each item, separately, included in the bill.

(b) WHERE PAYMENT IS MADE FOR LONG DISTANCE TELEPHONE SERVICE OR TELEGRAPH SERVICE IN COIN-OPERATED TELEPHONES.—If the tax imposed by section 4251 with respect to long distance telephone service or telegraph service is paid by inserting coins in coin-operated telephones,

tax shall be computed to the nearest multiple of 5 cents, except that where the tax is midway between multiples of 5 cents, the next higher multiple shall apply.

§ 42.4254–1 COMPUTATION OF TAX.—When a bill is rendered to a taxpayer covering charges for telephone services or telegraph services with respect to which a tax is imposed by section 4251, the amount upon which the tax shall be based shall be the sum of all such charges included in the bill, and not upon each separate charge included therein.

§ 42.4254–2 PAYMENT IN A COIN-OPERATED TELEPHONE.—Where the tax on a long distance telephone or radio telephone message or conversation, or a telegraph, cable, or radio dispatch or message is paid by inserting coins in a coin-operated telephone, the tax shall be computed to the nearest multiple of 5 cents, and where the tax is midway between multiples of 5 cents, the next highest multiple shall apply. In other words, one-half or a greater fraction of 5 cents shall be treated as 5 cents and a smaller fraction shall be ignored.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

O. GORDON DELK,
Acting Commissioner of Internal Revenue.

Approved January 12, 1959.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on January 14, 1959, 8:49 a.m., and published in the issue of the Federal Register for January 15, 1959, 24 F.R. 358.)

Whether for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

SUBCHAPTER C.—TRANSPORTATION OF PERSONS

SECTION 4261.—IMPOSITION OF TAX

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

SECTION 4263.—EXEMPTIONS

26 CFR 42.4263(f): Statutory provisions; exemptions; small aircraft on nonestablished lines. T.D. 6358[1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER D, PART 42.—FACILITIES AND SERVICES EXCISE TAXES

Regulations under section 4263(f) of the Internal Revenue Code of 1954, as amended, relating to exemption from tax on transportation of persons for small aircraft on nonestablished lines.

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

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

On December 5, 1958, notice of proposed rulemaking regarding the amendment of § 42.4263 of the Facilities and Services Excise Tax Regulations (26 CFR Part 42) to conform such regulations to section 134 of the Excise Tax Technical Changes Act of 1958 (72 Stat. 1292), relating to the exemption from the tax imposed by section 4261 of amounts paid for transportation of persons on small aircraft operating on nonestablished lines was published in the Federal Register (23 F.R. 9456). No objection to the rules proposed having been received during the 15-day period prescribed in the notice, the regulations as so published are hereby adopted.

§ 42.4263(f) STATUTORY PROVISIONS; EXEMPTIONS; SMALL AIRCRAFT ON NONESTABLISHED LINES.

SEC. 4263 EXEMPTIONS. * * *

(f) SMALL AIRCRAFT ON NONESTABLISHED LINES.—The tax imposed by section 4261 shall not apply to transportation by aircraft having—

(1) A gross takeoff weight (as determined under regulations prescribed by the Secretary or his delegate) of less than 12,500 pounds, and

(2) A passenger seating capacity of less than 10 adult passengers, including the pilot,

except when such aircraft is operated on an established line.

[Sec. 4263(f) as added by sec. 134, Excise Tax Technical Changes Act 1958 (72 Stat. 1292)]

§ 42.4263(f)–1 EXEMPTION OF SMALL AIRCRAFT ON NONESTABLISHED LINES FROM THE TAX ON THE TRANSPORTATION OF PERSONS IMPOSED UNDER SECTION 4261.—(a) *In general.*—Amounts paid for the transportation of persons on a small aircraft of the type sometimes referred to as "air taxis" shall be exempt from the tax imposed under section 4261 provided the aircraft (1) has a gross takeoff weight of less than 12,500 pounds determined as provided in paragraph (b) of this section and (2) has a passenger seating capacity of less than 10 adult passengers, including the pilot. The exemption does not apply, however, if the aircraft is operated on an established line.

(b) *Determination of gross takeoff weight.*—The term "gross takeoff weight of less than 12,500 pounds" means a maximum certificated takeoff weight of less than 12,500 pounds. This shall be based on the maximum certificated takeoff weight shown in the aircraft operating record or aircraft flight manual which is part of the air worthiness certificate issued by the Civil Aeronautics Administration.

(c) *Established line.*—The term "operated on an established line" means operated with some degree of regularity between definite points. It does not

[1] 24 F.R. 580.

necessarily mean that strict regularity of schedule is maintained; that the full run is always made; that a particular route is followed; or that intermediate stops are restricted. The term implies that the person rendering the service maintains and exercises control over the direction, route, time, number of passengers carried, etc.

(d) *Effective date of exemption.*—The exemption provided under section 4263(f) has application only to the transportation of persons on or after January 1, 1959.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

O. GORDON DELK,
Acting Commissioner of Internal Revenue.

Approved January 22, 1959.

FRED C. SCRIBNER, JR.
Acting Secretary of the Treasury

(Filed by the Division of the Federal Register on January 26, 1959, 8:47 a.m. and published in the issue of the Federal Register for January 27, 1959, 24 F.R. 580.)

PART II.—PROPERTY (REPEALED AUGUST 1, 1958 BY P.L. 85-475)

SECTION 4271.—IMPOSITION OF TAX

Rev. Rul. 59-75

Towboat services which were furnished in shifting vessels being constructed or repaired and outfitted did not constitute transportation of property within the meaning of section 4271(a) of the Internal Revenue Code of 1954, prior to its repeal by the Tax Rate Extension Act of 1958, where such shifting was from one location to a proximate location in the builder's shipyard and was essential to and an integral part of the construction or repair and outfitting operations. Accordingly, amounts which were paid for towboat services furnished under these circumstances were not subject to the tax on transportation of property.

Revenue Ruling 54-321, C.B. 1954-2, 422, amplified.

Advice has been requested whether the tax on the transportation of property, prior to its repeal by the Tax Rate Extension Act of 1958, Public Law 85-475, C.B. 1958-3, 73, was due on amounts paid by a shipbuilding company to a towboat company under the circumstances stated below.

In the instant case, a corporation is engaged in constructing, repairing, and outfitting ships. The construction and repairing operations are performed at docks which are located on one side of a waterway leading off of a sound. The outfitting operations are performed at an outfitting basin located within the same shipyard but on the opposite side of the waterway. After the ships are constructed or repaired, as the case may be, they are towed by tugs across the waterway to the outfitting basin.

Revenue Ruling 54-321, C.B. 1954-2, 422, holds that towboat services which are rendered in launching and in shifting uncompleted vessels from one location to another in the builder's shipyard, and which are essential to and an integral part of the construction of the vessels, do not constitute transportation of property within the meaning of section 4271(a) of the Internal Revenue Code of 1954. This ruling may have been misinterpreted as to the area within which un-

completed vessels or those under repair may be shifted in connection with construction or repair operations, without incurring liability for the transportation tax.

It is held that towboat services which were furnished in shifting vessels being constructed or repaired and outfitted did not constitute the transportation of property within the meaning of the Code, where the shifting was from one location to a proximate location in the builder's shipyard and was essential to and an integral part of such operations. It is immaterial whether the shifting was along a pier, from one pier to another, or, as in the case described, from the construction or repair docks to the outfitting basin. Accordingly, the case described above is held to be within the scope of Revenue Ruling 54–321, and amounts paid for towboat services furnished under these circumstances were not subject to the tax on transportation of property.

The principles of this ruling do not apply, however, where the vessels were towed to or from a point outside the builder's shipyard, for example, to or from a loading dock or point of anchorage in the channel.

Revenue Ruling 54–321, C.B. 1954–2, 422, is hereby amplified.

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

Whether the tax on transportation of property applies to the movement of excavated material from the point of excavation to a processing plant on the same premises where it is processed into sand and gravel. See Rev. Rul. 59–200, page 698.

SUBCHAPTER D.—SAFE DEPOSIT BOXES

SECTION 4286.—IMPOSITION OF TAX

26 CFR 42.4286: Statutory provisions; imposition of tax. T. D. 6342[1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER D, PART 42.—FACILITIES AND SERVICES EXCISE TAXES

Regulations under sections 4286 and 4287 of the Internal Revenue Code of 1954, as amended, relating to the tax on the use of safe deposit boxes.

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

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

On October 18, 1958, notice of proposed rulemaking regarding the regulations under sections 4286 and 4287 of the Internal Revenue

[1] 23 F. R. 9807.

Code of 1954, as amended, relating to the facilities and services excise tax imposed on the use of safe deposit boxes was published in the Federal Register (23 F. R. 8067). No objection to the rules proposed having been received during the 30-day period prescribed in the notice, the regulations as so published are hereby adopted.

PARAGRAPH 1. Section 42.0–3 of the Facilities and Services Excise Tax Regulations (26 CFR Part 42) is hereby amended by striking paragraph (f) and inserting in lieu thereof the following:

(f) *Subpart G.*—The regulations in Subpart G of this part relate to amounts paid on or after January 1, 1955, for the use of safe deposit boxes.

PAR 2. The following regulations are prescribed under subchapter D of chapter 33 of the Internal Revenue Code of 1954, as amended, relating to the tax on the use of safe deposit boxes:

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SUBPART G—SAFE DEPOSIT BOXES

Sec.
42.4286 Statutory provisions; imposition of tax.
42.4286–1 Imposition of tax.
42.4287 Statutory provisions; definition of safe deposit box.
42.4287–1 Safe deposit box.

AUTHORITY: §§ 42.4286 to 42.4287–1, incl., issued under sec. 7805, I. R. C. 1954; 68A Stat. 917; 26 U. S. C. 7805.

SUBPART G—SAFE DEPOSIT BOXES

§ 42.4286 STATUTORY PROVISIONS; IMPOSITION OF TAX.

SEC. 4286. IMPOSITION OF TAX

There is hereby imposed a tax equivalent to 10 percent of the amount collected for the use of any safe deposit box. Such tax shall be paid by the person paying for the use of the safe deposit box.

§ 42.4286–1 IMPOSITION OF TAX.—(a) *In general.*—Section 4286 imposes a tax upon amounts collected for the use of safe deposit boxes. When during the term of the contract or agreement for the use of a safe deposit box, such use is relinquished and a new contract or agreement is made for the use of another safe deposit box, additional tax is due upon any further amount collected under the new contract or agreement.

(b) *Rate of tax.*—Tax is imposed at the rate of 10 percent of the amount collected for the use of any safe deposit box.

(c) *Liability for tax.*—The tax is payable by the person paying for the use of the safe deposit box. Every person receiving payments for the use of a safe deposit box is required under section 4291 to collect the tax from the person paying for such use, and must return and pay over the tax so collected in accordance with the applicable provisions of the regulations contained in Subpart I of this part.

§ 42.4287 STATUTORY PROVISIONS; DEFINITION OF SAFE DEPOSIT BOX

SEC. 4287. DEFINITION OF SAFE DEPOSIT BOX.

For the purposes of section 4286, any vault, safe, box, or other receptacle, of not more than 40 cubic feet capacity, used for the safekeeping or storage of jewelry, plate, money, specie, bullion, stocks, bonds, securities, valuable papers of any kind, or other valuable personal property, shall be regarded as a safe deposit box.

§ 42.4287–1 SAFE DEPOSIT BOX.—The term "safe deposit box" includes any vault, safe, box, or other receptacle of not more than 40 cubic feet capacity, such as is customarily leased by a bank, trust company, security dealer, investment company, or storage company, for the safekeeping or storage of jewelry, plate, money, specie, bullion, stocks, bonds, securities, important papers of any kind, or other forms of valuable personal property. The term includes each individual vault, safe, box, or other receptacle, of not more than 40 cubic feet capacity, even though it is leased as one of several adjacent safe deposit boxes with an aggregate capacity of more than 40 cubic feet, and regardless of whether such adjacent safe deposit boxes are enclosed within a vault, enclosure, compartment, etc., to which the lessee has sole access. However, the term "safe deposit box" does not include open space in a general storage vault.

DANA LATHAM
Commissioner of Internal Revenue.

Approved December 17, 1958.

NELSON P. ROSE
Acting Secretary of the Treasury

(Filed by the Division of the Federal Register on December 19, 1958, 8:51 a. m., and published in the issue of the Federal Register for December 20, 1958, 23 F. R. 9807.)

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

SUBCHAPTER E.—SPECIAL PROVISIONS APPLICABLE TO SERVICES AND FACILITIES TAXES

SECTION 4292.—STATE AND LOCAL GOVERNMENTAL EXEMPTION

26 CFR 42.4292–1: State and local Government exemptions. — Rev. Rul. 59–37

> The exemption from the tax on communication services or facilities and the tax on transportation of persons provided by section 4292 of the Internal Revenue Code of 1954 with respect to payments made for services or facilities furnished to a state, etc., is applicable to payments made by an association comprised entirely of accredited state-operated high schools for services or facilities utilized in the transaction of the association's official business.

Advice has been requested whether the exemption from certain excise taxes on facilities and services applies to payments for communication services or facilities or for transportation services or facilities utilized by officers and employees of an athletic association of state-operated high schools in the transaction of the association's official business.

An athletic association of accredited state-operated high schools was formed on a voluntary basis in a certain state for the purpose of promoting clean amateur athletics among its member institutions. It promotes and controls the interscholastic athletic contests, activities and interests of its members. It is administered by a board of five directors who are either high school principals or superintendents. The directors serve without pay, but are reimbursed by the association for expenses incurred by them in connection with yearly board meetings and such other services which they are called upon to perform for the association. The association derives its income from dues collected from the member schools and from a percentage of the receipts from football games and basketball tournaments. This income is used to defray the association's expenses.

Section 4251 of the Internal Revenue Code of 1954 imposes a tax on amounts paid for certain enumerated communication services or facilities, including local telephone service, long distance telephone service, and telegraph service. Section 4261 of the Code imposes a tax on the amount paid within the United States for taxable transportation of any person by rail, motor vehicle, water, or air.

Under the provisions of section 4292 of the Code, however, the communications tax and the tax on the transportation of persons do not apply to any payment received for services or facilities furnished to the Government of any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia.

Under the provisions of section 130.44 of Regulations 42, made applicable to the 1954 Code by Treasury Decision 6091, C. B. 1954–2, 47, amounts paid for communication services or facilities furnished to officers or employees of any State, Territory or political subdivision thereof, or the District of Columbia, are exempt from the tax if such amounts are paid from government funds. Section 42.4292–1 of the Facilities and Services Excise Tax Regulations provides that the tax on the transportation of persons shall not apply to amounts paid by a State for the transportation of persons. Amounts paid for transportation or facilities by an officer or employee of a State, who is traveling on a mileage or other allowance basis are exempt from the tax where reimbursement is made to such officer or employee.

In the instant case, it is held that since all the schools which comprise the membership of the association are state-operated schools, payments made by the association for communication or transportation services or facilities utilized by officers or employees of the athletic association in the transaction of its official business, constitute payments for services or facilities furnished to a state. Therefore, such payments are exempt from the communications tax, and from the tax on the transportation of persons imposed by section 4251 and 4261 of the Code, respectively.

SECTION 4293.—EXEMPTION FOR UNITED STATES AND POSSESSIONS

Exemption of the United States from tax on payments for certain leases of business machines. See Secretary's authorization, page 769.

SECTION 4294.—EXEMPTION FOR NONPROFIT EDUCATION ORGANIZATIONS

Temporary rules implementing the provisions of the Excise Tax Technical Changes Act of 1958 which accord an exemption from the services and facilities taxes to certain nonprofit educational organizations. See T.D. 6344, page 776.

CHAPTER 34.—DOCUMENTARY STAMP TAXES

SUBCHAPTER A.—ISSUANCE OF CAPITAL STOCK AND CERTIFICATES OF INDEBTEDNESS BY A CORPORATION

PART I.—ISSUANCE OF CAPITAL STOCK AND SIMILAR INTERESTS

SECTION 4301.—IMPOSITION OF TAX

(Also Sections 4321, 4382.) Rev. Rul. 59–52

The issuance and the sale or transfer of shares of stock of a limited dividend corporation are subject to the documentary stamp tax imposed by sections 4301 and 4321, respectively, of the Internal Revenue Code of 1954.

Advice has been requested concerning the applicability of the documentary stamp tax imposed by sections 4301 and 4321 of the Internal Revenue Code of 1954 to the issuance and transfer of stock of a limited dividend housing company organized under state law, as described below.

A state public housing law authorizes the formation of limited dividend housing companies for the purpose of providing housing for veterans. In furtherance of this purpose, the law provides that three or more persons may become a housing company by filing a certificate which states the name of the housing company, the purpose for which it is formed, the amount of capital stock, the number of shares, the duration of the company, and other pertinent information. It is required that such company must raise at least 20 percent of the actual cost of the lands and improvements through investment of private capital in the stocks or income debentures of the company. On dissolution of the company, stockholders in no event shall receive more than the par value of their stock plus accumulated, accrued, or unpaid dividends or interest. The provisions of the business corporation law, the general corporation law, and the stock corporation law of the state are applicable to such housing companies. The public housing law limits the amount of dividends that may be paid to a stockholder in any one year. The dividends paid on the stock are exempt from taxation by the state.

Section 4301 of the Code provides that a documentary stamp tax shall be imposed on each original issue of shares or certificates of stock issued by a corporation, whether on organization or reorganization. Section 4321 of the Code provides that a documentary stamp tax shall be imposed on each sale or transfer of shares or certificates of stock, or of rights to subscribe for or to receive such shares or certificates, issued by a corporation.

There is no provision in the law or regulations which exempts stock issued by limited dividend corporations from the stamp tax on the issuance and/or the sale or transfer of shares of stock. Accordingly, it is held that the issuance and the sale or transfer of shares of stock of the limited dividend corporation described above are subject to the documentary stamp tax imposed by sections 4301 and 4321, respectively, of the Code. In view of the foregoing, in determining whether shares of stock issued by the limited dividend corporation are subject to the documentary stamp tax, it is not necessary to determine whether such corporation is an instrumentality or agency of a State or a municipal or other corporation exercising the taxing power.

Whether, for purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

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26 CFR 43.4301: Statutory provisions; imposition of tax. T. D. 6351 [1]
(Also Sections 6001, 6802, 6804; 43.6001, 43.6802, 43.6804.)

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER D, PART 43.—DOCUMENTARY STAMP TAXES

Regulations under chapter 34 (Documentary Stamp Taxes) and certain other provisions of the Internal Revenue Code of 1954.

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

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

On September 13, 1958, notice of proposed rule making with respect to regulations under chapter 34 of the Internal Revenue Code of 1954 (relating to documentary stamp taxes) and with respect to regulations under various administrative provisions of the Internal Revenue Code of 1954 having application to the documentary stamp taxes was published in the Federal Register (23 F.R. 7107). After consideration of all such relevant material as was presented by interested persons regarding the rules proposed, the following regulations are hereby adopted. They supersede paragraph 25 of Treasury Decision 6118 (19 F.R. 9896), approved December 30, 1954 [C.B. 1955–1, 698], as added by Treasury Decision 6208 (21 F.R. 8082), approved October 16, 1956 [C.B. 1956–2, 1369].

[1] The publication of this Treasury Decision in 24 F.R. 251, dated January 10, 1959, contains (1) instructions for modifying the notice of proposed rulemaking published in 23 F.R. 7107, dated September 13, 1958, and (2) the full context of the regulations with such modifications. As here published, the Treasury Decision reflects the full context of such regulations, with such modifications. The individual instructions have been omitted.

DOCUMENTARY STAMP TAX REGULATIONS

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AUTHORITY: §§ 43.0–1 to 43.7805–1, incl., issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

DOCUMENTARY STAMP TAXES

SUBPART A.—INTRODUCTORY PROVISIONS

§ 43.0–1 INTRODUCTION.—(a) *In general.*—The regulations in this part relate to documentary stamp taxes imposed by chapter 34 of the Internal Revenue Code of 1954. These regulations constitute Part 43, of Title 26, of the Code of Federal Regulations. References in the regulations to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, unless otherwise indicated.

(b) *Division of regulations.*—The regulations in this part (26 CFR Part 43) are divided into 10 subparts. Subpart A contains provisions relating to general definitions and use of terms, the division and scope of the regulations in this part, and the extent to which the regulations in this part supersede prior regulations relating to documentary stamp taxes. Subpart B relates to the tax on issuance of capital stock and similar interests. Subpart C relates to the tax on issuance of certificates of indebtedness. Subpart D relates to the tax on sales or transfers of capital stock and similar interests. Subpart E relates to the tax on sales or transfers of certificates of indebtedness. Subpart F relates to provisions common to sales or transfers of capital stock and certificates of indebtedness. Subpart G relates to the tax on conveyances. Subpart H relates to the tax on policies issued by foreign insurers. Subpart I relates to miscellaneous provisions applicable to documentary stamp taxes. Subpart J relates to selected provisions of subtitle F of the Code, relating to procedure and administration, which have special application to documentary stamp taxes.

(c) *Arrangement and numbering.*—Each section of the regulations is preceded by the section of the Internal Revenue Code which it interprets. Sections of the Code or references thereto are preceded by "Sec." or the word "section". Each section of the regulations is preceded by a section symbol and 43 followed by a decimal point (§ 43.).

§ 43.0–2 GENERAL DEFINITIONS AND USE OF TERMS.—(a) *In general.*—As used in the regulations in this part, unless otherwise expressly indicated—

(1) The terms defined in the provisions of law contained in the regulations in this part shall have the meanings so assigned to them.

(2) The Internal Revenue Code of 1954 means the Act approved August 16, 1954 (68A Stat.), entitled "An Act To revise the internal revenue laws of the United States", as amended.

(3) Regulations 71 means the regulations approved November 25, 1941 (26 CFR (1941) Part 113), as amended, relating to stamp taxes on issues and transfers of stocks and bonds, conveyances of realty, passage tickets, and foreign insurance policies.

(4) The term "district director" means district director of Internal Revenue.

(5) The terms "stamp tax" and "stamp taxes" generally mean any one or all of the stamp taxes which constitute the subject of the regulations in this part.

(6) The term "documentary stamps" means all stamps issued for use in payment of the stamp taxes imposed by chapter 34 of the Internal Revenue Code.

(7) The cross references in the regulations in this part to other portions of the regulations, when the word "see" is used, are made only for convenience and shall be given no legal effect.

(b) *Cross reference.*—For other definitions, see section 4381, §§ 43.4381–1 and 43.4381–2, and section 7701 (§ 43.7701).

§ 43.0–3 SCOPE OF REGULATIONS.—The regulations in this part have application to all transactions occurring after December 31, 1954.

§ 43.0–4 EXTENT TO WHICH THE REGULATIONS IN THIS PART SUPERSEDE PRIOR REGULATIONS.—The regulations in this part, with respect to the subject matter within the scope thereof, supersede Regulations 71.

SUBPART B.—TAX ON ISSUANCE OF CAPITAL STOCK AND SIMILAR INTERESTS

§ 43.4301 STATUTORY PROVISIONS; IMPOSITION OF TAX.

SEC. 4301. IMPOSITION OF TAX.

There shall be imposed a tax on each original issue of shares or certificates of stock, issued by a corporation, whether on organization or reorganization, at the following rates:

(1) PAR VALUE STOCK.—Eleven cents on each $100 or fraction thereof of the par or face value of each certificate (or of the shares where no certificate is issued).

(2) NO-PAR-VALUE STOCK.—

(A) ACTUAL VALUE OF $100 OR MORE PER SHARE.—Eleven cents on each $100 or fraction thereof of the actual value of each certificate (or of the shares where no certificate is issued).

(B) ACTUAL VALUE OF LESS THAN $100 PER SHARE.—Three cents on each $20 or fraction thereof of the actual value of each certificate (or of the shares where no certificate is issued).

§ 43.4301–1 IMPOSITION OF THE TAX ON ORIGINAL ISSUE OF STOCK.—(a) *Scope of tax.*—Section 4301 imposes a tax on each original issue of shares or certificates of stock issued by a domestic corporation. See section 4381(b) and § 43.4381–1(b) and section 4381(c) and § 43.4381–1(c), respectively, for definitions of the terms "corporation" and "shares or certificates of stock". Stock is deemed to be issued when it is subscribed for and the subscription is accepted. The tax applies to each original issue of the shares or certificates, whether upon organization, reorganization, or otherwise, regardless of the purpose of the issue, the person to whom issued, or the time of delivery. The tax also applies to shares or certificates issued in a recapitalization where the recapitalization results in the dedication of an amount as capital for the first time (see § 43.4302–1).

(b) *Rate and computation of tax.*—(1) *Rate of tax.*—The rates of tax are as follows:

(i) Par value stock—11 cents on each $100 or fraction thereof of the face value of each certificate; and

(ii) No par value stock—11 cents on each $100 or fraction thereof of the actual value of each certificate, where the actual value of each share is $100 or more; and 3 cents on each $20 or fraction thereof of the actual value of each certificate, where the actual value of each share is less than $100.

(2) *Separate computation.*—A separate computation of tax must be made with respect to each certificate regardless of the number of certificates which may be issued in a single transaction.

(3) *Par value stock.*—Where stock has a par value, the tax is measured by the total face value of the certificate and not by the amount paid for the stock. For example, the tax upon the issuance of a certificate for any number from 1 to 100 shares of stock having a par value of $1 a share is 11 cents, since in such case the total face value of the certificate does not exceed $100. The tax on the issuance of a certificate for any number from 11 to 20 shares of stock having a par value of $10 a share, or for any number from 5 to 8 shares of stock having a par value of $25 a share, is 22 cents, since in these cases the total face value of the certificate is more than $100 but does not exceed $200.

(4) *No par value stock.*—(i) Where stock has no par value, the rate of tax is determined by the actual value of each share, and the amount of tax, computed at such rate, is measured by the actual value of the certificate. Thus, in all cases where the actual value of each share is $100 or more, the tax must be computed at the rate of 11 cents on each $100 or fraction thereof of the actual value of the certificate; and in all cases where the actual value of each share is less than $100, the tax must be computed at the rate of 3 cents on each $20 or fraction thereof of the actual value of the certificate. For example, upon the issuance of a certificate for 10 shares having an actual value of $101 a share, or a total actual value of $1,010, the tax, computed at the rate of 11 cents on each $100 or fraction thereof of the actual value of the certificate, amounts to $1.21. Upon the issuance of a certificate for 10 shares having an actual value of $99 a share, or a total actual value of $990, the tax, computed at the rate of 3 cents on each $20 or fraction thereof of the actual value of the certificate, amounts to $1.50.

(ii) The actual value of stock not having a par value shall be determined on the basis of the market value of the stock at the time of issuance. In the absence of a market value of the stock, the actual value shall be determined on the basis of all the facts and circumstances of the case.

(iii) Stock which has been given a "fixed" or "stated" price, as distinguished from stock having a par value, is taxable as stock without par value.

(5) *Shares not represented by certificates.*—Where the shares are not represented by certificates, the subscription is the basis of tax computation. In the case of shares having a par value, a separate computation of tax must be made with respect to the aggregate par value of the shares covered by each subscription. In the case of shares not having a par value, a separate computation of tax must likewise be made with respect to the aggregate actual value of the shares covered by each subscription at the rate determined by the actual value of each share.

§ 43.4301–2 ILLUSTRATIONS.—(a) *Issues subject to tax.*—The following are examples of issues subject to the tax:

(1) Certificates or shares representing beneficial interests in any organization which is a corporation within the meaning of section 4381(b) or section 7701(a)(3).

(2) Stock issued for property, real or personal, or for the purpose of purchasing a business.

(3) Stock issued by joint-stock land banks.

(4) Stock issued as a dividend.

(5) Temporary or interim certificates.

(6) The issue of a fractional share, or a certificate for a fractional share, of stock (see, however, paragraph (b)(6) of this section).

(7) Stock issued upon exercise of a warrant or rights entitling the holder to subscribe for unissued stock (see § 43.4321–3(a)).

(8) Stock issued in connection with a consolidation by a consolidated corporation in exchange for stock of the consolidating corporations whether issued directly to the consolidating corporations or to the stockholders of the consolidating corporations (see also § 43.4321–2(a)(9) relating to the imposition of the stock transfer tax where the stock is issued directly to the stockholders).

(9) Stock issued in connection with a merger by the continuing corporation whether issued directly to the merging corporation or to the stockholders of the merging corporation (see also § 43.4321–2(a)(9)) and stock issued to the stockholders of the continuing corporation in a recapitalization under section 4302 which results in the dedication of an amount as capital which amount is so dedicated for the first time.

(10) Stock issued outside the United States by a domestic corporation.

(11) A business property investment certificate, wherein it is certified that the holder thereof is the owner of an interest in certain specified property, legal title to which has been previously conveyed to a trustee, and whereby the issuing corporation agrees to manage the property and distribute the proceeds.

(b) *Issues not subject to tax.*—In addition to the various issues specifically exempt under sections 4303(a) and 4382, the following are examples of issues not subject to the tax:

(1) The issue of warrants or rights to subscribe for unissued stock (see, however, § 43.4321–3).

(2) The issue of certificates of stock in exchange for outstanding certificates representing the same stock as, for instance, to reflect a change in the name of the issuing corporation or to secure several certificates for one certificate, or vice versa.

(3) The issue of voting-trust certificates.

(4) The issue of definitive certificates of stock in exchange for temporary or interim certificates upon the issuance of which the tax has been paid.

(5) The issue of stock in a recapitalization or reorganization where there is no dedication of additional capital, either by transfer of earned surplus or otherwise (see, however, § 43.4302–1(b)).

(6) Stock issued on the surrender of fractional shares or certificates for fractional shares of stock (see, however, paragraph (a)(6) of this section).

(7) The issue in the United States of stock of a foreign corporation.

(8) The issue of stock to effect a mere split in outstanding shares without any increase in the issuing corporation's capital stock account.

§ 43.4302 Statutory Provisions; Stock Issued in Recapitalization.

SEC. 4302. RECAPITALIZATION.

In the case of a recapitalization, the tax imposed by section 4301 shall be that proportion of the tax computed on the certificates (or on the shares where no certificates are issued) issued in the recapitalization that (1) the amount dedicated as capital for the first time by the recapitalization, whether by a transfer of earned surplus or otherwise, bears to (2) the total par value (or actual value if no par stock) of such certificates or shares issued in the recapitalization.

§ 43.4302–1 Limitation on Tax in Case of Recapitalization.—(a) Where stock is issued in a recapitalization, the tax payable is that proportion of the total tax imposed by section 4301 computed with respect to all the shares or certificates issued in the recapitalization that the amount dedicated as capital for the first time by the recapitalization, whether by a transfer of earned surplus or otherwise, bears to the total par value (or actual value if no par stock) of the shares or certificates so issued.

(b) A tax is not payable with respect to stock issued in a recapitalization unless the recapitalization results in the dedication of an amount as capital which amount is so dedicated for the first time. Thus, where a corporation transferred an amount from capital to capital surplus in a prior recapitalization, and such corporation in a subsequent or second recapitalization transfers such amount from capital surplus to capital under such circumstatnces that the amount so restored to capital is clearly indentifiable, a tax is not payable with respect to the amount so rededicated as capital. However, the tax is payable with respect to a transfer of capital surplus to capital by way of a recapitalization where the amount so transferred had not been previously dedicated as capital.

(c) Where a recapitalization is effected in connection with, or as part of, some other transaction, for example, an original or an additional issue of stock, a merger, etc., the limitation of the tax payable to the proportion specified in this section applies only to the stock issued in that part of the transaction which constitutes a recapitalization. Thus, where a corporation makes a change in its capital structure by replacing an issue of stock with another issue of stock and at the same time disposes of part of the new stock by sale to underwriters, the tax limitation is applicable only to that portion of the new stock which is issued in exchange for the old stock retired thereby. In such case, the portion of the new stock sold to the underwriters is taxable in its entirety without any adjustment on account of the recapitalization. Similarly, where a corporation retires its preferred stock by issuing common stock in exchange therefor, and such exchange is made in connection with a merger in which the corporation issues common stock also to the former stockholders of the merged company, the tax limitation is applicable only to the common stock issued in exchange for the preferred stock, and the shares or certificates of common stock issued to the former stockholders of the merged company are subject to tax without any adjustment on account of the recapitalization.

§ 43.4303 STATUTORY PROVISIONS; EXEMPTIONS.

SEC. 4303. EXEMPTIONS.

(a) COMMON TRUST FUNDS.—The tax imposed by section 4301 shall not apply to the issue of shares or certificates of a common trust fund, as defined in section 584.

(b) OTHER EXEMPTIONS.—For other exemptions, see section 4382.

§ 43.4303–1 COMMON TRUST FUNDS.—For regulations under section 584, see the Income Tax Regulations (26 CFR Part 1).

§ 43.4304 STATUTORY PROVISIONS; AFFIXING OF STAMPS.

SEC. 4304. AFFIXING OF STAMPS.

The stamps representing the tax imposed by section 4301 shall be affixed to the stock books or corresponding records of the organization and not to the certificates issued.

§ 43.4304–1 AFFIXING OF STAMPS.—(a) *Documentary stamps.*—Only documentary stamps shall be used in payment of the tax imposed by section 4301. The requisite stamps shall be affixed to the stock books or corresponding records of the corporation, and not to the certificates issued. See §§ 43.6804–1 and 43.6804–2, contained in subpart J of this part, for appropriate use, denominations, and cancellation of such stamps.

(b) *Purchase of documentary stamps.*—Documentary stamps may be purchased, and requisition forms for the purchase of such stamps may be obtained, only from the sources and in the manner provided in § 43.6802–1, contained in subpart J of this part. For provisions relating to distribution, supply, and redemption of stamps, see sections 6801, 6802 (§ 43.6802), and 6805 (§ 43.6805), and the regulations thereunder contained in the Regulations on Procedure and Administration (26 CFR Part 301).

§ 43.4305 STATUTORY PROVISIONS; CROSS REFERENCES.

SEC. 4305. CROSS REFERENCES.

For definitions, penalties, and other general and administrative provisions applicable to this part, see sections 4381 and 4383 and subtitle F.

§ 43.4305–1 CROSS REFERENCES.—(a) For definitions, see section 4381, §§ 43.4381–1 and 43.4381–2, and section 7701 (§ 43.7701).

(b) For penalties, see section 7271 and § 43.7271–1.

(c) For other general and administrative provisions, see section 4383, § 43.4383–1, subpart J of this part, and the applicable sections of the Regulations on Procedure and Administration (26 CFR Part 301).

SUBPART C.—TAX ON ISSUANCE OF CERTIFICATES OF INDEBTEDNESS

§ 43.4311 STATUTORY PROVISIONS; IMPOSITION OF THE TAX.

SEC. 4311. IMPOSITION OF TAX.

There shall be imposed a tax on all certificates of indebtedness issued by a corporation at the rate of 11 cents on each $100 of face value or fraction thereof.

§ 43.4311–1 IMPOSITION OF TAX ON ISSUANCE OF CERTIFICATES OF INDEBTEDNESS.—(a) *Scope of tax.*—Section 4311 imposes a tax on the issue within the territorial jurisdiction of the United States by any corporation of certificates of indebtedness as defined in section 4381(a) and § 43.4381–1. See section 4312 and § 43.4381–1(b) for definitions of the term "corporation". Every renewal of a certificate of indebtedness is subject to tax as a new issue (see § 43.4313–1). A certificate of indebtedness is issued within the meaning of the law at the time it is delivered so as to constitute an obligation of the issuer.

(b) *Rate and computation of tax.*—The rate of tax is 11 cents on each $100 or fraction thereof of the face value of each certificate of indebtedness; except that, where a certificate conditioned for the repayment or payment of money is given in a penal sum, greater than the debt secured, the tax is based upon the amount secured (see section 4314). A separate computation of tax must be made with respect to each certificate of indebtedness regardless of the number of certificates which may be issued in a single transaction. For example, the tax on the issuance of a certificate having a face value of $1,000 is $1.10. The tax on the issuance of 2 certificates having a face value of $50 each is 22 cents, that is, 11 cents on each certificate, whether the certificates are issued to the same person or to different persons.

(c) *Affixing of stamps.*—(1) The requisite documentary stamps shall be affixed either to the certificates of indebtedness or to the indenture or agreement under which they are issued. If the stamps are affixed to the indenture or agreement, the certificate must bear a legend showing that the proper documentary stamps have been affixed to the indenture or agreement and duly cancelled. If the indenture provides for the issue of certificates over a period of years, the requisite stamps may be affixed at the time of each issue. Only documentary stamps shall be used in payment of the tax imposed by section 4311. See §§ 43.6804–1 and 43.6804–2, contained in subpart J of this part, for the appropriate use, denominations, and cancellation of such stamps.

(2) Documentary stamps may be purchased, and requisitions for the purchase of such stamps may be obtained, only from the sources and in the manner provided in § 43.6802–1, contained in subpart J of this part. For provisions relating to distribution, supply, and

redemption of stamps, see sections 6801, 6802 (§ 43.6802), and 6805 (§ 43.6805), and the regulations thereunder contained in the Regulations an Procedure and Administration (26 CFR Part 301).

§ 43.4311–2 ILLUSTRATIONS.—(a) *Issues subject to tax.*—The following are examples of corporate instruments taxable upon issue:

(1) A bond secured by a real estate mortgage.

(2) A bond delivered to a bank or trust company as security for the payment of an obligation.

(3) Bonds executed outside the United States by a foreign corporation and delivered in the United States.

(4) Interim certificates or temporary bonds issued in lieu of definitive bonds. However, no additional tax is due on the issuance of the corresponding permanent or definitive bonds, but each of such permanent or definitive bonds must bear notation of the fact that requisite stamps were duly attached to the interim certificates or temporary bonds or to the indenture or agreement under which such interim certificates or temporary bonds were issued.

(5) Equipment trust certificates.

(6) Any certificate of indebtedness issued by any receiver, trustee in bankruptcy, assignee, or other person, having custody of property, or charge of the affairs, of any corporation (see section 4312).

(b) *Issues not subject to tax.*—In addition to the various issues specifically exempt under sections 4315(a) and 4382, the following are examples of instruments not taxable upon issue:

(1) An instrument issued by an individual.

(2) An instrument merely representing the assignment of an interest in a bond (see, however, § 43.4331–1 and § 43.4351–1(b)).

(3) Bonds issued in exchange for outstanding bonds of different denominations but of the same kind, the same total face amount, and the same maturity date.

(4) Permanent or definitive bonds issued in exchange for interim certificates or temporary bonds representing the same obligation (see, however, paragraph (a)(4) of this section).

(5) A certificate of deposit issued by a bank, whether or not negotiable, and whether payable on demand or at some specified time; and a certificate of deposit issued by an organization operating under the Morris Plan.

(6) Indemnity, fidelity, and surety bonds.

(7) A business property investment certificate, wherein it is certified that the holder thereof is the owner of an interest in certain specified property, legal title to which has been previously conveyed to a trustee, and whereby the issuing corporation agrees to manage the property and distribute the proceeds. However, such instrument is subject to the tax imposed by section 4301 (see § 43.4301–2(a)(11)).

(8) A bond issued by a trust company on behalf of the estate of a decedent for which it is acting as executor or administrator, provided the certificate is issued solely on the credit of the estate.

(9) A warrant granting the right to purchase unissued bonds (see § 43.4331–3).

§ 43.4312 STATUTORY PROVISIONS; DEFINITION OF CORPORATION.

SEC. 4312. DEFINITIONS.

(a) CORPORATION.—For the purpose of section 4311 the term "corporation" includes any receiver, trustee in bankruptcy, assignee, or other

person, having custody of property, or charge of the affairs, of the corporation.

(b) CROSS REFERENCES.—For other definitions, see section 4381 and subtitle F.

§ 43.4313 STATUTORY PROVISIONS; RENEWAL OF CERTIFICATES OF INDEBTEDNESS.

SEC. 4313. RENEWALS.

Every renewal of any certificate of indebtedness shall be taxed as a new issue.

§ 43.4313–1 TAX ON RENEWAL OF CERTIFICATES OF INDEBTEDNESS.—Every renewal of a certificate of indebtedness is subject to the tax imposed by section 4311 as a new issue. Whenever there is such a material change in the obligation as to constitute a new obligation, as, for example, an extension of maturity date or a change in the interest rate of the outstanding certificate of indebtedness, such change constitutes a renewal subject to tax as a new issue. The time when the original certificate was issued is immaterial. Likewise, the time when the certificate is renewed, whether before or after the original date of maturity, is immaterial. A tax liability is not dependent upon use of any particular form of instrument to effect the renewal. The renewal may, for example, be evidenced by a notation on the original certificate, by a collateral agreement, or by an extension agreement.

§ 43.4314 STATUTORY PROVISIONS; BOND AS SECURITY FOR DEBT.

SEC. 4314. BOND AS SECURITY FOR DEBT.

In the case where a bond conditioned for the repayment or payment of money is given in a penal sum greater than the debt secured, the tax imposed by section 4311 shall be based upon the amount secured.

§ 43.4314–1 BOND AS SECURITY FOR DEBT.—For the effect of section 4314 on the computation of the tax. See § 43.4311–1(b).

§ 43.4315 STATUTORY PROVISIONS; EXEMPTION FOR CERTAIN INSTALLMENT OBLIGATIONS.

SEC. 4315. EXEMPTIONS.

(a) INSTALLMENT PURCHASE OF OBLIGATIONS.—The tax imposed by section 4311 shall not apply to any instrument under the terms of which the obligee is required to make payment therefor in installments and is not permitted to make in any year a payment of more than 20 percent of the cash amount to which entitled upon maturity of the instrument.

(b) OTHER EXEMPTIONS.—For other exemptions, see section 4382.

§ 43.4316 STATUTORY PROVISIONS; CROSS REFERENCES.

SEC. 4316. CROSS REFERENCES.

For penalties and other general and administrative provisions applicable to this part, see section 4383 and subtitle F.

§ 43.4316–1 CROSS REFERENCES.—(a) For definitions, see section 4381, §§ 43.4381–1 and 43.4381–2, and section 7701 (§ 43.7701).

(b) For penalties, see section 7271 and § 43.7271–1.

(c) For other general and administrative provisions, see section 4383, § 43.4383–1, subpart J of this part, and the applicable sections of the Regulations on Procedure and Administration (26 CFR Part 301).

Subpart D.—Tax on Sales or Transfers of Capital Stock and Similar Interests

§ 43.4321 Statutory Provisions; Imposition of Tax.

SEC. 4321. IMPOSITION OF TAX.

There shall be imposed a tax on each sale or transfer of shares or certificates of stock, or of rights to subscribe for or to receive such shares or certificates, issued by a corporation, at the following rates:

(1) PAR-VALUE STOCK.—Five cents on each $100 or fraction thereof of the par or face value of each certificate (or of the shares where no certificate is sold or transferred), except as provided in paragraph (3).

(2) NO-PAR-VALUE STOCK.—Five cents on each share, except as provided in paragraph (3).

(3) EXCEPTION.—In the case of a sale at $20 or more per share, the rate provided in paragraphs (1) and (2) shall be 6 cents in lieu of 5 cents.

§ 43.4321–1 Imposition of Tax.—(a) *Scope of tax.*—Section 4321 imposes a tax on each sale or transfer (as defined in section 4351(b)) within the territorial jurisdiction of the United States of shares or certificates of stock, or of rights to subscribe for or to receive such shares or certificates, issued by a corporation. As to sales or transfers of warrants to subscribe for or to purchase stock, see § 43.4321–3. The tax applies to the specified dealings or transactions in stock, whether occurring before, after, or without the issuance of a certificate. The tax attaches at the time of making the sale or transfer, regardless of the time or manner of delivery of the certificate, agreement, or memorandum of sale. For requirements as to the making and keeping of records of such sales or transfers, see §§ 43.4321–4 and 43.6001–1. See section 4381(b) and § 43.4381–1(b) and section 4381(c) and § 43.4381–1(c), respectively, for definitions of the terms "corporation" and "shares or certificates of stock". For purposes of the tax imposed by section 4321, the term "stock", as used in the regulations in this part, includes shares or certificates of stock and rights to subscribe for or to receive such shares or certificates.

(b) *Rates and computation of tax.*—(1) *Stock having a par value.*—(i) Where, by sale or transfer, par value stock of the same class issued by one corporation is transferred from a single transferor to a single transferee, the tax is computed on the basis of the aggregate par value of all the shares transferred. The selling price of the stock is material only where the change of ownership is by sale, and then only in determining the rate of tax. Where there are two or more transferors or two or more transferees, or where in a single transaction transfer is made of the stock of two or more corporations or of two or more classes issued by a single corporation, a separate tax computation must be made with respect to each transferor and each transferee and with respect to the stock of each corporation and the stock of each class issued by a single corporation. The foregoing rule may be illustrated by the following examples:

Example (1). A, owning 25 shares of common stock and 25 shares of preferred stock of the X Corporation, and 50 shares of the common stock of the Y Corporation, transfers all the stock by delivering the certificates to B. In this situation, there are three distinct transactions, namely, a transfer of 25 shares of common stock of the X Corporation, a transfer of 25 shares of preferred stock of the X Cor-

poration, and a transfer of 50 shares of common stock of the Y Corporation, and the tax is computed, in the case of each transfer, upon the aggregate par value of the stock.

Example (2). A, owning 100 shares of stock in the X Corporation represented by one or more certificates, sells 50 shares each to B and C. To that end, A sends his certificate or certificates to the transfer agent with instructions to issue one or more certificates aggregating 50 shares to each purchaser. In this situation, there are two distinct transactions, namely, two sales of 50 shares of stock each, and the tax is computed upon the aggregate par value of the stock transferred to each purchaser.

Example (3). A and B, each owning 50 shares of stock in the X Corporation represented in each case by one or more certificates, make a gift of their stock to C. To that end, they send their certificates to the transfer agent with instructions to issue to the donee one or more certificates for the entire 100 shares. In this situation, there are likewise two distinct transactions, namely, two gifts of 50 shares of stock each, and a separate computation must be made with respect to each gift.

(ii) The rate of tax applicable to each sale or transfer of par value stock is as follows:

(*a*) Six cents on each $100 or fraction thereof of the aggregate face value of the certificates or the aggregate par value of the shares with respect to sales, agreements to sell, and memoranda of sale, where the selling price is $20 or more a share.

(*b*) Five cents on each $100 or fraction thereof of the aggregate face value of the certificates or the aggregate par value of the shares with respect to sales, agreements to sell, and memoranda of sales, where the selling price is less than $20 a share.

(*c*) Five cents on each $100 or fraction thereof of the aggregate face value of the certificates or the aggregate par value of the shares in all other taxable transactions.

(iii) The computation of the tax may be illustrated by the following examples:

Example (1). A sells to B 100 shares of stock of the X Corporation having a par value of $100 a share for $50 per share. The amount of tax payable is computed at the rate of 6 cents on each $100 of the face value of the certificate or certificates ($10,000) and is $6.

Example (2). The facts are the same as set forth in example (1), except that the stock is sold for $10 per share. The amount of tax payable is computed at the rate of 5 cents on each $100 of the face value of the certificate or certificates ($10,000) and is $5.

Example (3). A gives B 100 shares of stock of the X Corporation having a par value of $100 a share at a time when its actual value is $50 a share and later gives 100 shares of the same stock to C at a time when its actual value is $10 a share. In each instance the amount of tax is computed at the rate of 5 cents on each $100 of the face value of the certificate or certificates ($10,000) and is $5 for each gift.

(2) *Stock without par value.*—(i) Where, by sale or transfer, stock without par value is transferred, the tax is computed strictly on the basis of the number of shares involved in each transfer. The selling price of the stock is material only where the change of ownership is by sale, and then only in determining the rate of tax. Stock which has

been given a "fixed" or "stated" price, as distinguished from stock having a par value, is taxable as stock without par value.

(ii) The rate of tax applicable to each sale or transfer of stock without par value is as follows:

(*a*) Six cents per share with respect to sales, agreements to sell, and memoranda of sales, where the selling price is $20 or more a share.

(*b*) Five cents per share with respect to sales, agreements to sell, and memoranda of sales, where the selling price is less than $20 a share.

(*c*) Five cents per share in all other taxable transactions.

(iii) The computation of the tax may be illustrated by the following examples:

Example (1). A sells to B 100 shares of stock without par value of the Z Corporation for $25 per share. The amount of tax payable is computed at the rate of 6 cents per share on 100 shares and is $6.

Example (2). A sells to B 100 shares of stock without par value of the Z Corporation for $10 per share. The amount of tax payable is computed at the rate of 5 cents per share on 100 shares and is $5.

Example (3). A gives B 100 shares of stock without par value of the Z Corporation at a time when its actual value is $25 per share and later gives C 100 shares of the same stock at a time when its actual value is $10 per share. In each instance the amount of tax is computed at the rate of 5 cents per share on 100 shares and is $5 for each gift.

(3) *Rights to receive, and rights to subscribe for, stock.*—In all cases, the tax on the transfer of rights to receive stock and on the transfer of rights to subscribe for stock is determined by the class of stock to which the rights relate. Thus, the tax is 5 cents on each share covered by the rights where the stock has no par value and 5 cents on each $100 or fraction thereof of the aggregate par value of the shares covered by the rights where the stock has a par value. In computing the tax on transfers of rights to receive or rights to subscribe for stock, the selling price or the subscription price of the stock, as the case may be, is immaterial.

(4) *Cross-reference.*—See § 43.4352–1 for computation of the tax imposed on the transfer of an interest in a partnership owning capital stock or similar interests taxable under section 4321.

§ 43.4321–2 ILLUSTRATIONS.—(a) *Sales and transfers subject to tax.* The following transfers of stock are illustrations of transactions which are taxable, unless exempt from tax under a specific provision of the Internal Revenue Code (see sections 4322, 4341, 4342, 4343, and 4382 with respect to such exemptions):

(1) Transfer by gift.

(2) Transfer by an administrator or executor to a distributee or legatee (see, however, section 4322(a)(4) and § 43.4322–1(e)).

(3) Transfer to or by trustees (see, however, section 4343(a)(8)).

(4) Transfer of an interim certificate, a voting trust certificate, or a certificate of beneficial interest in an association.

(5) Transfer from persons holding legal title as tenants in common, as joint tenants, or as tenants by the entirety, to the same persons separately to effect a partition, or from one person to two or more persons, whether or not including the transferor, as tenants in common, as joint tenants, or as tenants by the entirety (see, however, section 4343(a)(9)).

(6) Transfer from a partnership to a successor partnership; also from a partnership to the individual members thereof upon dissolution (see, however, § 43.4352–1).

(7) Transfer to a corporation of its own stock (see, however, paragraph (b) (3) of this section).

(8) Transfer upon a merger from the name of a merging corporation of stock owned by it to the name of the continuing corporation. Similarly, upon a consolidation, a transfer from any of the consolidating corporations to the consolidated corporation (see, however, paragraphs (b) (6) and (7) of this section).

(9) In addition to the tax on the issuance of stock in connection with a merger or consolidation, where such stock is issued directly to the stockholders of the merging or consolidating corporations by the continuing or consolidated corporation (see § 43.4301–2(a)(8) and (a)(9)), there is also a transfer tax imposed at the time of the issuance of such stock. The transfer tax is applicable to such a transaction inasmuch as there is involved the transfer to the stockholders of the merging or consolidating corporations of such corporations' right to receive the stock of the continuing or consolidated corporation.

(10) Transfer of stock to another person upon order of the purchaser; transfer of the right to receive a stock dividend already declared; issuance of stock to a person other than the subscriber; all other transfers of rights to receive stock; and all transfers of rights to subscribe for stock.

(11) Transfer by a broker to a customer of stock issued as a dividend on stock purchased for the customer by the broker and held by the broker in his own name or in the name of his nominee.

(12) Transfer of stock on the books of a domestic corporation, regardless of where the sale is made or the stock certificate is delivered.

(13) Sale or transfer within the territorial jurisdiction of the United States of stock of a foreign corporation.

(14) Transfers by operation of law (see, however, § 43.4343–1).

(b) *Sales and transfers not subject to tax.*—In addition to the various exemptions prescribed in section 4382 which apply to documentary stamp taxes generally and to the specific exemptions provided in sections 4322, 4341, 4342, and 4343 and the regulations thereunder, the following are examples of transactions not subject to the tax:

(1) Transfer of stock pursuant to a sale, where the requisite stamps have been affixed to the memorandum of sale.

(2) Surrender of certificates in exchange for other certificates representing the same stock issued to the same person (see also § 43.4301–2(b)(2)).

(3) Surrender of stock to the issuing corporation for extinguishment (see also paragraph (a)(7) of this section).

(4) Change in the registration of stock for the sole purpose of recording a change in the name of a stockholder, such as from the maiden name to the married name of a stockholder, or a change in the name of a corporation which is a stockholder.

(5) Transfer of stock to or by an insolvent bank, where such transfer is within the provisions of section 7507.

(6) In a consolidation of corporations, the surrender of stock of any of the consolidating corporations in exchange for stock of the con-

solidated corporation (see, however, paragraph (a)(9) of this section and § 43.4301–2(a)(8)).

(7) In a merger of corporations, the surrender of stock of both the merging and the continuing corporations in exchange for stock of the continuing corporation (see, however, paragraph (a)(9) of this section and § 43.4301–2(a)(9)).

(8) Deliveries of stock to or by a clearing house for the sole purpose of clearing or adjusting accounts of its members.

(9) Transfer of stock pursuant to a call, since a "call" is an agreement to sell stock and taxable as such. However, a person making such nontaxable transfer shall furnish and attach to the certificate a statement in substantially the following form:

> It is hereby certified that the transfer of _____ shares of the within stock to _____ has been made pursuant to a "call", and that the requisite Federal documentary stamps for the transaction are affixed to such "call", which is in the possession of the undersigned.
>
> _____
> (Signature)

(10) The mere delivery of a certificate of stock by a customer to his broker solely for the purpose of enabling such broker to sell the stock for the customer, where the broker has no legal title or other interest in the stock.

(11) The mere delivery of a certificate of stock by a purchasing broker to his customer, if the tax was paid upon the sale of the stock to such broker and such broker has no legal title or other interest in the stock.

§ 43.4321–3 TAX ON WARRANTS—(a) *To subscribe for stock.*—Transfers of warrants entitling the holder to subscribe for stock are taxable as transfers of rights to subscribe. For computation of the tax on transfers of rights to subscribe for stock, see § 43.4321–1(b)(3). The issue of a warrant entitling the holder to subscribe for stock is not subject to tax, but the issue of stock upon exercise of the warrant is subject to the tax imposed by section 4301 (see § 43.4301–2(a)(7)).

(b) *To purchase issued stock.*—(1) Warrants entitling the holder to purchase issue stock are taxable upon issuance as agreements to sell stock (see definition of "sale or transfer", section 4351(b)). The rate of tax applicable to the issue of such warrant is the rate that applies to agreements to sell the kind of stock to which the warrant relates. Thus, when the stock to be purchased under the warrant has a par value and the purchase price is less than $20 per share, the tax is 5 cents per each $100 or fraction thereof of the total par value of the stock which the holder is entitled to purchase, and if the purchase price is $20 or more per share the tax is 6 cents for each $100 or fraction thereof of the total par value. If the stock has no par value, the tax is 5 cents for each share which the holder is entitled to purchase, unless the purchase price is $20 or more per share, in which event the tax is 6 cents for each share instead of 5 cents.

(2) Transfers of warrants entitling the holder to purchase issued stock are not subject to the stamp tax since the statute does not impose a tax on sales or transfers of agreements to sell stock. If the transfer tax is paid upon the issuance of a warrant as an agreement to sell stock, no additional transfer tax is incurred upon the subse-

quent transfer of the stock pursuant to the exercise of the warrant. However, the person making such exempt transfer of stock shall furnish and attach to the certificate a statement in substantially the following form:

It is hereby certified that the transfer of the attached certificate for_____ to_____ is made
(Number of shares and description of stock) (Name of transferee)
pursuant to the exercise of a warrant which is in the possession of the undersigned, and that the requisite stamps due upon the issuance of such warrant have been affixed thereto.

_____
(Signature)

§ 43.4321–4 REQUIREMENT OF MEMORANDA OF AGREEMENTS TO SELL, ETC.—Every person who makes an agreement to sell stock, or who, by sale or otherwise, transfers title to stock by delivery of certificates assigned in blank, shall, as a part of such transaction, promptly make and deliver to the buyer, or transferee, a bill or memorandum of such agreement to sell, sale, or transfer, duly signed by the seller, or transferor, or his agent, to which the requisite stamps shall be affixed and cancelled. Such bill or memorandum shall show the date of the transaction, the names of the parties thereto, the description and number of shares of stock, the tax paid on the transaction, and, where a sale is involved, the sale price. (See § 43.6001–2, contained in subpart J of this part.)

§ 43.4321–5 RECORDS OF SALES AND TRANSFERS OF STOCK.—For recordkeeping requirements, see § 43.6001–1, contained in subpart J of this part.

§ 43.4321–6 REGISTRATION OF BROKERS, EXCHANGES, NOMINEES, ETC.—For provisions with respect to registration of brokers, exchanges, nominees, etc., see § 43.6001–4, contained in subpart J of this part.

§ 43.4321–7 RULES APPLICABLE TO CLEARING HOUSES.—For rules applicable to clearing houses, see § 43.6001–2, contained in subpart J of this part.

§ 43.4322 STATUTORY PROVISIONS; EXEMPTIONS.

SEC. 4322. EXEMPTIONS.

(a) EXEMPTIONS FOR CERTAIN TRANSFERS.—The tax imposed by section 4321 shall not apply to any delivery or transfer of shares, certificates, or rights—

(1) LOANS.—To a borrower as a loan of such shares, certificates, or rights, or to the lender as a return of such loan;

(2) BROKERS.—To a broker or his registered nominee for sale of such shares, certificates, or rights; by a broker or his registered nominee to a customer for whom and upon whose order the broker has purchased same; or by a purchasing broker to his registered nominee to be held by such nominee for the same purpose as if held by the broker;

(3) CORPORATIONS.—From a corporation to a registered nominee of such corporation, or from one such nominee to another such nominee, provided that in each instance such shares, certificates, or rights are to be held by the nominee for the same purpose as if retained by the corporation; or from such nominee to such corporation; or

(4) WORTHLESS STOCK.—By an executor or administrator to a legatee, heir, or distributee, if it is shown to the satisfaction of the

Secretary or his delegate that the value of such shares, certificates, or rights is not greater than the amount of the tax that would otherwise be imposed on such delivery or transfer.

(b) OTHER EXEMPTIONS.—For other exemptions, see sections 4341 to 4343, inclusive, and section 4382.

§ 43.4322–1 EXEMPTIONS.—(a) *Loan of stock and return of stock loaned.*—A mere loan of stock or the return of stock loaned is exempt from the tax imposed by section 4321 if the loan or return is accompanied by an exemption certificate in substantially the form prescribed in § 43.4344–1.

(b) *Transfer from customer to broker.*—(1) If stock is transferred to the name of a broker, or to the name of a broker's registered nominee, solely for the purpose of enabling such broker to sell the stock for the customer, the transfer is exempt from tax provided the broker furnishes at the time of transfer or delivery an exemption certificate in substantially the form prescribed in § 43.4344–1. For provisions relating to the registration of nominees, see § 43.6001–4(b), contained in subpart J of this part.

(2) A transfer to the name of a selling agent other than a broker, as, for example, a bank, whether the sale be made by the agent direct or through a broker for the agent's account, is subject to tax, since the exemption applies only to deliveries and transfers to brokers (but see § 43.4342–1(b)). However, liability is not incurred by the mere delivery of a certificate of stock to an agent who obtains no legal title or other interest in the stock.

(c) *Transfer from broker to customer.*—(1) If stock is transferred to the name of a purchasing broker or his registered nominee who holds the stock for the same purpose as if held by the broker and tax on such transfer is paid, transfer may thereafter be made to the name of the purchaser (for whom and upon whose order the broker has purchased such stock) without payment of tax. If the tax was paid upon the transfer to the name of the purchasing broker, transfer may be made to the name of his registered nominee and from such nominee to the name of the purchaser without payment of tax. However, no exemption will be allowed under this paragraph unless the broker furnishes at the time of transfer or delivery an exemption certificate in substantially the form prescribed in § 43.4344–1. For provisions relating to the registration of nominees, see § 43.6001–4(b), contained in subpart J of this part.

(2) Delivery to, or transfer to the name of, the customer may not be made tax-free in any case in which the stock was transferred from the seller to the broker or his registered nominee without payment of the tax, since the law requires that the tax shall be paid on the transfer or transfers between the actual seller and actual buyer. A transfer from the name of a purchasing agent other than a broker, as, for example, a bank, whether the purchase be made direct or through a broker for the agent's account, is subject to tax, since the exemption applies only to deliveries and transfers from brokers (but see § 43.4342–1(b)). However, liability is not incurred by the mere delivery to the principal of a certificate of stock by an agent having no legal title or other interest in the stock, or by a broker for the account of such agent.

(d) *Transfers between corporations and nominees.*—The tax does not apply to the delivery or transfer of stock from a corporation to a registered nominee of such corporation, or from one such nominee to another such nominee, if in either case the shares or certificates continue to be held by such nominee for the same purpose for which they would be held if retained by such corporation; or from such nominee to such corporation. No exemption is granted unless the nominee is registered in the manner provided in § 43.6001–4(b), contained in subpart J of this part. Nor shall the exemption be granted in any case unless the delivery or transfer is accompanied by an exemption certificate, executed by the person making the exempt transfer, in substantially the form prescribed in § 43.4344–1.

(e) *Transfers of worthless securities by executors, etc.*—The tax does not apply to deliveries or transfers of stock by an executor or administrator to a legatee, heir, or distributee, if it is shown to the satisfaction of the district director that the value of the stock so delivered or transferred is not greater than the amount of the tax that would otherwise be imposed on such delivery or transfer.

§ 43.4323 Statutory Provisions; Affixing of Stamps.

SEC. 4323. AFFIXING OF STAMPS.

(a) Books of the Corporation. The stamps representing the tax imposed by section 4321 shall be affixed to the books of the corporation in case of sale where the evidence of transfer is shown only by the books of the corporation.

(b) Other Evidences of Sale or Transfer.—For provisions applicable to the affixing of stamps in cases of sale or transfer shown otherwise than only by the books of the corporation, see section 4353.

§ 43.4323–1 Affixing of Stamps.—(a) Only documentary stamps shall be used in payment of the tax imposed by section 4321. In the case of a sale or transfer evidenced only by the books of the corporation or other organization, the requisite stamps shall be affixed to such books. In the case of a sale or transfer evidenced otherwise than only by the books of the corporation or other organization, see section 4353 and § 43.4353–1(a) for provisions relating to the affixing of the requisite stamps. See also § § 43.6804–1 and 43.6804–2, contained in subpart J of this part, for the appropriate use, denominations, and cancellation of such stamps.

(b) Documentary stamps may be purchased, and requisitions for the purchase of such stamps may be obtained, only from the sources and in the manner provided in § 43.6802–1, contained in subpart J of this part. For provisions relating to distribution, supply, and redemption of stamps, see sections 6801, 6802 (§ 43.6802), and 6805 (§ 43.6805), and the regulations thereunder contained in the Regulations on Procedure and Administration (26 CFR Part 301).

§ 43.4324 Statutory Provisions; Cross References.

SEC. 4324. CROSS REFERENCES.

For definitions, penalties, and other general and administrative provisions applicable to this part, see sections 4344, 4351, 4352, 4381, and 4383, and subtitle F.

§ 43.4324–1 Cross References.—(a) For definitions, see section 4351 and § 43.4351–1, section 4381 and § § 43.4381–1 and 43.4381–2, and section 7701 (§ 43.7701).

(b) For penalties, see section 7271 and § 4.7271–1.

(c) For other general and administrative provisions, see section 4344 and § 43.4344–1, section 4352 and § 43.4352–1, section 4383 and § 4.83–1, subpart J of this part, and the applicable sections of the Regulations on Procedure and Administration (26 CFR Part 301).

Subpart E.—Tax on Sales or Transfers of Certificates of Indebtedness

§ 43.4331 Statutory Provisions; Imposition of Tax.

SEC. 4331. IMPOSITION OF TAX.

There shall be imposed a tax on each sale or transfer of any certificates of indebtedness, issued by a corporation, at the rate of 5 cents on each $100 or rfaction thereof of the face value.

§ 43.4331–1 Imposition of Tax.—(a) *Scope of tax.*—Section 4331 imposes a tax on each sale or transfer (as defined in section 4351(b)) within the territorial jurisdiction of the United States of certificates of indebtedness. See section 4381(a) and § 43.81–1 for definition of the term "certificates of indebtedness". The tax attaches at the time of making the sale or transfer, regardless of the time or manner of delivery of the certificate or agreement or memorandum of sale. As to sales or transfers of warrants to subscribe for or purchase certificates of indebtedness, see § 43.4331–3. For requirements of maintenance of records and memoranda of such sales or transfers, see § § 43.4331–4 and 43.4331–5. See § 43.4352 for the computation of the tax imposed on the transfer of an interest in a partnership owning certificates of indebtedness.

(b) *Rate and computation of tax.*—(1) Where by sale or otherwise certificates of indebtedness of the same issue of a single corporation are transferred by a single tranferor to a single transferee, the tax is 5 cents on each $100 of face value, or fraction thereof, of the aggregate face value of all the certificates. Where there are two or more transferors or two or more transferees, or where in a single transaction transfer is made of certificates of two or more corporations or of two or more classes issued by a single corporation, a separate tax computation must be made with respect to each transferor and each transferee, and with respect to the certificates of each corporation and of the certificates of each class issued by a single corporation. The foregoing rule may be illustrated by the following examples:

Example (1). M, owning 25 class A bonds of the X Corporation and 25 class B bonds of the same corporation, and 50 class A bonds of the Y Corporation, transfers all the bonds to N. In this situation there are three taxable transfers, and a separate tax computation must be made with respect to the aggregate face value of the bonds involved in each.

Example (2). M, owning 100 class A bonds of the X Corporation, sells 50 bonds to N and 50 bonds to O. In this situation, there are two sales of 50 bonds each, and the tax is measured by the aggregate face value of the bonds sold to each purchaser.

Example (3). A husband and wife, each owning $50,000 face amount of class A bonds of the X Corporation, simultaneously give their bonds to their son. In this situation, there are two gifts, and a separate computation must be made with respect to the aggregate face value of the bonds included in each gift.

(2) The separate tax computation required will result in a difference in the amount of tax only where the face value of the certificates transferred is not $100 or multiples thereof.

(c) *Affixing of stamps.*—(1) Only documentary stamps shall be used in payment of the tax imposed by section 4331. For provisions relating to the affixing of the requisite stamps in case of a sale or transfer of certificates of indebtedness, see section 4353 and § 43.4353-1(b). See also § § 43.6804–1 and 43.6804–2, contained in subpart J of this part, for the appropriate use, denominations, and cancellation of such stamps.

(2) Documentary stamps may be purchased, and requisition forms for the purchase of such stamps may be obtained, only from the sources and in the manner provided in § 43.6802–1, contained in subpart J of this part. For provisions relating to distribution, supply, and redemption of stamps, see sections 6801, 6802 (§ 43.6802), 6805 (§ 43.6805), and the regulations thereunder contained in the Regulations on Procedure and Administration (26 CFR Part 301).

§ 43.4331–2 ILLUSTRATIONS.—(a) *Sales and transfers subject to tax.*—The tax on sales or transfers of certificates of indebtedness imposed by section 4331 is similar in scope to the tax on stock transfers imposed by section 4321. Accordingly, the various examples set forth in § 43.4321–2(a) of sales and transfers of stocks subject to the stock transfer tax apply, with certain exceptions, to sales and transfers of certificates of indebtedness unless such sales and transfers of certificates of indebtedness are exempt from tax under a specific provision of the Internal Revenue Code (see sections 4332, 4341, 4342, 4343, and 4382 with respect to such exemptions). These exceptions are the examples stated in subparagraphs (9) and (10) of § 43.4321–2(a). In addition, loans of certificates of indebtedness including intra-office borrowings and the return of certificates loaned are subject to the tax imposed under section 4331.

(b) *Sales and transfers not subject to tax.*—In addition to the various exemptions prescribed in section 4382 which apply to documentary stamps taxes generally and to the specific exemptions provided in sections 4332, 4341, 4342, and 4343 and the regulations thereunder, the examples set forth in § 43.4321–2(b) of sales and transfers of stocks not subject to the stock transfer tax illustrate sales and transfers of certificates of indebtedness which are not subject to the tax imposed by section 4331.

§ 43.4331–3 TAX ON WARRANTS.—(a) *To subscribe for certificates of indebtedness.*—Warrants entitling the holder to subscribe for unissued certificates of indebtedness are not subject to tax under section 4331.

(b) *To purchase issued certificates of indebtednes.*—Warrants entitling the holder to purchase issued certificates of indebtedness are, upon issuance, subject to tax under section 4331, as agreements to sell certificates. Subsequent transfers of such warrants are not subject to the transfer tax since the statute does not impose a tax upon transfers of agreements to sell certificates of indebtedness. For rate and computation of tax, see § 43.4331–1(b). If the transfer tax is paid upon issuance of a warrant, the subsequent transfer of the certificate pursuant to the exercise of such warrant is not subject to the

transfer tax. However, the person transferring the certificate shall furnish and attach thereto a statement substantially as follows:

It is hereby certified that the transfer of the attached certificates of indebtedness, _____
(Description and face value of certificates)

to _____, is made pursuant to the exercise of
(Name of transferee)
a warrant which is in the possession of the undersigned, and that the requisite stamps due upon the issuance of such warrant have been affixed thereto.

_____
(Signature)

§ 43.4331–4 REQUIREMENT OF MEMORANDA OF AGREEMENTS TO SELL, ETC.—Every person who makes an agreement to sell certificates of indebtedness, or who, by sale or otherwise, transfers title to certificates by delivery, including a person who lends certificates or returns certificates which have been borrowed, shall, as a part of the transaction, promptly make and deliver to the buyer, transferee, borrower, or lender, a bill or memorandum of such agreement to sell, transfer, loan, or return, duly signed by the seller, or transferor, or lender, or borrower, or his agent, to which the requisite stamps shall be affixed and canceled. Such bill or memorandum shall show the date of the transaction, the names of the parties thereto, and description and number of the certificates, and the tax paid on the transaction. No more than one stamped bill or memorandum shall be required in respect of any single transaction. (See § 43.6001–2, contained in subpart J of this part, relative to rules applicable to clearing houses.)

§ 43.4331–5 RECORDS OF SALES AND TRANSFERS OF CERTIFICATES OF INDEBTEDNESS.—The provisions of § 43.6001–1, contained in subpart J of this part, relative to records of sales and transfers of stock are also applicable to sales and transfers of certificates of indebtedness, except that the records of sales of certificates of indebtedness need not show the sales prices, since the selling price is immaterial for purposes of the tax imposed by section 4331.

§ 43.4331–6 REGISTRATION OF BROKERS, EXCHANGES, AND NOMINEES.—The provisions of § 43.6001–4, contained in subpart J of this part, relative to registration requirements in connection with transactions involving stock are also applicable to transactions involving certificates of indebtedness.

§ 43.4331–7 RULES APPLICABLE TO CLEARING HOUSES.—The provisions of § 43.6001–2, contained in subpart J of this part, containing rules applicable to clearing houses where stock transactions are involved are also applicable with respect to transactions involving certificates of indebtedness.

§ 43.4332 STATUTORY PROVISIONS; EXEMPTIONS.

SEC. 4332. EXEMPTIONS.

(a) BROKERS.—The tax imposed by section 4331 shall not apply to any delivery or transfer to a broker for sale, nor upon any delivery or transfer by a broker to a customer for whom and upon whose order he has purchased same.

(b) INSTALLMENT PURCHASE OF OBLIGATIONS.—The tax imposed by section 4331 shall not apply to any instrument under the terms of

which the obligee is required to make payment therefor in installments and is not permitted to make in any year a payment of more than 20 percent of the cash amount to which entitled upon maturity of the instrument.

(c) OTHER EXEMPTIONS.—For other exemptions, see sections 4341 to 4343, inclusive, and section 4382.

[Sec. 4332 as amended by Act of Jan. 28, 1956, 70 Stat. 9, effective as of January 1, 1955]

§ 43.4332–1 EXEMPTIONS.—(a) *Transfers to or from brokers.*—The rules stated in § 43.4322–1 (b) and (c) with respect to the exemption of transfers to or by brokers from the tax imposed by section 4321 also apply with respect to the tax imposed by section 4331.

(b) *Other exemptions.*—For other exemptions with respect to the tax imposed on sales or transfers of certificates of indebtedness, see sections 4341, 4342, 4343, and 4382 and the regulations thereunder.

§ 43.4333 STATUTORY PROVISIONS; CROSS REFERENCES.

SEC. 4333. CROSS REFERENCES.

For definitions, penalties, and other general and administrative provisions applicable to this part, see sections 4344, 4381, and 4383; sections 4351 to 4353, inclusive; and subtitle F.

§ 43.4333–1 CROSS REFERENCES.—(a) For definitions, see section 4351 and § 43.4351–1, section 4381 and §§ 43.4381–1 and 43.4381–2, and section 7701 (§ 43.7701).

(b) For penalties, see section 7271 and § 43.7271–1.

(c) For other general and administrative provisions, see section 4344 and § 43.4344–1, section 4352 and § 43.4352–1, section 4353 and § 43.4353–1, section 4383 and § 43.4383–1, subpart J of this part, and the applicable sections of the Regulations on Procedure and Administration (26 CFR Part 301).

SUBPART F.—PROVISIONS COMMON TO SALES OR TRANSFERS OF CAPITAL STOCK AND CERTIFICATES OF INDEBTEDNESS

EXEMPTIONS

§ 43.4341 STATUTORY PROVISIONS; TRANSFERS AS SECURITY.

SEC. 4341. TRANSFERS AS SECURITY.

The taxes imposed by sections 4321 and 4331 shall not apply to any delivery or transfer of any of the instruments referred to in such sections—

(1) COLLATERAL SECURITY.—To a lender as collateral security for money loaned thereon, provided that such collateral security is not actually sold; or

(2) SECURITY FOR PERFORMANCE.—To a trustee or public officer made pursuant to Federal or State law as security for the performance of an obligation, or by such trustee or public officer as a return of such security.

§ 43.4341–1 TRANSFERS AS SECURITY.—(a) *Stock or certificates of indebtedness deposited as collateral security.*—The tax imposed by section 4321 or 4331 does not apply to an agreement evidencing a deposit of certificates of stock or certificates of indebtedness as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of the certificates so deposited. The exemption applies also to transfers of stock or certificates of indebtedness to a nominee of the lender

and from such nominee back to the lender, if the stock or certificates of indebtedness are at all times held as collateral security for the loan; and to the return of the stock or certificates of indebtedness to the borrower by the lender or his nominee upon payment of the loan. The exemption does not apply, however, to deposits of stock or certificates of indebtedness as collateral security made otherwise than in connection with money loaned on such stock or certificates. The person making an exempt transfer under this paragraph shall, at the time of transfer or delivery, furnish an exemption certificate in substantially the form prescribed in § 43.4344–1. If the delivery or transfer is not accompanied by the required exemption certificate the person making the delivery or transfer will be required to pay the tax imposed by section 4321 or 4331. However, if an exemption certificate is furnished after the transfer or delivery, such person will be entitled to a refund of the tax paid upon filing a timely claim for refund.

(b) *Transfer of stock or certificates of indebtedness made pursuant to Federal or State law to secure the performance of obligations.*—The tax imposed by section 4321 or section 4331 does not apply to any delivery or transfer of stock or certificates of indebtedness to a trustee or public officer, which is made pursuant to Federal or State law to secure the performance of an obligation, or to a redelivery or retransfer of such stock or certificates of indebtedness to the transferor. The exemption provided under this paragraph shall be granted only if the delivery or transfer is accompanied by an exemption certificate in substantially the form prescribed in § 43.4344–1.

§ 43.4342. STATUTORY PROVISIONS; FIDUCIARIES AND CUSTODIANS.

SEC. 4342. FIDUCIARIES AND CUSTODIANS.

The taxes imposed by sections 4321 and 4331 shall not apply to any delivery or transfer of any of the instruments referred to in such sections—

(1) FIDUCIARIES.—From a fiduciary to his nominee, or from one nominee of the fiduciary to another nominee, provided that in each instance such instruments are to be held by the nominee for the same purpose as if retained by the fiduciary; or from the nominee to such fiduciary; or

(2) CUSTODIANS.—

(A) From the owner to a custodian if under a written agreement between the parties such instruments are to be held or disposed of by such custodian for, and subject at all times to the instructions of, the owner; or from such custodian to such owner;

(B) From a custodian as specified in subparagraph (A) to a registered nominee of such custodian, or from one such nominee to another such nominee, provided that in each instance such instruments are to be held by the nominee for the same purpose as if retained by the custodian; or from such nominee to such custodian.

§ 43.4342–1 TRANSFERS TO OR BY FIDUCIARIES OR CUSTODIANS.—(a) *Transfers between fiduciaries and their nominees.*—The tax imposed by section 4321 or 4331 does not apply to deliveries or transfers of stock or certificates of indebtedness from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, if the stock or certificates of indebtedness are to be held by such nominee for the same purpose as they would be held if retained by such fiduciary.

Nor does the tax apply to deliveries or transfers from a nominee of a fiduciary to such fiduciary. The exemption provided under this paragraph shall be granted only if the delivery or transfer is accompanied by an exemption certificate in substantially the form prescribed in § 43.4344–1.

(b) *Transfers to or by a custodian.*—(1) The tax imposed by section 4321 or 4331 does not apply to the delivery or transfer of stock or certificates of indebtedness from the owner thereof to a custodian if, under a written agreement between the owner and the custodian, the instruments so delivered or transferred are to be held or disposed of by such custodian for, and subject at all times to the instructions of, the owner; or to the delivery or transfer of stock or certificates of indebtedness from such custodian to such owner.

(2) The tax also does not apply to the delivery or transfer of stock or certificates of indebtedness from a custodian specified in subparagraph (1) of this paragraph to a registered nominee of such custodian, or from the owner direct to such registered nominee, or from one such nominee to another such nominee, if the stock or certificates of indebtedness are to be held by the nominee for the same purpose as they would be held if retained by such custodian. Nor does the tax apply to deliveries or transfers from a nominee of a custodian to such custodian or to the owner. No exemption is granted unless the nominee is registered in the manner provided in § 43.6001–4(b), contained in subpart J of this part.

(3) Moreover, the tax does not apply to the delivery or transfer of stock or certificates of indebtedness from a custodian of the owner to another custodian of the owner or from a registered nominee of the first custodian to the second custodian or to the registered nominee of the latter, if the transfer would have been exempt under subparagraph (1) or (2) of this paragraph if made by the owner direct to the second custodian or to the registered nominee of the latter.

(4) For purposes of this paragraph, a custodian is a person to whom stock or certificates of indebtedness are delivered or transferred to be held or disposed of by such person for, and subject at all times to the instructions of, the owner and not otherwise. The term "custodian", as used in this paragraph, does not include a trustee. A custodian is to be distinguished from a nominee who merely lends his name and usually does not retain possession of the securities registered in his name.

(5) The exemption provided under this paragraph shall be granted only if the delivery or transfer is accompanied by an exemption certificate in substantially the form prescribed in § 43.4344–1.

§ 43.4343 Statutory Provisions; Transfers by Operation of Law.

SEC. 4343. TRANSFERS BY OPERATION OF LAW.

(a) Exempt Transfers.—The taxes imposed by sections 4321 and 4331 shall not apply to any delivery or transfer of any of the instruments referred to in such sections—

(1) decedents.—From a decedent to his executor or administrator;

(2) minors.—From a minor to his guardian, or from a guardian to his ward upon attaining majority;

(3) incompetents.—From an incompetent to his committee or similar legal representative, or from a committee or similar legal representative to a former incompetent upon removal of disability;

(4) FINANCIAL INSTITUTIONS.—From a bank, trust company, financial institution, insurance company, or other similar entity, or nominee, custodian, or trustee therefor, to a public officer or commission, or person designated by such officer or commission or by a court, in the taking over of its assets, in whole or part, under Federal or State law regulating or supervising such institutions, nor upon redelivery or retransfer by any such transferee or successor thereto;

(5) BANKRUPTS.—From a bankrupt or person in receivership due to insolvency to the trustee in bankruptcy or receiver, from such receiver to such trustee, or from such trustee to such receiver, nor upon redelivery or retransfer by any such transferee or successor thereto;

(6) SUCCESSORS.—From a transferee under paragraphs (1) to (5), inclusive, to his successor, acting in the same capacity, or from one such successor to another;

(7) FOREIGN GOVERNMENTS AND ALIENS.—From a foreign country or national thereof to the United States or any agency thereof, or to the government of any foreign country, directed pursuant to the authority vested in the President by section 5(b) of the Trading with the Enemy Act (40 Stat. 415), as amended by the First War Powers Act, 1941 (55 Stat. 838; 50 U.S.C. App. 5);

(8) TRUSTEES.—From trustees to surviving, substituted, succeeding, or additional trustees of the same trust; or

(9) SURVIVORS.—Upon the death of a joint tenant or tenant by the entireties, to the survivor or survivors.

(b) NONEXEMPT TRANSFERS.—No delivery or transfer shall be exempt because effected by operation of law unless an exemption is otherwise specifically provided.

§ 43.4343–1 TRANSFERS BY OPERATION OF LAW.—No delivery or transfer shall be exempt from the tax imposed by section 4321 or 4331 because effected by operation of law unless an exemption is otherwise specifically provided. Each of the transfers specified in section 4343(a) is exempt from tax, but only if the delivery or transfer is accompanied by an exemption certificate as provided in § 43.4344–1.

§ 43.4344 STATUTORY PROVISIONS; EXEMPTION CERTIFICATES.

SEC. 4344. EXEMPTION CERTIFICATES.

No exemption shall be granted under section 4322(a)(1),(2), or (3), section 4332(a), section 4341(2), section 4342, or under section 4343(a) unless the delivery or transfer is accompanied by a certificate setting forth such facts as the Secretary or his delegate may by regulations prescribe.

§ 43.4344–1 EXEMPTION CERTIFICATES.—No exemption shall be granted under section 4322(a)(1), (2), or (3), section 4332(a), section 4341(2), section 4342, or section 4343(a) unless the delivery or transfer is accompanied by a certificate in substantially the following manner:

It is hereby certified that the transfer of the accompanying instrument(s) is made under such circumstances as to come within one of the exemptions specified in section 4322(a)(1), (2), or (3), 4332(a), 4341(2), 4342, or 4343(a) of the Internal Revenue Code, and that the evidence in proof of the exemption is maintained by the undersigned and is available for inspection by internal revenue officers.

(Signature)

§ 43.4345 STATUTORY PROVISIONS; CROSS REFERENCES.

SEC. 4345. CROSS REFERENCES.

For other exemptions, see sections 4322, 4332, and 4382.

MISCELLANEOUS PROVISIONS

§ 43.4351 STATUTORY PROVISIONS; DEFINITIONS.

SEC. 4351. DEFINITIONS.

(a) REGISTERED NOMINEE.—For the purpose of this subchapter, the term "registered nominee" means any person registered with the official in charge of the collection district in accordance with such regulations as the Secretary or his delegate shall prescribe.

(b) SALE OR TRANSFER.—For the purpose of this subchapter, the term "sale or transfer" means any sale, agreement to sell, memorandum of sale or delivery, or transfer of legal title, whether or not shown by the books of the corporation or other organization (or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale); and whether or not the holder acquires a beneficial interest in the instruments.

§ 43.4351–1 DEFINITIONS.—(a) *Registered nominee.*—For purposes of the regulations in this part, the term "registered nominee" means any person registered as such in accordance with § 43.6001–4(b), contained in subpart J of this part.

(b) *Sale or transfer.*—For purposes of the regulations in this part, the term "sale or transfer" includes sales of, agreements to sell, or memoranda of sales of, stock or certificates of indebtedness; deliveries of stock or certificates of indebtedness with intent to pass title; transfers of legal title to stock or certificates of indebtedness; transfers of rights to subscribe for stock; and transfers of rights to receive stock. The tax imposed by section 4321 and by section 4331 applies to the specified dealings or transactions in stock or certificates of indebtedness, whether effected by any assignment in blank, or by any delivery, or by any paper, agreement, memorandum or other evidence of transfer or sale (and in the case of stock, whether made before, after, or without the issuance of a certificate and whether made upon or shown by the books of the corporation or other organization), and without regard to whether the holder or transferee of the stock or certificate of indebtedness (or specified right in the case of stock) is entitled to any beneficial interest therein. For definition of the term "agreement to sell", see § 43.4381–2(a).

§ 43.4352 STATUTORY PROVISIONS; STOCK OR CERTIFICATES OF INDEBTEDNESS OWNED BY A PARTNERSHIP.

SEC. 4352. STOCK OR CERTIFICATES OF INDEBTEDNESS OWNED BY A PARTNERSHIP.

In the case of a transfer of an interest in a partnership owning any of the instruments referred to in sections 4321 and 4331, the tax imposed by each of such sections shall be that proportion of the tax computed on the transfer of all of the instruments taxable under each of such sections that—

(1) The interest in the partnership transfered bears to

(2) The total interests in the partnership of all the partners.

§ 43.4352–1 TRANSFER OF AN INTEREST IN A PARTNERSHIP.—(a) The tax imposed by section 4321 and by section 4331 on a transfer of an interest in a partnership, owning stock or certificates of indebtedness, is an amount equal to that proportion of each such tax computed on the transfer of all such stock and certificates of indebtedness owned

by the partnership that the interest in the partnership transferred bears to the total interests in the partnership of all the partners.

(b) A tax is payable on the transfer by one or more of the partners of his or their interest or interests, either in whole or in part, in the partnership, to one or more of the remaining partners or to one or more new partners admitted to the partnership. However, any change in the partnership accounts, resulting from periodic or varying withdrawals of earnings, does not constitute a transfer of an interest in a partnership and no tax is payable as the result of such a change.

§ 43.4353 STATUTORY PROVISIONS; AFFIXING OF STAMPS.

SEC. 4353. AFFIXING OF STAMPS.

The stamps representing the taxes imposed by section 4321 and section 4331 shall be affixed to—

(1) INSTRUMENT.—The instrument where the change of ownership is by transfer of the instrument;

(2) BILL OR MEMORANDUM OF SALE.—The bill or memorandum of sale in cases of an agreement to sell or where the transfer is by delivery of the instrument assigned in blank; such bill or memorandum of sale shall be made and delivered by the seller to the buyer, and shall show the date thereof, the name of the seller, the amount of the sale, and the instrument to which it refers.

§ 43.4353–1 AFFIXING OF STAMPS.—(a) *Stock.*—(1) In cases of agreements to sell stock and transfers of title thereto by delivery of certificates assigned in blank, the stamps shall be affixed to the memoranda of such transactions (see § 43.4321–4).

(2) In all cases where the change of ownership of the stock is by transfer or delivery under special endorsement, i.e., by insertion of the name of the transferee in the endorsement or power of attorney on the back of the certificate, the stamps shall be affixed to the certificate, whether or not the change of ownership results from a sale.

(3) In all cases where the evidence of sale or transfer is shown only by the books of the corporation or other organization, the stamps shall be affixed to such books (see section 4323).

(b) *Certificates of indebtedness.*—(1) In cases of agreements to sell certificates of indebtedness and transfers of title thereto, including loans, by delivery of certificates assigned in blank, the stamps shall be affixed to the memoranda of such transactions (see § 43.4331–4).

(2) In all cases where the change of ownership of the certificate of indebtedness is by transfer or delivery under special endorsement, i.e., by insertion of the name of the transferee in the endorsement on the back of the certificate, the stamps shall be affixed to the certificate, whether or not the change of ownership results from a sale.

(c) *In general.*—In no event shall any corporation or transfer agent transfer any shares, certificates of stock, or certificates of indebtedness unless stamps for the transfer tax due have been properly affixed and canceled as required by the regulations in this part.

§ 43.4354 STATUTORY PROVISIONS; CROSS REFERENCES.

SEC. 4354. CROSS REFERENCES.

For penalties and other general and administrative provisions applicable to this subchapter, see section 4383 and subtitle F.

§ 43.4354–1 CROSS REFERENCES.—(a) For definitions, see section 4381, §§ 43.4381–1 and 43.4381–2, and section 7701 (§ 43.7701).

(b) For penalties see section 7271 and § 43.7271–1.

(c) For other general and administrative provisions, see section 4383, § 43.4383–1, subpart J of this part, and the applicable sections of the Regulations on Procedure and Administration (26 CFR Part 301).

Subpart G.—Tax on Conveyances

§ 43.4361 Statutory Provisions; Imposition of Tax.

SEC. 4361. IMPOSITION OF TAX.

There shall be imposed a tax on each deed, instrument, or writing (unless deposited in escrow before April 1, 1932), whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100 and does not exceed $500, in the amount of 55 cents; and at the rate of 55 cents for each additional $500 or fractional part thereof.

§ 43.4361–1 Imposition of Tax.—(a) *Scope of tax.*—(1) Section 4361 imposes a tax upon deeds, instruments, or other writings, whereby realty sold is granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or, at his direction, any other person, when the consideration for, or value of, the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100.

(2) The tax is limited to conveyances of realty sold and does not apply to other conveyances (see § 43.4361–2(b)). The tax attaches at the time the deed or other instrument of conveyance is delivered, irrespective of the time when the sale is made. Deeds deposited in escrow become subject to the tax upon delivery to the grantee. A conveyance of realty subject to an equity of redemption is taxable when made, not when the time for redemption expires.

(3) For purposes of the tax imposed by section 4361, the determination of what constitutes "realty" is not controlled by the definition or scope of that term under State law. State law determines the character of the rights conveyed by an instrument, but whether such conveyance constitutes a conveyance of "realty" is to be determined under Federal law.

(4) For purposes of the regulations in this part—

(i) The term "realty" includes—

(*a*) Those interests in real property which endure for a period of time, the termination of which is not fixed or ascertained by a specific number of years, such as an estate in fee simple, life estate, perpetual easement, etc., and

(*b*) Those interests enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consist of a bundle of rights approximating those of the class of interests mentioned in subdivision (i) (*a*) of this subparagraph.

(ii) The term "sold" imports a transfer of an interest for a valuable consideration, which may involve money or anything of value.

(iii) The term "deed" includes any instrument or writing whereby realty is assigned, transferred, or otherwise conveyed to, or vested in, the purchaser, or at his direction, any other person.

(b) *Rate and computation of tax.*—The rate of tax is 55 cents on each $500 or fractional part thereof of the net consideration paid for, or the net value of, the realty conveyed, that is, the gross consideration or gross value less, in either case, the amount of all liens or encumbrances on the realty existing before the sale and not removed thereby. The tax is based upon the net consideration where it is definite in amount, or may be definitely determined. The tax is based upon net value where the amount of the consideration is indefinite, or is left open to be fixed by future contingencies. In determining the amount of the net consideration for, or net value of, the realty conveyed, only the amount of the liens and encumbrances on the property existing before the sale and not removed thereby may be deducted. Thus, for example, taxes or assessments which are liens on the property before the sale and are not paid at the time of sale are deductible. No deduction shall be made on account of any lien or encumbrance placed upon the property in connection with the sale, or by reason of deferred payments of the purchase price whether represented by notes or otherwise.

§ 43.4361–2 ILLUSTRATIONS.—(a) *Conveyances subject to tax.*—The following are examples of conveyances subject to the tax:

(1) A conveyance of realty in exchange for other property; also the conveyance of the other property, if it is realty.

(2) A conveyance of realty in consideration of life maintenance. The tax is computed on the net value of the realty conveyed.

(3) A conveyance by a defaulting mortgagor to the mortgagee in consideration of the cancellation of the mortgage debt. The tax is computed on the amount of the unpaid mortgage debt plus unpaid accrued interest.

(4) Deeds given by masters in chancery, sheriffs, clerks of court, etc., for realty sold under foreclosure or execution. The tax is computed on the amount bid for the property plus the costs if paid by the purchaser, whether the purchaser is the mortgagee, judgment creditor, or any other person.

(5) A conveyance of realty by a judgment or decree in a condemnation proceeding under the power of eminent domain, or a conveyance of such property under threat or imminence of such proceeding.

(6) Conveyances to or by building and loan associations. However, the tax does not apply to a conveyance of realty to a building and loan association for the purpose of securing a loan thereon, nor to the reconveyance of the realty to its owner as part of the loan transaction.

(7) A conveyance of realty to a corporation in exchange for shares of its capital stock.

(8) A conveyance of realty by a corporation in liquidation or in dissolution to its shareholders subject to the debts of the corporation; however, if there are no corporate debts and the conveyance is made solely for the cancellation and retirement of the capital stock, the tax does not apply.

(9) Deeds to standing timber and to mines. (For definition of the term "deed", see § 43.4361–1(a)(4)(iii).)

(10) In jurisdictions where common-law dower still exists, an instrument conveying the estate acquired by a widow upon assignment

of dower. However, an instrument purporting to convey the inchoate right of dower of a wife, or the consummate right of dower of a widow prior to assignment of dower, is not subject to the tax. Where by statute dower has been abolished and in lieu thereof a different interest in the husband's real property conferred upon the wife, the taxability of an instrument purporting to convey such interest prior to its assignment must be determined by the nature of the wife's interest as fixed by the statutes and decisions of the jurisdiction in which the real estate is located.

(11) A conveyance of real estate sold to or by the United States of America (see, however, § 43.4383–1).

(12) A conveyance of realty by a partner to the partnership as a contribution of partnership assets.

(b) *Conveyances not subject to tax.*—In addition to the various exemptions prescribed in sections 4362 and 4382 and in the Bankruptcy Act as amended, the following are examples of conveyances not subject to tax:

(1) The reconveyance of realty, conveyed to secure a debt, upon payment of such debt.

(2) Conveyances of realty without consideration and otherwise than in connection with a sale, including a deed conveying realty as a bona fide gift, although the deed may recite a consideration for the transfer, such as "natural love and affection and $1", "desire to promote public welfare and $1", or "$1 and other valuable consideration"; a gift of realty by a husband to his wife accomplished through the conveyance of the property for an ostensible consideration to a "straw man" who immediately reconveys the property to the wife; and a deed to or by a trustee not pursuant to a sale.

(3) A deed to confirm title already vested in the grantee, such as a quitclaim deed to correct a flaw in title.

(4) A deed given by an executor in accordance with the terms of the will; however, if, by reason of a consideration passing between devisees, one of them takes a greater share in the realty than that to which he is entitled under the will, the deed given by the executor to convey such greater share is subject to a tax computed upon the amount of such consideration.

(5) A deed from an agent to his principal conveying real estate purchased for and with funds of the principal.

(6) An option for the purchase of real property or a contract for the sale of real property, if the contract does not vest legal title.

(7) Partition deeds, unless, for consideration, some of the parties take shares greater in value than their undivided interests, in which event a tax attaches to each deed conveying such greater share computed upon the consideration for the excess.

(8) Ordinary leases of real property for a definite term of years (see, however, § 43.4361–1(a)(4)(i)).

(9) A deed executed by a debtor conveying property to a trustee for the benefit of his creditors; however, when the trustee conveys such property to a creditor or sells it to any other person, the deed executed by him is taxable.

(10) Conveyance to a receiver of realty included in the receivership assets, and reconveyance of such realty upon termination of the receivership.

(11) A deed conveying real estate situated in a foreign country.
(12) Transfer of real estate in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation.

§ 43.4361–3 AFFIXING OF STAMPS.—(a) Only documentary stamps shall be used in payment of the tax imposed by section 4361. The requisite stamps shall be affixed to the deed, instrument, or other writing by which the realty is conveyed. See §§ 43.6804–1 and 43.6804–2, contained in subpart J of this part, for the appropriate use, denominations, and cancellation of such stamps.

(b) Documentary stamps may be purchased, and requisition forms for the purchase of such stamps may be obtained, only from the sources and in the manner provided in § 43.6802–1, contained in subpart J of this part. For provisions relating to distribution, supply, and redemption of stamps, see sections 6801, 6802 (§ 43.6802), 6805 (§ 43.6805), and the regulations thereunder contained in the Regulations on Procedure and Administration (26 CFR Part 301).

§ 43.4362 STATUTORY PROVISIONS; EXEMPTIONS.

SEC. 4362. EXEMPTIONS.

(a) SECURITY FOR DEBT.—The tax imposed by section 4361 shall not apply to any instrument or writing given to secure a debt.
(b) OTHER EXEMPTIONS.—For other exemptions, see section 4382.

§ 43.4362–1 EXEMPTIONS.—Section 4362 expressly exempts from the tax imposed by section 4361 any instrument or writing, such as a mortgage or a deed of trust, given to secure a debt.

§ 43.4363 STATUTORY PROVISIONS; CROSS REFERENCES.

SEC. 4363. CROSS REFERENCES.

For penalties and other general and administrative provisions applicable to this subchapter, see section 4383 and subtitle F.

§ 43.4363–1 CROSS REFERENCES.—(a) For definitions, see section 4381, §§ 43.4381–1 and 43.4381–2, and section 7701 (§ 43.7701).
(b) For penalties, see section 7271 and § 43.7271–1.
(c) For other general and administrative provisions, see sections 4383, § 43.4383–1, subpart J of this part, and the applicable sections of the Regulations on Procedure and Administration (26 CFR Part 301).

SUBPART H.—TAX ON POLICIES ISSUED BY FOREIGN INSURERS

§ 43.4371 STATUTORY PROVISIONS; IMPOSITION OF TAX.

SEC. 4371. IMPOSITION OF TAX.

There shall be imposed a tax on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer at the following rates:

(1) CASUALTY INSURANCE AND INDEMNITY BONDS.—Four cents on each dollar, or fractional part thereof, of the premium charged on the policy of casualty insurance or the indemnity bond, if issued to or for, or in the name of, an insured as defined in section 4372(d);

(2) LIFE INSURANCE, SICKNESS, AND ACCIDENT POLICIES, AND ANNUITY CONTRACTS.—One cent on each dollar, or fractional part thereof, of the premium charged on the policy of life, sickness, or accident insurance, or annuity contract, unless the insurer is subject to tax under section 816:

(3) REINSURANCE.—One cent on each dollar, or fractional part thereof, of the premium charged on the policy of reinsurance covering any of the contracts taxable under paragraph (1) or (2).

[Sec. 4371 as amended by Act of Mar. 13, 1956, 70 Stat. 49; effective with respect to taxable years beginning after December 31, 1954]

§ 43.4371–1 IMPOSITION OF TAX ON POLICIES ISSUED BY FOREIGN INSURERS; SCOPE OF TAX.—(a) *Certain insurance policies, and indemnity, fidelity, or surety bonds.*—Section 4371(1) imposes a tax upon each policy of insurance (other than those referred to in paragraph (b) of this section), upon each indemnity, fidelity, or surety bond, or upon each certificate, binder, covering note, receipt, memorandum, cablegram, letter, or other instrument by whatever name called, whereby a contract of insurance of the character involved or an obligation of the nature of an indemnity, fidelity, or surety bond is made, continued, or renewed, if issued—

(1) By a nonresident alien individual, a foreign partnership, or a foreign corporation, as insurer, and the policy or other instrument is not signed or countersigned by an officer or agent of the insurer in a State, Territory, or the District of Columbia in which the insurer is authorized to do business; and

(2) To or for, or in the name of, a domestic corporation, domestic partnership, or an individual resident of the United States, against or with respect to hazards, risks, losses, or liabilities wholly or partly within the United States; or

(3) To or for, in the name of, a foreign corporation, foreign partnership, or nonresident individual, engaged in a trade or business within the United States with respect to hazards, risks, or liabilities wholly within the United States.

For definition of the term "indemnity bond", see section 4372(c).

(b) *Life insurance, sickness, and accident policies and annuity contracts.*—*Section* 4371(2) imposes a tax upon each policy of insurance or annuity contract, or certificate, binder, covering note, receipt, memorandum, cablegram, letter, or other instrument by whatever name called, whereby a contract of insurance or an annuity contract is made, continued, or renewed, if issued—

(1) By a nonresident alien individual, a foreign partnership, or a foreign corporation, as insurer, and the policy or other instrument is not signed or countersigned by an officer or agent of the insurer in a State, Territory, or the District of Columbia, in which such insurer is authorized to do business, or if not so signed or countersigned, the insurer is not subject to tax under section 816 (or, in the case of taxable years beginning before January 1, 1955, section 807); and

(2) To any person with respect to the life or hazards to the person of a citizen or resident of the United States.

(c) *Reinsurance.*—Section 4371(3) imposes a tax upon each policy of reinsurance, certificate, binder, covering note, receipt, memorandum, cablegram, letter, or other instrument by whatever name called, whereby a contract of reinsurance is made, continued, or renewed, if issued—

(1) By a nonresident alien individual, a foreign partnership, or a foreign corporation, as reinsurer, and the policy or other instrument is not signed or countersigned by an officer or agent of the reinsurer in a State, Territory, or the District of Columbia in which such reinsurer is authorized to do business; and

(2) To any person against, or with respect to, any of the hazards, risks, losses, or liabilities covered by contracts described in section 4371(1) or (2).

(d) *Exempt indemnity bonds.*—The tax imposed by section 4371 does not apply to any indemnity bond described in section 4373(2).

§ 43.4371–2 RATE AND COMPUTATION OF TAX.—(a) *Rate of Tax.*—(1) The tax under section 4371(1) is imposed at the rate of 4 cents on each dollar, or fractional part thereof, of the premium charged.

(2) The tax under section 4371(2) and (3) is imposed at the rate of 1 cent on each dollar, or fractional part thereof, of the premium charged.

(b) *Computation of tax.*—The tax is measured strictly by the amount of the premium charged. The time and method of payment of the premium are immaterial; the tax liability attaches if the insurance becomes effective, even though the premium is never paid. The full rate of tax applies to each fractional part of a dollar of the premium charged. For example, upon a premium charge of $10.10, the tax at the rate of 4 cents amounts to 44 cents, and at the rate of 1 cent amounts to 11 cents.

(c) *Meaning of premium.*—For purposes of the regulations in this part, the term "premium" means the agreed price or consideration for assuming and carrying the risk or obligation, and includes any additional assessment or charge which may be assessed or charged under the contract, whether payable in one sum or installments.

§ 43.4372 STATUTORY PROVISION; DEFINITIONS.

SEC. 4372. DEFINITIONS.

(a) FOREIGN INSURER OR REINSURER.—For the purpose of this subchapter, the term "foreign insurer or reinsurer" means an insurer or reinsurer who is a nonresident alien individual, or a foreign partnership, or a foreign corporation. The term includes a nonresident alien individual, foreign partnership, or foreign corporation which shall become bound by an obligation of the nature of an indemnity bond.

(b) POLICY OF CASUALTY INSURANCE.—For the purpose of section 4371(1), the term "policy of casualty insurance" means any policy (other than life) or other instrument by whatever name called whereby a contract of insurance is made, continued, or renewed.

(c) INDEMNITY BOND.—For the purpose of this subchapter, the term "indemnity bond" means any instrument by whatever name called whereby an obligation of the nature of an indemnity, fidelity, or surety bond is made, continued, or renewed. The term includes any bond for indemnifying any person who shall have become bound or engaged as surety, and any bond for the due execution or performance of any contract, obligation, or requirement, or the duties of any office or position, and to account for money received by virtue thereof, where a premium is charged for the execution of such bond.

(d) INSURED.—For the purpose of section 4371(1), the term "insured" means—

(1) A domestic corporation or partnership, or an individual resident of the United States, against, or with respect to, hazards, risks, losses, or liabilities wholly or partly within the United States, or

(2) A foreign corporation, foreign partnership, or nonresident individual, engaged in a trade or business within the United States, with respect to hazards, risks, or liabilities within the United States.

(e) POLICY OF LIFE, SICKNESS, OR ACCIDENT INSURANCE, OR ANNUITY CONTRACT.—For the purpose of section 4371(2), the term "policy of life, sickness, or accident insurance, or annuity contract" means any policy or other instrument by whatever name called whereby a contract of insurance or an annuity contract is made, continued, or renewed

with respect to the life or hazards to the person of a citizen or resident of the United States.

(f) POLICY OF REINSURANCE.—For the purpose of section 4371(3), the term "policy of reinsurance" means any policy or other instrument by whatever name called whereby a contract of reinsurance is made, continued, or renewed against, or with respect to, any of the hazards, risks, losses, or liabilities covered by contracts taxable under paragraph (1) or (2) of section 4371.

§ 43.4373 STATUTORY PROVISIONS; EXEMPTIONS.

SEC. 4373. EXEMPTIONS.

The tax imposed by section 4371 shall not apply to—

(1) DOMESTIC AGENT.—Any policy, indemnity bond, or annuity contract signed or countersigned by an officer or agent of the insurer in a State, Territory, or District of the United States within which such insurer is authorized to do business; or

(2) INDEMNITY BOND.—Any indemnity bond required to be filed by any person to secure payment of any pension, allowance, allotment, relief, or insurance by the United States, or to secure a duplicate for, or the payment of, any bond, note, certificate of indebtedness, war-saving certificate, warrant or check, issued by the United States.

§ 43.4374 STATUTORY PROVISIONS; AFFIXING OF STAMPS.

SEC. 4374. AFFIXING OF STAMPS.

Any person to or for whom or in whose name any policy, indemnity bond, or annuity contract referred to in section 4371 is issued, or any solicitor or broker acting for or on behalf of such person in the procurement of any such instrument, shall affix the proper stamps to such instrument.

§ 43.4374–1 AFFIXING OF STAMPS.—(a) *General.*—(1) Documentary stamps shall be used in payment of the tax. Requisite stamps must be affixed to the first instrument whereby the taxable contractual relationship is created, continued, or renewed, whether it be a letter of acceptance, a cablegram, or other instrument by whatever name called. Where the instrument which creates or evidences the contractual relationship is confirmed by a subsequent instrument, the latter shall bear a notation designating such prior instrument (referred to in this section as the original instrument) and showing that the requisite stamps have been affixed thereto and canceled.

(2) In any case where the amount of the premium is not definitely determined at the time of entering into the taxable contractual relationship, the stamps may be affixed to the receipts for monthly or other payments if proper notation be made upon such receipts identifying the original instruments to which they apply.

(3) The stamps shall be affixed by any person who is a party to the taxable contractual relationship, including any solicitor or broker acting for or on behalf of such person.

(b) *Subsequent instruments.*—In case a subsequent instrument provides for the payment of a premium greater than that provided for in the original instrument, the subsequent instrument must have affixed thereto stamps equal to the tax imposed upon the additional premium charged and must bear a notation of the stamps affixed to the original instrument.

(c) *Affixing of stamps.*—(1) Only documentary stamps shall be used in payment of the tax imposed by section 4371. See also §§ 43.6804–1 and 43.6804–2, contained in subpart J of this part, for the appropriate use, denominations, and cancellation of such stamps.

(2) Documentary stamps may be purchased, and requisition forms for the purchase of such stamps may be obtained, only from the sources and in the manner provided in § 43.6802–1, contained in subpart J of this part. For provisions relating to distribution, supply, and redemption of stamps, see sections 6801, 6802 (§ 43.6802), 6805 (§ 43.6805), and the regulations thereunder contained in the Regulations on Procedure and Administration (26 CFR Part 301).

(d) *Instruments without stamps or notation of stamping.*—For provisions relating to the penalty for failure to comply with the requirements of section 4374, see § 43.7270, contained in subpart J of this part.

(e) *Record requirements.*—For provisions relating to the requirements concerning records and the retention of policies for a period of 3 years, see § 43.6001–3, contained in subpart J of this part.

§ 43.4375 Statutory Provisions; Cross References.

SEC. 4375. CROSS REFERENCES.

For penalties and other general and administrative provisions, see section 4383 and subtitle F.

§ 43.4375–1 Cross References.—(a) For definitions, see section 4381, §§ 43.4381–1 and 43.4381–2, and section 7701 (§ 43.7701).

(b) For penalties, see section 7271 and § 43.7271–1.

(c) For other general and administrative provisions, see section 4383, § 43.4383–1, subpart J of this part, and the applicable sections of the Regulations on Procedure and Administration (26 CFR Part 301).

Subpart I.—Miscellaneous Provisions Applicable to Documentary Stamp Taxes

§ 43.4381 Statutory Provisions; Definitions.

SEC. 4381. DEFINITIONS.

(a) Certificates of Indebtedness.—For purposes of the taxes imposed by sections 4311 and 4331, the term "certificates of indebtedness" means bonds and debentures; and also includes all instruments, however termed, issued by a corporation with interest coupons or in registered form, known generally as corporate securities.

(b) Corporation.—For purposes of the taxes imposed by sections 4301 and 4331 [4321], the term "corporation" includes any investment trust or similar organization (or any person acting in behalf of such investment trust or similar organization) holding or dealing in shares or certificates of stock, or in certificates of indebtedness. The definition herein shall not be construed to limit the effect of the definition of the term "corporation" provided in section 7701(a)(3).

(c) Shares or Certificates of Stock.—For purposes of the taxes imposed by sections 4301 and 4331 [4321], the term "shares or certificates of stock" includes shares or certificates of profits or of interest in property or accumulations.

§ 43.4381–1 Definitions.—(a) *Certificates of indebtedness.*—The term "certificates of indebtedness" includes bonds and debentures. Such term also includes all instruments, however termed, issued by a corporation with interest coupons or in registered form and known generally as corporate securities. The essence of a corporate security is marketability. An instrument is ordinarily considered to be marketable if it is issued in series, under a trust indenture, and in registered form or with interest coupons attached. For example, an instrument containing the essential features of a promissory note is included within the meaning of the term "certificates of indebtedness" if it has, in

addition, the general characteristics of a corporate security. Whether or not an instrument is a certificate of indebtedness within the meaning of section 4381(a) is not determined by its name alone, but depends upon all the facts which can be derived from the face of the instrument, such as the form and terms of the instrument. The nature of the transaction or any act appearing outside of the instrument itself is immaterial for purposes of making such determination.

(b) *Corporation.*—For purposes of the taxes imposed by sections 4301, 4311, 4321, 4331, 4361, and 4371, the term "corporation" includes associations, joint-stock companies, and insurance companies (see § 43.7701). For purposes of the taxes imposed by sections 4301 and 4321, the term "corporation" also includes any investment trust or similar organization (or any person acting in behalf of such investment trust or similar organization) holding or dealing in shares or certificates of stock, or in certificates of indebtedness. In addition, for purposes of the tax imposed by section 4311, section 4312(a) provides that the term "corporation" also includes any receiver, trustee in bankruptcy, assignee, or other person having custody of property, or charge of the affairs, of the corporation.

(c) *Shares or certificates of stock.*—For purposes of the regulations in this part, the term "stock" includes shares or certificates of stock. The term "stock" also includes shares in an association, joint-stock company, or insurance company (see § 43.7701). For purposes of the tax imposed by section 4321, the term "stock" also includes rights to subscribe for or to receive shares or certificates of stock (see § 43.4321–1(a)). For purposes of the taxes imposed by sections 4301 and 4321, the term "shares or certificates of stock" includes shares or certificates of profits or of interest in property or accumulations.

§ 43.4381–2 Other Definitions.—(a) *Agreement to sell, exchange, and clearing house.*—As used in the regulations in this part, unless otherwise specified or indicated by the context—

(1) The term "agreement to sell" includes contracts to sell, either written or oral, and whether on the deferred or partial payment plan or otherwise, options, calls, offers, indemnities, and privileges.

(2) The term "exchange" includes each and every agency, office, room, or other place of assembly, whether under shelter or in the open, at which stocks, certificates of indebtedness, rights, or warrants are publicly bought, sold, bid for, offered, or exchanged, between persons there assembled, on behalf of themselves or others.

(3) The term "clearing house" includes every corporation, and every association of individuals, partnerships, or corporations, wholly or partly engaged in the business of clearing, settling or adjusting transactions in the purchase, sale, receipt, or delivery of stock, certificates of indebtedness, rights, or warrants, whether or not a part or department of an exchange or an independent body.

(b) *Cross references.*—For other definitions, see §§ 43.0–2 and 43.7701.

§ 43.4382 Statutory Provisions; Exemptions.

SEC. 4382. EXEMPTIONS.

(a) The taxes imposed by this chapter shall not apply to—

(1) Government and state obligations—Any certificate of indebtedness, note, or other instrument, issued by the United States,

or by any foreign Government, or by any State, Territory, or the District of Columbia, or local subdivision thereof, or municipal or other corporation exercising the taxing power;

(2) DOMESTIC BUILDING AND LOAN ASSOCIATIONS AND MUTUAL DITCH OR IRRIGATION COMPANIES.—Shares or certificates of stock and certificates of indebtedness issued by domestic building and loan associations, savings and loan associations, cooperative banks, and homestead associations substantially all the business of which is confined to making loans to members, or by mutual ditch or irrigation companies;

(3) FARMERS', FRUIT GROWERS' OR COOPERATIVE ASSOCIATIONS.—Shares or certificates of stock and certificates of indebtedness issued by any farmers' or fruit growers' or like associations organized and operated on a cooperative basis for the purposes, and subject to the conditions, prescribed in section 521.

(b) The taxes imposed by sections 4301, 4311, 4321, 4331, and 4361 shall not apply to—

(1) CORPORATE AND RAILROAD REORGANIZATIONS.—The issuance, transfer, or exchange of securities, or the making, delivery, or filing of conveyances to make effective any plan of reorganization or adjustment confirmed or approved as indicated below, provided that the issuance, transfer, or exchange of securities, or the making, delivery or filing of instruments of transfer or conveyances, occurs within 5 years from the date of such confirmation or approval—

(A) Confirmed under the Bankruptcy Act, as amended (30 Stat. 544; U.S.C., title 11),

(B) Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in section 77(m) of the Bankruptcy Act, as amended (49 Stat. 922; 11 U.S.C. 205(m)), or

(C) Approved in an equity receivership proceeding in a court involving a corporation, as defined in section 106(3) of the Bankruptcy Act, as amended (52 Stat. 883; 11 U.S.C. 506);

(2) ORDERS OF THE SECURITIES AND EXCHANGE COMMISSION.—The issuance, transfer, or exchange of securities, or making or delivery of conveyances, to make effective any order of the Securities and Exchange Commission as defined in section 1083(a): *Provided*, That—

(A) The order of the Securities and Exchange Commission in obedience to which such issuance, transfer, or exchange of securities or conveyances are made recites that such issuance, transfer, or exchange, or conveyances are necessary or appropriate to effectuate the provisions of section 11(b) of the Public Utility Holding Company Act of 1935 (49 Stat. 820; 15 U.S.C. 79k(b)),

(B) Such order specifies and itemizes the securities and other property which are ordered to be issued, transferred, exchanged, or conveyed, and

(C) Such issuance, transfer, or exchange, or conveyance is made in obedience to such order.

§ 43.4382–1 EXEMPTIONS.—(a) *Government and State obligations.*—Section 4382(a)(1) exempts from the tax imposed by sections 4311 and 4331 any certificate of indebtedness issued by the United States, or by any foreign government, or by any State, Territory, or the District of Columbia, or local subdivision thereof, or municipal or other corporation exercising the taxing power.

(b) *Stocks and certificates of indebtedness of domestic building and loan associations, etc.*—Section 4382(a)(2) exempts from the tax imposed by section 4301, 4311, 4321, or 4331 any stock or certificates of indebtedness issued by a (1) domestic building and loan association, savings and loan association, cooperative bank, or homestead asso-

ciation, substantially all the business of which is confined to making loans to members, or (2) mutual ditch or irrigation company. For definition of the term "domestic building and loan association", see § 43.7701.

(c) *Stocks and certificates of indebtedness of farmers', fruit growers', or cooperative associations.*—Section 4382(a)(3) exempts from the tax imposed by section 4301, 4311, 4321, or 4331 any stock or certificate of indebtedness issued by any farmers' or fruit growers' or like association organized and operated on a cooperative basis for the purposes, and subject to the conditions, prescribed in section 521. For regulations under section 521, see the Income Tax Regulations (26 CFR Part 1).

(d) *Corporate and railroad reorganizations.*—(1) Section 4382(b)(1) exempts from the taxes imposed by sections 4301, 4311, 4321, 4331, and 4361 the issuance, transfer, or exchange of securities, or the making, delivery, or filing of conveyances, to make effective any plan of reorganization or adjustment—

(i) confirmed under the Bankruptcy Act, as amended (30 Stat. 544; U.S.C., title 11);

(ii) approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in section 77(m) of the Bankruptcy Act, as amended (49 Stat. 922; 11 U.S.C. 205(m)); or

(iii) approved in an equity receivership proceeding in a court involving a corporation, as defined in section 106(3) of the Bankruptcy Act, as amended (52 Stat. 883; 11 U.S.C. 506),

if the issuance, transfer, or exchange of securities, or the making, delivery or filing of instruments of transfer or conveyance, occurs within 5 years from the date of such confirmation or approval.

(2) Section 267 of the Bankruptcy Act (52 Stat. 903; 11 U.S.C. 667) also exempts from stamp tax the issuance, transfer, or exchange of securities, or the making or delivery of instruments of transfer under any plan of reorganization confirmed under chapter X of the Bankruptcy Act, as amended. However, by reason of the provisions of section 4382(b)(1) the exemption conferred by section 267 has no application to the issuance, transfer, or exchange of securities, or the making, delivery, or filing of conveyances, which occurs after 5 years from the date of confirmation or approval of the plan of reorganization.

(e) *Orders of the Securities and Exchange Commission.*—Section 4382(b)(2) exempts from the taxes imposed by sections 4301, 4311, 4321, 4331, and 4361 the issuance, transfer, or exchange of securities, or the making or delivery of conveyances, to make effective any order of the Securities and Exchange Commission as defined in section 1083(a), if (1) the order of the Securities and Exchange Commission in obedience to which such issuance, transfer, or exchange of securities or conveyance is made recites that such issuance, transfer, or exchange of securities or conveyance is necessary or appropriate to effectuate the provisions of section 11(b) of the Public Utility Holding Company Act of 1935 (49 Stat. 820; 15 U.S.C. 79k(b)); (2) such order specifies and itemizes the securities and other property which are ordered to be issued, transferred, exchanged, or conveyed; and (3)

such issuance, transfer, or exchange or conveyance is made in obedience to such order.

(f) *Alteration and modification of securities under the Interstate Commerce Act.*—Section 20b of the Interstate Commerce Act (62 Stat. 162; 49 U.S.C. 20b) provides for alteration or modification of securities of a carrier as defined in section 20a(1). Paragraph (12) of section 20b makes sections 4301, 4311, 4321, 4331, and 4361, and any amendments thereto, unless specifically provided to the contrary, inapplicable to the issuance transfer, or exchange of securities or the making or delivery of conveyances to make effective any alteration or modification effected pursuant to section 20b.

§ 43.4383 Statutory Provisions; Liability for Tax.

SEC. 4383. LIABILITY FOR TAX.

The tax imposed by this chapter shall be paid by any person who makes, signs, issues, or sells any of the documents and instruments subject to the taxes imposed by this chapter, or for whose use or benefit the same are made, signed, issued, or sold. The United States or any agency or instrumentality thereof shall not be liable for the tax with respect to an instrument to which it is a party, and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor.

§ 43.4383–1 Liability for Tax.—(a) The tax is payable by any of the parties (except the United States or any agency or instrumentality thereof) to a taxable transaction. As, for example, in the case of the transfer of stock, the liability therefor is imposed upon the transferor, the transferee, and the corporation whose stock is transferred (if there is a transfer of record).

(b) The parties to the transaction may agree among themselves as to which shall pay the tax, but such agreement does not relieve the others from their liability in the event it is not carried out. No provisions, by-laws, or rules, of any exchange, and no custom, shall exempt any person from payment of the tax imposed.

(c) Where a state or a political subdivision thereof, acting in its governmental capacity, is a party to a taxable transaction, under chapter 34 of the Code, the transaction will not be exempt from the documentary stamp tax merely by reason of the governmental character of one of the parties. The legal incidence of the tax in such a case rests upon the other party to the transaction. However, if in a taxable transaction with a private party, a State or political subdivision thereof is acting in its proprietary function, both parties will be liable for the tax. Where all parties to a transaction are States or political subdivisions thereof, acting in their governmental capacity, no tax shall be imposed.

Subpart J.—Administrative Provisions Applicable to Documentary Stamp Taxes

§ 43.6001 Statutory Provisions; Notice or Regulations Requiring Records, Statements, and Special Returns.

SEC. 6001. NOTICE OR REGULATIONS REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS.

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such

returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

§ 43.6001–1 RECORDS OF SALES AND TRANSFERS OF STOCK.—(a) *Brokers, dealers, etc.*—All persons who are wholly or partly engaged in the business of buying, selling, or transferring stock, either at public or private sale, whether or not they are members of an exchange, including persons engaged in transactions known as "matched", "on-order", "pass-outs", or "give-ups", or transactions which are settled directly between the seller and buyer or which are cleared or adjusted through a clearing house or otherwise, or persons (other than those described in paragraph (b) of this section) engaged in accepting and procuring the transmission of orders for purchase or sale of shares of stock shall keep a record as to each transaction showing:

(1) Date of transaction.
(2) Name of customer for whom sold or loaned, or for whom bought or borrowed.
(3) Name of party to whom sold or loaned, or from whom bought or borrowed.
(4) Name of correspondent broker, if any.
(5) Number of shares involved.
(6) Name and description of stock.
(7) Par value of stock; if no par value, so indicate.
(8) Aggregate face value of the certificates involved.
(9) Selling price of stock, per share.
(10) Amount of tax paid.

(b) *Correspondent brokers.*—Persons engaged in accepting and procuring the transmission of orders for the purchase or sale of stock to be executed at a brokerage office or at an exchange, board of trade, or similar place, shall keep a record as to each transaction showing:

(1) Date of acceptance and transmission of order.
(2) Name of person from whom accepted.
(3) Name and address of person to whom transmitted.
(4) Name and description of stock.
(5) Par value of stock; if no par value, so indicate.
(6) Number of shares involved.
(7) Whether purchase or sale.
(8) Selling price of stock, per share.
(9) Date of execution of order.

(c) *Floor brokers, etc.*—Brokers known as strictly "floor brokers", "two-dollar men", or "room traders", whether their transactions are settled directly between seller and buyer, by "matched", "on-order", "pass-out", scratch sale', or "give-up", or by any other kind of sale or purchase, or whether their transactions are cleared through a clearing house or otherwise, shall, in lieu of the record prescribed in subsection (a) of this section, keep a record as to each transaction showing:

(1) Date of transaction.

(2) Name of seller.
(3) Name of purchaser.
(4) Name and description of stock.
(5) Number of shares involved.
(6) Par value of stock; if no par value, so indicate.
(7) Aggregate face value of the certificates involved.
(8) Selling price of stock, per share.
(9) Whether the transaction is "matched", "on-order", "pass-out", "scratch sale", or "give-up".
(10) Name of person to whom "given-up".

(d) *General.*—Persons keeping records as prescribed in this section may incorporate therein additional information for their own use, which should be entered, however, so as not to interfere with the recording of the information required by this section. These records must be kept in permanent form for a period of at least three years from the date of the transaction and must be available for ready inspection by internal revenue officers.

§ 43.6001–2 Rules Applicable to Clearing Houses.—(a) *In general.*—(1) If any person who negotiates sales or transfers of stock or certificates of indebtedness on a stock exchange appoints in writing the clearing house for the exchange as his agent for the purposes hereinafter specified, and on each business day furnishes to such clearing house a written report, statement, or sheet making a full disclosure of all transactions, both clearable and nonclearable, of the preceding business day in stocks or certificates of indebtedness that are listed or permitted to be dealt in by such member on such exchange, and also showing in which transactions, if any, certificates of indebtedness were loaned, borrowed, or returned, then in that event such clearing house may affix to such report, statement, or sheet, and cancel the stamps required for each transaction. The affixing and canceling of such stamps by the clearing house shall be held to be the act of the person making the sale, agreement to sell, memorandum of sale, delivery or transfer, as the case may be. If the person filing the report, statement, or sheet and the clearing house so elect, such person may affix and cancel the stamps before delivering such report, statement, or sheet to the clearing house; but such clearing house shall not accept the stamped report, statement, or sheet unless all stamps required to be affixed are attached thereto and properly canceled.

(2) The reports, statements, or sheets submitted to the clearing house shall in respect of each transaction show the date thereof, the names of the parties to the transaction, the amount and description of the stock or certificates of indebtedness traded in. The information with respect to more than one transaction may be entered upon one report, statement, or sheet. No settlement of differences or other dealings between members shall be permitted that will interfere with the full disclosure of each transaction.

(3) The report, statement, or sheet submitted to the clearing house does not relieve the seller from making and delivering to the buyer the bill or memorandum required by § 43.4321–4 in the case of stock and § 43.4331–4 in the case of certificates of indebtedness. However, where the stamps are affixed to the report, statement, or sheet submitted to the clearing house, under either of the methods permitted

by this section, the bill or memorandum shall, in lieu of stamps, bear an endorsement substantially in the following form:

> It is hereby certified that the requisite Federal stamps on this transaction have been affixed to clearing-house sheet dated ————————, and filed with the ———————— Stock Exchange Clearing House.
>
> ————————————
> (Member———————Stock Exchange)

(4) Whenever any clearing house carries upon its sheets or records information or reports of transactions showing the transfer by one of its members of an account of a customer without change of ownership of the securities of the customer, there shall be kept by the members involved in the transaction a record showing the particulars of such transaction.

(b) *Alternative rules applicable to clearing houses.*—A member of a securities exchange which is registered with the Securities and Exchange Commission as a national securities exchange may appoint in writing the clearing house for such exchange as his agent for the purpose of affixing the stamps required in respect of his transactions in stock or certificates of indebtedness. The privilege granted by this paragraph may be exercised only upon compliance with the following conditions:

(1) The member shall authorize and require the clearing house to affix the requisite stamps in respect of all transactions in stock or certificates of indebtedness, including rights to subscribe for or to receive stock, arising in the conduct of his business, irrespective of whether the stock or certificates of indebtedness are listed or unlisted, whether the transactions are clearable or not, and including transactions involving loans or borrowings of certificates of indebtedness and over-the-counter sales.

(2) The member shall make a daily report to the clearing house for each business day showing the total amount of tax payable on all his business transactions as specified in subparagraph (1) of this paragraph. The report shall be filed with the clearing house on the day on which the transactions covered thereby are due for settlement (blotter date).

(3) The member shall maintain complete and adequate daily records, such as a blotter or similar book of original entry, of all transactions in stock or certificates of indebtedness as specified in subparagraph (1) of this paragraph, whether the transaction is taxable or not. In the case of taxable transactions, the daily record shall show the amount of tax payable in respect of each transaction. In the case of nontaxable transactions, the daily record shall disclose the basis on which exemption from the tax is claimed. Such daily records shall be kept in permanent form for a period of at least three years from the date of the transaction, and must be available for ready inspection by internal revenue officers.

(4) The clearing house shall, on the day of receiving the report specified in subparagraph (2) of this paragraph, affix to the report and cancel documentary stamps aggregating in value the total amount of tax shown on the report. In lieu of affixing stamps to the report submitted by each member who may have elected to exercise the privilege granted by this paragraph, the clearing house may prepare

a daily summary statement showing the name of, and the total tax reported by, each such member, and affix to such summary statement and cancel documentary stamps aggregating in value the grand total of the amounts of tax reported by all such members. The daily reports received from its members and the daily summary statement of the total tax shown on such reports (if one is made) shall be kept in permanent form by the clearing house for a period of at least 3 years from the date thereof, and must be available for ready inspection by internal revenue officers. After the termination of such period, the daily reports and the summary statement may be destroyed by the clearing house, but only in the presence of an internal revenue officer.

(5) The member shall make and deliver to the buyer the bill or memorandum required by § 43.4321–4 in the case of stock and by § 43.4331–4 in the case of certificates of indebtedness, except that in lieu of affixing stamps to such bill or memorandum, the member shall make an endorsement on the bill or memorandum substantially in the following form:

It is hereby certified that the Federal stamp tax applicable to this transaction has been paid through the_____
(Insert name of clearing house)

on our behalf.

_____
(Member _____ Stock Exchange)

If so desired, the member may also make a similar endorsement on the certificates of stock or certificates of indebtedness covered by the bill or memorandum. In that event, the endorsement shall be in substantially the following form:

It is hereby certified that the Federal stamp tax applicable to the transfer of _____ shares of this certificate (or applicable to the transfer of this certificate of indebtedness) has been paid through _____ on our behalf.
(Insert name of clearing house)

_____
(Date) (Member————Stock Exchange)

The endorsement (including a facsimile signature of the member) may be made on the bill or memorandum and on the accompanying certificate of stock or certificates of indebtedness by a hand-stamped impression, if (i) the hand-stamp is held at all times in the custody of the person authorized to make such impression, and (ii) the records of the member contain sufficient information to establish the identity of the person so authorized.

§ 43.6001–3 Records With Respect to Foreign Insurance Policies.—(a) No return or statement showing a list of policies or other instruments subject to the tax imposed by section 4371 is required from any person to or for whom, or in whose name, such policy or other instrument is issued, or from the solicitor or broker acting directly or indirectly for or on behalf of such person. However, each person, solicitor, or broker, accepting, placing, soliciting, or making, directly or indirectly, or paying or receiving compensation with respect to, a policy or other instrument subject to the tax imposed by

section 4371 shall keep a record of such policy or other instrument for a period of at least three years from the date of issuance thereof and shall be prepared to furnish full information to the district director at any time upon demand.

(b) The person having control or possession of a policy of insurance, or reinsurance, or other instrument to which documentary stamps must be affixed shall retain such instrument for at least 3 years from the date of issuance thereof to enable internal revenue officers to ascertain whether the requisite stamps have been affixed and canceled.

§ 43.6001–4 REGISTRATION OF BROKERS, EXCHANGES, NOMINEES, ETC.—(a) *Registration of brokers, exchanges, etc.*—(1) *Requirements of registration.*—Every person engaged, in whole or in part, in any of the following businesses or activities shall file a statement for registration with the district director for *each* district in which such business or activity is conducted:

(i) Negotiating, making, or recording, sales or transfers, of stock, certificates of indebtedness, rights, or warrants;

(ii) Conducting or transacting a stock or bond brokerage business;

(iii) Accepting or procuring the transmission of orders for the purchase or sale or transfer of stock, certificates of indebtedness, rights, or warrants to be executed at a stock or bond brokerage office or an exchange or similar place;

(iv) Transferring stock, certificates of indebtedness, rights, or warrants, other than their own;

(v) Conducting an exchange or clearing house, or clearing association, for the clearing, adjusting, and settling of transactions made on exchanges or similar places. In case an exchange has a department connected therewith engaged in clearing, adjusting, and settling transactions made thereon, a statement shall be made setting forth the names and addresses of the superintendent and secretary of the clearing house department or committee.

(2) *Statement to be filed.*—(i) The statement shall be on Form 741, which is procurable from district directors. The statement shall set forth specifically the character of the business, the name under which it is operated, and its exact location. A concern having branches or agencies shall file a statement in the district in which its principal office is located, showing the address of each branch office or agency and the name of the manager or agent in charge thereof. A separate statement shall also be filed in each of the other districts in which branches or agencies are maintained. The data shown in a statement covering a branch or agency shall relate to such branch or agency rather than to the principal office. The statement shall show the name and residence address of each member or representative holding membership in an exchange and the name of the exchange. If a license has been procured under the laws of any State or under any provision of Federal law, the date of the license and the place of issuance shall be shown. Upon registration the district director shall issue a certificate of registration as provided in paragraph (c) of this section.

(ii) In the case of a partnership, the statement shall be signed by one of the partners and shall show the name and residence address of each member engaged in the business.

(iii) In the case of a corporation or association, including an exchange or clearing house, the statement shall be signed by the chief officer or secretary and shall show the names and residence addresses of the officers of the corporation or association. In the case of a corporation, the statement shall show the date and place of incorporation. In the case of an exchange or clearing house, the name and residence address of the superintendent shall be shown. A list of the members and their residence addresses and a copy of the constitution, charter, or agreement of association and of the by-laws, rules, and regulations shall be filed with the statement. A copy of each amendment shall be filed as and when adopted.

(iv) If there is an addition to the membership after a statement has been filed, an additional statement shall be filed showing the name and residence address of the additional member.

(3) *Business suspended or moved.*—In case a person registered as required herein suspends or closes his business, or moves it to another district, he shall notify the district director to that effect, showing the date of suspension, closing, or removal, and shall return the certificate of registration to the district director.

(b) *Registration of nominee.*—(1) Any person conducting a stock brokerage business, who has registered with the district director as provided in paragraph (a) of this section, may appoint some person to act as his nominee in holding stock on his behalf. Any person acting in the capacity of a custodian within the contemplation of the exemption provided in section 4342(2) may appoint some person to act as his nominee in holding stocks or certificates of indebtedness on his behalf. Any corporation may appoint some person to act as its nominee in holding stock on its behalf.

(2) The name of the person appointed as nominee of a broker, custodian, or corporation shall be registered with the district director for the district in which the principal office of the broker, custodian, or corporation is located. Substitution of a nominee may be effected by likewise registering the name of the successor nominee. No special form is prescribed for use in registering a nominee. Upon registration the district director shall issue a certificate of registration as provided in paragraph (c) of this section.

(c) *Certificate of registration.*—(1) *Brokers, exchanges, etc.*—Upon registration of a person engaged in any of the businesses specified in paragraph (a) (1) of this section, the district director shall issue to such person a certificate of registration which shall be signed by the district director and shall set forth the date of issue, the name of the person conducting the business, and the nature of the business for which the certificate is issued. Such certificate shall be kept at the place of business located within the district of the district director by whom the certificate is issued.

(2) *Nominee.*—Upon registration of any person as a nominee of a broker, custodian, or corporation, the district director shall issue to the broker, custodian, or corporation a certificate of registration signed by him and setting forth the date of issue, the name of the person registered as nominee, and the name of the broker, custodian, or corporation on whose behalf the nominee is registered. Such certificate shall be kept at the principal place of business of the broker, custodian, or corporation to whom the certificate is issued.

(3) *Inspection.*—The certificate of registration issued under subparagraph (1) or subparagraph (2) of this paragraph shall be held available for ready inspection by internal revenue officers.

§ 43.6001–5 General Requirements With Respect to Records and Returns.—For general provisions relating to records and returns, see the Regulations on Procedure and Administration (26 CFR Part 301).

§ 43.6802 Statutory Provisions; Supply and Distribution.

SEC. 6802. SUPPLY AND DISTRIBUTION.

The Secretary or his delegate shall furnish, without prepayment, to—

(1) POSTMASTER GENERAL.—The Postmaster General a suitable quantity of adhesive stamps (other than the stamps on playing cards), coupons, tickets, or such other devices as may be prescribed by the Secretary or his delegate pursuant to section 6302(b) or this chapter, to be distributed to, and kept on sale by, the various postmasters in the United States in all post offices of the first and second classes, and such post offices of the third and fourth classes as—

(A) Are located in county seats, or

(B) Are certified by the Secretary to the Postmaster General as necessary;

(2) DESIGNATED DEPOSITARY OF THE UNITED STATES.—Any designated depositary of the United States a suitable quantity of adhesive stamps to be kept on sale by such designated depositary;

(3) STATE AGENTS.—Any person who is—

(A) Duly appointed and acting as agent of any State for the sale of stock transfer stamps of such State, and

(B) Designated by the Secretary or his delegate for the purpose, a suitable quantity of such adhesive stamps as are required by section 4301, to be kept on sale by such person.

§ 43.6802–1 Where Stamps May Be Purchased and Where Requisition Forms for the Purchase of Such Stamps May Be Obtained and Filed.—(a) *Where stamps may be purchased.*—Documentary stamps may be purchased from (1) district directors and other duly authorized officials; (2) postmasters in all post offices of the first and second classes and such post offices of the third and fourth class as are located in county seats; (3) designated depositaries of the United States (see section 6802(2) § 43.6802(2)); and (4) State agents designated under paragraph (3) of section 6802 (§ 43.6802).

(b) *Requisitions.*—Requisitions for the purchase of documentary stamps shall be made on Form 427. Copies of these forms may be procured from any district director. A designated United States depositary shall make sales only upon receipt of a requisition on Form 427. For records to be kept of sales, see the Regulations on Procedure and Administration (26 CFR Part 301).

(c) *Use or resale of unused documentary stamps.*—Unused documentary stamps may be used at any time in payment of any tax imposed by section 4301, 4311, 4321, 4331, 4361 or 4371, or may be resold by the owner at any time. For redemption of stamps see section 6805 (§ 43.6805).

§ 43.6804 Statutory Provisions; Attachment and Cancellation.

SEC. 6804. ATTACHMENT AND CANCELLATION.

Except as otherwise expressly provided in this title, the stamps referred to in section 6801 shall be attached, protected, removed, canceled, obliterated, and destroyed, in such manner and by such instruments or other means as the Secretary or his delegate may prescribe by rules or regulations.

§ 43.6804–1 STAMPS TO BE USED AND DENOMINATIONS THEREOF.—(a) *Documentary stamps only to be used.*—Documentary stamps only shall be used in payment of the stamp taxes imposed by sections 4301, 4311, 4321, 4331, 4361, and 4371. Ordinary postage stamps shall not be used in payment of documentary stamp taxes.

(b) *Use of stamps.*—Wherever feasible, a stamp tax shall be paid by the use of a single stamp. If a stamp of a denomination equal to the tax is not readily available, the smallest practical number of stamps shall be used. A stamp affixed to an instrument and canceled cannot lawfully be removed therefrom and affxed to another instrument requiring a stamp (see section 7208 (§ 43.7208), relating to penalties).

(c) *Denominations of documentary stamps.*—Documentary stamps are issued in the following denominations: 1 cent, 2 cents, 3 cents, 4 cents, 5 cents, 8 cents, 10 cents, 20 cents, 25 cents, 40 cents, 50 cents, 55 cents, 80 cents, $1, $1.10, $1.65, $2, $2.20, $2.75, $3, $3.30, $4, $5, $10, $20, $30, $50, $60, $100, $500, $1,000, $2,500, $5,000, and $10,000.

§ 43.6804–2 CANCELLATION OF STAMPS.—A person using or affixing a stamp shall cancel it and so deface it as to render it unfit for reuse, by marking it with his initials and the day, month, and year when the affixing occurs. (See section 7271(1) (§ 43.7271), relating to penalties.) Such marking shall be made by writing or stamping in ink or by perforating with a machine or punch. In addition, unless a stamp of the value of 50 cents or more is canceled by perforation, three parallel incisions shall be made lengthwise through the stamp with some sharp instrument after the stamp has been affixed. However, the stamp shall not be so defaced as to prevent ready determination of its denomination and genuineness.

§ 43.6805 STATUTORY PROVISIONS; REDEMPTION OF STAMPS.

SEC. 6805. REDEMPTION OF STAMPS.

(a) AUTHORIZATION.—The Secretary or his delegate, subject to regulations prescribed by him, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of any internal revenue law, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected.

(2) METHOD AND CONDITIONS OF ALLOWANCE.—Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Secretary or his delegate, or until satisfactory proof has been made showing the reason why the same cannot be returned; or, if so required by the Secretary or his delegate, when the person presenting the same cannot satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

(c) TIME FOR FILING CLAIMS.—No claim for the redemption of, or allowance for, stamps shall be allowed unless presented within 3 years after the purchase of such stamps from the Government.

(d) FINALITY OF DECISIONS.—The findings of fact in and the decision of the Secretary or his delegate upon the merits of any claim presented under or authorized by this section shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer.

§ 43.7208 STATUTORY PROVISIONS; OFFENSES RELATING TO STAMPS.

SEC. 7208. OFFENSES RELATING TO STAMPS.

Any person who—

(1) COUNTERFEITING.—With intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed under authority of this title for the collection or payment of any tax imposed by this title, or sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device; or

(2) MUTILATION OR REMOVAL.—Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this title; or

(3) USE OF MUTILATED, INSUFFICIENT, OR COUNTERFEITED STAMPS.—Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title,

(A) Any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title; or

(B) Any adhesive stamp or the impression of any stamp, die, plate, or other articles of insufficient value; or

(C) Any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article; or

(4) REUSE OF STAMPS.—

(A) PREPARATION FOR REUSE.—Willfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has already been used: or

(B) TRAFFICKING.—Knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or

(C) POSSESSION.—Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article; or

(5) EMPTIED STAMPED PACKAGES.—Commits the offense described in section 7271 (relating to disposal and receipt of stamped packages) with intent to defraud the revenue, or to defraud any person; shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

§ 43.7209 STATUTORY PROVISIONS; UNAUTHORIZED USE OR SALE OF STAMPS.

SEC. 7209. UNAUTHORIZED USE OR SALE OF STAMPS.

Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this title or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Secretary or his delegate under this title for the collection or payment of any tax imposed by this title, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 6 months, or both.

§ 43.7209–1 USE OR RESALE OF UNUSED STAMPS.—For provision with respect to the use or resale of unused stamps see § 43.6802–1(c).

§ 43.7270 STATUTORY PROVISIONS; INSURANCE POLICIES.

SEC. 7270. INSURANCE POLICIES.

Any person who fails to comply with the requirements of section 4374 (relating to the affixing of stamps on insurance policies, etc.), with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of the tax.

§ 43.7271 STATUTORY PROVISIONS; PENALTIES FOR OFFENSES RELATING TO STAMPS.

SEC. 7271. PENALTIES FOR OFFENSES RELATING TO STAMPS.

Any person who with respect to any tax payable by stamps—

(1) FAILURE TO ATTACH OR CANCEL STAMPS, ETC.—Fails to comply with rules or regulations prescribed pursuant to section 6804 (relating to attachment, cancellation, etc., of stamps), unless such failure is shown to be due to reasonable cause and not willful neglect; or

* * * * * * *

(3) INSTRUMENTS.—Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid; or

* * * * * * *

shall be liable for each such offense to a penalty of $50.

§ 43.7271–1 CROSS REFERENCES.—For other provisions relating to penalties, see the applicable sections of the Regulations on Procedure and Administration (26 CFR Part 301).

§ 43.7701 STATUTORY PROVISIONS; DEFINITIONS.

SEC. 7701. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) PERSON.—The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) PARTNERSHIP AND PARTNER.—The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) CORPORATION.—The term "corporation" includes associations, joint-stock companies, and insurance companies.

(4) DOMESTIC.—The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

(5) FOREIGN.—The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) FIDUCIARY.—The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) STOCK.—The term "stock" includes shares in an association, joint-stock company, or insurance company.

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(9) UNITED STATES.—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.

(10) STATE.—The term "State" shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(12) DELEGATE.—The term "Secretary or his delegate" means the Secretary of the Treasury, or any officer, employee, or agency of the Treasury Department duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform the function mentioned or described in the context, and the term "or his delegate" when used in connection with any other official of the United States shall be similarly construed.

(13) COMMISSIONER.—The term "Commissioner" means the Commissioner of Internal Revenue.

* * * * * * *

(19) DOMESTIC BUILDING AND LOAN ASSOCIATION.—The term "domestic building and loan association" means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association, substantially all the business of which is confined to making loans to members.

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(b) INCLUDES AND INCLUDING.—The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

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(d) CROSS REFERENCES.

(1) OTHER DEFINITIONS.—For other definitions, see the following sections of Title 1 of the United States Code:

(1) Singular as including plural, section 1.
(2) Plural as including singular, section 1.
(3) Masculine as including feminine, section 1.

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§ 43.7805 STATUTORY PROVISIONS; RULES AND REGULATIONS.

SEC. 7805. RULES AND REGULATIONS.

(a) AUTHORIZATION.—Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary or his delegate shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) RETROACTIVITY OF REGULATIONS OR RULINGS.—The Secretary or his delegate may prescribe the extent, if any, to which the ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

(c) PREPARATION AND DISTRIBUTION OF REGULATIONS, FORMS, STAMPS, AND OTHER MATTERS.—The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

§ 43.7805–1 PROMULGATION OF REGULATIONS.—In pursuance of section 7805 of the Internal Revenue Code of 1954, the foregoing regulations are hereby prescribed. (See § 43.0–3 relating to the scope of the regulations.)

O. GORDON DELK,
Acting Commissioner of Internal Revenue.

Approved January 6, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on January 9, 1959, 8:47 a.m., and published in the issue of the Federal Register for January 10, 1959, 24 F.R. 251.)

PART II.—ISSUANCE OF CERTIFICATES OF INDEBTEDNESS

SECTION 4311.—IMPOSITION OF TAX

Whether, for the purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rev. 59–61, page 289.

SECTION 4312.—RENEWALS

(Also Section 4331; 26 CFR 43.4331–1.) Rev. Rul. 59–156

Where the terms of a corporate bond specifically include a clause under which the corporate-obligor continues liable under the bond until the debt evidenced thereby is paid in full, unless discharged in writing by the obligee, the renewal and/or transfer of such bond, prior to such discharge, are subject to the stamp tax as imposed by section 4312 and 4331 of the Internal Revenue Code of 1954. The dissolution of the corporate-obligor does not, in itself, affect the nature of the bond as a corporate obligation.

Advice has been requested concerning the applicability of the documentary stamp taxes to the renewal and/or transfer of a corporate mortgage bond where such bond was extended after the corporate-obligor was voluntarily dissolved.

A corporation executed its bond in the principal sum of $200x$ dollars to a life insurance company. The bond was secured by a first mortgage on real property located in the State of New York. The bond contains a provision that it is to remain in full force and effect and in no wise impaired, until the actual payment thereof to the obligee and, in case of any agreement or stipulation extending the time or modifying the terms of payment, then the obligor (corporation) shall continue liable on the bond as extended, unless expressly released and discharged in writing by the obligee. This is referred to as a "continuing liability clause."

Several years before the final payment on the bond was due, the corporate-obligor was voluntarily dissolved under New York State law. In the dissolution proceedings, the corporation conveyed the mortgaged property to an individual. One year later, the individual-owner entered into an extension agreement with a bank, under which the time of payment of the bond, now reduced to $150x$ dollars, was extended and the interest rate increased.

Section 4311 of the Internal Revenue Code of 1954 imposes a tax on all certificates of indebtedness issued by a corporation. Under section 4312 of the Code, every renewal of a certificate of indebtedness issued by a corporation is taxed as a new issue. Section 4331 of the Code imposes a tax on each sale or transfer of any certificates of indebtedness issued by a corporation.

The renewal and transfer of a bond issued by a corporation are subject to the stamp tax unless it is established that the corporate-obligor is no longer liable. Generally, under the law of New York,

liability of the maker of a bond is extinguished if the bond is renewed (1) without the consent of the maker and (2) the value of the property securing the debt is equal to or exceeds the amount of the obligation.

However, under the specific provisions of the bond in this case, the corporate-maker remained liable on the bond as extended or modified unless discharged in writing. There is no evidence of such discharge of the bond here under consideration as of the date of the extension agreement. The fact that the corporation was dissolved is immaterial since the corporation remained liable as a surety on its bond. The liability of a surety does not cease upon death, in the case of an individual, nor upon dissolution, in the case of a corporation. See *United States ex rel. Wilhelm, Trustee, et al.* v. *Chain, Executrix*, 300 U.S. 31, 35, and *Evans, et al.*, v. *Illinois Surety Co.*, 131 N.E. 262, 265.

Accordingly, it is held that the dissolution of the corporate-maker of the bond herein involved does not affect its liability as surety under its bond. Therefore, the agreement entered into between the individual and the bank extending the time and otherwise modifying the terms of payment of such bond is subject to the documentary stamp tax imposed by section 4312 of the Code as the renewal of a corporate bond. Likewise, the subsequent transfer of the corporate bond by the mortgagee to a successor mortgagee would be taxable under section 4331 of the Code.

SUBCHAPTER B.—SALES OF TRANSFERS OF CAPITAL STOCK AND CERTIFICATES OF INDEBTEDNESS OF A CORPORATION

PART I.—SALES OR TRANSFERS OF CAPITAL STOCK AND SIMILAR INTERESTS

SECTION 4321.—IMPOSITION OF TAX

26 CFR 43.4321–2: Illustrations. Rev. Rul. 59–183

Applicability of the documentary stamp tax, imposed by section 4321 of the Internal Revenue Code of 1954, to the transfer of stock, which is community property, under the will of a California decedent who devised and bequeathed all of his estate to his wife for life, with remainder to his children.

Advice has been requested concerning the applicability of the documentary stamp tax to the transfer of shares of stock under the circumstances described below.

A resident of California, a community property state, died testate. By his will, the decedent devised and bequeathed all of his estate to his wife for life, with remainder over to his three children in equal shares. Included in the estate were 2,000 shares of stock which were registered in the names of the decedent and the surviving wife as joint tenants with right of survivorship.

By court decree, it was held that the 2,000 shares of stock was community property. Therefore, the court, in its decree of distribution, decreed that one-half of all of the community property be set aside to the surviving wife of the decedent as her share of the community property and that the remaining one-half of the community property

be distributed to the surviving wife for her life, and upon her death to the three children of the decedent in equal shares, share and share alike. Also, the court decreed that the surviving wife should have a certificate for her one-half of the stock and that a second certificate should be issued to her in her capacity as life tenant.

Section 4321 of the Internal Revenue Code of 1954 imposes a tax on each sale or transfer of shares or certificates of stock, or of rights to subscribe for or to receive such shares or certificates, issued by a corporation.

The title to real and personal property of a California decedent vests immediately upon the death of the decedent in the heirs or beneficiaries named in the will and does not first vest in the personal representative pursuant to the Probate Code of California. Therefore, there is an immediate passing of title to those entitled to receive the decedent's property. Moreover, in California, a husband and wife have undivided one-half interests in all of the community property. See Rev. Rul. 56–55, C. B. 1956–1, 682.

Hence, in the instant case, when the decedent died, his undivided one-half interest in the community property vested immediately in his surviving wife as life tenant with remainder over to the decedent's three children. The undivided one-half interest of the wife in the community property was not distributed by the death of her husband. Therefore, after the death of the husband, the surviving wife owned a one-half undivided interest in the community property in her individual right and held the other one-half interest in her capacity as life tenant under the will of her deceased husband.

Accordingly, it is held that liability for the documentary stamp tax is incurred as follows:

1. The passing of title to the surviving wife of the decedent's one-half undivided interest in the community property upon the decedent's death is subject to the transfer tax imposed by section 4321 of the Code. Since this undivided interest is in respect to each of the 2,000 shares, the transfer tax is based on the entire number of shares involved (2,000).

2. The transfer of 1,000 shares from the undivided total number of shares (2,000) held by the surviving wife, individually, and as life tenant, into the name of the surviving wife as her sole and individual property is subject to the transfer tax.

3. Also, the transfer of 1,000 shares to the surviving wife as life tenant, under the decree of distribution, is subject to the transfer tax.

Whether a transfer agent is liable for the documentary stamp tax on transfers prior to the specific transfer he is requested to effect. See Rev. Rul. 59–3, page 447.

Whether the sale or transfer of stock of a limited dividend corporation is subject to the documentary stamp tax. See Rev. Rul. 59–52, page 386.

Whether, for the purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British

Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

PART II.—SALES OR TRANSFERS OF CERTIFICATES OF INDEBTEDNESS

SECTION 4331.—IMPOSITION OF TAX

Whether a transfer agent is liable for the documentary stamp tax on transfers prior to the specific transfer he is requested to effect. See Rev. Rul. 59–3, page 447.

Whether, for the purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

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26 CFR 43.4331–1: Imposition of tax.

Applicability of documentary stamp tax to an extension of a corporate bond by an individual grantee after the voluntary dissolution of the corporate maker. See Rev. 59–156, page 439.

PART III.—PROVISIONS COMMON TO SALES OR TRANSFERS OF CAPITAL STOCK AND CERTIFICATES OF INDEBTEDNESS

Subpart B.—Miscellaneous Provisions

SECTION 4353.—PAYMENT OF TAX THROUGH NATIONAL SECURITIES EXCHANGES WITHOUT USE OF STAMPS

Temporary rules relating to payment of documentary stamp transfer taxes by clearing houses of national securities exchanges. See T.D. 6349, page 792.

SUBCHAPTER C.—CONVEYANCES

SECTION 4361.—IMPOSITION OF TAX

Whether, for the purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

26 CFR 43.4361–1: Imposition of tax. Rev. Rul. 59–165

Instruments that transfer any interest in the ownership of real property are subject to the documentary stamp tax imposed by section 4361 of the Internal Revenue Code of 1954. Accordingly, with respect to realty located in the State of Minnesota, a sheriff's "certificate of sale" delivered to a foreclosure purchaser and a "certificate of redemption" delivered to a judgment debtor (redemptioner) are subject to the tax imposed by section 4361 of the Code.

Advice has been requested concerning the applicability of the documentary stamp tax on conveyances of real property, imposed by section 4361 of the Internal Revenue Code of 1954, to a sheriff's "certificate of sale" delivered to a foreclosure purchaser and to a "certificate of redemption" delivered to a judgment debtor (redemptioner) with respect to realty located in the State of Minnesota.

Section 4361 of the Code, as amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, C.B. 1958–3, 92, imposes a stamp tax on each deed, instrument, or writing by which any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale) exceeds $100.

Section 43.4361–1(a)(2) of the Documentary Stamp Tax Regulations provides that a conveyance of realty subject to an equity of redemption is taxable when made, not when the time for redemption expires. Section 43.4361–1(a)(4)(ii) of the regulations provides that the term "sold" imports transfer of an interest for a valuable consideration, which may involve money or anything of value.

In the foreclosure of a real estate mortgage in Minnesota, the realty subject to the mortgage is sold at public auction by a county sheriff, who then issues and delivers to the foreclosure purchaser a sheriff's certificate of sale, subject to redemption within one year. If redemption is made within one year by the judgment debtor or his grantee, a certificate of redemption is issued.

Under the laws of the State of Minnesota, the purchaser of realty at a sheriff's foreclosure sale does not acquire full title to the property foreclosed at that time but only a conditional right to obtain title to the premises at the expiration of the redemption period provided by law. See *Morgan* v. *Joslyn*, 97 N.W. 449. In Minnesota the sheriff's certificate of sale becomes a deed at the expiration of one year. The assignment of the interest or right of the foreclosure purchaser during the redemption period is a conveyance of real estate within the meaning of the recording act. If such interest or right is assigned, the title, when it passes by lapse of time and nonredemption, vests in the assignee of such interest. See *Berryhill* v. *Smith*, 61 N.W. 144.

Section 507.01, Chapter 507, of the Minnesota Statutes provides that the term "purchaser" embraces every person to whom any estate or interest in real estate is conveyed for a valuable consideration and every assignee of a mortgage, lease, or other conditional estate. The word "conveyance" includes every instrument in writing whereby any interest in real estate is created, aliened, mortgaged, or assigned, or by which the title thereto may be affected in law or in equity.

In view of the foregoing, in Minnesota a foreclosure purchaser takes such an interest in the real estate as to constitute an estate in such realty. The fact that legal title does not pass from the mortgagor to the purchaser until the expiration of the redemption period results in there being two estates in the same land at the same time, a fee-simple title in the mortgagor and a separate and distinct estate or interest in the foreclosure purchaser. The purchaser at the sale acquires an interest in the real estate which is subject to defeasance.

There is no provision of law or regulations which restricts the application of section 4361 of the Code to instruments conveying estates in fee simple. Instruments that transfer any interest in the ownership of real property are subject to the documentary stamp tax. The fact that in the State of Minnesota a sheriff's certificate of sale does not convey a fee-simple estate is immaterial in determining its liability for the tax imposed by this section of the Code.

Accordingly, with respect to realty located in the State of Minnesota, since in a foreclosure sale an interest in real estate passes to the foreclosure purchaser upon delivery to him of the sheriff's certificate of sale, it is held that the documentary stamp tax imposed by section 4361 of the Code is applicable to the sheriff's certificate of sale at the time of delivery of such certificate and not when the redemption period expires. It is further held that, since the certificate of redemption conveys, for a valuable consideration, the interest in the real estate acquired by the foreclosure purchaser, the subsequent delivery of a certificate of redemption to the judgment debtor or redemptioner is also subject to the documentary stamp tax.

Rev. Rul. 59–166

The documentary stamp tax imposed by section 4361 of the Internal Revenue Code of 1954 is not applicable where a "Surrender of Lease" is delivered by a lessee after a number of buildings and improvements were erected by him on property he leased for a period of 75 years without the privilege of extending such lease.

Advice has been requested whether the documentary stamp tax imposed by section 4361 of the Internal Revenue Code of 1954 is applicable to the delivery of an instrument called "Surrender of Lease," where the lease was for a period of 75 years and was granted for the purpose of erecting, maintaining, and operating a housing project. The lease was surrendered by the lessee after a number of buildings and improvements were erected on the leased property.

In the instant case, a lease was executed in 1952 by the Secretary of the Air Force and a construction company wherein Government land within an Air Force base was leased to the construction company for a period of 75 years (without privilege of renewal) for the purpose of erecting, maintaining, and operating a housing project. The lease provided that the lessee shall pay to the Government rental in the amount of $100 per year; that the buildings and other improvements erected by the lessee, constituting such housing project, shall become, as completed, real estate and part of the leased premises, and property of the United States, leased to the lessee and subject to the terms of the lease; that an application for mortgage insurance under Title VIII of the National Housing Act be made; that the lessee shall lease all units of the housing project to military and civilian personnel of the

Armed Forces assigned to duty in the area where the property is located; that the lessee shall not transfer or assign the lease without the written approval of the Secretary of the Air Force; that the lessee shall exercise due diligence in the protection of the leased premises, including the buildings and other improvements constituting the housing projects; and that the lessee shall pay all taxes, assessments, and similar charges which, at any time during the term of the lease, may be assessed or imposed upon the Government or upon the lessee with respect to the leased premises.

Pursuant to the provisions of Public Law 1020, 84th Congress, 70 Stat. 1111, 40 U.S.C. 1954, in 1957 a "Surrender of Lease" and a "Purchase Agreement" were executed on the same date by and between the lessee and the United States Government, acting through the Secretary of the Air Force, wherein the lease was terminated and all of the lessee's interest in the housing project was transferred and sold to the United States Government, which assumed the payments called for by a certain note that was secured by mortgages.

Specifically, the question is whether liability for documentary stamp tax was incurred when the "Surrender of Lease" and the "Purchase Agreement" were delivered and, if so, whether the tax is computed on the basis of the equity interest owned by the lessee or whether it is this amount plus the amount of the mortgage assumed by the Government.

Section 4361 of the Code imposes a tax on each deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100.

Under the lease executed in 1952, the lessee acquired a leasehold interest in Government lands. Upon completion of the buildings and other improvements erected on such lands which constituted the housing project, they became real estate, a part of the leased premises, and property of the United States, leased to the lessee. Therefore, upon execution of the "Surrender of Lease," no question arises with regard to a conveyance of buildings and improvements separate and apart from a conveyance of a leasehold interest in land, since such buildings and improvements were an integral part of the leasehold interest surrendered. Therefore, it follows that unless the interest acquired by the lessee under the 1952 lease was sufficient to constitute "realty" within the meaning of the statute, the surrender, under the "Surrender of Lease," of such interest, augmented as it was by the buildings and improvements erected on the leased land, for valuable consideration could not be said to be a conveyance of "realty sold" and, therefore, taxable.

The 1952 lease being a lease for a fixed period of 75 years and granting no right to extend the term by renewal or otherwise did not convey an interest in land of sufficient duration to constitute "realty" within the meaning of section 4361 of the Code. The lessee's interest in the buildings and improvements erected on the leased land is of no greater duration. Accordingly, it is held that no interest in "realty" was conveyed when the "Surrender of Lease" was delivered. Therefore, liability for the documentary tax stamp imposed by section 4361 of the

Code was not incurred upon the delivery of the "Surrender of Lease" or "Purchase Agreement."

SUBCHAPTER D.—POLICIES ISSUED BY FOREIGN INSURERS

SECTION 4371.—IMPOSITION OF TAX

Whether, for the purposes of the exemption extended by Revenue Ruling 296, a national of one of the member nations of the British Commonwealth of Nations employed by some other member nation of the Commonwealth of Nations is considered to be a national of the country of the diplomatic mission where employed. See Rev. Rul. 59–61, page 289.

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26 CFR 43.4371–1: Imposition of tax on policies issued by foreign insurers; scope of tax. — Rev. Rul. 59–148

Since Puerto Rico is not a State or Territory of the United States, a Puerto Rican insurance company is a "foreign insurer" for purposes of the documentary stamp tax imposed by section 4371 of the Internal Revenue Code of 1954 on policies issued by foreign insurers.

Advice has been requested whether a Puerto Rican insurance company is a "foreign insurer" for purposes of the documentary stamp tax on policies of insurance issued by a foreign insurer.

Section 4371 of the Internal Revenue Code of 1954 imposes a stamp tax on certain policies of insurance or reinsurance issued by any foreign insurer or reinsurer. Section 4372(a) of the Code defines the term "foreign insurer or reinsurer" as an insurer or reinsurer who is a nonresident alien individual, a foreign partnership, or a foreign corporation.

Section 7701(a)(4) of the Code provides that the term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or any State or Territory. Section 7701(a)(5) of the Code provides that the term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

Accordingly, it is held that, since Puerto Rico is not a State or Territory of the United States, a Puerto Rican insurer is a foreign insurer. Therefore, policies issued by such insurers are subject to the provisions of section 4371 of the Code.

SUBCHAPTER E.—MISCELLANEOUS PROVISIONS APPLICABLE TO DOCUMENTARY STAMP TAXES

SECTION 4382.—EXEMPTIONS

Whether shares of stock issued by a limited dividend housing company organized under state law are exempt from the documentary stamp tax. See Rev. Rul. 59–52, page 386.

SECTION 4383.—LIABILITY FOR TAX

(Also Sections 4321, 4331.) Rev. Rul. 59–3

Liability for the documentary stamp taxes on the sale or transfer of securities is imposed on any of the parties to a transaction, including a transfer agent. Such agent, however, is not liable for the stamp tax incurred on any transfer of securities made prior to the one which he is requested to effect. If, in any case of a requested transfer there is patent evidence of an error or mistake with respect to affixing of stamps in a prior transaction, the transfer agent may bring the matter to the attention of the responsible parties in order that appropriate action may be taken.

Advice has been requested concerning the liability of a transfer agent for documentary stamp taxes with respect to transfers made prior to the specific transfer which the transfer agent is requested to effect of record.

For example, dealer *A* sold 100 shares of *X* company stock to dealer *B* and neither party affixed the documentary stamps to the bill of sale or to the certificates. *B* sold the shares to *C*, a customer, and delivered the certificates to *D*, the transfer agent, accompanied by bills of sale with requisite stamps affixed to cover the sale from *B* to *C*, with instructions to register the shares in the name of *C*. The specific question is whether *D*, the transfer agent, is liable for the documentary stamp tax on the transfer of the stock from *A* to *B*.

Section 4321 of the Internal Revenue Code of 1954 imposes a tax on each sale or transfer of shares or certificates of stock, or of rights to subscribe for or to receive such shares or certificates, issued by a corporation. Section 4331 of the Code imposes a tax on each sale or transfer of any certificates of indebtedness issued by a corporation.

Section 4383 of the Code before it was redesignated as section 4384 by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, C.B. 1958–3, 92, provides that the documentary stamp tax shall be paid by any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued or sold.

Under the provisions of section 4383 of the Code, liability for the documentary stamp tax is imposed on any of the parties to the transaction, including a transfer agent. Therefore, a transfer agent may be held liable for the transfer tax incurred on any transfer which he may effect. However, such agent cannot be held liable for any tax incurred on a transfer to which he was not a party. Accordingly, it is held that a transfer agent is not liable for the stamp tax incurred on any transfer of securities made prior to the one he is requested to effect and to which he was not a party as transfer agent or otherwise. If, in any case of a requested transfer, there is patent evidence in the record of an error or mistake with respect to the affixing of stamps in a prior transaction, the transfer agent may, as part of his service, bring the matter to the attention of the responsible parties in order that appropriate action may be taken.

CHAPTER 35.—TAXES ON WAGERING

SUBCHAPTER A.—TAX ON WAGERS

SECTION 4401.—IMPOSITION OF TAX

26 CFR 44.4401: Statutory provisions; imposition of tax
(Also Sections 4901, 6001, 6011, 6071, 6091, 6151, 6419, 6806, 7262; 44.4901, 44.6001, 44.6011(a), 44.6071, 44.6091, 44.6151, 44.6419, 44.6806(c), 44.7262.)

T. D. 6370 [1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER D, PART 44.—TAXES ON WAGERING; EFFECTIVE JANUARY 1, 1955

Regulations prescribed under chapter 35 and certain other provisions of the Internal Revenue Code of 1954, as amended.

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

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

On January 8, 1959, notice of proposed rule making regarding the regulations under chapter 35, relating to the taxes on wagering, and certain other provisions of the Internal Revenue Code of 1954, as amended, was published in the Federal Register (24 F.R. 206). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following regulations are hereby adopted.

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[1] The publication of this Treasury Decision in 24 F.R. 2613, dated April 4, 1959, contains (1) instructions for modifying the notice of proposed rulemaking published in 24 F.R. 206, dated January 8, 1959, and (2) the full context of the regulations with such modifications. As here published, the Treasury Decision reflects the full context of such regulations, with modifications. The individual instructions have been omitted.

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AUTHORITY: §§ 44.0–1 to 44.7805, incl., issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

TAXES ON WAGERING

Subpart A.—Introduction

§ 44.0-1 INTRODUCTION.—(a) *In general.*—The regulations in this part (Part 44, Subchapter D, Chapter I, Title 26 (1954) Code of Federal Regulations) are designated "Wagering Tax Regulations." The regulations relate to the taxes imposed by chapter 35 of the Internal Revenue Code of 1954, as amended, to certain general provisions of chapter 40 of such Code, and to certain related administrative provisions of subtitle F of such Code. Chapter 35 imposes an excise tax on wagers and a special tax to be paid by each person liable for the tax imposed on wagers and by each person engaged in receiving wagers for or on behalf of any person liable for the tax imposed on wagers. References in these regulations to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, unless otherwise indicated. References to a section or other provision of law are references to a section or other provision of the Internal Revenue Code, as amended, unless otherwise indicated.

(b) *Division of regulations.*—The regulations in this part (26 CFR Part 44) are divided into five subparts. Subpart A contains provisions relating to the arrangement and numbering of the sections of the regulations in this part, general definitions and use of terms, scope of the regulations, and the extent to which the regulations in this part supersede prior regulations relating to the taxes imposed by chapter 35 of the Internal Revenue Code. Subpart B relates to the tax on wagers. Subpart C relates to the special tax. Subpart D relates to certain miscellaneous and general provisions having application to taxes imposed by chapter 35. Subpart E relates to selected provisions of subtitle F of the Code (Procedure and Administration) which have special application to the taxes imposed by chapter 35 of the Code.

(c) *Arrangement and numbering.*—Each section of the regulations in subparts B, C, D, and E of this part is preceded by the section, subsection, or paragraph of the Internal Revenue Code which it interprets. The section of the regulations can readily be distinguished from sections of the Code since—

(1) The sections of the regulations are printed in larger type;

(2) The sections of the regulations are preceded by a section symbol and the part number, arabic numeral 44, followed by a decimal point (§ 44.); and

(3) The sections of the Code are preceded by "Sec.".

Each section of the regulations setting forth law or regulations is designated by a number composed of the part number followed by a decimal point (44.) and the number of the corresponding provision of the Internal Revenue Code of 1954. In the case of a section setting forth regulations, this designation is followed by a hyphen (-) and a number identifying such section.

§ 44.0-2 GENERAL DEFINITIONS AND USE OF TERMS.—As used in the regulations in this part, unless otherwise expressly indicated—

(a) The terms defined in the provisions of law contained in the regulations in this part shall have the meanings so assigned to them.

(b) The Internal Revenue Code of 1954 means the Act approved August 16, 1954 (68A Stat.), entitled "An Act To revise the internal revenue laws of the United States", as amended.

(c) District director means district director of internal revenue.

(d) The cross references in the regulations in this part to other portions of the regulations, when the word "see" is used, are made only for convenience and shall be given no legal effect.

§ 44.0-3 SCOPE OF REGULATIONS.—The regulations in this part apply to wagering activity on and after January 1, 1955.

§ 44.0-4 EXTENT TO WHICH THE REGULATIONS IN THIS PART SUPERSEDE PRIOR REGULATIONS.—The regulations in this part, with respect to the subject matter within the scope thereof, supersede Regulations 132, 26 CFR (1939) Part 325.

Subpart B.—Tax on Wagers

§ 44.4401 STATUTORY PROVISIONS; IMPOSITION OF TAX.

SEC. 4401 IMPOSITION OF TAX.

(a) WAGERS.—There shall be imposed on wagers, as defined in section 4421, an excise tax equal to 10 percent of the amount thereof.

(b) AMOUNT OF WAGER.—In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary or his delegate, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

(c) PERSON LIABLE FOR TAX.—Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery. Any person required to register under section 4412 who receives wagers for or on behalf of another person without having registered under section 4412 the name and place of residence of such other person shall be liable for and shall pay the tax under this subchapter on all such wagers received by him.

[The last sentence of sec. 4401(c) was added by sec. 151 of the Excise Tax Technical Changes Act 1958 (72 Stat. 1305) and is applicable only to wagers received after September 2, 1958.]

§ 44.4401-1 IMPOSITION OF TAX.—(a) *In general.*—Section 4401 imposes a tax on all wagers, as defined in section 4421. See §§ 44.4421 and 44.4421-1 for definition of the term "wager".

(b) *Rate of tax; amount of wager.*—(1) *Rate of tax.*—The tax is imposed at the rate of 10 percent of the amount of any taxable wager.

(2) *Amount of wager.*—(i) The amount of the wager is the amount risked by the bettor, including any charge or fee incident to the placing of the wager as provided in subdivision (iv) of this subparagraph, rather than the amount which he stands to win. Thus, if a bettor bets $5 against a bookmaker's $7 with respect to the outcome of a prize fight, the amount of the wager subject to tax is $5.

(ii) In the case of a "parlay" wager (i.e., a single wager made by a bettor on the outcome of a series of events, usually horse races), the amount of the taxable wager is the amount initially wagered by the bettor irrespective of whether the parlay is successful. In the case of an "if" wager, the amount of the taxable wager is the total

of all amounts wagered on each selection of the bettor. For example, A makes a $10 wager on horse R with the understanding that if horse R wins, $5 is to be wagered on horse S and $5 on horse T. If horse R wins, the taxable wager is $20. If horse R loses, the taxable wager is $10. In determining the amount of a taxable wager involving the features of, or a combination of, "parlay" and "if" bets, such as wagers sometimes referred to as a "whipsaw" or an "if and reverse" bet, the rules set forth above relating to "parlay" and "if" bets are to be followed. For example, assume B wagers $10 on horse R with the understanding that if horse R wins, $5 is to be placed as a parlay wager on horses S and T. In such a case, if horse R loses, the taxable wager is $10; if horse R wins, there are two taxable wagers amounting in the aggregate to $15.

(iii) In the case of punchboards with prizes of merchandise, cash, or free plays listed thereon, the amount of the taxable wager is the amount risked by the bettor for all chances taken by him, including the chances taken by the bettor in lieu of the acceptance of an equivalent amount in cash or merchandise.

(iv) In determining the amount of any wager subject to tax there shall be included any charge or fee incident to the placing of the wager. For example, in the case of a wager with respect to a horse race, any amount paid to a bookmaker for the purpose of guaranteeing the bettor a payoff based on actual track odds is to be included as a part of the wager. Similarly, in the case of a lottery, any amount paid to the operator thereof by the bettor for the privilege of making a contribution to the pool or bank is also to be included in the amount of the wager. However, the amount of the wager subject to tax shall not include the amount of the tax where it is established by actual records of the taxpayer that such amount of tax was collected from the bettor as a separate charge.

§ 44.4401–2 Person Liable for Tax.—(a) *In general.*—(1) Every person engaged in the business of accepting wagers with respect to a sports event or a contest is liable for the tax on any such wager accepted by him. Every person who operates a wagering pool or lottery conducted for profit is liable for the tax with respect to any wager or contribution placed in such pool or lottery. To be liable for the tax, it is not necessary that the person engaged in the business of accepting wagers or operating a wagering pool or lottery physically receive the wager or contribution. Any wager or contribution received by an agent or employee on behalf of such person shall be considered to have been accepted by and placed with such person.

(2) Any person required to register under section 4412 by reason of having received wagers for or on behalf of another person, but who fails to register the name and place of residence of such other person (hereinafter in this subparagraph referred to as principal), shall be liable for the tax on all wagers received by him during the period in which he has failed to so register the name and place of residence of such principal. Subsequent compliance with section 4412 by the person receiving wagers for another does not relieve him of his liability and duty to pay such tax, nor will the fact that such person incurs liability with respect to the tax on such wagers, relieve his principal of liability for the tax imposed under section 4401 with

respect to such wagers. Accordingly, both the person receiving the wagers and his principal shall be liable for the tax on such wagers until the tax is paid. Payment of the tax on such wagers shall not relieve the person receiving wagers of any penalty for failure to register as required by section 4412. This subparagraph has application only to wagers received after September 2, 1958.

(b) *In business of accepting wagers.*—A person is engaged in the business of accepting wagers if he makes it a practice to accept wagers with respect to which he assumes the risk of profit or loss depending upon the outcome of the event or the contest with respect to which the wager is accepted. It is not intended that to be engaged in the business of accepting wagers a person must be either so engaged to the exclusion of all other activities or even primarily so engaged. Thus, for example, an individual may be primarily engaged in business as a salesman, and also for the purpose of the tax be engaged in the business of accepting wagers.

(c) *Lay-offs.*—If a person engaged in the business of accepting wagers or conducting a lottery or betting pool for profit lays off all or part of the wagers placed with him with another person engaged in the business of accepting wagers or conducting a betting pool or lottery for profit, he shall, notwithstanding such lay-off, be liable for the tax on the wagers or contributions initially accepted by him. See § 44.6419–2 for credit and refund provisions applicable with respect to laid-off wagers.

§ 44.4401–3 When Tax Attaches.—The tax attaches when (a) a person engaged in the business of accepting wagers with respect to a sports event or a contest, or (b) a person who operates a wagering pool or lottery for profit, accepts a wager or contribution from a bettor. In the case of a wager on credit, the tax attaches whether or not the amount of the wager is actually collected from the bettor. However, if an amount equivalent to the amount of the wager is paid to the bettor prior to the close of the calendar month in which such wager was accepted, either because of the cancellation of the event upon which the wager was placed, or because the wager was cancelled or rescinded by mutual agreement, the wager need not be reported on the taxpayer's return for such month. Where such cancellation or rescission takes place in a month subsequent to the month in which the wager was accepted, credit or refund of the tax paid with respect to such wager may be made subject to the provisions of § 44.6419–1.

§ 44.4402 Statutory Provisions; Exemptions.

SEC. 4402. EXEMPTIONS.

No tax shall be imposed by this subchapter—

(1) Parimutuels.—On any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licenced under State law, and

(2) Coin-operated devices.—On any wager placed in a coin-operated device with respect to which an occupational tax is imposed by section 4461, or on any amount paid, in lieu of inserting a coin, token, or similar object, to operate a device described in section 4462(a)(2)(B), if an occupational tax is imposed with respect to such device by section 4461.

[Sec. 4402 as amended by sec. 152(b), Excise Tax Technical Changes Act 1958 (72 Stat. 1305), which added to par. (2) material following "imposed by section 4461". Effective January 1, 1959.]

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§ 44.4402–1 EXEMPTIONS.—(a) *Parimutuel wagering enterprise.*—Section 4402 provides that no tax shall be imposed by section 4401 on any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law.

(b) *Wagering machines.*—(1) *Coin-operated machines.*—Section 4402 provides that no tax shall be imposed by section 4401 on any wager placed in a coin-operated device, such as a slot machine, claw machine, pinball machine, etc., with respect to which an occupational tax is imposed by section 4461.

(2) *Non-coin-operated machines.*—Section 4402 provides that no tax shall be imposed by section 4401 on any amount paid, in lieu of inserting a coin, token, or similar object, to operate a device described in section 4462(a)(2)(B) (devices similar to the devices referred to in subparagraph (1) of this paragraph but which are operated without the insertion of a coin, token, or similar object) if an occupational tax is imposed with respect to such device by section 4461. The provisions of this subparagraph apply only with respect to amounts paid on or after January 1, 1959.

§ 44.4403 STATUTORY PROVISIONS; RECORD REQUIREMENTS.

SEC. 4403. RECORD REQUIREMENTS.

Each person liable for tax under this subchapter shall keep a daily record showing the gross amount of all wagers on which he is so liable, in addition to all other records required pursuant to section 6001(a) [6001].

§ 44.4403–1 DAILY RECORD.—Every person liable for tax under section 4401 shall keep such records as will clearly show as to each day's operations:

(a) The gross amount of all wagers accepted;

(b) The gross amount of each class or type of wager accepted on each separate event, contest, or other wagering medium. For example, in the case of wagers accepted on a horse race, the daily record shall show separately the gross amount of each class or type of wagers (straight bets, parlays, "if" bets, etc.) accepted on each horse in the race. Similarly, in the case of the numbers game, the daily record shall show the gross amount of each class or type of wager accepted on each number.

For additional provisions relating to records, see §§ 44.6001 and 44.6001–1.

§ 44.4404 STATUTORY PROVISIONS; TERRITORIAL EXTENT.

SEC. 4404. TERRITORIAL EXTENT.

The tax imposed by this subchapter shall apply only to wagers

(1) Accepted in the United States, or

(2) Placed by a person who is in the United States

(A) With a person who is a citizen or resident of the United States, or

(B) In a wagering pool or lottery conducted by a person who is a citizen or resident of the United States.

§ 44.4404–1 TERRITORIAL EXTENT.—(a) *In general.*—The tax imposed by section 4401 applies to wagers (1) accepted in the United States, or (2) placed by a person who is in the United States (i) with a person who is a citizen or resident of the United States, or (ii) in a

wagering pool or lottery conducted by a person who is a citizen or resident of the United States. All wagers made within the United States are taxable irrespective of the citizenship or place of residence of the parties to the wager. Thus, the tax applies to wagers placed within the United States, even though the person for whom or on whose behalf the wagers are received is located in a foreign country and is not a citizen or resident of the United States. Likewise, a wager accepted outside the United States by a citizen or resident of the United States is taxable if the person making such wager is within the United States at the time the wager is made.

(b) *Examples.*—The following examples illustrate the application of paragraph (a) of this section:

Example (1). A syndicate which maintains its headquarters in a foreign country has representatives in the United States who receive wagers in the United States for or on behalf of such syndicate. For the purposes of section 4404, such wagers are considered as accepted within the United States, the syndicate is considered to be in the business of accepting wagers within the United States, and such wagers are subject to the tax. This is true regardless of the nationality or residence of the members of the syndicate.

Example (2). A Canadian citizen employed in Detroit, Michigan, telephones a horse race bet to a bookmaker who is a United States citizen with his place of business located in Windsor, Canada. The wager is taxable since it is made by a person within the United States with a person who is a United States citizen.

Example (3). A United States citizen while visiting Tijuana, Mexico, makes a wager on the outcome of a horse race with a bookmaker who is also a United States citizen located and doing business in Tijuana. The wager is not taxable since both parties to the wager, though United States citizens, were outside the United States at the time the wager was made.

§ 44.4405 Statutory Provisions; Cross References.

SEC. 4405. CROSS REFERENCES.

For penalties and other administrative provisions applicable to this subchapter, see sections 4421 to 4423, inclusive; and subtitle F.

Subpart C.—Occupational Tax

§ 44.4411 Statutory Provisions; Imposition of Tax.

SEC. 4411. IMPOSITION OF TAX.

There shall be imposed a special tax of $50 per year to be paid by each person who is liable for tax under section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable.

§ 44.4411–1 Imposition of Tax.—(a) *In general.*—A special tax of $50 per year is required to be paid by each person:

(1) Who is liable for the tax imposed by section 4401, or

(2) Who is engaged in receiving wagers for or on behalf of any person who is liable for the tax imposed by section 4401.

(b) *Examples.*—The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1). A, who is engaged in the business of accepting horse race bets, employs ten persons to receive on his behalf wagers which are transmitted by telephone. A also employs a secretary and a book-

keeper. A and each of the ten persons who receive wagers by telephone on behalf of A are liable for the special tax. The secretary and bookkeeper are not liable for the special tax unless they also receive wagers for A.

Example (2). B operates a numbers game and has an arrangement with ten persons, who are employed in various capacities, such as bootblacks, elevator operators, news dealers, etc., to receive wagers from the public on his behalf. B also employs C to collect from the ten persons referred to the wagers received by them on B's behalf and to deliver such wagers to B. C performs no other services for B. B and the ten persons who receive wagers on his behalf are liable for the special tax. C is not liable for the special tax since he is not engaged in receiving wagers for B.

(c) *Cross references.*—For provisions relating to the payment of the special tax (computation, manner of payment, etc.), see subpart D of this part.

44.4412 STATUTORY PROVISIONS; REGISTRATION.

SEC. 4412. REGISTRATION.

(a) REQUIREMENT.—Each person required to pay a special tax under this subchapter shall register with the official in charge of the internal revenue district—

(1) His name and place of residence;

(2) If he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

(3) If he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

(b) FIRM OR COMPANY.—Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

(c) SUPPLEMENTAL INFORMATION.—In accordance with regulations prescribed by the Secretary, he or his delegate may require from time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter.

§ 44.4412–1 REGISTRATION.—(a) *In general.*—Every person required to pay the special tax imposed by section 4411 shall register and file a return on Form 11–C. For provisions relating to the general requirement for filing a return, see § 44.6011(a)–1.

(b) *Information to be reported on Form 11–C.*—(1) Every person required to make a return on Form 11–C shall report thereon his full name and place of residence. A person doing business under an alias, style, or trade name shall give his true name, followed by his alias, style, or trade name. In the case of a partnership, association, firm, or company, other than a corporation, the style or trade name shall be given, also the true name of each member and his place of residence. In the case of a corporation, the true name and title of each officer and his place of residence shall be shown.

(2) Each person engaged in the business of accepting wagers on his own account shall report on Form 11–C the name and address of each place where such business will be conducted and the name, address, and number appearing on the special (occupational) stamp of each agent or employee who may receive wagers on his behalf. There-

after, a return shall be filed on Form 11–C, marked "Supplemental", each time an additional employee or agent is engaged to receive wagers. Such supplemental return shall be filed not later than 10 days after the date such additional employee or agent is engaged to receive wagers and shall show the name, address, and number appearing on the special (occupational) stamp of each such agent or employee. As to a change of address, see § 44.4905–2.

(3) Each agent or employee who receives wagers for or on behalf of a person engaged in the business of accepting wagers on his own account shall report on Form 11–C the name and residence address of each person (i.e., individual, partnership, corporation, etc.) on whose behalf wagers are to be received. Thereafter, the agent or employee shall file a return on Form 11–C, marked "Supplemental", each time he is engaged or employed to receive wagers for a person or persons other than the person or persons previously reported on Form 11–C. Such supplemental return shall be filed not later than 10 days after the date he is engaged to receive wagers and shall show the name, business address, or, if none, the residence address of the person or persons by whom he is engaged to receive wagers. As to a change of address, see § 44.4905–2.

(c) *Time and place for filing Form 11–C.*—For provisions relating to the time for filing Form 11–C (other than Form 11–C marked "Supplemental"), see §§ 44.6071 and 44.6071.1. For provisions relating to the place for filing Form 11–C, see §§ 44.6091 and 44.6091–1.

§ 44.4413 STATUTORY PROVISIONS; CERTAIN PROVISIONS MADE APPLICABLE.

SEC. 4413. CERTAIN PROVISIONS MADE APPLICABLE.

Sections 4901, 4902, 4904, 4905, and 4906 shall extend to and apply to the special tax imposed by this subchapter and to the persons upon whom it is imposed, and for that purpose any activity which makes a person liable for special tax under this subchapter shall be considered to be a business or occupation referred to in such sections. No other provisions of sections 4901 to 4907, inclusive, shall so extend or apply.

§ 44.4413–1 CERTAIN PROVISIONS MADE APPLICABLE.—For regulations under sections 4901, 4902, 4904, 4905, and 4906, as extended and made applicable to the special tax imposed by section 4411 and to the persons upon whom such tax is imposed, see subpart D of this part.

§ 44.4414 STATUTORY PROVISIONS; CROSS REFERENCES.

SEC. 4414. CROSS REFERENCES.

For penalties and other general and administrative provisions applicable to this subchapter, see section 4421 to 4423, inclusive; and subtitle F.

Subpart D.—Miscellaneous and General Provisions Applicable to Taxes on Wagering

MISCELLANEOUS PROVISIONS

§ 44.4421 STATUTORY PROVISIONS; DEFINITIONS.

SEC. 4421. DEFINITIONS.

For purposes of this chapter—

(1) WAGER.—The term "wager" means—

(A) Any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers.

(B) Any wager placed in a wagering pool with respect to a sports event or a contest, if such a pool is conducted for profit, and

(C) Any wager placed in a lottery conducted for a profit.

(2) LOTTERY.—The term "lottery" includes the numbers game, policy, and similar types of wagering. The term does not include—

(A) Any game of a type in which usually

(i) The wagers are placed.

(ii) The winners are determined, and

(iii) The distribution of prizes or other property is made in the presence of all persons placing wagers in such game, and

(B) Any drawing conducted by an organization exempt from tax under sections 501 and 521, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

§ 44.4421–1 DEFINITIONS.—(a) *Wager.*—The term "wager" means—

(1) Any wager placed with a person engaged in the business of accepting wagers upon the outcome of a sports event or a contest;

(2) Any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit; and

(3) Any wager placed in a lottery conducted for profit.

(b) *Lottery.*—(1) *In general.*—The term "lottery" includes the numbers game, policy, and similar types of wagering. In general, a lottery conducted for profit includes any scheme or method for the distribution of prizes among persons who have paid or promised a consideration for a chance to win such prizes, usually as determined by the numbers or symbols on tickets as drawn from a lottery wheel or other receptacle, or by the outcome of an event, provided such lottery is conducted for profit. The term also includes enterprises commonly known as "policy" or "numbers" and similar types of wagering where the player selects a number, or a combination of numbers, and pays or agrees to pay a certain amount in consideration of which the operator of the lottery, policy, or numbers game agrees to pay a prize or fixed sum of money if the selected number or combination of numbers appear or are published in a manner understood by the parties. For example, the winning number or combination of numbers may appear or be published as a series of numbers in the payoff prices of a series of horse races at a certain race track, or in the United States Treasury balance reports, or the reports of a stock or commodity exchange. This description is not intended to be restrictive; hence, the substitution of letters or other symbols for numbers, or a different arrangement for determining the winning number or combination of numbers, does not alter the fundamental nature of a game which otherwise would be considered a lottery. The operation of a punch board or a similar gaming device for profit is also considered to be the operation of a lottery.

(2) *Certain games excluded.*—(i) *Cards, dice, etc.*—Section 4421 specifically excludes from the term "lottery" any game of a type in which usually (*a*) the wagers are placed, (*b*) the winners are determined, and (*c*) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game. Thus, for example, no tax would be payable with respect to wagers made in a bingo or keno game since such a game is usually conducted under cir-

cumstances in which the wagers are placed, the winners are determined, and the distribution of prizes is made in the presence of all persons participating in the game. For the same reason, no tax would apply in the case of card games, dice games, or games involving wheels of chance, such as roulette wheels and gambling wheels of a type used at carnivals and public fairs.

(ii) *Drawings conducted by an organization exempt from tax under section 501 or 521.*—Section 421 specifically excludes from the term "lottery" any drawing conducted by an organization exempt from tax under section 501 or 521 if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual. For provisions relating to exemption from income tax under section 501 or 521, see the Income Tax Regulations (Part 1 of this chapter).

(c) *Other terms used.*—(1) *Wagering pool.*—A wagering pool conducted for profit includes any scheme or method for the distribution of prizes to one or more winning bettors based upon the outcome of a sports event or a contest, or a combination or series of such events or contests, provided such wagering pool is managed and conducted for the purpose of making a profit.

(2) *Sports event.*—A sports event includes every type of sports event, whether amateur, scholastic, or professional, such as horse racing, auto racing, dog racing, boxing and wrestling matches and exhibitions, baseball, football, and basketball games, tennis and golf matches, track meets, etc.

(3) *Contest.*—A contest includes any type of contest involving speed, skill, endurance, popularity, politics, strength, appearances, etc., such as a general or primary election, the outcome of a nominating convention, a dance marathon, a log-rolling, wood-chopping, weight-lifting, corn-husking, beauty contest, etc.

(4) *Conducted for profit.*—A wagering pool or lottery may be conducted for profit even though a direct profit will not inure from the operation thereof. A wagering pool or lottery operated with the expectancy of a profit in the form of increased sales, increased attendance, or other indirect benefits is conducted for profit for purposes of the wagering tax.

§ 44.4422 Statutory Provisions; Applicability of Federal and State Laws.

SEC. 4422. APPLICABILITY OF FEDERAL AND STATE LAWS.

The payment of any tax imposed by this chapter with respect to any activity shall not exempt any person from any penalty provided by a law of the United States or of any State for engaging in the same activity, nor shall the payment of any such tax prohibit any State from placing a tax on the same activity for State or other purposes.

§ 44.4422–1 Doing Business in Violation of Federal or State Law.—Payment of any special tax within the scope of the regulations in this part in nowise authorizes the carrying on of any business in violation of a law of the United States or the law of any State. The special tax stamp is not a license or permit and affords no protection from prosecution for violation of any Federal or State law. See also § 44.4906.

§ 44.4423 STATUTORY PROVISIONS; INSPECTION OF BOOKS.

SEC. 4423. INSPECTION OF BOOKS.

Notwithstanding section 7605(b), the books of account of any person liable for tax under this chapter may be examined and inspected as frequently as may be needful to the enforcement of this chapter.

GENERAL PROVISIONS RELATING TO OCCUPATIONAL TAXES

§ 44.4901 STATUTORY PROVISIONS; PAYMENT OF TAXES.

SEC. 4901. PAYMENT OF TAX.

(a) CONDITION PRECEDENT TO CARRYING ON CERTAIN BUSINESS.—No person shall be engaged in or carry on any trade or business subject to the tax imposed by section 4411 (wagering) * * * until he has paid the special tax therefor.

(b) COMPUTATION.—All special taxes shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(c) HOW PAID.—

(1) STAMP.—All special taxes imposed by law shall be paid by stamps denoting the tax.

(2) ASSESSMENT.—For authority of the Secretary or his delegate to make assessments where the special taxes have not been duly paid by stamp at the time and in the manner provided by law, see subtitle F.

§ 44.4901–1 PAYMENT OF SPECIAL TAX.—(a) *Condition precedent to carrying on business.*—No person shall engage in the business of accepting wagers subject to the tax imposed by section 4401 until he has filed a return on Form 11–C and paid the special tax imposed by section 4411. Likewise, no person shall engage in receiving wagers for or on behalf of any person engaged in the business of accepting wagers until he has filed a return on Form 11–C and paid the special tax imposed by section 4411. For provisions relating to the tax imposed by section 4401 and the special tax imposed by section 4411, see subparts B and C of this part, respectively.

(b) *Computation of special tax.*—(1) Section 4411 imposes a special tax of $50 per year which is required to be paid by each person who is liable for the tax imposed by section 4401 (tax on wagers) or who is engaged in receiving wagers for or on behalf of any person who is liable for the tax imposed by section 4401. A person engaged both in accepting wagers on his own account and in receiving wagers for or on behalf of some other person is required to purchase but one special tax stamp.

(2) The tax year begins July 1 and ends June 30 of the following calendar year. Persons commencing business between August 1 and June 30 (both dates inclusive) shall pay a proportionate part of the annual tax. "Commencing business" means the initial acceptance by a person of a wager subject to the tax imposed by section 4401 or the initial receiving of a taxable wager by an agent or employee for or on behalf of some other person. Persons in business for only a portion of a month are liable for tax for the full month, i.e., a person first becoming subject to the special tax on, for example, the 20th day of a month, is liable for tax for the entire month.

(c) *Tax payment evidenced by special tax stamp.*—(1) Upon receipt of a return on Form 11–C, together with remittance of the full amount of tax due, the district director will issue a special tax stamp as evidence of payment of the special tax.

(2) District directors will distinctly write or print on the stamp before it is delivered or mailed to the taxpayer the following information: (i) The taxpayer's registered name, and (ii) the business or office address of the taxpayer if he has one; if not, the residence address. Special tax stamps will be transmitted by ordinary mail, unless it is requested that they be transmitted by registered mail in which case additional cost to cover registry fee shall be remitted with the return.

(3) District directors and their collection officers are forbidden to issue receipts in lieu of stamps representing the payment of special taxes.

(d) *Cross references.*—For provisions relating to registration and information required to be reported on Form 11–C, see § 44.4412–1. For other provisions relating to Form 11–C, see §§ 44.6011(a)–1 (relating to returns), 44.6071–1 (time for filing returns and other documents), and 44.6091–1 (place for filing returns or other documents).

§ 44.4902 Statutory Provisions; Liability of Partners.

SEC. 4902. LIABILITY OF PARTNERS.

Any number of persons doing business in copartnership at any one place shall be required to pay but one special tax.

§ 44.4902–1 Partnership Liability.—Any number of persons doing business in copartnership shall be required to pay but one special tax. The district director may issue a special tax stamp to a copartnership in a firm or trade name, provided the names and addresses of all members of the partnership are disclosed on Form 11–C.

§ 44.4904 Statutory Provisions; Liability in Case of Different Businesses of Same Ownership and Location.

SEC. 4904. LIABILITY IN CASE OF DIFFERENT BUSINESSES OF SAME OWNERSHIP AND LOCATION.

Whenever more than one of the pursuits or occupations described in this subtitle are carried on in the same place by the same person at the same time, except as otherwise provided in this subtitle, the tax shall be paid for each according to the rates severally prescribed.

§44.4905 Statutory Provisions; Liability in Case of Death or Change of Location.

SEC. 4905. LIABILITY IN CASE OF DEATH OR CHANGE OF LOCATION.

(a) Requirements.—When any person who has paid the special tax for any trade or business dies, his wife or child, or executors or administrators or other legal repersentatives, may occupy the house or premises, and in like manner carry on, for the residue of the term for which the tax is paid, the same trade or business as the deceased before carried on, in the same house and upon the same premises, without the payment of any additional tax. When any person removes from the house or premises for which any trade or business was taxed to any other place, he may carry on the trade or business specified in the register kept in the office of the official in charge of the internal revenue district at the place to which he removes, without the payment of any additional tax: *Provided,* That all cases of death, change, or removal, as aforesaid, with the name of the successor to any person deceased, or of the person making

such change or removal, shall be registered with the Secretary or his delegate, under regulations to be prescribed by the Secretary or his delegate.

(b) REGISTRATION.

(1) For registration in case of wagering, * * *, see sections 4412, * * *.

(2) For other provisions relating to registration, see subtitle F.

§ 44.4905–1 CHANGE OF OWNERSHIP.—(a) *Changes through death.*—Whenever any person who has paid the special tax imposed by section 4411 dies, the surviving spouse or child, or executor or administrator, or other legal representative, may carry on such business for the remainder of the term for which such special tax has been paid without any additional payment, subject to the conditions hereinafter stated. If the surviving spouse or child, or executor or administrator, or other legal representative of the deceased taxpayer continues the business, such person shall within 30 days after the date of the death of the taxpayer execute a return on Form 11–C. Such return shall show the name of the deceased taxpayer, together with all other data required to be reported on Form 11–C (see § 44.4412–1), and the stamp issued to such taxpayer shall be submitted with the return for proper notation by the district director.

(b) *Changes from other causes.*—A receiver or trustee in bankruptcy may continue the business under the stamp issued to the taxpayer at the place and for the period for which the special tax was paid. An assignee for the benefit of creditors may continue business under his assignor's special tax stamp without incurring additional special tax liability. In such cases the change shall be registered with the district director in a manner similar to that required by paragraph (a) of this section.

(c) *Changes in firm.*—When one or more members of a firm or partnership withdraw, the business may be continued by the remaining partner or partners under the same special tax stamp for the remainder of the period for which the stamp was issued to the old firm. The change shall, however, be registered in the same manner as required in paragraph (a) of this section. If new partners are taken into a firm, the new firm so constituted may not carry on business under the special tax stamp of the old firm. The new firm shall make a return on Form 11–C and pay the special tax imposed by section 4411 reckoned from the first day of the month in which it began business, even though the name of such firm be the same as that of the old. If the members of a partnership, which has paid the special tax, form a corporation to continue the business, a new special tax stamp must be obtained in the name of the corporation.

(d) *Change in corporation.*—If a corporation changes its name, no additional tax is due, provided the change in name is registered with the district director in the manner required by paragraph (a) of this section. An increase in the capital stock of a corporation does not create a new special tax liability if the laws of the State under which it is incorporated permit such increase without the formation of a new corporation. A stockholder in a corporation, who after its dissolution continues the business, incurs liability for the special tax imposed by section 4411 unless he already has a special tax stamp obtained in respect of activities conducted as a sole proprietor.

§ 44.4905–2 CHANGE OF ADDRESS.—(a) *Procedure by taxpayer.*—Whenever a taxpayer changes his business or residence address to a location other than that specified in his last return on Form 11–C, he shall, within 30 days after the date of such change, register the change with the district director from whom the special tax stamp was purchased by filing a new return, Form 11–C, designated "Supplemental Return", and setting forth the new address and the date of change. The taxpayer's special tax stamp shall accompany the supplemental return for proper notation by the district director. As to liability in case of failure to register a change of address within 30 days, see § 44.4905–3.

(b) *Procedure by district director; removal within district.*—When a registration of a change of address within the same district is made by a taxpayer in the manner specified in paragraph (a) of this section, the district director, if necessary, will enter on his records the new address and the date of change. If the information disclosed on the supplemental return is such as to require a change on the face of the special tax stamp, the district director will make the proper change and return the stamp to the taxpayer for posting as provided in § 44.6806(c)–1.

(c) *Procedure by district director; removal to another district.*—In case of removal of the taxpayer's office or principal place of business (or residence address, if he has no office or principal place of business) to another district, the district director, after noting the transfer on his records, shall transmit the special tax stamp to the district director for the district to which such office or business was removed. The latter will make an entry on his records, as in the case of an original registration in his district, correct the address on the stamp, if necessary, and note also thereon his name, title, date, and district, and then forward the stamp to the taxpayer for posting as provided in § 44.6806(c)–1.

§ 44.4905–3 LIABILITY FOR FAILURE TO REGISTER CHANGE OR REMOVAL.—Any person succeeding to and carrying on a business for which the special tax imposed by section 4411 has been paid, and any taxpayer changing his residence address or his place of business, without registering such change as provided in §§ 44.4905–1 and 44.4905–2 shall be liable to an additional tax, and to the penalty prescribed in section 6651 for failure to make a return. (For regulations under section 6651, see the Regulations on Procedure and Administration (Part 301 of this chapter).)

§ 44.4906 STATUTORY PROVISIONS; APPLICATION OF STATE LAWS.

SEC. 4906. APPLICATION OF STATE LAWS.

The payment of any special tax imposed by this subtitle for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.

§ 44.4906–1 CROSS REFERENCE.—For provisions relating to the applicability of Federal and State laws, see §§ 44.4422 and 44.4422–1.

Subpart E.—Administrative Provisions of Special Application to the Taxes on Wagering

§ 44.6001 STATUTORY PROVISIONS; NOTICE OR REGULATIONS REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS.

SEC. 6001. NOTICE OR REGULATIONS REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS.

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

§ 44.6001–1 RECORD REQUIREMENTS.—(a) *In general.*—(1) In addition to all other records required pursuant to § 44.4403–1, every person required to pay tax under section 4401 shall keep such records as will clearly show as to each day's operation:

(i) Separately, the gross amount of wagers—

(*a*) Accepted directly by the taxpayer or at any registered place of business of the taxpayer (other than laid-off wagers),

(*b*) Accepted for his account by agents at any place other than a registered place of business of the taxpayer (other than laid-off wagers), and

(*c*) Accepted as laid-off wagers from persons subject to the tax on wagers;

(ii) With respect to wagers laid-off with others, the name, address, and registration number of each person with whom the laid-off wagers were placed, and the gross amount laid off with each such person, showing separately the gross amount of laid-off wagers with respect to each event, contest, or other wagering medium, as, for example, the gross amount laid off on each horse in a race; and

(iii) The gross amount of tax collected from or charged to bettors as a separate item.

(2) If the taxpayer has any agents or employees receiving wagers on his behalf, he shall maintain a separate record showing the name and address of each agent or employee, the period of employment, and the number of the special tax stamp issued to each such agent or employee.

(3) A duplicate copy of each return required by § 44.6011(a)–1 shall be retained as part of the taxpayer's records.

(b) *Records of agent or employee.*—Every person who is engaged in receiving for or on behalf of another person (at any place other than a registered place of business of such other person) wagers of a type subject to the tax imposed by section 4401 shall keep a record showing for each day (1) the gross amount of such wagers received by him, (2) the amount, if any, retained as a commission or as compensation for receiving such wagers, and (3) the amount turned over to the person on whose behalf the wagers were received, and the name and address of such person.

(c) *Record of claimants.*—Any person claiming a credit or refund shall keep a complete and detailed record of each overpayment and of each laid-off wager for which credit is taken or refund is claimed,

including a copy of the certificate required under paragraph (d) of § 44.6419–2.

(d) *Place for keeping records.* Every person required to pay the tax imposed by section 4401 shall keep or cause to be kept, at his office or principal place of business, or, if he has no office or principal place of business, at his residence or some other convenient or safe location, all such records as are required pursuant to paragraphs (a) and (c) of this section and §§ 44.4403 and 44.4403–1.

(e) *Period for retaining records.*—All records required by the regulations in this part shall at all times be available for inspection by internal revenue officers. Records required by paragraph (a) of this section shall be maintained for a period of at least three years from the date the tax became due. Records required by paragraph (b) of this section shall be maintained for a period of at least three years from the date the wager was received. Records required by paragraph (c) of this section shall be maintained for a period of at least three years from the date any credit is taken or refund is claimed.

§ 44.6011(a) STATUTORY PROVISIONS; GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST; GENERAL RULE.

SEC. 6011. GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

(a) GENERAL RULE.—When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

§ 44.6011(a)–1 RETURNS.—(a) *In general.*—Every person required to pay the tax on wagers imposed by section 4401 of the Code shall make for each month, from the daily records required by §§ 44.4403–1 and 44.6001–1, a return on Form 730 in accordance with the instructions and regulations applicable thereto. A return shall be made for each month whether or not liability has been incurred for that month. If the taxpayer ceases operations which make him liable for the tax, the last return shall be marked "Final Return".

(b) *Return on Form 11–C.*—Every person required to pay the special tax imposed by section 4411 shall make a return on Form 11–C in accordance with the instructions and regulations applicable thereto.

§ 44.6071 STATUTORY PROVISIONS; TIME FOR FILING RETURNS AND OTHER DOCUMENTS.

SEC. 6071. TIME FOR FILING RETURNS AND OTHER DOCUMENTS.

(a) GENERAL RULE.—When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

(b) SPECIAL TAXES.—For payment of special taxes before engaging in certain trades and businesses, see section 4901.

§ 44.6071–1 TIME FOR FILING RETURN.—(a) *Return on Form 730.*—Each return required to be made on Form 730 pursuant to § 44.6011 (a)–1 shall be filed on or before the last day of the first calendar month following the period for which it is made. For provisions relating to the time for filing a return when the prescribed due date falls on

Saturday, Sunday, or a legal holiday, see the provisions of the Regulations on Procedure and Administration (Part 301 of this chapter) under section 7503.

(b) *Return on Form 11–C.*—(1) the first return required to be made on Form 11–C shall be filed to cover the period beginning with the first day of the calendar month in which a person engages (or expects to engage) in activities which make him liable for the special tax imposed by section 4411 and ending with the following June 30. Thereafter, each return required to be made on Form 11–C shall be filed on or before July 1 to cover a 1-year period (beginning July 1 and ending June 30 of the following calendar year) during which taxable activity continues.

(2) For additional provisions relating to the return on Form 11–C, see § 44.4412–1 and §§ 44.4901 to 44.4905–3, inclusive.

§ 44.6091 STATUTORY PROVISIONS; PLACE FOR FILING RETURNS OR OTHER DOCUMENTS.

SEC. 6091. PLACE FOR FILING RETURNS OR OTHER DOCUMENTS.

(a) GENERAL RULE.—When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) TAX RETURNS.—In the case of returns of tax required under authority of part II of this subchapter—

(1) INDIVIDUALS.—Returns (other than corporation returns) shall be made to the Secretary or his delegate in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

(2) CORPORATIONS.—Returns of corporations shall be made to the Secretary or his delegate in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

* * * * * * *

(4) EXCEPTIONAL CASES.—Notwithstanding paragraph (1), (2), or (3) of this subsection, the Secretary or his delegate may permit a return to be filed in any internal revenue district, and may require the return of any officer or employee of the Treasury Department to be filed in any internal revenue district selected by the Secretary or his delegate.

§ 44.6091–1 PLACE FOR FILING RETURNS.—(a) *In general.*—A return on Form 730 or Form 11–C shall be filed with the district director of internal revenue for the district in which is located the legal residence or principal place of business of the person making the return. If such person has no legal residence or principal place of business in any internal revenue district, the return shall be filed with the District Director at Baltimore, Maryland, except as provided in paragraph (b) of this section.

(b) *Returns of individuals outside the United States.*—The returns on Form 730 and Form 11–C of individuals (whether citizens of the United States, citizens of possessions of the United States, or aliens) outside the United States having no legal residence or principal place of business in any internal revenue district shall be filed with the

Director, International Operations Division, Internal Revenue Service, at Washington 25, D.C.

§ 44.6151 STATUTORY PROVISIONS; TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS; GENERAL RULE.

SEC. 6151. TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.

(a) GENERAL RULE.—Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the principal internal revenue officer for the internal revenue district in which the return is required to be filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) EXCEPTIONS— * * *

(c) DATE FIXED FOR PAYMENT OF TAX.—In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

§ 44.6151–1 TIME AND PLACE FOR PAYING TAXES.—The taxes imposed by sections 4401 and 4411 shall, without assessment or notice and demand, be paid to the internal revenue officer with whom the returns are required to be filed at the time fixed for filing the returns. For provisions relating to the time for filing returns, see §§ 44.6071 and 44.6071–1. For provisions relating to the place for filing returns, see §§ 44.6091 and 44.6091–1.

§ 44.6419 STATUTORY PROVISIONS; CREDIT OR REFUND OF WAGERING TAX.

SEC. 6419. EXCISE TAX ON WAGERING.

(a) CREDIT OR REFUND GENERALLY.—No overpayment of tax imposed by chapter 35 shall be credited or refunded (otherwise than under subsection (b)), in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Secretary or his delegate, (1) that he has not collected (whether as a separate charge or otherwise) the amount of the tax from the person who placed the wager on which the tax was imposed, or (2) that he has repaid the amount of the tax to the person who placed such wager, or unless he files with the Secretary or his delegate written consent of the person who placed such wager to the allowance of the credit or the making of the refund. In the case of any laid-off wager, no overpayment of tax imposed by chapter 35 shall be so credited or refunded to the person with whom such laid-off wager was placed unless he establishes, in accordance with regulations prescribed by the Secretary or his delegate, that the provisions of the preceding sentence have been complied with both with respect to the person who placed the laid-off wager with him and with respect to the person who placed the original wager.

(b) CREDIT OR REFUND ON WAGERS LAID-OFF BY TAXPAYER.—Where any taxpayer lays off part or all of a wager with another person who is liable for tax imposed by chapter 35 on the amount so laid off, a credit against such tax shall be allowed, or a refund shall be made to, the taxpayer laying off such amount. Such credit or refund shall be in an amount which bears the same ratio to the amount of tax which such taxpayer paid on the original wager as the amount so laid off bears to the amount of the original wager. Credit or refund under this subsection shall be allowed or made only in accordance with regulations prescribed by the Secretary or his delegate; and no interest shall be allowed with respect to any amount so credited or refunded.

§ 44.6419–1 Credit or Refund Generally.—(a) *Overpayment of wagering tax; in general.*—If a person overpays the tax imposed under section 4401, he may either file a claim for refund on Form 843 or take credit for such overpayment against the tax due on a subsequent monthly return. A complete statement of the facts involving the overpayment shall be attached either to the claim or to the return on which the credit is claimed. Every claim for refund shall be supported by evidence showing the name and address of the taxpayer, the date of payment of the tax, and the amount of such tax. A credit taken on a return shall be supported by evidence of the same character.

(b) *Statement supporting credit or refund.*—No credit or refund shall be allowed whether in pursuance of a court decision or otherwise unless the taxpayer files a statement explaining satisfactorily the reason for claiming the credit or refund and establishing (1) that he has not collected (whether as a separate charge or otherwise the amount of tax from the person who placed the wager on which the tax was imposed, or (2) that he has either repaid the amount of the tax to the person who placed the wager or has secured the written consent of such person to the allowance of the credit or refund. In the latter case, the written consent of the person who placed the wager shall accompany the statement filed with the credit or refund claim. The statement supporting the credit or refund claim shall also show whether any previous claim for credit or refund covering the amount involved, or any part therof, has been filed. If the overpayment of tax relates to a laid-off wager accepted by the taxpayer, no credit or refund shall be allowed or made unless the taxpayer complies with the provisions of the first sentence of this paragraph, not only as to the person who placed the laid-off wager, but also with respect to the person who placed the original wager.

(c) *Limitation on credit or refund.*—No claim for credit or refund of tax shall be allowed unless presented within the period of limitations prescribed in section 6511. (For regulations under section 6511, see the Regulations on Procedure and Administration (Part 301 of this Chapter).)

§ 44.6419–2 Credit or Refund On Wagers Laid Off by Taxpayer.—(a) *Laid-off wagers; in general.*—If a taxpayer accepts a wager and lays off all or a part thereof with another person who is liable for tax under section 4401 with respect to such laid-off wager, a credit may be allowed to such taxpayer in the amount of the tax due with respect to the amount of the wager so laid off, provided there is attached to the return for the month during which the wager was accepted and laid off by him the certificate prescribed in paragraph (d) of this section.

(b) *Claim for refund.*—If a taxpayer has paid the tax with respect to a wager laid off by him, he may file a claim for refund of such tax on Form 843 or take a credit for the tax paid by him against the tax shown to be due on any subsequent monthly return. If a refund is claimed, Form 843 shall be completed in accordance with the instructions thereon and, in addition, there shall be attached to such form a statement setting forth the reason for claiming the refund, the month in which such tax was paid, the date of payment, and whether any previous claim for refund covering the amount involved or any part thereof has been filed. There shall also be attached to the Form 843

the certificate prescribed below. In the case of a credit, the statement and certificate shall be attached to the monthly return on which the credit is claimed.

(c) *Credit or refund not allowed.*—No credit or refund will be allowed under this section if the wager is laid off with a person or organization not liable for tax under section 4401 with respect to such laid-off wager. No interest shall be allowed on any amount of tax credited or refunded under this section.

(d) *Certificate required.*—The certificate prescribed for use in support of a credit or refund with respect to a laid-off wager shall be in the following form:

CERTIFICATE

(In support of credit or refund with respect to laid-off wagers under section 6419(b) of the Internal Revenue Code.)

I hereby certify that I, or the _____
(Corporation, partnership, or syndicate)
of which I am an officer or member, doing business at _____,
(Address)
registered with the District Director of Internal Revenue at _____, _____ under Registration No. _____ as a person accepting wagers within the meaning of section 4401 of the Internal Revenue Code, accepted laid-off wagers, in the amounts and on the dates indicated below, from _____,
(Name)
_____, during the month of _____, 19__:
(Address)

DATE	AMOUNT OF LAID-OFF WAGER	SUBJECT OF LAID-OFF WAGER (Identify horse and track, particular contest, or contestant, etc.)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Attach supplemental sheets for additional entries, if necessary.)

The undersigned further certifies that he, or the corporation, partnership, or syndicate of which he is a member, will make return of and account for the tax, under section 4401 of the Internal Revenue Code, with respect to the laid-off wagers so accepted.

It is understood by the undersigned that this certificate is given for the purpose of enabling the person from whom the laid-off wagers were accepted to claim credit with respect to the tax due on such laid-off wagers or to claim credit or refund of the tax, if any, paid on such laid-off wagers.

It is further understood that the fraudulent use of this certificate will subject the undersigned and all guilty parties to a fine of not more than $10,000 or to imprisonment for not more than five years, or both, together with costs of prosecution.

(Signed)_____ (Date)_____
(Title) _____
(Owner, President, Partner, Member, etc.)

§ 44.6806(c) STATUTORY PROVISIONS; POSTING OCCUPATIONAL TAX STAMPS; OCCUPATIONAL WAGERING TAX.

SEC. 6806. POSTING OCCUPATIONAL TAX STAMPS—* * *.

(c) OCCUPATIONAL WAGERING TAX.—Every person liable for special tax under section 4411 shall place and keep conspicuously in his principal place of business the stamp denoting the payment of such special tax; except that if he has no such place of business, he shall keep such stamp on his person, and exhibit it, upon request, to any officer or employee of the Treasury Department.

§ 44.6806(c)–1 SPECIAL TAX STAMP TO BE POSTED.—(a) *In general.*—The special tax stamp issued to a taxpayer as evidence of the

payment of the tax shall be kept posted conspicuously in his principal place of business, except that if he has no such place of business he shall keep such stamp on his person and exhibit it, upon request, to any officer or employee of the Service. For provisions relating to the penalty for failure to post such stamp, see § 44.7273(b).

(b) *Posting of certificate in lieu of stamp.*—When a special tax stamp has been lost or destroyed, such fact shall be reported at once to the internal revenue officer with whom the return on Form 11-C was filed for the purpose of obtaining from him a certificate of payment. Such certificate shall be posted in place of the stamp; otherwise, the penalty referred to in paragraph (a) of this section for failure to post the stamp will be incurred.

§ 44.7262 STATUTORY PROVISIONS; VIOLATION OF OCCUPATIONAL TAX LAWS RELATING TO WAGERING; FAILURE TO PAY SPECIAL TAX.

SEC. 7262. VIOLATION OF OCCUPATIONAL TAX LAWS RELATING TO WAGERING—FAILURE TO PAY SPECIAL TAX.

Any person who does any act which makes him liable for special tax under subchapter B of chapter 35 without having paid such tax, shall, besides being liable to the payment of the tax, be fined not less than $1,000 and not more than $5,000.

§ 44.7262-1 FAILURE TO PAY SPECIAL TAX.—Any person liable for the special tax who does any act which makes him liable for such tax, without having paid the tax, is, besides being liable for the tax, subject to a fine of not less than $1,000 and not more than $5,000.

§ 44.7272 STATUTORY PROVISIONS; PENALTY FOR FAILURE TO REGISTER.

SEC. 7272. PENALTY FOR FAILURE TO REGISTER.

(a) IN GENERAL.—Any person who fails to register with the Secretary or his delegate as required by this title or by regulations issued thereunder shall be liable to a penalty of $50.

(b) CROSS REFERENCES.—For provisions relating to persons required by this title to register, see sections * * * 4412 * * *.

§ 44.7273(b) STATUTORY PROVISIONS; PENALTIES FOR OFFENSES RELATING TO SPECIAL TAXES; SPECIAL WAGERING TAX.

SEC. 7273. PENALTIES FOR OFFENSES RELATING TO SPECIAL TAXES. * * *

(b) FAILURE TO POST OR EXHIBIT SPECIAL WAGERING TAX STAMP.—Any person who, through negligence, fails to comply with section 6806(c) relating to the posting or exhibiting of the special wagering tax stamp, shall be liable to a penalty of $50. Any person who, through willful neglect or refusal, fails to comply with section 6806(c) shall be liable to a penalty of $100.

§ 44.7701 STATUTORY PROVISIONS; DEFINITIONS.

SEC. 7701. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) PERSON.—The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) PARTNERSHIP AND PARTNER.—The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the

term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) CORPORATION.—The term "corporation" includes associations, joint-stock companies, and insurance companies.

* * * * * * *

(9) UNITED STATES.—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.

(10) STATE.—The term "State" shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(12) DELEGATE.—The term "Secretary or his delegate" means the Secretary of the Treasury, or any officer, employee, or agency of the Treasury Department duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform the function mentioned or described in the context, and the term "or his delegate" when used in connection with any other official of the United States shall be similarly construed.

(13) COMMISSIONER.—The term "Commissioner" means the Commissioner of Internal Revenue.

(14) TAXPAYER.—The term "taxpayer" means any person subject to any internal revenue tax.

* * * * * * *

(28) OTHER TERMS.—Any term used in this subtitle with respect to the application of, or in connection with, the provisions of any other subtitle of this title shall have the same meaning as in such provisions.

(29) INTERNAL REVENUE CODE.—The term "Internal Revenue Code of 1954" means this title, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.

(b) INCLUDES AND INCLUDING.—The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) COMMONWEALTH OF PUERTO RICO.—Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(d) CROSS REFERENCES—

(1) OTHER DEFINITIONS.—For other definitions, see the following sections of Title 1 of the United States Code:

(1) Singular as including plural, section 1.
(2) Plural as including singular, section 1.
(3) Masculine as including feminine, section 1.
(4) Officer, section 1.
(5) Oath as including affirmation, section 1.
(6) County as including parish, section 2.
(7) Vessel as including all means of water transportation, section 3.
(8) Vehicle as including all means of land transportation, section 4.
(9) Company or association as including successors and assigns, section 5.

(2) EFFECT OF CROSS REFERENCES.—For effect of cross references in this title, see section 7806(a).

§ 44.7805 STATUTORY PROVISIONS; RULES AND REGULATIONS.

SEC. 7805. RULES AND REGULATIONS.

(a) AUTHORIZATION.—Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary or his delegate shall prescribe all needful rules and regulations for the enforcement of this title, including all

rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) RETROACTIVITY OF REGULATIONS OR RULINGS.—The Secretary or his delegate may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

(c) PREPARATION AND DISTRIBUTION OF REGULATIONS, FORMS, STAMPS, AND OTHER MATTERS.—The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

Approved March 31, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on April 3, 1959, 8:47 a.m., and published in the issue of the Federal Register for April 4, 1959, 24 F.R. 2613.)

CHAPTER 36.—CERTAIN OTHER EXCISE TAXES

SUBCHAPTER A.—PLAYING CARDS

SECTION 4451.—IMPOSITION OF TAX

Rev. Rul. 59-20

The excise tax on playing cards imposed by section 4451 of the Internal Revenue Code of 1954 does not apply to sales of a specially designed deck of cards which is used to play a game called "Hi-Fen," and which is not suitable for use in the same manner as regular playing cards.

Advice has been requested whether the tax on playing cards applies to a specially designed deck of cards used to play a game called "Hi-Fen."

The game is played with a deck of 53 or possibly 54 cards consisting of 52 card faces imprinted with a letter of the alphabet, 26 cards in black and 26 cards in red, plus either one or two cards designated as "Hi-Fen." The object of the game is to form words from the letters which appear on the cards. A "Hi-Fen" card may be used in place of any letter in forming a word. None of the cards in the "Hi-Fen" pack have pips, numerals, or pictures of figures such as the king, queen, and jack, such as appear on regular playing cards.

Section 4451 of the Internal Revenue Code of 1954 imposes a tax of 13 cents per pack on every pack of playing cards containing not more than 54 cards, manufactured or imported, and sold, or removed for consumption or sale, by a manufacturer.

Article 8 of Regulations 66, made applicable to the 1954 Code by Treasury Decision 6091, C. B. 1954–2, 47, states that the tax applies to ordinary playing cards such as are used in playing games of skill or chance such as "poker," "euchre," "pinochle," and the like, and to cards that may be used in lieu of ordinary playing cards. Cards for

the game of "authors," so called, and the like, differing wholly from ordinary cards, are not subject to tax.

Accordingly, it is held that the tax on playing cards imposed by section 4451 of the Code does not apply to sales of "Hi-Fen" playing cards since they are not suitable for use in the same manner as ordinary playing cards.

SUBCHAPTER D.—TAX ON USE OF CERTAIN VEHICLES

SECTION 4482.—DEFINITIONS

26 CFR 41.4482(b)–1: Definition of taxable gross weight. Rev. Rul. 59–38

> The weight of certain parts of a concrete mixer mounted on a highway motor vehicle may be excluded in determining the "actual unloaded weight" of the vehicle, for purposes of the highway motor vehicle use tax, provided the parts are not a part of the body and perform no function in the movement or maintenance of the vehicle, but are used only in loading, unloading, protecting, or preserving the cargo.

The Internal Revenue Service has been asked whether the weight of the following parts of a concrete mixer are to be included in determining the "actual unloaded weight" of the vehicle, upon which the mixer is mounted, for purposes of the highway motor vehicle use tax:

(1) A separate engine assembly including engine, housing, gas tank, and skid. This assembly is used on some concrete mixers to power the mixing drum. On other mixers the truck engine is used as the power source for the drum.

(2) A transmission system connecting the power source to the mixing drum. The machinery, chiefly gears, will usually include clutch and gear shift assemblies, a worm drive assembly, and a drum sprocket and chain, as well as guards.

(3) The mixing drum, mixing blades or fins placed inside the mixing drum to churn the concrete mixture, and the drum door.

(4) A water system consisting of a tank and supports, water pump, controls, metering equipment, hose, and piping. This system is used to add a measured amount of water to the concrete mixture while it is being processed in transit.

(5) Trunnion bearing and drum rollers which enable the mixing drum to rotate.

(6) A loader assembly which consists primarily of a hopper that helps to direct the ingredients into the mixing drum without spillage.

(7) A discharge system, consisting of chutes, supports, and brackets, for directing the concrete into forms at the job site.

(8) Mud guards to protect moving parts from dirt, and drum roller guards which are a safety feature.

(9) Steel sign panels mounted on each side of the vehicle which carry the name of the concrete mix producer.

Section 4481(a) of the Internal Revenue Code of 1954 imposes a tax on the use of certain highway motor vehicles which have a taxable gross weight of more than 26,000 pounds.

Section 4482(b) of the Code provides as follows:

TAXABLE GROSS WEIGHT.—For purposes of this subchapter, the term "taxable gross weight," when used with respect to any highway motor vehicle, means the sum of—

(1) the actual unloaded weight of—

(A) such highway motor vehicle fully equipped for service, and

(B) the semitrailers and trailers (fully equipped for service) customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle, and

(2) the weight of the maximum load customarily carried on highway motor vehicles of the same type as such highway motor vehicle and on the semitrailers and trailers referred to in paragraph (1)(B).

Taxable gross weight shall be determined under regulations prescribed by the Secretary or his delegate (which regulations may include formulas or other methods for determining the taxable gross weight of vehicles by classes, specifications, or otherwise).

Section 41.4482(a)-1(a) of the Highway Motor Vehicle Use Tax Regulations defines a highway motor vehicle as any vehicle that is propelled by means of its own motor and that is of a type used for highway transportation.

Section 41.4482(b)-1(b) of the regulations provides as follows:

MEANING OF TERMS.—For purposes of the schedule of taxable gross weights prescribed in paragraph (c) of this section—

(1) The term "actual unloaded weight" means the empty (or tare) weight of the truck, truck-tractor, or bus, fully equipped for service.

(2) The term "fully equipped for service" includes body (whether or not designed and adapted primarily for transporting cargo, as for example, concrete mixers); all accessories; all equipment attached to or carried on such truck, truck-tractor, or bus, for use in connection with the movement of the vehicle by means of its own motor or for use in the maintenance of the vehicle; and a full complement of lubricants, fuel, and water. The term does not include driver, any equipment (not including body) attached to or carried on the vehicle for use in handling or transporting cargo; or any special equipment (such as an air compressor, crane, specialized oilfield machinery, etc.) mounted on the vehicle for use on construction jobs, in oilfield operations, etc.

A schedule of taxable gross weights, prescribed under the authority of section 4482(b) of the Code, is set forth in section 41.4482(b)-1(c) of the regulations. Highway vehicles are classified under this schedule according to the number of axles, the actual unloaded weight, and the type (whether equipped for use as a single unit or in combinations).

Revenue Ruling 57-340, C. B. 1957-2, 786, holds that any equipment mounted on or attached to a single-unit highway motor vehicle that is not a part of the body and that performs no function in the operation or maintenance of the vehicle, but is used only in loading, unloading, protecting, or preserving the cargo, is not to be included in determining the actual unloaded weight of the vehicle for use tax purposes.

Accordingly, it is held that, if the engine, together with its assembly, described in (1) above and the transmission from the power source to the mixing drum described in (2) perform no function in the movement or maintenance of the vehicle, the weight thereof would not be included in the actual unloaded weight of the vehicle. Like-

wise, since the parts and equipment described in (5), (6), and (7) perform no function in the movement or maintenance of the vehicle, but are used only to load, unload, protect, or preserve the cargo, the weight thereof would not be included in the actual unloaded weight of the vehicle. The weight of the water pump, controls, metering equipment, piping, and hose mentioned in (4) are to be excluded, since this equipment is used only to process the cargo. However, the water tank and its supports, in view of their cargo carrying function, are considered to be parts of the body of the vehicle and their weight should be included. The mixing drum in (3) is part of the truck body and its weight must be included. The mixing blades or fins and the mixing drum door are considered to be integral parts of the mixing drum, which is a part of the body, and their weight should also be included in determining the actual unloaded weight of the vehicle. The mud guards and the drum roller guards, in (8), are used in the maintenance of the vehicle and their weight should be included. The sign panels in (9) are includible as accessories in determining the actual unloaded weight of the vehicle. Furthermore, the weight of the mixer frame, which is attached to the truck's frame and upon which the mixing drum and its accessories are mounted, must be included in determining the actual unloaded weight of the vehicle.

CHAPTER 39.—REGULATORY TAXES

SUBCHAPTER A.—NARCOTIC DRUGS AND MARIHUANA

PART I.—NARCOTIC DRUGS

Subpart A.—Tax on Opium, Isonipecaine, Opiates, and Coca Leaves

SECTION 4701.—IMPOSITION OF TAX

Regulations 5, 26 CFR 151.1: Scope of regulations,
(Also Sections 4711, 4721, 4731, 4771.)

T. D. 58 [1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER D, PART 151.—REGULATORY TAXES ON NARCOTIC DRUGS

Regulations 5 revised to conform with the Internal Revenue Code of 1954.

DEPARTMENT OF THE TREASURY,
Office of Commissioner of Internal Revenue,
Office of Commissioner of Narcotics,
Washington 25, D.C.

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

The following regulations are prescribed under chapter 39, subchapter A, parts I and III of the Internal Revenue Code of 1954.

[1] 24 F.R. 2235.

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

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AUTHORITY: §§ 151.1 to 151.502, incl., issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

Subpart A.—Introductory

§ 151.1 Scope of Regulations.—The regulations in this part deal with the tax computation, procedure, forms of records and returns, and similar matters, pertaining to the special (occupational) taxes upon persons engaging in activities involving narcotic drugs, as well as with the stamp (commodity) tax upon any such materials which have been produced in, or imported into, the United States and sold or removed for consumption or sale.

§ 151.2 Laws Applicable.—The provisions of law which are applicable in respect of the taxes specified in § 151.1 are those set forth in parts I and III, subchapter A, chapter 39, of the Internal Revenue Code of 1954, together with all other provisions of law which, by reference or otherwise, are applicable to such taxes.

Subpart B.—Definitions

§ 151.11 Definitions.—As used in this part:

(a) The term "narcotic", "narcotics", or "narcotic drugs" shall mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, isonipecaine, coca leaves and opiate;

(2) Any compound, manufacture, salt, derivative, or preparation of opium, isonipecaine, coca leaves, or opiate;

(3) Any substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in subparagraphs (1) and (2) of this paragraph.

(b) The term "exempt preparations" means the preparations and remedies described in section 4702, which contain not more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid or avoirdupois ounce, and liniments, ointments, or other preparations for external use only, except liniments, ointments, and other preparations which contain cocaine or any of its salts or alpha or beta eucaine or any of their salts or any synthetic substitute for them, provided that such remedies and preparations are manufactured, sold, distributed, given away, dispensed, or possessed as medicines and a record of all sales, exchanges, or gifts of such preparations and remedies is kept as provided in § 151.426.

(c) The term "exempt officials" includes officials of the United States, insular possessions, Territories, the District of Columbia, States and political subdivisions. For provisions applicable to such officials, see §§ 151.221 to 151.229.

(d) The term "district director" means district director of internal revenue.

(e) The term "person" includes an individual, partnership, trust, association, company, or corporation; also a hospital, college of pharmacy, medical or dental clinic, sanatorium, or other institution or entity.

(f) The term "special tax" means any of the taxes, pertaining to the several occupations or activities covered by section 4721, imposed upon persons who import, manufacture, produce, compound, sell, deal in, dispense, administer, or give away narcotics.

(g) The term "stamp tax" means the tax on narcotics payable by attachment of stamps.

(h) The term "practitioner" includes a physician, dentist, veterinary surgeon, or any other person who may be lawfully entitled to distribute, dispense, prescribe, or administer narcotics to patients.

(i) Words importing the singular may include the plural; words importing the masculine gender may be applied to the feminine or the neuter.

(j) The definitions contained in this section shall not be deemed exclusive.

Subpart C.—Special Taxes

REGISTRATION

§ 151.21 PERSONS LIABLE.—Liability to payment of special tax and registration attaches to every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, administers, or gives away narcotics. As to the tax rates applicable to a person engaged in one or more of the foregoing activities, see § 151.41.

§ 151.22 MANNER AND TIME OF REGISTRATION.—Every person required to register shall execute and file with the district director for the internal revenue 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 § 151.41. Form 678 shall be executed by new applicants and approved by the district director 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. Form 678 may be obtained from the district director. For the purpose of the special tax imposed by section 4721, Form 678 shall be considered a return.

§ 151.23 INVESTIGATION OF APPLICANTS.—(a) All new applications on Form 678 shall be referred by the district director to the appropriate narcotic district supervisor for investigation, report, and recommendation. Renewal applications on Form 678 shall also be referred by the district director to the appropriate narcotic district supervisor for investigation, report and recommendation, if the district director is in doubt as to the applicant's being lawfully entitled to engage in the activity for which he seeks registration.

(b) In the case of applications which have been so referred, the district director shall not issue a special tax stamp in connection with any registration until information has been submitted to him, by the narcotic district supervisor, that the applicant is properly licensed or otherwise lawfully entitled to engage in the activity in the internal revenue district in which he seeks registration.

(c) All applications for registration that are referred to the narcotic district supervisor shall be returned by him to the district director with recommendation for approval or disapproval and, in case of disapproval, with a statement annexed concerning applicant's lack of

license or qualification, to lawfully engage in the activity for which registration is sought. The application together with any required statement shall be returned to the district director within 10 days from date of receipt of the application by the supervisor, unless a longer time shall be required within which to complete an investigation. In the latter event the district supervisor shall, upon or before the expiration of the said 10 days, so notify the district director stating the estimated additional time required.

§ 151.24 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.

§ 151.25 FALSE APPLICATIONS.—The false or fraudulent execution or signing of application for registration or supporting affidavit as required by § 151.24 shall subject the offending person to the penalties provided by section 7206.

§ 151.26 SIGNATURES.—(a) *Individuals.*—The application shall be signed by the person desiring registration.

(b) *Firms and corporations.*—The application of a firm shall be signed by a member, that of a corporation by an officer duly authorized to act. The names of the real owners shall be disclosed if the business is being carried on under an assumed name or that of a former owner. If owned by a partnership, the name of each partner shall appear. In the case of a corporation the names of the principal officers shall be shown.

(c) *Institutions.*—When an institution is subject to tax the head thereof or of the department wherein narcotic drugs are used shall sign the application for registration.

§ 151.27 INVENTORY REQUIRED.—Every person making application for registry or reregistry in any class (see § 151.41) 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 district directors 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 4702, 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 two years.

§ 151.28 REGISTRY NUMBERS.—Upon approval of the application the district director will assign a registry number to the applicant. The numbers are issued serially without regard to classes. The same number shall be retained throughout all the consecutive periods for which the applicant may be registered. One registry number will cover all classes at the same location except Class IV, for which a separate registry number will be assigned. However, a person regis-

tering in Classes IV and V only will be assigned the same number for both classes. In the case of one engaged in business at two or more places, a separate number will be assigned for each place of business. The registry number of a person who discontinues operations will not be assigned to any other person for any portion of the same fiscal year.

§ 151.29 RECORDING AND FILING.—Each approved application will be recorded by the district director on card Record 10 and the cards filed alphabetically. The applications will be filed numerically according to registry numbers. See § 151.479.

CLASSIFICATION

§ 151.41 RATES OF TAX.—(a) Persons subject to tax are divided into classes as shown by the table following:

Class	Annual tax rate	Persons liable
I	$24	Importers, manufacturers, producers, compounders.
II	12	Wholesale dealers.
III	3	Retail dealers.
IV	1	Physicians, dentists, veterinary surgeons, and other practitioners.
V [1]	1	Manufacturers of and dealers in exempt preparations (including dispensing physicians).
VI	1	Persons not registered in Class I, but lawfully entitled to obtain and use in a laboratory narcotics for the purpose of research, instruction or analysis.

[1] Persons paying tax in any of the Classes I to IV, inclusive, are not required to pay tax in Class V on account of manufacture or sale of exempt preparations.

(b) When business is done during the month of July, tax shall be paid for the full year. The tax in Class IV or V is at the rate of $1 a year or any fraction thereof, regardless of when business is first commenced. In Classes I to III, inclusive, and in Class VI, if business is commenced after the month of July, the amount due is to be reckoned proportionately by months from the first day of the month in which business is begun to July 1 following. See §§ 151.81 to 151.86, inclusive, for penalties and interest imposed where business is done before payment of special tax.

§ 151.42 IMPORTERS.—Every person who imports narcotic drugs is subject to tax as an importer at the rate of $24 per annum in Class I. A manufacturer or compounder who is also an importer is not thereby required to pay more than one tax.

§ 151.43 MANUFACTURERS AND COMPOUNDERS.—As a general rule, every person who, by compounding, mixing, or, other process of manufacture, produces narcotic drugs or preparations for sale or distribution is subject to tax as a manufacturer or compounder at $24 per annum in Class I, with the following exceptions as to retail dealers:

(a) *Prescription compounding.*—Persons who have paid tax as retail dealers (see § 151.46) do not incur liability as manufacturers or compounders on account of compounding narcotic preparations to fill legitimate prescriptions of registered practitioners, even though the

preparations are compounded in advance of receipt of prescriptions, so long as they are used for prescription purposes only.

(b) *Aqueous and oleaginous solutions.*—Persons qualified as retail dealers may also supply registered practitioners or exempt officials on order forms, in quantities not exceeding one ounce at any one time, with aqueous or oleaginous solutions, compounded by such retail dealer, in which the narcotic content does not exceed a greater proportion than 20 percent of the complete solution, to be used in legitimate office practice. In cases where the dealer is also registered in Class I or Class II, or both, these transactions should not appear in the monthly returns which he is required to make as a member of these last-named classes. The original order forms must be filed by the dealer with his narcotic prescriptions. Each package containing an aqueous or oleaginous solution so furnished must bear a label showing the date of the order, number of the order form if any, the name and proportion of narcotic drug contained in the solution, and the name, address, and registry number of the vendee and vendor, respectively.

§ 151.44 PRODUCERS.—Every person who produces narcotic drugs or preparations to be sold on order forms not by mixing or compounding but by merely transferring the contents of one package or of a number of packages to one or more packages of the same or of greater or smaller size is liable to tax as a producer at the rate of $24 per annum in Class I. As to liability to stamp tax, see § 151.124.

§ 151.45 WHOLESALE DEALERS.—Every person who sells or offers for sale narcotic drugs or preparations in original stamped packages is subject to tax as a wholesale dealer at the rate of $12 per annum in Class II.

§ 151.46 RETAIL DEALERS.—Every person who sells narcotic drugs or preparations from original stamped packages, with or without compounding, pursuant to oral or written prescriptions issued by registered practitioners in the course of professional practice only, is liable to tax as a retail dealer at the rate of $3 per annum in Class III, with the following exceptions:

(a) *Manufacturers.*—One registered as a member of Class I, who is qualified under the laws of the jurisdiction in which his place of business is located to fill prescriptions, will be permitted to do so from original stamped packages of his own production without payment of tax as a retail dealer. If, however, prescriptions are filled from packages produced by any other person, additional liability to tax as a retail dealer will be incurred.

(b) *Practitioners.*—A duly qualified practitioner (see § 151.47) is not required to pay additional tax on account of the sale of narcotic drugs for legitimate medical purposes to his own bona fide patients. A practitioner who operates a drug store and in his capacity as a druggist sells narcotic drugs or preparations, pursuant to oral or written prescriptions issued by other practitioners, incurs additional liability as a retail dealer.

§ 151.47 PRACTITIONERS.—(a) *In general.*—Physicians, dentists, veterinary surgeons, and other practitioners, including institutions, who prescribe, distribute, dispense, give away, or administer narcotic

drugs or preparations, and who are entitled to do so under the laws of the jurisdiction in which they practice, are subject to tax at the rate of $1 per annum or fraction thereof in Class IV.

(b) *Interdistrict practice.*—A practitioner maintaining an office where he is duly registered with the district director for the internal revenue district in which the office is located, and where his complete stock of narcotic drugs and all narcotic records are kept, may distribute, dispense, give away, administer, or prescribe narcotic drugs in other internal revenue districts in which he may be lawfully engaged in the practice of his profession, within the United States, in the course of his professional practice only, without incurring additional tax liability.

§ 151.48 LABORATORY USE.—Chemists occupying an independent status and not that of employees, in other words, in business for themselves, who, being thereunto lawfully entitled, make analyses of narcotic drugs or preparations or use such drugs in analyzing other substances in a laboratory, and other lawfully entitled persons who obtain and use in a laboratory any narcotic drugs or preparations for the purpose of research, instruction, or analysis, if not registered in Class I and not manufacturing or compounding narcotic drugs or preparations for sale or for removal for consumption or sale, are liable to tax at the rate of $1 per annum in Class VI.

PARTICULAR SITUATIONS

§ 151.61 DUAL LIABILITIES.—In general, one conducting two or more classes of business at the same location must pay a separate tax with respect to each such class. However, see § 151.41 as to Class V tax.

§ 151.62 SEVERAL PLACES OF BUSINESS.—Generally a taxpayer must pay as many special taxes as he has places of business. Thus if a concern has one or more separate branches where any of the various taxable businesses is carried on, tax must be paid for each branch separately. However, a manufacturer, compounder, or producer who has paid tax as such, and who has a principal office or place of business separate and apart from the place where the actual manufacturing, compounding, or producing is done, is not required to pay an additional tax with respect to such office or place of business, provided no merchandise except samples is kept thereat, on account of orders taken at such office or place of business for narcotics to be delivered from the place of manufacture, compounding, or production. If sales are made at a principal office or place of business separate and apart from the place of manufacture, compounding, or production, from stock kept at such office or place of business, tax as a wholesale or retail dealer, or both, as the case may be, must be paid with respect to such office or place of business.

§ 151.63 WAREHOUSES.—Tax does not attach with respect to a warehouse where narcotic drugs are stored, provided no sales are made at such place.

§ 151.64 ITINERANT VENDORS.—No person is permitted to dispense or deal in narcotic drugs or preparations except upon orders received or engagments made at, with respect to, or by reason of, a fixed

address. A peddler of such drugs or preparations will be regarded as incurring a separate tax liability and committing an additional offense at each place where a sale is made.

§ 151.65 Partnerships.—A partnership is subject to the same tax liability as an individual. Should any of the partners also individually engage in a taxable activity, he will incur additional liability with respect to such activity.

§ 151.66 Institutions.—Hospitals, colleges, medical and dental clinics, sanatoriums, and other institutions not exempt as public institutions are subject to the same special tax liability as other persons dealing or handling narcotic drugs or preparations in the same manner.

§ 151.67 Principals.—Principals, rather than agents, are liabile to the taxes imposed. Employers and other principals will be regarded as responsible for the acts of employees and other agents within the scope of their employment.

§ 151.68 Employees.—An employee of a person who has registered and paid tax will not himself incur liability to tax so long as he acts solely within the scope of his employment. However, an employee who, within or without the scope of his employment, does any unlawful act, will be held personally liable.

§ 151.69 Nurses.—Nurses are regarded as agents of the practitioners or institutions under whose direction or supervision their duties are performed, and they are not permitted to register, nor are they permitted to be in possession of narcotic drugs or preparations except as such agents, or as patients. Any unused narcotic drugs left by a practitioner with a nurse, to be administered during his absence, upon discharge of the nurse must be returned to the practitioner, who will account for the drugs on his records. Any such narcotic drugs found in the possession of a nurse not at the time under the supervision of a practitioner shall be forfeited to the Government.

§ 151.70 Nursing Homes and Similar Institutions.—Narcotic drugs left by a practitioner for a patient in a nursing home and no longer required for the patient must be returned to the practitioner. Narcotic drugs secured pursuant to a prescription issued to the patient in a nursing home and no longer required for the patient may be surrendered to the appropriate narcotic district supervisor on Form 142.

§ 151.71 Traveling Salesmen.—Traveling salesmen who merely solicit orders and forward them to their respective principals are not required to register or pay any tax.

§ 151.72 Operation of State Laws.—Payment of special tax under section 4721 confers no right or privilege to conduct business contrary to State law. The holder of a special-tax stamp issued by the Federal Government may still be punishable under a State law prohibiting or regulating the production, manufacture, or sale of narcotic drugs. On the other hand, compliance with State law affords no immunity under Federal law. Persons who engage in business in violation of the law of a State are, nevertheless, required to pay special tax as imposed under section 4721.

DELINQUENT AND FALSE RETURNS

§ 151.81 DELINQUENT RETURNS.—(a) Every person from whom a special-tax return is required who, without reasonable cause, fails to file such return on or before the date prescribed for filing (determined with regard to any extensions granted) is subject to certain penalties. Under section 6651(a), the penalty for delinquency is 5 percent of the amount of tax required to be shown on the return if the failure is for not more than one month, and an additional 5 percent for each additional month or fraction thereof, during which the delinquency continues, not to exceed 25 percent in the aggregate.

(b) A taxpayer who wishes to avoid the addition to the tax for delinquency must make an affirmative showing of all the facts alleged as reasonable cause for failure to file the return on time. Such showing should be made in the form of a written statement containing a declaration that it is made under penalties of perjury. The statement should be filed with the district director with whom the return is required to be filed. If the district director determines that the delinquency was due to a reasonable cause, and not to willful neglect, the addition to the tax will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the returns within the prescribed time, then the delay is due to reasonable cause.

(c) The addition to the tax under section 6651 is not applicable where a 50-percent addition to the tax for fraud is assessed under the provisions of section 6653(b). See § 151.85.

§ 151.82 SICKNESS OR ABSENCE.—(a) If the district director is satisfied that the failure to file a return is due to sickness or absence, he may extend the time for filing for not more than 30 days. Since any member of a firm may make the return, sickness or absence of less than all the members will not afford grounds for an extension of time.

(b) An extension of time for filing a return does not operate to extend the time for the payment of the tax. Taxpayers who are granted extensions of time for filing returns will be charged with interest at the rate of 6 percent per annum on the unpaid amount of tax from the original due date until paid.

§ 151.83 FAILURE OF AGENT.—If an attorney or agent is delegated to make a return and pay special tax, the principal will incur the penalty if the return is not filed within the time prescribed by law.

§ 151.84 DELINQUENT PAYMENT.—(a) Under section 6601 interest at the rate of 6 percent per annum shall be paid on any unpaid amount of tax (special or commodity) from the last date prescribed for payment of the tax (determined without regard to any extension of time for payment) to the date on which payment is received.

(b) If by reason of jeopardy, a notice and demand for payment of any tax is issued before the last date otherwise prescribed for payment, such last date shall, nevertheless, be used for the purpose of the interest computation, and no interest shall be imposed for the period commencing with the date of the issuance of the notice and demand and ending on such last date. If the tax is not paid on or before such last date, interest will automatically accrue from such last date to the date on which payment is received.

(c) Interest shall be assessed and collected in the same manner as tax and shall be paid upon notice and demand by the district director. Interest on tax may be assessed and collected at any time within the period of limitation on collection after assessment of the tax to which it relates.

(d) No interest under section 6601 shall be payable on any interest provided by such section.

(e) Interest shall not be imposed on any assessable penalty, unless such assessable penalty is not paid within 10 days from the date of notice and demand therefor. If interest is imposed it shall be imposed only for the period from the date of notice and demand to the date on which payment is received.

(f) If notice and demand is made for any amount and such amount is paid within 10 days after the date of such notice and demand, interest shall not be imposed for the period after the date of such notice and demand.

§ 151.85 False Returns.—If any part of an underpayment of tax, as defined in section 6653(c), required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment. If a penalty for fraud is assessed, the penalty for failure to file a return will not be assessed with respect to the same underpayment.

§ 151.86 When Penalty and Interest Accrues.—In view of the positive language of section 4901(a) all persons engaging in the activities specified in section 4721 will be regarded as delinquent, and the penalties and interest provided are applicable, unless applications are filed not later than July 1 of each year or on or before the date upon which liability is incurred.

CHANGES AFTER TAX PAYMENT

§ 151.101 Change of Control.—(a) Certain persons other than the taxpayer may, without incurring additional liability, carry on the business at the same address and for the remainder of the period for which special tax was paid. To secure such right the party or parties continuing the business must execute, within 30 days, a return on Form 678, showing the basis of the right. Under the conditions indicated the parties having such right include the following:

(1) The relict, children, or other legal representatives of a deceased taxpayer.

(2) A receiver or referee in bankruptcy, or an assignee for the benefit of creditors.

(3) The partner or partners remaining after death or withdrawal of a member.

(b) Special tax, reckoned from the first day of the month in which the change occurs, is incurred and must be paid by the parties indicated under the following conditions:

(1) Where additional partners are taken into a firm operating under the old or a new firm name.

(2) Where a corporation is formed to continue the business of a partnership, or a new charter is issued to a former corporation.

(3) Where a stockholder or other party continues a business previously conducted by a corporation, whether or not the corporation is dissolved.

§ 151.102 Qualification of Successor.—No district director shall issue a special-tax stamp to any person who desires to carry on business as shown in § 151.101(b) until the district director is satisfied that such person is lawfully entitled to obtain registration.

§ 151.103 Change of Name or Location.—The name of an individual, firm, or corporation that has paid special tax may be changed, or a special-tax payer may relocate his place of business, without incurring additional tax liability, provided the change is registered with the district director.

§ 151.104 Registration.—A special-tax payer who changes his name or relocates his place of business shall within 30 days execute a new return on Form 678, marking it "Revised Registry". The return shall set forth the date of change and the new name or address. The return shall be forwarded with the special-tax stamp to the district director who issued the stamp for recording the change.

§ 151.105 Liability for Failure to Register Change.—A person succeeding to a business for which tax has been paid, or a taxpayer who relocates his business, without registering the change within 30 days, as required by § 151.101 or § 151.104, respectively, will be liable to the tax, to the penalty and interest set forth in § 151.81 and § 151.84 and also to penalty for carrying on business without payment of tax. (See § 151.492.)

§ 151.106 Removal of Business.—(a) Where a taxpayer (other than a taxpayer registered in Classes I, II, and V (Manufacturer)) removes his business from one address to another within the State, Territory, or the District of Columbia, the district director will enter the new address and the date of removal on his Record 10. If the new address is not within a different internal revenue district, the district director will note the change on the face of the special-tax stamp and return the stamp to the taxpayer. If the new address is located in a different internal revenue district, the district director who issued the stamp will transmit the stamp to the district director of the internal revenue district in which the new address is located. The district director of that district will then make an entry on his Record 10, as in the case of a new registrant, and note the taxpayer's new address and the district director's name, title, and internal revenue district, and the date on the stamp, which he will return to the taxpayer. If the new internal revenue district is located in a different State or Territory or in the District of Columbia, the district director in whose internal revenue district the new address is located shall request the narcotic district supervisor to make an investigation, report, and recommendation as in the case of a new registrant. See § 151.23. Upon receipt of a favorable report from the narcotic district supervisor, the district director shall make an appropriate entry on his Record 10 and note the special-tax stamp in the manner prescribed herein and return the stamp to the taxpayer.

(b) Where a taxpayer in Class I, II, or V (Manufacturer) removes his business from one address to another, whether or not within the

same State, Territory, or the District of Columbia, or a taxpayer registered in any class removes his business from the District of Columbia to a State or Territory, or from a State or Territory to another State, Territory, or the District of Columbia, the district director will enter the new address and the date of removal on his Record 10. If the new address is located in a different internal revenue district, the district director who issued the stamp will transmit the stamp to the district director of the internal revenue district in which the new address is located. The district director in whose internal revenue district the new address is located shall request the narcotic district supervisor to make an investigation, report, and recommendation as in the case of a new registrant. See § 151.23. Upon receipt of a favorable report from the narcotic district supervisor, the district director shall make an appropriate entry on his Record 10 and note the special-tax stamp in the manner prescribed in paragraph (a) of this section and return the stamp to the taxpayer.

SPECIAL TAX STAMPS

§ 151.111 Preparation of Stamps.—District directors will distinctly write or print on the stamp, before it is issued, the taxpayer's name, address, and registry number, and the number of the class or classes in which registered.

§ 151.112 Posting of Stamps.—Every special-tax stamp issued to a taxpayer must be kept posted conspicuously on the premises where the business is operated. One who fails so to post a stamp thereby incurs liability to a penalty, equal to and in addition to the tax; but in no case shall the penalty be less than $10. Where the failure is willful the penalty is doubled. This liability is additional to any and all liability otherwise incurred.

§ 151.113 Loss of Stamps.—If a taxpayer loses his special-tax stamp, or if it is accidentally destroyed, he shall immediately notify the district director, who will issue a certificate of payment, Form 785, which must be displayed in lieu of the stamp. Unless a certificate is so obtained and displayed, liability for failure to display special-tax stamp will be incurred.

Subpart D.—Commodity Taxes

RATES OF TAX

§ 151.121 Scope of Tax.—(a) The tax attaches to all narcotics domestically manufactured or produced, and all narcotics imported in crude or manufactured form.

(b) A new tax liability will attach whenever a new derivative, compound, or preparation is produced, whether or not tax has been paid on the component ingredients or parts thereof. Thus imported opium is subject to one tax, morphine produced in this country from such imported opium is subject to another tax, a preparation manufactured by the use of such morphine also will be subject to tax, and so on.

(c) Preparations and remedies coming within the provisions of section 4702 are not subject to the tax. See §§ 151.421 to 151.423.

§ 151.122 Repacking.—(a) Repacking narcotics is production within the intent of section 4701, and narcotics so produced are taxable, regardless of any tax previously paid thereon.

(b) Retail druggists may, under the conditions indicated in § 151.43, fill prescriptions and supply solutions for office practice without payment of tax on the narcotics furnished in such manner.

§ 151.123 INTERNATIONAL MOVEMENTS; EXPORTS; IN-TRANSIT SHIPMENTS.—(a) Manufactured narcotic drugs or preparations which are subsequently exported are subject to tax whether manufactured expressly for export or not.

(b) Narcotic merchandise arriving in a port of the United States, shown by the shipping papers, i.e., either the bill of lading, manifest, or invoice, to be intended for transportation through the port, or through the United States or territorial waters thereof, to another country, and which is permitted by the Commissioner of Narcotics to be transported to a foreign destination, is not subject to tax.

(c) For customs regulations relating to merchandise in transit through the United States to foreign countries, see 19 CFR Part 18. For regulations under the Narcotic Drugs Import and Export Act relating to in-transit shipments, see 21 CFR 302.28.

§ 151.124 PERSONS LIABLE.—The tax on imported narcotics is to be paid by the importer. The tax on narcotic drugs domestically manufactured, produced, or compounded, is payable by the manufacturer, producer, or compounder.

§ 151.125 TIME OF PAYMENT.—(a) *Importations.*—The tax on imported narcotics must be paid before removal from customs custody.

(b) *Manufactured products.*—The tax on narcotics domestically manufactured, produced, or compounded must be paid before sale or removal for consumption or sale.

§ 151.126 AMOUNT OF TAX.—The tax is 1 cent per ounce or fraction thereof in each package constituting a taxable unit. See § 151.127. For instance, the tax on a package containing 5½ ounces will be 6 cents. The tax on a package containing less than 1 ounce will be 1 cent. The tax is measured by the entire drug content of a taxable package or container, not by the weight of the narcotic content therein.

§ 151.127 UNIT OF TAX; AMPOULES.—(a) With the exception noted in paragraph (b) of this section, the taxable unit is the smallest individual package or container. Thus if a manufacturer sells a preparation in packages containing one-tenth of an ounce each and puts 10 such packages into a larger container, it is not sufficient to place a stamp of the denomination of 1 cent on the outer container, but each of the inner packages must be separately stamped.

(b) When ampoules or other hermetically sealed units each containing only a single dose are put up in packages holding not more than 100 such units, tax may be paid on the joint contents of the entire number of units by affixing a stamp or stamps to the outer package or container.

§ 151.128 MANNER OF PAYMENT.—The tax is paid by attachment to the package forming the taxable unit of a stamp or stamps in sufficient amount. One or more stamps of an appropriate size shall be so affixed as to securely seal the package. In the case of bottles, cans, or other containers with stoppers, lids, or other removable closing devices, the stamp or stamps shall seal the stopper, lid, or other closing device at two opposite points.

§ 151.129 KINDS OF STAMPS.—Adhesive strip stamps are issued in the following denominations and sizes:

Sizes	*Denominations*
1½ by ¼ inch	1 cent.
2½ by ⅜ inch	1 and 2 cents.
4 by ½ inch	1, 2, 5, 6, 8, 10, and 16 cents.
6 by ¾ inch	1, 2, 5, 6, 8, 10, 16, 25, and 40 cents, and $1 and $1.28.

§ 151.130 PROCUREMENT OF STAMPS.—Stamps for affixing to packages or containers of narcotics will be furnished only on requisition of persons registered in Class I. The stamps are not transferable except to a successor in business who has registered and paid tax in Class I at the same location, but unused stamps may be redeemed. See § 151.461. The requisitions shall be made on Form 786. Blank requisition forms may be procured from district directors. District directors will preserve the requisitions and keep a record of the total quantity of stamps secured by each person making requisitions.

§ 151.131 MARKING CONTAINERS.—Each original stamped package containing a narcotic drug unmixed with other ingredients shall show the name or kind of narcotic drug contained therein. If the narcotic drug is mixed with some other ingredient or ingredients, the kind and quantity of narcotic to the ounce shall be shown unless the preparation is prepared in accordance with the United States Pharmacopoeia or the National Formulary. If the preparation contains more than one kind of narcotic, the name and quantity of each to the ounce shall be indicated. If the drug or preparation is in tablet, pill, ampoule, or suppository form, the quantity of each unit shall be given; if such information is given it will not be necessary, so far as this section is concerned, for the entire net weight of the contents to be shown. The packages and their contents will, however, be subject to the provisions of the Federal Food, Drug, and Cosmetic Act and regulations issued thereunder (21 CFR Part 1).

§ 151.132 IDENTIFICATION NUMBERS.—The manufacturer or producer of each package containing one ounce or more of morphine, dihydrocodeine, hydromorphone, hydrocodone, oxycodone, cocaine, methadone, isomethadone, pholcodine, alphaprodine, phenadoxone, levorphan, racemorphan, levomethorphan, racemethorphan or isonipecaine or any of their salts or derivatives, and each package containing tablets, pills, or preparations containing an aggregate of one ounce or more of any of these drugs, shall place thereon his name and location, and an individual identification number, and shall make record of such number together with the name and address of the purchaser, so arranged that upon disclosure of the identification number the identity of the purchaser can be readily ascertained. Likewise, a wholesale dealer shall keep a record showing, as to each such package of which he disposes, the manufacturer's name, location, and identification number, the name and address of the purchaser, and the date of disposal, so arranged that upon disclosure of the identity of the manufacturer and the identification number, the identity of the purchaser can be readily ascertained. Such records shall not be made a part of the monthly returns of such manufacturer, producer, or wholesale dealer, but shall constitute separate permanent records.

§ 151.133 CANCELLATION OF STAMPS.—Stamps will be canceled by noting thereon in red or black ink or by perforation the full or abbreviated name of the manufacturer, producer, or compounder, and the date of cancellation.

§ 151.134 REUSE OF STAMPS PROHIBITED.—A stamp once affixed to one package or container cannot lawfully be removed and affixed to another. As to refunds of amounts paid for stamps, see § 151.461.

Subpart E.—Order Forms

PROCUREMENT OF ORDER FORMS

§ 151.141 WRITTEN ORDER REQUIRED.—Except as otherwise provided, order forms are required for all sales or other dispositions of narcotic drugs.

§ 151.142 BY WHOM PROCURABLE.—Blank forms may be obtained only by persons who are duly qualified and registered under section 4722 or certified as purchasing exempt officials (see § 151.222 and § 151.223) and have legitimate use therefor. Order forms will not be furnished to persons registered in Class V who are not manufacturers.

§ 151.143 MANNER OF PROCUREMENT.—A person desiring and entitled to receive order forms should submit requisition on Form 679 to the district director of the internal revenue district in which he is doing business. The order forms are issued in books each containing 10 sets of original, duplicate, and triplicate forms. Blank requisitions, Form 679, may be obtained from the district director and a replacement requisition blank is included in each book of forms. Each requisition shall show the taxpayer's name, address, registry number, and class, and the number of books of order forms desired. Unless the taxpayer is registered in Class I or II, only one book of order forms will be furnished on each requisition. A charge of 10 cents is made for each book of order forms issued to other than exempt officials, and the requisition should be accompanied by remittance of the proper amount in the form of a check, cash, or money order. For procurement of order forms by exempt officials, see § 151.224.

§ 151.144 SIGNING OF REQUISITIONS.—Generally, requisitions for order forms shall be signed by the same person or persons signing the application for registration (see § 151.26). However, they may be signed by another person authorized by power of attorney previously filed with and approved by the district director. The power of attorney shall be executed on Form 1315, or a substantially similar form, in the same manner as applications for registration, shall show the signature of the person thereby authorized to sign requisitions for order forms, and shall affirm that the signature so shown is his signature.

§ 151.145 SIGNATURES TO BE COMPARED.—Upon receipt by the district director of a requisition for order forms, the signature on such requisition shall be compared with that appearing on the application for registration or in the power of attorney (see § 151.144). Unless the district director is satisfied that the requisition is authentic, it will not be honored.

§ 151.146 PROCEDURE REGARDING ORDER FORMS.—Upon receipt of a properly executed requisition, accompanied by a sum sufficient to

cover the cost of the order forms desired, the district director will issue the order forms requested. Before issuing the order forms the district director will cause to be shown thereon in a legible and permanent manner the name, address, registry number, and class number or numbers of the person to whom they are supplied, also the date of issuance and his signature or his name and the initials of the issuing employee.

§ 151.147 REQUISITIONS TO BE FILED.—The district director will stamp each requisition with the date when filled, enter thereon the first and last serial number of the order forms sold in pursuance thereof, and file all requisitions alphabetically according to the name of the purchaser.

EXECUTION OF ORDER FORMS

§ 151.161 EXECUTION OF FORMS.—(a) Order forms are issued in triplicate and shall be executed in triplicate. They are arranged to permit the execution of the original, duplicate, and triplicate simultaneously by means of interleaved carbon sheets. The original and the triplicate, together with the intervening carbon sheet, must be furnished to the consignor, but shall not leave the possession of the person executing the order until the duplicate is made.

(b) The attachment of extra sheets to order forms is not permitted. If one order form is not sufficient to include all the items of an order, an additional form or forms shall be used. The order forms are intended solely to cover dispositions of taxable narcotic drugs and preparations to registered persons. They shall not in any case be used as prescriptions.

§ 151.162 MANNER OF PREPARATION.—(a) The order forms shall become a part of the permanent records of the registrant filling them, and are required by law to be kept available for inspection for a period of two years. The manufacturer or wholesale dealer should insist for his own protection that the order forms be prepared in such manner as to render their subsequent alteration both difficult of accomplishment and easy of detection. Purchasers also should be careful to protect order forms signed by them against subsequent alteration. Official order forms for the purchase of taxable narcotic drugs should therefore be prepared by the use of typewriter, ink, or indelible pencil, and manufacturers and wholesale dealers should return unfilled any order form executed in a less permanent manner.

(b) For filing of requisitions, see § 151.147. For regulations relating to filing of order forms, see §§ 151.201 and 151.202.

§ 151.163 DATE.—The full and exact date when the order form is actually made out shall be inserted by the purchaser. Purchasers are also required to enter, in the space provided therefor at the bottom of the form, the number of items ordered. If in any case the number of items has not been so entered by the purchaser, the order form shall be returned for completion before it is filled.

§ 151.164 NAME AND ADDRESS OF PURCHASER.—The name, address, registry and class number, and internal revenue district of the purchaser as inserted by the district director shall not be changed by either the purchaser or consignor in any manner whatsoever. The merchandise requested on the form may be sent only to the person

designated by the district director and at the locations specified by him. The name of the purchaser, as registered with the district director, and as entered by the district director on the form, shall be shown on the first line in the lower right-hand space of the form, except where the form is signed personally by an individual registrant in which event this line may be left blank. The signature of an individual purchaser acting personally, or of an individual acting for a registrant, whether acting under power of attorney or otherwise authorized, shall be entered on the second line of the lower right-hand space.

§ 151.165 SIGNING OF ORDER FORMS.—(a) Official narcotic order forms shall be signed by the purchasing registrant with ink or indelible pencil. The signature shall be in the same form as on the application for registration.

(b) The signing of such forms merely with a firm, corporate, or trade name, without indication of personal responsibility, is not permissible, but the signature of the person signing the application for registration must appear. However, they may be signed by another person authorized by power of attorney previously filed with and approved by the district director. The power of attorney shall be executed in the same manner as applications for registration, shall show the signature of the person thereby authorized to sign order forms, and shall affirm that the signature so shown is his signature. The signature of the responsible individual may not be printed or stamped on the order form, but must be shown in his own handwriting.

(c) For signatures on applications for registration, see § 151.26.

§ 151.166 QUALIFICATIONS OF PURCHASER.—The purchaser shall, at the time the order is submitted, be registered, under section 4722, at the location, in the classes, and under the registry number specified thereon by the district director, and shall have paid the special taxes necessary to qualify him in such classes for the fiscal year ending on the following June 30 or be a certified exempt official (see §§ 151.222 and 151.223). The purchaser shall likewise be qualified for the fiscal year within which the merchandise is received. Any person executing and presenting for filling an order form who at the time of such presentation is not so registered and has not paid the necessary special taxes or who is not a certified exempt official will be liable to the penalties provided by law.

§ 151.167 ITEMS.—Only one item shall be entered on each numbered line and not more than 5 items shall be entered on a single order form. An item shall consist of one or more packages or bottles of the same kind and size; two or more such packages or bottles shall always be regarded as a single item and shall never be counted on the form as two or more items. A separate item shall be made for each article of different description or size. The number of items entered on the form shall be stated by the purchaser in the space provided near the bottom of the form for that purpose. The purchaser shall show, with respect to each item, the number of stamped packages, the size of each package in terms of pounds, ounces, grains, pills, or tablets (indicating size in case of pills or tablets), if in a solid form, or in terms of gallons, quarts, pints, or ounces, if in liquid form; the name of the article desired, and the name and quantity of the narcotic drug

contained in the article if it is not itself a pure narcotic drug. The showing of the catalogue number is optional with the purchaser.

§ 151.168 DISHONORED ORDER FORMS.—Any order form returned because of improper preparation (see § 151.186) must be retained on file with the duplicate thereof and a new form prepared if the articles are still desired.

§ 151.169 UNUSED ORDER FORMS.—Where, as to one or more classes, a registrant discontinues business or transfers to a different location in the same or a different internal revenue district, he shall return for cancellation all unused order forms on which such class number or numbers have been entered by the district director.

FILLING OF ORDER FORMS

§ 151.181 WHO MAY FILL.—Except as otherwise provided in this part, order forms may be filled only by a registered importer, manufacturer, producer, compounder, or wholesale dealer (a Class I or II registrant).

§ 151.182 SOLUTIONS.—An order form calling for one ounce or less of an aqueous or oleaginous narcotic solution may be filled by a retail dealer under the conditions outlined in § 151.43(b).

§ 151.183 RETURNED GOODS.—A person registered in any class or a certified exempt official may return narcotics to the person from whom obtained pursuant to the latter's order form.

§ 151.184 DISCONTINUANCE OF BUSINESS.—A person discontinuing, or who has discontinued, business in any class may dispose of his narcotics pursuant to order forms, provided he has obtained specific approval from the district director for the internal revenue district in which the proposed recipient is located to dispose of his narcotic stock to such recipient.

§ 151.185 FILLING OF ORDERS.—The consignor shall enter upon the order form the number and size of the stamped packages furnished on each item and the date when each item is filled. When an order cannot be filled in its entirety, it may be filled in part and the balance supplied by additional shipments within 60 days from the date of the order form. A notation, covering each shipment, showing the actual quantities supplied and the date of delivery, shall be made by the vendor on the original and triplicate and by the vendee on the duplicate. The drugs shall be shipped only to the person and at the location specified by the district director on the face of the order form: *Provided, however*, That orders for narcotic drugs and preparations submitted on official order forms by authorized purchasing officers of the Armed Services Medical Procurement Agency for delivery to armed services establishments within the United States may be shipped to locations other than the address specified on the order form, and in partial shipments at different times not to exceed six months from the date of the order, as designated by the procurement officer when submitting the order.

§ 151.186 ALTERATIONS.—No alteration, erasure, or change of any description may be made in any order, or in the indorsement thereon, by any person. The merchandise requested on an order form may not be furnished if the form shows any alteration or erasure, or evidence

of any change whatsoever. If an order is not properly prepared in every respect it must be returned to the vendee.

§ 151.187 Acceptance.—An order is regarded as accepted when notice to that effect is given or, if no notice is given, when the goods are delivered or shipped.

§ 151.188 Unaccepted Orders.—If an order is not accepted or if, for any reason, one can not be filled, the form shall be returned to the vendee with a letter of explanation. When received by the vendee the returned original and triplicate and the letter of explanation shall be attached to the duplicate and retained on file.

§ 151.189 Endorsements.—An order form made out to a Class I or Class II registrant who cannot fill it may be indorsed in the spaces provided for that purpose on the reverse sides of the original and triplicate forms and referred by him to another such registrant for filling. The endorsement may be made only by the person to whom the order is issued who shall be a Class I or II registrant. It shall show the name and address of the endorser, shall bear the signature of the endorsing registrant or another person, provided a power of attorney authorizing such other person to make such endorsements has been executed and approved in accordance with §§ 151.144 and 151.165, and shall indicate the class or classes in which the endorser is registered, his registry number, the internal revenue district in which he is located and his complete address. The endorsee shall, upon receipt of such order, if he can fill the same, ship the drugs directly to the person and at the location specified by the district director on the face of the order and make notation of the filling of each item in the same manner as in other cases. No change or alteration by the endorsee in any endorsement is permissible.

§ 151.190 Reporting Sales on Endorsed Orders in Monthly Returns.—Sales made on endorsed order forms shall be reported on Form 810b or 811b, as the case may be, in the same manner as other sales, except that on the line following that on which the sale is recorded, there shall be entered the name, address, registry and class numbers, and internal revenue district of the endorser.

FILING OF ORDER FORMS

§ 151.201 Filing of Order.—(a) The duplicate shall be kept on file by the vendee for at least two years. The original shall be filed and preserved for a like period by the vendor. The triplicate shall be forwarded by the vendor at the close of the month during which it is filled to the narcotic district supervisor for the district in which the vendor is located. Where an order is only partially filled during one month and other items thereon are to be supplied during a following month, as provided in § 151.185, the triplicate should be retained by the vendor and forwarded to the district supervisor at the close of the month during which the final shipment is made or during which the 60-day validity period expires.

(b) Any order form which is improperly executed or mutilated so as to make it unusable, shall not be destroyed, but all copies shall be kept on file with the other duplicates.

§ 151.202 Lost and Stolen Order Forms.—(a) If a purchaser ascertains that an original unfilled order has been lost, he shall execute another in triplicate and an affidavit stating that the goods covered by the first order were not received through loss of the order, and shall note on the second order the number and date of the lost order and the fact that it was lost. The duplicate of the second order and the affidavit shall be filed with the duplicate of the order first executed. If the first order is subsequently received by the person to whom it was directed, he shall mark upon the face thereof, "Not accepted", and return it to the purchaser, who shall attach it to the duplicate and the affidavit.

(b) Whenever any used or unused order forms are stolen from, or lost (otherwise than in the course of transmission) by any person registered under section 4722 or by a certified exempt official (see §§ 151.222 and 151.223), he shall immediately upon discovery of such theft or loss, report the same to the Commissioner of Narcotics, Washington 25, D.C., stating the serial number of each form stolen or lost. If the theft or loss includes any original orders received from other persons and the registrant or certified exempt official is unable to state the serial numbers of such orders, he shall report the date of receipt thereof and the names and addresses of the purchasers. If an entire book of order forms is lost or stolen, and the registrant or certified exempt official is unable to state the serial numbers of the order forms contained therein, he shall report, in lieu of the numbers of the forms contained in such book, the date or approximate date of purchase thereof. If any unused order form reported stolen or lost is subsequently recovered or found, the Commissioner of Narcotics shall be notified thereof.

EXCEPTIONS TO USE OF ORDER FORMS

§ 151.211 When Forms Not Required.—The use of order forms is not required—

(a) For dispositions by a duly qualified and registered practitioner in the course of his professional practice only.

(b) For sales or other dispositions pursuant to properly executed prescriptions for legitimate medical purposes.

(c) For lawful exportations.

(d) For the sale, distribution, giving away, dispensing, or possession of preparations and remedies which do not contain more than 2 grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than 1 grain of codeine, or any salt or derivative of any of them in 1 fluid ounce, or, if a solid or semisolid preparation, in 1 avoirdupois ounce; or of liniments, ointments, or other preparations which are prepared for external use only, except liniments, ointments, and other preparations which contain cocaine or any of its salts or alpha or beta eucaine or any of their salts or any synthetic substitute for them, provided that such remedies and preparations are manufactured, sold, distributed, given away, dispensed, or possessed as medicines and not for the purpose of evading the intentions and provisions of subchapter A of chapter 39, relating to narcotic drugs, and that a record of dispositions is kept as required by § 151.426.

Subpart F.—Special Exemptions

EXEMPT OFFICIALS

§ 151.221 EXEMPT OFFICIALS.—Officials of the United States, the District of Columbia, any State, Territory, or insular possession of the United States, or of any county, municipality, or other political subdivision therein, who, in the exercise of their official duties, acquire, dispense, or handle narcotic drugs or preparations, are not thereby required to register, pay special tax, or stamp packages containing narcotics which they compound or produce, but their right to such exemption shall be evidenced as provided in this subpart.

§ 151.222 MILITARY AND NAVAL OFFICERS.—Each official of the Army, Navy, Air Force, Public Health Service, or National Guard, who is authorized to procure or purchase narcotic drugs or preparations for official use shall file with the district director for the internal revenue district in which such person is officially located a certificate on Form 1964 from a superior official showing the name, official address and official status of the person claiming exemption. Each such certificate shall be renewed on or before July 1 of each year. With respect to the procurement of narcotic drugs and preparations by officials of the character indicated, see § 151.224. No exemption certificate shall be required under this section for officials who only prescribe, dispense, or administer narcotic drugs in the course of their official duties.

§ 151.223 CIVIL OFFICERS.—Each civil officer of the United States, or the District of Columbia, or of any State, Territory, or insular possession of the United States, or any county, municipality, or other political subdivision, who is engaged in any activity mentioned in section 4721 and who claims exemption from registration and tax, shall file with the district director for the internal revenue district in which he is located a certificate on Form 1964 from a superior official showing the official status and official address of the person claiming exemption and (a) whether he is to purchase the narcotics or obtain them from official stocks and (b) whether or not the officer is to administer or dispense narcotics. Each such certificate shall be renewed on or before July 1 of each year and, except in the case of officials of the United States, shall be accompanied by an inventory on the reverse side of Form 1964 of the narcotic drugs and preparations on hand at the time the certificate is filed.

§ 151.224 PROCUREMENT OF NARCOTICS.—(a)(1) When properly notified, as provided in § 151.222, relating to military and naval officers, of the right of an official to exemption with authority to purchase narcotics or, as provided in § 151.223, of the right of a civil officer to exempt status, the district director will assign to such official an exemption identification number. The same number shall be retained throughout all the consecutive periods for which the official is entitled to exemption.

(2) To each such official who is certified to the district director as an authorized purchaser of narcotics (except an official of a civil defense organization) will be issued without charge and without additional request, a book of official narcotic order blanks at the time of his original certification. Each order for the purchase of taxable narcotic drugs by such official shall be prepared on one of these order

blanks which will be similar to, and will be prepared, filled, filed and otherwise handled in the same manner as official opium order forms supplied to persons registered under section 4722. See subpart E, §§ 151.141 to 151.211, and the instructions in the order book. Orders for exempt narcotic preparations (see §§ 151.11 and 151.211) shall not be prepared on such blanks but shall be on official stationery of the institution or agency for which they are being purchased, bearing the exemption identification number assigned to the purchasing official by the district director. Each order, whether on a blank supplied by the district director for taxable narcotics or on the stationery of the agency for exempt narcotic preparations, must be signed by the official named in the certificate filed with the district director and to whom the exemption identification number has been assigned.

(3) When an exempt official is replaced by another or for any reason is no longer authorized to make purchases of narcotics for the institution or agency for which previously certified to the district director, the unused official order blanks remaining in his possession or custody shall not be used by his successor but shall be returned to the district director for cancellation, and new forms will be issued to the successor.

(4) After using the forms in the first book issued to him, an official can procure additional blanks without charge by making application on Form 679, a copy of which is placed in each book of forms issued.

(b) If an official is engaged in a private business or privately practices a profession in which narcotics are manufactured, produced, compounded, sold, dealt in, dispensed, prescribed, administered, or given away, such official shall register and pay the special tax for such private activity, and the narcotic drugs for such private purposes shall be secured upon regular order forms purchased under such registration.

(c) The exempt status of an official of a civil defense organization will be recognized only during a state of civil defense emergency proclaimed by the President or by concurrent resolution of the Congress as provided by law. Such officials will not procure narcotics through the use of official internal revenue order forms, except as provided in paragraphs (d), (e), (f), and (g) of this section, but shall use an order form approved by the Federal Civil Defense Administration. The order form shall bear the signature, titles, official address, and exemption identification number of the person executing the form, and will otherwise be handled in the manner prescribed for official internal revenue order forms.

(d) Provided, however, in case of a state of civil defense emergency proclaimed by the President or by concurrent resolution of the Congress as provided by law, regularly designated civil defense narcotics procurement officers who are also registered under the Federal narcotics laws may, irrespective of the class in which registered, use their official narcotic order forms for procurement of narcotics for civil defense emergency needs and may deliver the narcotics for such use to the medical officer in charge of the hospital, casualty center, or first-aid station for which the registrant is acting as a civil defense narcotics procurement officer.

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(e) Each order form used for the purpose specified in paragraph (d) of this section shall be clearly marked across its face with the words "Civil Defense Purchase" and on the reverse side of the retained duplicate copy shall be noted the name and location or other appropriate identification of the hospital, casualty center, or first-aid station to which the narcotics are delivered, and the signed receipt of the medical officer in charge.

(f) During a state of civil defense emergency proclaimed by the President or by concurrent resolution of the Congress as provided by law, any official narcotic order form bearing the legend "Civil Defense Purchase" and signed by the registrant as "Civil Defense Narcotics Procurement Officer", or in its abbreviated form "CDNPO", may be filled by any other registrant who has the required narcotic on hand, irrespective of the class or classes in which the latter may be registered under the law.

(g) The variation in normal narcotic procurement procedures permitted by this section will be valid only during a state of civil defense emergency proclaimed by the President or by concurrent resolution of the Congress as provided by law and only for civil defense procurements. At all other times and for all other narcotic purchases or transfers the usual restrictions and requirements relating to the use of narcotic order forms, as provided in existing regulations, will be observed.

§ 151.225 PRESCRIPTIONS.—(a) Prescriptions for narcotic drugs and preparations issued by exempt officials as such, in the course of official medical treatment of persons entitled to such official medical treatment, shall be prepared on official blanks if such blanks are provided, or otherwise on official stationery, and shall bear the signature, title, official address and exemption identification number of the person by whom executed. In the case of persons exempt under § 151.222 to whom no exemption identification number has been issued, the prescription shall bear, in lieu of the exemption identification number, the corps and jacket or serial number of the issuing officer. Such prescriptions issued in the course of official professional practice only and otherwise meeting the requirements of the regulations in this part may be filled by a duly registered druggist although they do not bear a registry number of the issuing practitioner.

(b) The procedures prescribed in paragraph (a) of this section shall not apply in the case of prescriptions written by an exempt official in the treatment of a private patient, i.e., a patient not entitled to receive medical treatment from the physician in the course of the latter's official duties. In prescribing and dispensing narcotic drugs to such private persons, the officer is subject to all the requirements of subchapter A, chapter 39, relating to narcotic drugs, including registration and payment of tax, as are imposed upon other physicians conducting private medical practice.

§ 151.226 FILLING AND FILING ORDERS AND PRESCRIPTIONS.—Except as to an order for one ounce or less of an aqueous or oleaginous narcotic solution (see § 151.43), an order for taxable narcotic drugs or preparations issued by an exempt official as such shall be filled only by a person registered as a manufacturer or wholesale dealer. In time of a civil defense emergency, the Federal Civil Defense Admin-

istration order form may, in addition, be filled by local establishments, such as retail stores, and from Federal sources. Prescriptions issued by exempt officials shall be filled only by retail dealers or by manufacturers supplying thereon narcotics of their own manufacture or production. A manufacturer or dealer who fills an improperly prepared order or prescription may be liable for violation of section 4705. After filling, orders and prescriptions of exempt officials shall be filed with the regular narcotic orders and prescriptions.

§ 151.227 ENFORCEMENT OFFICERS.—(a) Special agents and customs agents, for the establishment of drawback under customs laws and regulations, inspectors of the Food and Drug Administration, Department of Health, Education, and Welfare, in connection with their duties in enforcing the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040; 21 U.S.C. Chapter 1) and State or Federal officials engaged in their duties in enforcing any State or Federal narcotic drug law, are entitled to procure from any person registered under section 4722, samples of narcotics, and registrants may lawfully furnish to any such persons for the purposes stated, the required samples, taking a receipt therefor, which shall be filed with their official order forms and records.

(b) For drawback regulations of the Bureau of Customs, see 19 CFR Part 22. For regulations under the Federal Food, Drug, and Cosmetic Act, see 21 CFR Part 1.

§ 151.228 REPORTING FURNISHING OF SAMPLES.—Class I and II registrants who furnish samples of narcotic drugs and preparations under the provisions of § 151.227 to law enforcement officers shall report such dispositions on their monthly returns, Forms 810b and 811b, respectively, under the heading "Other dispositions" as provided for by §§ 151.263 and 151.353.

§ 151.229 OCEAN VESSELS.—(a) Narcotic drugs and preparations for stocking medicine chests and dispensaries maintained on board vessels engaged in international trade, vessels engaged in trade between ports of the United States, and merchant vessels belonging to the Government, may be obtained only (1) by the physician or surgeon employed upon such vessel and duly licensed in some State, Territory, or the District of Columbia, to practice his profession; or (2) by a retired commissioned medical officer of the United States Army, Navy, or Public Health Service, employed upon such vessel; or (3), if no physician, surgeon, or retired commissioned medical officer of the United States Army, Navy, or Public Health Service is employed upon such vessel, by the master; and only with the approval of commissioned medical officers and acting assistant surgeons of the United States Public Health Service, upon special order forms procurable from such officers.

(b) Subject to a determination by the Commissioner of Narcotics of the necessity and propriety in each case, the owner of civil aircraft of the United States, which are registered under the Civil Aeronautics Act of 1938, as amended, and used in commercial overseas transport, may purchase narcotic drugs or preparations thereof for emergency medical use in, or for stocking, first aid packets or medicine chests on life rafts carried aboard such aircraft. The owner, through his chief medical officer, shall submit to the Commissioner of Narcotics

a written order on a form provided by the Public Health Service, approved by a Public Health Service medical officer designated by the Surgeon General of the Public Health Service, addressed to any qualified registered manufacturer or dealer in narcotic drugs, covering the narcotic drug items desired, together with a written application addressed to such Commissioner, for approval of the order, stating the number of life rafts to be supplied, the kind and quantity of narcotics per raft packet unit, and the number of such packets to be held in reserve for replacements. If the order covers replenishment units, after the initial supply, the application shall state in detail the circumstances which make replenishment necessary, including an accounting for all narcotics previously disposed of. The Commissioner of Narcotics may require any further explanation of, or information concerning, any order that he may deem necessary. If he shall approve an order, he will forward same with his approval to the prospective vendor who is thereby authorized to supply the drugs to the applicant, but no manufacturer or dealer shall, under this section, fill any order which is not accompanied by written approval of such Commissioner. If the Commissioner of Narcotics shall not approve any order, he shall return same to the applicant with written notification of his disapproval.

SHIPMENTS TO THE INSULAR POSSESSIONS AND THE PANAMA CANAL ZONE
VIRGIN ISLANDS

§ 151.241 Shipments To Be Made Pursuant to Orders.—No person in the United States may ship narcotics to a person in the Virgin Islands, except pursuant to an order which has been approved by the Commissioner of Health of the Virgin Islands and which bears the official seal of the Government of the Virgin Islands and the date of approval. The shipment or other disposition of narcotics by any person in the United States contrary to Executive Order 6913, dated December 4, 1934, shall subject the offending party or parties to the penalties provided for violations of the provisions of law relating to narcotic drugs. See § 151.492.

§ 151.242 Who May Fill Orders.—An order for narcotic drugs submitted by a qualified dealer or practitioner in the Virgin Islands, in accordance with the terms of Executive Order 6913, may be filled only by a person duly registered, in the continental United States, in Classes I or II, except that an order for only such preparations and remedies as are considered exempt under section 4702 and regulations issued thereunder may be filled by a person duly registered, in the continental United States, in Class V.

§ 151.243 Record and Report of Sales.—Each sale or other disposition of narcotic drugs under Executive Order 6913 shall be recorded and reported as an insular sale by the person filling the order therefor. He shall enter upon Form 810b or 811b, as the case may be, of his quarterly or monthly return, the date upon which the order was approved by the Commissioner of Health of the Virgin Islands, in lieu of and in the space provided for the date of the purchaser's official order form. The column headed "Serial number" shall be used for inserting the date of receipt of the purchaser's approved order. The columns headed "Registry number", "Class", and "District" shall be

left blank. If the order covers items of preparations or remedies which are considered exempt under section 4702, such items shall not be reported in the quarterly or monthly return, but the person filling the order for such items shall keep a record in the same manner as in the case of a domestic sale, except that in lieu of the record of the registry number of the purchaser, there shall be kept a record of the date upon which the order was approved by the Commissioner of Health of the Virgin Islands and the date when the order was received by the vendor.

PUERTO RICO

§ 151.251 SHIPMENT OF DRUGS.—Registrants or exempt officials of Puerto Rico, in order to procure narcotic drugs, either taxable or exempt, must comply with the requirements of the Government of Puerto Rico, with respect to official order forms and certificates of exemption. Accordingly, manufacturers and wholesale dealers in the United States, shall not make shipments of narcotic drugs to persons located in Puerto Rico except pursuant to the proper order form or certificate of exemption, as the case may be. In order that registrants in the United States may determine whether a prospective purchaser in Puerto Rico is properly authorized to receive narcotic drugs, the practices and requirements of the Puerto Rican authorities with respect to orders by registrants and exempt officials are set out in §§ 151.252 to 151.256.

§ 151.252 TAXABLE DRUGS.—Registrants procuring taxable narcotic drugs must present orders therefor upon official order forms of the Department of Finance of Puerto Rico. Such forms bear the name and number of the registrant to whom issued, the date issued, a serial number, a 1-cent revenue tax stamp, and a certificate signed by the local Puerto Rican collector of internal revenue, showing that the person to whom issued is registered, has paid the required tax, and is entitled to acquire and sell narcotics. Accordingly, no order form from Puerto Rico for taxable narcotic drugs shall be accepted or filled unless such form bears the name of the registrant, the appropriate tax stamp, a serial number, the described certificate signed by the local Puerto Rican collector of internal revenue (either stamped or printed thereon) and the signature of the registrant specified or his authorized agent. Such forms are issued in duplicate; only those marked "Original" shall be accepted and filled.

§ 151.253 EXEMPT PREPARATIONS.—(a) Separate order forms are provided for purchases of exempt preparations. While these are similar in appearance to those provided for taxable drugs, they are different in that no space is provided for any revenue tax stamp and they are designated in the heading as orders to procure "Medicines and preparations exempt as per section 6" of the law. These likewise bear serial numbers, the date issued, the name of the registrant to whom issued, and a certificate signed by the local Puerto Rican collector of internal revenue. Accordingly, no order from Puerto Rico for exempt preparations shall be accepted or filled unless it bears the appropriate serial number, the name of the registrant, the certificate of the local Puerto Rican collector of internal revenue and the signature of the registrant specified or his authorized agent. Such forms

are issued in duplicate and only those marked "Original" shall be accepted and filled.

(b) For registrations relating to exempt preparations, see §§ 151.421 to 151.426.

§ 151.254 FORMS NOT INTERCHANGEABLE.—Taxable narcotics shall not be supplied pursuant to orders on forms provided for exempt preparations nor shall exempt preparations be supplied pursuant to orders on forms provided for taxable narcotics.

§ 151.255 SHIPMENTS TO EXEMPT OFFICIALS.—An exempt official of Puerto Rico, who purchases narcotic drugs, either taxable or exempt, is required by the insular authorities to present the order for such drugs to the Assistant Treasurer of the Island who affixes thereon a certificate to the effect that the purchaser has presented the necessary credentials establishing his right to exemption and is entitled to obtain the narcotic specified in the order without the use of official order forms. Accordingly, no order from one who purports to be an exempt official in Puerto Rico shall be accepted or filled unless it bears such certificate signed by the Assistant Treasurer.

§ 151.256 PENALTY FOR UNAUTHORIZED SHIPMENT.—No narcotic drugs or preparations, either taxable or tax-exempt, shall be furnished or shipped to any person in Puerto Rico, except by registered persons in the continental United States and then only pursuant to an order on an appropriate form as prescribed in §§ 151.251 to 151.255. The sale, bartering, exchanging, or giving away of any such narcotic drugs or preparations by any person in the United States to any person in Puerto Rico, otherwise than as above prescribed, shall subject the offending party or parties to the penalties provided for violations of the provisions of law relating to narcotic drugs.

Subpart G.—Returns of Manufacturers and Wholesale Dealers

MANUFACTURERS, PRODUCERS, AND COMPOUNDERS

§ 151.261 RETURNS REQUIRED.—(a) Every person registered in Class I, as an importer, manufacturer, producer or compounder, shall render a quarterly return on Form 810, and its supplements, Forms 810a, 810b, 810c, and 810d, and shall account therein for all stocks on hand at the beginning and end of the quarter, and for receipts, dispositions, manufacture, and packaging of taxable narcotics during the quarter. Such returns shall be executed under the penalties of perjury and shall be submitted to the district director for the internal revenue district in which the business is conducted, on or before the 15th day of the month succeeding the period for which it is rendered.

(b) Each return shall consist of Forms 810a showing all receipts of taxable narcotics; Forms 810b showing all dispositions of taxable narcotics; Forms 810c showing all manufacturing transactions; Forms 810d showing all packaging transactions; and a Form 810 showing a complete summary and a balanced stamp account. Forms 810a and 810b shall be headed in accordance with the classifications of transactions set out in the instructions appearing thereon and on Form 810.

§ 151.262 FORM 810a; RECEIPTS.—All taxable narcotics received by a manufacturer as such, including transfers from other classes

at the same location, shall be recorded on Form 810a in the order and at the time of receipt. Where record on Form 810a cannot, for any good and sufficient reason, be made immediately, the manufacturer shall have available for inspection such invoices, delivery or duplicate sales slips, or other papers or records as may be required to evidence any unrecorded purchase or receipt. Forms 810a shall be prepared in accordance with the instructions thereon and on Form 810.

§ 151.263 FORM 810b; DISPOSITIONS.—(a) All dispositions of taxable narcotics and preparations by a manufacturer as such, including exports, sales, transfers to other classes at the same location, and losses, shall be reported on Form 810b. A separate sheet, properly headed in the space provided, shall be used for each different type of transaction. On each sheet separate entries shall be used to report dispositions of each kind of drug and of each different type and size of package or unit involved. All losses reported shall be fully explained.

(b) The details of all exports, all insular sales, and all domestic sales to manufacturers (Class I), manufacturers of exempted preparations (Class V) and wholesale dealers (Class II), of any narcotic drug, and the details of all sales of taxable drugs other than (1) methylmorphine (codeine), (2) ethylmorphine (Dionin), and (3) narcotic drugs and compounds of narcotic drugs authorized to be sold on oral prescriptions (see § 151.398) to retail pharmacists (Class III), practitioners (Class IV), hospitals, clinics, and sanatoria (Classes III or IV), and laboratories (Class VI), shall be reported in full on Form 810b. The details of sales of (1) methylmorphine (codeine), (2) ethylmorphine (Dionin), and (3) narcotic drugs and compounds of narcotic drugs authorized for sale on oral prescriptions (see § 151.398) to Class III, IV, and VI registrants, may be omitted from returns, but such transactions shall be included in summarized entries on Form 810b. For all such sales not reported in detail the manufacturer shall have available for inspection original sales orders, delivery slips, or other papers or records sufficient to fully evidence and explain the dispositions.

§ 151.264 FORM 810c; MANUFACTURING.—(a) All taxable narcotics used in the production of other drugs or preparations, with the exception of transactions involving original manufacture from raw opium or coca leaves, shall be entered on Form 810c in the order and at the time they are placed into the process of manufacture. All taxable narcotic drugs and preparations produced therefrom shall be entered on the same form, at the time of production, which entry shall be clearly identified with the entry of drugs used in their production. Where record of "Used for production" or "Production" cannot be made immediately the manufacturer shall have available such batch tags, production orders, or other papers as may be required to evidence any unrecorded quantity used or produced. Any loss in manufacture and any recoverable wastes salvaged from the manufacture shall be reported. All such wastes shall be returned to raw stock and included in the report of raw materials on hand at the end of the month. Any narcotics actively in process of manufacture at the end of the month shall be so reported.

(b) Where drugs or preparations are placed in process during one quarter and a portion of the production is removed from process as finished goods during the same quarter, the portion thus removed from process shall be reported "Produced" and the remainder reported as "In process" at the close of the period.

(c) Taxable drugs or preparations placed in process for the manufacture of exempt preparations shall be reported on a separate Form 810c, on which the kind and quantity of narcotic used and the name of the exempt preparation to be produced therefrom shall be stated.

§ 151.265 FORM 210d; PACKAGING.—(a) All taxable narcotic drugs, either bulk finished goods or goods already in stamped packages, which are used during the month for packaging or repackaging into marketable packages shall be reported in Form 810d. By "marketable packages" is meant the package, bottle, or container in which it is intended that the goods shall be sold, whether stamped at the time of packaging or left without stamping until time of sale.

(b) All taxable narcotic drugs or preparations placed in marketable packages during the quarter shall be reported as credit entries on Form 810d, and in each instance clearly identified with the entry of drugs used in such packaging. A separate entry shall be made for each different size of package produced, but all entries representing a single packaging lot shall be grouped together.

(c) The number of packages of a given size produced, the size of the package (indicating the number of pills, tablets, ounces, etc.), the narcotic contained in each unit in the package, the total narcotic content of each package, and the aggregate narcotic content of all packages represented by the entry shall be indicated.

(d) The recoverable wastes salvaged from the packaging operation and the losses in packaging shall be shown as credit entries on the form. All recoverable wastes reported during the quarter shall be returned to raw stock and further accounted for as raw materials.

(e) Any goods actively in process of packaging at the close of the quarter shall be so reported, and the total amount of tax stamps affixed to packages at the time of packaging shall be shown.

(f) Where drugs or preparations are placed in process for packaging during one quarter and a portion thereof are removed as packages produced during the same quarter, the portion thus removed shall be reported as packages produced and the remainder reported as in process at the end of the quarter.

§ 151.266 FORM 810; SUMMARY.—The manufacturer shall report on Form 810, in accordance with the instructions appearing thereon, a summary of operations and the total value of stamps affixed to packages.

§ 151.267 FORM 810; STAMP ACCOUNT.—The manufacturer will also report on Form 810, in accordance with instructions on the form, the value of narcotic strip stamps on hand at the beginning and end of the quarter and purchased and affixed during the quarter. The manufacturer may elect whether to affix stamps at time of packaging or at time of sale but one of the two methods shall be followed consistently.

§ 151.268 ASSEMBLING.—Form 810 shall be used as a jacket or outside sheet for Forms 810a, 810b, 810c, 810d, and 810e, which shall constitute the inside sheets. The inside sheets shall be numbered consecutively, beginning with the number 1. Before transmitting the return to the district director the registrant shall securely fasten together all sheets.

§ 151.269 EXAMINATION BY DISTRICT DIRECTOR.—The district director will examine and verify the name entered on page 1 of Form 810, the signature, and the entry of the value of stamps purchased during the quarter. The person examining the return shall sign in the space provided on Form 810 therefor, and the date received in the district director's office shall be stamped or entered in the space provided.

MANUFACTURERS IMPORTING OPIUM

§ 151.281 RETURNS REQUIRED.—Every manufacturer importing crude opium shall render, in addition to the return on Form 810 and its supplements, an "Opium importing manufacturer's return" on Form 163 and its supplements, 163a and 163b, accounting, in accordance with the instructions on the forms, for the detail of such importation and for all manufacturing operations performed between such importation and the production in bulk of finished marketable products, standardized in accordance with USP, NF, or other recognized medical standards. Subsequent manufacture from such products, including bottling or packaging operations, shall be accounted for in the quarterly returns on Form 810 and its supplements. Returns on Form 163 and its supplements shall be rendered quarterly and submitted direct to the Commissioner of Narcotics on or before the twelfth day of the month immediately following the period for which it is rendered.

§ 151.282 FORM 163 AND SUPPLEMENTS.—The return of manufacture from crude opium shall consist of summaries on Forms 163 and 163a with supporting detail sheets on Form 163b accounting for original manufacture from crude opium, production from morphine for further manufacture and production from manufacturing opium, and also accounting for stocks of crude opium, manufacturing opium, morphine for further manufacture and other crude alkaloids, as such substances are defined on the forms. One Form 163b shall be used for each major class of transaction on each summary except where the entries represent mere deduction or total items, or balances carried forward from previous returns. Each detail sheet shall be headed to correspond with the major title of the group of entries which it supports and shall be numbered to correspond with the line and summary numbers.

§ 151.283 DETAILED REPORTS.—The detail sheets, Form 163b, supporting the summary of original manufacture from crude opium shall show separately the crude opium used for the manufacture of medicinal opium, crude opium used for the direct manufacture of opium tinctures and extracts, crude opium used for the extraction of alkaloids, crude opium used for the manufacture of exempt preparations, and crude opium used for the production of manufacturing opium; and shall show separately the medicinal opium, alkaloids and salts,

opium tinctures and extracts, exempt preparations, and manufacturing opium produced.

§ 151.284 IMPORTATION REPORTS.—Importations of opium shall be reported in summarized entries in the debit summary of the quarterly return, Form 810, together with the amount of the tax stamps affixed thereto, and shall be immediately reported by similar summarized entries in the credit summary of Form 810 as "Transferred to importing manufacturer's return." Such importations shall then be reported on a detail sheet, Form 163b, in the importing manufacturer's return and shall be further accounted for in the crude opium account and in the appropriate manufacturing statements in such return. Products manufactured therefrom shall be reported as produced in accordance with §§ 151.282 and 151.283 and, with the exception of manufacturing opium, morphine for further manufacture, and other crude or unfinished alkaloids, shall be transferred to the quarterly return, Form 810, when reported produced.

§ 151.285 ASSAYS.—Upon importation of crude opium, samples will be selected and assays made by the importing manufacturer in the manner and according to the method specified in the United States Pharmacopoeia. These assays shall form the basis of accounting for such opium, which shall be accounted for in terms of its anhydrous morphine alkaloid content. Where final assay data is not determined at the time of rendering return, report shall be made on the basis of the best data available, subject to adjustment, and the necessary adjusting entries shall be made on the next return.

§ 151.286 WITHDRAWAL FROM CUSTOMS CUSTODY.—Upon withdrawal of crude opium from customs custody, the importing manufacturer shall assign to each chest or container an identification mark or number by which the opium will be associated with the lot assay and identified in returns.

§ 151.287 RECORDING WITHDRAWALS.—Where factory procedure is such that partial withdrawals of opium are made from individual containers, there shall be attached to each container a stock record card on which shall be kept a complete record of all withdrawals therefrom.

§ 151.288 REPORTING PRODUCTION.—Manufacturing opium shall be reported produced when it comes into existence in that form in which it is intended for exclusive use in further manufacture. Medicinal opium, morphine and its salts, or other alkaloids or derivatives produced exclusively for sale as such shall be reported as produced when manufacture has actually been completed and the finished marketable product ready for packaging and sale. Such products shall be regarded as ready for packaging and sale as soon as all processing other than mere packaging and stamping has been completed. Medicinal opium, tinctures, extracts, or other products manufactured partly for sale and partly for use in further manufacture will be reported produced as soon as manufacture is complete and they are ready either for use in further manufacture or for packaging for sale.

§ 151.289 COMPLETING MANUFACTURE.—No accumulations of morphine or other narcotic drugs in their pure or near-pure states shall

be permitted to remain inactively in process. All such products nearing completion of their respective processes and approaching a condition of purity shall be carefully protected, promptly completed, and immediately transferred to finished stocks, and reported as produced.

§ 151.290 CONVERSION FACTORS.—In making conversions of opium alkaloids and their salts to anhydrous morphine the quantity of the particular alkaloid or salt in avoirdupois ounces shall be multiplied by a conversion factor arrived at by ascertaining the ratio, carried to the fourth decimal place, between the respective molecular weight of such alkaloid or salt and the molecular weight of anhydrous morphine (285.16), such weights being computed to the third decimal place from the chemical formulae of the substances and the atomic weights of elements, as adopted by the International Committee on Chemical Elements and published in the latest edition of the United States Pharmacopoeia.

§ 151.291 CROSS REFERENCE.—For regulations relating to the importation of crude opium under the Narcotic Drug Import and Export Act, see 21 CFR 302.1 to 302.16.

MANUFACTURERS IMPORTING MEDICINAL COCA LEAVES

§ 151.311 RETURNS REQUIRED.—Every manufacturer importing raw coca leaves for the manufacture of medicinal products shall render, in addition to the return on Form 810 and its supplements, a "Medicinal Coca Leaf Importing Manufacturer's Return", on Form 168 and its supplements 168a and 168b, accounting, in accordance with the instructions on the forms, for the detail of such importation and for all manufacturing operations performed between such importation and the manufacture of bulk of finished products standardized in accordance with USP, NF, or other recognized standards. Subsequent manufacture from such products, including bottling or packaging operations, shall be accounted for in quarterly returns on Form 810 and its supplements. Returns on Form 168 and its supplements shall be rendered quarterly and sent direct to the Commissioner of Narcotics on or before the twelfth day of the month immediately following the period for which it is rendered.

§ 151.312 FORM 168 AND SUPPLEMENTS.—The return of manufacture from medicinal coca leaves shall consist of summaries on Forms 168 and 168a with supporting detail sheets on Form 168b accounting for original manufacture from such leaves, conversions or synthesis from the ecgonine base or other coca alkaloids, production from manufacturing coca extracts, and also accounting for stocks of raw coca leaves, manufacturing coca extracts, and other crude coca alkaloids as such substances are defined on the forms. One Form 168b shall be used for each major class of transactions on each summary except where the entries represent mere deduction or total items, or balances carried forward from previous returns. Each detail sheet shall be headed to correspond with the major title of the group of entries which it supports and shall be numbered to correspond with the line and summary numbers.

§ 151.313 DETAILED REPORTS.—The detail sheets, Form 168b, supporting the summary of original manufacture from medicinal coca

leaves, shall show separately the coca leaves used for the manufacture of manufacturing coca extracts, coca leaves used for the direct manufacture of marketable coca tinctures and extracts, and coca leaves used for the extraction of alkaloids, and shall show separately the coca alkaloids and salts, coca tinctures and extracts, and manufacturing coca extracts produced.

§ 151.314 IMPORTATION REPORTS.—Importations of medicinal coca leaves shall be reported in summarized entries in the debit summary of the quarterly return, Form 810, together with the amount of the tax stamps affixed thereto, and shall be immediately reported by similar summarized entries in the credit summary of Form 810 as "Transferred to importing manufacturer's return". Such importations shall then be reported in detail on Form 168b, and shall be further accounted for in Form 168 and in the appropriate manufacturing statements in the return. Products manufactured therefrom shall be reported as produced in accordance with § 151.318 and, with the exception of manufacturing coca extracts, residues or bases for further manufacture, and other crude or unfinished alkaloids, shall be transferred to the quarterly return, Form 810, when reported produced.

§ 151.315 ASSAYS.—Upon importation of medicinal coca leaves, samples will be selected and assays made by the importing manufacturer in accordance with recognized chemical procedures. These assays shall form the basis of accounting for such coca leaves, which shall be accounted for in terms of their cocaine alkaloid content or equivalency or their total anhydrous coca alkaloid content. Where final assay data is not determined at the time of rendering return, report shall be made on the basis of the best data available, subject to adjustment, and the necessary adjusting entries shall be made on the next return.

§ 151.316 WITHDRAWAL FROM CUSTOMS CUSTODY.—(a) Upon withdrawal of medicinal coca leaves from customs custody, the importing manufacturer shall assign to each bale or container an identification mark or number by which the coca leaves will be associated with the lot assay and identified in returns.

(b) For regulations under the Narcotic Drugs Import and Export Act relating to coca leaves withdrawn from customs custody, see 21 CFR 302.37.

§ 151.317 RECORDING WITHDRAWALS.—Where factory procedure is such that partial withdrawals of medicinal coca leaves are made from individual containers, there shall be attached to the container a stock record card on which shall be kept a complete record of withdrawals therefrom.

§ 151.318 REPORTING PRODUCTION.—Manufacturing coca extracts shall be reported produced when they come into existence in that form in which they are intended for exclusive use in further manufacture. Cocaine and its salts, ecgonine and its salts, or other alkaloids or derivatives produced exclusively for sale as such shall be reported as produced when manufacture has actually been completed and the finished marketable product is ready for packaging and sale. Such products shall be regarded as ready for packaging and sale as soon

as all processing other than mere packaging and stamping has been completed. Tinctures, extracts, or other products manufactured partly for sale and partly for use in further manufacture shall be reported produced as soon as manufacture is complete and they are ready either for use in further manufacture or for packaging for sale.

§ 151.319 COMPLETING MANUFACTURE.—No accumulations of cocaine or ecgonine or other narcotic drugs in their pure or near-pure states shall be permitted to remain inactively in process. All such products nearing completion of their respective processes and approaching a condition of purity shall be carefully protected, promptly completed, and immediately transferred to finished stocks, and reported as produced.

§ 151.320 CONVERSION FACTORS.—In making conversions of coca alkaloids and their salts to cocaine alkaloid and to anhydrous ecgonine alkaloid, the quantity of the particular alkaloid or salt in avoirdupois ounces shall be multiplied by a conversion factor arrived at by ascertaining the ratio, carried to the fourth decimal place, between the molecular weight of such alkaloid or salt, and the molecular weight of cocaine alkaloid (303.172) or anhydrous ecgonine alkaloid (185.125), as the case may be, such weights being computed to the third decimal place from the chemical formulae of the substances and the atomic weights of elements, as adopted by the International Committee on Chemical Elements and published in the latest edition of the United States Pharmacopoeia.

§ 151.321 CROSS REFERENCE.—For regulations relating to the importation of special coca leaves and manufacture therefrom, see 21 CFR 302.29 to 302.51.

MANUFACTURERS IMPORTING SPECIAL COCA LEAVES

§ 151.331 RETURNS REQUIRED.—Every manufacturer using special coca leaves imported into the United States pursuant to the act of June 14, 1930 (46 Stat. 585), shall render a quarterly return on Form 169 and its supplements, and shall thereon account for all transactions involving such leaves or substances derived therefrom which contain cocaine or ecgonine, or any salts, derivatives, or preparations from which cocaine or ecgonine may be synthesized or made. This return shall be executed under the penalties of perjury by the manufacturer or his authorized agent and rendered direct to the Commissioner of Narcotics on or before the twelfth day of the month following the period for which the return is made. Such return shall include a report of all importations of special coca leaves on Form 169a, a report of all materials entered into the processes of manufacture on Form 169b, a report of the various substances produced therefrom on Forms 169c, 169d, and 169e, a report of all such substances destroyed on Form 169f, and a summary of operations on Form 169g.

§ 151.332 REPORT OF IMPORTATIONS.—The report of importations on Form 169a shall show in appropriate columns the following data as to each importation:

(a) The date of the import permit.
(b) The serial number of the import permit.
(c) The name of the foreign consignor.

(d) The address of the foreign consignor.
(e) The foreign port of export.
(f) The number of bales imported.
(g) The serial numbers of the bales imported.
(h) The quantity imported in avoirdupois pounds.

§ 151.333 REPORT OF MATERIALS USED.—The report of materials entered into the processes of manufacture on Form 169b shall show in appropriate columns the following information as to each lot of leaves dumped:

(a) The lot number or specification, a specification to be assigned to each dump for identification purposes in order to avoid repeating the serial numbers of the bales when the lot is subsequently referred to.
(b) The date the leaves were put in process of manufacture.
(c) The number of bales dumped.
(d) The serial numbers of the bales.
(e) The quantity of leaves put in process, stated in avoirdupois pounds.
(f) The quantity of alcohol used for each extraction or wash of the leaves, by alcohol.
(g) The quantity of water used for each water extraction or dilution.
(h) The quantity of any other or additional substance introduced at any stage into the process of manufacture.
(i) The dry weight of any filter cloth or other absorbent material to be later removed from process after saturation.

§ 151.334 REPORTS OF MANUFACTURE.—The reports of substances produced from special coca leaves, Forms 169c, 169d and 169e, shall show, in appropriate columns the following information as to each production lot or dump:

(a) The lot number.
(b) The quantity of ground leaves entered into process, in terms of avoirdupois ounces and the quantity, in ounces and grains, of alkaloid contained therein as determined by analysis.
(c) The quantity of substance in process after each distinct step in the manufacturing process and the total alkaloid contained in each, stated in ounces and grains.
(d) The quantity of exhausted or spent leaves and the quantity of each residue removed from process, and the total alkaloid contained in each, stated in ounces and grains.
(e) The weight of the used filter cloth or other absorbent material removed, after saturation.
(f) The quantity, in gallons, of finished extract produced.

§ 151.335 REPORT OF RESIDUES DESTROYED.—(a) The report of residues destroyed, Form 169f, shall show for each lot destroyed, in appropriate columns the following data:

(1) The lot number.
(2) The quantity of spent leaves, residues, and saturated materials destroyed, stated separately for each.
(3) The name of the Government officer witnessing the destruction.

(b) For Bureau of Narcotics regulations relating to the destruction or residue, see 21 CFR 302.39.

§ 151.336 SUMMARY.—(a) The summary, Form 169g, shall include a complete accounting for all transactions in raw leaves, leaves in process, and residues removed from production processes. The summary of raw coca leaves shall show:

(1) The quantity of special coca leaves on hand at the beginning of the quarter.

(2) The quantity of special coca leaves imported during the quarter.

(3) The quantity of special coca leaves put into process of manufacture during the quarter.

(4) The quantity of special coca leaves on hand at the end of the quarter.

(5) Any other transaction during the quarter which increased or decreased the quantity of raw coca leaves on hand.

(b) The summary of coca leaves in process shall show:

(1) The quantity of special coca leaves in process at the beginning of the quarter.

(2) The quantity of such leaves placed in process during the quarter.

(3) The quantity of such leaves represented by lots completed during the quarter.

(4) The quantity of such leaves represented by lots in process at the end of the quarter.

(5) Any other transaction during the quarter which increased or decreased the quantity of leaves in process.

(c) The summary of residues removed from production processes shall show, in appropriate columns, separately as to spent leaves, each residue and saturated material, the following information:

(1) The quantity of each, on hand at the beginning of the quarter, awaiting destruction.

(2) The quantity of each removed from process during the quarter.

(3) The quantity of each destroyed during the quarter.

(4) The quantity of each on hand at the end of the quarter.

(5) Any other transaction during the quarter affecting the quantity of such residues on hand.

§ 151.337 CROSS REFERENCE.—For Narcotic Drug Import and Export Act, as amended, regulations relating to special coca leaves, see 21 CFR 302.29 to 302.51.

WHOLESALE DEALERS

§ 151.351 RETURNS REQUIRED.—(a) Every person registered in Class II as a wholesale dealer shall render a monthly return on Form 811 and its supplements 811a and 811b accounting for all transactions involving taxable narcotics. The return shall be executed under the penalties of perjury and submitted to the district director for the internal revenue district, on or before the fifteenth day of the month succeeding that for which the return is rendered.

(b) Each return shall consist of Forms 811a showing all receipts of taxable narcotics and Forms 811b showing all dispositions of taxable narcotics, and a Form 811 showing a complete summary of transactions for the month. Forms 811a and 811b shall be headed in accordance

with the classifications of the transactions set out in the instructions on Form 811.

§ 151.352 FORM 811a; RECEIPTS.—All taxable narcotic drugs and preparations received by a wholesale dealer as such, including transfers from other classes at the same location, shall be recorded on Form 811a in the order and at the time of receipt. Where record on Form 811a cannot, for any good and sufficient reason, be made immediately, the wholesale dealer shall have available for inspection such invoices, delivery or duplicate sales slips, or other papers or records as may be required to evidence any unrecorded purchase or other receipt.

§ 151.353 FORM 811b; DISPOSITIONS.—(a) All dispositions of taxable narcotics and preparation by a wholesale dealer as such, including exports, sales, transfers to other classes at the same location, and losses, shall be reported on Form 811b. A separate sheet, properly headed in the space provided, shall be used for each different type of transaction. On each sheet separate entries shall be made of dispositions of each kind of drug and of each different type and size of package or unit involved. All losses reported shall be fully explained.

(b) The details of all exports, all insular sales, and all domestic sales to manufacturers (Class I), manufacturers of exempt preparations (Class V), and wholesale dealers (Class II), of any drug, and the details of all sales of taxable drugs other than (1) methylmorphine (codeine), (2) ethylmorphine (Dionin), and (3) narcotic drugs and compounds of narcotic drugs authorized for sale on oral prescriptions (see § 151.398) to retail pharmacists (Class III), practitioners (Class IV), hospitals, clinics, and sanatoria (Classes III or IV), and laboratories (Class VI), shall be reported in full on Form 811b. The details of sales of (1) methylmorphine (codeine), (2) ethylmorphine (Dionin), and (3) narcotic drugs and compounds of narcotic drugs authorized for sale on oral prescriptions (see § 151.398) to Class III, IV and VI registrants, may be omitted from returns, but such transactions shall be included in summarized entries on Form 811b. For all such sales not reported in detail the wholesale dealer shall have available for inspection original sales orders, delivery slips, or other papers or records sufficient to fully evidence and explain the dispositions.

§ 151.354 FORM 811; SUMMARY.—The wholesale dealer shall report on Form 811, in accordance with instructions appearing thereon, a complete summary of operations.

§ 151.355 ASSEMBLING.—Form 811 shall be used as a jacket or outside sheet for Forms 811a, 811b, and 811c, which shall constitute the inside sheets. The inside sheets shall be numbered consecutively, beginning with the number 1. Before transmitting the return to the district director, the registrant shall securely fasten together all sheets.

§ 151.356 EXAMINATION BY DISTRICT DIRECTOR.—The district director will examine and verify the name entered on page 1 of Form 811, and the signature. The person examining the return shall sign in the space provided on Form 811 therefor, and the date received in the district director's office shall be stamped or entered in the space provided.

INVENTORIES

§ 151.361 FORM 810e; MANUFACTURERS, PRODUCERS, COMPOUNDERS.—Each manufacturer, producer or compounder registered in Class I shall render as a part of his fourth quarterly return on Form 810 a detailed inventory on Form 810e of all narcotic substances, except those specifically required by §§ 151.362 and 151.363 to be reported on other forms, which are in his possession on December 31 of each year, classified and grouped as follows:

(a) Raw materials.
(b) Goods in process.
(c) Finished bulk stock.
(d) Finished goods in marketable packages.
(e) Miscellaneous stock.

§ 151.362 FORM 163b; MANUFACTURERS IMPORTING OPIUM.—Each manufacturer who imports crude opium shall, in addition to the inventory required by § 151.361, render an inventory on Form 163b of crude opium, goods in process of manufacture from crude opium, and substances resulting from such processes of manufacture which have not been transferred to the return on Form 810, which are in his possession as an opium importing manufacturer on December 31 of each year. Each inventory on Form 163b shall group the substances on hand on separate sheets in accordance with the classifications in the summaries of Forms 163 and 163a and each sheet shall be numbered to correspond with the appropriate line and summary numbers of such Forms 163 and 163a. Each such inventory shall be made a part of the return rendered on Form 163 for the quarter ending with the date for which the inventory is rendered.

§ 151.363 FORM 168b; MANUFACTURERS IMPORTING MEDICINAL COCA LEAVES.—Each manufacturer who imports coca leaves for the manufacture of medicinal products shall, in addition to the inventory required by § 151.361, render an inventory on Form 168b of raw coca leaves, goods in process of manufacture from such leaves and substances resulting from such processes of manufacture which have not been transferred to the return on Form 810, which are in his possession as a coca leaf importing manufacturer on December 31 of each year. Each inventory on Form 168b shall group the substances on hand on separate sheets in accordance with the classifications in the summaries of Forms 168 and 168a and each sheet shall be numbered to correspond with the appropriate line and summary numbers of such Forms 168 and 168a. Each such inventory shall be made a part of the return rendered on Form 168 for the quarter ending with the date for which the inventory is rendered.

§ 151.364 FORM 811c; WHOLESALE DEALERS.—Each wholesale dealer shall render, as part of his December return on Form 811, an inventory, on Form 811c, of taxable narcotic drugs on hand on December 31 of each year. A separate entry shall be made with respect to each kind of drug or preparation, and each kind or size of package. Each entry shall show the name, quantity, and narcotic content of the drug or preparation and the size of the individual package, the number of packages, and the total narcotic content of all the packages

covered by the entry, classified according to the kind of narcotic contained in the drug or preparation.

MISCELLANEOUS

§ 151.371 Substitute Forms.—Where the manufacturing processes of any manufacturer are such that in the opinion of the Commissioner of Narcotics the forms herein prescribed do not provide an adequate accounting therefor, or where in the opinion of the Commissioner of Narcotics some other form will provide a more satisfactory accounting, such manufacturer shall render returns on such forms and for such periods as the Commissioner of Narcotics shall provide and prescribe.

§ 151.372 Discontinuance of Business.—Upon discontinuance of business, any registrant required by the regulations in this part to render returns shall, in addition to complying with the requirements of § 151.473, render on the appropriate form a final return, marked "Final", which shall show in detail the disposition of all narcotics carried in the class for which the return is rendered, and, in the case of a Class I registrant, the disposition of all narcotic strip stamps purchased by him.

§ 151.373 Transfer of Business.—Any registrant required by the regulations in this part to render returns, upon transferring his business to a successor at the same location shall, upon qualification of the successor, render a final return on the prescribed forms to the date of discontinuance of business and, in case business is discontinued on any date other than the close of a fiscal year, an affidavit must be furnished in duplicate as provided in § 151.473. This return shall be marked "Final", shall contain a statement indicating to whom the business was transferred, and shall show in detail the disposition of all the narcotics carried in the class for which the return is rendered. The initial return of the successor shall account for transactions beginning with the day next succeeding the date of discontinuance of business by the predecessor, and if the narcotics of the predecessor have been purchased by him, they shall be reported as receipts in his initial return. Where strip stamps are transferred to a successor at the same location, as provided in § 151.130, a report of all such stamps transferred shall be made by both the person discontinuing business and his successor in the same manner as the report of narcotics transferred. Any strip stamps not transferred to a successor in business at the same location should be returned to the district director for redemption or cancellation. In all cases where a transfer of ownership or identity, as by the taking in of a partner, etc., is made, the same procedure shall be followed.

§ 151.374 Signing and Verifying Returns.—In preparing returns required by this subpart the name of the person entered on the first page shall be the name as registered with the district director. The registrant shall declare under the penalties of perjury, that the statements and details of the return are correct and true, and shall sign such statement, except that it may be signed by another person authorized by power of attorney previously filed with and approved by the district director. The power of attorney shall be executed in the same manner as applications for registration, shall show the signature

of the person thereby authorized to sign such statements, and shall affirm that the signature so shown is his signature.

§ 151.375 DUPLICATE COPY.—A duplicate copy of any return required by this subpart, executed as in the case of the original copy, shall be retained on file together with other narcotic records, and shall be kept available for inspection for not less than 2 years.

§ 151.376 EXAMINATION BY DISTRICT DIRECTORS.—District directors shall examine returns within five days after receipt from taxpayers and shall so far as practicable forward them immediately in a single shipment to the Commissioner of Narcotics with a letter of transmittal.

§ 151.377 INSPECTION BY FOOD AND DRUG INSPECTORS.—Each district director is authorized to make the narcotic returns of manufacturers and wholesale dealers available for examination by properly identified Federal food and drug inspectors during such time as the returns may be in his office.

Subpart H.—Retail Dealers, Practitioners, Dealers in Exempt Preparations, and Laboratories

PRESCRIPTIONS

§ 151.391 WHO MAY ISSUE.—A prescription for narcotic drugs may be issued only by a physician, dentist, veterinary surgeon, or other practitioner who has duly registered, or an exempt official.

§ 151.392 PURPOSE OF ISSUE.—A prescription, in order to be effective in legalizing the possession of unstamped narcotic drugs and eliminating the necessity for use of order forms, must be issued for legitimate medical purposes. The responsibility for the proper prescribing and dispensing of narcotic drugs is upon the practitioner, but a corresponding liability rests with the druggist who fills the prescription. An order purporting to be a prescription issued to an addict or habitual user of narcotics, not in the course of professional treatment but for the purpose of providing the user with narcotics sufficient to keep him comfortable by maintaining his customary use, is not a prescription within the meaning and intent of section 4705(c)(2), and the person filling such an order, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to narcotic drugs.

§ 151.393 MANNER OF EXECUTION; PRACTITIONERS.—All prescriptions for drugs and preparations not specifically exempt under section 4702 (see §§ 151.421 to 151.423) and not subject to the oral prescription procedure (see § 151.397) shall be dated as of and signed on the day when issued and shall bear the full name and address of the patient and the name, address, and registry number of the practitioner. A physician may sign a prescription in the same manner as he would sign a check or legal document, as, for instance, J. H. Smith, John H. Smith, or John Henry Smith. Prescriptions (other than oral prescriptions under § 151.397) should be written with ink or indelible pencil or typewriter; if typewritten, they shall be signed by the practitioner. The duty of properly preparing or telephoning prescriptions, as the case may be, is upon the practitioner, and he is liable to the penalties provided for violations of the provisions of law relating to narcotic drugs in the case of failure to insert or communicate, respectively, the

information required by section 4705(c)(2). A prescription required to be in writing may be prepared by a secretary or agent for the signature of a practitioner, but the practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the druggist who fills a prescription not prepared in the form prescribed by section 4705(c)(2) and regulations.

§ 151.394 WHO MAY FILL.—A prescription for narcotic drugs may be filled only by a retail dealer registered in Class III, an exempt official, or a member of Class I who is qualified to sell drugs at retail.

§ 151.395 REFILLING.—The refilling of a prescription for taxable narcotics is prohibited.

§ 151.396 PARTIAL FILLING.—As a general rule, the partial filling of narcotic prescriptions is not permissible. If, however, a dealer is unable to supply the full quantity called for in a written or oral prescription and an emergency exists, he may supply a portion of the drugs called for by the prescription, provided he makes a suitable notation on the face of the written prescription (or written record of the oral prescription) of the quantity furnished and the reason for not supplying the full quantity on the back of the written prescription (or written record of the oral prescription) and advises the issuing practitioner thereof. No further quantity shall be supplied except upon a new prescription.

§ 151.397 TELEPHONE ORDERS.—(a) Where written prescriptions signed by the practitioner are required, the furnishing of narcotics pursuant to telephone advice of practitioners is prohibited, whether signed prescriptions covering such orders are subsequently received or not, but in an emergency a druggist may deliver or have delivered through his responsible employee or agent narcotics pursuant to a telephone order, provided a properly prepared signed prescription is supplied before delivery is made, which shall be filed by the druggist as required by law.

(b) A dealer (druggist) may fill an oral prescription communicated to him by a duly registered practitioner for such narcotic drugs or compounds of a narcotic drug which the Commissioner of Narcotics has found and by regulations designated to possess relatively little or no addiction liability, as described in paragraph (c) of this section. In issuing an oral prescription, the prescriber shall furnish the dealer with the same information as is required in the case of a written prescription (see § 151.393) except for the written signature of the prescriber. The oral prescription, including the information required to be furnished by the prescriber, shall promptly be reduced to writing by the dealer, who shall file and preserve the writing in his narcotic prescription file as described in § 151.400. The practitioner is responsible in case the oral prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the druggist who fills an oral prescription not communicated in the form prescribed by law and regulations.

(c) Any interested agency, association, or manufacturer may submit a recommendation in writing to the Commissioner of Narcotics for a finding and designation that a specifically identified narcotic

drug or compound of a narcotic drug possesses relatively little or no addiction liability, giving reasons for the recommendation, or the said Commissioner may himself initiate a proposal for a prospective finding and designation with respect to a specifically identified narcotic drug or compound of a narcotic drug. The Commissioner of Narcotics shall request the officers, agencies, and associations designated in section 4705(c)(2) for an expression of their views on the subject, setting what he considers reasonable time limits for this purpose. After considering such expressions of views as shall be received within such time limits, he shall either (1) make the finding and designation by regulations, as authorized, with respect to the narcotic drug or compound of a narcotic drug, or (2) determine that the finding and designation cannot be made, notifying the recommending agency or association accordingly. After publication of regulations making the requisite finding and designation, the oral prescription procedure described in paragraph (b) of this section shall be applicable to the narcotic drug or compound of a narcotic drug which was the subject of the finding and designation.

(d) If the Commissioner of Narcotics shall subsequently determine that a narcotic drug or a compound of a narcotic drug, to which the oral prescription procedure described in paragraph (b) of this section has been made applicable, possesses a degree of drug addiction liability that, in his opinion, results in abusive use of such procedure, he shall by regulations publish the determination in the Federal Register. The determination shall be final and, after the expiration of a period of six months from the date of its publication, the oral prescription procedure described in paragraph (b) of this section shall cease to apply to the particular narcotic drug or to the particular compound of a narcotic drug which is the subject of the determination.

(e) See § 151.398 for narcotic drugs and compounds for which the oral prescription procedure is authorized.

§ 151.398 Narcotic Drugs and Compounds for Which Oral Prescription Is Authorized.—The oral prescription procedure described in § 151.397 is applicable to the following narcotic drugs and compounds of narcotic drugs:

(a) Any isoquinoline alkaloid of opium or any salt of any such isoquinoline alkaloid, alone or in combination with other active, non-narcotic medicinal ingredients.

(b) Apomorphine or any salt thereof, alone or in combination with other active, non-narcotic medicinal ingredients.

(c) N-allyl-normorphine (nalorphine, Nalline) or any salt thereof, alone or in combination with other active non-narcotic medicinal ingredients.

(d) Any compound consisting of methylmorphine (codeine) or of any salt thereof with an equal or greater quantity of any isoquinoline opium alkaloid or salt thereof, where the content of methylmorphine or any salt thereof does not exceed eight grains per fluid ounce or one grain per dosage unit of the compound.

(e) Any compound consisting of methylmorphine (codeine) or of any salt thereof with one or more active, non-narcotic ingredients in recognized therapeutic amounts, where the content of methylmorphine

or salt thereof does not exceed eight grains per fluid ounce or one grain per dosage unit of the compound.

(f) Any compound consisting of dihydrocodeinone (hydrocodone, Dicodid, Hycodan) or of any salt thereof with a four-fold or greater quantity of any isoquinoline opium alkaloid or salt thereof, where the content of dihydrocodeinone or any salt thereof does not exceed one and one-third grains per fluid ounce or one-sixth grain per dosage unit of the compound.

(g) Any compound consisting of dihydrocodeinone (hydrocodone, Dicodid, Hycodan) or any salt thereof with one or more active, non-narcotic ingredients in recognized therapeutic amounts, where the content of dihydrocodeinone or of any salt thereof does not exceed one and one-third grains per fluid ounce or one-sixth grain per dosage unit of the compound.

(h) Any compound consisting of dihydrohydroxycodeinone (oxycodone, Eucodal) or any salt thereof with one or more active, non-narcotic ingredients in recognized therapeutic amounts, where the content of dihydrohydroxycodeinone or of any salt thereof does not exceed two-thirds grains per fluid ounce or one-twelfth grain per dosage unit of the compound.

(i) Any compound consisting of ethylmorphine (Dionin) or of any salt thereof with one or more active, non-narcotic ingredients in recognized therapeutic amounts, where the content of ethylmorphine or any salt thereof does not exceed one and one-third grains per fluid ounce or one-sixth grain per dosage unit of the compound.

(j) Any compound consisting of dihydrocodeine or any salt thereof with one or more active non-narcotic ingredients in recognized therapeutic amounts, where the content of dihydrocodeine or any salt thereof does not exceed eight grains per fluid ounce or one grain per dosage unit of the compound.

§ 151.399 Forms To Be Used.—The Government does not furnish forms for written prescriptions or for recording oral prescriptions, and the order forms which are supplied must not be used as prescriptions. Any form for a written prescription or for recording an oral prescription may be used, provided the required data are shown thereon.

§ 151.400 Filing.—Dealers who fill prescriptions shall keep the written prescriptions, and the written records of oral prescriptions, in a separate file in such manner as to be readily accessible to inspection by investigating officers for not less than two years.

§ 151.401 Labels on Containers.—The dealer filling a written or oral prescription shall affix to the package a label showing his name and registry number, the serial number of the prescription, the name and address of the patient, and the name, address, and registry number of the practitioner issuing the prescription.

DISPENSING

§ 151.411 Prescriptions Unnecessary.—Practitioners may dispense narcotic drugs to bona fide patients pursuant to the legitimate practice of their professions without prescriptions or order forms.

§ 151.412 Practitioners' Records.—All persons and institutions registered in Class IV (practitioners, see § 151.47), shall keep a daily

record showing the kind and quantity of narcotics dispensed or administered, the name and address of each person to whom dispensed or administered, the name and address of the person upon whose authority and the purpose for which dispensed or administered. Practitioners are not required to keep a record of narcotics dispensed to persons upon whom they in the course of their professional practice are in personal attendance.

§ 151.413 FORM OF RECORD.—No special record form for the use of those registered practitioners is prescribed. Hospitals and institutions shall keep records in the manner best calculated to meet the conditions existing therein and to enable an inspecting officer quickly to ascertain the kinds and quantities of narcotics used daily. The initials of the practitioner giving directions for the administering of a narcotic should be entered on the patient's record chart, or a separate prescription giving the name and address of the patient, the date, and the physician's signature or initials, filed with the pharmacist in charge of the drug room before the narcotic leaves his control. If both chart and prescription are used, reference to the prescription should be made on the chart.

§ 151.414 STOCK PREPARATIONS.—A practitioner who, in his office practice, administers minute quantities of narcotics in stock preparations, may keep, as to such preparations, in lieu of the record required by § 151.412, a record of the date when each stock preparation is made or purchased and the date when the preparation is exhausted.

EXEMPT PREPARATIONS

§ 151.421 EXTENT OF EXEMPTION.—(a) Section 4702 has the effect of conditionally exempting from liability under other sections of subchapter A of chapter 39 relating to narcotic drugs persons manufacturing and dealing in certain narcotic preparations or remedies. Such persons are, however, subject to certain requirements laid down in section 4702. Manufacturers of and dealers in exempt preparations are required to register as such whether liable to tax in that capacity or not. See § 151.41 as to tax liability.

(b) Preparations containing cocaine, Pantopon, isonipecaine, or other opiates, in any quantity, whether for internal or external use, are not within section 4702 but are subject to all other provisions of subchapter A of chapter 39 relating to narcotic drugs.

§ 151.422 STANDARDS OF EXEMPTION.—(a) Preparations designed for or capable of internal use to be exempt shall not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or, if a solid or semisolid preparation, in one avoirdupois ounce. The preparation shall contain active medicinal drugs other than narcotics in sufficient proportion to confer upon the preparation valuable medicinal quantities other than those possessed by the narcotic drug alone. Use for aural, nasal, ocular, rectal, urethral, or vaginal purposes is not regarded as external use and, therefore, preparations manufactured or used for such purposes containing more than the percentages of narcotic drugs as above indicated are not within the exemption.

(b) There is no limitation upon the percentage of narcotic drugs external preparations may contain. In order to be within the exemption a preparation for external use, containing more than the maximum percentage of narcotic drugs above specified, shall contain ingredients rendering it unfit for internal administration.

§ 151.423 RESTRICTIONS ON DISPOSITIONS.—A preparation conforming to the standards set out in § 151.422 is exempt from stamp tax and the requirements pertaining to taxable narcotics only when manufactured, sold, distributed, given away, dispensed, or possessed as a medicine. A manufacturer may produce and sell as exempt only preparations readily capable of use for claimed medicinal purposes, and sales thereof, if not to consumers, shall be made only to persons registered in Class V. Sales made to consumers, either by manufacturers or dealers shall be made only in such quantities and with such frequency to the same purchaser as will restrict their use to the medicinal purpose for which intended.

§ 151.424 DISPOSITIONS TO DEALERS.—(a) Orders for exempt preparations, except where sold to a registrant in Class VI, are not required to be on any particular forms, but an order from a dealer shall not be honored by a manufacturer or other dealer unless it bears the registry number of the dealer giving the order. See §§ 151.241 and 151.253, relative to orders received from the Virgin Islands and Puerto Rico, respectively.

(b) Where orders for exempt preparations are taken by a traveling salesman, the salesman shall ascertain the registry number of the purchaser. The order shall not be filled by the manufacturer or vendor unless he knows the purchaser's registry number.

§ 151.425 DISPOSITIONS TO CONSUMERS.—(a) Preparations or remedies which are within the exemption may be sold with or without prescriptions, and a prescription for such a preparation may be refilled provided, of course, the preparation is furnished in good faith for medicinal purposes only. The filling or refilling of narcotic prescriptions calling for more than one exempt preparation or a mixture consisting of an exempt preparation or remedy further reduced or diluted by the addition of non-narcotic medicinal agents is authorized, provided, of course, the preparation is furnished in good faith for medicinal purposes.

(b) An extemporaneous prescription calling for narcotic drugs not in excess of the amounts specified in section 4702 may be refilled in the same manner as a prescription calling for ready-made preparations or remedies, provided the mixture is sold in good faith for medicinal purposes only, and a record is kept of the sale in the manner indicated in § 151.426.

§ 151.426 RECORDS REQUIRED.—(a) Every manufacturer, producer, compounder, or vendor (including dispensing physicians), of exempt preparations shall record all sales, exchanges, gifts, or other dispositions, the entries to be made at the time of delivery. The requirement that such records be maintained as herein provided and as provided in the second proviso of section 4702(a) is absolute, independent, and not merely a condition precedent to securing the exemption granted by section 4702 to manufacturers, producers, compounders, or vendors (including dispensing physicians), of exempt preparations; failure

to keep such records is in itself a violation of law and regulation and renders the manufacturer, producer, compounder, or vendor (including dispensing physicians), liable to the penalties provided for violations of the provisions of law relating to narcotic drugs. Separate records shall be kept of dispositions to registrants and of dispositions to consumers. The record of dispositions to registrants shall show the name, address, and registry number of the registrant to whom disposed, the name and quantity of the preparation, and the date upon which delivery to the registrant, his agent or a carrier is made. The record of dispositions to consumers shall show the name of the recipient, his address, the name and quantity of the preparation, and the date of delivery.

(b) Forms are not furnished for keeping the records required by paragraph (a) of this section, but the records shall be in the following form:

FORM OF RECORD OF DISPOSITIONS TO REGISTRANTS

Date	Registration number of recipient	Name of recipient	Address	Name of preparation	Quantity

FORM OF RECORD OF DISPOSITIONS TO CONSUMERS

Date	Name of recipient	Address	Name of preparation	Quantity

(c) In the case of manufacturers of or dealers in exempt preparations who are also registered as manufacturers of or dealers in taxable drugs in Class I or II, the requirement of this section as to records of dispositions to registrants shall be deemed to be complied with, if all such dispositions are evidenced by vouchers or invoices containing all the required information and such vouchers or invoices are kept in a separate file arranged chronologically.

(d) As to records required in the case of registrants supplying exempt preparations to consumers pursuant to prescriptions issued by registered physicians, the requirement of this section as to records of dispositions to consumers shall be deemed to be complied with if each such prescription shows the name and address of the recipient, the name and quantity of the preparation, and the date of filling, and the prescriptions are kept on the narcotic prescription file.

§ 151.427 MANUFACTURERS' RETURNS REQUIRED.—Each person registered in Class V as a manufacturer of exempt narcotic preparations, who uses more than 25 ounces of narcotics of all kinds in such manufacture in one year, unless also registered as a manufacturer of taxable narcotic drugs, shall render quarterly a return on Form 802

(manufacturers registered in Class I shall continue to use Form 810c). The return shall contain a statement of the purchase quota granted for the year and of all the purchases of each kind of taxable narcotics during the period beginning with the first day of the year and continuing through the last day of the quarter for which the return is made. The return shall also show a complete accounting for the quarter for (a) taxable narcotics purchased, used, and on hand, and (b) exempt preparations produced, used, and on hand. Such return shall be filed with the district director for the internal revenue district in which the business is located on or before the fifteenth day of April, July, October, and January, for the three-month period ending on the last day of March, June, September, and December, respectively. The district director shall forward the return to the Commissioner of Narcotics in the same manner as other narcotic returns.

LABORATORIES

§ 151.441 RECORDS REQUIRED.—(a) Persons registered in Class VI shall keep complete records of receipts, disposals, and stocks on hand, of all narcotic drugs and preparations. Duplicate copies of official order forms used to obtain narcotic drugs and preparations shall be retained (see § 151.201) and inventory on Form 678 shall be prepared, the original of which shall be kept on file by the maker and the duplicate forwarded to the district director with the application for registration (see § 151.27). A special record shall be kept showing the date, kind, and quantity of narcotic drug or preparation used, the particular purpose or object of such use, and of the identification and disposition of the narcotics or resulting products or residues so used, showing the date, quantity of resulting products or residues, and manner of disposition.

(b) Forms are not furnished for the keeping of this record, but the record shall be in the following form, which lists sample items as a guide:

NARCOTIC USED

Date	Kind	Quantity	Purpose
--------	Thebaine--------	1 oz-------	Experimental synthesis.
--------	Morphine--------	1 oz-------	Experimental synthesis.
--------	Narcotine--------	30 gr-------	Mineral analysis.
--------	Crude opium-----	1 lb--------	Assay.

IDENTIFICATION AND DISPOSITION OF NARCOTICS OR RESULTING PRODUCTS AND RESIDUES

Date	Products or residues	Quantity	Disposition (destroyed, retained, or returned)
--------	None------------	None------	All residues destroyed.
--------	Codeine----------	⅛ oz-------	Retained for instructional exhibit.
--------	None------------	None------	Consumed in analysis.
--------	Crude opium-----	½ lb-------	Returned to registered person desiring assay on Order Form No. —.

§ 151.442 HANDLING OF DRUGS.—(a) Official order forms shall be used to cover all transfers of narcotic drugs to and from registrants in Class VI, including preparations and remedies which might otherwise be exempt from this requirement under section 4702.

(b) Any product or residue resulting from the use of a narcotic drug or preparation obtained upon an order form, which is desired to be retained for further research, instruction, or analysis, shall be placed in a container legibly labeled with the name of the product or residue and the date produced.

(c) Any sale of a narcotic drug or preparation by a registrant in Class VI will render him liable to registration and to payment of tax in Classes I or II, as the facts may warrant, and to compliance with all other requirements of subchapter A of chapter 39, relating to narcotic drugs, and regulations in this part governing sales by registrants in Classes I or II.

§ 151.443 EXCEPTION.—(a) A registrant in Class VI who has produced a narcotic drug and who desires to have chemical or pharmacological tests, including tests for clinical evaluation, made with such drug that cannot be made through use of his own research facilities, may apply to the Commissioner of Narcotics for permission to transfer an appropriate quantity of the narcotic drug so produced to another qualified registrant or exempt official (see §§ 151.221 to 151.224) for the purpose of having the desired tests made. The application shall state the name and profession of the prospective transferee, the quantity and kind of narcotic drug proposed to be transferred, and the purpose of the chemical or pharmacological tests desired to be made by such transferee. Upon receipt of written approval by the Commissioner of Narcotics, and official order form from the prospective transferee, the applicant may transfer the approved quantity of narcotic drug to the said transferee for use for the purpose stated. The transferor shall keep on file the written approval of the Commissioner of Narcotics, with the official order form in such manner as to be readily accessible to inspection by any duly authorized officer or agent of the Treasury Department for not less than two years, and shall forward the triplicate copy of the official order form received from the transferee to the Narcotic District Supervisor for the narcotic district within which the transferor is located. The transferor shall securely attach to the container of any narcotic drug thus transferred a label bearing his name, address and registry number, the date of transfer, the identifying symbol, general or chemical name of the narcotic drug, and the statement "For Scientific Use Only."

(b) The transferee shall use the narcotic drug thus obtained from a registrant in Class VI only in making, or causing to be made under his supervision, the chemical or pharmacological tests desired. He shall not transfer such narcotic drug or any product or residue thereof to any other person who is not under his direct supervision for the purpose of the tests and at the place where the tests are made, but such quantity of the narcotic drug or product or residue thereof which is no longer required for the purpose of the tests shall be returned to the original transferor (registrant in Class VI) upon receipt of appropriate official order form. The triplicate copy of

this order form received from the original transferor shall be forwarded to the narcotic District Supervisor for the narcotic district within which the person returning the narcotics is located. The transferee of narcotic drugs obtained from a registrant in Class VI shall keep a record of such drugs used and disposed of, in the manner described in § 151.441 with additional data, in the case of pharmacological tests, accounting for quantities dispensed to humans and animals. A copy of the report, by the transferee to the registrant in Class VI, of the results of the tests made, if such report includes data from which a complete accounting for the narcotic drug used and disposed of can be ascertained, may be kept on file by the transferee as the special record herein required. All records required by this section and § 151.441 shall be kept by the respective persons in such manner as to be readily accessible to inspection, for not less than two years from the date of the last transaction shown therein.

Subpart I.—Administrative Provisions

ASSESSMENT OF TAX

§ 151.451 ASSESSMENT OF TAXES.—Tax due on narcotic drugs not paid by attachment of stamps to containers shall be reported for assessment. Special tax which the taxpayer refuses or fails to pay may likewise be reported for assessment. The district director is authorized and required to make all assessments of all taxes imposed by the Internal Revenue Code of 1954 or any prior internal revenue law.

§ 151.452 JEOPARDY ASSESSMENT.—(a) If the district director believes that the collection of any tax will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for filing the return or paying such tax has expired, immediately assess such tax, together with all interest, additional amounts and additions to the tax provided by law.

(b) The tax, interest, additional amounts, and additions to tax will upon assessment, become immediately due and payable, and the district director shall, without delay, issue a notice and demand for payment thereof in full. Upon failure or refusal to pay the amount demanded, collection thereof by levy shall be lawful without regard to the 10-day period provided in section 6331(a).

(c) The collection of a jeopardy assessment of any tax may be stayed by filing with the district director a bond on the form to be furnished by the district director upon request. The bond may be filed at any time before the time collection by levy is authorized under section 6331(a), or after collection by levy is authorized and before levy is made on any property or rights to property, or in the discretion of the district director, after any such levy has been made and before the expiration of the period of limitations on collection. The bond must be in an amount equal to the portion (including interest thereon to the date of payment as calculated by the district director) of the jeopardy assessment collection of which is sought to be stayed. The bond shall be conditioned upon the payment of the amount (together with interest thereon), the collection of which is stayed, at the time which, but for the making of the jeopardy assessment, such amount

would be due. See section 7101 and the regulations thereunder, relating to the form of bond and the sureties thereon. Upon the filing of a bond in accordance with this section, the collection of so much of the assessment as is covered by the bond will be stayed. The taxpayer may at any time waive the stay of collection of the whole or any part of the amount covered by the bond. If as a result of such waiver any part of the amount covered by the bond is paid, or if any portion of the jeopardy assessment is abated by the district director, then the bond shall at the request of the taxpayer be proportionately reduced.

(d) For Public Debt Service regulations relating to bonds, notes, and other obligations of the United States, see 31 CFR Chapter II.

§ 151.453 PAYMENT BY CHECK, ETC.—(a) District directors may accept checks drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or money orders in payment for the special tax and for stamps provided such checks or money orders are collectible in United States currency at par. A check or money order is payable at par only if the full amount thereof is payable without any deduction for exchange or other charges. As used in this section, the term "money order" means: (1) United States postal, bank, express, or telegraph money order; (2) money order issued by a domestic building and loan association (as defined in section 7701(a)(19)) or by a similar association incorporated under the laws of a possession of the United States; and (3) a money order issued by such other organization as the Commissioner may designate. However, the district director may refuse to accept any personal check whenever he has good reason to believe that the check will not be honored upon presentation.

(b) The person who tenders any check or money order in payment for taxes or stamps is not released from his liability until the check or money order is paid; and, if the check or money order is not duly paid, he shall also be liable for all legal penalties and additions, to the same extent as if such check or money order had not been tendered.

(c) If a taxpayer gives a check or money order as payment for stamps but the check or money order is not paid upon presentment, then the district director shall assess the amount of the check or money order against the taxpayer as if it were a tax due at the time the check or money order was received by the district director.

(d) If a check or money order is tendered in the payment for the special tax or for stamps, and such check or money order is not paid upon presentation, a penalty of 1% of the amount of the check or money order, in addition to any other penalties provided by law, shall be paid by the person who tendered such check or money order. If, however, the amount of the check or money order is less than $500, the penalty shall be $5.00 or the amount of the check or money order, whichever is lesser. Such penalty shall be paid in the same manner as tax upon notice and demand by the district director. The penalty set forth in this paragraph shall not apply if the person tendered such check or money order in good faith and with reasonable cause to believe that it would be duly paid.

REDEMPTION OF, OR ALLOWANCE FOR, STAMPS

§ 151.461 CLAIMS FOR REDEMPTION.—(a) Stamps which have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, may be redeemed, or an allowance may be made for such stamps, upon a claim properly presented to the district director.

(b) All claims for the redemption of or an allowance for stamps described in paragraph (a) of this section must be made on Form 843, and must be filed with the district director within three years after the purchase of the stamps from the Government. Such stamps must be submitted with the claim, or if it is impracticable to remove the stamps from the instruments or articles to which they are attached, they must be presented to an internal revenue officer who shall write on the face of the stamps the words "Claim for refund filed" and attach to the claim a statement showing that such endorsement has been made. In any case where the date of purchase of the stamps from the Government cannot be given, it must be shown definitely in the claim that they were so purchased within three years prior to the date of filing the claim.

§ 151.462 REFUNDS.—If an overpayment occurs because—

(a) The rates and duties represented by stamps, including special-tax stamps, or

(b) The amounts paid in respect of assessments of commodity and special taxes

are excessive in amount, paid in error, or in any manner wrongfully collected, a refund may be allowed for the overpayment pursuant to section 6402 upon a claim therefor on Form 843 properly presented to the district director. Such a claim is not valid unless it is presented within 3 years next after payment of the taxes. The amount of refund shall not exceed the portion of the tax paid within 3 years immediately preceding the filing of the claim.

MISCELLANEOUS

§ 151.471 SAFEGUARDING OF NARCOTICS.—Narcotic drugs and preparations shall at all times be properly safeguarded and securely kept where they will be available for inspection by properly authorized officers, agents, and employees of the Treasury Department.

§ 151.472 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.

(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.

§ 151.473 PROCEDURE ON DISCONTINUANCE OF BUSINESS.—(a) Where it is desired to discontinue business the taxpayer shall, before the discontinuance, dispose of all narcotics on hand and return all unused order forms to the district director for cancellation. Where the discontinuance occurs on any date other than June 30 the taxpayer shall also return the special-tax stamp or stamps to the district director who will mark each such stamp "Business discontinued" with the date, and return the stamp to the taxpayer who shall file it with his narcotic records and retain it for a period of not less than 2 years. Narcotics on hand may be disposed of either by disposition with the approval of the district director to another registrant or exempt official pursuant to official order forms or orders of purchase, or as provided in § 151.474 for the disposition of excess and undesired narcotics.

(b) In the case of Class I or II registrants, returns for periods subsequent to the date of discontinuance will not be demanded, provided all narcotics have been disposed of and an affidavit is submitted in duplicate to the district director certifying to that effect and that no further transactions of the class for which registration is discontinued will be consummated. The district director will forward one copy of this affidavit to the Commissioner of Narcotics.

§ 151.474 EXCESS AND UNDESIRED NARCOTICS.—(a) Excess and undesired narcotics in the possession of a registrant may be disposed of by shipment, charges prepaid (shipments by mail shall not be made), to the district supervisor of the narcotic district. If the person has paid tax in a class under which returns are required to be rendered and the narcotics to be disposed of are a part of the stock for such class, an inventory of the narcotics shipped shall be prepared in quadruplicate on the form used for detailed reporting of dispositions. The original inventory shall be filed with the return for such class for the month in which the disposition takes place, the duplicate copy made a part of the retained copy of the return, the triplicate copy forwarded with the narcotics when shipped for disposition, and the quadruplicate forwarded to the narcotic district supervisor. If the narcotics are held in a class for which returns are not required, an inventory shall be prepared in quadruplicate on Form 142, the triplicate of which shall be forwarded with the narcotics when shipped, the duplicate retained on file by the taxpayer for a period of 2 years, and the original and quadruplicate forwarded to the narcotic district supervisor.

(b) In any case the shipper shall notify the narcotic district supervisor when the shipment is made, advising of the size and description of the container in which the narcotics are being forwarded, and enclosing the required copy or copies of the inventory. The narcotic district supervisor will forward the original copy of Form 142 to the Commissioner of Narcotics.

(c) Accumulated manufacturing wastes or other excess or undesired narcotics in the possession of registrants may be destroyed by such registrants in the presence of a narcotic agent authorized by the Commissioner of Narcotics to witness such destruction.

§ 151.475 COURT SALES.—Court officers in making sales of narcotics under judicial proceedings shall require the purchaser thereof, who must be a registered person or exempt official, to make out official order forms or purchase orders therefor, the originals to be given to the registrant and the duplicates to be retained by the purchaser.

§ 151.476 SALES OF UNCLAIMED FREIGHT OF EXPRESS PACKAGES.—(a) The sale of unclaimed freight or express packages containing narcotics, by officials of railway and express companies, at public auction, to unregistered persons, is in violation of the law as set forth in subchapter A, chapter 39, relating to narcotic drugs.

(b) When a sale of such packages is to be made, the narcotic district supervisor shall be notified by the railway or express officials in advance. A narcotic officer will be detailed to inspect all unclaimed packages to be sold and identify such as contain narcotic drugs. He must be present at the time of the sale to see that the packages containing narcotics are sold only to proper persons pursuant to official order forms.

§ 151.477 LIST OF TAXPAYERS.—The list of narcotic special-taxpayers required by section 6107 shall be kept on Record 10, and may be inspected and copied in the office of the district director at such reasonable and proper times as not to interfere with the district director's use of it, or exclude other persons from inspecting it.

§ 151.478 SPECIAL REPORTS.—Statements pursuant to section 4732 (b) shall be rendered on Form 680 in the manner and at the time requested by the district director of internal revenue.

§ 151.479 RECORDS OPEN TO INSPECTION.—(a) Any officer, agent, or employee of the Treasury Department authorized to enforce the provisions of subchapter A, chapter 39, relating to narcotic drugs, and any officer of any State, Territory, the District of Columbia, or insular possession of the United States charged with the enforcement of any law or municipal ordinance relating to the traffic in narcotic drugs, shall have authority to examine the books, papers, and records kept pursuant to the regulations in this part, and may require the production thereof.

(b) All order forms, duplicate forms, prescription records, returns, and inventories required under the provision of subchapter A, chapter 39, relating to narcotic drugs, or the regulations in this part to be kept on file shall be kept so that they can be readily inspected.

FORFEITURES AND PENALTIES

§ 151.491 DISPOSITION OF FORFEITED NARCOTICS.—(a) Narcotic drugs forfeited to the United States under sections 4706 and 4733 may be delivered to any department, bureau, or other agency of the United States Government upon proper application addressed to the Commissioner of Narcotics. The application shall show the name, address, and official title, bureau or agency, and department, of the person to whom the narcotics are to be delivered, the kind and quantity of narcotics desired, and the purpose for which intended. The delivery of such narcotics shall be ordered by the Commissioner of Narcotics if, in his opinion, there exists a medical or scientific need therefor. The order will be filled by the Drugs Disposal Committee which will obtain a receipt for narcotic drugs delivered.

(b) For disposition of forfeited drugs under Bureau of Narcotics regulations, see 21 CFR 302.56.

§ 151.492 SPECIFIC PENALTY.—Persons who violate or fail to fulfill the provisions of law set forth in subchapter A, chapter 39, relating to narcotic drugs, are liable to punishment as provided in section 7237.

GENERAL

§ 151.501 CORRESPONDENCE.—Correspondence relative to interpretation of the provisions of subchapter A of chapter 39, relating to narcotic drugs, and the regulations in this part should be addressed to the Commissioner of Narcotics, Washington 25, D.C. All remittances shall be sent, and inquiries relative to registration and requests for blank forms shall be addressed, to the district director of internal revenue. Correspondence regarding charges of violations of the law or regulations should be addressed to the narcotic district supervisor in charge of the proper district.

§ 151.502 EFFECTIVE DATE.—The regulations in this part shall be effective upon filing for publication in the Federal Register and shall supersede all regulations heretofore made and promulgated which relate to the subject matter in this part.

Because this Treasury Decision merely rearranges and restates without substantial change the provisions of Regulations 5 (26 CFR (1939) Part 151), as amended and as in effect immediately prior to the effective date of this Treasury Decision, it is hereby found unnecessary to issue this Treasury Decision with notice and public procedure under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitations of section 4(c) of said Act.

DANA LATHAM,
Commissioner of Internal Revenue.
H. J. ANSLINGER,
Commissioner of Narcotics.

Approved March 18, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on March 20, 1959, 8:47 a.m., and published in the issue of the Federal Register for March 21, 1959, 24 F.R. 2235.)

Subpart B.—Tax on Opium for Smoking

SECTION 4711.—IMPOSITION OF TAX

Regulations under the Internal Revenue Code of 1954. See T.D. 58, page 475.

Subpart C.—Occupational Tax

SECTION 4721.—IMPOSITION OF TAX

Regulations under the Internal Revenue Code of 1954. See T.D. 58, page 475.

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Subpart D.—General Provisions Relating to Narcotic Drugs

SECTION 4731.—DEFINITIONS

Regulations under the Internal Revenue Code of 1954. See T.D. 58, page 475.

PART III.—MISCELLANEOUS PROVISIONS RELATING TO NARCOTIC DRUGS AND MARIHUANA

SECTION 4771.—STAMPS

Regulations under the Internal Revenue Code of 1954. See T.D. 58, page 475.

CHAPTER 40.—GENERAL PROVISIONS RELATING TO OCCUPATIONAL TAXES

SECTION 4901.—PAYMENT OF TAX

26 CFR 44.4901: Statutory provisions; payment of tax.

Regulations under the Internal Revenue Code of 1954 relating to the payment of the occupational tax on wagering. See T.D. 6370, page 448.

SUBTITLE E.—ALCOHOL, TOBACCO, AND CERTAIN OTHER EXCISE TAXES

CHAPTER 52.—TOBACCO, CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

SUBCHAPTER A.—DEFINITIONS; RATE AND PAYMENT OF TAX; EXEMPTION FROM TAX; AND REFUND AND DRAWBACK OF TAX

SECTION 5702.—DEFINITIONS

"Reconstituted tobacco" should be accounted for as tobacco material in the records required to be kept. See Rev. Proc. 59–10, page 302.

Submission of the package design and samples where "reconstituted tobacco" is to be used as a wrapper for rolls of tobacco. See Rev. Proc. 59–15, page 825.

SECTION 5703.—LIABILITY FOR TAX AND METHOD OF PAYMENT

26 CFR 270.64: Liability for tax and method of payment. T. D. 6341 [1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER E, PART 270.—CIGARS AND CIGARETTES—MANUFACTURERS, IMPORTERS, AND DEALERS

Taxpayment of cigars imported in passengers' baggage and by mail.

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

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

On August 2, 1958, a notice of proposed rulemaking with respect to regulations designated as Part 270 of Title 26 of the Code of Federal Regulations was published in the Federal Register (23 F. R. 5878). The purpose of the proposal was to require the payment to the Collector of Customs on the basis of a return, of any internal revenue tax due and payable on cigars imported in passengers' baggage, in excess of the quantity exempted from tax by law and customs regulations, or by mail where the value does not exceed $250, and such cigars are for the personal consumptions of the importer or for disposition as his bona fide gift. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed and after making editorial changes which relate merely to form and not to substance, the following amendments to regulations in 26 CFR Part 270 as last amended by Treasury Decision 6330 [C.B. 1958–2, 873], approved October 29, 1958, are hereby adopted:

PARAGRAPH 1. Section 270.64 is amended by adding in the third sentence after the words "That a manufacturer or an importer of cigars" the words", except where such cigars are imported in passengers' baggage, or by mail where the value does not exceed $250, for the personal consumption of the importer or for disposition as his bona fide gift,".

PAR. 2. Paragraph (a) of section 270.190 is amended to read as follows:

(a) *General.* All cigars and cigarettes shall, before removal, be put up by the importer in packages which shall bear the stamps, class designation, and mark, as required by this subpart. Such packages shall be of such construction as will securely contain the cigars and cigarettes therein and maintain such stamps, class designation, and mark thereon: *Provided,* That cigars and cigarettes removed as samples pursuant to the provisions of section 270.196a shall be exempt from the provisions of this paragraph: *And provided further,* That cigars imported in passengers' baggage, or by mail where the value does not exceed $250, where such cigars are for the personal consumption of the importer or for disposition as his bona fide gift, shall be exempt from the provisions of this paragraph.

PAR. 3. The first sentence of section 270.191 is amended to read as follows: "Every package of large cigars subject to tax shall, be-

[1] 23 F. R. 9808.

fore removal, have legibly imprinted thereon, or on a label securely affixed thereto, a class designation, for tax purposes, corresponding with the rate of tax imposed by section 5701(b)(2), I. R. C., on the cigars contained therein: *Provided*, That cigars imported in passengers' baggage, or by mail where the value does not exceed $250, where such cigars are for the personal consumption of the importer or for disposition as his bona fide gift, shall be exempt from the provisions of this section."

PAR. 4. Section 270.191a is amended to read as follows:

SEC. 270.191a MARK.—Every package of cigars on which tax is paid by return shall, before removal, have legibly imprinted thereon, or on a label securely affixed thereto, the number of cigars contained in such package: *Provided*, That cigars imported in passengers' baggage, or by mail where the value does not exceed $250, where such cigars are for the personal consumption of the importer or for disposition as his bona fide gift, shall be exempt from the provisions of this section.

PAR. 5. Section 270.230 is amended as follows:

(A) Paragraph (a) and the headnote are amended to read as follows:

(a) *General.*—Where cigars on which tax has not been paid are imported into the United States, the importer may, except as provided in paragraphs (c) and (d) of this section, pay tax thereon by filing a tax return, Form 2135, with remittance, with the district director for each removal of such cigars from customs custody subject to tax. The importer shall secure from the district director a copy of the tax return bearing acknowledgment of receipt of the remittance. Such copy shall be presented by the importer to the appropriate customs officer before such cigars are released from customs custody. When the cigars are so released, the customs officer shall endorse the copy of Form 2135 to show release of the cigars and return this copy to the importer, who shall retain such copy of the tax return for two years following the close of the calendar year in which the return was filed and shall make it available for inspection by any revenue officer upon his request.

(B) By adding a new paragraph (c) to read as follows:

(c) *Noncommercial importations in passengers' baggage.*—Where cigars on which tax has not been paid are imported into the United States in passengers' baggage, for the personal consumption of the importer or for disposition as his bona fide gift, in excess of the quantity exempted from tax by law and customs regulations, the importer shall, prior to removal, pay tax thereon by return to the collector of customs, in accordance with customs requirements.

(C) By adding a new paragraph (d) to read as follows:

(d) *Noncommercial importations by mail.*—Where cigars on which the tax has not been paid are imported into the United States by mail, for the personal consumption of the importer or for disposition as his bona fide gift, and the value does not exceed $250, the importer shall, prior to removal, pay tax thereon by return to the collector of customs, in accordance with customs requirements.

PAR. 6. Section 270.231 is amended by deleting the words "to the district director" from the first sentence.

PAR. 7. A new section 270.232 to read as follows is added:

SEC. 270.232 CUSTOMS' COLLECTION OF INTERNAL REVENUE TAXES ON CERTAIN IMPORTATIONS OF CIGARS.—Internal revenue taxes payable on cigars imported in passengers' baggage, or by mail where the value does not exceed $250, shall be collected, accounted for, and deposited as internal revenue collections by collectors of customs, in accordance with customs requirements.

This Treasury Decision shall be effective on the first day of the first month which begins not less than 30 days following the date of publication in the Federal Register.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).)

DANA LATHAM
Commissioner of Internal Revenue

Approved December 17, 1958.

NELSON P. ROSE
Acting Secretary of the Treasury

(Filed by the Division of the Federal Register on December 19, 1958, 8:48 a. m., and published in the issue of the Federal Register for December 20, 1958, 23 F. R. 9809.)

SECTION 5704.—EXEMPTION FROM TAX

26 CFR 141.1: Shipment or delivery restricted. Rev. Rul. 59–54 (Also Section 141.2.)

> Tobacco products may continue to be delivered for use as sea stores on ocean vessels and aircraft plying on a regular schedule in trade between any port in the State of Alaska and any other port in the United States outside of Alaska.

Advice has been requested whether tobacco products may continue to be delivered, without payment of tax, for use as ship's supplies (sea stores) on vessels engaged in trade between ports in Alaska, now that statehood has been attained, and other ports in the United States.

Section 5704 of the Internal Revenue Code of 1954 provides, in part, as follows:

> A manufacturer or export warehouse proprietor may transfer tobacco products and cigarette papers and tubes, without payment of tax, to the bonded premises of another manufacturer or export warehouse proprietor, or remove such articles, without payment of tax, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States; and manufacturers may similarly remove such articles for use of the United States; in accordance with such regulations and under such bonds as the Secretary or his delegate shall prescribe.

Section 141.1 of the Regulations relating to Shipment or Delivery of Manufactured Tobacco, Snuff, Cigars, or Cigarettes for Use as Sea Stores Without Payment of Internal Revenue Tax, provides, in part, that tobacco products may be delivered, without payment of tax, for use as sea stores on vessels operating on a regular schedule in trade between one customs great district of the United States and another customs great district thereof. Such regulations also provide that tobacco products may be delivered, without payment of tax, for use as sea stores on aircraft operating on a regular schedule in trade between one customs great district of the United States and another such great district, when the schedule requires operation outside the jurisdiction of the internal revenue laws of the United States.

Section 141.2 of the regulations states that customs great districts include, first, the seacoast between the northern boundary of the State

of Maine and the southern boundary of the State of Texas; second, the island of Puerto Rico; third, the seacoast between the southern boundary of the State of California and the northern boundary of the State of Washington; fourth, the Territory of Alaska; and, fifth, the Territory of Hawaii.

Now that Alaska has gained statehood, the reference to the Territory of Alaska, contained in the above section, will be construed as a reference to the State of Alaska.

In view of the foregoing, tobacco products may continue to be delivered, without payment of tax, for use as sea stores beyond the jurisdiction of the internal revenue laws on ocean vessels and aircraft plying on a regular schedule in trade between any port in the State of Alaska and any other port in the United States outside of Alaska.

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26 CFR 141.2: Customs great districts.

For delivery of tobacco products, without payment of tax, for use as ship's supplies on vessels engaged in trade between ports in the State of Alaska and other ports in the United States. See Rev. Rul. 59–54, page 537.

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26 CFR 270.146: Mark.

Identification of transferee manufacturer in the required mark. See Rev. Proc. 59–8, page 817.

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26 CFR 270.152: Transfer of cigars and cigarettes.

Identification of transferee manufacturer in the required mark. See Rev. Proc. 59–8, page 817.

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26 CFR 275.135: Mark.

Identification of transferee manufacturer in the required mark. See Rev. Proc. 59–8, page 817.

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26 CFR 275.141: Transfer of manufactured tobacco.

Identification of transferee manufacturer in the required mark. See Rev. Proc. 59–8, page 817.

SECTION 5705.—REFUND OR ALLOWANCE OF TAX

For the period of limitation for filing claims for refund of tax on tobacco withdrawn from the market. See Rev. Proc. 59–2, page 800.

SECTION 5708.—LOSSES CAUSED BY DISASTER

26 CFR 296.53: Persons to whom payment may be made. T.D. 6368[1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER E, PART 296.—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO MATERIALS, TOBACCO PRODUCTS, AND CIGARETTE PAPERS AND TUBES

Losses of tobacco products and cigarette papers and tubes caused by a disaster occurring after December 31, 1954, and not later than September 2, 1958

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

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

It has been determined that it may not be possible, in some instances, for claimants to comply with the provisions of regulations in subpart B of the Miscellaneous Regulations Relating to Tobacco Materials, Tobacco Products, and Cigarette Papers and Tubes (26 CFR Part 296), which require persons replacing or giving credit for tobacco products or cigarette papers or tubes lost and the recipients of such replacements or credits to join in the claims. Accordingly, it has been deemed desirable to amend the regulations to liberalize the requirement in this respect so that an otherwise allowable claim may be considered for allowance. To accomplish this purpose and in order to make a clarifying change, 26 CFR Part 296 is amended as follows:

PARAGRAPH 1. Section 296.53 is amended by inserting, in the second sentence, immediately before the word "rendered", the word "lost,".

PAR. 2. Section 296.54 is amended by striking the period at the end of the second sentence and inserting in lieu thereof the following:

: *Provided.*—That the assistant regional commissioner may allow a claim which otherwise is in compliance with the requirements of this subpart even though the person (or persons) receiving such replacement or credit does not join in the claim, if the failure to join in the claim is the result of (a) such person's death, (b) inability to locate such person, or (c) such person's refusal to joint in the claim.

PAR. 3. A new section, reading as follows, is inserted immediately following section 296.57:

SEC. 296.57a EVIDENCE OF REPLACEMENT.—Where, as provided in section 296.54, a possessor alleged to have received replacement does not join in the claim, the claimant must establish by documentary evidence (such as receipts or receipted copies of invoices) the replacement to the possessor as required by section 296.59.

Because the time for filing claims under subpart B of 26 CFR Part 296 expires on March 2, 1959, and because of the liberalizing nature of these amendments, it is found that it is impracticable and contrary to the public interest to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003), or subject to the effective date limitation of section 4(c) of such Act. Accordingly, this Treasury Decision shall be effective on September 3, 1958.

[1] 24 F.R. 1704.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805) and section 209 of Public Law 85–859, C.B. 1958–3, 92.)

DANA LATHAM,
Commissioner of Internal Revenue.
D. B. STRUBINGER,
Acting Commissioner of Customs.

Approved March 3, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on March 6, 1959, 8:47 a.m., and published in the issue of the Federal Register for March 7, 1959, 24 F.R. 1704.)

SUBCHAPTER C.—OPERATIONS BY MANUFACTURERS AND IMPORTERS OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES AND EXPORT WAREHOUSE PROPRIETORS

SECTION 5723.—PACKAGES, MARKS, LABELS, NOTICES, AND STAMPS

26 CFR 270.146: Mark.

Mark on packages of cigars taxpaid by return. See Rev. Proc. 59–7, page 817.

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26 CFR 270.191a: Mark.

Mark on packages of cigars taxpaid by return. See Rev. Proc. 59–7, page 817.

SUBCHAPTER E.—RECORDS OF MANUFACTURERS OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, EXPORT WAREHOUSE PROPRIETORS, AND DEALERS IN TOBACCO MATERIALS

SECTION 5741.—RECORDS TO BE MAINTAINED

26 CFR 270.142: Records.

"Reconstituted tobacco" should be accounted for as tobacco material in the records required to be kept. See Rev. Proc. 59–10, page 820.

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26 CFR 275.132: Records.

"Reconstituted tobacco" should be accounted for as tobacco material in the records required to be kept. See Rev. Proc. 59–10, page 820.

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26 CFR 280.127: Records.

"Reconstituted tobacco" should be accounted for as tobacco material in the records required to be kept. See Rev. Proc. 59–10, page 820.

26 CFR 295.56: Record of removals. T.D. 6379 [1]

(Also Section 7342; 295.40.)

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER E, PART 295.—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, FOR USE OF THE UNITED STATES

Simplification of requirements and improvement of procedures

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

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

On December 13, 1958, a notice of proposed rulemaking with respect to regulations designated as Part 295 of Title 26 of the Code of Federal Regulations are published in the Federal Register (23 F.R. 9674). The purpose of the proposal was to simplify the requirements and improve the procedures with respect to the removal of tobacco products and cigarette papers and tubes, without payment of tax, for use of the United States, and to make certain clarifying and conforming changes. No data, views, or arguments pertaining thereto have been received during the period of 30 days prescribed. However, it has been determined that this proposal will cause section 295.2, relating to forms, to be superfluous. Therefore, the regulations as so published, supplemented by the revocation of section 295.2, are hereby adopted.

PARAGRAPH 1. Section 295.2 is revoked.

PAR. 2. A new section 295.21a to read as follows is inserted immediately after section 295.21:

§ 295.21a INTERNAL REVENUE OFFICER.

"Internal revenue officer" shall mean an officer or employee of the Treasury Department duly authorized to perform any function relating to the administration or enforcement of this part.

PAR. 3. Section 295.30 is revoked.

PAR. 4. Section 295.40 and the headnote are amended to read as follows:

§ 295.40 AUTHORITY OF INTERNAL REVENUE OFFICERS TO ENTER PREMISES.

Any internal revenue officer may enter in the daytime any premises where tobacco products or cigarette papers or tubes removed under this part are kept, so far as it may be necessary for the purpose of examining such articles. When such premises are open at night, any internal revenue officer may enter them, while so open, in the performance of his official duties. The owner of such premises, or person having the superintendence of the same, who refuses to admit any internal revenue officer or permit him to examine the articles removed under this part shall be liable to the penalties prescribed by law for the offense.

(68A Stat. 872, 903; 26 U.S.C. 7342, 7606)

PAR. 5. Section 295.41 is amended by inserting in the first sentence, immediately after the word "any", the word "internal".

[1] 24 F.R. 4166.

PAR. 6. Section 295.51 is revoked.

PAR. 7. Section 295.52 is revoked.

PAR. 8. Section 295.56 and the headnote are amended to read as follows:

§ 295.56 RECORD OF REMOVALS.

Every manufacturer who removes tobacco products and cigarette papers and tubes under this part shall keep a supporting record of such removals and shall make appropriate entries therein at the time of removal. Such supporting record shall show, with respect to each removal, the date of removal, the name and address of the Federal agency or institution to which shipped or delivered, the quantity and, with respect to large cigars, the class designation. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each such removal, in such orderly manner that such information may be readily ascertained therefrom by internal revenue officers, such copies will be considered the supporting record required by this part. Such record shall be retained for two years following the close of the year in which the tobacco products and cigarette papers and tubes were removed, and shall be made available for inspection by any internal revenue officer upon his request.

(72 Stat. 1423; 26 U.S.C. 5741)

PAR. 9. Section 295.58 is revoked.

PAR. 10. Section 295.59 is amended to read as follows:

§ 295.59 TAX LIABILITY.

Responsibility for the tax on tobacco products and cigarette papers and tubes removed under this part shall rest upon the manufacturer making the removal until such articles are received by the Federal agency or institution. Where the manufacturer has knowledge that all or part of a shipment removed under this part has not been received by the Federal agency or institution, he shall immediately notify the assistant regional commissioner, furnish all pertinent details with respect to the loss or shortage, and either pay the tax due thereon or file claim for remission of the tax liability as provided in Parts 270, 275, and 285 of this subchapter.

This Treasury Decision shall be effective on the first day of the first month which begins not less than 30 days following the date of publication in the Federal Register.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954.

(68A Stat. 917; 26 U.S.C. 7805).)

DANA LATHAM,
Commissioner of Internal Revenue.

Approved May 19, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on May 22, 1959, at 8:47 a.m., and published in the issue of the Federal Register for May 23, 1959, 24 F.R. 4166.)

CHAPTER 53.—MACHINE GUNS AND CERTAIN OTHER FIREARMS

SUBCHAPTER A.—TAXES

PART I.—SPECIAL (OCCUPATIONAL) TAXES

SECTION 5801.—TAX

26 CFR 179.51: Rates of tax.

Proration of special (occupational) tax on certain dealers of firearms. See T.D. 6363, page 544.

PART II.—TRANSFER TAX

SECTION 5814.—ORDER FORMS

26 CFR 179.80: Subsequent transfer of firearms.

Documentary evidence of prior transfers accompanying the subsequent transfer of firearms. See T.D. 6363, page 544.

PART III.—TAX ON MAKING FIREARMS

SECTION 5821.—RATE, EXCEPTIONS, ETC.

26 CFR 179.76: Rate of tax.

Rate of tax applicable upon the making of each firearm. See T.D. 6363, page 544.

SUBCHAPTER B.—GENERAL PROVISIONS

SECTION 5843.—IDENTIFICATION OF FIREARMS

26 CFR 179.121: Identification of firearms.

For the verification and reporting of serial numbers on firearms. See Rev. Proc. 59–14, page 823.

SECTION 5848.—DEFINITIONS

26 CFR 179.15 Dealer. Rev. Rul. 59–77

Section 5848 of the Internal Revenue Code of 1954 defines the term "dealer" as any person not a manufacturer or importer, engaged within

the United States in the business of selling firearms. The term "dealer" includes wholesalers, pawnbrokers, and dealers in used firearms. *Held*, while each situation must be considered on its individual facts, the phrase "engaged within the United States in the business of selling firearms" usually denotes repeated commercial (wholesale or retail) sales of firearms with profit as the principal objective. This position is grounded on the principle that a single sale, unattended by circumstances showing the one making the sale to be engaged in the business, does not create special (occupational) tax liability.

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26 CFR 179.30: Manufacturer. T.D. 6363[1]
(Also Sections 5801, 5814, 5821;
179.51, 179.80, 179.76.)

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER E, PART 179.—MACHINE GUNS AND CERTAIN OTHER FIREARMS

Miscellaneous amendments

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

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

On December 13, 1958, notice of proposed rulemaking with respect to the amendment of the regulation in 26 CFR Part 179 was published in the Federal Register (23 F.R. 9674). The proposed amendments would conform the regulation to Chapter 53 of the Internal Revenue Code of 1954 as amended by the Excise Tax Technical Changes Act of 1958 (Public Law 85–859, 72 Stat. 1275) [C.B. 1958–3, 92]. No objection to the rules proposed were received during the 30 day period prescribed. Accordingly, the amendments as so published are hereby adopted.

In order to conform to Chapter 53 of the Internal Revenue Code of 1954 as amended by the Excise Tax Technical Changes Act of 1958 (Public Law 85–859, 72 Stat. 1275), 26 CFR Part 179 is hereby amended as follows:

PARAGRAPH 1. The table of contents is amended by deleting "179.101 Subsequent transfer of firearm." and renumbering the succeeding section "179.102" (Cancellation of stamp) as "179.101".

PAR. 2. Section 179.30 is amended by deleting the words "manufacture of" and inserting in lieu thereof the words "business of manufacturing".

PAR. 3. Section 179.38 is amended by deleting the words "designed and made" and inserting in lieu thereof the words "designed or redesigned and made or remade".

PAR. 4. Section 179.40 is amended by deleting the words "designed and made" and inserting in lieu thereof the words "designed or redesigned and made or remade".

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[1] 24 F.R. 1206.

PAR. 5. Section 179.51, subsection (b), is amended by deleting the period at the end of the second sentence and adding ", except that the special tax of $1.00 a year applicable to Class 5 Dealers shall not be prorated."

PAR. 6. Section 179.76 is amended to read as follows:

"The tax on the making of a firearm is at the rate of $200 for each firearm made".

PAR. 7. Section 179.77 is amended by deleting "of the proper denomination (see § 179.76)".

PAR. 8. Section 179.80 is amended by deleting the last two sentences and inserting in lieu thereof "(see Subpart E)."

PAR. 9. Section 179.83 is amended by deleting "either section 5811 or".

PAR. 10. Section 179.98 is amended by changing the cross reference "(see § 179.102)" to read "(see § 179.81)".

PAR. 11. Section 179.101 is deleted in its entirety.

PAR. 12. Section 179.102 is renumbered § 179.101.

Because the amendments to Chapter 53 of the Internal Revenue Code of 1954, made by section 203 of the Excise Tax Technical Changes Act of 1958 were effective on the day following the date of enactment of such Act, it is found that it is impracticable and contrary to the public interest to issue this Treasury Decision subject to the effective date limitation of section 4(c) of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003). Accordingly, this Treasury Decision is made effective as of September 3, 1958.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805). Interpret or apply 68A Stat. 726; 26 U.S.C. 5847.)

DANA LATHAM,
Commissioner.

Approved February 11, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on February 16, 1959, 8:47 a.m., and published in the issue of the Federal Register for February 17, 1959, 24 F.R. 1206.)

SUBCHAPTER C.—UNLAWFUL ACTS

SECTION 5852.—REMOVING OR CHANGING IDENTIFICATION MARKS

26 CFR 179.151: Returns.

For the verification and reporting of serial numbers on firearms. See Rev. Proc. 59–14, page 823.

SUBTITLE F.—PROCEDURE AND ADMINISTRATION
CHAPTER 61.—INFORMATION AND RETURNS

SUBCHAPTER A.—RETURNS AND RECORDS
PART I.—RECORDS, STATEMENTS, AND SPECIAL RETURNS

SECTION 6001.—NOTICE OR REGULATIONS REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS

26 CFR 1.6001: Statutory provisions; notice or regulations requiring records, statements, and special returns. T. D. 6364[1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Regulations under certain provisions of subtitle F of the Internal Revenue Code of 1954 applicable to taxes imposed by subtitle A of such Code.

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

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

On September 19, 1958, notice of proposed rulemaking regarding the regulations under certain sections of subtitle F of the Internal Revenue Code of 1954 which relate to certain procedural and administrative requirements in respect of the taxes imposed by subtitle A of such Code was published in the Federal Register (23 F. R. 7295). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following regulations are hereby adopted. However, the Treasury decision does not contain regulations under section 6851 of the Internal Revenue Code of 1954. Regulations under section 6851 will be the subject of a separate Treasury decision. The regulations hereby adopted are applicable for taxable years beginning after December 31, 1953, and ending after August 16, 1954, except as otherwise specifically provided.

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[1] The publication of this Treasury Decision in 24 F.R. 1178, dated February 17, 1959, contains (1) instructions for modifying the notice of proposed rulemaking published in 23 F.R. 7295, dated September 19, 1958, and (2) the full context of the regulations with such modifications. As here published, the Treasury Decision reflects the full context of such regulations, with modifications. The individual instructions have been omitted.

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AUTHORITY: §§ 1.6001 to 1.9100–1, incl., issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

PROCEDURE AND ADMINISTRATION

INFORMATION AND RETURNS

§ 1.6001 STATUTORY PROVISIONS; NOTICE OR REGULATIONS REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS.

SEC. 6001. NOTICE OR REGULATIONS REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS.

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

§ 1.6001–1 RECORDS.—(a) *In general.*—Except as provided in paragraph (b) of this section, any person subject to tax under subtitle A of the Internal Revenue Code of 1954, or any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.

(b) *Farmers and wage-earners.*—Individuals deriving gross income from the business of farming, and individuals whose gross income includes salaries, wages, or similar compensation for personal services rendered, are required with respect to such income to keep such records as will enable the district director to determine the correct amount of income subject to the tax. It is not necessary, however, that with respect to such income individuals keep the books of account or records required by paragraph (a) of this section. For rules with respect to the records to be kept in substantiation of traveling and other business expenses of employees, see § 1.162–17.

(c) *Exempt organizations.*—In addition to such permanent books and records as are required by paragraph (a) of this section with respect to the tax imposed by section 511 on unrelated business income of certain exempt organizations, every organization exempt from tax under section 501(a) but required by section 6033 to file an annual return shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts, and disbursements, and such other information as is required by section 6033. See section 6033 and § 1.6033–1.

(d) *Notice by district director requiring returns, statements, or the keeping of records.*—The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for tax under subtitle A of the Code.

(e) *Retention of records.*—The books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained so

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long as the contents thereof may become material in the administration of any internal revenue law.

(f) *Cross reference.*—For general information with respect to the keeping of records, see § 301.6001–1 of this chapter.

§ 1.6011 STATUTORY PROVISIONS; GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

SEC. 6011. GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

(a) GENERAL RULE.—When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

* * * * * * *

(c) INCOME, ESTATE, AND GIFT TAXES.—For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see sections 6012 to 6019, inclusive.

§ 1.6011–1 GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.—(a) *General rule.*—Every person subject to any tax, or required to collect any tax, under subtitle A of the Code, shall make such returns or statements as are required by the regulations in this chapter. The return or statement shall include therein the information required by the applicable regulations or forms.

(b) *Use of prescribe forms.*—Copies of the prescribed return forms will so far as possible be furnished taxpayers by district directors. A taxpayer will not be excused from making a return, however, by the fact that no return form has been furnished to him. Taxpayers not supplied with the proper forms should make application therefor to the district director in ample time to have their returns prepared, verified, and filed on or before the due date with the internal revenue office where such returns are required to be filed. Each taxpayer should carefully prepare his return and set forth fully and clearly the information required to be included therein. Returns which have not been so prepared will not be accepted as meeting the requirements of the Code. In the absence of a prescribed form, a statement made by a taxpayer disclosing his gross income and the deductions therefrom may be accepted as a tentative return, and, if filed within the prescribed time, the statement so made will relieve the taxpayer from liability for the addition to tax imposed for the delinquent filing of the return, provided that without unnecessary delay such a tentative return is supplemented by a return made on the proper form.

§ 1.6012 STATUTORY PROVISIONS; PERSONS REQUIRED TO MAKE RETURNS OF INCOME.

SEC. 6012. PERSONS REQUIRED TO MAKE RETURNS OF INCOME.

(a) GENERAL RULE.—Returns with respect to income taxes under subtitle A shall be made by the following:

(1) Every individual having for the taxable year a gross income of $600 or more (except that any individual who has attained the age of 65 before the close of his taxable year shall be required to

make a return only if he has for the taxable year a gross income of $1,200 or more);

(2) Every corporation subject to taxation under subtitle A;

(3) Every estate the gross income of which for the taxable year is $600 or more;

(4) Every trust having for the taxable year any taxable income, or having gross income of $600 or over, regardless of the amount of taxable income; and

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

except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary or his delegate, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

(b) RETURN MADE BY FIDUCIARIES AND RECEIVERS.—

(1) RETURNS OF DECEDENTS.—If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent.

(2) PERSONS UNDER A DISABILITY.—If an individual is unable to make a return required under subsection (a) or section 6015(a), the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

(3) RECEIVERS, TRUSTEES AND ASSIGNEES FOR CORPORATIONS.—In a case where a receiver, trustee in bankruptcy, or assignee, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

(4) RETURNS OF ESTATES AND TRUSTS.—Returns of an estate or a trust shall be made by the fiduciary thereof.

(5) JOINT FIDUCIARIES.—Under such regulations as the Secretary or his delegate may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this paragraph shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(c) CERTAIN INCOME EARNED ABROAD.—For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 911 (relating to earned income from sources without the United States).

(d) CONSOLIDATED RETURNS.—For provisions relating to consolidated returns by affiliated corporations, see chapter 6.

[Sec. 6012 as amended by sec. 72(a), Technical Amendments Act 1958]

§ 1.6012–1 INDIVIDUALS REQUIRED TO MAKE RETURNS OF INCOME.—(a) *Individual citizen or resident.*—(1) *In general.*—Except as provided in subparagraph (2) of this paragraph, an income tax return must be filed for each taxable year by every individual who receives $600 or more of gross income during such taxable year and who is—

(i) A citizen of the United States, whether residing at home or abroad,

(ii) A resident of the United States even though not a citizen thereof, or

(iii) An alien bona fide resident of Puerto Rico during the entire taxable year.

Such return must be filed by such individual regardless of his family or marital status.

(2) *Certain exceptions.*—(i) In case an individual who is described in subparagraph (1) of this paragraph has attained the age of 65 before the close of his taxable year, an income tax return must be filed by such individual only if he receives $1,200 or more of gross income during his taxable year.

(ii) In the case of a short taxable year referred to in section 443(a)(1), an individual described in subparagraph (1) of this paragraph shall file an income tax return if his gross income received during such short taxable year equals or exceeds his own personal exemption allowed by section 151(b) (prorated as provided in section 443(c)) and, when applicable, his additional examption for age 65 or more allowed by section 151(c)(1) (prorated as provided in section 443(c)).

(3) *Earned income from without the United States.*—For the purpose of determining whether an income tax return must be filed for any taxable year beginning after December 31, 1957, gross income shall be computed without regard to the exclusion provided for in section 911 (relating to earned income from sources without the United States). In the case of an individual claiming an exclusion under such section, he shall attach Form 2555 to the return required under this paragraph.

(4) *Return of income of minor.*—A minor is subject to the same requirements and elections for making returns of income as are other individuals. Thus, a return of income must be made by or for a minor who has a total of $600 of gross income, regardless of the amount of his taxable income. For example, a return must be made by or for a minor who has an aggregate of $600 gross income from funds held in trust for him and from his personal services. The return of a minor must be made by the minor himself or must be made for him by his guardian or other person charged with the care of the minor's person or property. See paragraph (b)(3) of § 1.6012–3. See § 1.73–1 for inclusion in the minor's gross income of amounts received for his personal services. For the amount of tax which is considered to have been properly assessed against the parent, if not paid by the child, see section 6201(c) and paragraph (c) of § 301.6201–1 of this chapter.

(5) *Returns made by agents.*—The return of income may be made by an agent if the person liable for the making of the return is unable to make it by reason of illness or continuous absence from the United States for a period of at least 60 days before the date prescribed by law for making the return. However, assistance in the preparation of the return may be rendered under any circumstances. Whenever a return is made by an agent it shall be accompanied by the prescribed power of attorney, Form 935, except that an agent holding a valid and subsisting general power of attorney authorizing him to represent his principal in making, executing, and

filing the income return, may submit a certified copy thereof in lieu of the authorization on Form 935. The agent, as well as the taxpayer, may incur liability for the penalties provided for erroneous, false, or fraudulent returns. For a return of an agent for a nonresident alien individual, see paragraph (b)(6) of this section. For the requirements regarding signing of returns, see § 1.6061–1.

(6) *Form of return.*—The return required under this paragraph shall be made on Form 1040, except in the case of a taxpayer who, in accordance with subparagraph (7) of this paragraph, elects to use Form 1040A. A taxpayer, even though entitled to use Form 1040A for the taxable year, may, nevertheless, use Form 1040 as his return. A taxpayer otherwise entitled to use Form 1040A as his return for the taxable year but who does not desire to take the standard deduction provided in section 141 is required to use Form 1040 as his return for the taxable year.

(7) *Use of Form 1040A by certain taxpayers with gross income less than $10,000.*—(i) *In general.*—Subject to the limitations set forth in subdivisions (ii), (iii), (iv), and (v) of this subparagraph, and in accordance with Form 1040A and the instructions provided with respect to such form, an individual may use Form 1040A as his return for any taxable year in which the gross income of the individual—

(*a*) Is less than $10,000,

(*b*) Consists entirely of remuneration for personal services performed as an employee, dividends, or interest, and

(*c*) Does not include more than $200 from dividends, interest, and remuneration for personal services other than wages, as defined in section 3401(a).

For purposes of determining whether gross income from dividends, interest, and remuneration other than wages, as defined in section 3401(a), exceeds $200, dividends from domestic corporations are taken into account to the extent that they are includible in gross income.

(ii) *Restrictions on use of Form 1040A.*—Form 1040A shall not be used by an individual—

(*a*) Who elects to itemize his deductions;

(*b*) Whose spouse makes a separate return on Form 1040 and elects to itemize deductions;

(*c*) Who is a nonresident alien individual;

(*d*) Who is a citizen of the United States entitled to the benefits of section 931 (relating to income from sources within possessions of the United States);

(*e*) Who makes a return under section 443(a)(1) for a period of less than 12 months on account of a change in his accounting period;

(*f*) Who makes a return on a fiscal year basis;

(*g*) Who makes a return by use of a method of accounting other than the cash receipts and disbursements method;

(*h*) Who claims that amounts included in the statement of wages under section 6051 are excluded under section 105(d);

(*i*) Who claims any of the deductions referred to in section 62, for example, the deductions for travel or transportation expense;

(*j*) Who claims a deduction for an exemption upon a multiple support agreement under section 152(c); or

(*k*) Who claims credit for payment of estimated income tax or for an overpayment of income tax for the previous taxable year.

(iii) *Credits not allowable.*—When Form 1040A is used, the following credits shall not be allowed:

(*a*) The credit provided by section 32 for tax withheld at source under subchapter B of chapter 3 of the Code;

(*b*) The credit provided by section 33 for taxes imposed by foreign countries and possessions of the United States;

(*c*) The credit provided by section 34 for dividends received;

(*d*) The credit provided by section 35 for partially tax-exempt interest; and

(*e*) The credit provided by section 37 for retirement income.

(iv) *Status benefits not allowable.*—The status of a taxpayer as head of household, as defined in section 1(b)(2), or as a surviving spouse, as defined in section 2(b), shall not be considered in determining the tax liability of a taxpayer filing Form 1040A.

(v) *Use after due date not permitted.*—Form 1040A shall not be used unless it is filed on or before the date prescribed in section 6072 (a) for the filing of the return.

(vi) *Computation and payment of tax.*—Unless a taxpayer is entitled to elect under section 6014 and § 1.6014–1 not to show the tax on Form 1040A and does so elect, he shall compute and show on his return on Form 1040A the amount of the tax imposed by subtitle A and shall, without notice and demand therefor, pay any unpaid balance of such tax not later than the date fixed for filing the return.

(vii) *Change of election to use Form 1040A.*—A taxpayer who has elected to make a return on Form 1040A may change such election. Such change of election shall be within the time and subject to the conditions prescribed in section 144(b) and § 1.144–2, relating to change of election to take, or not to take, the standard deduction.

(viii) *Joint return of husband and wife on Form 1040A.*—If the aggregate gross income for any taxable year of a husband and wife, neither of whom was a nonresident alien at any time during such year, is less than $10,000, consists solely of remuneration for services performed as an emplpoyee, dividends, or interest, and does not include more than $200 from dividends, interest, and remuneration for personal services other than wages as defined in section 3401(a), the spouses may file a joint return on Form 1040A. For purposes of determining whether gross income from sources other than wages exceeds $200 where both spouses received dividends from domestic corporations, the amount of such dividends received by each spouse is taken into account to the extent that such dividends are includible in gross income. See section 116 and §§ 1.116–1 and 1.116–2. If a joint return is made by husband and wife on Form 1040A, the liability for the tax shall be joint and several.

(b) *Returns of nonresident alien individuals.*—(1) *Individuals in class 1 (no United States business and gross income of not more than $15,400).*—(i) *Return not required.*—If the tax liability of a nonresident alien individual within class 1, as described in paragraph (a)(1) of § 1.871–7, is fully satisfied at the source, a return of income is not required.

(ii) *Return required.*—A nonresident alien individual within class 1 shall make or have made a return on Form 1040NB with respect to that portion of his income described in paragraph (b) of § 1.871–7 upon which the tax has not been fully satisfied at the source, including such income upon which the tax is limited by tax convention. A return shall be made in such instance even though the individual's gross income from sources within the United States for the taxable year is less than $600.

(iii) *Items upon which tax not fully satisfied.*—Some of the items of income from sources within the United States upon which the tax liability will not have been fully satisfied at the source are—

(*a*) Interest upon so-called tax-free covenant bonds upon which, in accordance with § 1.1451–1, a tax of only 2 percent is required to be withheld at the source;

(*b*) Capital gains described in paragraph (b)(4) of § 1.871–7, which are not subject to withholding under § 1.1441–1;

(*c*) Accrued interest received in connection with the sale of bonds between interest dates, which, in accordance with paragraph (a)(2) of § 1.1441–4, is not subject to withholding; and

(*d*) Dividends from foreign corporations which are not subject to withholding under paragraph (b)(2) of § 1.1441–3 but do constitute income from sources within the United States under paragraph (a)(2) of § 1.861–3.

(iv) *Claim for refund.*—Notwithstanding the provisions of subdivisions (i) and (ii) of this subparagraph, a nonresident alien individual within class 1 shall include on Form 1040NB his entire income described in paragraph (b) of § 1.871–7, whether or not the tax has been fully satisfied at the source upon a portion thereof, if a claim for the refund of an overpayment of tax is made in accordance with section 6402 and the regulations thereunder. However, if the overpayment to be refunded consists solely of tax deemed to have been paid under section 852(b)(3)(D), relating to undistributed capital gains of a regulated investment company, it is not necessary to include on the Form 1040NB the entire income described in paragraph (b) of § 1.871–7.

(2) *Individuals in class 2 (no United States business and gross income of more than $15,400).*—Even though the tax has been fully satisfied at the source, every nonresident alien individual within class 2, as described in paragraph (a)(2) of § 1.871–7, shall make or have made a return on Form 1040NB–a of all his income described in paragraph (c) of § 1.871–7, including such income upon which the tax is limited by tax convention. However, if the gross income of an individual within class 2 consists of treaty income only, as defined in paragraph (e) of § 1.871–7, or if the nontreaty income does not exceed $15,400 in the aggregate, the return shall be made on Form 1040NB in the manner and to the extent otherwise required in subparagraph (1) of this paragraph. See paragraph (e)(2) of § 1.871–7.

(3) *Individuals in class 3 (United States business).*—Every nonresident alien individual within class 3, as described in paragraph (a)(3) of § 1.871–7, shall make or have made a return on Form 1040B of all his income described in paragraph (d) of § 1.871–7, including

such income upon which the tax is limited by tax convention, even though his gross income from sources within the United States for the taxable year is less than $600. No exception is made to this requirement in the case of such an individual who is a resident of Canada or Mexico. However, if the gross income of a nonresident alien individual within class 3 consist of treaty income only and the tax is determined by applying the limited rates applicable under the convention, then the return shall be made on Form 1040NB in the manner and to the extent otherwise required by subparagraph (1) of this paragraph. See paragraph (e)(3) and (5) of § 1.871–7. When used for this purpose, Form 1040NB shall be appropriately marked in accordance with the instructions issued with respect to the return.

(4) *Treaty income.*—If the gross income of a nonresident alien individual to which this pargaraph applies includes income on which the tax is limited by tax convention, see paragraph (e) of § 1.871–7.

(5) *Claims for refund.*—(i) *Forms to use.*—In the case of any overpayment of income tax by a nonresident alien individual to which this paragraph applies, claim for refund may be made in accordance with section 6402 and the regulations thereunder.

(ii) *Tax withheld at source.*—If an overpayment has resulted from the withholding of tax at source under chapter 3 of the Code, statements shall be attached to the claim for refund showing accurately (*a*) the amounts of tax withheld, with the names and post office addresses of withholding agents and, (*b*) if applicable, facts sufficient to show that, at the time when the income was derived, the taxpayer was entitled to the benefit of a reduced rate of, or exemption from, tax with respect to that income under the provisions of a tax convention to which the United States is a party. For an illustration of the statements to be furnished when claiming the benefit of a reduced rate or exemption under a tax convention, see § 7.710 of Treasury Decision 6030, approved July 10, 1953 (26 CFR (1939) 7.710) [C. B. 1953–2, 185]; § 501.11 of Treasury Decision 6108, approved October 13, 1954 (§ 501.11 of this chapter) [C. B. 1954–2, 614]; and § 502.10 of Treasury Decision 6109, approved October 13, 1954 (§ 502.10 of this chapter) [C. B. 1954–2, 638]. For the refund to the withholding agent of an overpayment of the tax under chapter 3 of the Code, see § 1.1464–1.

(6) *Representative or agent for nonresident alien individuals.*—(i) *In general.*—The responsible representative or agent within the United States of a nonresident alien individual shall make in behalf of his nonresident alien principal a return of, and shall pay the tax on, all income from sources within the United States coming within his control as representative or agent. The agency appointment will determine how completely the agent is substituted for the principal for tax purposes. Any person who collects interest or dividends on deposited securities of a nonresident alien individual, executes ownership certificates in connection therewith, or sells such securities under special instructions shall not be deemed merely by reason of such acts to be the responsible representative or agent of the nonresident alien individual.

(ii) *Income to be returned.*—A return of income shall be required under this subparagraph only if the nonresident alien individual is otherwise required to make a return in accordance with this paragraph. The provisions of this parargaph shall apply in determining the form of return to be used and the income to be returned.

(c) *Cross reference.*—For returns by fiduciaries for individuals, estates, and trusts, see § 1.6012–3.

§ 1.6012–2 Corporations Required To Make Returns of Income.—(a) *In general.*—(1) *Requirement of return.*—Except as provided in paragraphs (e) and (g)(1) of this section with respect to charitable and other organizations having unrelated business income and to certain foreign corporations, respectively, every corporation, as defined in section 7701(a)(3), subject to taxation under subtitle A shall make a return of income regardless of whether it has taxable income or regardless of the amount of its gross income.

(2) *Existence of corporation.*—A corporation in existence during any portion of a taxable year is required to make a return. If a corporation was not in existence throughout an annual accounting period (either calendar year or fiscal year), the corporation is required to make a return for that fractional part of a year during which it was in existence. A corporation is not in existence after it ceases business and dissolves, retaining no assets, whether or not under State law it may thereafter be treated as continuing as a corporation for certain limited purposes connected with winding up its affairs, such as for the purpose of suing and being sued. If the corporation has valuable claims for which it will bring suit during this period, it has retained assets and therefore continues in existence. A corporation does not go out of existence if it is turned over to receivers or trustees who continue to operate it. If a corporation has received a charter but has never perfected its organization and has transacted no business and has no income from any source, it may upon presentation of the facts to the district director be relieved from the necessity of making a return. In the absence of a proper showing of such facts to the district director, a corporation will be required to make a return.

(3) *Form of return.*—The return required of a corporation under this section shall be made on Form 1120 unless the corporation is of a type for which a special form is prescribed. The special forms of returns and schedules required of particular types of corporations are set forth in paragraphs (b) to (g), inclusive, of this section.

(b) *Personal holding companies.*—A personal holding company, as defined in section 542, including a foreign corporation within the definition of such section, shall attach Schedule PH, Computation of U.S. Personal Holding Company Tax, to the return required by paragraph (a) or (g), as the case may be, of this section.

(c) *Insurance companies.*—(1) *Life insurance companies.*—A life insurance company subject to tax under section 802 or 811 shall make a return on Form 1120L. There shall be filed with the return (i) a copy of the annual statement, the form of which has been approved by the National Association of Insurance Commissioners, which is filed by the company for the year covered by such return with the Insurance Departments of States, Territories, and the District of Columbia, and which shows the reserves used by the company in

computing the taxable income reported on its return, and (ii) copies of Schedule A (real estate) and Schedule D (bonds and stocks) of such annual statement.

(2) *Mutual insurance companies.*—A mutual insurance company (other than a life or marine insurance company and other than a fire insurance company subject to the tax imposed by section 831) or an interinsurer or reciprocal underwriter subject to tax under section 821 shall make a return on Form 1120M. See paragraph (a)(3) of § 1.821–1. There shall be filed with the return (i) a copy of the annual statement, the form of which has been approved by the National Association of Insurance Commissioners, which is filed by the company for the year covered by such return with the Insurance Departments of States, Territories, and the District of Columbia, and (ii) copies of Schedule A (real estate) and Schedule D (bonds and stocks) of such annual statement.

(3) *Other insurance companies.*—Every insurance company (other than a life or mutual insurance company), every mutual marine insurance company, and every mutual fire insurance company, subject to tax under section 831, and every mutual savings bank conducting a life insurance business and subject to tax under section 594, shall make a return on Form 1120. See paragraph (c) of § 1.831–1. There shall be filed with the return a copy of the annual statement, the form of which has been approved by the National Association of Insurance Commissioners, which contains the underwriting and investment exhibit for the year covered by such return.

(4) *Foreign insurance companies.*—The provisions of subparagraphs (1), (2), and (3) of this paragraph concerning the returns and statements of insurance companies subject to tax under section 802 or 811, section 821, and section 831, respectively, are applicable to foreign insurance companies subject to tax under such sections, except that the copy of the annual statement, the form of which has been approved by the National Association of Insurance Commissioners, required to be submitted with the return shall, in the case of a foreign insurance company, be a copy of the statement relating to the United States business of such company.

(d) *Affiliated groups.*—For the forms to be used by affiliated corporations filing a consolidated return, see § 1.1502–12.

[NOTE: Paragraphs (e) and (f) of this section, relating to charitable and other organizations with unrelated business income and to farmers' cooperatives, respectively, have been issued as a part of Treasury Decision 6301, approved July 2, 1958 [C.B. 1958–2, 197].]

(g) *Returns by foreign corporations.*—(1) *Nonresident foreign corporations.*—(i) *In general.*—A nonresident foreign corporation is not required to make a return of income if the tax liability of the corporation is fully satisfied at the source. A nonresident foreign corporation shall, however, make or have made a return on Form 1120NB with respect to that portion of its income described in § 1.881–2 upon which the tax has not been fully satisfied at the source, including such income upon which the tax is limited by tax convention.

(ii) *Claim for refund.*—Notwithstanding the provisions of subdivision (i) of this subparagraph, a nonresident foreign corporation

shall include on Form 1120NB its entire income described in § 1.881–2, whether or not the tax has been fully satisfied at the source upon a portion thereof, if a claim for refund of an overpayment of tax is made in accordance with section 6402 and the regulations thereunder. However, if the overpayment to be refunded consists solely of tax deemed to have been paid under section 852(b)(3)(D), relating to undistributed capital gains of a regulated investment company, it is not necessary to include on the Form 1120NB the entire income described in § 1.881–2.

(2) *Resident foreign corporations.*—Every resident foreign corportation shall make or have made a return on Form 1120 of all its income described in § 1.882–1, including such income upon which the tax is limited by tax convention.

(3) *Treaty income.*—If the gross income of a foreign corporation includes income upon which the tax is limited by tax convention, see paragraph (f) of § 1.881–2 in the case of a nonresident foreign corporation, or paragraph (a)(7) of § 1.882–1 in the case of a resident foreign corporation.

(4) *Returns by agent.*—If at the time the return is filed a foreign corporation has no office or place of business within the United States but has an agent in the United States, the return required by this paragraph shall be made by the agent. See section 882(d).

(5) *Claims for refund.*—(i) *Form to use.*—In the case of any overpayment of income tax by a foreign corporation to which this paragraph applies, claim for refund shall be made in accordance with section 6402 and the regulations thereunder.

(ii) *Tax withheld at source.*—If an overpayment has resulted from the withholding of tax at source under chapter 3 of the Code, statements shall be attached to the claim for refund showing the same information as is required by paragraph (b)(5) of § 1.6012–1 in the case of a claim for refund by a nonresident alien individual.

(6) *Special return forms.*—For provisions relating to—

(i) Returns of foreign corporations which are personal holding companies as defined in section 542, see paragraph (b) of this section;

(ii) Returns of foreign insurance companies subject to tax under section 802 or 811, section 821, or section 831, see paragraph (c) of this section; and

(iii) Returns with respect to the tax imposed by section 511 upon unrelated business income described in section 512, see paragraph (e) of this section.

(h) *Other provisions.*—For returns by fiduciaries for corporations, see § 1.6012–3. For information returns by corporations contemplating dissolution or liquidation and for information returns by corporations of distributions in liquidation, see §§ 1.6043–1 and 1.6043–2, respectively. For information returns by corporations relating to corporate dividends, earnings, and profits, see § 1.6042–1. For returns as to formation or reorganization of foreign corporations, see § 1.6046–1. For information returns of officers, directors, and shareholders of foreign personal holding companies, as defined in section 552, see §§ 1.6035–1 and 1.6035–2.

§ 1.6012-3 RETURNS BY FIDUCIARIES.—(a) *For estates and trusts.*—(1) *In general.*—Every fiduciary, or at least one of joint fiduciaries, must make a return of income on Form 1041—

(i) For each estate for which he acts if the gross income of such estate for the taxable year is $600 or more;

(ii) For each trust for which he acts, except a trust exempt under section 501(a), if such trust has for the taxable year any taxable income, or has for the taxable year gross income of $600 or more regardless of the amount of taxable income; and

(iii) For each estate and each trust for which he acts, except a trust exempt under section 501(a), regardless of the amount of income for the taxable year, if any beneficiary of such estate or trust is a nonresident alien.

(2) *Gross income of $5,000 or more.*—In cases in which the gross income of the estate or trust is $5,000 or over for any taxable year, a copy of the will or trust instrument, accompanied by a written declaration of the fiduciary under the penalties of perjury that it is a true and complete copy, must be filed with the fiduciary return of the estate or trust, together with a statement by the fiduciary indicating the provisions of the will or trust instrument which, in his opinion, determine the extent to which the income of the estate or trust is taxable to the estate or trust, the beneficiaries, or the grantor, respectively. If, however, a copy of the will or trust instrument, and statement relating to the provisions of the will or trust instrument, have once been field, they need not again be filed if the fiduciary return contains a statement showing when and where they were filed. If the trust instrument is amended in any way after such copies have been filed, a copy of the amendment must be filed by the fiduciary with the return for the taxable year in which the amendment was made. The fiduciary must also file with such amendment a statement indicating the effect, if any, in his opinion, of the amendment on the extent to which the income of the estate or trust is taxable to the estate or trust, the beneficiaries, or the grantor, respectively.

(3) *Domiciliary and ancillary representatives.*—In the case of an estate required to file a return under subparagraph (1) of this paragraph, having both domiciliary and ancillary representatives, the domiciliary and ancillary representatives must each file a return on Form 1041. The domiciliary representative is required to include in the return rendered by him as such domiciliary representative the entire income of the estate. The return of the ancillary representative shall be filed with the district director for his internal revenue district and shall show the name and address of the domiciliary representative, the amount of gross income received by the ancillary representative, and the deductions to be claimed against such income, including any amount of income properly paid or credited by the ancillary representative to any legatee, heir, or other beneficiary. If the ancillary representative for the estate of a nonresident alien is a citizen or resident of the United States, and the domiciliary representative is a nonresident alien, such ancillary representative is required to render the return otherwise required of the domiciliary representative.

(4) *Two or more trusts.*—A trustee of two or more trusts must make a separate return for each trust, even though such trusts were created by the same grantor for the same beneficiary or beneficiaries.

[NOTE: Subparagraph (5) of this paragraph, relating to trusts with unrelated business income, was issued as a part of Treasury Decision 6301, approved July 2, 1958 [C.B. 1958–2, 197].]

(b) *For other persons.*—(1) *Decedents.*—The executor or administrator of the estate of a decedent, or other person charged with the property of a decedent, shall make the return of income required in respect of such decedent. For the decedent's taxable year which ends with the date of his death, the return shall cover the period during which he was alive. For the filing of returns of income for citizens and alien residents of the United States, and alien residents of Puerto Rico, see paragraph (a) of § 1.6012–1. For the filing of a joint return after death of spouse, see paragraph (d) of § 1.6013–1.

(2) *Nonresident alien individuals.*—(i) *In general.*—Except as otherwise provided in paragraph (b)(6) of § 1.6012–1, a resident or domestic fiduciary or other person charged with the care of the person or property of a nonresident alien individual shall make a return for that individual and pay the tax. However, if the nonresident alien individual has appointed a person in the United States to act as his agent for the purpose of making a return of income, the fiduciary or other person charged with the care of the person or property of that individual shall not be required to make a return and pay the tax in accordance with this subparagraph. In such case, if the fiduciary is required to file Form 1041 for an estate or trust of which the nonresident alien individual is a beneficiary, the fiduciary shall attach a copy of the agency appointment to his return on Form 1041.

(ii) *Income to be returned.*—A return of income shall be required under this subparagraph only if the nonresident alien individual is otherwise required to make a return in accordance with paragraph (b) of § 1.6012–1. The provisions of that section shall apply in determining the form of return to be used and the income to be returned.

(iii) *Allowance of deductions and credits.*—The nonresident alien individual shall receive the benefit of the deductions and credits allowed to him with respect to the income tax only if, pursuant to section 874, the return so filed in accordance with this subparagraph constitutes a true and accurate return of the taxpayer's total income received from all sources within the United States and required to be returned in accordance with paragraph (b) of § 1.6012–1. However, this subdivision shall not be construed to deny the credits provided by sections 31 and 32 for tax withheld at the source.

(iv) *Alien resident of Puerto Rico.*—This subparagraph shall not apply to the return of a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year. See § 1.876–1.

(v) *Cross reference.*—For requirements of withholding of tax at source on nonresident aliens and of returns with respect to such withheld taxes, see §§ 1.1441–1 through 1.1441–5 and §§ 1.1461–1 through 1.1461–3, respectively.

(3) *Persons under a disability.*—A fiduciary acting as the guardian of a minor, or as the guardian or committee of an insane person, must make the return of income required in respect of such person unless, in the case of a minor, the minor himself makes the return or causes it to be made.

(4) *Corporations.*—A receiver, trustee in dissolution, trustee in bankruptcy, or assignee, who, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns. Such return shall be filed whether or not the receiver, trustee, or assignee is operating the property or business of the corporation. A receiver in charge of only a small part of the property of a corporation, such as a receiver in mortgage foreclosure proceedings involving merely a small portion of its property, need not make the return of income. See also § 1.6041–1, relating to information at source, and § 1.6042–1, relating to returns regarding corporate dividends, earnings, and profits.

(5) *Individuals in receivership.*—A receiver who stands in the place of an individual must make the return of income required in respect of such individual. A receiver of only part of the property of an individual need not file a return, and the individual must make his own return.

(c) *Joint fiduciaries.*—In the case of joint fiduciaries, a return is required to be made by only one of such fiduciaries. A return made by one of joint fiduciaries shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(d) *Other provisions.*—For the definition of the term "fiduciary", see section 7701(a)(6) and the regulations thereunder. For information returns required to be made by fiduciaries under section 6041, see § 1.6041–1. As to further duties and liabilities of fiduciaries, see section 6903 and § 301.6903–1 of this chapter.

§ 1.6012–4 MISCELLANEOUS RETURNS.—For returns by regulated investment companies of tax on undistributed capital gain designated for special treatment under section 852(b)(3)(D), see § 1.852–9. For returns with respect to tax withheld from nonresident aliens and foreign corporations, and on tax-free covenant bonds, see §§ 1.1461–1 to 1.1461–3, inclusive. For returns of tax on transfers to avoid income tax, see § 1.1494–1. For the requirement of an annual report by persons completing a Government contract, see Treasury Decision 4906, approved June 23, 1939 (26 CFR (1939) 17.16) [C. B. 1939–2, 404], and Treasury Decision 4909, approved June 28, 1939 (26 CFR (1939) 16.15) [C.B. 1939–2, 422], as made applicable to section 1471 of the 1954 Code by Treasury Decision 6091, approved August 16, 1954 (19 F.R. 5167) [C.B. 1954–2, 47].

§ 1.6013 STATUTORY PROVISIONS; JOINT RETURNS OF INCOME TAX BY HUSBAND AND WIFE.

SEC. 6013. JOINT RETURNS OF INCOME TAX BY HUSBAND AND WIFE.

(a) JOINT RETURNS.—A husband and wife may make a single return jointly of income taxes under subtitle A, even though one of the spouses has neither gross income nor deductions, except as provided below:

(1) No joint return shall be made if either the husband or wife at any time during the taxable year is a nonresident alien;

(2) No joint return shall be made if the husband and wife have different taxable years; except that if such taxable years begin on the same day and end on different days because of the death of either or both, then the joint return may be made with respect to the taxable year of each. The above exception shall not apply if the surviving spouse remarries before the close of his taxable year, nor if the taxable year of either spouse is a fractional part of a year under section 443(a)(1);

(3) In the case of death of one spouse or both spouses the joint return with respect to the decedent may be made only by his executor or administrator; except that in the case of the death of one spouse the joint return may be made by the surviving spouse with respect to both himself and the decedent if no return for the taxable year has been made by the decedent, no executor or administrator has been appointed, and no executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse. If an executor or administrator of the decedent is appointed after the making of the joint return by the surviving spouse, the executor or administrator may disaffirm such joint return by making, within 1 year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return.

(b) JOINT RETURN AFTER FILING SEPARATE RETURN.

(1) IN GENERAL.—Except as provided in paragraph (2), if an individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse under subsection (a) and the time prescribed by law for filing the return for such taxable year has expired, such individual and his spouse may nevertheless make a joint return for such taxable year. A joint return filed by the husband and wife under this subsection shall constitute the return of the husband and wife for such taxable year, and all payments, credits, refunds, or other repayments made or allowed with respect to the separate return of either spouse for such taxable year shall be taken into account in determining the extent to which the tax based upon the joint return has been paid. If a joint return is made under this subsection, any election (other than the election to file a separate return) made by either spouse in his separate return for such taxable year with respect to the treatment of any income, deduction, or credit of such spouse shall not be changed in the making of the joint return where such election would have been irrevocable if the joint return had not been made. If a joint return is made under this subsection after the death of either spouse, such return with respect to the decedent can be made only by his executor or administrator.

(2) LIMITATIONS FOR MAKING OF ELECTION.—The election provided for in paragraph (1) may not be made—

(A) Unless there is paid in full at or before the time of the filing of the joint return the amount shown as tax upon such joint return; or

(B) After the expiration of 3 years from the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse); or

(C) After there has been mailed to either spouse, with respect to such taxable year, a notice of deficiency under section 6212, if the spouse, as to such notice, files a petition with the Tax Court of the United States within the time prescribed in section 6213; or

(D) After either spouse has commenced a suit in any court for the recovery of any part of the tax for such taxable year; or

(E) After either spouse has entered into a closing agreement under section 7121 with respect to such taxable year, or after any civil or criminal case arising against either spouse with respect to such taxable year has been compromised under section 7122.

(3) WHEN RETURN DEEMED FILED—

(A) ASSESSMENT AND COLLECTION.—For purposes of section 6501 (relating to periods of limitations on assessment and collection), and for purposes of section 6651 (relating to delinquent returns), a joint return made under this subsection shall be deemed to have been filed—

(i) Where both spouses filed separate returns prior to making the joint return—on the date the last separate return was filed (but not earlier than the last date prescribed by law for filing the return of either spouse);

(ii) Where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had less than $600 of gross income ($1,200 in case such spouse was 65 or over) for such taxable year—on the date of the filing of such separate return (but not earlier than the last date prescribed by law for the filing of such separate return); or

(iii) Where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had gross income of $600 or more ($1,200 in case such spouse was 65 or over) for such taxable year—on the date of the filing of such joint return.

(B) CREDIT OR REFUND.—For purposes of section 6511, a joint return made under this subsection shall be deemed to have been filed on the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse).

(4) ADDITIONAL TIME FOR ASSESSMENT.—If a joint return is made under this subsection, the periods of limitations provided in sections 6501 and 6502 on the making of assessments and the beginning of levy or a proceeding in court for collection shall with respect to such return include one year immediately after the date of the filing of such joint return (computed without regard to the provisions of paragraph (3)).

(5) ADDITIONS TO THE TAX AND PENALTIES.—(A) ADDITIONS TO THE TAX.—Where the amount shown as the tax by the husband and wife on a joint return made under this subsection exceeds the aggregate of the amounts shown as the tax upon the separate return of each spouse—

(i) NEGLIGENCE.—If any part of such excess is attributable to negligence or intentional disregard of rules and regulations (but without intent to defraud) at the time of the making of such separate return, then 5 percent of the total amount of such excess shall be added to the tax;

(ii) FRAUD.—If any part of such excess is attributable to fraud with intent to evade tax at the time of the making of such separate return, then 50 percent of the total amount of such excess shall be added to the tax.

(B) CRIMINAL PENALTY.—For purposes of section 7206 (1) and (2) and section 7207 (relating to criminal penalties in the case of fraudulent returns) the term "return" includes a

separate return filed by a spouse with respect to a taxable year for which a joint return is made under this subsection after the filing of such separate return.

(c) TREATMENT OF JOINT RETURN AFTER DEATH OF EITHER SPOUSE.—For purposes of sections 21, 443, and 7851(a)(1)(A), where the husband and wife have different taxable years because of the death of either spouse, the joint return shall be treated as if the taxable years of both spouses ended on the date of the closing of the surviving spouse's taxable year.

(d) DEFINITIONS.—For purposes of this section—

(1) The status as husband and wife of two individuals having taxable years beginning on the same day shall be determined—

(A) If both have the same taxable year—as of the close of such year; and

(B) If one dies before the close of the taxable year of the other—as of the time of such death; and

(2) An individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married; and

(3) If a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

[Sec. 6013 as amended by sec. 73, Technical Amendments Act 1958]

§ 1.6013–1 JOINT RETURNS.—(a) *In general.*—(1) A husband and wife may elect to make a joint return under section 6013(a) even though one of the spouses has no gross income or deductions. For rules for determining whether individuals occupy the status of husband and wife for purposes of filing a joint return, see paragraph (a) of § 1.6013–4. For any taxable year with respect to which a joint return has been filed, separate returns shall not be made by the spouses after the time for filing the return of either has expired. See, however, paragraph (d)(5) of this section for the right of an executor to file a late separate return for a deceased spouse and thereby disaffirm a timely joint return made by the surviving spouse.

(2) A joint return of a husband and wife (if not made by an agent) shall be signed by both spouses. The provisions of paragraph (a)(5) of § 1.6012–1, relating to returns made by agents, shall apply where one spouse signs a return as agent for the other, or where a third party signs a return as agent for both spouses.

(b) *Nonresident alien.*—A joint return shall not be made if either the husband or wife at any time during the taxable year is a nonresident alien.

(c) *Different taxable years.*—Except as otherwise provided in this section, a husband and wife shall not file a joint return if they have different taxable years.

(d) *Joint return after death.*—(1) Section 6013(a)(2) provides that a joint return may be made for the survivor and the deceased spouse or for both deceased spouses if the taxable years of such spouses begin on the same day and end on different days only because of the death of either or both. Thus, if a husband and wife make their returns on a calendar year basis, and the wife dies on August 1, 1956, a joint return may be made with respect to the calendar year 1956 of the husband and the taxable year of the wife beginning on January 1, 1956, and ending with her death on August 1, 1956. Similarly, if husband and wife both make their returns on the basis of a fiscal year beginning on July 1 and the wife dies on October 1, 1956, a joint

return may be made with respect to the fiscal year of the husband beginning on July 1, 1956, and ending on June 30, 1957, and with respect to the taxable year of the wife beginning on July 1, 1956, and ending with her death on October 1, 1956.

(2) The provision allowing a joint return to be made for the taxable year in which the death of either or both spouses occurs is subject to two limitations. The first limitation is that if the surviving spouse remarries before the close of his taxable year, he shall not make a joint return with the first spouse who died during the taxable year. In such a case, however, the surviving spouse may make a joint return with his new spouse provided the other requirements with respect to the filing of a joint return are met. The second limitation is that the surviving spouse shall not make a joint return with the deceased spouse if the taxable year of either spouse is a fractional part of a year under section 443(a)(1) resulting from a change of accounting period. For example, if a husband and wife make their returns on the calendar year basis and the wife dies on March 1, 1956, and thereafter the husband receives permission to change his annual accounting period to a fiscal year beginning July 1, 1956, no joint return shall be made for the short taxable year ending June 30, 1956. Similarly, if a husband and wife who make their returns on a calendar year basis receive permission to change to a fiscal year beginning July 1, 1956, and the wife dies on June 1, 1956, no joint return shall be made for the short taxable year ending June 30, 1956.

(3) Section 6013(a)(3) provides for the method of making a joint return in the case of the death of one spouse or both spouses. The general rule is that, in the case of the death of one spouse, or of both spouses, the joint return with respect to the decedent may be made only by his executor or administrator, as defined in paragraph (c) of § 1.6013–4. An exception is made to this general rule, whereby in the case of the death of one spouse, the joint return may be made by the surviving spouse with respect to both him and the decedent if all the following conditions exist:

(i) No return has been made by the decedent for the taxable year in respect of which the joint return is made;

(ii) No executor or administrator has been appointed at or before the time of making such joint return; and

(iii) No executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse.

These conditions are to be applied with respect to the return for each of the taxable years of the decedent for which a joint return may be made if more than one such taxable year is involved. Thus, in the case of husband and wife on the calendar year basis, if the wife dies in February 1957, a joint return for the husband and wife for 1956 may be made if the conditions set forth in this subparagraph are satisfied with respect to such return. A joint return also may be made by the survivor for both himself and the deceased spouse for the calendar year 1957 if it is separately determined that the conditions set forth in this subparagraph are satisfied with respect to the return for such year. If, however, the deceased spouse should, prior to her death,

make a return for 1956, the surviving spouse may not thereafter make a joint return for himself and the deceased spouse for 1956.

(4) If an executor or administrator is appointed at or before the time of making the joint return or before the last day prescribed by law for filing the return of the surviving spouse, the surviving spouse cannot make a joint return for himself and the deceased spouse whether or not a separate return for the deceased spouse is made by such executor or administrator. In such a case, any return made solely by the surviving spouse shall be treated as his separate return. The joint return, if one is to be made, must be made by both the surviving spouse and the executor or administrator. In determining whether an executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse, an extension of time for making the return is included.

(5) If the surviving spouse makes the joint return provided for in subparagraph (3) of this paragraph and thereafter an executor or administrator of the decedent is appointed, the executor or administrator may disaffirm such joint return. This disaffirmance, in order to be effective, must be made within one year after the last day prescribed by law for filing the return of the surviving spouse (including any extension of time for filing such return) and must be made in the form of a separate return for the taxable year of the decedent with respect to which the joint return was made. In the event of such proper disaffirmance the return made by the survivor shall constitute his separate return, that is, the joint return made by him shall be treated as his return and the tax thereon shall be computed by excluding all items properly includible in the return of the deceased spouse. The separate return made by the executor or administrator shall constitute the return of the deceased spouse for the taxable year.

(6) The time allowed the executor or administrator to disaffirm the joint return by the making of a separate return does not establish a new date for the return of the deceased spouse. Accordingly, the provisions of sections 6651 and 6601, relating to delinquent returns and delinquency in payment of tax, are applicable to such return made by the executor in disaffirmance of the joint return.

(e) *Return of surviving spouse treated as joint return.*—For provisions relating to the treatment of the return of a surviving spouse as a joint return for each of the next two taxable years following the year of the death of the spouse, see section 2 and § 1.2-2.

§ 1.6013-2 Joint Return After Filing Separate Return.—(a) *In general.*—(1) Where an individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse under section 6013(a), and the time prescribed by law for filing the return for such taxable year has expired, such individual and his spouse may, under conditions hereinafter set forth, make a joint return for such taxable year. The joint return filed pursuant to section 6013(b) shall constitute the return of the husband and wife for such year, and all payments, credits, refunds, or other repayments, made or allowed with respect to the separate return of either spouse are to be taken into account in determining the extent to which the tax based on the joint return has been paid.

(2) If a joint return is made under section 6013(b), any election, other than the election to file a separate return, made by either spouse in his separate return for the taxable year with respect to the treatment of any income. deduction, or credit of such spouse shall not be changed in the making of the joint return where such election would have been irrevocable if the joint return had not been made. Thus, if one spouse has made an irrevocable election to adopt and use the last-in, first-out inventory method under section 472, this election may not be changed upon making the joint return under section 6013(b).

(3) A joint return made under section 6013(b) after the death of either spouse shall, with respect to the decedent, be made only by his executor or administrator. Thus, where no executor or administrator has been appointed, a joint return cannot be made under section 6013(b).

(b) *Limitations with respect to making of election.*—A joint return shall not be made under section 6013(b)(1) with respect to a taxable year—

(1) Unless there is paid in full at or before the time of the filing of the joint return the amount shown as tax upon such joint return; or

(2) After the expiration of three years from the last day prescribed by law for filing the return for such taxable year determined without regard to any extension of time granted to either spouse; or

(3) After there has been mailed to either spouse, with respect to such taxable year, a notice of deficiency under section 6212, if the spouse, as to such notice, files a petition with the Tax Court of the United States within the time prescribed in section 6213; or

(4) After either spouse has commenced a suit in any court for the recovery of any part of the tax for such taxable year; or

(5) After either spouse has entered into a closing agreement under section 7121 with respect to such taxable year, or after any civil or criminal case arising against either spouse with respect to such taxable year has been compromised under section 7122.

(c) *When return deemed filed; assessment and collection; credit or refund.*—(1) For the purpose of section 6501, relating to the period of limitations upon assessment and collection, and section 6651, relating to delinquent returns, a joint return made under section 6013(b) shall be deemed to have been filed, giving due regard to any extension of time granted to either spouse, on the following date:

(i) Where both spouses filed separate returns, prior to making the joint return under section 6013(b), on the date the last separate return of either spouse was filed for the taxable year, but not earlier than the last date prescribed by law for the filing of the return of either spouse;

(ii) Where only one spouse was required and did file a return prior to the making of the joint return under section 6013(b), on the date of the filing of the separate return, but not earlier than the last day prescribed by law for the filing of such return; or

(iii) Where both spouses were required to file a return, but only one spouse did so file, on the date of the filing of the joint return under section 6013(b).

(2) For the purpose of section 6511, relating to refunds and credits, a joint return made under section 6013(b) shall be deemed to have been filed on the last date prescribed by law for filing the return for such taxable year, determined without regard to any extension of time granted to either spouse for filing the return or paying the tax.

(d) *Additional time for assessment.*—In the case of a joint return made under section 6013(b), the period of limitations provided in sections 6501 and 6502 shall not be less than one year after the date of the actual filing of such joint return. The expiration of the one year is to be determined without regard to the rules provided in paragraph (c)(1) of this section, relating to the application of sections 6501 and 6651 with respect to a joint return made under section 6013(b).

(e) *Additions to the tax and penalties.*—(1) Where the amount shown as the tax by the husband and wife on a joint return made under section 6013(b) exceeds the aggregate of the amounts shown as tax on the separate return of each spouse, and such excess is attributable to negligence, intentional disregard of rules and regulations, or fraud at the time of the making of such separate return, there shall be assessed, collected, and paid in the same manner as if it were a deficiency an additional amount as provided by the following:

(i) If any part of such excess is attributable to negligence, or intentional disregard of rules and regulations, at the time of the making of such separate return, but without any intent to defraud, this additional amount shall be 5 percent of the total amount of the excess.

(ii) If any part of such excess is attributable to fraud with intent to evade tax at the time of the making of such separate return, this additional amount shall be 50 percent of the total amount of the excess. The latter addition is in lieu of the 50 percent addition to the tax provided in section 6653(b).

(2) For purposes of section 7206(1) and (2) and section 7207 (relating to criminal penalties in the case of fraudulent returns), the term "return" includes a separate return filed by a spouse with respect to a taxable year for which a joint return is made under section 6013(b) after the filing of a separate return.

§ 1.6013–3 Treatment of Joint Return After Death of Either Spouse.—For purposes of section 21 (relating to change in rates during a taxable year), section 443 (relating to returns for a period of less than 12 months), and section 7851(a)(1)(A) (relating to the applicability of certain provisions of the Internal Revenue Codes of 1954 and 1939), where the husband and wife have different taxable years because of death of either spouse, the joint return shall be treated as if the taxable years of both ended on the date of the closing of the surviving spouse's taxable year. Thus, in cases where the 1939 Code otherwise would apply to the taxable year of the decedent spouse and the 1954 Code would apply to the taxable year of the surviving spouse, this provision makes the 1954 Code applicable to the taxable years of both spouses if a joint return is filed.

§ 1.6013–4 Applicable Rules.—(a) *Status as husband and wife.*—For the purpose of filing a joint return under section 6013, the status

as husband and wife of two individuals having taxable years beginning on the same day shall be determined—

(1) If the taxable year of each individual is the same, as of the close of such year; and

(2) If the close of the taxable year is different by reason of the death of one spouse, as of the time of such death.

An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married. However, the mere fact that spouses have not lived together during the course of the taxable year shall not prohibit them from making a joint return. A husband and wife who are separated under an interlocutory decree of divorce retain the relationship of husband and wife until the decree becomes final. The fact that the taxpayer and his spouse are divorced or legally separated at any time after the close of the taxable year shall not deprive them of their right to file a joint return for such taxable year under section 6013.

(*b*) *Computation of income, deductions, and tax.*—If a joint return is made, the gross income and adjusted gross income of husband and wife on the joint return are computed in an aggregate amount and the deductions allowed and the taxable income are likewise computed on an aggregate basis. Deductions limited to a percentage of the adjusted gross income, such as the deduction for charitable, etc., contributions and gifts, under section 170, will be allowed with reference to such aggregate adjusted gross income. A similar rule is applied in the case of the limitation of section 1211(b) on the allowance of losses resulting from the sale or exchange of capital assets (see § 1.1211–1). Although there are two taxpayers on a joint return, there is only one taxable income. The tax on the joint return shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several. For computation of tax on the basis of the splitting of income in the case of a joint return, see § 1.2–1. For tax in the case of a joint return of husband and wife electing to pay the optional tax under section 3, see § 1.3–1 and paragraph (c) of § 1.6014–1. For separate computations of the self-employment tax of each spouse on a joint return, see paragraph (b) of § 1.6017–1.

(*c*) *Definition of executor or administrator.*—For purposes of section 6013 the term "executor or administrator" means the person who is actually appointed to such office and not a person who is merely in charge of the property of the decedent.

§ 1.6014 Statutory Provisions; Income Tax Return—Tax Not Computed by Taxpayer.

SEC. 6014. INCOME TAX RETURN—TAX NOT COMPUTED BY TAXPAYER.

(a) Election by Taxpayer.—An individual entitled to elect to pay the tax imposed by section 3 whose gross income is less than $5,000 and includes no income other than remuneration for services performed by him as an employee, dividends or interest, and whose gross income other than wages, as defined in section 3401(a), does not exceed $100, shall at his election not be required to show on the return the tax imposed by section 1. Such election shall be made by using the form prescribed for purposes of this section and shall constitute an election to pay the tax imposed by section 3. In such case the tax shall be

computed by the Secretary or his delegate who shall mail to the taxpayer a notice stating the amount determined as payable. In determining the amount payable, the credit against such tax provided for by section 34 or 37 shall not be allowed. In the case of a head of household (as defined in section 1(b)) or a surviving spouse (as defined in section 2(b)) electing the benefits of this subsection, the tax shall be computed by the Secretary or his delegate without regard to the taxpayer's status as a head of household or as a surviving spouse.

(b) REGULATIONS.—The Secretary or his delegate shall prescribe regulations for carrying out this section, and such regulations may provide for the application of the rules of this section to cases where the gross income includes items other than those enumerated by subsection (a), to cases where the gross income from sources other than wages on which the tax has been withheld at the source is more than $100 but not more than $200, and to cases where the gross income is $5,000 or more but not more than $5,200. Such regulations shall provide for the application of this section in the case of husband and wife, including provisions determining when a joint return under this section may be permitted or required, whether the liability shall be joint and several, and whether one spouse may make return under this section and the other without regard to this section.

§ 1.6014–1 TAX NOT COMPUTED BY TAXPAYER WITH GROSS INCOME LESS THAN $5,000.—(*a*) *In general.*—If an individual is entitled under § 1.6012–1(a)(7) to use as his return Form 1040A, he may elect not to show thereon the amount of the tax due in connection with such return if his gross income is less than $5,000.

(b) *Computation and payment of tax.*—A taxpayer who, in accordance with paragraph (a) of this section, elects not to show the tax on Form 1040A is not required to pay the unpaid balance of such tax at the time he files the return. In such case, the tax will be computed for the taxpayer by the Internal Revenue Service, and a notice will be mailed to the taxpayer stating the amount of tax due. Where it is determined that a refund of tax is due, the Internal Revenue Service will send such refund to the taxpayer. See paragraph (c) of § 301.6402–3 of this chapter.

(c) *Joint return.*—(1) A husband and wife who, pursuant to § 1.6012–1(a)(6), file a joint return on Form 1040A may elect not to show the tax on such return if their aggregate gross income for the taxable year is less than $5,000.

(2) The tax computed for the taxpayer who files Form 1040A and elects not to show thereon the tax due shall be the lesser of the following amounts:

(i) A tax computed as though the return on Form 1040A constituted the separate returns of the spouses, or

(ii) A tax computed as though the return on Form 1040A constituted a joint return.

§ 1.6017 STATUTORY PROVISIONS; SELF-EMPLOYMENT TAX RETURNS.

SEC. 6017. SELF-EMPLOYMENT TAX RETURNS.

Every individual (other than a nonresident alien individual) having net earnings from self-employment of $400 or more for the taxable year shall make a return with respect to the self-employment tax imposed by chapter 2. In the case of a husband and wife filing a joint return under section 6013, the tax imposed by chapter 2 shall not be computed on the aggregate income but shall be the sum of the taxes computed under such chapter on the separate self-employment income of each spouse.

§ 1.6017–1 SELF-EMPLOYMENT TAX RETURNS.—(a) *In general.*—Every individual, other than a nonresident alien, having net earnings from self-employment, as defined in section 1402, of $400 or more for the taxable year shall make a return of such earnings. Except as otherwise provided in this section, such return shall be made on Form 1040 in accordance with the instructions issued with respect to such form. The form to be used by residents of the Virgin Islands is Form 1040 V. I. Residents of Puerto Rico who are required to make a return of income under section 6012(a) shall make a return of such income and earnings from self-employment on Form 1040. Residents of Puerto Rico who are not required to make a return of income under section 6012(a) but are required to make a return of self-employment tax shall make such return on Form 1040 P.R. For purposes of this section, an individual who is a resident of the Virgin Islands or of Puerto Rico is not to be considered a nonresident alien individual. See § 1.1402(b)–1. Provisions applicable to returns under section 6012(a) shall be applicable to returns under this section. A return is required under this section if an individual has self-employment income, as defined in section 1402(b), even though he may not be required to make a return under section 6012 for purposes of the tax imposed by section 1 or 3.

(b) *Joint returns.*—(1) In the case of a husband and wife filing a joint return under section 6013, the tax on self-employment income is computed on the separate self-employment income of each spouse, and not on the aggregate of the two amounts. The requirement of section 6013(d)(3) that in the case of a joint return the tax is computed on the aggregate income of the spouses is not applicable with respect to the tax on self-employment income. Where the husband and wife each has net earnings from self-employment of $400 or more, it will be necessary for each to complete separate schedules of the computation of self-employment tax with respect to the net earnings of each spouse, despite the fact that a joint return is filed. If the net earnings from self-employment of either the husband or the wife are less than $400, such net earnings are not subject to the tax on self-employment income, even though they must be shown on the joint return for purposes of the tax imposed by section 1 or 3.

(2) Except as otherwise expressly provided, section 6013 is applicable to the return of the tax on self-employment income; therefore, the liability with respect to such tax in the case of a joint return is joint and several.

(c) *Social security account numbers.*—Every individual making a return of net earnings from self-employment is required to show thereon his social security account number, or, if he has no such account number, to make application therefor on Form SS–5 before filing such return. However, the failure to apply for or receive a social security account number will not excuse the individual from the requirement that he file such return on or before the due date thereof. Form SS–5 may be obtained from any district office of the Social Security Administration or from any district director of internal revenue. The application on Form SS–5 shall be filed with the district office of the Social Security Administration nearest the legal

residence or principal place of business of such individual, or if he has no legal residence or principal place of business within the United States, Puerto Rico, or the Virgin Islands, with the office of the Social Security Administration at Baltimore, Maryland. An individual who has previously secured a social security account number as an employee shall use that account number on his return of net earnings from self-employment.

§ 1.6031 STATUTORY PROVISIONS; RETURN OF PARTNERSHIP INCOME.

SEC. 6031. RETURN OF PARTNERSHIP INCOME.

Every partnership (as defined in section 761(a)) shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowable by subtitle A, and such other information for the purpose of carrying out the provisions of subtitle A as the Secretary or his delegate may by forms and regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual.

§ 1.6031–1 RETURN OF PARTNERSHIP INCOME.—(a) *In general.*—Except as provided in paragraphs (b) and (d) of this section with respect to certain organizations excluded from the application of subchapter K of chapter 1 of the Code and certain partnerships having no United States business, an unincorporated organization defined as a partnership in section 761(a), through or by means of which any business, financial operation, or venture is carried on, shall make a return for each taxable year on Form 1065. For purposes of filing a partnership return, an unincorporated organization will not be considered, within the meaning of section 761(a), to carry on a business, financial operation, or venture as a partnership before the first taxable year in which such organization receives income or makes or incurs any expenditures treated as deductions for Federal income tax purposes. Such return shall state specifically the items of partnership gross income and the deductions allowable by subtitle A of the Code and shall include the names and addresses of all the partners and the amount of the distributive shares of income, gain, loss, deduction, or credit allocated to each partner. Such return shall be made for the taxable year of the partnership, irrespective of the taxable years of the partners. For taxable years of a partnership and of a partner, see section 706 and § 1.706–1. For signing of a partnership return, see § 1.6063–1.

(b) *Unincorporated organizations excluded from the application of subchapter K.*—(1) *Wholly excluded.*—(i) Any unincorporated organization with respect to which under section 761(a) an election to be excluded from all the provisions of subchapter K of chapter 1 of the Code has been made shall file Form 1065 for the first year with respect to which such an election has been made, and such return shall contain in lieu of the information therein required only the name, or other identification, and the address of the organization. See section 761 and paragraph (a)(2)(iv) of § 1.761–1.

(ii) For each subsequent calendar year or portion thereof for which it is wholly excluded from the application of subchapter K of chapter 1 of the Code such an unincorporated organization shall file Form 1096 for the organization and Form 1099 for each person who

was a member of the organization during any part of the calendar year. See section 761 and paragraph (a)(2)(v)(*a*) of § 1.761–1.

(2) *Partially excluded.*—Any unincorporated organization excluded from the application of part of subchapter K of chapter 1 of the Code shall file a return on Form 1065 containing such information as the Commissioner may require. See section 761 and paragraph (a)(2)(v)(*b*) of § 1.761–1.

(c) *Partnerships having business or source of income within the United States.*—Every partnership engaged in trade or business, or having income from sources, within the United States shall file a partnership return in accordance with this section, whether or not its principal place of business is outside of the United States, and whether or not all its members are nonresident aliens.

(d) *Partnerships having no United States business.*—(1) *No return required from partnership.*—A partnership carrying on no business in the United States and deriving no income from sources within the United States need not file a partnership return.

(2) *Returns of information with respect to partnership required of citizen or resident partners.*—Where a United States citizen or resident is a partner in a partnership described in subparagraph (1) of this paragraph which is not required to file a partnership return, the district director with whom such person files his separate return may require such person to render such statements or provide such information as is necessary to show whether or not such person is liable for tax on income derived from such partnership. In addition, if an election in accordance with the provisions of section 703 (relating to elections affecting the computation of taxable income derived from a partnership) or section 761 (relating to the election to be excluded from the application of all or part of subchapter K of chapter 1 of the Code) is to be made by or for the partnership, a return on Form 1065 shall be filed for such partnership. See section 6063 and § 1.6063–1, relating to the authority of a partner to sign a partnership return. The filing of one such return for a taxable year of the partnership by a citizen or resident partner shall constitute a filing for the partnership of such partnership return.

(e) *Place and time for filing returns.*—(1) *Place for filing.*—The returns of partnerships doing business, or having income from sources, within the United States shall be filed with the district director for the internal revenue district in which the partnership has its principal office or principal place of business within the United States. If such partnership has no office, place of business, or agency within the United States, the return shall be filed with the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C. A partnership return filed under the authority of paragraph (d)(2) of this section shall be filed with the internal revenue officer with whom the citizen or resident partner files his separate income tax return.

(2) *Time for filing.*—The return of a partnership shall be filed on or before the fifteenth day of the fourth month following the close of the taxable year of the partnership, except that the return of a partnership consisting entirely of nonresident aliens shall be filed on

or before the fifteenth day of the sixth month following the close of the taxable year of the partnership.

§ 1.6032 STATUTORY PROVISIONS; RETURNS OF BANKS WITH RESPECT TO COMMON TRUST FUNDS.

SEC. 6032. RETURNS OF BANKS WITH RESPECT TO COMMON TRUST FUNDS.

Every bank (as defined in section 581) maintaining a common trust fund shall make a return for each taxable year, stating specifically, with respect to such fund, the items of gross income and the deductions allowed by subtitle A, and shall include in the return the names and addresses of the participants who would be entitled to share in the taxable income if distributed and the amount of the proportionate share of each participant. The return shall be executed in the same manner as a return made by a corporation pursuant to the requirements of sections 6012 and 6062.

§ 1.6032–1 RETURNS OF BANKS WITH RESPECT TO COMMON TRUST FUNDS.—Every bank (as defined in section 581) maintaining a common trust fund shall make a return of income of the common trust fund, regardless of the amount of its taxable income. If a bank maintains more than one common trust fund, a separate return shall be made for each. No particular form is prescribed for making the return under this section, but Form 1065 may be used if it is designated by the bank as the return of a common trust fund. The return shall be made for the taxable year of the common trust fund and shall be filed on or before the fifteenth day of the fourth month following the close of such taxable year with the district director for the district in which the income tax return of the bank is filed. Such return shall state specifically with respect to the fund the items of gross income and the deductions allowed by subtitle A of the Code, and shall include each participant's name and address, the participant's proportionate share of taxable income or net loss (exclusive of gains and losses from sales or exchanges of capital assets), and the participant's proportionate share of gains and losses from sales or exchanges of capital assets. See § 1.584–2. A copy of the plan of the common trust fund must be filed with the return. If, however, a copy of such plan has once been filed with a return, it need not again be filed if the return contains a statement showing when and where it was filed. If the plan is amended in any way after such copy has been filed, a copy of the amendment must be filed with the return for the taxable year in which the amendment was made. For the signing of a return of a bank with respect to common trust funds, see § 1.6062–1, relating to the manner prescribed for the signing of a return of a corporation.

[NOTE: Sections 1.6033 and 1.6033–1 have been issued as a part of Treasury Decision 6203, approved September 13, 1956 [C.B. 1956–2, 219], and Treasury Decision 6301, approved July 2, 1958 [I.R.B. 1958–30, 10].]

§ 1.6034 STATUTORY PROVISIONS; RETURNS BY TRUSTS CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(c).

SEC. 6034. RETURNS BY TRUSTS CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(C).

(a) GENERAL RULE.—Every trust claiming a charitable, etc., deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary or his delegate may by forms or regulations prescribe, setting forth—

(1) The amount of the charitable, etc., deduction taken under section 642(c) 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 642(c) 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.

(b) EXCEPTION.—This section 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.

§ 1.6034–1 INFORMATION RETURNS REQUIRED OF CERTAIN TRUSTS CLAIMING CHARITABLE OR OTHER DEDUCTIONS UNDER SECTION 642(c).—(a) *In general.*—Every trust (other than a trust described in paragraph (b) of this section) claiming a charitable or other deduction under section 642(c) shall file, with respect to the taxable year for which such deduction is claimed, a return of information on Form 1041A. The return shall set forth the name and address of the trust and the following information concerning the trust in such detail as is prescribed by the form or in the instructions issued with respect to such form:

(1) The amount of the charitable or other deduction taken under section 642(c) 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 642(c);

(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 642(c), 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 642(c) 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.

(b) *Exception.*—A trust is not required to file a Form 1041A for any taxable year with respect to which the trustee is required by the terms of the governing instrument and applicable local law to distribute currently all of the income of the trust. For this purpose, the income of the trust shall be determined in accordance with section 643(b) and § § 1.643(b)-1 and 1.643(b)-2.

(c) *Time and place for filing return.*—The return on Form 1041A shall be filed on or before the fifteenth day of the fourth month following the close of the taxable year of the trust, with the internal revenue officer with whom the fiduciary files the return on Form 1041 for such trust.

(d) *Other provisions.*—For publicity of information on Form 1041A, see section 6104 and the regulations thereunder in Part 301 of this chapter. For the criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

§ 1.6035 STATUTORY PROVISIONS; RETURNS OF OFFICERS, DIRECTORS, AND SHAREHOLDERS OF FOREIGN PERSONAL HOLDING COMPANIES.

SEC. 6035. RETURNS OF OFFICERS, DIRECTORS, AND SHAREHOLDERS OF FOREIGN PERSONAL HOLDING COMPANIES.

(a) OFFICERS AND DIRECTORS.—

(1) MONTHLY RETURNS.—On the 15th day of each month each individual who on such day is an officer or a director of a foreign corporation which, with respect to its taxable year preceding the taxable year in which such month occurs, was a foreign personal holding company (as defined in section 552), shall make a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Secretary or his delegate shall by forms or regulations prescribe as necessary for carrying out the provisions of this title. The Secretary or his delegate may by regulations prescribe, as the period with respect to which returns shall be made, a longer period than a month. In such case the return shall be due on the 15th day of the succeeding period, and shall be made by the individuals who on such day are officers or directors of the corporation.

(2) ANNUAL RETURNS.—On the 60th day after the close of the taxable year of a foreign personal holding company (as defined in section 552), each individual who on such 60th day is an officer or director of the corporation shall make a return setting forth—

(A) In complete detail the gross income, deductions and credits, taxable income, and undistributed foreign personal holding company income of such foreign personal holding company for such taxable year; and

(B) The same information with respect to such taxable year as is required in paragraph (1), except that if all the required returns with respect to such year have been filed under paragraph (1), no information under this subparagraph need be set forth in the return filed under this paragraph.

(b) SHAREHOLDERS.—

(1) MONTHLY RETURNS.—On the 15th day of each month each United States shareholder, by or for whom 50 percent or more in value of the outstanding stock of a foreign corporation is owned directly or indirectly (including, in the case of an individual, stock owned by the members of his family as defined in section 544(a)(2)), if such foreign corporation with respect to its taxable

year preceding the taxable year in which such month occurs was a foreign personal holding company (as defined in section 552), shall make a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Secretary or his delegate shall by forms or regulations prescribe as necessary for carrying out the provisions of this title. The Secretary or his delegate may by regulations prescribe, as the period with respect to which returns shall be made, a longer period than a month. In such case the return shall be due on the 15th day of the succeeding period, and shall be made by the persons who on such day are United States shareholders.

(2) ANNUAL RETURNS.—On the 60th day after the close of the taxable year of a foreign personal holding company (as defined in section 552) each United States shareholder by or for whom on such 60th day 50 percent or more in value of the outstanding stock of such company is owned directly or indirectly (including, in the case of an individual, stock owned by members of his family as defined in section 544(a)(2)) shall make a return setting forth the same information with respect to such taxable year as is required in paragraph (1), except that, if all the required returns with respect to such year have been made under paragraph (1), no return shall be required under this paragraph.

§ 1.6035–1 RETURNS OF OFFICERS AND DIRECTORS OF FOREIGN PERSONAL HOLDING COMPANIES FOR TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1958.—(a) *Requirement of returns.*—(1) *Form 957.*—For taxable years beginning after December 31, 1958, on the fifteenth day of the first month after the close of each such taxable year of a foreign personal holding company (as defined in section 552) each United States citizen or resident who on such day is an officer or director of such company shall file an information return on Form 957 with respect to the stock and securities of the company setting forth the following information with respect to the taxable year:

(i) The name and address of the corporation;

(ii) The kind of business in which the corporation is engaged;

(iii) The date of incorporation;

(iv) The country under the laws of which the corporation is incorporated;

(v) The number of shares and par value of common stock of the corporation outstanding as of the beginning and end of the taxable year;

(vi) The number of shares and par value of preferred stock of the corporation outstanding as of the beginning and end of the taxable year, the rate of dividend on such stock, and whether such dividend is cumulative or noncumulative;

(vii) A description of the convertible securities issued by the corporation, including a statement of the face value of, and rate of interest on, such securities;

(viii) The name and address of each person who was a shareholder during the taxable year and the class and number of shares held by each, together with an explanation of any changes in stockholdings during the taxable year;

(ix) The name and address of each holder during the taxable year of securities convertible into stock of the corporation, and the class,

number, and face value of the securities held by each, together with an explanation of any changes in the holdings of such securities during the taxable year;

(x) If any resolution or plan in respect of the dissolution of the corporation or the liquidation of the whole or any part of its capital stock was adopted during the taxable year, a certified copy of such resolution or plan and of any amendments thereof or supplements thereto;

(xi) If the return is for any taxable year in which the corporation was organized or reorganized—

(*a*) The classes and kinds of assets transferred to the corporation for stock or securities of the corporation in connection with its formation, organization, or reorganization;

(*b*) A detailed list of any stock or securities included in the assets transferred to the corporation for stock or securities of the corporation; and

(*c*) The names and addresses of the persons who were the owners of assets transferred to the corporation for stock or securities of the corporation immediately prior to such transfer; and

(xii) Such other information with respect to the stock or securities of the company as may be required by the return form.

(2) *Form 958.*—For taxable years beginning after December 31, 1958, on the sixtieth day after the close of the taxable year of a foreign personal holding company (as defined in section 552), each United States citizen or resident who on such day is an officer or director of such company shall file an information return on Form 958 with respect to the income of the corporation for the taxable year setting forth the following information:

(i) The gross income, deductions and credits, taxable income, foreign personal holding company income, and undistributed foreign personal holding company income for such taxable year, in complete detail;

(ii) The same information with respect to such taxable year as is required in subparagraph (1) of this paragraph, except that if all the information required under subparagraph (1) of this paragraph has been submitted, such information need not be set forth in the return on Form 958; and

(iii) Such other information as is required by the return form.

(b) *Returns jointly made.*—If two or more officers or directors of a foreign personal holding company are required to file information returns for any taxable year under section 6035(a) and this section, any two or more of such officers or directors, may in lieu of filing separate returns for such year, jointly execute and file the return on Form 957 and the return on Form 958.

(c) *Separate returns for each corporation.*—If a person is required to file returns under section 6035(a) and this section with respect to more than one foreign personal holding company, separate returns must be filed with respect to each company.

(d) *Place for filing returns.*—Returns required under section 6035 (a) and this section shall be filed with the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C.

(e) *Penalties.*—For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

§ 1.6035–2 RETURNS OF SHAREHOLDERS OF FOREIGN PERSONAL HOLDING COMPANIES FOR TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1958.—(a) *Requirement of return.*—For taxable years beginning after December 31, 1958, on the fifteenth day of the first month after the close of each such taxable year of a foreign personal holding company (as defined in section 552) each United States shareholder, by or for whom on such day 50 percent or more in value of the outstanding stock of such company is owned directly or indirectly, shall file an information return on Form 957 for such taxable year. For purposes of this section, an individual shall be considered as owning the stock owned by members of his family, as described in section 544(a)(2). The return shall set forth for the taxable year the same information as is required under paragraph (a)(1) of § 1.6035–1.

(b) *Duplicate returns.*—If a shareholder of a foreign personal holding company is required to file a return as an officer or a director of such company under section 6035(a) and paragraph (a)(1) of § 1.6035–1, he shall file such return and not the return required to be filed under section 6035(b) and this section.

(c) *Separate return for each corporation.*—If a person is required to file a return under section 6035(b) and this section with respect to more than one foreign personal holding company, a separate return must be filed with respect to each company.

(d) *Place for filing return.*—The return required under section 6035(b) and this section shall be filed with the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C.

(e) *Penalties.*—For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

§ 1.6035–3 RETURNS OF OFFICERS, DIRECTORS, AND SHAREHOLDERS OF FOREIGN PERSONAL HOLDING COMPANIES FOR PERIODS WITHIN OR FOR TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1959.—(a) For rules relating to information returns required to be filed by officers and directors of foreign personal holding companies for periods within or for taxable years beginning before January 1, 1959, see §§ 39.338–1 and 39.338–2 of Regulations 118 (26 CFR (1939) Part 39) as made applicable under the Internal Revenue Code of 1954 by Treasury Decision 6091, approved August 16, 1954 (19 F.R. 5167) [C.B. 1954–2, 47].

(b) For rules relating to information returns required to be filed by shareholders of foreign personal holding companies for taxable years beginning before January 1, 1959, see §§ 39.339–1 and 39.339–2 of Regulations 118 (26 CFR (1939) Part 39) as made applicable under the Internal Revenue Code of 1954 by Treasury Decision 6091, approved August 16, 1954 (19 F.R. 5167).

§ 1.6041 STATUTORY PROVISIONS; INFORMATION AT SOURCE.

SEC. 6041. INFORMATION AT SOURCE.

(a) PAYMENTS OF $600 OR MORE.—All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments described in section 6042(1) or section 6045), of $600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary or his delegate, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary or his delegate, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

(b) COLLECTION OF FOREIGN ITEMS.—In the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by any person undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange, such person shall make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the amount paid and the name and address of the recipient of each such payment.

(c) PAYMENTS OF INTEREST BY CORPORATIONS.—Every corporation making payments of interest, regardless of amounts, shall, when required by regulations of the Secretary or his delegate, make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the amount paid and the name and address of the recipient of each such amount.

(d) RECIPIENT TO FURNISH NAME AND ADDRESS.—When necessary to make effective the provisions of this section, the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

§ 1.6041–1 RETURN OF INFORMATION AS TO PAYMENTS OF $600 OR MORE.—(a) *General rule.*—(1) Except as provided in § 1.6041–3, every person engaged in a trade or business shall make an information return for the calendar year with respect to payments made by him during such year in the course of his trade or business to another person of fixed or determinable—

(i) Salaries, wages, commissions, fees, and other forms of compensation for services rendered aggregating $600 or more;

(ii) Interest, rents, royalties, annuities, pensions, and other gains, profits, and income aggregating $600 or more; or

(iii) Foreign items, as defined in § 1.6041–4, aggregating $600 or more.

The payments described in subdivisions (i), (ii), and (iii) of this subparagraph shall not include any payments described in sections 6042(1), 6043(2), 6044, and 6045.

(2) The return required by this paragraph shall be made on Forms 1099 and 1096, except that the return with respect to distributions to beneficiaries of a trust or of an estate shall be made on Form 1041. A separate Form 1099 shall be furnished for each person to whom such payments of $600 or more are made. For time and place for filing Forms 1099 and 1096, see § 1.6041–6.

(b) *Persons engaged in trade or business.*—The term "all persons engaged in a trade or business", as used in section 6041(a), includes

not only those so engaged for gain or profit, but also organizations the activities of which are not for the purpose of gain or profit. Thus, the term includes the organizations referred to in sections 401(a), 501(c), 501(d) and 521 and in paragraph (g) of this section. On the other hand, section 6041(a) applies only to payments in the course of trade or business; hence it does not apply to an amount paid by the proprietor of a business to a physician for medical services rendered by the physician to the proprietor's child.

(c) *Fixed or determinable income.*—Income is fixed when it is to be paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained. The income need not be paid annually or at regular intervals. The fact that the payments may be increased or decreased in accordance with the happening of an event does not for purposes of this section make the payments any the less determinable. A salesman working by the month for a commission on sales which is paid or credited monthly receives determinable income.

(d) *Payments specifically included.*—(1) Sums paid in respect of life insurance, endowment, or annuity contracts are required to be reported in returns of information—

(i) Unless the payment is made in respect of a life insurance or endowment contract by reason of the death of the insured and is not required to be reported by paragraph (b) of § 1.6041–2, or

(ii) Unless the payment is made by reason of the surrender or lapse of a policy which the insurance company can establish by its records was purchased and paid for by the insured.

(2) Fees for professional services paid to attorneys, physicians, and members of other professions are required to be reported in returns of information if paid by persons engaged in a trade or business and paid in the course of such trade or business.

(3) Amounts paid as prizes and awards which are required to be included in gross income under section 74 and § 1.74–1 when paid in the course of a trade or business shall be reported in returns of information.

(e) *Payment made in medium other than cash.*—If any payment required to be reported on Form 1099 is made in property other than money, the fair market value of the property at the time of payment is the amount to be included on such form.

(f) *When payment deemed made.*—For purposes of a return of information, an amount is deemed to have been paid when it is credited or set apart to a person without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and is made available to him so that it may be drawn at any time, and its receipt brought within his own control and disposition.

(g) *Payments made by United States, State, or Territory.*—Returns on Forms 1099 and 1096 of payments made by the United States, or a State, Territory, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, shall be made by the officer or employee of the United States, or of such State, Territory, or political subdivi-

sion, or of the District of Columbia, or of such agency or instrumentality, as the case may be, having control of such payments or by the officer or employee appropriately designated to make such returns.

§ 1.6041–2 RETURN OF INFORMATION AS TO PAYMENTS TO EMPLOYEES.—(a) *In general.*—Wages, as defined in section 3401, paid to an employee are required to be reported on Form W–2. All other payments of compensation, including the cash value of payments made in any medium other than cash, to an employee by his employer in the course of the trade or business of the employer must be reported on Form 1099 if the total of such payments and the amount of the employee's wages, if any, required to be reported on Form W–2 equals $600 or more in a calendar year. For example, if a payment of $700 was made to an employee and $400 thereof represents wages subject to withholding under section 3402 and the remaining $300 represents compensation not subject to withholding, the $400 must be reported on Form W–2 and the $300 must be reported on Form 1099.

(b) *Distributions under employees' trust.*—Amounts which are distributed or made available to a beneficiary, and to which section 402 (relating to employees' trusts) or section 403 (relating to employee annuity plans) applies, shall be reported on Forms 1099 and 1096 to the extent such amounts are includible in the gross income of such beneficiary when the amounts so includible are $600 or more in any calendar year.

§ 1.6041–3 PAYMENTS FOR WHICH NO RETURN OF INFORMATION ON FORMS 1099 AND 1096 IS REQUIRED.—Payments of the following character need not be reported on Forms 1099 and 1096—

(a) Payments of income required to be reported on Forms 1012, 1013, 1042, 1042S, 1000, 1001 (including all special variations thereof), 941, W–2, and W–3;

(b) Payments by a broker to his customer;

(c) Payments of any type made to corporations (except payments described in section 6044 and § 1.6044–1);

(d) Payments of bills for merchandise, telegrams, telephone, freight, storage, and similar charges;

(e) Payments of rent made to real estate agents (but the agent is subject to the requirements of paragraph (a)(1)(ii) of § 1.6041–1);

(f) Payments representing earned income for services rendered without the United States made to a citizen of the United States, if it is reasonable to believe that such amounts will be excluded from gross income under the provisions of section 911 and the regulations thereunder;

(g) Salaries and profits paid or distributed by a partnership to the individual partners;

(h) Payments of commissions to general agents by fire insurance companies or other companies insuring property, except when specifically directed by the Commissioner to be filed;

(i) Advances, reimbursements, or charges for traveling and other business expenses of an employee to the extent that the employee is required to account (within the meaning of the term "account" as set forth in paragraph (b)(4) of § 1.162–17) and does so account to his employer for such expenses;

(j) Amounts paid to persons in the military or civil service of the United States or a State, Territory or political subdivision thereof, or the District of Columbia as an allowance or reimbursement for traveling or other bona fide ordinary and necessary expenses, including an allowance for meals and lodging or a per diem allowance in lieu of subsistence;

(k) Payments of interest on obligations of the United States, or a State, Territory, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing (but for requirements for reporting certain such payments by the United States or any agency or instrumentality thereof, see §§ 1.1461–1 to 1.1461–3, inclusive);

(l) Payments of interest on corporate bonds (but for requirements for reporting payments of interest on bonds, mortgages, deeds of trust, or other similar obligations issued before January 1, 1934, and containing a tax-free covenant, see §§ 1.1461–1 to 1.1461–3, inclusive);

(m) Payments made to employees for services performed in Puerto Rico;

(n) Amounts paid to persons in the service of an international organization, as defined in section 7701(a)(18) as an allowance or reimbursement for traveling or other bona fide ordinary and necessary expenses, including an allowance for meals and lodging or a per diem allowance in lieu of subsistence; and

(o) A payment of a type determined by the Commissioner to be paid as an award to an informer or other payment of a similar character made by the United States, a State, Territory, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

§ 1.6041–4 Returns of Information as to Foreign Items.—(a) *In general.*—If the amount of foreign items, as defined in paragraph (b) of this section, paid in any calendar year to a citizen or resident of the United States (individual or fiduciary), or a partnership any member of which is a citizen or resident of the United States, is $600 or more, an information return on Form 1099 setting forth the amount of such items is required to be filed by any person who accepts the item for collection as a matter of business or for profit, such as a bank. As used in this section, the term "collection" includes (1) payment of the foreign item in cash; (2) the crediting of the account of the person presenting the foreign item; (3) the tentative crediting of the account of the person presenting the foreign item until the amount of the foreign items is received by the bank or collecting agent from abroad; and (4) the receipt of foreign items for the purpose of transmitting them abroad for deposits.

(b) *Foreign items defined.*—The term "foreign items", as used in this section, means any item of interest upon the bonds of a foreign country or of a nonresident foreign corporation not having a fiscal or paying agent in the United States (including Puerto Rico as if a part of the United States), or any item of dividends upon the stock of such corporation.

(c) *License to collect foreign items.*—A bank or agent collecting foreign items is required to obtain a license pursuant to the provi-

sions of section 7001 and the regulations thereunder in Part 301 of this chapter.

§ 1.6041–5 INFORMATION AS TO ACTUAL OWNER.—When a person receiving a payment described in section 6041 is not the actual owner of the income received, the name and address of the actual owner shall be furnished upon demand of the person paying the income, and in default of compliance with such demand the payee becomes liable for the penalties provided. See section 7203.

§ 1.6041–6 TIME AND PLACE FOR FILING FORMS 1099 AND 1096 AND INFORMATION TO BE SHOWN ON FORM 1099.—Forms 1099 and 1096 for any calendar year shall be filed on or before February 28 of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for such forms. The name and address of the person making the payment and the name and address of the recipient of the payment shall be stated on Form 1099. If the present address of the recipient is not available, the last known post office address must be given.

§ 1.6042 STATUTORY PROVISIONS; RETURNS REGARDING CORPORATE DIVIDENDS, EARNINGS, AND PROFITS.

SEC. 6042. RETURNS REGARDING CORPORATE DIVIDENDS, EARNINGS, AND PROFITS.

Every corporation shall, when required by the Secretary or his delegate—

(1) Make a return of its payments of dividends, stating the name and address of, the number of shares owned by, and the amount of dividends paid to, each shareholder;

(2) Furnish to the Secretary or his delegate a statement of such facts as will enable him to determine the portion of the earnings or profits of the corporation (including gains, profits, and income not taxed) accumulated during such periods as the Secretary or his delegate may specify, which have been distributed or ordered to be distributed, respectively, to its shareholders during such taxable years as the Secretary or his delegate may specify; and

(3) Furnish to the Secretary or his delegate a statement of its accumulated earnings and profits and the names and addresses of the individuals or shareholders who would be entitled to such accumulated earnings and profits if divided or distributed, and of the amounts that would be payable to each.

§ 1.6042–1 RETURN OF INFORMATION AS TO PAYMENTS OF DIVIDENDS.—(a) *Requirement of return.*—(1) *In General.*—Except as provided in subparagraphs (2) and (3) of this paragraph, 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 payment during the calendar year of $10 or more 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 shall file for the calendar year a return setting forth the amount of such payments for such calendar year. A separate return on Form 1099, showing the name and address of the payor and the shareholder, and the amount paid, shall be prepared with respect to

each shareholder. These returns shall be accompanied by transmittal Form 1096.

(2) *National farm loan associations and certain other corporations.*—A corporation described in section 501(c)(12), (15), or (16), or section 521(b)(1), or a national farm loan association or a production credit association, making a payment of a dividend or a distribution to any shareholder shall file an information return with respect to such payments when they total $100 or more during the calendar year.

(3) *Savings and loan associations, etc.*—A savings and loan association, a cooperative bank, a homestead association, a credit union, or a building and loan association is required to file an information return with respect to distributions to a shareholder only if the amount thereof paid to the shareholder during the calendar year, or such amount when aggregated with other payments made to the shareholder during such year of interest, rents, royalties, annuities, pensions, and other gains, profits, and income, as described in paragraph (a)(1)(ii) of § 1.6041–1, totals $600 or more. For this purpose, the term "distributions to a shareholder" includes periodical distributions of earnings on running installment shares of stock paid or credited by a building and loan association to its holders of that class of stock, and the sum received upon withdrawal from a building and loan association in excess of the amounts paid in on account of membership fees and stock subscriptions, consisting of accumulated profits.

(b) *Nontaxable or partly nontaxable distributions.*—In the case of a distribution which is made from a depletion or depreciation reserve, or which for any other reason is deemed by the corporation to be nontaxable or partly nontaxable to its shareholders, the corporation shall fill in the information on both sides of Form 1096.

(c) *Information as to actual owner.*—(1) *In general.*—When the person receiving a payment with respect to which an information return is required under authority of the Internal Revenue Code of 1954 is not the actual owner of the income received, the name and address of the actual owner or payee shall be furnished upon demand of the person paying the income, and in default of a compliance with such demand the payee becomes liable for the penalties provided. See section 7203. Dividends on stock are prima facie the income of the record owner of the stock. If a record owner of stock who is not the actual owner thereof receives dividends on such stock, he shall file a Form 1087 disclosing the name and address of the actual owner or payee, the name of the issuing corporation, the number of shares of such stock, and the amount of dividends received with respect to such stock during the calendar year. Unless such a disclosure is made the record owner will be held liable for any tax based upon such dividends. A separate Form 1087 shall be filed by the record owner for each of the stockholdings of each actual owner for whom he acts as nominee. However, where the record owner is a banking institution, trust company, or brokerage firm, it may, provided it maintains such records as will permit a prompt substantiation of each payment of dividends made to the actual owner, file one Form 1087 for each actual owner for whom it acts as nominee and report thereon the total amount of the divi-

dends paid to such actual owner (without itemization as to the issuing company, class of stock, etc.).

(2) *Exceptions.*—The filing of Form 1087 is not required if—

(i) The record owner is required to file a fiduciary return on Form 1041, or a withholding return on Form 1042, disclosing the name and address of the actual owner or payee;

(ii) The actual owner or payee is a nonresident alien individual, foreign partnership, or foreign corporation and the tax has been withheld at the source before receipt of the dividends by the record owner;

(iii) The record owner is a banking institution, a trust company, or a brokerage firm which prepares the individual income tax return of the actual owner, provided the verification on the return with respect to the preparation thereof is executed by such record owner;

(iv) The record owner is a nominee of a banking institution or trust company exercising trust powers, and such banking institution or trust company is required to file a fiduciary return on Form 1041 which reflects the name and address of the actual owner or payee;

(v) The actual owner is an organization exempt from taxation under section 501(a) and is exempt from the requirement of filing a return under section 6033 and paragraph (g) of § 1.6033–1; or

(vi) The record owner is a banking institution or trust company exercising trust powers, or a nominee thereof, and the actual owner is an organization exempt from taxation under section 501(a) for which such banking institution or trust company files an annual return.

See § 1.1441–1, relating to withholding of tax on nonresident alien individuals, and § 1.1442–1, relating to withholding of tax on nonresident foreign corporations.

(d) *Time and place for filing.*—Forms 1099, 1096, and 1087 for any calendar year shall be filed on or before February 28 of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for such forms.

§ 1.6043 Statutory Provisions; Return Regarding Corporate Dissolution or Liquidation.

SEC. 6043. RETURN REGARDING CORPORATE DISSOLUTION OR LIQUIDATION.

Every corporation shall—

(1) With 30 days after the adoption by the corporation of a resolution or plan for the dissolution of the corporation or for the liquidation of the whole or any part of its capital stock, make a return setting forth the terms of such resolution or plan and such other information as the Secretary or his delegate shall by forms or regulations prescribe; and

(2) When required by the Secretary or his delegate, make a return regarding its distributions in liquidation, stating the name and address of, the number and class of shares owned by, and the amount paid to, each shareholder, or, if the distribution is in property other than money, the fair market value (as of the date the distribution is made) of the property distributed to each shareholder.

§ 1.6043–1 RETURN REGARDING CORPORATE DISSOLUTION OR LIQUIDATION.—(a) *Requirement of returns.*—Within 30 days after the adoption of any resolution or plan for or in respect of the dissolution of a corporation or the liquidation of the whole or any part of its capital stock, the corporation shall file a return on Form 966, containing the information required by paragraph (b) of this section and by such form. Such return shall be filed with the district director for the district in which the income tax return of the corporation is filed. Further, if after the filing of a Form 966 there is an amendment of or supplement to the resolution or plan, an additional Form 966, based on the resolution or plan as amended or supplemented, must be filed within 30 days after the adoption of such amendment or supplement. A return must be filed under section 6043 and this section in respect of a liquidation whether or not any part of the gain or loss to the shareholders upon the liquidation is recognized under the provisions of section 1002.

(b) *Contents of return.*—(1) *In general.*—There shall be attached to and made a part of the return required by section 6043 and paragraph (a) of this section a certified copy of the resolution or plan, together with any amendments thereof or supplements thereto, and such return shall in addition contain the following information:

(i) The name and address of the corporation;

(ii) The place and date of incorporation;

(iii) The date of the adoption of the resolution or plan and the dates of any amendments thereof or supplements thereto; and

(iv) The internal revenue district in which the last income tax return of the corporation was filed and the taxable year covered thereby.

(2) *Liquidation within one calendar month.*—If the corporation is a domestic corporation, and the plan of liquidation provides for a distribution in complete cancellation or redemption of all the capital stock of the corporation, and for the transfer of all the property of the corporation under the liquidation entirely within some one calendar month pursuant to section 333, and any shareholder claims the benefit of such section, such return shall, in addition to the information required by subparagraph (1) of this paragraph, contain the following:

(i) A statement showing the number of shares of each class of stock outstanding at the time of the adoption of the plan of liquidation, together with a description of the voting power of each such class;

(ii) A list of all the shareholders owning stock at the time of the adoption of the plan of liquidation, together with the number of shares of each class of stock owned by each shareholder, the certificate numbers thereof, and the total number of votes to which entitled on the adoption of the plan of liquidation; and

(iii) A list of all corporate shareholders as of January 1, 1954, together with the number of shares of each class of stock owned by each such shoreholder, the certificate numbers thereof, the total number of votes to which entitled on the adoption of the

plan of liquidation, and a statement of all changes in ownership of stock by corporate shareholders between January 1, 1954, and the date of the adoption of the plan of liquidation, both dates inclusive.

(3) *Returns in respect of amendments or supplements.*—If a return has been filed pursuant to section 6043 and this section, any additional return made necessary by an amendment of or a supplement to the resolution or plan will be deemed sufficient if it gives the date the prior return was filed and contains a duly certified copy of the amendment or supplement and all other information required by this section and by Form 966 which was not given in the prior return.

§ 1.6043–2 RETURN OF INFORMATION RESPECTING DISTRIBUTIONS IN LIQUIDATION.—(a) Unless the distribution is one in respect of which information is required to be filed pursuant to paragraph (b) of § 1.332–6, paragraph (a) of § 1.368–3, or § 1.1081–11, every corporation making any distribution of $600 or more during a calendar year to any shareholder in liquidation of the whole or any part of its capital stock shall file a return of information on Forms 1096 and 1099L, giving all the information required by such forms and by the regulations in this part. A separate Form 1099L must be prepared for each shareholder to whom such distribution was made, showing the name and address of such shareholder, the number and class of shares owned by him in liquidation of which such distribution was made, and the total amount distributed to him on each class of stock. If the amount distributed to such shareholder on any class of stock consisted in whole or in part of property other than money, the return on such form shall in addition show the amount of money distributed, if any, and shall list separately each class of property other than money distributed, giving a description of the property in each such class and a statement of its fair market value at the time of the distribution. Such forms, accompanied by transmittal Form 1096 showing the number of Forms 1099L filed therewith, shall be filed on or before February 28 of the year following the calendar year in which such distribution was made with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for such forms.

(b) If the distribution is in complete liquidation of a domestic corporation pursuant to a plan of liquidation in accordance with which all the capital stock of the corporation is canceled or redeemed, and the transfer of all the property under the liquidation occurs within some one calendar month pursuant to section 333, and any shareholder claims the benefit of such section, the return on Form 1096 shall show (1) the amount of earnings and profits of the corporation accumulated after February 28, 1913, determined as of the close of such calendar month, without diminution by reason of distribution made during such calendar month, but including in such computation all items of income and expense accrued up to the date on which the transfer of all the property under the liquidation is completed, (2) the ratable share of such earnings and profits of each share of stock canceled or redeemed in the liquidation, and (3) the date and circumstances of the acquisition by the corporation of any stock or securities distributed to shareholders in the liquidation.

§ 1.6044 STATUTORY PROVISIONS; RETURNS REGARDING PATRONAGE DIVIDENDS.

SEC. 6044. RETURNS REGARDING PATRONAGE DIVIDENDS.

(a) PAYMENTS OF $100 OR MORE.—Any corporation allocating amounts as patronage dividends, rebates, or refunds (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice, or in some other manner that discloses to each patron the amount of such dividend, refund, or rebate) shall make a return showing—

(1) The name and address of each patron to whom it has made such allocations amounting to $100 or more during the calendar year; and

(2) The amount of such allocations to each patron.

(b) PAYMENTS REGARDLESS OF AMOUNT.—If required by the Secretary or his delegate, any such corporation shall make a return of all patronage dividends, rebates, or refunds made during the calendar year to its patrons.

(c) EXCEPTIONS.—This section shall not apply in the case of any corporation (including any cooperative or nonprofit corporation engaged in rural electrification) described in section 501(c)(12) or (15) which is exempt from tax under section 501(a), or in the case of any corporation subject to a tax imposed by subchapter L of chapter 1.

§ 1.6044–1 RETURNS OF INFORMATION AS TO PATRONAGE DIVIDENDS, REBATES, OR REFUNDS.—(a) *Requirement.*—(1) *In general.*—Except as provided in subparagraph (2) of this paragraph, any corporation allocating to any patron amounts aggregating $100 or more during the calendar year as patronage dividends, rebates, or refunds (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, letters of advice, or in some other manner that discloses to each patron the amount of such dividend, rebate, or refund) shall for each calendar year file a return of information with respect to such allocation on Forms 1096 and 1099. A separate Form 1099 shall be prepared for each patron showing the name and address of the patron to whom such allocation is made, and the amount of the allocation. The allocation shall be reported for the calendar year during which the allocation is made, regardless of whether the allocation is deemed for the purpose of section 522 to be made at the close of a preceding taxable year of the corporation.

(2) *Exception.*—A return under section 6044 and this section is not required in the case of any corporation (including any cooperative or nonprofit corporation engaged in rural electrification) described in section 501(c)(12) or (15) which is exempt from tax under section 501(a), or in the case of any corporation subject to a tax imposed by subchapter L of chapter 1 of the Code.

(b) *Time and place for filing returns.*—Forms 1099, accompanied by transmittal Form 1096, shall be filed on or before February 28 of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for such forms.

(c) *Definitions.*—The terms "cooperative association", "patron", "patronage dividends, rebates, and refunds", and "allocation" are defined, for the purpose of this section, in paragraph (b) of § 1.522–1.

§ 1.6045 STATUTORY PROVISIONS; RETURNS OF BROKERS.

SEC. 6045. RETURNS OF BROKERS.

Every person doing business as a broker shall, when required by the Secretary or his delegate, make a return, in accordance with such regu-

lations as the Secretary or his delegate may prescribe, showing the names of customers for whom such person has transacted any business, with such details regarding the profits and losses and such other information as the Secretary or his delegate may by forms or regulations require with respect to each customer as will enable the Secretary or his delegate to determine the amount of such profits or losses.

§ 1.6046 STATUTORY PROVISIONS; RETURNS AS TO FORMATION OR REORGANIZATION OF FOREIGN CORPORATIONS.

SEC. 6046. RETURNS AS TO FORMATION OR REORGANIZATION OF FOREIGN CORPORATIONS.

(a) REQUIREMENT.—Every attorney, accountant, fiduciary, bank, trust company, financial institution, or other person, who aids, assists, counsels, or advises in, or with respect to, the formation, organization, or reorganization of any foreign corporation, shall, within 30 days thereafter, make a return in accordance with regulations prescribed by the Secretary or his delegate.

(b) FORM AND CONTENTS OF RETURN.—Such return shall be in such form, and shall set forth, in respect of each such corporation, to the full extent of the information within the possession or knowledge or under the control of the person required to make the return, such information as the Secretary or his delegate prescribes by forms or regulations as necessary for carrying out the provisions of the income tax laws.

(c) PRIVILEGED COMMUNICATIONS.—Nothing in this section shall be construed to require the making of a return by an attorney-at-law with respect to any advice given or information obtained through the relationship of attorney and client.

(d) CROSS REFERENCE.—For provisions relating to penalties for violations of this section, see section 7203.

§ 1.6046–1 RETURN AS TO FORMATION OR REORGANIZATION OF FOREIGN CORPORATIONS.—(a) *Requirement of returns.*—Every attorney, accountant, fiduciary, bank, trust company, financial institution, or other person, who aids, assists, counsels, or advises in, or with respect to, the formation, organization, or reorganization of any foreign corporation shall file an information return on Form 959. The return must be filed in every such case regardless of—

(1) The nature of the counsel or advice given, whether for or against the formation, organization, or reorganization of the foreign corporation, or the nature of the aid or assistance rendered, and

(2) The action taken upon the advice or counsel, that is, whether the foreign corporation is actually formed, organized or reorganized.

(b) *Special provisions.*—(1) *Employers.*—In the case of aid, assistance, counsel, or advice in, or with respect to, the formation, organization, or reorganization of a foreign corporation given by a person in whole or in part through the medium of employees (including, in the case of a corporation, the officers thereof), the return made by the employer must set forth in detail the information required by this section including that which, as an incident to such employment, is within the possession or knowledge or under the control of such employees.

(2) *Employees.*—The obligation of an employee (including in the case of a corporation, the officers thereof) to file a return with respect to any aid, assistance, counsel, or advice in or with respect to the formation, organization, or reorganization of a foreign corporation, given as an incident to his employment, will be satisfied if a return as prescribed by this section is duly filed by the employer. Clerks, stenographers, and other employees rendering aid or assistance solely

of a clerical or mechanical character in or with respect to the formation, organization, or reorganization of a foreign corporation are not required to file returns by reason of such services.

(3) *Partners.*—In the case of aid, assistance, counsel, or advice in, or with respect to, the formation, organization, or reorganization of a foreign corporation given by one or more members of a partnership in the course of its business, the obligation of each such individual member to file a return will be satisfied if a return as prescribed by this section is duly filed by the partnership executed by all the members of the firm who gave any such aid, assistance, counsel, or advice. If, however, the partnership has been dissolved at the time the return is due, individual returns must be filed by each member of the former partnership who gave any such aid, assistance, counsel, or advice.

(4) *Return jointly made.*—If two or more persons aid, assist, counsel, or advise in, or with respect to, the formation, organization, or reorganization of a particular foreign corporation, any two or more of such persons may, in lieu of filing several returns, jointly execute and file one return.

(5) *Separate return for each corporation.*—If a person aids, assists, counsels, or advises in, or with respect to, the formation, organization, or reorganization of more than one foreign corporation, a separate return must be filed with respect to each foreign corporation.

(c) *Information required to be shown on return.*—The return required by section 6046 and this section shall set forth the following information to the extent the information is within the possession or knowledge, or under the control, of the person filing the return:

(1) The name and address of the person (or persons) to whom, and the person (or persons) for whom, or on whose behalf, the aid, assistance, counsel, or advice was given;

(2) The name and address of the foreign corporation and the country under the laws of which it was formed, organized, or reorganized;

(3) The month and year when the foreign corporation was formed, organized, or reorganized;

(4) A statement of the manner in which the formation, organization, or reorganization of the foreign corporation was effected;

(5) A complete statement of the reasons for, and the purposes sought to be accomplished by, the formation, organization, or reorganization of the foreign corporation;

(6) A statement showing the classes and kinds of assets transferred to the foreign corporation in connection with its formation, organization, or reorganization, including a detailed list of any stock or securities included in such assets, and a statement showing the names and addresses of the persons who were the owners of such assets immediately prior to the transfer;

(7) The names and addresses of the shareholders of the foreign corporation at the time of the completion of its formation, organization, or reorganization, showing the classes of stock and number of shares held by each and, in the case of Forms 959 filed after December 31, 1958, the names and addresses of the subscribers to the stock of the foreign corporation and the number of shares subscribed to by each;

(8) The name and address of the person (or persons) having custody of the books of account and records of the foreign corporation; and

(9) Such other information as is required by the return form.

(d) *Privileged communications.*—An attorney-at-law is not required to file a return with respect to any advice given or information obtained through the relationship of attorney and client.

(e) *Time and place for filing return.*—(1) *Time for filing.*—Returns required by section 6046 and this section shall be filed within 30 days after the first performance of any of the functions referred to in paragraph (a) of this section. If, in a particular case, the aid, assistance, counsel, or advice given by any person extends over a period of more than one day, such person, to avoid the multiple filing of returns, shall file a return within 30 days after either of the following events:

(i) The formation, organization, or reorganization of the foreign corporation, or

(ii) The termination of his aid, assistance, counsel, or advice in, or with respect to, the formation, organization, or reorganization of the foreign corporation.

(2) *Place for filing.*—Returns required by section 6046 and this section shall be filed with the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C.

(f) *Penalties.*—For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

§ 1.6061 Statutory Provisions; Signing of Returns and Other Documents.

SEC. 6061. SIGNING OF RETURNS AND OTHER DOCUMENTS.

Except as otherwise provided by sections 6062 and 6063, any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary or his delegate.

§ 1.6061–1 Signing of Returns and Other Documents by Individuals.—(a) *Requirement.*—Each individual (including a fiduciary) shall sign the income tax return required to be made by him, except that the return may be signed for the taxpayer by an agent who is duly authorized in accordance with paragraph (a)(5) of § 1.6012–1 to make such return. Other returns, statements, or documents required under the provisions of subtitle A or F of the Code or of the regulations thereunder to be made by any person with respect to any tax imposed by subtitle A of the Code shall be signed in accordance with any regulations contained in this chapter, or any instructions, issued with respect to such returns, statements, or other documents.

(b) *Cross references.*—For provisions relating to the signing of returns, statements, or other documents required to be made by corporations and partnerships with respect to any tax imposed by subtitle A of the Code, see §§ 1.6062–1 and 1.6063–1, respectively. For provisions relating to the making of returns by agents, see paragraphs (a)(5) and (b)(6) of § 1.6012–1: and to the making of re-

turns for minors and persons under a disability, see paragraph (a) (4) of § 1.6012–1 and paragraph (b) (3) of § 1.6012–3.

§ 1.6062 STATUTORY PROVISIONS; SIGNING OF CORPORATION RETURNS.

SEC. 6062. SIGNING OF CORPORATION RETURNS.

The return of a corporation with respect to income shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duty authorized so to act. In the case of a return made for a corporation by a fiduciary pursuant to the provisions of section 6012(b) (3), such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

§ 1.6062–1 SIGNING OF RETURNS, STATEMENTS, AND OTHER DOCUMENTS MADE BY CORPORATIONS.—(a) *Returns.*—(1) *In general.*—Returns required to be made by corporations under the provisions of subtitle A or F of the Code, or the regulations thereunder, with respect to any tax imposed by subtitle A of the Code, shall be signed for the corporation by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to sign such returns. It is not necessary that the corporate seal be affixed to the return. Spaces provided on return forms for affixing the corporate seal are for the convenience of corporations required by charter, or by the law of the jurisdiction in which they are incorporated, to affix their corporate seals in the execution of instruments.

(2) *By fiduciaries.*—A return with respect to income required to be made for a corporation by a fiduciary, pursuant to the provisions of section 6012(b) (3), shall be signed by such fiduciary. See paragraph (b) (4) of § 1.6012–3.

(3) *By agents.*—A return with respect to income required to be made by an agent for a foreign corporation, which has no office or place of business in the United States, shall be signed by such agent. See paragraph (g) (4) of § 1.6012–2.

(b) *Statements and other documents.*—Statements and other documents required to be made by or for corporations under the provisions of subtitle A or F of the Code, or the regulations thereunder, with respect to any tax imposed by subtitle A, shall be signed in accordance with the regulations contained in this chapter, or the forms and instructions, issued with respect to such statements or other documents.

(c) *Evidence of authority to sign.*—An individual's signature on a return, statement, or other document made by or for a corporation shall be prima facie evidence that such individual is authorized to sign such return, statement, or other document.

(d) *Related provisions.*—For the rules relating to the verification of returns, see § 1.6065–1. For provisions with respect to the signing of returns generally, see § 301.6061–1 of this chapter.

§ 1.6063 STATUTORY PROVISIONS; SIGNING OF PARTNERSHIP RETURNS.

SEC. 6063. SIGNING OF PARTNERSHIP RETURNS.

The return of a partnership made under section 6031 shall be signed by any one of the partners. The fact that a partner's name is signed

on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

§ 1.6063–1 SIGNING OF RETURNS, STATEMENTS, AND OTHER DOCUMENTS MADE BY PARTNERSHIP.—(a) *In general.*—Returns, statements, and other documents required to be made by partnerships under the provisions of subtitle A or F of the Code, or the regulations thereunder, with respect to any tax imposed by subtitle A of the Code shall be signed by any one of the partners. However, with respect to the signing of powers of attorney, see paragraph (a)(2) of § 601.504 of this chapter.

(b) *Evidence of authority to sign.*—A partner's signature on a return, statement, or other document made by or for a partnership of which he is a member shall be prima facie evidence that such partner is authorized to sign such return, statement, or other document.

§ 1.6065 STATUTORY PROVISIONS; VERIFICATION OF RETURNS.

SEC. 6065. VERIFICATION OF RETURNS.

(a) PENALTIES OF PERJURY. Except as otherwise provided by the Secretary or his delegate, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

(b) OATH.—The Secretary or his delegate may by regulations require that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be verified by an oath. This subsection shall not apply to returns and declarations with respect to income taxes made by individuals.

§ 1.6065–1 VERIFICATION OF RETURNS.—(a) *Persons signing returns.*—If a return, declaration, statement, or other document made under the provisions of subtitle A or F of the Code, or the regulations thereunder, with respect to any tax imposed by subtitle A of the Code is required by the regulations contained in this chapter, or the form and instructions, issued with respect to such return, declaration, statement, or other document, to contain or be verified by a written declaration that it is made under the penalties of perjury, such return, declaration, statement, or other document shall be so verified by the person signing it.

(b) *Persons preparing returns.*—(1) *In general.*—Except as provided in subparagraph (2) of this paragraph, if a return, declaration, statement, or other document is prepared for a taxpayer by another person for compensation or as an incident to the performance of other services for which such person receives compensation, and the return, declaration, statement, or other document requires that it shall contain or be verified by a written declaration that it is prepared under the penalties of perjury, the preparer must so verify the return, declaration, statement, or other document. A person who renders mere mechanical assistance in the preparation of a return, declaration, statement, or other document as, for example, a stenographer or typist, is not considered as preparing the return, declaration, statement, or other document.

(2) *Exception.*—The verification required by subparagraph (1) of this paragraph is not required on returns, declarations, statements, or other documents which are prepared—

(i) For an employee either by his employer or by an employee designated for such purpose by the employer, or

(ii) For an employer as a usual incident of the employment of one regularly or continuously employed by such employer.

§ 1.6071 STATUTORY PROVISIONS; TIME FOR FILING RETURNS AND OTHER DOCUMENTS.

SEC. 6071. TIME FOR FILING RETURNS AND OTHER DOCUMENTS.

(a) GENERAL RULE.—When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

* * * * * * *

§ 1.6071–1 TIME FOR FILING RETURNS AND OTHER DOCUMENTS.—(a) *In general.*—Whenever a return, statement, or other document is required to be made under the provisions of subtitle A or F of the Code, or the regulations thereunder, with respect to any tax imposed by subtitle A of the Code, and the time for filing such return, statement, or other document is not provided for by the Code, it shall be filed at the time prescribed by the regulations contained in this chapter with respect to such return, statement, or other document.

(b) *Return for a short period.*—In the case of a return with respect to tax under subtitle A for a short period (as defined in section 443, the district director may, upon a showing by the taxpayer of unusual circumstances, prescribe a time for filing the return for such period later than the time when such return would otherwise be due.

(c) *Time for filing certain information returns.*—(1) For provisions relating to the time for filing returns of partnership income, see paragraph (e)(2) of § 1.6031–1.

(2) For provisions relating to the time for filing information returns by banks with respect to common trust funds, see § 1.6032–1.

(3) For provisions relating to the time for filing information returns by certain organizations exempt from taxation under section 501(a), see paragraph (e) of § 1.6033–1.

(4) For provisions relating to the time for filing information returns by trusts claiming charitable deductions under section 642(c), see paragraph (c) of § 1.6034–1.

(5) For provisions relating to the time for filing information returns by officers, directors, and shareholders of foreign personal holding companies, see §§ 1.6035–1 and 1.6035–2.

(6) For provisions relating to the time for filing information returns by persons making certain payments, see § 1.6041–6.

(7) For provisions relating to the time for filing information returns regarding corporate dividends, earnings, profits, and ownership of stock, see paragraph (d) of § 1.6042–1.

(8) For provisions relating to the time for filing information returns by corporations with respect to contemplated dissolution or liquidation, see paragraph (a) of § 1.6043–1.

(9) For provisions relating to the time for filing information returns by corporations with respect to distributions in liquidation, see paragraph (a) of § 1.6043–2.

(10) For provisions relating to the time for filing information returns with respect to payments of patronage dividends, see paragraph (b) of § 1.6044–1.

(11) For provisions relating to the time for filing information returns with respect to formation or reorganization of foreign corporations, see § 1.6046–1.

§ 1.6072 STATUTORY PROVISIONS; TIME FOR FILING INCOME TAX RETURNS.

SEC. 6072. TIME FOR FILING INCOME TAX RETURNS.

(a) GENERAL RULE.—In the case of returns under section 6012, 6013, 6017, or 6031 (relating to income tax under subtitle A), returns made on the basis of the calendar year shall be filed on or before the 15th day of April following the close of the calendar year and returns made on the basis of a fiscal year shall be filed on or before the 15 day of the fourth month following the close of the fiscal year, except as otherwise provided in the following subsections of this section.

(b) RETURNS OF CORPORATIONS.—Returns of corporations under section 6012 made on the basis of the calendar year shall be filed on or before the 15th day of March following the close of the calendar year, and such returns made on the basis of a fiscal year shall be filed on or before the 15th day of the third month following the close of the fiscal year.

(c) RETURNS BY CERTAIN NONRESIDENT ALIEN INDIVIDUALS AND FOREIGN CORPORATIONS.—Returns made by nonresident alien individuals (other than those whose wages are subject to withholding under chapter 24) and foreign corporations (other than those having an office or place of business in the United States) under section 6012 on the basis of a calendar year shall be filed on or before the 15th day of June following the close of the calendar year and such returns made on the basis of a fiscal year shall be filed on or before the 15th day of the 6th month following the close of the fiscal year.

(d) RETURNS OF EXEMPT COOPERATIVE ASSOCIATIONS.—In the case of income tax returns of exempt cooperative associations taxable under the provisions of section 522, returns made on the basis of a calendar year shall be filed on or before the 15th day of September following the close of the calendar year and returns made on the basis of a fiscal year shall be filed on or before the 15th day of the 9th month following the close of the fiscal year.

(e) INCOME TAX DUE DATES POSTPONED IN CASE OF CHINA TRADE ACT CORPORATIONS.—In the case of any taxable year beginning after December 31, 1948, and ending before October 1, 1956, no Federal income tax return of any corporation organized under the China Trade Act, 1922 (42 Stat. 849, U.S.C. title 15, chapter 4), as amended, shall become due until December 31, 1956, but only with respect to any such coropration and any such taxable year which the Secretary or his delegate may determine reasonable under the circumstances in China pursuant to such regulations as may be prescribed. Such due date shall be subject to the power of the Secretary or his delegate to extent the time for filing such return, as in other cases.

§ 1.6072–1 TIME FOR FILING RETURNS OF INDIVIDUALS, ESTATES, AND TRUSTS.—(a) *In general.*—Except as provided in paragraphs (b) and (c) of this section, returns of income required under sections 6012, 6013, 6014, and 6017 of individuals, estates, and trusts (including unrelated business tax returns of domestic and foreign trusts referred to in section 511(b)(2)) shall be filed on or before the fifteenth day of the fourth month following the close of the taxable year.

(b) *Decedents.*—In the case of a final return of a decedent for a fractional part of a year, the due date of such return shall be the fifteenth day of the fourth month following the close of the 12-month period which began with the first day of such fractional part of the year.

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(c) *Nonresident alien individuals.*—The income tax return of a nonresident alien individual shall be filed on or before the fifteenth day of the sixth month following the close of the taxable year. However, a nonresident alien individual who for the taxable year has wages subject to withholding under chapter 24 of the Code shall file his income tax return on or before the fifteenth day of the fourth month following the close of the taxable year.

(d) *Last day for filing return.*—For provisions relating to the time for filing a return where the last day for filing falls on Saturday, Sunday, or a legal holiday, see section 7503 and § 301.7503–1 of this chapter.

§ 1.6072–2 Time for Filing Returns of Corporations.—(a) *Domestic and certain foreign corporations.*—The income tax return required under section 6012 of a domestic corporation or of a foreign corporation having an office or place of business in the United States shall be filed on or before the fifteenth day of the third month following the close of the taxable year.

(b) *Foreign corporations not having an office or place of business in the United States.*—The income tax return of a foreign corporation which does not have an office or place of business in the United States shall be filed on or before the fifteenth day of the sixth month following the close of the taxable year.

(c) *Organizations having unrelated business income taxable at corporation rates.*—The provisions of paragraphs (a) or (b) of this section apply to organizations referred to in section 511(a)(2) and required to file a return of unrelated business taxable income.

(d) *Exempt cooperative associations.*—The income tax return of an exempt cooperative association taxable under the provisions of section 522 shall be filed on or before the fifteenth day of the ninth month following the close of the taxable year.

(e) *Cross references.*—For provisions relating to the time for filing a return where the last day for filing falls on Saturday, Sunday, or a legal holiday, see section 7503 and § 301.7503–1 of this chapter. For provisions relating to the fixing of a later time for filing in the case of a return for a short period, see paragraph (b) of § 1.6071–1. For provisions relating to time for filing consolidated returns, see paragraph (a) of § 1.1502–12.

§ 1.6072–3 Income Tax Due Dates Postponed in Case of China Trade Act Corporations.—(a) With respect to a taxable year beginning after December 31, 1948, and ending before October 1, 1956, the income tax return of any corporation organized under the China Trade Act of 1922 (15 U.S.C., c. 4), as amended, shall not become due until December 31, 1956, provided that during any such taxable year conditions in China have been generally so unsettled as to militate against the normal commercial operations and corporate activities of such corporation. However, the postponement of the due date shall not apply to an income tax return for any such taxable year if—

(1) The books of account and business records are available so as to permit the filing of a proper return, and the corporation has otherwise been in a position to carry on its commercial operations and

corporate activities and to make a proper distribution of its earnings or profits, if any, so as to permit the certification required by section 941(b); or

(2) All the commercial operations and corporate activities of such corporation have been carried on in Hong Kong, Macao, or Taiwan (Formosa).

(b) Notwithstanding the provisions of subparagraph (1) or (2) of paragraph (a) of this section, the postponed due date referred to in this section will apply if a corporation satisfies the Commissioner that special circumstances exist, related to the unsettled conditions in China, which warrant such postponement.

(c) The postponed due date provided for in this section is expressly subject to the power of the Commissioner to extend, as in other cases, the time for filing the income tax return. See section 6081 and the regulations thereunder.

§ 1.6072–4 TIME FOR FILING OTHER RETURNS OF INCOME.—(a) *Returns of tax withheld from nonresident aliens and foreign corporations, and on tax-free covenant bonds.*—For the time for filing returns with respect to tax withheld under chapter 3 of the Code, see §§ 1.1461–1 through 1.1461–3.

(b) *Reports for recovery of excessive profits on Government contracts.*—For the time for filing annual reports by persons completing Government contracts, see Treasury Decision 4906, approved June 23, 1939 (26 CFR (1939) 17.16) [C.B. 1939–2, 404], and Treasury Decisions 4909, approved June 28, 1939 (26 CFR (1939) 16.15) [C.B. 1939–2, 422], as made applicable to section 1471 of the 1954 Code by Treasury Decision 6091, approved August 16, 1954 (19 F.R. 5167) [C.B. 1954–2, 47].

(c) *Returns of tax on transfers to avoid income tax.*—For the time for filing returns of tax under chapter 5 of the Code, see § 1.1494–1.

§ 1.6081 STATUTORY PROVISIONS; EXTENSION OF TIME FOR FILING RETURNS.

SEC. 6081. EXTENSION OF TIME FOR FILING RETURNS.

(a) GENERAL RULE.—The Secretary or his delegate may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

(b) AUTOMATIC EXTENSION FOR CORPORATION INCOME TAX RETURNS.—An extension of 3 months for the filing of the return of income taxes imposed by subtitle A shall be allowed any corporation if, in such manner and at such time as the Secretary or his delegate may by regulations prescribe, there is filed on behalf of such corporation the form prescribed by the Secretary or his delegate, and if such corporation pays, on or before the date prescribed for payment of the tax, the amount properly estimated as its tax or the first installment thereof required under section 6152; but this extension may be terminated at any time by the Secretary or his delegate by mailing to the taxpayer notice of such termination at least 10 days prior to the date for termination fixed in such notice.

(c) POSTPONEMENT BY REASON OF WAR.—For time for performing certain acts postponed by reason of war, see section 7508.

§ 1.6081–1 EXTENSION OF TIME FOR FILING RETURNS.—(a) *In general.*—District directors, including the Director, International Opera-

tions Division, are authorized to grant a reasonable extension of time for filing any return, declaration, statement, or other document which relates to any tax imposed by subtitle A of the Code and which is required under the provisions of subtitle A or F of the Code or the regulations thereunder. However, except in the case of taxpayers who are abroad, such extensions of time shall not be granted for more than six months. Except in the case of declarations of estimated income tax, an extension of time for filing an income tax return does not operate to extend the time for the payment of the tax, or any installment thereof, unless so specified in the extension. For extension of time for filing declarations of estimated tax, see §§ 1.6073–4 and 1.6074–3. For extension of time for paying tax, see § 1.6161–1.

(b) *Application for extension of time.*—(1) A taxpayer desiring an extension of time for filing a return, statement, or other document shall, on or before the due date thereof, submit an application for such extension to the internal revenue officer with whom the return, statement, or other document is required to be filed. Such application shall be in writing, properly signed by the taxpayer or his duly authorized agent, and shall clearly set forth (i) the particular tax return, information return, statement, or other document, including the taxable year or period thereof, with respect to which the extension of the time for filing is desired, and (ii) a full recital of the reasons for requesting the extension to aid such internal revenue officer in determining the period of extension, if any, which will be granted. Such a request in the form of a letter will suffice as an application.

(2) In any case in which a taxpayer is unable, by reason of illness, absence, or other good cause, to sign a request for an extension, any person standing in close personal or business relationship to the taxpayer may sign the request on his behalf, and shall be considered as a duly authorized agent for this purpose, provided the request sets forth the reasons for a signature other than the taxpayer's and the relationship existing between the taxpayer and the signer.

§ 1.6081–2 Extensions of Time in the Case of Foreign Organizations, Certain Domestic Corporations, Certain Partnerships, and Citizens of United States Residing or Traveling Abroad.—(a) *In general.*—An extension of time for filing returns of income is hereby granted up to and including the fifteenth day of the sixth month following the close of the taxable year in the case of:

(1) Partnerships which are required under paragraph (e)(2) of § 1.6031–1 to file returns on the fifteenth day of the fourth month following the close of the taxable year of the partnership, and which keep their records and books of account abroad;

(2) Domestic corporations which transact their business and keep their records and books of account abroad;

(3) Foreign corporations which maintain an office or place of business within the United States;

(4) Domestic corporations whose principal income is from sources within the possessions of the United States; and

(5) American citizens residing or traveling abroad, including persons in military or naval service on duty outside the United States.

In all such cases a statement must be attached to the return showing that the person for whom the return is made is a person described in this section.

(b) *Definitions.*—The term "abroad", as used in this section, means outside the continental United States, Hawaii, and Puerto Rico. For purposes of this paragraph, the term "continental United States" does not include Alaska.

§ 1.6081–3 Automatic Extension of Time for Filing Corporation Income Tax Returns.—(a) *In general.*—A corporation shall be allowed an automatic extension of time to the fifteenth day of the third month following the month in which falls the date prescribed for the filing of its income tax return provided the following requirements are met:

(1) An application must be prepared in duplicate on Form 7004, "Application for Automatic Extension of Time to File U.S. Corporation Income Tax Return", and must be signed by a person authorized by the corporation to request such extension, and such person must be either an officer of the corporation or a person currently enrolled to practice before the Treasury Department.

(2) The original of the application must be filed on or before the date prescribed for the filing of the return of the corporation with the internal revenue officer with whom the corporation is required to file its income tax return and must be accompanied by a remittance of an estimated amount of tax which shall not be less than would be required as the first installment under section 6152(a)(1) should the corporation elect to pay the tax in installments.

Upon the timely filing of Form 7004, properly prepared, the three-month extension shall be considered as allowed. If the taxpayer elects to pay in installments the tax shown on Form 7004, the installment privilege provided in section 6152(a)(1) is limited to the amount shown on the form. The duplicate Form 7004 shall be attached to the completed income tax return when filed as evidence of the extension.

(b) *Consolidated returns.*—An application for an automatic ex-extension of time for filing a consolidated return shall be made by a person authorized by the parent corporation to request such extension. Such person must be either an officer of the parent corporation or a person currently enrolled to practice before the Treasury Department. There shall be attached to such application a statement listing the name and address of each member of the affiliated group for which such consolidated return will be made. The original of such application shall be filed with the district director for the district in which the parent corporation is required to file its income tax return. If a member of the affiliated group would be required to file its separate income tax return with a district director other than the district director with whom the parent corporation files its return, the parent corporation must immediately send to each district director with whom such member would be required to file its return a written notice that an application for the automatic extension of time for filing the consolidated return has been filed. Such notice shall also indicate the name and address of each member of the affiliated group required

to file its separate return with such district director, and the name an address of the district director with whom the consolidated return will be filed. Upon the timely filing of Form 7004 in the office of the district director with whom the parent corporation files its return, and notices in the offices of the district directors with whom the members of the affiliated group file their returns, the three-month extension shall be considered as granted to the affiliated group for the filing of its consolidated return or for the filing of each member's separate return. In the event that the privilege of filing a consolidated return is not exercised, the parent corporation, and members of the affiliated group filing in the same district as that in which the parent files, shall attach to their completed separate income tax returns a copy of the application (Form 7004); and each other member of the affiliated group shall attach to its completed separate income tax return a copy of the notice sent to the district director with whom its return is filed.

(c) *Termination of automatic extension.*—The district director, including the Director, International Operations Division, may, in his discretion, terminate at any time an automatic extension by mailing to the corporation (parent corporation in the case of an affiliated group), or the person who requested such extension for the corporation, a notice of termination. The notice shall be mailed at least ten days prior to the termination date designated in such notice. The notice of termination shall be sufficient for all purposes when mailed to the corporation at its address shown on Form 7004 or to the person who requested such extension for the corporation at his last known address or last known place of business, even if such corporation has terminated its existence, or such person is deceased or is under a legal disability.

§ 1.6091 STATUTORY PROVISIONS; PLACE FOR FILING RETURNS OR OTHER DOCUMENTS.

SEC. 6091. PLACE FOR FILING RETURNS OR OTHER DOCUMENTS.

(a) GENERAL RULE.—When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) TAX RETURNS.—In the case of returns of tax required under authority of part II of this subchapter—

(1) INDIVIDUALS.—Returns (other than corporation returns) shall be made to the Secretary or his delegate in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

(2) CORPORATIONS.—Returns of corporations shall be made to the Secretary or his delegate in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

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(4) EXCEPTIONAL CASES.—Notwithstanding paragraph (1), (2), or (3) of this subsection, the Secretary or his delegate may permit a return to be filed in any internal revenue district, and may require

the return of any officer or employee of the Treasury Department to be filed in any internal revenue district selected by the Secretary or his delegate.

§ 1.6091–1 Place for Filing Returns or Other Documents.—(a) *In general.*—Except as provided in § 1.6091–4, whenever a return, statement, or other document is required to be made under the provisions of subtitle A or F of the Code, or the regulations thereunder, with respect to any tax imposed by subtitle A of the Code, and the place for filing such return, statement, or other document is not provided for by the Code, it shall be filed at the place prescribed by the regulations contained in this chapter.

(b) *Place for filing certain information returns.*—(1) For the place for filing returns of partnership income, see paragraph (e)(1) of § 1.6031–1.

(2) For the place for filing information returns by banks with respect to common trust funds, see § 1.6032–1.

(3) For the place for filing information returns by certain organizations exempt from taxation under section 501(a), see paragraph (e) of § 1.6033–1.

(4) For the place for filing information returns by trusts claiming charitable deductions under section 642(c), see paragraph (c) of § 1.6034–1.

(5) For the place for filing information returns by officers, directors, and shareholders of foreign personal holding companies, see paragraph (e) of § 1.6035–1 and paragraph (c) of § 1.6035–2.

(6) For the place for filing returns of information reporting certain payments on Forms 1099 and 1096, see § 1.6041–6.

(7) For the place for filing information returns regarding corporate dividends, earnings, and profits on Forms 1099 and 1096, and regarding ownership of stock on Form 1087, see paragraph (d) of § 1.6042–1.

(8) For the place for filing information returns by corporations relating to contemplated dissolution or liquidation, see paragraph (a) of § 1.6043–1.

(9) For the place for filing information returns by corporations relating to distributions in liquidation, see paragraph (a) of § 1.6043–2.

(10) For the place for filing information returns reporting payments of patronage dividends, see paragraph (b) of § 1.6044–1.

(11) For the place for filing information returns relating to formation or reorganization of foreign corporations, see paragraph (e) of § 1.6046–1.

§ 1.6091–2 Place for Filing Income Tax Returns.—(a) *Individuals, estates, and trusts.*—(1) Except as provided in §§ 1.6091–3 and 1.6091–4, income tax returns of individuals, estates, and trusts shall be filed with the district director for the internal revenue district in which is located the legal residence or principal place of business of the person required to make the return, or, if such person has no legal residence or principal place of business in any internal revenue district, with the district director at Baltimore, Maryland.

(2) An individual employed on a salary or commission basis who is not also engaged in conducting a commercial or professional enter-

prise for profit on his own account does not have a "principal place of business" within the meaning of this section.

(b) *Corporations.*—Except as provided in § § 1.6091–3 and 1.6091–4, income tax returns of corporations shall be filed with the district director for the internal revenue district in which is located the principal place of business or principal office or agency of the corporation.

§ 1.6091–3 INCOME TAX RETURNS REQUIRED TO BE FILED WITH DIRECTOR, INTERNATIONAL OPERATIONS DIVISION.—The following income tax returns shall be filed with the Director, International Operations Division, Internal Revenue Service, at Washington 25, D.C., or at such other address as is designated on the return form or in the instructions issued with respect to such form:

(a) Income tax returns on which all, or a portion, of the tax is to be paid in foreign currency. See § § 301.6316–1 to 301.6316–8, inclusive, of this chapter.

(b) Income tax returns of an individual citizen of the United States whose principal place of abode for the taxable year is outside the United States, and who has no legal residence or principal place of business in any internal revenue district in the United States.

(c) Income tax returns of an individual citizen of a possession of the United States (whether or not a citizen of the United States) who has no legal residence or principal place of business in any internal revenue district in the United States.

(d) Except in the case of any departing alien return under section 6851 and § 1.6851–2, the income tax return of any alien who has no legal residence or principal place of business in any internal revenue district in the United States.

(e) The income tax return of an estate or trust the fiduciary of which is outside the United States and has no legal residence or place of business in any internal revenue district in the United States.

(f) Income tax returns of foreign corporations having no principal place of business, or principal office or agency in any internal revenue district in the United States.

§ 1.6091–4 EXCEPTIONAL CASES.—(a) *Permission to file in district other than required district.*—The Commissioner may permit the filing of any income tax return required to be made under the provisions of subtitle A or F of the Code, or the regulations in this part, in any internal revenue district, notwithstanding the provisions of paragraphs (1) and (2) of section 6091(b) and §§ 1.6091–1 to 1.6091–3, inclusive.

(b) *Returns of officers and employees of the Internal Revenue Service.*—The Commissioner may require any officer or employee of the Internal Revenue Service to file his income tax return in any district selected by the Commissioner.

§ 1.6102 STATUTORY PROVISIONS; COMPUTATIONS ON RETURNS OR OTHER DOCUMENTS.

SEC. 6102. COMPUTATIONS ON RETURNS OR OTHER DOCUMENTS.

(a) AMOUNTS SHOWN ON INTERNAL REVENUE FORMS.—The Secretary or his delegate is authorized to provide with respect to any amount required to be shown on a form prescribed for any internal revenue return, statement, or other document, that if such amount of such item is other than a whole-dollar amount, either—

(1) The fractional part of a dollar shall be disregarded; or

(2) The fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by $1.

(b) ELECTION NOT TO USE WHOLE DOLLAR AMOUNTS.—Any person making a return, statement, or other document shall be allowed, under regulations prescribed by the Secretary or his delegate, to make such return, statement, or other document without regard to subsection (a).

(c) INAPPLICABILITY TO COMPUTATION OF AMOUNT.—The provisions of subsections (a) and (b) shall not be applicable to items which must be taken into account in making the computations necessary to determine the amount required to be shown on a form, but shall be applicable only to such final amount.

§ 1.6102–1 COMPUTATIONS ON RETURNS OR OTHER DOCUMENTS.—For provisions with respect to the rounding off of whole-dollar amounts of money items on returns and accompanying schedules, see § 301.6102–1 of this chapter.

TIME AND PLACE FOR PAYING TAX

§ 1.6151 STATUTORY PROVISIONS; TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.

SEC. 6151. TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.

(a) GENERAL RULE.—Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the principal internal revenue officer for the internal revenue district in which the return is required to be filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) EXCEPTIONS.—

(1) INCOME TAX NOT COMPUTED BY TAXPAYER.—If the taxpayer elects under section 6014 not to show the tax on the return, the amount determined by the Secretary or his delegate as payable shall be paid within 30 days after the mailing by the Secretary or his delegate to the taxpayer of a notice stating such amount and making demand therefor.

(2) USE OF GOVERNMENT DEPOSITARIES.—For authority of the Secretary or his delegate to require payments to Government depositaries, see section 6302(c).

(c) DATE FIXED FOR PAYMENT OF TAX.—In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

§ 1.6151–1 TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.—(a) *In general.*—Except as provided in section 6152 and paragraph (b) of this section, the tax shown on any income tax return shall, without assessment or notice and demand, be paid to the internal revenue officer with whom the return is required to be filed at the time fixed for filing the return (determined without regard to any extension of time for filing the return). For provisions relating to the time for filing income tax returns, see section 6072 and §§ 1.6072–1 to 1.6072–4, inclusive. For provisions relating to the place for filing income tax returns, see section 6091 and §§ 1.6091–1 to 1.6091–4, inclusive.

(b) *Returns on Form 1040A.*—(1) *Where tax is not shown on return.*—In any case in which a taxpayer files a return on Form 1040A and, pursuant to section 6014 and § 1.6014–1, elects not to show the tax on the return, the amount of tax determined to be due shall be paid within 30 days after the date of mailing to the taxpayer a notice stating the amount payable and making demand upon the taxpayer therefor. However, if the notice is mailed to the taxpayer more than 30 days before the due date of the return, payment of the tax shall not be required prior to such due date.

(2) *Where tax is shown on the return.*—In any case in which a taxpayer files a return on Form 1040A pursuant to paragraph (a)(7) of § 1.6012–1 and shows the amount of tax on the return, the unpaid balance of the tax shall, without assessment or notice and demand, be paid not later than the date fixed for filing the return

(c) *Date fixed for payment of tax.*—In any case in which a tax imposed by subtitle A of the Code is required to be paid on or before a certain date, or within a certain period, any reference in subtitle A or F of the Code to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

§ 1.6152 STATUTORY PROVISIONS; INSTALLMENT PAYMENTS.

SEC. 6152. INSTALLMENT PAYMENTS.

(a) PRIVILEGE TO ELECT TO MAKE INSTALLMENT PAYMENTS.—

(1) CORPORATIONS.—A corporation subject to the taxes imposed by chapter 1 may elect to pay the unpaid amount of such taxes in installments as follows:

(A) With respect to taxable years ending before December 31, 1954, four installments, the first two of which shall be 45 percent, respectively, of such taxes and the last two of which shall be 5 percent, respectively, of such taxes:

(B) With respect to taxable years ending on or after December 31, 1954, two equal installments.

(2) ESTATES OF DECEDENTS.—A decedent's estate subject to the tax imposed by chapter 1 may elect to pay such tax in four equal installments.

(b) DATES PRESCRIBED FOR PAYMENT OF INSTALLMENTS.—

(1) FOUR INSTALLMENTS.—In any case (other than payment of estimated income tax) in which the tax may be paid in four installments, the first installment shall be paid on the date prescribed for the payment of the tax, the second installment shall be paid on or before 3 months, the third installment on or before 6 months, and the fourth installment on or before 9 months, after such date.

(2) TWO INSTALLMENTS.—In any case (other than payment of estimated income tax) in which the tax may be paid in two installments, the first installment shall be paid on the date prescribed for the payment of the tax, and the second installment shall be paid on or before 3 months after such date.

(c) PRORATION OF DEFICIENCY TO INSTALLMENTS.—If an election has been made to pay the tax imposed by chapter 1 in installments and a deficiency has been assessed, the deficiency shall be prorated to such installments. Except as provided in section 6861 (relating to jeopardy assessments), that part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as and as part of such installment. That part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary or his delegate.

(d) ACCELERATION OF PAYMENT.—If any installment (other than an installment of estimated income tax) is not paid on or before the date fixed for its payment, the whole of the unpaid tax shall be paid upon notice and demand from the Secretary or his delegate.

[Sec. 6152 as amended by sec. 3, Act of Sept. 1, 1954 (Pub Law 767, 83d Cong.), 68 Stat. 1130 [C.B. 1954–2, 612]]

§ 1.6152–1 INSTALLMENT PAYMENTS.—(a) *Privilege of corporation to elect to make installment payments.*—(1) *Amount to be paid.*—In the case of any taxable year ending on or after December 31, 1954, a corporation subject to the taxes imposed by chapter 1 of the Code may elect, as provided in subparagraph (2) of this paragraph, to pay the unpaid amount of such tax for the taxable year in two equal installments instead of making a single payment. If such an election is made, the installments shall be paid as follows:

(i) Fifty percent on or before the date prescribed for the payment of the tax as a single payment, and

(ii) The remaining 50 percent on or before three months after the date prescribed for the payment of the first installment.

For provisions relating to installment payments of estimated income tax by corporations, see section 6154 and §§ 1.6154–1 to 1.6154–3, inclusive.

(2) *Method of election.*—A corporation shall be considered to have made an election to pay its tax in installments if—

(i) It files its income tax return on or before the date prescribed therefor (determined without regard to any extension of time) and pays 50 percent of the unpaid amount of the tax at such time, or

(ii) It files an application on Form 7004 for an automatic extension of time to file its income tax return, as provided in § 1.6081–3, and pays 50 percent of the unpaid amount of the tax at such time.

Except as provided in paragraph (c) of this section, the installment privilege is limited to the unpaid amount of tax as shown on the income tax return filed in accordance with the provisions of subdivision (i) of this subparagraph, or as shown on the Form 7004 filed in accordance with the provisions of subdivision (ii) of this subparagraph.

(b) *Privilege of estates of decedents to make installment payments.*—With respect to the income tax imposed by chapter 1 of the Code upon estates of decedents, the fiduciary may elect to pay the tax in four equal installments instead of in a single payment. If the election is made, the tax shall be paid as follows:

(1) Twenty-five percent on or before the date prescribed for the payment of the tax as a single payment,

(2) Twenty-five percent on or before three months after the date prescribed for payment of the first installment,

(3) Twenty-five percent on or before six months after the date prescribed for payment of the first installment, and

(4) Twenty-five percent on or before nine months after the date prescribed for payment of the first installment.

(c) *Proration of deficiency to installments.*—If an election has been made to pay the tax imposed by chapter 1 of the Code in install-

ments, and a deficiency has been assessed, the deficiency shall be prorated equally to all the installments, whether paid or unpaid. Except as provided in section 6861, relating to jeopardy assessment, the part of the deficiency so prorated to any installment which is not yet due shall be collected at the same time as and as part of such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the district director.

(d) *Acceleration of payment.*—If a taxpayer elects under the provisions of this section to pay the tax in installments, any installment may be paid prior to the date prescribed for its payment. If an installment is not paid in full on or before the date fixed for its payment the whole amount of the unpaid tax shall be paid upon notice and demand from the district director.

§ 1.6161 STATUTORY PROVISIONS; EXTENSION OF TIME FOR PAYING TAX.

SEC. 6161. EXTENSION OF TIME FOR PAYING TAX.

(a) AMOUNT DETERMINED BY TAXPAYER ON RETURN.—

(1) GENERAL RULE.—The Secretary or his delegate, except as otherwise provided in this title, may extend the time for payment of the amount of the tax shown, or required to be shown, on any return or declaration required under authority of this title (or any installment thereof), for a reasonable period not to exceed 6 months from the date fixed for payment thereof. Such extension may exceed 6 months in the case of a taxpayer who is abroad.

* * * * * * *

(c) AMOUNT DETERMINED AS DEFICIENCY.—Under regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may extend, to the extent provided below, the time for payment of the amount determined as a deficiency:

(1) In the case of a tax imposed by chapter 1 or 12, for a period not to exceed 18 months from the date fixed for payment of the deficiency, and, in exceptional cases, for a further period not to exceed 12 months;

* * * * * * *

An extension under this subsection may be granted only where it is shown to the satisfaction of the Secretary or his delegate that the payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer in the case of a tax imposed by chapter 1, to the estate in the case of a tax imposed by chapter 11, or to the donor in the case of a tax imposed by chapter 12. No extension shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

* * * * * * *

§ 1.6161–1 EXTENSION OF TIME FOR PAYING TAX OR DEFICIENCY.—(a) *In general.*—(1) *Tax shown or required to be shown on return.*—A reasonable extension of the time for payment of the amount of any tax imposed by subtitle A of the Code and shown or required to be shown on any return, or for payment of the amount of any installment of such tax, may be granted by the district directors (including the Director, International Operations Division) at the request of the taxpayer. The period of such extension shall not be in excess of six months from the date fixed for payment of such tax or installment, except that if the taxpayer is abroad the period of the extension may be in excess of six months.

(2) *Deficiency.*—The time for payment of any amount determined as a deficiency in respect of tax imposed by chapter 1 of subtitle A of the Code, or for the payment of any part thereof, may, at the request of the taxpayer, be extended by the internal revenue officer to whom the tax is required to be paid for a period not to exceed 18 months from the date fixed for payment of the deficiency, as shown on the notice and demand, and, in exceptional cases, for a further period not in excess of 12 months. No extension of the time for payment of a deficiency shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(3) *Extension of time for filing distinguished.*—The granting of an extension of time for filing a return does not operate to extend the time for the payment of the tax or any part thereof, unless so specified in the extension.

(b) *Undue hardship required for extension.*—An extension of the time for payment shall be granted only upon a satisfactory showing that payment on the due date of the amount with respect to which the extension is desired will result in an undue hardship. The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the taxpayer. It must appear that substantial financial loss, for example, loss due to the sale of property at a sacrifice price, will result to the taxpayer from making payment on the due date of the amount with respect to which the extension is desired. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

(c) *Application for extension.*—An application for an extension of the time for payment of the tax shown or required to be shown on any return, or for the payment of any installment thereof, or for the payment of any amount determined as a deficiency shall be made on Form 1127 and shall be accompanied by evidence showing the undue hardship that would result to the taxpayer if the extension were refused. Such application shall also be accompanied by a statement of the assets and liabilities of the taxpayer and an itemized statement showing all receipts and disbursements for each of the three months immediately preceding the due date of the amount to which the application relates. The application, with supporting documents, must be filed with the internal revenue officer to whom the tax is required to be paid on or before the date prescribed for payment of the amount with respect to which the extension is desired. The application will be examined, and within 30 days, if possible, will be denied, granted, or tentatively granted subject to certain conditions of which the taxpayer will be notified. If an additional extension is desired, the request therefor must be made on or before the expiration of the period for which the prior extension is granted.

(d) *Payment pursuant to extension.*—If an extension of time for payment is granted, the amount the time for payment of which is so extended shall be paid on or before the expiration of the period of the extension without the necessity of notice and demand. The granting of an extension of the time for payment of the tax or deficiency does not relieve the taxpayer from liability for the payment of interest thereon during the period of the extension. See section

6601 and § 301.6601–1 of this chapter. Further, the granting of an extension of the time for payment of one installment of the tax does not extend the time for payment of subsequent installments.

(e) *Cross reference.*—For extensions of time for payment of estimated tax, see §§ 1.6073–4 and 1.6074–3.

§ 1.6162 STATUTORY PROVISIONS; EXTENSION OF TIME FOR PAYMENT OF TAX ON GAIN ATTRIBUTABLE TO LIQUIDATION OF PERSONAL HOLDING COMPANIES.

SEC. 6162. EXTENSION OF TIME FOR PAYMENT OF TAX ON GAIN ATTRIBUTABLE TO LIQUIDATION OF PERSONAL HOLDING COMPANIES.

(a) EXTENSION PERMITTED.—The Secretary or his delegate may (under regulations prescribed by the Secretary or his delegate) extend (for a period not to exceed 5 years from the date fixed for the payment of the tax) the time for the payment of such portion of the amount determined as the tax under chapter 1 by the taxpayer for any taxable year beginning before January 1, 1956, as is attributable to the short-term or long-term capital gain derived by the taxpayer from the receipt by him of property other than money on a complete liquidation of a corporation to which section 331(a)(1) or 342 applies. This section shall apply only if the corporation, for its taxable year preceding the year in which occurred the complete liquidation (or the first of the series of distributions in complete liquidation), was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company. An extension under this section shall be granted only if it is shown to the satisfaction of the Secretary or his delegate that the failure to grant the extension will result in undue hardship to the taxpayer.

(b) SECURITY.—For authority of the Secretary or his delegate to require security in the case of such an extension, see section 6165.

§ 1.6162–1 EXTENSION OF TIME FOR PAYMENT OF TAX ON GAIN ATTRIBUTABLE TO LIQUIDATION OF PERSONAL HOLDING COMPANIES.—(a) *In general.*—(1) If it is shown to the satisfaction of the district director that undue hardship to the taxpayer will result from the payment of such portion of the amount determined as the tax under chapter 1 of the Code by the taxpayer as is attributable to the short-term or long-term capital gain derived by the taxpayer from the receipt by him of property other than money on a complete liquidation of a corporation to which section 331(a)(1) or 342 applies, the district director may grant an extension of time for the payment of such portion of the tax. For the meaning of the term "undue hardship", see paragraph (b) of § 1.6161–1.

(2) The extension of time for payment shall be for a period not in excess of five years. The extension shall only be granted for a taxable year beginning before January 1, 1956, and shall apply only if the corporation, for its taxable year preceding the year in which occurred the complete liquidation (or the first of the series of distributions in complete liquidation), was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company.

(b) *Requirement of bond.*—As a condition to the granting of an extension of time for payment, the taxpayer will usually be required by the district director to furnish a bond as provided in section 6165 and the regulations thereunder. For other provisions with respect to bonds, see section 7101 and the regulations thereunder.

§ 1.6164 Statutory Provisions; Extension of Time for Payment of Taxes by Corporations Expecting Carrybacks.

SEC. 6164. EXTENSION OF TIME FOR PAYMENT OF TAXES BY CORPORATIONS EXPECTING CARRYBACKS.

(a) In General.—If a corporation, in any taxable year, files with the Secretary or his delegate a statement, as provided in subsection (b), with respect to an expected net operating loss carryback from such taxable year, the time for payment of all or part of any tax imposed by subtitle A for the taxable year immediately preceding such taxable year shall be extended, to the extent and subject to the conditions and limitations hereinafter provided in this section.

(b) Contents of Statement.—The statement shall be filed at such time and in such manner and form as the Secretary or his delegate may by regulations prescribe. Such statement shall set forth that the corporation expects to have a net operating loss carryback, as provided in section 172(b), from the taxable year in which such statement is made, and shall set forth, in such detail and with such supporting data and explanation as such regulations shall require—

(1) The estimated amount of the expected net operating loss;

(2) The reasons, facts, and circumstances which cause the corporation to expect such net operating loss;

(3) The amount of the reduction of the tax previously determined attributable to the expected carryback, such tax previously determined being ascertained in accordance with the method prescribed in section 1314(a); and such reduction being determined by applying the expected carryback in the manner provided by law to the items on the basis of which such tax was determined;

(4) The tax and the part thereof the time for payment of which is to be extended; and

(5) Such other information for purposes of carrying out the provisions of this section as may be required by such regulations.

The Secretary or his delegate shall, upon request, furnish a receipt for any statement filed, which shall set forth the date of such filing.

(c) Amount to Which Extension Relates and Installment Payments.—The amount the time for payment of which may be extended under subsection (a) with respect to any tax shall not exceed the amount of such tax shown on the return, increased by any amount assessed as a deficiency (or as interest or addition to the tax) prior to the date of filing the statement and decreased by any amount paid or required to be paid prior to the date of such filing, and the total amount of the tax the time for payment of which may be extended shall not exceed the amount stated under subsection (b)(3). For purposes of this subsection, an amount shall not be considered as required to be paid unless shown on the return or assessed as a deficiency (or as interest or addition to the tax), and an amount assessed as a deficiency (or as interest or addition to the tax) shall be considered to be required to be paid prior to the date of filing of the statement if the 10th day after notice and demand for its payment occurs prior to such date. If an extension of time under this section relates to only a part of the tax, the time for payment of the remainder shall be considered to be the dates on which payments would have been required if such remainder had been the tax and the taxpayer had elected to pay the tax in installments as provided in section 6152.

(d) Period of Extension.—The extension of time for payment provided in this section shall expire—

(1) On the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for the filing of the return for the taxable year of the expected net operating loss, or

(2) If an application for tentative carryback adjustment provided in section 6411 with respect to such loss is filed before the expiration of the period prescribed in paragraph (1), on the date on which notice is mailed by certified mail or registered mail by the Secretary or his delegate to the taxpayer that such application is allowed or disallowed in whole or in part.

(e) REVISED STATEMENTS.—Each statement filed under subsection (a) with respect to any taxable year shall be in lieu of the last statement previously filed with respect to such year. If the amount the time for payment of which is extended under a statement filed is less than the amount under the last statement previously filed, the extension of time shall be terminated as to the difference between the two amounts.

(f) TERMINATION.—The Secretary or his delegate is not required to make any examination of the statement, but he may make such examination thereof as he deems necessary and practicable. The Secretary or his delegate shall terminate the extension as to any part of the amount to which it relates which he deems should be terminated because, upon such examination, he believes that, as of the time such examination is made, all or any part of the statement clearly is in a material respect erroneous or unreasonable.

(g) PAYMENTS ON TERMINATION.—If any extension of time is terminated under subsection (e) or (f) with respect to any amount, then—

(1) No further extension of time shall be made under this section with respect to such amount, and

(2) The time for payment of such amount shall be considered to be the dates on which payments would have been required if there had been no extension with respect to such amount and the taxpayer had elected to pay the tax in installments as provided in section 6152.

(h) JEOPARDY.—If the Secretary or his delegate believes that collection of the amount to which an extension under this section relates is in jeopardy, he shall immediately terminate such extension, and notice and demand shall be made by him for payment of such amount.

(i) CONSOLIDATED RETURNS.—If the corporation seeking an extension of time under this section made or was required to make a consolidated return, either for the taxable year within which the net operating loss arises or for the preceding taxable year affected by such loss, the provisions of such section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary or his delegate may by regulations prescribe.

[Sec. 6164 as amended by sec. 89(b), Technical Amendments Act 1958]

§ 1.6164–1 EXTENSION OF TIME FOR PAYMENT OF TAXES BY CORPORATIONS EXPECTING CARRYBACKS.—(a) *In general.*—If a corporation in any taxable year files a statement with respect to an expected net operating loss carryback from such taxable year, such corporation may extend the time for the payment of all or part of any tax imposed by subtitle A for the taxable year immediately preceding such taxable year to the extent and subject to the limitations provided in section 6164. A corporation may extend the time for payment with respect to only such taxes as meet the following requirements:

(1) The tax must be one imposed by subtitle A of the Code;

(2) The tax must be for the taxable year immediately preceding the taxable year of the expected net operating loss;

(3) The tax must be shown on the return or must be assessed within the taxable year of the expected net operating loss; and

(4) The tax must not have been paid or required to have been paid prior to the filing of the statement.

(b) *Statement for purpose of extending time for payment.*—(1) The time for payment of the tax is automatically extended upon the filing of a statement on Form 1138 by the corporation with the district director for the district where the tax is payable. The statement on Form 1138 must be filled out in accordance with the instructions accompanying the form, and all information required by the form and the instructions must be furnished by the taxpayer. The

district director, upon request, will furnish a receipt for any statement filed. Such receipt will show the date the statement was filed.

(2) The period of extension is that provided in section 6164(d) and § 1.6164–5 unless sooner terminated by action of either the district director or the corporation.

§ 1.6164–2 AMOUNT OF TAX THE TIME FOR PAYMENT OF WHICH MAY BE EXTENDED.—(a) *Total amount to which extension may relate.*—The total amount of tax the time for payment of which may be extended under section 6164 may not exceed the amount of the reduction of the taxes previously determined attributable to the expected carryback.

(b) *Amount of tax to which extension may relate.*—(1) The taxpayer shall specify on Form 1138 the kind of tax and the amount thereof the time for payment of which is to be extended. The amount of tax to which an extension may relate shall not exceed the amount of such tax shown on the return as filed, increased by any amount assessed as a deficiency (or as interest or addition to the tax) prior to the date of filing the statement and decreased by any amount paid or required to be paid prior to such date. In determining the amount of tax required to be paid prior to the date of filing the statement, only the following amounts shall be taken into consideration:

(i) The amount of the tax shown on the return as filed; and

(ii) Any amount assessed as a deficiency (or as interest or addition to the tax) if the tenth day after notice and demand for its payment occurs prior to the date of the filing of the statement.

(2) Delinquent installments are to be considered amounts required to be paid prior to the date of filing the statement. In the case of any authorized extension of time under sections 6161 and 6162, the amount of tax the time for payment of which is so extended is not to be considered required to be paid prior to the end of such extension. Similarly, any amount assessed as a deficiency (or as interest or addition to the tax) is not to be considered required to be paid prior to the date of the filing of the statement unless the tenth day after notice and demand for its payment falls prior to the date of the filing of the statement.

(3) The taxpayer may choose to extend the time for payment of all of one or more taxes, or it may choose to extend the time for payment of portions of several taxes. The taxes chosen by the taxpayer need not be those taxes which are affected by the carryback.

§ 1.6164–3 COMPUTATION OF THE AMOUNT OF REDUCTION OF THE TAX PREVIOUSLY DETERMINED.—(a) *Tax previously determined.*—The taxpayer is to determine the amount of the reduction, attributable to the expected carryback, in the aggregate of the taxes previously determined for taxable years prior to the taxable year of the expected net operating loss. The tax previously determined is to be ascertained in accordance with the method prescribed in section 1314(a). Thus, the tax previously determined will be the tax shown on the return as filed, increased by any amounts assessed (or collected without assessment) as deficiencies prior to the date of the filing of the statement, and decreased by any amounts abated, credited, refunded, or otherwise repaid prior to such date. Any items as to which the Internal Revenue Service and the taxpayer are in disagreement at the

time of the filing of the statement shall be taken into account in ascertaining the tax previously determined only if, and to the extent that, they were reported in the return, or were reflected in any amounts assessed (or collected without assessment) as deficiencies, or in any amounts abated, credited, refunded, or otherwise repaid, prior to the date of the filing of the statement. The tax previously determined will reflect the foreign tax credit and the credit for tax withheld at source provided in section 32.

(b) *Reduction attributable to the expected carryback.*—The reduction, attributable to the expected carryback or related adjustments, in any tax previously determined is to be ascertained by applying the expected carryback as if it were a determined net operating loss carryback, in accordance with the provisions of section 172 and §§ 1.172–1 to 1.172–8, inclusive. Items must be taken into account only to the extent that such items were included in the return, or were reflected in amounts assessed (or collected without assessment) as deficiencies, or in amounts abated, credited, refunded, or otherwise repaid, prior to the date of the filing of the statement. Thus, for example, if the taxpayer claims a deduction for depreciation of $10,000 in its return and the Internal Revenue Service asserts that only $4,000 is properly deductible, no change is to be made in the $10,000 depreciation deduction as shown by the taxpayer on his return unless a deficiency has been assessed, or an amount collected without assessment, prior to the date of filing of the statement as a result of a change in the depreciation deduction, or unless such change in the depreciation deduction was reflected in an amount abated, credited, refunded, or otherwise repaid prior to such date.

§ 1.6164–4 Payment of Remainder of Tax Where Extension Relates to Only Part of the Tax.—(a) *Time for payment.*—If an extension of time relates to only part of the tax, the time for payment of the remainder of the tax shall be considered to be the dates on which payments would have been required if such remainder had been the tax and the taxpayer had elected to pay the tax in installments as provided in section 6152(a).

(b) *Example.*—The provisions of this section may be illustrated by the following example:

Example. Corporation X, which keeps its books and makes its tax returns on the calendar year basis, filed its income tax return for 1956 on March 15, 1957. The corporation showed a tax of $1,000 on its return and paid 50 percent of such tax, or $500 on March 15, 1957. On June 3, 1957, corporation X, pursuant to the provisions of section 6164, extended the time for payment of $400 of such tax. The remainder of the tax the time for payment of which was not so extended, i.e., $600, is to be considered the tax for purposes of determining when it is to be paid. The remainder is considered to be due on the dates on which payment would have been required if such remainder had been the tax. Since the taxable year ended on December 31, 1956, the tax is payable in two equal installments of $300 each on March 15, 1957, and June 17, 1957. The taxpayer, having paid $500 on March 15, 1957, will have $100 to pay on June 17, 1957.

§ 1.6164–5 Period of Extension.—If the time for the payment of any tax has been extended pursuant to section 6164, such extension shall expire:

(a) On the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for the filing of the return for the taxable year of the expected net operating loss; or

(b) If an application for a tentative carryback adjustment provided in section 6411 with respect to such loss is filed before the expiration of the period specified in paragraph (a) of this section, on the date on which notice is mailed by registered mail prior to September 3, 1958, and by either registered or certified mail on and after September 3, 1958, to the taxpayer that such application is allowed or disallowed in whole or in part.

§ 1.6164–6 REVISED STATEMENTS.—(a) *Requirements and effect.*—A corporation may file more than one statement under section 6164 with respect to any one taxable year. Each statement is to be considered a new statement and not an amendment of any prior statement. Each such new statement is to be in lieu of the last statement previously filed with respect to the taxable year. The new statement may extend the time for payment of a greater or lesser amount of tax than was extended under the prior statement or may change the kind of tax the time for payment of which is to be extended. The extension may not relate to any amount of tax which was paid or required to be paid prior to the date of filing the new statement. Any amount of tax the time for payment of which was extended under a prior statement, however, may continue to be extended under the new statement. If the amount the time for payment of which is extended under the new statement is less than the amount so extended under the last statement previously filed, the extension of time shall be terminated on the date the new statement is filed as to the difference between the two amounts. See § 1.6164–8 for the dates on which such difference must be paid. If a corporation pays any amount of tax, the time for payment of which was extended, prior to the date the extension would otherwise terminate, the extension with respect to such amount shall be deemed terminated, without regard to whether a new statement is filed, on the date such amount is paid. The corporation shall indicate on each new statement filed that it has already filed one or more prior statements with respect to the taxable year. The corporation shall likewise indicate the date each prior statement was filed and the amount of each tax the time for payment of which was extended under each prior statement.

(b) *Example.*—The provisions of this section may be illustrated by the following example:

Example. Corporation Y, which keeps its books and makes its tax returns on the calendar year basis, filed its income tax return for 1956 on March 15, 1957, showing a tax of $100,000. At the same time it filed a statement under section 6164 in which it stated that it expected to have a net operating loss of $75,000 in 1957 and that the reduction in the tax previously determined for 1955 (the second taxable year preceding the year of the expected net operating loss) attributable to the expected net operating loss carryback resulting from such expected loss, would be $39,000. The corporation accordingly extended the time for payment of $39,000 of its income tax for 1956, and paid $30,500 (50 percent of the excess of $100,000 over $39,000) of such tax on March 15, 1957 (see section 6164(c) and § 1.6164–4). As a

result of its operations during the next several months, the corporation filed a second statement on June 3, 1957, in which it stated that its expected net operating loss for 1957 would amount to $150,000 and that the corresponding reduction in the tax for 1955 would amount to $78,000. Corporation Y under the new statement may extend the time for payment of $30,500, the installment due on June 17, 1957, and the time for payment of the $39,000 extended under the first statement filed on March 15, 1957, may continue to be extended under the second statement. The $30,500 which was paid on March 15, 1957, will not be affected by the second statement filed on June 3, 1957.

§ 1.6164–7 Termination by District Director.—(a) *After an examination of the statement filed by the corporation is made.*—The district director is authorized to make such examination of the statements filed as he deems necessary and practicable. If, upon such examination as he may make, the district director believes that, as of the time he makes the examination, all or any part of the statement is in a material respect erroneous or unreasonable, he will terminate the extension as to any part of the amount to which such extension relates which he deems should be terminated.

(b) *Jeopardy.*—If the district director believes that the collection of any amount to which an extension under section 6164 relates is in jeopardy, he will immediately terminate the extension. In the case of such a termination, notice and demand shall be made by the district director for payment of such amount, and there may be no further extension of time under section 6164 with respect to such amount.

§ 1.6164–8 Payments on Termination.—(a) *In general.*—If an extension of time under section 6164 is terminated with respect to any amount either (1) by the filing of a new statement by the taxpayer under section 6164(e) extending the time for payment of a lesser amount than was extended in a prior statement, or (2) by action of the district director under section 6164(f) after making an examination of the statement filed by the corporation, no further extension of time may be made under section 6164 with respect to such amount. The time for payment of such amount shall be the dates on which payments would have been required if there had been no extension with respect to such amount and the taxpayer had elected under section 6152(a) to pay the tax in installments.

(b) *Example.*—The provisions of this section may be illustrated by the following example:

Example. Corporation Z, which keeps its books and makes its tax returns on the calendar year basis, filed its income tax return for 1956 on March 15, 1957, showing a tax of $100,000. At the same time it filed a statement under section 6164 extending the time for payment of the entire $100,000 on the basis of an expected net operating loss carryback from 1957. On April 10, 1957, the corporation filed a new statement indicating that the reduction, attributable to the carryback from 1957, in its income tax for 1956, would only be $80,000, and thus terminated the above extension of $20,000. The time for payment of such $20,000 may not be extended again, and such $20,000 is payable as if it were the tax for 1956 and corporation Z had elected to pay such tax in installments. That is, $10,000 is payable on March 15, 1957, and $10,000 payable on June 17, 1957. Inasmuch as the March

15 date had already passed when the corporation Z terminated the extension with respect to the $20,000, $10,000 is payable immediately upon such termination, and the other installment of $10,000 is payable on June 16, 1957. This example would also apply if the extension of time for payment of the $20,000 were terminated instead by the district director on April 10, 1957.

§ 1.6164–9 CROSS REFERENCES.—For provisions with respect to interest due on amounts the payment of which is extended under section 6164, see section 6601 and § 301.6601–1(e) of this chapter. For provisions relating to the applicability of section 6164 in the case of corporations making or required to make consolidated returns, see § 1.1502–19.

TENTATIVE CARRYBACK ADJUSTMENTS

§ 1.6411 STATUTORY PROVISIONS; TENTATIVE CARRYBACK ADJUSTMENTS.

SEC. 6411. TENTATIVE CARRYBACK ADJUSTMENTS.

(a) APPLICATION FOR ADJUSTMENT.—A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback, provided in section 172(b), from any taxable year. The application shall be verified in the manner prescribed by section 6065 in the case of a return of such taxpayer, and shall be filed, on or after the date of filing of the return for the taxable year of the net operating loss from which the carryback results and within a period of 12 months from the end of such taxable year, in the manner and form required by regulations prescribed by the Secretary or his delegate. The application shall set forth in such detail and with such supporting data and explanation as such regulations shall require—

(1) The amount of the net operating loss;

(2) The amount of the tax previously determined for the prior taxable year affected by such carryback, the tax previously determined being ascertained in accordance with the method prescribed in section 1314(a);

(3) The amount of decrease in such tax, attributable to such carryback, such decrease being determined by applying the carryback in the manner provided by law to the items on the basis of which such tax was determined;

(4) The unpaid amount of such tax, not including any amount required to be shown under paragraph (5);

(5) The amount, with respect to the tax for the taxable year immediately preceding the taxable year of such loss, as to which an extension of time for payment under section 6164 is in effect; and

(6) Such other information for purposes of carrying out the provisions of this section as may be required by such regulations.

An application under this subsection shall not constitute a claim for credit or refund.

(b) ALLOWANCE OF ADJUSTMENTS.—Within a period of 90 days from the date on which an application for a tentative carryback adjustment is filed under subsection (a), or from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss from which such carryback results, whichever is the later, the Secretary or his delegate shall make, to the extent he deems practicable in such period, a limited examination of the application, to discover omissions and errors of computation therein, and shall determine the amount of the decrease in the tax attributable to such carryback upon the basis of the application and the examination, except that the Secretary or his delegate may disallow, without further action, any application which he finds contains errors of computation which he deems cannot be corrected by him within such 90-day period or ma-

terial omissions. Such decrease shall be applied against any unpaid amount of the tax decreased (including any amount of such tax as to which an extension of time under section 6164 is in effect) and any remainder shall be credited against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss the time for payment of which tax is extended under section 6164. Any remainder shall, within such 90-day period, be either credited against any tax or installment thereof then due from the taxpayer, or refunded to the taxpayer.

(c) CONSOLIDATED RETURNS.—If the corporation seeking a tentative carryback adjustment under this section, made or was required to make a consolidated return, either for the taxable year within which the net operating loss arises, or for the preceding taxable year affected by such loss, the provisions of this section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary or his delegate may by regulations prescribe.

§ 1.6411–1 TENTATIVE CARRYBACK ADJUSTMENTS.—(a) *In general.*—Any taxpayer who has a net operating loss under section 172 may file an application under section 6411 for a tentative carryback adjustment of the taxes for taxable years prior to the taxable year of the loss which are affected by the net operating loss carryback resulting from such loss. The right to file an application for a tentative carryback adjustment is not limited to corporations, but is available to any taxpayer. A corporation may file an application for a tentative carryback adjustment even though it has not extended the time for payment of tax under section 6164.

(b) *Contents of application.*—(1) The application for a tentative carryback adjustment shall be filed, in the case of a corporation, on Form 1139, and in the case of taxpayers other than corporations, on Form 1045. The application shall be filled out in accordance with the instructions accompanying the form, and all information required by the form and the instructions must be furnished by the taxpayer.

(2) An application for a tentative carryback adjustment does not constitute a claim for credit or refund. If such application is disallowed by the district director in whole or in part, no suit may be maintained in any court for the recovery of any tax based on such application. The filing of an application for a tentative carryback adjustment will not constitute the filing of a claim for credit or refund within the meaning of section 6511 for purposes of determining whether a claim for credit or refund was filed prior to the expiration of the applicable period of limitation. The taxpayer, however, may file a claim for credit or refund under section 6402 at any time prior to the expiration of the applicable period of limitation, and may maintain a suit based on such claim if it is disallowed or if the district director does not act on the claim within six months from the date it is filed. Such claim may be filed before, simultaneously with, or after the filing of the application for a tentative carryback adjustment. A claim for credit or refund under section 6402 filed after the filing of an application for a tentative carryback adjustment is not to be considered an amendment of such application. Such claim, however, in proper cases may constitute an amendment to a prior claim filed under section 6402.

(c) *Time and place for filing application.*—The application for a tentative carryback adjustment shall be filed on or after the date of the filing of the return for the taxable year of the net operating

loss and shall be filed within a period of twelve months from the end of such taxable year. Any application filed prior to the date the return for the taxable year of the loss is filed shall be considered to have been filed on the date such return is filed. The application shall be filed with the district director for the district in which the tax was paid or the assessment was made.

§ 1.6411-2 COMPUTATION OF TENTATIVE CARRYBACK ADJUSTMENT.—(a) *Tax previously determined.*—The taxpayer is to determine the amount of decrease, attributable to the carryback, in tax previously determined for each taxable year before the taxable year of the net operating loss. The tax previously determined is to be ascertained in accordance with the method prescribed in section 1314 (a). Thus, the tax previously determined will be the tax shown on the return as filed, increased by any amounts assessed (or collected without assessment) as deficiencies before the date of the filing of the application for a tentative carryback adjustment, and decreased by any amounts abated, credited, refunded, or otherwise repaid prior to such date. Any items as to which the Internal Revenue Service and the taxpayer are in disagreement at the time of the filing of the application shall be taken into account in ascertaining the tax previously determined only if, and to the extent that, they were reported in the return, or were reflected in any amounts assessed (or collected without assessment) as deficiencies, or in any amounts abated, credited, refunded, or otherwise repaid, before the date of filing the application. The tax previously determined, therefore, will reflect the foreign tax credit and the credit for tax withheld at source provided in section 32.

(b) *Decrease attributable to carryback.*—The decrease in tax previously determined which is affected by the carryback or any related adjustments, is to be determined, except for such carryback and related adjustments, on the basis of the items which entered into the computation of such tax as previously determined; the tax previously determined being ascertained in the manner described in this section. In determining any such decrease, items shall be taken into account only to the extent that they were reported in the return, or were reflected in amounts assessed (or collected without assessment) as deficiencies, or in amounts abated, credited, refunded, or otherwise repaid, before the date of filing the application for a tentative carryback adjustment. If the Internal Revenue Service and the taxpayer are in disagreement as to the proper treatment of any item, it shall be assumed for purposes of determining the decrease in the tax previously determined that such item was correctly reported by the taxpayer unless, and to the extent that, the disagreement has resulted in the assessment of a deficiency (or the collection of an amount without an assessment), or the allowing or making of an abatement, credit, refund, or other repayment, before the date of filing the application. Thus, if the taxpayer claimed a deduction on its return of $50,000 for salaries paid its officers but the district director asserts that such deduction should not exceed $20,000, and the Internal Revenue Service and the taxpayer have not agreed on the amount properly deductible before the date the application for a tentative carryback adjustment is filed, $50,000 shall be considered as the amount prop-

erly deductible for purposes of determining the decrease in tax previously determined in respect of the application for a tentative carryback adjustment. In determining the decrease in tax previously determined, any items which are affected by the carryback must be adjusted to reflect such carryback. Thus, unless otherwise provided, any deduction limited, for example, by adjusted gross income, such as the deduction for medical, dental, etc., expenses is to be recomputed on the basis of the adjusted gross income as affected by the carryback.

§ 1.6411-3 ALLOWANCE OF ADJUSTMENTS.—(a) *Time prescribed.*—The district director shall act upon any application for a tentative carryback adjustment filed under section 6411(a) within a period of 90 days from whichever of the following two dates is the later:

(1) The date the application is filed; or

(2) The last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss from which the carryback results.

(b) *Examination.*—Within the 90-day period described in paragraph (a) of this section, the district director shall make, to the extent he deems practicable in such period, an examination of the application to discover omissions and errors of computation. He shall determine within such period the decrease in tax previously determined, affected by the carryback or any related adjustments, upon the basis of the application and such examination. Such decrease shall be determined in the same manner as that provided in section 1314(a) for the determination by the taxpayer of the decrease in taxes previously determined which must be set forth in the application for a tentative carryback adjustment. The district director, however, may correct any errors of computation or omissions he may discover upon examination of the application. In determining the decrease in tax previously determined which is affected by the carryback or any related adjustment, he accordingly may correct any mathematical error appearing on the application and he may likewise correct any modification required by the law and incorrectly made by the taxpayer in computing its net operating loss, the resulting carrybacks, or its net operating loss deduction. If the required modification has not been made by the taxpayer and the district director has available the necessary information to make such modification within the 90-day period, he may, in his discretion, make such modification. In determining such decrease, however, the district director will not, for example, change the amount claimed on the return as a deduction for depreciation because he believes that the taxpayer has claimed an excessive amount; likewise, he will not include in gross income any amount not so included by the taxpayer, even though the district director believes that such amount is subject to tax and properly should be included in gross income.

(c) *Disallowance in whole or in part.*—If the district director finds that an application for a tentative carryback adjustment contains material omissions or errors of computation, he may disallow such application in whole or in part without further action. If, however, he deems that any error of computation can be corrected by him within

the 90-day period, he may do so and allow the application in whole or in part. The district director's determination as to whether he can correct any error of computation within the 90-day period shall be conclusive. Similarly, his action in disallowing, in whole or in part, any application for a tentative carryback adjustment shall be final and may not be challenged in any proceeding. The taxpayer in such case, however, may file a claim for credit or refund under section 6402, and may maintain a suit based on such claim if it is disallowed or if the district director does not act upon the claim within six months from the date it is filed.

(d) *Application of decrease.*—(1) Each decrease determined by the district director in any previously determined tax which is affected by the carryback or any related adjustments shall first be applied against any unpaid amount of the tax with respect to which such decrease was determined. Such unpaid amount of tax may include one or more of the following:

(i) An amount with respect to which the taxpayer is delinquent;

(ii) An amount the time for payment of which has been extended under section 6164 and which is due and payable on or after the date of the allowance of the decrease; and

(iii) An amount (including an amount the time for payment of which has been extended under section 6161 or 6162, but not including an amount the time for payment of which has been excluded under section 6164) which is due and payable on or after the date of the allowance of the decrease.

(2) In case the unpaid amount of tax includes more than one of such amounts, the district director, in his discretion, shall determine against which amount or amounts, and in what proportion, the decrease is to be applied. In general, however, the decrease will be applied against any amounts described in subparagraph (1) (i), (ii), and (iii) of this paragraph in the order named. If there are several amounts of the type described in subparagraph (1) (iii) of this paragraph, any amount of the decrease which is to be applied against such amounts will be applied by assuming that the tax previously determined minus the amount of the decrease to be so applied in "the tax" and that the taxpayer had elected to pay such tax in installments. The unpaid amount of tax against which a decrease may be applied under subparagraph (1) of this paragraph may not include any amount of tax for any taxable year other than the year of the decrease. After making such application, the district director will credit any remainder of the decrease against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss the time for payment of which has been extended under section 6164.

(3) Any remainder of the decrease after such application and credits may, within the 90-day period, in the discretion of the district director, be credited against any tax or installment thereof then due from the taxpayer, and, if not so credited, shall be refunded to the taxpayer within such 90-day period.

§ 1.6411–4 CONSOLIDATED RETURNS.—For further rules applicable to affiliated groups in the case of tentative carryback adjustments, see § 1.1502–19.

MISCELLANEOUS PROVISIONS

§ 1.9100–1 EXTENSION OF TIME FOR MAKING CERTAIN ELECTIONS.—(a) *In general.*—The Commissioner in his discretion may, upon good cause shown, grant a reasonable extension of the time fixed by the regulations in this chapter for the making of an election or application for relief in respect of tax under subtitle A of the Code provided—

(1) The time for making such election or application is not expressly prescribed by law;

(2) Request for the extension is filed with the Commissioner before the time fixed for making such election or application, or within such time thereafter as the Commissioner may consider reasonable under the circumstances; and

(3) It is shown to the satisfaction of the Commissioner that the granting of the extension will not jeopardize the interests of the Government.

(b) *Exceptions.*—Notwithstanding the provisions of paragraph (a) of this section, the time fixed by the regulations in this chapter will not be extended in cases such as the following:

(1) An election required to be made in or with the taxpayer's original income tax return;

(2) An election required to be exercised by the filing of a claim for credit or refund, unless the election is required to be exercised on or before a date which precedes the date of expiration of the period of limitations provided in section 6511;

(3) An election required to be filed in a petition to the Tax Court;

(4) An application for permission to change a previous election;

(5) An application for permission to change an accounting method as described in §§ 1.77–1 and 1.446–1;

(6) An application for permission to change an accounting period as described in § 1.442–1; or

(7) An application for permission to change the method of treating bad debts as described in § 1.166–1.

DANA LATHAM,
Commissioner of Internal Revenue.

Approved February 12, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on February 13, 1959, 12:30 p.m., and published in the issue of the Federal Register for February 17, 1959, 24 F.R. 1178.)

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26 CFR 31.6001: Statutory provisions; notice or regulations requiring records, statements, and special returns.

Regulations under the Internal Revenue Code of 1954 relating to requirements with respect to employment taxes. See T.D. 6354, page 263.

26 CFR 43.6001: Statutory provisions; notice or regulations requiring records, statements, and special returns.

Regulations under the Internal Revenue Code of 1954 relating to record requirements with respect to documentary stamp taxes. See T.D. 6351, page 387.

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26 CFR 44.6001: Statutory provisions; notice or regulations requiring records, statements, and special returns.

Regulations under the Internal Revenue Code of 1954 relating to the record requirements with respect to the tax on the amount of wagers. See T.D. 6370, page 448.

PART II.—TAX RETURNS OR STATEMENTS

Subpart A.—General Requirement

SECTION 6011.—GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST

26 CFR 1.6011–1: General requirement of return, statement, or list.

Reporting on Form 1087 of dividends received by a record owner of stock. See Rev. Proc. 59–11, page 821.

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26 CFR 31.6011(a): Statutory provisions; general requirement of return, statement, or list; general rule.

Regulations under the Internal Revenue Code of 1954 relating to the requirement of return with respect to employment taxes. See T.D. 6354, page 263.

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26 CFR 44.6011(a): Statutory provisions; general requirement of return, statement, or list; general rule.

Regulations under the Internal Revenue Code of 1954 relating to the returns required with respect to the taxes on wagering. See T.D. 6370, page 448.

Subpart B.—Income Tax Returns

SECTION 6012.—PERSONS REQUIRED TO MAKE RETURNS OF INCOME

26 CFR 1.6012–1: Individuals required to make returns of income. (Also Section 871; 1.871–2.) Rev. Rul. 59–167

The nonresident foreign corporate trustee of a foreign trust having as its sole beneficiary a nonresident alien individual is not re-

quired to file a United States income tax return for the trust for any taxable year during which the trust was not at any time engaged in trade or business within the United States, the gross income of the trust from sources within the United States was not more than $15,400, and the tax liability thereon was fully satisfied through withholding of tax at the source. Also, the trustee is not required to file a United States income tax return for the nonresident alien beneficiary of the trust for any taxable year in which the beneficiary was not at any time engaged in trade or business within the United States, none of the trust income was taxable to the beneficiary, and no gross income was derived by the beneficiary from sources within the United States.

Advice has been requested whether a nonresident foreign corporate trustee for a foreign trust is required, in its fiduciary capacity, to file a United States income tax return either for the trust or the nonresident alien beneficiary thereof under the factual situation described below.

A nonresident foreign corporation is the trustee of a foreign trust which was not engaged in trade or business within the United States at any time during the taxable year. The settlor and beneficiary of the trust are both nonresident alien individuals. During the taxable year, the trust gross income from sources within the United States was $600 or more but not more than $15,400 and the tax liability on such income was satisfied through the withholding of tax at the source. None of the trust income was distributed or distributable to the beneficiary or used for his support during the taxable year, nor did the beneficiary receive in that year any gross income from sources within the United States.

Section 6012 of the Internal Revenue Code of 1954 reads, in part, as follows:

(a) GENERAL RULE.—Returns with respect to income taxes under subtitle A shall be made by the following:

* * * * * * *

(4) Every trust having for the taxable year any taxable income, or having gross income of $600 or over, regardless of the amount of taxable income; and

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

except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary or his delegate, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

Section 1.871–2 of the Income Tax Regulations provides that the term "nonresident alien individual" also includes a nonresident alien fiduciary.

Under section 1.6012–1(b) of the regulations, a nonresident alien individual, not engaged in trade or business within the United States at any time during the taxable year, is not required generally to file a United States income tax return for such year if his gross income for the year from sources within the United States is not more than $15,400 and the tax liability thereon is fully satisfied through the withholding of tax at the source.

The facts of the instant case indicate that the trust is a nonresident alien entity not engaged in trade or business within the United States at any time during the taxable year, that the trust gross income for the taxable year from sources within the United States was not more

than $15,400, and that the tax liability thereon was fully satisfied through withholding at the source. It is held, under the factual situation existing during the taxable year, that the trustee is not required to file a United States income tax return for the trust for such year.

The facts further disclose that the nonresident alien beneficiary of the trust was not engaged in trade or business within the United States at any time during the taxable year, none of the trust income for the taxable year was taxable to the beneficiary, and no gross income was derived by the beneficiary during such year from sources within the United States. Under such circumstances, the trustee is not required to file a United States income tax return for the taxable year for the nonresident alien beneficiary of the trust.

Income received from sources within the United States by a husband and wife, citizens and residents of a foreign country. See Rev. Rul. 59–199, page 182.

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26 CFR 1.6012–3: Returns by fiduciaries.

Trustees under a power in trust. See Rev. Rul. 59–154, page 160.

SECTION 6013.—JOINT RETURN OF INCOME TAX BY HUSBAND AND WIFE

26 CFR 1.6013–1. Joint returns.

Filing of returns by a husband and wife, citizens and residents of a foreign country, with respect to income received from sources within the United States which constitutes community income under the laws of such foreign country. See Rev. Rul. 59–199, page 182.

SECTION 6017.—SELF-EMPLOYMENT TAX RETURNS

26 CFR 1.6017–1: Self-employment tax returns. Rev. Rul. 59–168

(Also Section 1402; 1.1402–1.)

> If an individual is engaged in carrying on a trade or business at the time of his death, his surviving spouse may not include any income derived therefrom for the period prior to his death in computing her net earnings from self-employment, even though she takes over thereafter, operates the business as owner, and files a joint return with respect to both herself and the decedent.

Advice has been requested whether a surviving spouse, who takes over a business as the owner thereof upon the death of her husband, can include the earnings of the business which are attributable to that part of the year in which it was operated by the husband in computing her "net earnings from self-employment" for the year.

A individually owned and operated a business, the gross income from which, less deductions, constituted "net earnings from self-

employment" for purposes of the tax imposed by the Self-Employment Contributions Act of 1954 (chapter 2, subtitle A, Internal Revenue Code of 1954). *A* filed his Federal income tax returns on a calendar-year basis. He died on June 30, 1956, and his surviving spouse took over the business, as its owner, and operated it during the last six months of the year.

Section 6017 of the Internal Revenue Code of 1954 provides that every individual (other than a nonresident alien individual) having net earnings from self-employment of $400 or more for his taxable year shall make a return with respect to the self-employment tax imposed by section 1401 of the Code. A husband and wife filing a joint return must compute their self-employment tax, if any, separately and may not combine their self-employment income for purposes of determining their self-employment tax liability.

In order for income, other than that specifically excluded in section 1402(a) of the Code, to be included in an individual's "net earnings from self-employment" for purposes of the Self-Employment Contributions Act of 1954, it must have been derived from a trade or business carried on by the individual, either personally or through agents or employees. Rev. Rul. 59–162, page 224, this Bulletin. In the instant case, *A* operated the business individually prior to his death and any income derived therefrom during his taxable period, which ended as of the date of his death, June 30, 1956, must be included in computing his net earnings from self-employment. *A*'s surviving spouse may not include any part of such income in computing her net earnings from self-employment even though she files a joint return with respect to herself and the decedent in accordance with the provisions of section 6013 of the Code. The income derived from the operation of the business by the surviving spouse during the last six months of 1956 should be included in computing her net earnings from self-employment for that year.

Where a joint return is filed and the decedent's net earnings from self-employment amount to $400 or more, a separate Schedule SE must be filed in his name in conjunction with Schedule C or F, Form 1040, U.S. Individual Income Tax Return. The surviving spouse must likewise execute separate Schedules if her net earnings from self-employment amount to $400 or more for the taxable year.

Subpart C.—Estate and Gift Tax Returns

SECTION 6019.—GIFT TAX RETURNS

26 CFR 25.6019–1: Persons required to file returns. Rev. Rul. 59–57

(Also Sections 2513, 2521, 2522; 25.2513–1, 25.2521–1, 25.2522(a)–1.)

Any individual who makes a contribution or gift in excess of $3,000 in any one calendar year to a political party or to a candidate for public office must file a Federal Gift Tax Return, Form 709. To the extent that such a contribution or gift is in excess of $3,000 it may be applied against all or any unused portion of the $30,000 lifetime specific exemption authorized by section 2521 of the Code. The gift splitting provi-

sions of section 2513 of the Code provide that contributions or gifts made by a husband or a wife to a third party are considered as made one-half by each spouse under specified conditions. Thus, in such a situation, a gift of $6,000 can be made without any portion of the gift being applied against the specific exemption. A contribution to a political party or to any candidate for public office does not constitute a gift to or for the use of the United States, or any State, Territory, or political subdivision thereof, for exclusively public purposes within the meaning of section 2522(a)(1) of the Internal Revenue Code of 1954. Accordingly, a contribution made to a political party or to any candidate for public office is not allowable as a deductible contribution for gift tax purposes under section 2522 of the Code.

PART III.—INFORMATION RETURNS

Subpart A.—Information Concerning Persons Subject to Special Provisions

SECTION 6031.—RETURN OF PARTNERSHIP INCOME

26 CFR 1.6031–1: Return of partnership income. Rev. Rul. 59–169

For purposes of determining the taxable income of partners, it will be necessary for each partnership, including those engaged in farming, in making a return of income for each taxable year, as required by section 6031 of the Internal Revenue Code of 1954, to complete Form 1065, U.S. Partnership Return of Income, including Schedule L-Balance Sheets, to the extent indicated by the form and its accompanying instructions.

Advice has been requested concerning the necessity of farm partnerships preparing Schedule L—Balance Sheets on Form 1065, U. S. Partnership Returns of Income.

Section 6031 of the Internal Revenue Code of 1954 relating to returns of partnership income provides as follows:

Every partnership (as defined in section 761(a) shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowable by subtitle A, and such other information for the purpose of carrying out the provisions of subtitle A as the Secretary or his delegate may by forms and regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual.

In view of the foregoing it is held that all partnerships, including those engaged in farming will be required to complete Schedule L-Balance Sheets prescribed on form 1065, U.S. Partnership Return of Income. There is no authority in the law or the applicable regulations to exclude any occupational group from this requirement.

SECTION 6033.—RETURNS BY EXEMPT ORGANIZATIONS

26 CFR 1.6033–1: Returns by exempt organizations. Rev. Rul. 59–95 (Also Sections 501; 1.501(a)–1.)

An organization previously held exempt from Federal income tax was requested to produce a financial statement as of the end of the year and a statement of its operations during such year.

However, its records were so incomplete that it was unable to furnish such statements. Section 6033 of the Internal Revenue Code of 1954 provides that every organization, except as provided therein, exempt from taxation under section 501(a) of the Code shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and shall keep such records, render under oath such statements, make such other returns and comply with such rules and regulations as the Secretary of the Treasury or his delegate may from time to time prescribe. *Held*, failure or inability to file the required information return or otherwise to comply with the provision of section 6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of an exempt status.

Subpart B.—Information Concerning Transactions With Other Persons

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SECTION 6045.—RETURNS OF BROKERS

Reporting on Form 1087 of dividends received by a record owner of stock. See Rev. Proc. 59–11, page 821.

PART V.—TIME FOR FILING RETURNS AND OTHER DOCUMENTS

SECTION 6071.—TIME FOR FILING RETURNS AND OTHER DOCUMENTS

26 CFR 31.6071(a): Statutory provisions; time for filing returns and other documents.

Regulations under the Internal Revenue Code of 1954 relating to the time for filing employment tax returns and other documents. See T.D. 6354, page 263.

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26 CFR 44.6071: Statutory provisions; time for filing returns and other documents.

Regulations under the Internal Revenue Code of 1954 relating to the time for filing returns with respect to the taxes on wagering. See T.D. 6370, page 448.

PART VI.—EXTENSION OF TIME FOR FILING RETURNS

SECTION 6081.—EXTENSION OF TIME FOR FILING RETURNS

26 CFR 1.6081–1: Extension of time for filing returns. T. D. 6371[1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Amendment of Income Tax Regulations under sections 6073 and 6081 of the Internal Revenue Code of 1954.

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

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

In order to modify the regulations under section 6073 of the Internal Revenue Code of 1954, relating to the time for filing declarations of estimated income tax by individuals, to reflect the admission of the State of Alaska into the Union, and to provide in the regulations under section 6081 of the Internal Revenue Code of 1954, relating to extensions of time for filing returns, a new rule with respect to the place for making application for extension of time for filing a return required to be filed with an Internal Revenue Service Center, the Income Tax Regulations (26 CFR Part 1) are hereby amended as follows:

PARAGRAPH 1. Section 1.6073–4 is amended by striking out in the last sentence of paragraph (b) thereof the words "the Territory of".

PAR. 2. Section 1.6081–1 is amended by striking out the first sentence of paragraph (b)(1) of such section and inserting in lieu thereof the following:

A taxpayer desiring an extension of the time for filing a return, statement, or other document shall submit an application therefor on or before the due date of such return, statement, or other document. Except in the case of an information return required to be filed with an Internal Revenue Service Center, the application for extension of the time for filing a return, statement, or other document shall be made to the internal revenue officer with whom such return, statement, or other document is required to be filed. In the case of an information return required to be filed with an Internal Revenue Service Center, the application for extension of the time for filing any such return shall be made to the internal revenue officer with whom the person required to file such return is required to file his income tax return or with whom he would be required to file an income tax return if such a return were required of him.

Because this Treasury Decision makes only clarifying and procedural changes, 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 that Act.

[1] 24 F.R. 2650.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

Approved April 1, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on April 6, 1959, 8:48 a.m., and published in the issue of the Federal Register for April 7, 1959, 24 F.R. 2650.)

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26 CFR 31.6081(a): Statutory provisions; extension of time for filing returns.

Regulations under the Internal Revenue Code of 1954 relating to extension of time for filing employment tax returns. See T.D. 6354, page 263.

PART VII.—PLACE FOR FILING RETURNS OR OTHER DOCUMENTS

SECTION 6091.—PLACE FOR FILING RETURNS OR OTHER DOCUMENTS

26 CFR 44.6091: Statutory provisions; place for filing returns or other documents.

Regulations under the Internal Revenue Code of 1954 relating to the place for filing returns with respect to the taxes on wagering. See T.D. 6370, page 448.

SUBCHAPTER B.—MISCELLANEOUS PROVISIONS

SECTION 6103.—PUBLICITY OF RETURNS AND LISTS OF TAXPAYERS

26 CFR 301.6103(a)-101: Inspection of returns by committees of Congress other than those enumerated in Section 6103 (d) of the Internal Revenue Code of 1954. (Also Part II, Section 55.) — E.O. 10801[1]

Amendment of Executive Order No. 10703, authorizing the inspection of certain tax returns.

By virtue of the authority vested in me by sections 55(a), 508, 603, 729(a), and 1204 of the Internal Revenue Code of 1939 (53 Stat. 29, 111, 171; 54 Stat. 989, 1008; 55 Stat. 722; 26 U.S.C. 55(a), 508, 603, 729(a) and 1204), and by section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)), Executive Order No. 10703 of March 17, 1957, [C.B. 1957-1, 438], entitled "Inspection

[1] 24 F.R. 521.

of Income, Excess-Profits, Declared-Value, Excess-Profits, Capital-Stock, Estate, and Gift Tax Returns by the Select Committee of the Senate Established by Senate Resolution 74, 85th Congress, to Investigate Improper Activities in Labor-Management Relations, and for Other Purposes," is hereby amended by striking out "for the years 1945 to 1957, inclusive, shall, during the Eighty-fifth Congress," and inserting in lieu thereof "for the years 1945 to 1959, inclusive, shall, during the Eighty-fifth Congress and as long as the Committee is authorized to act during the Eighty-sixth Congress,".

This order shall be effective as of noon on January 3, 1959.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE,
January 21, 1959.

(Filed by the Division of the Federal Register on January 21, 1959, 1:15 p.m., and published in the issue of the Federal Register for January 23, 1959, 24 F.R. 521.)

(Also Part II, Section 55.) E.O. 10806 [2]

Inspection of income, excess-profits, estate, and gift tax returns by the Senate Committee on Government Operations.

By virtue of the authority vested in me by sections 55(a) and 508 of the Internal Revenue Code of 1939 (53 Stat. 29, 111; 26 U.S.C. 55(a), 508) and by section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)), it is hereby ordered that any income, excess-profits, estate, or gift tax return for the years 1947 to 1959, inclusive, shall, during the Eighty-sixth Congress be open to inspection by the Senate Committee on Government Operations, or any duly authorized subcommittee thereof, in connection with its studies of the operation of Government activities at all levels with a view to determining the economy and efficiency of the Government, such inspection to be in accordance and upon compliance with rules and regulations prescribed by the Secretary of the Treasury in Treasury Decisions 6132 [C.B. 1955–1, 142] and 6133, [C.B. 1955–1, 335], relating to the inspection of returns by committees of the Congress, approved by me on May 3, 1955.

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

DWIGHT D. EISENHOWER.

THE WHITE HOUSE,
March 10, 1959.

(Filed by the Division of the Federal Register on March 11, 1959, 1:24 p.m., and published in the issue of the Federal Register for March 13, 1959, 24 F.R. 1823.)

(Also Part II, Section 55.) E.O. 10808 [3]

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

By virtue of the authority vested in me by sections 55(a), 508, 603, 729(a), and 1204 of the Internal Revenue Code of 1939 (53 Stat. 29,

[2] 24 F.R. 1823.
[3] 24 F.R. 2221.

111, 171; 54 Stat. 989, 1008; 55 Stat. 722; 26 U.S.C. 55(a), 508, 603, 729(a), and 1204), and by section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)), it is hereby ordered that any income, excess-profits, declared-value excess-profits, capital-stock, estate, or gift tax return, for the years 1945 to 1958, inclusive, shall, during the Eighty-sixth Congress, be open to inspection by the Senate Committee on the Judiciary, or any duly authorized subcommittee thereof, in connection with its investigation of the administration, operation, and enforcement of the Internal Security Act of 1950 and other internal security laws pursuant to Senate Resolution 59, 86th Congress, agreed to February 2, 1959, such inspection to be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in Treasury Decisions 6132 [C.B. 1955–1, 142] and 6133 [C.B. 1955–1, 335], relating to the inspection of returns by committees of the Congress, approved by me on May 3, 1955.

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

DWIGHT D. EISENHOWER.

THE WHITE HOUSE,
March 19, 1959.

(Filed by the Division of the Federal Register on March 19, 1959, 2:33 p.m., and published in the issue of the Federal Register for March 21, 1959, 24 F.R. 2221.)

(Also Part II, Section 55.) E.O. 10815[4]

Inspection of income, excess-profits, estate, and gift tax returns by the Committee on Un-American Activities, House of Representatives.

By virtue of the authority vested in me by sections 55(a), 508, and 729(a) of the Internal Revenue Code of 1939 (53 Stat. 29, 111; 54 Stat. 989, 1008; 26 U.S.C. 55(a), 508, and 729(a)), and by section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)), it is hereby ordered that any income, excess-profits, estate, or gift tax return for the years 1945 to 1959, inclusive, shall, during the Eighty-sixth Congress, be open to inspection by the Committee on Un-American Activities, House of Representatives, or any duly authorized subcommittee thereof, for the purpose of carrying on those investigations authorized by clause 17 of Rule XI of the Rules of the House of Representatives, agreed to January 7, 1959, such inspection to be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in Treasury Decisions 6132 [C.B. 1955–1, 142] and 6133 [C.B. 1955–1, 335], relating to the inspection of returns by committees of the Congress, approved by me on May 3, 1955.

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

DWIGHT D. EISENHOWER.

THE WHITE HOUSE,
April 29, 1959.

(Filed by the Division of the Federal Register on April 29, 1959, 4:40 p.m., and published in the issue of the Federal Register for May 1, 1959, 24 F.R. 3474.)

[4] 24 F.R. 8474.

(Also Part II, Section 55.) E.O. 10818 [5]

Inspection of income, excess-profits, estate, and gift tax returns by the Committee on Government Operations, House of Representatives.

By virtue of the authority vested in me by sections 55(a), 508, and 729(a) of the Internal Revenue Code of 1939 (53 Stat. 29, 111; 54 Stat. 989, 1008; 26 U.S.C. 55(a), 508, and 729(a)), and by section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)), it is hereby ordered that any income, excess-profits, estate, or gift tax return for the years 1945 to 1959, inclusive, shall, during the Eighty-sixth Congress, be open to inspection by the Committee on Government Operations, House of Representatives, or any duly authorized subcommittee thereof, in connection with its studies of the operation of Government activities at all levels with a view to determining the economy and efficiency of the Government, such inspection to be in accordance and compliance with the rules and regulations prescribed by the Secretary of the Treasury in Treasury Decisions 6132 [C.B. 1955–1, 142] and 6133 [C.B. 1955–1, 335], relating to the inspection of returns by committees of the Congress, approved by me on May 3, 1955.

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

DWIGHT D. EISENHOWER.

THE WHITE HOUSE,
May 8, 1959

(Filed by the Division of the Federal Register on May 11, 1959, 9:40 a.m., and published in the issue of the Federal Register for May 12, 1959, 24 F.R. 3779.)

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26 CFR 301.6103(a)–102: Inspection by Securities and Exchange Commission of transcript cards and corporate and individual income tax returns. (Also Part II, Section 55; 26 CFR (1939) 458.325.) E.O. 10814 [6]

Inspection of statistical transcript cards and corporation and individual income tax returns by the Securities and Exchange Commission.

By virtue of the authority vested in me by section 55(a) of the Internal Revenue Code of 1939 (53 Stat. 29; 54 Stat. 1008; 55 Stat. 722; 26 U.S.C. 55(a)) and by section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753, 26 U.S.C. 6103(a)), and in the interest of the internal management of the Government, it is hereby ordered that statistical transcript cards prepared by the Internal Revenue Service from income tax returns of corporations made for taxable years ending after December 31, 1952, and corporate and individual income tax returns made for taxable years ending after December 31, 1956, shall be open to inspection by the Securities and

[5] 24 F.R. 3779.
[6] 24 F.R. 3474.

Exchange Commission as may be needed in gathering statistical information in carrying out its functions under the Securities Exchange Act of 1934, approved June 6, 1934 (48 Stat. 881; 15 U.S.C. 78), as amended, or in complying with directives or recommendations of the Bureau of the Budget pursuant to section 103 of the Budget and Accounting Procedures Act of 1950, approved September 12, 1950 (64 Stat. 834; 31 U.S.C. 18b), relating to the development of programs for preparing statistical information by Executive agencies. Such inspection shall be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in the two Treasury Decisions, relating to the inspection of certain transcript cards and income tax returns by the Securities and Exchange Commission, approved by me this date.

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

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
April 29, 1959.

(Filed by the Division of the Federal Register on April 29, 1959, 4:40 p.m., and published in the issue of the Federal Register for May 1, 1959, 24 F.R. 3474.)

T.D. 6374[7]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER F, PART 301.—PROCEDURE AND ADMINISTRATION

Regulations governing the inspection of transcript cards and corporate and individual income tax returns by the Securities and Exchange Commission.

DEPARTMENT OF THE TREASURY,
Washington 25, D.C.

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

SEC. 301.6103(a)–102. INSPECTION BY SECURITIES AND EXCHANGE COMMISSION OF TRANSCRIPT CARDS AND CORPORATE AND INDIVIDUAL INCOME TAX RETURNS.—(a) Pursuant to the provisions of section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)) and of the Executive order issued thereunder, and in the interest of the internal management of the Government, corporate and individual income tax returns made for taxable years ending after December 31, 1956, and statistical transcript cards prepared by the Internal Revenue Service from income tax returns of corporations made for taxable years beginning after December 31, 1953, and ending after August 16, 1954, shall be open to inspection by the Securities and Exchange Commission as may be needed in gathering statistical information in carrying out its functions under the Securities Exchange Act of 1934, approved June 6, 1934 (48 Stat. 881; 15 U.S.C. 78), as amended, or in complying with directives or recommendations of the Bureau of the Budget pursuant to section 103 of the Budget and Accounting Procedures Act of 1950, approved September 12, 1950 (64 Stat. 834; 31 U.S.C. (18b), relating to the develop-

[7] 24 F.R. 3503.

ment of programs for preparing statistical information by Executive agencies. Upon request, such inspection may be made by any officer or employee of the Securities and Exchange Commission duly authorized by the Chairman of such Commission to make it. Upon written notice by the Chairman of the Securities and Exchange Commission to the Secretary of the Treasury, stating the type of statistical transcript cards or income tax returns of which inspection is desired, the Secretary, or any officer or employee of the Treasury Department with the approval of the Secretary, may furnish the Securities and Exchange Commission with any data on such cards or returns or may make them available for inspection and the taking of such data as the Chairman of the Securities and Exchange Commission may designate. Such data shall be furnished, or such returns or cards shall be made available for inspection, in the Office of the Commissioner of Internal Revenue. Any information thus obtained shall be held confidential except to the extent that it shall be published or disclosed in statistical form, provided such publication shall not disclose, directly or indirectly, the name or address of any taxpayer.

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

ROBERT B. ANDERSON,
Secretary of the Treasury.

Approved April 29, 1959.

DWIGHT D. EISENHOWER,
The White House.

(Filed by the Division of the Federal Register April 29, 1959, 4:57 p.m., and published in the issue of the Federal Register for May 1, 1959, 24 F.R. 3503.)

CHAPTER 62.—TIME AND PLACE FOR PAYING TAX

SUBCHAPTER A.—PLACE AND DUE DATE FOR PAYMENT OF TAX

SECTION 6151.—TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS

26 CFR 31.6151: Statutory provisions; time and place for paying tax shown on returns.

Regulations under the Internal Revenue Code of 1954 relating to the time and place for paying employment taxes. See T.D. 6354, page 263.

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26 CFR 44.6151: Statutory provisions; time and place for paying tax shown on returns; general rule.

Regulations under the Internal Revenue Code of 1954 relating to the time and place for paying the taxes on wagering. See T.D. 6370, page 448.

CHAPTER 64.—COLLECTION

SUBCHAPTER A.—GENERAL PROVISIONS

SECTION 6302.—MODE OR TIME OF COLLECTION

26 CFR 31.6302(c): Statutory provisions; mode or time of collection; use of Government depositaries.

Regulations under the Internal Revenue Code of 1954 relating to the mode or time of collection, and the use of Government depositaries with respect to employment taxes. See T.D. 6354, page 263.

SUBCHAPTER D.—SEIZURE OF PROPERTY FOR COLLECTION OF TAXES

SECTION 6331.—LEVY AND DISTRAINT

26 CFR 301.6331–1: Levy and distraint.

Levy on accrued salaries of state employees. See Ct. D. 1837, below.

SECTION 6332.—SURRENDER OF PROPERTY SUBJECT TO LEVY

26 CFR 301.6332–1: Surrender of property subject to levy. Ct. D. 1837
(Also Section 6331; 301.6331–1.)

INCOME TAX—INTERNAL REVENUE CODE OF 1954—DECISION OF COURT

1. PROPERTY SUBJECT TO LEVY—ACCRUED SALARIES OF STATE EMPLOYEES—"PERSON" DEFINED—PERSONAL LIABILITY FOR FAILURE TO SURRENDER PROPERTY.

Accrued salaries of State employees are subject to levy for the collection of any federal tax. The fact that section 6331 of the 1954 Code contained an express provision for levy upon accrued salaries of employees of the federal government but omitted reference to state employees did not indicate an intention on the part of Congress to exclude the latter from levy. A State is a "person" whose accrued salary obligations to State employees are subject to federal tax levy under section 6332 of the 1954 Code and the State Auditor who, under West Virginia law, was obligated with respect to the salaries covered by the levies, is personally liable in a sum equal to the amount, not exceeding the delinquent taxes, which he refused to surrender to the Government but instead surrendered to taxpayers in defeat of the Government's levies.

2. JUDGMENT AFFIRMED.

Judgment of the United States Court of Appeals for the Fourth Circuit, 252 Fed. (2d) 434, affirmed.

SUPREME COURT OF THE UNITED STATES

Edgar B. Sims, Petitioner, v. *United States of America*

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

[March 23, 1959]

MR. JUSTICE WHITTAKER delivered the opinion of the Court.

The Commissioner of Internal Revenue assessed an income tax deficiency against each of three residents of West Virginia and forwarded the assessment lists to the Director of Internal Revenue at Parkersburg for collection. The deficiencies remaining unpaid for more than 10 days after demand for payment and the taxpayers being then employed by the State of West Virginia, the Director issued notices of levy directed to the State of West Virginia and served them on petitioner, as the State Auditor, seizing the accrued salaries of the taxpayers pursuant to § 6331 of the 1954 Internal Revenue Code, 26 U.S.C. (Supp. V) § 6331.[1] Petitioner refused to honor the levies and instead issued and delivered payroll warrants to the taxpayers for their then accrued net salaries aggregating $519.71.[2] Thereafter the Government brought this suit in the Federal District Court against petitioner under § 6332 of the 1954 Internal Revenue Code, 26 U.S.C. (Supp. V) § 6332,[3] to recover from him personally the $519.71 that he had so paid to the taxpayers in disobedience to and defeat of the Government's levies. The District Court rendered judgment for the Government and the Court of Appeals affirmed, 255 F. 2d 434. Certiorari was sought on the grounds that § 6331 does not authorize a levy on the accrued salaries of employees of a State, and that, if it be held that it does, petitioner was not a person "obligated with respect to" the accrued and seized salaries, within the meaning of § 6332, and, therefore, is not personally liable for refusing to surrender them to the Government. We granted the writ to determine those questions. 358 U.S. 809.

Nothing in the Constitution requires that the salaries of state employees be treated any differently, for federal tax purposes, than the salaries of others, *Helvering* v. *Gerhardt*, 304 U.S. 405 [Ct. D. 1343, C.B. 1938–2, 246]; *Graves* v. *State of New York ex rel. O'Keefe*, 306 U. S. 466 [Ct. D. 1390, C.B. 1939–1 (Part 1), 129], and it is quite clear, generally, that accrued salaries are property and rights to property subject to levy.[4] In plain terms, § 6331 provides for the collection of assessed and unpaid taxes "by levy upon all property and rights to

[1] 26 U.S.C. (Supp. V) § 6331, in pertinent part, provides:

"(a) Authority of Secretary or delegate.—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax . . . by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer . . . .

"(b) Seizure and sale of property.—The term 'levy' as used in this title includes the power of distraint and seizure by any means. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible)."

[2] The assessment against each of the taxpayers substantially exceeded in amount the accrued salary owing to each at the time of the levies.

[3] 26 U.S.C. (Supp. V) § 6332 provides:

"(a) Requirement.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

"(b) Penalty for violation.—Any person who fails or refuses to surrender as required by subsection (a) any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy.

"(c) Person defined.—The term 'person,' as used in subsection (a), includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation."

[4] *Glass City Bank* v. *United States*, 326 U.S. 265, 268 [Ct. D. 1651, C.B. 1945, 330]; *United States* v. *Long Island Drug Co.*, 115 F. 2d 983, 986 (C.A. 2d Cir.); 9 Mertens, Law of Federal Income Taxation (Rev.), § 49.205.

property" belonging to a delinquent taxpayer.[5] Pursuant to that statute a regulation was promulgated expressly interpreting and declaring § 6331 to authorize levy on the accrued salaries of employees of a State to enforce collection of any federal tax.[6]

Although not disputing these principles, petitioner advances two arguments in support of his claim that the statutes do not authorize a levy on the accrued salaries of employees of a State. First, he contends that a State is not a "person" within the meaning of § 6332, and, second, he argues that Congress, by specifically authorizing in § 6331 a levy "upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality" thereof, but not similarly specifically authorizing levy upon the accrued salaries or wages of employees of a State, evinced its intention to exclude the latter from such levies.

Though the definition of "person" in § 6332 does not mention States or any sovereign or political entity or their officers among those it "includes" (Note 3), it is equally clear that it does not *exclude* them. This is made certain by the provisions of § 7701(b) of the 1954 Internal Revenue Code that "The term 'includes' and 'including' when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined." 26 U.S.C. (Supp. V) § 7701(b). Whether the term "person" when used in a federal statute includes a State cannot be abstractly declared, but depends upon its legislative environment, *Ohio* v. *Helvering*, 292 U.S. 360, 370 [Ct. D. 836, C.B. XIII–1, 531 (1934)]; *Georgia* v. *Evans*, 316 U.S. 159, 161. It is clear that § 6332 is stated in all-inclusive terms of general application. "In interpreting federal revenue measures expressed in terms of general application, this Court has ordinarily found them operative in the case of state activities even though States were not expressly indicated as subjects of tax." *Wilmette Park Dist.* v. *Campbell*, 338 U.S. 411, 416 [Ct. D. 1726, C.B. 1950–1, 143], and cases cited. We think that the subject matter, the context, the legislative history, and the executive interpretation, *i.e.*, the legislative environment, of § 6332 make it plain that Congress intended to and did include States within the term "person" as used in § 6332.

Nor is there merit in petitioner's contention that Congress, by specifically providing in § 6331 for levy upon the accrued salaries of federal employees, but not mentioning state employees, evinced an intention to exclude the latter from levy. The explanation of that action by Congress appears quite clearly to be that this Court had held in *Smith* v. *Jackson*, 246 U.S. 388, that a federal disbursing officer might not, in the absence of express congressional authorization, set off an indebtedness of a federal employee to the Government against the employee's salary, and, pursuant to that opinon, the Comptroller General ruled that an "administrative official served with [notices of levy] would be without authority to withhold any portion of the current salary of such employee in satisfaction of the notices of levy and distraint." 26 Comp. Gen. 912 (1947). It is evident that § 6331 was enacted to overcome that difficulty and to subject the salaries of federal employees to the same collection procedures as are available against all other taxpayers, including employees of a State.

Accordingly we hold that §§ 6331 and 6332 authorize levy upon the accrued salaries of state employees for the collection of any federal tax.

This brings us to petitioner's contention that even if the salaries of state employees are subject to levy, he is not personally liable to the Government for refusing to honor its levies because, contrary to the holding of the courts below, he was not a person "obligated with respect to" the salaries covered thereby. Congress did not define the questioned phrase, nor do we feel called upon here to delimit its scope, for we think it includes, at least, a person who has the sole power to control disposition of the fund, and we also think that, under the West Virginia law, petitioner both had and exercised that power. By a

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[5] The only property exempt from levy is that listed in § 6334(a) of the 1954 Internal Revenue Code, 26 U.S.C. (Supp. V) § 6334(a), consisting of certain personal articles and provisions. It does not exempt salaries or wages.

[6] Section 301.6331–1(a)(4)(ii) of Treasury Regulations relating to Seizure of Property for Collection of Taxes (1954), 26 CFR § 301.6331–1 (a)(4)(ii), in pertinent part, provides:

"State and municipal employees.—Accrued salaries, wages, or other compensation of any officer, employee, or elected or appointed official of a State or Territory, or of any agency, instrumentality or political subdivision thereof, are also subject to levy to enforce collection of any federal tax."

This Regulation became effective on January 1, 1955, 1955–1 Cum. Bull., p. 195, § 7851, and therefore prior to the service on petitioner of the Government's notices of levy in October 1955.

West Virginia statute, 1 W. Va. Code, 1955, § 1031(1), he was empowered and obligated to deduct and withhold from the salaries of state employees sums "to pay taxes as may be required by an act or acts of the Congress of the United States of America"; and, similarly, another West Virginia statute, 2 W. Va. Code, 1955, § 3834(18), authorizes garnishments to be served upon him to sequester the salaries of state employees. He alone has the obligation and power to issue warrants for the payment of salaries, and state employees entitled to payment for services may enforce their rights by mandamus against him. *State ex rel. Board of Governors of West Virginia University* v. *Sims*, 133 W. Va. 239, 55 S.E. 2d 505; *State ex rel. Board of Governors of West Virginia University* v. *Sims*, 136 W. Va. 789, 86 S.E. 2d 489; *State ex rel. Board of Governors of West Virginia University* v. *Sims*, 140 W. Va. 64, 82 S.E. 2d 321. By and to the extent of these West Virginia laws petitioner was obligated and empowered in respect to the sequestered salaries. These laws empowered him completely to control the disposition of that fund. He exercised that power by refusing to honor the Government's valid levies and to surrender the fund to the Government. Instead he surrendered the fund to the taxpayers. That action by petitioner resulted in defeat of the Government's valid levies.

Upon these principles four judges who are constantly required to pass upon West Virginia laws have held that, under the law of that State, petitioner is a person who was obligated with respect to the salaries covered by the Government's levies. Their conclusion appears to be founded on reason and authority, and under familiar principles will be accepted here. *Propper* v. *Clark*, 337 U.S. 472, 486–487. Being a person who, under the law of West Virginia, was obligated with respect to the salaries covered by the Government's levies, petitioner is, by § 6332(b), made personally liable to the Government in a sum equal to the amount, not exceeding the delinquent taxes, which he refused to surrender to the Government but surrendered instead to the taxpayers in defeat of the Government's levies. The judgment of the Court of Appeals was therefore correct and must be Affirmed.

CHAPTER 65.—ABATEMENTS, CREDITS, AND REFUNDS

SUBCHAPTER A.—PROCEDURE IN GENERAL

SECTION 6402.—AUTHORITY TO MAKE CREDITS OR REFUNDS

26 CFR 301.6402–1: Authority to make credits or refunds — Rev. Rul. 59–39

> Where prior to marriage a gift is made by the husband to a third party and one-half of the value is included in the gift tax return of each of the spouses, but the tax shown to be due on both returns is paid by the husband, an overassessment of tax on the wife's return may be applied against a deficiency assessed against the husband and a claim for refund of the overassessment by the wife may be rejected in full.

Advice has been requested whether an overassessment of tax on a wife's gift tax return may be applied against a deficiency assessed against the husband where the gift had been made by the husband to a third party and the spouses reported one-half of the value of the gift on the gift tax return filed by each.

The taxpayer and his wife were married in May 1955. During that year both before and after the date of the marriage the husband made gifts to his two sons by a prior marriage. A consent was signified in accordance with section 2513 of the Internal Revenue Code of 1954,

and each reported one-half of the value of the total gifts on gift tax returns filed for that year. The husband paid the tax shown to be due on both returns. However, an audit of the returns showed that one-half of the value of the gifts made prior to the marriage was included in the return filed by the wife. Consequently, a deficiency was found on the return filed by the husband, and the amount of the overassessment on the wife's return was determined to be refundable.

Section 6402(a) of the Internal Revenue Code of 1954 provides that, "In the case of any overpayment, the Secretary or his delegate, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall refund any balance to such person."

Section 2513(d) of the Code provides, "If the consent required by subsection (a)(2) is signified with respect to a gift made in any calendar year, the liability with respect to the entire tax imposed by this chapter of each spouse for such year shall be joint and several."

In the case of *Cherry Cotton Mills, Inc.* v. *United States*, 327 U. S. 536, Ct. D. 1672, C. B. 1946–1,228, where a plaintiff sued the Government to recover the Government's indebtedness to the plaintiff for illegally collected taxes, which indebtedness the Government had set off against plaintiff's greater past due indebtedness to the Reconstruction Finance Corporation, it was held that the Government was entitled to recover on its counterclaim for the balance of plaintiff's indebtedness to the Reconstruction Finance Corporation. This indicates that an overassessment may be offset against any indebtedness due the Government, the only conditions apparently being the establishment of the indebtedness and a showing that the liability so established is that of the party or parties in question. In this connection, it was held in *Ruth B. Bush* v. *United States*, 109 Fed. Supp. 254, that in actions by taxpayers against the United States to recover alleged overpayments of taxes, counterclaims of the United States alleging that additional taxes and interest were duly determined and assessed by the Commissioner of Internal Revenue for the years involved were sufficient.

While section 2513 of the Code provides that a gift by one spouse to any person other than his spouse may be considered as made one-half by him and one-half by his spouse and imposes certain liabilities, it does not go as far as to change the ownership of any property between the husband and wife. The mere filing of a return showing only one-half of the gifts made by her husband, therefore, does not vest in the wife any title to any part of the tax refund.

Accordingly, it is held that where a gift is made by a husband to a third party and one-half of the value thereof is included in his gift tax return and one-half is returned by his wife, an overassessment of tax on the wife's return may be applied against a deficiency assessed against the husband and a claim for refund of the overassessment filed by the wife to have the overassessment paid to her may be rejected in full. See Rev. Rul. 56–92, C.B. 1956–1,564.

26 CFR 301.6402–2: Claims for credit or refund. Rev. Rul. 59–157

Principles are established as guides for taxpayers filing claims for refund pursuant to Public Law 408, 84th Congress.

A series of questions has been presented to the Internal Revenue Service with respect to the filing of refund claims under the provisions of section 2(d), Public Law 408, 84th Congress.

Public Law 408, C.B. 1956–1, 854, which amends section 120 of the Internal Revenue Code of 1939 (relating to unlimited deduction for charitable contributions) provides, in general, that an unlimited charitable deduction is to be available for charitable and other contributions under the 1939 Code where in the current year and in eight out of ten of the immediately preceding years the individual's contribution to charity, plus his income tax payments, exceeded 90 percent of his net income, but only if an amount equal to any refund under such provision is paid to, or set aside for, charity.

The following questions and their answers appear below.

Question 1.—Where and on what form should claim for refund under Public Law 408 be filed?

Answer. Section 301.6402(a)(2) of the Regulations on Procedure and Administration, relating to claims for credit or refund, provides in part that "the claim, together with appropriate supporting evidence, must be filed in the office of the District Director for the Internal Revenue district in which the tax was paid." Except to the extent special rules (not generally applicable here), relating to the use of the return forms as claims apply, claims should be made on Form 843, Claim.

Question 2.—In the event the taxpayer dies before the claim for refund has been filed, will it be appropriate for the duly appointed legal representative of the estate of the decedent to file a refund claim?

Answer. Section 301.6402(e) of the regulations provides, in part, that "If a return is filed by an individual and, after his death, a refund claim is filed by his legal representative, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the legal representative to file the claim."

Accordingly, the duly appointed legal representative of a deceased taxpayer may file claim for refund under Public Law 408.

Question 3.—It is necessary that a claim for refund, filed during the lifetime of the taxpayer, specify the names of the organizations to which the amount of the refund is to be paid as a charitable contribution?

Answer. Section 301.6402–2(b)(1) of the regulations provides in part, that "* * * The claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof."

In addition to setting forth in detail each ground upon which a credit or refund is claimed, a taxpayer must submit satisfactory evidence to the District Director sufficient to insure that either the refund itself, or an amount equal to the amount to be refunded, has been or will be paid to an organization or organizations described in section 170(c) of the Internal Revenue Code of 1954.

Question 4.—Is it necessary that a taxpayer filing a claim during his lifetime, which may not be paid until after his death, provide by will that the amount of the claimed refund will be paid in cash to certain named charitable organizations described in section 170 or section 2055 of the 1954 Code?

Answer. Section 2(b)(2) of Public Law 408, *supra*, provides that in the case of a taxpayer who has died at the time the refund is made, that (A) an amount equal to the amount of the refund, must under the terms of the decedent's will, be transferred to a person or organization described in section 2055 of the Internal Revenue Code of 1954, and (B) an amount equal to the amount of such transfer must be deductible from the value of the gross estate under such section or the corresponding provisions of the Internal Revenue Code of 1939.

The report of the Committee on Finance, Senate Report No. 1403, C. B. 1956–1, 953, commenting on this provision states as follows: "If the taxpayer has died at the time the refund is made, an amount equal to the refund must, under the terms of the decedent's will, be transferred for public, charitable, or religious uses (as described in section 2055 of the 1954 Code which provides a deduction for charitable, etc., contributions for the estate-tax purposes) and the amount so transferred must be deductible from the value of the gross estate."

It is not necessary that the taxpayer's will make specific cash bequests of the amount of the refunds. However, in the absence of a specific bequest the will must provide for a residuary or other bequest or device to such a person or organization in an amount of money or property not less than the amount of the refund.

Question 5.—Will the receipt of a refund under Public Law 408, *supra*, in any year affect in any manner the taxpayer's right to an unlimited deduction for charitable contributions in such year under section 170(b)(1)(C) of the 1954 Code?

Answer. The report of the Committee on Finance, U.S. Senate Report No. 1403, 84th Congress, *supra*, in its discussion of Public Law 408, *supra*, points out that the amount of any refund is not to be taken into consideration in determining the qualification of the taxpayer for an unlimited charitable deduction for any year or any liability of the taxpayer or his estate for income or estate-tax purposes. Therefore, a refund will not be taken into account for any taxable year for purposes of determining whether the sum of the contributions and taxes paid in a taxable year exceeds 90 percent of the taxable or net income of the taxpayer.

SUBCHAPTER B.—RULES OF SPECIAL APPLICATION

SECTION 6413.—SPECIAL RULES APPLICABLE TO CERTAIN EMPLOYMENT TAXES

Employer's claim for refund of employee tax erroneously paid under the Railroad Retirement Tax Act where the claim lacks the required statement with respect to employee consent or repayment of employe tax. See Rev. Rul. 59–212, page 692.

SECTION 6416.—CERTAIN TAXES ON SALES AND SERVICES

Rev. Rul. 59-216

Cash discounts allowed by retailers or manufacturers in connection with the sale of taxable articles include a proportionate reduction in the tax. Therefore, such discounts may not be considered as applying only to the tax-excluded sale price of articles, even though the computation of the amount of the discount is based upon such tax-excluded sale price.

Advice has been requested whether a cash discount allowed by a retailer or a manufacturer to a purchaser of an article subject to the retailers or the manufacturers excise tax, imposed by Chapters 31 and 32 of the Internal Revenue Code of 1954, must be computed upon the retailer's or manufacturer's tax-*included* selling price or whether it may be computed upon the tax-*excluded* selling price of the article.

Section 6416(b)(1) of the 1954 Code provides that if the price of any article subject to the retailers or manufacturers excise taxes is readjusted by reason of a bona fide discount, rebate, or allowance, the part of the tax proportionate to the part of the price repaid or credited to the purchaser will be deemed an overpayment, to be credited or refunded to the taxpayer without interest.

Section 316.13 of Regulations 46 and section 320.9 of Regulations 51, which have been made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954–2, 47, provide that readjustments in sale price (such as allowable discounts, rebates, bonuses, etc.) cannot be anticipated. The tax must be based upon the original price unless the readjustments have actually been made prior to the close of the reporting period. However, if the price upon which the tax was computed is subsequently adjusted, a proper credit may be taken against the tax on a subsequent return, or an appropriate claim for refund may be filed.

In arriving at an answer to the question presented, it must be understood that liability for the retailers excise tax is incurred by the retailer and not by his customers. Likewise, liability for the manufacturers excise tax is incurred by the manufacturer, producer, or importer, and not by the purchasers of the taxable articles. However, based upon provisions contained in sections 4051 and 4216 of the Code, where the retailers or manufacturers excise tax is not billed as a separate item, it is presumed that the amount of the tax is included in the price charged for the article, and such amount is excluded by an appropriate computation in determining the taxable sale price. Thus, retailers or manufacturers may bill their customers either (1) for a tax-excluded price plus an amount equal to the tax, or (2) for a total price, which is presumed to be a tax-included price regardless of whether it is so stated. The customers do not, in either instance, pay tax as such. Where the retailer or manufacturer collects an amount equal to the tax from his customer, either as a separate item or by inclusion in the price charged for the article, such amount becomes a part of the price payable by the customer for the article rather than a payment of tax as such.

The manner in which a retailer or a manufacturer computes a discount is a matter for settlement between him and his customer. There is nothing in the law or regulations which would compel a retailer or a manufacturer to compute a discount upon the tax-*included* selling price rather than the tax-*excluded* price. However, regardless of the manner in which such a discount is computed, a proportionate excise tax reduction is inherent in the price adjustment. In other words, whatever adjustment in price results from such discounts is considered to include a proportionate amount which represents the tax paid by the retailer or the manufacturer. Accordingly, the retailer or the manufacturer is entitled to claim a credit or refund for that amount.

For example, assume that a taxable article is sold by a retailer (or a manufacturer) for a list price of $660.00 plus ten percent tax (or a total of $726.00). By meeting prescribed conditions, the customer becomes entitled to a cash discount of five percent. If the retailer (or the manufacturer) uses the tax-excluded sale price ($660.00) as a base for computing the discount, the amount of the discount ($33.00) may not be considered as applying only to the tax-excluded sale price of $660.00, even though the computation was based upon such tax-excluded sale price. Instead, the amount allowed as the discount must be regarded as including a part of the tax to the extent specified in the law. Consequently, in this case, the discount represents an adjustment or reduction of $3.00 ($\frac{1}{11}$th of $33.00) in the tax.

On the other hand, if the retailer (or the manufacturer) uses the tax-included sale price ($726.00) as a base for computing the discount, the discount ($36.30) represents an adjustment or reduction of $3.30 (one-eleventh of $36.30) in the tax.

Allowability of a credit or refund with respect to diesel fuel or special motor fuels used in certain nonpassenger-carrying vehicles operated by a transit company. See Rev. Rul. 59–76, page 646.

Applicability of a credit or refund for tax paid on the sale of high fidelity phonographs which were later converted and sold as stereophonic phonographs. See Rev. Rul. 59–201, page 330.

Regulations under the Internal Revenue Code of 1939 supplemented and made applicable to the 1954 code. See T.D. 6340, page 694.

SECTION 6419.—EXCISE TAX ON WAGERING

26 CFR 44.6419: Statutory provisions; credit or refund of wagering tax.

Regulations under the Internal Revenue Code of 1954 relating to the credit or refund of tax paid on the amount of wagers. See T.D. 6370, page 448.

SECTION 6420.—GASOLINE USED ON FARMS

Rev. Rul. 59–89

Where gasoline is used by a milling company in harvesting a crop which has been purchased from a farmer, neither the milling company nor the farmer is entitled to the payment provided by section 6420(a) of the Internal Revenue Code of 1954 with respect to gasoline used on a farm for farming purposes.

Advice has been requested concerning the allowability, under the circumstances described below, of the payments provided by section 6420(a) of the Internal Revenue Code of 1954 with respect to gasoline used on a farm for farming purposes.

A milling company purchases alfalfa crops from farmers while such crops are growing in the fields. The milling company performs the harvesting operation on the farm, using its own equipment and employees. After the harvesting operation is finished, the alfalfa is hauled to the milling company's dehydrating plant for further processing.

Under the provisions of section 6420(a) of the Code, if gasoline is used on a farm for farming purposes, the ultimate purchaser of such gasoline is entitled to a payment in the amount determined by multiplying the number of gallons so used by the rate of tax on gasoline under section 4081 which applied on the date he purchased such gasoline. Section 6420(c)(3)(A) of the Code provides, in part, that gasoline shall be treated as used for farming purposes only if used by the owner, tenant, or operator of a farm in connection with cultivating the soil, or in connection with raising or harvesting agricultural or horticultural commodities, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, on a farm of which he is the owner, tenant, or operator; except that if such use is by *any person other than* the owner, tenant, or operator of such farm, then the owner, tenant, or operator of the farm on which the gasoline was used shall be treated as the user and ultimate purchaser of such gasoline. [Emphasis supplied.]

The above provisions of section 6420 of the Code were added by Public Law 466, 84th Congress, 70 Stat. 87 C.B. 1956–1, 870. The words "any person other than" contained in section 6420(c)(3)(A) must be interpreted in light of the purpose of the legislation, as stated in the Committee reports to the House of Representatives and the Senate. See House of Representatives Report No. 1684, C.B. 1956–1, 983; Senate Report No. 1609, C.B. 1956–1, 995; and House of Representatives [Conference] Report No. 1957, C.B. 1951–1, 995. These reports indicate that it was the intent of Congress to relieve farmers from the burden of the excise tax on gasoline used on their farms for farming purposes by providing for an annual payment directly to the owner, tenant, or operator of a farm. Accordingly, the words "any person other than" are construed to mean custom operators or other independent contractors performing services on a farm *for the owner, tenant, or operator of the farm* in connection with cultivating the soil or in connection with raising or harvesting agricultural or horticultural commodities. Under such circumstances, the owner, tenant, or

operator of the farm would include in his claim for payment the gasoline used on his farm by the custom operator. Persons other than the owner, tenant, or operator of the farm would not be entitled to any payment, even though they might indicate that the benefits would be passed on to the owner, tenant, or operator of the farm.

In the instant case, the milling company purchased from the farmers the alfalfa crops which were growing in the fields. In the subsequent harvesting of its own crops, the milling company could not be considered as a custom operator performing services for the owner, tenant, or operator of the farm. Therefore, it is held that, under these circumstances, no payment under the provisions of section 6420(a) of the Code is allowable either to the milling company or to the farmers. However, see section 6421(a) of the Code, which provides that the ultimate purchaser of gasoline is entitled to a payment equal to one cent for each gallon of gasoline which is used *otherwise* than as fuel in a highway vehicle which (at the time of such use) is registered, or is required to be registered, for highway use under the law of any State or foreign country.

SECTION 6421.—GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES OR BY LOCAL TRANSIT SYSTEMS

(Also Section 6416.) Rev. Rul. 59–76

The payment authorized by section 6421(a) of the Internal Revenue Code of 1954 applies to gasoline used in snow plows and sanders which are not registered or required to be registered for highway use under the laws of any state or foreign country. Similarly, the credit or refund provisions under sections 6416(b)(2)(I) and (J) of the Code apply to diesel fuel and special motor fuels used in such vehicles. However, the payment authorized by section 6421(b) of the Code is not applicable to gasoline used by a transit company in supervisory cars, repair trucks, snow plows, and sanders which are required to be registered for highway use. Likewise, the credit or refund provisions of section 6416(b)(2)(H) of the Code do not apply to diesel fuel and special motor fuels used in such vehicles.

Advice has been requested whether the payment authorized by section 6421(a) of the Internal Revenue Code of 1954, pertaining to gasoline used for nonhighway purposes applies to gasoline used in snow plows and sanders which are not registered or required to be registered for highway use under the laws of any state or foreign country. Further advice has been requested whether the payment authorized by section 6421(b) of the Code, pertaining to gasoline used in vehicles engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes, applies to gasoline used in supervisory cars, repair trucks, snow plows, and sanders (which are required to be registered for highway use under the laws of the state where they are operated) used by a transit company in connection with furnishing scheduled common carrier public passenger land transportation service along regular routes.

Section 6421(a) of the Code provides, in part, that the ultimate purchaser is entitled to a payment equal to one cent for each gallon of gasoline which is purchased on or after July 1, 1956, and which is used otherwise than as a fuel in a highway vehicle which (at the time

of such use) is registered, or is required to be registered, for highway use under the laws of any state or foreign country.

Under the provisions of section 6421(b) of the Code, if gasoline is used during any calendar quarter in "vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes," the ultimate purchaser of such gasoline is entitled to a payment, under certain conditions, with respect to gasoline so used. Such payment is determined by multiplying one cent for each gallon of gasoline so used by the percentage which the transit system's "tax-exempt passenger fare revenue" derived from such scheduled service during the calendar quarter was of the total passenger fare revenue derived during the same quarter from such scheduled service. However, 60 percent or more of the total passenger fare revenue must be attributable to tax-exempt passenger fare revenue, not including the tax on the transportation of persons, in order for a carrier to avail itself of this provision. The term "tax-exempt passenger fare revenue" means revenue attributable to fares which were exempt from the tax on transportation of persons by reason of section 4263(a) of the Code.

In accordance with the provisions of sections 6416(b)(2) (I) and (J) of the Code (sections 6416(b)(2) (J) and (K), respectively, before their redesignation by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, C.B. 1958–3, 92), where diesel fuel or special motor fuels are purchased taxpaid at the rate of three cents a gallon and used otherwise than as fuel in a highway vehicle which is registered or required to be registered, credit or refund at the rate of one cent a gallon for fuel so used may be claimed. Under the provisions of section 6416(b)(2)(H) of the Code (section 6416(b)(2)(L) before its redesignation by the Excise Tax Technical Changes Act), when diesel fuel or special motor fuel, on which tax was paid under section 4041 of the Code at the rate of three cents a gallon, is used in "vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes," a credit or refund at the rate of one cent a gallon on each gallon so used may be claimed, provided at least 60 percent of the passenger fare revenue derived by the transit system during the calendar quarter from furnishing scheduled service along regular routes was attributable to tax-exempt passenger fare revenue. However, in both instances, the person who paid the tax on the fuel is the one who is entitled to the credit or refund rather than the ultimate purchaser as in the case of gasoline.

Accordingly, in the instant case, it is held that since the snow plows and sanders are not registered or required to be registered for highway use under the laws of any state or foreign country, the ultimate purchaser of gasoline used in such snow plows and sanders is entitled to the payment provided by section 6421(a) of the Code. Likewise, if these vehicles used diesel fuel or a special motor fuel on which tax had been paid at the rate of three cents a gallon, the person who paid the tax would be entitled to a credit or refund of one cent a gallon on each gallon of fuel so used.

It is further held that, since the supervisory cars, repair trucks, snow plows, and sanders (which are required to be registered by the laws of the state where they are operated) used by a transit company in connection with its transit service are not vehicles engaged in fur-

nishing scheduled common carrier public passenger land transportation service along regular routes within the meaning of section 6421(b) of the Code, the payment authorized by that section is not applicable. Furthermore, since these vehicles are required to be registered by the laws of the state where they are operated, the payment authorized by section 6421(a) of the Code is not applicable. Therefore, no payment may be made under the provisions of that section with respect to the gasoline used in such vehicles. Likewise, if taxpaid diesel fuel or special motor fuel were used in these vehicles, the person who paid the tax on such fuel would not be entitled to a credit or refund, since the vehicles are not vehicles engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes and since they are required to be registered.

Rev. Rul. 59–90

Where a timely filed Form 2240, Claim For Refund Of Federal Tax On Gasoline Used On A Farm, has been disallowed, such Form 2240 may be regarded and processed as a claim for a payment equal to one cent for each gallon of gasoline used for certain nonhighway purposes, provided the claimant is entitled to such payment, under the provisions of section 6421(a) of the Internal Revenue Code of 1954.

Advice has been requested whether a timely filed Form 2240, Claim for Refund of Federal Tax on Gasoline Used on a Farm, may be regarded and processed as a claim for the payment provided by section 6421(a) of the Internal Revenue Code of 1954, with respect to gasoline used for certain nonhighway purposes, under the circumstances described below.

A company filed a claim under the provisions of section 6420(a) of the Code, on Form 2240 for a payment equivalent to the Federal excise tax on the gasoline used in a manner described by the claim. The claim was disallowed because the gasoline was not used on a farm for farming purposes within the meaning of that section. However, it was determined that the company was entitled to a payment, under the provisions of section 6421(a) of the Code, equal to one cent for each gallon of gasoline used in the manner described.

Under the provisions of section 6421(a) of the Code, if gasoline is used otherwise than as a fuel in a highway vehicle (1) which, at the time of such use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (2) which, in the case of a highway vehicle owned by the United States, is used on the highway, the Secretary of the Treasury or his delegate shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to one cent for each gallon of gasoline so used. Section 6421(c) of the Code provides that not more than one claim may be filed under subsection (a) by any person with respect to gasoline used during the one-year period ending on June 30th of any year. Also, no claim shall be allowed under this section with respect to any one-year period unless filed on or before September 30th of the year in which such one-year period ends. (Under the provisions of section 6420(b) of the Code, relating to payments provided by section 6420(a), the time for filing a claim and the period covered are the same as in section 6421(c) of the Code.)

Ordinarily, the claim for the one-cent payment for each gallon of gasoline used for nonhighway purposes is filed on Form 843, Claim. However, since the Form 2240 was timely filed and the claimant is otherwise entitled to the payment provided by section 6421(a) of the Code, it is held that such Form 2240 may be regarded and processed as a claim under the provisions of that section of the Code.

SECTION 6423.—CONDITIONS TO ALLOWANCE IN THE CASE OF ALCOHOL AND TOBACCO TAXES

26 CFR 296.1: Scope of regulations in this subpart. T.D. 6359 [1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER E, PART 296.—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO MATERIALS, TOBACCO PRODUCTS, AND CIGARETTE PAPERS AND TUBES

Application of section 6423, Internal Revenue Code of 1954, as amended, to regulations applying to the refund or credit of tax on tobacco materials, tobacco products, and cigarette papers and tubes.

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

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

On September 26, 1958, a notice of proposed rulemaking with respect to Subpart A of regulations designated as Part 296 of Title 26 Code of Federal Regulations was published in the Federal Register (23 F.R. 7485). The proposed regulations in Subpart A would implement the provisions of section 6423 of the Internal Revenue Code of 1954, as amended, which impose certain limitations on the refund or credit of tax paid or collected on articles taxed under chapter 52 of the Internal Revenue Code of 1954, as amended, or by any corresponding provision of prior internal revenue laws.

In accordance with the notice, interested parties were afforded an opportunity to submit written data, views, or arguments pertaining thereto. No written comments were received within the period of 30 days prescribed. Accordingly, the regulations as so published are hereby adopted.

Section 6423 of the Internal Revenue Code of 1954, as amended, reads as follows:

SEC. 6423. CONDITIONS TO ALLOWANCE IN THE CASE OF ALCOHOL AND TOBACCO TAXES.

(a) CONDITIONS.—No credit or refund shall be allowed or made, in pursuance of a court decision or otherwise, of any amount paid or collected as an alcohol or tobacco tax unless the claimant establishes (under regulations prescribed by the Secretary or his delegate)—

(1) that he bore the ultimate burden of the amount claimed; or

(2) that he has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount; or

(3) that (A) the owner of the commodity furnished him the amount claimed for payment of the tax, (B) he has filed with the Secretary or his delegate the written consent of such owner to the allowance to the claimant of the credit or refund, and (C) such owner satisfies the requirements of paragraph (1) or (2).

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[1] 24 F.R. 599.

(b) FILING OF CLAIMS.—No credit or refund of any amount to which subsection (a) applies shall be allowed or made unless a claim therefor has been filed by the person who paid the amount claimed, and, except as hereinafter provided in this subsection, unless such claim is filed after April 30, 1958, and within the time prescribed by law, and in accordance with regulations prescribed by the Secretary or his delegate. All evidence relied upon in support of such claim shall be clearly set forth and submitted with the claim. Any claimant who has on or before April 30, 1958, filed a claim for any amount to which subsection (a) applies may, if such claim was not barred from allowance on April 30, 1958, file a superseding claim after April 30, 1958, and on or before April 30, 1959, conforming to the requirements of this section and covering the amount (or any part thereof) claimed in such prior claim. No claim filed before before May 1, 1958, for the credit or refund of any amount to which subsection (a) applies shall be held to constitute a claim for refund or credit within the meaning of, or for purposes of, section 7422(a); except that any claimant who instituted a suit before June 15, 1957, for recovery of any amount to which subsection (a) applies shall not be barred by this subsection from the maintenance of such suit as to any amount claimed in such suit on such date if in such suit he establishes the conditions to allowance required under subsection (a) with respect to such amount.

(c) PERIOD NOT EXTENDED.—Any suit or proceeding, with respect to any amount to which subsection (a) applies, which is barred on April 30, 1958, shall remain barred. No claim for credit or refund of any such amount which is barred from allowance on April 30, 1958, shall be allowed after such date in any amount.

(d) APPLICATION OF SECTION.—This section shall apply only if the credit or refund is claimed on the grounds that an amount of alcohol or tobacco tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive. This section shall not apply to—

(1) any claim for drawback,

(2) any claim made in accordance with any law expressly providing for credit or refund where a commodity is withdrawn from the market, returned to bond, or lost or destroyed, and

(3) any amount claimed with respect to a commodity which has been lost, where a suit or proceeding was instituted before June 15, 1957.

(e) MEANING OF TERMS.—For purposes of this section—

(1) ALCOHOL OR TOBACCO TAX.—The term "alcolhol or tobacco tax" means—

(A) any tax imposed by chapter 51 (other than part II of subchapter A, relating to occupational taxes) or by chapter 52 or by any corresponding provision of prior internal revenue laws, and

(B) in the case of any commodity of a kind subject to a tax described in subparagraph (A), any tax equal to any such tax, any additional tax, or any floor stocks tax.

(2) TAX.—The term "tax" includes a tax and an exaction denominated a "tax", and any penalty, addition to tax, additional amount, or interest applicable to any such tax.

(3) ULTIMATE BURDEN.—The claimant shall be treated as having borne the ultimate burden of an amount of an alcohol or tobacco tax for purposes of subsection (a)(1), and the owner referred to in subsection (a)(3) shall be treated as having borne such burden for purposes of such subsection, only if—

(A) he has not, directly or indirectly, been relieved of such burden or shifted such burden to any other person,

(B) no understanding or agreement exists for any such relief or shifting, and

(C) if he has neither sold nor contracted to sell the commodities involved in such claim, he agrees that there will be no such relief or shifting, and furnishes such bond as the Secretary or his delegate may require to insure faithful compliance with his agreement.

* * * * * * *

In order to implement the Internal Revenue Code of 1954, as amended, with respect to the above provisions of law, 26 CFR Part 296, "Miscellaneous Regulations Relating to Tobacco Materials, Tobacco Products, and Cigarette Papers and Tubes," is promulgated.

Subpart A.—Application of Section 6423, Internal Revenue Code of 1954, as Amended, To Refund or Credit of Tax on Tobacco Materials, Tobacco Products, and Cigarette Papers and Tubes.

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Subpart A.—Application of Section 6423, Internal Revenue Code of 1954, as Amended, To Refund or Credit of Tax on Tobacco Materials, Tobacco Products, and Cigarette Papers and Tubes.

GENERAL

§ 296.1 Scope of Regulations in This Subpart.—The regulations in this subpart relate to the limitations imposed by section 6423, I.R.C., on the refund or credit of tax paid or collected in respect to any article of a kind subject to a tax imposed by chapter 52, I.R.C., or by any corresponding provision of prior internal revenue laws.

§ 296.2 Meaning of Terms.—When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section.

Article.—The commodity in respect to which the amount claimed was paid or collected as a tax.

Assistant regional commissioner.—An assistant regional commissioner (alcohol and tobacco tax) who is responsible to, and functions under the direction and supervision of, a regional commissioner of internal revenue.

Claimant.—Any person who files a claim for a refund or credit of tax under this subpart.

Director.—The Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Treasury Department, Washington 25, D.C.

I.R.C.—Internal Revenue Code of 1954, as amended.

Owner.—A person who, by reason of a proprietary interest in the article, furnished the amount claimed to the claimant for the purpose of paying the tax.

Person.—An individual, a trust, estate, partnership, association, company, or corporation.

Regional commissioner.—The regional commissioner in a region.

Tax.—Any tax imposed by chapter 52, I.R.C., or by any corresponding provision of prior internal revenue laws, and in the case of any commodity of a kind subject to a tax under such chapter, any tax equal to any such tax, any additional tax, or any floor stocks tax. The term includes an exaction denominated a "tax", and any penalty, addition to tax, additional amount, or interest applicable to any such tax.

§ 296.3 APPLICABILITY TO CERTAIN CREDITS OR REFUNDS.—The provisions of this subpart apply only where the credit or refund is claimed on the grounds that an amount of tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive. This subpart does not apply to:

(a) any claim for drawback,

(b) any claim made in accordance with any law expressly providing for credit or refund where an article is withdrawn from the market, returned to bond, lost, or destroyed,

(c) any amount claimed with respect to an article which has been lost, where a suit or proceeding was instituted before June 15, 1957, and

(d) any claim based solely on errors in computation of the quantity of an article subject to tax or on mathematical errors in computation of the amount of the tax due, or to any claim in respect of tax collected or paid on an article seized and forfeited, or destroyed, as contraband.

Any suit or proceeding, with respect to any amount to which the provisions of this subpart would apply, which was barred on April 30, 1958, shall remain barred, and no claim for credit or refund of any such amount which was barred from allowance on April 30, 1958, shall be allowed after such date in any amount.

§ 296.4 ULTIMATE BURDEN.—For the purposes of this subpart, the claimant, or owner, shall be treated as having borne the ultimate burden of an amount of tax only if:

(a) he has not, directly or indirectly, been relieved of such burden or shifted such burden to any other person,

(b) no understanding or agreement exists for any such relief or shifting, and

(c) if he has neither sold nor contracted to sell the articles involved in such claim, he agrees that there will be no such relief or shifting, and furnishes bond as provided in section 296.10.

§ 296.5 CONDITIONS TO ALLOWANCE OF CREDIT OR REFUND.—No credit or refund to which this subpart is applicable shall be allowed or made, pursuant to a court decision or otherwise, of any amount paid or collected as a tax unless a claim therefor has been filed, as provided in this subpart, by the person who paid the tax and the claimant, in addition to establishing that he is otherwise legally entitled to credit or refund of the amount claimed, establishes:

(a) that he bore the ultimate burden of the amount claimed, or

(b) that he has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount, or

(c) that (1) the owner of the article furnished him the amount claimed for payment of the tax, (2) he has filed with the assistant regional commissioner the written consent of such owner to the allowance to the claimant of the credit or refund, and (3) such owner satisfies the requirements of paragraph (a) or (b).

§ 296.6 REQUIREMENTS FOR PERSONS INTENDING TO FILE CLAIM.—Any person who, having paid the tax with respect to an article, desires to claim refund or credit of any amount of such tax to which the provisions of this subpart are applicable must:

(a) file a claim, as provided in section 296.7,

(b) comply with any other provisions of law or regulations which may apply to the claim, and

(c) if, at the time of filing the claim, neither he nor the owner has sold or contracted to sell the articles involved in the claim, file a bond on Form 2490, as provided by section 296.10.

CLAIM PROCEDURE

§ 296.7 EXECUTION AND FILING OF CLAIM.—Claims to which this subpart is applicable shall be executed on Form 843 (original only) in accordance with instructions on the form and shall be filed with the district director of internal revenue for the district where the tax was paid, who will refer such claims to the assistant regional commissioner (alcohol and tobacco tax) for the region. The claim must set forth each ground upon which the claim is made in sufficient detail to apprise the assistant regional commissioner of the exact basis therefor. Allegations pertaining to the bearing of the ultimate burden relate to additional conditions which must be established for a claim to be allowed and are not in themselves legal grounds for allowance of a claim. There shall also be attached to the form and made a part of the claim the supporting data required by section 296.8. All evidence relied upon in support of such claim shall be clearly set forth and submitted with the claim.

§ 296.8 DATA TO BE SHOWN IN CLAIM.—Claims to which this subpart is applicable, in addition to the requirements of section 296.7, must set forth or contain the following:

(a) A statement that the claimant paid the amount claimed as a "tax" as defined in this subpart.

(b) If the claim is a superseding claim covering an amount (or any part thereof) claimed in a claim filed on or before April 30, 1958, a statement setting forth the place of filing of such claim, the date of filing thereof, the amount claimed, and information showing that such prior claim was not barred from allowance on April 30, 1958.

(c) Full identification (by specific reference to the form number, the date of filing, the place of filing, and the amount paid on the basis of the particular form or return) of the tax forms or returns covering the payments for which refund or credit is claimed.

(d) The written consent of the owner to the allowance of the refund or credit to the claimant (where the owner of the article

in respect of which the tax was paid furnished the claimant the amount claimed for the purpose of paying the tax).

(e) If the claimant or the owner, as the case may be, has neither sold nor contracted to sell the articles involved in the claim, a statement that the claimant or the owner, as the case may be, agrees not to shift, directly or indirectly in any manner whatsoever, the burden of the tax to any other person.

(f) If the claim is for refund of a floor stocks tax, or of an amount resulting from an increase in rate of tax applicable to an article, a statement as to whether the price of the article was increased on or following the effective date of such floor stocks tax or rate increase, and, if so, the date of the increase, together with full information as to the amount of such price increase.

(g) Specific evidence (such as relevant records, invoices, or other documents, or affidavits of individuals having personal knowledge of pertinent facts) which will satisfactorily establish the conditions to allowance set forth in section 296.5.

The assistant regional commissioner may require the claimant to furnish as a part of the claim such additional information as he may deem necessary.

§ 296.9 Time for Filing Claim.—(a) *General.*—Except as provided in subsection (c) credit or refund of any amount of tax to which the provisions of this subpart apply shall not be made unless the claimant files a claim therefor after April 30, 1958, and within the time prescribed by law and in accordance with the provisions of this subpart, and no claim filed before May 1, 1958, for the credit or refund of any amount of tax to which this subpart is applicable shall be held to constitute a claim for refund or credit within the meaning of, or for the purposes of, section 7422(a), I.R.C.

(b) *Superseding claims.*—Any claimant who on or before April 30, 1958, filed a claim for any amount to which this subpart applies may, if such claim was not barred from allowance on April 30, 1958, file a superseding claim after April 30, 1958, and on or before April 30, 1959, conforming to the requirements of this subpart and covering the amount (or any part thereof) claimed in the prior claim.

(c) *Suits instituted before June 15, 1957.*—Any claimant who instituted a suit before June 15, 1957, for recovery of any amount to which this subpart applies, shall not be barred by this section from the maintenance of such suit as to any such amount claimed in such suit on such date if in such suit he establishes the conditions to allowance in this subpart with respect to such amount.

BONDS

§ 296.10 Bond, Form 2490.—Each claim for a refund or credit of tax on articles which the claimant or the owner, as the case may be, has neither sold nor contracted to sell at the time of filing of the claim must be accompanied by a bond on Form 2490. The bond shall be executed by the claimant or the owner of the articles, as the case may be, in accordance with the provisions of this subpart and the instructions printed on the form. Such bond shall be conditioned that there will be no relief or shifting of the ultimate burden of the tax to any other person. The penal sum shall not be less than the amount of tax claimed on all articles which have not been sold or

contracted for sale at the time of filing of the claim. Bonds required by this subpart shall be given with corporate surety or with collateral security. A separate bond must be filed for each claim.

§ 296.11 CORPORATE SURETY.—Surety bonds required by this subpart may be given only with corporate sureties holding certificates of authority from and subject to the limitations prescribed by the Secretary of the Treasury as set forth in Treasury Department Form 356-Revised. Powers of attorney and other evidence of appointment of agents and officers to execute bonds on behalf of corporate sureties are required to be filed with, and passed on by, the Commissioner of Accounts, Surety Bonds Branch, Treasury Department.

§ 296.12 DEPOSIT OF SECURITIES IN LIEU OF CORPORATE SURETY.—In lieu of corporate surety, the principal may pledge and deposit securities which are transferable and are guaranteed as to both interest and principal by the United States, in accordance with the provisions of 31 CFR Part 225.

§ 296.13 AUTHORITY TO APPROVE BONDS.—Assistant regional commissioners are authorized to approve all bonds required by this subpart.

§ 296.14 TERMINATION OF LIABILITY.—Bonds on Form 2490 will be terminated by the assistant regional commissioner on receipt of satisfactory evidence that the person giving the bond has disposed of the articles covered by the bond and that he bore the ultimate burden of the amount claimed and that no understanding or agreement exists whereby he will be relieved of such burden or shift such burden to another person.

§ 296.15 RELEASE OF PLEDGED SECURITIES.—Securities of the United States, pledged and deposited as provided by section 296.12, shall be released only in accordance with the provisions of 31 CFR Part 225. When the assistant regional commissioner is satisfied that they may be released, he shall fix the date or dates on which a part or all of such securities may be released. At any time prior to the release of such securities, the assistant regional commissioner may, for proper cause, extend the date of release for such additional length of time as he deems necessary.

PENALTIES

§ 296.16 PENALTIES.—It is an offense punishable by fine and imprisonment for anyone to make or cause to be made any false or fraudulent claim upon the United States, or to make any false or fraudulent statements, or representations, in support of any claim, or to falsely or fraudulently execute any documents required by the provisions of the internal revenue laws, or any regulations made in pursuance thereof.

Because the provisions of Public Law 85–323 apply to certain claims for refund or credit of tax filed by taxpayers after April 30, 1958, it is found that it is impractical and contrary to the public interest to issue this Treasury Decision subject to the effective date limitation of section 4(c) of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003). Accordingly, this Treasury Decision is made effective as of May 1, 1958.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

DANA LATHAM,
Commissioner of Internal Revenue.

Approved January 22, 1959.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on January 27, 1959, 8:50 a.m., and published in the issue of the Federal Register for January 28, 1959, 24 F.R. 599.)

CHAPTER 66.—LIMITATIONS

SUBCHAPTER A.—LIMITATIONS ON ASSESSMENT AND COLLECTION

SECTION 6501.—LIMITATIONS ON ASSESSMENT AND COLLECTION

26 CFR 301.6501(c)-1: Exceptions to general period of limitations on assessment and collection. (Also Section 4241.) — Rev. Rul. 59-127

Where a member of a social, athletic, or sporting club fails or refuses to pay either the tax on dues or membership fees or the tax on initiation fees and there has been no attempt by the club to put the Government on notice of the member's liability for such tax, a direct assessment of the tax due may be entered against the club member at any time, even though the club has filed timely returns of like taxes paid by other members for the same period.

Advice has been requested whether the period of limitation upon assessment provided by section 6501 of the Internal Revenue Code of 1954 prohibits the direct assessment of the excise taxes on dues or membership fees and on initiation fees under the circumstances described below.

Certain members of a social, athletic, or sporting club paid their dues and initiation fees but failed or refused to pay the tax due thereon. The club has filed timely returns for the same periods covering the dues or membership fees tax and the initiation fees tax collected from other members of the club, but it did not report that it was unable to collect the taxes from some of its members.

Section 4241(a)(1) of the Code imposes a tax on any amount paid as dues or membership fees to any social, athletic, or sporting club or organization, if the dues or fees of an active resident annual member are in excess of $10 per year. Section 4241(a)(2) of the Code imposes a tax on any amount paid as initiation fees to any social, athletic, or sporting club or organization, if such fees amount to more than $10, or if the dues or membership fees, not including initiation fees, of an active resident annual member are in excess of $10 per year. Section 4291 of the Code provides, in part, that every person receiving any payment for facilities or services on which a tax is imposed upon the

payor thereof shall collect the amount of the tax from the person making such payment.

Insofar as it is applicable here, section 6501(a) of the Code, as amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, C.B. 1958–3, 92 provides the general rule that the amount of any tax imposed by the Internal Revenue Code of 1954 shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed) and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period. However, section 6501(c)(3) of the Code provides that in the case 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.

Under the provisions of section 101.37(a) of Regulations 43, made applicable to the 1954 Code by Treasury Decision 6091, C. B. 1954–2, 47, every social, athletic, or sporting club or organization must collect the tax on taxable payments of dues and initiation fees, such tax to be collected at the time the dues or fees are paid. The tax so collected shall be paid to the District Director of Internal Revenue on or before the last day of the month succeeding the quarter in which collected, except where otherwise prescribed. Section 101.37(d) of the regulations provides that in the event a member refuses to pay the tax, or if for any reason the tax cannot be collected from such member, the club shall report to the District Director of Internal Revenue the name and address of the member, the amount and date of the payment on which the tax is due, and the circumstances surrounding the transaction.

Initiation fees and dues or membership fees are separate and distinct, and section 4241 of the Code imposes a separate tax, to be paid by the club member, in respect of each. Under the provisions of section 4291 of the Code and section 101.37(a) of the regulations, the club is required to collect any such taxes due, make returns, and pay over the amounts thereof to the Government. Thus, there is an obligation on the part of each member as well as the club to see that the Government receives the amounts of tax due. Technically, a single separate return could be required to be filed in respect of each member's payment of tax on dues or membership fees and a single separate return could likewise be required to be filed in respect of each member's payment of tax on initiation fees. However, as a matter of practicality and convenience, to both the taxpayers and the Government, a club is permitted to file one return combining all payments of the tax on dues or membership fees and all payments of the tax on initiation fees received in a single filing period. But, the combined return, permitted for the purpose of convenience, cannot be construed to mean that the filing thereof has started the statutory period of limitation to run as to any taxes omitted from such return with respect to those members who have failed to pay either the tax due on dues or membership fees or the tax due on initiation fees or both.

Accordingly, it is held that where a club member fails or refuses to pay either the tax on dues or membership fees or the tax on initiation fees and there has been no attempt by the club to put the Government on notice of the member's liability for such tax, a direct assessment of the amounts due may be entered against the club member at any time, even though the club has filed timely returns of like taxes paid by

other members for the same period. Likewise, the same conclusion would apply in similar situations involving any of the other so-called "collected" excise taxes, which are the taxes on admissions, communications, transportation of persons, and safe deposit boxes.

CHAPTER 69.—GENERAL PROVISIONS RELATING TO STAMPS

SECTION 6802.—SUPPLY AND DISTRIBUTION

26 CFR 43.6802: Statutory provisions; supply and distribution.

Regulations under the Internal Revenue Code of 1954 relating to the supply and distribution of stamps with respect to documentary stamp taxes. See T.D. 6351, page 387.

SECTION 6804.—ATTACHMENT AND CANCELLATION

26 CFR 43. 6804: Statutory provisions; attachment and cancellation.

Regulations under the Internal Revenue Code of 1954 relating to the attachment and cancellation of stamps used in payment of the documentary stamp taxes. See T.D. 6351, page 387.

SECTION 6806.—POSTING OCCUPATIONAL TAX STAMPS

26 CFR 44.6806(c): Statutory provisions; posting occupational tax stamps; occupational wagering tax.

Regulations under the Internal Revenue Code of 1954 relating to the posting of the special tax stamp in place of business. See T.D. 6370, page 448.

CHAPTER 75.—CRIMES, OTHER OFFENSES, AND FORFEITURES

SUBCHAPTER B.—OTHER OFFENSES

SECTION 7262.—VIOLATION OF OCCUPATIONAL TAX LAWS RELATING TO WAGERING—FAILURE TO PAY SPECIAL TAX

26 CFR 44.7262: Statutory provisions; violation of occupational tax laws relating to wagering; failure to pay special tax.

Regulations under the Internal Revenue Code of 1954 relating to fines for failure to pay special tax. See T.D. 6370, page 448.

SUBCHAPTER C.—FORFEITURES

PART II.—PROVISIONS COMMON TO FORFEITURES

SECTION 7325.—PERSONAL PROPERTY VALUED AT $2,500 OR LESS

26 CFR 172.26: Forfeiture of seized personal property. T. D. 6339 [1]
(Also Section 7326; 172.65.)

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER E, PART 172.—DISPOSITION OF SEIZED PERSONAL PROPERTY

Miscellaneous amendments

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

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

In order to conform to and implement sections 7325 and 7326 of the Internal Revenue Code of 1954 as amended by the Excise Tax Technical Changes Act of 1958 (Public Law 85–859, 72 Stat. 1275) [C.B. 1958–3, 92], 26 CFR, Part 172 is hereby amended as follows:

PARAGRAPH 1. Section 172.26 is amended to read as follows:

Personal property seized as subject to forfeiture under the internal revenue laws and appraised at a value of $2,500.00 or less, and any carrier appraised at $2,500.00 or less under the customs laws shall be forfeited to the United States in administrative or summary forfeiture proceedings, unless within 30 days from the date of the first advertisement of seizure as required by I. R. C., section 7325, or within 20 days from the date of first publication of notice of seizure of carriers as required by 19 U. S. C., section 1608, a claimant appears and files proper claims supported by a $250.00 cost bond, thereby removing the forfeiture status of the property or carrier in question to the jurisdiction of the Federal court for adjudication, in which event the seizure in question shall be referred to the United States Attorney for appropriate judicial forfeiture proceedings or other disposition.

PAR. 2. The following new subpart, Subpart G, is added immediately following Subpart F:

SUBPART G—DISPOSAL OF FORFEITED OR ABANDONED PROPERTY

§ 172.65 AUTHORITY FOR DESTRUCTION.—The assistant regional commissioner is authorized to order the destruction of any coin-operated gaming device as defined in I. R. C., section 4462(a)(2) upon which a tax is imposed by I. R. C., section 4461, after the expiration of three months from the date of consummation of administrative forfeiture under any provision of I. R. C.

Because the amended sections 7325 and 7326 of the Internal Revenue Code of 1954 are effective on the day following the date of enactment of the Excise Tax Technical Changes Act of 1958 (Public Law 85–859, 72 Stat. 1275), it is found that it is impracticable and contrary to the public interest to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Admin-

[1] 23 F. R. 9693.

istrative Procedure Act (60 Stat. 238; 5 U. S. C. 1003) or subject to the effective date limitation of section 4(c) of such Act. Accordingly, this Treasury Decision shall be effective on September 3, 1958.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).)

DANA LATHAM,
Commissioner of Internal Revenue.

Approved December 11, 1958.

NELSON P. ROSE,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on December 15, 1958, 8:50 a. m., and published in the issue of the Federal Register for December 16, 1958, 23 F. R. 9693.)

SECTION 7326.—DISPOSAL OF FORFEITED OR ABANDONED PROPERTY IN SPECIAL CASES

26 CFR 172.65: Authority for destruction.

Authorization for the destruction of coin-operated gaming devices which have been forfeited. See T.D. 6339, page 659.

SUBCHAPTER D.—MISCELLANEOUS PENALTY AND FORFEITURE PROVISIONS

SECTION 7342.—PENALTY FOR REFUSAL TO PERMIT ENTRY OR EXAMINATION

26 CFR 295.40: Authority of internal revenue officers to enter premises.

Authority for examination by internal revenue officer of tobacco products and cigarette papers and tubes removed for shipment to Federal agencies and institutions for gratuitous distribution in the United States. See T.D. 6379, page 541.

CHAPTER 80.—GENERAL RULES

SUBCHAPTER A.—APPLICATION OF INTERNAL REVENUE LAWS

SECTION 7805.—RULES AND REGULATIONS

26 CFR 296.54: Execution and filing of claims.

The procedure to be used in the execution and filing of claims covering tobacco products, cigarette papers, and tubes lost, rendered unmarketable, or condemned by reason of a major disaster occurring after December 31, 1954, and not later than September 2, 1958. See Rev. Proc. 59–6, page 815.

PART II

RULINGS AND DECISIONS UNDER THE INTERNAL REVENUE CODE OF 1939, THE FEDERAL FIREARMS ACT, AND OTHER PUBLIC LAWS

Rulings and decisions published in Part II of the Internal Revenue Bulletin are based on the applications of provisions of the Internal Revenue Code of 1939 and unless otherwise noted therein are published without consideration to any application of the provisions of the Internal Revenue Code of 1954, the Federal Firearms Act, or other public laws.

SUBTITLE A.—TAXES SUBJECT TO THE JURISDICTION OF THE BOARD OF TAX APPEALS

CHAPTER 1.—INCOME TAX

SUBCHAPTER B.—GENERAL PROVISIONS

PART II.—COMPUTATION OF NET INCOME

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

REGULATIONS 118, SECTION 39.22(a)-1. What included in gross income.

Premiums by a corporation on an insurance contract on the life of an employee-shareholder. See Rev. Rul. 59-79, page 15.

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

REGULATIONS 111, SECTION 29.22(k)-1: Alimony and separate maintenance payments—income to former wife. Ct. D. 1834

(Also Section 23(u); Regulations 111, Section 29.23 (u)-1.)

INCOME TAX—INTERNAL REVENUE CODE OF 1939—DECISION OF COURT

1. GROSS INCOME—DEDUCTIONS—ALIMONY, ETC. PAYMENTS—SUPPORT PAYMENTS.

A property settlement agreement provides that (1) the husband shall pay his wife $125 per week for herself and two minor children, reduced by $31.25 as each child reaches majority or upon the death of either child prior to majority; (2) upon remarriage

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of the wife, all alimony shall cease but the husband shall pay $31.25 weekly for support and maintenance of each child; and (3) if the wife fails to support the children, the husband may pay the cost thereof and deduct the amount expended from the weekly payments. Such an agreement designates the portion of the payments to be used for support of children with sufficient specificity to satisfy the statute and regulations which prohibit any sum identifiably designated as payable for support of children from being deductible by the husband.

As a general rule, when a settlement agreement, read as a whole, discloses that the parties have earmarked, designated, apportioned or allocated the payments to be made, one part to be payable for alimony, and another part to be payable for the support of children, with sufficient certainty and specificity to readily determine which is which without reference to contingencies which may never come into being, then the "part of any periodic payment" has been fixed "by the terms of the decree or written instrument" and satisfies the statutes and regulations excluding payments for child support from the divorced wife's income and disallowing deductions for such payments from the divorced husband's income.

2. CASE DISTINGUISHED.

Weil v. *Commissioner*, 240 F. 2d 584 (1957) distinguished.

3. DECISION AFFIRMED.

T.C. Memo. 1956–48, filed February 29, 1956, affirmed.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Jo Eisinger and Lorain B. Eisinger, Appellants, vs. *Commissioner of Internal Revenue, Appellee*

No. 15,387. December 10, 1957

On petition for review of the Decision of the Tax Court of the United States

Before: LEMMON and BARNES, Circuit Judges; and YANKWICH, District Judge

BARNES, Circuit Judge:

This is a timely appeal or petition to review from a decision of the Tax Court. The original jurisdiction of the Tax Court (Int. Rev. Code of 1939, Section 272) [1] and of this court on review (Int. Rev. Code of 1939, Section 1141(a) and Section 1142) [2] is not in issue.

Jo and Lorain Eisinger, husband and wife, seek to deduct from their joint income tax return for the years 1949 and 1950 the total payments made by Jo Eisinger to his former wife, Wilhelmina Eisinger, in accordance with the terms of a certain property settlement agreement, dated March 28, 1949 and amended April 28, 1949, incorporated into the terms of a decree of divorce, obtained in Florida on May 26, 1949, dissolving the marriage of Jo and Wilhelmina Eisinger. At the time of the divorce there were two children, the issue of said marriage, both minors.

Taxpayers deducted the sums of $3,850 and $6,677, respectively, from their gross income for the two years. The Commissioner of Internal Revenue determined that of such sums, fifty per cent, or $1,925 and $3,364.50, respectively, represented payments for the support of the two minor children, and hence were not deductible.

Petitioners claimed the entire sums were periodic payments which Jo Eisinger was obligated to make pursuant to an agreement incident to a decree of divorce, as contemplated by Section 22(k) of the 1939 Internal Revenue Code, and hence properly deductible under Section 23 of said Code.

Internal Revenue Code, Section 22 (k) reads in material part as follows:

"(when) a wife . . . is divorced . . . from her husband under a decree of divorce . . ., periodic payments . . . received subsequent to such decree in discharge of . . . a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce . . .

[1] 1954 Internal Revenue Code § 6212(a) and § 6213(a).
[2] 1954 Internal Revenue Code § 7482–3.

shall be includible in the gross income of such wife. . . . This subsection shall not apply to that part of any such periodic payment which the terms of the decree or written instrument fix, in terms of an amount of money or a portion of the payment, as a sum which is payable for the support of minor children of such husband."

Section 23 provides:

"In computing net income there shall be allowed as deductions: . . . (u) . . . In the case of a husband described in Section 22(k), amounts includible under Section 22(k) in the gross income of wife, payment of which is made within the husband's taxable year. . . ."

Under the Code, only where payments made by the husband to the wife qualify for inclusion in the wife's income under Section 22(k), may the husband deduct such payments under Section 23(u). Therefore, where payments made are "payable for the support of minor children," within the meaning of Section 22(k), they may not be deducted by the husband.[3]

The Property Settlement Agreement provides that the wife should have custody of the two minor children, and states:

"4. The Husband agrees to pay to the Wife, by way of alimony, the sum of One Hundred Twenty-five Dollars ($125.00) per week, commencing upon the date of the entry of the final decree of divorce in the action presently pending between the parties in the Circuit Court of the 11th Judicial Circuit of Florida . . . and weekly thereafter, and in consideration thereof the Wife agrees to support the aforesaid children. If the Wife shall fail to support either or both of said children, the Husband may pay the cost thereof and deduct the same from said weekly alimony. Said payments shall continue during the life of the Wife and shall cease upon her death or upon the death of the Husband. Upon the remarriage of the Wife all alimony payments to her shall cease, but in lieu thereof the Husband shall pay the sum of Thirty-one and 25/100 Dollars ($31.25) per week for the support and maintenance of each child of said marriage until such child shall attain the age of twenty-one (21) years, at which time the aforesaid payments for such child shall cease and terminate. Whether or not the Wife shall remarry, as each child shall attain the age of twenty-one (21) years, the aforesaid alimony shall be reduced by Thirty-one and 25/100 Dollars ($31.25) per week for each child thus attaining the age of twenty-one (21) years. It is the intention of the parties that when both of said children shall have attained the age of twenty-one (21) years the Husband shall pay to the Wife alimony in the sum of Sixty-two and 50/100 Dollars ($62.50) per week during her life and until her remarriage; provided, however, that no alimony shall be paid to the said Wife if the Husband shall die or if the Wife shall have meanwhile remarried or shall have died It is also agreed that the said payments of alimony to the Wife shall be reduced by the sum of Thirty-one and 25/100 Dollars ($31.25) per week in the event of the death of either of said children before he shall have attained the age of twenty-one (21) years, and if both of said children shall die before attaining said age the alimony for said Wife shall be reduced by the sum of Sixty-two and 50/100 ($62.50) per week.

6. (a) The Wife does and shall accept the provisions hereof in full satisfaction for her support and maintenance and for the support and maintenance of the minor children of the marriage. . . ."

Briefly stated, appellants maintain that by the agreement, "no specific designation of a sum payable for support of the minor children" was made; hence the whole sum paid can be deducted by him. The Commissioner maintained, and the Tax Court supported his decision, that construing the agreement in its entirety, "the amount for the support of the children is identifiable," and hence is sufficiently specifically designated so as to satisfy the statute and regulations which prohibit such sum identifiably designated as payable for support of children from being deductible by the husband.

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[3] Relevant portions of Regulations to the Code of 1939 are Regulations 111, Sec. 29, 22(k)–1, which repeats the Code Section and then adds:

"If, however, the periodic payments are received by the wife for the support and maintenance of herself and of minor children of the husband without such specific designation of the portion for the support of such children, then the whole of such amounts is includible in the income of the wife as provided in Section 22(k)."

Appellants rely largely on a recent decision by Judge Medina in the Second Circuit, *Weil* v. *Commissioner*, 240 F. 2d 584 (1957).

We agree with it, in its application of the law to the facts of that case, but do not find the legal position there taken applicable herein, nor de we agree with the generality of some of its language.

There the Tax Court held that under the terms of the property settlement agreement then before it, there was "fixed" certain sums payable for the support of minor children. Judge Medina, speaking for the Court, disagreed with such an interpretation. We shall first consider what the Second Circuit said about the law applicable and then consider the similarity and differences between the agreement there and here under consideration.

The Court said:

> "The key words of the statute are 'payable for.' The context of Section 22 demonstrates that the Congress used this phrase advisedly. The wife is not relieved of taxability on sums which she in fact expends for the support of minor children, but only on such sums as 'the terms of the * * * instrument fix * * * as * * * payable for' that purpose. The statute taxes to the wife sums which are available for her own use or benefit—whether or not she has undertaken to support the minor children—and does not tax to the wife sums she is required to devote exclusively to the support of the children. What vitiates the decision of the Tax Court in this case is its holding that sums may be 'payable for the support of minor children,' even though the wife may be free to use them for other purposes.
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> Despite two decisions seemingly to the contrary, Henrietta S. Seltzer, 22 T.C. 203, and Dorothy Newcombe, 10 T.C.M. 152, affirmed on another point, 9 Cir., 203 F. 2d 128, the Tax Court has, in a series of cases culminating in the case at bar, adopted the position that it is enough if anywhere in the instrument there is mentioned a sum thought to be appropriate for the support of minor children under some circumstances.
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> * * *
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> We hold that sums are 'payable for the support of minor children' when they are to be used for that purpose only. Accordingly, if sums are to be considered 'payable for the support of minor children,' their use must be restricted to that purpose, and the wife must have no independent beneficial interest therein. This cannot be the case if the terms of the instrument contemplate a continuance of the payments to the wife after she has ceased to support the children. The fortuitous or incidental mention of a figure in a provision meant to be inoperative, unless some more or less probable future event occurs, will not suffice to shift the tax burden from the wife to the husband.
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> * * *
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> We agree with the statement of the Commissioner in his brief that in order to sustain the determination of the Tax Court it is necessary to find in the agreement 'sufficient provisions showing an intention on the part of Charles Weil to provide for his minor children specifically, as distinct from an intention to provide for his former wife and have her in turn provide for the children.' But we are convinced that the agreement contains no such provisions. It is quite true that the agreement must be read as a whole, Mandel v. Commissioner, 7 Cir., 185 F. 2d 50; Budd v. Commissioner, 6 Cir., 177 F. 2d 198, and that no particular formula, such as the phraseology we have quoted from Section 22(k), is necessary. This particular instrument, however, must be construed as expressing the husband's intention to make payments to the wife and have her support the children, the very converse of what the Commissioner states is necessary to support the orders of the Tax Court in these cases." 240 F. 2d 584, 587–588.

In describing the property settlement agreement in the *Weil* case, the court points out that from one periodic payment to be made to the wife, she was to support, maintain and educate the children and herself.

> "Except in the remarriage clause the agreement nowhere requires the wife to devote any specified amount to the support of the children, nor unless she remarries, are the payments to her to be reduced if it becomes no longer necessary for her to support either or both of the children." 240 F. 2d 584, at 588.

To the contrary the contract there interpreted specifically provided that payments to the wife should not be revised, even though one or both children died, or became of age, or because either failed to longer live with their mother.

It is true that if the wife *remarried*, then by the terms of the Weil agreement, during each child's life before majority while living with their mother, the father agreed to pay $200.00 per child to the mother. This was the only contingency mentioned by reason of which any specification of amounts for child support could be ascertained. The reliance on this contingency, which might never occur, caused the Second Circuit to refer to the Tax Court's "fine tooth combing" endeavors.

In contrast, we here have an agreement in which the Commissioner properly emphasized the following facts, none of which existed in the *Weil* case:

(a) If the wife did not remarry, the original $125.00 per week payments were to be reduced by $31.25 as each child reached majority.
(b) "It is the intention of the parties that when both of said children shall have attained the age of 21," the husband shall pay alimony of $62.50 per week.
(c) Payments were to be reduced by $31.25 per week upon the death of either child prior to his majority.
(d) "If the wife shall fail to support either or both of said children, the husband may pay the cost thereof and deduct the same from said weekly alimony."
(e) Upon remarriage of the wife, "all alimony payments to her shall cease, but in lieu thereof the husband shall pay $31.25 for the support and maintenance of each child . . . until such child shall attain the age of 21."

The husband, when he entered into this agreement, had a moral and legal duty to (a) pay his wife alimony, and (b) support his minor children. He recognized that duty, and entered into the property settlement agreement. By the language used, he arranged to pay his wife alimony, and have her support herself and the children. Can there be any doubt that in setting the various figures used therein—($125.00, $62.50 and $31.25)—each of the parties had in mind they were agreeing the wife would need and have $62.50 per week, and each child $31.25? We recognize that the Internal Revenue Law uses the language "payable for," and does not concern itself with whether the children receive any precise amount of support, or any support. But these parties did concern themselves. The husband saw to it that if the wife failed to use "her" support money for the support of the children, the husband could pay to the children, or for them, and deduct such amounts from the wife's "alimony payments." This was a laudable agreement on the part of both for the benefit of their children. It establishes conclusively in our mind how the parties regarded the payments. Suppose, in full accordance with the terms of his property settlement agreement, the husband had deducted from his payments of alimony to his wife $62.50 per week, and expended that sum directly for the benefit of his children, over a period of years. Would anyone suggest his wife could recover the full $125.00 per week as her alimony, or that the husband would in any way be in contempt of the Florida court decree?

The general rule which we here approve is that when the settlement agreement, read as a whole, discloses that the parties have earmarked or designated or apportioned or allocated the payments to be made, *one part to be payable for alimony, and another part to be payable for the support of children*, with sufficient certainty and specificity to readily determine which is which, without reference to contingencies which may never come into being, then the "part of any periodic payment" has been fixed "by the terms of the decree or written instrument" and satisfies the statutes and regulations hereinbefore quoted. *Joslyn* v *C.I.R.*, 7 Cir., 230 F. 2d 871 (1956); *Mandel* v. *C.I.R.*, 7 Cir., 185 F. 2d 50 (1950); *Budd* v. *C.I.R.*, 6 Cir., 177 F. 2d 198 (1947), affirming per curiam, 7 T.C. 413 (1946); *Morsman* v. *Commissioner*, 27 T.C. 520 (1956); U.S. Treas. Reg. 111, Section 29.23(u)-1 (1939). We disagree with *Deitsch* v. *Commr.*, 6 Cir. 26 Law Week 2265; —— F. 2d ——.

Under this general rule, the trier of fact does not rely on "[T]he fortuitous or incidental mention of a figure in a provision meant to be inoperative unless some more or less probable future event occurs, (which) will not suffice to shift the tax burden from the wife to the husband." (*Weil* v. *Commissioner*, *supra.*) Neither should a strained or unnatural construction be allowed to shift the tax burden from the husband to the former wife.

The decision of the Tax Court is Affirmed.

(Endorsed:) Opinion. Filed December 10, 1957.

PAUL P. O'BRIEN, Clerk.

Rev. Rul. 59–45

REGULATIONS 118, SECTION 39.22(k)–1: Alimony and separate maintenance payments; income to former wife.
(Also Section 23(u); Regulations 118, Section 39.23(u)–1.)
(Also Part I, Sections 71, 215; 26 CFR 1.71–1, 1.215–1.)

Payments made under a decree of divorce or separate maintenance by a husband to his former wife, which are to be paid over a period of less than ten years but which are subject to the contingency of the death of either spouse, the remarriage of the wife, or a change in the economic status of either spouse, qualify as periodic payments within the intendment of section 22(k) of the Internal Revenue Code of 1939, provided the payments are in the nature of alimony or an allowance for support. Such payments are includible in the gross income of the wife and are deductible by the husband. See *Rudolph B. S. Myers* v. *Commissioner*, 212 Fed. (2d) 448; *Clay W. Prewett, Jr.* v. *Commissioner*, 221 Fed. (2d) 250. Under section 71 of the Internal Revenue Code of 1954, the same principle is also applicable to payments of this type, as well as to payments made after August 16, 1954, under (1) a written separation agreement executed after that date, or (2) under a decree for support entered after March 1, 1954. See section 1.71–1(d)(3) of the Income Tax Regulations.

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

REGULATIONS 111, SECTION 29.23(a)–1: Business expenses. Ct. D. 1835
(Also Sections 23(o), 23(q); Regulations 111, 29.23(o)–1, 29.23(q)–1.)

INCOME TAX—INTERNAL REVENUE CODE OF 1939—DECISION OF COURT

1. DEDUCTIONS FROM GROSS INCOME—BUSINESS EXPENSES—SUMS EXPENDED BY ALCOHOLIC BEVERAGE DEALER TO HELP DEFEAT INITIATIVE MEASURES PENDING BEFORE VOTERS NOT DEDUCTIBLE—VALIDITY OF REGULATIONS.

Sums paid by wholesale liquor and beer dealers to organizations which expended them in extensive publicity programs designed to persuade the voters to cast their ballots against proposed prohibition measures are not deductible as ordinary and necessary business expenses. Treasury Regulations disallowing deductions of amounts expended to influence legislation apply to expenditures for publicity directed to the general public, as well as to lobbying expenses, and apply to initiative measures as fully as to any other kind of legislation. These Regulations are valid even though disallowing deductions of sums expended to preserve a taxpayer's business, since the Regulations themselves are an expression of a sharply defined national policy and have acquired the force of law under the doctrine of statutory re-enactment in the face of known administrative interpretation. Nondiscriminatory disallowance of such deductions does not violate the "freedom of speech or of the press" rights guaranteed by the First Amendment made applicable to the States by the Fourteenth Amendment.

2. JUDGMENTS AFFIRMED.

JUDGMENTS OF THE UNITED STATES COURTS OF APPEALS FOR THE NINTH CIRCUIT, 246 F. 2D 751, AND FOR THE EIGHTH CIRCUIT, 251 F. 2D 724, AFFIRMED.

SUPREME COURT OF THE UNITED STATES

William B. Cammarano and Louise Cammerano, his wife, Petitioners v. *United States of America*

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

F. Strauss & Son, Inc., of Arkansas, Petitioner v. *Commissioner of Internal Revenue*

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

[February 24, 1959]

OPINION

MR. JUSTICE HARLAN delivered the opinion of the Court.

These cases, coming to us from two different Circuits, present identical issues, and may appropriately be dealt with together in one opinion. The issues involve the interpretation and validity of Treas. Reg. 111. § 29.23(o)–1 and § 29.23(q)–1 as applied by the court below to deny deduction as "ordinary and necessary" business expenses under § 23(a)(1)(A) of the Internal Revenue Code of 1939[1] to sums expended by the respective taxpayer petitioners in furtherance of publicity programs designed to help secure the defeat of initiative measures then pending before the voters of the States of Washington and Arkansas.

The Treasury Regulations in question each provides in pertinent part that no deduction shall be allowed to "sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda, including advertising other than trade advertising . . . ."[2] Both Courts of Appeals held that these provisions render nondeductible sums paid by petitioners to organizations which expended them in extensive publicity programs designed to persuade the voters to cast their ballots against state initiative measures, even though the passage of those measures would have seriously affected, or indeed wholly destroyed, the taxpayers' businesses—and that so interpreted the Regulations are a valid exercise of the Commissioner's rule-making power. We granted certiorari because of the recurring nature of the question, and because of its importance to the proper administration of the Internal Revenue laws. 355 U.S. 952; 356 U.S. 966.

A brief review of the facts in the two cases is necessary to an understanding of the issues.

No. 29: In 1948 petitioners William and Louise Cammarano, husband and wife, jointly owned a one-fourth interest in a partnership engaged in the distribution of beer at wholesale in the State of Washington. The partnership was a member of the Washington Beer Wholesalers Association. In December 1947 the Association had established a trust fund as a repository for assessments collected from its members to help finance a statewide publicity program urging the defeat of "Initiative to the Legislature No. 13," a measure to be submitted to the electorate at the general election of November 2, 1948, which would have placed the retail sale of wine and beer in Washington exclusively in the hands of the State. During 1948 petitioners' partnership paid to the trust fund $3,545.15, of which petitioners' pro rata share was $886.29. The trust fund collected a total of $53,500, which was turned over to an Industry Advisory Committee organized by wholesale and retail wine and beer dealers, which in turn expended

[1] That section (26 U.S.C. § 23(a)(1)(A)) provides in pertinent part:
"§ 23. Deductions from gross income. In computing net income there shall be allowed as deductions:
"(a) Expenses.
"(1) Trade or Business Expenses.
"(A) In General. All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. . . ."

[2] Only § 29.23(o)–(1), which reads on individuals, is involved as to petitioners Cammarano, and only § 29.23(q)–(1), reading on corporations, as to petitioner F. Strauss & Son, Inc. Because the language and effect of the two Regulations are in all relevant respects identical, they will be discussed throughout this opinion as if they were one.

it as part of contributions totaling $231,257.10 for various kinds of advertising directed to the public, none of which referred to petitioners' wares as such and all of which urged defeat of Initiative No. 13.[3] The initiative was defeated.

In preparing their joint income tax return for 1948, petitioners deducted as a business expense the $886.29 paid to the Association's trust fund as their share of the partnership assessment. The deduction was disallowed by the Commissioner, and petitioners paid under protest the additional sum thus due and sued in the District Court for refund. That court ruled that the payments made to the trust fund were "expended for . . . the . . . defeat of legislation" within the meaning of Treas. Reg. 111, § 29.23(o)-1 and were therefore not deductible as ordinary and necessary business expenses under § 23(a)(1)(A) of the Internal Revenue Code of 1939. The Court of Appeals affirmed, holding the Regulation applicable and valid as applied. 246 F. 2d 751.[4]

No. 50: Petitioner F. Strauss & Son, Inc., is a corporation engaged in the wholesale liquor business in Arkansas. In 1950 an initiative calling for an election on statewide prohibition was placed on the ballot to be voted on in the state general election on November 7, 1950. In May of that year Strauss, together with eight other Arkansas liquor wholesalers, organized Arkansas Legal Control Associates, Inc., as a means of coordinating their efforts to persuade the voters of Arkansas to vote against the proposed prohibition measure. Between May 30, and November 30, 1950, Arkansas Legal Control Associates collected a total of $126,265.84, which was disbursed for various forms of publicity concerning the proposed Act.[5] Strauss' contribution amounted to $9,252.67.

The initiative measure was defeated in the November election. On its 1950 income tax return Strauss deducted the $9,252.67 as a business expense. The Commissioner disallowed the deduction and Strauss filed a timely petition in the Tax Court seeking a redetermination of the deficiency asserted. That court upheld the action of the Commissioner in disallowing the claimed deduction, and the Court of Appeals unanimously affirmed. 251 F. 2d 724.

Since 1918 regulations promulgated by the Commissioner under the Internal Revenue Code have continuously provided that expenditures for the "promotion or defeat of legislation . . .," or for any of the other purposes specified in the "corporate" Regulation now before us, are not deductible from gross corporate income; and since 1938 regulations containing identical language have forbidden such deductions from individual income.[6] During this period of more than 40 years these regulatory provisions have been before this Court on only one occasion. In *Textile Mills Corp.* v. *Commissioner*, 314 U.S. 326 [Ct. D. 1532, C.B. 1941-2, 200], it was held that the Commissioner properly disallowed the deduction of sums paid by a corporation to a publicist and two legal experts employed

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[3] A typical advertisement paid for by the Industry Advisory Committee, signed by "Men & Women Against Prohibition," begins "We intend to Vote Against Initiative 13—because it would mean a return to the speakeasy, the bootlegger, the gangster—and, finally, statewide PROHIBITION! We urge our friends and neighbors to do likewise."

[4] The Court of Appeals alternatively held that judgment in favor of the Commissioner was required by a trial court finding that petitioners Cammarano had failed to show that passage of the initiative would have impaired their partnership's business as a beer distributor. 246 F. 2d, at 754. This ground of decision is not strongly defended by the Government in this Court, and on our view of the principles which control it need not be considered.

[5] A typical advertisement, which ran in all Arkansas daily and weekly newspapers, and which shows as its sponsor "Arkansas Against Prohibition," begins:
"What Does 'One Quart' Prohibition REALLY MEAN? There's nothing like it anywhere . . . it's novel . . . it's unique. But it's sinister . . . It's a plan to destroy the strictly-regulated alcohol beverage business and to turn that business over to the bootlegger."

[6] Article 143 of Treas. Reg. 33 (1918 ed.) denied deductibility as ordinary and necessary business expenses to corporate expenditures for "lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda. . . ." The prohibition against corporate deduction of such expenditures first appears in its present form in Art. 562 of Treas. Reg. 45 (1919 ed.), promulgated under the Revenue Act of 1918. Thereafter it so appears continuously without change. See Art. 562 of Treas. Reg. 45 (1920 ed.), 62, 65, and 69, promulgated under the Revenue Acts of 1918, 1921, 1924, and 1926, Art. 262 of Treas. Reg. 74 and 77, promulgated under the Revenue Acts of 1928 and 1932, Art. 23(o)-2 of Treas. Reg. 86, promulgated under the Revenue Act of 1934, Art. 23(q)-1 of Treas. Reg. 94 and 101, promulgated under the Revenue Acts of 1936 and 1938, §§ 19.23(q)-1, 29.23(q)-1, and 39.23(q)-1 of Treas. Reg. 103, 111, and 118, respectively, promulgated under the Internal Revenue Code of 1939.

The prohibition against individual deductibility of such expenditures first appears in Art. 23(o)-1 of Treas. Reg. 101, promulgated under the Revenue Act of 1938, and thereafter in §§ 19.23(o)-1, 29.23(o)-1, and 39.23(o)-1 of Treas. Reg. 103, 111, and 118, respectively, promulgated under the Internal Revenue Code of 1939.

In the proposed Income Tax Regulations under the 1954 Code, the prohibitions are consolidated in § 1.162-15.

to help secure the passage of legislation designed to secure the return of certain properties in this country seized during World War I under the provisions of the Trading With the Enemy Act. This holding was squarely based on the regulatory provisions now embodied in Treas. Reg. 111, § 29.23(q)-1, which were found valid and applicable to the facts involved in that case, although the very business of the taxpayer seeking the deduction was the direction of the publicity program in the course of which the expenditures were made.

Petitioners suggest that *Textile Mills* is not dispositive of the present cases, either as to the applicability of the Regulations upon the facts disclosed by these records or as to the validity of those Regulations under the statute if they are found to be applicable. Essentially, petitioners' contentions are (1) that the Regulations cannot properly be construed as applicable to expenditures made in connection with efforts to promote or defeat the passage of legislation by persuasion of the general public as opposed to direct influence on legislative bodies, that is "lobbying"; (2) that in any case the Regulations are inapplicable to expenditures made in connection with initiative measures; and (3) that if construed as applicable to the facts here presented the Regulations are invalid as contrary to the plain terms of § 23(a)(1)(A) of the 1939 Code and possibly as unconstitutional under the First Amendment.

We need not be long detained by the question of the applicability of the Regulations to petitioners' expenditures. First, we see no justification for reading into these regulatory provisions the implied exceptions which petitioners would have us there find. We cannot accept petitioners' argument that *Textile Mills* should be read as limiting such provisions to direct dealings with legislators, insidious or otherwise. The deductions whose propriety was before the Court in that case were for expenditures, characterized by the Court of Appeals as being for "matters of publicity, 'including the making of arrangements for speeches, contacting the press, in respect of editorial comments, and news items,'" and for the preparation of "brochures" involving "a comprehensive study of the history of the treatment of persons and property in war," 117 F. 2d 62, 65, 63, all designed to influence the opinions of the general public.[7] Apart from *Textile Mills*, the Courts of Appeals have uniformly applied these Regulations to expenditures for publicity directed to the general public on legislative matters. See, *e.g.*, *Revere Racing Assn.* v. *Scanlon*, 232 F. 2d 816 (C.A. 1st Cir.); *American Hardware & Eq. Co.* v. *Commissioner*, 202 F. 2d 126 (C.A. 4th Cir.); *Roberts Dairy Co.* v. *Commissioner*, 195 F. 2d 948 (C.A. 8th Cir.); *Sunset Scavenger Co.* v. *Commissioner*, 84 F. 2d 453 (C. A. 9th Cir.) [Ct. D. 1190, C.B. 1951-1, 202]. Petitioners' reading of these Regulations would make all but the reference to "lobbying" pure surplusage. We think that the Regulations must be construed to mean what they say—that not only lobbying expenses, but also sums spent for "the promotion or defeat of legislation, the exploitation of propaganda, including advertising other than trade advertising" are nondeductible.[8]

Likewise unpersuasive is petitioners' suggested distinction between expenses incurred in attempting to promote or defeat legislation pending before legislatures and those incurred in furthering or combatting an initiative measure. We think that initiatives are plainly "legislation" within the meaning of these Regulations. Had the measures involved in these cases been passed by the people of Washington and Arkansas they would have had the effect and status of ordinary laws in every respect. The Constitutions of the States of Washington and Arkansas both explicitly recognize that in providing for initiatives they are vesting legislative power in the people.[9] Every court which has considered the

[7] Petitioners Cammarano suggest that in fact "lobbying" was involved in *Textile Mills* because of the activities of one Mondell whose services had also been engaged by the petitioner there. But the opinion of the Court of Appeals shows that none of the payments made to Mondell were involved in the litigation (see 117 F. 2d, at 64), and the opinion of this Court makes no reference to any of Mondell's activities.

[8] Petitioners point to *United States* v. *Rumely*, 345 U.S. 41, and *United States* v. *Harriss*, 347 U.S. 612, where this Court interpreted the term "lobbying" in a congressional resolution and in the Federal Regulation of Lobbying Act, 2 U.S.C. §§ 261-270, to mean only representations and communications made directly to Congress and its members concerning pending or proposed legislation. These cases do not advance petitioners' cause, since the regulatory provisions here explicitly embrace more than "lobbying." Cf. *United States* v. *Rumely*, *supra*, at 47.

[9] Amendment 7 of the Constitution of the State of Washington provides in pertinent part:

"Art. 2, Sec. 1. *Legislative Powers, Where Vested*—The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the State of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature. . . ."

Amendment 7 of the Arkansas Constitution contains a virtually identical provision.

question has found these provisions to be fully as applicable to initiatives and referendums as to any other kind of legislation. See *Revere Racing Assn.* v. *Scanlon, supra; Old Mission Portland Cement Co.* v. *Commissioner*, 69 F. 2d 676, affirmed on other issues, 293 U.S. 289 [Ct. D. 903, C.B. XIV–1, 332 (1935)]; *Mosby Hotel Co.* v. *Commissioner*, decided October 22, 1954, P–H 1954 TC Mem. Dec. ¶ 54,288; *McClintock-Trunkey Co.* v. *Commissioner*, 19 T.C. 297, reversed on other issues, 217 F. 2d 329 (involving payments, like those of petitioners Cammarano, made to the Washington Beer Wholesalers Association in connection with "Initiative to the Legislature No. 13").

A contrary reading of the Regulations would, indeed, be anomalous, for it would mean that expenses of publicity campaigns directed to the public to influence it in turn to persuade its legislative representatives to vote for or against pending bills would be encompased by the Regulations and denied deductibility, whereas a less-diluted form of persuasion and influence, directed to the voters as legislators, would be left at large so far as the Regulations are concerned. We see no reason to give so artificial and strained a construction to the pertinent language.[10]

The cornerstone of petitioners' argument is that Treas. Reg. 111, § 29.23(o)–1 and § 29.23(q)–1 are invalid if interpreted to apply to the expenditures here at issue. It is contended that sums expended by a taxpayer to preserve his business from destruction are deductible as ordinary and necessary business expenses under the Code as a matter of law, and that therefore a regulation purporting to deny deductibility to such expenditures is plainly contrary to the statute and *ipso facto* invalid. Petitioners rely upon *Commissioner* v. *Heininger*, 320 U.S. 467 [Ct. D. 1596, C.B. 1944, 484] where this Court held that attorney's fees incurred by a mail-order dentist in resisting a postal fraud charge which would have ended his business were deductible as an ordinary and necessary business expense.

We do not think that *Heininger* governs the present cases, nor that it establishes as broad a rule of law as petitioners suggest. In *Heininger* this Court held no more than that expenditures without which a business enterprise would inevitably suffer adverse effects, and the granting of deductibility to which would frustrate no "sharply defined national or state policies," 320 U.S., at 473 (see also *Commissioner* v. *Sullivan*, 356 U.S. 27 [Ct. D. 1821, C.B. 1958–1, 506]), were deductible as ordinary and necessary business expenses under the statute.[11] Here the deductions sought are prohibited by Regulations which themselves constitute an expression of a sharply defined national policy, further demonstration of which may be found in other sectons of the Internal Revenue Code.[12]

As was said in *Textile Mills*, "the words 'ordinary and necessary' are not so clear and unambiguous in their meaning and application as to leave no room for an interpretative regulation. The numerous cases which have come to this Court on that issue bear witness to that." 314 U.S., at 338. In the present cases there is before us regulatory language of more than 40 years' continuous duration expressly providing that sums expended for the activities here involved shall not be considered an ordinary and necessary business expense under the statute. The provisions of the Internal Revenue Code which underlie the Regulations have been repeatedly re-enacted by the Congress without the

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[10] Petitioners place heavy reliance on the Commissioner's acquiescence until 1958 in a 1944 decision of the Tax Court allowing deduction to expenditures—found otherwise to qualify under § 23(a)(1)(A) of the 1939 Code—incurred by a taxpayer in connection with a self-operative amendment to the Missouri Constitution, on the ground that "no legislation was needed or involved." *Smith* v. *Commissioner*, 3 T.C. 696. Whether or not under the Regulations here at issue a distinction can rationally be drawn between a popularly enacted constitutional amendment and an initiative, we do not see how the fact that the Tax Court and the Commissioner for a period made such a distinction, compare *Smith* v. *Commissioner, supra*, with *McClintock-Trunkey Co.* v. *Commissioner*, 19 T.C. 297, reversed on other issues, 217 F. 2d 329, helps petitioners' case, as the Commissioner and the Tax Court have been entirely consistent in their position that expenditures connected with initiatives—as in the present cases—are not deductible.

The Tax Court appears to have modified its view since the *Smith* case even as to expenditures made in connection with constitutional amendments. See *Mosby Hotel Co.* v. *Commissioner*, decided October 22, 1954, P–H 1954 TC Mem. Dec. ¶ 54,288. And the Commissioner has recently withdrawn his acquiescence in the *Smith* decision. See Rev. Rul. 58–255, 1958–1 Cum. Bull. 91.

[11] The Court noted that in judging the issues before it "we do not have the benefit of an interpretative departmental regulation defining the application of the words 'ordinary and necessary' to the particular expenses here involved." 320 U.S., at 470.

[12] See p. 14, *post*.

slightest suggestion that the policy expressed in these regulatory measures does other than precisely conform to its intent.[13]

In 1934 the Court of Appeals for the Ninth Circuit denied deduction to expenses incurred in connection with a referendum which would, if passed, have increased the taxpayer's business. *Old Mission Portland Cement Co.* v. *Commissioner, supra.*[14] And in 1936 the same court in *Sunset Scavenger Co.* v. *Commissioner, supra,* reversed the Board of Tax Appeals to hold that the regulatory language now before us, through repeated re-enactment by Congress of the underlying legislation, already had acquired the force of law, and applied it to deny deductibility to expenditures made by an incorporated association of garbage collectors for a publicity program directed to the general public urging the defeat of legislation which would have injured the business of the Association's membership. The court recognized that the Board of Tax Appeals had twice previously held similar expenditures deductible so long as not made for an illegal purpose,[15] but pointed out that in both of those cases the effect of the Regulation had been entirely disregarded, and that they were therefore not sound authority. Three years later the Congress, in the face of these decisions, again re-enacted without change in the 1939 Code the "ordinary and necessary" business expense section.

It is also noteworthy that Congress, in its 1954 re-enactment of the Internal Revenue Code, again adopted the "ordinary and necessary" provisions without substantive change,[16] following consistent rulings by the courts subsequent to the 1939 re-enactment holding these Regulations applicable to sums spent in efforts to persuade the general public of the desirability or undesirability of proposed legislation affecting the taxpayer's business. See *Textile Mills; American Hardware & Eq. Co.* v. *Commissioner, supra; Roberts Dairy Co.* v. *Commissioner, supra; McClintock-Trunkey Co.* v. *Commissioner, supra.* Although the tax years involved in the cases before us are 1948 and 1950, and a 1954 re-enactment of course cannot conclusively demonstrate the propriety of an administrative and judicial interpretation and application as made to transactions occurring before the re-enactment, the 1954 action of Congress is significant as indicating satisfaction with the interpretation consistently given the statute by the Regulations here at issue and in demonstrating its prior intent. Cf. *United States* v. *Stafoff,* 260 U.S. 477, 480.

Under these circumstances we think that the Regulations have acquired the force of law. This is not a case where the Government seeks to cloak an interpretative regulation with immunity from judicial examination as to conformity with the statute on which it is based simply because Congress has for some period failed affirmatively to act to change the interpretation which the regulation gives to an otherwise unambiguous statute. Cf. *Jones* v. *Liberty Glass Co.,* 332 U.S. 524 [Ct. D. 1695, C.B. 1948–1, 102]. Nor is it a case where no reliable inference as to Congress' intent can be drawn from re-enactment of a statute because of a conflict between administrative and judicial interpretation of the statute at the time of its re-enactment. Cf. *Commissioner* v. *Glenshaw Glass Co.,* 348 U.S. 426, 431 [Ct. D. 1783, C.B. 1955–1, 207]. Here we have unambiguous regulatory language, adopted by the Commissioner in the early days of federal income tax legislation, in continuous existence since that time, and consistently construed and applied by the courts on many occasions to deny deductions of sums expended in efforts to persuade the electorate,[17] even when a clear business motive for the expenditure has been demonstrated.

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[13] See Note 6, *supra.*

[14] The suggestion of petitioners Cammarano that the decision in that case turned on factors of the kind involved in *McDonald* v. *Commissioner,* 323 U.S. 57 [Ct. D. 1617, C.B. 1944, 94], is contradicted by the statement of the Court of Appeals concerning *Old Mission* in *Sunset Scavenger Co.* v. *Commissioner,* 84 F. 2d at 457.

[15] *G. T. Wofford* v. *Commissioner,* 15 B.T.A. 1225; *Los Angeles & Salt Lake R. Co.* v. *Commissioner,* 18 B.T.A. 168. Cf. *Lucas v. Wofford,* 49 F. 2d 1027, where a petition by the Commissioner for review of the decision in *G. T. Wofford, supra,* was denied upon a finding that the expenditures involved were not made "to secure the passage or defeat of any legislation." 49 F. 2d, at 1028.

After this Court's decision in *Textile Mills* the Board of Tax Appeals recognized that the Regulation was applicable to expenditures incurred in a "proper and legal attempt to prevent [business] injury" by endeavoring to secure the defeat of legislation. *Bellingrath* v. *Commissioner,* 46 B.T.A. 89, 92.

[16] Internal Revenue Code of 1954, 26 U.S.C. (Supp. V) § 162.

[17] *Smith* v. *Commissioner, supra,* can hardly be regarded as a break in the uniform chain of decisions. See Note 16, *supra.*

In these circumstances we consider that what was said in *Massachusetts Mutual Life Ins. Co.* v. *United States*, 288 U.S. 269, 273 [Ct. D. 638, C.B. XII–1, 286 (1933)], applies here:

> "This action [of Congress in re-enacting a statute] was taken with knowledge of the construction placed upon the section by the official charged with its administration. If the legislative body had considered the Treasury interpretation erroneous it would have amended the section. Its failure so to do requires the conclusion that the regulation was not inconsistent with the intent of the statute [citations] unless, perhaps, the language of the act is unambiguous and the regulation clearly inconsistent with it. [citation]." [18]

This Court has heretofore recognized that the "ordinary and necessary" language of the Code is hardly unambiguous, see *Textile Mills Securities Corp.* v. *Commissioner*, *supra*, and we cannot say that these Regulations are clearly, or even apparently, inconsistent with it. Cf. *Trust of Bingham* v. *Commissioner*, 325 U.S. 365 [Ct. D. 1643, C.B. 1945, 103].

The statutory policy is further evidenced by the treatment given by Congress to the tax status of organizations, otherwise qualified for exemption as organized exclusively for "religious, charitable, scientific, literary or educational purposes," which engage in activities designed to promote or defeat legislation. As early as 1934 Congress amended the Code expressly to provide that no tax exemption should be given to organizations, otherwise qualifying, a substantial part of the activities of which "is carrying on propaganda, or otherwise attempting, to influence legislation," and that deductibility should be denied to contributions by individuals to such organizations. Revenue Act of 1934, §§ 101(6), 23(o)(2), 48 Stat. 700, 690. And a year thereafter, when the Code was for the first time amended to permit corporations to deduct certain contributions not qualifying as "ordinary and necessary" business expenses, an identical limitation was imposed. Revenue Act of 1935, § 102(c), 49 Stat. 1016. These limitations, carried over into the 1939 and 1954 Codes,[19] made explicit the conclusion derived by Judge Learned Hand in 1930 that "political agitation as such is outside the statute, however innocent the aim . . . . Controversies of that sort must be conducted without public subvention; the Treasury stands aside from them." *Slee* v. *Commissioner*, 42 F. 2d 184, 185. The Regulations here contested appear to us to be but a further expression of the same sharply defined policy.

Petitioners suggest that if the Regulations are construed to deny them deduction, a substantial constitutional issue under the First Amendment is presented. They rely upon *Speiser* v. *Randall*, 357 U.S. 513, where a California statute requiring the taking of a loyalty oath as a condition of property tax exemption was struck down on grounds of procedural due process. This contention, made by neither petitioner below, is without merit. *Speiser* has no relevance to the cases before us. Petitioners are not being denied a tax deduction because they engage in constitutionally protected activities, but are simply being required to pay for those activities entirely out of their own pockets, as everyone else engaging in similar activities is required to do under the provisions of the Internal Revenue Code. Nondiscriminatory denial of deduction from gross income to sums expended to promote or defeat legislation is plainly not "aimed at the suppression of dangerous ideas." 357 U.S., at 519. Rather, it appears to us to express a determination by Congress that since purchased publicity can influence the fate of legislation which will affect, directly or indirectly, all in the community, everyone in the community should stand on the same footing as regards its purchase so far as the Treasury of the United States is concerned.

Affirmed.

Mr. JUSTICE DOUGLAS concurring in a separate opinion.

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[18] See also *Helvering* v. *Winmill*, 305 U.S. 79, 83 [Ct. D. 1365, C.B. 1938–2, 212]: "Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed to have received congressional approval and have the effect of law."

[19] Internal Revenue Code of 1939, 26 U.S.C. §§ 23(o)(2), (q)(2), 101(6); Internal Revenue Code of 1954, 26 U.S.C. (Supp. V) §§ 170(c)(2)(D), 501(c)(3).

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

REGULATIONS 118, SECTION 39.23(c)–1: Taxes.

Tax imposed by the State of Georgia by section 2 of the Georgia Retailers' and Consumers' Sales, and Use Tax. See Rev. Rul. 59–65, page 51.

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

REGULATIONS 111, SECTION 29.23(m)–1: Depletion of mines, oil and gas wells, other natural deposits, and timber; depreciation of improvements. (Also Section 144; Regulations 111, Section 29.114–1.) Ct. D. 1836

INCOME TAX—INTERNAL REVENUE CODE OF 1939—DECISION OF COURT

1. DEDUCTIONS FROM GROSS INCOME—DEPLETION—COAL STRIPPING CONTRACTS—ECONOMIC INTEREST IN MINERAL DEPOSITS.

Petitioners did not acquire an "economic interest" in coal in place entitling them to an allowance for depletion since (1) their investments were in their equipment, all movable; (2) their investments in such equipment were recoverable through depreciation; (3) the contracts were terminable without cause on short notice; (4) the landowners did not surrender nor agree to surrender a capital interest in coal in place; (5) the coal at all times belonged entirely to landowners and petitioners were required to deliver all that they mined to the landowners; (6) petitioners were not entitled to any part of the proceeds of sale of the coal but were paid a fixed sum for each ton mined and delivered; and (7) petitioners, thus, looked only to the landowners for compensation due under the contracts.

2. JUDGMENTS AFFIRMED.

Judgments of the United States Court of Appeals for the Third Circuit, 255 F. 2d 595, 599, affirmed.

SUPREME COURT OF THE UNITED STATES

Emory W. Parsons, Erma M. Parsons, Howard H. Parsons, et al., Petitioners, v. *Francis R. Smith, Former Collector of Internal Revenue for the First District of Pennsylvania*

George Huss, Russell Huss and Wesley Huss, Petitioners, v. *Francis R. Smith, Former Collector of Internal Revenue for the First District of Pennsylvania*

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

[April 6, 1959]

Mr. JUSTICE WHITTAKER delivered the opinion of the Court.

These tax refund cases present the question whether petitioners, Parsons in No. 218 and Huss in No. 305, are entitled to an allowance for depletion on amounts received by them under contracts with the owners of coal-bearing lands for the strip mining of coal from the those lands and the delivery of it to the landowners. The cases were heard by the same courts below. The District Court ruled that petitioners had no depletable interest in the coal in place and rendered judgment for the respondent—collector in each case. The Court of Appeals affirmed both judgments. 255 F. 2d 595, 599. Because of an asserted conflict with the principles applicable under the decisions of this Court, we granted certiorari in both cases. 358 U.S. 418.

The pertinent facts in each case were found by the District Court and are not challenged here. In substance, they are as follows:

PARSONS, No. 218. Petitioners were members of a partnership ("Parsons") which, until the transactions involved here, was primarily engaged in road building. Rockhill Coal Co. ("Rockhill") owned bituminous coal-bearing lands in Pennsylvania. Much of the coal was located relatively near the surface and was therefore removable by the strip mining process.[1] In 1942 Parsons expressed a desire to strip mine coal from Rockhill's lands, but it refused to sign the written contract offered because the firm did not wish to be bound by a contract "which would take a long time, since, if an opportunity opened up, [it] wanted to go back to road building." It was then agreed that Parsons would, and it did, proceed under an oral agreement. Under that agreement Parsons was to strip mine coal from such sites and seams, within a generally described area of Rockhill's lands, as were designated by Rockhill. Parsons was to furnish at its own expense all of the equipment, facilities and labor which it thought necessary to strip mine and deliver the coal to Rockhill's cars at a fixed point. For each ton of coal so mined and delivered Rockhill was to pay Parsons a stated amount of money.[2] Parsons was not authorized to keep or sell any of the coal but was required to deliver all that was mined to Rockhill. The agreement was not for a definite term, nor did it obligate Parsons to mine the tract to exhaustion, but, to the contrary, it was agreed that "if Parsons or Rockhill wanted to quit, all that was necessary to terminate the arrangement was the giving of a ten-day notice." However, if Rockhill thus canceled the agreement and if "Parsons had previously gone to the expense of removing the overburden (thereby performing the heavy part of the work, as well as meeting wages and expenses in so doing), then Parsons would have the privilege of taking out the coal [so uncovered] and of being paid for it [even though] this took more than ten days." Operations continued under the agreement without notice of termination until August 1, 1950, when Parsons gave Rockhill notice that it would "quit" the work on September 1, 1950, and it ceased these operations on or near that date. Large amounts of stripable coal still remained on the tract and strip mining thereon was continued by another contractor. Parsons' investment in equipment used in the work ran from a low in 1943 of $60,000 to a high in 1947 of $250,000. The equipment was movable and there is no evidence that it was not usable elsewhere for other purposes.

HUSS, No. 305. Petitioners were members of a partnership ("Huss") engaged in the business of strip mining coal. Philadelphia and Reading Coal & Iron Co. ("Reading") owned anthracite coal-bearing lands in Schuylkill County, Pennsylvania. Much of the coal was so located that it could be removed by strip mining. In 1944 Reading and Huss entered into a written contract[3] under which Huss undertook to strip mine the coal from such areas, within a generally described tract of Reading's land, as might be designated by Reading and that was not lying deeper than a prescribed distance from the surface. Huss was to furnish at its own expense all of the equipment, facilities and labor necessary to mine and deliver the coal to Reading's colliery. For each ton of coal so mined and delivered Reading was to pay Huss a stated sum.[4] That sum was agreed to be in "full compensation for the full performance of all work and for the furnishing of all material, labor, power, tools, machinery, implements and equipment required for the work." Huss was not authorized to keep or sell any of the coal. The contract was expressly terminable by Reading at any time upon 30 days' written notice "without specifying any reason therefor" and without liability for "any loss of anticipated profits or any other damages whatever." This right of termination was not exercised. Operations continued under the contract until July 1947, by which time Huss had mined most of the stripable

[1] Strip mining is done from the surface of the earth. In general, it is performed by stripping off the earth, known as overburden, which lies over the coal and then removing the coal so uncovered.

[2] It was contemplated by the parties that in the event of an increase in the union labor wage scale the amount per ton to be paid to Parsons would be increased and on several occasions it was increased to cover higher costs for both labor and material used in the work.

[3] During the tax years involved, which were 1944 to 1947, other like contracts were entered into by the parties, but they were all identical, except for areas covered and price per ton to be paid to Huss, and it will therefore be unnecessary to treat with them individually.

[4] The contract provided however that in the event of an increase in the union labor wage scale the amount per ton to be paid to Huss would be, and on several occasions during the operation it was, increased sufficiently to cover increased labor costs.

coal on the lands covered by the contract that lay within the stipulated distance from the surface, and the contract was then canceled by mutual agreement. Huss' investment in equipment used in the work ran from a low in 1944 of $100,000 to a high in 1947 of $500,000. All of the equipment was movable and usable elsewhere in strip mining and some of it was usable for other purposes.

Whether a deduction from gross income shall be permitted for depletion of mineral deposits, or any interest therein, is entirely a matter of grace.[5] We therefore must look, first, to the provisions and purposes of the statutes and to the decisions construing them to see what interests are permitted a deduction for depletion, and, next, to the contracts involved to see whether they gave to petitioners such an interest.

The applicable statutes are §§ 23(m) and 114(b)(4)(A) of the Internal Revenue Code of 1939, 26 U.S.C. (1952 ed.) § 23(m) and 26 U.S.C. (1946 ed.) § 114(b)(4)(A). Section 23(m) directs that a reasonable allowance for depletion shall be made "in the case of mines, . . . according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the Commissioner, with the approval of the Secretary," and that "[i]n the case of leases the deductions shall be equitably apportioned between the lessor and lessee." And § 114(b)(4)(A) provides that the allowance shall be, "in the case of coal mines, 5 percentum . . . of the gross income from [mining] [6] the property during the taxable year, excluding . . . any rents or royalties paid or incurred by the taxpayer in respect of the property."

The purpose of the deduction for depletion is plain and has been many times declared by this Court. "[It] is permitted in recognition of the fact that the mineral deposits are wasting assets and is intended as compensation to the owner for the part used up in production." *Helvering* v. *Bankline Oil Co.*, 303 U.S. 362, 366. And see *United States* v. *Ludey*, 274 U.S. 295, 302 [T.D. 4046, C.B. VI–2, 157 (1927)]; *Helvering* v. *Elbe Oil Land Development Co.*, 303 U.S. 372, 375 [Ct. D. 1322, C.B. 1938–1, 293]; *Anderson* v. *Helvering*, 310 U.S. 404, 408; *Kirby Petroleum Co.* v. *Commissioner*, 326 U.S. 599, 603 [Ct. D. 1664, C.B. 1946–1, 69]. "[The depletion] exclusion is designed to permit a recoupment of the owner's capital investment in the minerals so that when the minerals are exhausted, the owner's capital is unimpaired." *Commissioner* v. *Southwest Exploration Co.*, 350 U.S. 308, 312. Save for its application only to gross income from mineral deposits and standing timber, the purpose of "the deduction for depletion does not differ from the deduction for depreciation." *United States* v. *Ludey*, 274 U.S., at 303. In short, the purpose of the depletion deduction is to permit the owner of a capital interest in mineral in place to make a tax-free recovery of that depleting capital asset.

Although the sentence in § 23(m) that "In the case of leases the deductions shall be equitably apportioned between the lessor and lessee" presupposes "that the deduction may be allowed in other cases" (*Palmer* v. *Bender*, 287 U.S. 551, 557 [Ct. D. 641, C.B. XII–1, 235 (1933)]), the statute "must be read in the light of the requirement of apportionment of a single depletion allowance" (*Helvering* v. *Twin Bell Oil Syndicate*, 293 U.S. 312, 321 [Ct. D. 905, C.B. XIV–1, 253 (1935)]), for two or more persons "cannot be entitled to depletion on the same income" (*Commissioner* v. *Southwest Exploration Co.*, 350 U.S. 308, 309). It follows that if petitioners are entitled to a depletion allowance on the amounts earned under their contracts, the amounts allowable to the landowners for the depletion of their coal deposits would be correspondingly reduced.

Dealing specifically with the problem of what interests in mineral deposits were permitted a deduction for depletion under the practically identical predecessors of §§ 23(m) and 114, this Court said in *Palmer* v. *Bender*, 287 U.S. 551, 557: "The language of the statute is broad enough to provide, at least, for every case in which the taxpayer has acquired, by investment, any interest in the oil in place, and secures, by any form of legal relationship, income derived from the extraction of the oil, to which he must look for a return of his capital." The Court further said that the deduction is not "dependent upon the particular legal form of the taxpayer's interest in the property to be depleted, [and that] [i]t is enough if . . . he has retained a right to share in the oil produced. If so he

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[5] *Helvering* v. *Bankline Oil Co.*, 303 U.S. 362, 366 [Ct. D. 1323, C.B. 1938–1, 306]; *Anderson* v. *Helvering*, 310 U.S. 404, 408 [Ct. D. 1456, C.B. 1940–1, 108]; *Commissioner* v. *Southwest Exploration Co.*, 350 U.S. 308, 312 [Ct. D. 1791, C.B. 1956–1, 614].

[6] Section 114(b)(4)(B) provided that "the term 'gross income from the property' means the gross income from mining." 26 U.S.C. (1946 ed.) § 114(b)(4)(B).

has an *economic interest* in the oil, in place, which is depleted by production."[7] *Ibid.* [Emphasis added.] The Court went on to hold that lessees of oil producing properties, by reserving from an assignment a royalty of "one-eighth of all the oil produced and saved," retained an economic interest in the oil in place and were therefore entitled to an allowance for depletion against their gross income from that interest.

Five years later, in 1938, the Court in *Helvering* v. *Bankline Oil Co.*, 303 U.S. 362, reaffirmed the test laid down in *Palmer* and added: "But the phrase 'economic interest' is not to be taken as embracing a mere economic advantage derived from production, through a contractual relation to the owner, by one who has no capital investment in the mineral deposit." 303 U.S., at 367. Applying that principal, the Court held that a processor who, by contracts with the owners of gas and oil wells, had acquired the right to take wet gas from the well heads and to extract and sell the gasoline therefrom, paying the well owners a percentage of the proceeds of such sales, had not acquired an economic interest in the depleting gas in place but only an economic advantage to be derived from the processing operations, and that therefore the income from those operations was not subject to the depletion deduction.

In his first regulations prescribed under the Internal Revenue Act of 1939, the Commissioner adopted almost literally the language we have quoted from *Palmer* and *Bankline* as the tests to be administratively applied in determining what interests in mineral deposits are entitled to the depletion allowance. See Treas. Reg. 103, § 19.23(m)-1, August 23, 1939. That language, with immaterial changes, has remained in the regulations ever since. During the years here involved, 1942 through 1950, the regulation in force was Treas. Reg. 111, § 29.23(m)-1, which, in pertinent part, provides:

> "Under [the provisions of §§ 23(m) and 114] the owner of an economic interest in mineral deposits or standing timber is allowed annual depletion deductions. An economic interest is possessed in every case in which the taxpayer has acquired, by investment, any interest in mineral in place or standing timber and secures, by any form of legal relationship, income derived from the severance and sale of the mineral or timber, to which he must look for a return of his capital. But a person who has no capital investment in the mineral deposit or standing timber does not possess an economic interest merely because, through a contractual relation to the owner, he possesses a mere economic advantage derived from production. . . ."

Such are the interests that are permitted a deduction for depletion by the statutes as consistently interpreted by this Court and by the Commissioner.

Petitioners do not dispute that these are the controlling principles, but rather they contend that they come within those that allow the deduction. They argue that by their contracts to mine the coal, and particularly by contributing their equipment, organizations and skills to the mining project as required by those contracts, they, in legal effect, made a capital investment in, and thereby acquired

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[7] The principles declared in the *Palmer* case have been recognized and applied by every subsequent decision of this Court that has treated with the subject.

Helvering v. *Bankline Oil Co.*, 303 U.S. 362, 367, literally adopted the language of the *Palmer* case upon the point.

In *Helvering* v. *O'Donnell*, 303 U.S. 370, 371 [Ct. D. 1324, C.B. 1938-1, 337] it was said: "The question is whether respondent had an interest, that is, a capital investment, in the oil and gas in place. . . . *Palmer* v. *Bender*, 287 U.S. 551, 557; *Helvering* v. *Twin Bell Oil Syndicate*, 293 U.S. 312, 321; *Thomas* v. *Perkins*, 301 U.S. 655, 661 [Ct. D. 1237, C.B. 1937-1, 162]; *Helvering* v. *Bankline Oil Co.*, *supra*."

Helvering v. *Elbe Oil Land Development Co.*, 303 U.S. 372, 375-376, declared that "The words 'gross income from the property' as used in the statute governing the allowance for depletion, mean gross income received from the operation of the oil and gas wells by one who has a capital investment therein—not income from the sale of the oil and gas properties themselves."

Anderson v. *Helvering*, 310 U.S. 404, 408-409, repeated the statement last quoted.

In *Kirby Petroleum Co.* v. *Commissioner*, 326 U.S. 599, 603, the Court said: "The test of the right to depletion is whether the taxpayer has a capital investment in the oil in place which is necessarily reduced as the oil is extracted."

In *Burton-Sutton Oil Co.* v. *Commissioner*, 328 U.S. 25, 32 [Ct. D. 1674, C.B. 1946-1, 237], the Court said: "It seems generally accepted that it is the owner of a capital investment or economic interest in the oil in place who is entitled to the depletion."

Commissioner v. *Southwest Exploration Co.*, 350 U.S. 308, 313, reannounced substantially the rule declared in the *Palmer* case. It said "that a taxpayer is entitled to depletion where he has: (1) 'acquired, by investment, any interest in the oil in place,' and (2) secured by legal relationship 'income derived from the extraction of the oil, to which he must look for a return of his capital.' . . . These two factors, usually considered together, constitute the requirement of 'an economic interest.'"

an economic interest in, the coal in place, which was depletable by production, and that they are therefore entitled to take the deduction against their gross income derived from those mining operations.

We take a different view. It stands admitted that before and apart from their contracts, petitioners had no investment or interest in the coal in place. Their asserted right to the deduction rests entirely upon their contracts. Is there anything in those contracts to indicate that petitioners made a capital investment in, or acquired an economic interest in, the coal in place, as distinguished from the acquisition of a mere economic advantage to be derived from their mining operations? We think it is quite plain that there is not.

By their contracts, which were completely terminable without cause on short notice, petitioners simply agreed to provide the equipment and do the work required to strip mine coal from designated lands of the landowners and to deliver the coal to the latter at stated points, and in full consideration for performance of that undertaking the landowners were to pay to petitioners a fixed sum per ton. Surely those agreements do not show or suggest that petitioners actually made any capital investment in the coal in place, or that the landowners were to or actually did in any way surrender to petitioners any part of their capital interest in the coal in place. Petitioners do not factually assert otherwise. Their claim to the contrary is wholly based upon an asserted legal fiction. As stated, they claim that their contractual right to mine coal from the designated lands and the use of their equipment, organizations and skills in doing so, should be regarded as the making of a capital investment in, and the acquisition of an economic interest in, the coal in place. But that fiction cannot be indulged here, for it is negated by the facts.

To recapitulate, the asserted fiction is opposed to the facts (1) that petitioners' investments were in their equipment, all of which was movable—not in the coal in place; (2) that their investments in equipment were recoverable through depreciation—not depletion; (3) that the contracts were completely terminable without cause on short notice; (4) that the landowners did not agree to surrender and did not actually surrender to petitioners any capital interest in the coal in place; (5) that the coal at all times, even after it was mined, belonged entirely to the landowners, and that petitioners could not sell or keep any of it but were required to deliver all that they mined to the landowners; (6) that petitioners were not to have any part of the proceeds of the sale of the coal, but, on the contrary, they were to be paid a fixed sum for each ton mined and delivered, which was, as stated in *Huss*, agreed to be in "full compensation for the full performance of all work and for the furnishing of all [labor] and equipment required for the work"; and (7) that petitioners, thus, agreed to look only to the landowners for all sums to become due them under their contracts. The agreement of the landowners to pay a fixed sum per ton for mining and delivering the coal "was a personal covenant and did not purport to grant [petitioners] an interest in the [coal in place]." *Helvering* v. *O'Donnell*, 303 U.S. 370, 372. Surely these facts show that petitioners did not actually make any capital investment in, or acquire any economic interest in, the coal in place, and that they may not fictionally be regarded as having done so.

"Undoubtedly, [petitioners] through [their] contracts obtained an economic advantage from [their] production of the [coal], but that is not sufficient. The controlling fact is that [petitioners] had no interest in the [coal] in place." *Helvering* v. *Bankline Oil Co.*, 303 U.S., at 368. Of course, the parties might have provided in their contracts that petitioners would have some capital interest in the coal in place, but they did not do so—apparently by design. Instead, petitioners simply entered into contracts, terminable without cause on short notice, with the owners of coal-bearing lands to provide the equipment and do the work required to strip mine and deliver coal from those lands, as independent contractors for fixed unit prices. "[Petitioners thus] bargained for and obtained an economic advantage from the [mining] operations but that advantage or profit did not constitute a depletable interest in the [coal] in place" (*Helvering* v. *O'Donnell*, 303 U.S., at 372), and having "no capital investment in the mineral deposit which suffered depletion, [petitioners are] not entitled to the statutory allowance" (*Helvering* v. *Bankline Oil Co.*, 303 U.S., at 368).

The judgments must therefore be Affirmed.

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

REGULATIONS 111, SECTION 29.23(o)–1:
Contributions or gifts by individuals.

Amounts contributed by individuals to persuade the public to vote against measures affecting the contributor's business. See Ct. D. 1835, page 666.

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

REGULATIONS 111, SECTION 29.23(q)–1:
Contributions or gifts by corporations.

Amounts contributed by corporations to persuade the public to vote against measures affecting the contributor's business. See Ct. D. 1835, page 666.

SECTION 23(u).—DEDUCTIONS FROM GROSS INCOME: ALIMONY, ETC., PAYMENTS

REGULATIONS 111, SECTION 29.23(u)–1:
Periodic alimony payments.

Deductibility of periodic payments to former wife for the support of herself and minor children made pursuant to an agreement incident to a decree of divorce. See Ct. D. 1834, page 661.

PART V.—RETURNS AND PAYMENT OF TAX

SECTION 55.—PUBLICITY OF RETURNS

Inspection of certain returns by the Select Committee of the Senate. See E.O. 10801, page 630.

Inspection of certain returns by the Senate Committee on Government Operations. See E.O. 10806, page 631.

Inspection of certain returns by the Senate Committee on the Judiciary. See E.O. 10808, page 631.

Inspection of certain returns by the Committee on Un-American Activities, House of Representatives. See E.O. 10815, page 632.

Inspection of certain returns by the Committee on Government Operations, House of Representatives. See E.O. 10818, page 633.

26 CFR (1939) 458.325: Inspection by Securities and Exchange Commission of statistical transcript cards prepared from corporation income tax returns. T. D. 6375 [1]

TITLE 26—INTERNAL REVENUE, 1939.—CHAPTER I, SUBCHAPTER E, PART 458.—INSPECTION OF RETURNS

Regulations governing the inspection by the Securities and Exchange Commission of statistical transcript cards prepared from corporation income tax returns.

DEPARTMENT OF THE TREASURY,
Washington 25, D.C.

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

SEC. 458.325. INSPECTION BY SECURITIES AND EXCHANGE COMMISSION OF STATISTICAL TRANSCRIPT CARDS PREPARED FROM CORPORATION INCOME TAX RETURNS.—(a) Pursuant to the provisions of section 55(a) of the Internal Revenue Code of 1939 (53 Stat. 29; 54 Stat. 1008; 55 Stat. 722; 26 U.S.C. 55(a)) and of the Executive order issued thereunder, and in the interest of the internal management of the Government, statistical transcript cards prepared by the Internal Revenue Service from income tax returns of corporations made under the Internal Revenue Code of 1939 for taxable years ending after December 31, 1952, shall be open to inspection by the Securities and Exchange Commission as may be needed in gathering statistical information in carrying out its functions under the Securities Exchange Act of 1934, approved June 6, 1934 (48 Stat. 881; 15 U.S.C. 78), as amended, or in complying with directives or recommendations of the Bureau of the Budget pursuant to section 103 of the Budget and Accounting Procedures Act of 1950, approved September 12, 1950 (64 Stat. 834; 31 U.S.C. 18b), relating to the development of programs for preparing statstical information by Executive agencies. Upon request, such inspection may be made by any officer or employee of the Securities and Exchange Commission duly authorized by the Chairman of the Commission to make it. Upon written notice by the Chairman of the Securities and Exchange Commission to the Secretary of the Treasury, stating the type of statistical transcript cards of which inspection is desired, the Secretary, or any officer or employee of the Treasury Department with the approval of the Secretary, may furnish the Securities and Exchange Commission with any data on such cards or may make them available for inspection and the taking of such data as the Chairman of the Securities and Exchange Commission may designate. Such data shall be furnished, or such cards shall be made available for inspection, in the Office of the Commissioner of Internal Revenue. Any information thus obtained shall be held confidential except to the extent that it shall be published or disclosed in statistical form, provided such publication shall not disclose, directly or indirectly, the name or address of any taxpayer.

[1] 24 F.R. 3503.

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

ROBERT B. ANDERSON,
Secretary of the Treasury.

Approved April 29, 1959.

DWIGHT D. EISENHOWER,
The White House.

(Filed by the Division of the Federal Register on April 29, 1959, 4:57 p.m., and published in the issue of the Federal Register for May 1, 1959, 24 F.R. 3503.)

Inspection by Securities and Exchange Commission of statistical transcript cards prepared from corporation income tax returns. See E.O. 10814, page 14.

SUBCHAPTER C.—SUPPLEMENTAL PROVISIONS

SUPPLEMENT A.—RATES OF TAX

SECTION 102.—SURTAX ON CORPORATIONS IMPROPERLY ACCUMULATING SURPLUS

REGULATIONS 118, SECTION 39.102–2: Purpose to avoid surtax; evidence; burden of proof; definition of holding or investment company. T. D. 6378[1]

TITLE 26—INTERNAL REVENUE, 1939.—CHAPTER I, SUBCHAPTER A.—INCOME AND EXCESS PROFITS TAXES

Treasury Decision 4914, relating to corporation returns to be given particular attention to determine the applicability of section 102 of the Internal Revenue Code of 1939, and the corresponding section of the Revenue Act of 1938, amended to limit its application to taxable years to which the Internal Revenue Code of 1939 and the Revenue Act of 1938 are applicable.

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

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

In order to make the provisions of Treasury Decision 4914, approved July 26, 1939 (4 F.R. 3443, published in part as a note following 26 CFR, 1939 Supp., 9.102–2) [C.B. 1939–2, 108], as amended by Treasury Decision 5398, approved August 12, 1944 (9 F.R. 9944) [C.B. 1944, 194], applicable only to taxable years to which the Internal Revenue Code of 1939 and the Revenue Act of 1938 are applicable, Treasury Decision 4914 is further amended by adding at the end thereof the following new section:

§ 22. The rules provided in this Treasury Decision shall not be applied with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.

[1] 24 F.R. 3819.

Because this Treasury Decision merely prevents the application of Treasury Decision 4914, as amended, to taxable years to which the Internal Revenue Code of 1954 applies, 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 that Act.

(This Treasury Decision is issued under the authority contained in sections 62 and 3791 of the Internal Revenue Code of 1939 (53 Stat. 32, 467; 26 U. S. C. 62, 3791).)

DANA LATHAM,
Commissioner of Internal Revenue.

Approved May 8, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on May 12, 1959, 8:50 a.m., and published in the issue of the Federal Register for May 13, 1959, 24 F.R. 3819.)

SUPPLEMENT B.—COMPUTATION OF NET INCOME

SECTION 112(f).—RECOGNITION OF GAIN OR LOSS: INVOLUNTARY CONVERSIONS

REGULATIONS 118, SECTION 39.112(f)-1: Involuntary conversion where disposition of the converted property occurred after December 31, 1950.

Application of the "suddenness" test in cases involving involuntary conversions. See Rev. Rul. 59-102, page 200.

SECTION 112(n).—RECOGNITION OF GAIN OR LOSS: GAIN FROM SALE OR EXCHANGE OF RESIDENCE

REGULATIONS 111, SECTION 29.112(n)-1: Gain from sale or exchange of residence.

Regulations 111 amended. See T.D. 6360, below.

REGULATIONS 118, SECTION 39.112(n)-1: Gain from sale or exchange of residence. T.D. 6360[1]

(Also Regulations 111, Section 29.112(n)-1.)

TITLE 26—INTERNAL REVENUE, 1939.—CHAPTER I, SUBCHAPTER A, PARTS 39 AND 29.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1951 AND DECEMBER 31, 1941

Regulations 118 and 111 amended to conform to sections 1 and 2 of the Act of August 12, 1955 (Public Law 384, 84th Cong., 69 Stat. 716), relating to the further suspension of certain periods of limi-

[1] 24 F.R. 712.

tation within which there may be a nonrecognition of gain in the case of the sale or exchange of a residence by a member of the Armed Forces of the United States.

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

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

In order to conform Regulations 118 (26 CFR (1939) Part 39) and Regulations 111 (26 CFR (1939) Part 29), relating to income taxes, to the applicable provisions of the Act of August 12, 1955 (Public Law 384, 84th Cong., 69 Stat. 716) [C.B. 1955-2, 771], such regulations are amended as follows:

REGULATIONS 118

PARAGRAPH 1. Section 39.112(n), *Statutory provisions; recognition of gain or loss; gain from sale or exchange of residence*, is amended as follows:

(A) By striking out the words "and before January 1, 1954, except that any such period" in the first sentence of paragraph (8) of section 112(n) and inserting in lieu thereof the words "and during an induction period (as defined in section 112(c)(5) of the Internal Revenue Code of 1954), except that any such period of time".

(B) By revising the historical note following section 112(n) to read as follows:

[Sec. 112(n) as added by sec. 318(a), Rev. Act 1951 (65 Stat. 494); amended by sec. 1, Act of July 16, 1952 (Pub. Law 567, 82d Cong., 66 Stat. 735) [C.B. 1952-2, 360]; sec. 1, Act of Aug. 12, 1955 (Pub. Law 384, 84th Cong., 69 Stat. 716)]

PAR. 2. Paragraph (f)(1) of § 39.112(n)-1, *Members of Armed Forces*, is amended by striking out the words "after the date of the sale of the old residence and before January 1, 1954" in the first sentence and inserting in lieu thereof the words "during an induction period (as defined in section 112(c)(5) of the Internal Revenue Code of 1954 and the regulations thereunder)".

REGULATIONS 111

PAR. 3. There is inserted immediately preceding § 29.112(n)-1, as added by Treasury Decision 5991, approved February 17, 1953 (26 CFR (1939) 29.112(n)-1) [C.B. 1953-1, 146], the following:

PUBLIC LAW 384, 84TH CONGRESS APPROVED AUGUST 12, 1955

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 112(n)(8) of the Internal Revenue Code of 1939 (relating to the suspension of certain periods of limitation while the taxpayer is on extended active duty with the Armed Forces) is hereby amended by striking out "and before January 1, 1954, except that any such period" and inserting in lieu thereof the following: "and during an induction period (as defined in section 112(c)(5) of the Internal Revenue Code of 1954), except that any such period of time".

Sec. 2. The amendment made by the first section of this Act shall take effect as of December 31, 1953.

* * * * * * *

PAR. 4. Paragraph (f) of § 29.112(n)-1, as added by Treasury Decision 5991 (26 CFR (1939) 29.112(n)-1 (f)), is amended by strik-

ing out the words "after the date of the sale of the old residence and before January 1, 1954" in the first sentence and inserting in lieu thereof the words "during an induction period (as defined in section 112(c)(5) of the Internal Revenue Code of 1954 and the regulations thereunder)".

Because this Treasury Decision does not prescribe new or different substantive rules and because it merely conforms the regulations to the applicable provisions of the Act of August 12, 1955 (Public Law 384, 84th Cong., 69 Stat. 716), which provide for the removal of an unintentional discrimination, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(This Treasury Decision is issued under the authority contained in sections 62 and 3791 of the Internal Revenue Code of 1939 (53 Stat. 32, 467; 26 U.S.C. 62, 3791).)

DANA LATHAM,
Commissioner of Internal Revenue.

Approved January 28, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on January 30, 1959, 8:48 a.m., and published in the issue of the Federal Register for January 31, 1959, 24 F.R. 712.)

Nonrecognition of gain upon sale of taxpayer's home which was previously rented. See Rev. Rul. 59–72, page 203.

SECTION 114.—BASIS FOR DEPRECIATION AND DEPLETION

REGULATIONS 111, SECTION 29.114–1: Basis for allowance of depreciation and depletion.

Depletable interest under a coal stripping contract which required taxpayer to turn over all coal mines to the landowners. See Ct. D. 1836, page 673.

SECTION 115(a).—DISTRIBUTIONS BY CORPORATIONS: DEFINITION OF DIVIDEND

REGULATIONS 118, SECTION 39.115(a)–1: Dividends.

Payment of premiums by a corporation on a life insurance contract on the life of an employee-shareholder. See Rev. Rul. 59–79, page 15.

Distribution upon cancellation or redemption of a corporation's capital stock. See Rev. Rul. 59–97, below.

SECTION 115(g).—DISTRIBUTIONS BY CORPORATIONS

REGULATIONS 118, SECTION 39.115(g)–1: Rev. Rul. 59–97 [1]
Distribution in redemption or cancellation of stock taxable as a dividend.
(Also Sections 115 (a), 117 (a); Regulations 118, Section 39.117(a)–1, 39.115 (a)–1.)

Decision in *Westerhaus Company, et al.* v. *Commissioner*, T.C. Memo 1957–213, relating to the sales of stock of one wholly-owned corporation to another wholly-owned corporation, will be followed in all cases involving this question for years to which the Internal Revenue Code of 1939 applies. The change in policy is applicable only in factual situations comparable to those involved in that case. Revenue Ruling 55–15, C.B. 1955–1, 361, revoked.

The Internal Revenue Service has been requested to state whether it will adopt the decision of the Tax Court of the United States in the case of *Westerhaus Company, et al.* v. *Commissioner*, T.C. Memo 1957–213, relating to the sales of stock of one wholly-owned corporation to another wholly-owned corporation for taxable years applicable to the Internal Revenue Code of 1939.

Under the facts in the *Westerhaus* case, the taxpayer, owner of all the stock in a corporation, sold some of its shares to another wholly-owned corporation. In subsequent years, the taxpayer sold more shares in wholly-owned corporations to other wholly-owned corporations. In each of the foregoing transactions, the purchasing corporations had accumulated earnings in excess of the purchase price of the shares of stock, and in each instance new certificates of stock were issued. The sales were at the current book values of the stock.

Section 115(a) of the 1939 Code provides, in part, that the term dividend means any distribution made by a corporation to its shareholders, whether in money or other property, (1) out of its earnings or profits accumulated after February 28, 1913, or (2) out of the earnings or profits of the taxable year, without regard to the amount of earnings and profits at the time the distribution was made. Section 115(g)(1) of the 1939 Code provides, in general, that if a corporation cancels or redeems its stock at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend, the amount so distributed, to the extent that it represents a distribution of earnings or profits accumulated after February 28, 1913, shall be treated as a taxable dividend. Under the provisions of section 117 of the 1939 Code, corporate stock which is not held primarily for sale to customers in the ordinary course of business qualifies as a capital asset and any gain or loss on the sale or exchange thereof constitutes a capital gain or loss.

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[1] Based on Technical Information Release 108, dated October 31, 1958.

Revenue Ruling 55–15, C.B. 1955–1, 361, holds that where a sale is made by a sole stockholder of his stock in one corporation to another corporation wholly-owned by him, payments received from such sale represents a cash distribution to the taxpayer, taxable as a dividend under section 115(a) of the 1939 Code.

The Tax Court of the United States, relying on the decisions of *Emma Cramer, et al* v.. *Commissioner*, 20 T.C. 679, and *Roger W. Pope et ux.* v. *Commissioner*, T.C. Memo 1956–41, affirmed 239 Fed. (2d) 881, held in the *Westerhaus* case that the proceeds of the sales of stock of one wholly-owned corporation to another wholly-owned corporation did not constitute dividends within the meaning of section 115(a) and 115(g) of the 1939 Code, but represented proceeds of sales taxable as capital gains.

In view of the decision in the *Westerhaus* case, the Service now holds that, in factual situations comparable to those involved in the foregoing cases for years to which the 1939 Code applies, proceeds from the sales of stock of one wholly-owned corporation to another wholly-owned corporation represent proceeds of sales taxable as capital gains rather than as dividends, despite the close relationship of the parties and the available earnings and profits.

However, capital gains treatment will continue to be denied in cases where, and to the extent that, the stock is sold at a price in excess of its fair market value, and in cases where there exist other factors indicating that the true import of the transaction is the receipt of ordinary income, by way of dividend or otherwise, rather than the sale of stock. See, for example, *Sam Gold et ux.* v. *Commissioner*, T.C. Memo 58–2, and *William M. Liddon et ux.* v. *Commissioner*, 22 T.C. 1220, reversed and remanded on other grounds, 230 Fed. (2d) 304, certiorari denied, 352 U.S. 824.

All cases involving this issue for 1954 and subsequent years are covered specifically by section 304 of the Internal Revenue Code of 1954.

Revenue Ruling 55–15, C.B. 1955–1, 361, is hereby revoked.

SECTION 117(a).—CAPITAL GAINS AND LOSSES

REGULATIONS 118, SECTION 39.117(a)–1:
Meaning of terms.

Gain realized from the sales of stock of one wholly-owned corporation to another wholly-owned corporation. See Rev. Rul. 59–97, page 684.

SECTION 120.—UNLIMITED DEDUCTION FOR CHARITABLE AND OTHER CONTRIBUTIONS

REGULATIONS 118, SECTION 39.120–1: Unlimited deduction for charitable and other contributions. T.D. 6352[1]

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 39.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1951

Regulations 118 amended with respect to the unlimited deduction to individuals of charitable contributions.

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

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

On October 9, 1958, notice of proposed rule making regarding amendments to conform Regulations 118 (26 CFR (1939) Part 39) to the Act of February 15, 1956 (Public Law 408, 84th Cong., 70 Stat. 15) was published in the Federal Register (23 F.R. 7821). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following regulations are hereby adopted:

PARAGRAPH 1. Section 39.120 is amended to read as follows:

§ 39.120 STATUTORY PROVISIONS; UNLIMITED DEDUCTION FOR CHARITABLE AND OTHER CONTRIBUTIONS.

SEC. 120. UNLIMITED DEDUCTION FOR CHARITABLE AND OTHER CONTRIBUTIONS.

In the case of an individual if in the taxable year and in eight of the ten preceding taxable years the amount of the contributions or gifts described in section 23(o) (or corresponding provisions of prior revenue Acts) plus the amount of income (determined without regard to subchapter E, relating to tax on self-employment income), war-profits, or excess-profits taxes paid during such year in respect of such year or preceding taxable years, exceeds 90 per centum of the taxpayer's net income for each such year, as computed without the benefit of the applicable subsection, then the 20 per centum limit imposed by section 23(o) shall not be applicable.

[Sec. 120 as amended by sec. 208(d)(6), Social Security Act Amendments 1950; Pub. Law 918 (81st Cong.); sec. 4 (b), Pub. Law 465 (82d Cong.); Pub. Law 408 (84th Cong.)]

PUB. LAW 408 (EIGHTY-FOURTH CONGRESS) (ACT OF FEBRUARY 15, 1956 (70 STAT. 15))

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 of 1939 (relating to unlimited deduction for charitable and other contributions) is hereby amended by striking out "in each of the ten preceding taxable years" and inserting in lieu thereof "in eight of the ten preceding taxable years".

SEC. 2. (a) Except as provided in subsections (b), (c), and (d), the amendment made by the first section of this Act shall apply to all taxable years to which the Internal Revenue Code of 1939 applies.

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[1] The publication of this Treasury Decision in 24 F.R. 299, dated January 14, 1959, contains (1) instructions for modifying the notice of proposed rulemaking published in 23 F.R. 7821, dated October 9, 1958, and (2) the full context of the regulations with such modifications. As here published, the Treasury Decision reflects the full context of such regulations, with modifications. The individual instructions have been omitted.

(b) Notwithstanding any other provision of law, credit for any overpayment resulting from the amendment made by the first section of this Act shall not be allowed, and the refund of any such overpayment shall be made only if it is established to the satisfaction of the Secretary of the Treasury or his delegate—

(1) In the case of a taxpayer who has not died at the time the refund is made, that the amount of such refund is to be paid forthwith as a charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1954), or

(2) In the case of a taxpayer who had died at the time the refund is made, that (A) an amount equal to the amount of the refund, under the terms of the decedent's will, will be transferred to any person or organization described in section 2055 of the Internal Revenue Code of 1954, and (B) an amount equal to the amount of such transfer is deductible from the value of the gross estate under such section or the corresponding provisions of the Internal Revenue Code of 1939.

No interest shall be paid upon any overpayment resulting from the amendment made by the first section of this Act.

(c) The amount of any refund made under this Act, and the payment or transfer of such amount as described in paragraph (1) or (2) of subsection (b), shall not be taken into account in determining any liability of the taxpayer or his estate for income tax or estate tax under the Federal income tax and estate tax laws.

(d) If a claim for refund relates to an overpayment on account of the amendment made by the first section of this Act, in lieu of the three-year period of limitation prescribed in section 322(b)(1) of the Internal Revenue Code of 1939, the period shall be seven years from the date prescribed by law for filing the return for the year with respect to which the claim is made. In the case of a claim described in this subsection, the amount of the refund may exceed the portion of the tax paid within the period prescribed in paragraph (2) or (3), whichever is applicable of section 322(b) of such code, to the extent of the amount of the overpayment attributable to the amendment made by the first section of this Act.

PAR. 2. Paragraph (c) of § 39.120–1 is amended by deleting the words "each of the ten" and inserting the words "eight of the ten".

PAR. 3. There is inserted immediately after § 39.120–1(c) the following:

(d)(1) The first section of Public Law 408 (84th Cong.), approved February 15, 1956, amends section 120 to provide for an unlimited deduction for charitable contributions by an individual provided the required contributions and income tax payments have been made by him in the taxable year and in eight of the ten preceding taxable years. Notwithstanding any other provision of law, no credit against any liability in respect of an internal revenue tax shall be made for an overpayment which would not result but for the provisions of the first section of Public Law 408.

(2) Notwithstanding any other provision of law, the refund of an overpayment which would result solely because of the application of the provisions of the first section of Public Law 408 shall not be made unless—

(i) In the case of a taxpayer who has not died at the time the refund is made, it is established to the satisfaction of the Commissioner that the amount of such refund is to be paid forthwith as a charitable contribution (within the meaning of section 170(c) of the Internal Revenue Code of 1954).

(ii) In the case of a taxpayer who has died at the time the refund is made, it is established to the satisfaction of the Commissioner that under the terms of the will of the decedent an amount equal to the amount of the refund will be transferred to a person or organization described in section 2055 of the Internal Revenue Code of 1954 and an amount equal to the amount of such transfer would, except for the provisions of section 2(c) of Public Law 408, be deductible from the value of the gross estate under section 2055 of the Internal Revenue Code of 1954, or the corresponding provisions of the Internal Revenue Code of 1939.

For purposes of this paragraph, "the amount of such refund", "an amount equal to the amount of the refund", and "an amount equal to the

amount of such transfer" need not be traceable to the refund. For example, if a decedent's will provided for a charitable bequest of $1,000 or more, and the refund was $1,000 or less, the requirements of subdivision (ii) of this subparagraph would be satisfed.

(3) The provisions of subparagraph (2)(i) or (ii) of this paragraph may be met in the following manner:

(i) In the case of a taxpayer who has not died at the time the refund is made, by submission in form and content satisfactory to the Commissioner of any one of the following—

(*a*) Evidence of the taxpayer's legally enforceable pledge to a charitable organization of the amount to be refunded.

(*b*) Evidence of the creation by the taxpayer of a trust, to exist pending the making of a refund or the denial of a claim therefor, in money or property in an amount not less than the amount of the refund (and maintenance of a corpus of a value not less than the amount of the refund), the terms of which provide that upon the receipt by the taxpayer of the refund the amount of the refund shall be payable to a charitable organization.

(*c*) An acceptable bond as prescribed by section 7101 of the Internal Revenue Code of 1954 and the regulations thereunder. Such bond shall be in an amount not less than the amount of the refund and shall be conditioned upon the payment by taxpayer to the charitable organization of the amount of the refund within the time subsequent to the making of the refund that is prescribed in this paragraph.

(*d*) Evidence of actual payment (subsequent to filing a claim for refund) to a charitable organization of the amount of the refund prior to the time the refund is made.

(*e*) Any combination of the methods outlined in this subparagraph, provided that the sum of the amounts paid or to be paid to a charitable organization shall not be less than the amount of the refund.

In any event, there must be submitted, prior to the time the refund is made, evidence sufficient to insure that either the refund itself, or an amount not less than the amount to be refunded, has been or will be paid within six months after the refund is made to an organization described in section 170(c) of the Internal Revenue Code of 1954. A reasonable extension of the time for payment may be granted by the Commissioner at the request of the taxpayer. The period of such extension shall not be in excess of one year from the time the refund is made. The term "charitable organization" means an organization or organizations described in section 170(c) of the Internal Revenue Code of 1954.

(ii) In the case of a taxpayer who has died at the time the refund is made, by submission to the Commissioner of a verified copy of the last will and testament of the decedent. Such last will and testament may provide for a specific bequest or devise to a person or organization described in section 2055 of the Internal Revenue Code of 1954. In the absence of a specific bequest, the will must provide for a residuary or other bequest or devise to such a person or organization. In either case, it must be established that the amount to be transferred under the will of the decedent will in no event be an amount of money or property less than the amount of the refund. See subparagraph (2)(ii) of this paragraph.

(4) No refund shall be made as a result of the first section of Public Law 408, unless a contribution of the refund or of the amount of the refund is made after February 14, 1956.

(5) No interest shall be paid upon any overpayment refunded as a result of the application of the first section of Public Law 408.

(6) The amount of any refund made as a result of the first section of Public Law 408, and the payment or transfer of such amount as described in subparagraph (2)(i) or (ii) of this paragraph, shall not be taken into account in determining any liability of the taxpayer or his estate for income tax or estate tax under the Federal income tax and estate tax laws. Thus, a refund will not be taken into account for any taxable year for purposes of determining whether the sum of the contributions and taxes

paid in a taxable year is equal to 90 percent of the taxable or net income of the taxpayer, nor shall a taxpayer be allowed a deduction under section 170 of the Internal Revenue Code of 1954 for payment of the amount of the refund to an organization described in section 170(c). Similarly, a refund or the right to a refund shall not be included in the gross estate of a decedent, nor shall there be allowed as a deduction from the decedent's gross estate the amount equal to the amount of the refund which, under the terms of the decedent's will, is transferred or is to be transferred to a person or organization described in section 2055 of the Internal Revenue Code of 1954. This subparagraph shall not, however, apply in determining whether for purposes of section 2(b)(2) of Public Law 408 an amount paid to a person or organization described in section 2055 of the Internal Revenue Code of 1954 would be deductible under that section.

(7) If a claim for refund relates to an overpayment arising because of the first section of Public Law 408, in lieu of the 3-year period of limitation prescribed in section 322(b)(1) of the Internal Revenue Code of 1939 the period of limitation shall be seven years from the date prescribed by law for filing the return for the year with respect to which the claim is made. In the case of a claim described in this subparagraph, the amount of the refund may exceed the portion of the tax paid within the period prescribed in paragraph (2) or (3), whichever is applicable, of section 322(b) of such Code, to the extent of the amount of the overpayment attributable to the enactment of the first section of Public Law 408.

PAR. 4. The amendments to § 39.120 and § 39.120–1 of Regulations 118, covering taxable years beginning after December 31, 1951, set forth in this Treasury Decision, are hereby made applicable to taxable years beginning after December 31, 1938, and before January 1, 1952 (such years being covered by Regulations 103 and 111).

(This Treasury Decision is issued under the authority contained in sections 62 and 3791 of the Internal Revenue Code of 1939 (53 Stat. 32, 467; 26 U.S.C. 62, 3791).)

HAROLD T. SWARTZ,
Acting Commissioner of Internal Revenue.

Approved January 8, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on January 13, 1959, 8:47 a.m., and published in the issue of the Federal Register for January 14, 1959, 24 F.R. 299.)

SECTION 130A.—EMPLOYEE STOCK OPTIONS

REGULATIONS 118, SECTION 39.130A–3:
Exercise of restricted stock option.

The employer-employee relationship required by an employees' restricted stock option is affected by active military service. See Rev. Rul. 59–140, page 92.

CHAPTER 3.—ESTATE TAX

SUBCHAPTER A.—BASIC ESTATE TAX

PART II.—ESTATES OF CITIZENS OR RESIDENTS OF THE UNITED STATES

Subpart I.—Computation of Tax

SECTION 811(k).—GROSS ESTATE: VALUATION OF UNLISTED STOCK AND SECURITIES

REGULATIONS 105, SECTION 81.10: Valuation of property.

Valuation of stock of closely held corporations in estate tax returns. See Rev. Rul. 59-60, page 237.

CHAPTER 4.—GIFT TAX

SECTION 1003(b).—NET GIFTS: EXCLUSIONS FROM GIFTS

REGULATIONS 108, SECTION 86.10: Total amount of gifts. Rev. Rul. 59-78

A gift in trust for a minor under terms requiring the trustee to use the property for the benefit of the donee as if held by him as guardian of the donee constitutes a gift of a present interest and is, therefore, entitled to the exclusion under section 1003(b)(3) of the Internal Revenue Code of 1939.

Rev. Rul. 54-91, C.B. 1954-1, 207, distinguished.

Advice has been requested whether a gift in trust, under a trust instrument requiring the trustee to use the income for the support, education and benefit of a minor as though he (the trustee) were holding the property as guardian of the minor, constitutes a gift of a present interest so as to qualify for the exclusion provided for by section 1003(b)(3) of the Internal Revenue Code of 1939.

In the instant case, a gift was made in trust for the benefit of a minor donee. The trust instrument provided that the net income and principal be used for the support, education and benefit of the donee in such manner and amounts, and at such times, as accord with the needs and best interest of the donee, as if the trustee held the property as guardian of the donee. The trust property not previously used for such purposes is to be distributed to the beneficiary upon his attaining the age of 21 years, and, in the event of his prior death, it is to be distributed to his estate.

Revenue Ruling 54-91, C.B. 1954-1, 207, holds that transfers in trust for the benefit of minor beneficiaries, but for their immediate enjoyment only in the uncontrolled discretion of the trustee, create only future interests, absent the appointment of a legal guardian.

That position is based on the case of *Arthur Stifel* v. *Commissioner*, 197 Fed. (2d) 107. In that case, the trustee was given the power, in his discretion, to expend trust property for the minor donees' benefit as if such property were held by him as guardian of the donees and he were making such expenditure in that capacity. The court regarded the trustee's discretion as subject only to a power in the donees, excercisable through their legally appointed guardians, to demand such expenditures for the benefit of the donees; but that limitation on the discretion of the trustee was deemed ineffective because the power to demand expenditures could be exercised neither by the donees themselves nor by anyone empowered to act for them, in view of the disability of the donees and the fact that no guardian had been appointed for them. It would follow equally from the court's reasoning that the provisions in the trust instruments with respect to the exercise of the discretionary power to make expenditures as if the trustee were a guardian were also ineffective to limit the discretion of the trustee as to the expenditure or accumulation of the funds of the trust, and the opinion of the court did not even mention those provisions of the trust instruments. Since the minor beneficiaries had no enforceable right of immediate enjoyment, it was held that the gifts were of future interests only, under the doctrine of *Fondren* v. *Commissioner*, 324 U.S. 18, Ct. D. 1627, C.B. 1945, 421, and *Commissioner* v. *Disston*, 325 U.S. 442, Ct. D. 1642, C.B. 1945, 426.

The gift in the instant case is distinguishable from the type of gift involved in the *Stifel* case and Revenue Ruling 54–91, *supra*, in that the trustee here does not have uncontrolled discretion whether to expend or withhold the funds of the trust but instead is directed to use both income and principal for the benefit of the donee, according to the needs and best interest of the donee, as if the trustee were the guardian of the donee. Similar transfers were involved in *United States* v. *Baker*, 236 Fed. (2d) 317, and were there held to constitute gifts of present interests which qualified for the statutory exclusion provided by section 1003(b)(3) of the 1939 Code. In that case the court viewed the transfers as conferring upon the beneficiaries rights to present enjoyment no different from those they would have had if the gifts had been made directly to each of them, or to a guardian for their benefit, and concluded that the gifts should be judged by the same standard as that applied to gifts to a guardian.

The Internal Revenue Service accepts the *Baker* decision as correct and will follow that decision in cases involving similar transfers. For the reasons stated earlier, transfers of the type involved in *Stifel* v. *Commissioner*, *supra*, and Revenue Ruling 54–91, *supra*, are regarded as distinguishable.

It is accordingly held that a gift in trust for a minor under terms requiring the trustee to use the property for the benefit of the donee as if held by him as guardian for the donee constitutes a gift of a present interest and is, therefore, entitled to the exclusion under section 1003(b)(3) of the Internal Revenue Code of 1939.

SECTION 1005.—GIFTS MADE IN PROPERTY

REGULATIONS 108, SECTION 86.19: Valuation of property.

Valuation of stock of closely held corporations in Federal gift tax returns. See Rev. Rul. 59–60, page 237.

SUBTITLE B.—MISCELLANEOUS TAXES

CHAPTER 9.—EMPLOYMENT TAXES

SUBCHAPTER B.—EMPLOYMENT BY CARRIERS

PART I.—TAX ON EMPLOYEES

SECTION 1502.—OVERPAYMENTS AND UNDERPAYMENTS

Regulations 114, SECTION 411.801: Refund or credit for overpayments which are not adjusted; abatement of overassessments. (Also Part I, Section 6413.) — Rev. Rul. 59–212

An employer under the Railroad Retirement Tax Act filed a timely claim for refund of employer tax and employee tax erroneously paid thereunder. The portion relating to the employee tax was disallowed for the reason that the claim did not include the required employer's statement with respect to employee consent or repayment of the employee tax. New claims for refund of the employee tax would be barred by the statute of limitations. *Held*, the claim may be reconsidered provided the required employer's statement is submitted within the two-year period provided by section 3772(a) of the Internal Revenue Code of 1939.

Advice has been requested relative to the refund of the employee tax under the Railroad Retirement Tax Act (subchapter B, chapter 9, Internal Revenue Code of 1939), in a case where such tax was erroneously paid by the employer and his claim for refund did not contain the required statement regarding refund to or consent of the employees involved.

An employer under the Railroad Retirement Tax Act filed a timely claim for the refund of employer tax and employee tax erroneously paid under such Act. The portion of the amount claimed which represented employee tax was disallowed by the District Director of Internal Revenue for the reason that the claim did not contain a statement, as required by the applicable regulations, to the effect that the employer had obtained the written consent of the employees to the allowance of the refund or that the employee tax had been refunded to the employees. Since new claims for the refund of the employee tax would be barred by the specific provisions of section 3313 of the 1939 Code, the question has arisen whether the claim may be recon-

sidered for the allowance of the employee tax, if the supporting statement of the employer is submitted within the two-year period provided by section 3772(a) of the 1939 Code.

Section 1502 of the Railroad Retirement Tax Act provides, in part, that if more than the correct amount of employee tax is paid with respect to any compensation payment and the overpayment cannot be adjusted under section 1501(c), the amount of the overpayment shall be refunded in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations.

Section 411.801 of Regulations 114, prescribed under the Railroad Retirement Tax Act, provides that no refund or credit will be allowed after the expiration of four years after the payment of the tax, penalty, or interest, except on one or more of the grounds set forth in a claim filed prior to the expiration of such four-year period. The regualtions provide also that each claim filed by an employer for refund, credit, or abatement of employee tax collected from an employee shall include a statement that the employer has repaid the tax to the employee or has secured the written consent of such employee, to allowance of the refund, credit, or abatement.

While section 411.801 of the regulations provides that each claim filed by an employer for refund, credit, or abatement of employee tax collected from an employee shall include a statement to the effect that the employer has repaid the tax to the employee or has secured the written consent of such employee to the allowance of the refund, credit, or abatement, this does not mean that such statement must be attached to or submitted with the claim or that faliure to do so renders the claim faulty so far as timely filing is concerned. Like any other evidence necessary to support a claim, such statement may be filed with the claim or at any time within the applicable statutory period of limitation. Therefore, the employer's statement required by the regulations for the refund of the employee tax in the instant case may properly be accepted by the District Director of Internal Revenue and made a part of the employer's claim, provided it is received in sufficient time for his office to reconsider the claim and authorize the refund prior to the expiration of the two-year period provided by section 3772(a) of the 1939 Code.

This conclusion is applicable also for purposes of the Federal Insurance Contributions Act (subchapter A, chapter 9, 1939 Code) for the years governed by the 1939 Code. It may also be applied with respect to claims filed by employers, for the years governed by the 1954 Code, for refund of the employee tax imposed under the Federal Insurance Contributions Act and the Railroad Retirement Tax Act (chapters 21, and 22, respectively, subtitle C, 1954 Code) to the extent not inconsistent with the provisions of the 1954 Code.

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SUBTITLE C.—MANUFACTURERS' EXCISE AND IMPORT TAXES AND TEMPORARY TAXES

CHAPTER 29.—MANUFACTURERS' EXCISE AND IMPORT TAXES

SUBCHAPTER C.—GENERAL ADMINISTRATIVE PROVISIONS

SECTION 3441.—SALE PRICE

26 CFR (1939) 330.1: Determination of price for purposes of manufacturers' excise taxes. (Also Section 3443; 330.1–2.) (Also Part I, Sections 4216, 6416.) T. D. 6340[1]

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 330.—DETERMNATION OF PRICE AND PRICE READJUSTMENTS

Regulations with respect to certain problems encountered in the determination of price for purposes of the manufacturers excise taxes, and with respect to bona fide discounts, rebates, and allowances for purposes of such taxes.

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

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

On March 22, 1958, notice of proposed rule making with respect to regulations relating to the determination of price and price readjustments for purposes of the manufacturers excise taxes under chapter 29 of the Internal Revenue Code of 1939 and chapter 32 of the Internal Revenue Code of 1954 was published in the Federal Register (23 F. R. 1931). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following regulations are hereby adopted.

Section

330.1–1 Determination of price for purposes of manufacturers excise taxes.
330.1–2 Readjustments of price for purposes of manufacturers excise taxes.
330.1–3 Application of regulations.

AUTHORITY: §§ 330.1–1 to 330.1–3, incl., issued under sec. 3791, Internal Revenue Code of 1939 (53 Stat. 467; 26 U. S. C. 3791), and made applicable to Internal Revenue Code of 1954 under sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).

§ 330.1–1 DETERMINATION OF PRICE FOR PURPOSES OF MANUFACTURERS EXCISE TAXES.—(a) Section 3441(a) of the Internal Revenue Code of 1939, providing the following rules for determining the price at which an article is sold for purposes of computing any manufacturers excise tax imposed by chapter 29 of such Code, which is based on the price for which the article is sold, is set forth below:

[1] 23 F. R. 9692.

SEC. 3441. SALE PRICE.

(a) In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Commissioner, in accordance with the regulations.

(b) Any charge which is required by a manufacturer, producer, or importer to be paid as a condition to his sale of a taxable article and which is not attributable to an expense falling within one of the exclusions provided in section 3441(a) of the Internal Revenue Code of 1939 is includible in the sale price upon which the tax is based. It is immaterial for this purpose that the charge may be paid to someone other than the manufacturer, producer, or importer, or that it may be separately billed to the purchaser as one earmarked for expenses incurred or to be incurred in his behalf, as for example, for advertising at the national or local level, for demonstration or display of the article, for sales promotion programs, or otherwise.

§ 330.1–2 READJUSTMENT OF PRICE FOR PURPOSES OF MANUFACTURERS EXCISE TAXES.—(a) Readjustments of the price of an article, as determined for purposes of the manufacturers excise taxes imposed by chapter 29 of the Internal Revenue Code of 1939, may not be anticipated. However, under section 3443(a)(2) of such Code, if the tax is based upon the price for which an article is sold, a proportionate adjustment of the tax may be made when the price is subsequently readjusted by a bona fide discount, rebate, or allowance made to the purchaser of the article. Section 3443(a)(2) provides as follows:

SEC. 3443. CREDITS AND REFUNDS.

(a) A credit against tax under this chapter, or a refund, may be allowed or made—

* * * * * * *

(2) To any person who has paid tax under this chapter with respect to an article, when the price on which the tax was based is readjusted by reason of return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance; in the amount of that part of the tax proportionate to the part of the price which is refunded or credited.

(b) In determining whether a manufacturer, producer, or importer has made a bona fide discount, rebate, or allowance to a purchaser, for purposes of section 3443(a)(2), the basic consideration is whether the price actually paid by, or charged against, the purchaser has in fact been reduced by subsequent transactions between the parties. In general, the price will be considered as having been readjusted by reason of a bona fide discount, rebate, or allowance only if the manufacturer, producer, or importer repays a part of the purchase price in cash to his vendee, or credits the vendee's account, in consideration of factors which, if taken into account at the time of the original transaction, would have resulted at that time in a lower sale price. For example, a price readjustment is considered to have been made when a bona fide discount, rebate, or allowance is given

in consideration of such factors as prompt payment, quantity buying over a specified period, the vendee's inventory of an article when new models are introduced, or a general price reduction affecting articles held in stock by the vendee. On the other hand, repayments made by a manufacturer, producer, or importer to his vendee do not effectuate price readjustments if given in consideration of an expenditure made or to be made by the vendee for national or local advertising, for demonstration or display of the manufacturer's product by the vendee, or other similar circumstances under which the vendee has been or is required to incur an expense which, if treated as a separate item in the original transaction and not included in the price billed for the taxable article, would nevertheless have been includible in the price of the article for purposes of computing the tax.

(c) The principles stated in this section may be illustrated by the following examples:

Example 1. A, a manufacturer of refrigerators, adds x dollars per refrigerator as a separate item on each invoice covering sales to his distributors. This separate charge, which must be paid by the distributor as a condition to the sale, is credited to the distributor's account in a reserve fund set up for local advertising of A's product and is unconditionally refundable to the distributor, by agreement between him and the manufacturer, if unexpended within a specified period or upon termination of the relationship between the parties, whichever is earlier. A also makes a contribution to the distributor's account in the reserve fund in an amount equal to y dollars per refrigerator purchased by the distributor. Thereafter, when a distributor makes an expenditure for local advertising of A's product, the distributor is given a credit memorandum equal to the amount of such expenditure, but not in excess of x plus y dollars per refrigerator purchased by him, which is charged to the distributor's account in the reserve fund. In this stiuation, the segregated charge of x dollars for local advertising is considered to be a part of the sale price of the refrigerator, and the additional contribution of y dollars made by A to the reserve fund does not affect such price. Furthermore, no readjustment of price occurs upon issuance of a credit memorandum in consideration of amounts expended by the distributor for local advertising of A's product. However, any amount remaining to the distributor's credit in the reserve fund upon expiration of the period specified, or upon termination of the relationship between the parties, which is refunded to the distributor in accordance with the agreement between him and the manufacturer, constitutes a bona fide discount, rebate, or allowance.

Example 2. B, a manufacturer of electric dishwashers, bills his distributors in a specified amount per dishwasher purchased by them. Thereafter, B issues to each distributor a credit memorandum in the amount of x dollars for each home demonstration by the distributor of the manufacturer's product. The credit which B allows the distributor for demonstration of B's product does not effect a readjustment of price.

Example 3. C, a manufacturer of automobiles, bills his dealers in a specified amount per automobile purchased by them. Thereafter, C

remits to the dealer x dollars of the original sale price for each automobile sold by the dealer in the last month of the model year. An additional amount of y dollars is paid to the dealer upon a showing by the dealer that he has paid y dollars to the salesman who made the sale. In this case, the x dollars paid to the dealer by C constitutes a bona fide discount, rebate, or allowance since payment of such amount is in the nature of a price reduction by reason of the dealer's inventory when new models are introduced. However, the y dollars paid to the dealer in reimbursement for the amount paid by him to the salesman who made the sale, does not constitute a bona fide discount, rebate, or allowance. Moreover, such payment of y dollars is essentially an allowance by the manufacturer to a person other than the manufacturer's vendee and, as such, would not, in any event, be recognized as a price readjustment (see § 316.13(d) of Regulations 46, 1940 Edition (Part 316 of this chapter)).

§ 330.1–3 APPLICATION OF REGULATIONS.—(a) *In general.*—Except as provided in paragraph (b) of this section, the regulations in this part shall be applicable in respect of sales made on and after March 1, 1939.

(b) *Exceptions.*—(1) *Published rulings.*—S. T. 430, C. B. II–2, 300 (1923), and S. T. 523, C. B. XI–2, 477 (1932), to the extent such rulings are inconsistent with the regulations in this part, are revoked effective with respect to sales made on and after the first day of the first calendar month which begins more than 30 days after the date of publication of this part in the Federal Register.

(2) *Unpublished rulings.*—Any unpublished ruling of the Internal Revenue Service, insofar as it is inconsistent with the regulations in this part, is revoked. The extent to which the revocation of any such unpublished ruling shall be applied without retroactive effect for any period prior to the first day of the first calendar month which begins more than 30 days after the date of publication of this part in the Federal Register, shall be determined in accordance with the general policy of the Internal Revenue Service as set forth in paragraph (i) (4) of section 601.201 of the Statement of Procedural Rules (26 CFR 601.201(i)(4); C. B. 1955–2, 948).

PAR. 2. The regulations prescribed by paragraph 1 of this Treasury decision are hereby prescribed under and made applicable to sections 4216 and 6416(b)(1) of the Internal Revenue Code of 1954 (which sections correspond to sections 3441 and 3443(a)(2) of the Internal Revenue Code of 1939) until superseded by regulations issued under such sections of the Internal Revnue Code of 1954.

O. GORDON DELK,
Acting Commissioner of Internal Revenue.

Approved December 11, 1958.

NELSON P. ROSE,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on Dec. 15, 1958, 8:15 a. m., and published in the issue of the Federal Register for Dec. 16, 1958, 23 F.R. 9692.)

SECTION 3443.—CREDITS AND REFUNDS

26 CFR (1939) 330.1–2: Readjustments of price for purposes of manufacturers excise taxes.

Regulations under the Internal Revenue Code of 1939. See T. D. 6340, page 694.

CHAPTER 30.—TRANSPORTATION AND COMMUNICATION

SUBCHAPTER E.—TRANSPORTATION OF PROPERTY

SECTION 3475.—TRANSPORTATION OF PROPERTY

REGULATIONS 113, SECTION 143.1: Meaning of terms. Rev. Rul. 59–200

(Also Part I, Section 4271.)

> The tax on the transportation of property does not apply to amounts paid to truckers on an hourly basis by a person engaged in the business of producing sand and gravel for the transportation of material excavated within the boundaries of his premises to a plant located on the same premises for processing into sand and gravel.
>
> Revenue Ruling 249, C. B. 1953–2, 437, modified.

The Internal Revenue Service has been asked to reconsider Revenue Ruling 249, C. B. 1953–2, 437, which hold that the tax on the transportation of property applies to amounts paid to truckers on an hourly basis by a person engaged in the business of producing sand and gravel for the transportation of material excavated within the boundaries of his premises to a plant located on the same premises for processing into sand and gravel.

Section 3475 of the Internal Revenue Code of 1939, under which Revenue Ruling 249 was issued, imposed a tax upon amounts paid for the transportation of property by rail, motor vehicle, water, or air from one point in the United States to another. That section further provided, however, that the tax would not apply to the transportation of earth, rock, or other material excavated within the boundaries of, and in the course of, a construction project and transported to any place within, or adjacent to, the boundaries of such project.

The basis for the conclusion in Revenue Ruling 249 was that the material being transported was excavated in connection with a business of producing sand and gravel and not in the course of *a construction project*. Therefore, the conditions of the specific exemption provided by the statute were not met. The question now presented, however, is whether the movement of excavated material under these circumstances constitutes "transportation" within the meaning of the statute.

The case of *Kerns* v. *United States*, 204 Fed. (2d) 813, involved a situation where (1) a movement of property was limited to premises on which mining, quarrying, manufacturing, or other form of productive enterprise was carried on, (2) such movement was of raw materials to be manufactured or used in the manufacturing process and was carried on as an integral part of the productive enterprise, (3) a hauler supplied trucks and drivers for the movement on a fixed hourly rental basis without regard to the work done or the tonnage hauled, and (4) the stone company had the exclusive power of directing the work in which the trucks were engaged. Under these circumstances the court held that the movement is not "transportation of property" within the meaning and intent of the statute to which the tax is intended to apply. The Service has decided to follow the *Kerns* decision in cases where the facts are substantially the same.

It should be noted, however, that although the court in the *Kerns* case cited several decisions to support the conclusion reached, it nevertheless distinguished the case of *Getchell Mine, Inc.* v. *United States*, 181 Fed. (2d) 987. The *Getchell* case involved a movement of gold ore from mine to mill, all of which took place over private roads located on property of the taxpayer, in vehicles supplied by an independent contractor who was paid on a basis of the volume carried and the distance hauled. There the court held that the trucking services were furnished by a person engaged in the business of transporting property for hire and that the movement was from one point in the United States to another. Thus, the tax was held to apply to payments made for the transportation services furnished in that case. See also *Hines Lumber Co.* v. *United States*, 239 Fed. (2) 488. It will be the policy of the Service to adhere to the *Getchell* decision in cases where the facts are substantially the same as those present in that case.

The position of the Service with respect to the *Kerns* and *Getchell* decisions will be followed without regard to whether the issue arises under the provisions of section 3475 of the 1939 Code or under the corresponding provisions of section 4271 of the Internal Revenue Code of 1954.

In accordance with the above conclusion, Revenue Ruling 249 is hereby modified to the extent that it holds that amounts paid for the transportation of the material to the processing plant are subject to the tax on the transportation of property.

SUBTITLE D.—GENERAL ADMINISTRATIVE PROVISIONS

CHAPTER 36.—COLLECTION

SUBCHAPTER B.—LIEN FOR TAXES

SECTION 3678.—CIVIL ACTION TO ENFORCE LIEN ON PROPERTY

Tax lien against cash surrender value of life insurance policy when insured beyond jurisdiction of court. See Ct. D. 1833, page 700.

SUBCHAPTER C.—DISTRAINT

PART III.—GENERAL PROVISIONS

SECTION 3710.—SURRENDER OF PROPERTY SUBJECT TO DISTRAINT

(Also Section 3678.) Ct. D. 1833[1]

INCOME AND WITHHOLDING TAXES—INTERNAL REVENUE CODE—DECISION OF COURT

1. PROPERTY SUBJECT TO LIENS—CASH SURRENDER VALUE OF LIFE INSURANCE POLICIES—INSURED BEYOND JURISDICTION OF COURT—TAX LIENS ENFORCEABLE WHEN INSURED IS WITHOUT PERSONAL JURISDICTION OF COURT.

Taxpayer has a present property interest, subject to lien for unpaid taxes, in life insurance policies issued to him to the extent of their cash surrender value, where he could withdraw such value at any time and where he had reserved the right to change the beneficiaries, even though he had not made an election to take such surrender value and had not surrendered the policies.

The Government's lien for unpaid taxes attached to the insured's property interest in the policies when the assessment list was received by the Director of Internal Revenue. The lien was perfected by Commissioner's demand on the insured before he absconded from the jurisdiction of the District Court. Notice of lien was properly filed and the insurance companies were served with notice of lien. Because the lien had attached to the *res*, and the Court had jurisdiction over the *res*, the property rights of the insured in the policies were held subject to the Government's lien, even though the insured was beyond the personal jurisdiction of the Court.

The insured, after having been convicted of tax frauds, fled the country, and the Director of Internal Revenue served notice upon the insurance companies that the Government was asserting lien against the cash surrender value of the policies for unpaid taxes. Subsequent proceeding, instituted under 26 USC 7403, in which the insured, the insurance companies, and beneficiaries under the policies were made parties, brought in the district in which the insurance companies were doing business and in which notice was served on insured by publication, was sufficient to foreclose the lien. The decree directing the insurance companies to pay such cash surrender value to the United States will protect the companies from further liability under the policies.

2. JUDGMENT REVERSED.

In the original decision (which was adhered to after a rehearing) the judgment of U.S. District Court, N.D. West Virginia, 147 Fed. Supp. 902, was reversed and case remanded to District Court.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

(Argued November 8, 1957. Decided January 14, 1958.)

No. 7465.

United States of America, Appellant, v. *Metropolitan Life Insurance Company, a corporation, and The Guardian Life Insurance Company of America, a corporation, appellees*

Appeal from the United States District Court for the Northern District of West Virginia, at Wheeling

Before PARKER, Chief Judge, and SOPER and HAYNSWORTH, Circuit Judges

Louise Foster, Attorney, Department of Justice, (Charles K. Rice, Assistant Attorney General; Lee A. Jackson, Attorney, Department of Justice, and

[1] Adhered to in a Per Curiam decision, 256 Fed. (2d) 17, after a rehearing.

Albert M. Morgan, United States Attorney, on brief) for Appellant, and Howard Caplan (Stewart McReynolds, and Stotler, McReynolds & Caplan on brief) for Appellees.

PARKER, Chief Judge:

This is an appeal by the United States from a judgment dismissing, as against two insurance companies, an action to foreclose a tax lien on the cash surrender value of two insurance policies issued to a taxpayer, who had been convicted of tax frauds and had fled from the country. The District Court held that, in the absence of an election by the insured to take the cash surrender value of the policies, he had no property therein to which a lien for taxes could attach, and that, as he had not made such election and had not been personally served with summons in the action so that he could be subjected to an order of court requiring him to make the election, the court was without power to grant relief. The facts are stated in detail in the opinion of the District Judge and need not be repeated here. Those necessary to an understanding of the case are as follows:

Insured, Dr. Milton Alfred Gilmore, is a citizen of West Virginia. On January 16, 1953 he was convicted by a jury of wilfully and knowingly attempting to evade federal income taxes; but, before sentence could be pronounced in the case, he fled into Canada, where he still is. Insured owed income taxes for the years 1942 through 1948, in addition to payroll withhholding taxes, which were properly assessed but remained unpaid notwithstanding proper notices and demands made by the Collector of Internal Revenue upon insured and his wife, to whom he had transferred large amounts of cash. Insured held life insurance policies in the Metropolitan Life Insurance Company and the Guardian Life Insurance Company, which had substantial cash surrender values at the time of the institution of this action. Both policies were payable at insured's death to his wife as beneficiary and to his daughter as contingent beneficiary, but each policy reserved to him the right to change the beneficiary at any time.

This action was instituted to enforce the liens of the unpaid federal taxes against insured's interest in the two policies as well as against other property which he owned; and his wife and daughter were named as parties to the action along with insured and the two insurance companies. It was conceded that notice of the tax liens had been served upon the insurance companies in New York as well as in West Virginia. Personal service of process could not be had upon insured or his wife or daughter, but process was served upon them by publication, and was regularly served upon the insurance companies. Judgment was entered enforcing the liens against certain real estate in West Virginia but dismissing the action in so far as it sought to enforce liens against insured's interest in the policies. Only the right of the United States to enforce tax liens against the policies is involved in this appeal.

Three questions are presented by the appeal: (1) Did the insured have a property interest in the insurance policies? (2) If so, was a tax lien in favor of the United States perfected on such interest? (3) Can the tax lien be foreclosed in this action and the interest of insured in the policies be subjected to the satisfaction of the lien? We think that all of these questions should be answered in the affirmative.

1. THE PROPERTY INTEREST OF INSURED IN THE POLICIES.

We think there can be no question but that insured had a property interest in the policies. Both policies had a cash surrender value which was withdrawable at any time and while the policies were payable at the death of insured to his wife and daughter as beneficiaries, he had reserved the right to change the beneficiaries at any time. He had complete power over the policies, therefore, and could have availed himself of the cash surrender value by surrendering the policies as easily as he could have cashed in a certificate of deposit in a bank by surrendering the certificate. To say that he had no property in the policies because he had not elected to take the cash surrender value and surrender them is as lacking in reality as to say that the holder of a certificate of deposit in a bank has no property therein because he has not elected to cash and surrender it and can receive nothing thereon until he elects to do so. It has been held that the insured has a property interest in a policy which has no cash surrender value but only a borrowing privilege. *United States* v. *Trout* 46 F. Supp. 484, 485. A fortiori, such property interest exists where there is a cash surrender value and the insured has reserved complete control, not only over this, but also over who may take the proceeds of the policies as beneficiary upon his death.

Very much in point are the cases of *Rowen* v. *Com'r* 2 Cir. 215 F. 2d 641; *United States* v. *Behrens* 2 Cir. 230 F. 2d 504; *United States* v. *Hoper* 7 Cir. 242 F. 2d 468; and *United States* v. *Bess* 3 Cir. 243 F. 2d 675. In these cases it was held that a tax lien could be enforced against the proceeds of a policy to the extent of its cash surrender value, even though insured had died and the proceeds of the policy were payable to named beneficiaries. Dealing with this subjection of the cash surrender value to the liens in *United States* v. *Behrens, supra*, Judge Learned Hand said:

"The obligation of an insurer in a policy of life insurance is made up of a number of promises, of which one is to pay to the beneficiary the amount of the insurance—the 'proceeds'—and another is to pay the 'surrender value' to the insured upon his demand. The performances of these promises are not only separate, but inconsistent with each other: the payment of the 'surrender value' cancels the promise to pay the 'proceeds' and the promise to pay the 'proceeds' assumes that the insured has not demanded and received the 'surrender value.' * * *

"However, in *Rowen* v. *Commissioner of Internal Revenue, supra*, 215 F. 2d at page 647, we held that 'it is not realistic to view his' the insured's 'death as wiping out these values. Under the policies, his death was merely a condition upon which the surrender values no longer payable to the decedent became merged in the greater values which the insurers were obligated to pay the beneficiaries.' There can be no doubt that the courts have spoken of the 'surrender value' as though it were in fact a fund which the insurer held as a custodian for the insured. This way of looking at the situation was long ago stated by Judge Addison Brown with his customary clarity, and the Supreme Court has twice quoted what he said with approval. We shall not requote it in full; it is enough to excerpt the following passages. 'Though this excess of premiums paid is legally the sole property of the company, still in practical effect, though not in law, it is the moneys of the assured deposited with the company in advance to make up the deficiency in later premiums * * *. So long as the policy remains in force the company has not practically any beneficial interest in it, except as its custodian, with the obligation to maintain it unimpaired and suitably invested for the benefit of the insured. This is the practical, though not the legal, relation of the company to this fund.' This language obviously treats the surplus of the paid premiums that makes up the 'surrender value,' as a 'fund' held for the insured, and, if it were such, the lien would follow it into the 'proceeds.'".

This is in accord with the holding of the Supreme Court in *Burnet* v. *Wells*, 289 U.S. 670, 679, where Mr. Justice Cardozo, speaking for the court, said:

"A policy of life insurance is a contract susceptible of ownership like any other chose in action. It 'is not an assurance for a single year with a privilege of renewal from year to year by paying the annual premium.' It is 'an entire contract of assurance for life, subject to discontinuance and forfeiture for nonpayment of any of the stipulated premiums.' N.Y. Life Insurance Co. v. Statham, 93 U.S. 24, 30; Vance on Insurance, pp. 260, 262 and cases there cited. One who takes out a policy on his own life, after application in his own name accepted by the company, becomes in so doing a party to a contract, though the benefits of the insurance are to accrue to some one else. Mutual Life Ins. Co. v. Hurni Packing Co., 263 U.S. 167, 177; Vance on Insurance, pp. 90, 91 and 108. The rights and interests thereby generated do not inhere solely in those who are to receive the proceeds. They inhere also in the insured who in cooperation with the insurer has brought the contract into being. * * * The contracts remain his, or his at least in part, though the fruits when they are gathered are to go to some one else."

As said by Mr. Justice Holmes in *Grigsby* v. *Russell*, 222 U.S. 149, 156, "Life insurance has become in our days one of the best recognized forms of investment and self-compelled saving. So far as reasonable safety permits, it is desirable to give to life policies the ordinary characteristics of property."

In cases arising under state statutes, where the question is whether there is an indebtedness owing the insured by the company, the majority holding is that the interest of the insured under the policies is not subject to attachment or garnishment. See note 37 A.L.R. 2d 271 et seq. In cases arising under the bankruptcy act, however, where the question is whether the insured has a property interest which vests in the trustee in bankruptcy, it has generally been

held that he does have such interest if he has reserved the right to change the beneficiary and the policy has a cash surrender value. Notes 68 A.L.R. 1216 and 1232, 103 A.L.R. 240, 169 A.L.R. 1381 and 1386. This has been expressly decided by the Supreme Court of the United States. *Burlingham* v. *Crouse* 228 U.S. 459, 473; *Cohen* v. *Samuels* 245 U.S. 50, 52–53. In the case last cited, the court adverted to the provision of the bankruptcy act as to the vesting in the trustee of policies payable to the insured, his estate or his personal representative, and said:

> "It is true the policies in question here are not so payable, but they can be or could have been so payable at his own will and by simple declaration. Under such conditions to hold that there was nothing of property to vest in a trustee would be to make an insurance policy a shelter for valuable assets and, it might be, a refuge for fraud."

The fact that the insured has a property interest in a policy having a cash surrender value and subject to change of beneficiary by him has been recognized in a number of cases in which creditors have resorted to equitable remedies or to supplementary proceedings, which are equitable in their nature, to reach the interest of the insured. See *Foley* v. *Equitable Life Assur. Soc.* 290 N.Y. 424, 49 N.E. 2d 511; *Rubenstein* v. *Rubenstein* 105 N.Y.S. 2d 24; *Anthracite Ins. Co.* v. *Sears* 109 Mass. 383; *Biggert* v. *Straub* 193 Mass. 77, 78 N.E. 770, 118 Am. St. Rep. 449: notes 37 A.L.R. 2d 291 et seq. And it has been held that the rights of the insured under such a policy are property rights which pass to an assignee under a general assignment for the benefit of creditors. *Blinn* v. *Dane* 207 Mass. 159, 93 N.E. 601, 20 Ann. Cas. 1184 and note.

2. THE PERFECTING OF THE TAX LIEN.

We think that there can, likewise, be no question but that a tax lien was perfected by the United States upon the insured's interest in the insurance policies. When Dr. Gilmore fled to Canada he left unpaid the taxes here asserted by the government which became liens upon all his property, including his interest in these policies, when the assessment list was received by the Director of Internal Revenue. Sections 3670 and 3671 of the Internal Revenue Code of 1939, which are the statutes here applicable, provide:

> "Sec. 3670. *Property Subject to Lien.* If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person." (26 USC 1952 ed. sec. 3670).
>
> "Sec. 3671. *Period of Lien.* Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time." (26 USC 1952 ed. sec. 3671).

In the following cases it has been squarely held that, where the provisions of the taxing statute are followed, a tax lien is perfected upon the cash surrender value of a policy of insurance issued to taxpayer upon his life. *Kyle* v. *McGuirk* 3 Cir. 82 F. 2d 212; *Cannon* v. *Nicholas* 10 Cir. 80 F. 2d 934 [C.D. 1113, C.B. XV–1, 313 (1936)]; *United States* v. *Royce Shoe Co.* D.N.H., 137 F. Supp. 786; *Knox* v. *Great West Life Assur. Co.* E.D. Mich. 109 F. Supp. 207, aff. 6 Cir. 212 F. 2d 784; *United States* v. *Ison* S.D.N.Y. 67 F. Supp. 40; *Smith* v. *Donnelly* E. D. La. 65 F. Supp. 415; *United States* v. *Prudential Ins. Co.* E.D. Pa. 54 F. Supp. 664.

There is no question here of the rights of third parties as assignees. Notices were duly given the insurance companies of the tax liens here sought to be enforced; and there is no contention that anything had been paid under the policies or that they had been assigned to anyone prior to the giving of the notices or the institution of the action. The property rights of the insured in the policies were held thereafter subject to the liens of the government, and the insurance companies were charged with notice of such liens and were bound to take them into account before making any payments to the insured under the terms of the policies. See *United States* v. *Eiland* 4 Cir. 223 F. 2d 118.

It is said, relying upon such cases as *United States* v. *Metropolitan Life Ins. Co.* 2 Cir. 130 F. 2d 149, and *United States* v. *Penn Mut. Life Ins. Co.* 3 Cir. 130 F. 2d

494, that unless the insured has exercised his option to take the cash surrender value under the policy, there is nothing to which the lien provided for by statute can attach. As pointed out above, however, insured unquestionably has a property right under the policies, the value of which is measured as a practical matter by the cash surrender value, and we do not think that the right of the government to reach such property for taxes can be defeated by the fact that the insured has not made an election under the policies. This is the effect of the decisions, heretofore cited of *Rowen* v. *Com'r, supra,* 215 F. 2d 641; *United States* v. *Behrens, supra,* 2 Cir. 230 F. 2d 504; *United States* v. *Hoper, supra,* 7 Cir. 247 F. 2d 468; and *United States* v. *Bess, supra,* 3 Cir. 243 F. 2d 265.

The promises of the companies with relation to the cash surrender values amount to promises to pay these to the insured on his demand; and where his rights under the policies are subjected to tax liens, the right to demand the cash surrender value is vested in the government to the extent necessary to satisfy the liens. As said by this court in *United States* v. *Eiland, supra,* which dealt with a lien created by statutory attachment and garnishment on an ordinary debt, 223 F. 2d 118, 121:

> "A creditor ordinarily perfects a lien upon a debt by attachment and garnishment with service of notice thereof upon the debtor. See Miller v. United States, 11 Wall. 268, 297, 20 L. Ed. 135; Kennedy v. Brent, 6 Cranch 187, 3 L. Ed. 194; Rickman v. Rickman, 180 Mich. 224, 146 N.W. 609, Ann. Cas. 1915c, 1237, 1248; Strawberry Growers' Selling Co. v. Lewellyn, 158 La. 303, 103 So. 823, 39 A.L.R. 1502; 4 Am. Jur. p. 896; 5 Am. Jur. p. 94; 7 C.J.S., Attachment, sec. 224, page 403. When this has been properly done, the effect thereof is to give to the attaching creditor a lien upon the indebtedness for the amount necessary to satisfy the judgment rendered in the proceedings in his favor. The effect of the federal taxing statutes to which we have referred is to create a statutory attachment and garnishment in which the service of notice provided by statute takes the place of the court process in the ordinary garnishment proceeding. There is no necessity for adjudicating the amount of the tax under the statutory proceeding, United States v. Morris & Essex R Co., 2 Cir., 135 F. 2d 711, certiorari denied, Morris & Essex R. Co. v. Delaware, L. & W. R. Co., 320 U.S. 754, 64 S. Ct. 61, 88 L. Ed. 449; and, consequently, the service of such notice results in what is virtually a transfer to the government of the indebtedness, or the amount thereof necessary to pay the tax, so that payment to the government pursuant to the levy and notice is a complete defense to the debtor against any action brought against him on account of the debt."

When the insured's interest in the policies is subjected to the tax lien under this proceeding, this amounts to a seizure of such interest by the United States (*United States* v. *Miller* 11 Wall, 268, 297); and the United States, by virtue of such seizure, may exercise any right which the insured might have exercised under the policies, including the election to take the cash surrender value.

3. THE SUFFICIENCY OF THE PROCEEDING

We think it clear that the proceeding here, which was instituted under 26 USC 7403, was sufficient to foreclose the tax lien asserted on the policies and to protect the interest of the insurance companies. Not only were the insured and the companies made parties to the proceeding, but the beneficiaries under the policies were also made parties. As the insured was not present within the state, it was proper that he be served by publication so that the court might foreclose the tax lien upon his property. 28 USC 1655.* And as the insurance

*That section is as follows:

"In an action in a district court to enforce any lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to, real or personal property within the district, where any defendant cannot be served within the State, or does not voluntarily appear, the court may order the absent defendant to appear or plead by a day certain.

"Such order shall be served on the absent defendant personally if practicable, wherever found, and also upon the person or persons in possession or charge of such property, if any. Where personal service is not practicable, the order shall be published as the court may direct, not less than once a week for six consecutive weeks.

"If an absent defendant does not appear or plead within the time allowed, the court may proceed as if the absent defendant had been served with process within the State, but any adjudication shall, as regards the absent defendant without appearance, affect only the property which is the subject of the action. When a part of the property is within another district, but within the same State, such action may be brought in either district.

"Any defendant not so personally notified may, at any time within one year after final judgment, enter his appearance, and thereupon the court shall set aside the judgment and permit such defendant to plead on payment of such costs as the court deems just."

companies were present doing business within the state, it was clearly proper that the suit be brought there to reach insured's interest in the policies. *Harris* v. *Balk* 198 U.S. 215. There is no reason why the court should not determine the value of the insured's interest under the policies and direct that this be paid upon the tax liens asserted by the government, nor why this will not fully protect the companies with respect to their obligations under the policies in the same way that a debtor garnishee is protected in any garnishment proceeding. The statute under which the proceeding was instituted is as follows:

> "(a) *Filing.*—In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Secretary or his delegate, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability.
>
> "(b) *Parties.*—All persons having liens upon or claiming any interest in the property involved in such action shall be made parties thereto.
>
> "(c) *Adjudication and Decree.*—The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States."

The action taken by the United States in asserting the lien and instituting this action for its foreclosure amounted, as heretofore stated, to a seizure of the insured's property in the policies; and the court was vested with full power to enter judgment with respect thereto. That the insurance companies are fully protected by judgment rendered in the proceeding and that the proceeding may be brought against them wherever they are doing business, see *Harris* v. *Balk* 198 U.S. 215.

It is argued that, although cash surrender value of the policies might be subjected to the tax lien if service of process could be made personally upon the insured and he could be required to elect to receive the cash surrender value, this may not be done in an action in rem, where the insured cannot be subjected to an in personam judgment or required to make such election. We see no reason for such distinction. The interest of the insured in the policies has been brought under the jurisdiction of the court in what is essentially a garnishment proceeding in so far as it relates to his interest in the policies and the promises for his benefit therein contained. 5 Am. Jur. sec. 657. The court can unquestionably condemn the interest of the insured under the policies to the satisfaction of the lien and can direct that such interest be paid by the insurance companies to the United States, the holder of the lien. This interest is the cash surrender value of the policies. It is argued, however, that the court may not do this, because the policies must be surrendered as a condition to obtaining the cash surrender value; but the surrender is for the protection of the companies and they will be as well protected by the judgment of the court as by the surrender of the policies, since the policies are not negotiable. See *Foley* v. *Equitable Life Assur. Society*, 290 N.Y. 424, 49 N.E. 2d 511, 514; *Rubenstein v. Rubenstein* 105 N.Y.S. 2d 24; *United States* v. *Manufacturers' Trust Co.* 2 Cir. 198 F. 2d 366, 369; *Harris* v. *Balk*, *supra*. Of course, surrender of the policies should be ordered if the policies are available for surrender. When, however, they are unavailable for surrender, because the owner has absconded to a foreign country and is beyond the reach of personal process, and when the interest of the insurer will be protected by the judgment of the court, the insurer should be required to pay the cash surrender value in the proceeding under the statute.

To sum up, we think that the insured unquestionably had a property interest in the policies in question; that the value of this property interest was the cash surrender value of the policies; that this property interest was subjected to the lien for taxes when the assessment list was placed in the hands of the

Director of Internal Revenue; that the insurance companies were fixed with notice of the lien when notices were served upon them; that the proceeding instituted under 26 USC 7403 was a proper proceeding to foreclose the lien; that the government as holder of the lien can elect in the proceeding to take the cash surrender value of the policies; and that a decree of the court directing that the cash surrender value of the policies be paid to the United States will protect the insurance companies from further liability under the policies. As said by Judge Harrison in *United States* v. *Trout, supra*, we "see no reason to uphold a taxpayer who admits he has an interest in property but flauntingly says it is beyond the reach of the government." To which we may add that the court is not so impotent that it cannot apply to the satisfaction of tax liens property interests of a taxpayer held by corporations within its jurisdiction.

The judgment appealed from should be reversed and the case remanded to the District Court for further proceedings.

Reversed and Remanded.

PART III

ALCOHOL TAX RULINGS AND DECISIONS

SUBPART A.—RULINGS AND DECISIONS UNDER THE INTERNAL REVENUE CODE OF 1954, AS AMENDED BY THE EXCISE TAX TECHNICAL CHANGES ACT OF 1958

Rulings and decisions published in Part III, Subpart A, of the Internal Revenue Bulletin are based on the application of provisions of the Internal Revenue Code of 1954 as amended by the Excise Tax Technical Changes Act of 1958 and, unless otherwise noted therein, are published without consideration as to any application of the provisions of prior laws or the Federal Alcohol Administration Act.

SUBTITLE E.—ALCOHOL, TOBACCO, AND CERTAIN OTHER EXCISE TAXES

CHAPTER 51.—DISTILLED SPIRITS, WINES, AND BEER

SUBCHAPTER A.—GALLONAGE AND OCCUPATIONAL TAXES

PART I.—GALLONAGE TAXES

Subpart E.—General Provisions

SECTION 5064.—LOSSES CAUSED BY DISASTER DISTILLED SPIRITS, WINES, AND BEER

26 CFR 170.105: Execution and filing of claims. T. D. 6367 [1]
(Also 170.156.)

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER E, PART 170.—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

Losses of (1) beer caused by floods of 1951 and hurricanes of 1954 and (2) alcoholic liquors caused by a disaster occurring after December 31, 1954, and before September 3, 1958.

Department of the Treasury,
Office of Commissioner of Internal Revenue,
Office of Commissioner of Customs,
Washington 25, D.C.

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

It has been found that it is not possible, in some instances, for claimants to comply with the provisions of regulations in subparts F and I

[1] 24 F.R. 1413.

of the Miscellaneous Regulations Relating to Liquor (26 CFR Part 170) which require persons replacing, making reimbursement, or giving credit for liquors lost and the recipients of such replacements, reimbursements, or credits to join in the claims. Accordingly, it has been deemed desirable to amend the regulations to liberalize the requirement in this respect so that an otherwise allowable claim may be considered for allowance. To accomplish this purpose, 26 CFR Part 170 is hereby amended as follows:

§ 170.105 [AMENDMENT]

PARAGRAPH 1. Section 170.105 in subpart F is amended by striking the period at the end of the second sentence which begins "In any instance", and inserting in lieu thereof the following:

Provided—That the assistant regional commissioner may allow a claim otherwise meeting the requirements of this subpart even though the person (or persons) receiving such replacement or credit does not join in the claim if the failure to join in the claim is the result of (a) such person's death, (b) inability to locate such person, or (c) such person's refusal to join in the claim.

PAR. 2. A new section, reading as follows, is inserted immediately following § 170.108 in subpart F:

§ 170.108a Evidence of replacement.—Where, as provided in § 170.105, a possessor alleged to have received replacement does not join in the claim, the claimant must establish by documentary evidence (such as receipts or receipted copies of invoices) the replacement to the possessor as required by § 170.110.

§ 170.156 [AMENDMENT]

PAR. 3. The paragraph with headnote "Claimant" in § 170.156 in subpart I is amended to read as follows:

Claimant.—The person to whom payment may be made, as provided in § 170.158.

§ 170.159 [AMENDMENT]

PAR. 4. Section 170.159 in subpart I is amended by inserting immediately preceding the last sentence, an additional sentence reading as follows:

In any instance where the beer was replaced or where reimbursement for the cost of the beer was made, the person replacing or making reimbursement therefor and the recipient thereof shall join in the claim: *Provided*, That the assistant regional commissioner may allow a claim otherwise meeting the requirements of this subpart even though the person (or persons) receiving such replacement or reimbursement does not join in the claim if the failure to join in the claim is the result of (a) such person's death, (b) inability to locate such person, or (c) such person's refusal to join in the claim.

PAR. 5. A new section, reading as follows, is inserted immediately following § 170.161 in subpart I:

§ 170.161a EVIDENCE OF REPLACEMENT OR REIMBURSEMENT.—Where, as provided in § 170.159, a possessor alleged to have received replacement or reimbursement does not join in the claim, the claimant must establish by documentary evidence (such as receipts or receipted copies of invoices) the replacement or reimbursement to the possessor as required by § 170.161(e)(1).

Because the time for filing claims under subparts F and I of 26 CFR Part 170 expires on March 2, 1959, and March 3, 1959, respectively, and because of the liberalizing nature of these amendments, it is found that it is impracticable and contrary to the public interest to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act (60 Stat. 238;

5 U.S.C. 1003), or subject to the effective date limitation of section 4(c) of such Act. Accordingly, this Treasury Decision shall be effective on September 3, 1958.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805) and sections 207 and 208 of Public Law 85–859, C.B. 1958–3, 92).

DANA LATHAM,
Commissioner of Internal Revenue.
LAWTON M. KING,
Acting Commissioner of Customs.

Approved February 20, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on February 25, 1959, at 8:51 a.m., and published in the issue of the Federal Register for February 26, 1959, 24 F.R. 1413.)

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26 CFR 170.156: Meaning of terms.

Allowance of claims covering losses of beer caused by 1951 floods and 1954 hurricanes. See T.D. 6367, page 707.

SUBCHAPTER C.—OPERATION OF DISTILLED SPIRITS PLANTS

PART II.—OPERATIONS ON BONDED PREMISES

Subpart C.—Storage

SECTION 5234.—MINGLING AND BLENDING OF DISTILLED SPIRITS

26 CFR 170.193: Numbering, marking, and branding consolidated packages. (Also Sections 225.409, 225.417f.) — Rev. Rul. 59–128

Section 5234(a)(2), as included in the Internal Revenue Code of 1954 by section 210(a)(2) of the Excise Tax Technical Changes Act of 1958, Public Law 85–859, 26 U.S.C. 5234, C.B. 1958–3, 92, provides, in part, for the mingling of spirits of the same kind, distilled by the same proprietor at the same distillery under his own or any trade name and for the repackaging of such spirits in as many as necessary of the packages from which dumped, for further storage in bond. It is also provided that the spirits so mingled may be labeled the same as if they had not been so mingled. *Held*, when spirits are mingled under the provisions of Subpart K of the Miscellaneous Regulations Relating to Liquor, the warehouseman may use any of the names represented in the mingled spirits as the name of the distiller to be marked on packages filled with such mingled spirits pursuant to section 170.193 of the Miscellaneous Regulations Relating to Liquor, and sections 225.409 and 225.417f of the Warehousing of Distilled Spirits Regulations.

26 CFR 225.409: Marking and branding packages filled from storage tanks.

Name to be marked on packages of mingled spirits. See Rev. Rul. 59–128, page 709.

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26 CFR 225.417f: Numbering, marking, and branding of consolidated packages.

Name to be marked on packages of mingled spirits. See Rev. Rul. 59–128, page 709.

SUBCHAPTER E.—GENERAL PROVISIONS RELATING TO DISTILLED SPIRITS

PART III.—MISCELLANEOUS PROVISIONS

SECTION 5314.—SPECIAL APPLICABILITY OF CERTAIN PROVISIONS

26 CFR 182.5: Territorial extent. Rev. Rul. 59–40
(Also Section 5001.)

> The tax imposed by section 5001(a)(10) of the Internal Revenue Code of 1954, as amended by the Excise Tax Technical Changes Act of 1958, is not applicable in respect to bay rum or any article containing distilled spirits brought from Puerto Rico into the United States where there is compliance with the provisions of section 5314(a) of the Code, as amended, effective July 1, 1959.
>
> The reference to section 5001(a)(4) appearing in section 5314(a)(2) of the Code, as amended, should be to section 5001(a)(10) of the Code.

Advice has been requested whether the tax imposed by section 5001(a)(10) of the Internal Revenue Code, as amended, effective July 1, 1959, by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, 85th Cong., 26 U.S.C. 5314, C.B. 1958–3, 92, is applicable in respect of bay rum or any article containing distilled spirits brought from Puerto Rico into the United States where there is compliance with the provisions of section 5314(a)(2) of the Code, as amended.

Section 5314(a)(2) of the Internal Revenue Code of 1954, as amended by the Excise Tax Technical Changes Act of 1958, provides that authorized tax free distilled spirits for certain purposes, denatured distilled spirits, and articles containing denatured distilled spirits, produced or manufactured in Puerto Rico, may be brought into the United States free of any tax imposed by section 5001(a)(4) or section 7652(a)(1) of the Code, for disposal under the same conditions as like spirits, denatured spirits, and articles produced or manufactured in the United States.

The reference to section 5001(a)(4) appearing in section 5314(a)(2) of the Code, as amended, should to be section 5001(a)(10). The reference to section 5001(a)(4) relates to the provisions of the Code prior to amendment by the Excise Tax Technical Changes Act of 1958. In the Act the provisions of section 5001(a)(4) were redesignated as section 5001(a)(10). However, the operation of section 5314, as amended, is not impaired by this erroneous reference.

Section 5001(a)(4) as contained in the Excise Tax Technical Changes Act of 1958, imposes no tax with respect to products of Puerto Rico brought into the United States. Therefore the reference in section 5314(a)(2) to such provisions can have no effect.

Section 5001(a)(10) of the Code, as amended by the Excise Tax Technical Changes Act of 1958, provides as follows:

> Except as provided in section 5314, upon bay rum, or any article containing distilled spirits, brought from Puerto Rico into the United States for consumption or sale there is hereby imposed a tax on the spirits contained therein at the rate imposed on distilled spirits produced in the United States.

The provisions of section 5001(a)(10) of the Code, as amended, which impose a tax with respect to alcoholic compounds brought from Puerto Rico into the United States make it clear that the tax imposed under this paragraph is not applicable where there is compliance with the provisions of section 5314 of the Code, as amended.

Accordingly, the tax imposed by section 5001(a)(10) of the Internal Revenue Code, as amended by the Excise Tax Technical Changes Act of 1958, is not applicable in respect of bay rum or any article containing distilled spirits brought from Puerto Rico into the United States where there is compliance with the provisions of section 5314(a) of the Internal Revenue Code, as amended by the Act.

Since section 5314 of the Internal Revenue Code, as amended by the Excise Tax Technical Changes Act of 1958 will not be effective until July 1, 1959, this ruling is prospective from July 1, 1959.

SUBTITLE F.—PROCEDURE AND ADMINISTRATION

CHAPTER 80.—GENERAL RULES

SUBCHAPTER A.—APPLICATION OF INTERNAL REVENUE LAWS

SECTION 7805.—RULES AND REGULATIONS

26 CFR 170.186: Authorized consolidation. Rev. Rul. 59–117

Section 170.186 of the Miscellaneous Regulations Relating to Liquor provides, in part, that within eight years of the date of original entry for deposit, and with the prior approval of the internal revenue officer in charge, packages of spirits of the same kind, distilled by the same proprietor (under his own or any trade name) at the same distillery, and which have been stored in internal revenue bond in the same kind of cooperage for not less than four years (or two years in the case of rum or brandy) may, as provided in sections 170.185 through 170.196 of the regulations, be dumped and mingled in a warehouse tank, and immediately repackaged in as many as necessary of the packages from which dumped, for further storage in bond. *Held*, when packages are being filled with mingled spirits in a continuing consolidation program, where the original components of each lot would be eligible for mingling with each other, and it becomes evident that the last package

would not be filled to capacity if the tank were drained, the proprietor may determine the gauge of the spirits remaining in the tank, in a quantity less than a full package, and treat such spirits as a part of the succeeding lot to be mingled in that tank. If the original components of the heel are not eligible for mingling with the components of the succeeding lot, or if the consolidation operations are discontinued, the spirits remaining must be drawn off into a remnant package as provided in the regulations. Entries on Form 2323, Mingling of Distilled Spirits, must be appropriately modified to reflect the operation.

26CFR 170.195 Dumping and gauging. Rev. Rul. 59–106

Section 170.190 of the Miscellaneous Regulations Relating to Liquor provides, in part, that, when spirits in packages are to be dumped for mingling, the proof of the spirits in the tank shall be adjusted to a whole degree of proof and such adjusted proof shall be regarded as the proof of the spirits run into all packages filled from the tank. *Held*, when distilled spirits are mingled under the provisions of sections 170.185 through 170.196 of the regulations and the proof is reduced in the tank in accordance with section 170.190 of the regulations, the spirits may be reduced to any whole degree of proof which is not less than that to which the spirits could have been reduced on entry. However, in no instance shall the reduction be such that the volume in the tank after reduction will exceed the total capacity of the packages from which the spirits were dumped. Caution should be exercised regarding the requirement for tax payment of below proof spirits on a wine gallon basis.

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26 CFR 170.371: Existing regulations prescribed as interim regulations. T. D. 6373 [1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER E, PART 170.—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

Interim regulations under Chapter 51 of the Internal Revenue Code as amended by the Excise Tax Technical Changes Act of 1958 (Public Law 85–859), 72 Stat. 1275.

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

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

The purpose of this Treasury Decision is to provide interim regulations for the proper administration of the Internal Revenue Code of 1954 (herein referred to as "the Code"), as amended by section 201 of the Excise Tax Technical Changes Act of 1958 (Public Law 85–859, 72 Stat. 1313) (herein referred to as "the act").

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[1] 24 F.R. 3067.

Subpart Q—Interim Regulations

§ 170.371.—EXISTING REGULATIONS PRESCRIBED AS INTERIM REGULATIONS.

All regulations (including all Treasury Decisions) prescribed by, or under authority duly delegated by, the Secretary of the Treasury, or jointly by the Secretary and the Commissioner of Internal Revenue, or by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, or jointly by the Commissioner of Internal Revenue and the Commissioner of Customs with the approval of the Secretary of the Treasury, applicable under any provision of law in effect on June 30, 1959, to the extent such provision of law is repealed by section 201 of the act, are, insofar as any such regulation is not inconsistent with the Code as amended by section 201 of the act, hereby prescribed under and made applicable to the provisions of the Code, as amended by the act, corresponding to the provision of law so repealed. Such regulations shall, on July 1, 1959, become effective as regulations under the various provisions of the Code as amended by section 201 of the act, until superseded by regulations issued pursuant to chapter 51 of the Code as amended by such act.

§ 170.372.—APPLICABILITY OF INSTRUCTIONS OR RULES IN EFFECT ON JUNE 30, 1959.

All instructions and interpretative rulings in effect, with respect to chapter 51 of the Code or with respect to regulations issued pursuant thereto, as of June 30, 1959, shall, to the extent that such instructions or rulings are not inconsistent with chapter 51 of the Code, as amended by section 201 of the act or with regulations in effect after such date, continue in effect on and after July 1, 1959, and be applied as instructions and rulings pursuant to the applicable provisions of the Code as so amended or pursuant to the applicable provisions of regulations in effect on and after July 1, 1959, as the case may be.

§ 170.373 REGULATIONS TO BE FOLLOWED.

(a) *Continuation of same businesses.*—Any person who, on June 30, 1959, was subject to regulations which, under § 170.371, are prescribed and made applicable on and after July 1, 1959, shall be subject to the provisions of such regulations as prescribed and made applicable which correspond to the provisions of regulations to which he was subject on June 30, 1959, to the extent that such regulations are not superseded as provided in § 170.371.

(b) *New businesses.*—Any person who, on or after July 1, 1959, intends to commence a new business or operation which is required to be qualified under section 5171, I.R.C., shall conduct such business or operation in conformity with the regulations in Part 182, 216, 220, 221, 225, 230, or 235 of this chapter, as the case may be, which would have been applicable to such business or operation on June 30, 1959, to the extent that such regulations are not superseded as provided in § 170.371.

§ 170.374 MEANING OF TERMS.

The terms "distilled spirits plant," "bonded premises," and "bottling premises," as they appear in this section, shall have the meanings ascribed in section 5002(a)(1), (2), and (3), I.R.C., respectively. Any references, in the regulations prescribed and made applicable by this subpart, to industrial alcohol plants, registered distilleries, fruit distilleries, internal revenue bonded warehouses, industrial alcohol bonded warehouses, distillery denaturing bonded warehouses, and industrial alcohol denaturing plants shall, for the purpose of this subpart, be treated as references to the corresponding facilities of the bonded premises of a distilled spirits plant, and references to the proprietor of any such premises shall be treated as references to the proprietor of the bonded premises of a distilled spirits plant. Similarly, any references in the regulations prescribed and made applicable by this subpart to taxpaid bottling houses and rectifying plants shall, for the purpose of this subpart, be treated as references to the corresponding facilities of the bottling premises of distilled spirits plants, and references to the proprietors of such taxpaid bottling house and rectifying plant shall be treated as references to the proprietors of bottling premises of distilled spirits plants.

Because this Treasury decision merely provides for the continuance of existing rules pending further action, it is hereby found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said act. This Treasury Decision shall become effective on July 1, 1959.

(These regulations are issued under authority of the provisions of section 210 of the Excise Tax Technical Changes Act of 1958 (Public Law 85–859, 72 Stat. 1435) and section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

DANA LATHAM,
Commissioner of Internal Revenue.

Approved April 16, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on April 20, 1959 at 8:51 a.m., and published in the issue of the Federal Register for April 21, 1959, 24 F.R. 3067.)

SUBPART B.—RULINGS AND DECISIONS UNDER THE INTERNAL REVENUE CODE OF 1954 PRIOR TO AMENDMENT BY THE EXCISE TAX TECHNICAL CHANGES ACT OF 1958

Rulings and decisions published in Part III, Subpart B, of the Internal Revenue Bulletin are based on the application of the provisions of the Internal Revenue Code of 1954 prior to the amendments by the Excise Tax Technical Changes Act of 1958 and, unless otherwise noted therein, are published without consideration as to any application of the provisions of the Federal Alcohol Administration Act, or other public laws.

SUBTITLE E.—ALCOHOL, TOBACCO, AND CERTAIN OTHER EXCISE TAXES

CHAPTER 51.—DISTILLED SPIRITS, WINES, AND BEER

SUBCHAPTER A.—GALLONAGE AND OCCUPATIONAL TAXES

PART I.—GALLONAGE TAXES

Subpart A.—Distilled Spirits

SECTION 5001.—IMPOSITION, RATE, AND ATTACHMENT OF TAX

26 CFR 182.5: Territorial extent.

Applicability of the tax imposed by section 5001 of the Code upon section 5314(a)(2). See Rev. Rul. 59–40, page 710.

SECTION 5003.—EXEMPTIONS

26 CFR 225.860: General. Rev. Rul. 59–21
(Also Sections 5053, 5362, 7805; 245.195, 240.690, 252.92.)

Section 309 of the Tariff Act of 1930, as amended, 19 U. S. C. 1309, provides, in part, that distilled spirits, wines, and beer of foreign or domestic origin may be withdrawn free of duty and internal revenue tax, or with benefit of drawback, for supplies of aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions. Similar provision are contained in pertinent regulations issued under chapter 51 of the Internal Revenue Code of 1954. *Held*, under the above provisions, liquors (including wines and beer) may be withdrawn free of tax or with benefit of drawback for lading on aircraft engaged in foreign trade, as supplies, and are eligible for use while such aircraft are in nonstop flights over the United States such as flights from Chicago, Illinois, to Mexico City, Mexico, and that the liquors served during such flights may be considered as used in international travel. See, however, Revenue Ruling 54–480, C. B. 1954–2, 558, with respect to special tax liability as a retail dealer in liquors.

Subpart D.—Beer

SECTION 5053.—EXEMPTIONS

26 CFR 245.195: General.

Withdrawal of beer, free of tax for lading as supplies on aircraft for serving to passengers during nonstop flights over the United States. See Rev. Rul. 59–21, page 715.

Subpart E.—General Provisions

SECTION 5062: REFUND AND DRAWBACK IN CASE OF EXPORTATION

26 CFR 252.1: Drawback on distilled spirits, wines, and beer. T.D. 6357[1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER E, PARTS 252 AND 253

Amendment of regulations regarding drawback on domestic alcohol used in the manufacture of flavoring extracts and medicinal or toilet preparations.

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

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

On August 19, 1958, a notice of proposed rulemaking with respect to the amendment of the regulations in 26 CFR Parts 252 and 253 was published in the Federal Register (23 F.R. 6362). The proposed amendments would conform these regulations to Treasury Department Order No. 165–9 [C.B. 1958–2, 1086], transferring from the Commissioner of Internal Revenue to the Commissioner of Customs the function of allowing drawback of an amount equal to the internal revenue tax found to have been paid on domestic alcohol used in the manufacture or production in the United States of flavoring extracts and medicinal or toilet preparations (including perfumery) that have been exported.

In accordance with the notice, interested parties were afforded an opportunity to submit written data, views, or arguments pertaining thereto. No written comments were received within the period of 30 days prescribed. Accordingly, the amendments so published are hereby adopted.

In order to conform regulations in 26 CFR Parts 252 and 253 to the Treasury Department Order, such regulations are amended as follows:

PARAGRAPH 1. 26 CFR Part 252 is amended as follows:

(A) Section 252.1 is amended to read as follows:

§ 252.1 DRAWBACK ON DISTILLED SPIRITS, WINES, AND BEER.—The regulations in this part relate to the allowance of drawback of internal revenue tax on

[1] 24 F.R. 527.

(a) distilled spirits and wines packaged or bottled especially for export and beer brewed and manufactured in the United States when exported or used as supplies on vessels or aircraft, and (b) distilled spirits exported in distiller's original packages containing not less than 20 wine gallons each. Regulations relating to drawback of tax on such articles deposited in foreign-trade zones are contained in Part 253 of this title.

(B) Subpart F, containing §§ 252.180–252.184, is revoked.

PAR. 2. 26 CFR Part 253 is amended as follows:

(A) Section 253.20 is amended by deleting "flavoring extracts, and medicinal or toilet preparations made with taxpaid alcohol;" from the definition of the word "articles".

(B) Sections 253.200 and 253.201 and the undesignated centerhead preceding the two sections are revoked.

This Treasury Decision shall be effective as of January 1, 1959, the effective date of Treasury Department Order No. 165–9.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

O. GORDON DELK,
Acting Commissioner of Internal Revenue.
RALPH KELLY,
Commissioner of Customs.

Approved January 19, 1959.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register on January 22, 1959, 8:47 a.m., and published in the issue of the Federal Register for January 23, 1959, 24 F.R. 527.)

SUBCHAPTER B.—DISTILLERIES

PART I.—ESTABLISHMENT

SECTION 5176.—DISTILLER'S BOND

26 CFR 170.145: Execution. Rev. Rul. 59–22

Registered distillers and registered fruit distillers are required to file a notice and execute a new bond annually on the first day of May. Where such bonds on Form 30, Distiller's Bond, or Form 301/2, Fruit Distiller's Bond, are given without surety but instead are supported by a consent of surety on the distiller's Transportation and Warehousing Bond, Form 1571, the requirements of section 170.145 of the Miscellaneous Regulations relating to Liquor may be satisfied if Form 1533, Consent of Surety, when executed by the principal and the surety, is appropriately worded.

Advice has been requested concerning the procedure to be followed by registered distillers or registered fruit distillers, who are required to file notices and execute new bonds annually on the first day of May, where a Distiller's Bond, Form 30, is given without surety but which is supported by consent of surety on the distiller's Transportation and Warehousing Bond, Form 1571.

Section 5176 of the Internal Revenue Code of 1954 states, in effect, that every person intending to commence or to continue the business of a distiller shall, on filing his notice of such intention, before pro-

ceeding with such business, and on the first day of May of each succeeding year, execute a bond in the form prescribed by the Secretary of the Treasury or his delegate. Such bond shall be with such sureties, approved by the Secretary or his delegate, and for a penal sum not less than the amount of tax on the spirits that can be distilled in his distillery during a period of 15 days. Such bond shall not exceed the sum of $100,000.

Section 170.145 of the Miscellaneous Regulations Relating to Liquor provides as follows:

> Consents of surety submitted under the provisions of this subpart must be executed on Form 1533, in duplicate, by the distiller and the surety, in accordance with the instructions in the notice on the form. The Form 1533 must properly identify the bond affected thereby and contain the following statement of purpose:
>
> "To continue in effect the terms and conditions of said bond (including all extensions" or limitations of such terms and conditions previously consented to and approved) to cover operations from May 1, 1959, to June 30, 1959, both dates inclusive."

Accordingly, it is held that where Form 30, Distiller's Bond, is given without surety but instead is supported by a consent of surety on Form 1571, Transportation and Warehousing Bond, the requirements of section 170.145 of the regulations may be satisfied by the filing of Form 1533, Consent of Surety, executed by the principal and the surety, reading as follows:

> To extend the terms of the above-described bond, Form 1571, and distiller's bond, Form 30, dated _____ effective _____ in the penal sum of $100,000, written without surety, to cover operation of registered distillery No. _____, (address), to continue in effect the terms and conditions of said bond, Form 30, (including all extensions or limitations of such terms and conditions previously consented to and approved) to cover operations from May 1, 1959, to June 30, 1959, both dates inclusive.

This procedure is equally applicable to bonds on Form 30½, Fruit Distiller's Bond.

PART II.—OPERATION

SECTION 5194.—TRANSFER OF SPIRITS AT REGISTERED DISTILLERIES

26 CFR 220.554: Vodka. Rev. Rul. 59–23
(Also Part III–C, Section 5 (e); 27 CFR 5.21.)

> Alcohol may be used in the production of vodka at a rectifying plant. The transfer of alcohol in bond to a registered distillery for the production of vodka is not authorized. Vodka produced by the extractive distillation process at a registered distillery may not be shipped to rectifying plants (or to taxpaid bottling houses) for completion and bottling as vodka but must be reduced to vodka proof prior to shipment. In the manufacture of vodka by the use of activated carbon, the time of contact with the reduced spirits is left to the discretion of the producer.
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> Revenue Ruling 58–336, C. B. 1958–1, 588, amplified.

Advice has been requested whether Revenue Ruling 58–336, C. B. 1958–1, 588, extends to the use of alcohol in the production of vodka and for further clarification of the processing and shipment of vodka.

It is held in Revenue Ruling 58–336, that vodka may be produced by

the extractive distillation process under authority of section 220.554(c) of the Regulations relating to the Production of Distilled Spirits. It is also held that vodka may be produced by a distiller or a rectified by the treatment of neutral spirits of 110 degrees of proof with one ounce of activated carbon for each 100 gallons of reduced spirits processed provided the neutral spirits, prior to reduction in proof, meet specified conditions.

While the Revenue Ruling refers only to neutral spirits, it does not exclude the use of alcohol, produced at an industrial alcohol plant, by rectifiers in the production of vodka, provided that prior to treatment with activated carbon the alcohol intended for use substantially meets the specifications set forth in the Ruling.

Revenue Ruling 55–114, C. B. 1955–1, 573, provides that alcohol transferred to a registered distillery pursuant to section 5217 of the Internal Revenue Code of 1954, relating to national emergency transfers of distilled spirits, may not be redistilled or otherwise used in the production of vodka at a registered distillery as spirits so transferred may not be redistilled or reduced below the eligible proof (160 degrees) necessary for withdrawal for national defense purposes. Thus, the transfer of alcohol in bond to a registered distillery for the production of vodka by any process is not authorized.

The manufacture of vodka at a registered distillery by the extractive distillation process pursuant to section 220.554 of the Regulations relating to Production of Distilled Spirits must be one complete operation as provided in Revenue Ruling 55–114, and the final product must conform with the standards for vodka established by section 21(a), Class 1, of the Regulations relating to the Labeling and Advertising of Distilled Spirits. Since such Ruling and the standards of identity established for vodka require reduction to not more than 110 degrees proof and not less than 80 degrees proof, the spirits may not be shipped prior to such reduction in proof to rectifying plants (or to taxpaid bottling houses) for completion and bottling as vodka.

In manufacturing vodka by the use of activated carbon, the time of contact of the activated carbon with the reduced spirits is left to the discretion of the producer.

SECTION 5195.—RESTRICTIONS RELATING TO OPERATIONS

26 CFR 220.366a: Distiller's schedule of operations.

Removal of distilled spirits at night by pipeline. See Rev. Rul. 59–115, below.

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26 CFR 220.779: Removal of spirits at night. Rev. Rul. 59–115
(Also Sections 220.366a, 225.351a, 225.582.)

Section 5195(b) of the Internal Revenue Code of 1954, provides that no person shall remove any distilled spirits, at any other time than after sunrising and before sunsetting in any cask or package containing more than ten gallons, from any premises or building in which the same may have been distilled, redistilled, rectified, com-

pounded, manufactured, or stored. Section 220.779 of the Distilled Spirits Regulations and section 225.582 of the Warehousing of Distilled Spirits Regulations provide that distilled spirits may not be removed at any other time than after sunrise and before sunset, in any cask or package containing more than ten gallons from any internal revenue bonded warehouse, or from any premises or building in which they have been distilled, redistilled, rectified, compounded, manufactured, or stored. Section 220.366a of the Distilled Spirits Regulations and section 225.351a of the Warehousing of Distilled Spirits Regulations further provide that the distiller or proprietor is to furnish daily to the storekeeper-gauger in charge, a schedule of operations which shall show all activities which require the immediate supervision or attention of a storekeeper-gauger. *Held*, a distiller or proprietor of an internal revenue bonded warehouse may remove taxpaid distilled spirits, by pipeline, from the cistern room of his distillery and from his internal revenue bonded warehouse to his contiguous rectifying plant or taxpaid bottling house at night, when the removal takes place under storekeeper-gauger supervision. Where the distiller finds it necessary to remove spirits by pipeline after regular business hours when a storekeeper-gauger is not normally assigned to the plant, he should make special application to the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax, requesting permission for such operation and showing the necessity therefor.

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26 CFR 225.351a: Proprietor's schedule of operations.

Removal of distilled spirits at night by pipeline. See Rev. Rul. 59–115, page 719.

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26 CFR 225.582: Restrictions on removal at night.

Removal of distilled spirits at night by pipeline. See Rev. Rul. 59–115, page 719.

SUBCHAPTER C.—INTERNAL REVENUE BONDED WAREHOUSES

PART II.—OPERATION

SECTION 5241.—SUPERVISION OF OPERATIONS

26 CFR 170.189: Application.

Dates to be shown upon Form 2323, Mingling of Distilled Spirits. See Rev. Proc. 59–13, page 822.

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26 CFR 225.417c: Application for consolidation.

Dates to be shown upon Form 2323, Mingling of Distilled Spirits. See Rev. Proc. 59–13, page 822.

26 CFR 225.564: Date of receipt in warehouse to be shown on withdrawal application or permit.

Dates to be shown upon Form 2323, Mingling of Distilled Spirits. See Rev. Proc. 59–13, page 822.

SECTION 5243.—BOTTLING OF DISTILLED SPIRITS IN BOND

26 CFR 225.956: Bottling a part of a lot for exportation. Rev. Rul. 59–24
(Also Section 7805; 230.201, 235.785.)

> Cases of assorted distilled spirits may be made up, for the sole purpose of exportation for use as samples abroad, from remnant cases of distilled spirits which have been bottled for export, provided specified conditions are met.

Advice has been requested whether a bottler of distilled spirits for export may repackage remnant cases of such distilled spirits for the purpose of making up cases of assorted spirits to be used as samples in taking orders in foreign markets.

Cases of assorted distilled spirits may be made up, for the sole purpose of exportation for use as samples abroad, from remnant cases of distilled spirits which have been bottled for export, only under the following conditions:

1. The bottler shall give written notice to the internal revenue officer in charge of his intention to prepare assorted cases from remnant cases of distilled spirits which have been bottled for export. The notice shall identify the cases in question.

2. The remnant cases of distilled spirits which it is desired to be made up into assorted cases will be constructively dumped on Form 1515, Distilled Spirits Bottled in Bond, in the case of spirits bottled-in-bond for export, or on Form 230, Description and Gauge of Spirits or Wines for Bottling without Rectification, in the case of taxpaid spirits bottled for export with benefit of drawback. The bottles may then be repacked into smaller cases, each of which will be given a new serial number.

3. Each individual small case must contain only spirits of one producer or bottler, and must be of a kind and size which may be placed in a case for export in the ordinary manner for commercial use. In brief, each small case must be a miniature of a regular case.

4. Miniature cases must be legibly marked to conform to the requirements of the respective regulations under which the distilled spirits were bottled for export, except that a proportionate reduction in the size of the letters and figures will be permitted on such cases. In particular circumstances where, due to the reduced size of the case, sufficient space is not available for such marking, a type or printed label containing all of the required information may be approved for affixing to the case in lieu of the prescribed method for marking cases. Before using such label, the proprietor shall procure approval from the internal revenue officer in charge.

5. Records must be maintained for the miniature cases in the same manner as if they were regular cases.

6. Miniature cases may be placed in an outer shipping container. The outer shipping container must be marked to show: (a) the serial number of each miniature case contained therein; (b) the words "Assorted Distilled Spirits For Export From U. S. A.;" (c) the total proof gallons contained therein; (d) the name of the foreign port to which the spirits are to be shipped; and (e) the name of the exporter. In addition, the case must conform to any pertinent ICC or Customs requirements.

7. Miniature cases of bottled-in-bond spirits may not be mixed with miniature cases of taxpaid spirits in the outer shipping case.

SUBCHAPTER E.—INDUSTRIAL ALCOHOL PLANTS, BONDED WAREHOUSES, DENATURING PLANTS, AND DENATURATION

PART I.—INDUSTRIAL ALCOHOL PLANTS, BONDED WAREHOUSES, AND DENATURING PLANTS

SECTION 5304.—ALCOHOL PERMITS

Section 5271 of Chapter 51, effective July 1, 1959, provides that users of specially denatured spirits must make application on Form 1479 and Form 1485 in order to use and procure spirits on and after July 1, 1959. See Rev. Proc. 59–17, page 826.

The procedure, as established in section 5271 of the Code as amended by Public Law 85–859, C.B. 1958–3, 92, to be followed by dealers in specially denatured alcohol in order that they may qualify after July 1, 1959. See Rev. Proc. 59–18, page 828.

Section 5271 of Chapter 51, effective July 1, 1959, provides that users of tax-free spirits must make application on Form 2600 and Form 1450 in order to use and procure spirits on and after July 1, 1959. See Rev. Proc. 59–19, page 830.

Procedure for qualification of distilled spirits plants by July 1, 1959, as provided in section 5171 of chapter 51 of the Code, as amended. See Rev. Proc. 59–20, page 832.

Section 5271 of Chapter 51, effective July 1, 1959, provides that proprietors and dealers in specially denatured spirits may only permit withdrawals of such spirits under valid withdrawal permits. Tax-free spirits may only be shipped to users under valid withdrawal permits. See Rev. Proc. 59–21, page 833.

26 CFR 182.2: Forms prescribed. (Also Section 182.165.) Rev. Rul. 59–25

Section 182.2 of the Industrial Alcohol Regulations authorizes the Director, Alcohol and Tobacco Tax Division, to prescribe all forms required by such regulations, including bonds, applications, reports, returns, and records. It further provides that the information called for shall be furnished in accordance with the instructions on the forms or issued in respect thereto. *Held*, pursuant to such authority, applications of corporations for basic permits, except applications to use tax-free alcohol, whether or not attested by the corporate seal, may be accepted by the Assistant Regional Commissioner, Alcohol and Tobacco Tax, of the appropriate region when such applications are signed by a person who has been duly authorized to execute such applications by an appropriate Power of Attorney, Form 1534, bearing the corporate seal, or other appropriate corporate authorization, and evidence of such authority has been filed with the Assistant Regional Commissioner. However, this authorization does not extend to bonds or consents of surety given in support of applications nor to Form 1447, Application for Basic Permit to use Alcohol Free of Tax. Section 182.165(b) of the Industrial Alcohol Regulations requires the affixing of the corporate seal to applications for permits to use tax-free alcohol. Such documents must continue to be attested by the corporate seal, or if the corporation has no seal that fact should be stated in the application.

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26 CFR 182.165: Applications for permit, Form 1447.

The corporate seal must be affixed to applications for permits to use tax-free alcohol. See Rev. Rul. 59–25, above.

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26 CFR 182.860: General. Rev. Rul. 59–116

The Internal Revenue Service prescribed requirements to be followed by manufacturers of toilet preparations in stating names and addresses, multiple permit numbers, state abbreviations, and trade names on labels of toilet products.

Advice has been requested regarding the labeling requirements for toilet preparations.

Section 182.860 of the Regulations relating to Industrial Alcohol provides, among other things, for the bottling, rebottling, repackaging, etc., of products such as bay rum, lilac vegetal, hair lotions, dry shampoos, deodorant sprays, skin lotions, perfumes, toilet waters, and similar products made with specially denatured alcohol.

Section 182.861 provides in part that bottles and other containers of the products specified in section 182.860 of the regulations shall be labeled to show the name and address of the original manufacturer, or the basic permit number of such manufacturer and the name and address of the person by or for whom the bottles or other containers are filled.

The term "* * * address of the original manufacturer * * *," as used in section 182.861 of the regulations refers to the location of the

actual permit premises where the products are made and not to the address of the principal office of the company, if located elsewhere.

As a matter of label economy, multiple permit numbers and multiple addresses may be stated on labels of a toilet product manufactured by the same company at several plants. Such manufacturers may state the name and the address of one permittee and the permit numbers of the other permit premises at which the product is made so that the same label may be used by all plants, or they may show the name and all the addresses of the permit premises where the product is made. Multiple permit numbers and multiple addresses may not be used when products are to be labeled under names other than that of the original manufacturer.

In stating his permit number on the label, a manufacturer may substitute, for the abbreviation of the name of the state, the number assigned to such state below. For example, SDA–CONN–1234 may be stated on the label as SDA–07–1234. The numbers which may be substituted for the abbreviation of each state, territory, or possession are set out below:

01—Alabama
02—Alaska
03—Arizona
04—Arkansas
05—California
06—Colorado
07—Connecticut
08—Delaware
09—D.C.
10—Florida
11—Georgia
12—Hawaii
13—Idaho
14—Illinois
15—Indiana
16—Iowa
17—Kansas
18—Kentucky
19—Louisiana
20—Maine
21—Maryland
22—Massachusetts
23—Michigan
24—Minnesota
25—Mississippi
26—Missouri
27—Montana
28—Nebraska
29—Nevada
30—New Hampshire
31—New Jersey
32—New Mexico
33—New York
34—North Carolina
35—North Dakota
36—Ohio
37—Oklahoma
38—Oregon
39—Pennsylvania
40—Rhode Island
41—South Carolina
42—South Dakota
43—Tennessee
44—Texas
45—Utah
46—Vermont
47—Virginia
48—Washington
49—West Virginia
50—Wisconsin
51—Wyoming

* * *

52—Puerto Rico
53—Virgin Islands

Although the appropriate listed number may be substituted for the state abbreviation in stating permit numbers on labels, the abbreviation of the state name must be used on all forms and records where the permit number is required to be shown, and in all correspondence relating to specially denatured alcohol problems.

When a permittee operates the same premises under one or more trade names (as shown by his basic permit and by Form 1479–A, Formula for Preparation Made with Specially Denatured Alcohol),

each trade name may be stated on the label of his products as the name of the manufacturer. For example, if The Bestever Cosmetic Company, Richmond, Virginia, manufactures toilet products under the trade name Carroll Smith, Inc., at Richmond, Virginia, such products may be labeled "Carroll Smith, Inc., Richmond, Virginia," and in such case the permit number need not be shown. This of course applies only where the manufacturing address is stated.

Permit numbers must appear on labels used on the actual package (bottle, can, jar, etc.) containing the product, and not on disposable wrappings or cartons alone.

There is no objection to the use of auxiliary labels for permit numbers. These labels may be placed on the back or bottom of containers. Permit numbers may be shown on the backs of labels only if the containers and contents are so transparent that the number is plainly legible from the opposite side of the container. The permit number may be molded into the bottom of glass or plastic containers.

SECTION 5310.—WITHDRAWAL OF ALCOHOL FREE OF TAX

26 CFR 182.661: Hospitals, sanitariums, or clinics. Rev. Rul. 59–188

> A health clinic, operated for the benefit of members of a union, which furnishes medical care only to such members and their families, upon payment of a stipulated monthly fee, and which makes a charge for the drugs administered by it, is not a clinic operated for charity for purposes of using alcohol free of tax under the provisions of section 5310(c) of the Internal Revenue Code of 1954.

Advice has been requested whether a health clinic operated for the benefit of members of a union may secure tax-free alcohol for use in the treatment of its patients.

Section 5310(c) of the Internal Revenue Code of 1954 provides, in part, that alcohol may be withdrawn, free of tax, for the use of any clinic operated for charity and not for profit, including use in the compounding of bona fide medicines for treatment outside of such clinics of patients thereof, but not for sale.

A health clinic has been established for the care and treatment of members of a union. The facilities of such clinic are available only to members of the union and their families. Each active member must pay a stipulated fee each month entitling him to clinical care for himself and his family, and a charge is made for the drugs administered.

To be within the provisions of section 5310(c) of the Code relating to the use of alcohol, free of tax, in charitable clinics, the clinic must be operated not only without profit but entirely for charity. No charge of any nature may be exacted of or collected from patients of the clinic by reason of services rendered, and no fee may be charged for medicines compounded with tax-free alcohol except when such medicines are administered in the clinic and no profit is realized by the clinic from any patient as the result therof or in any manner. In this connection, see Revenue Ruling 55–664, C.B. 1955–2, 703.

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Since the members of the union contribute in part to the maintenance of the clinic, it does not qualify as a clinic operated for charity for purposes of using alcohol free of tax under the provisions of section 5310(c) of the Code.

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26 CFR 182.672(b): Procedure. Rev. Rul. 59–206

Section 182.672(b) of the Federal Industrial Alcohol Regulations provides that when the use of tax-free alcohol is discontinued, the permittee shall give notice thereof in writing, in triplicate, to the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax, and shall surrender to the Assistant Regional Commissioner his basic and withdrawal permits. Any tax-free alcohol remaining on hand at the time of such discontinuance may be returned to the industrial alcohol plant or bonded warehouse in accordance with section 182.664 of the Federal Industrial Alcohol Regulations; or, when authorized by the Assistant Regional Commissioner, the alcohol may be disposed of to another person holding a permit to use tax-free alcohol, upon the filing of a Consent of Surety, Form 1533, on the bond (if any) of the purchaser extending the terms of his bond to cover the transportation to, and use by him of the alcohol. *Held*, where small quantities of tax-free alcohol remain on hand at the tax-free users' premises at the time of discontinuance of operations and cannot be disposed of as provided in section 182.672(b) of the Federal Industrial Alcohol Regulations, the Assistant Regional Commissioner, may, at his discretion, authorize destruction thereof without Government supervision and without the addition of kerosene provided such destruction is effected by dumping the alcohol into a sewer or by other equally effective means. In such cases an affidavit or statement certifying to the destruction should be furnished by the permittee.

PART II.—DENATURATION

SECTION 5331.—WITHDRAWAL FROM BOND FREE OF TAX

26 CFR 182.845: General. Rev. Rul. 59–149

Form 1479–A, Formula for Preparation made with Specially Denatured Alcohol, is required to be filed by persons purchasing proprietary solvent or lacquer thinner only in those instances where they intend to use the product in the manufacture of preparations for sale.

Advice has been requested whether the user who purchases proprietary solvents and lacquer thinners must file Form 1479–A, Formula for Preparation made with Specially Denatured Alcohol.

Section 182.845(a) of the Industrial Alcohol Regulations permits producers of proprietary solvents and lacquer thinners to sell such articles to users for solvent or other manufacturing purposes satisfactory to the Director, Alcohol and Tobacco Tax Division, and to

dealers and other producers for resale. This section of the regulations prohibits the sale of proprietary solvents and lacquer thinners by the producers to users for the manufacture for sale of preparations which do not contain sufficient quantities of other materials to definitely change the composition and character of the proprietary solvents or lacquer thinners.

In order that the Internal Revenue Service may determine whether preparations manufactured for sale with the use of proprietary solvents or lacquer thinners contain sufficient quantities of other material so that such preparations are removed from the restriction as to sale contained in the regulations, persons who purchase proprietary solvents or lacquer thinners for such use are required to file Form 1479–A, Formula for Preparation made with Specially Denatured Alcohol, or a statement of process and formula, in quadruplicate with the Director, Alcohol and Tobacco Tax Division. This requirement is applicable without regard to the size of the containers of the finished products or the quantities of proprietary solvents or lacquer thinners purchased for use in the manufacture of such preparations.

Where more than one preparation is produced for sale with the use of substantially the same kind and quantities of other material, a representative product may be covered by Form 1479–A, Formula for Preparation made with Specially Denatured Alcohol, and submitted to the Director, Alcohol and Tobacco Tax Division, and additional similar products may be covered in a statement, in quadruplicate, in which reference must be made to the approved Form 1479–A, and filed with the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax in lieu of filing Form 1479–A for such additional products. If the proprietary solvents or lacquer thinners are to be used in the manufacture of surface coatings containing not less than two pounds of solid coating material per gallon, a statement, in quadruplicate, to that effect may be submitted to the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax, in lieu of submitting Form 1479–A to the Director, Alcohol and Tobacco Tax Division.

However, where the proprietary solvent or lacquer thinner is to be used by the purchaser solely for solvent or manufacturing purposes not involving the sale of preparations containing proprietary solvents or lacquer thinners, the submission of Form 1479–A, Formula for Preparation made with Specially Denatured Alcohol, is not required.

SUBCHAPTER F.—BONDED AND TAXPAID WINE PREMISES

PART II.—OPERATIONS

SECTION 5362.—REMOVALS OF WINE FROM BONDED PREMISES

26 CFR 230.201: Remnants.

For repackaging of remnant cases of distilled spirits for the purpose of making up cases of assorted spirits to be used as samples in taking orders in foreign markets. See Rev. Rul. 59–24, page 721.

26 CFR 235.785: Method of numbering.

For repackaging of remnant cases of distilled spirits for the purpose of making up cases of assorted spirits to be used as samples in taking orders in foreign markets. See Rev. Rul. 59–24, page 721.

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26 CFR 240.690: Withdrawal free of tax.

Withdrawal of wines free of tax for lading as suppliers on aircraft for serving to passengers during nonstop flights over the United States. See Rev. Rul. 59–21, page 715.

PART III.—CELLAR TREATMENT AND CLASSIFICATION OF WINE

SECTION 5382.—CELLAR TREATMENT OF NATURAL WINE

26 CFR 240.524: Finishing of wine. Rev. Rul. 59–150
(Also Section 240.530.)

The use of a slurry for clarifying wine which is prepared by adding one pound of Bentonite (Wyoming clay) to not more than two gallons of water, is considered as being consistent with good commercial practice under section 240.524 of the Federal Wine Regulations, provided the total quantity of water so used does not exceed one percent of the volume of wine treated. Winemakers may use Bentonite slurry in clarification of wines within these limitations, on receiving the approval of the Assistant Regional Commissioner, Alcohol and Tobacco Tax, after filing appropriate notice pursuant to section 240.530 of the regulations.

Revenue Ruling 58–461, C.B. 1958–2, 824, containing a list of materials approved for the treatment or finishing of wine, as amplified by Revenue Ruling 58–595, C.B. 1958–2, 1003, Revenue Ruling 58–596, C.B. 1958–2, 1003, and Revenue Ruling 59–105, page 729, is hereby further amplified

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(Also Sections 240.529, 240.530.) Rev. Rul. 59–189

The use of compressed air for the aeration of sherry wine during the baking process is considered as being consistent with good commercial practice within the limitations of section 240.524 and section 240.529 of the Federal Wine Regulations, provided it does not cause changes in the wine other than those occurring during the usual storage in wooden cooperage over a period of time. Winemakers, desiring to use compressed air in the process of baking sherry wine, many receive the approval of the Assistant Regional Commissioner, Alcohol and Tobacco Tax, by the filing of appropriate notice pursuant to section 240.530 of the regulations.

Revenue Ruling 58–461, C.B. 1958–2, 999, containing a list of materials approved for the treatment or finishing of wine, as amplified by Revenue Ruling 58–595, C.B. 1958–2, 1003, Revenue Ruling 58–596, C.B. 1958–2, 1003, Revenue Ruling 59–105, page 729 and Revenue Ruling 59–150, above is hereby further amplified.

(Also Sections 240.529, 240.530.) Rev. Rul. 59–207

The use of anion exchange resin Duolite A–6 in a continuous column process for the treatment of white wines will be considered as being consistent with good commercial practice within the limitations of sections 240.524 and section 240.529 of the Federal Wine Regulations, provided the fixed acids are not reduced below five grams per liter and the restrictions imposed by Revenue Ruling 58–461, C.B. 1958–2, 999, in connection with the use of other approved anion exchange resins are observed. Winemakers, desiring to use anion exchange resin Duolite A–6 in a continuous column process for reducing the natural acidity of white wine, may receive the approval of the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax, by the filing of appropriate notice pursuant to section 240.530 of the regulations.

Revenue Ruling 58–461, C.B. 1958–2, 999, containing a list of materials approved for the treatment or finishing of wine, as amplified by Revenue Ruling 58–595, C.B. 1958–2, 1003, Revenue Ruling 58–596, C.B. 1958–2, 1003, Revenue Ruling 59–105, below, Revenue Ruling 59–150, page 728, and Revenue Ruling 59–189, page 728, is hereby further amplified.

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26 CFR 240.529: Materials authorized for treatment of wine. Rev. Rul. 59–105

(Also Section 240.530.)

The use of sodium salt of sorbic acid and potassium salt of sorbic acid in quantities not exceeding one-tenth of one percent in the cellar treatment of wines is considered as being consistent with good commercial practice and may be approved for use by winemakers by Assistant Regional Commissioners, Alcohol and Tobacco Tax, pursuant to the provisions of section 240.530 of the Wine Regulations.

Revenue Ruling 58–461, C.B. 1958–2, 999, containing a list of materials which have been approved for the treatment of wine, is amplified to include the above material. For additional materials which have been approved for such treatment, see Revenue Ruling 58–595, C.B. 1958–2, 1003, and Revenue Ruling 58–596, C.B. 1958–2, 1003.

(Also Section 240.530.) Rev. Rul. 59–217

The use of glycine (amino acid) as a yeast food in the fermentation of wines in the proportion of not more than two pounds per 1,000 gallons of wine will be considered as being consistent with good commercial practice within the limitations of section 240.529 of the Federal Wine Regulations. Winemakers desiring to use glycine (amino acid) within the limitations set forth above in the fermentation of wines may receive the approval of the Assistant Regional Commissioner, Alcohol and Tobacco Tax, by filing of appropriate notice pursuant to section 240.530 of the regulations.

Revenue Ruling 58–461, C.B. 1958–2, 999, containing a list of materials approved for the treatment or finishing of wine, as amplified by Revenue Ruling 58–595, C.B. 1958–2, 1003, Revenue Ruling 58–

596, C.B. 1958–2, 1003, Revenue Ruling 59–105, page 729, Revenue Ruling 59–150, page 728, Revenue Ruling 59–189, page 728, and Revenue Ruling 59–207, page 729, is hereby further amplified.

Use of compressed air in the process of baking sherry wine. See Rev. Rul. 59–189, page 728.

The use of anion exchange resin Duolite A–6 in a continuous column process for treatment of white wines. See Rev. Rul. 59–207, page 729.

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26 CFR 240.530: Notice.

For the use of sodium salt of sorbic acid and potassium salt of sorbic acid in the cellar treatment of wine. See Rev. Rul. 59–105, page 729.

Use of Bentonite slurry prepared with water in the clarification of wine, see Rev. Rul. 59–150, page 728.

Use of compressed air in the process of baking sherry wine. See Rev. Rul. 59–189, page 728.

The use of anion exchange resin Duolite A–6 in a continuous column process for treatment of white wines. See Rev. Rul. 59–207, page 729.

Use of glycine (amino acid) as a yeast food in fermentation of wine. See Rev. Rul. 59–217, page 729.

SUBCHAPTER H.—MISCELLANEOUS PLANTS AND WAREHOUSES

PART II.—VOLATILE FRUIT-FLAVOR CONCENTRATE PLANTS

SECTION 5511.—ESTABLISHMENT AND OPERATION

26 CFR 198.176: Removal of concentrate. Rev. Rul. 59–53

Volatile fruit-flavor concentrate may not be produced at a high alcoholic content (in excess of fifteen percent alcohol by volume) and subsequently diluted with distilled water for removal under the provisions of section 198.176 of the Regulations relating to Fruit-Flavor Concentrates. Forms 27–G, Notice By Proprietor of Volatile Fruit-Flavor Concentrate Plant, will not be approved to cover the production of volatile fruit-flavor concentrates containing over six percent alcohol by volume.

Advice has been requested whether a manufacturer of volatile fruit-flavor concentrates may dilute a concentrate containing excessive alcohol with distilled water in an amount necessary to reduce the

alcoholic content to not more than fifteen percent, add thereto materials specified in section 198.176 of the Regulations relating to Fruit-Flavor Concentrates, and remove the product from the manufacturing premises. Advice has also been requested whether Form 27–G, Notice by Proprietor of Volatile Fruit-Flavor Concentrate Plant, may be approved covering the production of volatile fruit-flavor concentrate containing up to and including fifteen percent of alcohol by volume.

A volatile fruit-flavor concentrate manufacturer found that concentrates produced by him from various fruits varied considerably as to alcoholic content, depending upon the type of fruit from which produced. In some cases the alcoholic content was far in excess of the six percent specified in his notice, Form 27–G, and even in excess of the fifteen percent limitation specified in section 198.176 of the regulations. Permission was requested to dilute the concentrates with water for the purpose of removing them from the premises under the provisions of section 198.176 of the regulations; and to amend Form 27–G to permit the production of concentrates with an alcoholic content of up to and including fifteen percent.

Section 5511 of the Internal Revenue Code of 1954 conditions the manufacture of volatile fruit-flavor concentrate tax free, among other things, upon the concentrates and the mash or juice from which produced, containing no more alcohol than is reasonably unavoidable in manufacture; and upon such concentrate's being rendered unfit for use as a beverage before removal from the place of manufacture.

Section 198.176 of the regulations provides that concentrate which is fit for use as a beverage may not be removed from the place of manufacture, but provides that it may be used on the premises in the completion of the manufacture of any product, authorized in section 198.26 of the regulations to be made on the premises, which contains less than one-half of one percent of alcohol by volume. Section 198.176 further provides that where the alcoholic content of the concentrate exceeds six percent but not more than fifteen percent of alcohol by volume and it is desired to remove such concentrate from the premises, certain substances must be added in amounts as specified therein. Concentrates containing not more than six percent of alcohol by volume may be removed from the premises without being modified by the addition of any substance unless it is found that the concentrate is fit for use as a beverage.

The purpose of section 198.176 of the regulations relative to the disposition of volatile fruit-flavor concentrate containing over six percent but not more than fifteen percent of alcohol by volume, is to provide for the occasional unavoidable production of concentrates containing over six percent of alcohol by volume. The day to day production taxfree of concentrate containing over 6 percent alcohol by volume is not authorized since with proper care in handling the mash or juice, the development of more alcohol is reasonably avoidable. Manufacturers must exercise every precaution to keep the alcoholic content of the mash or juice as low as possible. Failure to do so may render the concentrate taxable and result in the concentrate manufacturer's being required to discontinue the production of volatile fruit-flavor concentrates free of tax.

Fruit-flavor concentrate containing excessive alcohol may not, therefore, be diluted with water, prior to the addition of substances authorized in section 198.176 of the regulations, for the purpose of reducing the alcoholic content of the concentrates so it will fall within the fifteen percent limitation specified in that section and thus be open to removal from the volatile fruit-flavor concentrate premises on the addition of the specified substances. Form 27–G will not be approved covering the production of a volatile fruit-flavor concentrate containing in excess of six percent alcohol by volume.

SUBTITLE F.—PROCEDURE AND ADMINISTRATION

CHAPTER 80.—GENERAL RULES

SUBCHAPTER A.—APPLICATION OF INTERNAL REVENUE LAWS

SECTION 7805.—RULES AND REGULATIONS

26 CFR 170.105: Execution and filing of claims.

For the procedure to be used in the execution and filing of claims covering the tax paid on distilled spirits, wines, rectified products, and beer lost, rendered unmarketable, or condemned by reason of "major disasters" occurring during the period January 1, 1955, to September 2, 1958. See Rev. Proc. 59–5, page 811.

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26 CFR 170.124: Execution and filing of claim.

For the procedure to be used in the execution and filing of claims covering the tax paid on distilled spirits, wines, rectified products, and beer lost, rendered unmarketable, or condemned by reason of "major disasters" occurring during the period September 3, 1958, to June 30. 1959. See Rev. Proc. 59–5, page 811.

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26 CFR 170.159: Execution and filing of claim.

For the establishment of a claims procedure with respect to beer lost, rendered unmarketable, or condemned by reason of the floods of 1951 or the hurricanes of 1954. See Rev. Proc. 59–5, page 811.

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26 CFR 182.630a–1: Vessels employed in the fisheries. T. D. 6346[1]
(Also 225.860a, 240.690a, 245.196.)

[1] 23 F. R. 10540.

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER E, PARTS 182, 225, 240, AND 245 INDUSTRIAL ALCOHOL, WAREHOUSING OF DISTILLED SPIRITS, WINE AND BEER

Supplies on fishing vessels

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

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

The purpose of this Treasury Decision is to conform 26 CFR Parts 182, 225, 240, and 245 to the provisions of Customs Regulations (19 CFR 10.59 (e)), as amended by Treasury Decision 54541 (23 F. R. 1696), which relate to the time within which an accounting must be made for conditionally free withdrawals of distilled spirits, wines, and beer for supplies on fishing vessels. Therefore, 26 CFR Parts 182, 225, 240, and 245 are amended, as follows:

PARAGRAPH 1. 26 CFR 182.630a–1, 225.860a, 240.690a, and 245.196, are amended by striking from the fifth sentence of each section the phrase "(excluding any period during which the customhouse is not open for general customs business)", and inserting in lieu thereof the phrase "(excluding Saturday, Sunday, and holidays)".

Since the purpose of this Treasury Decision is merely to conform Internal Revenue Service regulations with Customs Regulations, 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. Accordingly, this Treasury Decision shall be effective on the date of its publication in the Federal Register.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).)

O. GORDON DELK,
Acting Commissioner of Internal Revenue.

Approved December 23, 1958.

NELSON P. ROSE,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on December 30, 1958, 8:51 a. m., and published in the issue of the Federal Register for December 31, 1958, 23 F. R. 10540.)

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26 CFR 225.860a: Vessels employed in the fisheries.

Withdrawal of distilled spirits for use as supplies on fishing vessels. See T.D. 6346, page 732.

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26 CFR 240.690a: Vessels employed in the fisheries.

Withdrawal of wines for use as supplies on fishing vessels. See T.D. 6346, page 732.

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26 CFR 245.196: Vessels employed in the fisheries.

Withdrawal of beer for use as supplies on fishing vessels. See T. D. 6346, page 732.

26 CFR 252.3a: Vessels employed in the fisheries. T. D. 6345[1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER E, PART 252.—DRAWBACK ON LIQUORS EXPORTED

Supplies on fishing vessels

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

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

The purpose of this Treasury Decision is to conform 26 CFR Part 252 to the provisions of Customs Regulations (19 CFR 10.59(e)), as amended by Treasury Decision 54541 (23 F.R. 1696), which relate to the time within which an accounting must be made for conditionally free withdrawals of distilled spirits, wines, and beer for supplies on fishing vessels. Therefore, 26 CFR Part 252 is amended, as follows:

PARAGRAPH 1. The fifth sentence of 26 CFR 252.3a is amended by striking the phrase "(excluding any period during which the customhouse is not open for general customs business)"; and inserting in lieu thereof the phrase "(excluding Saturday, Sunday, and holidays)".

Since the purpose of this Treasury Decision is merely to conform Internal Revenue Service regulations with Customs Regulations, 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. Accordingly, this Treasury Decision shall be effective on the date of its publication in the Federal Register.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).)

O. GORDON DELK,
Acting Commissioner of Internal Revenue.

RALPH KELLY,
Commissioner of Customs.

Approved December 22, 1958.

NELSON P. ROSE,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on December 30, 1958 8:51 a. m., and published in the issue of the Federal Register for December 31, 1958, 23 F. R. 10540.)

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26 CFR 252.92: Distilled spirits and wines to be used as supplies on aircraft.

Withdrawal of domestic liquors, wines, and beer, with benefit of drawback for lading as supplies on aircraft for serving to passengers during nonstop flights over the United States. See Rev. Rul. 59-21, page 715.

[1] 23 F.R. 10540.

SUBPART C.—RULINGS AND DECISIONS UNDER THE FEDERAL ALCOHOL ADMINISTRATION ACT

Rulings and decisions published in Part III, Subpart C, of the Internal Revenue Bulletin are based on the application of provisions of the Federal Alcohol Administration Act.

SECTION 5(e).—UNFAIR COMPETITION AND UNLAWFUL PRACTICES: LABELING

27 CFR 4.21: The standards of identity. Rev. Rul. 59–218

Wine made from the Olallie variety of blackberry may be labeled as "Blackberry Wine" or "Blackberry Wine of the Olallie Variety." Revenue Ruling 55–553, C.B. 1955–2, 733, amplied.

Advice has been requested whether wine made from the Olallie variety of blackberry may be labeled as "Blackberry Wine."

Section 4.21(e), Class 5, of the Federal Labeling and Advertising of Wine Regulations, issued pursuant to the Federal Alcohol Administration Act, establishes the standard of identity for fruit wine and provides, in part, that "berry wine" is fruit wine produced from berries.

Revenue Ruling 55–553, C.B. 1955–2, 733, provides that wine made from a variety of blackberry known as the Olallie berry may be labeled as "Blackberry Wine of the Olallie variety."

The Federal-State Market News Service of the United States Department of Agriculture and the California Department of Agriculture, and the Agricultural Marketing Service of the United States Department of Agriculture recognize the Olallie as a variety of blackberry, whereas they do not so recognize the Boysenberry, Loganberry, or Youngberry. Moreover price lists of California canners and packers of berries list the Olallie under the general category of blackberries, in the same manner as the "Cascade," "Evergreen," and "Himalaya" are listed; whereas Boysenberries, Loganberries, and Youngberries are listed separately.

As early as 1956, consignor's invoices and consignee's purchase orders described the berries as the Olallie variety of California Blackberries or simply as Blackberries. Also, Olallies have been packaged under labels designating them as "Blackberries" or "California Blackberries" for the past several years.

Accordingly, in view of this history of the Olallie variety being known to the trade and consumers as a "Blackberry" or "California Blackberry," wine made from the Olallie variety may be designated as "Blackberry Wine" or "Blackberry Wine of the Olallie Variety."

Revenue Ruling 55–553, *supra*, is amplified.

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27 CFR 4.39: Prohibited practices.

Filing of certificates of origin and identity and certificates of vintage dates for imported wines. See Rev. Proc. 59–9, page 818.

27 CFR 4.45 : Certificates of origin and identity.

Filing of certificates of origin and identity and certificates of vintage dates for imported wines. See Rev. Proc. 59–9, page 818.

Imported French Table Wines accompanied by certificates of origin and identity. See Rev. Proc. 59–12, page 821.

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27 CFR 5.21 : The standards of identity.

For the production of vodka from alcohol produced at an industrial alcohol plant by rectifiers. See Rev. Rul. 59–23, page 718.

PART IV

TAX CONVENTIONS

UNITED STATES-FEDERAL REPUBLIC OF GERMANY INCOME TAX CONVENTION

(Also Income Tax Conventions between the United States and Austria, Belgium, Canada, Denmark, Finland, France, Greece, Honduras, Italy, Japan, Netherlands, Norway, Sweden, Switzerland, the Union of South Africa, and the United Kingdom.)

(See also Part I, Sections 901, 904; 26 CFR 1.901–1, 1.904–1.)

Rev. Rul. 59–56

Even though the income tax conventions to which the United States is a party contain a provision that income from real property shall be subjected to tax only in the country in which the property is situated, a citizen of the United States or an alien resident thereof is, by reason of a saving clause in the convention, liable for United States income tax on the income from such property. In order substantially to avoid double taxation in this type of case, a credit against United States income tax is allowable as provided in section 901 of the Internal Revenue Code of 1954, subject to the limitation of section 904.

Advice has been requested with respect to the effect of a "saving clause" as found in most of the tax conventions to which the United States is a party.

For purposes of illustration, the question for consideration is whether income derived from the cutting and sale of timber in Germany by a United States citizen residing in the United States is subject only to German tax by reason of Article IX of the Income Tax Convention between the United States and the Federal Republic of Germany, C.B. 1955–1, 635.

Article IX of the Income Tax Convention between the United States and the Federal Republic of Germany, *supra*, reads, in part, as follows:

(1) Income from real property situated in one of the contracting States (including gains derived from the sale or exchange of such property and interest on debts secured by mortgages on farms, timberlands, or real property used wholly or partly for housing purposes * * * derived by a resident or corporation or other entity or company of the other contracting State, shall be taxable only by the former State.

* * * * * * *

(2) (b) A resident or corporation or other entity of the United States deriving from sources in the Federal Republic any item of income coming within the scope of paragraph (1) of this Article, may, for any taxable year, elect to be

subject to tax by the Federal Republic on a net income basis as if such resident or corporation or other entity were engaged in trade or business within the Federal Republic through a permanent establishment therein.

Article XV of the convention reads, in part, as follows:

(1) It is agreed that double taxation shall be avoided in the following manner:
(a) The United States, in determining its taxes specified in Article I of this convention in the case of its citizens, residents or corporations, may, regardless of any other provision of this convention, include in the basis upon which such taxes are imposed all items of income taxable under the revenue laws of the United States as if this Convention had not come into effect. * * *

* * * * * * *

(2) The provisions of this Article shall not disturb the exemptions from tax of the United States * * * granted by Article XI(1) of the present convention.

Provisions similar to those in Article XV(1)(a) are contained in the tax conventions between the United States and Austria, C.B. 1957–2, 985; Belgium, T.D. 6160, C.B. 1956–1, 815; Canada, C.B. 1951–1, 624; Denmark, T.D. 5777, C.B. 1950–1, 76; Finland, T.D. 6202, C.B. 1956–2, 1067; France, T.D. 5499, C.B. 1946–1, 134; Greece, effective as of January 1, 1953; Honduras, C.B. 1957–2, 1033; Italy, C.B. 1956–2, 1096; Japan, C.B. 1955–1, 658; Netherlands, T.D. 5778, C.B. 1950–1, 92; Norway, T.D. 6150, C.B. 1955–2, 793; Sweden, T.D. 4975, C.B. 1940–2, 43; Switzerland, T.D. 6149, C.B. 1955–2, 814; and the Union of South Africa, C.B. 1954–2, 651. Although the convention with the United Kingdom of Great Britain and Northern Ireland contains no specific provision such as Article XV(1)(a) of the German convention, other provisions of the United Kingdom convention are interpreted as having the same effect as Article XV(1)(a) of the German convention. T.D. 5569, C.B. 1947–2, 100, regulations section 7.514.

The meaning of Article XV(1)(a) of the German convention and of similar provisions in other income tax conventions is that the United States income tax liability of United States citizens, residents, or corporations is determined "as if this Convention had not come into effect." The purpose of this "saving clause" is to make it plain that the United States reserves the right, in the case of its citizens, residents, or corporations, to include in its tax base all items of income taxable under its revenue laws. However, this right is made subject, in certain of the conventions, to an exception such as is provided in Article XV(2) of the convention with the Federal Republic of Germany.

One of the fundamental principles of interpretation of a statute or treaty is that particular clauses and phrases should not be studied as detached expressions, but that every part of a treaty must be considered in determining the meaning of any of its parts. A treaty must be considered as a whole, its parts making it an integral whole. Accordingly, Article IX of the convention with Germany must be read in the light of Article XV.

It is apparent from the foregoing that the income derived and/or loss sustained from the cutting and sale of timber in Germany by a citizen of the United States, irrespective of his place of residence, or by a resident of the United States, is treated for United States income tax purposes in the same manner as if the convention had not come into effect. The status for United States tax purposes of such income or loss would not be affected by the taxpayer's election under Article

IX(2)(b) of the Convention, *supra*, to be subject to tax by the Federal Republic of Germany on a net income basis.

Subject to the provisions of section 901 and the limitation provided in section 904 of the Code, a citizen or an alien resident of the United States is entitled to a credit against his United States income tax for income taxes paid or accrued during the taxable year to any foreign country provided that he does not use the tax table or claim the standard deduction in computing his United States income tax liability.

UNITED STATES-AUSTRIA INCOME TAX CONVENTION

Effect of the "saving clause." See Rev. Rul. 59–56, page 737.

UNITED STATES-BELGIUM INCOME TAX CONVENTION

T.D. 6160, C.B. 1956–1, 815; Section 504.116: Credit against United States tax for Belgian tax.

Effect of the "saving clause." See Rev. Rul. 59–56, page 737.

UNITED STATES-CANADA INCOME TAX CONVENTION

Effect of the "saving clause." See Rev. Rul. 59–56, page 737.

UNITED STATES-FRANCE INCOME TAX CONVENTION

T.D. 5499, C.B. 1946–1, 134; Section 7.423: Credit against United States tax liability for income tax paid to France.

Effect of the "saving clause." See Rev. Rul. 59–56, page 737.

UNITED STATES-FINLAND INCOME TAX CONVENTION

T.D. 6202, C.B. 1956–2, 1967; Section 511.-118: Credit against United States tax for Finnish tax.

Effect of the "saving clause." See Rev. Rul. 59–56, page 737.

UNITED STATES-GREECE INCOME TAX CONVENTION

Effect of the "saving clause." See Rev. Rul. 59–56, page 737.

UNITED STATES-HONDURAS INCOME TAX CONVENTION

Effect of the "saving clause." See Rev. Rul. 59–56, page 737.

UNITED STATES-ITALY INCOME TAX CONVENTION

Effect of the "saving clause." See Rev. Rul. 59–56, page 737.

UNITED STATES-JAPAN INCOME TAX CONVENTION

Effect of the "saving clause." See Rev. Rul. 59–56, page 737.

UNITED STATES-KINGDOM OF DENMARK INCOME TAX CONVENTION

T.D. 5777, C.B. 1950–1, 76;
Section 7.964: Credit against United States tax liability for Danish tax.

Effect of the "saving clause." See Rev. Rul. 59–56, page 737.

UNITED STATES-KINGDOM OF NORWAY INCOME TAX CONVENTION

T.D. 6150, C.B. 1955–2, 793;
Section 510.116: Credit against United States tax for Norwegian tax.

Effect of the "saving clause." See Rev. Rul. 59–56, page 737.

UNITED STATES-NETHERLANDS INCOME TAX CONVENTION

T.D. 5778, C.B. 1950–1, 92;
Section 7.865: Credit against United States tax liability for income tax paid to the Netherlands.

Effect of the "saving clause." See Rev. Rul. 59–56, page 737.

UNITED STATES-SWEDEN INCOME TAX CONVENTION

T.D. 4975, C.B. 1940–2, 43; Section 25.14:
Scope of Article XIV.

Effect of the "saving clause." See Rev. Rul. 59–56, page 737.

UNITED STATES-SWITZERLAND INCOME TAX CONVENTION

T.D. 6149, C.B. 1955–2, 814; Section 509.118: Credit against United States tax for Swiss tax.

Effect of the "saving clause." See Rev. Rul. 59–56, page 737.

UNITED STATES-UNION OF SOUTH AFRICA TAX CONVENTION

Effect of the "saving clause." See Rev. Rul. 59–56, page 737.

UNITED STATES-UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND INCOME TAX CONVENTION

T.D. 5569, C.B. 1947–2, 100; Section 7.514: Scope of the Convention.

Effect of the "saving clause." See Rev. Rul. 59–56, page 737.

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ADMINISTRATIVE AND MISCELLANEOUS MATTERS

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PART V

ADMINISTRATIVE AND MISCELLANEOUS MATTERS

TREASURY DEPARTMENT CIRCULAR NO. 230 (REVISED)[1]

Rules governing the practice of attorneys and agents before the Internal Revenue Service.

TREASURY DEPARTMENT,
Washington 25, D.C.,

November 26, 1958

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

On October 4, 1958, notice of proposed rule making regarding the regulations under Parts 10, 12, 13, and 14 of Title 31 of the Code of Federal Regulations, as consolidated and reconstituted as Part 10 of such title (comprising Treasury Department Circular No. 230), was published in the Federal Register (23 F.R. 7702). On October 31, 1958, notice of proposed rule making regarding an amendment adding a new subparagraph (7) to § 10.7(a) of such proposed regulations was published in the Federal Register (23 F.R. 8427). After consideration of all such relevant matter as was presented by interested parties regarding the rules proposed, the following regulations are hereby adopted:

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[1] This publication consolidates the revision of Department Circular No. 230, dated November 26, 1958, appearing in 23 F.R. 9261, dated November 29, 1958, and the amendment, dated January 29, 1959, appearing in 24 F.R. 1157 dated February 14, 1959, which adds subparagraph 7 to section 10.7(a).

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AUTHORITY: § 10.0 to 10.94 issued under sec. 3, Act of July 7, 1884, 23 Stat. 258, 5 U.S.C. 261; R.S. 161, 5 U.S.C. 22; secs. 2 to 12, 60 Stat. 237 et seq. (5 U.S.C. 1001 to 1011); Reorganization Plan No. 26 of 1950, 64 Stat. 1280, 15 F.R. 4935. Statutes giving special authority are cited to text in parenthesis.

§ 10.0 SCOPE OF PART.—This part contains rules governing the recognition of attorneys, agents and other persons representing clients before the Internal Revenue Service. Customhouse brokers are licensed by the Commissioner of Customs under other regulations. See 19 CFR Part 31. Subpart A of this part sets forth rules relating to authority to practice before the Internal Revenue Service. Sub-

part B prescribes the duties and restrictions relating to enrolled practitioners. Subpart C contains rules relating to disciplinary proceedings. Subpart D contains general provisions, including provisions relating to availability of official records.

SUBPART A.—RULES GOVERNING AUTHORITY TO PRACTICE

§ 10.1 DIRECTOR OF PRACTICE.—(a) *Establishment of office.*—There is established in the Internal Revenue Service the office of Director of Practice. The Director of Practice shall be appointed by the Secretary of the Treasury and shall be under the direction and supervision of the Secretary of the Treasury.

(b) *Duties.*—The Director of Practice shall receive and act upon applications for enrollment to practice as attorneys or agents before the Internal Revenue Service; institute and provide for the conduct of disciplinary proceedings relating to enrolled attorneys and agents; make inquiries with respect to matters under his jurisdiction; and perform such other duties as are necessary or appropriate to carry out the provisions of this part or as are prescribed by the Secretary of the Treasury. Decisions of the Director of Practice in individual cases relating to enrollment, disbarment, or disciplinary measures shall not be subject to change by the Commissioner of Internal Revenue.

(c) *Acting Director.*—The Secretary of the Treasury will designate an officer or employee of the Treasury Department to act as Director of Practice in the event of the absence of the Director or of a vacancy in that office.

§ 10.2 REGULATION OF PRACTICE.—(a) *In general.*—Except as provided by § 10.7 or other sections of this part no person shall be recognized or permitted to practice before the Internal Revenue Service unless he is enrolled as an attorney or agent pursuant to this part. An enrollment card issued pursuant to the regulations superseded by this part will be recognized to evidence enrollment to practice pursuant to the regulations in this part and subject to the limitations specified by that card.

(b) *Definition of Practice.*—Practice before the Internal Revenue Service comprehends all matters connected with presentations to the Internal Revenue Service or any of its officers or employees relating to a client's rights, privileges or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include the preparation and filing of necessary documents, correspondence with and communications to the Internal Revenue Service, and the representation of a client at conferences, hearings, and meetings. Neither the preparation of tax returns nor the furnishing of information at the request of the Internal Revenue Service or any of its officers or employees is considered practice before the Service, and enrollment is not necessary for either of such activities.

§ 10.3 ELIGIBILITY FOR ENROLLMENT.—(a) *In general.*—Persons applying for enrollment to practice before the Internal Revenue Service must show to the satisfaction of the Director of Practice that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render valuable service to clients, and

otherwise competent to advise and assist clients in the presentation of their interests to the Internal Revenue Service. Applicants for enrollment have the burden of establishing that they possess a good character and reputation, an adequate education, knowledge and understanding of the laws and regulations relating to tax matters and other subjects administered by the Internal Revenue Service, and a knowledge of the rules governing practice before the Internal Revenue Service.

(b) *Character and reputation.*—Good character and good reputation are not identical requirements. The former is determined by the applicant's actual qualities; the latter depends upon the opinion entertained of the applicant by those who have had the opportunity of knowing him in the community in which he resides or in which he practices his profession. It follows that evidence of any act or omission which tends to establish lack of integrity or untrustworthiness or other qualities reprehensible in a professional man, is material as bearing upon the character of the applicant, notwithstanding there is clear proof that his reputation is good.

(c) *Citizens; natural persons.*—Enrollment to practice may be granted only to natural persons who are citizens of the United States and who are over the age of 21 years.

(d) *Attorneys and certified public accountants.*—If found to possess the qualifications provided for in this part, the Director of Practice may grant enrollment to practice before the Internal Revenue Service to persons of the following classes:

(1) Any attorney at law who is a member in good standing of the bar of the highest court of a State, Territory, or possession of the United States, or of the courts of the District of Columbia, and who is lawfully engaged in the active practice of his profession;

(2) Any certified public accountant who has duly qualified to practice as a certified public accountant in a State, Territory, possession of the United States, or in the District of Columbia, and who is lawfully engaged in the active practice of his profession.

(e) *Persons not attorneys or certified public accountants.*—With respect to applicants other than attorneys or certified public accountants, the Director of Practice, in his discretion, may grant special enrollment to practice if the applicant demonstrates special competence by written examination or as provided in paragraph (f). Persons interested in obtaining special enrollment pursuant to paragraph (e) should apply to the Director of Practice for information as to requirements.

(f) *Special enrollment for former Internal Revenue Service employees.*—Former employees of the Internal Revenue Service may be granted special enrollment by the Director of Practice under paragraph (e), in cases where their service and technical experience in the Internal Revenue Service has qualified them for such enrollment, as follows:

(1) Application for special enrollment on account of former employment in the Internal Revenue Service shall be made to the Director of Practice. Each applicant will be supplied a form by the Director, which shall indicate the information required respecting the applicant's qualifications. In addition to the applicant's name, address, citizenship, age, educational experience, etc., such information

shall specifically include a detailed account of the applicant's employment in the Internal Revenue Service, which account shall show (1) positions held, (2) date of each appointment and termination thereof, (3) nature of services rendered in each position, with particular reference to the degree of technical experience involved, and (4) name of supervisor in such positions, together with such other information regarding the experience and training of the applicant as may be relevant.

(2) Upon receipt of each such application, it shall be transmitted to the appropriate officer of the Internal Revenue Service with the request that a detailed report of the nature and rating of the applicant's services in the Internal Revenue Service, accompanied by the recommendation of the superior officer in the particular unit or division of the Internal Revenue Service that such employment does or does not qualify the applicant technically and otherwise for the desired authorization, be furnished to the Director of Practice. (Such report shall be requested in addition to the usual reports requested in cases of application for enrollment.)

(3) In examining the qualifications of an applicant for special enrollment on account of employment in the Internal Revenue Service, the Director of Practice will be governed by the following policies:

(*i*) Special enrollment on account of such employment may be of the same scope as enrollment granted pursuant to paragraph (d)(2) or the scope may be limited to permit the presentation of matters only of the particular class or only before the particular unit or division of the Internal Revenue Service for which his former employment in the Internal Revenue Service has qualified the applicant.

(*ii*) In the case of employees separated from employment in the Internal Revenue Service, application for special enrollment on account of such employment must be made within 3 years after the termination thereof.

(*iii*) It shall be requisite for special enrollment on account of such employment for practice before the Internal Revenue Service that the applicant shall have had a minimum of 7 years continuous employment in the Internal Revenue Service during at least 5 years of which service he shall have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations thereunder relating to income, estate, gift, employment, or excise taxes.

(*iv*) For the purposes of subdivision (*iii*), an aggregate of 10 or more years of employment, at least three of which occurred within the 5 years preceding the date of application, shall be deemed the equivalent of 7 years continuous employment.

§ 10.4 Ineligibility for Enrollment.—(a) *In general.*—No person shall be eligible for enrollment to practice before the Internal Revenue Service if he fails in any particular to show to the satisfaction of the Director of Practice that he is possessed of the qualities contemplated by section 3 of the Act of July 7, 1884, 23 Stat. 258 (5 U.S.C. 261) and the regulations contained in this part, or if such practice by him would be inconsistent with any of the laws of the United States.

(b) *Particular grounds.*—Among the causes sufficient to justify denial of an application for enrollment are failure to show good character or reputation; any conduct or practices which would constitute a violation of any of the provisions of this part if the applicant were enrolled; any conduct which would be a ground for disbarment or suspension from practice pursuant to this part; and any conduct which would be deemed grossly improper in commercial transactions by accepted standards.

(c) *Government officers and employees; judges.*—Officers and employees of the United States or of the District of Columbia, Members of Congress or a Delegate or Resident Commissioner thereto, and judges of the Tax Court or any courts of record, unless such judges are permitted by law to practice their profession, shall be ineligible for enrollment. Officers and employees of any State, or subdivision thereof, whose duties require them to pass upon, investigate, or deal with tax matters of such State or subdivision, shall be ineligible for enrollment, provided such employment may disclose facts or information applicable to Federal tax matters.

(d) *Full-time employees of corporations and others.*—Except for employees of individuals or partnerships engaged in the practice of law or accounting, persons employed by individuals, partnerships, corporations or other organizations on a full-time basis, and who do not maintain offices apart from their employment, with services available to the general public, shall not be eligible for enrollment.

(e) *Violation by Internal Revenue Service employee of tenure agreement.*—Application for enrollment may be denied in any case in which it appears that the applicant without reasonable cause has terminated his employment with the Internal Revenue Service in violation of an obligation assumed as a condition of employment to remain in the service of the Internal Revenue Service for a specified period or for a reasonable time.

(f) *Oath of allegiance.*—No person shall be enrolled to practice if he is unable for any reason to take the oath of allegiance, and to support the Constitution of the United States, as required of persons prosecuting claims against the United States by section 3478 of the Revised Statutes (31 U.S.C. 204).

§ 10.5 Application for Enrollment.—(a) *Form; fee.*—An applicant for enrollment shall file with the Director of Practice an application on Form 23, properly executed under oath or affirmation. Such application shall be accompanied by a check or money order in the amount of $25.00, payable to the Treasurer of the United States, which amount shall constitute a fee which shall be charged to each applicant for enrollment. The fee shall be retained by the United States whether or not the applicant is granted enrollment. Attorneys at law shall apply for enrollment as attorneys, and all other applicants shall apply for enrollment as agents, except that an applicant who is qualified to enroll either as an attorney at law or as an agent may elect whether to apply as attorney or agent.

(b) *Additional information; examination.*—The Director of Practice, as a condition to consideration of an application for enrollment, may require the applicant to file additional information and to submit to any written or oral examination under oath or otherwise.

Upon request of the Director of Practice an applicant shall endeavor to stipulate with an officer or employee of the Internal Revenue Service facts pertaining to the application to the fullest extent to which either complete or qualified agreement can be reached. The Director shall grant a hearing on an application at the applicant's written request.

(c) *Temporary recognition.*—Upon receipt of a properly executed application, the Director of Practice may grant the applicant temporary recognition to practice pending investigation of the applicant and a determination as to whether enrollment to practice should be granted. Such temporary recognition shall not be granted if the application is not regular on its face; if the information stated therein, if true, is not sufficient to warrant enrollment to practice; or if there is any information before the Director of Practice which indicates that the statements in the application are untrue or that the applicant is not of good character or reputation. Issuance of temporary recognition shall not constitute enrollment to practice or a finding of eligibility for enrollment, and the temporary recognition may be withdrawn at any time by the Director of Practice.

(d) *Appeal from denial of application.*—Decisions of the Director of Practice denying enrollment to practice before the Internal Revenue Service may be appealed to the Secretary of the Treasury. (Sec. 501, 65 Stat. 290; 5 U.S.C. 140.)

§ 10.6 ENROLLMENT.—(a) *Roster.*—The Director of Practice shall maintain rosters of all attorneys and agents who are enrolled to practice, of all attorneys and agents who have been disbarred or suspended from practice before the Internal Revenue Service, and of persons whose applications for enrollment have been denied.

(b) *Enrollment cards.*—The Director of Practice shall issue an enrollment card to each attorney or agent who is enrolled to practice before the Internal Revenue Service. Unless advised to the contrary by the Director of Practice, any officer or employee of the Internal Revenue Service may consider the holder of an unexpired enrollment card to be duly authorized to practice before the Internal Revenue Service.

(c) *Period of enrollment card.*—Every enrollment card shall by its terms become void five years after the date of its issuance. A holder of a void card is not entitled to practice before the Internal Revenue Service.

(d) *Application for renewal.*—Application for renewal of enrollment card may be made at any time during a twenty-four month period commencing twelve months before and ending twelve months after the expiration of an enrollment card. Such application shall be filed on Form 23A at such place or places as may be designated by the Director of Practice and there shall be annexed thereto the enrollment card last outstanding. Copies of Form 23A may be obtained from the Director of Practice and at the offices of District Directors of Internal Revenue. Each application shall be accompanied by a check or money order in the amount of $5.00, payable to the Treasurer of the United States, which amount shall constitute a fee which shall be charged each person who applies for issuance of a new enrollment card pursuant to the provisions of this paragraph.

(e) *Expiration of enrollment.*—Unless application for a new enrollment card is filed with the Director of Practice within twelve months after the expiration date of an enrollment card, the enrollment of the holder of the card shall automatically terminate, his name shall be stricken from the roster of enrollees, and he shall not be authorized to practice before the Internal Revenue Service except by filing a new application for enrollment, as provided by § 10.5, and obtaining authority to practice from the Director of Practice. (Sec. 501, 65 Stat. 290; 5 U.S.C. 140.)

§ 10.7 PRACTICE WITHOUT ENROLLMENT.—(a) *In general.*—Individuals may appear on their own behalf, and individuals who are qualified, of good character and reputation, and are not under disbarment or suspension from practice before the Internal Revenue Service or from practice of their profession by any other authority, may be permitted to appear without enrollment, provided they present satisfactory identification, in the following classes of cases:

(1) An individual may represent another individual who is his regular full-time employer, may represent a partnership of which he is a member or a regular full-time employee, or may represent without compensation a member of his immediate family.

(2) Corporations (including a parent, subsidiary or affiliated corporation), trusts, estates, associations, or organized groups may be represented by a bona fide officer or regular full-time employee.

(3) Trusts, receiverships, guardianships, or estates may be represented by their trustees, receivers, guardians, administrators or executors or their regular full-time employees.

(4) Any governmental unit, agency, or authority may be represented by an officer or regular employee in the course of his official duties.

(5) Unenrolled persons may participate in rule making as provided by section 4 of the Administrative Procedure Act, 60 Stat. 238 (5 U.S.C. 1003).

(6) Enrollment is not required for representation outside of the United States before personnel of the International Operations Division of the Internal Revenue Service.

(7) [2] Any person who signs a return, other than an estate or gift tax return or an income tax or excess profits tax return of a corporation, as having prepared it for the taxpayer may appear, without enrollment, as the taxpayer's representative, with or without the taxpayer, before revenue agents and examining officers of the Audit Division in the offices of District Directors (but not at the Informal Conference in a District Director's office) with respect to the tax liability of the taxpayer for the taxable year or period covered by that return; provided that any person who prepared the income tax return of a corporation and the individual returns of any of the corporate officers for the same taxable year or period, or any part thereof, covered by such corporate return, may also so appear as the corporation's representative. Proper authorization from the taxpayer will be required. Any person who prepared a return with respect to which the instruc-

[2] Subparagraph (7) of section 10.7(a), approved by Acting Secretary Fred C. Scribner, Jr., on January 29, 1959, will become effective on March 15, 1959. For standards of conduct governing practice under this subparagraph, see Rev. Proc. 59–3, page 801, this Bulletin.

tions or regulations do not require that it be signed by the person who prepared the return for the taxpayer may likewise appear as the taxpayer's representative when properly authorized. Unless the taxpayer is present, such persons must present satisfactory identification. All such persons will be subject to such rules regarding standards of conduct, the extent of their authority, and other matters as the Director of Practice, with approval of the Commissioner of Internal Revenue, shall prescribe. Such persons will be permitted to represent taxpayers within those limits without enrollment.

(b) *Special appearance.*—The Director of Practice, subject to such conditions as he deems appropriate, may authorize any person to represent another without enrollment for the purpose of a particular matter.

§ 10.8 CUSTOMHOUSE BROKERS.—Nothing contained in the regulations in this part shall be deemed to affect or limit the right of a customhouse broker, licensed as such by the Commissioner of Customs in accordance with the regulations prescribed therefor, in any customs district in which he is so licensed, at the office of the District Director of Internal Revenue or before the National Office of the Internal Revenue Service, to act as a representative in respect to any matters relating specifically to the importation or exportation of merchandise under the customs or internal revenue laws, for any person for whom he has acted as a customhouse broker.

SUBPART B.—DUTIES AND RESTRICTIONS RELATING TO ENROLLED ATTORNEYS AND AGENTS

§ 10.20 LOSS OF STATUS.—Loss of status to practice as an attorney, as a certified public accountant, or as a public accountant shall constitute good cause for disbarment.

§ 10.21 ETHICS. — (a) *Professional ethics.* — Enrolled attorneys shall conduct themselves and their practice before the Internal Revenue Service in accordance with recognized ethical standards applicable to attorneys generally. Enrolled agents who are certified public accountants or public accountants shall conduct themselves and their practice before the Internal Revenue Service in accordance with recognized ethical standards applicable to certified public accountants or public accountants generally.

(b) *Observance of regulations.*—Enrolled attorneys and agents shall conduct themselves and their practice before the Internal Revenue Service in such manner as not to commit any act of disreputable conduct referred to in § 10.51 or to violate any other provisions of this part.

§ 10.22 INFORMATION TO BE FURNISHED.—(a) *To the Internal Revenue Service generally.*—No enrolled attorney or agent shall neglect or refuse to submit records or information in any matter before the Internal Revenue Service, upon proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, unless the information or testimony is privileged or such attorney or agent has reasonable grounds to believe and does believe that the said demand is of doubtful legality; and no such attorney or agent shall interfere, or attempt to interfere, with any proper and lawful efforts by the Internal Revenue Service or its officers or employees to obtain information relative to any matter before the Internal Revenue Service.

(b) *To Director of Practice.*—It shall be the duty of an enrolled attorney or agent, when requested by the Director of Practice, to provide the Director with any information he may have concerning violation of the regulations in this part by any person, and to testify thereto in any proceeding instituted under this part for the disbarment or suspension of an enrolled attorney or agent, unless such information is privileged.

§ 10.23 KNOWLEDGE OF CLIENT'S OMISSION.—Each enrolled attorney or agent who knows that a client has not complied with the law, or has made an error in or omission from any return, document, affidavit, or other paper which the client is required by law to execute in connection with any matter administered by the Internal Revenue Service, shall advise the client promptly of the fact of such noncompliance, error, or omission.

§ 10.24 DILIGENCE AS TO ACCURACY.—(a) *In general.*—Each enrolled attorney or agent shall exercise due diligence in preparing or assisting in the preparation of, approving, and filing returns, documents, affidavits, and other papers relating to Internal Revenue Service matters.

(b) *Representations to service.*—Each enrolled attorney or agent shall exercise due diligence to determine the correctness of representations made by him to the Internal Revenue Service.

(c) *Representations to clients.*—Each enrolled attorney or agent shall exercise due diligence to determine the correctness of representations made by him to clients with reference to any matter administered by the Internal Revenue Service.

§ 10.25 MONEYS RECEIVED FROM OR FOR A CLIENT.—Each enrolled attorney or agent shall promptly pay over to the United States when due all sums received for the payment of any tax, duty, or other debt or obligation owing to the United States, and shall promptly account to a client for funds received for him from the United States, or received from a client in excess of the charges properly payable in respect of the client's business.

§ 10.26 ENDORSEMENT OF CLIENT'S CHECKS.—No enrolled attorney or agent shall, without authority of his client, accept or endorse any Government draft, check, or warrant drawn to the order of such client.

§ 10.27 PROMPT DISPOSITION OF PENDING MATTERS.—No enrolled attorney or agent shall unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

§ 10.28 ASSISTANCE FROM UNENROLLED PERSONS.—No enrolled attorney or agent shall in any Internal Revenue Service matter knowingly and directly or indirectly:

(a) Employ or accept assistance from any unenrolled person who is disbarred from practice before the Internal Revenue Service or any other department or agency of the Federal Government or before any court of record; who is under suspension from practice before any such department, agency, or court; who has been deprived of his certificate as a certified public accountant or public accountant; or who to the knowledge of the enrolled attorney or agent solicits busi-

ness, obtains clients, or otherwise conducts his practice in a manner forbidden under the regulations in this part to enrolled persons; or

(b) Accept employment as associate, correspondent, or sub-agent from, or share fees with, any such person, or any person who is not an attorney, a certified public accountant, or a public accountant. Nothing in this section shall be construed to authorize the acceptance of employment or the sharing of fees contrary to recognized ethical standards which are to be followed pursuant to § 10.21.

§ 10.29 EMPLOYEES OF ACCOUNTING CORPORATIONS.—No enrolled attorney or agent shall be connected with an accounting corporation either as an officer, employee, or stockholder.

§ 10.30 CERTAIN PARTNERSHIPS PROHIBITED.—No enrolled attorney or agent shall maintain a partnership for the practice of law, accountancy, or other related professional service with a person who is under disbarment from practice before the Internal Revenue Service or any other department or agency of the Federal Government, or with an unenrolled person who is neither an attorney legally practicing law nor a certified public accountant or a public accountant legally practicing accounting. Nothing in this section shall be construed to authorize the maintenance of a partnership contrary to recognized ethical standards which are to be followed pursuant to § 10.21.

§ 10.31 EMPLOYEES OF AGRICULTURAL COOPERATIVE ASSOCIATIONS.—Nothing contained in the regulations in this part shall prevent an enrolled person from being employed by agricultural cooperative associations (which are on a nonprofit basis and not subject to Federal income taxes) to represent before the Service the groups or units constituting membership of such associations: *Provided*, That individuals may not be so represented.

§ 10.32 PRACTICE BY FORMER GOVERNMENT EMPLOYEES.—(a) *In general.*—No former officer or employee of the United States, whether or not enrolled to practice before the Internal Revenue Service, shall represent anyone in any matter administered by the Internal Revenue Service if the representation would violate any of the laws of the United States, including the laws which under certain circumstances prohibit former officers and employees of the United States from acting as representatives of others in matters to which the United States is a party or in which it is interested. See section 190 of the Revised Statutes (5 U.S.C. 99) and 18 U.S.C., Chapter 15.

(b) *Personal consideration.*—No former officer or employee of the United States, whether or not enrolled to practice before the Internal Revenue Service, shall represent anyone in any matter administered by the Internal Revenue Service to which he gave personal consideration or as to the facts of which he gained knowledge during and by reason of his Government service.

§ 10.33 PRACTICE BY FORMER INTERNAL REVENUE SERVICE EMPLOYEES.—(a) *Matters pending while employed.*—No former officer or employee of the Internal Revenue Service shall, within two years after the termination of his Internal Revenue Service employment, practice or in any manner act as attorney or agent or as the employee of an attorney or agent in any matter which was pending in the Internal Revenue Service during the period of his employment

therein, unless he shall first obtain the written consent of the Director of Practice. This consent will not be granted unless it appears that the applicant, as an officer or employee of the Internal Revenue Service, did not give personal consideration to the matter or gain knowledge of the facts of it during and by reason of his employment in the Internal Revenue Service.

(b) *Application for consent.*—An applicant for the consent provided for in paragraph (a) shall file a declaration to the effect that he gave no personal consideration to the matter and that he obtained no knowledge of the facts involved in the matter during and by reason of his employment by the Internal Revenue Service, that he is not and will not knowingly be associated with any former officer or employee who gained knowledge of the matter during and by reason of employment by the Internal Revenue Service, and that his employment is not prohibited by law or by the regulations of the Internal Revenue Service. The application shall be denied by the Director of Practice if the statements contained therein are disproved by an examination of files, records or circumstances pertaining to the matter. Applications for consent should be transmitted to the Director of Practice on Form 901 and should state the applicant's former connection with the Internal Revenue Service and identify the matter in which he desires to act. The applicant shall be advised as to his privilege to appear in the matter, and he shall file the notice of advice in the Internal Revenue Service's record of the matter concerning which he has applied for permission to appear or act as attorney or agent.

(c) *Pending matter.*—For the purpose of this section, a matter shall not be deemed pending in the Internal Revenue Service merely by virtue of the filing of a tax return, but it shall be considered as pending from the time an examination was commenced by interviewing, corresponding with, or examining the books and records of, a taxpayer, or from the time a taxpayer made a representation or inquiry to the Internal Revenue Service which is related to the matter. Pursuant to section 190 of the Revised Statutes (5 U.S.C. 99), a pending matter includes any claim against the United States pending in any department of the Government.

§ 10.34 Assistance From or to Former Employees.—In connection with any matter involving practice before the Internal Revenue Service, no enrolled attorney or agent shall knowingly assist, accept assistance from, or share fees with, any person who gave personal consideration to the matter or gained knowledge of facts involved in it during and by reason of his Government service.

§ 10.35 Enrollees as Notaries.—No enrolled attorney or agent as notary public shall take acknowledgments, administer oaths, certify papers, or perform any official act in connection with matters in which he is employed as counsel, attorney, or agent, or in which he may be in any way interested before the Internal Revenue Service. Under the provisions of this section an enrolled person who is a notary public is prohibited from taking any acknowledgment, oath, or certification as a notary public in connection with any tax return, protest, or other document which he has prepared or in the preparation of which he has assisted. (26 Op. Atty. Gen. 236.)

§ 10.36 ATTEMPTING TO OBTAIN INFORMATION.—No enrolled person shall procure, or attempt to procure, directly or indirectly, from Government records or other Government sources information of any kind which is not made available by proper authority.

§ 10.37 FEES.—(a) *In general.*—An enrolled attorney or agent shall not charge a manifestly unreasonable fee for representation of a client in any matter before the Internal Revenue Service. The reasonableness of a fee is within limits a matter of judgment and depends upon all the facts and circumstances of the case, including its complexity and difficulty, the time and effort required, the amount involved, and the professional standing and experience of the enrolled attorney or agent.

(b) *Contingent fees.*—An enrolled attorney or agent shall not enter into a wholly contingent fee agreement with a client for representation in any matter before the Internal Revenue Service unless the client is financially unable to pay a reasonable fee on any other terms. Partially contingent fee agreements are permissible where provision is made for the payment of a minimum, substantial in relation to the possible maximum fee, which minimum fee is to be paid and retained irrespective of the outcome of the proceeding.

§ 10.38 SOLICITATION AND ADVERTISING.—(a) *Solicitation.*—No enrolled attorney or agent shall, in any manner whatsoever not warranted by personal relations, directly or indirectly solicit employment in matters related to the Internal Revenue Service.

(b) *Advertising special relationships.*—No enrolled attorney or agent shall use, directly or indirectly, signs, printing or other written matter indicating some past or present connection with, or relationship to, the Internal Revenue Service, nor shall he represent in any manner that he possesses influence or a special relationship with officers or employees of the Internal Revenue Service.

(c) *Letterheads and announcements.*—The following shall not be presumed to constitute a violation of this paragraph:

(1) Letterheads, professional cards, and the customary professional insertions in telephone, and city directories, or in newspapers, trade or professional journals, or other publications admitted to second-class mailing privileges, provided they set forth only the name and address of the attorney or agent, or the name of the firm of which he is a member or with which he is associated, and a notation of the nature of his practice, to wit, whether he practices as an attorney, certified public accountant, or public accountant (there is no objection to the use of the words "Enrolled to practice before the Internal Revenue Service"); and the customary professional insertions in professional directories provided they set forth only the above information and customary biographical and professional data;

(2) The distribution by former officers or employees of the Government of cards briefly stating the fact of their former official status and announcing their new status or association, provided the cards are addressed only to personal or business acquaintances and provided such cards are distributed only once, within a reasonable time after severance of official connection with the Government, and within 30 days after the creation of the new status or the formation of the new association.

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§ 10.39 RIGHTS AND DUTIES OF AGENTS.—An agent enrolled before the Internal Revenue Service shall have the same rights, powers, and privileges and be subject to the same duties as an enrolled attorney: *Provided*, That an enrolled agent shall not have the privilege of drafting or preparing any written instrument by which title to real or personal property may be conveyed or transferred for the purpose of affecting Federal taxes, nor shall such enrolled agent advise a client as to the legal sufficiency of such an instrument or its legal effect upon the Federal taxes of such client: *And provided further*, That nothing in the regulations in this part shall be construed as authorizing persons not members of the bar to practice law.

NOTE: An interpretation by the Secretary of the Treasury of § 10.39 (31 CFR, 1949 ed., 10.2(f)), among other sections, appeared at 21 F.R. 833, Feb. 7, 1956.

SUBPART C.—RULES APPLICABLE TO DISCIPLINARY PROCEEDINGS

§ 10.50 AUTHORITY TO DISBAR OR SUSPEND.—Pursuant to section 3 of the Act of July 7, 1884, 23 Stat. 258 (5 U.S.C. 261), the Secretary of the Treasury, after due notice and opportunity for hearing, may suspend or disbar from further practice before the Internal Revenue Service any enrolled attorney or agent shown to be incompetent, disreputable or who refuses to comply with the rules and regulations in this part, or who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement.

§ 10.51 DISREPUTABLE CONDUCT.—(a) *Nature.*—Disreputable conduct, for which any enrolled attorney or agent may be disbarred or suspended from practice before the Internal Revenue Service, includes any conduct violative of the ordinary standards of professional obligation and honor.

(b) *Forms.*—Among other forms of disreputable conduct, the following are deemed to constitute such conduct:

(1) Conviction of any criminal offense prescribed by the internal revenue laws or conviction of any crime involving moral turpitude;

(2) Making false answers in an application for enrollment or for renewal of an enrollment card with knowledge that such answers are false;

(3) Preparing or filing for himself or another a false Federal tax return or other statement on which Federal taxes may be based, knowing the same to be false;

(4) Willful failure to make a Federal tax return in violation of provisions of the internal revenue laws and the regulations issued thereunder;

(5) Suggesting to a client or a prospective client an illegal plan for evading Federal taxes or the payment thereof, knowing the same to be illegal;

(6) Giving false testimony in any proceeding before the Internal Revenue Service or before any tribunal authorized to pass upon Federal tax matters, knowing the same to be false;

(7) Filing any false or fraudulently altered document or affidavit in any case or other proceeding before the Internal Revenue Service, or procuring the filing thereof, knowing the same to be false or fraudulently altered;

(8) Using, with intent to deceive, false or misleading representations to procure employment in any case or proceeding before the Internal Revenue Service;

(9) Knowingly giving false or misleading information relative to a matter pending before the Internal Revenue Service to any officer or employee of the Internal Revenue Service;

(10) Preparing a false financial statement for a corporation, partnership, association, or individual, or certifying the correctness of such false statement, knowing the same to be false;

(11) Imparting to a client false information relative to the progress of a case or other proceeding before the Internal Revenue Service, knowing the same to be false;

(12) False representations by an enrolled agent that he is an attorney or a certified public accountant;

(13) Preparing or assisting in the preparation of, or filing, a false claim against the United States, knowing the same to be false;

(14) Approving, for filing, a false Federal tax return prepared by some other person, or advising or aiding in the preparation of such a false tax return, knowing the same to be false;

(15) Misappropriation of, or failure properly and promptly to remit, funds received from a client for the purpose of payment of taxes or other obligations due the United States, or misappropriation of funds or other property belonging to a client;

(16) Improper retention of a fee for which no services have been rendered;

(17) Obtaining or attempting to obtain money or other thing of value from a client or other person by false representations, knowing the same to be false;

(18) Obtaining or attempting to obtain money or other thing of value from a client or other person by duress or undue influence;

(19) Concealing or attempting to conceal assets of himself or another in order to evade or assist in evading Federal taxes or the payment thereof;

(20) Representing to a client or prospective client that the attorney or agent can improperly obtain special consideration or action from the Internal Revenue Service or an officer or employee thereof, or that he has access to unusual sources of information within the Internal Revenue Service;

(21) Soliciting or procuring the false testimony of any person in any proceeding before the Internal Revenue Service;

(22) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress, or coercion, by the offer of any special inducement or promise of advantage, or by the bestowing of any gift, favor or thing of value;

(23) Failure of an enrolled attorney to conduct himself and his practice before the Internal Revenue Service in accordance with recognized ethical standards applicable to attorneys generally;

(24) Failure of an enrolled agent to conduct himself and his practice before the Internal Revenue Service in accordance with recognized ethical standards;

(25) Disbarment or suspension from practice as an attorney, certified public accountant, or public accountant by any duly constituted authority of any State, Territory, possession of the United States, the District of Columbia, or by any department or agency of the Federal Government;

(26) In connection with practice before the Internal Revenue Service, using intemperate and abusive language, making false accusations or statements knowing them to be false, or circulating or publishing malicious and libelous matter;

(27) Knowingly aiding or abetting another by any means to defraud or attempt to defraud the United States, as by affirmatively assisting or participating in any way in the concealment of or failure to report income, receipts, or other property subject to taxation by the United States;

(28) Solicitation of practice in any unethical or unprofessional manner;

(29) Representing, as an agent or associate, an attorney, accountant, or other person known by the enrollee to solicit practice in any unethical or unprofessional manner;

(30) Knowingly aiding and abetting another person to practice his profession during a period of disbarment of such other person.

§ 10.52 VIOLATION OF REGULATIONS.—Any enrolled attorney or agent may be disbarred or suspended from practice before the Internal Revenue Service for willful violation of any of the regulations contained in this part.

§ 10.53 AUTHORITY TO REPRIMAND.—The Director of Practice is authorized to reprimand any enrolled attorney or agent for conduct which is not the subject of a complaint and hearing before an Examiner. The Examiner may reprimand any enrolled attorney or agent in cases heard by him upon a complaint filed by the Director of Practice.

§ 10.54 RECEIPT OF INFORMATION CONCERNING ENROLLED ATTORNEYS AND AGENTS.—If an officer or employee of the Internal Revenue Service has reason to believe that an enrolled attorney or agent has violated any provision of the laws or regulations governing practice before the Internal Revenue Service, of if any such officer or employee receives information to that effect concerning any enrolled attorney or agent, he shall promptly make a written report thereof, which report or a copy thereof shall be forwarded to the Director of Practice. If any other person has information of such violations, he may make a report thereof to the Director of Practice or to any officer or employee of the Internal Revenue Service.

§ 10.55 INSTITUTION OF PROCEEDING.—Whenever the Director of Practice has reason to believe that any enrolled attorney or agent has violated any provision of the laws or regulations governing practice before the Internal Revenue Service, he may institute a proceeding for disbarment or suspension of the enrolled attorney or agent. The proceeding shall be instituted by a complaint which names the respondent and is signed by the Director of Practice and filed in his office. Except in cases of willfulness, or where time, the nature of the proceeding, or the public interest does not permit, a proceeding will not be instituted

under this section until facts or conduct which may warrant such action have been called to the attention of the proposed respondent in writing and he has been accorded opportunity to demonstrate or achieve compliance with all lawful requirements.

§ 10.56 CONFERENCES.—(a) *In general.*—The Director of Practice may confer with an enrolled attorney or agent concerning allegations of misconduct irrespective of whether a proceeding for disbarment or suspension has been instituted against him. If such conference results in a stipulation in connection with a proceeding in which the attorney or agent is the respondent, the stipulation may be entered in the record at the instance of either party to the proceeding.

(b) *Resignation or voluntary suspension.*—An enrolled attorney or agent, in order to avoid the institution or conclusion of a disbarment or suspension proceeding, may offer his resignation or consent to suspension from practice before the Internal Revenue Service. The Director of Practice, in his discretion, may accept the offered resignation and may suspend an attorney or agent in accordance with his consent.

§ 10.57 CONTENTS OF COMPLAINT.—(a) *Charges.*—A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against him so that he is able to prepare his defense.

(b) *Demand for answer.*—In the complaint, or in a separate paper attached to the complaint, notification shall be given of the place and time within which the respondent shall file his answer, which time shall be not less than fifteen days from the date of service of the complaint, and notice shall be given that a decision by default will be rendered against the respondent in the event he fails to file his answer as required.

§ 10.58 SERVICE OF COMPLAINT AND OTHER PAPERS.—(a) *Complaint.*—The complaint or a copy thereof may be served upon the respondent by registered mail, or first-class mail as hereinafter provided; by delivering it to the respondent or his attorney or agent of record either in person or by leaving it at the office or place of business of the respondent, attorney or agent; or in any other manner which has been agreed to by the respondent. Where the service is by registered mail, the return post office receipt duly signed by or on behalf of the respondent shall be proof of service. If the registered matter is not claimed or accepted by the respondent and is returned undelivered, complete service may be made upon the respondent by mailing the complaint to him by first-class mail, addressed to him at the address under which he is enrolled or at the last address known to the Director of Practice. If service is made upon the respondent or his attorney or agent of record in person or by leaving the complaint at the office or place of business of the respondent, attorney or agent, the verified return by the person making service, setting forth the manner of service, shall be proof of such service.

(b) *Service of papers other than complaint.*—Any paper other than the complaint may be served upon an enrolled attorney or agent as provided in paragraph (a) or by mailing the paper by first-class mail

to the respondent at the address under which he is enrolled or at the last address known to the Director of Practice, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. Such mailing shall constitute complete service. Notices may be served upon the respondent or his attorney or agent of record by telegraph.

(c) *Filing of papers.*—Whenever the filing of a paper is required or permitted in connection with a disbarment or suspension proceeding, and the place of filing is not specified by this subpart or by rule or order of the Examiner, the paper shall be filed with the Director of Practice, Treasury Department, Internal Revenue Building, Washington, D.C. All papers shall be filed in duplicate.

§ 10.59 ANSWER.—(a) *Filing.*—The respondent's answer shall be filed in writing within the time specified in the complaint or notice of institution of the proceeding, unless on application the time is extended by the Director of Practice or the Examiner. The answer shall be filed in duplicate with the Director of Practice.

(b) *Contents.*—The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which he knows to be true, or state that he is without sufficient information to form a belief when in fact he possesses such information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.*—Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Director of Practice or the Examiner, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the Examiner may make his decision by default without a hearing or further procedure.

§ 10.60 SUPPLEMENTAL CHARGES.—If it appears that the respondent in his answer, falsely or in bad faith, denies a material allegation of fact in the complaint or states that the respondent has no knowledge sufficient to form a belief, when he in fact possesses such information, or if it appears that the respondent has knowingly introduced false testimony during proceedings for his disbarment or suspension, the Director of Practice may thereupon file supplemental charges against the respondent. Such supplemental charges may be tried with other charges in the case, provided the respondent is given due notice thereof and is afforded an opportunity to prepare a defense thereto.

§ 10.61 REPLY TO ANSWER.—No reply to the respondent's answer shall be required, and new matter in the answer shall be deemed to be denied, but the Director of Practice may file a reply in his discretion or at the request of the Examiner.

§ 10.62 PROOF; VARIANCE; AMENDMENT OF PLEADINGS.—In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the Examiner may order or au-

thorize amendment of the pleading to conform to the evidence: *Provided*, That the party who would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations of the pleading as amended; and the Examiner shall make findings on any issue presented by the pleadings as so amended.

§ 10.63 MOTIONS AND REQUESTS.—Motions and requests may be filed with the Director of Practice or with the Examiner.

§ 10.64 REPRESENTATION.—A respondent or proposed respondent may appear in person or he may be represented by counsel or other representative who need not be enrolled to practice before the Internal Revenue Service. The Director may be represented by an attorney or other employee of the Internal Revenue Service.

§ 10.65 EXAMINER.—(a) *Appointment.*—An Examiner, appointed as provided by section 11 of the Administrative Procedure Act, 60 Stat. 244 (5 U.S.C. 1010), shall conduct proceedings upon complaints for the disbarment or suspension of enrolled attorneys or agents.

(b) *Powers of Examiner.*—Among other powers, the Examiner shall have authority, in connection with any disbarment or suspension proceeding assigned or referred to him, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and requests, which rulings may not be appealed from prior to the close of a hearing except, at the discretion of the Examiner, in extraordinary circumstances;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make initial decisions.

§ 10.66 HEARINGS.—(a) *In general.*—The Examiner shall preside at the hearing on a complaint for the disbarment or suspension of an enrolled attorney or agent. Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be conducted pursuant to section 7 of the Administrative Procedure Act, 60 Stat. 241 (5 U.S.C. 1006).

(b) *Failure to appear.*—If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to him, he shall be deemed to have waived the right to a hearing and the Examiner may make his decision against the absent party by default.

§ 10.67 EVIDENCE.—(a) *In general.*—The rules of evidence prevailing in courts of law and equity are not controlling in hearings on complaints for the disbarment or suspension of enrolled attorneys

and agents. However, the Examiner shall exclude evidence which is irrelevant, immaterial, or unduly repetitious, and he may exclude evidence which is not of the kind which would affect reasonable and fair-minded men in the conduct of their daily affairs.

(b) *Depositions.*—The deposition of any witness taken pursuant to § 10.68 may be admitted.

(c) *Proof of documents.*—Official documents, records and papers of the Internal Revenue Service shall be admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records and papers may be evidenced by a copy attested or identified by an officer or employee of the Internal Revenue Service.

(d) *Exhibits.*—If any document, record or other paper is introduced in evidence as an exhibit, the Examiner may authorize the withdrawal of the exhibit subject to any conditions which he deems proper.

(e) *Objections.*—Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as ordered by the Examiner. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

§ 10.68 DEPOSITIONS.—Depositions for use at a hearing may, with the written approval of the Examiner, be taken by either the Director of Practice or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than ten days' written notice to the other party before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in internal revenue matters. Such notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of ten days' notice may be waived by the parties in writing, and depositions may then be taken from the persons and at the times and places mutually agreed to by the parties. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogatories shall be mailed or delivered to the opposing party at least five days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the Examiner and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

§ 10.69 TRANSCRIPT.—In cases where the hearing is stenographically reported by a government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the government and the reporter. Where the hearing is stenographically reported by a regular employee of the Internal Revenue Service, a copy thereof will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Neither of the parties shall have the right to receive any copies of exhibits introduced at the hearing or at the

taking of depositions, but they shall have the right to examine all exhibits.

§ 10.70 PROPOSED FINDINGS AND CONCLUSIONS.—Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the Examiner, prior to making his decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

§ 10.71 DECISION OF THE EXAMINER.—As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Examiner shall make the initial decision in the case. The decision shall include (a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (b) an order of disbarment, suspension, or reprimand or an order of dismissal of the complaint. The Examiner shall file the decision with the Director of Practice and shall transmit a copy thereof to the respondent or his attorney of record. In the absence of an appeal to the Secretary of the Treasury, or review of the decision upon motion of the Secretary, the decision of the Examiner shall without further proceedings become the decision of the Secretary of the Treasury thirty days from the date of the Examiner's decision.

§ 10.72 APPEAL TO THE SECRETARY.—Within 30 days from the date of the Examiner's decision, either party may appeal to the Secretary of the Treasury. The appeal shall be filed with the Director of Practice in duplicate and shall include exceptions to the decision of the Examiner and supporting reasons for such exceptions. If an appeal is filed by the Director of Practice, he shall transmit a copy thereof to the respondent. Within 15 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director of Practice. If the reply brief is filed by the Director, he shall transmit a copy of it to the respondent. Upon the filing of an appeal and a reply brief, if any, the Director of Practice shall transmit the entire record to the Secretary of the Treasury.

§ 10.73 DECISION OF THE SECRETARY.—On appeal from or review of the initial decision of the Examiner, the Secretary of the Treasury will make the agency decision. In making his decision the Secretary of the Treasury will review the record or such portions thereof as may be cited by the parties to permit limiting of the issues. A copy of the Secretary's decision shall be transmitted to the respondent by the Director of Practice.

§ 10.74 EFFECT OF DISBARMENT OR SUSPENSION; SURRENDER OF CARD.—In case the final order against the respondent is for disbarment, the respondent shall not thereafter be permitted to practice before the Internal Revenue Service unless and until authorized to do so by the Director of Practice upon application by the person disbarred. In case the final order against the respondent is for suspension, the respondent shall not thereafter be permitted to practice before the Internal Revenue Service during the period of suspension. If disbarred or suspended from practice, the respondent shall surren-

der his enrollment card to the Director of Practice for cancellation, in the case of disbarment, or for retention during the period of suspension.

§ 10.75 NOTICE OF DISBARMENT OR SUSPENSION.—Upon the issuance of a final order disbarring or suspending an enrolled attorney or agent, the Director of Practice shall give notice thereof to appropriate officers and employees of the Internal Revenue Service and to interested departments and agencies of the Federal Government. Notice in such manner as the Director of Practice may determine may be given to the proper authorities of the State by which the disbarred or suspended person was licensed to practice as an attorney or accountant.

SUBPART D.—GENERAL PROVISIONS

§ 10.90 OFFICIAL RECORDS.—(a) *Availability.*—There are made available to public inspection at the office of the Director of Practice the roster of all persons enrolled to practice and the roster of all persons disbarred or suspended from practice.

(b) *Direct interest.*—Matters of official record pertaining to the enrollment of persons to practice are available at the office of the Director of Practice to persons properly and directly concerned.

(c) *Confidential records.*—There are held confidential the official records of the investigation of applicants for enrollment, of proceedings to suspend or disbar, and of the grounds for suspension or disbarment. Publication is capable of injuring enrollees and former enrollees without furthering the public interest. Much of the information is elicited without the aid of the subpoena power on the assurance that the sources will be protected. Much of the information contained in these official records is subject to the secrecy statutes pertaining to tax returns. (Sec. 3, 60 Stat. 238, 5 U.S.C. 1002.)

§ 10.91 INFORMATION, REQUESTS, AND SUBMITTALS.—The public may secure information from, or make submittals or request to, the Director of Practice, Treasury Department, Internal Revenue Building, Washington, D.C. Requests for information contained in official records of the office of the Director of Practice should be addressed to the Director in writing, should clearly state the information desired, and should set forth the interest of the applicant in the subject matter and the purpose for which the information is desired. If the applicant is an attorney or agent acting for another, he should attach to the application evidence of his authority to act for his principal.

§ 10.92 EFFECTIVE DATE OF REGULATIONS.—The regulations in this part, as reconstituted and amended, supersede the regulations promulgated by Treasury Department Circular No. 230 effective from and after October 1, 1936, relating to the recognition of attorneys, agents, and others, as heretofore amended and supplemented. The regulations in this part, as reconstituted and amended, shall become effective on the thirty-first day after the date of their publication in the Federal Register [3]; shall apply to all unsettled matters then pending in the Internal Revenue Service or which may thereafter be presented or referred to the Internal Revenue Service or offices thereof for adjudication; and shall be applicable to all those enrolled to practice before

[3] This effective date applies only to the sections of the Circular as approved by Acting Secretary Julian B. Baird on November 26, 1958. It does not apply to subparagraph 7 of section 10.7(a).

the Treasury Department as attorneys or agents immediately prior to the effective date of such regulations. All proceedings within the purview of section 3 of the Act of July 7, 1884, 23 Stat. 258 (5 U.S.C. 261), commenced after the effective date of such regulations, shall in all procedural matters be governed by the provisions of such regulations and such supplementary rules as may from time to time be adopted pursuant to the regulations. Violations of the regulations committed prior to the effective date thereof shall in all substantive matters be dealt with according to the provisions of the regulations in force at the time when the act or acts alleged to constitute such violations occurred.

§ 10.93 SAVING CLAUSE.—No amendment of this part shall affect any proceeding for the disbarment or suspension of an enrolled attorney or agent which was instituted prior to the date of publication of the amendment in the Federal Register.

§ 10.94 SPECIAL ORDERS.—The Secretary of the Treasury reserves the power to issue such special orders as he may deem proper in any cases within the purview of this part.

JULIAN B. BAIRD,
Acting Secretary of the Treasury.

(Document 58-9924 (Department Circular 230) filed by the Division of the Federal Register on Nov. 28, 1958, 8:53 a.m., and published in the issue of the Federal Register for Nov. 29, 1958, 23 F.R. 9261; Document 59-1336 filed by the Division of the Federal Register on Feb. 13, 1959, 8:46 a.m., and published in the issue of the Federal Register for Feb. 14, 1959, 24 F.R. 1157.)

TREASURY DEPARTMENT ORDER 150-35 (Revision 1)

Delegation of Authority With Respect to the Inspection of Certain Tax Returns.

There are hereby delegated to the Commissioner of Internal Revenue the functions of the Secretary of the Treasury prescribed by any Treasury decision relating to the granting of permission to inspect returns to any agency of the Executive Branch of the United States Government.

The functions herein delegated to the Commissioner may be exercised by any officer or employee of the Internal Revenue Service who is so authorized by the Commissioner, under such rules as may be prescribed by him.

Dated May 8, 1959.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on May 14, 1959, 8:48 a.m., and published in the issue of the Federal Register for May 15, 1959, 24 F.R. 3960)

TREASURY DEPARTMENT ORDER 165-2, AMENDMENT 1 [T.D. 54803]

Delegation of authority with respect to certain functions

Treasury Department Order No. 165-2, dated October 29, 1953, T.D. 53368 (18 F.R. 7177), transferred from the Commissioner of Internal Revenue to the Commissioner of Customs the function of

refunding excess deposits of internal revenue tax, previously collected by collectors of customs, which are found to be due and the functions of determining, allowing, and paying interest in connection with such refunds.

By virtue of the authority vested in me by Reorganization Plan No. 26 of 1950 (3 CFR, 1950 Supp., Ch. III) there are hereby transferred from the Commissioner of Customs to the Commissioner of Internal Revenue the functions of refunding such deposits, and of determining, allowing, and paying interest, in any case in which the allowance or making of the refund is not now or hereafter excepted from the application of section 6423 of the Internal Revenue Code of 1954, as added by the Act of February 11, 1958 (Pub. Law 85-323 [C.B. 1958-1, 630]).

The functions herein transferred may be delegated by the Commissioner of Internal Revenue to subordinates in such manner as he shall direct.

In all other respects Treasury Department Order No. 165-2, dated October 29, 1953, shall remain in full force and effect.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

March 9, 1959.

(Filed by the Division of the Federal Register on March 17, 1959, 8:49 a.m., and published in the Federal Register for March 18, 1959, 24 F.R. 1991.)

DELEGATION ORDER NO. 40 (REVISED)

(Effective January 13, 1959)

Credits and refunds

Authority is hereby delegated to District Directors of Internal Revenue to make credits or refunds, within the applicable period of limitations, of overpayments in any amount, of any internal revenue tax, and allowable interest thereon, including those cases requiring a report to the Joint Committee on Internal Revenue Taxation.

The above authority to make credits and refunds shall be exercised only after compliance with all requirements of existing procedures for review.

The authority herein delegated may be redelegated.

This order supersedes Delegation Order No. 40 issued October 18, 1956 [C.B. 1956-2, 1377].

DANA LATHAM,
Commissioner.

(Filed by the Division of the Federal Register on January 26, 1959, 8:47 a. m. and published in the issue of the Federal Register for January 27, 1959, 24 F.R. 486.)

DELEGATION ORDER NO. 72[1]

(Effective March 9, 1959)

Delegation of function regarding refund of alcohol and tobacco taxes.

1. Pursuant to authority vested in me by Treasury Department Order 165-2, Amendment 1, (24 F.R. 1991) dated March 9, 1959,

[1] Delegation Orders Nos. 68 through 71 were not published.

page 767, this Bulletin, there is hereby delegated to each assistant regional commissioner (alcohol and tobacco tax) the function of allowing or rejecting claims for refund of excess deposits of alcohol and tobacco taxes, as defined in section 6423(e)(1) of the Internal Revenue Code of 1954, previously collected by collectors of customs, in any case in which the allowance or making of the refund is not now or hereafter excepted from the application of section 6423 of the Internal Revenue Code of 1954, as added by the Act of February 11, 1958 (Public Law 85–323 [C.B. 1958–1, 630]).

2. The exercise of the authority delegated herein to each assistant regional commissioner (alcohol and tobacco tax) shall be under the direction and supervision of his regional commissioner and in accordance with existing policy and procedures.

3. The authority herein delegated may not be redelegated.

CHARLES I. FOX,
Acting Commissioner.

(Filed by the Division of the Federal Register on May 22, 1959, 8:47 a.m., and published in the issue of the Federal Register for May 23, 1959, 24 F.R. 4185)

SECRETARY'S AUTHORIZATION

(Also Part I, Section 4293.)

TITLE 26—INTERNAL REVENUE, 1954—CHAPTER I, PART 48.—MANUFACTURERS AND RETAILERS EXCISE TAXES

Exemption from tax of payments made under certain leases of business machine directly to the United States for its exclusive use.

By virtue of the authority vested in me by section 4293 of the Internal Revenue Code of 1954 (68A Stat. 511; 26 U.S.C. 4293), exemption is hereby authorized from the tax imposed by section 4191 of the Internal Revenue Code of 1954 (63A Stat. 491; 26 U.S.C. 4191) on any payment made under leases of business machines directly to the United States for its exclusive use to which section 4217(b) of the Internal Revenue Code of 1954, as added by section 117(a) of the Excise Tax Technical Changes Act of 1958 (72 Stat. 1280), is applicable: *Provided*, That there is included in the lease agreement a statement to the effect that the agreement is a lease of business machines directly to the United States for its exclusive use and qualifies for exemption under the order of the Secretary of the Treasury dated April 20, 1959, authorized by section 4293 of the Internal Revenue Code of 1954. As used in this authorization, the phrase "leases of business machines directly to the United States" does not include leases of business machines entered into by a contractor or person other than an officer or employee of the United States who is authorized to execute contracts for or on behalf of the United States.

(Sec. 4293, 68A Stat. 511; 26 U.S.C. 4293)

This authorization shall be effective as of January 1, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on April 23, 1959, 8:49 a.m., and published in the Federal Register for April 24, 1959, 24 F.R. 3186.)

PROCLAMATION 3266

DETERMINING CERTAIN DRUGS TO BE OPIATES

By the President of the United States of America
A Proclamation

WHEREAS section 4731(g) of the Internal Revenue Code of 1954 provides in part as follows:

OPIATE—The word "opiate", as used in this part shall mean any drug (as defined in the Federal Food, Drug, and Cosmetic Act; 52 Stat. 1041, section 201(g); 21 U.S.C. 321) found by the Secretary or his delegate, after due notice and opportunity for public hearing, to have an addiction-forming or addiction-sustaining liability similar to morphine or cocaine, and proclaimed by the President to have been so found by the Secretary or his delegate. * * *;

AND WHEREAS the Secretary of the Treasury, after due notice and opportunity for public hearing, has found that each of the following-named drugs has an addiction-forming or addiction-sustaining liability similar to morphine, and that in the public interest this finding should be effective immediately:

(1) (−) 3-Hydroxynormorphinan [(−) 3-Hydroxymorphinan].
(2) 2′-hydroxy-2,5,9-trimethyl-6,7,-benzmorphan.
(3) 3-Allyl-1-methyl-4-phenyl-4-propionoxypiperidine.
(4) Dimethylaminoethyl diphenyl-a-ethoxyacetate.

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, do hereby proclaim that the Secretary of the Treasury has found that each of the aforementioned drugs has an addiction-forming or addiction-sustaining liability similar to morphine and that in the public interest this finding should be effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States to be affixed.

DONE at the City of Washington this 24th day of December in the year of our Lord nineteen hundred and fifty-eight, and of the [SEAL] Independence of the United States of America the one one hundred and eighty-third.

DWIGHT D. EISENHOWER.

By the President.

CHRISTIAN A. HERTER,
Acting Secretary of State.

(Filed by the Division of the Federal Register on December 31, 1958, 1:38 p.m., and published in the issue of the Federal Register for January 3, 1959, 24 F.R. 37.)

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER H, PART 601.—STATEMENT OF PROCEDURAL RULES [1]

This part, as filed with the Federal Register on June 29, 1955 [C.B. 1955–2, 921], and as last amended on May 10, 1958 [C.B. 1958–1, 664], is further amended as follows:

[1] 24 F.R. 1155.

PARAGRAPH 1. The Table of Contents is amended as follows:

(A) By striking out the heading of section 601.321 and inserting in lieu thereof the following:

601.321 INTERSTATE TRAFFIC IN FIREARMS AND AMMUNITION.

(B) By striking out the heading of section 601.324 and inserting in lieu thereof the following:

601.324 CLAIMS.

(C) By striking out the heading of section 601.503 and inserting in lieu thereof the following:

601.503. FILING POWER OF ATTORNEY.

PAR. 2. Section 601.103, SUMMARY OF GENERAL TAX PROCEDURE, is amended as follows:

(A) By inserting "certified mail or" before "registered" in the first sentence of paragraph (c)(2).

(B) By inserting "certified mail or" before "registered" in the third and fifth sentences of paragraph (c)(3).

PAR. 3. Section 601.104(a)(1), RETURNS, is amended by striking out the eighth and ninth sentences and inserting in lieu thereof the following:

In the case of certain individual income taxpayers having gross income not exceeding $10,000 and consisting of income from specified sources, a special form (Form 1040A) is prescribed upon which the taxpayer may set forth the information necessary to a determination of his tax liability. A taxpayer filing a return on Form 1040A shall compute the tax and transmit with the return any unpaid balance of tax, except that if his income does not exceed $5,000 he may elect to have the district director compute the tax and mail him a notice stating the amount of tax due.

PAR. 4. Section 601.105, EXAMINATION OF RETURN AND CLAIMS FOR REFUND, CREDIT OR ABATEMENT; DETERMINATION OF CORRECT TAX LIABILITY, is amended as follows:

(A) By striking the fourth sentence of paragraph (c)(3) and inserting in lieu thereof the following:

If the taxpayer is represented by an attorney or agent, the rules with respect to their recognition and the filing of powers of attorney are applicable.

(B) By striking the last sentence of paragraph (e)(1) and inserting in lieu thereof the following:

If an individual income taxpayer files Form 1040A as a return and properly elects to have the tax computed by the district director, such return operates automatically as a claim for refund for the amount of any overpayment shown by the district director's computation of the tax on the basis of the return.

Par. 5. Section 601.106, APPELLATE FUNCTIONS, is amended as follows:

(A) By striking out paragraph (a)(2) and inserting in lieu thereof the following:

(2) The authority described in subparagraph (1) of this paragraph does not include the authority to:

(i) Negotiate or make a settlement in any case docketed in the Tax Court on and after the opening date of the session at which the case is calendared for trial, or of any pre-trial hearing of or report session thereon, otherwise referred to as "session" cases;

(ii) Make or approve a settlement in presession cases docketed in the Tax Court, except with the concurrence of regional counsel;

(iii) Eliminate the ad valorem fraud penalty in any case not docketed in the Tax Court, except with the concurrence of regional counsel;

(iv) Act in any case in which a recommendation for criminal prosecution is pending, except with the concurrence of regional counsel; nor

(v) Modify any decision of the Excess Profits Tax Counsel with respect to any issue arising under section 722 of the Internal Revenue Code of 1939, except with the concurrence of the Director of the Appellate Division.

Authority to negotiate and make a settlement or concession in a case docketed in the Tax Court in a session status referred to in subdivision (i) of this subparagraph is delegated to the regional counsel.

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

At any hearing granted by the Appellate Division on a nondocketed case the district director will be represented if he so desires, or if the Chief of the Appellate Division of the region deems it advisable; and at any such hearing on a case involving the ad valorem fraud penalty, the regional counsel will be represented if he so desires. In any case docketed in the Tax Court, settlement negotiations held prior to the opening date of the session at which the case is calendared for trial, or of any pre-trial hearing of or report session on the case, shall be conducted by the Regional Appellate Division, with the regional counsel invited to participate.

(C) By striking out the period at the end of the first sentence of paragraph (d)(1)(ii) and inserting in lieu thereof "of the memorandum recommending the issuance of such statutory notice."

(D) By striking out in the second sentence of paragraph (e)(1) "unless the taxpayer's domicile is then situated within such region.", and inserting in lieu thereof "unless the taxpayer currently resides within the area served by the Washington Regional Appellate Division Office and can produce all required books and records there."

(E) By striking out the second sentence of paragraph (e)(2).

(F) By striking out "(31 CFR Parts 10, 12, 13, and 14)" in the first sentence of paragraph (f) and inserting in lieu thereof "(31 CFR Part 10)".

(G) By striking out paragraph (f)(8) and inserting in lieu thereof the following:

(8) RULE VIII.—In any case docketed in the Tax Court of the United States on which a conference is being conducted by the Appellate Division, the regional counsel will be invited to participate in the conference. In cases not docketed in the Tax Court of the United States on which a conference is being conducted by the Appellate Division, the regional counsel may be requested to attend and to give legal advice in the more difficult cases, or on matters of legal or litigating policy.

(H) By striking out paragraph (f)(9) and inserting in lieu thereof the following:

(9) RULE IX.—Prior to the opening date of the session of the Tax Court at which the case is calendared for trial (or the opening date of any pre-trial hearing or report session, as the case may be) a taxpayer may request the reopening or resumption of settlement conferences in a docketed case, before the Associate Chief or the Assistant Chief, as the case may be, in charge of an Appellate Division office, and whenever such request is granted, the conferee who originally heard the case shall ordinarily be present and participate in any conference.

PAR. 6. Section 601.107, EXCESS PROFITS TAX COUNCIL; APPELLATE FUNCTIONS AND PROCEDURES UNDER SECTION 722 OF THE INTERNAL REVENUE CODE OF 1939, is amended as follows:

(A) By striking out the last sentence of paragraph (a)(1) and inserting in lieu thereof the following:

The appellate functions of the Excess Profits Tax Council, which is under technical supervision and administrative control of the Director of the Appellate Division, Washington, D.C., relate to the consideration and the determination of issues arising under section 722 of the 1939 Code.

(B) By striking out "(31 CFR Parts 10–14)" in the last sentence of paragraph (a)(2) and inserting in lieu thereof "(31 CFR Part 10)".

(C) By adding at the end of paragraph (b)(2) the following sentence:

The Director of the Appellate Division is authorized exclusively to exercise final authority in all issues under section 722 of the 1939 Code in cases not docketed in the Tax Court.

(D) By striking out "Council" in paragraph (b)(3) and inserting in lieu thereof "Director, Appellate Division".

(E) By inserting after paragraph (b)(3) the following new subparagraph:

(4) With respect to all issues under section 722 of the 1939 Code docketed with the Tax Court, the Director of the Appellate Division represents the Commissioner in functions comparable to those delegated to the Regional Appellate Divisions in standard issue docketed cases. See section 601.106(d)(2).

PAR. 7. Section 601.108(c), CERTIFICATION OR REJECTION OF CLAIMED OVERPAYMENT, is amended by inserting "certified mail or" before "registered" in the next to the last sentence.

PAR. 8. Section 601.303(b), CLAIMS FOR ABATEMENT, is amended by striking out "or beer," in the first sentence and inserting in lieu thereof ", beer, or firearms,".

PAR. 9. Section 601.305(a), LIABILITY UNDER INTERNAL REVENUE CODE, is amended by striking out "or beer, and" the second time it appears in the second sentence and inserting in lieu thereof "beer, or firearms, and (iii) the failure to pay firearms 'making' or transfer taxes, and".

PAR. 10. Section 601.231, LICENSING UNDER THE FEDERAL FIREARMS ACT OF MANUFACTURERS OF, AND DEALERS IN, FIREARMS OR AMMUNITION, is amended to read as follows:

§ 601.321 INTERSTATE TRAFFIC IN FIREARMS AND AMMUNITION.—Part 177 of this chapter contains the regulations relative to the licensing of manufacturers of, and dealers in, firearms and ammounition, the records required to be kept by the licensees, the interstate traffic in firearms and ammunition, and the forfeiture and disposition of seized firearms or ammunition, under the provisions of the Federal Firearms Act.

PAR. 11. Section 601.323, ASSESSMENTS, is amended by striking out in the first sentence "Director, Alcohol and Tobacco Tax Division," and inserting in lieu thereof "assistant regional commissioner, (alcohol and tobacco tax),".

PAR. 12. Section 601.324, REDEMPTION OF OR ALLOWANCE FOR STAMPS OR REFUNDS, is amended to read as follows:

§ 601.324 CLAIMS. The procedures applicable to the filing of claims under chapter 53 of the Code are set forth below:

(a) Claims for abatement or refund of the making and transfer taxes are prepared and filed in accordance with the procedures set forth in § 601.303(b) and (c).

(b) Claims for the redemption of "National Firearms Act" stamps are prepared and filed in accordance with the procedure set forth in Part 179 of this chapter.

(c) Claims for the abatement or refund of occupational taxes and penalties erroneously assessed or collected, and claims for redemption of stamps for occupational taxes are prepared and filed in accordance with the procedure set forth in § 601.304(f).

PAR. 13. Section 601.401, EMPLOYMENT TAXES, is amended as follows:

(A) By striking out the sixth sentence of paragraph (a)(3) and inserting in lieu thereof the following:

All other returns of Federal employment taxes (with the exception of returns filed for agricultural employees) are required to be filed for each calendar quarter except that if pursuant to regulations the district director so notifies the employer, returns on Form 941 are required to be filed on a monthly basis.

(B) By inserting after paragraph (a)(5) the following new subparagraph:

(6) *Separate accounting.*—If an employer fails to withhold and pay over income, social security, or railroad retirement tax due on wages of employees, he may be required by the district director to collect such taxes and deposit them in a separate banking account in trust for the United States not later than the second banking day after such taxes are collected.

(C) By striking out the first sentence of paragraph (d)(1) and inserting in lieu thereof the following:

In the case of an employee receiving wages from more than one employer during the calendar year, amounts may be deducted and withheld as employee social security tax (that is, employee tax under the Federal Insurance Contributions Act) with respect to wages in excess of $4,800 ($4,200 for certain calendar years prior to 1959).

PAR. 14. Section 601.403, MISCELLANEOUS EXCISE TAXES COLLECTED BY RETURN, is amended as follows.

(A) By striking out paragraph (a)(3) and inserting in lieu thereof the following:

(3) *Transportation of persons.*—Subchapter C of chapter 33 of the Code imposes a tax with respect to transportation of persons, including seating or sleeping accommodations furnished in connection with such transportation. Similar taxes on transportation of property, and transportation of oil by pipeline, were repealed by the Tax Rate Extension Act of 1958 (72 Stat. 259).

(B) By striking out "the tax on the transportation of oil by pipeline," in the first sentence of paragraph (c)(1).

(C) By inserting after paragraph (c)(3) the following new subparagraph:

(4) *Separate accounting.*—Collecting agents who fail to collect and pay over the excise taxes on facilities or services may be required by the district director to collect such taxes and deposit them in a separate banking account in trust for the United States not later than the second banking day after such taxes are collected.

(D) By striking out paragraph (e)(3) and redesignating paragraph (e)(4) as paragraph (e)(3).

PAR. 15. Section 601.502(b)(1) is amended by striking out the first sentence and inserting in lieu thereof the following:

Except as provided in this paragraph, or as authorized by Treasury Department Circular No. 230 as amended (31 CFR Part 10) [I.R.B. 1959–7, 6], which circular contains rules governing the recognition of attorneys and agents representing clients before the Internal Revenue Service, no person appearing as an attorney or agent on behalf of any taxpayer, or of a transferee or fiduciary will be recog-

nized by representatives of the Service, unless such attorney or agent is duly enrolled and in good standing to practice before the Internal Revenue Service in accordance with Department Circular No. 230.

PAR. 16. Section 601.503, FILING POWER OF ATTORNEY AND STATEMENT RELATIVE TO FEES, is amended as follows:

(A) By striking out the heading and inserting in lieu thereof "*Filing power of attorney*".

(B) By striking out the last sentence.

PAR. 17. Section 601.504, PROVISIONS RESPECTING POWERS OF ATTORNEY, is amended as follows:

(A) By striking out paragraph (a)(1)(i) and inserting in lieu thereof the following:

(i) To receive (but not to endorse and collect) checks in payment of any refund of internal revenue taxes, penalties, or interest. The endorsement and payment of checks drawn on the Treasurer of the United States after delivery to the taxpayer or to his attorney or agent are governed by Treasury Department Circular No. 21, Revised September 1946, as amended (31 CFR Part 360). If the refund check is not to be endorsed by the payee personally, it should be endorsed under authority evidenced by one of the special types of powers of attorney prescribed by that circular. (See section 3477 of the Revised Statutes (31 U.S.C. 203) for restrictions on the assignment of claims, and § 601.510.)

(B) By striking out the first sentence of paragraph (c) and inserting in lieu thereof the following:

(1) Except as provided in subparagraph (2), in any case in which a power of attorney has been filed and thereafter the taxpayer desires to authorize an additional attorney or agent to represent him before the Service with respect to the same matter, a new power of attorney must be filed which shall include the names of all attorneys or agents authorized to act for the taxpayer.

(C) By adding at the end of paragraph (c) the following new subparagraph:

(2) In any case in which a general power of attorney has been filed and the taxpayer merely desires to authorize an additional attorney or agent to represent him before the Service with respect to a specific act (but wishes the power of attorney previously filed to remain in effect with respect to all other matters referred to in such general power), a separate power of attorney may be filed which shall include the name of the attorney or agent (or the names of the attorneys or agents) authorized to act for the taxpayer with respect to the performance of the specific act. Such separate power of attorney shall contain on the face thereof a recital to the effect that the intent and purpose thereof is not to revoke any existing power of attorney theretofore filed, but instead is intended to be in addition thereto. Such separate power of attorney shall in no case be effective so far as the Service is concerned unless a certificate signed by the taxpayer is attached to and filed with the separate power stating (i) that additional attorneys or agents in fact have been employed and (ii) that the attorneys or agents authorized by the taxpayer's general power of attorney to represent him before the Service have been notified in writing of the execution of such separate power.

PAR. 18. Section 601.508, RECOGNITION BY CORRESPONDENCE, is amended by striking out "Department" in the second sentence and inserting in lieu thereof "Service".

PAR. 19. Section 601.702(a), GENERAL, is amended by adding at the end thereof of the following new subparagraph:

(8) Applications, and certain papers submitted in support of such applications, filed by organizations described in section 501(c) or (d) of the Code and determined to be exempt from taxation under section 501(a) are open to public inspection in the office of the information officer of the National Office.

Copies of such applications filed after September 2, 1958, are open to public inspection in the offices of district directors of internal revenue.

(R.S. 161; 5 U.S.C. 22)

DANA LATHAM,
Commissioner of Internal Revenue.

(Filed by the Division of the Federal Register on February 13, 1959, 8:46 a.m., and published in the issue of the Federal Register for February 14, 1959, 24 F.R. 1155.)

(Also Part I, Sections 4057, 4221, 4222, 4294.) T. D. 6344[1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER D, PART 148.—CERTAIN EXCISE TAX MATTERS UNDER THE EXCISE TAX TECHNICAL CHANGES ACT OF 1958

Temporary rules relating to registration and exemption for nonprofit educational organizations.

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

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

The following rules, prescribed under the Excise Tax Technical Changes Act of 1958 (Public Law 85–859, approved September 2, 1958) [C.B. 1958–3, 92], relate to the registration requirements for certain tax-free sales of articles taxable under chapter 32 of the Internal Revenue Code of 1954, as amended, and the exemption from the retailers excise tax, manufacturers excise tax, and the excise tax on transportation and communications applicable with respect to nonprofit educational organizations.

The rules set forth herein are to remain in force and effect until superseded by regulations relating to the subject matters referred to herein conforming with the amendments affecting such matters made by the Excise Tax Technical Changes Act of 1958.

These rules are designed to inform interested taxpayers as to how, when, and where to perform certain acts required or permitted under section 4222 of the Internal Revenue Code of 1954, as added by section 119(a) of the Excise Tax Technical Changes Act of 1958, section 4057 of the Code, as added by section 105(a) of the Act, and section 4294 of the Code, as added by section 135(a) of the Act, to assist them in the performance of such acts and in complying with the added or amended provisions of the Internal Revenue Code.

In order to prescribe temporary rules relating to the subject matters referred to above, the following regulations are hereby issued:

§ 148.1–3 TEMPORARY PROCEDURES FOR TAX-FREE SALES AND PURCHASES—(a) *Purpose of this section.*—The purpose of this section is to set forth temporary rules for compliance with the registration requirements of section 4222 of the Internal Revenue Code of 1954, as amended, whereby articles subject to tax under chapter 32 of such Code may be sold tax free on and after January 1, 1959.

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[1] 23 F. R. 10344.

(b) *Tax-free sales only if seller and purchaser are registered.*—Except as provided in paragraphs (c) and (i) of this section, an article subject to tax under chapter 32 may on and after January 1, 1959, be sold tax free by the manufacturer for the following uses (but only if the seller, first purchaser, and second purchaser, as the case may be, have registered as required by this section)—

(1) for use by the purchaser for further manufacture;

(2) for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture;

(3) for export by the purchaser;

(4) for resale by the purchaser to a second purchaser for export by the second purchaser;

(5) for use by the purchaser as supplies for vessels or aircraft subject in the case of civil aircraft to the reciprocity requirements of section 4221(e);

(6) to a State or local government for its exclusive use;

(7) to a nonprofit educational organization for its exclusive use;

(8) in the case of a tire, inner tube, or automobile radio or television receiving set, for use by the purchaser for sale on or in connection with the sale of another article manufactured or produced by such purchaser, provided such other manufactured article is to be sold by the manufacturer thereof for one of the purposes specified in subparagraphs (3) to (7), inclusive, of this paragraph;

(9) in the case of musical instruments, to a religious institution for exclusively religious purposes;

(10) in the case of automobile bodies, to a manufacturer or producer of automobile trucks or other automobiles to be sold by such manufacturer or producer;

(11) in the case of gasoline, to a producer of gasoline; or

(12) in the case of lubricating oil, to a manufacturer or producer of lubricating oil for resale by him.

(c) *Tires, tubes, and automobile radio or television receiving sets.*—A tire, inner tube, or automobile radio or television receiving set may not be sold tax free under subparagraphs (1) and (2) of paragraph (b) of this section for use, or for resale for use, in further manufacture.

(d) *Definitions.*—For purposes of this section—

(1) *Manufacturer.*—The term "manufacturer" includes a producer or importer of an article.

(2) *Export.*—The term "export" includes shipment to a possession of the United States; and the term "exported" includes shipped to a possession of the United States.

(3) *Supplies for vessels or aircraft.*—The term "supplies for vessels or aircraft" means fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or vessels actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. For purposes of the preceding sentence, the term "vessels" includes civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and the term "vessels of war of the United States or of any foreign

nation" includes aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof.

(4) *State or local government.*—The term "State or local government" means any State, Alaska, Hawaii, the District of Columbia, or any political subdivision of any of the foregoing.

(5) *Nonprofit educational organization.*—For definition of the term "nonprofit educational organization" see § 148.1–4(b) of the regulations in this part.

(6) *Sold for use in further manufacture.*—An article shall be treated as sold for use in further manufacture if—

(i) such article (other than an article referred to in subdivision (ii)) is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another article taxable under chapter 32 to be manufactured or produced by him; or

(ii) in the case of an automobile part or accessory taxable under section 4061(b), a radio or television component taxable under section 4141, or a camera lens taxable under section 4171, such article is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, any other article (taxable or nontaxable) to be manufactured or produced by him.

(e) *Temporary registration*—(1) *Prior registration.*—Any person who has been issued a certificate of registry before January 1, 1959, which is still in effect (i) authorizing him either to sell or purchase articles tax free for use in further manufacture of other articles, or for resale for such use, or (ii) as a producer or importer of gasoline or manufacturer or producer of lubricating oil, may, on and after January 1, 1959, and until the temporary rules set forth in this section are superseded by subsequent regulations, use such registration for tax-free sales and purchases as provided by this section.

(2) *Other temporary registration.*—Any person who is eligible to sell or purchase articles tax free as provided in paragraph (b) of this section and who does not have a prior certificate of registry as referred to in subparagraph (1) of this paragraph may, on and after January 1, 1959, and until the temporary rules set forth in this section are superseded by permanent regulations, make such tax-free sales or purchases in accordance with the following procedure. Such person shall prior to making a tax-free purchase or sale address a communication to the district director for the district in which is located his principal place of business (or if he has no principal place of business in the United States, with the Director of International Operations, Internal Revenue Service, Washington, D. C.) setting forth: (i) his name, or trade name if one is used, and address; (ii) the nature of the business (manufacturer, exporter, reseller for further manufacture, or nonprofit educational organization, etc.); and (iii) a general description of the types of tax-free sales or purchases intended to be made. In the case of a religious institution (other than a church) and a nonprofit educational organization, additional information shall be furnished showing that the institution or organization is exempt from income tax as an institution or organization described in section 501(c)(3) of the Internal Revenue Code (or the corresponding provisions of prior revenue laws.) Upon the filing of this information with the district director, the seller or purchaser, as the case may be, shall be considered to be temporarily

registered for purposes of selling or purchasing articles tax free as indicated in paragraph (b) of this section.

(f) *Evidence of tax-free sale.*—The purchaser shall note on the purchase order or other document furnished to the seller by the purchaser the exempt purpose for which the article or articles are being purchased and the registration number of the purchaser as provided in subparagraph (1) of paragraph (e) of this section, or if the purchaser has temporarily registered as provided in subparagraph (2) of paragraph (e) of this section, the date of such registration and the district director with whom registered.

(g) *Failure to register.*—If either the seller or purchaser is not registered as provided in paragraph (e) of this section, tax-free sale for any of the purposes specified in paragraph (b) of this section may not be made, except as indicated in paragraph (i) of this section. Where tax is paid but the article is used or resold for use for an exempt purpose, a claim for refund may be filed on Form 843, or credit taken on a subsequent return, in accordance with the provisions of section 6402(a) or 6416, as the case may be.

(h) *Duty of seller to ascertain use of registration or exemption certificate.*—A manufacturer or reseller making a sale for a tax-free purpose as provided by this section must use reasonable diligence to satisfy himself that the tax-free sale is warranted by law. If the manufacturer has knowledge at the time of his sale that the article sold by him is not intended for use or resale as indicated by the purchaser, the manufacturer is liable for the tax and is not relieved of liability by reason of the registration of the purchaser or the furnishing of an exemption certificate or statement by the purchaser.

(i) *Exceptions to the requirement for registration*—(1) *State and local governments.*—A State or local government purchasing articles direct from the manufacturer for its exclusive use may, but is not required to, register as provided in this section of the regulations. To establish the right to sell articles tax free to a State or local government which is not registered, the manufacturer must comply with the provisions of § 314.24 of Regulations 44 (26 CFR (1939) Part 314) and § 316.24 of Regulation 46 (26 CFR (1939) Part 316), as prescribed under and made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, 19 F. R. 5167, August 17, 1954.

(2) *Sales or resales for export to foreign purchaser.*—In the case of sales for export or for resale for export, where the first purchaser or the second purchaser is located in a foreign country or possession of the United States, such purchaser is not required to register as provided in paragraph (e) of this section. To establish the right to sell articles tax free for export to a purchaser who is not registered and who is located in a foreign country or a possession of the United States, the manufacturer must obtain from such purchaser the information required in § 314.25 of Regulations 44 (26 CFR (1939) Part 314) and § 316.25 of Regulations 46 (26 CFR (1939) Part 316). For requirements as to proof of exportation see section 4221(b).

(3) *Sales of mechanical pencils, fountain pens, and ball point pens for export.*—A manufacturer of mechanical pencils, fountain pens, and ball point pens and a purchaser of these articles may not register under the provisions of these regulations in order to sell or purchase these articles tax free for export or for resale for export.

To establish the right to sell mechanical pencils, fountain pens, and ball point pens tax free for export or for resale by the purchaser to a second purchaser for export, the manufacturer must comply with the provisions of § 316.25 of Regulations 46 (26 CFR (1939) Part 316). For requirements as to proof of exportation see section 4221(b).

(4) *United States.*—The registration requirements of this section do not apply to purchases and sales by the United States. The United States or any of its agencies or instrumentalities may purchase and sell taxable articles for any of the exempt purposes specified in paragraph (b) of this section provided the purchase order or other document relating to such purchases clearly indicates that the articles are being purchased tax free as authorized by chapter 32 of the Code.

§ 148.1–4 TAX-FREE SALES OR SERVICES TO CERTAIN NONPROFIT EDUCATIONAL ORGANIZATIONS—(a) *In general.*—Sales to, or facilities or services furnished, a nonprofit educational organization, as defined in paragraph (b), are not subject to the tax imposed by:

(1) chapter 31 of the Internal Revenue Code of 1954, relating to retailers excise taxes.

(2) chapter 32 of the Internal Revenue Code of 1954, relating to manufacturers excise taxes,

(3) section 4251 of the Internal Revenue Code of 1954, relating to the tax on communication services or facilities, or

(4) section 4261 of the Internal Revenue Code of 1954, relating to the tax imposed upon the transportation of persons.

(b) *Definition of nonprofit educational organization.*—The term "nonprofit educational organization" means an organization exempt from income tax under section 501(a) of the Internal Revenue Code of 1954 whose primary function is the presentation of formal instruction and which normally maintains a regular faculty and curriculm and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), provided such school normally maintains a regular faculty and curriculm and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(c) *Retailers excise taxes*—(1) *Exemption.*—Section 4057 of the Code provides an exemption from the retailers excise tax with respect to the sale after December 31, 1958, of any article, including liquid fuel referred to in section 4041 of the Code, to a nonprofit educational organization, as defined in paragraph (b), for its exclusive use. In addition section 4057 provides an exemption from the tax on the use of liquid fuel imposed by section 4041 with respect to the use after such date by a nonprofit educational organization of such liquid fuel. In the case of a school operated as an activity of an organization described in section 501(c)(3), referred to in paragraph (b) of this section, the sale must be for the exclusive use of such school, or in the case of liquid fuel, such liquid fuel must be used by such school.

(2) *Evidence required to establish tax-free sales to nonprofit educational organization; general rule*—(i) Except as provided in subparagraph (3) of this paragraph, to establish the right to exemption

under section 4057, the retailer must obtain from the purchaser and retain in his possession a properly executed exemption certificate as set forth in paragraph (h)(1). Such certificate shall show that the organization has received a determination letter from a district director or a ruling from the Commissioner holding the organization to be exempt from income tax as an organization described in section 501(c)(3) or that it has received such determination letter or ruling under the corresponding provisions of prior revenue laws. The exemption certificate must also show the date of such determination letter or ruling and that such determination letter or ruling is still in effect and has not been withdrawn or revoked. Unless exemption from income tax has been established by such a determination letter or ruling, the retailer does not have the right to make tax-free sales. The organization, in order to enable the retailer to establish his right to sell tax free, shall apply to the district director for the district in which its principal office is located for a determination of its status. Application for a determination should be made by filing Form 1023 with such district director. Copies of the form and instructions as to the appropriate procedure to be followed in filing it may be obtained from the appropriate district director.

(ii) The exemption certificate must also include a statement that the organization (or the school operated as an activity of an organization which has such a determination letter or ruling) normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(3) *Evidence required to establish tax-free sales to a school operated as an activity of a church, parish, or other religious body.*—(i) In the case of sales to a school operated as an activity of a church, parish, or other religious body, to establish the right to exemption under section 4057 the retailer must obtain from the purchaser and retain in his possession a properly executed exemption certificate as set forth in paragraph (h)(2). Such certificate shall show that the purchaser is either—

(*a*) A school operated as an activity of a church, parish, or other religious body within the meaning of section 503(b)(1); or

(*b*) A church, parish, or other religious body within the meaning of section 503(b)(1) which operates a school as one of its activities,

and that the purchase is for the exclusive use of that school.

(ii) The exemption certificate must also include a statement that such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(4) *Frequency of certificates.*—Where only occasional sales are made by a retailer to a nonprofit educational organization, as defined in paragraph (b) of this section, a separate exemption certificate should be furnished for each order. However, where sales by the retailer to the educational organization are regularly or frequently made, a certificate covering all orders for a specified period not to exceed 4 calendar quarters will be acceptable. Such certificate and

proper records of invoices, orders, etc., relative to tax-free sales must be readily accessible for inspection by internal revenue officers and retained as provided in section 6001 of the Code and the regulations thereunder.

(5) *Exemption certificate.*—(i) For form of certificates for exemption from retailers excise taxes for use by a nonprofit educational organization other than a school operated as an activity of a church, parish, or other religious body, see paragraph (h)(1) of this section.

(ii) For form of certificates for exemptions from retailers excise taxes for use by a school operated as an activity of a church, parish, or other religious body, see paragraph (h)(2) of this section.

(6) *Prima facie evidence of exempt use.*—In the absence of circumstances indicating a different use, the exemption certificate procured by the retailer from the purchasing nonprofit educational organization will be acceptable as prima facie evidence that the article is purchased for the exclusive use of such organization.

(7) *Exemption certificate not obtained prior to filing of retailer's excise tax return.*—If the sale is otherwise exempt but the exemption certificate is not obtained prior to the time the retailer files a return covering taxes due for the period in which the sale was made, the retailer must include the tax on such sale in his return for that period. However, if the certificate is later obtained, a credit may be taken on a subsequent return or a claim for refund of the tax paid on such sale may be filed on Form 843, within the period of limitation prescribed by section 6511(b) of the Code and § 301.6511(b)–1.

(d) *Manufacturers excise taxes.*—(1) *Exemption.*—Section 4221(a)(5) of the Code provides an exemption from the manufacturers excise tax with respect to the sale after December 31, 1958 of an article by the manufacturer, producer, or importer thereof to certain nonprofit educational organizations, as defined in paragraph (b) of this section, for their exclusive use. However, the exemption authorized by that section does not apply with respect to the sale of any article unless both the manufacturer, producer, or importer and the nonprofit educational organization are registered as provided in § 148.1–3 of these temporary rules. See such section of these temporary rules for the requirements relating to the tax-free sale of articles subject to the manufacturers excise tax to a non-profit educational organization for its exclusive use.

(e) *Communication services or facilities furnished to nonprofit educational organizations.*—(1) *Exemption.*—Under the provisions of section 4294(a) of the Code, amounts paid after December 31, 1958, for communication services or facilities furnished to a nonprofit educational organization, as defined in paragraph (b) of this section, are exempt from the tax imposed by section 4251, if such amounts are paid by such organization. In the case of a school operated as an activity of an organization described in section 501(c)(3), which is exempt from income tax, the exemption from the communications tax only applies to the amount paid for services or facilities which are for the exclusive use of the school.

(2) *Exemption certificate for payments made by a nonprofit educational organization.*—(i) A nonprofit educational organization shall establish its right to exemption by properly executing and furnishing to the person providing the service or facility an exemption certificate.

No additional exemption certificates are required where payment for services or facilities furnished is made by such organization from its funds direct to such person.

(ii) For form of certificates for exemption from communications taxes for use by a nonprofit educational organization other than a school operated as an activity of a church, parish, or other religious body, see paragraph (h)(3) of this section.

(iii) For form of certificates for exemption from communications taxes for use by a school operated as an activity of a church, parish, or other religious body, see paragraph (h)(4) of this section.

(3) *Exemption certificate for payments made by a person other than a nonprofit educational organization.*—(i) In all cases where payment is made for communication services or facilities furnished to a nonprofit educational organization by a person other than such nonprofit educational organization but for which he is reimbursed by such organization, the right to exemption shall be evidenced by properly executed exemption certificates. An agent of a telegraph, telephone, radio, or cable company should not accept an exemption certificate unless satisfied, on the basis of proper credentials or otherwise, that the person who signed it is the person whom he represents himself to be and that the exemption claimed is allowable under the law. A separate exemption certificate will be required for each message paid for as a separate item, but where periodic payments are made, a blanket certificate (for a period not to exceed one month) may be accepted as evidence of the right to exemption.

(ii) For form of certificates for exemption from communications taxes for use on behalf of a nonprofit educational organization other than a school operated as an activity of a church, parish, or other religious body, see paragraph (h)(3) of this section.

(iii) For form of certificates for exemption from communications taxes for use on behalf of a school operated as an activity of a church, parish, or other religious body, see paragraph (h)(4) of this section.

(f) *Exemption from tax on the transportation of persons.*—(1) *In general.*—Under the provisions of section 4294(a), the tax imposed by section 4261 shall not apply to amounts paid after December 31, 1958, by a nonprofit educational organization, as defined in paragraph (b) of this section, for the transportation of persons or for seating or sleeping accommodations furnished to such organizations. Amounts paid for transportation or facilities by an officer, employee, or student of such nonprofit educational organization who is traveling on a mileage or other allowance basis are exempt from tax where reimbursement is made to such officer, employee, or student by such nonprofit educational organization. In the case of a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax, the exemption from the tax on the transportation of persons only applies to amounts paid for such transportation of persons rendered for the exclusive benefit of such school.

(2) *Evidence of right to exemption.*—(i) The right to exemption from the tax on the transportation of persons shall be established by the use of exemption certificates. A separate certificate must be furnished with respect to each amount paid for transportation or for seating or sleeping accommodations furnished in connection therewith.

Where a nonprofit educational organization, as defined in paragraph (b) of this section, purchases transportation or facilities for a group of persons, as in the case of a college football team using transportation facilities to travel to the site of a game away from home, one certificate covering the total amount paid may be accepted by the carrier. Where such organization makes periodic payments for transportation or facilities furnished officers, employees, or students of such organization, one certificate covering the total amount paid at any one time may be accepted by the carrier. One exemption certificate covering a number of separate payments may not be accepted by the carrier. Each person claiming exemption from the tax must identify himself by presenting credentials in the form of papers, documents, or other evidence which will reasonably assure the agent of the carrier collecting a payment that he is the person covered by the exemption certificate furnished on behalf of the nonprofit educational organization. The exemption certificate must be submitted to the carrier at the time the payment for transportation or facilities is made.

(ii) For form of certificates for exemption from taxes on the transportation of persons for use by a nonprofit educational organization other than a school operated as an activity of a church, parish, or other religious body, see paragraph (h) (5) of this section.

(iii) For form of certificates for exemption from taxes on the transportation of persons for use by a school operated as an activity of a church, parish, or other religious body, see paragraph (h) (6) of this section.

(g) *Retention of exemption certificates.*—The exemption certificates required under paragraphs (c), (e), and (f) of this section shall be retained by the retailer, carrier, or communications facility, together with the record of the goods sold, the services rendered, or the facilities furnished, and made available for inspection by internal revenue officers for a period of at least three years from the date the tax would have become due, if payable.

(h) *Forms of exemption certificates.*—The following forms of exemption certificates will be acceptable for the purposes of this section and must be adhered to in substance:

(1) Form of certificate for exemption from retailers excise taxes for use by a nonprofit educational organization other than a school operated as an activity of a church, parish, or other religious body:

EXEMPTION CERTIFICATE

(For use by a nonprofit educational organization purchasing articles subject to retailers excise tax for its exclusive use)

_____, 19____
(DATE)

The undersigned hereby certifies that he is_____
(TITLE)

of_____; that he is
(EXEMPT ORGANIZATION)

authorized to execute this certificate; and that the articles specified in the accompanying order or on the reverse side hereof are purchased by such organization exclusively for use in its educational activities.

It is understood that this exemption certificate is for use only by a nonprofit educational organization in the tax-free purchase for its exclusive use of articles subject to the retailers excise tax; or by an organization exempt from income tax

described in section 501(c)(3) of the Code in the tax-free purchase of any such article for the exclusive use of its school which qualifies for the exemption; and it is agreed that if any article purchased tax free under this exemption certificate is used otherwise, such fact will be reported to the retailer from whom the tax-free purchase was made.

The organization claiming exemption under this certificate has received a determination letter (or a ruling) from the Internal Revenue Service holding the organization to be exempt from income tax as an organization described in section 501(c)(3) of the Internal Revenue Code (or has received a determination letter (or ruling) under the corresponding provisions of prior revenue laws). The date of such determination letter (or ruling) is _____ and such determination letter (or ruling) has not been withdrawn or revoked.

The exempt organization, or the school operated as an activity of the exempt organization, normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

The undersigned understands that the fraudulent use of this certificate for the purpose of securing this exemption will subject him and all guilty parties to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

_____
(SIGNATURE OF AUTHORIZED INDIVIDUAL)

_____
(ADDRESS)

(2) Form of certificate for exemption from retailers excise taxes for use by a school operated as an activity of a church, parish, or other religious body:

EXEMPTION CERTIFICATE

(For use by or for a school operated as an activity of a church, parish, or other religious body in purchasing articles subject to retailers excise tax for the exclusive use of the school)

_____, 19____
(DATE)

The undersigned hereby certifies that he is_____
(TITLE)

of_____; that he is authorized
(SCHOOL, CHURCH, PARISH, ETC.)

to execute this certificate; and that the articles specified in the accompanying order on the reverse side hereof are purchased by such institution exclusively for use in its educational activities.

It is understood that this exemption certificate is for use only by a school operated as an activity of a church, parish, or other religious body in the tax-free purchase for its exclusive use of articles subject to the retailers excise tax; or by a church, parish, or other religious body in the tax-free purchase of any such article for the exclusive use of its school which qualifies for the exemption; and it is agreed that if any article purchased tax free under this exemption certificate is used otherwise, such fact will be reported to the retailer from whom the tax-free purchase was made.

The school operated as an activity of the church, parish, or other religious body normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

The undersigned understands that the fraudulent use of this certificate for the purpose of securing this exemption will subject him and all guilty parties to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

_____
(SIGNATURE OF AUTHORIZED INDIVIDUAL)

_____
(ADDRESS)

(3) Form of certificate for exemption from communications taxes for use by or on behalf of a nonprofit educational organization other than a school operated as an activity of a church, parish, or other religious body:

EXEMPTION CERTIFICATE

(For use by or on behalf of a nonprofit educational organization exempt from communications tax)

_____, 19____
(DATE)

The undersigned hereby certifies that he is _____
(TITLE OR CAPACITY)

of _____; that he is authorized to execute
(EXEMPT ORGANIZATION)

this certificate; and that the communication services or facilities furnished or to be furnished to the organization by _____
(TELEPHONE, TELEGRAPH COMPANY, ETC.)

will be paid for from funds of the organization and are for the exclusive use of the organization in the educational activities which qualify it for exemption from tax under section 4294 of the Internal Revenue Code.

The organization claiming exemption under this certificate has received a determination letter (or a ruling) from the Internal Revenue Service holding the organization to be exempt from income tax as an organization described in section 501(c)(3) of the Internal Revenue Code (or has received such determination letter (or ruling) under the corresponding provisions of prior revenue laws). The date of such determination letter (or ruling) is _____ _____ and such determination letter (or ruling) has not been withdrawn or revoked.

The exempt organization normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

The undersigned understands that the fraudulent use of this certificate for the purpose of securing this exemption will subject him and all guilty parties to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

_____
(SIGNATURE OF AUTHORIZED INDIVIDUAL)

_____
(ADDRESS)

(4) Form of certificate for exemption from communications taxes for use by or on behalf of a school operated as an activity of a church, parish, or other religious body:

EXEMPTION CERTIFICATE

(For use by or on behalf of a school operated as an activity of a church, parish, or other religious body for exemption from communications tax)

_____, 19____
(DATE)

The undersigned hereby certifies that he is _____
(TITLE OR CAPACITY)

of _____; that he is authorized to execute this
(SCHOOL, CHURCH, PARISH, ETC.)

certificate; and that the communication services or facilities furnished or to be furnished to the institution by_____
(TELEPHONE, TELEGRAPH COMPANY, ETC.)

will be paid for from the funds of the institution and are for the exclusive use of the school.

The school operated as an activity of the church, parish, or other religious body normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

The undersigned understands that the fraudulent use of this certificate for the purpose of securing this exemption will subject him and all guilty parties to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

_____
(SIGNATURE OF AUTHORIZED INDIVIDUAL)

_____
(ADDRESS)

(5) Form of certificate for exemption from taxes on the transportation of persons for use by or on behalf of a nonprofit educational organization other than a school operated as an activity of a church, parish, or other religious body:

EXEMPTION CERTIFICATE

(For use by or on behalf of a nonprofit educational organization exempt from the tax on the transportation of persons)

_____, 19____
(DATE)

Place of issue of ticket(s)_____
Ticket Form No(s)._____ Ticket No.(s)._____
(TO BE FILLED IN BY AGENT OF CARRIER ISSUING TICKET)
For_____
(TRANSPORTATION-SEAT, BERTH, OR STATEROOM)
Via_____ From_____
To_____
The undersigned hereby certifies that he is_____
(TITLE OR
_____ of _____; that
CAPACITY) (EXEMPT ORGANIZATION)
he is authorized to execute this certificate; and that the transportation furnished or to be furnished to the organization by_____
(NAME OF CARRIER)
will be paid for from funds of the organization and is for the exclusive use of the organization in the educational activities which qualify it for exemption from tax under section 4294 of the Internal Revenue Code.

The organization claiming exemption under this certificate has received a determination letter (or a ruling) from the Internal Revenue Service holding the organization to be exempt from income tax as an organization described in section 501(c)(3) of the Internal Revenue Code (or has received such determination letter (or ruling) under the corresponding provisions of prior revenue laws). The date of such determination letter (or ruling) is_____ _____ and such determination letter (or ruling) has not been withdrawn or revoked.

The exempt organization normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

The undersigned understands that the fraudulent use of this certificate for the purpose of securing this exemption will subject him and all guilty parties to a fine of not more than $10,000 or to imprisonment for not more than five years, or both, together with costs of prosecution.

_____
(SIGNATURE OF AUTHORIZED INDIVIDUAL)
_____
(ADDRESS)

(6) Form of certificate for exemption from taxes on the transportation of persons for use by or on behalf of a school operated as an activity of a church, parish, or other religious body:

EXEMPTION CERTIFICATE

(For use by or on behalf of a school operated as an activity of a church, parish, or other religious body for exemption from tax on the transportation of persons)

_____, 19____
(DATE)

Place of issue of ticket(s)_____
Ticket Form No(s). _____ Ticket No(s). _____
(TO BE FILLED IN BY AGENT OF CARRIER ISSUING TICKET)
For _____ Via _____
(TRANSPORTATION-SEAT, BERTH, OR STATEROOM)

From _____ To _____

The undersigned hereby certifies that he is_____
(TITLE OR CAPACITY)

of_____; that he is authorized to execute this
(SCHOOL, CHURCH, PARISH, ETC.)

certificate; and that the transportation furnished or to be furnished to the institution by_____will be
(NAME OF CARRIER)

paid for from the funds of the institution and is for the exclusive use of the school.

The school operated as an activity of the church, parish, or other religious body normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

The undersigned understands that the fraudulent use of this certificate for the purpose of securing this exemption will subject him and all guilty parties to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

_____
(SIGNATURE OF AUTHORIZED INDIVIDUAL)

_____
(ADDRESS)

Because the provisions of law under which these temporary rules are prescribed become effective on January 1, 1959, and because it is essential that rules implementing these provisions of law be in effect on such date, it is found impracticable to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).)

DANA LATHAM,
Commissioner of Internal Revenue.

Approved December 22, 1958.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on December 23, 1958, 12:30 p. m. and published in the issue of the Federal Register for December 25, 1958, 23 F. R. 10344.)

(Also Part I, Section 4231.) T. D. 6347[1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER D, PART 148.—CERTAIN EXCISE TAX MATTERS UNDER THE EXCISE TAX TECHNICAL CHANGES ACT OF 1958

Temporary rules relating to collection by proprietors of the cabaret tax from concessionaires.

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

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

The following rules, prescribed under the Excise Tax Technical Changes Act of 1958 (Public Law 85-859, approved September 2,

[1] 24 F. R. 54.

1958) [C.B. 1958–2, 92], relate to the collection by proprietors of the cabaret tax from concessionaires under chapter 33 of the Internal Revenue Code of 1954, as amended.

The rules set forth herein are to remain in force and effect until superseded by regulations relating to the subject matters referred to herein conforming with the amendment affecting such matters made by the Excise Tax Technical Changes Act of 1958.

These rules are designed to inform interested taxpayers as to how, when, and where to perform certain acts required or permitted under section 4231 (6) of the Internal Revenue Code of 1954, as amended by section 131 (c) of the Excise Tax Technical Changes Act of 1958.

In order to prescribe temporary rules relating to the subject matters referred to above, the following regulations are hereby issued:

§ 148.1–6 Reporting and Payment of Cabaret Tax on Amounts Received by Concessionaires.—(a) *In general*—(1) *Scope of regulations.*—The regulations in this section relate to the reporting and payment of the tax imposed by section 4231 (6) of the Internal Revenue Code of 1954 on any amount paid on or after January 1, 1959, to any concessionaire for admission, refreshment, service, or merchandise, at any roof garden, cabaret, or other similar place furnishing a public performance for profit, by or for any patron or guest who is entitled to be present during any portion of such performance. Section 4231 (6) of the Code, as amended by the Excise Tax Technical Changes Act of 1958, provides in part that if the person receiving, on or after such date, payments subject to the cabaret tax is a concessionaire, the tax "shall be paid by such concessionaire and collected from him by the proprietor of the roof garden, cabaret, or other similar place."

(2) *Application of regulations.*—The regulations in this section supplement and modify provisions of existing regulations relating to the reporting and payment of the tax imposed by section 4231 (6) of the Code, and have application to the tax imposed by such section in respect of any amount paid to a concessionaire on or after January 1, 1959.

(3) *Cross references.*—(i) For definition of the term "roof garden, cabaret, or other similar place", see section 4232(b) of the Code as amended by the Excise Tax Technical Changes Act of 1958.

(ii) For regulations relating to the basis, rate, computation, and scope of the tax imposed by section 4231(6) of the Code, see §§ 101.13 and 101.14 of Regulations 43, as amended (26 CFR (1939) Part 101), as prescribed under and made applicable to part I of subchapter A of chapter 33 of the Internal Revenue Code of 1954 by Treasury Decision 6091, 19 F. R. 5167, August 17, 1954 [C. B. 1954–2, 47].

(iii) For regulations relating to returns and payment of the tax imposed by section 4231(6) of the Code which are modified by the regulations in this section, see Part 477 (26 CFR (1939), 1956 Supp.), as prescribed under and made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091.

(b) *Duties of concessionaire.*—(1) *Payment of tax to proprietor.*—Every person who, as a concessionaire in a particular roof garden, cabaret, or other similar place, receives payments on or after January 1, 1959, with respect to which he incurs liability for the tax im-

posed by section 4231(6) of the Code, shall pay the amount of such tax to the proprietor of such roof garden, cabaret, or other similar place. The amount of such tax for any calendar month shall be paid to such proprietor on or before the day of the next following month which immediately precedes the last five days of such month (for example, the 25th day of a 30-day month, and the 26th day of a 31-day month). However, if such person ceases to be a concessionaire in relation to such proprietor, such person shall immediately pay to such proprietor any amount of such tax which he has not previously paid to the proprietor. A concessionaire shall on each day on which a payment of tax is made to a proprietor furnish to the proprietor a signed statement setting forth the period during which the concessionaire incurred liability for the tax so paid to the proprietor.

(2) *Records of concessionaire.*—The concessionaire shall keep the records required by § 101.32(b) of Regulations 43. The concessionaire also shall keep as part of his records a copy of each written statement furnished to the proprietor pursuant to subparagraph (1) of this paragraph and the receipts furnished by the proprietor pursuant to paragraph (c) (1) of this section.

(c) *Duties of proprietor.*—(1) *Collection of tax from concessionaire.*—The proprietor shall collect from each concessionaire, within the time prescribed in paragraph (b) (1) of this section for payment of tax by the concessionaire to the proprietor, the amount of the tax which is payable by the concessionaire to the proprietor pursuant to section 4231(6) and this section. Any amount of tax so collected by the proprietor is a special fund in trust for the United States. See section 7501 of the Code. On each day during which the proprietor receives any such amount from a concessionaire, the proprietor shall furnish to the concessionaire a signed receipt, showing the amount of tax received by him from the concessionaire and the date it was received.

(2) *Monthly deposits of tax.*—In determining whether or not the proprietor of a roof garden, cabaret, or other similar place is required to deposit excise taxes for any month, pursuant to § 477.4 of the regulations relating to Return and Payment of Certain Excise Taxes (26 CFR (1939) Part 477), and in depositing tax for any such month, the proprietor shall include any amount of tax collected from a concessionaire on or before the day which immediately precedes the last five days of the following month, exclusive of any amount previously deposited or included in a return filed by him for a prior tax-return period.

(3) *Failure to collect tax from concessionaire.*—In the event that a concessionaire refuses to pay to the proprietor the amount required to be paid, or if for any other reason the tax is not collected by the proprietor from the concessionaire, the proprietor shall furnish to the district director with whom he files returns a written statement, signed and dated by the proprietor, reporting:

(i) The name and address of such concessionaire,

(ii) The amount of tax which should have been collected by the proprietor from the concessionaire, if such amount is known,

(iii) The amount, if any, actually collected by the proprietor from the concessionaire,

(iv) The period, if known, for which the concessionaire incurred liability for tax which was not collected, and

(v) Any other available information concerning such refusal or failure.

(4) *Records of proprietor.*—In addition to any other records required to be kept by a proprietor of a roof garden, cabaret, or other similar place (see § 101.32(b) of Regulations 43), the proprietor shall keep as a part of his records:

(i) The name and address of each person who, as a concessionaire in such place, incurred liability for the tax imposed by section 4231(6) of the Code,

(ii) A copy of each receipt furnished to a concessionaire pursuant to paragraph (c)(1) of this section,

(iii) A copy of each statement furnished by a concessionaire pursuant to paragraph (b)(1) of this section, and

(iv) A copy of each statement furnished to the district director pursuant to paragraph (c)(3) of this section.

(5) *Returns of proprietor.*—(i) Tax collected by a proprietor from a concessionaire pursuant to section 4231(6) and this section shall be reported by the proprietor, as tax imposed by such section 4231(6), on the form prescribed for use as a return of such tax.

(ii) A proprietor required to file returns on a quarterly basis shall include in any such return the total amount of tax collected by him from a concessionaire on or before the day immediately preceding the last five days of the month following the calendar quarter for which the return is filed, exclusive of any tax so collected which has been included in a return filed by him for a prior tax-return period.

(iii) A proprietor required to file returns on a monthly basis shall include in any such return the total amount of tax collected by him from a concessionaire during the period covered by such return.

(iv) Whenever any amount of tax collected by a proprietor from a concessionaire is reported on a return there shall be attached to such return, as a part thereof, a statement showing the name and address of each concessionaire from whom any such tax was collected, and the amount of such tax collected from each such concessionaire.

(d) *Overpayment of tax.*—If more than the correct amount of tax for which a concessionaire incurs liability under section 4231(6) of the Code is collected by the proprietor and paid to the district director, the concessionaire may file a claim on Form 843 for refund of the amount overpaid. For regulations relating to claims for refund, see § 301.6402–2 of the Regulations on Procedure and Administration (26 CFR Part 301). No refund shall be allowed unless the concessionaire establishes that he has satisfied the conditions stated in section 6416(a) of the Code applicable to such refund.

Because the provisions of law under which these temporary rules are prescribed become effective on January 1, 1959, and because it is essential that rules implementing this provision of law be in effect on such date, it is found impracticable to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).)

O. GORDON DELK,
Acting Commissioner of Internal Revenue.

Approved December 30, 1958.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on December 30, 1958, 12:30 p. m. and published in the issue of the Federal Register for January 3, 1959, 24 F. R. 54.)

(Also Part I, Sections 4241, 4353.) T. D. 6349[1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER D, PART 148.—CERTAIN EXCISE TAX MATTERS UNDER THE EXCISE TAX TECHNICAL CHANGES ACT OF 1958

Temporary rules relating to payment of documentary stamp transfer taxes by check in lieu of stamp and payment of club dues tax by life members.

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

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

The following rules, prescribed under the Excise Tax Technical Changes Act of 1958 (Public Law 85-859, approved September 2, 1958) [C.B. 1958-3, 921], relate to the payment of documentary stamp transfer taxes by clearing houses for national securities exchanges, and the payment of club dues tax by life members.

The rules set forth herein are to remain in force and effect until superseded by regulations relating to documentary stamp taxes and the tax on club dues conforming with the amendments affecting such taxes made by the Excise Tax Technical Changes Act of 1958.

These rules are designed to inform interested taxpayers as to how, when, and where to perform certain acts required or permitted under sections 4241(a)(3) and 4353 of the Internal Revenue Code, as amended by sections 132(a) and 141(a), respectively, of the Excise Tax Technical Changes Act of 1958, to assist them in the performance of such acts and in complying with the amended provisions of the Internal Revenue Code.

In order to prescribe temporary rules relating to the subject matter referred to above, the following regulations are hereby adopted:

§ 148.1-1 PAYMENT OF DOCUMENTARY STAMP TAX THROUGH CLEARING HOUSES OF NATIONAL SECURITIES EXCHANGES WITHOUT USE OF STAMPS.—(a) *In general.*—Section 4353 of the Internal Revenue Code of 1954, as amended, provides that if a member of a securities exchange which is registered with the Securities and Exchange Commission as a national securities exchange appoints such exchange, or the clearing house for such exchange, as his agent for purposes of paying the taxes imposed by sections 4321 and 4331 of such Code in

[1] 24 F.R. 104.

respect of his transactions, the taxes imposed by such sections in respect of such transactions may be paid through such agent without the use of stamps.

(b) *Method of payment.*—(1) A clearing house for a securities exchange referred to in paragraph (a) of this section which has been appointed by a member of the securities exchange to act as his agent in accordance with the provisions of paragraph (c) of § 113.41 or paragraph (b) of § 113.71 of Regulations 71 (1941 edition, as amended, 26 CFR (1939)) may, on and after January 1, 1959, in lieu of affixing and canceling stamps as provided in subparagraph (4) of such paragraph (c), make payment to the district director for the district in which the clearing house is located of the total tax due. Any such payment of tax shall be made on the day on which the report specified in paragraph (c) (2) of § 113.41 is received by the clearing house.

(2) Each daily payment of tax shall be accompanied by a statement in substantially the following form: "The accompanying check No. ____ in the amount of $_____ is in payment of the total documentary stamp transfer tax liability as shown to be due on the reports received by the clearing house for_____.

Date

_____
Name of Clearing House

by _____
Name Title

§ 148.1–2 LIFE MEMBERSHIPS.—(a) *Basic tax.*—Section 4241 (a) (3) of the Code provides that a life member shall be liable, except as provided in paragraph (b) of this section, for a tax equivalent to the tax upon the amount paid on or after January 1, 1959, as dues or membership fees to any social, athletic, or sporting club or organization by those members (other than life members) having privileges most nearly comparable to the privileges of the person holding the life membership. Thus, if the life member has limited privileges comparable to the privileges of certain other members who pay dues in a lesser amount than members having full privileges, the tax of the life member shall be computed on the basis of such lesser amount. The tax must be paid by the life member at the time for payment of dues or fees by members having comparable privileges. No tax under section 4241 shall be imposed in respect of any life membership for which no charge is made to any person, such as an honorary membership. Further, if the tax liability of a life member is determined pursuant to section 4241 (a) (3) (A) and this paragraph, no tax shall be paid by the life member on the amount paid by him for his life membership.

(b) *Election by life member to pay tax on cost of life membership*—(1) *In general.*—In lieu of paying tax as provided in paragraph (a) of this section, a life member may elect to pay tax only on the amount paid in respect of his life membership computed as provided in subparagraph (3) of this paragraph. The election in respect of a life membership may be made only by the life member. An election made in accordance with the provisions of this paragraph may not be revoked.

(2) *Conditions for election.*—In the case of a life membership purchased before July 1, 1959, all amounts paid on or before June 30, 1959, for such life membership are treated as having been paid on

July 1, 1959. If a payment was made before July 1, 1959, for a life membership and if the life member desires to make the election provided in subparagraph (1) of this paragraph, he must make the election during the period beginning January 1, 1959, and ending July 1, 1959. If a life membership is purchased after June 30, 1959, the life member, if he wishes to pay tax computed on the amount paid for such life membership, must make his election not later than the day on which the first amount is paid for the life membership. The election by a life member to pay tax in respect of the amount paid for his membership shall be evidenced by a statement signed by such member and furnished to the club or organization in which he has such life membership. Such statement shall include:

(i) The name and address of the life member.

(ii) The total amount paid or to be paid for the life membership.

(iii) The date on which the first payment for the life membership was made and the amount of such payment.

(iv) An assertion by the life member that he elects to pay tax in respect of his life membership computed on the basis of the amount of the payment or payments made or to be made for the life membership.

The statement shall be retained by the club and shall be available for inspection by internal revenue officers.

(3) *Measure of tax.*—(i) If a life member elects to pay tax in respect of the amount paid for his life membership, the amount of the tax, except as provided in subdivision (ii) of this subparagraph, shall be 20 percent of the amount of each payment made for the life membership. The amount on which the tax is computed shall be based on payments made for the life membership by either the life member or any other person.

(ii) If an election is made in respect of a life membership for which a payment is made prior to July 1, 1959, the amount computed as tax pursuant to subdivision (i) of this subparagraph shall be reduced by any tax imposed and paid on or after January 1, 1959, pursuant to the provisions of section 4241(a)(3)(A) and paragraph (a) of this section. However, any tax imposed by section 4241 for any period prior to January 1, 1959, shall be disregarded in computing the tax in respect of a life membership.

(4) *Collection to tax.*—If an election is made in accordance with the provisions of this paragraph, the tax, computed as provided in subparagraph (3) of this paragraph, attaches at the time each payment for the life membership is made and the tax shall be collected at such time by the club or organization from the life member. For this purpose amounts paid on or before June 30, 1959, for a life membership are treated as having been paid on July 1, 1959.

Because of the need for temporary rules under which clearing houses for national securities exchanges may, on and after January 1, 1959, pay the documentary stamp tax by check in lieu of stamps, and in order to provide the procedure by which a life member may, on and after January 1, 1959, make the election to pay club dues tax as authorized in section 4241(a)(3), as amended by section 132(a) of the Excise Tax Technical Changes Act of 1958, it is found impracticable to issue this Treasury Decision with notice and public procedure

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

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

DANA LATHAM,
Commissioner of Internal Revenue.

Approved December 31, 1958.

NELSON P. ROSE,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on January 2, 1959, 3:36 p.m., and published in the issue of the Federal Register for January 6, 1959, 24 F. R. 104.)

(Also Part I, Section 4216.) T.D. 6355 [1]

TITLE 26—INTERNAL REVENUE, 1954.—CHAPTER I, SUBCHAPTER D, PART 148.—CERTAIN EXCISE TAX MATTERS UNDER THE EXCISE TAX TECHNICAL CHANGES ACT OF 1958

Temporary rules relating to constructive sale price for manufacturers excise tax.

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

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

The following rules, prescribed under the Excise Tax Technical Changes Act of 1958 (Public Law 85-859, approved September 2, 1958) [C.B. 1958-3, 921], relate to the determination of the constructive sale price for manufacturers excise taxes.

The rules set forth herein are to remain in force and effect until superseded by regulations relating to manufacturers excise taxes conforming with the amendments affecting such taxes made by the Excise Tax Technical Changes Act of 1958.

These rules are designed to inform interested taxpayers as to the application of section 4216(b) of the Internal Revenue Code (relating to constructive sale price), as amended by section 115 of the Excise Tax Technical Changes Act of 1958, and to assist them in complying with the amended provisions of the Internal Revenue Code.

In order to prescribe temporary rules relating to the constructive sale price under section 4216(b) of the Code, as amended, the following regulations are hereby adopted:

Sec. 148.1-5 CONSTRUCTIVE SALE PRICE.—(a) *Purpose of this section.*—The purpose of this section is to set forth temporary rules to be used in determining a constructive sale price under section 4216(b) of the Internal Revenue Code, as amended by section 115 of the Excise Tax Technical Changes Act of 1958, with respect to certain sales made on and after January 1, 1959, by a manufacturer, producer, or importer. The temporary rules set forth in this section have appli-

[1] 24 F.R. 310.

cation in the case of articles in respect of which the manufacturer's excise tax imposed under chapter 32 of the Code is based on the price for which the article is sold.

(b) *General rule.*—(1) *Sales at retail.*—Where a manufacturer, producer, or importer sells an article at retail, and the special rule provided in paragraph (c) of this section does not apply, the basis for tax shall be the lower of: (i) the actual price for which the article is sold; or (ii) the highest price for which such articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof. Thus, where a manufacturer, producer, or importer sells an article at retail, the tax on his retail sale ordinarily will be computed upon the highest price for which similar articles are sold by him to wholesale distributors. However, in such cases it must be shown that he has an established bona fide practice of selling such articles in substantial quantities to wholesale distributors. If he has no such sales to wholesale distributors, a fair market price will be determined by the Commissioner. In any case the price so determined shall not be in excess of the actual price for which the article is sold by him at retail.

(2) *Sales on consignment and sales otherwise than through an arm's length transaction.*—For rules relating to the determination of a constructive sale price in the case of sales on consignment, or sales otherwise than through an arm's length transaction and at less than the fair market price, see paragraphs (a) and (d) of § 316.15 of Regulations 46 (26 CFR (1939) Part 316), as prescribed under and made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, 19 F.R. 5167, August 17, 1954 [C.B. 1954–2, 47].

(c) *Special rule.*—(1) *Basis for tax.*—Where a manufacturer, producer, or importer sells an article at retail, to a retailer, or to a special dealer, and the conditions specified in subparagraph (2) of this paragraph are met, a special constructive sale price rule is provided for computation of the tax. This rule provides that the tax is to be based on the lower of the following prices: (i) the actual price for which the article is sold; or (ii) the highest price for which such articles are sold by such manufacturer, producer, or importer to wholesale distributors (other than special dealers).

(2) *Conditions governing applicability of special rule.*—In order to qualify for application of the special constructive sale price rule to the sale by the manufacturer, producer, or importer of an article at retail, to a retailer, or to a special dealer, the following four conditions must be satisfied.

(i) The manufacturer, producer, or importer of the article must regularly sell such articles at retail, to retailers, or to special dealers, as the case may be.

(ii) The manufacturer, producer, or importer of the article must regularly sell such articles to one or more wholesale distributors (other than special dealers) in arm's length transactions, and must establish that his prices in such cases are determined without regard to any tax benefit under this paragraph resulting from a reduction in the tax base for his sales at retail, to retailers, or to special dealers.

(iii) The normal method of sales within the industry embracing the article is not to sell at retail, or to retailers, or both.

(iv) The sale at retail, to a retailer, or to a special dealer must be an arm's length transaction.

(3) *Requests for determination.*—In any case in which a manufacturer, producer, or importer desires a determination as to the application of this paragraph, he may request such a determination from the Commissioner. The request shall contain complete and detailed information with respect to each of the conditions specified in subparagraph (2) of this paragraph to assist the Commissioner in determining whether the constructive sale price provisions of this paragraph apply, such as data which will show the normal method of sales for the article within the industry by manufacturers, producers, and importers (including the dollar value of sales at various distribution levels), and the source of such data; evidence as to the regularity with which sales of such articles are made by the manufacturer, producer, or importer at retail, to retailers, or to special dealers; information that the prices of the manufacturer, producer, or importer to wholesale distributors have been determined without regard to any tax benefit under the special rule of this paragraph; etc.

(d) *Definitions.*—For purposes of this section—

(1) *Wholesale distributors.*—The term "wholesale distributors" means persons who customarily resell to others who in turn resell.

(2) *Special dealer.*—The term "special dealer" means a distributor of articles taxable under section 4121 (relating to electric, gas, and oil appliances) who does not maintain a sales force to resell the article whose constructive sale price is established under paragraph (c) of this section but relies on salesmen of the manufacturer, producer, or importer of the article for resale of the article to retailers.

(3) *Industry.*—(i) The term "industry" as applied to any article generally means the specific category of articles listed in chapter 32 of the Internal Revenue Code (other than combinations) that embraces the article for which a constructive sale price is to be determined under paragraph (c) of this section. For the rule applicable to combinations of two or more articles, see subdivision (iv) of this subparagraph.

(ii) The following are examples of categories of taxable articles which comprise separate industries:

(*a*) Taxable electric flatirons;

(*b*) Taxable electric, gas, and oil appliances of the type used for cooking, warming, or keeping warm food or beverages for consumption on the premises;

(*c*) Taxable electric direct-motor and belt-driven fans and air circulators;

(*d*) Taxable electric, gas, and oil incinerator units and garbage disposal units;

(*e*) Taxable electric light bulbs and tubes;

(*f*) Taxable radio receiving sets;

(*g*) Taxable automobile radio receiving sets;

(*h*) Taxable radio and television components;

(*i*) Taxable musical instruments;

(*j*) Taxable fishing rods, creels, reels and artificial lures, baits, and flies;

(*k*) Taxable golf bags, balls and clubs;

(*l*) Taxable cameras;

(*m*) Taxable unexposed photographic film in rolls (including motion picture film);

(*n*) Taxable check writing, signing, canceling, perforating, cutting, and dating machines, and other check protector machine devices;

(*o*) Taxable cash registers; and

(*p*) Taxable mechanical pencils, fountain pens and ball point pens.

(iii) With respect to the tax imposed by section 4061, the following categories of articles are to be considered separate industries:

(*a*) Taxable automobile trucks (consisting of automobile truck bodies and chassis);

(*b*) Taxable automobile buses (consisting of automobile bus bodies and chassis);

(*c*) Taxable truck and bus trailers and semitrailers (consisting of chassis and bodies of such trailers and semitrailers);

(*d*) Taxable tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer;

(*e*) All other taxable automobile chassis and bodies;

(*f*) Taxable trailer and semitrailer chassis and bodies suitable for use in connection with passenger automobiles; and

(*g*) Taxable automobile parts and accessories.

(iv) With respect to an article which is—

(*a*) taxable as "Combinations of household type refrigerators and quick-freeze units" under section 4111,

(*b*) taxable as "Combinations of any of the foregoing" under sections 4141 and 4191, or

(*c*) a combination, other than a combination referred to in (*a*) or (*b*) of this subdivision, of articles taxable under the same section or different sections of chapter 32 of the Code

the industry test required by paragraph (c) (2) (iii) of this section for such article shall be met if such test is met for the article or articles which comprise more than 50 percent in value of the combination. In case of a combination consisting of a taxable article and a nontaxable article, the category for the taxable article in the combination shall constitute the industry for purposes of paragraph (c) (2) (iii) of this section.

Because the provisions of law under which these temporary rules are prescribed become effective on January 1, 1959, and because it is essential that rules implementing these provisions of law be in effect promptly, it is found impracticable to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

HAROLD T. SWARTZ,
Acting Commissioner of Internal Revenue.

Approved January 8, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

(Filed by the Division of the Federal Register on January 9, 1959, 2:39 p.m., and published in the issue of the Federal Register for January 14, 1959, 24 F.R. 310.)

(Also Part I, Section 547.) Rev. Proc. 59–1

Assessment of proposed personal holding company tax deficiencies will be suspended in order to provide taxpayers with sufficient time for making payments of deficiency dividends prior to assessment of the deficiency where an agreement has been signed under the provisions of section 547(c)(3) of the 1954 Code.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to set forth the conditions under which Form 2198, Determination of Liability for Personal Holding Company Tax, revised January 1959, may be accepted by the Internal Revenue Service and to announce the procedure established for the assessment of deficiencies in personal holding company tax cases where a Form 2198 has been approved.

SEC. 2. BACKGROUND.

.01 Section 547(c)(3) of the Internal Revenue Code of 1954 provides for the execution of an agreement form to be used in those cases where an assessment is proposed to the personal holding company tax liability and where the taxpayer seeks to offset this assessment by the timely payment of deficiency dividends. Form 2198 has been designed for this purpose.

.02 Section 547(f)(2) of the Code provides for a stay of collection on these cases until the expiration of 120 days after the determination. However, there is no provision for the suspension of making assessments for a similar period.

SEC. 3. PROCEDURES.

.01 Form 2198 will not be signed by the District Director of Internal Revenue or such other official to whom authority to sign Form 2198 is delegated unless all items relating to the personal holding company tax liability and other income tax liability are agreed upon by the taxpayer and the Revenue Service.

.02 Form 2198 will be approved only where sufficient time remains in which to make an assessment under the provisions of section 6501 of the Internal Revenue Code of 1954. If insufficient time remains in which to make such assessment, Form 2198 will be approved only if the taxpayer and the Service have signed an agreement under section 6501(c)(4) extending the period of limitation upon assessment.

.03 A Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, or 870–AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, is presently required to be signed by the taxpayer and submitted concurrently with Form 2198. In such a case, Forms 870 and 870–AD should contain the following conditions:

(1) The waiver of restrictions on assessment and collection contained herein is subject to the approval of the District Director of Form 2198 relating to the taxpayer's liability for Income and Personal Holding Company Tax.

(2) This agreement will not take effect until after the expiration of the 120 day period to begin with the date Form 2198 is approved by the District Director or such other official to whom authority to sign Form 2198 is delegated.

(3) If the taxpayer complies with section 547 of the Code, relating to the payment of deficiency dividends, by paying the deficiency dividends within 90 days after the date of approval of Form 2198 and filing a proper claim on Form 976, Claim for Deficiency Dividends Deduction or Credit or Refund under Section 547 of the Internal Revenue Code of 1954, within 120 days after the approval of Form 2198, the amount of the deficiency stated on this waiver shall be reduced by the amount necessary to give effect to the timely paid deficiency dividends and the remainder, if any, will be assessed.

(4) Where at the expiration of the 120 day period beginning with the date of the approval of Form 2198, a Form 976 has not been filed or timely deficiency dividend payments have not been made, the entire amount of the deficiency shown on this form will be assessed.

.04 The terms of the above conditions state, in effect, that no assessment may be made on the basis of the waiver until 120 days from the date of the acceptance by the Service of Form 2198.

.05 Interest will not be imposed on the deficiency for the period beginning immediately after the 30th day after the date Form 870 is effective (120 days from the date of the approval of Form 2198) and ending with the date notice and demand is made for payment of such deficiency.

SEC. 4. INQUIRIES.

Inquiries relating to this Revenue Procedure should be addressed to the Assistant Commissioner (Operations), for the attention of O:A:PPr.

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26 CFR 601.316: Administrative remedies available to taxpayers after the purchase of tobacco tax stamps or after assessment or payment of tobacco taxes. (Also Part I, Section 5705.)

Rev. Proc. 59-2

The date of withdrawal of tobacco products from the market may be shown in claims as the date such products were received on the factory premises or voluntarily destroyed at other than such premises; or in lieu of such dates, the claimant may certify (under penalties of perjury) that the products were so received or destroyed, within six months prior to the date the claim is filed.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to provide information as to the date to be shown in claims for refund of tax, Form 843, Claim, filed under section 5705 of the Internal Revenue Code of 1954, on tobacco products withdrawn from the market.

SEC. 2. BACKGROUND.

The period of limitation for filing claims for refund of tax, as set forth in section 5705(c) of the Code, as amended by the Excise Tax Technical Changes Act, Public Law 85-859, 85th Cong., 26 U.S.C. 5705, C.B. 1958-3, 92, is six months after the date of withdrawal from the market, loss (otherwise than by theft), or destruction of the tobacco products to which the claim relates.

SEC. 3. ACCEPTABLE DATES ON CLAIM.

It will be acceptable for claimants to show on Form 843, Claim, as the date of withdrawal from the market, the date that tobacco products were received on the factory premises (as described in the manufacturer's application for permit), or were voluntarily destroyed at a place other than such premises. In lieu of a listing of such specific date or dates, the claimant may certify (under penalties of perjury) that the products covered by the claim were received on the factory premises, or voluntarily destroyed at a place other than such premises, within six months prior to the date that the claim is filed.

SEC. 4. INQUIRIES.

Inquiries in regard to this Revenue Procedure should refer to the number thereof and should be addressed to the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax.

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26 CFR 601.501: Scope of requirements. Rev. Proc. 59–3

Standards of conduct, extent of authority, and circumstances and conditions governing recognition of unenrolled preparers of returns under section 10.7(a)(7) of Department Circular No. 230, as revised.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to prescribe, pursuant to section 10.7(a)(7) of Department Circular No. 230, approved January 29, 1959, effective March 15, 1959,[1] the standards of conduct, the extent of authority, and the circumstances and conditions under which a preparer may appear as the taxpayer's representative.

SEC. 2. SCOPE OF AUTHORITY.

.01 Any non-enrolled person who signed a return as having prepared it for the taxpayer (hereinafter sometimes called the preparer), when duly authorized by the taxpayer, may appear as the taxpayer's representative, with or without the taxpayer, before a revenue agent or examining officer (field audit or office audit) in the Audit Division in an office of District Director (but not at the Informal Conference

[1] Section 10.7(a)(7) of the Department Circular No. 230 states:

"§ 10.7 PRACTICE WITHOUT ENROLLMENT—(a) *In general.*—Individuals may appear on their own behalf, and individuals who are qualified, of good character and reputation, and are not under disbarment or suspension from practice before the Internal Revenue Service or from practice of their profession by any other authority, may be permitted to appeal without enrollment, provided they present satisfactory identification, in the following classes of cases:

* * * * * * *

"(7) Any person who signs a return, other than an estate or gift tax return or an income tax or excess profits tax return of a corporation, as having prepared it for the taxpayer may appear, without enrollment, as the taxpayer's representative, with or without the taxpayer, before revenue agents and examining officers of the Audit Division in the offices of District Directors (but not at the Informal Conference in a District Director's office) with respect to the tax liability of the taxpayer for the taxable year or period covered by that return; provided that any person who prepared the income tax return of a corporation and the individual returns of any of the corporate officers for the same taxable year or period, or any part thereof, covered by such corporate return, may also so appear as the corporation's representative. Proper authorization from the taxayer will be required. Any person who prepared a return with respect to which the instructions or regulations do not require that it be signed by the person who prepared the return for the taxpayer may likewise appear as the taxpayer's representative when properly authorized. Unless the taxpayer is present, such persons must present satisfactory identification. All such persons will be subject to such rules regarding standards of conduct, the extent of their authority, and other matters as the Director of Practice, with approval of the Commissioner of Internal Revenue, shall prescribe. Such persons will be permitted to represent taxpayers within those limits without enrollment."

in a District Director's office) with respect to the tax liability of the taxpayer for the taxable year or period covered by that return, subject to the limitations herein prescribed.

.02 The scope of authority may include dealing with any return (for example, income, excise or employment) which he signed as having prepared it for the taxpayer, but not an estate or gift tax return or an income tax or excess profits tax return of a corporation; provided that any person who prepared the income tax return of a corporation and the individual returns of any of the corporate officers for the same taxable year or period, or any part thereof, covered by such corporate return, may also so appear as the corporation's representative.

.03 Any person who prepared a return which provides no space on the prescribed form for signature of the person (other than the taxpayer) who prepared the return for the taxpayer, or who prepared a return with respect to which the instructions or regulations do not require that it be signed by the person who prepared the return for the taxpayer, may likewise appear as the taxpayer's representative.

.04 Where net operating loss carry-backs and carry-forwards are involved, the preparer may not (otherwise than as a witness) deal with the prior or subsequent returns unless he prepared the returns and signed them as having prepared them for the taxpayer.

.05 Such permission to appear before a revenue agent or examining officer in an office of District Director shall not constitute enrollment nor a finding of eligibility for enrollment.

.06 Nothing herein shall be construed as authorizing persons not members of the Bar to practice law. (Note: An interpretation by the Secretary of the Treasury of § 10.39 of Department Circular No. 230 (31 CFR, 1949 ed., 10.2(f)), among other sections, appeared at 21 F.R. 833, Feb. 7, 1956).

.07 The preparer of the return will be expected to remain steadily alert to questions, issues and factual situations of such difficulty as to require the assistance of an enrolled attorney or an enrolled agent and, when such assistance is required, to suggest to the taxpayer that he seek the advice or services of an enrolled person.

.08 Proper authorization will be filed with the revenue agent or examining officer in the office of District Director of Internal Revenue in which the case is under consideration at the time of the initiation of the examination or subsequent thereto.

.09 Unless the taxpayer is present, such a person must present identification satisfactory to the revenue agent or examining officer.

SEC. 3. LIMITATIONS UPON AUTHORITY DELEGATED.

The authority delegated to a preparer will be limited to appearances as the taxpayer's representative before the offices and officials above indicated. No preparer shall have authority to appear or to correspond as the taxpayer's representative at any other stage or level of proceedings or before any other Internal Revenue Service personnel, as for example, at the Informal Conference in the Audit Division in a District Director's office, the Appellate Division of a region, or in the National office. In addition, the following acts are beyond the scope of authority of a non-enrolled preparer:

(a) Executing claims for refund for the taxpayer.

(b) Receiving checks in payment of any refund of internal revenue taxes, penalties or interest for the taxpayer.

(c) Executing waivers or consents agreeing to a later assessment or collection of taxes than is provided by the applicable statute of limitations.

(d) Executing closing agreements with respect to a tax liability or specific matter for the taxpayer.

(e) In the event an agreement is reached at the conclusion of the examination—field audit or office audit—executing the Form 870 or other appropriate agreement form for the taxpayer.

(f) Receiving the "Form L–19" letter for the taxpayer (informing the taxpayer of his right to an Informal Conference in the Audit Division of the District Director's office) or receiving the "30-day letter" for the taxpayer. (If the taxpayer desires to request an Informal Conference in the Audit Division of the District Director's office or if the taxpayer desires to file a protest against the proposed determination set forth in the "30-day letter" the request or protest should be executed by the taxpayer and presented by the taxpayer or through his *enrolled* representative. See section 601.105 (c) and (d) of the Statement of Procedural Rules, C.B. 1955–2, pages 930–933 and the Conference and Practice Requirements, page 984 et seq.)

(g) Receiving copies of correspondence addressed to the taxpayer.

(*Note:* No preparer as such will be permitted to perform any of the acts specified in subparagraphs (a) through (g), above; enrollment is required for the performance of such acts.)

SEC. 4. FORM OF AUTHORIZATION AND FEE STATEMENT.

.01 The use of technical language in the preparation of the authorization is not necessary, but the instrument should clearly express the taxpayer's intention as to the scope of the authority granted to the person who prepared his return.

.02 The authorization should be signed by the taxpayer. (Instructions for execution of the authorization are the same as those for the execution of a power of attorney, see section 601.504(a) (2) and (3) of the Conference and Practice Requirements, C.B. 1955–2, page 987.)

.03 The authorization should be acknowledged before a notary public, or in lieu thereof, witnessed by two disinterested individuals.

.04 Authorization in either the form set forth in Appendix A hereto or the form set forth in Appendix B hereto (or any other form clearly evidencing requisite intent) may be accepted as evidence of authorization to a preparer to appear as the taxpayer's representative before internal revenue agents or examining officers in the Audit Division in an office of District Director of Internal Revenue (including local offices of the District Director). Such authorization may also be accepted by the International Operations Division as evidence of authorization to a preparer to appear as the taxpayer's representative before internal revenue agents or examining officers of the International Operations Division.

.05 The authorization may not include a power of substitution.

.06 A preparer shall not charge a manifestly unreasonable fee and shall not enter into a wholly contingent fee agreement with a taxpayer for representation in any matter before a revenue agent or examining

officer unless the taxpayer is financially unable to pay a reasonable fee on any other terms. A preparer shall file with the authorization a signed fee statement in the form set forth in Appendix C hereto, or the form set forth in Appendix D hereto, whichever is applicable (or any other form clearly evidencing whether or not there is a contingent or partially contingent fee agreement for the representation of the taxpayer before revenue agents or examining officers and if there is such an agreement, the terms thereof relating to compensation).

.07 A taxpayer who authorizes the use of the services of a preparer may at any time change to an enrolled attorney or an enrolled agent or vice versa by giving written notice thereof to the Service and to the former preparer (or to the former enrolled attorney or agent) and filing a power of attorney. (See section 601.504(c) of the Conference and Practice Requirements, C.B. 1955–2, page 988.)

.08 In any case in which authorization to a preparer has been filed and thereafter a taxpayer desires to authorize, in addition, an enrolled attorney or enrolled agent to represent him before the Service with respect to the same matter, a separate power of attorney should be filed which should include the name of the enrolled attorney or enrolled agent (or the names of the enrolled attorneys or enrolled agents) authorized to act for the taxpayer. Such separate power of attorney should contain on the face thereof a recital to the effect that the intent and purpose thereof is not to revoke the existing authorization theretofore filed, but instead is intended to be in addition thereto.

.09 If the taxpayer desires to revoke the authority granted to a preparer previously filed and to authorize an enrolled attorney or agent to act with respect to the same matter, a revocation of authority of the former preparer shall in no case be effective so far as the Service is concerned prior to the giving of written notice to the Service and to the former preparer that the authority of such preparer has been revoked.

SEC. 5. ETHICS AND CONDUCT.

.01 All preparers representing taxpayers within the scope of this Revenue Procedure shall conduct themselves in accordance with recognized ethical standards. All such preparers shall conduct themselves in such manner as not to commit any act of disreputable conduct. (For examples of disreputable conduct, see section 10.51(b) of Department Circular No. 230, page 6, this bulletin.)

.02 No such preparer shall neglect or refuse to submit records or information in any matter before the Internal Revenue Service, upon proper and lawful request by a duly authorized officer or employee of the Service, unless the information or testimony is privileged, or such preparer has reasonable grounds to believe and does believe that the said demand is of doubtful legality; and no such preparer shall interfere, or attempt to interfere, with any proper and lawful efforts by the Internal Revenue Service or its officers or employees to obtain information relative to any matter before the Service.

.03 Each such preparer who knows that a client has not complied with the law, or has made an error in or omission from any return, document, affidavit, or other paper which the client is required by law to execute in connection with any matter administered by the Service, shall advise the client promptly of the fact of such noncompliance, error, or omission.

.04 Each such preparer shall exercise due diligence in preparing or assisting in the preparation of, approving, and filing returns, documents, affidavits, and other papers relating to Internal Revenue Service matters. Each such preparer shall exercise due diligence to determine the correctness of representations made by him to the Internal Revenue Service. Each such preparer shall exercise due diligence to determine the correctness of representations made by him to clients with reference to any matter administered by the Internal Revenue Service.

.05 No such preparer shall unreasonably delay the prompt disposition of any matter before the Revenue Service.

.06 No such preparer as notary public shall take acknowledgments, administer oaths, certify papers, or perform any official act in connection with matters related to his client's tax liabilities in which he is employed, or in which he may be in any way interested before the Internal Revenue Service. Under the provisions of this paragraph a preparer who is a notary public is prohibited from taking any acknowledgment, oath, or certification as a notary public in connection with any tax return, protest, or other document which he has prepared or in the preparation of which he has assisted. (26 Op. Atty. Gen. 236.)

.07 No such preparer shall procure, or attempt to procure, directly or indirectly, from Government records or other Government sources information of any kind which is not made available by proper authority.

SEC. 6. SOLICITATION AND ADVERTISING.

.01 No such preparer shall, in any manner whatsoever not warranted by personal relations, directly or indirectly solicit employment for the representation of taxpayers before the Internal Revenue Service.

.02 A preparer is prohibited from advertising that he is authorized to represent taxpayers before the Internal Revenue Service.

.03 No such preparer or agent shall use, directly or indirectly, signs, printing or other written matter indicating some past or present connection with, or relationship to the Treasury Department or the Internal Revenue Service, nor shall he represent in any manner that he possesses influence or a special relationship with officers or employees of the Revenue Service.

SEC. 7. PERSONS INELIGIBLE.

.01 Any person (a) who is under disbarment or suspension from practice before the Treasury Department or the Internal Revenue Service or from the practice of his profession by any other authority, (b) who has been convicted of any criminal offense prescribed by the internal revenue laws or convicted of any crime involving moral turpitude, (c) whose application for enrollment has been denied for failure to show good character or reputation or for conduct or practices, (d) who refuses to comply with this Revenue Procedure, or (e) whose conduct or practices have been or are such as to constitute a violation of Sections 5 or 6, above, or as to otherwise render him ineligible under section 10.7(a)(7) of Department Circular No. 230, is ineli-

gible to appear as the taxpayer's representative under this Revenue Procedure.

.02 Any person who is an officer or employee of the United States or of the District of Columbia shall be ineligible to appear as the taxpayer's representative under this Revenue Procedure. Any person who is an officer or employee of any state, or any subdivision thereof, whose duties require him to pass upon, investigate, or deal with tax matters of such state or subdivision shall also be ineligible to so appear, provided such employment may disclose facts or information applicable to Federal tax matters.

.03 Any revenue agent or examining officer who has reason to believe that a preparer's conduct or practices have been or are such as would render him ineligible shall communicate such information through appropriate supervisory channels to the Director of Practice. Pending advice from supervisory officials or the Director of Practice, the revenue agent or examining officer may continue to deal with the preparer or, in the exercise of sound administrative discretion, may decline to deal with the preparer (other than as a witness).

.04 Any person claiming to be aggrieved may communicate with the Director of Practice, Internal Revenue Service, Washington 25, D.C.

SEC. 8. SPECIAL ORDERS.

The Director of Practice may issue such special orders as he may deem proper in any matter within the purview of this Revenue Procedure.

SEC. 9. APPLICABILITY.

This Revenue Procedure is not applicable to enrolled attorneys or agents nor to unenrolled preparers of returns who do not seek to represent taxpayers before revenue agents or examining officers in the Audit Division of an office of District Director under the provisions of sec-10.7(a)(7) of Department Circular No. 230, as revised.

SEC. 10. INQUIRIES.

Inquiries from Service personnel regarding this Revenue Procedure should be addressed to the Audit Division (O:A). Other inquiries should be addressed to the Director of Practice (C:DP).

SEC. 11. EFFECTIVE DATE.

This Revenue Procedure shall be effective March 15, 1959.

GEORGE C. LEA,
Director of Practice.

Approved January 29, 1959.

DANA LATHAM,
Commissioner.

APPENDIX A (Form for Use with Witnesses)

AUTHORIZATION

The undersigned,

(Print name of taxpayer)

of ---

(Mailing address of taxpayer)

(Telephone number of taxpayer)

hereby requests and authorizes:

(Print name of preparer of return)

(Mailing address of preparer)

(Telephone number of preparer)

who prepared, or who prepared and signed the return described below as having prepared it for me, to appear as my representative, with or without me, before revenue agents or examining officers in the Audit Division in the District Director's office (but not at the Informal Conference in the District Director's office) with respect to the tax liability covered by my

U.S. Federal _____ tax return Form _____ for the taxable year 19__,

and request and authorize the above-named preparer to represent me within the limitations of Revenue Procedure 59–3.

I hereby make, constitute and appoint the above-named preparer of my return as my attorney in fact to inspect my return for the year or period referred to above.

No other power of attorney or authorization has been executed by me with respect to this matter.

Witness:

(Signature of taxpayer)

(Date)

NOTE.—Original executed authorization must be filed with the office of the District Director of Internal Revenue in which the case is under consideration or furnished to the revenue agent or examining officer at the time of the conference. An original executed authorization must be submitted for each year under consideration.

APPENDIX B (Form for Use with Notary)

AUTHORIZATION

The undersigned,

(Print name of taxpayer)

of ---

(Mailing address of taxpayer)

(Telephone number of taxpayer)

hereby requests and authorizes:

(Print name of preparer of return)

(Mailing address of preparer)

(Telephone number of preparer)

who prepared, or who prepared and signed the return described below as having prepared it for me, to appear as my representative, with or without me, before revenue agents or examining officers in the Audit Division in the District Director's office (but not at the Informal Conference in the District Director's office) with respect to the tax liability covered by my

U.S. Federal ------ tax return Form ------ for the taxable year year 19—,

and request and authorize the above-named preparer to represent me within the limitations of Revenue Procedure 59–3.

I hereby make, constitute and appoint the above-named preparer of my return as my attorney in fact to inspect my return for the year or period referred to above.

No other power of attorney or authorization has been executed by me with respect to this matter.

(Signature of taxpayer)

(Date)

County of ---

State of ---

Subscribed and sworn to before me this ------ day of ---------- 19--.

NOTE.—Original executed authorization must be filed with the office of the District Director of Internal Revenue in which the case is under consideration or furnished to the revenue agent or examining officer at the time of the conference. An original executed authorization must be submitted for each year under consideration.

APPENDIX C

FEE STATEMENT

_____
(Place)

_____
(Date)

This is to certify that I have not entered into a contingent fee agreement for the representation of_____

_____
(Name of taxpayer)

before revenue agents or examining officers in the Audit Division in the District Director's office under terms of an authorization executed by the taxpayer under date of _____.

_____
(Signature of preparer)

NOTE.—An original executed fee statement must be filed with the authorization with the office of the District Director of Internal Revenue in which the case is under consideration or furnished to the revenue agent or examining officer at the time of the conference. An original executed fee statement must be submitted for each year under consideration.

Preparers of returns appearing before revenue agents or examining officers of the Audit Division in the offices of District Directors are subject to the standards of conduct and the circumstances and conditions prescribed in Revenue Procedure 59–3.

APPENDIX D

FEE STATEMENT

_____
(Place)

_____
(Date)

This is to certify that I have entered into a contingent or partially contingent fee agreement for the representation of_____

_____
(Name of taxpayer)

before revenue agents or examining officers in the Audit Division in the District Director's office under terms of an authorization executed by the taxpayer under date of_____.

The terms of the contingent or partially contingent fee agreement as they relate to compensation are as follows:

_____

_____

_____
(Signature of preparer)

NOTE.—An original executed fee statement must be filed with the authorization with the office of the District Director of Internal Revenue in which the case is under consideration or furnished to the revenue agent or examining officer at the time of the conference. An original executed fee statement must be submitted for each year under consideration.

Preparers of returns appearing before revenue agents or examining officers of the Audit Division in the offices of District Directors are subject to the standards of conduct and the circumstances and conditions prescribed in Revenue Procedure 59–3.

Recognition to be accorded unenrolled persons who are not within the exceptions provided in section 10.7 of Department Circular No. 230, as revised. (Revision of IR-Mimeograph No. 58, C.B. 1952–2, 297.)

SECTION 1. PURPOSE.

The adoption of the informal conference procedure under Reorganization Plan No. 1 of 1952, C.B. 1952–1, 227, occasioned a number of inquiries concerning the extent to which examining officers and other employees of the Internal Revenue Service may accord recognition to unenrolled persons employed by taxpayers in connection with Federal tax matters. The purpose of this Revenue Procedure is to outline generally the position of the Service in this respect, and to set forth principles which may be used as guides by the Internal Revenue Service as a whole, including Office Audit activities, in determining the extent to which matters may be discussed with unenrolled persons.

SEC. 2. IN GENERAL.

.01 Generally speaking, any individual who has knowledge of the facts, or who can furnish information which will be of assistance in establishing the facts, is a proper source of information in connection with a determination of tax liability and can be heard in the capacity of a "witness" without regard to whether he is acting at the request of the taxpayer or claims the taxpayer as his client for purposes other than representation before the Service. For example, an attorney who represented the taxpayer in a sale of real estate may be a proper person to furnish the facts with respect to the particular transaction involved. Similarly, an accountant who has kept or audited the taxpayer's books and records or prepared his tax returns may be a proper person to supply information and assist in the factual development of the case. However, unless properly enrolled and authorized to represent the taxpayer before the Internal Revenue Service with respect to the tax involved in the examination, or unless within the exceptions provided in subsections (1), (2), (3), (4), (6), or (7) of section 10.7 (a) or section 10.7(b) of Department Circular No. 230, as revised, page 6 this bulletin, an individual may not be heard as the taxpayer's representative in advocating, in those cases where issues or controversies have arisen out of the factual development of such cases, the adoption of any particular position with respect to such issues or controversies. The difference may be summarized by distinguishing activities in the capacity of witness—or one who assists in the factual development of a case—and activities in the capacity of advocate—or one who acts in behalf of the taxpayer in urging particular determinations with respect to the issues or controversies which have arisen out of the factual development of a case. In other words, during the examination process a taxpayer has the right to use the services of any person he may elect, whether or not enrolled, for the purpose of explaining his books, records or returns to the examining agent; and the examining agent, in the factual development of a case, has not only the right but also the duty to receive information from anyone, whether or not enrolled and irrespective of the presence of the taxpayer, who has knowledge of facts pertinent to the case.

.02 The foregoing portains primarily to the furnishing of information during the factual development stage of a case. However, the taxpayer also has the right, in those cases where issues or controversies have resulted from the factual development of such cases, to have any unenrolled person who has knowledge of pertinent facts accompany him or his duly enrolled and authorized representative to conferences (including the informal conference in the Audit Division of an office of District Director), but such unenrolled person may appear at such conferences only when the taxpayer or his duly enrolled and authorized representative is present in person, and then only in the capacity of witness.

.03 Nothing in this Revenue Procedure is to be construed as authorizing "practice" before the Internal Revenue Service by unenrolled persons who are not within the exceptions provided in subsections (1), (2), (3), (4), (6), or (7) of section 10.7(a) or section 10.7(b) of Department Circular No. 230, as revised (31 CFR 10.7(a) and 10.7(b)).

.04 It is believed that the foregoing statements will be of assistance to field districts in the exercise of their sound administrative discretion in determining the matters that may be discussed with unenrolled persons without violating the provisions of the regulations relating to "practice" or Section 9 of the Service's "Rules of Conduct and Other Instructions for Employees of the Internal Revenue Service".

SEC. 3. INQUIRIES.

Inquiries from Service personnel regarding this Revenue Procedure should be addressed to the Audit Division (O:A). Other inquiries should be addressed to the Director of Practice (C:DP).

SEC. 4. EFFECT ON IR-MIMEOGRAPH NO. 58.

This Revenue Procedure revises and supersedes IR-Mimeograph No. 58 C.B. 1952–2, 297.

SEC. 5. EFFECTIVE DATE.

This Revenue Procedure shall be effective March 15, 1959.

DANA LATHAM,
Commissioner.

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26 CFR 601.301: Imposition of taxes, qualification requirements, and regulations.
(Also Part III–B, Section 7805; 170.105, 170.124, 170.159.)

Rev. Proc. 59–5

Claims may now be filed under sections 207 and 208 of the Excise Tax Technical Changes Act of 1958 covering the tax paid on beer lost or rendered unmarketable, or condemned by reason of the floods of 1951 or the hurricanes of 1954; and the tax paid on alcoholic beverages lost, rendered unmarketable, or condemned by reason of "major disasters" occurring during the period January 1, 1955, to September 2, 1958. All persons joining in the filing of such claims must sign as a party to the claim either by a joint certification or by individual affidavits. The provisions of section 210 (a) (3) of the Act for the filing of claims for losses caused by disasters occurring during the period September 3, 1958, to June 30, 1959, inclusive, are also explained.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to advise proprietors of distilleries, rectifying plants, bonded wine cellars, breweries, and tax-paid bottling houses, importers, wholesale and retail dealers, and others concerned, of the claims procedures established with respect to beer which was lost, rendered unmarketable, or condemned by reason of the floods of 1951 or the hurricanes of 1954, and the losses caused by disasters occurring during the periods January 1, 1955, to September 2, 1958, and September 3, 1958, to June 30, 1959.

SEC. 2. BACKGROUND.

Section 207 of the Excise Tax Technical Changes Act of 1958, Public Law 85–859, C.B. 1958–3, 92, authorizes the payment, under certain conditions, of an amount equal to the amount of internal revenue tax paid under section 3150(a) of the Internal Revenue Code of 1939 on any beer which was lost, rendered unmarketable, or condemned by a duly authorized health official of the United States or of a State by reason of the floods of 1951 or the hurricanes of 1954. Section 5064 of the Internal Revenue Code of 1954, as amended by the Act, makes provision for the payment, without interest, of an amount equal to the internal revenue tax paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer lost, rendered unmarketable, or condemned by reason of a major disaster occurring after June 30, 1959. Similar payments are authorized under section 208 of the Act as to disaster losses during the period January 1, 1955, to September 2, 1958, inclusive. Similar payments are also authorized as to disaster losses during the period September 3, 1958, to June 30, 1959, inclusive, by reason of section 210(a)(3) of the Act, under which provisions having the effect of section 5064 of the Code are made applicable to such period.

SEC. 3. CLAIMS BASED ON BEER LOST BY REASON OF FLOODS OF 1951 OR HURRICANES OF 1954.

Claims may be filed, in accordance with the provisions of subpart I of the Miscellaneous Regulations Relating to Liquor, as added by Treasury Decision 6316, C.B. 1958–2, 978, covering the tax paid on beer lost, rendered unmarketable, or condemned by reason of the floods of 1951 or hurricanes of 1954 and which was in the possession of the brewer or importer who paid the tax or in the possession of a wholesale or retail dealer, at the time it was lost, rendered unmarketable, or condemned. Such claims must be filed on or before March 3, 1959. Where beer was lost while in the possession of a dealer and the lost beer has been replaced for the possessor or reimbursement therefor has been made to him by the brewer or importer, either directly or through a wholesale dealer, all parties to the transaction must join in Form 843, Claim, by appropriate certification and signatures.

SEC. 4. CLAIMS FOR LOSSES SUSTAINED BY REASON OF DISASTERS OCCURRING DURING THE PERIOD JANUARY 1, 1955, TO SEPTEMBER 2, 1958.

Claims may be filed covering distilled spirits, wines, rectified products, and beer lost, rendered unmarketable, or condemned by reason of "major disasters" occurring during the period January 1, 1955, to September 2, 1958, inclusive. Claims may be filed only with respect

to such products which, at the time of the disaster, were in the possession of the payer of the tax, or tax and duty, or person who was obligated to pay the tax; in the possession of the bottler; or in the possession of a wholesale or retail dealer. Such claims must be filed in accordance with the provisions of subpart F of the Miscellaneous Regulations Relating to Liquor, as added by Treasury Decision 6315, C.B. 1958–2, 962, and must be filed no later than March 2, 1959.

Where the spirits, wines, rectified products, or beer were in the possession of a dealer when lost, and replacement has been made by the distiller, winemaker, brewer, rectifier, importer, or wholesaler, either directly or through a wholesale dealer, all parties to the transaction must join in the claim by appropriate certification and signature.

SEC. 5. CLAIMS FOR LOSSES SUSTAINED BY REASON OF DISASTERS OCCURRING DURING THE PERIOD SEPTEMBER 3, 1958, TO JUNE 30, 1959.

The procedure for the filing of claims covering distilled spirits, wines, rectified products, and beer lost, rendered unmarketable, or condemned by reason of "major disasters" occurring during the period September 3, 1958, to June 30, 1959, inclusive, is prescribed by subpart G of the regulations, as added by Treasury Decision 6315, *supra*. Such claim may be filed only by the person who held the products for sale at the time of the disaster and must be filed within 6 months after the date on which the President makes the determination that the "major disaster" has occurred.

SEC. 6. PROCEDURE FOR THE EXECUTION AND FILING OF CLAIMS.

.01 In the interest of clarity and to avoid confusion in the preparation and distribution of refund checks it is desirable that only one name be shown on the Claim, Form 843, on the line for the name of the taxpayer. This, of course, is not intended to apply where the claim is being filed by a partnership. In the case of claims under subparts F and I, the name appearing on this line should be that of the person or company bearing the ultimate burden of the replacement, reimbursement, or credit given; in the case of claims under subpart G, such name would be that of the person holding the liquors for sale at the time of disaster.

.02 Insofar as signing the claim is concerned, there is room for variation in procedure, depending on the specific facts in the case. For example, where a claim is filed by a wholesale distributor and there is only one or possibly two or three possessors or recipients, and they are in the same town as the claimant, there would seem to be little reason why all concerned could not join in the claim by signing the Form 843, provided the status of each signator is made clear. In such case the certification should be in substantially the following forms:

> We certify that this claim is based on replacement by (name of party making replacement) to (name of retailer); or
>
> We certify that this claim is based on replacement by (name of brewer or importer) through (name of wholesaler) to (name or retailer).

However, in those cases where the claim is filed by the person or company originally paying the tax and there are a number of possessors joining in the claim, perhaps located in various towns, it may be advisable to have such persons join in the claim by affidavit. This

would require that each claimant submit an affidavit to be attached to and made part of the claim in which each would set forth among other things that he is joining in the claim with the person actually submitting such claim. Either of the two methods outlined above is satisfactory.

.03 The most important facts to be kept in mind in preparing the claims are that the person or company to whom payment is to be made is set forth clearly and that there be only one such person, partnership, or corporation shown in the line on Form 843 which calls for the name of the taxpayer, and that persons joining in the claim sign the Form 843 or join in by means of an affidavit so stating, depending on which method may prove the most convenient. Such affidavit should also make it clear that those joining will not file another claim covering the same liquors, since it is entirely possible that a possessor or recipient may join in more than one claim.

.04 Each claim should be accompanied by supporting data clearly identifying the liquors lost in as much detail as is necessary to establish the extent of the loss and to prevent allowance of more than one claim covering the identical liquors or any part thereof.

SEC. 7. PROCEDURE WHERE THE PERSON EXPECTED TO JOIN IN A CLAIM DOES NOT DO SO.

The Alcohol and Tobacco Tax Division is now considering and will propose an amendment of subparts F and I of the Miscellaneous Regulations Relating to Liquors to permit Assistant Regional Commissioners to consider claims for allowance when there is satisfactory evidence showing that the joining in a claim by a recipient of replacement, reimbursement, or credit could not be accomplished. If approved by the Secretary of the Treasury, this amendment would afford relief in the instances indicated. However, the six-month statutory period for filing these claims may expire before the proposed amendment can be processed. Accordingly, to be entitled to relief under the proposed amendment, if approved, the claimant should perfect his claim to the greatest possible extent under the existing regulations and file the claim before expiration of the deadline for filing. Such claims should include a statement regarding the identity of the person (or persons) not joining in the claim, the reason for his not joining, his last known address, and the extent and results of efforts made to obtain compliance. Such claims particularly must set forth all information obtained which was pertinent to the possessor's indemnification by insurance or otherwise against loss of the tax, or tax and customs duty, as the case may be.

SEC. 8. LAST DAY FOR FILING CLAIMS.

The last day for filing claims under subpart F (losses by "major disasters" occurring January 1, 1955, through September 2, 1958) is March 2, 1959. The last day for filing claims under subpart I (beer losses—floods of 1951 and hurricanes of 1954) is March 3, 1959. Claims under subpart G must be filed within six months after the date on which the President makes the determination that the "major disaster" has occurred.

SEC. 9. INQUIRIES.

Inquiries concerning this Revenue Procedure should refer to its number and be addressed to the office of the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax.

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26 CFR 601.316: Claims. Rev. Proc. 59–6
(Also Part I, Section 7805; 296.54.)

> Claims may now be filed under Section 209 of the Excise Tax Technical Changes Act of 1958, covering the tax on tobacco products and cigarette papers and tubes, which were lost, rendered unmarketable, or condemned by reason of a "major disaster" occurring after December 31, 1954, and not later than September 2, 1958. Where the tobacco products or cigarette papers or tubes were replaced or where credit was given, the person replacing or giving credit and the recipient must join in the claim. Claims must be filed on or before March 2, 1959.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to set forth procedures for the execution of claims and for the protection of the right to payment in respect to claims under the Regulations in Part 296, subpart B relating to Losses of Tobacco Products and Cigarette Papers and Tubes Caused by Disaster, as added by Treasury Decision 6325, C.B. 1958–2, 864, where the joining in a claim by other persons could not be accomplished.

SEC. 2. BACKGROUND.

The Regulations in Part 296, subpart B relating to Losses of Tobacco Products and Cigarette Papers and Tubes Caused by Disaster, implements section 209 of the Excise Tax Technical Changes Act of 1958, Public Law 85–859, C.B. 1958–2, 92, relating to claims in respect of taxes paid or determined and customs duties paid on tobacco products and cigarette papers and tubes removed, which were lost, rendered unmarketable, or condemned by a duly authorized official, by reason of a "major disaster" occurring after December 31, 1954, and not later than September 2, 1958. Section 296.54 of such subpart provides that in any instance where the tobacco products or cigarette papers or tubes were replaced or where credit therefor was given, the person replacing or giving credit and the recipient shall join in the claim.

SEC. 3. EXECUTION OF CLAIMS.

.01 To avoid confusion in the preparation and distribution of checks, it is desirable that only one name be shown on the Claim, Form 843, on the line for the name of the taxpayer, except where the claim is being filed by a partnership. The name appearing on this line should be that of the person or company bearing the ultimate burden of the replacement or credit given.

.02 Insofar as signing the claim is concerned, there is room for variation in procedure, depending on the specific facts in the case. For example, where a claim is filed by a wholesale distributor, in connection with a few possessors or recipients, there would seem to be little reason why all concerned could not join in the claim by

signing the Form 843, provided the status of each signer is made clear. However, in those cases where the claim is filed by the taxpayer, with many possessors joining in the claim, it may be advisable to have such persons join in the claim by affidavit. This would require that each joiner submit an affidavit, to be attached to and made part of the claim, in which he would set forth among other things that he is joining in the claim with the person actually submitting such claim. Either of the two methods outlined above is satisfactory.

.03 It is important that only the name of the individual, partnership, or corporation to whom payment is to be made is set forth clearly in the line on the Form 843 which calls for the name of the taxpayer, and that persons joining in the claim sign the Form 843 or join in by means of an affidavit so stating, depending on which method is more convenient. Such affidavit should also make it clear that those joining will not file another claim covering the same tobacco products or cigarette papers or tubes, since it is possible that a possessor or recipient may have to join in more than one claim.

.04 To establish the extent of the loss and to prevent the allowance of more than one claim covering the same tobacco products or cigarette papers or tubes, or any part thereof, supporting data clearly identifying the tobacco products or cigarette papers or tubes should accompany each claim.

SEC. 4. PROCEDURE WHERE PERSON EXPECTED TO JOIN IN CLAIM DOES NOT DO SO.

The office of the Director, Alcohol and Tobacco Tax Division, is now considering and will propose an amendment of subpart B of Part 296 of the regulations to permit Assistant Regional Commissioner to consider for allowance claims when there is satisfactory evidence showing that the joining in a claim by a recipient of replacement or credit could not be accomplished. If approved by the Secretary of the Treasury, this amendment would afford relief in the instances indicated. The six-month statutory period for filing these claims may expire before the proposed amendment can be processed. Accordingly, to be entitled to relief under the proposed amendment, if approved, the claimant should perfect his claim to the greatest possible extent under the existing regulations and file the claim on or before March 2, 1959, when such period of limitation expires. Such claims should include a statement regarding the identity of the person, or persons, not joining in the claim, the reason for his not joining in, his last known address, and the extent and results of efforts made to obtain compliance. Such claims particularly must set forth all information obtained which was pertinent to the possessor's indemnification by insurance or otherwise against loss of the tax, or tax and customs duty, as the case may be.

SEC. 5. EFFECT ON OTHER DOCUMENTS.

For the claims procedure with respect to disaster losses of beer and alcoholic beverages, see Revenue Procedure 59–5, page 811.

SEC. 6. INQUIRIES.

Inquiries regarding this Revenue Procedure should refer to its number and be addressed to the office of the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax.

26 CFR 601.311: Imposition of taxes; regulations.
(Also Part I, Section 5723; 270.146, 270.191a.)

Rev. Proc. 59–7

When cigars are taxpaid by return, the packages must indicate the quantity and the kind of product contained in the package.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to advise manufacturers and importers of cigars and proprietors of customs bonded cigar manufacturing warehouses (class 6), in respect to the mark required to be shown on packages of cigars when the tax is paid by return.

SEC. 2. BACKGROUND.

Inquiries have been received whether sections 270.146 and 270.191a of the Cigars and Cigarettes-Manufacturers, Importers, and Dealers Regulations, in respect to the mark, contemplates that the word "cigars" shall appear on the packages when such product is taxpaid by return.

SEC 3. QUANTITY AND KIND TO BE INDICATED.

The regulations contemplate that, when cigars are taxpaid by return, the packages shall, in addition to identifying the domestic manufacturer by name and location, or by his permit number, indicate the quantity and the kind of product contained in the packages, such as "10 cigars." The quantity and the kind of product may be indicated together or separately, on the package, as desired.

SEC. 4. INQUIRIES.

Inquiries regarding this Revenue Procedure should refer to its number and be addressed to the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax.

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26 CFR 601.311: Imposition of taxes; regulations.
(Also Part I, Section 5704; 270.146, 270.152, 275.135, and 275.141.)

Rev. Proc. 59–8

Packages containing tobacco products produced by one manufacturer and transferred in bond, without payment of tax, to another manufacturer of such products should, in the required mark, identify the transferee manufacturer by name and location, or by permit number.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to advise manufacturers of tobacco products as to which manufacturer's name and location, or permit number (to be shown in the mark as required by section 270.152 of the regulations relating to Cigars and Cigarettes—Manufacturers, Importers, and Dealers, and section 275.141 of the regulations relating to Manufactured Tobacco—Manufacturers, Importers, and Dealers), should appear on packages of tobacco products produced and packaged by one manufacturer and transferred in bond to another such manufacturer.

SEC. 2. BACKGROUND.

Under the provisions of section 5704(b) of the Internal Revenue Code of 1954 and sections 270.152 and 275.141 of the regulations, a manufacturer of tobacco products may transfer such products under his bond, without payment of tax, to the factory of any qualified manufacturer of such products. When so transferred, the products are exempt from the packaging requirements of sections 270.144 and 275.134 of the regulations. However, the regulations contemplate that the products may be shipped in bulk or in packages, as desired. When the products are transferred in packages, the question has been raised whether the mark on such packages should identify the transferee or transferor.

SEC. 3. IDENTIFICATION OF TRANSFEREE MANUFACTURER.

Packages containing tobacco products produced by one manufacturer and transferred in bond, without payment of tax, to another manufacturer of such products should, in the mark required by the regulations, identify the transferee manufacturer by name and location, or by permit number, since he becomes liable for the tax on such products upon their receipt and would usually be the proper claimant in respect to a refund or allowance provided by law.

SEC. 4. INQUIRIES.

Inquiries regarding this Revenue Procedure should refer to its number and be addressed to the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax.

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26 CFR 601.301: Imposition of taxes, qualification requirements, and regulations.
(Also Part III–C, Section 5(e); 4.39, 4.45.)

Rev. Proc. 59–9

Certificates of origin and identity and certificates of authenticity of vintage dates for bottled imported wines will not be demanded until further announcements are made by the Director, Alcohol and Tobacco Tax Division.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to inform importers of wine, and others concerned, of the provisions of sections 4.39 and 4.45 of the Federal Labeling and Advertising of Wine Regulations regarding certificates of origin and identity and certificates of authenticity of vintage dates.

SEC. 2. BACKGROUND.

Section 4.39, of the Federal Labeling and Advertising of Wine Regulations, Regulations 4, under the Federal Alcohol Administration Act, provides, with respect to imported wines bottled in this country, that the year of vintage may be stated only if the bottler possesses a certificate issued by a duly authorized official of the country of origin of such wine identifying the original container as containing vintage wine as defined in section 4.1 of the regulations, and certifying:

.01 That the laws of the country of origin regulate the appearance of vintage dates upon labels of wine produced for home consumption.

.02 That the wine in question has been produced in conformity with such laws, and,

.03 That the wine would be entitled, under such laws, to bear the vintage date if sold in such country.

SEC. 3. AMENDMENTS OF THE REGULATIONS RELATING TO LABELING AND ADVERTISING OF WINE.

The regulations have been amended by Treasury Decision 6319, C.B. 1958–2, 1019, to authorize the Director, Alcohol and Tobacco Tax Division, effective January 2, 1959:

.01 To require in the case of imported bottled wine bearing a vintage date, a certificate identical with that required in the case of imported vintage wine bottled in the United States, if the issuance of such a certificate with respect to such wine has been authorized by the foreign government concerned.

.02 To require, in the case of any imported wine, a certificate issued by a duly authorized official of the foreign government concerned, (if the issuance of such certificate with respect to such wine has been authorized by the foreign government) certifying as to the identity of the wine and that the wine has been produced in compliance with the laws of that foreign government regulating the production of wine for home consumption.

SEC. 4. CERTIFICATES OF ORIGIN AND IDENTITY AND CERTIFICATES OF AUTHENTICITY OF VINTAGE DATES.

Although the Director, Alcohol and Tobacco Tax Division is authorized on the effective date of amendment to require certificates of origin and identity and certificates of authenticity of vintage dates, such certificates will not be demanded until such time as the Director has definitely established that the laws of the foreign governments concerned authorize the issuance of such certificates. When it has been determined that the countries have laws which authorize the issuance of certificates and certificates are actually being issued pursuant to such laws, importers of wines from such countries will be advised through official directives that on and after a specified date certificates will be required to effect release from Customs Custody of such imported wines.

SEC. 5. INQUIRIES.

Correspondence in regard to this Revenue Procedure should refer to its number and be addressed to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C., attention O:AT:BT.

26 CFR 601.311: Imposition of taxes; regulations.
(Also Part I, Sections 5702, 5714; 270.142, 275.132, 280.127.)

Rev. Proc. 59–10

Materials referred to as "reconstituted tobacco" should be accounted for as tobacco material by weight in the records required to be kept by manufacturers of tobacco products and dealers in tobacco materials. Every manufacturer of tobacco products who intends to use "reconstituted tobacco" as a wrapper should submit a sample with other pertinent information, to the Director, Alcohol and Tobacco Tax Division, and secure an official determination of the rate of tax applicable to the product prior to marketing it.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to furnish manufacturers of tobacco products and dealers in tobacco materials instructions in respect to material variously referred to in the trade as "reconstituted tobacco," "homogenized leaf tobacco," "tobacco sheet," etc., used in the manufacture of tobacco products.

SEC. 2. BACKGROUND.

"Reconstituted tobacco" is produced from tobacco scraps, stems, etc., and is usually formed into sheets or rolls. On the basis of examination and analysis of samples of such material as have come to the attention of the Director, Alcohol and Tobacco Tax Division, such material is considered to be a form of tobacco materials as defined by section 5702(1) of the Internal Revenue Code of 1954 and regulations thereunder.

SEC. 3. ACCOUNTING FOR MATERIAL.

This "reconstituted tobacco," etc., should be accounted for as tobacco material by weight (whether in sheets, rolls, bobbins, etc.,) in the records required to be kept by manufacturers of tobacco products and dealers in tobacco materials by section 270.142 of the Regulations relating to Cigars and Cigarettes—Manufacturers, Importers, and Dealers, section 275.132 of the Regulations relating to Manufactured Tobacco—Manufacturers, Importers, and Dealers, and section 280.127 of the Regulations relating to Dealers in Tobacco Materials.

SEC. 4. SUBMISSION OF SAMPLES WHEN USED AS WRAPPER.

Since section 5702 of the Code distinguishes between cigarettes and cigars on the basis of the kind of wrapper used, whenever "reconstituted tobacco," etc., is to be used as a wrapper, an official determination should be secured from the Director, Alcohol and Tobacco Tax Division, prior to marketing of the product, of the rate of tax applicable to the tobacco product on which it is to be used. Therefore, every manufacturer of tobacco products who intends to use such material as a wrapper for rolls of tobacco should submit an adequate sample of such material (about 400 square inches), and of the finished product if available, the brand name and kind of product on which it will be used, and any other information which may be pertinent to such determination. Such samples and information should be submitted to the Director, Alcohol and Tobacco Tax Division, Washington 25, D.C., Attention: Tobacco Tax Branch.

SEC. 5. INQUIRIES.

Inquiries in regard to this Revenue Procedure should refer to its number and be addressed to the office of the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax.

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26 CFR 601.602: Forms and instructions. (Also Part I, Section 6011, 6045; 1.6011–1.

Rev. Proc. 59–11

A stockholder, who receives or has credited to his account corporate dividends in a taxable year, is required to list each such dividend separately in the appropriate schedule of his United States Individual Income Tax Return, Form 1040, whether it be a "Qualifying" or a "Non-Qualifying" dividend. A record owner of stock, however, who is not the actual owner, may report on a single Form 1087, Ownership Certificate-Dividends on Stock, the name and address of the actual owner, the name and address of the record owner, and the total amount of the dividends received during the calendar year, without itemizing the dividends so received.

This ruling amplifies Revenue Ruling 56–567, C. B. 1956–2, 933, which holds that a stockholder who receives or has credited to his account dividends from qualifying domestic corporations, whether received direct or through a broker who is the record owner of the stock, is required to list each such dividend separately in the appropriate schedule of his individual income tax return.

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26 CFR 601.301: Imposition of taxes, qualification requirements, and regulations.
(Also Part III–C, Section 5(e); 4.45.)

Rev. Proc. 59–12

French Table Wines shipped to the United States from foreign ports on or after March 1, 1959, must be accompanied by appropriate certificates of origin and identity issued under the authority of the French Government.

SECTION 1. PURPOSE.

The purpose of the Revenue Procedure is to inform importers of French Table Wines that all such wines shipped from foreign ports to the United States on or after March 1, 1959, must be accompanied by appropriate certificates of origin and identity issued under authority of the French Government with respect to such wines.

SEC. 2. BACKGROUND.

Revenue Procedure 59–9, page 818, provides, in part, that when the Director, Alcohol and Tobacco Tax Division has determined that the Government of a particular foreign wine producing country has authorized the issuance of certificates of origin and identity with respect to its wines, in the manner specified in section 4.45 of the Federal Labeling and Advertising of Wine Regulations issued pursuant to the Federal Alcohol Administration Act, the Director will announce that fact and will also announce, on and after a specified date, importations of wine from such country must be accompanied

at time of importation by appropriate certificates of origin and identity.

SEC. 3. CERTIFICATES OF ORIGIN AND IDENTITY FOR FRENCH WINES CONTAINING 14 PERCENT OR LESS ALCOHOL BY VOLUME.

Under French law all wines are subject to a "Control of Origin" supervised by the French Bureau of Indirect Taxes (Administration des Contributions Indirectes). The Bureau of Indirect Taxes issues certificates to cover all table wines exported from France; one, often referred to as the "Green Certificate" and identified as "Certificat Delivre Pour Des Vins Justifiant Du Droit A Une Appellation D'Origine Controlee," is issued to cover all table wines entitled to be labeled under an "Appellation Controlee" designation; another, referred to as the "Buff Certificate" and identified as "Acquit-A-Caution Du Reg. 2 A," is issued to cover all French wines not entitled to an "Appellation Controlee" designation. For example, wines bearing designations such as "Vin Rouge," "Vin Blanc," "Vin Rose," "French White Wine," "French Red Wine," etc., will be covered by the buff certificate, and wines bearing "Appellation Controlee" designations such as "Sauterne," "Champagne," "Medoc," "St. Julien," "Graves," "Bordeaux Superior," "Bordeaux Blanc," "Burgogne," "Beaujolais," "Anjou," etc., will be covered by the green certificates.

.01 Both of the certificates will identify the wines covered thereby as follows: (1) type of shipping container (cartons, cases, barrels, etc.), (2) serial numbers on the shipping containers, (3) number of containers, (4) total volume, and (5) designation (Appellation D'Origine). No goods shall be released from Customs Custody unless the certificates accurately identify the shipment in all respects including the primary label designation.

.02 In addition, in the case of "Appellation Controlee" Bordeaux Wines, the green certificates will bear the reference "Certificat de Conformite Exigible" and in the case of Champagne a "Certificat D'Origine" will accompany such wines. These additional certificates will be required in those cases where the labels affixed to the wine bottles specifically indicate the shipments to be covered by such certificates and at any other time where additional evidence of authenticity may appear desirable.

.03 In order to avoid detention of merchandise at the ports of entry, all importers of French wines should advise their principals abroad of these provisions.

SEC. 4. INQUIRIES.

Correspondence in regard to this Revenue Procedure should refer to its number and be addressed to the Director, Alcohol and Tobacco Tax, Washington 25, D.C., attention O:AT:BT.

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26 CFR 601.301: Imposition of taxes, qualification requirements, and regulations.
(Also Part III–B, Section 5241; 170.189, 225.417c, 225.564.)

Rev. Proc. 59–13

Proprietors of internal revenue bonded warehouses are requested by the Internal Revenue Service to show in section 1, item 9(e) of

Form 2323, Mingling of Distilled Spirits, the date each lot of distilled spirits listed therein was received in the warehouse.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to inform proprietors of internal revenue bonded warehouses and others concerned of the need for showing additional information on Form 2323, Mingling of Distilled Spirits.

SEC. 2. BACKGROUND.

In order to avoid unnecessary delay in processing various applications which require that reference be made to the deposit forms maintained by storekeeper-gaugers assigned to internal revenue bonded warehouses, section 225.564 of the Federal Warehousing of Distilled Spirits Regulations requires proprietors to show on such applications, in addition to other required information, the date the spirits involved were deposited in the warehouse.

The current revision of Form 2323 does not make provision for reporting the date the spirits were received in the warehouse but as the storekeeper-gauger to whom the application is submitted must locate the deposit forms for such spirits, the furnishing of the date of deposit would reduce delay in processing the application.

SEC. 3. INTERIM METHOD.

Pending revision of Form 2323 proprietors of internal revenue bonded warehouses are requested to show, in section I, item 9(e) of the form, the date each lot of spirits listed therein was received in the warehouse.

SEC. 4. INQUIRIES.

Inquiries regarding this Revenue Procedure should refer to the number thereof and be addressed to the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax.

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26 CFR 601.319: Applicable laws. (Also Part I, Sections 5843, 5852; 179.121, 179.151.)

Rev. Proc. 59–14

Registered importers, manufacturers and dealers in firearms should verify the serial numbers shown on Form 2 (Firearms) "Return of Firearms Manufactured, Imported, or Received" and Form 3 (Firearms) "Return of Firearms Transferred or Otherwise Disposed of" by actual comparison with the serial number stamped on the weapon.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to invite attention to the provisions of section 179.151 of the Regulations relating to Machine Guns and Certain Other Firearms and to solicit the cooperation of importers, manufacturers and dealers in firearms and others concerned in the uniform preparation of timely, complete and accurate returns, Form 2 (Firearms) "Return of Firearms Manufactured, Imported, or Received," and Form 3 (Firearms) "Return of Firearms Transferred or Otherwise Disposed of" reflecting commercial transactions in machine guns and certain other firearms coming within

the purview of the National Firearms Act, Chapter 53, Internal Revenue Code.

SEC. 2. BACKGROUND.

The use of Form 2 (Firearms) and Form 3 (Firearms) is prescribed *only* for use by registered importers, manufacturers and dealers in reporting commercial transactions in firearms coming within the purview of the National Firearms Act. These returns are filed at the close of each business day with the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C. Space is provided on each return to record an individual description of at least 15 firearms, and a separate line should be used for each individual firearm. The *only* exception to this rule applies in recording bulk quantities of identical firearms bearing consecutive manufacturer's serial numbers in which case the first and last number in the series, plus the total quantity of firearms in the lot may be entered in the column captioned "Serial No." Where additional sheets are required to record bulk transactions involving firearms with serial numbers not in numerical sequence, additional forms should be used and a notation made at the top of each form to designate the total number of pages (forms) in the series as well as the individual page within such series (Example: Page (1) of (7) pages). The practice of attaching a separate schedule listing the serial numbers of firearms which are further described on accompanying Form 2 (Firearms) or Form 3 (Firearms) is not authorized and should be discontinued immediately.

SEC. 3. VERIFICATION AND REPORTING OF SERIAL NUMBERS.

Section 5843 of the Code provides that the manufacturer's serial number must be stamped on a firearm for positive individual identification purposes. Section 5852 of the Code makes it unlawful to remove or change such identification marks. Each firearm reported on Form 2 (Firearms) as having been imported, produced, or received represents a potential revenue to the Government of $200 upon subsequent transfer thereof, and registered importers, manufacturers and dealers are held accountable for the tax imposed under section 5811 of the Code unless the subsequent transfer is exempt by virtue of section 5812. Accordingly, it is essential that the returns accurately reflect the manufacturer's serial number stamped on the weapon, and experience has shown that this may best be accomplished by verifying the serial numbers to be shown in the returns and/or commercial invoices, etc., by actual comparison with the serial number stamped on the weapon. Where a discrepancy is noted, the matter should be reported to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C., immediately for appropriate instructions prior to filing the return.

SEC. 4. INQUIRIES.

Inquiries in regard to this Revenue Procedure should refer to the number thereof and should be directed to the Director, Alcohol and Tobacco Tax Division, attention: O:AT:EF.

26 CFR 601.311: Imposition of taxes, regulations. (Also Part I, Section 5702.) Rev. Proc. 59–15

Where "reconstituted tobacco" is to be used as a wrapper for rolls of tobacco, the manufacturer should submit to the Director, Alcohol and Tobacco Tax Division, prior to the marketing of the product, samples of the wrapper material and the finished product, and the proposed design of the package.
Revenue Procedure 59–10, page 820, amplified.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to furnish instructions to manufacturers of cigars and cigarettes with respect to the submission of the package design and samples of the product where "reconstituted tobacco," etc., is to be used as a wrapper for rolls of tobacco.

SEC. 2. BACKGROUND.

Revenue Procedure 59–10, page 820, advised that where "reconstituted tobacco," etc., is to be used as a wrapper for rolls of tobacco, the manufacturer should, prior to marketing of the product, submit a sample of the wrapper material, and of the finished product if available, and other information which may be pertinent to the official determination of the rate of tax applicable. Experience has demonstrated that in order to determine the tax status of such product it is necessary that a sample of the finished product and the proposed package design should be so submitted.

SEC. 3. SUBMISSION OF SAMPLES.

Where reconstituted tobacco is to be used as a wrapper for rolls of tobacco, in addition to a sample of the wrapper material and other information called for in Revenue Procedure 59–10, *supra*, the manufacturer should submit, prior to marketing of the product, a sample of the finished product, and the proposed design of the package. Samples and information should be submitted to the Director, Alcohol and Tobacco Tax Division, Washington 25, D.C., Attention: Tobacco Tax Branch, for official determination as to the rate of tax applicable to the product.

SEC. 4. EFFECT ON OTHER DOCUMENTS.

This Revenue Procedure amplifies Revenue Procedure 59–10, page 820.

SEC. 5. INQUIRIES.

Inquiries in regard to this Revenue Procedure should refer to its number and be addressed to the Director, Alcohol and Tobacco Tax Division, Washington 25, D.C., Attention: Tobacco Tax Branch.

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26 CFR 601.501: Scope of requirements. Rev. Proc. 59–16

Unenrolled preparers of returns, under section 10.7(a)(7) of Department Circular No. 230, as revised, are required to file a signed fee statement in the form set forth in section 4.06 of Revenue Procedure 59–3. However, enrolled attorneys and agents are not required to file a fee statement.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to reiterate that fee statements are required of preparers of returns appearing before the Internal Reveue Service without enrollment.

SEC. 2. BACKGROUND.

Section 10.7(a)(7) of Department Circular No. 230, as revised, page 745, and section 4.06 of Revenue Procedure 59–3, page 801, set forth the rules relating to recognition of unenrolled preparers of returns and the form of fee statements that are required to be filed by them. Notwithstanding the publicity given to these provisions it appears that a question exists among unenrolled preparers of returns, enrolled attorneys and agents, and Internal Revenue Service personnel regarding the filing of fee statements.

SEC. 3. FEE STATEMENTS.

.01 An unenrolled preparer of returns should file with the authorization of the taxpayer a signed fee statement in the form set forth in Appendix C, or Appendix D of Revenue Procedure 59–3, *supra*. However, the preparer may use any other form clearly evidencing whether or not there is a contingent or partially contingent fee agreement for the representation of the taxpayer before revenue agents or examining officers and if there is such an agreement, the terms thereof relating to compensation. See section 4.06 of Revenue Procedure 59–3, *supra*.

.02 An enrolled attorney or agent is not required to file a contingent fee statement. See section 10:37 of Department Circular 230, as revised, *supra*.

SEC. 4. INQUIRIES.

Inquiries from Service personnel regarding this Revenue Procedure should be addressed to the Audit Division (O:A). Other inquiries should be addressed to the Director of Practice (C:DP).

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26 CFR 601.301: Imposition of taxes, qualification requirements, and regulations.
(Also Part III–B, Section 5304.)

Rev. Proc. 59–17

Present users of specially denatured spirits must make application on Form 1479, Application For Permit To Use Specially Denatured Spirits, and Form 1485, Application and Withdrawal Permit Of User To Procure Specially Denatured Spirits, in order to qualify for use and procurement of specially denatured spirits on and after July 1, 1959.

SECTION 1. PURPOSE.

In order for users of specially denatured spirits to continue to use and procure specially denatured spirits (formerly called specially denatured alcohol) on or after July 1, 1959, such users are required to make application on Form 1479 (Revised April 1959), Application For Permit to Use Specially Denatured Spirits, for an industrial use permit (formerly caller a basic permit) to use specially denatured spirits and to file an application on Form 1485 (Revised April 1959), Application And Withdrawal Permit of User To Procure Specially Denatured Spirits, for a permit to procure specially denatured spirits.

SEC. 2. BACKGROUND.

Section 5271 of the Internal Revenue Code of 1954, as amended by the Excise Tax Technical Changes Act, Public Law 85–859, C.B. 1958–3, 92, provides that no person shall procure or use specially denatured spirits on or after July 1, 1959, until he has filed an application and received a permit to do so.

SEC. 3. QUANTITIES TO BE SHOWN ON THE APPLICATIONS.

The application for an industrial use permit on Form 1479 requires that the user state the quantity of specially denatured spirits, including recovered or restored denatured spirits and recovered or restored articles, that will be on hand, in transit, and unaccounted for at any one time. This quantity will determine the penal sum of the specially denatured alcohol user's bond. It may be large enough to permit the user to order containers of the size usually purchased, to have specially denatured spirits in transit, and at the same time, to have a sufficient quantity on hand to care for present needs.

The application on Form 1485 requires that the user state the total quantity to be withdrawn during a calendar month and the total quantity to be withdrawn during a year. The proposed regulations on specially denatured spirits state that the quantity of any formula to be withdrawn during any calendar month should not be more than one-twelfth of the annual requirements but provide that where the user desires to withdraw more than one-twelfth of his annual quota during any month, he should state his needs and furnish sufficient information for the Assistant Regional Commissioner, Alcohol and Tobacco Tax, to determine whether such withdrawals should be authorized. If one-twelfth of the user's annual quota is less than a 55 gallon drum and sufficient reasons exist for purchasing a 55 gallon container, he should enter 55 gallons as the quantity to be withdrawn per calendar month and he should furnish sufficient information for the Assistant Regional Commissioner to determine whether that portion of the application should be approved. The same procedure would hold true if the user has a seasonal business that requires the use of specially denatured spirits in only a few months during a year. The user of specially denatured spirits should determine his annual quota and the need for each of the few months that he expects to use the material and adequately explain his desires.

SEC. 4. PERIOD TO BE ENTERED ON FORM 1485.

The entry for the beginning of the period should be July 1, 1959, but the ending date should be left blank at this time.

SEC. 5. USER'S BOND.

Each user of specially denatured spirits should file a new bond, Form 1480, Bond of Specially Denatured Spirits User, or he may continue his current bond in effect by filing Form 1533, Consent of Surety, extending the terms of the bond to cover specially denatured spirits on hand, in transit, and unaccounted for on and after July 1, 1959. Where a user has submitted a strengthening bond, such bond should also be covered by a separate consent. Where the quantity is increased, the user should submit a strengthening bond with the same surety or submit a new bond.

SEC. 6. FILING OF QUALIFYING DOCUMENTS.

The above described applications and bond or consent of surety with the necessary supporting documents outlined in the proposed regulations should be filed in duplicate with the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax. These qualifying documents should be filed as soon as possible in order to expedite handling in the office of the Assistant Regional Commissioner.

SEC. 7. RESULT IF APPLICATIONS ARE NOT FILED PRIOR TO JULY 1, 1959.

If the two applications and bond or consent of surety on the bond or bonds are not filed prior to July 1, 1959, the user will not be entitled to use specially denatured spirits on and after July 1, 1959, and the vendor named on the user's current withdrawal permit will be notified by the Assistant Regional Commissioner that the user may not continue to withdraw specially denatured spirits.

SEC. 8. CONTINUATION OF PERMITS ON AND AFTER JULY 1, 1959.

The proposed regulations on specially denatured spirits provide that if one holds both a permit as a user and has a valid withdrawal permit on Form 1485 on June 30, 1959, and has filed the required applications, he may continue to use and withdraw specially denatured spirits on and after July 1, 1959, under such permits until final action is taken on his application.

SEC. 9. INQUIRIES.

Inquiries in regard to this Revenue Procedure should refer to its number and be addressed to the office of the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax.

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26 CFR 601.301: Imposition of taxes, qualification requirements, and regulations.

(Also Part III–B, Section 5304.)

Rev. Proc. 59–18

Under Section 5271 of the Internal Revenue Code of 1954, as amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, dealers in specially denatured spirits are required to make application on Form 1474, Application for Permit to Deal in Specially Denatured Spirits, for an industrial use permit and an application on Form 1477, Application and Withdrawal Permit of Bonded Dealer to Procure Specially Denatured Spirits, in order to continue to procure and deal in specially denatured spirits.

SECTION 1. PURPOSE.

In order to continue to procure and deal in specially denatured spirits (formerly called specially denatured alcohol) on and after July 1, 1959, dealers are required to make application on Form 1474 (Revised April 1959), Application for Permit to Deal in Specially Denatured Spirits, for an industrial use permit (formerly called a basic permit) to deal in specially denatured spirits and an application on Form 1477 (Revised April 1959), Application and Withdrawal Permit of Bonded Dealer to Procure Specially Denatured Spirits, for a permit to procure specially denatured spirits.

SEC. 2. BACKGROUND.

Section 5271 of the Internal Revenue Code of 1954, as amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, C.B. 1958–3, 92, provides that no person shall procure or deal in specially denatured spirits on and after July 1, 1959, until he has filed an application and received a permit to do so.

SEC. 3. QUANTITIES TO BE SHOWN ON THE APPLICATION.

The application for an industrial use permit, Form 1474, requires that dealers state the quantity of specially denatured spirits that will be on hand, in transit, and unaccounted for at any one time. This quantity will determine the penal sum of the dealer's bond.

The application on Form 1474 requires that the dealers state the maximum quantity of specially denatured spirits which will be withdrawn during the term of the permit, considered to be one year.

SEC. 4. PERIOD TO BE ENTERED ON FORM 1477.

The entry for the beginning of the period should be July 1, 1959, but the ending date should be left blank at this time.

SEC. 5. DEALER'S BOND.

Each dealer has the choice of either submitting a new bond, Form 1475, Bond of Dealer in Specially Denatured Spirits, or continuing his current bond by filing Form 1533, Consent of Surety, extending the terms of the bond to cover specially denatured spirits on hand, in transit, and unaccounted for on and after July 1, 1959. In instances where a strengthening bond has been submitted, such bond should also be covered by a separate consent of surety. Where the quantity is increased, a strengthening bond or a new bond should be submitted.

SEC. 6. WHERE AND WHEN QUALIFYING DOCUMENTS SHOULD BE FILED.

The above described applications and bond or consent of surety with the necessary supporting documents outlined in the proposed regulations should be filed in duplicate with the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax. They should be filed as soon as possible in order to expedite handling in the office of the Assistant Regional Commissioner.

SEC. 7. RESULT IF APPLICATIONS ARE NOT FILED PRIOR TO JULY 1, 1959.

Where a dealer does not file the two applications and the consent of surety on his bonds prior to July 1, 1959, he will not be entitled to deal in specially denatured spirits on and after July 1, 1959, and the vendor named on the dealer's current withdrawal permit will be notified by the Assistant Regional Commissioner that the dealer may not continue to withdraw specially denatured spirits.

SEC. 8. CONTINUATION OF PERMITS ON AND AFTER JULY 1, 1959.

The proposed regulations provide that if one holds both a permit as a dealer and has a valid withdrawal permit on Form 1477 on June 30, 1959, and has also filed the required applications, he may continue to deal in and withdraw specially denatured spirits on and after July 1, 1959, under such permits until final action is taken on his applications.

SEC. 9. INQUIRIES.

Inquiries in regard to this Revenue Procedure should refer to its number and be addressed to the office of the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax.

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26 CFR 601.301: Imposition of taxes, qualification requirements, and regulations.
(Also Part III–B, Section 5304.)

Rev. Proc. 59–19

Present users of tax-free spirits must make application on Form 2600, Application For Permit to Use Spirits Free of Tax, and Form 1450, Application and Withdrawal Permit to Procure Spirits Free of Tax, in order to qualify for use and procurement of spirits free of tax on and after July 1, 1959.

SECTION 1. PURPOSE.

In order for users of tax-free spirits to continue to procure and use spirits free of tax (formerly called tax-free alcohol) on and after July 1, 1959, such users are required to make application on Form 2600, Application For Permit to Use Spirits Free of Tax, for an industrial use permit (formerly called a basic permit) to use spirits free of tax and an application on Form 1450 (Revised April 1959), Application and Withdrawal Permit To Procure Spirits Free of Tax, for a permit to procure spirits free of tax.

SEC. 2. BACKGROUND.

Section 5271 of the Internal Revenue Code of 1954, as amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, C.B. 1958–3, 92, provides that no person shall procure or use spirits free of tax on or after July 1, 1959, until he has filed an application and received a permit to do so.

SEC. 3. QUANTITIES TO BE SHOWN ON THE APPLICATION.

.01 The application for an industrial use permit, Form 2600, requires that the user state the quantity of tax-free spirits, including recovered tax-free spirits, that will be on hand, in transit, and unaccounted for at any one time. This quantity will determine the penal sum of the tax-free spirits user's bond. The bond may be large enough to authorize the user to order containers of the size usually purchased, to permit him to have spirits in transit, and, at the same time, to allow him to have a sufficient quantity on hand to care for present needs.

.02 The application on Form 1450 requires that the user of tax-free spirits state the total quantity to be withdrawn during the term of the permit, considered to be one year. The proposed regulations state that the quantity to be withdrawn during any calendar month should not be more than one-twelth of the annual requirements but provides that where the user desires to withdraw more than one-twelfth of his annual quota during any month, he should state his needs and furnish sufficient information for the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax, to determine whether such withdrawals should be authorized. If one-twelfth of

the tax-free user's annual quota is less than a 55 gallon drum and sufficient reasons exist for purchasing a 55 gallon container, he should enter 55 gallons as the quantity to be withdrawn per calendar month and furnish sufficient information for the Assistant Regional Commissioner to determine whether that portion of the application should be approved. The same procedure would hold true if the user has a seasonal business that requires the use of tax-free spirits in only a few months during the year. The user of tax-free spirits should determine his annual quota and the need for each of the few months that he expects to use the material and adequately explain his desires.

SEC. 4. PERIOD TO BE ENTERED ON FORM 1450.

The entry for the beginning of the period should be July 1, 1959, but the ending date should be left blank at this time.

SEC. 5. BOND.

Each user of tax-free spirits should file a new bond, Form 1448, Tax-Free Spirits User's Bond, or he may continue his current bond in effect by filing Form 1533, Consent of Surety, extending the terms of the bond to cover tax-free spirits on hand, in transit, and unaccounted for on and after July 1, 1959. Where a strengthening bond has been submitted, such bond should also be covered by a separate consent of surety. Where the quantity is increased, the user of tax-free spirits should submit a strengthening bond or a new bond.

SEC. 6. FILING OF QUALIFYING DOCUMENTS.

The above described applications and bond or consent of surety with the necessary supporting documents outlined in the proposed regulations should be filed in duplicate with the Assistant Regional Commissioner. They should be filed as soon as possible to expedite handling in the office of the Assistant Regional Commissioner.

SEC. 7. RESULT IF APPLICATIONS ARE NOT FILED PRIOR TO JULY 1, 1959.

If the two applications and bond or the consent of surety on the bond or bonds are not filed prior to July 1, 1959, the user of tax-free spirits will not be entitled to use spirits free of tax on and after July 1, 1959, and the vendor named on the user's current withdrawal permit will be notified by the Assistant Regional Commissioner that the user may not continue to withdraw spirits free of tax.

SEC. 8. CONTINUATION OF PERMITS ON AND AFTER JULY 1, 1959.

The proposed regulations provide that if one holds a permit as a user and has filed a valid withdrawal permit on Form 1450 on June 30, 1959, and also has filed the required applications, he may continue to use and withdraw specially denatured spirits on and after July 1, 1959, under such permits until final action is taken on his applications.

SEC. 9. INQUIRIES.

Inquiries in regard to this Revenue Procedure should refer to its number and be addressed to the office of the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax.

26 CFR 601.301: Imposition of taxes, qualification requirements, and regulations. Rev. Proc. 59–20

(Also Part III–B, Section 5304.)

Distillers, warehousemen, denaturers, rectifiers, and bottlers of distilled spirits are prohibited from engaging in business on and after July 1, 1959, unless they have applied for and received notice of qualification as distilled spirits plants.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to furnish instructions to distillers, warehousemen, denaturers, rectifiers, and bottlers of distilled spirits, with respect to what they must do in order to continue business operations on and after July 1, 1959.

SEC. 2. BACKGROUND.

Distillers, warehousemen, denaturers, rectifiers, and bottlers of distilled spirits now operating industrial alcohol plants, industrial alcohol bonded warehouses, industrial alcohol denaturing plants, registered distilleries, registered fruit distilleries, distillery, denaturing bonded warehouses, internal revenue bonded warehouses, taxpaid bottling houses, and rectifying plants are required by section 5171 of the Internal Revenue Code of 1954, as amended by the Excise Tax Technical Changes Act, Public Law 85–859, C.B. 1958–3, 92, to apply for and receive notice of the registration of their plants before continuing business as such on and after July 1, 1959. Such persons are also required by the quoted statute to apply for a permit authorizing such of their operations as are not covered by a permit under the Federal Alcohol Administration Act.

SEC. 3. WHAT MUST BE DONE.

To qualify a premises as a distilled spirits plant, the above-named persons must complete the following acts:

.01 Apply for registration by filing Form 2607, Registration of Distilled Spirits Plant.

.02 File a bond on Form 2601, Distilled Spirits Bond. No bond is required if the only operation of the plant will be the bottling, without rectification, of taxpaid spirits.

.03 Apply for an "operating permit" by filing Form 2603, Application For Operating Permit, if the plant is to engage in distilling for industrial use, denaturing of spirits, bottling or packaging of spirits for industrial use, warehousing of spirits for industrial use, or warehousing of spirits (without bottling in bond) for nonindustrial use.

.04 File either Form 1602, Consent, or Form 3–A, Indemnity Bond, unless the person qualifying the premises as a distilled spirits plant is the owner of the property unencumbered (including buildings and equipment) to be so qualified.

SEC. 4. OPTIONAL PROCEDURE IN RESPECT OF PRIOR LIENS.

Proprietors may, subject to the approval of the Assistant Regional Commissioner, file Form 2602, Consent to Additional Conditions on Indemnity Bond Form 3–A, to extend the terms of Indemnity Bond,

Form 3–A, so that it will stand in lieu of prior liens against the property of the distilled spirits plant, and will indemnify the United States for the payment of all taxes which could be asserted against the property by reason of such prior liens. This option does not affect the mandatory filing of Form 1602 or Form 3–A as discussed in Section 3.04.

SEC. 5. DATE FOR QUALIFICATION.

The application for registration should be filed well before July 1, 1959, since no person may commence or continue business as a distilled spirits plant on or after July 1, 1959, until his application for registration, Form 2607, has been approved and returned to him by the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax. The application for an operating permit should also be filed as early as possible, but in no case later than June 30, 1959. If a proprietor is to expand his operations to include functions not now covered by a permit, he may not commence such additional functions until he has received his operating permit, or a permit under the Federal Alcohol Administration Act, authorizing the additional functions.

SEC. 6. INQUIRIES.

Inquiries in regard to this Revenue Procedure should be addressed to the local officer in charge, branch office supervisor, or appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax.

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26 CFR 601.301: Imposition of taxes, qualification requirements, and regulations. (Also Part III–B, Section 5304.)

Rev. Proc. 59–21

Proprietors of distilled spirits plants that are successors to industrial alcohol plants, bonded warehouses, and denaturing plants, and dealers in specially denatured alcohol may on and after July 1, 1959, ship tax-free and specially denatured spirits to users under the provisions of withdrawal permits in effect on June 30, 1959, unless notified by the Assistant Regional Commissioner, Alcohol and Tobacco Tax, that such withdrawals may not be made.

SECTION 1. PURPOSE.

Proprietors of industrial alcohol plants, bonded warehouses, and denaturing plants, and dealers in specially denatured alcohol must be familiar with the withdrawal permits they may accept as valid on and after July 1, 1959. After this date, the withdrawal of spirits free of tax and specially denatured spirits may be made from distilled spirits plants or bonded dealer premises only by persons holding valid permits to secure such spirits.

SEC. 2. BACKGROUND.

Section 5271 of the Internal Revenue Code of 1954, as amended by the Excise Tax Technical Changes Act of 1958, Public Law 85–859, C.B. 1958–3, 92, provides that no person shall procure spirits free of tax or specially renatured spirits on and after July 1, 1959, until he has filed an application and received a permit to do so. The shortage of time will not permit Assistant Regional Commissioners, Alcohol

and Tobacco Tax, to process these applications and issue new withdrawal permits between the date the applications are received and July 1, 1959.

SEC. 3. VALID WITHDRAWAL PERMITS ON AND AFTER JULY 1, 1959.

.01 Proposed regulations to be issued provide that where a person holds a permit as a user or dealer and also holds a valid withdrawal permit on June 30, 1959, and files prior to July 1, 1959, the required applications for the continuance of such activities on and after July 1, 1959, he may continue to withdraw tax-free or specially denatured spirits under the withdrawal permit in effect on June 30, 1959. Accordingly, unless proprietors of industrial alcohol plants, bonded warehouses, and denaturing plants, and dealers in specially denatured alcohol are notified by the Assistant Regional Commissioner that withdrawals may not be made under the provisions of a particular withdrawal permit because the person to whom the permit was issued has not filed the necessary applications, they may on and after July 1, 1959, and until further notification ship tax-free or specially denatured spirits under the provisions of any withdrawal permit in effect on June 30, 1959, that names them as the vendor. The same rule will hold true for any valid permit to procure tax-free or specially denatured alcohol held by an agency of the United States Government on June 30, 1959, unless there is notification by the Director, Alcohol and Tobacco Tax Division, that withdrawals may not be made under a particular permit.

.02 After July 1, 1959, proprietors and dealers may receive withdrawal permits bearing the revision date of April 1959, and having a format somewhat different from those in use on June 30, 1959. If this permit is properly authenticated by the signature of the appropriate Assistant Regional Commissioner, shipments may also be made under such withdrawal permits. Storekeeper-gaugers assigned to individual plants should be consulted if questions arise regarding the revised permits.

SEC. 4. INQUIRIES.

Inquiries regarding this Revenue Procedure not answered by consultation with storekeeper-gaugers should refer to its number and be addressed to the office of the appropriate Assistant Regional Commissioner, Alcohol and Tobacco Tax.

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26 CFR 601.201: Rulings and determination letters. — Rev. Proc. 59–22

Strict compliance with the rules set forth in Revenue Ruling 54–172 is required of taxpayers requesting rulings on prospective transactions.

SECTION 1. PURPOSE.

The Internal Revenue Service calls attention to the necessity for strict compliance with its rules regarding requests for rulings on prospective transactions and extends these rules in the respects stated below.

SEC. 2. BACKGROUND.

.01 The rules are contained in Revenue Ruling 54–172, C.B. 1954–1, 394. They have been in effect since 1954, but in some respects there have been increasing laxities in complying with them.

.02 Particular attention is called to two provisions of the Revenue Ruling. One of these requires that if a taxpayer is contending for a particular determination, he must submit an explanation of the ground for such contention, together with a memorandum of relevant authorities. Even though the taxpayer is urging no particular determination or determinations with respect to a prospective transaction, it is required that he state his views as to the tax results of the proposed transaction, accompanying them with a memorandum of relevant authorities.

.03 The other provision of the Revenue Ruling, to which attention is directed, requires the submission, with the application for a ruling, of a complete statement of all of the facts regarding the proposed transaction. These include, but are not necessarily limited to, identification of all of the parties concerned; a full and precise statement of the business reasons, if any, for the transaction; and conformed copies of all contracts, wills, deeds, agreements, trust indentures, or other documents involved in the transaction. When documents are filed, they are to be accompanied by an analysis of their bearing on the issue or issues in question, specifying the pertinent provisions.

SEC. 3. PROCEDURE.

.01 While this Procedure is intended primarily to call the attention of practitioners to the extension of the requirements of Revenue Ruling 54–172, *supra*, it is to be observed that every application for a ruling must meet *all* of the requirements of the Revenue Ruling. This Procedure is not intended to relinquish any requirements stated in the Ruling.

.02 Any application hereafter filed for a ruling on a prospective transaction that does not comply with all of the provisions of Revenue Ruling 54–172, as extended by this Procedure, will be acknowledged by a form letter pointing out the requirements which have not been met and stating that the case has been closed, subject to reopening if, and when, the application is completed in conformity with the requirements. The same procedure will be followed with respect to applications on hand which ask for particular determinations but do not comply with the Revenue Ruling. Similar action may also be taken if the memorandum of authorities or the statement of facts, or both, submitted in response to such a form letter, are insufficient. For example, a memorandum of authorities is insufficient when it does not deal adequately with each issue involved; and a statement of facts is insufficient when it does not include all the facts bearing upon the tax results of the transaction or when it is not accompanied by copies of all of the pertinent documents, or when a document is not accompanied by an analysis of its bearing on the issue or issues, specifying the pertinent provisions.

.03 In connection with its consideration of an application for a ruling in the situations covered by these rules, the Revenue Service may, at any stage of the case, require the submission of an appropriate memorandum of relevant authorities or such other additional statement as may be essential to a determination of the issue.

SEC. 4. EFFECT ON OTHER DOCUMENTS.

Revenue Ruling 54–172, C.B. 1954–1, 394, is extended.

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