Treasury Department : : : Bureau of Internal Revenue

Internal Revenue Bulletin

Cumulative Bulletin 1947–2

JULY–DECEMBER 1947

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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

Treasury Department : : : : Bureau of Internal Revenue

Internal Revenue Bulletin

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

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

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

UNITED STATES GOVERNMENT PRINTING OFFICE : WASHINGTON : 1948

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See back of title for prices

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

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

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

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

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Year.	Cumulative Bulletin.		Price (cents).
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1922	*I–1	*I–2	40, 30
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1924	*III–1	*III–2	50, 50
1925	*IV–1	*IV–2	40, 35
1926	*V–1	*V–2	40, 30
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	Part 1		50
	[1] Part 2		$1
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1947	1947–1	1947–2	40, 75

*The asterisk (*) indicates the supply of that publication is exhausted.

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

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

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

INTRODUCTORY NOTES.

The Internal Revenue Cumulative Bulletin 1947-2, in addition to all decisions of the Treasury Department (called Treasury Decisions) pertaining to Internal Revenue matters, contains opinions of the Chief Counsel, and rulings and decisions pertaining to income, estate, gift, sales, capital stock, excess profits, employment, social security, and miscellaneous taxes, and legislation affecting the revenue statutes, as indicated on the title page of this Bulletin, published in the Bulletins (1947, Nos. 14 to 26, inclusive) for the period July 1 to December 31, 1947. It also contains a cumulative list of announcements relating to decisions of The Tax Court of the United States, formerly United States Board of Tax Appeals, published in the Internal Revenue Bulletin Service from July 1 to December 31, 1947.

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

Rulings under Titles VIII and IX of the Social Security Act and under Subchapters A and C, Chapter 9, of the Internal Revenue Code in force prior to January 1, 1940, are published under article headings of Regulations 91 and 90, respectively; rulings under Subchapters A and C, Chapter 9, of the Code in force on or after January 1, 1940, are published under the section headings of Regulations 106 and 107, respectively; rulings under the Carriers Taxing Act of 1937 and under Subchapter B, Chapter 9, of the Code, are published under the article headings of Regulations 100; and rulings under Title III of the Revenue Act of 1936—Tax on unjust enrichment—are coded under the sections of that Act and the article headings of Regulations 95.

ABBREVIATIONS.

The following abbreviations are used throughout the Bulletin:

A, B, C, etc.—The names of individuals.
A. R. M.—Committee on Appeals and Review memorandum.
A. R. R.—Committee on Appeals and Review recommendation.
A. T.—Alcohol Tax Unit.

B. T. A.—Board of Tax Appeals.
C. B.—Cumulative Bulletin.
Ct. D.—Court decision.
C. S. T.—Capital Stock Tax Division.
C. T.—Taxes on Employment by Carriers.
D. C.—Treasury Department circular.
Em. T.—Taxes imposed by the Social Security Act, the Carriers Taxing Act of 1937, and Subchapters A, B, and C of the Internal Revenue Code.
E. P. C.—Excess Profits Tax Council ruling or memorandum.
E. T.—Estate Tax Division.
G. C. M.—General Counsel's, Assistant General Counsel's, or Chief Counsel's memorandum.
I. R. B.—Internal Revenue Bulletin.
I. R. C.—Internal Revenue Code.
I. T.—Income Tax Unit.
M, N, X, Y, Z, etc.—The names of corporations, places, or businesses, according to context.
Mim.—Mimeographed letter.
MS. or M. T.—Miscellaneous Division.
O. or L. O.—Solicitor's law opinion.
O. D.—Office decision.
Op. A. G.—Opinion of the Attorney General.
P. T.—Processing Tax Division.
S. T.—Sales Tax Division.
Sil.—Silver Tax Division.
S. M.—Solicitor's memorandum.
Sol. Op.—Solicitor's opinion.
S. R.—Solicitor's recommendation.
S. S. T.—Taxes on Employment by others than carriers.
T.—Tobacco Division.
T. B. M.—Advisory Tax Board memorandum.
T. B. R.—Advisory Tax Board recommendation.
T. C.—Tax Court of the United States.
T. D.—Treasury decision.
x and y are used to represent certain numbers, and when used with the word "dollars" represent sums of money.

ANNOUNCEMENT RELATING TO DECISIONS OF THE TAX COURT OF THE UNITED STATES, FORMERLY KNOWN AS THE UNITED STATES BOARD OF TAX APPEALS.

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

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THE TAX COURT OF THE UNITED STATES.

CUMULATIVE LIST OF ANNOUNCEMENTS RELATING TO DECISIONS OF THE TAX COURT OF THE UNITED STATES, FORMERLY THE UNITED STATES BOARD OF TAX APPEALS, PUBLISHED IN THE INTERNAL REVENUE BULLETIN SERVICE FROM JULY 1 TO DECEMBER 31, 1947, INCLUSIVE.

[Announcements relating to the acquiescence or nonacquiescence of the Commissioner in decisions of The Tax Court of the United States, formerly the United States Board of Tax Appeals, as printed in the weekly Internal Revenue Bulletins from December 22, 1924, to December 31, 1931, inclusive, are published in Cumulative Bulletin X-2 (1931), pages 1-106. Those printed in weekly Bulletins from January 1, 1932, to December 31, 1939, inclusive, are published in Cumulative Bulletin 1939-2, pages 1-73. Those printed in weekly Bulletins from January 1, 1940, to December 31, 1942, inclusive, and in semimonthly Bulletins from January 1, 1943, to December 31, 1944, inclusive, are published in Cumulative Bulletin 1944, pages 1-51. Those printed in semimonthly Bulletins during the calendar year 1945 are published in Cumulative Bulletin 1945, pages 1-9. Those printed in biweekly Bulletins from January 1 to June 30, 1946, inclusive, are published in Cumulative Bulletin 1946-1, pages 1-5. Those printed in biweekly Bulletins from July 1 to December 31, 1946, inclusive, are published in Cumulative Bulletin 1946-2, pages 1-7. Those printed in biweekly Bulletins from January 1 to June 30, 1947, inclusive, are published in Cumulative Bulletin 1947-1, pages 1-5. The list below, therefore, contains only such announcements printed in the biweekly Bulletins from July 1 to December 31, 1947, inclusive.]

1947-26-12718

The Commissioner acquiesces in the following decisions:

Taxpayer.	Docket No.	Report.	
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A.			
Adda, Inc.[1]	8883	9	199
Anderson, Monroe D., estate of [2]	2581	8	706
Anderson, William P	8929	8	921
Atkinson, William G. (also known as Paul Cavanagh) [3]	95500	[a] 42	1037
B.			
Baltimore Transfer Co. of Baltimore City, The	9947	8	1
Bartlett, Edwin R	10246	8	1120
Bellande et ux, Edward A	5045	8	796
Berwind, Charles G	8599	8	1112
Blake, Marion A	7214	8	546
Blake, Virginia	7215	8	546
Bouldin, Charles F	8560	8	959
Briskey Co.[4]	60899	[a] 29	987
Bush Terminal Buildings Co	6806	7	793
Byram, Harry E., estate of [5]	8837	9	1
C.			
Carter-Colton Cigar Co	9123	9	219
Cavanagh, Paul (also known as William G. Atkinson) [3]	95500	[a] 42	1037

[a] Board of Tax Appeals.

[1] Acquiescence relates only to the issue involving the useful life of a building for depreciation purposes.
[2] Gift tax decision.
[3] Nonacquiescence published in Cumulative Bulletin 1941-1, pages 12 and 13, withdrawn.
[4] Nonacquiescence published in Cumulative Bulletin XIII-1 (1934), page 19, withdrawn.
[5] Estate tax decision.

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Report. Volume.	Page.
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Cluett, 3d, et ux, Robert	10067	8	1178
Cohu, Didi M	5040	8	796
Cohu, La Motte T	5039	8	796
Cook, Mary E., estate of	[1] 7354 [2] 9833	9	563
Crown Zellerbach Corporation	3786	8	511
Cuba Railroad Co., The [3]	9397	9	211
D			
Dean, J. Simpson [4]	9013	9	256
Dean, Paulina duPont [4]	9012	9	256
Donaldson, Maynard M., executor of estate of Mary E. Cook	[1] 7354 [2] 9833	9	563
Druggists' Supply Corporation	9270	8	1343
Durst Productions Corporation [3]	10867	8	1326
E.			
East Coast Oil Co., S. A.[5]	58180	[a] 31	558
Exolon Co., The [6]	101276	[a] 45	844
F.			
Flock, Emanuel	6828	8	945
Frew, Walter E., estate of [2]	9373	8	1240
Frew et al., Ella Louise, executors of the last will and testament of Walter E. Frew [2]	9373	8	1240
Frye, Floyd A., administrator of estate of Joseph D. Rosenberg	4978	7	73
G.			
Geary, Mary deF. Harrison	8209	9	8
Gibson Products Co., Inc	9176	8	654
Gracey, Euleon Jock [7]	3394	5	296
Guggenheimer et ux., Charles S	8813	8	789
H.			
Hall, Aleda N	11836	9	53
Harris Hardwood Co., Inc. [8]	4424	8	874
Heckett, Eric H	5160	8	841
Hill, Inc., R. O. H	9028	9	153
Home Guaranty Abstract Co	9574	8	617
Hooker, Harry M	10247	8	1120
Hooker Electrochemical Co	10245	8	1120
Hudson, Marjorie V. L	8695	8	950

[a] Board of Tax Appeals.

[1] Gift tax decision.
[2] Estate tax decision.
[3] Acquiescence relates only to the result.
[4] Acquiescence relates to all issues except the issue whether appreciation in value of assets distributed in kind is includible in computing earnings and profits of the corporation which made the distribution.
[5] Nonacquiescence published in Cumulative Bulletin XIV–1 (1935), page 27, withdrawn.
[6] Limited acquiescence and partial nonacquiescence published in Cumulative Bulletin 1942–1, pages 6 and 22, respectively, withdrawn.
[7] Nonacquiescence published in Cumulative Bulletin 1945, page 8, withdrawn.
[8] This announcement does not relate to the issue involving adjustment for abnormalities of base period net income under section 711(b)(1)(J)(ii) of the Internal Revenue Code.

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Report. Volume.	Page.
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K.			
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Kregar, Edward R., estate of [1] [2]	9328	8	1199
Kregar et al., William J., executors of estate of Edward R. Kregar [1] [2]	9328	8	1199
L.			
Lion Clothing Co	5730	8	1181
Longview Hilton Hotel Co	12511	9	180
Lucas, Mabelle T.[3]	72933	[a] 34	877
M.			
Mahn, Dorothy (formerly Mrs. E. J. Gracey)[4]	3395	5	296
Marks, Melanie Dennery	6383	8	1255
Marshall, Herbert [5]	99559	[a] 41	1064
May, Agnes K	8654 10083	8	860
May, Walter A., estate of [6]	10170	8	1099
May et al., Mollie B., executors of estate of Walter A. May [6]	10170	8	1099
McAvoy Company [7]	9216	[a] 10	1017
Monroe Coal Mining Co	7322	7	1334
Morley, Walter G	7031	8	904
Mutual Fire, Marine and Inland Insurance Co., The	7459	8	1212
N.			
National Leather & Shoe Finders Association	9535	9	121
New York Trust Co., The, executor of estate of Harry E. Byram [6]	8837	9	1
Northrop, Inez H	5042	8	796
Northrop, John K	5041	8	796
O.			
O'Meara, Maurice P	8292	8	622
P.			
Perkins, Harold G	8922	8	1051
Pittsburgh & West Virginia Railway Co., The [8]	11116	9	268
R.			
Roberts, Edward, transferee of assets received from Joseph D. Rosenberg, deceased	4956	7	73
Roberts, Edward, transferee of assets received from estate of Joseph D. Rosenberg	4954	7	73

[a] Board of Tax Appeals.

[1] Gift tax decision.
[2] Acquiescence relates only to the valuation of the gift property.
[3] Nonacquiescence published in Cumulative Bulletin XV–2 (1936), page 39, withdrawn.
[4] Nonacquiescence published in Cumulative Bulletin 1945, page 9, withdrawn.
[5] Nonacquiescence published in Cumulative Bulletin 1940–2, page 12, withdrawn.
[6] Estate tax decision.
[7] Nonacquiescence published in Cumulative Bulletin VII–2 (1928), page 49, withdrawn.
[8] Acquiescence relates to all issues except the issue whether taxable income was derived by the taxpayer upon the purchase of its own bonds at less than the issue price.

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Report.	
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Roberts, Michael C., transferee of assets received from estate of Joseph D. Rosenberg	4960	7	73
Roberts, Wallace, transferee of assets received from Joseph D. Rosenberg, deceased	4957	7	73
Roberts, Wallace, transferee of assets received from estate of Joseph D. Rosenberg	4958	7	73
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Rosenberg, Joseph D., estate of	4978	7	73
Rosenberg, Robert T	4963	7	73
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Rosenberg, Robert T., transferee of assets received from estate of Joseph D. Rosenberg	4962	7	73
Rosenblatt et ux., Bernard A	10104	8	1245
Rosenblatt, Gertrude	10105	8	1245
S.			
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Schwartz, Cornelia B., estate of [1]	8998	9	229
Schwartz, H. Livingston, administrator of estate of Cornelia B. Schwartz [1]	8998	9	229
Seligmann, Grace R.[2]	8403	9	191
Smith, Inc., Hugh [3]	8389	8	660
Standish, Thomas A.[2]	9019	8	1204
State National Bank of Houston et al., The, executors of estate of Monroe D. Anderson [2]	2581	8	706
Stephens et ux., Moye W	5046	8	796
Stewart, Anita Quinby	9642	9	195
Strauss, Lewis L.[4]	108586	8	1058
T.			
Texas Co. (South America), Ltd., The	9584	9	78
Toy, Harvey M.[5]	72932	[a] 34	877
U.			
Union Trusteed Funds, Inc	7405	8	1133
Unique Art Manufacturing Co., Inc	9295	8	1341
V.			
Veit, Howard	5862	8	809

[a] Board of Tax Appeals.

[1] Estate tax decision.

[2] Gift tax decision.

[3] Acquiescence relates to all issues except that involving the allowance of a dividends paid credit in determining "undistributed adjusted net income" for the year 1934.

[4] Acquiescence relates only to the issue whether the total cost of common and class A preferred stock of Polaroid Corporation was entirely allocable to the preferred stock.

[5] Nonacquiescence published in Cumulative Bulletin XV-2 (1936), page 48, withdrawn.

ACQUIESCENCES—Continued.

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Wright, Jr., Solomon	11620	9	173
Z.			
Zakon, William [1]	5450	[a] 7	687
Zellerbach Paper Co	3106	8	511

[a] Board of Tax Appeals.

[1] Nonacquiescence published in Cumulative Bulletin VII-2 (1928), page 53, withdrawn.

The Commissioner does NOT acquiesce in the following decisions:

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A.			
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Alexander, Henry C	6515	8	1019
Anderson et ux., Arthur M	6516	8	1019
Atkin et ux., I. C. Raymond	6517	8	1019
B.			
Barnard, Josephine S., estate of [2]	9180	9	61
Bartow, Francis D., estate of	6547	8	1019
Bartow, Sabina R	6547	8	1019
Brinckerhoff et ux., John H	8905	8	1045
C.			
City Bank Farmers Trust Co., executor of estate of Josephine S. Barnard [2]	9180	9	61
Clary, George B	8908	8	1045
Clemens, Ernest W	10026	8	121
D.			
Davids, Beatrice Clary	8907	8	1045
Davison, H. P	6518	8	1019
Dean, J. Simpson [3]	9013	9	256
Dean, Paulina duPont [3]	9012	9	256
Dickey et ux., Charles D	6519	8	1019
E.			
Edward Orton, Jr. Ceramic Foundation	4297	9	533
F.			
First State Bank of Stratford	9077	8	831
G.			
Gilt Edge Textile Corporation, formerly Gilt Edge Silk Mills of New Jersey	10447	9	543
K.			
Kregar, Edward R., estate of [2 4]	9328	8	1199
Kregar et al., William J., executors of estate of Edward R. Kregar [2 4]	9328	8	1199
L.			
Lamont, Thomas S	6520	8	1019
Lamont, Thomas W	6521	8	1019
Leffingwell et ux., R. C	6522	8	1019

[1] Nonacquiescence relates only to the issue involving the deductibility of New York City real estate taxes.
[2] Gift tax decision.
[3] Nonacquiescence relates only to the issue whether appreciation in value of assets distributed in kind is includible in computing earnings and profits of the corporation which made the distribution.
[4] Nonacquiescence relates only to the issue whether the donor is entitled to seven exclusions or to one.

NONACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Report.	
		Volume.	Pages.
M.			
Mitchell, William A	6523	8	1019
Morgan, J. P., estate of	6524	8	1019
Morgan et al., Junius S., executors of estate of J. P. Morgan	6524	8	1019
Morgan et ux., Junius S	6525	8	1019
Morgan & Co., Inc., J. P., executor of estate of Francis D. Bartow	6547	8	1019
MacQuigg et al., Charles E., trustees of Edward Orton, Jr. Ceramic Foundation	4297	9	533
P.			
Pittsburgh & West Virginia Railway Co., The [1]	11116	9	268
R.			
Railway Express Agency, Inc	7886	8	991
S.			
Smith, Inc., Hugh [2]	8339	8	660
Stephan et ux., John	8906	8	1045
Strauss, Lewis L.[3]	108586	8	1058
T.			
Transport, Trading & Terminal Corporation	3890	9	247
W.			
Whitney, George	6514	8	1019

[1] Nonacquiescence relates only to the issue whether taxable income was derived by the taxpayer upon the purchase of its own bonds at less than the issue price.

[2] Nonacquiescence relates only to the issue involving the allowance of a dividends paid credit in determining "undistributed adjusted net income" for the year 1934.

[3] Nonacquiescence relates only to the issue whether petitioner is taxable on certain royalty payments received by his wife in 1938 and 1939 where petitioner had assigned to his wife the right to receive the royalties.

INCOME TAX RULINGS.—PART I.

A. INTERNAL REVENUE CODE.

CHAPTER 1.—INCOME TAX.

SUBCHAPTER B.—GENERAL PROVISIONS.

PART II.—COMPUTATION OF NET INCOME.

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

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

INTERNAL REVENUE CODE.

Interest from Philippine obligations issued after March 24, 1934. (See I. T. 3864, page 17.)

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

INTERNAL REVENUE CODE.

Tennessee retailers' sales tax collected by dealer from vendee. (See I. T. 3865, page 20.)

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

INTERNAL REVENUE CODE.

Connecticut sales and use taxes collected by retailer from purchaser. (See I. T. 3881, page 23.)

SECTION 29.22(a)–21: Trust income taxable to the grantor as substantial owner thereof. 1947–14–12589 T. D. 5567

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

Regulations 111 amended—Taxability of income of certain trusts.

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

To Collectors of Internal Revenue and Others Concerned:

On January 28, 1947, notice of proposed rule making regarding the taxability of the income of certain trusts was published in the

Federal Register (12 F. R., 560). After consideration of all such relevant matter as was presented by interested persons regarding the proposal, the following amendments to Regulations 111 [26 CFR, Part 29] are hereby adopted. These amendments are designed to set forth the application in certain cases of the principles enunciated in *Helvering* v. *Clifford* (309 U. S., 331 [Ct. D. 1444, C. B. 1940–1, 105]) and related cases.

PARAGRAPH 1. Section 29.22(a)–21, added by Treasury Decision 5488, approved December 29, 1945 [C. B. 1946–1, 19] [26 CFR, 29.22(a)–21], is amended as follows:

(A) By striking out the last sentence of paragraph (*a*) of such section and inserting in lieu thereof the following:

Such factors are set forth in general in paragraph (*b*) and in detail in paragraphs (*c*), (*d*), and (*e*), below.

(B) By striking out the words "subsection (*a*)," "subsection (*c*)," "subsection (*d*)," and "subsection (*e*)" wherever they appear in paragraph (*b*) of such section and inserting in lieu thereof "paragraph (*a*)," "paragraph (*c*)," "paragraph (*d*)," and "paragraph (*e*)."

(C) By striking out of subparagraph (2) of paragraph (*c*) of such section the words: "or spouse living with the grantor," and inserting in lieu thereof the following:

or spouse (living with the grantor, and not having a substantial adverse interest in the corpus or income of the trust),

(D) By striking out the second undesignated paragraph of paragraph (*c*) of such section beginning: "Where the grantor's reversionary interest is to take effect in possession or enjoyment" to and including the clause designated (B) and inserting in lieu thereof the following:

Where the grantor's reversionary interest is to take effect in possession or enjoyment by reason of some event other than the expiration of a specific term of years, the trust income is nevertheless attributable to him if such event is the practical equivalent of the expiration of a period less than 10 or 15 years, as the case may be. For example, a grantor is taxable on the income of a trust if the corpus is to return to him or his estate on the graduation from college or prior death of his son, who is 18 years of age at the date of the transfer in trust. Trust income is, however, not attributable to the grantor where such reversionary interest is to take effect in possession or enjoyment at the death of the person or persons to whom the income is payable.

(E) By striking out the words "exceptions (1) to (5)" in the first parenthetical clause in the first undesignated paragraph of paragraph (*d*) and inserting in lieu thereof "subparagraphs (1) to (4)."

(F) By striking out the second sentence of the first undesignated paragraph of paragraph (*d*) of such section and inserting in lieu thereof the following:

The grantor is not taxable, however, if the power, whether exercisable with respect to corpus or income, may only affect the beneficial enjoyment of the income for a period commencing 10 years from the date of the transfer (or 15 years where any power of administration specified in paragraph (*c*) is exercisable solely by the grantor, or spouse living with the grantor and not having a substantial adverse interest, or both, whether or not as trustee).

(G) By striking out the last sentence of the first undesignated paragraph of paragraph (*d*) of such section and inserting in lieu thereof the following:

Where the income affected by the power is for a period beginning by reason of some event other than the expiration of a specific term of years, the grantor will be taxable if such event is the practical equivalent of the expiration of a period less than 10 or 15 years, as the case may be, in accordance with the criteria stated in paragraph (*c*).

(H) By striking out the clause constituting the beginning of the second undesignated paragraph of paragraph (*d*) reading as follows: "This subsection shall not apply to any one or more of the following excepted powers:" and inserting in lieu thereof the following:

The foregoing provisions of this paragraph shall not apply to any one or more of the following powers:

(I) By striking out all of paragraph (*d*) following subparagraph (2) and inserting in lieu thereof the following:

(3) If (i) the power is exercisable by a trustee or trustees, none of whom is the grantor, spouse living with the grantor, or a related or subordinate trustee of the type and under all the conditions referred to in subparagraph (4)(ii), and (ii) the exercise of the power is not subject to the approval or consent of any person other than such trustee or trustees, this paragraph shall not apply to a power—

(A) to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries,

(B) to pay out corpus to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries).

The powers herein described include all the powers described in subparagraph (4), since the latter powers are more limited than those herein described.

(4) If the power—

(i) is exercisable by the grantor or spouse living with the grantor, or both, whether or not as trustee, or

(ii) is exercisable (A) solely by a trustee or trustees who include the father, mother, issue, brother, sister, or employee of the grantor, or a subordinate employee of a corporation in which the grantor is an executive or in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control, and (B) in a manner which may affect the interests of beneficiaries which include the spouse or any child of the grantor (see subparagraph (3) for a power exercisable by a related or subordinate trustee of the class hereinabove described where the exercise of the power does not affect the interest of the spouse or a child of the grantor or where the power is exercisable only with the concurrence of an unrelated and nonsubordinate trustee), or

(iii) is exercisable by any person or persons other than as trustee, or

(iv) is exercisable by any trustee or trustees, and the exercise of the power is subject to the approval or consent of any person or persons (other than such trustee or trustees), or of the grantor or spouse living with the grantor, or both, in the capacity of trustee,

this paragraph shall not apply—

(*aa*) to a power to pay out corpus to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries), provided that the power is limited by a reasonably definite external standard. Such standard must be set forth in the trust instrument and must consist of needs and circumstances of the beneficiaries;

(*bb*) if the power is not limited by a reasonably definite external standard, to a power to pay out corpus to or for any current income beneficiary, provided that any such payment of corpus must be chargeable against the proportionate share of corpus held in trust for the payment of income to such beneficiary as if such corpus constitutes a separate trust;

(*cc*) to a power to distribute or apply income to or for any current income beneficiary or to accumulate such income for him, provided that any accumulated income must ultimately be payable to the beneficiary from whom distribution or application is withheld, to his estate,

or to his appointees (or persons named as alternate takers in default of appointment) provided that such beneficiary possesses a power of appointment which does not exclude from the class of possible appointees any person other than the beneficiary, his estate, his creditors or the creditors of his estate; or, if payable upon the termination of the trust or in conjunction with a distribution of corpus which distribution is augmented by such accumulated income, is ultimately payable to the current income beneficiaries in shares which have been irrevocably specified in the trust instrument. Accumulated income shall be considered so payable although it is provided that if any beneficiary does not survive a date of distribution which may reasonably be expected to occur within the beneficiary's lifetime, the share of such deceased beneficiary is to be paid to such persons as the beneficiary may appoint, or is to be paid to one or more designated alternate takers (other than the grantor or the grantor's estate) if the share of such alternate taker or the shares of such alternate takers have been irrevocably specified in the trust instrument;

(*dd*) to a power, exercisable only during (1) the existence of a legal disability of any current income beneficiary, or (2) the period in which any income beneficiary shall be under the age of 21 years, to distribute or apply income to or for such beneficiary or to accumulate and add such income to corpus;

(*ee*) in a case falling under subdivision (ii) hereof, to a power to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries, whether or not the conditions in subdivision (*cc*) or (*dd*) are satisfied, provided that such power is limited by a reasonably definite external standard. For the requirements of such standard, see subdivision (*aa*) hereof.

A power does not fall within the powers described in subparagraphs (3) and (4) if the trustee is enabled to add to the class of beneficiaries designated to receive the income or corpus, except in so far as provision may be made for after-born or after-adopted children. A mere power to allocate receipts as between corpus and income, even though expressed in broad language, is not deemed a power over beneficial enjoyment with respect to income or corpus.

(J) By striking out paragraph (*e*) of such section in its entirety and inserting in lieu thereof the following:

(*e*) *Administrative control.*—Income of a trust, whatever its duration, is taxable to the grantor where, under the terms of the trust or the circumstances attendant on its operation, administrative control is exercisable primarily for the benefit of the grantor rather than the beneficiaries of the trust. Administrative control is exercisable primarily for the benefit of the grantor where—

(1) a power exercisable by the grantor, or any person not having a substantial adverse interest in its exercise, or both, whether or not in the capacity of trustee, enables the grantor or any person to purchase, exchange or otherwise deal with or dispose of the corpus or the income therefrom for less than an adequate and full consideration in money or money's worth; or

(2) a power exercisable by the grantor, or any person not having a substantial adverse interest in its exercise, or both, whether or not in the capacity of trustee, enables the grantor to borrow the corpus or income, directly or indirectly, without adequate interest in any case, or without adequate security except where a trustee (other than the grantor or spouse living with the grantor) is authorized under a general lending power to make loans without security to the grantor and other persons and corporations upon the same terms and conditions; or

(3) the grantor has directly or indirectly borrowed the corpus or income and has not completely repaid the loan, including any interest, before the beginning of the taxable year; or

(4) any one of the following powers of administration over the trust corpus or income is exercisable in a nonfiduciary capacity by the grantor, or any person not having a substantial adverse interest in its exercise, or both: a power to vote or direct the voting of stock or other securities, a power to control the investment of the trust funds either by directing investments or reinvestments or by vetoing proposed investments or reinvestments, and a power to reacquire the trust corpus by substituting other property of an equivalent value.

If a power is exercisable by a person as trustee, it is presumed that the power is exercisable in a fiduciary capacity primarily in the interests of the beneficiaries. Such presumption may be rebutted only by clear and convincing proof that the power is not exercisable primarily in the interests of the beneficiaries. If a power is not exercisable by a person as trustee, the determination of whether such power is exercisable in a fiduciary or a nonfiduciary capacity depends on all the terms of the trust and the circumstances surrounding its creation and administration. For example, where the trust corpus consists of diversified stocks or securities of corporations the stock of which is not closely held and in which the holdings of the trust, either by themselves or in conjunction with the holdings of the grantor, are of no significance from the viewpoint of voting control, a power with respect to such stocks or securities held by a person who is not a trustee will be regarded as exercisable in a fiduciary capacity primarily in the interests of the beneficiaries. Where the trust corpus consists of stock or securities of a closely held corporation, such a power may or may not, depending upon all the facts, be considered exercisable in a fiduciary capacity.

The mere fact that a power exercisable by the trustee is described in broad language does not indicate that the trustee is authorized to purchase, exchange, or otherwise deal with or dispose of the trust property or income for less than an adequate and full consideration in money or money's worth, or is authorized to lend the trust property or income to the grantor without adequate interest. On the other hand, such authority may be indicated by the actual administration of the trust.

PAR. 2. Section 29.22(a)–21 [26 CFR, 29.22(a)–21] as amended shall be applicable to taxable years beginning after December 31, 1945.

(This Treasury decision is issued under authority contained in section 62 of the Internal Revenue Code (53 Stat., 32; 26 U. S. C., 1940 ed., 62).)

This Treasury decision shall be effective on the thirty-first day after the date of its publication in the Federal Register.

JOSEPH D. NUNAN, JR.,
Commissioner of Internal Revenue.

Approved June 30, 1947.

JOSEPH J. O'CONNELL, JR.,
Acting Secretary of the Treasury.

(Published in the Federal Register July 4, 1947.)

SECTION 29.22(a)–21: Trust income taxable to the grantor as substantial owner thereof. 1947–14–12590 Mim. 6156

Policy regarding extent of application of section 29.22(a)–21 of Regulations 111, as amended by Treasury Decision 5567 [page 9, this Bulletin], relating to taxability of income of certain trusts.

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

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

1. Section 29.22(a)–21, dealing with the taxation of trust income to the grantor within the principles of *Helvering* v. *Clifford* (309 U. S., 331 [Ct. D. 1444, C. B. 1940–1, 105]), was added to Regulations 111 by Treasury Decision 5488 (11 F. R., 65), approved December 29, 1945 [C. B. 1946–1, 19]. Section 29.22(a)–21 was amended by Treasury Decision 5567, approved June 30, 1947 [page 9, this Bulletin]. Such section, as amended, is applicable only to taxable years beginning after December 31, 1945. However, it will be the policy

of the Bureau, where no inconsistent claims prejudicial to the Government are asserted by trustees or beneficiaries, not to assert liability of the grantor for any prior taxable year under the general provisions of section 22(a) of the Internal Revenue Code if the trust income would not be taxable to the grantor under the regulations as amended.

2. Mimeograph 6071 (11 F. R., 12044), approved October 10, 1946 [C. B. 1946–2, 31], provided that where the grantor's control over a trust created prior to January 1, 1946, was terminated at any time during the calendar year 1946, with the result that the trust income on the last day of such calendar year was no longer taxable to the grantor under the provisions of section 29.22(a)–21 of Regulations 111, it would be the policy of the Bureau not to assert liability of the grantor under such provisions for any part of the calendar year 1946. In view of the amendments made by Treasury Decision 5567, grantors who have not heretofore terminated their substantial ownership of the trust income under Mimeograph 6071 may now desire to terminate such controls over the trusts as subject them to tax under the provisions of section 29.22(a)–21, as amended by Treasury Decision 5567.

It will, therefore, be the policy of the Bureau where the grantor's control over a trust created prior to January 1, 1946, is terminated at any time prior to January 1, 1948, with the result that the trust income on the last day of the calendar year 1947 is no longer taxable to the grantor under the provisions of section 29.22(a)–21, as amended by Treasury Decision 5567, not to assert liability of the grantor under those regulations for any part of the calendar years 1946 and 1947. The Bureau may, however, assert liability of the grantor in such a case under section 22(a) of the Internal Revenue Code without reference to section 29.22(a)–21 for any part of the calendar year 1946 or the calendar year 1947 preceding the termination of the grantor's control over the trust. The complete repayment by the grantor prior to January 1, 1948, of a loan of trust corpus or income made to him directly or indirectly prior to January 1, 1946, shall be considered, for the purposes of the applicability of this mimeograph, a termination (with respect to such loan) of the controls defined in paragraph (*e*)(3) of section 29.22(a)–21, as amended.

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

This mimeograph is published without prior general notice of its proposed issuance, inasmuch as taxpayers, in order to secure the benefits provided herein, must act prior to January 1, 1948, and notice and public rule making procedure in connection herewith would result in delay, which is hereby found to be contrary to the public interest. (See section 4(a) of the Administrative Procedure Act, approved June 11, 1946.)

This mimeograph, being within the parenthetical exception to section 4(c) of the Administrative Procedure Act, shall be effective upon its filing for publication in the Federal Register.

JOSEPH D. NUNAN, Jr.,
Commissioner.

Approved June 30, 1947.

JOSEPH J. O'CONNELL, Jr.,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register July 3, 1947, 8.48 a. m.)

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

1947–24–12692
I. T. 3877

INTERNAL REVENUE CODE.

Pensions received by former members of the police and fire departments of New York City, retired pursuant to sections B18–4.0 and B19–4.0, respectively, of the Administrative Code of the City of New York (Local Laws of Cities and Villages, 1940, page 247) because of total permanent disability caused in or induced by the actual performance of the duties of their positions, are in the nature of and in lieu of workmen's compensation, and such pensions are excludible from gross income under section 22(b)(5) of the Internal Revenue Code.

Advice is requested whether pensions received by former members of the police and fire departments of New York City, retired pursuant to sections B18–4.0 and B19–4.0, respectively, of the Administrative Code of the City of New York (Local Laws of Cities and Villages, 1940, page 247) because of total permanent disability caused in or induced by the actual performance of the duties of their positions, are excludible from gross income under section 22(b)(5) of the Internal Revenue Code.

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

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

* * * * * * *

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

Section B18–4.0 o fthe Administrative Code of the City of New York, relating to disability retirement of policemen, provides in part as follows:

SEC. B18–4.0. PAYMENT OF PENSIONS; DISABILITY; RETIREMENT FOR SERVICE.—a. The board of trustees shall retire any member who, upon an examination, as provided in subdivision d of this section, may be found to be disqualified, physically or mentally, for the performance of his duties. Such member so retired shall receive from such pension fund an annual pension as provided in this section. In every case such board shall determine the circumstances thereof, and such pension so allowed is to be in lieu of any salary received by such member at the time of his being so retired. The department shall not be liable for the payment of any claim or demand for services thereafter rendered, and the amount of such pension shall be determined upon the following conditions:

1. In case of total permanent disability at any time caused in or induced by the actual performance of the duties of his position, the amount of annual pension to be allowed shall be not less than three-fourths of the annual salary of such member at the date of his retirement.

Section B19–4.0 of the Administrative Code of the City of New York contains similar provisions with respect to disability retirement of firemen.

The corporation counsel of the city of New York, in an opinion dated June 11, 1947, rendered at the request of the fire commissioner of the city of New York, concluded that pension payments made to members

of the fire department who are injured in line of duty are in the nature of and in lieu of workmen's compensation. In support of that conclusion, the corporation counsel cited the decision in *Ryan* v. *City of New York* (228 N. Y., 16, 126 N. E., 350), in which it was held that a policeman injured while on duty at the precinct police station was not entitled to the benefits of the workmen's compensation law. In arriving at the conclusion that the injured policeman was not entitled to workmen's compensation, the court said:

> The truth is that the claimant and his brother officers do not need the protection of the workmen's compensation law, and the legislature did not mean that they should have it. They do not need it, because compensation is assured to them by an independent statute, with its own special and comprehensive scheme. * * *

In *Webster R. Frye et ux.* v. *United States* and *Herman L. Lay et ux.* v. *United States* (72 Fed. Supp., 405), the District Court of the United States for the District of Columbia stated that the District of Columbia Code provisions for compensation of policemen and firemen in the District of Columbia, disabled through injury received or disease contracted in line of duty, were in the nature of a workmen's compensation act. That statement appears to have been based primarily on the fact that when the Federal Compensation Act of September 7, 1916 (39 Stat., 742), was amended by section 11 of the Act of July 11, 1919 (41 Stat., 68, 104), to cover employees of the government of the District of Columbia, policemen and firemen in the District of Columbia who are pensioned or pensionable under section 12 of the District of Columbia Appropriation Act approved September 1, 1916 (39 Stat., 676, 718), were expressly excluded. The court also pointed out that policemen and firemen are expressly excluded from the Civil Service Retirement Act of 1920, as amended. In the course of its opinion, the court cited I. T. 3281 (C. B. 1939–1 (Part 1), 97) in which it is held, in effect, that compensation paid by the United States under the provisions of the Federal Compensation Act of September 7, 1916, on account of disability or death of an employee of the Federal Government resulting from a personal injury sustained by the employee while in the performance of his duty comes within the provisions of section 22(b)(5) of the Revenue Act of 1938, and is, therefore, not subject to Federal income tax. The provisions of section 22(b)(5) of the Internal Revenue Code, supra, are, to the extent material, the same as those of section 22(b)(5) of the Revenue Act of 1938. It is stated in I. T. 3281, supra, that the provisions of the Act of September 7, 1916, are similar in many respects to those of the so-called workmen's compensation acts of the various States.

In view of the foregoing, it is held that pensions received by former members of the police and fire departments of New York City, retired pursuant to sections B18–4.0 and B19–4.0, respectively, of the Administrative Code of the City of New York because of total permanent disability caused in or induced by the actual performance of the duties of their positions, are in the nature of and in lieu of workmen's compensation, and such pensions are excludible from gross income under section 22(b)(5) of the Internal Revenue Code.

SECTION 29.22(b)(4)-4: Interest upon United States obligations. 1947-17-12622 I. T. 3864
(Also section 22(a), Section 29.22(a)-1.)

INTERNAL REVENUE CODE.

Interest received by a citizen of the United States, or an alien residing therein, from obligations of the Philippine Islands issued subsequent to March 24, 1934, is subject to Federal income tax. Interest received by such individuals from obligations of the Philippine Islands issued on or prior to that date is exempt from Federal income tax.

The withdrawal of sovereignty of the United States in the Philippine Islands on July 4, 1946, had no effect on the taxability, for Federal income tax purposes, of interest on Philippine obligations.

Advice is requested whether the withdrawal of sovereignty of the United States in the Philippine Islands on July 4, 1946, had any effect on the taxability of interest on Philippine obligations, where such interest is received by a citizen of the United States or an alien residing in the United States.

Under section 22(b)(4)(C) of the Internal Revenue Code and corresponding provisions of prior revenue laws, interest upon the obligations of possessions of the United States is excluded from gross income and exempt from Federal income tax. (See also section 1 of the Act of February 6, 1905, 33 Stat., 689.) However, section 9 of the Act of March 24, 1934 (48 Stat., 456, 463), enacted to effect the complete independence of the Philippine Islands and for other purposes, provides as follows:

SEC. 9. There shall be no obligation on the part of the United States to meet the interest or principal of bonds and other obligations of the government of the Philippine Islands or of the Provincial and municipal governments thereof, hereafter issued during the continuance of United States sovereignty in the Philippine Islands: *Provided*, That such bonds and obligations hereafter issued shall not be exempt from taxation in the United States or by authority of the United States.

In view of the provisions of section 9 of the Act of March 24, 1934, supra, interest received by a citizen of the United States, or an alien residing in the United States, on Philippine obligations issued subsequent to March 24, 1934, is subject to Federal income tax. Interest received by such individuals from obligations of the Philippine Islands issued on or prior to that date is exempt from Federal income tax. (See O. D. 34, C. B. 1, 84 (1919), relating to interest on Philippine certificates of indebtedness, and O. D. 922, C. B. 4, 111 (1921), relating to interest on Philippine bonds of 1914–1934.)

The withdrawal of sovereignty of the United States in the Philippine Islands on July 4, 1946, had no effect on the taxability, for Federal income tax purposes, of interest on Philippine obligations.

SECTION 29.22(b)(9)-1: Income from discharge of indebtedness. 1947-19-12647 T. D. 5576
(Also Section 29.22(b)(10)-1.)

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

Regulations 111 amended to conform to Public Law 112, Eightieth Congress [page 334, this Bulletin], relating to the exclusion of income from the discharge of indebtedness.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 111 [26 CFR, Part 29] to Public Law 112, Eightieth Congress, approved June 25, 1947 [page 334, this Bulletin], such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 29.22(b)(9)–1 of Regulations 111 [26 CFR, 29.22(b)(9)–1] the following:

PUBLIC LAW 112 (EIGHTIETH CONGRESS), APPROVED JUNE 25, 1947.

* * * * * * *

SEC. 3. The last sentence of section 22(b)(9) and the last sentence of section 22(b)(10) of the Internal Revenue Code (relating to exclusion of income from discharge of indebtedness) are hereby amended by striking out "1947" and inserting in lieu thereof "1949".

PAR. 2. Section 29.22(b)(9)–1 of Regulations 111, as amended by Treasury Decision 5546, approved December 9, 1946 [C. B. 1946–2, 32] [26 CFR, 29.22(b)(9)–1], is further amended by striking from the first paragraph and from the third paragraph "January 1, 1948" and inserting in lieu thereof in each instance "January 1, 1950."

PAR. 3. There is inserted immediately preceding section 29.22(b)(10)–1 of Regulations 111 [26 CFR, 29.22(b)(10)–1] the following:

PUBLIC LAW 112 (EIGHTIETH CONGRESS), APPROVED JUNE 25, 1947.

* * * * * * *

SEC. 3. The last sentence of section 22(b)(9) and the last sentence of section 22(b)(10) of the Internal Revenue Code (relating to exclusion of income from discharge of indebtedness) are hereby amended by striking out "1947" and inserting in lieu thereof "1949".

PAR. 4. Section 29.22(b)(10)–1 of Regulations 111, as amended by Treasury Decision 5546, approved December 9, 1946 [26 CFR, 29.22(b)(10)–1], is further amended by striking from the first sentence and from the last sentence "January 1, 1948" and inserting in lieu thereof in each instance "January 1, 1950."

(This Treasury decision is issued under the authority contained in section 62 of the Internal Revenue Code (53 Stat., 32, 26 U. S. C., 1940 ed., 62) and Public Law 112, Eightieth Congress, approved June 25, 1947.)

This Treasury decision is published without prior general notice of its proposed issuance for the reason that notice and public rule making procedure in connection therewith is found to be unnecessary. See section 4(a) of the Administrative Procedure Act, approved June 11, 1946.

This Treasury decision shall be effective on the thirty-first day after the date of its publication in the Federal Register.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved September 5, 1947.

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

(Published in the Federal Register September 12, 1947.)

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

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5576, page 17.)

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

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

INTERNAL REVENUE CODE.

Connecticut sales and use taxes paid by retailers or purchasers and attributable to a trade or business. (See I. T. 3881, page 23.)

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

SECTION 29.23(a)-1: Business expenses.

INTERNAL REVENUE CODE.

Tennessee retailers' sales tax paid by vendee. (See I. T. 3865, page 20.)

SECTION 29.23(a)-1: Business expenses.

INTERNAL REVENUE CODE.

Connecticut sales tax paid by purchaser with respect to property purchased for use in trade or business. (See I. T. 3881, page 23.)

SECTION 23(b).—DEDUCTIONS FROM GROSS INCOME: INTEREST.

SECTION 29.23(b)-1: Interest. 1947-22-12672
I. T. 3872

INTERNAL REVENUE CODE.

Where the transferee of the assets of a decedent's estate pays interest which accrued on a Federal estate tax deficiency subsequent to the distribution of assets of the estate, the distribution rendering the estate no longer able to make payment of the deficiency, such interest is deductible by the transferee for Federal income tax purposes.

I. T. 3156 (C. B. 1938-1, 213) modified.

Advice is requested with respect to the deductibility, for Federal income tax purposes, of interest on a Federal estate tax deficiency, paid by the transferee (distributee) of the assets of the estate.

In the case under consideration, the taxpayer was the sole beneficiary under the will of her husband. The Federal estate tax was due and payable on October 25, 1938. Before and after that date, the executor made payments on account of the Federal estate tax liability. Final

distribution of the assets was made on January 7, 1941, following a partial distribution on December 31, 1940. The distribution of December 31, 1940, depleted the assets of the estate to such an extent that the value of the remaining assets was less than the amount of an estate tax deficiency which was determined on October 14, 1941, which deficiency, with interest, was paid by the taxpayer as transferee on July 3, 1942.

Section 23(b) of the Internal Revenue Code provides in part for the deduction, in computing net income, of interest paid or accrued within the taxable year on indebtedness. The indebtedness must be that of the taxpayer.

In *Commissioner* v. *Henry W. Breyer, Jr., et al.*, involving interest on Federal estate tax deficiencies, and *Commissioner* v. *Koppers Company*, involving interest on Federal income tax deficiencies, both reported in 151 Fed. (2d), 267, the United States Circuit Court of Appeals for the Third Circuit concluded that interest paid by the transferees in those cases, which interest had accrued subsequent to the transfer to them of the assets of the transferors, was interest on the indebtedness of the transferees and, as such, deductible in their Federal income tax returns under section 23(b) of the Internal Revenue Code.

In view of the foregoing, it is held that where the transferee of the assets of a decedent's estate pays interest which accrued on a Federal estate tax deficiency subsequent to the distribution of assets of the estate, the distribution rendering the estate no longer able to make payment of the deficiency, such interest is deductible by the transferee for Federal income tax purposes.

I. T. 3156 (C. B. 1938-1, 213), which holds (syllabus) that the interest paid by transferees in meeting the liability of the transferor for Federal income tax and interest thereon is not deductible in the income tax returns of such transferees, is modified to the extent it is inconsistent herewith.

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

SECTION 29.23(c)-1: Taxes. 1947-17-12623
(Also Section 22(a), Section 29.22(a)-5; I. T. 3865
Section 23(a), Section 29.23(a)-1; Section 43, Section 29.43-2.)

INTERNAL REVENUE CODE.

The tax imposed by the Tennessee Retailers' Sales Tax Act, approved January 24, 1947, is an excise tax levied on the dealer, and it constitutes an allowable deduction under section 23(c)(1) of the Internal Revenue Code in the Federal income tax return of the dealer upon whom it is imposed. Where dealers collect the tax from vendees, they must include the total amounts so collected in their gross income for Federal income tax purposes.

To the extent that the tax is paid by the vendee, otherwise than in connection with the vendee's trade or business, it is deductible as a tax in computing the net income of the vendee unless he elects the optional standard deduction. If the tax is paid with respect to goods purchased for consumption or use in the vendee's trade or business, it is deductible by him as a business expense, provided the cost of

the property acquired is properly chargeable to expense, or it may be treated as a capital item where the cost of the property is properly capitalized.

Advice is requested as to the treatment for Federal income tax purposes of the tax levied by the Tennessee Retailers' Sales Tax Act, approved January 24, 1947.

The pertinent provisions of the act (Chapter No. 3, House bill No. 39, Seventy-fifth General Assembly, State of Tennessee) are as follows:

An act to define certain additional privileges and to levy and provide for the collection of additional privilege taxes; and to provide penalties for violation of this act.

Whereas, the present revenues of the State of Tennessee have proven wholly inadequate * * *

* * * * * * *

Now, therefore, new and additional privilege taxation is offered as a solution to meet the foregoing essential needs of the State of Tennessee:

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That this act shall be known as the "Tennessee Retailers' Sales Tax Act" and the tax herein imposed shall be in addition to all other privilege taxes.

* * * * * * *

SEC. 3. *Be it further enacted,* That it is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this State, or who rents or furnishes any of the things or services taxable under this act, or who stores for use or consumption in this State any item or article of tangible personal property as defined herein and who leases or rents such property within the State of Tennessee. For the exercise of said privilege a tax is levied as follows:

(a) At the rate of two per cent (2%) of the sales price of each item or article of tangible personal property when sold at retail in this State; the tax to be computed on gross sales for the purpose of remitting the amount of tax due the State, and to include each and every retail sale.

(b) At the rate of two per cent (2%) of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed, or stored for use of [sic] consumption in this State; * * *

(c) At the rate of two per cent (2%) of the gross proceeds derived from the lease or rental of tangible personal property * * * where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to said business.

(d) At the rate of two per cent (2%) of the monthly lease or rental price paid by lessee or rentee, or contracted or agreed to be paid by lessee or rentee, to the owner of the tangible personal property.

(e) The said tax shall be collected from the dealer as defined herein and paid at the time and in the manner as hereinafter provided.

* * * * * * *

SEC. 3 [sic]. *Be it further enacted,* That the aforesaid tax at the rate of two per cent (2%) of the retail sales price, as of the moment of sale, or two per cent (2%) of the cost price, as of the moment of purchase, as the case may be, shall be collectible from all persons as defined herein engaged as dealers, as hereinafter defined, in the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this State, of tangible personal property.

* * * * * * *

SEC. 5. *Be it further enacted,* That:

(a) The privilege tax herein levied, measured by retail sales shall be collected by the dealer from the purchaser or consumer.

(b) Dealers shall, as far as practicable, add the amounts of the tax imposed under this act to the sales price or charge, which shall be a debt from the

purchaser or consumer to the dealer, until paid, and shall be recoverable at law in the same manner as other debts. * * *

* * * * * * *

(e) A person engaged in any business taxable under this act shall not advertise or hold out to the public, in any manner, directly or indirectly, that he will absorb all or any part of the tax, or that he will relieve the purchaser of the payment of all or any part of the tax. A person who violates this provision with respect to advertising shall be guilty of a misdemeaner * * *

The tax is to be paid to the State by the " dealer." In general, the term " dealer " includes every person who sells tangible personal property at retail, or who manufactures, produces, possesses, or stores such property for sale at retail, or for use, consumption, or distribution within the State. The term also includes both lessees and lessors of tangible personal property.

In view of the provisions of the act set forth above, it is evident that the tax is an excise tax levied by the State on the dealer for the privilege of engaging in any of the following businesses: selling at retail, renting or furnishing certain things or services, and storing certain property for use or consumption within the State. For Federal income tax purposes, such tax is an allowable deduction under section 23(c)(1) of the Internal Revenue Code in the income tax return of the dealer upon whom it is imposed. If the dealer keeps accounts and files Federal income tax returns on the accrual basis, the amount of the tax accrued during the taxable year must be deducted in the return for such year. If the dealer keeps accounts and files Federal income tax returns on the cash receipts and disbursements basis, only the amount of tax actually paid during the taxable year may be deducted in the return for such year. Where dealers collect the tax from vendees, they must include the total amounts so collected in their gross income for Federal income tax purposes.

Since the State law prohibits dealers from absorbing the tax, it is presumed that the amount of the tax is separately stated at the time it is paid by the vendee. (See section 29.23(c)–1(*b*) of Regulations 111.) Therefore, to the extent that the tax is paid by the vendee (otherwise than in connection with the vendee's trade or business), such amount is deductible as a tax in computing the net income of the vendee for Federal income tax purposes. However, in the case of a vendee who is an individual and who elects the optional standard deduction, no amount may be deducted on account of the tax paid by him.

Section 23(c)(3) of the Code specifically prohibits the vendee from deducting, as a tax, the amount paid where the tax is paid in connection with the vendee's trade or business. However, where the tax is paid by the vendee with respect to goods purchased for consumption or use in his trade or business, such amount may be deducted as a business expense if the cost of the property acquired is properly chargeable to expense, or it may be treated as a capital item where the cost of the property is properly capitalized. With respect to amounts which may be deducted as a business expense, a vendee who keeps accounts and files Federal income tax returns on the accrual basis must deduct the tax accrued for the taxable year in the return for such year, whereas a vendee who keeps accounts and files Federal income tax returns on the cash receipts and disbursements basis may deduct in the return for the taxable year only that amount of tax which was actually paid during such year.

SECTION 29.23(c)-1: Taxes. 1947-25-12710
(Also Section 22(a), Section 29.22(a)-5; I. T. 3881
Section 22(n), Section 29.22(n)-1; Section 23(a), Section 29.23(a)-1; Section 24, Section 29.24-2.)

INTERNAL REVENUE CODE.

Deductibility for Federal income tax purposes of the sales tax and the use tax imposed by sections 3 and 6, respectively, of the Connecticut Sales and Use Tax Act approved on May 29, 1947, effective July 1, 1947.

Advice is requested as to the treatment for Federal income tax purposes of the taxes levied by the Connecticut Sales and Use Tax Act, approved on May 29, 1947, effective July 1, 1947.

The pertinent provisions of the Connecticut Sales and Use Tax Act are as follows :

SECTION 1. TITLE.—This act is known and may be cited as the "Sales and Use Tax Act."

* * * * * * *

SEC. 3. THE SALES TAX.—(1) *Imposition and rate of sales tax.*—For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of three per cent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this State on or after July 1, 1947, and to and including June 30, 1951. (2) *Reimbursement.*—Reimbursement for the tax hereby imposed shall be collected by the retailer from the consumer so far as it can be done and such tax reimbursement termed "tax" in this and the following subsections shall be paid by the consumer to the retailer and it shall be the duty of each retailer in this State to collect from the consumer the full amount of the tax imposed by this act or an amount equal as nearly as possible or practicable to the average equivalent thereof; and such tax shall be a debt from the consumer to the retailer, when so added to the original purchase price and shall be recoverable at law in the same manner as other debts. * * * (4) *Unlawful advertising.*—No retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or if added that it or any part thereof will be refunded. * * *

* * * * * * *

SEC. 6. THE USE TAX.—(1) *Imposition and rate of use tax.*—An excise tax is hereby imposed on the storage, use or other consumption in this State of tangible personal property purchased from any retailer on or after July 1, 1947, for storage, use, or other consumption in this State at the rate of three per cent of the sales price of the property. (2) *Liability for tax.*—Every person storing, using, or otherwise consuming in this State tangible personal property purchased from a retailer is liable for the tax. His liability is not extinguished until the tax has been paid to this State except that a receipt from a retailer maintaining a place of business in this State or from a retailer who is authorized by the commissioner, under such rules and regulations as he may prescribe, to collect the tax and who is, for the purposes of this act relating to the use tax, regarded as a retailer maintaining a place of business in this State, given to the purchaser pursuant to subsection 3 of this section, is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers. (3) *Collection by retailer.*—Every retailer maintaining a place of business in this State and making sales of tangible personal property for storage, use, or other consumption in this State, not exempted under this act, shall, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use, or other consumption becomes taxable, collect the use tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the commissioner. * * * (4) *Tax as debt.*—The tax required to be collected by the retailer constitutes a debt owed by the retailer to the State. (5) *Unlawful advertising.*—The provisions of section 3, subsection 4 pertaining to the sales tax shall apply with equal force to the use tax (6) *Separate statement of tax.*—

The tax required to be collected by the retailer from the purchaser shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales. * * *

* * * * * * *

SEC. 8. EXEMPTIONS FROM USE TAX.—(1) *Where sales tax applicable.*—The storage, use or other consumption in this State of property, the gross receipts from the sale of which are required to be included in the measure of the sales tax, is exempted from the use tax. * * *

SEC. 9. RETURNS AND PAYMENTS.—* * * (2) *Return.*—* * * For purposes of the sales tax a return shall be filed by every seller. For purposes of the use tax a return shall be filed by every retailer maintaining a place of business in the State and by every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. * * *

* * * * * * *

SEC. 20. OVERPAYMENTS AND REFUNDS.—(1) *Credits and refunds.*—* * * Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor pursuant to this act shall be credited or refunded by the State to the purchaser. * * *

Section 23(c)(1) of the Internal Revenue Code provides that in computing net income there shall be allowed as deductions taxes paid or accrued within the taxable year, with certain exceptions not here material. Section 23(c)(3) of the Code provides for the deduction of amounts representing sales taxes paid by a purchaser of services or tangible personal property, otherwise than in connection with a purchaser's trade or business. The term "sales tax," as used in section 29.23(c)–1(*b*) of Regulations 111, relating to State and local sales taxes, means a tax imposed by any State, Territory, District, or possession of the United States, or any political subdivision thereof, upon persons engaged in selling tangible personal property at retail, which is measured by the gross sales price or the gross receipts from the sale, or which is a stated sum per unit of such property sold. The term also includes a tax imposed by such authorities upon persons engaged in furnishing services at retail, which is measured by the gross receipts for furnishing such services.

It is held that the sales tax imposed by section 3 of the Connecticut Sales and Use Tax Act, effective July 1, 1947, is deductible by the retailer under section 23(c)(1) of the Internal Revenue Code. If the retailer is an individual, the deduction must be taken in arriving at adjusted gross income. (See section 22(n)(1) of the Code.) In the case of all other retailers, the deduction is allowable in determining net income. The sales tax collected by a retailer from a purchaser must be included in the retailer's gross income for Federal income tax purposes. To the extent that the sales tax is paid by the purchaser (otherwise than in connection with his trade or business), it is deductible under section 23(c)(3) of the Code except in the case of an individual who elects to take the optional standard deduction. Where the sales tax is paid with respect to property purchased for use in the purchaser's trade or business, it is deductible by him as a business expense if the cost of the property acquired is properly chargeable to expense, or it may be treated as a capital item where the cost of the property is properly capitalized. Where the purchaser is an individual and the sales tax is deductible as a business expense, the deduction must be taken in arriving at his adjusted gross income. (See section 22(n)(1) of the Code.) In the case of all other purchasers

the deduction is allowable as a business expense in determining net income.

It is also held that the use tax imposed by section 6 of the Connecticut Sales and Use Tax Act constitutes an allowable deduction to the purchaser under section 23(c)(1) of the Code, except that in the case of an individual who elects the optional standard deduction, no deduction is allowable if the use tax is not attributable to a trade or business carried on by him. Where the use tax is attributable to a trade or business carried on by an individual, the amount of such tax is deductible from gross income in computing adjusted gross income. In the case of all other taxpayers, the use tax is deductible from gross income in determining net income. The amount of use tax collected by a retailer from a purchaser should not be included in the retailer's gross income, and no deduction is allowable to the retailer with respect to the amount of use tax remitted by him to the State.

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

SECTION 29.23(k)-1: Bad debts. 1947-25-12716
T. D. 5594

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

Section 23(k), Internal Revenue Code.—Extension of time for filing application for permission to change to the reserve method of treating bad debts.

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

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH 1. Section 29.23(k)-1 of Regulations 111 as amended by Treasury Decision 5376, approved June 3, 1944 [C. B. 1944, 119] [26 CFR, 29.23(k)-1], provides that application for permission to change the method of treating bad debts shall be made at least 30 days prior to the close of the taxable year for which the change is to be effective. An extension of time, to a date not later than March 15, 1948, within which to make the application provided in section 29.23(k)-1, is granted to taxpayers making returns on the basis of the calendar year 1947 where the application is for permission to change to the reserve method of treating bad debts.

PAR. 2. Because of the short period of time remaining for making the applications to which this Treasury decision relates, delay in the granting of the extension of time provided hereby would adversely affect the operations of the taxpayers involved. It is therefore 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 said Act.

PAR. 3. This Treasury decision shall be effective upon its filing for publication in the Federal Register.

773384°—48——3

(This Treasury decision is issued under the authority contained in section 62 of the Internal Revenue Code (53 Stat., 32; 26 U. S. C., 1940 ed., 62).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved December 8, 1947.

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

(Filed with the Division of the Federal Register December 9, 1947, 3.33 p. m.)

SECTION 29.23(k)–5: Reserve for bad debt. 1947–25–12717
Mim. 6209

Reserve method of accounting for bad debts in the case of banks.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 8, 1947.

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

1. The Bureau has given careful and extended consideration to the situation of banks in general with respect to the use of reserves for bad debts, the proper measure of such reserves, and amounts to be allowed as deductions.

2. In determining a reasonable annual addition to a reserve for bad debts by a bank it is believed to be fair and sufficiently accurate to resort to the average annual bad-debt loss of the bank over a period of 20 years, to include the taxable year, as constituting a representative period in the bank's history and to accept the equivalent percentage of presently outstanding loans as indicative of the probable annual accruing loss. The Tax Court has held that the "use of the reserve for bad debts is not inherently inconsistent with a cash basis where, as here, the reserve is against loss of capital only * * * and contains no element of income which has never been reported. * * * Such a reserve for loss of capital does not differ materially from a reserve for depreciation which is set up on a percentage basis rather than on the basis of actual depreciation suffered." (See *Estate of Maurice S. Saltstein* v. *Commissioner*, 46 B. T. A., 774, 777, acquiescence, C. B. 1942–1, 14.) However, such reserve can not be permitted to accumulate indefinitely simply because of the possibility that at some future date large losses may be concentrated within a relatively short period of time and operate to absorb the greatest probable reserve. To permit this would sanction the deduction of a mere contingency reserve for losses, which is not an allowable deduction for income or excess profits tax purposes. This latter rule makes imperative the imposition of some reasonable ceiling on the accumulation of the reserve other than such indefinite limitation as might eventually prevail under a moving average method.

3. The Bureau has accordingly approved the use by banks of 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, 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 (see first year in following computation) and the minimum reserve which the taxpayer will be entitled to maintain in future years (see second year in following computation). A bank, following a change to the reserve method of accounting for bad debts, 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. Such continued deductions will be allowed only in such amounts as will bring the accumulated total at the close of any taxable year to a total not exceeding three times the moving average loss rate applied to outstanding loans (see fifth year in following computation).

Example of the application of the foregoing with amount of outstanding loans remaining unchanged at $1,000,000.

Year.	Moving average percentage.	Actual bad debts for year.	Deduction.	Reserve at end of year.	Ceiling.
1	1.0	$2,000	$12,000	$10,000	$30,000
2	.8	11,500	9,500	8,000	24,000
3	.7	1,000	7,000	14,000	21,000
4	.8	1,000	8,000	21,000	24,000
5	1.0	500	9,500	30,000	30,000

4. In computing the moving average percentage of actual bad debt losses to loans, the average should be computed on loans comparable in their nature and risk involved to those outstanding at the close of the current taxable year involved. Government insured loans should be eliminated from prior year accounts in computing percentages of past losses, also from the current year loans in computing allowable deductions for additions to the reserve. Losses not in the nature of bad debts resulting from the ordinary conduct of the present business should also be eliminated in computing percentages of prior losses.

5. A newly organized bank or a bank without sufficient years' experience for computing an average as provided for above will be permitted to set up a reserve commensurate with the average experience of other similar banks with respect to the same type of loans, preferably in the same locality, subject to adjustment after a period of years when the bank's own experience is established.

6. Bad debt losses sustained are to be charged to the reserve, and recoveries made of specific debts which have been previously charged against the reserve by a bank on the reserve method of treating bad debts should be credited to the reserve.

7. Where a bank making its return on the basis of the calendar year 1947 wishes to avail itself of the provisions of this mimeograph and to change from the specific charge-off to the reserve method of accounting for bad debts, the time for making application for such change under section 29.23(k)-1, Regulations 111, has been extended to March 15,

1948 (T. D. 5594, approved December 8, 1947 [page 25, this Bulletin]). If such bank files its return on or before March 15, 1948, on the reserve method, and the return is accompanied by a written statement setting forth the election to use such method and explaining in detail the computations of the bad debt deduction shown in the return, such return will be accepted as a timely application.

8. The term " banks " as used herein means banks or trust companies incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia), of any State, or of any Territory, a substantial part of the business of which consists of receiving deposits and making loans and discounts.

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

GEO. J. SCHOENEMAN,
Commissioner.

Approved December 8, 1947.

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

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

SECTION 19.23(m)–5: Computation of depletion based on a percentage of income in the case of coal mines, metal mines, fluorspar mines, ball and sagger clay mines, rock asphalt mines, and sulphur mines or deposits. (Also Section 114, Section 19.114–1.)

1947–23–12681
Ct. D. 1694

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF COURT.

DEPLETION—BASIS—METAL MINES—PRODUCTS USED FOR REFRACTORY PURPOSES RATHER THAN FOR METALLIC PURPOSES.

A mine producing chromite, the " end use " of practically all of which product was for refractory purposes rather than for metallic purposes, does not come within the category of " metal mines " within the meaning of section 114(b)(4) of the Internal Revenue Code. The Commissioner's disallowance of petitioner's claim for percentage depletion was a reasonable interpretation of that section.

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

E. J. Lavino & Co. v. *United States of America.*
[72 Fed. Supp., 248.]

[June 18, 1947.]

OPINION.

MCGRANERY, J.: This is an action brought against the United States to recover income taxes paid by E. J. Lavino & Co. for the years 1939, 1940 and 1941. On the basis of the pleadings and the evidence adduced at trial, I make the following special

FINDINGS OF FACTS.

1. This action arises under 28 U. S. C. A., section 41 (1), (5) and (20). The matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000. The plaintiff is a Delaware corporation having its principal business office in Philadelphia. The United States is made the party defendant to this

suit because Walter J. Rothensies, the collector of internal revenue for the first district of Pennsylvania, to whom the allegedly overpaid taxes were paid, was not in office at the time of the commencement of this suit.

2. During the years 1939, 1940, 1941, taxpayer owned chromite properties in the Province of Camaguey in the Republic of Cuba.

3. For each of these years, the taxpayer duly filed Federal income tax returns in which there was reflected income received from the operation of the mines, and in each instance it calculated its allowance for depletion by taking 15 per cent of its gross income from the mines (hereafter designated percentage depletion) as permitted for metal mines by section 114(b)(4) of the Internal Revenue Code. Later, the Commissioner of Internal Revenue disallowed the depletion as computed by the percentage depletion method and substituted a depletion deduction arrived at by making an allowance for each unit of mineral actually taken from the mines (unit depletion). This method resulted in smaller deductions and the taxpayer became liable for additional taxes. After appropriate satisfaction of the tax deficiencies, the taxpayer filed claims for refunds which were rejected by the Commissioner of Internal Revenue. This action was then brought on May 19, 1945.

4. The taxpayer seeks the benefit of the percentage depletion provisions of section 23(m) and section 114(b)(4) of the Internal Revenue Code. Section 23(m), during the years at issue, provided that in computing net income there should be allowed as a deduction—

"In the case of mines, * * * a reasonable allowance for depletion * * *; 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."

Section 114(b)(4) provided:

> "(4) PERCENTAGE DEPLETION FOR COAL AND METAL MINES AND SULPHUR.—The allowance for depletion under section 23(m) shall be, in the case of coal mines, 5 per centum, in the case of metal mines, 15 per centum, and, in the case of sulphur mines or deposits, 23 per centum, of the gross income from the property during the taxable year * * *"

5. The industrial uses of chromite minerals fall into three groups: metallurgical, refractory, and chemical uses, with the latter relatively less important than the first two. The use of chromite ore for refractory purposes does not involve the making of or reduction to a metal. The mineral, in the form in which it is obtained from the earth, is crushed or ground into bricks or other shapes and these are then used in the linings of high temperature metallurgical furnaces. Substantially all of the materials produced by the taxpayer's mines in 1939, 1940, and 1941 were used by the taxpayer in the production of these refractories for high temperature metallurgical furnaces.

DISCUSSION.

Although the metal chromium might have been extracted from the ore product of taxpayer's mines in the years at issue, by and large, it was not. The appropriateness of the Commissioner's disallowance, therefore, depends upon the definition of "metal mines." The taxpayer's contention is that Congress intended to define a metal mine as one from which metals can be extracted at a profit or commercially. The Government necessarily contends that the category "metal mines" did not embrace petitioner's mines in the years at issue; its theory is that metal mines are those mines from which metal actually is obtained. The Government contends, as well, that the taxpayer has not proved, even under its own definition, that the Commissioner's disallowance was improper; i. e., that metal could have been extracted from the mines at a profit, but this court's final view of the case makes it unnecessary to deal with this argument.

The Government has marshaled an array of arguments to support its interpretation of the statute. It points to the legislative history of the percentage depletion provision, the prior, the contemporaneous, and the subsequent administrative interpretations, and the enactment of later statutes, as all evincing a congressional intent to define "metal mines" according to the use of the mine's product. It further contends that practical considerations recommend its definition and that the Commissioner's interpretation of the phrase, if reasonable, should not be set aside merely because another interpretation is possible.

The allowance for depletion is permitted in recognition of the fact that mineral deposits are wasting assets and is intended as compensation to the owner for the exhaustion of his capital assets in natural resources. But "The deduction

is permitted as an act of grace." (See *Helvering* v. *Bankline Oil Co.*, 303 U. S., 362, 366 [Ct. D. 1323, C. B. 1938–1, 306, 307].) The granting of an arbitrary deduction of a percentage of the gross income derived from the severance of the minerals from the earth is in the interests of convenience and does not change the basic character of the allowance. (See *Anderson* v. *Helvering*, 310 U. S., 404, 408 [Ct. D. 1456, C. B. 1940–1, 108, 110].) The language of section 114(b)(4) first appeared in the Revenue Act of 1932. The allowance of a flat 15 per cent deduction for depletion of a metal mine as a substitute for the computations hitherto used was adopted by Congress after a study of the problem by the Joint Committee on Internal Revenue Taxation. A Preliminary Report on Depletion was submitted to the committee on September 19, 1929, by L. H. Parker, its chief of staff. (See Reports to the Joint Committee on Internal Revenue Taxation, Sixty-ninth Congress, volume 1, part 8.) Copies of the Parker report were distributed to the Treasury Department, the mining industry, and others, and hearings were held on the data contained in the report and its recommendations. The recommendations made by the Parker report were urged on the House Ways and Means Committee and the Senate Finance Committee and finally the Senate Finance Committee introduced section 114(b)(4) as an amendment to the revenue bill of 1932. (S. Rept. No. 665, Seventy-second Congress, first session, page 30, C. B. 1939–1 (Part 2), 496.) It is apparent from the Parker report that the 15 per cent short cut allowance was based on a study of the problems and experiences of mines actually producing ores from which metals were extracted. The discussion of the previous method for arriving at depletion allowances, the examples of mines used, the analysis of how the new method of computing depletion would work with its references to smelting and refining, all indicate that the recommendation of a 15 per cent percentage depletion for metal mines contemplated mines from which metal is actually extracted.

The Government points out that the Treasury Department, both before and after adoption of the percentage depletion provision, had used the test of whether or not minerals were used for the purpose of obtaining the metals from them in describing the minerals as metallic or nonmetallic. Thus, at the time of enactment of section 114(b)(4), in defining mineral properties, Treasury Regulations 74, under the Revenue Act of 1928, article 221(e), provided:

"'Minerals' include *ores of the metals*, coal, oil, gas, and such *nonmetallic substances* as abrasives, * * * barytes, borax, building stone, * * * fluorspar, * * * refractories * * * and talc." [Italics supplied.]

The Government contends that "ores of the metals" and "nonmetallic substances" had the same scope as "metal mines" and "mines other than metal," and that the reciprocal of the latter, "nonmetallic substances," obviously described mineral substances which may or may not contain metals, but which were not mined for the purpose of recovering the metals they contained. Furthermore, the Government points out, within the classification of nonmetallic substances were several which had meaning solely as classifications of the nonmetallic use to which minerals were put, including abrasives and refractories. Therefore, in view of the close cooperation of the Treasury and the Joint Committee in the enactment of section 114(b)(4), "Its substantially contemporaneous expressions of opinion are highly relevant and material evidence of the probable general understanding of the times and of the opinions of the men who probably were active in the drafting of the statute." (See *White* v. *Winchester Club*, 315 U. S., 32, 41 [Ct. D. 1538, C. B. 1942–1, 272, 275–276].) Furthermore, the substance of Regulations 74 has been promulgated under later Revenue Acts and the Government argues that reenactment of the Revenue Acts illustrates specific congressional approval of this interpretation, as embodied in the regulation. With this argument the court is less impressed. (Cf. Griswold, A Summary of the Regulations Problem, 54 Harv., 398.)

The evidence at trial indicated that administrative interpretation has continued further. Mr. L. R. Andresen, Chief of the Natural Resources Section of the Bureau of Internal Revenue, testified at trial that the "end use" rule has been the Bureau's policy throughout the years, but was modified slightly in 1938 to meet the "unusual situation of a mine which produced both substances susceptible of a metallic and nonmetallic use from the same property in the same year," by a ruling classifying the mine according to the use for which the product had the greater value. In the war period, when taxpayers producing and using substances for nonmetallic uses were asked by the Government to divert all or a part of their production to the production of metals, there was issued General Counsel's Memorandum 24185 [C. B. 1944, 132], which stated that:

"Where a mine produces an ore containing substances which are susceptible to both metallic and nonmetallic uses, or where a mine produces both metallic and nonmetallic substances from the same ore body, percentage depletion may be computed for Federal income tax purposes on the part sold or used as a metal or metals, and that part sold or used as a nonmetal should be treated as a nonmetal in determining the nature and extent of the depletion allowance."

The Government further argues that in amending section 114(b)(4) in 1942 and 1944 to grant percentage depletion to other specified mines as well as metal mines, Congress again approved the principle that metal mines are mines from which the minerals are actually used as source of metals. In 1942 the amendment provided that the same percentage depletion applied to metal mines should be granted to "fluorspar, ball and sagger clay or rock asphalt mines." (Revenue Act of 1942, C. 619, 56 Stat., 840, section 145.) In 1944 Congress provided that the allowance should be extended to "metal mines, fluorspar, flake graphite, vermiculite, beryl, feldspar, mica, talc, lepidolite, spodumene, barite, ball and sagger clay, or rock asphalt mines, and potash mines or deposits." (Revenue Act of 1943, C. 63, 58 Stat., 44, section 124(a).) Since most of the mines listed in addition to metal mines are mines from which metals *can* be extracted, the Government's argument is that the definition of "metal mine" intended by Congress must be something other than that suggested by the taxpayer.

All the above is suggestive, in varying degree, of congressional intent to adopt a definition of "metal mines" similar to that employed by the Commissioner in disallowing percentage depletion in the instant case. This is a situation where experts obviously disagree, as they did at trial, on the definition of the key term, and where, although it is difficult to be positive about congressional intent on the specific point, the Commissioner's interpretation does not seem unwarranted.

Entirely apart from specific congressional intent, the taxpayer argues that the Government's "end use" criterion is impractical, and, therefore, unreasonable, pointing out that if it is adopted a metal mine may be classified as such on one day and as a nonmetal mine on the next, depending upon the ultimate use to which its product is put, and that it may be difficult, even impossible, for a taxpayer to determine what that ultimate use is. From the evidence adduced at trial, both these contingencies would seem improbable and, as far as this taxpayer is concerned, both objections for the years at issue are hypothetical. It has stipulated that the end use of substantially all its products for the years at issue was as refractories. Moreover, the first type of objection is met by the proration formula embodied in the General Counsel's memorandum, for if the objection means anything, it means that a taxpayer will be unable to foretell his tax liabilities with reasonable certainty, and the formula takes care of that. The second objection would seem equally surmountable by a reasonable effort at inquiry among customers, where price, ore content, and past dealings did not make clear the intended ultimate use. Furthermore, on this plane of administrative efficiency, or practicality, the criterion suggested by taxpayer has practical weaknesses of its own, enough, at any rate, to further the impression that the Commissioner's interpretation of the law in rejecting it is not unreasonable. Thus, during what period would a mine have to be susceptible of producing ore from which metal could be extracted at a profit; during the tax years at issue, or at some future date, during war, during periods of scarcity and emergency stockpiling, or during periods when high-grade ore is available at low prices? How much profit is "profitable"; should the absence or presence of competition matter? Finally, it should be remembered that the subject dealt with here is an exceedingly complex one. Of it, the Supreme Court has said, in *Helvering* v. *Wilshire Oil Co.* (308 U. S., 90, 102–103 [Ct. D. 1424, C. B. 1939–2, 213, 218]):

"In its general aspects under Revenue Acts depletion is a problem on which taxpayers, Government and accountants have expressed a contrariety of opinions. * * * Obfuscation in attempted application of its principles under income tax laws has frequently been the result * * * Experience and new insight can be expected to produce rather constant change. In sum, the highly technical and involved factors entering into a practical solution of the problem of depletion in administration of the tax laws points to the necessity of interpreting section 23(l) so as to strengthen rather than to weaken the administrative powers to deal with it equitably and reasonably * * *"

To sustain the Commissioner's interpretation, the court need not find that his construction is the only reasonable one, but only that it has a "reasonable basis." (See *Unemployment Compensation Commission of Territory of Alaska* v. *Aragan*,

329 U. S., 143, 153.) The court feels that this requirement has been met, and that taxpayer was correctly allowed to claim depletion on a unit basis only, rather than percentage depletion under 114(b)(4).

CONCLUSIONS OF LAW.

1. The court has jurisdiction of the subject matter and the parties of this action.
2. The Commissioner's disallowance of petitioner's claim for percentage depletion was a reasonable interpretation of section 114(b)(4).
3. Judgment will be entered in favor of defendant.

SECTION 23(u).—DEDUCTIONS FROM GROSS INCOME: ALIMONY, ETC., PAYMENTS.

SECTION 29.23(u)–1: Periodic alimony payments. 1947–18–12630
G. C. M. 25250

INTERNAL REVENUE CODE.

The taxpayer and his wife, who were domiciled in the State of Connecticut, entered into a separation agreement in January, 1935, which provided for monthly payments to her. She obtained a decree of divorce from a court in Mexico within two weeks thereafter, and the husband then remarried. Payments were made under the 1935 agreement until July of 1943, at which time the wife was advised by counsel that the Mexican divorce would not be recognized by the courts of Connecticut. Under a new agreement which made no mention of the Mexican divorce, a lump-sum settlement was made, and the wife thereafter obtained a divorce from a court in Nevada. *Held*, the monthly payments made in 1942 and 1943 are deductible under section 23(u) of the Internal Revenue Code.

An opinion is requested whether, in a case in which a wife obtained a Mexican divorce which is not recognized by the courts of the State in which the husband and wife are domiciled, the husband may deduct, for Federal income tax purposes, monthly payments made to her during 1942 and 1943 pursuant to a separation agreement.

In the instant case, the taxpayer and his wife, who were domiciled in the State of Connecticut, separated prior to January —, 1935, on which date a separation agreement was entered into between them providing for monthly payments to her. Within two weeks thereafter, the wife obtained a decree of divorce from a court in Mexico and the husband then remarried. Payments were made under the 1935 agreement until July of 1943, at which time the wife was advised by counsel that the Mexican divorce would not be recognized by the courts of Connecticut. Under a new agreement which made no mention of the Mexican divorce, a lump-sum settlement was made, and the wife thereafter obtained a divorce from a court in Nevada.

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

(k) ALIMONY, ETC., INCOME.—In the case of a wife who is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, periodic payments (whether or not made at regular intervals) received subsequent to such decree in discharge of * * * a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce or separation shall be includible in the gross income of such wife * * *

Section 23(u) of the Code provides in part that in computing net income there shall be allowed as deductions:

(u) ALIMONY, ETC., PAYMENTS.—In the case of a husband described in section 22(k), amounts includible under section 22(k) in the gross income of his wife, payment of which is made within the husband's taxable year. * * *

In general, the provisions of sections 22(k) and 23(u) of the Code are applicable with respect to taxable years beginning after December 31, 1941. (See section 120(g) of the Revenue Act of 1942.)

In the case under consideration, the payments were periodic and were made under an agreement incident to a divorce. However, the question remains whether there was a decree of divorce which the Bureau must, or should, recognize for Federal income tax purposes.

The question whether a Mexican divorce decree is valid in the State of Connecticut has not been passed upon by the highest court of that State. However, it seems probable that such a decree would not be recognized in Connecticut. (Cf. *State* v. *Cooke*, 110 Conn., 348, 148 Atl., 385; and *Pettis* v. *Pettis*, 91 Conn., 608, 101 Atl., 13.) In fact, American courts in general have shown little tendency to recognize decrees of divorce granted by Mexican courts to citizens of the United States who are not bona fide residents of Mexico. (See *Bobala* v. *Bobala*, 68 Ohio App., 63, 33 N. E. (2d), 845; *Cover* v. *Mattingly*, 62 Wash. L. Rep., 967; *Alzmann* v. *Maher*, 231 App. Div., 139, 246 N. Y. Supp., 60; *DuQuesnay* v. *Henderson*, 24 Cal. App. (2d), 11, 74 Pac. (2d), 294; *Dailey* v. *Dailey*, 154 Wash., 499, 282 Pac., 830.) Although some State courts refuse to recognize Mexican divorce decrees, it is unlikely that they would permit parties to deny the validity thereof if the parties have taken steps which indicate their reliance upon the validity of such decrees. (See *Weber* v. *Weber*, 135 Misc., 717, 238 N. Y. Supp., 333; *Fisher* v. *Fisher*, 162 Misc., 775, 295 N. Y. Supp., 451; *Kelsey* v. *Miller*, 203 Cal., 61, 263 Pac., 200; *Bruguiere* v. *Bruguiere*, 172 Cal., 199, 155 Pac., 988.)

There is no doubt that many persons affected by Mexican divorces have acted in good faith in relying on such divorces. That is true in the instant case in which the wife obtained the Mexican divorce and the husband then remarried. To allow deductions under section 23(u) of the Code in such cases seems to be within the general intent of Congress in enacting that section. (See House of Representatives Report No. 2333, Seventy-seventh Congress, second session, C. B. 1942–2, 372, 409.)

Payments made pursuant to a separation agreement not incident to a divorce or a decree of separate maintenance are not deductible under section 23(u) of the Code. Such limitation on alimony deductions was probably due to the apprehension that unless the payments were part of or incident to some publicly recorded action of a court, separation agreements might be used for tax avoidance. Even though a husband and wife might execute a separation agreement as an income-splitting device, it is doubtful that a husband and wife would go through the form of a Mexican divorce for such purpose.

Since the parties in the instant case took affirmative steps which clearly indicated their reliance on the validity of the Mexican decree, and since the facts negative any effort on their part to use such decree as a device to avoid or evade taxes, it is the opinion of this office that the monthly payments made by the husband to his wife during 1942 and 1943 are deductible under section 23(u) of the Code.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

SECTION 24.—ITEMS NOT DEDUCTIBLE.

SECTION 29.24–2: Capital expenditures.

INTERNAL REVENUE CODE.

Amount paid as consideration for the transfer of a liquor license. (See I. T. 3873, page 82.)

SECTION 29.24–2: Capital expenditures.

INTERNAL REVENUE CODE.

Connecticut sales tax paid by purchaser with respect to property purchased for use in trade or business. (See I. T. 3881, page 23.)

SECTION 19.24–6: Losses from sales or exchanges between certain classes of persons. 1947–14–12582 Ct. D. 1686

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT.

1. DEDUCTIONS—LOSSES—SALES OR EXCHANGES OF PROPERTY BETWEEN MEMBERS OF A FAMILY.

On several occasions in 1940 and 1941 a husband who managed the estate of his wife as well as his own ordered his broker to sell certain stock for the account of one of the two and to buy the same number of shares of the same stock for the other at as nearly the same price as possible. On each occasion the sale and purchase were promptly negotiated through a stock exchange, the identity of the other purchasers and sellers was never known, the buying spouse received stock certificates different from those which the other had sold and the purpose was to establish tax losses. *Held:* The losses are disallowed under section 24(b)(1) of the Internal Revenue Code. The purpose of that section was to put an end to the right of taxpayers to choose, by intrafamily transfers and other designated devices, their own time for realizing tax losses on investments which, for most practical purposes, are continued uninterrupted.

2. DECISION AFFIRMED.

Decision of the United States Circuit Court of Appeals, Sixth Circuit (158 Fed. (2d), 637), reversing The Tax Court (5 T. C., 623), affirmed.

SUPREME COURT OF THE UNITED STATES.

945. *John P. McWilliams, petitioner*, v. *Commissioner of Internal Revenue.*

946. *Estate of Susan P. McWilliams, Deceased, John P. McWilliams, Executor, petitioners*, v. *Commissioner of Internal Revenue.*

947. *Brooks B. McWilliams, petitioner*, v. *Commissioner of Internal Revenue.*

On writs of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[June 16, 1947.]

OPINION.

Mr. Chief Justice VINSON delivered the opinion of the Court.

The facts of these cases are not in dispute. John P. McWilliams, petitioner in No. 945, had for a number of years managed the large independent estate of his wife, petitioner in No. 947, as well as his own. On several occasions in 1940 and 1941 he ordered his broker to sell certain stock for the account of one of the two, and to buy the same number of shares of the same stock for the other, at as nearly the same price as possible. He told the broker that his purpose was to establish tax losses. On each occasion the sale and purchase were promptly negotiated through the Stock Exchange, and the identity of the persons buying from the

selling spouse and of the persons selling to the buying spouse was never known. Invariably, however, the buying spouse received stock certificates different from those which the other had sold. Petitioners filed separate income tax returns for these years, and claimed the losses which he or she sustained on the sales as deductions from gross income.

The Commissioner disallowed these deductions on the authority of section 24(b) of the Internal Revenue Code,[1] which prohibits deductions for losses from "sales or exchanges of property, directly or indirectly * * * between members of a family," and between certain other closely related individuals and corporations.

On the taxpayers' applications to The Tax Court, it held section 24(b) inapplicable, following its own decision in *Ickelheimer* v. *Commissioner*,[2] and expunged the Commissioner's deficiency assessments.[3] The Circuit Court of Appeals reversed The Tax Court[4] and we granted certiorari[5] because of a conflict between circuits[6] and the importance of the question involved.

Petitioners contend that Congress could not have intended to disallow losses on transactions like those described above, which, having been made through a public market, were undoubtedly bona fide sales, both in the sense that title to property was actually transferred, and also in the sense that a fair consideration was paid in exchange. They contend that the disallowance of such losses would amount, *pro tanto*, to treating husband and wife as a single individual for tax purposes.

In support of this contention, they call our attention to the pre-1934 rule, which applied to all sales regardless of the relationship of seller and buyer, and made the deductibility of the resultant loss turn on the "good faith" of the sale, i. e., whether the seller actually parted with title and control.[7] They point out that in the case of the usual intrafamily sale, the evidence material to this issue was peculiarly within the knowledge and even the control of the taxpayer and those amenable to his wishes, and inaccessible to the Government.[8] They maintain that the only purpose of the provisions of the 1934 and 1937 Revenue Acts—the forerunners of section 24(b)[9]—was to overcome these

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[1] The material parts of section 24(b) are as follows:

"(b) LOSSES FROM SALES OR EXCHANGES OF PROPERTY.—

"(1) LOSSES DISALLOWED.—In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly—

"(A) Between members of a family, as defined in paragraph (2)(D);

"(B) Except in the case of distributions in liquidation, between an individual and a corporation more than 50 per centum in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

"(C) Except in the case of distributions in liquidation, between two corporations more than 50 per centum in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual, if either one of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company;

"(D) Between a grantor and a fiduciary of any trust;

"(E) Between the fiduciary of a trust and the fiduciary of another trust, if the same person is a grantor with respect to each trust; or

"(F) Between a fiduciary of a trust and a beneficiary of such trust."

Section 24(b)(2)(D) defines the family of an individual to include "only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; * * *"

[2] B. T. A., 478, affirmed, 132 Fed. (2d), 660 (C. C. A. 2).

[3] 5 T. C. 623.

[4] 158 Fed. (2d), 637 (C. C. A. 6).

[5] — U. S., — [67 S. Ct. 868]. In No. 946, the petition for certiorari of the estate of Susan P. McWilliams, the deceased mother of John P. McWilliams, was granted at the same time as the petitions in Nos. 945 and 947, and the three cases were consolidated in this Court. As all three present the same material facts and raise precisely the same issues, no further reference will be made to the several cases separately.

[6] The decision of the Circuit Court of Appeals for the Second Circuit in *Commissioner* v. *Ickelheimer*, supra, note, 2, is in conflict on this point with the decision of the Circuit Court of Appeals for the Sixth Circuit in the present case, and also with that of the Circuit Court of Appeals for the Fourth Circuit in *Commissioner* v. *Kohn* (158 Fed. (2d), 32 [Ct. D. 1682] [C. B. 1947–1, 25]).

[7] *Commissioner* v. *Hale* (67 Fed. (2d), 561 (C. C. A. 1)); *Zimmerman* v. *Commissioner* (36 B. T. A., 279, reversed on other grounds, 100 Fed. (2d), 1023 (C. C. A. 3)); *Uihlein* v. *Commissioner* (30 B. T. A., 399, affirmed, 82 Fed. (2d), 944 (C. C. A. 7)).

[8] See H. Rept. No. 1546, Seventy-fifth Congress, first session, page 26 (C. B. 1939–1 (Part 2), 704, 722–723). See also cases cited in note 7, supra.

[9] The provisions of section 24(b)(1)(A) and (B) of the Internal Revenue Code originated in section 24(a)(6) of the Revenue Act of 1934 (48 Stat., 680, 691). These provisions were reenacted without change as section 24(a)(6) of the Revenue Act of 1936 (49 Stat., 1648, 1662), and the provisions of section 24(b)(1)(C), (D), (E), and (F) of the Code were added by section 301 of the 1937 Act (50 Stat., 813, 827).

evidentiary difficulties by disallowing losses on such sales irrespective of good faith. It seems to be petitioners' belief that the evidentiary difficulties so contemplated were only those relating to proof of the parties' observance of the formalities of a sale and of the fairness of the price, and consequently that the legislative remedy applied only to sales made immediately from one member of a family to another, or mediately through a controlled intermediary.

We are not persuaded that Congress had so limited an appreciation of this type of tax avoidance problem. Even assuming that the problem was thought to arise solely out of the taxpayer's inherent advantage in a contest concerning the good or bad faith of an intrafamily sale, deception could obviously be practiced by a buying spouse's agreement or tacit readiness to hold the property sold at the disposal of a selling spouse, rather more easily than by a pretense of a sale where none actually occurred, or by an unfair price. The difficulty of determining the finality of an intrafamily transfer was one with which the courts wrestled under the pre-1934 law,[10] and which Congress undoubtedly meant to overcome by enacting the provisions of section 24(b).[11]

It is clear, however, that this difficulty is one which arises out of the close relationship of the parties, and would be met whenever, by prearrangement, one spouse sells and another buys the same property at a common price, regardless of the mechanics of the transaction. Indeed, if the property is fungible, the possibility that a sale and purchase may be rendered nugatory by the buying spouse's agreement to hold for the benefit of the selling spouse, and the difficulty of proving that fact against the taxpayer, are equally great when the units of the property which the one buys are not the identical units which the other sells.

Securities transactions have been the most common vehicle for the creation of intrafamily losses. Even if we should accept petitioners' premise that the only purpose of section 24(b) was to meet an evidentiary problem, we could agree that Congress did not mean to reach the transactions in this case only if we thought it completely indifferent to the effectuality of its solution.

Moreover, we think the evidentiary problem was not the only one which Congress intended to meet. Section 24(b) states an absolute prohibition—not a presumption—against the allowance of losses on any sales between the members of certain designated groups. The one common characteristic of these groups is that their members, although distinct legal entities, generally have a near-identity of economic interests.[12] It is a fair inference that even legally genuine intra-group transfers were not thought to result, usually, in economically genuine realizations of loss, and accordingly that Congress did not deem them to be appropriate occasions for the allowance of deductions.

The pertinent legislative history lends support to this inference. The congressional committees, in reporting the provisions enacted in 1934, merely stated that "the practice of creating losses through transactions between members of a family and close corporations has been frequently utilized for avoiding the income tax," and that these provisions were proposed to "deny losses to be taken in the case of [such] sales" and "to close this loophole of tax avoidance."[13] Similar language was used in reporting the 1937 provisions.[14] Chairman Doughton of the Ways and Means Committee, in explaining the 1937 provisions to the House, spoke of "the artificial taking and establishment of losses where property was shuffled back and forth between various legal entities owned by the same persons or person," and stated that "these transactions seem to occur at moments remarkably opportune to the real party in interest in reducing his tax liability but, at the same time allowing him to keep substantial control of the assets being traded or exchanged."[15]

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[10] Cf. *Shoenberg* v. *Commissioner* (77 Fed. (2d), 446 (C. C. A. 8) [Ct. D. 1051, C. B. XIV–2, 180 (1935)]); *Cole* v. *Helburn* (4 Fed. Supp., 230); *Zimmerman* v. *Commissioner*, supra, note 7.

[11] See H. Rept. No. 1546, Seventy-fifth Congress, first session, page 26, supra, note 8.

[12] See text of section 24(b)(1), quoted in note 1.

[13] H. Rept. No. 704, Seventy-third Congress, second session, page 23 (C. B. 1939–1 (Part 2), 554, 571); S. Rept. No. 558, Seventy-third Congress, second session, page 27 (C. B. 1939–1 (Part 2), 586, 607).

[14] The type of situations to which these provisions applied was described as being that "in which due to family relationships or friendly control, artificial losses might be created for tax purposes." (H. Rept. No. 1546, Seventy-fifth Congress, first session, page 28 (C. B. 1939–1 (Part 2), 704, 724).

[15] 81 Congressional Record, 9019. Representative Hill, chairman of a House subcommittee on the income tax laws, explained to the House with reference to the 1934 provisions that the committee had "provided in this bill that transfers between members of the family for the purposes of creating a loss to be offset against ordinary income shall not be recognized for such deduction purposes." (78 Congressional Record, 2662.)

We conclude that the purpose of section 24(b) was to put an end to the right of taxpayers to choose, by intrafamily transfers and other designated devices, their own time for realizing tax losses on investments which, for most practical purposes, are continued uninterrupted.

We are clear as to this purpose, too, that its effectuation obviously had to be made independent of the manner in which an intragroup transfer was accomplished. Congress, with such purpose in mind, could not have intended to include within the scope of section 24(b) only simple transfers made directly or through a dummy, or to exclude transfers of securities effected through the medium of the Stock Exchange, unless it wanted to leave a loophole almost as large as the one it had set out to close.

Petitioners suggest that Congress, if it truly intended to disallow losses on intrafamily transactions through the market, would probably have done so by an amendment to the wash sales provisions,[16] making them applicable where the seller and buyer were members of the same family, as well as where they were one and the same individual. This extension of the wash sales provisions, however, would bar only one particular means of accomplishing the evil at which section 24(b) was aimed, and the necessity for a comprehensive remedy would have remained.

Nor can we agree that Congress' omission from section 24(b) of any prescribed time interval, comparable in function to that in the wash sales provisions, indicates that section 24(b) was not intended to apply to intrafamily transfers through the Exchange. Petitioners' argument is predicated on the difficulty which courts may have in determining whether the elapse of certain periods of time between one spouse's sale and the other's purchase of like securities on the Exchange is of great enough importance in itself to break the continuity of the investment and make section 24(b) inapplicable.

Precisely the same difficulty may arise, however, in the case of an intrafamily transfer through an individual intermediary, who, by prearrangement, buys from one spouse at the market price and a short time later sells the identical certificates to the other at the price prevailing at the time of sale. The omission of a prescribed time interval negates the applicability of section 24(b) to the former type of transfer no more than it does to the latter. But if we should hold that it negated both, we would have converted the section into a mere trap for the unwary.[17]

Petitioners also urge that, whatever may have been Congress' intent, its designation in section 24(b) of sales "between" members of a family is not adequate to comprehend the transactions in this case, which consisted only of a sale of stock by one of the petitioners to an unknown stranger, and the purchase of different certificates of stock by the other petitioner, presumably from another stranger.

We can understand how this phraseology, if construed literally and out of context, might be thought to mean only direct intrafamily transfers. But petitioners concede that the express statutory reference to sales made "directly or indirectly" precludes that construction. Moreover, we can discover in this language no implication whatsoever that an indirect intrafamily sale of fungibles is outside the statute unless the units sold by one spouse and those bought by the other are identical. Indeed, if we accepted petitioners' construction of the statute, we think we would be reading into it a crippling exception which is not there.

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[16] Section 118 of the Internal Revenue Code, which first appeared in its present form as section 118 of the Revenue Act of 1932 (47 Stat., 169, 208), provides in part as follows:

"SEC. 118. LOSS FROM WASH SALES OF STOCK OR SECURITIES.

"(a) 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 upon 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 23(e)(2); nor shall such deduction be allowed under section 23(f) unless the claim is made by a corporation, a dealer in stocks or securities, and with respect to a transaction made in the ordinary course of its business."

[17] We have noted petitioners' suggestion that a taxpayer is assured, under the wash sales provisions, of the right to deduct the loss incurred on a sale of securities, even though he himself buys similar securities 31 days later; and that he should certainly not be precluded by section 24(b) from claiming a similar loss if the taxpayer's spouse, instead of the taxpayer, makes the purchase under the same circumstances. We do not feel impelled to comment on these propositions, however, in a case in which the sale and purchase were practically simultaneous and the net consideration received by one spouse and that paid by the other differed only in the amount of brokers' commissions and excise taxes.

Finally, we must reject petitioners' assertion that the Dobson rule[18] controls this case. The Tax Court found the facts as we stated them, and then overruled the Commissioner's determination because it thought that section 24(b) had no application to a taxpayer's sale of securities on the Exchange to an unknown purchaser, regardless of what other circumstances accompanied the sale. We have decided otherwise, and on our construction of the statute, and the conceded facts, The Tax Court could not have reached a result contrary to our own.[19]

Affirmed.

Mr. Justice BURTON took no part in the consideration or decision of these cases.

SECTION 25.—CREDITS OF INDIVIDUALS AGAINST NET INCOME.

SECTION 29.25–3: Personal exemption, surtax exemptions, and exemptions for both normal tax and surtax. 1947–26–12719 I. T. 3883

INTERNAL REVENUE CODE.

A divorced husband is entitled to claim his child as a dependent, for Federal income tax purposes, if the amount paid under a court order for the child's support during the calendar year constituted more than one-half of the amount expended for that purpose, even though the payments are deposited in a special account for use as an educational fund.

Advice is requested whether a child of divorced parents may be claimed as a dependent by the husband under the circumstances hereinafter stated.

In the instant case, the child lives in the home of his mother and stepfather, his mother having remarried. Pursuant to the court decree under which the child's parents were divorced, his father makes a monthly payment of $60 for the child's support. However, such payments are not used for support of the child but are deposited in an account to his credit for use as an educational fund when he reaches college age. The money used for the child's support is furnished by his stepfather, but the payments made by the child's father exceed one-half of the amount used for the child's support.

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

(b) CREDITS FOR BOTH NORMAL TAX AND SURTAX.—
(1) CREDITS.—There shall be allowed for the purposes of both the normal tax and the surtax, the following credits against net income:

* * * * * * *

(C) An exemption of $500 for each dependent whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $500, except that the exemption shall not be allowed in respect of a dependent who has made a joint return with his spouse under section 51 for the taxable year beginning in such calendar year.

* * * * * * *

(3) DEFINITION OF DEPENDENT.—As used in this chapter [Chapter 1 of the Code] the term "dependent" means any of the following persons over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:
(A) a son or daughter of the taxpayer * * *
(B) a stepson or stepdaughter of the taxpayer.

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[18] *Dobson* v. *Commissioner* (320 U. S., 489 [Ct. D. 1597, C. B. 1944, 561]).
[19] Cf. *Trust of Bingham* v. *Commissioner* (325 U. S., 365 [Ct. D. 1643, C. B. 1945, 103]).

It is held, in the instant case, that the divorced husband is entitled to claim his child as a dependent, for Federal income tax purposes, inasmuch as the amount paid under a court order for the child's support during the calendar year constituted more than one-half of the amount expended for that purpose, even though the payments are deposited in a special account for use as an educational fund.

PART IV.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING.

SECTION 41.—GENERAL RULE.

SECTION 19.41-4: Accounting period.

INTERNAL REVENUE CODE.

Accounting period of a corporation "revived" after several years of inactivity. (See Ct. D. 1690, page 129.)

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

SECTION 29.43-2: When charges deductible. 1947-16-12608
(Also Section 19.43-2.) G. C. M. 25298

INTERNAL REVENUE CODE AND REVENUE ACT OF 1938.

Unpaid amounts asserted against a taxpayer as additional tax liabilities, which amounts are the subject of a bona fide contest, are not accruable items for Federal income tax purposes while they are *unsettled* as to amount and prior to establishment of the *fact* of liability. The term "contest" includes a contest lodged with the tax authorities as well as a contest in court. Recommended that I. T. 3491 (C. B. 1941-2, 177) be revoked.

Contested deficiencies of tax which have been paid to the tax authorities are deductible not later than the time of payment even though the contest of liability is continued by the taxpayer by the filing of a claim for refund and a suit in court for recovery of the amounts paid.

Advice is requested as to accrual and deduction, for Federal income tax purposes, of various amounts asserted against a taxpayer as additional tax liabilities, such amounts having been contested by the taxpayer either in the courts or before the taxing authorities.

(*a*) *Federal electrical energy tax.*—As the result of an examination of the taxpayer's Federal electrical energy tax liability, imposed under section 616(a) of the Revenue Act of 1932, as amended, for periods beginning in 1933 and extending through the calendar year 1939, a considerable additional liability was proposed which was immediately contested by the taxpayer. As the result of conferences with Bureau officials, at which the applicability of Bureau regulations and rulings to various phases of the taxpayer's business was discussed, agreements were reached on most of the points in dispute and a new audit was made. Negotiations for final settlement of the liability were completed in May, 1940, and the reduced deficiency agreed upon was paid in June, 1940.

(*b*) *New York City emergency excise, sales, personal property, and compensating use taxes.*—The taxpayer, in determinations by the comptroller of the city of New York, was billed for various deficiencies for taxable periods under local laws enacted from time to time from 1933 to 1942, inclusive, such as the emergency excise tax of 1933 and 1934 on the gross incomes of public utility companies (later the 1 per cent tax on public utilities), the 2 per cent retail sales tax, and the 2 per cent personal property and compensating use taxes. These deficiencies were contested on numerous grounds, including constitutionality. In each case, formal hearings were held in the comptroller's office with respect to the merits of item inclusions, etc. In all but one instance, the contested issues were settled in the comptroller's office by stipulation, without further proceedings, for amounts which appear, with one or two exceptions, to have reduced the asserted deficiencies by one-third to one-half or more. No payment of any of these asserted deficiencies was made prior to the dates of settlement. In the one case where further proceedings were taken, the comptroller's office refused to revise the asserted deficiency, and proceedings were instituted by the taxpayer in the Supreme Court of the State of New York for certiorari to review the comptroller's determination. As a prerequisite to commencement of the certiorari proceedings, the taxpayer was required, under local law, to deposit the total amount of the asserted deficiency, including penalties and interest, with the comptroller. The case was thereafter settled by stipulation for about two-thirds of the asserted deficiency in tax, and the excess deposit made with the comptroller was returned.

(*c*) *New York City tax on real estate of corporations.*—Prior to the year 1936, all of the parcels of real estate owned by the taxpayer were assessed separately and independently under their respective section, block, and lot designations. In 1936 the taxing authorities adopted a method of grouping the properties and valuing each group as a unit. This method was applied to some of the taxpayer's properties for 1936. For 1937 all of the taxpayer's real estate was brought under the group valuation method. The taxpayer filed protests against the 1937 tentative assessed valuations on the ground that the group valuation method represented a procedure not authorized by, and contrary to, the Greater New York Charter and the tax law of the State of New York. After hearing on an application duly made for the correction of the assessments, the taxing authorities made their determination final, without modification, and entered such assessments upon the tax rolls thereafter delivered to the city collector. To avoid liens upon the properties and penalty interest, the taxpayer paid the taxes under protest and immediately filed a petition with the Supreme Court of the State of New York for certiorari to review the assessments made by the taxing authorities. A writ of certiorari was forthwith issued by the court. Thereafter, a settlement of the proceedings was effected whereby the contested tax was substantially reduced, and the court ordered the difference refunded to the taxpayer without interest.

The rule which has been followed by the Bureau for a number of years is that, regardless of the nature of the reasons underlying the delay in its determination, a deficiency in tax is deductible for Federal income tax purposes, by a taxpayer who keeps accounts and files Federal income tax returns on the accrual basis, for the taxable period

with respect to which the tax is imposed. (See I. T. 3491, C. B. 1941–2, 177, citing *Floyd, Incorporated*, v. *Commissioner*, 43 B. T. A., 101, acquiescence, C. B. 1941–1, 4.) This rule was premised on the view that *liability* for the tax is *incurred* in the year for which the tax is imposed by law, and since all of the events upon which the tax is *predicated* have occurred in that year, the amount of the tax liability is then fixed by law and is ascertainable (knowable) as of the end of the taxable period.

The above-stated rule appears to have originated in *Uncasville Manufacturing Co.* v. *Commissioner* (55 Fed. (2d), 893, certiorari denied, 286 U. S., 545). In that case, the Bureau's final determination in 1925 increased the income for Federal income tax purposes for the year 1918. That increase had the effect of increasing the taxpayer's liability for a State tax which was measured by the amount of income for Federal income tax purposes. The question for determination was when the deficiency in the State tax should be taken as a deduction in the Federal returns—whether in 1918, or in 1925 when it was finally fixed as a tax by the Bureau's final determination of the revised income. The Bureau had ruled that the deficiency in the State tax was deductible for the year 1925, and the Board of Tax Appeals had approved this action. The circuit court, applying what it conceived to be the essential holding in *United States* v. *Anderson* (269 U. S., 422, T. D. 3839, C. B. V–1, 179 (1926)), held that the deficiency in the State tax had accrued in, and was deductible for, the taxable year 1918, and in support of its conclusion stated:

* * * All the facts upon which the calculation depended had been fixed before the expiration of the year 1918. Differences could arise, and did, as to the amount of the company's income for that year, but they were due to the proper appraisal of its property, and possible disputes as to the meaning of the law. The computation was uncertain, but its basis was unchangeable; it was unknown, not unknowable on December 31, 1918. That is the test, and that was not the situation in *Lucas* v. *American Code Co.* [280 U. S., 445, Ct. D. 168, C. B. IX–1, 314 (1930)], where the employee's claim was subject to variation according as he lived and conducted himself in the future. * * *

By the statement that "All the facts upon which the calculation depended had been fixed before the expiration of the year 1918," the circuit court clearly indicated that it meant that *all of the facts upon which the tax was predicated had their time* in that year and that this was the essential factor to accrual. The circumstance that a dispute might arise, as to the proper evaluation of such facts, to delay the fixing of the amount of the evaluation until a later time, and as to the meaning of the law as well, was regarded by the court as unimportant.

In *United States* v. *Anderson*, supra, no dispute about the facts and their evaluation is indicated in the Supreme Court's opinion. The principal contention of the taxpayer therein was that, even upon the accrual basis of accounting, the munitions manufacturer's tax imposed by the Revenue Act of 1916 for the year 1916 did not accrue until it was *due and payable* in the following year. The Supreme Court, in the course of its discussion, stated that the adoption of the accrual method of accounting for Federal income tax purposes

* * * was to enable taxpayers to keep their books and make their returns according to scientific accounting principles, by charging against income earned

during the taxable period the expenses incurred in and properly attributable to the process of earning income during that period; * * *

and that

The appellee's [taxpayer's] true income for the year 1916 could not have been determined without deducting from its gross income for the year the total cost and expenses attributable to the production of that income during the year. * * *

including the reserve set up on the taxpayer's books in 1916 for munitions taxes in respect of munitions sold in that year. The Court concluded with the statement that

* * * In a technical legal sense it may be argued that a tax does not accrue until it has been assessed and becomes due; but it is also true that in advance of the assessment of a tax all the events may occur which fix the amount of the tax and determine the liability of the taxpayer to pay it. * * *

And its decision was that " the reserves for taxes which appeared on appellee's books in 1916 " were deductible in its income tax return on the accrual basis for that year.

The Supreme Court's general remarks in the Anderson case undoubtedly gave strong indication that under the accrual method of accounting the income earned during the taxable period should, perhaps, in all instances be charged with the expenses incurred and attributable to the process of earning income during that period. But it is not certain that the Court rested its decision upon the premise that accrual in the taxable period for which the tax is imposed necessarily follows because of the circumstance that all of the facts upon which the calculation depends *had their time* in the taxable year. Its statement that in advance of assessment " all the events may [must?] occur which *fix the amount of the tax* and *determine the liability* of the taxpayer to pay it " [italics supplied] had to do with reserves for taxes which had actually been set up on the taxpayer's books in 1916, the year for which the tax was imposed, and was not addressed to a situation involving a deficiency in tax determined after a bona fide contest as to amount and the fact of liability.

Dixie Pine Products Co. v. *Commissioner* (320 U. S., 516, Ct. D. 1598, C. B. 1944, 509) involved a tax asserted by the Mississippi taxing authorities in respect of the receipt and use of a solvent held by such authorities to be gasoline within the meaning of the State law imposing a tax on gasoline. The taxpayer had made payment of a similar demand for 1936, but for the year 1937 it refused to, and never did, make any payment in respect of the tax asserted. Nevertheless, it made entries in its books as of the close of that year accruing the tax so asserted and deducted the amount thereof in its 1937 Federal income tax return. Thereafter, in 1939, the Supreme Court of Mississippi upheld the taxpayer's contention that the solvent used by it was not within the scope of the taxing statute. Notwithstanding its successful contest of the demand for 1937, the taxpayer carried to the United States Supreme Court its challenge of the Bureau's action, approved by the Board of Tax Appeals (45 B. T. A., 286), in disallowing the deduction of that item in the Federal income tax return for 1937. The Supreme Court said that it could not be questioned that a taxpayer who accounts on the accrual basis may, and should, deduct from gross income " a liability *which really accrues in* the taxable year." [Italics supplied.] The Court went on to say that:

* * * It has long been held that in order truly to reflect the income of a given year, *all the events must occur in that year which fix the amount and the fact of the taxpayer's liability* for items of indebtedness deducted though not paid [citing *United States* v. *Anderson*, supra]; and *this can not be the case where the liability is contingent and is contested by the taxpayer* [citing *Lucas* v. *American Code Co.*, supra]. * * * It must, in the circumstances, await the event of the State court litigation and might claim a deduction only for the taxable year in which its liability for the tax was finally adjudicated. [Italics supplied.]

The Court stressed the language first used in *United States* v. *Anderson*, supra, concerning the occurrence of all the events which fix the tax and determine the liability of the taxpayer to pay it, but in this instance the Court stated that all the events *must occur in that* (taxable) *year* which *fix the amount* and *the fact of* the taxpayer's liability, and it added the statement that "this can not be the case where the liability is contingent and is contested by the taxpayer." This language appears to indicate that the resolution of a bona fide contest is necessary, not only to fix the fact of liability but also the amount thereof, and necessarily defers the accrual of the tax to the time it is finally adjudicated.

Later, in *The Security Flour Mills Co.* v. *Commissioner* (321 U. S., 281, Ct. D. 1603, C. B. 1944, 526), the Supreme Court again stated the essentials of accruability in the following language:

> It is settled by many decisions that *a taxpayer may not accrue an expense the amount of which is unsettled* or the liability for which is contingent, and *this principle is fully applicable to a tax, liability for which the taxpayer denies, and payment whereof he is contesting.* * * * [Italics supplied.]

By the statement that "a taxpayer may not accrue an expense the amount of which is unsettled," the Court would appear to have arrived at the position that accruability of an unpaid liability item must await the occurrence of all the events necessary to settle the amount and to establish the *fact of the taxpayer's liability*, including the resolution of a bona fide contest of the fact of liability. (Cf. *Burton-Sutton Oil Co., Inc.*, v. *Commissioner*, issue 3, 3 T. C., 1187, 1196, acquiescence, C. B. 1944, 4; *Atlantic Coast Line Railroad Co.* v. *Commissioner*, 4 T. C., 140, acquiescence, C. B. 1944, 2; and I. T. 3746, C. B. 1945, 141.)

It is the opinion of this office that, under a proper interpretation of the Supreme Court decisions discussed herein, unpaid amounts asserted against a taxpayer as additional tax liabilities, which are the subject of a bona fide contest, are not accruable items for Federal income tax purposes while *unsettled* as to amount and prior to the establishment of the *fact* of liability. The term "contest" includes not only a contest in court (I. T. 3746, supra), but a contest lodged with the tax authorities as well. (See *The Great Island Holding Corporation et al.* v. *Commissioner*, 5 T. C., 150, acquiescence, C. B. 1945, 3.) Accordingly, it is recommended that I. T. 3491 (C. B. 1941–2, 177), which is contrary to this view, be revoked.

With respect to the accruability of interest on contested unpaid deficiencies of tax, the rule set forth in G. C. M. 9575 (C. B. X–1, 381 (1931)) is consistent with the foregoing discussion.

As to contested deficiencies of tax which have been paid to the taxing authorities, though the contest of liability is continued by the taxpayer by the filing of a claim for refund and a suit in court for the recovery thereof, this office is of the opinion that such deficiencies

must be held to be deductible not later than the time of payment. (See *Chestnut Securities Co.* v. *United States*, 62 Fed. Supp., 574.) The accrual basis of accounting for liability items relates to deductibility of items which are unpaid. (Cf. *Dixie Pine Products Co.* v. *Commissioner*, supra.)

In view of the foregoing, it is the opinion of this office that the contested deficiency in the Federal electrical energy tax, which was settled and paid in 1940, and the various contested deficiencies in New York City emergency excise, retail sales, personal property, and compensating use taxes are deductible, for Federal income tax purposes, for the taxable years of the final settlement, inasmuch as it appears that the contests thereof were bona fide. In connection with these New York City taxes, the making of a deposit with the city comptroller of the full amount of deficiency, with interest, as a prerequisite to the filing of certiorari proceedings, should not be regarded as a payment of the demanded deficiency. The New York City real estate taxes, which were paid upon assesssment to avoid liens and penalty interest, are deductible for the taxable year in which they were paid, even though they were thereafter contested in certiorari proceedings.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

SECTION 29.43-2: When charges deductible. 1947-19-12640
G. C. M. 25261

INTERNAL REVENUE CODE.

On May 29, 1946, the Secretary of the Interior entered into an agreement with the M Union covering, for the period of Government possession of certain coal mines, the terms and conditions of employment in such mines. The agreement provided for vacation payments of $100 to all employees with a record of one year's standing (June 1, 1945, to May 31, 1946). Pro rata payments for full months of employment are provided for employees beginning employment or terminating employment during the qualifying period. The taxpayer was a party to a contract dated April 11, 1945, containing a provision for vacation pay of $75. The taxpayer keeps its accounts and files its Federal income tax returns on a calendar year basis. *Held*, no part of the vacation pay provided for in the agreement of May 29, 1946, is accruable and deductible as of December 31, 1945. *Held further*, the accrual and deduction of vacation pay may properly be made for amounts determinable at December 31, 1945, under the contract then in effect.

An opinion is requested as to accrual and deduction, for Federal income tax purposes, of vacation payments required to be made under an agreement of May 29, 1946, which was entered into by the Secretary of the Interior with the M Union to cover, during the period of Government possession, the terms and conditions of employment with respect to coal mines which were, as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement dated April 11, 1945. The agreement of May 29, 1946, provides in part for vacation payments of $100 to all employees with a record of one year's standing (June 1, 1945, to May 31, 1946), with pro rata payments for full months of employment in the case of employees beginning employment, or terminating employment, during the qualifying period. The taxpayer is a party to a similar agreement entered into on April 11, 1945, providing for vacation payments of $75. The taxpayer keeps its

accounts and files its Federal income tax returns on the accrual and calendar year basis.

In connection with the instant inquiry, attention was called to the case of the O Company, in which the taxpayer was allowed to accrue and deduct as of December 31, 1943, amounts representing a reasonable estimate of vacation payments to be made in 1944. In that case, under an agreement in effect prior to December 31, 1943, qualified employees were entitled to receive pay during vacations taken within one year after the close of the qualifying period, and if no vacations were taken within one year, to receive the vacation pay in a lump sum. In either event, the vacation pay was computable at the rate of pay in effect when such vacation pay was paid. The conclusion reached in that case was based on the rule that an item may be properly accrued although the amount is not definitely fixed. (See *Continental Tie & Lumber Co.* v. *United States*, 286 U. S., 290, Ct. D. 494, C. B. XI–1, 260 (1932); *Lucas* v. *American Code Co., Inc.*, 280 U. S., 445, Ct. D. 168, C. B. IX–1, 314 (1930); and *American National Co., Receiver*, v. *United States*, 274 U. S., 99, T. D. 4099, C. B. VI–2, 193 (1927).)

It has been pointed out that in some cases taxes, the amount of which is not determinable or the liability for which does not come into being until after the close of the taxable year, have been held to be accruable for the years to which the taxes apply. In G. C. M. 15305 (C. B. XIV–2, 80 (1935)), it was held that taxes imposed by the State of New Jersey accrue as of October 1 although the rate is not determined until the latter part of the following year. In *Fawcus Machine Co.* v. *United States* (282 U. S., 375, Ct. D. 278, C. B. X–1, 424 (1931)), the Court held that the Federal income tax with respect to the year 1918 accrued in that year even though the Revenue Act of 1918, applicable to the year 1918, was not passed until February, 1919, and made changes in the rate of taxation.

In the O Company case, referred to above, there was a definite liability for vacation pay, the amount of that vacation pay being measured by the rate of pay of the worker at the time of payment. It was realized that the worker might be advanced in the rate of compensation paid him and, therefore, the amount of vacation pay to be received might be different from the amount he would have received had the vacation been taken concurrently with the acquisition of the right to such vacation pay. It was held that the amount of pay to be accrued in the circumstances of that case should comprehend an estimate of the cost of the vacation pay to the employer at the time the vacation would be taken or the payments made.

In G. C. M. 15305, supra, the taxes were imposed by the State of New Jersey. The tax rate was not determined at the time of assessment, which was on October 1. The Bureau took the position with respect to the accrual of the taxes that it was not necessary that the rate of tax liability be fixed prior to the deduction thereof. In that case, the liability for the taxes was determined, but the amount thereof was subject to adjustment. The conclusion in G. C. M. 15305 recognized the procedure of assessment in New Jersey and the New Jersey statute which provided that all property should be assessed to the owners with reference to the amount owned on the 1st day of October in each year. It is generally true in the State of New Jersey that the owner of real property on October 1 is the person who is liable for the tax, and the only question to be determined is the amount of

that liability. In G. C. M. 15305, supra, it was pointed out that the basic idea under the accrual system of accounting is that the books shall immediately reflect obligations and expenses definitely incurred and income definitely earned without regard to whether payment has been made or whether payment is due. Expenses incurred in the operations for a particular year are properly chargeable in the accounts for that year, although payment may not be due until the following year. As in the case of the O Company, heretofore mentioned, in G. C. M. 15305 the liability existed but the amount thereof was of necessity to be determined by future events. In the instant case, the liability for vacation pay was certain as of December 31, 1945, but that liability was based on the contract of April 11, 1945. As of the close of that calendar year no other liability for vacation pay existed.

In the Fawcus Machine Co. case, supra, the question was whether taxes could be accrued when the legislation fixing the amount of the taxes was passed subsequent to the close of the taxable year, a rate being already in effect at the close of the taxable year. The Court said:

> A corporation can not claim to have accumulated any net income in any year until provision is made for taxes accrued, based on net income for the same year.

The Court further pointed out that the taxes in question were provided for by an act passed in February, 1919, but the taxes in question were for the year 1918. The Court then observed:

> The act was passed in ample time to allow the taxpayer to readjust its accounts for that year by including these taxes; and, since its books were kept on an accrual basis, it was necessary that this should be done in order clearly to reflect the income for 1918.

The last-quoted language of the Court in the Fawcus Machine Co. case was interpreted in *Van Norman Co.* v. *Welch* (141 Fed. (2d), 99). In that case, the liability for the additional tax did not exist and was not known in the year of the earnings to which it pertained. The event which fixed the amount of the additional tax and made the taxpayer liable therefor was the enactment of statutes in June of the following year. The court referred to the language used in *Fawcus Machine Co.* v. *United States*, supra, and said:

> We interpret this to mean that a taxpayer will be required to keep his accounts open for a reasonable time after the close of the tax year. In that case [the Fawcus Machine Co. case] the Act imposing taxes for the year 1918 was passed in February, 1919. Thus the taxpayer was given ample time to readjust its accounts before its tax return was due on March 15, 1919.

The court further observed that on the accrual basis "no attempt should be made to include things which can not be learned until beyond a reasonable time after the tax period." It treated the period until March 15 as a reasonable time, and indicated that since the statutes fixing the liability were not enacted until the following June, "It would be unreasonable and impractical to require the accounts to be held open and adjusted so long after the close of the taxable year and, more important, after the tax returns were due."

In the instant case, the additional liability arose on May 29 following the close of the (calendar) taxable year. There is nothing to indicate that as of December 31, 1945, a change in the amount of liability was to be anticipated. At the end of the taxable year, there was a fixed liability for vacation pay under the contract of April 11, 1945,

and it appears that the fixed and determined amount of this vacation pay was $75. The liability at the rate of $100 did not arise until May 29 following the taxable year. In the Van Norman Co. case, supra, the additional liability arose in June following the taxable year. The facts in the instant case are, therefore, more similar to the facts in the Van Norman Co. case than they are to the facts in the Fawcus Machine Co. case.

In view of the foregoing, it is the opinion of this office that no part of the vacation pay provided for in the agreement of May 29, 1946, is accruable and deductible as of December 31, 1945. It is also the opinion of this office that the accrual and deduction of vacation pay may properly be made for amounts determinable at December 31, 1945, under the contract then in effect.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

SECTION 29.43–2: When charges deductible.

INTERNAL REVENUE CODE.

Tennessee retailers' sales tax. (See I. T. 3865, page 20.)

PART V.—RETURNS AND PAYMENT OF TAX.

SECTION 51.—INDIVIDUAL RETURNS.

SECTION 29.51–1: Individual returns. 1947–16–12609
I. T. 3861

INTERNAL REVENUE CODE.

Upon the death of a spouse who is domiciled in the State of Idaho, the surviving spouse takes one-half of the community property, subject to the community debts, as a matter of right, not as a matter of descent. The principle of G. C. M. 25008 (C. B. 1946–2, 49), which holds that "that part of the income received during the period of administration by the estate of a deceased husband, who died while domiciled in California, which is derived from the surviving wife's share of community property * * * is taxable to the wife for Federal income tax purposes," is applicable in such a case.

Advice is requested whether the principle of G. C. M. 25008 (C. B. 1946–2, 49), which holds that "that part of the income received during the period of administration by the estate of a deceased husband, who died while domiciled in California, which is derived from the surviving wife's share of community property acquired by the community on or after July 29, 1927, the effective date of section 161(a) of the Civil Code of California, is taxable to the wife for Federal income tax purposes," applies to cases in which the decedent was domiciled in the State of Idaho.

The opinion in G. C. M. 25008, supra, is based on the decision in *Stella Wheeler Bishop* v. *Commissioner* (152 Fed. (2d), 389) in which the court refused to follow the decisions in *Commissioner* v. *Rose B. Larson* (131 Fed. (2d), 85) and *Jennie Hobbs Barbour* v. *Commissioner* (89 Fed. (2d), 474, Ct. D. 1267, C. B. 1937–2, 279), involving the community property laws of the States of Washington and Texas, respec-

tively, on the ground that by the laws of the State of Washington the "ownership" of the income derived from the community property during the administration of the estate of the husband "is in the executor or administrator," and by the laws of the State of Texas, the community property, upon the death of the husband, "is an entirety regarded * * * as belonging to his estate," and that there were no such laws in the State of California with respect to community property acquired after July 29, 1927. The court further stated that although the surviving wife's half of California community property, like the decedent's half, was subject to administration, her half, unlike his half, never became a part of his estate.

As in the case of the State of California, the laws of the State of Idaho appear to be unlike those of the States of Washington and Texas. The laws of the State of Idaho relating to community property provide that upon the death of either the husband or the wife, one-half of all of the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the decedent, but only to the extent that such disposition is in favor of certain designated distributees. In case no testamentary disposition is made, the decedent's one-half interest in the community property goes to the survivor, subject to community debts. (See section 14–113 of the Idaho Code, 1932.) During his lifetime the husband has the management of the community property, but he can neither sell, convey, nor encumber community real estate unless the wife joins with him in executing and acknowledging the deed or other instrument of conveyance. (See section 31–913 of the Idaho Code, 1932.)

The Supreme Court of Idaho has held that the husband and wife are equal partners in the community, there being no distinction as to degree, quantity, and nature with respect to their holdings. In the leading case of *Kohny* v. *Dunbar* (21 Idaho, 258, 121 Pac., 544, 547, 548), in which the State sought to subject the surviving wife's share of the community property to inheritance taxes, the court stated that:

> * * * This statute clearly and unmistakably provides that the surviving spouse takes his or her half of the community property, *not by succession, descent or inheritance, but as survivor* of the marital community or partnership. * * * While, therefore, the survivor in this case receives the entire community estate by reason of the death of her husband, ***half of it was already hers***, and the only additional interest or right she acquires in that half by reason of the death of her husband is the right of management, control, and disposition. * * * The statute makes her an heir of her husband, and so, in the absence of testamentary disposition of the husband's share of the community property, she inherits his half, and therefore takes his share under the intestate laws of the State. It is clear, however, that she does not inherit her share of the common property.
>
> * * * * * * *
>
> We conclude that upon the death of husband or wife the survivor takes one-half of the property in his or her own right as survivor, and is not liable under section 1873 [of the Revised Codes] to pay an inheritance tax on such interest in the community estate. [Italics supplied.]

Since, upon the death of a spouse who is domiciled in the State of Idaho, the surviving spouse takes one-half of the community property, subject to the community debts, as a matter of right, not as a matter of descent, it is held that the principle of G. C. M. 25008, supra, is equally applicable to cases of decedents who were domiciled in the State of Idaho.

SECTION 29.51–1: Individual returns. 1947–20–12649
I. T. 3867

INTERNAL REVENUE CODE.

A husband and wife domiciled in Michigan are entitled to include in their separate Federal income tax returns one-half of their community income received or accrued on and after July 1, 1947, the effective date of the Michigan Community Property Act.

Advice is requested whether a husband and wife who are domiciled in Michigan may each report in separate Federal income tax returns one-half of their community income received or accrued on and after the effective date of the Michigan Community Property Act.

The Michigan Community Property Act (Act No. 317 of the 1947 Public Acts of the State of Michigan), effective July 1, 1947, establishes a community property system which, for Federal income tax purposes, satisfies the tests prescribed by the Supreme Court of the United States in *Poe* v. *Seaborn* (282 U. S., 101, Ct. D. 259, C. B. IX–2, 202 (1930)) and *Commissioner* v. *Harmon* (323 U. S., 44, Ct. D. 1616, C. B. 1944, 166). Section 4 of the Michigan law provides that the respective interests of the husband and wife in such community property shall be present, existing, and equal interests and shall arise as an incident of marriage.

It is held, therefore, that a husband and wife who are domiciled in Michigan are entitled to include in their separate Federal income tax returns one-half of their community income received or accrued on and after July 1, 1947, the effective date of the Michigan Community Property Act.

SECTION 29.51–1: Individual returns. 1947–20–12650
I. T. 3868

INTERNAL REVENUE CODE.

A husband and wife domiciled in Oregon are entitled to include in their separate Federal income tax returns one-half of their community income received or accrued on and after July 5, 1947, the effective date of the Oregon Community Property Act.

Advice is requested whether a husband and wife who are domiciled in Oregon may each report in their separate Federal income tax returns one-half of their community income received or accrued on and after July 5, 1947, the effective date of the Oregon Community Property Act.

The Oregon Community Property Act (Chapter 525, Laws of 1947), approved April 19, 1947, provides that husbands and wives shall each have a present vested one-half interest in the community property, as defined in the act. The community property system is not elective or consensual, but is imposed on married persons domiciled in Oregon as an incident of marriage. The individual powers of management, control, and disposition of the community property, conferred on the spouses by the act, are substantially the same as those provided in the 1945 Oklahoma Community Property Act, which has been recognized by the Bureau as effective for the division of community income for Federal income tax purposes. (See I. T. 3782 (C. B. 1946–1, 84).) The community property system established by the Oregon Community Property Act satisfies the tests prescribed by the Supreme

Court of the United States in *Poe* v. *Seaborn* (282 U. S., 101, Ct. D. 259, C. B. IX–2, 202 (1930)) and *Commissioner* v. *Harmon* (323 U. S., 44, Ct. D. 1616, C. B. 1944, 166).

In view of the foregoing, it is held that a husband and wife who are domiciled in Oregon are entitled to include in their separate Federal income tax returns one-half of their community income received or accrued on and after July 5, 1947, the effective date of the Oregon Community Property Act.

SECTION 19.51–1: Individual returns. 1947–20–12651
Ct. D. 1691

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF COURT.

1. COMMUNITY OR SEPARATE INCOME—LOUISIANA—OIL LEASE BONUSES AND ROYALTIES AND RESTORED DEPLETION IN RESPECT TO SEPARATELY OWNED REALTY.

Oil lease bonuses and royalties and restored depletion from canceled leases received from the separately owned real property of taxpayer, a married man domiciled in the State of Louisiana, constitutes his separate income, taxable entirely to him. Under Louisiana law, the rights of the community in income from the separately owned properties of the spouses under the administration of the husband are the same as the rights of the usufructuary to income. The community is entitled to the fruits to which the usufructuary is entitled. Oil in the earth is not a "fruit" but a part of the realty itself; its removal, therefore, alters the substance of the thing of which it is a part.

2. DECISION REVERSED.

Decision of The United States Tax Court (5 T. C., 290) reversed and remanded.

3. REHEARING DENIED.

Taxpayer's motion for rehearing denied on March 31, 1947.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Commissioner of Internal Revenue, Petitioner, v. *William Kirkman Gray, Respondent.*

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

Before McCORD, WALLER, and LEE, Circuit Judges.

[February 14, 1947.]

OPINION.

LEE, Circuit Judge: This suit involves a deficiency in income tax for the year 1941. The questions presented are: (1) whether royalties and bonuses paid under oil and gas leases to the husband as owner of separate real property in Louisiana belonged to the community or to him separately;[1] and (2) whether, if such royalties and bonuses belonged to the community, they were taxable as separate income to the husband because derived from his separately owned property.

The facts were stipulated, and those pertinent may be summarized as follows: Prior to 1939 the taxpayer acquired by inheritance a one-third interest in certain lands in Louisiana. The taxpayer and his sister, owner of the other two-thirds interest, operate the lands as a plantation. Subsequent to acquisition of the lands but prior to 1939, oil was discovered and profitable production followed. The taxpayer and his wife, domiciliaries of Louisiana, were married prior to the

[1] The solution of such question depends upon the local law. (*Poe* v. *Seaborn*, 282 U. S., 101 [Ct. D. 259, C. B. IX–2, 202 (1930)]; *Commissioner* v. *Wilson* (76 Fed. (2d), 766.)

taxable year. No prenuptial agreement concerning their separate or community income exists. During the taxable year the taxpayer received oil lease bonuses and royalties and the restored depletion from canceled leases. The taxpayer and his wife, in reporting these items, divided them equally in their tax returns. The Commissioner, determining that these items constituted separate income of the taxpayer, assessed a deficiency in his income tax and reported an overreturn in that of his wife.

The Tax Court held that these items constitute community income of the taxpayer and his wife, and reversed the Commissioner. (5 T. C., 290.) In reaching its conclusion, The Tax Court relied on several decisions of the Supreme Court of Louisiana, viz, *Roberson* v. *Pioneer Gas Co.* (173 La., 313, 137 So., 46); *Logan* v. *State Gravel Co.* (158 La., 105, 103 So., 526); *Board of Commissioners of Caddo Levee District* v. *Pure Oil Co.* (167 La., 801, 120 So., 373); *Shell Petroleum Corporation* v. *Calcasieu Real Estate & Oil Co.* (185 La., 751, 170 So., 785), in which the court stated that the payment of royalties under a mineral lease was the payment of rent; and the case of *Gulf Refining Co. of Louisiana* v. *Glassell* (186 La., 190, 171 So., 846), in which the court said that "the usual oil and gas lease, with a cash or royalty consideration, or both, such as presently before us, was a contract of letting and hiring within the meaning of the codal articles, and therefore does not create a servitude on the realty or a real right in the land."

After reasoning that the payment of royalty is a payment of rent, The Tax Court applied the Louisiana law in *Peters* v. *Klein* (161 La., 664, 109 So., 349), that "all collections of rents or revenues from the property under the administration of a married man during the existence of the community belong to the community." The Tax Court then held that bonuses, royalties, and restored depletions on bonuses collected by the taxpayer, under oil and gas leases covering his separate real property, went into the marital community. The Commissioner is here urging that The Tax Court failed to appraise properly the jurisprudence it cited.

Louisiana cases hold that royalty is rent for certain, but not all, purposes. Early in the jurisprudence of Louisiana the Supreme Court recognized that oil and gas leases contained elements of both ordinary leases and sales. In *Rives* v. *Gulf Refining Co.* (133 La., 178, 62 So., 623) the court said:

"Gas and oil leases and contracts are a part by themselves. There is scarcely any comparison between them and the ordinary farm or house lease, although there is some resemblance in them to coal or solid mineral leases. The code is silent as to such contracts; for the reason, doubtless, that minerals under and within the soil of Louisiana were not in the contemplation of the lawmakers at the time that the code was adopted. * * * The law with reference to sales and leases found in the code can not be unreservedly applied to these contracts. Such contracts partake of the nature of both sale and lease, and they have features which are not applicable to either."

In *Spence* v. *Lucas* (138 La., 763, 70 So., 796) the court said:

"* * * mineral leases will be construed as leases, and not sales, and that the law with reference to leases will be applied thereto *in so far as they may be.*" [Italics added.]

Again in *Nabors Oil & Gas Co.* v. *Louisiana Oil Refining Co.* (151 La., 361, 91 So., 765) the court (headnote 10) held:

"The doctrine that an ordinary lessee can not dispute the title of his lessor during the time of the lease has no application to a contract in the form of an oil and gas lease by which a person acquires mineral rights, it being more like a sale than an ordinary lease * * *."

This concept of an oil and gas lease, partaking of the nature of both sale and lease, runs through the jurisprudence of Louisiana (*Sparks* v. *Dan Cohen Co.*, 187 La., 830, 175 So., 590; *Wiley* v. *Davis*, 164 La., 1090, 115 So., 280; *Tyson* v. *Surf Oil Co.*, 195 La., 248, 196 So., 336; *Gulf Refining Co. of Louisiana* v. *Garrett*, 209 La., 674, 25 So. (2d), 329); and the law applied to a given case has depended on whether the articles of the code dealing with letting and hiring were applicable to the issue before the court, or whether the partial alienation or dismemberment of the fee, the sale feature of the lease contract, was a factor to be considered by the court in passing upon the question before it. Most of the apparent conflicts in the cases can be reconciled if this differentiation be observed.

In *Roberson* v. *Pioneer Gas Co.*, *Logan* v. *State Gravel Co.*, *Board of Commissioners of Caddo Levee District* v. *Pure Oil Co.*, and *Shell Petroleum Corporation* v. *Calcasieu Real Estate & Oil Co.*, cited by The Tax Court, the articles of the code

dealing with letting and hiring were applicable to the issues before the court. *Nabors Oil & Gas Co.* v. *Louisiana Oil Refining Co.*, supra; *Wiley* v. *Davis*, supra; *Federal Land Bank* v. *Mulhern* (180 La., 627, 157 So., 370); *Wright et al.* v. *Imperial Oil & Gas Products Co.* (177 La., 482, 148 So., 685); *Texas Co.* v. *Fontenot* (200 La., 753, 8 So. (2d), 689) exemplify the application of the sale feature of lease contracts. To illustrate:

In *Wiley* v. *Davis*, supra, an oil and gas lease given by the natural tutrix on the property of her wards was held null and void. The reason given by the court was that an oil and gas lease was a partial sale. The court said:

"But as tutrix of her children Mrs. Davis had no authority to grant a mineral lease on their behalf without authorization of the probate judge; for the granting of a mineral lease on property is the granting of a servitude thereon * * * and hence constitutes a dismemberment of said property amounting to a partial *alienation* thereof. * * * And since the tutrix had no authority to grant said lease on behalf of the minors, the lease was null as to said minors."

In *Federal Land Bank* v. *Mulhern*, supra, the court sustained the right of a mortgagee to protect his mortgage against an oil and gas lease under a lease subsequent in date to the mortgage. The court said:

"* * * While the owner of land does not own the fugitive minerals, such as oil and gas beneath its surface, but only the right to reduce them to possession and ownership, and while such minerals are not susceptible to ownership apart from the land, * * * yet these minerals, while in place in the ground beneath the surface, unsevered, are real estate, a part of the land itself, a part of the realty, as much so as timber, coal, iron, and salt * * *.

"A lease granted by the owner of land for the development of the property for oil and gas *is, in a sense, a conveyance of the mineral rights, an alienation of a part of his interest in the land, a dismemberment of the realty.* * * * [Italics added.]

"The gas in place in the ground being a part or element of the realty, it follows that it constitutes a part of the value of the land, * * *."

In *Wright et al.* v. *Imperial Oil & Gas Products Co.*, supra, a case involving liability of the owners of the gas severed for severance tax, the court held that while the natural gas beneath the surface was the property of no one until reduced to possession, the lessor at the moment the gas was reduced to possession in the course of its extraction from the land became the owner of a part of it, namely, one-eighth, and at the same instant the lessee became the owner of the remainder. Referring to the cases of *Logan* v. *State Gravel Co.*, supra; *Board of Commissioners of Caddo Levee District* v. *Pure Oil Co.*, supra; and *Roberson* v. *Pioneer Gas Co.*, supra, cited by plaintiffs to show that they were never at any time the owners of any part of the gas produced since their contract was one of lease and the royalties paid were rent, the court said:

"* * * The issues presented in those cases, as well as the facts, are different from those in the present case. There was no question presented there, involving liability for a severance tax. While in them, especially in the latter two, the court treated royalties as rent, it does not follow that when the question of who is liable for severance tax arises, the court will not examine particularly into the facts involving liability for the tax, and rule that the owner of the royalty [part of the natural resource severed] is liable for the tax thereon. Although the lessor, at the moment of the reducing of the oil or gas to possession, may be the owner of a part of it, nevertheless the delivery of such part by the lessee to the lessor as royalty may be treated, *in proper cases*, as the payment of rent." [Italics added.]

The Civil Code of Louisiana in articles 2334 and 2402 defines separate and community property.[2] Article 2402 says that the community includes, among other things, the profits of all of the effects of which the husband has the administration and enjoyment of right or in fact. The word "profits," an erroneous translation from the French text, should be read "fruits" (see 3 Compiled Edition of the Civil Codes of Louisiana, Louisiana Legal Archives, Part II, pages 1318–1320). With

[2] Article 2334:

"*Separate and common property of spouses.*—The property of married persons is divided into separate and common property.

"Separate property is that which either party brings into the marriage, or acquires during the marriage with separate funds, or by inheritance, or by donation made to him or her particularly.

"The earnings of the wife when living separate and apart from her husband although not separated by judgment of court, her earnings when carrying on a business, trade, occupation or industry separate from her husband, actions for damages resulting from offenses

the exception of the last sentence in article 2402, dealing with damages resulting from personal injury to the wife, the present article is identical with the corresponding article of the Code of 1870 and of the Code of 1825. In Louisiana, where the French text of the code conflicts with the English text, the French text prevails. (*Sample* v. *Whitaker*, 135 So., 38, 40, 172 La., 722; *Phelps* v. *Reinach*, 38 La. Ann., 547.)

The rights of the community in the income from the separately owned properties of the spouses under the administration of the husband are the same as the rights of the usufructuary to income. The community is entitled to the fruits to which the usufructuary is entitled. In *Succession of Andrus* (131 La., 940, 60 So., 623) the court said:

"The profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact, fall into the community. (C. C., article 2402.) Hence the community quoad such effects, whether owned by the husband or the wife, occupies a position similar to that of an usufructuary. This is the jurisprudence of this court, and the rule of *stare decisis* forbids the reopening of the same question."

See to the same effect *Wimbish* v. *Gray* (10 Rob., 46); *Succession of Waterer* (25 La. Ann., 210); and *Long* v. *Kee* (42 La. Ann., 899). Therefore, we turn to the articles of the code setting forth the "fruits" to which the usufructuary is entitled to determine the "fruits" (erroneously translated as "profits" in article 2402) to which the community is entitled. These articles are set forth in a footnote.[3]

"Fruits" are products reproduced from time to time in successive seasons and include fruits of the earth, civil fruits, and the young of animals. (*Elder* v. *Ellerbe*, 135 La., 990, 66 So., 337; *Jackson* v. *Shaw*, 151 La., 795, 92 So., 339.) "Fruits" do not include minerals and timber. (C. C., 551. *Elder* v. *Ellerbe*, supra; *Harang* v. *Bowie Lumber Co.*, 145 La., 96, 81 So., 769.)

As defined in article 533 of the Civil Code, a usufruct is the right of enjoying a thing, the property of which is vested in another, and to draw from the same all of the profits, utility, and advantages which it may produce, *provided it be without altering the substance of the thing.* The kind of fruits spoken of in

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and quasi offenses and the property purchased with all funds thus derived, are her separate property.

"Actions for damages resulting from offenses and quasi offenses suffered by the husband, living separate and apart from his wife, by reason of fault on her part, sufficient for separation or divorce, shall be his separate property.

"Common property is that which is acquired by the husband and wife during marriage, in any manner different from that above declared. But when the title to community property stands in the name of the wife, it can not be mortgaged or sold by the husband without her written authority or consent. [As amended, Acts 1912, No. 170; 1920, No. 186.]"

Article 2402:

"*Property forming community—Personal injuries to wife.*—This partnership or community consists of the profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the reciprocal industry and labor of both husband and wife, and of the estate which they may acquire during the marriage, either by donations made jointly to them both, or by purchase, or in any other similar way, even though the purchase be only in the name of one of the two and not of both, because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase. But damages resulting from personal injuries to the wife shall not form part of this community, but shall always be and remain the separate property of the wife and recoverable by herself alone; 'provided where the injuries sustained by the wife result in her death, the right to recover damages shall be as now provided by existing laws.' [As amended, Acts 1902, No. 68.]"

[3] "533. *Usufruct defined.*—Usufruct is the right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility and advantages which it may produce, provided it be without altering the substance of the thing.

"The obligation of not altering the substance of the thing takes place only in the case of perfect usufruct."

"544. *Fruits—Ownership.*—All kinds of fruits, natural, cultivated or civil, produced, during the existence of the usufruct, by the things subject to it, belong to the usufructuary."

"545. *Kinds of fruits defined.*—Natural fruits are such as are the spontaneous product of the earth; the product and increase of cattle are likewise natural fruits.

"The fruits, which result from industry bestowed on a piece of ground, are those which are obtained by cultivation.

"Civil fruits are rents of real property, the interest of money, and annuities.

"All other kinds of revenue or income derived from property by the operation of the law or private agreement, are civil fruits."

"546. *Natural or cultivated fruits—Ownership.*—The natural fruits, or such as are the product of industry, hanging by branches or by roots at the time when the usufruct is open, belong to the usufructuary.

"Fruits in the same state, at the moment when the usufruct is at an end, belong to the owner, without being obliged to compensate the other, for either work or seeds."

"547. *Civil fruits—Ownership.*—Rents and income of property, interest of money, and annuities, and other civil fruits, are supposed to be obtained day by day, and they belong to the usufructuary, in proportion to the duration of his usufruct, and are due to him, though they may not be collected at the expiration of his usufruct."

article 545 of the Civil Code of which the usufructuary has the enjoyment are such as may be used without altering the substance of the thing. Since oil in place is part of the realty, "when the lessee goes on the property and drills for and strikes gas [oil] for the purpose of reducing it to possession and ownership, the real estate which holds or contains the gas [oil] is wasted by its extraction because the property is actually deprived of something which forms a component part of it that is valuable and capable of being reduced to possession and ownership." (*Federal Land Bank* v. *Mulhern*, supra, on rehearing.) Oil in the earth is not a "fruit" but a part of the realty itself; its removal, therefore, alters the substance of the thing of which it is a part.

In a recent case, *Gulf Refining Co.* v. *Garrett* (209 La., 674, 25 So. (2d), 329) the Louisiana Supreme Court on original hearing made an analysis of the status of a royalty under the codal provisions. In answer to the argument that royalty was rent and that rent was a civil fruit of which the usufructuary had the enjoyment, the court said:

"One of the arguments urged in support of Mrs. Garrett's claim, that she is entitled to all of the royalties from oil produced from the well drilled on the 80-acre tract after the agreement dated June 17, 1941, was entered into, is that the royalty on oil or gas, in a mineral lease, is rent, and that rent is revenue. The argument refers to the third paragraph in article 545 of the Civil Code, where it is declared: 'civil fruits are rents of real property, the interest on money, and annuities.' But the word 'rents' as used in that paragraph means the rent of a farm or house—not the royalty stipulated in a mining lease; otherwise the paragraph would conflict with article 552 of the Civil Code, referring to the right of a usufructuary with regard to the 'proceeds of mines and quarries.' And it would conflict with the proviso in article 533, defining 'usufruct,' and limiting the right of the usufructuary to 'all the profit' of the property subject to the usufruct, '*provided it be without altering the substance of the thing.*' [Italics supplied.] The cases cited to support the argument for Mrs. Garrett in that respect are *Logan* v. *State Gravel Co.* (158 La., 105, 103 So., 526) and *Board of Commissioners of Caddo Levee District* v. *Pure Oil Co.* (167 La., 801, 120 So., 373), and several other decisions, maintaining that the royalty stipulated in a mining lease is considered rent. *Notwithstanding the royalty stipulated in an oil or gas lease may be considered as rent for certain purposes, or in some aspects, it is well settled now that the royalty stipulated in an oil or gas lease is not to be compared with rent of a house or a farm.* [Italics added.] It is true that in the case of *Gulf Refining Co.* v. *Glassell* (186 La., 190, 171 So., 846, 850) it was declared that a mineral lease, for the production of oil or gas, and a lease of a farm, should be placed in the same legal category, that is, as leases, conferring 'personal rights and not real rights.' But the holding in that case was abrogated by the legislature at its next session, by Act 205 of 1938, declaring that oil and gas leases and the rights resulting therefrom 'are hereby defined and classified as real rights and incorporeal immovable property.' In the case of *Amerada Petroleum Corporation* v. *Reese* (195 La., 359, 368, 196 So., 558), the court quoted with approval from *Allison* v. *Maroun* (193 La., 286, loc. cit., 291, 190 So., 408, loc. cit., 409) the following observation: 'It is a matter of general knowledge, and is conceded by all parties to this suit, that the cause which induced the legislature to enact Act No. 205 of 1938 was the decision in *Gulf Refining Co.* v. *Glassell* (186 La., 190, 171 So., 846), that the holder of a mineral lease had not a real right on the leased land and therefore could not institute successfully a petitory or possessory action. That the statute was enacted in consequence of that decision is emphasized by the provision of the second section, that the act shall apply as well to leases made previous to the passage of the act as to leases made afterwards.'"

The justices of the court disagreed as to the interpretation of the agreement involved in the Gulf Refining Co. case; on application, a rehearing was granted; and, on rehearing, a majority remanded the case for testimony on the intention of the parties who executed the agreement. While the original opinion is not authority, as it was set aside by the granting of a rehearing, the logic of the analysis of the authorities as to the status of a royalty *under a right of usufruct* and the conclusion therefrom, set forth in the quotation, are persuasive. Neither the analysis nor the conclusion was challenged in the dissenting opinions or in the opinion on rehearing.

Under Louisiana law royalty under a mineral lease is a share of the product reserved by the owner for permitting another to use his property. (*Wright et al.* v. *Imperial Oil & Gas Co.*, supra; *Texas Co.* v. *Fontenot*, supra; *Vincent* v. *Bullock*, 192 La., 1, 187 So., 35; *Sartor* v. *United Gas Public Service Co.*, 186 La.,

555, 173 So., 103; *State* v. *Texas Co.*, 187 La., 287, 174 So., 359.) When, therefore, the lessee delivers to the lessor royalty stipulated and reserved to the lessor in the lease, he is delivering to the lessor a share of the product, the right to which product was vested in the lessor by virtue of his ownership of the property.

"The settled jurisprudence, therefore, is that, under an oil and gas lease contract in which the lessor reserves a stipulated royalty interest, the parties own the oil or gas jointly at the time of severance, the lessor owning the fractional interest reserved as royalty and the lessee owning the remainder * * *." (*Texas Co.* v. *Fontenot*, 200 La., 753, 8 So. (2d), 689.)

While for some purposes this product may be termed rent, so terming it does not change the fact that in receiving it the lessor has merely received that which he has reserved.

As the owner of the property the taxpayer had the exclusive right to drill for and abstract the oil and thereby acquire full legal title to the oil. This right he conveyed to another by means of a lease, one consideration being the lessee's obligation to deliver to him a fractional part, the royalty reserved, of the oil produced. The fact that it was delivered to him in the form in which he acquired the legal title at the time of severance and that this was done by the lessee may not convert what is separate property into community property.[4] In this respect an oil royalty is not similar to rent received from real estate.

Fruits from the husband's separate estate falling into the community under article 2404 of the Civil Code have the same character as the fruits of the wife's paraphernal property falling into the community under article 2386 of the Civil Code. Prior to 1944 article 2386 described the fruits so falling as "natural, civil, or the result of labor." In 1944 the legislature, in amending the article, amended the description with respect to the fruits to read "natural, civil, including interest, dividends, and rents, or from the result of labor." The amendment thus specified "interest, dividends, and rents" as included in "civil" fruits. Since the oil industry in 1944 was one of the largest in the State, the omission of "royalty" from the specific designation of "interest, dividends, and rents" indicates the legislature did not consider royalty a civil fruit. The husband may enjoy interest and dividends without consuming the producing property. By the rule of *ejusdem generis*, the "rents" in the phrase "interest, dividends, and rents" must refer to nonconsuming rents, such as money rentals payable for nonoil-bearing properties. The facts in *Peters* v. *Klein*, supra, cited by The Tax Court, show that the rents collected in that case were of that character.[5]

We conclude, therefore, that the rent of land denominated a "civil fruit" in C. C. 545, of which the usufructuary has the enjoyment and which belongs to the community when the land is under the administration of the husband, is rent under an ordinary lease.

Gulf Refining Co. v. *Glassell*, supra, also relied on by The Tax Court must be read in the light of the issue before the court. With reference to the scope of that decision the Supreme Court in *Smith* v. *Kennon* (175 So., 763, 188 La., 101), said:

"* * * the same justice who wrote the opinion * * * in which per curiam [in connection with the refusal of an application for rehearing] * * * stated: 'We simply held that a lessee of the usual mineral or gas and oil lease has no real right in or servitude on the leased land and is not a judgment creditor type obligee and therefore can not, in his own right or name, institute a petitory or possessory action.'"

In *Amerada Petroleum Co.* v. *Reese* (195 La., 359, 196 So., 558), in referring to the Glassell case and Act 205 of 1938, passed by the legislature shortly after the Glassell case was decided, the court said:

"And as stated in the Louisiana Law Review, 'Act 205 of 1938 was passed for the purpose of changing the rule of the Glassell case. * * * By defining a mineral lease as a "real right," the 1938 act brings the right of the lessee (such as that in the Glassell case), within the operation of the articles of the Code of Practice permitting petitory actions. * * *' * * * *"

Later in the Amerada case the court said:

"Thus it may be seen that after the decision in the Glassell case, declaring that under the law as it then existed the mineral lessee did not have a greater right than the ordinary lessee, both being controlled by the same basic law, and consequently, without the right to institute a petitory or possessory action,

[4] Cf. *Lucas* v. *Baucum* (50 Fed. (2d), 806).
[5] Rents from city real estate.

the legislature, at its regular session of 1938, adopted Act 205, classifying a mineral lease and similar contracts as real rights and incorporeal immovable property in order to give the mineral lessee '*any procedure available to the owner of immovable property or land*' *so that his rights* '*may be asserted, protected and defended in the same manner as may be the ownership or possession of other immovable property by the holder of such rights.* * * *' (Italics supplied.)"

It is evident that the issue in the Glassell case was one of procedure and has been so confined in subsequent litigation.

In *Texas Co.* v. *Fontenot*, supra, the court said:

"The words 'bonus,' 'rental,' and 'royalty' used in connection with oil and gas leases are to be construed in the ordinary and popular sense, 'bonus' meaning the cash consideration paid or agreed to be paid for the execution of the lease, * * *."

As the execution by a fee owner of an oil and gas lease is a dismemberment of the property amounting to a partial alienation and bonus is the cash consideration paid therefor, it follows that the bonus paid the taxpayer for an oil and gas lease fell into his separate estate.

Our analysis and appraisal of Louisiana jurisprudence compel the conclusion in the instant case that neither royalties nor bonuses received by the taxpayer from oil and gas leases covering his separate real property fell into the marital community.

Lazard v. *Commissioner* (153 Fed. (2d), 348) is not opposed to the views herein expressed. While the Commissioner alternatively urged in that case in The Tax Court and in this court that royalties from the wife's separate property while being administered by the husband would not fall into the community but would remain the wife's separate property, neither court found it necessary to consider the alternate contention, as each found that the wife's property was not being administered by the husband.

Holding, as we do, that the royalties and bonuses from mineral leases on the taxpayer's separate property were his separate income, we find no need to consider the Commissioner's second and alternate argument.

The judgment appealed from is reversed, and the cause is remanded for further proceedings not inconsistent herewith.

Reversed and remanded.

SECTION 29.51–1: Individual returns. 1947–21–12660
I. T. 3869

INTERNAL REVENUE CODE.

A husband and wife who are domiciled in Nebraska are entitled to include in their separate Federal income tax returns one-half of their community income received or accrued on and after September 7, 1947, the effective date of the Nebraska Community Property Act.

Advice is requested whether a husband and wife who are domiciled in Nebraska may each report in separate Federal income tax returns one-half of their community income received or accrued on and after September 7, 1947, the effective date of the Nebraska Community Property Act.

The Bureau recognizes that the Nebraska Community Property Act (Nebraska legislative bill 410, approved June 12, 1947) establishes a community property system which, for Federal income tax purposes, satisfies the tests prescribed by the United States Supreme Court in *Poe* v. *Seaborn* (282 U. S., 101, Ct. D. 259, C. B. IX–2, 202 (1930)) and *Commissioner* v. *Harmon* (323 U. S., 44, Ct. D. 1616, C. B. 1944, 166).

In view of the foregoing, it is held that a husband and wife who are domiciled in Nebraska are entitled to include in their separate Federal income tax returns one-half of their community income received or accrued on and after September 7, 1947, the effective date of the Nebraska Community Property Act.

SECTION 29.51–1: Individual returns. 1947–21–12661
I. T. 3870

INTERNAL REVENUE CODE.

A husband and wife who are domiciled in Pennsylvania are entitled to include in their separate Federal income tax returns one-half of their community income received or accrued on and after September 1, 1947, the effective date of the Pennsylvania Community Property Act.

Advice is requested whether a husband and wife who are domiciled in Pennsylvania may each report in separate Federal income tax returns one-half of their community income received or accrued on and after September 1, 1947, the effective date of the Pennsylvania Community Property Act.

The Bureau recognizes that the Pennsylvania Community Property Act (Act No. 550 of the General Assembly of the Commonwealth of Pennsylvania (1947 session), approved July 7, 1947) establishes a community property system which, for Federal income tax purposes, satisfies the tests prescribed by the Supreme Court of the United States in *Poe* v. *Seaborn* (282 U. S., 101, Ct. D. 259, C. B. IX–2, 202 (1930)) and *Commissioner* v. *Harmon* (323 U. S., 44, Ct. D. 1616, C. B. 1944, 166).

In view of the foregoing, it is held that a husband and wife who are domiciled in Pennsylvania are entitled to include in their separate Federal income tax returns one-half of their community income received or accrued on and after September 1, 1947, the effective date of the Pennsylvania Community Property Act.

SECTION 29.51–1: Individual returns. 1947–24–12693
I. T. 3878

INTERNAL REVENUE CODE.

Rental income derived from North Carolina real property held by a husband and wife as tenants by the entirety belongs to the husband, and he alone is taxable on such income for Federal income tax purposes. However, gains and losses from the sale of such property may, for such purposes, be divided equally between the spouses. The fact that part of such income or gain is attributable to services rendered by either or both of the spouses is immaterial.

Advice is requested whether (1) rental income derived from North Carolina real property held by a husband and wife as tenants by the entirety, and (2) gains and losses from the sale of such property, may be divided and reported equally by the spouses in their separate Federal income tax returns.

The Bureau has held in certain instances that where a husband and wife own real or personal property as tenants by the entirety they may each report one-half of the income derived from such property in their separate Federal income tax returns. In each such instance the State law was resorted to in order to determine what interest the wife had in the income derived from the property which she held with her husband as a tenant by the entirety. Where, under the particular State law, the wife is entitled to share equally with her husband in the entirety income, the Bureau has consistently held that one-half of such income is taxable to the wife.

Under the common law, the husband is entitled, during the existence of the marital relationship, to all the income derived from property held by the spouses as tenants by the entirety. Where the strict common-law rule still prevails, the husband alone is taxable on such income. (See *Cooley* v. *Commissioner*, 75 Fed. (2d), 188, certiorari denied, 295 U. S., 747.) It seems clear that the strict common-law rule still prevails in North Carolina. The Supreme Court of North Carolina stated in *Atkinson* v. *Atkinson* (225 N. C., 120, 33 S. E. (2d), 666) that " during the existence of the estate by entirety, the rents and profits of the land belong to the husband." In *Lewis* v. *Pate et ux.* (212 N. C., 253, 193 S. E., 20), the same court, in a *per curiam* opinion, stated:

While there are a number of exceptions in the record, the appellant presents to this court for determination only one question, to wit: " Does the husband own and have the right to dispose of all the income, rents and profits, products, etc., accruing from an estate held by entirety to such an extent that an execution against him may be levied upon it to the exclusion of any interest the wife may have? " This question must be answered in the affirmative. It is well established law in this State that the husband, during coverture and as between himself and the wife, has absolute and exclusive right to the control, use, possession, rents, issues, and profits of property held as tenants by the entirety. The common-law rule still prevails. (*Davis* v. *Bass*, 188 N. C., 200, 124 S. E., 566; *Bynum* v. *Wicker*, 141 N. C., 95, 53 S. E., 478, 115 Am. St. Rep., 675; *Bank of Greenville* v. *Gornto*, 161 N. C., 341, 342, 77 S. E., 222; *Dorsey* v. *Kirkland*, 177 N. C., 520, 523, 99 S. E., 407; *Simonton* v. *Cornelius*, 98 N. C., 433, 437, 4 S. E., 38; *Bryant* v. *Bryant*, 193 N. C., 372, 137 S. E., 188, 51 A. L. R., 1100; 30 C. J., 567.)

In view of the foregoing, it is held that rental income derived from North Carolina real property held by husband and wife as tenants by the entirety belongs to the husband, and he alone is taxable on such income for Federal income tax purposes. However, gains and losses from the sale of such property may, for such purposes, be divided equally between the spouses. (Cf. I. T. 1574, C. B. II–1, 143 (1923).)

There is also presented in the instant case the question whether the rendition of services by either or both of the spouses in connection with the property held by them as tenants by the entirety would have any bearing on the division of rental income or gains from sale of the property. In view of the decisions in *Edwin F. Sandberg* v. *Commissioner* (8 T. C., 423, acquiescence, C. B. 1947–1, 4) and *George K. Brennen* v. *Commissioner* (4 T. C., 1260, acquiescence, C. B. 1945, 2), it is held that the fact that part of the rental income or gain from sale of the property is attributable to the rendition of services by either or both of the spouses has no bearing on the division of such income or gain from sale.

SECTION 29.51–1: Individual returns. 1947–24–12694
I. T. 3879

INTERNAL REVENUE CODE.

Income derived on and after September 1, 1947, the effective date of the Pennsylvania Community Property Act, from the separate property of a husband or wife domiciled in Pennsylvania, and compensation earned by either spouse on and after such date, constitute community income for Federal income tax purposes.

Advice is requested whether income derived on and after September 1, 1947, the effective date of the Pennsylvania Community Property

Act, from the separate property of a husband or wife domiciled in Pennsylvania, and compensation earned by either spouse on and after such date, constitute community income for Federal income tax purposes.

The Bureau held in I. T. 3870 (page 57, this Bulletin) that a husband and wife who are domiciled in Pennsylvania are entitled to include in their separate Federal income tax returns one-half of their community income received or accrued on and after September 1, 1947, the effective date of the Pennsylvania Community Property Act (Act No. 550 of the General Assembly of the Commonwealth of Pennsylvania (1947 session), approved July 7, 1947).

The Pennsylvania Community Property Act provides in part as follows:

SECTION 1. All property of the husband, both real and personal, owned or claimed by him before marriage, or before the effective date of this act, whichever is later, and that acquired afterwards by gift, devise or descent, or received as compensation for personal injuries, shall be his separate property.

SEC. 2. All property of the wife, both real and personal, owned or claimed by her before marriage, or before the effective date of this act, whichever is later, and that acquired afterwards by gift, devise or descent, or received as compensation for personal injuries, shall be her separate property.

SEC. 3. All property acquired by either the husband or wife during marriage and after the effective date of this act, except that which is the separate property of either, as hereinabove defined, shall be deemed the community or common property of the husband and wife, and each shall be vested with an undivided one-half interest therein, and all the effects which the husband and wife possess at the time the marriage may be dissolved shall be regarded as common effects or gains unless the contrary be satisfactorily proved.

SEC. 4. The wife shall have the management and control and may dispose of her separate property and that portion of the common or community property, consisting of her earnings, all rents, interest, dividends and other income from her separate property and all other common or community property, the title to which stands in her name. The husband shall have the management and control and may dispose of his separate property and all community property, the management, control, disposition of which is not conferred upon the wife hereby.

From an examination of sections 1 and 2 of the act defining separate property of the respective spouses, it will be seen that no mention is made of the rents, issues, profits, and income from such property. It will be noted, however, that under section 3 of the act all property acquired by either the husband or wife during marriage and after the effective date of the act, "except that which is the separate property of either, as hereinabove defined" is deemed to be community or common property. From a reading of section 3 in connection with sections 1 and 2, there appears to be no reasonable doubt that income from separate property is community property inasmuch as such income is not included in the definitions of separate property. Furthermore, section 4 of the act provides that the wife shall have the management and control and may dispose of her separate property and "*that portion of the common or community property, consisting of her earnings, all rents, interest, dividends and other income from her separate property* and all *other* common or community property, the title to which stands in her name." [Italics supplied.]

Had the legislature of Pennsylvania desired to treat income from separate property as the separate income of the owner, this could easily have been accomplished by so providing in the definition of

separate property. This was done by California (sections 162 and 163, California Civil Code, 1941) and by Washington (sections 6890 and 6891, Remington's Revised Statutes, 1932). The community property laws of those States specifically provide that the "rents, issues, and profits" from separate property of either spouse are his or her separate property. The Pennsylvania law defining community income is similar to the law of Texas which is silent as to the treatment of income from separate property, but which income in general has been held to be community income. (See G. C. M. 13742, C. B. XIII–2, 181 (1934); *Commissioner* v. *Ted B. Wilson et al.*, 76 Fed. (2d), 766; and *Commissioner* v. *Anna Davis Terry*, 69 Fed. (2d), 969, Ct. D. 862, C. B. XIII–2, 273 (1934).)

With respect to the effect of the management, control, and disposition of the property (section 4 of the act), the United States Supreme Court has held that a State law's investiture of the husband with broad powers in this respect by no means negatives the wife's present interest as coowner. (See *Poe* v. *Seaborn*, 282 U. S., 101, Ct. D. 259, C. B. IX–2, 202 (1930).) The "management, control, and power of sale of such [community] property" does not make it the sole property of the one in whose name the property is recorded. (See *Warburton* v. *White*, 176 U. S., 484.) In Texas, the wife also has the management, control, and power of disposal of her earnings and income from her separate estate, but in general such income is community income and is divisible between the two spouses for Federal income tax purposes. (See *Hopkins* v. *Bacon*, 282 U. S., 122, Ct. D. 260, C. B. IX–2, 201 (1930).)

Generally, the determination of property rights of a husband and wife under the community property law of a State is governed by the decisions of the courts of that State. In the absence of any such court decisions in the State of Pennsylvania, and in view of the above-quoted provisions of Pennsylvania law, it is held that income derived on and after September 1, 1947, the effective date of the Pennsylvania Community Property Act, from the separate property of a husband or wife domiciled in Pennsylvania, and compensation earned by either spouse on and after such date, constitute community income for Federal income tax purposes.

In the case of unincorporated businesses, such as sole proprietorships and partnerships, the preparation of profit and loss statements as of the close of business on August 31, 1947, is, of course, the most desirable and accurate method of allocation between community and noncommunity income, and such action should be taken in all cases where it is practicable. However, in those cases where it is not practicable or reasonable for the proprietors of businesses to take such action, the proration of the income for the calendar year 1947 on a time basis will be acceptable. In view of the effective date of the act, September 1, 1947, such proration may be accomplished on a daily or monthly basis, that is, either 243/365 or 8/12 (⅔) of the total income for the calendar year 1947 will represent noncommunity income, and either 122/365 or 4/12 (⅓) of the total income for the calendar year 1947 will represent community income. (Cf. *C. J. Wrightsman* v. *Commissioner*, 111 Fed. (2d), 227; *Albert J. Houston* v. *Commissioner*, 31 B. T. A., 188; and I. T. 1576, C. B. II–1, 144 (1923).)

Consistent with the well-established policy of the Bureau, there may be eliminated, before the above-mentioned proration of income

is made, items of income or deduction clearly and accurately determined to be attributable to a particular period (the period before the effective date of the community property law or the period after the effective date of the law) and after such proration is made, the eliminated items will be added to (if items of income) or deducted from (if deductible items) the income derived by proration for the period to which such items are applicable.

SECTION 29.51–1: Individual returns. 1947–25–12711
I. T. 3882

INTERNAL REVENUE CODE.

Income derived on and after July 5, 1947, the effective date of the Oregon Community Property Act, from the separate property of a husband or wife domiciled in Oregon, and compensation earned by either spouse on and after such date, constitute community income for Federal income tax purposes.

Advice is requested whether income derived on and after July 5, 1947, the effective date of the Oregon Community Property Act, from the separate property of a husband or wife domiciled in Oregon, and compensation earned by either spouse on and after such date, constitute community income for Federal income tax purposes.

The Bureau held in I. T. 3868 (page 49, this Bulletin) that a husband and wife who are domiciled in Oregon are entitled to include in their separate Federal income tax returns one-half of their community income received or accrued on and after July 5, 1947, the effective date of the Oregon Community Property Act (chapter 525, Oregon Laws of 1947).

The Oregon Community Property Act provides in part as follows:

SECTION 1. All property of the husband, both real and personal, owned or claimed by him before marriage or before the effective date of this act, whichever is later, and that acquired afterwards by gift, devise or descent, or received as compensation for personal injuries, shall be his separate property.

SEC. 2. All property of the wife, both real and personal, owned or claimed by her before marriage or before the effective date of this act, whichever is later, and that acquired afterwards by gift, devise or descent, or received as compensation for personal injuries, shall be her separate property.

SEC. 3. All property acquired by either the husband or wife during marriage and after the effective date of this act, *except that which is the separate property of either as herein defined*, shall be deemed the community or common property of the husband and wife, and each shall be vested with an undivided one-half interest therein; and all the effects which the husband and wife possess at the time the marriage may be dissolved shall be regarded as common effects or gains unless the contrary be satisfactorily proved. [Italics supplied.]

SEC. 4. The wife shall have the management and control and may dispose of her separate personal property and *that portion of the common or community personal property consisting of her earnings and all rents, interest, dividends and other income from her separate property* and all *other* common or community personal property, the title to which stands in her name. The husband shall have the management and control and may dispose of his separate personal property and all community personal property, the management, control and disposition of which is not conferred upon the wife hereby; provided, however, neither spouse shall convey or encumber the community real property unless the other spouse join in the execution of the deed, mortgage or any other instruments. [Italics supplied.]

From an examination of sections 1 and 2 of the act defining separate property of the respective spouses, it will be seen that no mention is

made of the rents, issues, profits, and income from such property. It will be noted, however, that under section 3 of the act all property acquired by either the husband or wife during marriage and after the effective date of the act, " except that which is the separate property of either as herein defined," is deemed to be community or common property. From a reading of section 3 in connection with sections 1 and 2, there appears to be no reasonable doubt that income from separate property is community property inasmuch as such income is not included in the definitions of separate property. Had the legislature of Oregon desired to treat income from separate property as the separate income of the owner, this could easily have been accomplished by so providing in the definition of separate property. Furthermore, section 4 of the act provides that the wife shall have the management and control and may dispose of her separate personal property and " that portion of the common or community personal property consisting of her earnings and all rents, interest, dividends, and other income from her separate property " and all other common or community personal property, the title to which stands in her name.

Generally, the determination of property rights of a husband and wife under the community property law of a State is governed by the decisions of the courts of that State. In the absence of any such court decisions in the State of Oregon, and in view of the above-quoted provisions of Oregon law, it is held that income derived on and after July 5, 1947, the effective date of the Oregon Community Property Act, from the separate property of a husband or wife domiciled in Oregon, and compensation earned by either spouse on and after such date, constitute community income for Federal income tax purposes.

SECTION 52.—CORPORATION RETURNS.

SECTION 29.52–1: Corporation returns. 1947–21–12662
I. T. 3871

INTERNAL REVENUE CODE.

Upon presentation of the facts to the collector, a corporation which has ceased business operations, has retained no assets, and has no income, may be relieved from filing Federal income tax returns even though the corporation has not been formally dissolved.

Advice is requested whether a corporation which has ceased operations, retaining no assets and having no income, may be relieved from filing Federal income tax returns.

The instant corporation ceased business operations in October, 1936, and during the calendar year 1946 it received no income from any source whatever. The balance sheet as of December 31, 1946, shows assets consisting of notes and accounts receivable and good will. The greater portion of the notes and accounts receivable was owed to the corporation by a bank which closed its doors in 1930. The State banking authorities applied the amount owed by the bank in reduction of accounts payable by the corporation to the bank. The balance of the notes and accounts receivable is uncollectible because of the applicable State statutes of limitation. The good will account is merely a bookkeeping figure, the corporation in fact having no good will.

Section 29.52–1 of Regulations 111 provides in part as follows:

* * * A corporation having an existence during any portion of a taxable year is required to make a return. * * * 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 it continues in existence. * * *

There is no specific provision in the regulations with respect to the necessity of filing a Federal income tax return in the case of a corporation which has ceased business operations and has not been *formally* dissolved. With respect to a newly organized corporation, section 29.52–1 of Regulations 111 further provides:

* * * A corporation which has received a charter, but has never perfected its organization, which has transacted no business and had no income from any source, may upon presentation of the facts to the collector be relieved from the necessity of making a return as long as it remains in an unorganized condition. In the absence of a proper showing to the collector such a corporation will be required to make a return.

In *Kamin Chevrolet Co.* v. *Commissioner* (3 T. C., 1076), pursuant to a resolution of the board of directors, the taxpayer distributed all of its assets to its stockholders on June 29, 1940, subject to its liabilities, but did not surrender its charter. One of the questions was whether the Bureau correctly treated the excess profits tax return filed for the calendar year 1940 as a return for the six months' period ended June 30, 1940. The Tax Court sustained the Bureau's action, stating in part:

It may be conceded that technically the petitioner had a legal existence for the entire calendar year 1940. Under the laws of the Commonwealth of Pennsylvania a corporation's charter is not canceled by a complete liquidation of the corporation. Some action must be taken either by the corporate officers or by the proper State authorities for the cancellation of the charter before the corporate existence ceases.

It does not follow from this that a corporation may not be dissolved for the purpose of the income and excess profits tax prior to the date that its charter is canceled. There may be a *de facto* dissolution even though there is no *de jure* dissolution. There can be no doubt that upon the stipulated facts there was a *de facto* dissolution of the petitioner corporation on June 30, 1940. Thereafter the corporation had no capital, no income, and no expenses. It was a mere empty shell.

There is no sound basis for holding that a *de jure* dissolution is required in connection with Federal income tax returns whereas a *de facto* dissolution is sufficient in regard to Federal excess profits tax returns. Therefore, relief from the necessity of filing a Federal income tax return in a case in which a *de facto* dissolution has occurred may be regarded as subject to administrative control similar to that which is applicable in the case of a corporation which has never perfected its organization, which has transacted no business, and had no income from any source.

Accordingly, it is held that upon presentation of the facts to the collector, a corporation which has ceased business operations, has retained no assets, and has no income, may be relieved from filing Federal income tax returns even though the corporation has not been formally dissolved.

SECTION 53.—TIME AND PLACE FOR FILING RETURNS.

SECTION 29.53-2: Extensions of time for filing returns. 1947-15-12593 Mim. 6157
(Also Section 58, Section 29.58-8.)

Extensions of time for filing income tax returns, declarations of estimated tax, statements of income tax withheld, and returns of information, Form 990.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., July 1, 1947.

Collectors of Internal Revenue and Others Concerned:

1. Under the provisions of section 29.53-2, Regulations 111, authority for granting extensions of time for filing income tax returns is delegated to collectors of internal revenue. Section 29.58-8, Regulations 111, contains a similar delegation of authority with respect to declarations of estimated tax. The authority of collectors to grant extensions was formerly limited by policy announcements issued from time to time by the Commissioner, and applications for extensions beyond certain specified periods were transmitted to the Bureau for consideration.

2. Requests for extensions which, under the policy announcements referred to in the foregoing paragraph were transmitted to the Bureau, were handled, prior to November 1, 1943, by the Income Tax Unit. Effective November 1, 1943, jurisdiction over the granting of extensions of time for filing income tax returns, declarations of estimated tax, and statements of income tax withheld at the source on wages was transferred to the Accounts and Collections Unit of the Bureau. Collectors of internal revenue are authorized, under general supervision of the Deputy Commissioner, Accounts and Collections Unit, to grant extensions of time for filing income tax returns, declarations of estimated tax, statements of income tax withheld, and certain information returns, within the periods prescribed by statute, in accordance with the rules and policies hereinafter set forth.

3. During recent years, a concerted effort has been made by the Bureau to effect a reduction in the number of extensions of time granted. Through cooperation of collectors of internal revenue, very gratifying results along this line have been obtained. Although it is the desire of the Bureau that this effort be continued, cognizance must be taken of circumstances which affect the ability of some taxpayers to file returns on or before the due date. Reasons for requesting an extension of time should be given sympathetic consideration when such reasons appear to be bona fide. Collectors will be expected to deny requests for extensions based on frivolous or inadequate reasons and to discourage requests for more time than circumstances appear to warrant. On the other hand, it is desired that collectors observe the policy of granting reasonable extensions of time in all cases in which there appears to be a real need for such action. The terms, periods, and conditions of extensions to be granted are hereinafter outlined with respect to various types of returns.

4. *Corporation income tax returns.*—A request for an extension of time for filing a corporation income tax return must be signed by an

officer or duly authorized agent of the corporation. Blanket requests by accountants or others will not be recognized, but a parent corporation may request extensions for its subsidiaries where a consolidated return is to be filed. In such cases, the name and address of each member of the affiliated group for which the extension is desired must be included in the application therefor and, if any such member is located in a collection district other than the one in which the parent corporation is located and the application is filed, the parent corporation shall immediately notify the collector for such other district of any extension granted. Extensions granted to corporations will be conditioned upon the filing of tentative returns and payment of one-fourth of the tax shown thereon to be due on or before the statutory date upon which the returns are required to be filed. A tentative return must be prepared on the appropriate income tax form, showing the name and address of the taxpayer and the estimated amount, if any, of the tax due. The items and schedules shown on the form need not be filled in. However, the affidavit on the tentative return must be executed in the same manner as is required on the final return. Interest is collectible at the rate of 6 per cent per annum on the difference between the amounts of tax shown on the tentative and final returns, computed from the due date of each installment to and including the date of payment. If an extension is granted too late to permit the filing of a tentative return on or before the due date, the collector may fix a date not more than 10 days thereafter for compliance with a tentative return requirement. In such cases, interest at the rate of 6 per cent per annum will be added to the amount paid with the tentative return. In any case in which an extension is granted beyond the due date for payment of the second installment of tax, the terms of the extension must provide for payment of that installment upon the basis of the estimated tax shown on the tentative return. In so far as practicable, extensions of time granted to corporations should be limited to 30 days and should rarely exceed 60 days. However, collectors are authorized to grant further extensions of time within the statutory limitation of 6 months when the circumstances clearly warrant such action. If a corporation requesting an extension states in its request that there will be no tax due upon its final return, an extension of time may be granted without requiring a tentative return. (For specific extension of time granted in every case for filing returns of income by foreign corporations which maintain an office or place of business within the United States, domestic corporations which transact their business and keep their records and books of accounts abroad, and domestic corporations whose principal income is from sources within possessions of the United States, see section 29.53–3(*a*), (2), (3), and (4) of Regulations 111.)

5. *Individual income tax returns.*—Collectors are authorized to grant extensions of time for filing individual income tax returns, conditioned upon the filing of a return on Form 1040 and payment of interest upon the tax, plus any additions thereto, from the due date of the return to the date of payment. Individual extensions should be limited in the first instance to a period of one month. As in the case of corporations, however, collectors are authorized to grant to individuals further extensions of time, within statutory limitations, when clearly warranted by the circumstances. Tentative returns will not be required of individuals other than estates, trusts, and certain

nonresident aliens hereinafter referred to. No extension of time will be granted for filing a return upon which the collector is required to compute the tax under section 51(f) of the Internal Revenue Code. Neither will an extension of time be granted for filing a return which, under the provisions of section 58(d)(3) of the Code, is considered as a declaration of estimated tax or the amendment of a declaration. (For specific extension of time granted in every case for filing returns of income by American citizens residing or traveling abroad, including persons in military or naval service on duty outside the United States, see section 29.53-3(*a*)(5) of Regulations 111.)

6. *Declarations of estimated tax.*—Although authority exists in the statute for granting an extension of time for filing a declaration of estimated tax, it is believed that the number of applications for extensions of this type will be small. It is proper for collectors to inform applicants for this type of extension to the effect that only a reasonable estimate is required and that any estimate made prior to the fourth quarter may be amended. If, however, a taxpayer shows that he is unable to make a reasonable estimate by the normal due date, or if his request is received too late for any other action, he may be granted a reasonable extension of time. An extension of time for filing an amended declaration may also be granted. Such an extension will, however, be granted only for reasons personal to the taxpayer, such as serious or protracted illness, death in the immediate family of the taxpayer occurring close to the date when the declaration is due, unavoidable absence from home, and similar reasons. Under no circumstances will an extension of time for filing an amended declaration be granted for purely business reasons or because the taxpayer can not obtain professional assistance for its preparation. In the case of a declaration, or an amended declaration, an extension of time for filing automatically extends, for the period of the extension, the time for making payment without interest. Extensions of time for filing declarations, or amended declarations, should be limited in so far as practicable, to a period of not more than 15 days. (For specific extension of time granted in every case for filing declarations of estimated tax otherwise due on or before the 15th day of the third month of the taxable year by United States citizens who are outside the States of the Union, the District of Columbia, and Hawaii on the 15th day of the third month of the taxable year, see section 29.58-8 of Regulations 111.)

7. *Returns of estates and trusts and certain nonresident aliens.*—Estates and trusts, although treated as individuals for the purpose of computing the amount of income tax due, are not subject to the provisions of the Internal Revenue Code relating to collection of income tax at the source on wages, nor are they required to file declarations or make advance payments of estimated tax. Requests for extensions received from estates and trusts should, therefore, be granted in the same manner as those received from corporations, i. e., conditioned upon the filing of tentative returns and payment of one-fourth of the tax shown thereon to be due. A similar rule should be applied in the case of nonresident aliens with respect to whom withholding of tax at the source on wages is not applicable. (For specific extension of time granted in every case for filing nontaxable returns of income by fiduciaries for estates or trusts, see section 29.53-3(*b*) of Regulations 111.)

8. *Statements of income tax withheld.*—Section 1625(c) of the Internal Revenue Code provides:

(c) EXTENSION OF TIME.—The Commissioner, under such regulations as he may prescribe with the approval of the Secretary, may grant to any employer a reasonable extension of time (not in excess of thirty days) with respect to the statements required to be furnished under this section.

It is anticipated that a number of employers will request extensions of time for furnishing these statements to employees and for filing the duplicates which are required to be filed with the return of income tax withheld for the fourth quarter of each year. Since most employees will need this information to prepare their returns, extensions of this type will be strictly limited. Collectors are authorized to grant such extensions only when the request is based upon circumstances which could not reasonably have been foreseen and provided for in advance, and then for no more than 15 days. (For specific extension of time granted in every case for furnishing statements (Withholding Receipts—Forms W–2) required by section 1625(a) of the Code upon termination of employment with respect to any employee whose employment is definitely terminated during the calendar year, see section 405.501(*b*) of Regulations 116.)

9. *Other returns.*—Reasonable extensions of time may be granted for sufficient cause for filing partnership returns (Forms 1065), information returns (Forms 1087, 1096, and 1099), returns of tax withheld at source under sections 143 and 144 of the Internal Revenue Code (Forms 1013 and 1042); and returns of information (Forms 990) by organizations exempt from income tax. No tentative returns will be required. No extension of time may be granted for filing a quarterly return of income tax withheld on wages (Form W–1). (For specific extension of time granted in every case for filing returns of income by foreign partnerships, see section 29.53–3(*a*)(1) of Regulations 111.)

10. *Form of application.*—No particular formality will be required, in connection with requests for extensions herein considered, other than that they be in writing, properly signed by the taxpayer or a duly authorized agent, and clearly set forth the particular tax or information return, declaration, or statement, including the taxable year or period thereof, with respect to the time for the filing or furnishing of which extension is desired, and also a full recital of the causes for the delay, to aid the collector 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. If, by reason of illness, absence, or other good cause, a taxpayer is unable to sign a request for extension, any person standing in close personal or business relationship to him may do so, provided the reasons and relationship are stated, in which case the signer of the request shall be considered as a duly authorized agent for this purpose.

11. *Records and reports.*—Collectors will maintain a record of all extensions granted or denied. This may be done by preparing an extra carbon copy of the letter granting or denying such extension, or by any other practicable method. On or before July 31 of each year, collectors will prepare reports to the Commissioner with respect to the number of extensions requested, granted, and denied during the fiscal year ended June 30.

12. *Stamping of returns.*—Since copies of extension letters may frequently become detached from returns, collectors will stamp on all returns, with respect to which extensions were granted, the words "Extension granted to _____," the date to be filled in with a dating stamp or with pen and ink. If stamps are not available for this purpose, requisition should be made promptly.

13. *Extensions by the Commissioner.*—Despite the fact that broad authority for granting extensions of time is delegated to collectors of internal revenue, it is anticipated that many taxpayers will address their applications for such extensions to the Commissioner. It will be the general policy to refer any such application received by the Commissioner to the appropriate collector if sufficient time exists for it to reach the collector's office and be acted upon before the due date for filing the return with respect to which the extension is requested. Nothing in this mimeograph shall be taken to preclude the granting of an extension by the Commissioner in any case in which the circumstances warrant such action.

14. This mimeograph supersedes Mimeographs 3361 (C. B. IV–2, 69 (1925)), 3759 (C. B. VIII–2, 123 (1929)), 3789 (C. B. IX–1, 126 (1930)), 4150 (C. B. XIII–1, 71 (1934)), and 4584 (C. B. 1937–1, 97), and also all other prior instructions and policy announcements relating generally to the type of extensions herein considered.

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

JOSEPH D. NUNAN, Jr.,
Commissioner.

Approved July 1, 1947.

JOSEPH J. O'CONNELL, Jr.,
Acting Secretary of the Treasury.

SECTION 54.—RECORDS AND SPECIAL RETURNS.

SECTION 29.54–1: Records and income tax forms. 1947–19–12641
I. T. 3866

INTERNAL REVENUE CODE.

Acceptability, for Federal income tax purposes, of microfilm reproductions of records.

Advice is requested whether microfilm reproductions of records are acceptable for Federal income tax purposes.

Section 54 of the Internal Revenue Code provides in part that every person liable to any tax imposed under Chapter 1 of the Code or for the collection thereof shall keep such records as the Commissioner, with the approval of the Secretary, may from time to time prescribe. Under section 29.54–1 of Regulations 111, every person, with certain exceptions not material here, is required to keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of the gross income and the deductions, credits, and other matters required to be shown in any return under Chapter 1 of the Code. Such books or records are required to be kept at all times available for inspection by internal revenue officers, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

It would be undesirable and impracticable for the Bureau to attempt to make tax determinations on the basis of microfilm reproductions of general books of account, such as cash books, journals, voucher registers, ledgers, etc. However, no objection will be interposed to the retention by taxpayers of only microfilm reproductions of supporting records of details, such as payroll records, canceled checks, invoices, vouchers, etc., provided the following conditions are met: (1) the taxpayer will retain microfilmed copies so long as the contents thereof may become material in the administration of any internal revenue law; (2) the taxpayer will provide appropriate facilities for preservation of the films and for the ready inspection and location of the particular records, including a projector for viewing the records, in the event inspection is necessary for tax purposes; and (3) the taxpayer will be ready to make any transcriptions of the information contained on the microfilm which may be required.

SECTION 55.—PUBLICITY OF RETURNS.

SECTION 29.55(b)-1: Inspection of returns. 1947-24-12709
T. D. 5591

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 458.—INSPECTION OF RETURNS.

Revoking paragraph 16 of Treasury Decision 4359 [C. B. XI-2, 305 (1932)], as amended, relating to public decisions in respect of overassessments of income, profits, estate, and gift taxes allowed in excess of $20,000.

TREASURY DEPARTMENT,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

(*a*) Pursuant to the provisions of section 55(a) of the Internal Revenue Code (53 Stat., 29; 26 U. S. C., 55(a)); section 257(a) of the Revenue Act of 1926; section 55 of the Revenue Act of 1928; section 55 of the Revenue Act of 1932, as amended by section 218(h) of the National Industrial Recovery Act; section 55(a) of the Revenue Acts of 1934, 1936, and 1938 (44 Stat., 51; 45 Stat., 809; 47 Stat., 189; 48 Stat., 209, 698; 49 Stat., 1671; 52 Stat., 478), paragraph 16 of Treasury Decision 4359, approved December 13, 1932 [C. B. XI-2, 305 (1932)], as amended by Treasury Decision 4583, approved August 29, 1935 [C. B. XIV-2, 318] [26 CFR, 458.100], is hereby revoked.

(*b*) Because of the revocation of Executive Order No. 7165 of August 29, 1935, upon which such paragraph 16 is based, it is found that it is impracticable to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(*c*) This Treasury decision shall be effective upon its filing for publication in the Federal Register.

JOHN W. SNYDER,
Secretary of the Treasury.

Approved.

HARRY S. TRUMAN,
The White House.

(Filed with the Division of the Federal Register November 18, 1947, 11.21 a. m.)

EXECUTIVE ORDER—REVOCATION OF EXECUTIVE ORDER NO. 7165 OF AUGUST 29, 1935, RELATING TO THE PREPARATION AND PUBLICITY OF DECISIONS IN RESPECT OF OVERASSESSMENTS OF INCOME, PROFITS, ESTATE, AND GIFT TAXES ALLOWED IN EXCESS OF $20,000.

By virtue of the authority vested in me by section 55(a) of the Internal Revenue Code (53 Stat., 29; 26 U. S. C., 55(a)), section 257(a) of the Revenue Act of 1926; section 55 of the Revenue Act of 1928; section 55 of the Revenue Act of 1932, as amended by section 218(h) of the National Industrial Recovery Act; and section 55(a) of the Revenue Acts of 1934, 1936, and 1938 (44 Stat., 51; 45 Stat., 809; 47 Stat., 189; 48 Stat., 209, 698; 49 Stat., 1671; 52 Stat., 478); Executive Order No. 7165 of August 29, 1935, relating to the preparation and publicity of decisions in respect of overassessments of income, profits, estate, and gift taxes allowed in excess of $20,000 is hereby revoked.

This order shall become effective upon its filing for publication in the Federal Register.

HARRY S. TRUMAN.

THE WHITE HOUSE,
November 18, 1947.

(9906)

(Filed with the Division of the Federal Register November 18, 1947, 11.21 a. m.)

SECTION 58.—DECLARATION OF ESTIMATED TAX BY INDIVIDUALS.

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

INTERNAL REVENUE CODE.

Granting extensions of time for filing declarations. (See Mim. 6157, page 64.)

SUBCHAPTER C.—SUPPLEMENTAL PROVISIONS.

SUPPLEMENT A.—RATES OF TAX.

SECTION 101.—EXEMPTIONS FROM TAX ON CORPORATIONS.

1947–15–12594
I. T. 3860

INTERNAL REVENUE CODE AND REVENUE ACT OF 1938.

A corporation which otherwise qualifies for exemption under sections 101(14) of the Internal Revenue Code and the Revenue Act of 1938 will not be denied exemption from Federal income taxation under those provisions of law solely because its capital stock is owned by others than an exempt organization if such stock ownership confers no rights to dividends or profits.

I. T. 3264 (C. B. 1939–1 (Part 1), 121) modified.

Reconsideration has been given to I. T. 3264 (C. B. 1939–1 (Part 1), 121), which holds that a building corporation, incorporated for the particular purpose of building and maintaining a chapter house for a fraternity, the stock of which is held by others than an exempt or-

ganization, is not entitled to exemption from Federal income taxation under the provisions of section 101(14) of the Revenue Act of 1938.

The language of section 101(14) of the Revenue Act of 1938 is almost identical with that of section 101(14) of the Internal Revenue Code. Those sections provide for the exemption from Federal income taxation of corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from Federal income taxation. The mere fact that the capital stock of such a corporation is owned by others than an exempt organization is not believed to be sufficient in itself to warrant denial of exemption from Federal income taxation, if such stock ownership confers no rights to receive dividends or profits at any time.

Accordingly, I. T. 3264, supra, is modified to provide that if the capital stock of the building corporation therein involved is held by others than an exempt organization and if the holders of such stock could in no case receive any dividends or profits, all the income from the property held by the building corporation, less expenses, being paid over to an organization which itself is exempt from tax, the corporation is entitled to exemption from Federal income taxation under section 101(14) of the Revenue Act of 1938. It follows that the corporation is also entitled to exemption under section 101(14) of the Internal Revenue Code.

SUPPLEMENT B.—COMPUTATION OF NET INCOME.

SECTION 112(g).—RECOGNITION OF GAIN OR LOSS: DEFINITION OF REORGANIZATION.

SECTION 19.112(g)-3: Exchanges solely of stock or securities, or property, solely for stock or securities, in pursuance of plan of reorganization.

INTERNAL REVENUE CODE.

Exchange of stock for new stock and new debenture bonds in "recapitalization" having no legitimate corporate business purpose. (See Ct. D. 1687, page 79.)

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

SECTION 29.113(a)-2: General rule. (Also Section 29.113(a)(10)-1; Section 118, Section 29.118-1.) 1947-14-12583 I. T. 3858

INTERNAL REVENUE CODE.

Determination of the basis for computing gain or loss on the subsequent sale or other disposition of securities of a reorganized corporation, acquired upon settlement of a series of contracts to buy and sell such securities "when issued," involving the applicability of the "first in, first out" rule and the allocation of nondeductible wash sale losses.

I. T. 3721 (C. B. 1945, 164) supplemented.

Advice is requested as to the basis for computing gain or loss for Federal income tax purposes on the subsequent sale or other disposition of securities of a reorganized corporation acquired upon settlement of a series of contracts to buy and sell such securities " when issued." The inquiry involves the applicability of the " first in, first out " rule prescribed in sections 29.22(a)-8 and 29.118-1(*d*) of Regulations 111 and the allocation of nondeductible wash sale losses under section 113(a)(10) of the Internal Revenue Code.

The treatment of various types of transactions in connection with trading in securities on a " when issued " basis was ruled upon in I. T. 3721 (C. B. 1945, 164), and the discussion and conclusions set forth herein may be considered as supplementary to question and answer 2(*a*)(2) in I. T. 3721.

In the instant case, the reorganization of the corporation has been held by the Bureau to be a taxable transaction. The settlement date for the " when issued " transactions was August 26, 1946. None of the taxpayers involved (hereinafter referred to as customers) was a dealer in securities. In each of the four typical cases presented, the customer's contracts to buy securities " when issued " were for a greater number of shares than the number of shares he had contracted to sell, so that upon final settlement each customer actually acquired a certain number of shares of newly issued securities. It will be observed from the following examples and discussion that the short-term capital gains resulting from " matching " buy and sell contracts are taxable in the year of the settlement, whereas losses, being nondeductible under section 118 of the Internal Revenue Code, are allocable to the cost of the newly issued securities acquired, under a principle similar to that prescribed in section 29.118-1(*d*) of Regulations 111.

CASE 1.

Customer A entered into contracts to buy and sell common stock " when issued " as follows:

Buy contracts.			Sell contracts.		
Date.	Number of shares.	Price.	Date.	Number of shares.	Price
May 15, 1945	100 at 18	$1,800	July 15, 1946	200 at 32	$6,400
July 15, 1945	200 at 20	4,000			
June 15, 1946	200 at 31	6,200			
	500	12,000		200	6,400

On August 26, 1946, all of the contracts were settled by the broker without instructions from the customer who paid him $5,600. Three hundred shares of stock were credited to the customer's account. On October 1, 1946, the customer sold 100 shares at 30, and the broker made delivery from the 300 shares which had been credited to A's account on August 26, 1946.

Although the contracts were settled by the broker without instructions from the customer, the shares received pursuant to each of the buy contracts can be identified by certificate numbers or according to the date of the buy contract and the purchase price, provided such identification is made upon receipt of the securities on the settlement

date. If such identification is made, the manner in which the sell contract was actually settled governs the determination of which shares have been sold and which have been retained by the taxpayer. (Cf. *James E. Davidson* v. *Commissioner*, 305 U. S., 44, Ct. D. 1366, C. B. 1938–2, 227.)

The "first in, first out" rule prescribed in section 29.22(a)–8 of Regulations 111 is not applicable to stock purchased on a "when issued" basis, because the buy contracts are all settled on the settlement date and the shares received pursuant to such contracts are received simultaneously. However, if the stock received on the settlement date pursuant to the buy contracts is not properly marked for identification purposes, then a rule similar to the "first in, first out" rule should be applied and the shares of stock used to settle the sell contract should be charged against the shares of stock acquired pursuant to the earliest buy contracts.

Assuming that the broker actually delivered (1) 100 shares purchased at 18 pursuant to the contract dated May 15, 1945, and 100 shares purchased at 20 pursuant to the contract dated July 15, 1945, in settlement of the sell contract, and (2) 100 shares purchased at 20 on July 15, 1945, to cover the sale made on October 1, 1946 (or that the securities received pursuant to the buy contracts were not properly marked for identification purposes), the transactions outlined should be treated as follows:

Transaction.	Cost of shares.	Sale proceeds.	Short-term capital gain.
500 shares received Aug. 26, 1946, pursuant to buy contracts	$12,000		
Less: 200 shares delivered Aug. 26, 1946, in settlement of sell contract (100 at 18 plus 100 at 20)	3,800	$6,400	$2,600
	8,200		
Less: Shares delivered to cover sale made Oct. 1, 1946 (100 at 20)	2,000	3,000	1,000
Basis of 200 shares retained (200 at 31)	6,200		
Total proceeds of sales		9,400	
Total short-term capital gains			3,600

CASE 2.

Customer B entered into contracts to buy and sell common stock "when issued" as follows:

Buy contracts.			Sell contracts.		
Date.	Number of shares.	Price.	Date.	Number of shares.	Price.
May 15, 1945	100 at 18	$1,800	July 15, 1946	200 at 32	$6,400
July 15, 1945	200 at 20	4,000			
June 15, 1946	200 at 31	6,200			
	500	12,000		200	6,400

Prior to August 26, 1946, customer B instructed the broker to deliver the stock to be acquired pursuant to the buy contract dated June 15, 1946, against the sell contract. On August 26, 1946, all of the contracts were settled, and customer B paid the broker $5,600 and received 300 shares of stock.

The transactions outlined should be treated as follows:

Transaction.	Cost of shares.	Sale proceeds.	Short-term capital gain.
500 shares received Aug. 26, 1946, pursuant to buy contracts	$12,000		
Less: 200 shares delivered Aug. 26, 1946, in settlement of sell contract (200 at 31)	6,200	$6,400	$200
Basis of 300 shares retained (100 at 18 plus 200 at 20)	5,800		

CASE 3.

Customer C entered into contracts to buy and to sell common stock "when issued" as follows:

Buy contracts.			Sell contracts.		
Date.	Number of shares.	Price.	Date.	Number of shares.	Price.
May 15, 1945	100 at 18	$1,800	Feb. 15, 1946	200 at 27	$5,400
June 15, 1945	200 at 19	3,800			
May 15, 1946	100 at 30	3,000			
July 15, 1946	200 at 32	6,400			
	600	15,000		200	5,400

Prior to August 26, 1946, customer C instructed the broker to deliver the stock acquired pursuant to the buy contract dated July 15, 1946, against the sell contract. On August 26, 1946, the contracts were settled, and customer C paid the broker $9,600 and received 400 shares of stock.

The transactions outlined should be treated as follows:

Transaction.			Cost of shares.	Sale proceeds.	Nondeductible loss.
600 shares received Aug. 26, 1946, pursuant to buy contracts			$15,000		
Less: 200 shares delivered Aug. 26, 1946, in settlement of sell contract (200 at 32)			6,400	$5,400	$1,000
400 retained shares acquired Aug. 26, 1946:					
Date.	Number of shares.	Cost.			
May 15, 1945	100 at 18	$1,800			
June 15, 1945	200 at 19	3,800			
May 15, 1946	100 at 30	3,000			
			8,600		

The loss of $1,000 is nondeductible because of acquisition of substantially identical stock by purchase within the 61-day period prescribed in section 118 of the Code and section 29.118-1 of Regulations 111.

Section 29.118-1(*d*) of Regulations 111 is not applicable to this case since the 400 retained shares were acquired simultaneously on the settlement date, and there is no other provision in the regulations which specifically covers the present situation. It is held, however, that a principle similar to that prescribed in section 29.118-1(*d*) is applicable. Accordingly, the shares of stock sold will be "matched" with an equal

number of shares of stock acquired in accordance with the order of acquisition of the buy contracts. The new basis of the retained shares, adjusted in accordance with the provisions of section 113(a)(10) of the Code and section 29.113(a)(10)–1, example (2), of Regulations 111, is as follows:

Number of shares.	Date.	Nondeductible loss.	Old basis.	New basis.
100 at 18	May 15, 1945	$500	$1,800	$2,300
100 at 19	June 15, 1945	500	1,900	2,400
100 at 19	June 15, 1945		1,900	1,900
100 at 30	May 15, 1946		3,000	3,000
400		1,000	8,600	9,600

CASE 4.

Customer D entered into contracts to buy and sell common stock "when issued" as follows:

Buy contracts.			Sell contracts.		
Date.	Number of shares.	Price.	Date.	Number of shares.	Price.
Jan. 15, 1946	300 at 26	$7,800	Sept. 15, 1945	100 at 22	$2,200
Mar. 15, 1946	300 at 28	8,400			
	600	16,200		100	2,200

On August 26, 1946, all of the contracts were settled without any instructions from customer D, and customer D paid the broker $14,000 and received 500 shares of stock.

Assuming that the broker actually delivered 100 shares purchased at 26 pursuant to the contract dated January 15, 1946, in settlement of the sell contract (or that the securities received pursuant to the buy contracts were not properly marked for identification purposes), the transactions outlined should be treated as follows:

Transaction.	Cost of shares.	Sale proceeds.	Nondeductible loss.
600 shares received Aug. 26, 1946, pursuant to buy contracts	$16,200		
Less: 100 shares delivered Aug. 26, 1946, in settlement of sell contract (100 at 26)	2,600	$2,200	$400
Basis of 500 shares retained:			
200 at 26	$5,200		
300 at 28	8,400		
	13,600		

The loss of $400 is nondeductible because of acquisition of substantially identical stock by purchase within the 61-day period prescribed in section 118 of the Code and section 29.118–1 of Regulations 111.

The new basis of the retained shares, adjusted in accordance with the provisions of section 113(a)(10) of the Code and section 29.113(a)(10)–1, example (1), of Regulations 111, is as follows:

Number of shares.	Date.	Nondeductible loss.	Old basis.	New basis.
100 at 26	Jan. 15, 1946	$400	$2,600	$3,000
100 at 26	Jan. 15, 1946		2,600	2,600
300 at 28	Mar. 15, 1946		8,400	8,400
500		400	13,600	14,000

SECTION 29.113(a)–2: General rule. 1947–16–12610
(Also Section 29.113(a)(5)–1.) I. T. 3862

INTERNAL REVENUE CODE.

The basis (unadjusted) for determining gain or loss upon the sale of Louisiana community property by the executor or administrator of a deceased husband's estate is (1) with respect to the widow's one-half share of such property, the cost or other basis of such share to the community, and (2) with respect to the husband's one-half share, the fair market value thereof as of the date of his death.

Advice is requested as to the basis for determining gain or loss, for Federal income tax purposes, upon the sale of Louisiana community property by the executor or administrator of a deceased husband's estate, with particular reference to the effect, if any, of section 811(e)(2) of the Internal Revenue Code, as added by section 402(b)(2) of the Revenue Act of 1942, relating to the inclusion in the estate of a decedent, for Federal estate tax purposes, of the interest of the surviving spouse in the community property.

Section 113(a) of the Internal Revenue Code provides that the basis (unadjusted) of property, for the purpose of determining gain or loss, shall be its cost, except in certain specified instances. Section 113(a)(5) of the Code, one of these exceptions, reads in part as follows:

(5) PROPERTY TRANSMITTED AT DEATH.—If the property was acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, the basis shall be the fair market value of such property at the time of such acquisition. * * * In the case of an election made by the executor under section 811(j), the time of acquisition of the property shall, for the purpose of this paragraph, be the applicable valuation date of the property prescribed by such section in determining the value of the gross estate.

The last sentence of the above-quoted portion of section 113(a)(5) of the Code was added by section 144(a) of the Revenue Act of 1942. Section 144(b) of the Revenue Act of 1942 provides that the sentence so added shall be applicable only with respect to property includible in the gross estate of a decedent dying after the date of enactment (October 21, 1942) of the Revenue Act of 1942.

Under section 113(a)(5) of the Code, supra, the proper gain or loss basis of the community property in the instant case depends upon whether the widow acquired her one-half share of such property by inheritance, or as outright owner thereof, or whether all of the community property was acquired by the deceased husband's estate from the decedent.

With respect to Louisiana community property, it has been held that the wife has a present vested interest in such property equal to that of her husband and that she is the owner of one-half of the community income. (See *Bender* v. *William Pfaff*, 282 U. S., 127, Ct. D. 261, C. B. IX–2, 200 (1930).) Upon the death of the husband, this ownership of the wife does not cease. The Supreme Court of Louisiana, in 1943, in *Succession of Wiener* (203 La., 649, 14 So. (2d), 475, 477, 480–481), in speaking of the interest of the wife in the community property, said:

> That this community is a partnership in which the husband and wife own equal shares, their title thereto vesting at the very instant such property is acquired, is well settled in this State [citations] * * *
>
> * * * * * * *
>
> * * * Unlike the wife's interest in the common law States, where joint tenancies and tenancies by the entirety abide, the wife's interest in the community property in Louisiana is more than a mere expectancy or hope and her husband's death is not the force that generates her title thereto and her rights therein. Over a hundred years ago, in the case of *Dixon* v. *Dixon's Executors* (4 La., 188, 23 Am. Dec., 478), this court held that the rights of the wife, as well as those of the husband, in and to the marital gains, grow out of the marriage contract itself and do not originate only when it is dissolved, and this is now our settled law * * * She is the half-partner and owner of all acquisitions made during the existence of the community, *whether they be property or income.* She has the same privilege as her husband of disposing of her interest therein by will, and, in the absence of a will, at her death her interest in the community property passes to her legal heirs in the same manner as her husband's interest therein passes to his legal heirs in the absence of a will. [Emphasis supplied by the court.]

Although the entire community property, when there are community debts, passes under the control of the executor or executors of the husband's succession (*Succession of McLean*, 12 La. Ann., 222; *Kremer et al.* v. *Kremer*, 121 La., 484, 46 So., 600; *Fontenot et al.* v. *Fontenot et al.*, 157 La., 511, 102 So., 590) and "quoad 'its administration'" is regarded as their property so that the entire income received from such property during the period of administration is taxable to the decedent's estate (*Estate of Hunt Henderson et al.* v. *Commissioner*, Docket No. 111403, Tax Court memorandum opinion entered December 14, 1943), and although the wife's share of the community property is residuary in character in the sense that it will be reduced by the community debts, it is clear, under the foregoing quotation from *Succession of Wiener*, supra, that the death of the husband was not the generating source of the wife's title or right to one-half of the community property but that she acquired such title and right under the marriage contract.

Inasmuch as the widow, under the laws of Louisiana, retains her interest in an undivided one-half of the community property after the death of her husband, and does not take her share as a legatee, devisee, or heir, but as outright owner, it follows that her share of the community property is not acquired by bequest, devise, or inheritance, nor is it acquired by the deceased husband's estate from the decedent. Therefore, the provisions of section 113(a)(5) of the Code, supra, are not applicable to the wife's undivided one-half share of the community property. However, that section of the Code is applicable with respect to the deceased husband's share of such property, as it is "acquired * * * by the decedent's estate from the decedent."

The mere fact that the entire community property is included in the deceased husband's gross estate under the provisions of section 811(e)(2) of the Code for Federal estate tax purposes is not inconsistent with the conclusion that under section 113(a) of the Code, supra, the basis of the widow's one-half share of the community property, for determining gain or loss, is cost (adjusted) to the community. The Supreme Court of the United States, in upholding the constitutionality of section 811(e)(2) of the Code in *Fernandez* v. *Samuel G. Wiener et al.* (326 U. S., 340, Ct. D. 1657, C. B. 1946–1, 270), stated that the power of Congress to impose death taxes is not limited to the taxation of transfers at death, but extends to the creation, exercise, acquisition, or relinquishment of any power or legal privilege which is incident to the ownership of property. The Court stated that under the Louisiana community property laws the death of the husband terminates his control over the widow's share of the community property, and for the first time brings her half of such property into her full and exclusive possession, control, and enjoyment, and that the death of the wife liberates her husband's share from the restrictions which the existence of the community had placed upon his control of it. It is the cessation of these powers and removal of these restrictions which are taxed under section 811(e)(2) of the Code and not the transfer of the property itself. The Court further noted that the rights in the property subject to these powers and restrictions were in every sense " vested " from the moment the community began. Thus, it is readily seen that the one-half interest of the widow in the community property is taxed under section 811(e)(2) of the Code not because the wife inherits her one-half share from the deceased husband, but because of the foregoing shifts in legal relationships.

Accordingly, it is held that the basis (unadjusted) for determining gain or loss upon the sale of Louisiana community property by the executor or administrator of a deceased husband's estate is (1) with respect to the widow's one-half share of such property, the cost or other basis of such share to the community, and (2) with respect to the husband's one-half share, the fair market value thereof as of the date of his death. (See I. T. 3808, C. B. 1946–2, 58, relating to the basis of Texas community property under similar circumstances.)

SECTION 29.113(a)(5)–1: Basis of property acquired by bequest, devise, or inheritance.

INTERNAL REVENUE CODE.

Deceased husband's one-half share of Louisiana community property sold by executor or administrator of his estate. (See I. T. 3862, page 76.)

SECTION 29.113(a)(10)–1: Stocks or securities acquired in " wash sales."

INTERNAL REVENUE CODE.

Securities of a reorganized corporation acquired upon settlement of a series of contracts to buy and sell such securities " when issued." (See I. T. 3858, page 71.)

SECTION 114.—BASIS FOR DEPRECIATION AND DEPLETION.

SECTION 19.114–1: Basis for allowance of depreciation and depletion.

INTERNAL REVENUE CODE.

Chromite ore used for refractory purposes. (See Ct. D. 1694, page 28.)

SECTION 115.—DISTRIBUTIONS BY CORPORATIONS.

SECTION 19.115–3: Earnings or profits.

INTERNAL REVENUE CODE.

Exchange of stock for new stock and new debenture bonds in "recapitalization" having no legitimate corporate business purpose. (See Ct. D. 1687, below.)

SECTION 19.115–9: Distribution in redemption or cancellation of stock taxable as a dividend. 1947–15–12595 Ct. D. 1687

(Also Section 112(g), Section 19.112(g)–3; Section 115, Section 19.115–3.)

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT.

1. DIVIDENDS—REORGANIZATION—RECAPITALIZATION—DISTRIBUTION OF EARNINGS AND PROFITS.

A corporation whose stock was owned, except for one share, by the petitioner in No. 287 and his wife and another corporation whose stock was owned, except for a few shares, by the petitioner in No. 209, each changed its capital structure under a plan of reorganization and issued stock and debenture bonds in exchange for stock. At the time of the transactions each corporation had earnings and profits sufficient to cover the value of the debenture bonds. *Held:* The distribution of debentures in each case was a taxable dividend under section 115 (a) and (g) of the Internal Revenue Code and there was no tax-free reorganization under section 112 of the Code. While there was a technical "recapitalization" there was no "recapitalization" within the meaning of section 112(g) of the Code. For the purpose of that section nothing can be a "recapitalization" unless it partakes of those characteristics of a reorganization which underlie the purpose of Congress in postponing the tax liability. The creation of new corporate obligations which are transferred to stockholders in relation to their former holdings, so as to produce, for all practical purposes, the same result as a distribution of cash earnings of equivalent value, can not obtain tax immunity because cast in the form of a recapitalization-reorganization. A "reorganization" which is merely a vehicle, however elaborate or elegant, for conveying earnings from accumulations to the stockholders is not a reorganization under section 112 of the Code. The facts would equally sustain the imposition of the tax on the debentures under section 112(c)(1) of the Code.

2. DECISIONS AFFIRMED.

Decisions of the United States Circuit Court of Appeals, Third Circuit (155 Fed. (2d), 237, and 155 Fed. (2d), 246), affirming the decisions of The Tax Court (4 T. C., 897, and 5 T. C., 351), affirmed.

SUPREME COURT OF THE UNITED STATES.

287. *J. Robert Bazley, petitioner*, v. *Commissioner of Internal Revenue.*

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

209. *Adam A. Adams, petitioner*, v. *Commissioner of Internal Revenue.*

On writ of certiorari to the Circuit Court of Appeals for the Third Circuit.

[June 16, 1947.]

OPINION.

Mr. Justice FRANKFURTER delivered the opinion of the Court.

The proper construction of provisions of the Internal Revenue Code relating to corporate reorganizations is involved in both these cases. Their importance to the Treasury as well as to corporate enterprise led us to grant certiorari. (329 U. S., 695; 329 U. S., 701.) While there are differences in detail to which we shall refer, the two cases may be disposed of in one opinion.

In the Bazley case, No. 287, the Commissioner of Internal Revenue assessed an income tax deficiency against the taxpayer for the year 1939. Its validity depends on the legal significance of the recapitalization in that year of a family corporation in which the taxpayer and his wife owned all but one of the company's 1,000 shares. These had a par value of $100. Under the plan of reorganization the taxpayer, his wife, and the holder of the additional share were to turn in their old shares and receive in exchange for each old share five new shares of no par value, but of a stated value of $60, and new debenture bonds, having a total face value of $400,000, payable in 10 years but callable at any time. Accordingly, the taxpayer received 3,990 shares of the new stock for the 798 shares of his old holding and debentures in the amount of $319,200. At the time of these transactions the earned surplus of the corporation was $855,783.82.

The Commissioner charged to the taxpayer as income the full value of the debentures. The Tax Court affirmed the Commissioner's determination, against the taxpayer's contention that as a "recapitalization" the transaction was a tax-free "reorganization" and that the debentures were "securities in a corporation a party to a reorganization," "exchanged solely for stock or securities in such corporation" "in pursuance of a plan of reorganization," and as such no gain is recognized for income tax purposes. (Internal Revenue Code, sections 112(g)(1)(E) and 112(b)(3).) The Tax Court found that the recapitalization had "no legitimate corporate business purpose" and was therefore not a "reorganization" within the statute. The distribution of debentures, it concluded, was a disguised dividend, taxable as earned income under sections 22(a) and 115 (a) and (g). (4 T. C., 897.) The Circuit Court of Appeals for the Third Circuit, sitting *en banc*, affirmed, two judges dissenting. (155 Fed. (2d), 237.)

Unless a transaction is a reorganization contemplated by section 112(g), any exchange of "stock or securities" in connection with such transaction, can not be "in pursuance of the plan of reorganization" under section 112(b)(3). While section 112(g) informs us that "reorganization" means, among other things, "a recapitalization," it does not inform us what "recapitalization" means. "Recapitalization" in connection with the income tax has been part of the revenue laws since 1921. (42 Stat., 227, 230, section 202(c)(2).) Congress has never defined it and the Treasury regulations shed only limited light. (Treasury Regulations 103, section 19.112(g).) One thing is certain. Congress did not incorporate some technical concept, whether that of accountants or of other specialists, into section 112(g), assuming that there is agreement among specialists as to the meaning of recapitalization. And so, recapitalization as used in section 112(g) must draw its meaning from its function in that section. It is one of the forms of reorganization which obtains the privileges afforded by section 112(g). Therefore, "recapitalization" must be construed with reference to the presuppositions and purpose of section 112(g). It was not the purpose of the reorganization provision to exempt from payment of a tax what as a practical matter is realized gain. Normally, a distribution by a corporation, whatever form it takes, is a definite and rather unambiguous event. It furnishes the proper occasion for the determination and taxation of gain. But there are circumstances where a formal distribution, directly or through exchange of securities, represents merely a new form of the previous participation in an enterprise, involving no change of substance in the rights and relations of the interested

parties one to another or to the corporate assets. As to these, Congress has said that they are not to be deemed significant occasions for determining taxable gain.

These considerations underlie section 112(g) and they should dominate the scope to be given to the various sections, all of which converge toward a common purpose. Application of the language of such a revenue provision is not an exercise in framing abstract definitions. In a series of cases this Court has withheld the benefits of the reorganization provision in situations which might have satisfied provisions of the section treated as inert language, because they were not reorganizations of the kind with which section 112, in its purpose and particulars, concerns itself. (See *Pinellas Ice & Cold Storage Co.* v. *Commissioner*, 287 U. S., 462 [Ct. D. 630, C. B. XII–1, 161 (1933)]; *Gregory* v. *Helvering*, 293 U. S., 465 [Ct. D. 911, C. B. XIV–1, 193 (1935)]; *Le Tulle* v. *Scofield*, 308 U. S., 415 [Ct. D. 1432, C. B. 1940–1, 151].)

Congress has not attempted a definition of what is recapitalization and we shall follow its example. The search for relevant meaning is often satisfied not by a futile attempt at abstract definition but by pricking a line through concrete applications. Meaning frequently is built up by assured recognition of what does not come within a concept the content of which is in controversy. Since a recapitalization within the scope of section 112 is an aspect of reorganization, nothing can be a recapitalization for this purpose unless it partakes of those characteristics of a reorganization which underlie the purpose of Congress in postponing the tax liability.

No doubt there was a recapitalization of the Bazley corporation in the sense that the symbols that represented its capital were changed, so that the fiscal basis of its operations would appear very differently on its books. But the form of a transaction as reflected by correct corporate accounting opens questions as to the proper application of a taxing statute; it does not close them. Corporate accounting may represent that correspondence between change in the form of capital structure and essential identity in fact which is of the essence of a transaction relieved from taxation as a reorganization. What is controlling is that a new arrangement intrinsically partake of the elements of reorganization which underlie the congressional exemption and not merely give the appearance of it to accomplish a distribution of earnings. In the case of a corporation which has undistributed earnings, the creation of new corporate obligations which are transferred to stockholders in relation to their former holdings, so as to produce, for all practical purposes, the same result as a distribution of cash earnings of equivalent value, can not obtain tax immunity because cast in the form of a recapitalization-reorganization. The governing legal rule can hardly be stated more narrowly. To attempt to do so would only challenge astuteness in evading it. And so it is hard to escape the conclusion that whether in a particular case a paper recapitalization is no more than an admissible attempt to avoid the consequences of an outright distribution of earnings turns on details of corporate affairs, judgment on which must be left to The Tax Court. (See *Dobson* v. *Commissioner*, 320 U. S., 489 [Ct. D. 1597, C. B. 1944, 56].)

What have we here? No doubt, if the Bazley corporation had issued the debentures to Bazley and his wife without any recapitalization, it would have made a taxable distribution. Instead, these debentures were issued as part of a family arrangement, the only additional ingredient being an unrelated modification of the capital account. The debentures were found to be worth at least their principal amount, and they were virtually cash because they were callable at the will of the corporation which in this case was the will of the taxpayer. One does not have to pursue the motives behind actions, even in the more ascertainable forms of purpose, to find, as did The Tax Court, that the whole arrangement took this form instead of an outright distribution of cash or debentures, because the latter would undoubtedly have been taxable income whereas what was done could, with a show of reason, claim the shelter of the immunity of a recapitalization-reorganization.

The Commissioner, The Tax Court and the Circuit Court of Appeals agree that nothing was accomplished that would not have been accomplished by an outright debenture dividend. And since we find no misconception of law on the part of The Tax Court and the Circuit Court of Appeals, whatever may have been their choice of phrasing, their application of the law to the facts of this case must stand. A "reorganization" which is merely a vehicle, however elaborate or elegant, for conveying earnings from accumulations to the stockholders is not a reorganization under section 112. This disposes of the case as a matter of law, since the facts as found by The Tax Court bring them within it. And even if

this transaction were deemed a reorganization, the facts would equally sustain the imposition of the tax on the debentures under section 112(c) (1) and (2).[1] (*Commissioner* v. *Estate of Bedford*, 325 U. S., 283 [Ct. D. 1641, C. B. 1945, 357].)

In the Adams case, No. 209, the taxpayer owned all but a few of the 5,914 shares of stock outstanding out of an authorized 6,000, par value $100. By a plan of reorganization, the authorized capital was reduced by half, to $295,700, divided into 5,914 shares of no par value but having a stated value of $50 per share. The 5,914 old shares were canceled and the corporation issued in exchange therefor 5,914 shares of the new no-par common stock and 6 per cent 20-year debenture bonds in the principal amount of $295,700. The exchange was made on the basis of one new share of stock and one $50 bond for each old share. The old capital account was debited in the sum of $591,400, a new no-par capital account was credited with $295,700, and the balance of $295,700 was credited to a "Debenture Payable" account. The corporation at this time had accumulated earnings available for distribution in a sum not less than $164,514.82, and this account was left unchanged. At the time of the exchange, the debentures had a value not less than $164,208.82.

The Commissioner determined an income tax deficiency by treating the debenture bonds as a distribution of the corporation's accumulated earnings. The Tax Court sustained the Commissioner's determination (5 T. C., 351), and the circuit court of appeals affirmed. (155 Fed. (2d), 246.) The case is governed by our treatment of the Bazley case. The finding by The Tax Court that the reorganization had no purpose other than to achieve the distribution of the earnings, is unaffected by the bookkeeping detail of leaving the surplus account unaffected. (See section 115(b), and *Commissioner* v. *Wheeler*, 324 U. S., 542, 546 [Ct. D. 1637, C. B. 1945, 349, 351].)

Other claims raised have been considered but their rejection does not call for discussion.

Judgments affirmed.

Mr. Justice DOUGLAS and Mr. Justice BURTON dissent in both cases for the reasons stated in the joint dissent of Judges Maris and Goodrich in the court below. (*Bazley* v. *Commissioner*, 155 Fed. (2d), 237, 244.)

SECTION 117.—CAPITAL GAINS AND LOSSES.

SECTION 29.117–1: Meaning of terms. (Also Section 24, Section 29.24–2.) — 1947–22–12673, I. T. 3873

INTERNAL REVENUE CODE.

An amount paid as consideration for the transfer of a liquor license constitutes a capital investment which must be carried on the books of the transferee as a capital asset until such time as the license is again transferred or terminated.

Advice is requested relative to the treatment, for Federal income tax purposes, to be given an amount paid to the holder of a license issued under authority of the California Alcoholic Beverage Control Act as consideration for the assignment or transfer of such license.

In the case under consideration, an individual holds a license to engage in the "on-sale" liquor business, which license was issued by the State Board of Equalization of the State of California. The license is renewable each year at a cost of $525. The number of licenses issued is limited, and it appears to be the usual practice of the State board of equalization to renew a license upon application therefor. It is stated that a person holding such a license has no property right therein; that when a licensee transfers or assigns a license, the transferee or assignee does not receive the same license which the transferor or assignor held; and that although the licensee is privileged to transfer

[1] As amended by Supreme Court order of October 13, 1947.

or assign his license, his agreement to transfer or assign merely places the transferee or assignee in a position to apply for a new license, issuance of which is within the discretion of the State board of equalization.

In *The Elston Co.* v. *United States* (86 Ct. Cls., 136, 21 Fed. Supp., 267), a suit for the recovery of income taxes, the taxpayer owned 382 saloon license " renewal rights " in the city of Chicago, 249 of which had been acquired by transfer or assignment at a cost of $258,575.70. Although the renewal of saloon licenses in the city of Chicago rested entirely within the discretion of the administrative authorities, it had been the practice of such authorities to issue licenses to holders of old licenses or to registered assignees of original holders. As the number of saloon licenses which might be issued was limited in number, the " renewal rights " had a substantial value. The court concluded that the " renewal rights " constituted property which was subject to purchase, sale, and assignment, separate from the business itself, and that the loss resulting from the worthlessness and abandonment of such property in 1919 was deductible from gross income, as a loss under section 234(a)(4) of the Revenue Act of 1918, citing *William Zakon* v. *Commissioner* (7 B. T. A., 687, acquiescence, page 5, this Bulletin); *McAvoy Company* v. *Commissioner* (10 B. T. A., 1017, acquiescence, page 3, this Bulletin); and *Best Brewery Co.* v. *Commissioner* (16 B. T. A., 1354, acquiescence, C. B. VIII–2, 5 (1929)).

The life of the property in a license, which property is created by the custom of annual license renewal, can not be estimated with any degree of certainty. Consequently, a deduction for depreciation or obsolescence may not be allowed, nor may a deduction be allowed as a business expense since the asset has an economically useful life beyond the taxable year.

In view of the foregoing, it is held that an amount paid as consideration for the transfer of a liquor license constitutes a capital investment which must be carried on the books of the transferee as a capital asset until such time as the license is again transferred or terminated.

SECTION 29.117–4: Determination of period for which capital assets are held. (Also Section 117, Section 19.117–4.)

1947–15–12596
G. C. M. 25301

INTERNAL REVENUE CODE AND PRIOR REVENUE LAWS.

Under the provisions of section 117(h)(1) of the Internal Revenue Code and corresponding provisions of prior revenue laws, the holding period of property received in a tax-free exchange includes the holding period of the property exchanged therefor, even though the latter property was not a capital asset when it was exchanged.

G. C. M. 621 (C. B. V–2, 5 (1926)) and G. C. M. 11557 (C. B. XII–1, 128 (1933)) modified.

Reference is made to the decision in *Commissioner* v. *Euleon Jock Gracey et al.* (159 Fed. (2d), 324) which affirmed in part a decision of The Tax Court of the United States (5 T. C., 296, acquiescences, page 2 of this Bulletin). That decision held, under the provisions of section 117(h)(1) of the Internal Revenue Code, that the holding period of property received in a tax-free exchange includes the holding period of the property exchanged therefor, even though the latter property

was not a capital asset when it was exchanged. The decision of the court is contrary to the conclusion reached in G. C. M. 621 (C. B. V-2, 5 (1926)), promulgated under the Revenue Acts of 1924 and 1926, and G. C. M. 11557 (C. B. XII-1, 128 (1933)), promulgated under the Revenue Act of 1928.

In the Gracey case, it appears that the taxpayer, on February 10, 1940, in a tax-free transaction falling within the provisions of section 112(b)(5) of the Code, exchanged an oil well drilling rig for stock in a corporation. He had held the rig as a member of a partnership until October 31, 1939, and as an individual thereafter until the date of the exchange. The rig, having been subject to an allowance for depreciation, was not a capital asset in his hands at the time of the exchange. Part of the stock thus acquired by him was sold on March 6, 1940, and 50 per centum of the recognized gain was reported as community gain from the sale of a capital asset held for more than 24 months. The United States Circuit Court of Appeals for the Fifth Circuit affirmed The Tax Court's holding that the taxpayer, in determining the holding period for the stock, could include the period during which he held the rig.

Section 117(h)(1) of the Code does not expressly provide that the property exchanged must be a capital asset in order to permit the inclusion of the holding period of such property in determining the holding period of the property received. The only condition prescribed in the statute is that for the purpose of determining gain or loss from the exchange, the property received must have the same basis in whole or in part in the hands of the taxpayer as the property exchanged.

In view of the foregoing, it is now the position of this office that the holding period of property received in a tax-free exchange includes the holding period of the property exchanged therefor, even though the latter property was not a capital asset when it was exchanged.

G. C. M. 621 (C. B. V-2, 5 (1926)) and G. C. M. 11557 (C. B. XII-1, 128 (1933)), supra, are modified in so far as they hold that a taxpayer may "tack" the holding period of properties exchanged to the holding period of capital assets received therefor only to the extent that the properties exchanged were capital assets at the time of the exchange.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

SECTION 118.—LOSS FROM WASH SALES OF STOCK OR SECURITIES.

SECTION 29.118-1: Losses from wash sales of stock or securities.

INTERNAL REVENUE CODE.

Losses sustained upon settlement of a series of contracts to buy and sell securities of a reorganized corporation "when issued." (See I. T. 3858, page 71.)

SECTION 119.—INCOME FROM SOURCES WITHIN UNITED STATES.

SECTION 29.119–8: Sale of personal property. 1947–22–12674
G. C. M. 25131

INTERNAL REVENUE CODE AND PRIOR REVENUE LAWS.

As a general rule, for the purpose of determining the source of income attributable to the sale of personal property, a sale is consummated at the place where the seller surrenders all his right, title, and interest to the buyer. Where bare legal title is retained by the seller, the sale will be deemed to have occurred at the time and place of passage to the buyer of beneficial ownership and risk of loss.

Where the sales transaction is arranged for the primary purpose of tax avoidance, the foregoing rules will not be applied. In such cases, all factors of the transaction, such as negotiations, execution of the agreement, location of the property, and place of payment, will be considered, and the sale will be treated as having been consummated at the place where the substance of the sale occurred.

G. C. M. 8594 (C. B. IX–2, 354 (1930)) revoked, and G. C. M. 13475 (C. B. XIII–2, 224 (1934)) modified. Recommended that I. T. 2549 (C. B. IX–2, 360 (1930)) be revoked and that I. T. 2806 (C. B. XIII–2, 78 (1934)) be modified.

In view of acquiescence (page 2, this Bulletin) by the Commissioner in *East Coast Oil Co., S. A.*, v. *Commissioner* (31 B. T. A., 558), reconsideration has been given to G. C. M. 8594 (C. B. IX–2, 354 (1930)), which holds that the place of execution of a contract of sale is the decisive factor in determining the place of sale and, hence, in determining whether the source of income resulting from such a contract is within or without the United States. Adoption of that rule was accompanied by a reversal (I. T. 2549, C. B. IX–2, 360 (1930)) of the long-standing position of the Bureau that, generally, in a sales transaction, the place where title passes determines the source of income. The conclusion reached in G. C. M. 8594, supra, was based in part on the opinion in *Compania General de Tabacos de Filipinas* v. *Collector* (279 U. S., 306), certain parts of which were deemed to be susceptible of an interpretation that the place where a contract of sale is entered into is the decisive factor in determining the place of sale and thus the source of income. In *East Coast Oil Co., S. A.*, v. *Commissioner*, supra (affirmed, 85 Fed. (2d), 322, certiorari denied, 299 U. S., 608), the Board stated in part as follows:

As we read it, the Compania General case in no wise varies the established rule that the place where title passes is the place of sale. There a tax (arising under provisions of the Philippine income tax law similar to the provisions of the 1918 and 1921 Acts here material) was imposed upon net income received from sources within the Philippine Islands.

The taxpayer plaintiff was a corporation which produced and purchased products within the Islands and disposed of them in the United States through a branch agency. Under the law, the profits on the sales were subject to the Philippine tax, unless the sales were made in the United States. The case was submitted to the Court upon a stipulation to the effect that the sales were made in the United States, subject however to final confirmation by the plaintiff in the Philippines. Under that stipulation the Court could not but conclude that when confirmation was given, the sale became complete, and that it was not complete until confirmation was given. The stipulation was consistent only with the proposition that property in the goods passed, *eo instanti*, upon the confirmation made in the Philippines—that the place of sale is where the final act of the seller, causing title to pass, was done. And to that effect was respondent's argument

to the Court. The Court did not say that the place where is made an executory contract of sale is necessarily the place of sale; it did not set aside the rule that a sale is consummated when and where the property in the goods passes. (See Briskey Co., 29 B. T. A., 987 [acquiescence, page 1, this Bulletin].)

See also *Ronrico Corporation* v. *Commissioner* (44 B. T. A., 1130, acquiescence, C. B. 1944, 24) and *The Exolon Co.* v. *Commissioner* (45 B. T. A., 844, acquiescence, page 1, this Bulletin).

In view of the foregoing, this office adopts the general rule that, for the purpose of determining the source of income attributable to the sale of personal property, a sale is consummated at the place where the seller surrenders all his right, title, and interest to the buyer. In cases in which the bare legal title is retained by the seller, the sale will be deemed to have occurred at the time and place of the passage to the buyer of the beneficial ownership and the risk of loss. (See *Ronrico Corporation* v. *Commissioner*, supra.) However, in any case in which the sales transaction is arranged in a particular manner for the primary purpose of tax avoidance, the foregoing rules will not be applied. (See *Kaspare Cohn, Inc.*, v. *Commissioner*, 35 B. T. A., 646.) In such cases, all factors of the transaction, such as negotiations, the execution of the agreement, the location of the property, and the place of payment, will be considered, and the sale will be treated as having been consummated at the place where the substance of the sale occurred.

G. C. M. 8594, supra, is revoked, and G. C. M. 13475 (C. B. XIII–2, 224 (1934)) is modified to the extent it is inconsistent herewith. It is recommended that I. T. 2549, supra, be revoked, and that I. T. 2806 (C. B. XIII–2, 78 (1934)) be modified to the extent it is inconsistent herewith.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

SECTION 29.119–8: Sale of personal property. 1947–22–12676
I. T. 3875

INTERNAL REVENUE CODE AND PRIOR REVENUE LAWS.

In accordance with the recommendation in G. C. M. 25131 (page 85, this Bulletin), I. T. 2549 (C. B. IX–2, 360 (1930)) is revoked and I. T. 2806 (C. B. XIII–2, 78 (1934)) is modified to the extent it is inconsistent with G. C. M. 25131.

SUPPLEMENT D.—RETURNS AND PAYMENT OF TAX.

SECTION 141.—CONSOLIDATED RETURNS.

REGULATIONS 104, SECTION 23.11: Consolidated returns for subsequent years. 1947–18–12631
Mim. 6174

Election to file consolidated or separate returns in the case of affiliated groups with taxable years ending in 1947.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., August 12, 1947.

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

1. In I. T. 3821 (C. B. 1946–2, 72) it was held that affiliated groups which filed consolidated income and excess profits tax returns for fiscal years ended in 1946 would not have a new election to file separate returns for fiscal years ending in 1947. I. T. 3854 (C. B. 1947–1, 57) revoked I. T. 3821 and held that affiliated groups with fiscal years ending in 1947 might file separate returns for such years notwithstanding the fact that consolidated returns were filed for the prior years. Since, however, I. T. 3854 was not published until June 16, 1947, some affiliated groups which otherwise would have filed separate returns for fiscal years ending in 1947 filed consolidated returns in reliance on I. T. 3821.

2. In view of this situation, where affiliated groups with fiscal years ending in 1947 filed consolidated income tax returns on or before August 15, 1947, consideration will be given to requests by such affiliated groups for extensions of time (not to exceed six months from the due dates for such returns) in which to file separate returns for such fiscal years. Where affiliated groups elect to file separate returns within the period of any extension granted, the consolidated returns previously filed will be treated as " tentative returns " within the meaning of section 23.10(*b*) of Regulations 104; and as provided in such regulations, the payments made in connection therewith must be adjusted in a manner satisfactory to the Commissioner.

3. All requests for extensions of time under this mimeograph should be addressed to the Commissioner of Internal Revenue, Washington 25, D. C., for the attention of IT:P:CA.

GEO. J. SCHOENEMAN,
Commissioner.

REGULATIONS 104, SECTION 23.11: Consolidated returns for subsequent years. 1947–24–12695 I. T. 3880

INTERNAL REVENUE CODE.

Election with respect to filing separate Federal income tax returns for the calendar year 1947 by affiliated corporations which filed consolidated Federal income tax returns for the calendar year 1946.

Advice is requested whether affiliated corporations which filed consolidated Federal income tax returns for the calendar year 1946 may elect to file separate Federal income tax returns for the calendar year 1947.

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

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

solidated income- and excess-profits-tax regulations prescribed under subsection (b) prior to the last day prescribed by law for the filing of such return. * * *

Section 23.11(*a*) of Regulations 104, as amended, relating to consolidated income tax returns of affiliated corporations, provides in part as follows:

(*a*) *Consolidated Returns Required for Subsequent Years.* If a consolidated return is made under these regulations for any taxable year, a consolidated return must be made for each subsequent taxable year during which the affiliated group remains in existence unless * * * (2) Chapter 1 of the Code to the extent applicable to corporations, or these regulations which have been consented to, have been amended and any such amendment is of a character which makes less advantageous to affiliated groups as a class the continued filing of consolidated returns, * * *

It is held that the law applicable to the filing of consolidated Federal income tax returns has been so amended as to make less advantageous to affiliated groups as a class the continued filing of such returns, within the meaning of section 23.11(*a*) of Regulations 104, as amended, for the calendar year 1947. Accordingly, affiliated corporations which filed consolidated Federal income tax returns for the calendar year 1946 may, notwithstanding the filing of such returns, file separate Federal income tax returns for the calendar year 1947.

SECTION 143.—WITHHOLDING OF TAX AT SOURCE.

SECTION 29.143–1: Withholding tax at source.

INTERNAL REVENUE CODE.

Tax on nonresident alien wife's share of community income. (See I. T. 3859, page 98.)

SECTION 29.143–1: Withholding tax at source. (Also Section 29.143–3; Section 144, Section 29.144–2; Section 211, Section 29.211–7; Section 231, Section 29.231–1.) 1947–24–12698 T. D. 5580

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 29 AND PART 7.

Regulations 111 amended to conform to the United States–United Kingdom income tax convention, and Treasury Decision 5532 [C. B. 1946–2, 73] amended to simplify withholding regulations under such convention.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 111 [26 CFR, Part 29] to the income tax convention between the United States and the United Kingdom of Great Britain and Northern Ireland, signed April 16, 1945, and effective (for the purposes of United States income and excess profits taxes) for taxable years beginning on or after January 1, 1945, and in order to further simplify the procedure outlined in Treasury Decision 5532, approved August 23, 1946 [C. B. 1946–2, 73]

[26 CFR, 7.500–7.511, inclusive], relating to withholding of the tax at the source under such convention, such regulations are amended as follows:

REGULATIONS 111.

PARAGRAPH 1. Section 29.143–1, as amended by Treasury Decision 5357, approved April 19, 1944 [C. B. 1944, 307] [26 CFR, 29.143–1], is further amended by inserting the following in the first paragraph thereof immediately following "(See paragraph 111 of the Appendix to these regulations.)":

As to rates of withholding pursuant to the tax convention and protocol between the United States and the United Kingdom, see Treasury Decision 5532, approved August 23, 1946 [26 CFR, 7.500–7.511, inclusive].

PAR. 2. Section 29.143–3, as amended by Treasury Decision 5517, approved June 12, 1946 [C. B. 1946–2, 8] [26 CFR, 29.143–3], is further amended by inserting immediately preceding the penultimate paragraph thereof the following new paragraph:

As to items of income received on or after January 1, 1945, by residents of the United Kingdom (including foreign corporations) and not subject to the withholding provisions of the Internal Revenue Code, see the tax convention and protocol between the United States and the United Kingdom and Treasury Decision 5532 [26 CFR, 7.500–7.511, inclusive].

PAR. 3. Section 29.144–2 [26 CFR, 29.144–2] is amended—

(A) By inserting in Table II at the end thereof immediately after the end of line 5, the following:

6. Residents (including corporations) of the United Kingdom	See Treasury Decision 5532, approved August 23, 1946.

(B) By striking out "6" in the last line of the table, prior to its amendment by this Treasury decision, and inserting "7" in lieu thereof.

PAR. 4. Section 29.211–7, as amended by Treasury Decision 5443, approved March 2, 1945 [C. B. 1945, 231] [26 CFR, 29.211–7], is further amended by inserting as the last sentence of the second paragraph thereof the following:

As to items of income received in taxable years beginning on or after January 1, 1945, by individual residents of the United Kingdom, see Treasury Decision 5569, approved July 3, 1947 [page 100, this Bulletin].

PAR. 5. Section 29.231–1, as amended by Treasury Decision 5443 [26 CFR, 29.231–1] is further amended by inserting as the last sentence of the second paragraph thereof the following:

As to items of income received in taxable years beginning on or after January 1, 1945, by foreign corporations managed and controlled in the United Kingdom and not having a permanent establishment in the United States, see Treasury Decision 5569, approved July 3, 1947.

TREASURY DECISION 5532.

PAR. 6. Treasury Decision 5532, approved August 23, 1946, is amended by striking out the third paragraph from the end of section 7.502(*a*) [26 CFR, 7.502(a)] thereof and inserting in lieu thereof the following:

Form 1001A–UK must be filed for each three calendar year period and the first such form filed by the taxpayer with any withholding agent should be filed not later than 20 days preceding the date of the first payment of income in such

period. If the taxpayer files such form with the withholding agent in the calendar year 1946 or in any subsequent calendar year no additional Form 1001A–UK need be filed prior to the end of the two calendar years immediately following the calendar year in which such form is so filed unless the Commissioner notifies the withholding agent that an additional Form 1001A–UK must be filed by the taxpayer at an earlier date.

This Treasury decision is published without prior general notice of its proposed issuance for the reason that notice and public rule making procedure in connection herewith are hereby found to be unnecessary since this Treasury decision makes only minor technical amendments to Regulations 111 and amends Treasury Decision 5532 so as to extend the period for which certain forms are required. See section 4(a) of the Administrative Procedure Act, approved June 11, 1946.

This Treasury decision shall be effective on and after the thirty-first day of its publication in the Federal Register.

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

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 13, 1947.

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

(Published in the Federal Register November 20, 1947.)

SECTION 29.143–3: Exemption from withholding.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5580, page 88.)

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

SECTION 29.144–2: Aids to withholding agents in determining liability for withholding of tax.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5580, page 88.)

SUPPLEMENT E.—ESTATES AND TRUSTS.

SECTION 165.—EMPLOYEES' TRUSTS.

SECTION 29.165–6: Taxability of beneficiary under a trust which meets the requirements of section 165(a). 1947–20–12652 G. C. M. 25358

INTERNAL REVENUE CODE.

The long-term capital gains provisions of section 165(b) of the Internal Revenue Code, relating to taxability of amounts distributed to beneficiaries of employees' trusts, are applicable only with respect to qualified trusteed plans and do not extend to a nontrusteed annuity contract.

An opinion is requested whether the capital gains provisions of section 165(b) of the Internal Revenue Code are applicable with respect to a total distribution paid within one taxable year to an employee or his beneficiary, on account of the employee's separation from the service, under a group annuity contract meeting the requirements of section 165(a) of the Code where the amount is not paid by a *trust.*

It is contended that the context of section 162 of the Revenue Act of 1942, amending section 165 of the Code, strongly suggests the reasonableness of interpreting the language "any such trust," as used in section 165(b) of the Code, to mean "any such plan" for purposes of carrying out the intent of Congress, and that such context contains no word or provision opposed to such an interpretation.

Section 165(b) of the Code, relating to the taxation of the beneficiaries of an exempt employees' trust, reads as follows:

(b) TAXABILITY OF BENEFICIARY.—The amount actually distributed or made available to any distributee by any such trust shall be taxable to him, in the year in which so distributed or made available, under section 22(b)(2) as if it were an annuity the consideration for which is the amount contributed by the employee, except that if the total distributions payable with respect to any employee are paid to the distributee within one taxable year of the distributee on account of the employee's separation from the service, the amount of such distribution to the extent exceeding the amounts contributed by the employee, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months.

In the opinion of this office the language of section 165(b) of the Code is unambiguous, and it is clear that it relates only to the taxation of the beneficiary of a qualified employees' trust. (See section 29.165–6 of Regulations 111.) This construction is based upon the use of the words "The amount actually distributed or made available to any distributee by any *such* trust." [Italics supplied.] The reference must be to a trust described in subsection (a). A trust so described is exempt from Federal income tax for a taxable year if it meets certain requirements. Under such a construction, the above-quoted provision would have the same effect if it read substantially as follows: "The amount actually distributed or made available to any distributee by any trust that is exempt under section 165(a) during the year within which it made the distribution shall be taxable to him in the year in which so distributed or made available * * *" Such interpretation is borne out by Senate Report No. 1631, Seventy-seventh Congress (C. B. 1942–2, 504), submitted by the Committee on Finance on the Revenue Bill of 1942. In explaining the effect of the provisions of proposed section 165(b) of the Code, it is stated at page 138 of the Senate report (C. B. 1942–2, 607):

The provisions of the House bill with respect to section 165(b), concerning the taxation of the beneficiary of a trust which meets the requirements of section 165(a), have not been changed except to take care of the situation where an employee receives the total distributions that he is entitled to under the plan in one taxable year on account of his separation from the service. In such a case, it is provided that the amount of such distributions to the extent that it exceeds the amounts contributed by the employee shall be considered a gain from the sale or exchange of a capital asset held for more than six months. For example, if under a profit-sharing trust, the total distributions to which an employee is entitled are paid to the employee in the year in which he retires or severs his connection with his employer, or to his widow if he dies during the course of his employment, the amount received by the employee or widow to the extent it exceeds the employee's contributions will be considered a gain from the sale or exchange of a capital asset held for more than six months.

Nothing is contained in the foregoing explanation upon which to premise a legislative intent to confer the capital gains benefit on beneficiaries under group annuity contracts.

The difficulty with the contention which has been advanced is that it involves a construction of the statute which would be tantamount to interpolating a provision which Congress did not see fit to insert. In other words, the effect of the contention made is that the Bureau should supply what is believed by the taxpayer to be an omission in section 165(b) of the Code by adding a provision which would permit lump-sum distributions under nontrusteed annuity plans to be treated as capital gains. In *Gould* v. *Gould* (245 U. S., 151, 153) the Supreme Court of the United States commented on this point as follows:

> In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. * * *

It is true the Gould decision goes on to state that in case of doubt statutes are construed most strongly against the Government and in favor of the citizen, and it is also true that the ordinary application of the stated principle involves construction in favor of the taxpayer. Nevertheless, the logic of the above-quoted language is equally applicable in a situation such as the one here involved, where it is sought to broaden the effect of section 165(b) of the Code so as to provide capital gains treatment for lump-sum payments under nontrusteed plans. It may be argued that such an interpretation is desirable but, even so, it is believed that if Congress had intended to extend the capital gains treatment to distributions under such plans it would have so provided in the wording of the statute. Moreover, as indicated above, section 29.165–6 of Regulations 111 interprets section 165(b) of the Code as being applicable only to the taxation of the beneficiary of an employees' trust.

For the reasons indicated above, it is the opinion of this office that the capital gains provisions of section 165(b) of the Internal Revenue Code are applicable only to total distributions made from or pursuant to qualified trusteed plans.

CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue.

SUPPLEMENT G.—INSURANCE COMPANIES.

SECTION 201(a).—TAX ON LIFE INSURANCE COMPANIES: DEFINITION.

SECTION 19.201(a)–1: Life insurance companies: Definition. 1947–21–12663 Ct. D. 1692

(Also Section 203(a), Section 19.203(a)(2)–1.)

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF COURT.

1. LIFE INSURANCE COMPANY—RESERVE FUNDS HELD FOR FULFILLMENT OF CONTRACTS.

A corporation issuing policies of insurance on the assessment plan is not a life insurance company within the definition of section 201(a) of the Internal Revenue Code although its reserve funds held

for the fulfillment of its contracts comprise more than 50 per centum of its total reserve funds, where such reserve was not held for the exclusive purpose of the fulfillment of the obligations of the policies. The mortuary fund maintained by the corporation, pursuant to its by-laws and the State law, not only for the payment of policy claims and expenses incidental thereto but also for other purposes, is not the reserve held for the fulfillment of life insurance contracts required by section 19.203(a) (2)–1 of Regulations 103. The power to use for general purposes interest earned by the assets in reserve constitutes an authority to use the mortuary fund for such a purpose and prevents the fund from meeting the criteria for a reserve fund contemplated by the statutory definition.

2. DECISION REVERSED.

Decision of The Tax Court of the United States (6 T. C., 473) reversed.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Commissioner of Internal Revenue, petitioner, v. *National Reserve Insurance Co., respondent.*

[160 Fed. (2d), 956.]

Upon petition to review a decision of The Tax Court of the United States.

Before DENMAN, STEPHENS, and BONE, Circuit Judges.

[April 3, 1947.]

OPINION.

DENMAN, Circuit Judge: The Commissioner seeks review of a decision of The Tax Court holding that the appellee, an Arizona corporation issuing policies of insurance on the assessment plan, hereinafter called the Company, was a life insurance company within the definition of section 202(a) of the Internal Revenue Code and hence not liable for income tax deficiencies found by the Commissioner for the tax years 1939 and 1940 to be due on its income from assessment receipts for those years.

The Commissioner found that the Company was a mutual insurance company taxable under section 207 of the Internal Revenue Code. The Company does not contest this finding of the Commissioner if it be not a life insurance company within section 201(a).

The net taxable income of a life insurance company is the gross income from interest, dividends and rents less, inter alia, the amount placed in its reserve fund, described in section 203(a) of the Revenue Code.[1]

Section 201(a) of the Code provides:

"SEC. 201. TAX ON LIFE INSURANCE COMPANIES.

"(a) DEFINITION.—When used in this chapter the term 'life insurance company' means an insurance company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and

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[1] SEC. 203. NET INCOME OF LIFE INSURANCE COMPANIES.

(a) GENERAL RULE.—In the case of a life insurance company the term "net income" means the gross income less—

* * * * * * *

(2) RESERVE FUNDS.—An amount equal to 4 per centum of the mean of the reserve funds *required by law* and held at the beginning and end of the taxable year, except that in the case of any such reserve fund which is computed at a lower interest assumption rate, the rate of 3¾ per centum shall be substituted for 4 per centum * * * [Italics supplied.]

Section 202(b) provides:

"(b) RESERVE FUNDS REQUIRED BY LAW, DEFINED.—The term 'reserve funds required by law' includes, in the case of assessment insurance, sums actually deposited by any company or association with State or Territorial officers pursuant to law as guaranty or reserve funds, and any funds maintained under the charter or articles of incorporation of the company or association exclusively for the payment of claims arising under certificates of membership or policies issued upon the assessment plan and not subject to any other use."

accident insurance), the reserve funds of which, held for the fulfillment of such contracts, comprise more than 50 per centum of its total reserve funds."

The Company has a reserve fund for such insurance contracts and the Commissioner concedes that it exceeded the 50 per cent required by section 201(a) for the years 1939 and 1940. The sole question on this appeal is whether the fund was " held for the fulfillment of such contracts."

The Company admits its mortuary fund, which it claims complies with section 201(a), supra, was created by it under the Arizona law, its policies and by-laws. The Tax Court's findings show that this mortuary fund so created was held to pay policy claims and expenses incidental thereto; in addition it found it was held to (*a*) pay attorney's fees and the necessary expense of handling a contested or disputed claim; (*b*) make the deposit with the State treasurer required by Arizona law which was subject to a lien of all the Company's creditors; (*c*) pay for the expense of organizing a legal reserve life insurance company; (*d*) make refunds to policyholders of excessive premiums, in the nature of dividends, and (*e*) apply the interest earned by the assets in the fund to payment of general expenses.

(A) The Commissioner claims that the phrase " fulfillment of such contracts " does not include the legal expenses in determining whether their fulfillment requires payment. Such expenses he contends are but the necessary business of an insurance company. However, the applicable Treasury regulations indicate the contrary. Treasury Regulations 103, section 19.201(*a*)–1 provides that the reserve referred to in section 201(a) of the Revenue Code must conform with section 19.203(*a*)(2)–1 of the regulations defining " Reserve funds."

With respect to the business expenses, the latter section provides that the reserve " does not include reserves required to be maintained to provide for the *ordinary running expenses* of a business definite in amount, and which must be *currently paid by every company* from its income if its business is to continue, such as taxes, salaries, reinsurance and unpaid brokerage: * * *." [Italics supplied.]

It seems inconceivable that if the Treasury regarded the attorney's fees in determining whether the " fulfillment " of the " contracts " of insurance as not a part of such fulfillment, but were " ordinary running expenses " " currently paid," it so would have stated in this regulation. This interpretation is fortified by the other succeeding specific exemptions from payment from the reserve of " * * * the reserve or net value of risks reinsured in other solvent companies to the extent of the reinsurance; reserve for premiums paid in advance; *annual and deferred dividends;* accrued but unsettled policy claims; losses incurred but unreported; liability on supplementary contracts not involving life contingencies; estimated value of future premiums which have been waived on policies after proof of total and permanent disability." [Italics supplied.]

(B) The Commissioner contends that the moneys of the Company's reserve deposited in the State treasury amounting to $2,000 in 1939 and $2,789.47 in 1940, are not held for the fulfillment of the insurance contracts. This deposit of part of the reserve with the State treasurer is required by section 53–605 (a), (b) and (e) of the Arizona Code.[2]

However, such deposit is not exclusively for the fulfillment of the insurance contracts, for under section 53–605(d)

"Any unsettled final judgment of a court of this State shall be a lien on the deposits of money or securities prescribed by section 608b [section 53–605], and subject to execution after thirty (30) days from entry of final judgment. If said deposit is depleted thereby it shall be replenished within ninety (90) days."

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[2] 53–605. DEPOSIT OF MONEY OR SECURITY.—(a) Every benefit corporation organized or operating under the provisions of this act, before receiving a certificate of authority to transact business, shall in addition to the requirements of section 609b [section 53–611], deposit with the State treasurer, to be by him held in trust for the benefit and protection of the corporation's members, the sum of one thousand dollars ($1,000). Thereafter a further sum of one thousand dollars ($1,000), divided into twelve (12) equal monthly payments, beginning thirty (30) days after the certificate of authority is issued, shall be likewise deposited with the State treasurer. Failure to pay any such monthly payment shall automatically cancel the corporation's certificate of authority.

(b) In addition to said deposits every such corporation shall, not later than February 1, 1940, and on or before February 1 of each year thereafter, deposit with the State treasurer, to be by him held in trust as hereinafter provided, for the benefit and protection of the members of the corporation, a further sum equal to one dollar ($1.00) for each one thousand dollars ($1,000) of protection in force on December 31 of the preceding year, beginning as of December 31, 1939, until a total of ten thousand dollars ($10,000) has been deposited * * *

(c) Said deposit may be considered as a part of any required reserve of the corporation and shall not be subject to withdrawal so long as the corporation has any contract or other liability outstanding * * *

"Any" final judgment well could be one for $100,000 arising from the negligent killing of four occupants of an automobile in a collision with the Company's automobile engaged in business of the Company in which the latter's agent is at fault. Such complete wiping out of this portion of the reserve could in no sense be a fulfillment of the insurance contracts.

The "guaranty or reserve funds" deposited with State officials under section 202(b), supra, we consider to be ejusdem generis with the succeeding "funds" there described as "any funds maintained under the charter or articles of incorporation of the company or association exclusively for the payment of claims arising under certificates of membership or policies issued upon the assessment plan and not subject to any other use." The funds so deposited with the Arizona treasurer do not comply with Treasury Regulations 103, section 19.203(*a*)-1, supra.

(C) Under the Company's by-laws its mortuary reserve fund is also held subject to pay for the expense of organizing a different company—a legal reserve company. We agree with The Tax Court's Judge Disney's dissenting statement that "I am altogether unable to comprehend how a mortuary fund, subject to be drawn upon to set up a legal reserve life insurance company can be said to be held for the fulfillment of the insurance contracts." It is noted that the majority opinion did not even mention this important fact.

The circumstance that the fund may not have been debited in the taxable years with the expenses of organizing a legal reserve company is irrelevant. The mortuary fund was established and was "held" to pay such expenses, whether or not any were incurred during a particular year.

(D) Article XVI of the Company's by-laws required the directors to issue each year to each member whose payments had not lapsed a certificate showing the member's share in the savings in the mortuary fund. Under this provision the Company was required by the Arizona Corporation Commission to make refunds to policyholders of premiums collected in excess of the cost of insurance out of the mortality fund, and the amounts so refunded ($1,597.93 in 1939 and $4,154.18 in 1940) were treated in its books as dividends. Quite clearly a fund subject to be depleted by the amounts of excess premiums in the nature of dividends is not a reserve fund held for fulfillment of insurance contracts. Compare the cases which decide that a reserve held to pay dividends or coupons representing dividends to policyholders are mere liability or solvency reserves and not life insurance reserves in the technical sense. (*New York Life Insurance Co.* v. *Bowers*, 283 U. S., 242 [Ct. D. 337, C. B. X-1, 484 (1931)]; *Helvering* v. *Inter-Mountain Life Insurance Co.*, 294 U. S., 686 [Ct. D. 950, C. B. XIV-1, 339 (1935)]; *Helvering* v. *Montana Life Insurance Co.*, 84 Fed. (2d), 623 (C. C. A. 9); *Continental Assurance Co.* v. *United States*, 8 Fed. Supp., 474 (C. Cls.); *Massachusetts Mutual Life Insurance Co.* v. *United States*, 56 Fed. (2d), 897 (C. Cls.) [Ct. D. 502, C. B. XI-1, 296 (1932)]; *Minnesota Mutual Life Insurance Co.* v. *United States*, 66 C. Cls., 481, certiorari denied, 279 U. S., 856; *Equitable Life Assurance Society* v. *Commissioner*, 33 B. T. A., 708, 716-717; *Midland Mutual Life Insurance Co.* v. *Commissioner*, 19 B. T. A., 765.) See section 19.203(*a*)(2)-1 of Treasury Regulations 103, which provides that the term reserves does not include amounts maintained for annual and deferred dividends.

The Tax Court seems to have recognized that the payment of these dividends from the mortuary fund was not a payment to fulfill contracts. However, it attempted to justify its holding that the mortuary fund was held to fulfill contracts on the theory that the payment of dividends did not in fact reduce the reserve in the taxable years below legal requirements. But this, of course, is immaterial to the issue under the statute. Since the Company maintained only one "reserve" fund, its mortuary fund, and since this fund was subject to invasion for premium refunds, it does not meet the statutory test which specifies a reserve fund held only to fulfill contracts.

(E) Section 53-609(b) of the Arizona Code permitted the interest earned by the assets of the corporation, whether deposited with the State treasurer or otherwise invested, to be used for general operating expenses. No exception is made of interest earned on the assets set aside in a reserve fund. This authorizes use of the mortuary fund for such expenses, for the reason that interest earned by the assets comprising a reserve fund is considered as a part of the fund. The classic definition of a reserve fund, stated in *Maryland Casualty Co.* v. *United States* (251 U. S., 342) and incorporated in section 19.203(*a*)(2)-1 of Treasury Regulations 103, is that it is a sum of money, variously computed or estimated, which with *accretions from interest*, is set aside to mature or liquidate future unaccrued and contingent claims. The regulation also states that only funds dependent upon

interest earnings for their maintenance will be considered as reserves. And Congress has always considered interest on the reserve fund as of the same character as the principal of the fund, so far as protection for policyholders is concerned. (See for a full discussion, *Commissioner* v. *Monarch Life Insurance Co.*, 114 Fed. (2d), 314 (C. C. A. 1). See also *Helvering* v. *Oregon Insurance Co.*, 311 U. S., 267, 269 [Ct. D. 1476 (C. B. 1940–2, 234, 235)]; *Massachusetts Mutual Life Insurance Co.* v. *United States*, 56 Fed. (2d), 897, 899 (C. Cls.) [Ct. D. 502 (C. B. XI–1, 296–297 (1932))].)

While *Jones* v. *Oklahoma Ben. Life Assn.* (151 Fed. (2d), 505 (C. C. A. 10)) held that authority to use the interest earned by the fund involved in that case for general expenses did not prevent the fund from qualifying as a reserve fund held to fulfill contracts, this conclusion was reached because (at page 509):

"Under the Oklahoma statutes and the by-laws of the association, interest earned by the emergency fund of the association does not accrue to the fund and is no part thereof. Hence, use of the interest for expenses can not be said to be a use of the fund."

In the instant case section 53–609(b) of the Arizona Code does not provide that interest earned shall not be part of the mortuary or reserve fund. Nor does the Company's by-laws so provide. Article XVI of the Company's by-laws merely prescribes a death benefit fund and an expense fund, but does not stipulate that all interest earned shall go into the expense fund. On the contrary, it is stated that the expense fund shall consist of *only* membership and registration fees, first month's payments of assessments and reinstatements, 50 per cent of the following 11 months' payments and 33⅓ per cent of all subsequent payments, thus excluding interest earned by the mortuary fund.

The power to use interest earned by the assets in reserve for general expenses constitutes an authority to use the mortuary fund for such a purpose and prevents the fund from meeting the criteria for a reserve fund contemplated by the statutory definition.

The Company contends that since in neither tax years was its reserve for the "fulfillment" of its policy claims an amount less than the 50 per cent of its total reserve fund, it has complied with section 201(a) of the Code. We do not agree. The fund was held for these five other purposes and hence not for the exclusive purpose of the fulfillment of the obligations of the policies. It is immaterial that possible drains on the reserve did not happen so to reduce it below its minimum in these particular years.

The Tax Court is in error in holding that the Company was a life insurance company taxable under section 201(a) of the Code and in [not] determining its tax as a mutual insurance company under section 207.

The decision of The Tax Court is reversed.

SECTION 202.—ADJUSTED NORMAL-TAX NET INCOME.

SECTION 29.202–1: Reserve and other policy liability credit for adjusted normal-tax net income. 1947–26–12721 T. D. 5595

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

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

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY OF THE TREASURY,
Washington, D. C., December 19, 1947.

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

PARAGRAPH 1. By virtue of the authority vested in me by section 202(b) of the Internal Revenue Code, as amended by section 163 of

the Revenue Act of 1942 (53 Stat., 71, 56 Stat., 870; 26 U. S. C. and Sup., 202(b)), it is hereby determined that the figure to be used in computing the "reserve and other policy liability credit" of life insurance companies for the taxable year 1947 shall be 1.0066.

PAR. 2. It is found that notice and public procedure are unnecessary, since the figure announced in this Treasury decision is computed from information contained in the income tax returns of life insurance companies for the year 1946 which are not open to public inspection. The public accordingly can not effectively participate in the determination of such figure.

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

(Filed with the Division of the Federal Register December 26, 1947, 8.47 a. m.)

SECTION 203(a).—NET INCOME OF LIFE INSURANCE COMPANIES: GENERAL RULE.

SECTION 19.203(a)(2)–1: Reserve funds.

INTERNAL REVENUE CODE.

Reserve fund not held for exclusive purpose of fulfillment of obligations of policies. (See Ct. D. 1692, page 92.)

SECTION 204.—INSURANCE COMPANIES OTHER THAN LIFE OR MUTUAL.

SECTION 29.204–2: Gross income. 1947–25–12715
T. D. 5593

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

Amending section 29.204–2 of Regulations 111, relating to gross income of insurance companies other than life or mutual and mutual marine insurance companies and mutual fire insurance companies issuing perpetual policies.

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

To Collectors of Internal Revenue and Others Concerned:

On March 12, 1947, notice of proposed rule making relating to the gross income of certain insurance companies was published in the Federal Register (12 F. R., 1688). After consideration of all such relevant matter as was presented by interested persons regarding the proposal, the following amendment to Regulations 111 [26 CFR, Part 29] is hereby adopted.

Section 29.204–2, as amended by Treasury Decision 5387, approved July 1, 1944 [C. B. 1944, 336] [26 CFR, 29.204–2], is further amended by adding at the end thereof a new paragraph to read as follows:

For taxable years beginning after December 31, 1946, that part of the deduction for "losses incurred" which represents an adjustment to "losses paid"

for "salvage and reinsurance recoverable" shall, except as hereinafter provided, include all salvage in course of liquidation, and all reinsurance in process of collection not otherwise taken into account as a reduction of "losses paid," outstanding at the end of the taxable year. Salvage in course of liquidation includes all property (other than cash), real or personal, tangible or intangible, except that which may not be included by reason of express statutory provisions (or rules and regulations of an insurance department) of any State or Territory or the District of Columbia in which the company transacts business. Such salvage in course of liquidation shall be taken into account to the extent of the value thereof at the end of the taxable year as determined from a fair and reasonable estimate based upon either the facts in each case or the company's experience with similar cases. Cash received during the taxable year with respect to items of salvage or reinsurance shall be taken into account in computing losses paid during such taxable year. To the extent attributable to losses paid prior to January 1, 1947, salvage and reinsurance shall be accounted for in accordance with the practice of the company as reflected in its income tax return for the year 1946.

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

This Treasury decision shall be effective on the thirty-first day after the date of its publication in the Federal Register.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved December 2, 1947.

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

(Published in the Federal Register December 9, 1947.)

SUPPLEMENT H.—NONRESIDENT ALIEN INDIVIDUALS.

SECTION 211.—TAX ON NONRESIDENT ALIEN INDIVIDUALS.

SECTION 29.211–7: Taxation of nonresident alien individuals. 1947–14–12584 I. T. 3859
(Also Section 143, Section 29.143–1.)

INTERNAL REVENUE CODE.

Taxability of a nonresident alien wife's share of community income, with particular reference to the liability of the husband to withhold Federal income tax on such income.

Advice is requested relative to the taxability, for Federal income tax purposes, of the income of a nonresident alien wife, the ownership of which income is solely attributable to the fact that her husband is domiciled in a community property State. Advice is also requested as to the liability of the husband to withhold Federal income tax on such income.

It has been held that so long as the marriage relationship continues the domicile of a husband in a community property State fixes the domicile of the wife in that State. (See *Paul Cavanagh* v. *Commissioner*, 42 B. T. A., 1037, affirmed, 125 Fed. (2d), 366, and *Herbert Marshall* v. *Commissioner*, 41 B. T. A., 1064, acquiescences, page 3 of this Bulletin.) However, the fact that a wife is domiciled in a com-

munity property State for the purpose of a division of the community income does not answer the question whether she is a resident of the United States. The terms "domicile" and "residence" are not synonymous. (See *Charles W. Bowring* v. *Bowers*, 24 Fed. (2d), 918, T. D. 4164, C. B. VII–1, 98 (1928), certiorari denied, 277 U. S., 608.) Accordingly, the wife of a citizen or resident of the United States may be a nonresident alien for income tax purposes notwithstanding the fact that under the State law she is considered as having a domicile in this country. The residence of such a wife must be determined by applying the rules set forth in sections 29.211–1 to 29.211–5 of Regulations 111.

In general, under the laws of the community property States, the wife has a present vested interest in the community property which is equal to that of her husband, and one-half of the community income may be reported by her in her separate Federal income tax return. (See *Poe* v. *H. G. Seaborn*, 282 U. S., 101, Ct. D. 259, C. B. IX–2, 202 (1930); *Goodell* v. *I. B. Koch*, 282 U. S., 118, Ct. D. 262, C. B. IX–2, 199 (1930); *Bender* v. *William Pfaff*, 282 U. S., 127, Ct. D. 261, C. B. IX–2, 200 (1930); *Hopkins* v. *C. W. Bacon*, 282 U. S., 122, Ct. D. 260, C. B. IX–2, 201 (1930); and *United States* v. *Robert K. Malcolm*, 282 U. S., 792.) Although the husband has the management and control of the community property and is agent for the community estate, he is not the agent for the wife for Federal income tax purposes in the absence of a power of attorney to that effect. He, therefore, can not be required to file a return on behalf of his wife. Furthermore, where his wife is a nonresident alien, a joint return may not be filed. (See section 51(b) of the Code.)

Section 143(b) of the Internal Revenue Code provides in part as follows:

(b) NONRESIDENT ALIENS.—All persons, in whatever capacity acting, * * * having the control, receipt, custody, disposal, or payment of interest * * * dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income (but only to the extent that any of the above items constitutes gross income from sources within the United States), of any nonresident alien individual, * * * shall * * * deduct and withhold from such annual or periodical gains, profits, and income a tax equal to 30 per centum thereof * * *

In view of the foregoing, it is held that in cases where the husband is domiciled in a community property State, and the wife is a nonresident alien, the husband is required to withhold the tax prescribed under section 143(b) of the Code, supra, or such tax as may be prescribed by treaty, and to pay such tax to the collector of internal revenue. (See section 143(c) of the Code.) Failure of the husband to deduct, withhold, and pay such tax may render him liable to the penalties prescribed by section 145 (a) and (b) of the Code.

If the Federal income tax liability of the nonresident alien wife has not been fully satisfied by withholding under section 143(b) of the Code, and she has not filed or caused to be filed a Federal income tax return accounting for the additional tax due, the Commissioner or a collector of internal revenue may, pursuant to authority conferred by section 3612 of the Code, make a return for her which is sufficient for all legal purposes. Any tax which the wife does not pay upon notice and demand from the collector may be collected by distraint against, or

levy upon, community property under the management and control of the husband, or any other property of the wife which the husband has in his possession or control. (See sections 276(c) and 3710 (a) and (b) of the Code.)

SECTION 29.211–7: Taxation of nonresident alien individuals. 1947–15–12597 T. D. 5569

(Also Section 231, Section 29.231–1.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 7.—TAXATION PURSUANT TO TREATIES.—SUBPART—UNITED KINGDOM; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1944.

Regulations affecting the taxation of nonresident aliens who are residents of the United Kingdom and foreign corporations managed and controlled in the United Kingdom under the income tax convention and protocol between the United States and the United Kingdom, proclaimed by the President of the United States on July 30, 1946.

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

To Collectors of Internal Revenue and Others Concerned:

On February 22, 1947, notice of proposed rule making under the income tax convention and supplementary protocol between the United States and the United Kingdom of Great Britain and Northern Ireland, both of which were proclaimed by the President of the United States on July 30, 1946, was published in the Federal Register (12 F. R., 1236). After consideration of all such relevant matter as was presented by interested persons regarding the proposal, the following regulations are adopted for the purposes of such convention and protocol (see section 7.514).

Section.

7.512. Introductory.
7.513. Applicable provisions of the Internal Revenue Code.
7.514. Scope of the convention.
7.515. Definitions.
7.516. Scope of convention with respect to determination of "industrial or commercial profits."
7.517. Control of a domestic enterprise by a United Kingdom enterprise.
7.518. Income from operation of ships and aircraft.
7.519. Exemption from, or reduction in rate of, United States tax in the case of dividends, interest, royalties, natural resource royalties, and real property rentals.
7.520. Government wages, salaries, pensions, and similar remunerations.
7.521. Compensation for labor or personal services.
7.522. Pensions and life annuities.
7.523. Capital gains.
7.524. Dividends and interest paid by a United Kingdom corporation.
7.525. United Kingdom corporations—Exemption from Federal taxation with respect to accumulated profits or undistributed income.
7.526. Visiting professors or teachers.
7.527. Remittances.
7.528. Credit against United States tax liability for income tax paid or deemed to have been paid to the United Kingdom.
7.529. Adjustment of tax liability of nonresident aliens who are residents of the United Kingdom and of United Kingdom corporations.
7.530. Reciprocal administrative assistance.
7.531. Information to be furnished in due course.
7.532. Information in specific cases.

SECTION 7.512. INTRODUCTORY.—The income tax convention between the United States and the United Kingdom of Great Britain and Northern Ireland, signed April 16, 1945, and supplementary protocol, signed at Washington on June 6, 1946, both of which were proclaimed by the President of the United States on July 30, 1946, and effective (for the purposes of United States income and excess profits taxes) for taxable years beginning on or after January 1, 1945 (hereinafter referred to as the convention), provide as follows:

ARTICLE I.

(1) The taxes which are the subject of the present convention are:

(*a*) In the United States of America:

The Federal income taxes, including surtaxes and excess profits taxes (hereinafter referred to as United States tax).

(*b*) In the United Kingdom of Great Britain and Northern Ireland:

The income tax (including surtax), the excess profits tax and the national defense contribution (hereinafter referred to as United Kingdom tax).

(2) The present convention shall also apply to any other taxes of a substantially similar character imposed by either contracting party subsequently to the date of signature of the present convention or by the government of any territory to which the present convention is extended under Article XXII.

ARTICLE II.

(1) In the present convention, unless the context otherwise requires:

(*a*) The term "United States" means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and of Hawaii, and the District of Columbia.

(*b*) The term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man.

(*c*) The terms "territory of one of the contracting parties" and "territory of the other contracting party" mean the United States or the United Kingdom as the context requires.

(*d*) The term "United States corporation" means a corporation, association or other like entity created or organized in or under the laws of the United States.

(*e*) The term "United Kingdom corporation" means any kind of juridical person created under the laws of the United Kingdom.

(*f*) The terms "corporation of one contracting party" and "corporation of the other contracting party" mean a United States corporation or a United Kingdom corporation as the context requires.

(*g*) The term "resident of the United Kingdom" means any person (other than a citizen of the United States or a United States corporation) who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in the United States for the purposes of United States tax. A corporation is to be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom.

(*h*) The term "resident of the United States" means any individual who is resident in the United States for the purposes of United States tax and not resident in the United Kingdom for the purposes of United Kingdom tax, and any United States corporation and any partnership created or organized in or under the laws of the United States, being a corporation or partnership which is not resident in the United Kingdom for the purposes of United Kingdom tax.

(*i*) The term "United Kingdom enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom.

(*j*) The term "United States enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of the United States.

(*k*) The terms "enterprise of one of the contracting parties" and "enterprise of the other contracting party" mean a United States enterprise or a United Kingdom enterprise, as the context requires.

(*l*) The term "permanent establishment" when used with respect to an enterprise of one of the contracting parties means a branch, management,

factory or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the contracting parties shall not be deemed to have a permanent establishment in the territory of the other contracting party merely because it carries on business dealings in the territory of such other contracting party through a bona fide commission agent, broker, or custodian acting in the ordinary course of his business as such. The fact that an enterprise of one of the contracting parties maintains in the territory of the other contracting party a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one contracting party has a subsidiary corporation which is a corporation of the other contracting party or which is engaged in trade or business in the territory of such other contracting party (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation.

(2) For the purposes of Articles VI, VII, VIII, IX, and XIV a resident of the United Kingdom shall not be deemed to be engaged in trade or business in the United States in any taxable year unless such resident has a permanent establishment situated therein in such taxable year. The same principle shall be applied, *mutatis mutandis*, by the United Kingdom in the case of a resident of the United States.

(3) In the application of the provisions of the present convention by one of the contracting parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that contracting party relating to the taxes which are the subject of the present convention.

ARTICLE III.

(1) A United Kingdom enterprise shall not be subject to United States tax in respect of its industrial or commercial profits unless it is engaged in trade or business in the United States through a permanent establishment situated therein. If it is so engaged, United States tax may be imposed upon the entire income of such enterprise from sources within the United States.

(2) A United States enterprise shall not be subject to United Kingdom tax in respect of its industrial or commercial profits unless it is engaged in trade or business in the United Kingdom through a permanent establishment situated therein. If it is so engaged, United Kingdom tax may be imposed upon the entire income of such enterprise from sources within the United Kingdom: Provided that nothing in this paragraph shall affect any provisions of the law of the United Kingdom regarding the imposition of United Kingdom excess profits tax and national defense contribution in the case of interconnected companies.

(3) Where an enterprise of one of the contracting parties is engaged in trade or business in the territory of the other contracting party through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment, and the profits so attributed shall, subject to the law of such other contracting party, be deemed to be income from sources within the territory of such other contracting party.

(4) In determining the industrial or commercial profits from sources within the territory of one of the contracting parties of an enterprise of the other contracting party, no profits shall be deemed to arise from the mere purchase of goods or merchandise within the territory of the former contracting party by such enterprise.

ARTICLE IV.

Where an enterprise of one of the contracting parties, by reason of its participation in the management, control or capital of an enterprise of the other contracting party, makes with or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with an independent enterprise, any profits which would but for those conditions have

accrued to one of the enterprises but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE V.

(1) Notwithstanding the provisions of Articles III and IV of the present convention, profits which an individual (other than a citizen of the United States) resident in the United Kingdom or a United Kingdom corporation derives from operating ships documented or aircraft registered under the laws of the United Kingdom, shall be exempt from United States tax.

(2) Notwithstanding the provisions of Articles III and IV of the present convention, profits which a citizen of the United States not resident in the United Kingdom or a United States corporation derives from operating ships documented or aircraft registered under the laws of the United States, shall be exempt from United Kingdom tax.

(3) This article shall be deemed to have superseded, on and after the 1st day of January, 1945, as to United States tax, and on and after the 6th day of April, 1945, as to United Kingdom tax, the arrangements relating to reciprocal exemption of shipping profits from income tax effected between the Government of the United States and the Government of the United Kingdom by exchange of notes dated August 11, 1924, November 18, 1924, November 26, 1924, January 15, 1925, February 13, 1925, and March 16, 1925, which shall accordingly cease to have effect.

ARTICLE VI.

(1) The rate of United States tax on dividends derived from a United States corporation by a resident of the United Kingdom who is subject to United Kingdom tax on such dividends and not engaged in trade or business in the United States shall not exceed 15 per cent: Provided that such rate of tax shall not exceed 5 per cent if such resident is a corporation controlling, directly or indirectly, at least 95 per cent of the entire voting power in the corporation paying the dividend, and not more than 25 per cent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to 5 per cent shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

(2) Dividends derived from sources within the United Kingdom by an individual who is (*a*) a resident of the United States, (*b*) subject to United States tax with respect to such dividends, and (*c*) not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom surtax.

(3) Either of the contracting parties may terminate this article by giving written notice of termination to the other contracting party, through diplomatic channels, on or before the 30th day of June in any year after the year 1945, and in such event paragraph (1) hereof shall cease to be effective as to United States tax on and after the 1st day of January, and paragraph (2) hereof shall cease to be effective as to United Kingdom tax on and after the 6th day of April, in the year next following that in which such notice is given.

ARTICLE VII.

(1) Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax on such interest and not engaged in trade or business in the United States, shall be exempt from United States tax; but such exemption shall not apply to such interest paid by a United States corporation to a corporation resident in the United Kingdom controlling, directly or indirectly, more than 50 per cent of the entire voting power in the paying corporation.

(2) Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) derived from sources within the United Kingdom by a resident of the United States who is subject to United States tax on such interest and not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom tax; but such exemption shall not apply to such interest paid by a corporation resident in the United Kingdom to a United States corporation controlling, directly or indirectly, more than 50 per cent of the entire voting power in the paying corporation.

ARTICLE VIII.

(1) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trade-marks, and other like property, and derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax on such royalties or other amounts and not engaged in trade or business in the United States, shall be exempt from United States tax.

(2) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trade-marks, and other like property, and derived from sources within the United Kingdom by a resident of the United States who is subject to United States tax on such royalties or other amounts and not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom tax.

(3) For the purpose of this article the term "royalties" shall be deemed to include rentals in respect of motion picture films.

ARTICLE IX.

(1) The rate of United States tax on royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and on rentals from real property or from an interest in such property, derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax with respect to such royalties or rentals and not engaged in trade or business in the United States, shall not exceed 15 per cent: Provided that any such resident may elect for any taxable year to be subject to United States tax as if such resident were engaged in trade or business in the United States.

(2) Royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and rentals from real property or from an interest in such property, derived from sources within the United Kingdom by an individual who is (*a*) a resident of the United States, (*b*) subject to United States tax with respect to such royalties and rentals, and (*c*) not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom surtax.

ARTICLE X.

(1) Any salary, wage, similar remuneration, or pension paid by the Government of the United States to an individual (other than a British subject who is not also a citizen of the United States) in respect of services rendered to the United States in the discharge of governmental functions, shall be exempt from United Kingdom tax.

(2) Any salary, wage, similar remuneration, or pension paid by the Government of the United Kingdom to an individual (other than a citizen of the United States who is not also a British subject) in respect of services rendered to the United Kingdom in the discharge of govermental functions, shall be exempt from United States tax.

(3) The provisions of this article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the contracting parties for purposes of profit.

ARTICLE XI.

(1) An individual who is a resident of the United Kingdom shall be exempt from United States tax upon compensation for personal (including professional) services performed during the taxable year within the United States if (*a*) he is present within the United States for a period or periods not exceeding in the aggregate 183 days during such taxable year, and (*b*) such services are performed for or on behalf of a person resident in the United Kingdom.

(2) An individual who is a resident of the United States shall be exempt from United Kingdom tax upon profits, emoluments, or other remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if (*a*) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and (*b*) such services are performed for or on behalf of a person resident in the United States.

(3)[1] The provisions of this article shall not apply to the compensation, profits, emoluments, or other remuneration of public entertainers such as State, motion picture, or radio artists, musicians, and athletes.

ARTICLE XII.

(1) Any pension (other than a pension to which Article X applies), and any life annuity, derived from sources within the United States by an individual who is a resident of the United Kingdom shall be exempt from United States tax.

(2) Any pension (other than a pension to which Article X applies), and any life annuity, derived from sources within the United Kingdom by an individual who is a resident of the United States shall be exempt from United Kingdom tax.

(3) The term "life annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

ARTICLE XIII.

(1) Subject to section 131 of the United States Internal Revenue Code as in effect on the 1st day of January, 1945, United Kingdom tax shall be allowed as a credit against United States tax. For this purpose, the recipient of a dividend paid by a corporation which is a resident of the United Kingdom shall be deemed to have paid the United Kingdom income tax appropriate to such dividend if such recipient elects to include in his gross income for the purposes of United States tax the amount of such United Kingdom income tax.

(2) Subject to such provisions (which shall not affect the general principle hereof) as may be enacted in the United Kingdom, United States tax payable in respect of income from sources within the United States shall be allowed as a credit against any United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid by a United States corporation, such credit shall take into account (in addition to any United States income tax deducted from or imposed on such dividend) the United States income tax imposed on such corporation in respect of its profits, and where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, such tax on profits shall likewise be taken into account in so far as the dividend exceeds such fixed rate.

(3) For the purposes of this article, compensation, profits, emoluments, and other remuneration for personal (including professional) services shall be deemed to be income from sources within the territory of the contracting party where such services are performed.

ARTICLE XIV.

A resident of the United Kingdom not engaged in trade or business in the United States shall be exempt from United States tax on gains from the sale or exchange of capital assets.

ARTICLE XV.

Dividends and interest paid on or after the 1st day of January, 1945, by a United Kingdom corporation shall be exempt from United States tax except where the recipient is a citizen of or a resident of the United States or a United States corporation.

ARTICLE XVI.

A United Kingdom corporation shall be exempt from United States tax on its accumulated or undistributed earnings, profits, income, or surplus, if individuals who are residents of the United Kingdom control, directly or indirectly, throughout the last half of the taxable year, more than 50 per cent of the entire voting power in such corporation.

ARTICLE XVII.

(1) The United States income tax liability for any taxable year beginning prior to January 1, 1936, of any individual (other than a citizen of the United

[1] Paragraph (3) of Article XI was deleted by the protocol approval June 6, 1946.

States) resident in the United Kingdom, or of any United Kingdom corporation, remaining unpaid on the date of signature of the present convention, may be adjusted on a basis satisfactory to the United States Commissioner of Internal Revenue: Provided that the amount to be paid in settlement of such liability shall not exceed the amount of the liability which would have been determined if

(*a*) the United States Revenue Act of 1936 (except in the case of a United Kingdom corporation in which more than 50 per cent of the entire voting power was controlled, directly or indirectly, throughout the latter half of the taxable year, by citizens or residents of the United States), and

(*b*) Articles XV and XVI of the present convention,

had been in effect for such year. If the taxpayer was not, within the meaning of such Revenue Act, engaged in trade or business in the United States and had no office or place of business therein during the taxable year, the amount of interest and penalties shall not exceed 50 per cent of the amount of the tax with respect to which such interest and penalties have been computed.

(2) The United States income tax unpaid on the date of signature of the present convention for any taxable year beginning after the 31st day of December, 1935, and prior to the 1st day of January, 1945, in the case of an individual (other than a citizen of the United States) resident of the United Kingdom, or in the case of any United Kingdom corporation shall be determined as if the provisions of Articles XV and XVI of the present convention had been in effect for such taxable year.

(3) The provisions of paragraph (1) of this article shall not apply—

(*a*) unless the taxpayer files with the Commissioner of Internal Revenue on or before the 31st day of December, 1947, a request that such tax liability be so adjusted and furnished such information as the Commissioner may require; or

(*b*) in any case in which the Commissioner is satisfied that any deficiency in tax is due to fraud with intent to evade the tax.

ARTICLE XVIII.

A professor or teacher from the territory of one of the contracting parties who visits the territory of the other contracting party for the purpose of teaching, for a period not exceeding two years, at a university, college, school, or other educational institution in the territory of such other contracting party shall be exempted by such other contracting party from tax on his remuneration for such teaching for such period.

ARTICLE XIX.

A student or business apprentice from the territory of one of the contracting parties who is receiving full-time education or training in the territory of the other contracting party shall be exempted by such other contracting party from tax on payments made to him by persons within the territory of the former contracting party for the purposes of his maintenance, education, or training.

ARTICLE XX.

(1) The taxation authorities of the contracting parties shall exchange such information (being information available under the respective taxation laws of the contracting parties) as is necessary for carrying out the provisions of the present convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of the present convention. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this article, the term "taxation authorities" means, in the case of the United States, the Commissioner of Internal Revenue or his authorized representative; in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorized representative; and, in the case of any territory to which the present convention is extended under Article XXII, the competent authority for the administration in such territory of the taxes to which the present convention applies.

ARTICLE XXI.

(1) The nationals of one of the contracting parties shall not, while resident in the territory of the other contracting party, be subjected therein to other or more burdensome taxes than are the nationals of such other contracting party resident in its territory.

(2) The term "nationals" as used in this article means

(*a*) in relation to the United Kingdom, all British subjects and British protected persons, from the United Kingdom or any territory with respect to which the present convention is applicable by reason of extension made by the United Kingdom under Article XXII; and

(*b*) in relation to the United States, United States citizens, and all persons under the protection of the United States, from the United States or any territory to which the present convention is applicable by reason of extension made by the United States under Article XXII;

and includes all legal persons, partnerships, and associations deriving their status as such from, or created or organized under, the laws in force in any territory of the contracting parties to which the present convention applies.

(3) In this article the word "taxes" means taxes of every kind or description, whether National, Federal, State, provincial, or municipal.

ARTICLE XXII.

(1) Either of the contracting parties may, at the time of exchange of instruments of ratification or thereafter while the present convention continues in force, by a written notification of extension given to the other contracting party through diplomatic channels, declare its desire that the operation of the present convention shall extend to all or any of its colonies, overseas territories, protectorates, or territories in respect of which it exercises a mandate, which impose taxes substantially similar in character to those which are the subject of the present convention. The present convention shall apply to the territory or territories named in such notification on the date or dates specified in the notification (not being less than 60 days from the date of the notification), or, if no date is specified in respect of any such territory, on the sixtieth day after the date of such notification, unless, prior to the date on which the convention would otherwise become applicable to a particular territory, the contracting party to whom notification is given shall have informed the other contracting party in writing through diplomatic channels that it does not accept such notification as to that territory. In the absence of such extension, the present convention shall not apply to any such territory.

(2) At any time after the expiration of one year from the entry into force of an extension under paragraph (1) of this article, either of the contracting parties may, by written notice of termination given to the other contracting party through diplomatic channels, terminate the application of the present convention to any territory to which it has been extended under paragraph (1), and in such event the present convention shall cease to apply, six months after the date of such notice, to the territory or territories named therein, but without affecting its continued application to the United States, the United Kingdom, or to any other territory to which it has been extended under paragraph (1) hereof.

(3) In the application of the present convention in relation to any territory to which it is extended by notification by the United States or the United Kingdom references to the "United States" or, as the case may be, the "United Kingdom" shall be construed as references to that territory.

(4) The termination in respect of the United States or the United Kingdom of the present convention under Article XXIV or of Article VI shall, unless otherwise expressly agreed by both contracting parties, terminate the application of the present convention or, as the case may be, that article to any territory to which the convention has been extended by the United States or the United Kingdom.

(5) The provisions of the preceding paragraphs of this article shall apply to the Channel Islands and the Isle of Man as if they were colonies of the United Kingdom.

ARTICLE XXIII.

(1) The present convention shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

(2) Upon exchange of ratifications, the present convention shall have effect

(*a*) as respects United States tax, for the taxable years beginning on or after the 1st day of January, 1945;

(*b*) (i) as respects United Kingdom income tax, for the year of assessment beginning on the 6th day of April, 1945, and subsequent years; (ii) as respects United Kingdom surtax, for the year of assessment beginning on the 6th day of April, 1944, and subsequent years; and (iii) as respects United Kingdom excess profits tax and national defense contribution, for any chargeable accounting period beginning on or after the 1st day of April, 1945, and for the unexpired portion of any chargeable accounting period current at that date.

ARTICLE XXIV.

(1) The present convention shall continue in effect indefinitely but either of the contracting parties may, on or before the 30th day of June in any year after the year 1946, give to the other contracting party, through diplomatic channels, notice of termination and, in such event, the present convention shall cease to be effective

(*a*) as respects United States tax, for the taxable years beginning on or after the 1st day of January in the year next following that in which such notice is given;

(*b*) (i) as respects United Kingdom income tax, for any year of assessment beginning on or after the 6th day of April in the year next following that in which such notice is given; (ii) as respects United Kingdom surtax, for any year of assessment beginning on or after the 6th day of April in the year in which such notice is given; and (iii) as respects United Kingdom excess profits tax and national defense contribution, for any chargeable accounting period beginning on or after the 1st day of April in the year next following that in which such notice is given and for the unexpired portion of any chargeable accounting period current at that date.

(2) The termination of the present convention or of any article thereof shall not have the effect of reviving any treaty or arrangement abrogated by the present convention or by treaties previously concluded between the contracting parties.

In witness whereof the above-mentioned plenipotentiaries have signed the present convention and have affixed thereto their seals.

Done at Washington, in duplicate, on the 16th day of April, 1945.

For the Government of the United States of America:

E. R. STETTINUS, Jr.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

HALIFAX.

PROTOCOL.

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland,

Desiring to conclude a supplementary protocol modifying in certain respects the convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed at Washington on April 16, 1945,

Have agreed as follows:

ARTICLE I.

Paragraph (3) of Article XI of the convention of April 16, 1945, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income shall be deemed to be deleted and of no effect.

ARTICLE II.

This protocol, which shall be regarded as an integral part of the said convention, shall be ratified and the instruments of ratification thereof shall be exchanged at Washington.

In witness whereof the undersigned plenipotentiaries, being authorized thereto by their respective Governments, have signed this protocol and have affixed thereto their seals.

Done at Washington, in duplicate, this 6th day of June, 1946.

For the Government of the United States of America:

JAMES F. BYRNES,
Secretary of State of the United States of America.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

JOHN BALFOUR,
His Majesty's Envoy Extraordinary and Minister Plenipotentiary in Washington.

SEC. 7.513. APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE.—The Internal Revenue Code provides in part as follows:

CHAPTER 1.—INCOME TAX.

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SEC. 22. GROSS INCOME.

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

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(7) INCOME EXEMPT UNDER TREATY.—Income of any kind, to the extent required by any treaty obligation of the United States;

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SEC. 62. RULES AND REGULATIONS.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

Pursuant to section 62 of the Internal Revenue Code, and other provisions of the internal revenue laws, the following regulations, which are designated as sections 7.514 to 7.532, are hereby prescribed and all regulations inconsistent herewith are modified accordingly:

SEC. 7.514. SCOPE OF THE CONVENTION.—The primary purposes of the convention, to be accomplished on a reciprocal basis, are to avoid double taxation upon major items of income derived from sources in one country by persons resident in the other country, and to exchange fiscal information complementary to other provisions of the convention, including those relating to avoidance of double taxation.

The specific classes of income from sources within the United States exempt under the convention from United States tax for taxable years beginning on or after January 1, 1945, are:

(*a*) Industrial and commercial profits of a United Kingdom enterprise having no permanent establishment in the United States (Article III);

(*b*) Income derived by a nonresident alien who is a resident of the United Kingdom, or by a United Kingdom corporation, from the operation of ships documented or aircraft registered, under the laws of the United Kingdom (Article V);

(*c*) Interest and royalties (including film rentals) derived by a nonresident alien who is a resident of the United Kingdom or by a foreign corporation managed and controlled in the United Kingdom if such alien or corporation (1) is subject to United Kingdom tax upon such interest or royalties, and (2) has no permanent establishment in the United States (but such exemption does not apply to interest paid to such foreign corporation controlling the corporation paying such interest) (Articles VII and VIII);

(*d*) Compensation and pensions paid by the United Kingdom to individuals (other than a citizen of the United States who is not also a British subject) for services rendered to the United Kingdom in the discharge of its governmental functions (Article X);

(*e*) Compensation for personal services derived by a nonresident alien who is a resident of the United Kingdom if (1) such alien is present in the United States for a period or periods not exceeding 183 days during the taxable year, and (2) such services are performed for, or on behalf of, a person resident in the United Kingdom (Article XI);

(*f*) Pensions (other than pensions paid by the Government of the United States) and life annuities derived by nonresident alien individuals residing in the United Kingdom (Article XII);

(*g*) Gains from the sale or exchange of capital assets by a nonresident alien who is a resident of the United Kingdom or by a foreign corporation managed and controlled in the United Kingdom, if such alien or corporation has no permanent establishment in the United States (Article XIV);

(*h*) Dividends and interest paid on or after January 1, 1945, by a corporation organized under the laws of the United Kingdom to a nonresident alien or foreign corporation (Article XV);

(*i*) Remuneration derived from teaching in the United States for a period of not more than two years by a professor or teacher who is from the territory of the United Kingdom, but who is temporarily present in the United States (Article XVIII);

(*j*) Remittances from sources within the United Kingdom received in the United States by a nonresident alien individual who is from the territory of the United Kingdom but who is temporarily present in the United States for the purpose of education, or training, such remittances being for the purpose of his maintenance, education, or training (Article XIX).

The convention also reduces to 15 per cent the rate of tax otherwise imposed upon dividends, natural resource royalties, and rentals from real property, derived by a nonresident alien who is resident in the United Kingdom or by a foreign corporation managed and controlled in the United Kingdom if such alien or corporation meets the tests of liability to United Kingdom tax and absence of permanent establishment in the United States set out in paragraph (*c*) of this section with respect to exemption in the case of interest and royalties.

As to exemption from withholding of the tax at the source in the case of interest, royalties, pensions, and life annuities and reduction in the rate of tax from 30 per cent to 15 per cent in the case of dividends, natural resource royalties, and rentals arising from real property, see Treasury Decision 5532 [C. B. 1946–2, 73] [26 CFR, 7.500 to 7.511].

The convention does not affect the liability to United States income taxation of subjects of the United Kingdom who are residents of the United States except that such individuals are entitled to the benefits of Article X (relating to United Kingdom Government salaries and the like), of Article XIII(1) (relating to credit for United Kingdom income tax), and of Article XXI (relating to equality of taxation). Except as provided in Article X with respect to a citizen of the United States who is also a British subject and in Article XIII relating to the credit for income tax, the convention does not affect taxation by the United States of a citizen of the United States or of a domestic corporation, even though such citizen is resident in the United Kingdom and such corporation is managed and controlled in the United Kingdom. The convention has general application to foreign corporations managed and controlled in the United Kingdom even though such corporations are not organized under the laws of the United Kingdom, but, in the case of corporations organized under the laws of the United Kingdom but managed and controlled outside the United Kingdom, the provisions of Articles V, XV, and XVI are applicable.

SEC. 7.515. DEFINITIONS.—As used in sections 7.512 to 7.532 of these regulations, unless the context otherwise requires, the terms defined in the convention shall have the meanings so assigned to them. Any term used in sections 7.512 to 7.532 of these regulations which is not defined in the convention, but which is defined in the Internal Revenue Code, shall be given the definition contained therein unless the context otherwise requires.

As used in sections 7.512 to 7.532 of these regulations:

(*a*) The term "permanent establishment" means a branch, management, factory, mine, oil well, farm, timberland, plantation, workshop, warehouse, office, or other fixed place of business. The fact that a foreign corporation managed and controlled in the United Kingdom has a domestic subsidiary corporation, or a foreign subsidiary corporation having a branch in the United States, does not of itself constitute either subsidiary corporation a permanent establishment of the parent United Kingdom enterprise. The fact that a United Kingdom

enterprise has business dealings in the United States through a bona fide commission agent, broker, or custodian, acting in the usual course of his business as such, or maintains in the United States an office or other fixed place of business used exclusively for the purchase of goods or merchandise, does not mean that such United Kingdom enterprise has a permanent establishment in the United States. If, however, a United Kingdom enterprise carries on business in the United States through an agent who has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise, or if it has an agent who maintains within the United States a stock of merchandise from which he regularly fills orders on behalf of his principal, then such enterprise shall be deemed to have a permanent establishment in the United States. However, an agent having power to contract on behalf of his principal but only at fixed prices and under conditions determined by the principal does not constitute a permanent establishment of such principal. The mere fact that an agent (assuming he has no general authority to contract on behalf of his employer or principal) maintains samples or occasionally fills orders from incidental stocks of goods maintained in the United States will not constitute a permanent establishment within the United States. The mere fact that salesmen, employees of a United Kingdom enterprise, promote the sale of their employer's products in the United States or that such enterprise transacts business in the United States by means of mail-order activities, does not mean such enterprise has a permanent establishment therein. The term "permanent establishment" as used in the convention implies the active conduct therein of a business enterprise. The mere ownership, for example, of timberlands or a warehouse in the United States by a United Kingdom enterprise does not mean that such enterprise has a permanent establishment therein. As to the effect of the maintenance of a permanent establishment within the United States upon exemption from United States tax in the case of interest and royalties and reduction in the rate of United States tax in the case of dividends, natural resource royalties, and rentals arising from real property, see section 7.519 of these regulations.

(*b*) The term "enterprise" means any commercial or industrial undertaking whether conducted by an individual, partnership, corporation, or other entity. It includes such activities as manufacturing, merchandising, mining, processing, and banking. It does not include the rendition of personal services. Hence, a nonresident alien who is a resident of the United Kingdom and who renders personal services is not, merely by reason of such services, engaged in an enterprise within the meaning of the convention and his liability to United States tax is not affected by Article III of the convention.

(*c*) The term "United Kingdom enterprise" means an enterprise carried on by any person (including an individual and foreign corporation, whether or not a corporation organized under the laws of the United Kingdom, which is managed and controlled in the United Kingdom but not including a United States citizen or domestic corporation) who is a resident of the United Kingdom, regardless of whether such enterprise is carried on within or without the United Kingdom.

(*d*) The term "resident of the United Kingdom" means any nonresident alien (including an individual, fiduciary, and partnership) resident in the United Kingdom for the purposes of United Kingdom income tax, and any foreign corporation managed and controlled from within the United Kingdom but not engaged in trade or business within the United States.

(*e*) The term "industrial and commercial profits" means profits arising from industrial, commercial, mercantile, manufacturing, and like activities of a United Kingdom enterprise as defined in this section. Such term does not include rentals, royalties, interest, dividends, fees, compensation for personal services, nor gains derived from the sale or exchange of capital assets. Such enumerated items of income are not governed by the provisions of Article III of the convention but are subject to the rules elsewhere set forth in the convention and in sections 7.512 to 7.532 of these regulations.

SEC. 7.516. SCOPE OF CONVENTION WITH RESPECT TO DETERMINATION OF "INDUSTRIAL OR COMMERCIAL PROFITS."—(*a*) *General.*—Article III of the convention adopts the principle that an enterprise of one of the contracting parties shall not be taxable in the territory of the other contracting party upon its industrial or commercial profits unless it has a permanent establishment in the territory of the latter party. Hence, a United Kingdom enterprise is subject to United States tax upon its industrial and commercial profits to the extent of such profits from sources within the United States only if it has a permanent establishment within

the United States. From the standpoint of Federal income taxation, the article has application only to a United Kingdom enterprise and to the industrial and commercial income thereof from sources within the United States. It has no application, for example, to compensation for labor or personal services performed in the United States nor to income derived from real property located in the United States, including rentals and royalties therefrom, nor to gains from the sale or disposition of such property, nor to interest, dividends, royalties, other fixed or determinable annual or periodical income and gains derived from the sale or exchange of capital assets.

(*b*) *No United States permanent establishment.*—A nonresident alien individual who is a resident of the United Kingdom or a foreign corporation managed and controlled in the United Kingdom, having no permanent establishment in the United States, is not, for taxable years beginning on or after January 1, 1945, subject to United States income tax upon industrial and commercial profits from sources within the United States. For example, if such United Kingdom enterprise sells, in 1946, merchandise, such as leather goods, porcelain, textiles, or liquors, through a bona fide commission agent or broker in the United States acting in the ordinary course of his business as such agent or broker, the resulting profits are, under the terms of Article III of the convention, exempt from United States income tax. Likewise no permanent establishment exists if such enterprise, through its sales agents in the United States, secures orders for its products, the sales being made in the United Kingdom.

(*c*) *United States permanent establishment.*—A nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of the United Kingdom or a foreign corporation managed and controlled in the United Kingdom, having a permanent establishment in the United States, is subject to tax upon industrial and commercial profits from sources within the United States to the same extent as are nonresident aliens and foreign corporations engaged in trade or business therein. In the determination of the income taxable to such alien or foreign corporation all industrial and commercial profits from sources within the United States shall be deemed to be allocable to the permanent establishment in the United States. Hence, for example, if a United Kingdom enterprise having a permanent establishment in the United States sells in the United States, through a commission agent therein, goods produced in the United Kingdom, the resulting profits derived from United States sources from such transactions are allocable to such permanent establishment even though such transactions were carried on independently of such establishment. In determining industrial and commercial profits no account shall be taken of the mere purchase of merchandise within the United States by the United Kingdom enterprise. The industrial or commercial profits of the permanent establishment shall be determined as if the establishment were an independent enterprise engaged in the same or similar activities and dealing at arm's length with the enterprise of which it is a permanent establishment.

SEC. 7.517. CONTROL OF A DOMESTIC ENTERPRISE BY A UNITED KINGDOM ENTERPRISE.—Article IV of the convention provides, in effect, that if a United Kingdom enterprise by reason of its control of a domestic enterprise imposes on such latter enterprise conditions different from those which would result from normal business relations between independent enterprises, the accounts between the enterprises may be adjusted so as to ascertain the true net income of each enterprise. The purpose is to place the controlled domestic enterprise on a tax parity with an uncontrolled domestic enterprise by determining, according to the standard of an uncontrolled enterprise, the true net income from the property and business of the controlled enterprise. The basic objective of the article is that if the accounting records do not truly reflect the net income from the property and business of such domestic enterprise the Commissioner of Internal Revenue may intervene and, by making such distributions, apportionments, or allocations as he may deem necessary of gross income or deductions of any item or element affecting net income as between such domestic enterprise and the United Kingdom enterprise by which it is controlled or directed, determine the true net income of the domestic enterprise. The provisions of section 29.45–1, Regulations 111 [26 CFR, 29.45–1], shall, in so far as applicable, be followed in the determination of the net income of the domestic business.

SEC. 7.518. INCOME FROM OPERATION OF SHIPS AND AIRCRAFT.—The income derived from the operation of ships documented, or aircraft registered, under the laws of the United Kingdom by a nonresident alien who is a resident of

the United Kingdom or by a corporation, association, or other like entity created under the laws of the United Kingdom, is, for taxable years beginning on or after January 1, 1945, exempt from United States income tax under the provisions of Article V of the convention. It is immaterial for the purpose of the exemption whether such corporation is managed and controlled in the United Kingdom.

SEC. 7.519. EXEMPTION FROM, OR REDUCTION IN RATE OF, UNITED STATES TAX IN THE CASE OF DIVIDENDS, INTEREST, ROYALTIES, NATURAL RESOURCE ROYALTIES, AND REAL PROPERTY RENTALS.—(a) *Dividends, natural resource royalties, and rentals from real property.*—(1) *General.*—The tax imposed by the Internal Revenue Code in the case of dividends, natural resource royalties, and rentals arising from real property (including leasehold and other interest in such property), received in any taxable year beginning on or after January 1, 1945, from sources within the United States by (i) a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of the United Kingdom, or (ii) a foreign corporation (whether or not created under the laws of the United Kingdom) which is managed and controlled in the United Kingdom, is limited to 15 per cent under the provisions of Article VI(1) (relating to dividends) and Article IX(1) (relating to natural resource royalties and rentals from real property) of the convention if such alien or corporation—

(i) is subject to United Kingdom tax on such dividends, natural resource royalties, and rentals, and

(ii) at no time during the taxable year in which such dividends, natural resource royalties, and rentals were so derived was engaged in trade or business within the United States.

For the purposes of Articles VI, VII, VIII, IX, and XIV of the convention, the nonresident alien or foreign corporation is not deemed to be engaged in trade or business within the United States unless such alien or foreign corporation has a permanent establishment situated therein at some time in the taxable year in which the income is derived. See Article II(2) of the convention. Thus, if a nonresident alien who is a resident of the United Kingdom performs personal services within the United States during the calendar year 1946, has no permanent establishment within the United States at any time during such year, and is subject to United Kingdom tax upon dividends derived by him from United States sources in that year, he is entitled to the reduced rate of tax with respect to such dividends, as provided in Article VI(1) of the convention, even though by reason of his having rendered personal services within the United States he is engaged in trade or business therein in that year within the meaning of section 211(b) of the Internal Revenue Code. If, for example, A, a nonresident alien who is a resident of the United Kingdom, derives in 1946 $5,000 compensation for such personal services and his only other income from sources within the United States consists of dividends, the dividends are subject to tax at the rate not to exceed 15 per cent and his earned income is subject to normal tax and surtax without taking the dividends into account in determining the tax on such earned income.

In any case, however, in which a nonresident alien or a foreign corporation derives from sources within the United States in any taxable year beginning on or after January 1, 1945, royalties from the operation of mines, quarries, or other extraction of natural resources or rentals from real property situated within the United States and is entitled to the reduced rate of 15 per cent prescribed in Article IX of the convention, such alien or foreign corporation may for such taxable year elect instead to be subject to Federal income tax as if such alien or corporation were engaged in trade or business within the United States by reason of having a permanent establishment therein. Such election shall be made by so signifying on the return for such year. The election so signified shall be irrevocable for the taxable year for which such election is made. In such case a return may be filed by the nonresident alien or foreign corporation even though the sole income of such alien or corporation from sources within the United States is fixed or determinable annual or periodical income upon which the tax has been fully satisfied at the source and there exists no necessity for the filing of the return except for the purposes of securing the benefits of Article IX of the convention. See section 29.217–2, Regulations 111 [26 CFR, 29.217–2].

(2) *Dividends paid by a United States subsidiary corporation.*—Under the proviso of Article VI(1) of the convention, dividends paid by a domestic corporation to its foreign parent corporation are subject to tax at the rate of only 5

per cent if (i) such foreign corporation controls, directly or indirectly, at the time the dividend is paid 95 per cent or more of the voting power in such domestic corporation, (ii) not more than 25 per cent of the gross income of the domestic corporation paying the dividend consists of dividends and interest (other than dividends and interest paid to such domestic corporation by its own subsidiary corporations, if any), and (iii) the relationship between such domestic corporation and such foreign corporation has not been arranged or maintained primarily with the intention of securing such reduced rate of 5 per cent.

Thus, for example, the X Corporation is a domestic corporation, 97 per cent of the entire voting stock of which is controlled by the Y Company, Ltd., a foreign corporation managed and controlled in the United Kingdom, not having a permanent establishment in the United States at any time during the calendar year 1946, and subject to United Kingdom tax with respect to any dividends received by it or credited to its account in the United States. The X Corporation makes its income tax returns on the calendar year basis and throughout each of the years 1943, 1944, and 1945 derived not more than 25 per cent of its gross income from interest and dividends from corporations not controlled by it. The relationship between the X Corporation and the Y Company, Ltd., is a relationship arranged and maintained without reference to the reduced rate of tax on dividends provided in the proviso in Article VI(1) of the convention. A dividend was paid by the X Corporation to the Y Company, Ltd., on July 1, 1946. The reduced rate of tax of 5 per cent is applicable to such dividend.

(*b*) *Interest and royalties.*—(1) *General.*—Interest (other than interest paid by a subsidiary corporation to its United Kingdom parent corporation, as explained in subparagraph (2) of this paragraph), whether on bonds, securities, notes, debentures, or any other form of indebtedness (including interest on obligations of the United States and on obligations of instrumentalities of the United States) and royalties for the privilege of using copyrights, patents, designs, secret processes and formulae, trade-marks, and other like property (including film rentals) received in any taxable year beginning on or after January 1, 1945, from sources within the United States by (i) a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of the United Kingdom, or (ii) a foreign corporation (whether or not organized under the laws of the United Kingdom) which is managed and controlled in the United Kingdom, are exempt from United States tax under the provision of Articles VII and VIII of the convention if such alien, or corporation—

(i) is subject to United Kingdom tax on such interest or royalty, and

(ii) at no time during the taxable year in which such interest or royalty was so derived, had a permanent establishment situated within the United States.

Such interest and royalties are, therefore, not subject to the withholding provisions of the Internal Revenue Code.

(2) *Interest paid by subsidiary corporation to its United Kingdom parent corporation.*—Article VII(1) of the convention provides in part that the exemption from United States tax of interest paid to residents of the United Kingdom shall not apply to interest paid by a domestic corporation to a foreign corporation managed and controlled in the United Kingdom if such foreign corporation controls more than 50 per cent of the voting power of all classes of stock of such domestic corporation.

(*c*) *Beneficiaries of an estate or trust.*—A nonresident alien who is a resident of the United Kingdom and who is a beneficiary of a domestic estate or trust shall be entitled to the exemption, or reduction in the rate of tax, as the case may be, provided in Articles VI, VII, VIII, IX, and XIV of the convention with respect to dividends, interest, royalties, natural resource royalties, rentals from real property, and capital gains to the extent such item or items are included in his distributive share of income of such estate or trust if he is taxable in the United Kingdom on such income and is not engaged in trade or business in the United States through a permanent establishment. In such case such beneficiary must, in order to be entitled to the exemption or reduction in the rate of tax, execute Form 1001-UK or Form 1001A-UK (modified to show dividends where applicable) and file such form with the fiduciary of such estate or trust in the United States.

In any case in which dividends, interest, royalties, rents, or the like are derived from United States sources by a United Kingdom estate or trust any beneficiary of such estate or trust who is not a resident of the United Kingdom is not entitled to any exemption under the convention with respect to such income included in his distributive share of the income of the estate or trust.

SEC. 7.520. *Government wages, salaries, pensions, and similar remunerations.*—Under Article X of the convention any salary, wage, similar remuneration, or pension, paid in taxable years beginning on or after January 1, 1945, by the Government of the United Kingdom for services rendered such Government (whether within or without the United States) in the discharge of its governmental functions by any individual who is not a citizen of the United States, is exempt from Federal income tax. For the purposes of the exemption an individual is treated as not a citizen of the United States if he or she has the dual status of being a citizen of the United States as well as being a subject of the United Kingdom. Thus, if A, a United States citizen, marries a British subject and assumes the status of a British subject by reason of such marriage without relinquishing her United States citizenship and performs personal services in the United States for the Government of the United Kingdom, the compensation for such services is excluded from gross income. As to the taxation, generally, of compensation of alien employees of foreign governments see section 116(h) of the Internal Revenue Code and section 29.116-2, Regulations 111 [26 CFR, 29.116-2]. The exemption granted by Article X of the convention does not apply to compensation for services rendered incident to the carrying on of any trade or business by the United Kingdom.

SEC. 7.521. COMPENSATION FOR LABOR OR PERSONAL SERVICES.—Article XI provides, upon a reciprocal basis, that a nonresident alien who is a resident of the United Kingdom is, for taxable years beginning on or after January 1, 1945, exempt from Federal income tax upon compensation (regardless of amount of such compensation) for personal (including professional) services performed during the taxable year within the United States if for such taxable year—

(*a*) such alien is temporarily present in the United States for a period or periods not exceeding 183 days during such taxable year, and

(*b*) such services are performed for or on behalf of a person resident in the United Kingdom.

As to the source of compensation for labor or personal services see section 119(a)(3), Internal Revenue Code.

SEC. 7.522. PENSIONS AND LIFE ANNUITIES.—Under the provisions of Article XII of the convention, pensions (other than pensions paid by the United States) and life annuities derived from sources within the United States by a nonresident alien individual who is a resident of the United Kingdom are exempt from Federal income tax for taxable years beginning on or after January 1, 1945. The term "life annuities" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make payments in consideration of payments made for such obligation.

SEC. 7.523. CAPITAL GAINS.—Under Article XIV of the convention, when read in association with Article II(2) of the convention, gains from the sale or exchange of capital assets by a nonresident alien individual who is a resident of the United Kingdom or by a foreign corporation managed and controlled in the United Kingdom are, for taxable years beginning on or after January 1, 1945, exempt from Federal income tax unless such alien or corporation has a permanent establishment in the United States. As to what constitutes capital assets, see section 117, Internal Revenue Code. As to what constitutes a permanent establishment see section 7.515 of these regulations. If A, a nonresident alien individual who is a resident of the United Kingdom, performs personal services within the United States during the calendar year 1946 for a domestic employer, he is engaged in trade or business within the United States in such taxable year. (Section 211(b), Internal Revenue Code.) He carries on in that year no other business activity within the United States other than certain securities transactions upon a domestic stock exchange and maintained no office or other fixed place of business within the United States at any time during such year. A is not subject to Federal income tax upon his capital gains, if any, realized from his securities transactions. Likewise, a foreign corporation managed and controlled in the United Kingdom, selling its products manufactured in the United Kingdom through a resident commission agent or broker in the United States, and having certain securities transactions within the United States as its only other business activity therein, is exempt from United States tax upon those capital gains, if any, arising from the securities transactions within the United States.

SEC. 7.524. DIVIDENDS AND INTEREST PAID BY A UNITED KINGDOM CORPORATION.—A dividend paid by a foreign corporation constitutes in whole or in part income

from sources within the United States and hence is subject to tax in the hands of a nonresident alien or foreign corporation, if 50 per cent or more of the gross income of the foreign corporation paying such dividend is derived from sources within the United States during the period prescribed by the statute. Section 119(a)(2)(B), Internal Revenue Code, and section 29.119–3(*b*), Regulations 111 [26 CFR, 29.119–3(b)]. Interest paid by a resident foreign corporation constitutes in its entirety income from sources within the United States, and hence is subject to tax in the hands of a nonresident alien individual or foreign corporation, if 20 per cent or more of the gross income of the foreign corporation paying such interest is derived from sources within the United States during the period prescribed by the statute. Section 119(a)(1)(B), Internal Revenue Code, and section 29.119–2(*b*), Regulations 111 [26 CFR, 29.119–2(b)].

Under the provisions of Article XV of the convention, dividends and interest paid by a corporation created under the laws of the United Kingdom to any nonresident alien or to any foreign corporation, whether or not such alien is a resident of the United Kingdom and whether or not such foreign corporation is organized under the laws of the United Kingdom, are, for taxable years beginning on or after January 1, 1945, not subject to Federal income tax regardless of whether the corporation paying such dividends or interest is a resident foreign (as to the United States) corporation and regardless of the percentage of its gross income derived from sources within the United States.

SEC. 7.525. UNITED KINGDOM CORPORATIONS—EXEMPTION FROM FEDERAL TAXATION WITH RESPECT TO ACCUMULATED PROFITS OR UNDISTRIBUTED INCOME.—Section 102 of the Internal Revenue Code imposes (in addition to other taxes imposed by Chapter 1 of such Code) a graduated income tax or surtax upon any domestic or foreign corporation formed or availed of to avoid the imposition of the individual surtax upon its shareholders or the shareholders of any other corporation through the medium of permitting earnings or profits to accumulate instead of dividing or distributing them. Such tax, however, does not apply in the case of personal holding companies as defined in section 501 of the Internal Revenue Code nor to foreign personal holding companies as defined in Supplement P (section 331) of such Code. Section 500 of the Internal Revenue Code imposes (in addition to the taxes imposed by Chapter 1 of such Code) a graduated income tax or surtax upon corporations classified as personal holding companies, regardless of whether or not they are formed or availed of to accumulate earnings or profits for the purpose of avoiding surtax upon shareholders.

Under the provisions of Article XVI of the convention corporations organized under the laws of the United Kingdom are, for taxable years beginning on or after January 1, 1945, subject to neither the tax imposed by section 102 of the Internal Revenue Code nor the tax imposed by section 500 of such Code if more than 50 per cent of the entire voting power in such corporation is controlled directly or indirectly throughout the last half of the taxable year by nonresident alien individuals who are residents of the United Kingdom. To come within the scope of the exemption, the prescribed proportion of the stock of the United Kingdom corporation concerned must be so owned at all times throughout the last half of the taxable year in which the taxable status of the corporation is involved. In determining the ownership of the voting stock of the United Kingdom corporation, the provisions of section 29.503(a)–1 to 29.503(a)–7, inclusive, and section 29.503(b)–1, Regulations 111 [26 CFR, 29.503(a)–1 to 29.503(a)–7, and 29.503(b)–1], shall, in so far as not inconsistent with the convention, be applicable in the administration of the provisions of the convention.

SEC. 7.526. VISITING PROFESSORS OR TEACHERS.—Under Article XVIII of the convention, an alien individual who is from the territory of the United Kingdom, but who is temporarily present within the United States for the purposes of teaching, lecturing, or instructing, at any university, college, school, or other educational institution situated within the United States, is, for a period not exceeding two years from the date of his arrival in the United States, exempt for taxable years beginning on or after January 1, 1945, from Federal income tax on remuneration received for such services. It shall be deemed that such alien coming to the United States for the purposes indicated has, for a period of not more than two years immediately succeeding the date of his arrival within the United States for such purposes, the tax status of a nonresident alien in the absence of proof of his intention to remain indefinitely in the United States.

SEC. 7.527. REMITTANCES.—Under Article XIX of the convention nonresident alien individuals who are from the territory of the United Kingdom but who are temporarily present in the United States for the purposes of study or for

acquiring business experience or training are exempt, for taxable years beginning on or after January 1, 1945, from Federal income tax upon amounts representing remittances from sources within the United Kingdom for the purposes of their maintenance, education, and training.

SEC. 7.528. CREDIT AGAINST UNITED STATES TAX LIABILITY FOR INCOME TAX PAID OR DEEMED TO HAVE BEEN PAID TO THE UNITED KINGDOM.—For the purpose of avoidance of double taxation, Article XIII of the convention provides that there shall be allowed on the part of the United States, in accordance with section 131 of the Internal Revenue Code as in effect on the 1st day of January, 1945, for taxable years beginning on or after January 1, 1945, against the United States income and excess profits tax liability a credit for United Kingdom taxes.

In determining the credit under section 131 of the Internal Revenue Code, in any case in which a taxpayer receives a dividend from a foreign corporation managed and controlled in the United Kingdom, it shall be deemed that such taxpayer has paid to the United Kingdom the United Kingdom income tax at the rate appropriate to such dividend, if such taxpayer elects to include in his gross income an amount equivalent to such United Kingdom income tax in addition to the amount of the dividend otherwise included in gross income.

Thus, if such foreign corporation declares during the taxable year 1945 a gross dividend of which the taxpayer's share is $1,000, and the standard rate of United Kingdom income tax in 1945 is 50 per cent and such corporation is not entitled to any "relief" from the payment of the standard rate of tax because of any Dominion income tax paid by it, there is deducted at the source by such corporation incident to the payment of the dividend of $1,000 the sum of $500, leaving a net amount of $500 actually received by the taxpayer. If the taxpayer elects to include the entire amount of $1,000 in his gross income, the amount of $500, representing the United Kingdom income tax deemed to have been paid, is allowable as a credit under section 131 of the Internal Revenue Code, subject to the limitations provided in that section. If, however, the foreign corporation is entitled to "relief" for Dominion income tax paid by it so that the amount of tax deducted from the gross dividend is the net United Kingdom income tax (representing the standard tax reduced by the relief for Dominion income tax) the amount of such net United Kingdom tax is the amount allowable as a credit against the United States income tax under the provisions of section 131 of the Internal Revenue Code, subject to the limitations provided in that section, provided the taxpayer elects to include in his gross income, in addition to the amount of the dividend received by him, the net United Kingdom tax appropriate to the dividend. See sections 29.131–1 to 29.131–8, Regulations 111 [26 CFR, 29.131–1 to 29.131–8].

The net United Kingdom tax is also the basis of the credit in the case of a dividend paid by such corporation subsequent to 1945 even though the tax required to be deducted from such dividend must be determined without taking into account any reduction by reason of "relief" from double taxation to which the corporation paying such dividend may be entitled. Thus, for example, a foreign corporation managed and controlled in the United Kingdom derives all of its income from sources within a British Dominion which imposes an income tax at an effective rate of 20 per cent. On July 1, 1946, it pays a dividend, the gross amount of which in the case of A, a United States citizen shareholder resident in the United States, is $1,000. The amount of tax required to be withheld by the corporation is $450 or a rate of 45 per cent applied to the gross amount of the dividend, and A receives a net dividend of $550. However, the corporation in the payment of its United Kingdom income tax received a credit against the rate of 45 per cent for the 20 per cent tax paid to the Dominion. Hence the net United Kingdom rate is 25 per cent which, applied to the gross dividend of $1,000, equals $250, which constitutes the United Kingdom income tax appropriate to the dividend. In such case, if A elects to take a credit for the United Kingdom tax appropriate to the dividend, he must include in gross income the amount of $550 plus $250, or $800, the sum of $250 being the basis of the resulting credit under the provisions of section 131, Internal Revenue Code.

Assume that a domestic corporation owns stock in a foreign corporation managed and controlled in the United Kingdom (hereinafter referred to as the first United Kingdom corporation), that the first United Kingdom corporation has as its sole income dividends received from a second United Kingdom corporation, and that such second United Kingdom corporation derives all its income from sources within the X British Colony which imposes upon such second United Kingdom corporation tax at the rate of 20 per cent of its income. Both

the first and second United Kingdom corporations are subject to tax imposed by the United Kingdom. However, in the imposition of such tax upon the second United Kingdom corporation, there is allowed under United Kingdom law against the United Kingdom standard tax of 45 per cent a credit of 20 per cent imposed by the X Colony and hence such corporation pays United Kingdom tax at the rate of 25 per cent. The second United Kingdom corporation is deemed under United Kingdom law to have paid the 25 per cent United Kingdom tax with respect to the dividends paid by it and, in turn, the first United Kingdom corporation is deemed to have paid United Kingdom tax of 25 per cent with respect to such dividends. When, therefore, dividends are received by the domestic corporation from the first United Kingdom corporation, such domestic corporation will for the purposes of the credit under section 131 be deemed to have paid United Kingdom tax of 25 per cent. Such domestic corporation may elect to include in its gross income the amount of United Kingdom tax thus deemed to have been paid and to claim credit for such tax under the provisions of section 131 of the Internal Revenue Code.

SEC. 7.529. ADJUSTMENT OF TAX LIABILITY OF NONRESIDENT ALIENS WHO ARE RESIDENTS OF THE UNITED KINGDOM AND OF UNITED KINGDOM CORPORATIONS.—Article XVII(1) of the convention confers upon the Commissioner of Internal Revenue authority to adjust the tax liability for taxable years beginning prior to January 1, 1936, of any nonresident alien individual who is a resident of the United Kingdom and of any corporation organized under the laws of the United Kingdom (whether or not such corporation is managed and controlled in the United Kingdom) in any case in which such tax liability remained unpaid on April 16, 1945 (the date of signature of the convention). Such provisions, however, will not apply unless—

(*a*) the taxpayer files with the Commissioner of Internal Revenue on or before December 31, 1947, a request that such tax liability be so adjusted and a sworn statement showing for each year involved and for such other years as the Commissioner of Internal Revenue may require, (1) by items and classes of income the amounts of dividends, interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical income, gains, profits, and income derived from sources within the United States; (2) the business transactions, if any, carried on in the United States by or in behalf of the taxpayer during each of such years; and (3) such further information as the Commissioner of Internal Revenue may require in the particular case; and

(*b*) the Commissioner of Internal Revenue is satisfied that the additional income tax involved did not arise by reason of fraud with intent to evade the tax on the part of the taxpayer concerned.

In any case in which the Commissioner of Internal Revenue deems it appropriate to exercise the authority thus conferred, the resulting tax liability for any such year or years may not exceed the amount of the liability which would be determined had the following been given effect for such year or years:

(i) The Revenue Act of 1936 (but this does not apply in the case of a United Kingdom corporation in which more than 50 per cent of the entire voting power was controlled, directly or indirectly, through the latter half of the taxable year for which the liability is being determined by citizens or residents of the United States);

(ii) Article XV of the convention, exempting from United States tax dividends and interest paid by a United Kingdom corporation to nonresident aliens or foreign corporations; and

(iii) Article XVI of the convention, exempting United Kingdom corporations from the tax imposed by the United States with respect to accumulated or undistributed earnings, profits, income, or surplus.

In any case in which the Commissioner of Internal Revenue has exercised his authority to apply the provisions of Article XVII(1) of the convention, if the taxpayer was not engaged in trade or business within the United States and had no office or place of business therein during the taxable year involved, the aggregate amount of interest and penalties may not exceed 50 per cent of the amount of the tax with respect to which such interest and penalties have been computed.

Article XVII(2) of the convention provides that the Federal income tax liability for taxable years beginning after December 31, 1935, and prior to January

1, 1945, which remains unpaid on April 16, 1945, the date of signature of the convention, in the case of any nonresident alien individual, a resident of the United Kingdom, or of any United Kingdom corporation, shall be determined under the United States internal revenue law properly applicable thereto, except that Articles XV (relating to exception from United States tax of dividends and interests paid by a United Kingdom corporation) and XVI (relating to exemption of a United Kingdom corporation from United States tax with respect to accumulated earnings or profits) of the convention shall be treated as being in effect for such years. (See sections 7.524 and 7.525 of these regulations.)

SEC. 7.530. RECIPROCAL ADMINISTRATIVE ASSISTANCE.—By Article XX of the convention, the United States and the United Kingdom adopt the principle of exchange of such information as is necessary to the administration of the provisions of the convention or for the prevention of fraud or for the detection of practices which are aimed at reduction of the revenues of either contracting party but not including information which would disclose any trade secret or trade process. Pursuant to such principle, every United States withholding agent shall make and file with the collector, in duplicate, an information return on Form 1042D, in addition to the withholding return, Form 1042, for the calendar year 1946 and each subsequent calendar year, with respect to: (*a*) dividends from which a tax of 15 per cent was withheld from persons whose addresses are in the United Kingdom (5 per cent in the case of dividends falling within the scope of the proviso of Article VI(1) of the convention); (*b*) real property rentals and natural resource royalties from which a tax of 15 per cent was withheld from persons whose addresses are in the United Kingdom; (*c*) royalties and like amounts and interest from which no tax was withheld from persons whose addresses are in the United Kingdom; and (*d*) all other fixed or determinable annual or periodical income paid to persons whose addresses are in the United Kingdom.

The information and correspondence relative to exchange of information may be transmitted directly by the Commissioner of Internal Revenue to the Commissioners of Inland Revenue.

SEC. 7.531. INFORMATION TO BE FURNISHED IN DUE COURSE.—In accordance with the provisions of Article XX of the convention the Commissioner of Internal Revenue will forward to the Commissioners of Inland Revenue as soon as practicable after the close of the calendar year 1946, and of each calendar year thereafter during which the convention is in effect, the names and addresses of all persons whose addresses are within the United Kingdom and who derived from sources within the United States dividends, interest, rents, royalties, salaries, wages, pensions, annuities, or other fixed or determinable annual or periodical profits and income, showing the amounts of such items of income in the case of each addressee. For these purposes the transmission to the Commissioners of Inland Revenue of information return Form 1042D as provided in section 7.530 of these regulations for the calendar year 1946, and subsequent calendar years, shall constitute compliance with the provisions of Article XX of the convention and of sections 7.512 to 7.532 of these regulations.

SEC. 7.532. INFORMATION IN SPECIFIC CASES.—Under the provisions of Article XX of the convention and upon request of the Commissioners of Inland Revenue, the Commissioner of Internal Revenue shall furnish to the Commissioners of Inland Revenue any information (other than information that would disclose any trade secret or trade process) available to or obtainable by the Commissioner of Internal Revenue relative to the tax liability of any person under the revenue laws of the United Kingdom in any case in which such information is necessary to the administration of the provisions of the convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance.

JOSEPH D. NUNAN, Jr.,
Commissioner of Internal Revenue.

Approved July 3, 1947.

JOSEPH J. O'CONNELL, Jr.,
Acting Secretary of the Treasury.

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SECTION 29.211-7: Taxation of nonresident alien individuals. 1947-23-12682 I. T. 3876

INTERNAL REVENUE CODE.

A resident of the United Kingdom (other than a citizen of the United States) who is employed by a foreign corporation managed and controlled in the United Kingdom is exempt, under Article XI(1) of the United States-United Kingdom income tax convention, from United States income tax with respect to compensation received from the foreign corporation for personal services rendered in the United States, if he is present in the United States for a period or periods aggregating not in excess of 183 days during the taxable year, even though such corporation has a permanent establishment in the United States.

Advice is requested whether certain officers and employees of a foreign corporation, which is managed and controlled in the United Kingdom and has a permanent establishment in the United States, such officers and employees being nonresident aliens as to the United States, are entitled to exemption from United States income tax under Article XI(1) of the United States-United Kingdom income tax convention (T. D. 5569, page 100, at page 104, this Bulletin) in respect of their compensation for personal services rendered in the United States.

Article XI(1) of the United States-United Kingdom income tax convention provides as follows:

(1) An individual who is a resident of the United Kingdom shall be exempt from United States tax upon compensation for personal (including professional) services performed during the taxable year within the United States if (*a*) he is present within the United States for a period or periods not exceeding in the aggregate 183 days during such taxable year, and (*b*) such services are performed for or on behalf of a person resident in the United Kingdom.

Article II(1)(*g*) of the United States-United Kingdom income tax convention provides as follows:

(*g*) The term "resident of the United Kingdom" means any person (other than a citizen of the United States or a United States corporation) who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in the United States for the purposes of United States tax. A corporation is to be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom.

Section 7.515(*d*) of Treasury Decision 5569 (page 100, at page 111, this Bulletin) provides as follows:

(*d*) The term "resident of the United Kingdom" means any nonresident alien (including an individual, fiduciary, and partnership) resident in the United Kingdom for the purposes of United Kingdom income tax, and any foreign corporation managed and controlled from within the United Kingdom *but not engaged in trade or business within the United States.* [Italics supplied.]

The precise question presented is whether the clause "but not engaged in trade or business within the United States," contained in section 7.515(*d*) of Treasury Decision 5569, supra, will preclude the officers and employees of the instant corporation who render personal services in the United States from the benefits of the exemption provided by Article XI(1) of the United States-United Kingdom income tax convention.

It will be observed that Article II(1)(*g*) of the tax convention, supra, in defining the term "resident of the United Kingdom," excludes from the definition any taxable entity "resident in the United States

for the purposes of United States tax." For United States income tax purposes, a foreign (as to the United States) corporation engaged in trade or business in the United States is regarded as resident in the United States. (See section 231(b) of the Internal Revenue Code.) Hence, there appears in section 7.515(*d*) of Treasury Decision 5569, supra, the above-mentioned clause. Thus, a foreign corporation managed and controlled in the United Kingdom, as is the instant corporation, and having a permanent establishment in the United States, is not, for example, entitled to the benefits of the provisions of Articles VI, VII, or VIII of the convention. It does not follow, however, that exemption from United States tax is denied with respect to compensation of its officers and employees where such individuals conform to the conditions set forth in Article XI(1) of the convention.

It will be observed that Article II(1)(*h*) of the convention, in defining the reciprocal term " resident of the United States," does not exclude any domestic (as to the United States) corporation which has a permanent establishment in the United Kingdom. Hence, an individual employee of such a corporation, who is himself a resident of the United States, would be exempt from United Kingdom tax under Article XI(2) of the convention if, during the taxable year, he performs personal services in the United Kingdom for such corporation for a period or periods aggregating not in excess of 183 days. Obviously, Article XI is intended to operate reciprocally. Therefore, an employee of a foreign corporation managed and controlled in the United Kingdom, even though such corporation has a permanent establishment in the United States, is exempt from United States income tax with respect to compensation received from that corporation for personal services, if he is present in the United States for a period or periods aggregating not in excess of 183 days during the taxable year. Such exemption from United States tax in the case of such an individual is in harmony with the exemptions from United States tax recognized in the case of residents of Sweden under Article XI(*b*) of the United States-Sweden tax convention (T. D. 4975, C. B. 1940-2, 43, at 45) and under Article VII(1)(*a*) of the United States-Canada income tax convention (T. D. 5206, C. B. 1943, 526, at 528).

Accordingly, it is held that a resident of the United Kingdom (other than a citizen of the United States) who is employed by a foreign corporation managed and controlled in the United Kingdom is exempt, under Article XI(1) of the United States-United Kingdom income tax convention, from United States income tax with respect to compensation received from the foreign corporation for personal services rendered in the United States, if he is present in the United States for a period or periods aggregating not in excess of 183 days during the taxable year, even though such corporation has a permanent establishment in the United States.

SECTION 29.211-7: Taxation of nonresident alien individuals.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5580, page 88.)

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SUPPLEMENT 1.—FOREIGN CORPORATIONS.

SECTION 231.—TAX ON FOREIGN CORPORATIONS.

SECTION 29.231–1: Taxation of foreign corporations.

INTERNAL REVENUE CODE

Regulations affecting the taxation of foreign corporations managed and controlled in the United Kingdom under the income tax convention and protocol between the United States and the United Kingdom, proclaimed by the President of the United States on July 30, 1946. (See T. D. 5569, page 100.)

SECTION 29.231–1: Taxation of foreign corporations.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5580, page 88.)

CHAPTER 2.—ADDITIONAL TAXES.

SUBCHAPTER E.—EXCESS PROFITS TAX.

PART I.

SECTION 722.—GENERAL RELIEF—CONSTRUCTIVE AVERAGE BASE PERIOD NET INCOME.

REGULATIONS 112, SECTION 35.722–5: Application for relief under section 722.

INTERNAL REVENUE CODE

Jurisdiction of The Tax Court of the United States. (See Ct. D. 1693, below.)

SECTION 732.—REVIEW OF ABNORMALITIES BY BOARD OF TAX APPEALS [NOW THE TAX COURT OF THE UNITED STATES].

REGULATIONS 112, SECTION 35.732–1: Review of abnormalities by The Tax Court of the United States. 1947–22–12679 Ct. D. 1693

(Also Section 722, Section 35.722–5.)

EXCESS PROFITS TAX—INTERNAL REVENUE CODE—DECISION OF COURT.

APPLICATION FOR RELIEF—JURISDICTION OF TAX COURT—APPLICATION FOR RELIEF ESSENTIALLY CLAIM FOR REFUND OR CREDIT.

The filing of an excess profits tax return, payment of a part of the tax due, the filing of a claim for refund or credit and denial in whole or in part of such claim by the Commissioner, are prerequisites to the jurisdiction of The Tax Court to determine petitioner's right

to relief from excessive or discriminatory excess profits taxes resulting from abnormally low excess profits credit under section 722, Internal Revenue Code. Until some tax has been paid there is no basis for relief. The essential characteristic of an application for relief is that it is a claim for refund or credit.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

Pohatcong Hosiery Mills, Inc., petitioner, v. *Commissioner of Internal Revenue, respondent.*

[162 Fed. (2d), 146.]

On petition for review of the decision of The Tax Court of the United States.

Before GOODRICH, MCLAUGHLIN, and KALODNER, Circuit Judges.

[Decided May 23, 1947.]

OPINION OF THE COURT AS AMENDED JULY 24, 1947.

By KALODNER, Circuit Judge:

In this petition for review of the decision of The Tax Court we are met with a problem in the administrative procedure for obtaining excess profits tax relief under section 722 of the Internal Revenue Code.

The issue is whether (1) payment of any part of the petitioner's excess profits tax and (2) denial in whole or in part by the Commissioner of a claim for refund or credit under section 722, are prerequisites to the jurisdiction of The Tax Court to determine petitioner's right to relief under section 722.

The facts, which are not in dispute, are as follows:

Petitioner filed its excess profits tax return for the calendar year 1942, computing its tax without the application of section 722. In the return it reported its excess profits net income as $206,334.07, its excess profits credit based on invested capital as $73,428.16, and its unused excess profits credit adjustment as $142,794.08. Since the credits exceeded the excess profits net income, the return showed no excess profits tax due, and none was paid.

On September 4, 1943, the petitioner filed, on Form 991, an application for relief under section 722, covering the years 1940, 1941, and 1942. Subsequently, the Commissioner notified the petitioner that he proposed to determine a deficiency of $88,642.23 in excess profits tax for 1942, based upon an increase in petitioner's excess profits tax net income and decreases in petitioner's credits. On July 20, 1944, petitioner filed, on Form 991, an amended application for relief, in the same amount as the proposed deficiency, under section 722 covering the tax year 1942. After numerous conferences between petitioner's and Commissioner's representatives, the Commissioner, on August 29, 1945, mailed a notice of deficiency in excess profits taxes for 1942 in the amount of $88,642.23. In this deficiency notice, the Commissioner said:

"You have filed Forms 991, Application for Relief under Section 722 of the Internal Revenue Code, one on September 4, 1943, covering the years 1940, 1941, and 1942, and one, amended on July 20, 1944, covering the year 1942. *Since these applications do not constitute claims for refund, no excess profits tax having been paid for any of the aforementioned years, this letter is not a notice of disallowance under section 732 of the Internal Revenue Code.* However, consideration has been given to your contentions relative to reconstruction under section 722 of your base period income for excess profits credit purposes, *and it has been determined* that you have not established that the tax computed under Subchapter E of Chapter 2 of the Internal Revenue Code, without the benefit of section 722 of the Code, results in an excessive and discriminatory tax within the provisions of section 722 (a) and (b) of the Code, and that you have not established what would be a fair and just amount representing normal earnings to be used as a constructive average base period net income for the purposes of an excess profits tax based upon a comparison of normal earnings and earnings during the excess profits tax taxable years ended December 31, 1940, December 31, 1941, and December 31, 1942." [Italics supplied.]

From this deficiency determination, a petition was made to The Tax Court on November 21, 1945. In two general assignments, the petition alleged error in determining the deficiency; nine other assignments were directed toward the

Commissioner's failure to grant relief under section 722. Thereafter, The Tax Court granted a motion by the Commissioner to dismiss the proceeding for lack of jurisdiction in so far as it related to petitioner's application for relief under section 722 on the ground that no excess profits tax had been paid by petitioner in 1942, and its application for relief had not been denied; it did so expressly upon the authority of its decisions in *American Coast Line, Inc.*, v. *Commissioner* (6 T. C., 67, since affirmed, 2 Cir., 1947, 159 Fed. (2d), 665 [Ct. D. 1690, page 129, this Bulletin]) ; *Uni-Term Stevedoring Co., Inc.* (3 T. C., 917) ; and *Pioneer Parachute Co., Inc.* (4 T. C., 27).

Following the answer of the Commissioner, the petitioner amended its petition before The Tax Court to clearly reflect that no issue other than relief under section 722 was intended to be raised. Thereupon, pointing out that the pleadings as they then stood raised no issue as to any adjustments made by the Commissioner in determining the excess profits tax deficiency and that the only errors assigned related to the failure of the Commissioner to grant relief under section 722, The Tax Court entered its order sustaining the deficiency determined by the Commissioner.

As is immediately apparent, we are not here concerned with the merits of petitioner's claim for relief under section 722; we are concerned with the procedure for the realization of such relief.

Petitioner takes the position that The Tax Court is required to pass upon its right to section 722 relief before it determines whether any proposed deficiency exists, for under section 729(a)[1] of the Internal Revenue Code, sections 271 and 272 are applicable. Briefly, these sections grant a taxpayer the right to petition The Tax Court for a redetermination of any deficiency determined by the Commissioner before payment thereof, and define a deficiency as the amount by which the tax imposed exceeds the amount shown as the tax on the taxpayer's return.

Moreover, it is contended that the " tax shown on its return " was " paid " since its return showed no excess profits tax due, and that the Commissioner has disallowed petitioner's claim for relief. Accordingly, petitioner asserts that The Tax Court had jurisdiction to redetermine the deficiency in its excess profits tax for the year 1942, and should have considered petitioner's right to relief under section 722.

The Commissioner's position is that the excess profits tax structure contemplates the determination and payment of petitioner's " normal " excess profits tax, with the proviso that petitioner may obtain the benefits of section 722, an " abnormality " provision designed to alleviate the tax burden in hardship cases, only by way of a claim for refund or credit. The Commissioner further contends that The Tax Court may consider a taxpayer's right to relief under section 722 only after the taxpayer has paid the excess profits tax due and filed a claim for refund, and that claim has been disallowed in whole or in part by the Commissioner.

Before continuing, a word may be said as to the scope of our review. We, of course, credit The Tax Court's decision great weight and persuasiveness, particularly since we are dealing with a matter affecting procedure before The Tax Court itself, although it has not favored us with a full-length picture of its views; for those, we are relegated to its prior decisions. Nevertheless, we think we have here a pure question of law and the enforcement of a rule of general applicability. (*Crane* v. *Commissioner*, 67 S. Ct., 1047 [Ct. D. 1684, C. B. 1947–1, 97].) It is not otherwise contended by the Commissioner.[2]

The answer to the dispute herein rests within the Internal Revenue Code.[3] Turning to the Code, we find the excess profits tax imposed in the sections commencing with section 710. Section 721 is an " abnormalities " provision intended to afford relief from excess profits taxes by excluding from income in the current

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[1] This section reads:

" SEC. 729. LAWS APPLICABLE.

"(a) GENERAL RULE.—All provisions of law (including penalties) applicable in respect of the taxes imposed by Chapter 1, shall, in so far as not inconsistent with this subchapter, be applicable in respect of the tax imposed by this subchapter."

[2] The Commissioner does not make the same assertion here as in *Ceco Steel Products Corporation* v. *Commissioner* (8 Cir., 1945, 150 Fed. (2d), 698 [Ct. D. 1654, C. B. 1945, 281]), which may be distinguished on its facts.

[3] The Excess Profits Tax (Subchapter E of Chapter 2) was added to the Internal Revenue Code by section 201 of the Second Revenue Act of October 8, 1940 (54 Stat., 975), entitled " Excess Profits Tax Act of 1940." As will appear, in so far as it is here material, that Act was amended by the Excess Profits Tax Amendments of 1941 (55 Stat., 17), the Revenue Act of 1942 (56 Stat., 798), and the Excess Profits Tax Amendments of 1943 (57 Stat., 601)

taxable year items of net abnormal income attributable to other taxable years. A taxpayer may take advantage of section 721 by proper adjustment in the excess profits tax return filed, or by making no adjustment in the return, but thereafter filing a claim for refund, the denial of which may be reviewed by The Tax Court.[4]

Section 722, on the other hand, affords relief from excessive or discriminatory excess profits taxes resulting from abnormally low excess profits credit. The method of obtaining that relief is specifically stated in the margin.[5]

It is immediately apparent that section 722 relief, except as not pertinent here[6] is not available to the taxpayer in the first instance, for he may not take advantage of that section in his excess profits tax return.

Careful examination of the statute exposes the error in the critical assumption of petitioner's argument that the total excess profits tax due can not be found without deciding to what extent it is affected by section 722. The answer must be, as the Commissioner asserts, that except in instances already mentioned, the extent of excess profits tax liability is determined separately and independently of the considerations contained in section 722. Having saddled the taxpayer with a tax that undoubtedly could choke off its wind, Congress, reminiscent of sovereign gracious clemency, granted relief under specified conditions. This approach is consistent with *American Coast Line, Inc.*, v. *Commissioner* (2 Cir., 159 Fed. (2d), 665, at page 668), wherein the court said "This argument might perhaps be persuasive, if the denial of 'benefits' under section 722 were regarded as a constituent factor of the tax itself, as for example are the conditions detailed in section 721. We do not so regard section 722; on the contrary it was a favor; it presupposed that, even after taking into account the ameliatory conditions of section 721, the tax was due unless *ex gratia* the blow was softened; it was a tempering of the wind to the shorn lamb." Although the court there was primarily concerned with section 722 as it was amended by the Revenue Act of 1942 (56 Stat., 798, 914), we think it applies equally as well now.

Viewing the legislation in this light, it is not difficult to follow the reasoning of the Commissioner, that the essential characteristic of an application for relief is that it is a claim for refund or credit. The statutory requirements that the excess profits tax due be determined without reference to section 722, the tax thus shown on the return be paid, and the relief be made available only upon application, are wholly consistent with that conclusion.

The evolution of section 722(d) affords additional basis for the determination of The Tax Court, as it is explained in Uni-Term Stevedoring Co., supra, Pioneer Parachute Co., supra, and American Coast Line, Inc., supra.

Originally,[7] section 722 briefly provided, "For the purposes of this subchapter, the Commissioner shall also have authority to make such adjustments as may be necessary to adjust abnormalities affecting income or capital, and his decision shall be subject to review by the United States Board of Tax Appeals." But this was merely a stop-gap provision, and not intended as the last word on the subject.[8] Even under this statute the Commissioner had promulgated regulations

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[4] See reference to section 732, footnote 5.

[5] Section 722(d). "Application for relief under this section. The taxpayer shall compute its tax, file its return, and pay the tax shown on its return under this subchapter without the application of this section, except as provided in section 710(a)(5). The benefits of this section shall not be allowed unless the taxpayer within the period of time prescribed by section 322 and subject to the limitation as to amount of credit or refund prescribed in such section makes application therefor in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. * * *" (Section 722(d) as amended by section 1(a), Excess Profits Tax Amendments of 1943 (57 Stat., 601).)

Pursuant to section 732(a), the notice of disallowance by the Commissioner of a claim for refund relating to certain parts of section 711, or to sections 721 or 722, may operate as a notice of deficiency; hence The Tax Court may review the disallowance; under section 732(c) The Tax Court's review is final, but under section 732(d), the determination by any division of The Tax Court of any question arising under section 721(a)(2)(C) or section 722, is reviewable by a special division of The Tax Court, and its decision is final.

[6] Thus, pursuant to section 710(a)(5), under certain conditions taxpayer may file his application for relief at the time the excess profits tax return is filed and withhold 33 per cent of the claimed reduction. (See Regulations 112, sections 35.710–5 and 35.722–5(*a*).)

Also, pursuant to the last sentence in section 722(d), relief may be had by using in the excess profits tax return the credit based upon the constructive average base period net income as finally determined. (See Regulations 112, section 35.722–5(*d*) as amended by T. D. 5393, C. B. 1944, 415.)

[7] Second Revenue Act of October 8, 1940 (54 Stat., 974, 986).

[8] H. Rept. No. 3002, Seventy-sixth Congress, third session, page 52 (C. B. 1940–2, 548, 557); Bulletin on Section 722, United States Treasury Department, Bureau of Internal Revenue (November, 1944), page 1 (463A CCH Standard Excess Profits Tax Reporter, section 5145.02).

requiring the taxpayer to compute and pay its excess profits tax without regard to the section, and to file an application therefor.[9]

The procedure for obtaining relief was first fully provided, when section 722 was enlarged, and subsection (e) was added by the Excess Profits Tax Amendments of 1941.[10] This amendment required a taxpayer to compute its tax and file its return without the application of section 722.[11]

Accordingly, the taxpayer was required to apply to the Commissioner for the "benefits" of the section within six months from the statutory date for the filing of returns. However, if the Commissioner issued a preliminary notice of deficiency in excess profits tax, the taxpayer had 90 days to apply to the Commissioner for the relief; or, if the Commissioner mailed a final notice of deficiency without having mailed a preliminary notice or within 90 days after the preliminary notice, the taxpayer could claim the benefits of section 722 in his petition (or in an amended petition) before the then Board of Tax Appeals.[12]

In the same amending Act,[13] section 732 was added providing, if there were a disallowance in whole or in part of a "claim for refund" of tax under that subchapter, the Commissioner must send a notice to the taxpayer of such disallowance; within 90 days thereafter the taxpayer could file a petition with the then Board of Tax Appeals for a redetermination of the tax; if that petition was filed, the notice of disallowance was deemed to be a notice of deficiency.[14] The Board was also granted broad authority to determine a deficiency under this procedure and its review of section 722 issues was made final.

Moreover, the Commissioner adopted regulations which considered the application for relief required by the amended statute as "a claim for refund or credit with respect to the excess profits tax for the taxable year paid at or prior to the time such application is filed."[15]

By section 222(a) of the Revenue Act of 1942 (56 Stat., 914), subsection (e) of section 722 was redesignated subsection (d). While the general procedure for obtaining relief was retained, the new provision, aside from extending the time limitations, required the taxpayer not merely to compute its tax and file its return, but also *to pay its tax* under the subchapter without the application of section 722, except, of course, as provided in section 710(a)(5).[16] Section 222(c)

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[9] See Regulations 109, section 30.722–1, as originally issued.

[10] March 7, 1941, section 6 (55 Stat., 17, 23).

[11] The reason for this provision is significant: "It is deemed advisable in the interests of good administration, in view of the nature of the problem presented by section 722, that the taxpayer should not be permitted to apply the section in the computation of the excess profits tax liability shown upon its return and that the taxpayer should be required to conform to reasonable restrictions with respect to the time within which it may make application for the benefits of the section." (H. Rept. No. 146; Seventy-seventh Congress, first session, page 13, C. B. 1941–1, 550, 559.)

[12] But if the application was not filed within the six months period, the relief granted could not exceed the amount of the deficiency.

[13] Section 9, Excess Profits Tax Amendments of 1941 (55 Stat., 26).

[14] Under section 722 as originally enacted, it was not apparent that an appeal to the Board of Tax Appeals could be had unless the Commissioner issued a deficiency letter, upon which the jurisdiction of the Board might be premised. See House Report No. 146 (C. B. 1941–1, at page 560): "Under existing law, unless a deficiency has been determined by the Commissioner, a taxpayer has no right of appeal to the Board (section 272(a)(1), I. R. C.). Thus, for example, if a refund claim were filed by a taxpayer and the Commissioner disallowed the claim in whole or in part but did not determine deficiency, no right of review of the Commissioner's action by the Board would be present. Inasmuch as the taxpayer's right to relief under certain of the relief provisions provided in this bill may only be raised by a claim for refund, it is necessary that a procedure be provided whereby the Board may obtain jurisdiction to review a decision by the Commissioner disallowing such claims."

In Uni-Term Stevedoring Co., (3 T. C., 917, at page 918, n. 1), The Tax Court said, "It has been suggested that the only purpose of section 732(a) was to permit review by this court in cases where no deficiency had been determined in excess profits tax. No support is found for this either in the legislative history or in the provisions of the statute. The latter indicate a realization by Congress that a notice might be mailed under 732(a) even though the Commissioner had also determined a deficiency and mailed a notice under 729(a)."

[15] Regulations 109, section 30.722–5(c), as added by T. D. 5045 (C. B. 1941–1, 69, 101) (Later amended by T. D. 5153, C. B. 1942–1, 145.)

[16] To conform to the statute and to joint resolution of March 31, 1943 (57 Stat., 56), the regulations quoted above and cited in footnote 15, were amended by T. D. 5264 (C. B. 1943, 761), and superseded by Regulations 112, section 35.722–5. The first sentence is as given in the text; the regulations continued: "The amount of credit or refund claimed shall be the excess of the amount of the excess profits tax for the taxable year paid over the amount of excess profits tax claimed to be payable computed pursuant to the provisions of section 722. In case the taxpayer elects to pay in installments the tax shown upon its return and at the time the application is filed such tax had not been paid in full, the taxpayer should file a claim for refund on Form 843 as promptly as possible after such tax has been paid in full. The information already submitted in the application need not again be submitted on Form 843 if reference is made therein to such application. For limitations upon

of the 1942 Act also amended section 732, with the addition of subdivision (d) thereto, to provide that determinations and redeterminations by any division of the Board involving any question arising under section 722, or another section not pertinent here, shall be reviewed by a special division, whose determination is not subject to review by the Board.[17]

It was pursuant to this amendatory statute that the Court in *American Coast Line, Inc.*, v. *Commissioner*, supra, held that payment of the excess profits tax was a necessary condition to review by The Tax Court of matters pertaining to section 722. Thus, relief under section 722 was accorded what fully amounts to the status of a claim for refund.

The next legislative step in the development of section 722(d), was taken in section 1(a) of the Excess Profits Tax Amendments Act of December 17, 1943 (57 Stat., 601), wherein section 722(d) was modified to read as already noted.[18] This amendment was made applicable retroactive to taxable years beginning after December 31, 1939.[19]

The most significant feature of this amendment was the repeal of those provisions permitting the taxpayer to by-pass the Commissioner and to make his application for section 722 relief by way of petition directly to The Tax Court. Thus, Congress "wholly assimilated the situation to a claim for refund." (*American Coast Line, Inc.*, v. *Commissioner*, supra, 159 Fed. (2d), at page 668.) Even under the prior statutory arrangement, the specific permission to petition The Tax Court for relief in the first instance would not have been necessary unless Congress had already considered section 722 relief available only by a claim for refund; for, the Commissioner's deficiency determination otherwise would have been sufficient to carry the whole matter to The Tax Court as with other sections of the subchapter relating to the excess profits tax.

It may be noted that on the assumption that Congress did not intend to by-pass the Commissioner, and with a view toward affording the fullest consideration to the complex claims based on section 722, the Commissioner has set up an intradepartmental method of processing such claims by establishing a field division and an "Excess Profits Tax Council." (Bulletin on Section 722 (November, 1944), 463A CCH, section 5145.) Support for this assumption may be found in subsection (g) of section 722 (added by section 206 of the Revenue Act of 1943 (58 Stat., 21, 55)) providing for publication of relief allowed by the Commissioner or The Tax Court, and "In the case of relief allowed by The Tax Court of the United States, the Commissioner shall also set forth the data previously reported under this subsection with respect to relief previously allowed in such case by the Commissioner." We may assume that this was another step to assure a "consistent and uniform application of the principles" in section 722.[20]

The difficulty with petitioner's exegesis of the relevant statutes lies in the assumption that the relief accorded under section 722 may be treated in the manner of a deduction or credit which could or should have been taken on the excess profits tax return. But we think it apparent, from our review, that in cases like the present, the rebate was intended to be made available by a claim for refund, over which The Tax Court would have had no jurisdiction except by virtue of section 732.

The policy of treating section 722 relief as a claim for refund further presupposes a payment. The Commissioner has so dealt with the matter in his regulations. Significantly, these regulations have remained constant, in treating the application under section 722 as a claim for refund, throughout the legislative changes referred to herein. (See *Commissioner* v. *Munter*, 67 S. Ct., 1175, footnote 6 [Ct. D. 1685, C. B. 1947-1, 48, 51].)

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refunds and credits generally, see section 322. As to procedure upon disallowance of a claim for refund of an excess profits tax which is claimed to be excessive and discriminatory under section 722, see section 732." (Regulations 112, section 35.722-5(c).) (Subsequently this was amended by T. D. 5393, C. B. 1944, 415, 422.)

[17] "* * * Because of the complicated nature and the economic character of the issues involving relief under section 722 * * * Only by this method can a consistent and uniform application of the principles established be assured in all cases." (S. Rept. No. 1631, Seventy-seventh Congress, second session, C. B. 1942-2, 504, 655; compare H. Rept. No. 2333, Seventy-seventh Congress, first session, C. B. 1942-2, 372, 482.)

[18] See footnote 5. Regulations 109, section 30.722-5(*a*), and Regulations 112, section 35.722-5(*a*), were amended to conform by T. D. 5393 (C. B. 1944, 415).

[19] It may be noted that petitioner here raises no question relating to retroactive statutes. On this issue, see *Pioneer Parachute Co., Inc.*, v. *Commissioner* (4 T. C., 27).

[20] See note 17.

Petitioner, however, urges upon the Court the thought that the statute merely requires payment of the "tax shown on its return" in contradistinction to the prior requirement to "pay its tax," and suggests that since the return filed disclosed no tax due, it has "paid" the tax shown. Accordingly, it is argued, the Commissioner erred in refusing to consider its application as a claim for refund and the notice of deficiency, as quoted above, amounts to a disallowance of the claim; hence, the jurisdictional prerequisites were met.

The obstacle in the path of that conclusion is the fact that petitioner puts itself in the anomalous position of requesting a refund or credit for money which it never paid. Section 722 relief is afforded by way of "recapture," so to speak, and presupposes something paid. This is particularly true in the instant case, since, as has already been pointed out, section 722 may not be considered by a taxpayer on its excess profits tax return, except as noted. Accordingly, there is nothing to refund to petitioner, nor anything for which it may be credited. Therefore, we fully agree with The Tax Court that "until some (excess profits) tax is paid, there is no basis for relief," and on the basis of what has already been said, it is apparent that "the relief is not affected through reduction of a deficiency in the excess profits tax." (*Uni-Term Stevedoring Co., Inc.*, v. *Commissioner*, supra, 3 T. C., at page 919.)

Finally, petitioner voices the fear that on such construction as we have given the law, the Commissioner would be in a position to assert the finality of the proceeding with respect to the deficiency determination against a subsequent contest with respect to the claim for refund. Of course this would be true if petitioner's view, that the claim for refund may be asserted upon a deficiency determination, were controlling. But as this case stands, the claim for relief may not be asserted at that time; for this reason alone the petitioner would not be precluded from asserting its claim if and when the Commissioner rejects it. The Tax Court so ruled in the Uni-Term case, and the Commissioner disavows any contrary thought. Moreover, section 729(a) makes other provisions of the law applicable only in so far as they are not inconsistent with the excess profits tax subchapter. Thus, the Commissioner can not take the position that, the notice of disallowance being the equivalent of a notice of deficiency, one notice of deficiency in excess profits tax under section 272(a) has already been mailed and section 272(f) prohibits another notice of deficiency where the taxpayer filed a petition with The Tax Court based on the existing notice. Section 732(a) expressly requires the Commissioner to send a notice of disallowance of the claim for refund to the taxpayer, and the taxpayer may appeal to The Tax Court on the basis of that notice. Accordingly, section 272(f) would be inconsistent with the excess profits tax subchapter if the notice of disallowance may be said to be a notice of deficiency for by hypothesis that section must be read in the light of the specific relief provisions provided for realization of the benefits of section 722.

Petitioner also asserts that, having paid the deficiency pursuant to section 1145, it could not recover such overpayment in view of section 322(c),[21] but whatever plausibility exists in that argument, it fails to take into account section 322(c)(1).

On this score, a nice point is made in The Tax Court's decision in the Uni-Term case, 3 T. C., at page 921, note 7, where attention is called to the fact that jurisdiction to review the Commissioner's disallowance of a claim under section 722 is exclusively in The Tax Court, but, for other excess profits tax purposes, the taxpayer has the alternative of suing for refund in a district court or the Court of Claims. Thus, liability for the excess profits tax in the first instance being without consideration of section 722, if the argument of finality were effective to prevent the application of the procedure under sections 722 and 732, then a taxpayer could not take advantage of a suit for refund in such other courts lest it abandon its claim under section 722. The procedural views of The Tax Court preserve those alternative rights with respect to other provisions of the excess profits tax.

For the reasons stated the order of The Tax Court is affirmed.

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[21] (c) EFFECT OF PETITION TO BOARD.—If the Commissioner has mailed to the taxpayer a notice of deficiency under section 272(a) and if the taxpayer files a petition with the Board of Tax Appeals within the time prescribed in such subsection, no credit or refund in respect of the tax for the taxable year in respect of which the Commissioner has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of such tax shall be instituted in any court except—

(1) As to overpayments determined by a decision of the Board which has become final: * * *

REGULATIONS 109, SECTION 30.732-1: Review of abnormalities by The Tax Court of the United States.
(Also Section 41, Section 19.41-4.)

1947-17-12624
Ct. D. 1690

EXCESS PROFITS TAX—INTERNAL REVENUE CODE—DECISION OF COURT.

1. RETURNS—CHANGE FROM CALENDAR TO FISCAL YEAR BASIS—NONCOMPLIANCE WITH CONDITIONS IMPOSED BY COMMISSIONER TO EFFECT CHANGE.

Taxpayer corporation, organized in 1933, had been inactive since 1935 until July, 1939, when it was revived in order to take title to a ship which it was proposed to buy and operate. The ship was operated at a loss in 1939 and 1940, and sold in 1940 at a profit. On May 7, 1940, the corporation asked permission of the Commissioner to file its return on a fiscal year basis from July, 1939, to June, 1940, which would have exempted it from excess profits tax. The Commissioner granted leave, but on certain conditions with which the corporation never complied, and on March 15, 1941, it filed income and excess profits tax returns on a calendar year basis for 1939 and 1940. *Held:* The Commissioner properly determined the corporation's Subchapter E excess profits tax on the basis of a calendar year 1940. The corporation's argument that it was in effect a new corporation when it revived in July, 1939, and that as such it had the privilege without the Commissioner's leave of fixing a fiscal year instead of a calendar year basis, is untenable as evidenced by the acts of the shareholders, who canceled the old shares, increased the capital of the corporation, took new shares for themselves, put the title to the ship in the corporation, asked leave to change its basis, and filed a return for the whole year 1939.

2. APPLICATION FOR RELIEF UNDER SECTION 722—JURISDICTION OF TAX COURT.

The Commissioner mailed to the taxpayer corporation a preliminary deficiency notice on December 18, 1941, taxpayer protested on January 2, 1942, and filed an application for relief under section 722, Internal Revenue Code, on March 14, 1942. On September 29, 1942, the Commissioner mailed a notice of deficiency denying relief, and taxpayer filed a petition for redetermination with the then Board of Tax Appeals on December 26, 1942, without prior payment of the deficiency and denial of a claim for refund therefor as provided by section 732 of the Code, which applied retroactively to all cases for years beginning after December 31, 1939. *Held:* Since section 722 bestowed a favor, and Congress by later amendments intended to deny relief in all cases where the amount of the tax as assessed was not paid and to wholly assimilate the situation to a claim for refund, the petition to the Board was defective, and The Tax Court is without jurisdiction to review the Commissioner's denial of relief.

3. DECISION AFFIRMED.

Decision of The Tax Court of the United States (6 T. C., 67) affirmed.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

American Coast Line, Inc., petitioner, v. *Commissioner of Internal Revenue, respondent.*

Before L. HAND, CHASE, and FRANK, Circuit Judges.

On petition to review an order of The Tax Court, assessing a deficiency in excess profits tax against the petitioner for the year 1940.

[February 3, 1947.]

OPINION.

L. HAND, Circuit Judge: This is an appeal from an order of The Tax Court which assessed a deficiency in excess profits tax against the petitioner for the

year 1940, and dismissed its petition for lack of jurisdiction, so far as it sought relief under section 722.[1] Two questions arise: (1) whether any excess profits tax was due for the year 1940; and (2), if so, whether The Tax Court had jurisdiction to entertain an application for relief under section 722(d) of the Internal Revenue Act.[2] The facts are as follows. The petitioner is a corporation organized in 1933, all of whose 100 shares were held in 1939 by the "Prudential Steamship Co." The wife of Stephen D. Stephanidis owned two thirds of the shares of the Prudential Steamship Co., and Nicholas D. Allen owned the other third; the shares had been transferred to the Prudential company as security for a loan, but this had been paid at or before the time here in question. The corporation had at one time been in business, but had been wholly inactive since 1935; it had kept alive as a corporation by paying its franchise taxes but it had filed no income tax returns. In July, 1939, Stephanidis, Allen and two others, decided to revive it in order to take title to a ship which they proposed to buy and operate. The Prudential Steamship Co.—i. e., Stephanidis and Allen—surrendered their certificates for 100 shares; the capital was increased to 600 shares; and 150 shares were issued to Stephanidis, to Allen and to each of the other two. (Stephanidis' shares were issued in the name of his wife as the original 100 had been.) The corporation spent about $6,000 in repairs and operated the ship at a loss during the last part of 1939 and the early part of 1940. On March 15, 1940, it sold her to the British Government for $400,000, title being transferred on June 7 at a profit of $287,000. The corporation during the years when it was active had filed its income tax returns on the basis of the calendar year. This it wished to change; and on May 7, 1940, it asked leave of the Commissioner to file on the basis of a fiscal year from July 1, 1939, to June, 1940, which would have exempted it from the excess profits tax. The Commissioner granted leave, but on certain conditions with which the corporation never complied; and on March 15, 1941, it filed its income tax and excess profits tax returns upon a calendar year for the years 1939 and 1940, as it had always done in the past. The Commissioner mailed to it a "preliminary deficiency notice" on December 18, 1941, assessing the whole profit from the sale as subject to the excess profits tax; the corporation protested on January 2, 1942, and filed an "application" for relief under section 722[1] on March 14, 1942. The Commissioner had several conferences with it, but mailed a "notice of deficiency" on September 29, 1942; and the corporation filed its petition with the Board on December 26, 1942.

The petitioner's first point is that the corporation, having for all practical purposes been long moribund, became a new corporation when it was revived in July, 1939, and, as such had the privilege, without the Commissioner's leave, of fixing a fiscal year instead of a calendar year, unlike a corporation which had already used a calendar year. This argument is unsound on its face; every act of the shareholders contradicted it. They canceled the old shares, increased the capital of the corporation, took new shares for themselves, put the title of the ship in the corporation, asked leave to change its fiscal year, and filed a return for the whole year, 1939. Nothing could more clearly prove that they meant to avoid the expense of forming a new corporation, and proposed to make use of the old one. The excuse, which they attempted to make at the trial, that they thought they were making a new corporation, and merely signed such papers as their lawyer told them, is plainly untenable; as Judge Murdock said in the court below: they "have not a leg to stand on."

The second question is whether The Tax Court was without jurisdiction to review the Commissioner's denial of the benefits of section 722, a question quite different from the merits of the Commissioner's action. The section as a whole was intended to relieve corporations from the harsh results of applying the excess profits tax to situations in which the "excess profits tax credit" even with the assistance of section 721 was not adequate protection. In 1940 when the tax was first passed, section 722 merely provided in general terms that the Commissioner might relieve corporations from "abnormal" results, and that the Board of Tax Appeals—as it then was—should have jurisdiction to review his decision. In 1941 the section was greatly enlarged so as to make more specific those situations to which it applied, and subdivision (e) was added, providing for the "Application for Relief Under This Section." This subdivision required the corporation to return its excess profits tax without regard to section 722; but gave the privilege

[1] Section 722, Title 26, United States Code.
[2] Section 722(d), Title 26, United States Code.

within six months after the return was filed of making "application" to the Commissioner for the "benefits" of the section under appropriate regulations; it did not in terms require the corporation to pay the tax as a condition of making the "application." If the Commissioner denied the relief, it could not appeal to the Board, but was forced to pay the tax as returned, to claim a refund and appeal to the Board under section 732. However, the Commissioner might assess a deficiency against the corporation, because it had returned too small a tax, or none at all; and this he might do either by a "preliminary notice" followed by an assessment, or without any notice. In either case subdivision (e) allowed the corporation to invoke the "benefits" of section 722 upon an appeal to the Board from the deficiency. If the Commissioner proceeded by "preliminary notice" the corporation might file an "application" to him within 90 days; if it did not, apparently it lost its privilege. In the case at bar the Commissioner did serve a "preliminary notice" and the corporation filed a timely "application." Since the Commissioner never passed upon the "application" except by assessing the deficiency on September 29, 1942, the Board had a jurisdiction to review his disallowance under section 722(e)(1) in the same proceeding in which it reviewed the deficiency. This is a necessary consequence of the language of the exception as a whole, because, unless the jurisdiction of the Board extended to cases within subdivision (e)(1), that subdivision hung in the air and the sentence did not even parse. If the Commissioner cut short the 90 days after his "preliminary notice," or gave none at all, an appeal to the Board also lay, but with these we are not here concerned.

So the law stood until October 21, 1942, when subdivision (e) was renumbered (d), and was amended to provide that as a condition upon making any "application" to the Commissioner the corporation must not only "compute its tax" and "file its return," but "pay its tax without the application of this section": i. e., section 722. This amendment was expressly made applicable retroactively to all taxes imposed after December 31, 1939, and therefore covered the tax at bar. Two questions arise. First, whether the corporation's appeal of December 26, 1942, was defective, assuming that the amendment of October 21, 1942, for the first time made payment of the tax assessed a condition as well upon appeals to the Board as upon "applications" to the Commissioner. Second, whether payment of the tax was in fact a condition as well upon appeals to the Board, as upon "applications" to the Commissioner. The right answer to the first of these questions is yes. It might perhaps be argued that, if before October 21, 1942, the corporation had appealed from the deficiency assessed on September 29, 1942, the amendment would not have deprived the Board of a jurisdiction already vested in it. That we do not answer; for there can be no doubt that, if it be once conceded that section 722(d) did make payment of the deficiency a condition upon the appeal granted by subdivision (d)(1) or (d)(2), all appeals taken after October 21, 1942, were subject to that condition, regardless of whether the deficiency to be reviewed had been assessed before payment had been made a condition either upon "applications" to the Commissioner or appeals to the Board.

The answer to the other question is not so plain: Should the condition of payment which the amendment imposed upon all "applications" to the Commissioner be understood as also applicable to appeals to the Board? Appeals to the Board lay only after the Commissioner had finally assessed a deficiency, because, we have already implied, section 722(d)(1) presupposed that any "preliminary notice" has been followed by a definitive assessment. Since section 272(a) stayed process on an assessment, pending appeal to the Board, it is true that the assessment must be regarded as not final in the same sense that a judgment stayed on the appeal is not final. Moreover, there is no doubt a difference between a tax, conceded to be due in the corporation's own return, and a tax assessed against it *in invitum*. This argument might perhaps be persuasive, if the denial of "benefits" under section 722 were regarded as a constituent factor of the tax itself, as for example are the conditions detailed in section 21. We do not so regard section 722; on the contrary it was a favor; it presupposed that, even after taking into account the ameliatory conditions of section 721, the tax was due unless *ex gratia* the blow was softened; it was a tempering of the wind to the shorn lamb. When Congress imposed as a condition upon such a favor, and expressly prescribed that the recipient must not be in default as to what it acknowledged to be due, we can hardly believe that it meant to relieve those of the same condition who had wrongly, even though honestly, failed to acknowledge what in fact was due, merely because their liability had not been finally

determined on an appeal. Moreover, we think it not unimportant as disclosing a preexisting purpose that by the amendment of 1943 Congress denied the "benefits" of section 722 in all cases where the amount of the tax as assessed was not paid; and wholly assimilated the situation to a claim for refund. It is not unfair to regard the earlier statutory steps, though inarticulate, as successive efforts to realize an object already in mind.

Finally, so far as concerns our review of The Tax Court, as distinct from its own decision as to its jurisdiction, the case seems to us especially proper for the application of the doctrine that, even as to matters of law unmixed with fact, we are to yield unless our conviction to the contrary is strong. In *Brooklyn National Corporation* v. *Commissioner*,[3] The Tax Court had refused to follow our earlier decisions on the point involved, saying with engaging candor that they thought us mistaken. Relying upon our earlier decision in *Kirschenbaum* v. *Commissioner*,[4] in which we had followed *Commissioner* v. *Estate of Bedford*[5] [Ct. D. 1641, C. B. 1945, 357], we deferred to that ruling. It is of course not our province to fix the distribution of judicial power; least of all are we in a position to measure the higher authority which The Tax Court's constant occupation in its special field should give to its rulings, as distinct from ours in our sprawling jurisdiction. We can think of no legal question as to which we ought more readily yield than that at bar; in that thicket of verbiage, through which we have been forced to cut a way, it must surely be an advantage to have been familiar with other tangles of the same general sort; and, while it is the pleasure of Congress to express itself so apocalyptically, we may well be grateful that we are permitted to put our hand into those of accredited pathfinders.

Order affirmed.

EXCESS PROFITS TAX COUNCIL.

1947–19–12646
E. P. C. 19

Changes in capacity for production or operation.

1. This memorandum has reference to changes in character represented by differences in capacity for production or operation. The treatment of this subject in the Bulletin on Section 722 (Part V, pages 53–59, G. P. O. printing) calls for further explanation and some modification. Anything in the bulletin inconsistent with the following positions is superseded.

2. Basic to consideration of the entire subject is the principle that under subsection (b) (4) a change in character by reason of a change in capacity, in order to be accepted as a factor qualifying the taxpayer for relief, must cause the taxpayer's average base period net income in which it is not fully reflected to be an inadequate standard of normal earnings. A corollary of this principle is that to qualify for relief under subsection (b) (4) the change in capacity must result in a higher level of normal earnings. To prevent misunderstanding, the treatment of capacity in the bulletin must at all points be read with this basic requirement in mind. For example, the fifth paragraph under Part V, Subpart I (C) (3)—the last full paragraph on page 53, G. P. O. printing—might otherwise be interpreted to suggest that the taxpayer described would be entitled to relief solely by virtue of the change in capacity, regardless of whether or not that change made the actual base period net income inadequate as a standard of normal earnings. This interpretation is not intended. In general, if the

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[3] 157 Fed. (2d), 450.
[4] 155 Fed (2d), 23.
[5] 325 U. S., 283.

only qualifying change is a change in capacity, relief is controlled by the extent to which lack of the added capacity (developed through two years of normal operation) was a limitation upon profits during the base period.[1]

3. In dealing with capacity problems the bulletin discussion is mostly in terms of businesses in which capacity is represented by factories, heavy machinery, buildings, or operating units such as stores or sales organizations serving well-defined territories. A substantial change in capacity of such a business is an infrequent and readily recognized event. It is characterized by a relatively large addition to fixed investment and an important change in physical plant, personnel, and equipment, that require advance planning. Such is the change in capacity used for illustration in the Committee reports—the addition by a mining company of a new mine and new plant to be used in connection with that mine. If earlier consummation of such an increase in capacity would have yielded a higher level of earnings under base period conditions, it is proper to allow a constructive income at the higher level following methods suggested in Part V, Subpart II, of the bulletin, or other methods that come within the statute.

4. It is also recognized in the bulletin that capacity is not always represented by physical facilities. Capacity for operation is illustrated (Part V, Subpart I(C)(3), twelfth paragraph—first complete paragraph on page 55, G. P. O. printing) by an automobile dealer operating under a franchise covering a specified territory. Such a franchise is a significant measure of the taxpayer's scope of operations and a real limitation upon its earning power; revision of such a franchise enlarging the dealer's territory is properly recognized as a change in capacity. It is conceivable also that some unusual types of service organizations may operate through such highly specialized personnel that the training and addition to the organization of a new group of specialists would be a significant change in capacity for operation. Such changes in capacity should be accorded the same treatment under section 722 as the physical changes discussed in the preceding paragraph.

5. In certain types of business not specifically dealt with in the bulletin there is no realistic and significant measure of capacity. What, for example, is the capacity of the operator of a fleet of taxicabs in a large city where the number of cabs is not limited by franchise and in a period when an additional cab can be bought, sold, rented, or released as the occasion demands? What is the capacity of a vendor of ready-mixed concrete when the number of concrete-mixing trucks at his disposal can be increased or decreased almost overnight? Again, what is the capacity of a personal service organization in a field not requiring highly specialized personnel in a period when office space is freely available and employees may be added to the staff or dropped as the volume of business requires? Obviously there are types of business in which there is no significant measure of capacity distinguishable from the ability to sell goods and services at a profit. In other words, capacity for production or operation, in the physical sense in which these terms are generally understood and apparently

[1] See *National Grinding Wheel Co.* v. *Commissioner* (8 T. C., No. 152, June 26, 1947).

intended in subsection (b)(4), has little or no effect on the earning power of certain types of business. In these types of business, therefore, no change in physical capacity can make base period earnings inadequate within the meaning of section 722(b)(4). By the same reasoning, no limitation in terms of physical capacity in these types of business can be placed upon reconstruction of normal earnings.

6. To illustrate the latter point, a taxpayer in the business of renting trucks commenced business in 1935 and expanded its business and earnings rapidly throughout the base period with prospects of further expansion. As soon as it could obtain another rental contract it acquired the additional trucks needed. These rental contracts were of a long-term character, so that each one represented a relatively permanent enlargement in volume of business. The taxpayer operated in a large city, and its business was so small relative to its opportunities that for practical purposes its expansion would not be limited for a period of years except by its ability to sell and organize its trucking facilities. Undoubtedly, if the business had been commenced two years earlier the taxpayer's level of earnings at the end of the base period would have exceeded its actual level at that time. In this case the capacity limitation in the bulletin referred to above may not be invoked to limit reconstruction to the number of trucks owned and committed for at the close of 1939. The reason is that the number of trucks owned is not a significant measure of capacity for such a business.

7. Thus far, two types of business have been discussed—first, those in which a significant measure of capacity for production or operation is clearly available, and, second, those in which no significant measure of capacity exists. Doubtless there are types of business that fall between these extremes. In some mercantile establishments, for example, floor space may to some extent be a measure of capacity but subject to severe limitations because of the ease with which floor space may be changed in response to the buying power of the community and the ability of a sales organization. In considering capacity problems in these intermediate types of business, judgment must be exercised in each case to accord to capacity only such significance as the circumstances justify. It is impossible to lay down hard and fast rules for dealing with these cases.

8. The significance of capacity for production or operation covered by commitments should be judged by the principles suggested above. All circumstances surrounding the change should be scrutinized in order to determine the significance of the new capacity with as much certainty as possible, inasmuch as new capacity covered by commitment was not tested by actual experience except under war conditions in the post-1939 period. A reasonable showing that the change would have resulted in an addition to the taxpayer's earnings under base period conditions is especially important, because base period conditions were usually very different from the conditions under which committed capacity was actually utilized.

CHARLES D. HAMEL,
Chairman.

SEPTEMBER 9, 1947.

1947–20–12658
E. P. C. 20

Avoidance of duplication in credits of affiliated corporations.

No provision in the bulletin applies specifically to the avoidance of duplication of credit among corporations that are affiliated through stock ownership, and therefore this memorandum is an addition to the bulletin.

1. Applications for relief under section 722 have been filed by subsidiary corporations and by corporations otherwise owned and controlled by the same interests under a variety of circumstances. In many cases if an application were treated as if the corporation were an independent entity, ignoring its subsidiary or controlled status, the result would be a duplication in the excess profits credits allowable and a corresponding duplication of benefit to the group of affiliated corporations. It is believed that "a fair and just amount representing normal earnings to be used as a constructive average base period net income for the purpose of an excess profits tax period" was not intended to mean an amount which would result in affiliated corporations receiving duplicate credits and benefits for the base period earnings of the business conducted by them. Accordingly, applications for relief which result in such duplication to corporations that are affiliated through ownership of 95 per cent or more of the voting stock by the same interests in substantially the same proportion will be denied except under conditions specified in paragraph 2.

2. In cases where a group of such affiliated corporations establishes an equitable allocation to its member corporations of the normal earnings under the principles of section 722 attributable to the business of the entire group, such allocation will be accepted for the purpose of determining constructive average base period net income for the member or members of the group which will benefit thereby, subject to the execution of appropriate agreements by other members of the group consenting to such reductions in their excess profits credits as will reflect the accepted allocation of normal earnings and eliminate duplications in the aggregate excess profits credits of the group.

3. Examples of the types of cases in which this problem may arise are as follows:

(*a*) Corporation A conducted a business through a main office and two branch offices throughout the base period until July 1, 1939, when it incorporated the two branch offices as Corporations B and C. Corporations B and C applied for relief under section 722(b)(4) on the ground of commencement of business and sought a constructive average base period net income based on the actual earnings of the businesses conducted by their respective offices during the base period, including the time that these businesses were conducted directly by A. Corporation A filed an excess profits tax return using as a part of its base period net income the earnings of the two branch offices from January 1, 1936, to July 1, 1939. Allowance of the applications of B and C without adjusting the credit of A would obviously result in duplication of the benefits of the excess profits credit and consequently should not be granted. However, if B and C furnish an

agreement signed by A providing for a reduction in its credit corresponding to the credit allowed B and C, increases should be allowed to that extent.

(*b*) A situation similar to the one described above has arisen except that the businesses conducted by the branch offices were incorporated in 1940 with only nominal equity capital, the parent Corporation A furnishing the bulk of the capital necessary on loan. Corporations B and C filed applications under section 722(c) on the grounds of abnormally low invested capital. If these were allowed without any adjustment of the credit of Corporation A, it follows that a duplication of credit and benefit would be created. Therefore, applications of B and C should be treated as in (*a*) above.

(*c*) Corporation A operated a well-established and successful chain of motion-picture theaters, under the active management of some of the controlling stockholders. In 1939, it was decided to build some new theaters in different and untried locations. In order to protect Corporation A from liability for possible losses from the new and more speculative enterprise, its stockholders organized Corporation B on July 1, 1939, with ownership in the same proportions as in A, and B took over the well-established theaters and operated them, paying a nominal sum for leases, franchises, and good will. Corporation B filed an application under section 722(b)(4) on the ground of commencement of business, claiming the actual base period earnings of the successful chain operated by Corporation A as a basis for its excess profits credit. If this application were allowed and there were no arrangement to the contrary, Corporation A would retain the benefit of these same earnings from January 1, 1936, to July 1, 1939, in computing its excess profits credit, thus resulting in duplication. The application of Corporation B should be denied since a reconstruction of its base period net income would not be "a fair and just amount representing normal earnings." However, if Corporation B supplies an appropriate agreement from Corporation A whereby A consents to a reduction in its credit, B may be granted relief to the extent that A's credit is reduced.

4. In those instances in which applications may be filed by corporations controlled through common ownership in less degree than 95 per cent, issues involving possible duplication of credit and benefit will be given consideration as they arise.

CHARLES D. HAMEL,
Chairman, Excess Profits Tax Council.

SEPTEMBER 22, 1947.

1947–21–12668
E. P. C. 21

Capacity in relation to the application of the push-back rule.

Section 722(b)(4) of the Internal Revenue Code establishes the so-called "push-back" rule by the following provision:

If the business of the taxpayer did not reach, by the end of the base period, the earning level which it would have reached if the taxpayer had commenced business or made the change in the character of the business two years before it did so, it shall be deemed to have commenced the business or made the change at such earlier time.

In the application of the push-back rule, the bulletin in several statements (see pages 51, 55, 69, and 80) limits capacity in establishing taxpayer's constructive earnings level as of the end of the base period to the capacity actually existing or committed for at that time. It is the view of the Council that this limitation is too restrictive in its effect. The Council holds that any increase in capacity which is an essential part of, or an integral factor in, the developments which clearly may be expected to result from the commencement or change, by the end of the base period, in the ordinary course of business, under base period conditions, had the commencement or change been made two years earlier, may be recognized in establishing the constructive earnings level at the end of the base period.[1] The taxpayer must clearly demonstrate that such increased capacity would have resulted in the usual course of business under base period conditions, had the qualifying event occurred two years earlier. There are no grounds for looking beyond December 31, 1939, in a noncommitment situation, and the question of whether the constructive capacity was or was not actually attained after December 31, 1939, is irrelevant.

A constructive average base period net income based, in whole or in part, on any constructive increase in capacity must reflect constructively the effect of acquiring such capacity on the capital structure of the taxpayer. If the finances of the taxpayer would not have permitted such acquisition without additional capital, either borrowed or paid in, and if it is determined that the capacity would have been financed by borrowed capital, the constructive average base period net income will be reduced by an appropriate adjustment for interest on such constructive borrowed capital. If it is determined that the capacity would have been financed by capital additions (as defined by section 713(g)(3)), the constructive average base period net income will be reduced by 8 per cent of such constructive capital as is determined would have been necessary to acquire the capacity. Duplicate credit may not be secured directly or indirectly through the application of sections 722 and 713(g). Thus, the principles of section 35.722–3(*d*)(5), discussed in the bulletin at page 118, relating to adjustments for capital additions after commitment, will be applied in situations of this type.

CHARLES D. HAMEL,
Chairman, Excess Profits Tax Council.

OCTOBER 2, 1947.

1947–21–12669
E. P. C. 22

Under the facts given, the taxpayer is entitled to the use of the 2-year push-back, and normal earnings are not limited to capacity existing on December 31, 1939.

An established taxpayer, without diminution of its regular business, commenced manufacture of a product during the year 1937 which it had never made before. It was a patented low-priced product for

[1] Attention is invited to E. P. C. 19 [page 132, this Bulletin], in which it was ruled, at the end of paragraph 6, that the capacity limitation stated in the bulletin may not be invoked to limit reconstruction to equipment owned and committed for at the close of 1939 when such equipment is not a significant measure of capacity in the taxpayers' business.

kitchen use, and in all preliminary tests proved to be highly acceptable. The market, however, was already well supplied with other products performing the same functions but differently designed. Surveys by the taxpayer indicated that there existed a potential unfilled market which, with reasonable development, would permit a mass production operation using a plant with a capacity of $20x$ units. All preliminary planning was backgrounded on capturing a market which would permit of the mass production of the unit in a plant of at least $20x$ units capacity.

At December 31, 1939, a plant of $10x$ units capacity was in successful operation, all production from this plant had been sold and there were unfilled orders of $4.5x$ units. No commitment for the acquisition of additional capacity existed at December 31, 1939.

Examination of the records of the taxpayer shows that orders had been received as follows:

	Units.
1937	$3x$
1938	$6x$
First quarter of 1939	$2x$
Second quarter of 1939	$3x$
Third quarter of 1939	$4x$
Fourth quarter of 1939	$5x$

Seasonal fluctuations in demand are not significant, and the growth is recognized as permanent.

The facts clearly indicate that the taxpayer's business, in so far as it relates to the new product, had not reached by December 31, 1939, the earning level it would have reached had it commenced the manufacture of the new product two years earlier than it did. It is to be observed, however, that during the year 1939 the existing plant attained full capacity and at December 31, 1939, had a backlog of unfilled orders of $4.5x$ units. If the plant capacity actually existing at December 31, 1939, is a limitation, no higher level of production or operation can be established under the assumption that the change occurred two years earlier than it did.

Section 722(b)(4) provides in part:

> If the business of the taxpayer did not reach, by the end of the base period, the earning level which it would have reached if the taxpayer had commenced business or made the change in the character of the business two years before it did so, it shall be deemed to have commenced the business or made the change at such earlier time.

The report of the Senate committee on the revenue bill of 1942 [S. Rept. 1631, C. B. 1942–2, 504, at 651], in discussing this part of section 722(b)(4), states as follows:

> Opportunity is thus afforded growing taxpayers to establish within a period of normal earnings a larger earnings capacity as a result of the assumption that such taxpayer commenced business or changed the character of the business two years earlier than such events actually occurred. In determining whether such taxpayer was growing, consideration shall be given to the business experience of the taxpayer and to its prospects at the end of the base period. Events occurring or existing after December 31, 1939, shall not be considered in ascertaining the growth of the taxpayer.

In the application of the "push-back" rule, "consideration shall be given to the business experience of the taxpayer and to its prospects

at the end of the base period." From the business experience of this taxpayer, in so far as the new product is concerned, the facts show that it was growing, and its prospects at the end of the base period, with orders running far in excess of its existing capacity, indicate physical expansion. It is apparent, therefore, that had the taxpayer commenced manufacturing the new product two years earlier an increase in capacity prior to December 31, 1939, would have been a development clearly to have been expected.

Under the circumstances in this case it is held, therefore, that in determining the level of earnings to be derived from the new product the capacity existing is not a factor limiting the level of earnings which may be established had the taxpayer made the change two years earlier than it did so. (See E. P. C. 21 [page 136, this Bulletin].)

CHARLES D. HAMEL, *Chairman.*

OCTOBER 2, 1947.

1947–23–12685
E. P. C. 23

The use of the four calendar years 1936 through 1939 as the base period in section 722(c) cases.

1. Paragraph 2 of E. P. C. 13 [C. B. 1947–1, 83] indicates that the base period prescribed in section 713(b) is a practical and appropriate device in establishing constructive average base period net income. In the case of corporations organized after December 31, 1939, some elaboration of that statement is considered advisable.

2. Experience has indicated that reconstruction usually is simplified where the four calendar years 1936 through 1939 are employed as the base period. Comparative data and industry statistics, for example, are most often compiled on a calendar year basis. A further advantage is the elimination of the problems arising from the prohibition in section 722(a) against the use of post-1939 events and conditions. Finally, in the great majority of cases, the end result of the use of the calendar year base period is identical with the result obtained by using a fiscal year base period properly adjusted to eliminate post-1939 events or conditions.

3. Therefore, it is the opinion of the Council that, in the case of a fiscal year corporation qualifying for relief under section 722(c), the four calendar years 1936 through 1939 may be employed as the base period where conditions during that period are appropriate for the determination of normal earnings for the taxpayer involved.

4. This memorandum is permissive only. It is not intended to invalidate any reconstruction made on the basis of a fiscal year base period where proper adjustment has been made to eliminate the effects of post-1939 events or conditions. Neither does it have any application to cases involving variant profits cycle, sporadic profits experience, or other elements which would call for the use of some other base period had the taxpayer qualified for relief under section 722(b).

CHARLES D. HAMEL, *Chairman.*

OCTOBER 27, 1947.

CHAPTER 9.—EMPLOYMENT TAXES.

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

SECTION 1625.—RECEIPTS.

REGULATIONS 116, SECTION 405.501: Receipts for tax withheld at source on wages. 1947-23-126
Circular 19

Form W-2, Withholding Statement for 1948.—Rules for reproduction.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., October 15, 1947.

Collectors of Internal Revenue and Others Concerned:

1. Form W-2 for 1948 has been approved. It may be reproduce but its reproduction must have official approval. Requests for suc approval must be addressed to the Commissioner of Internal Revenu Attention: A&C: Col: O, Washington 25, D. C., and must include th proposed form of the reproduction and a sample of the paper to b used. The following specifications must be met:

(*a*) *Color and quality of paper:* The forms must be printed on bu paper of substantially the same weight and texture and of qualit as good as that used by the Government. The use of wax-coated pape will not be permitted.

(*b*) *Typography:* The reproduction must be printed in black ink using type not smaller than the corresponding type on the officia form, and, as nearly as possible, of the same font. A limited rea rangement of the face of the form will be permitted, but the spac for the name of the employee must be above that used for the nam of the employer. The space provided for the collector's use may b slightly reduced, but only if proved necessary. It must be in the sam relative position as on the official form. No rearrangement of th material on the backs of the original and duplicate will be permitte

(*c*) *Data to be shown on Form W-2:* Reproduced Forms W-2 mus be designed so as to provide for entry by employers of the same dat as to wages paid and tax withheld as required by the official form. A separate showing of the Federal old age and survivors insurance ta (abbreviation "O. A. S. I.") will be permitted if clearly indicated a such. However, only one amount of wages may be shown, the gros wages before any payroll deductions of any nature have been mad Permission will not be granted for reproductions which would perm employers to show, on the original and triplicate copies, any payro deductions other than those indicated herein. There is no objectio to the attachment of a stub or extension, to the duplicate portion o the form only, to provide additional information not authorized f reproduction on the form itself.

(*d*) *Additional copies* similar to Form W-2b may be reproduced for the use of employers. It will be permissible to prepare forms, as carbon impressions of Form W-2, for use in connection with taxes other than Federal income tax, provided such forms bear no mention of the Internal Revenue Service or the United States Treasury Department. These forms or additional copies must not be placed ahead of Form W-2a in the assembly. Forms for delivery to State or local taxing authorities should be clearly labeled to indicate the purpose for which they are intended and should not bear any part of the designation "Form W-2."

(*e*) *Dimensions:* The official size of the form is 7⅞ inches wide by 3⅔ inches in depth, but the depth may vary from 3½ to 3¾ inches.

(*f*) *Carbonized forms or "spot carbons"* are not permissible. Interleaved carbon, if used, must be of good quality to preclude smudging.

(*g*) *The Government Printing Office symbol* must be omitted from reproduced forms.

(*h*) *Authorized reproduction:* An approved form must bear the notation "App. B. I. R." and the date of its approval in small type in the bottom margin, left-hand side of the face of both the original and the collector's copy, Form W-2a.

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

GEO. J. SCHOENEMAN,
Commissioner.

B. REVENUE ACT OF 1938.

SUBTITLE B.—GENERAL PROVISIONS.

PART IV.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING.

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

ARTICLE 43-2: When charges deductible. 1947-16-12611
I. T. 3863

REVENUE ACTS OF 1932, 1934, 1936, AND 1938.

In accordance with the recommendation contained in G. C. M. 25298 (page 39, this Bulletin), I. T. 3491 (C. B. 1941-2, 177) is hereby revoked.

ARTICLE 43-2: When charges deductible.

REVENUE ACT OF 1938.

Accrual of amounts asserted as additional tax liabilities which are the subject of a bona fide contest. (See G. C. M. 25298, page 39.)

SUBTITLE C.—SUPPLEMENTAL PROVISIONS.

SUPPLEMENT A.—RATES OF TAX.

SECTION 101.—EXEMPTIONS FROM TAX ON CORPORATIONS.

REVENUE ACT OF 1938.

Stock ownership of corporations organized for exclusive purpose of holding title to property. I. T. 3264 (C. B. 1939-1 (Part 1), 121) modified. (See I. T. 3860, page 70.)

SUPPLEMENT B.—COMPUTATION OF NET INCOME.

SECTION 117.—CAPITAL GAINS AND LOSSES.

ARTICLE 117-4: Determination of period for which capital assets are held.

REVENUE ACT OF 1938.

Capital asset received in tax-free exchange for a noncapital asset. (See G. C. M. 25301, page 83.)

INCOME TAX RULINGS.—PART II.

REVENUE ACTS OF 1937 AND 1936.

SUBTITLE C.—SUPPLEMENTAL PROVISIONS.

SUPPLEMENT B.—COMPUTATION OF NET INCOME.

SECTION 117.—CAPITAL GAINS AND LOSSES.

ARTICLE 117-3: Determination of period for which capital assets are held.

REVENUE ACT OF 1936.

Capital asset received in tax-free exchange for a noncapital asset. (See G. C. M. 25301, page 83.)

INCOME TAX RULINGS.—PART III.

REVENUE ACTS OF 1935 AND 1934 OR PRIOR ACTS.

SUBTITLE C.—SUPPLEMENTAL PROVISIONS.

SUPPLEMENT B.—COMPUTATION OF NET INCOME.

SECTION 117.—CAPITAL GAINS AND LOSSES.

ARTICLE 117–3: Determination of period for which capital assets are held.

REVENUE ACTS OF 1924, 1926, 1928, 1932, AND 1934.

Capital asset received in tax-free exchange for a noncapital asset. G. C. M. 621 (C. B. V–2, 5 (1926)) and G. C. M. 11557 (C. B. XII–1, 128 (1933)) modified. (See G. C. M. 25301, page 83.)

EMPLOYMENT TAX RULINGS.

INTERNAL REVENUE CODE.

CHAPTER 9, SUBCHAPTER A.—FEDERAL INSURANCE CONTRIBUTIONS ACT.

SECTION 1400: Rate of tax.
REGULATIONS 106, SECTION 402.302: Rates and computation of employees' tax.

Increase in tax rate postponed. (See T. D. 5566, page 148.)

SECTION 1400: Rate of tax.
REGULATIONS 106, SECTION 402.302: Rates and computation of employees' tax.

Change in rates of tax for the calendar year 1948 and subsequent years. (See T. D. 5592, page 165.)

SECTION 1401: Deduction of tax from wages.
REGULATIONS 106, SECTION 402.705: Special refunds of employees' tax on wages over $3,000.

Changes effected by 1946 Amendments. (See T. D. 5566, page 148.)

SECTION 1401: Deduction of tax from wages. 1947–23–12686
REGULATIONS 106, SECTION 402.705: Special refunds of employees' tax on wages over $3,000. Mim. 6198

Special refunds of employees' tax on wages over $3,000.

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

Collectors of Internal Revenue and Others Concerned:

1. Section 413 of the Social Security Act Amendments of 1946, approved August 10, 1946 [C. B. 1946–2, 287], amended section 1401(d) of the Internal Revenue Code to read as follows:

> (1) WAGES RECEIVED BEFORE 1947.—If by reason of an employee rendering service for more than one employer during any calendar year after the calendar year 1939, the wages of the employee with respect to employment during such year exceed $3,000, the employee shall be entitled to a refund of any amount of tax, with respect to such wages, imposed by section 1400, deducted from such wages and paid to the collector, which exceeds the tax with respect to the first $3,000 of such wages received. Refund under this section may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax; except that no such

refund shall be made unless (A) the employee makes a claim, establishing his right thereto, after the calendar year in which the employment was performed with respect to which refund of tax is claimed, and (B) such claim is made within two years after the calendar year in which the wages are received with respect to which refund of tax is claimed. No interest shall be allowed or paid with respect to any such refund. No refund shall be made under this paragraph with respect to wages received after December 31, 1946.

(2) WAGES RECEIVED AFTER 1946.—If by reason of an employee receiving wages from more than one employer during any calendar year after the calendar year 1946, the wages received by him during such year exceed $3,000, the employee shall be entitled to a refund of any amount of tax, with respect to such wages, imposed by section 1400 and deducted from the employees' wages (whether or not paid to the collector), which exceeds the tax with respect to the first $3,000 of such wages received. Refund under this section may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax; except that no such refund shall be made unless (A) the employee makes a claim, establishing his right thereto, after the calendar year in which the wages were received with respect to which refund of tax is claimed, and (B) such claim is made within two years after the calendar year in which such wages were received. No interest shall be allowed or paid with respect to any such refund.

2. A comparison of the two numbered provisions shown above discloses an important change in the law with respect to special refund claims to be filed after December 31, 1947, with respect to wages received after 1946. In determining amounts refundable with respect to wages received after 1946, it will not be necessary to determine (1) the calendar year in which the services were performed, nor (2) whether the employees' tax was paid to a collector of internal revenue. It is only necessary that the employees' tax be deducted from his wages (whether or not paid to the collector).

3. The regulations affecting such special refunds are contained in Treasury Decision 5566, approved June 23, 1947 [page 148, this Bulletin]. Paragraph 11 of such Treasury decision has added subparagraph (*c*) to section 402.705 of Regulations 106 relating to wages received after 1946. Subparagraph (*c*) provides as follows:

Wages received after 1946.—This paragraph relates only to refunds, under section 1401(d)(2) of the Act, of employees' tax with respect to wages received after December 31, 1946. If, during any calendar year beginning after December 31, 1946, an employee receives wages in excess of $3,000 from two or more employers, the employee may file a claim for refund of the amount, if any, by which the employees' tax imposed with respect to such wages and deducted therefrom exceeds the employees' tax with respect to the first $3,000 of such wages. (See sections 402.227 and 402.228 (26 CFR, 402.227 and 402.228), relating to wages.) Each such claim shall be made with respect to wages received within one calendar year (regardless of the year or years after 1936 during which the services are performed for which such wages are received). The employee shall submit with the claim, as a part thereof, a statement setting forth the following information, with respect to each employer from whom he received wages during the calendar year: (1) the name and address of such employer, (2) the account number of the employee and the employee's name as reported by the employer on his returns, (3) the amount of wages received during the calendar year to which the claim relates, (4) the amount of employees' tax, if any, deducted from such wages, and (5) the amount of such tax, if any, which has been refunded or otherwise returned to the employee. Other information may be required, but should be submitted only upon the receipt of a specific request therefor. The employee's claim shall be made on Form 843, in accordance with these regulations and the instructions relating to such form, and shall be filed with the collector for the district in which the employee resides. No

interest will be allowed or paid by the Government on the amount of any refund to which this paragraph relates. No refund to which this paragraph relates will be made unless (1) the employee files a claim, establishing his right thereto, after the calendar year in which the wages are received with respect to which refund of tax is claimed, and (2) such claim is filed within two years after the calendar year in which such wages are received.

4. It will be noted with respect to wages received after 1946 that the employee claimant will furnish the evidence in support of his claim in lieu of the evidence furnished by employers as provided in the regulations affecting claims filed with respect to wages received before 1947. A new form, therefore, is being printed to be used by such employees with respect to wages received after 1946 and will be distributed to collectors at an early date. The form will be designated Form SS–9a and will be used to support the employee's claim on Form 843.

5. Form SS–9, "Employer's Statement to Support Employee's Claim for Special Refund of Employees' Tax," will continue to be used with respect to those claims filed in connection with wages received before 1947. Prior procedure continues in effect with respect to claims filed in connection with wages received before 1947. Prior general instructions will also apply to claims filed with respect to wages received after 1946.

6. Effective January 1, 1948, employees making requests for the proper forms should be furnished two copies of Form SS–9a on the assumption that the employee intends to file a claim with respect to wages received during 1947 only. One copy of Form SS–9a should be attached to Form 843 and the other retained by the claimant. If, however, the employee states in his request that he intends to file claims with respect to wages received in 1946 and 1947, it will be necessary to furnish him with both forms, Form SS–9 and Form SS–9a. Appropriate instructions should be given to prospective claimants where both forms are to be used.

7. Correspondence in regard to the procedure outlined herein should refer to the number of this mimeograph and the symbols EmT: A.

GEO. J. SCHOENEMAN,
Commissioner.

SECTION 1410: Rate of tax.
REGULATIONS 106, SECTION 402.402: Rates and computation of employers' tax.

Increase in tax rate postponed. (See T. D. 5566, page 148.)

SECTION 1410: Rate of tax.
REGULATIONS 106, SECTION 402.402: Rates and computation of employers' tax.

Change in rates of tax for the calendar year 1948 and subsequent years. (See T. D. 5592, page 165.)

SECTION 1426: Definitions. 1947–14–12585
REGULATIONS 106, SECTION 402.201: General definitions and use of terms. T. D. 5566
(Also Sections 1400, 1410, and 1401; Regulations 106, Sections 402.227, 402.228, 402.302, 402.402, 402.705; also Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Sections 403.201, 403.202, 403.203, 403.206, 403.211, 403.226(*b*), 403.227, 403.228.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER D, PARTS 402 AND 403.

Regulations 106 and 107 amended to conform to certain provisions of the Social Security Act Amendments of 1946 [C. B. 1946-2, 287].

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

To Collectors of Internal Revenue and Others Concerned:

On March 21, 1947, notice of proposed rule making, regarding the employment tax provisions of the Social Security Act Amendments of 1946 (Public Law 719, Seventy-ninth Congress; 60 Stat., 978), approved August 10, 1946 [C. B. 1946–2, 287], was published in the Federal Register (12 F. R., 1892). After consideration of all such relevant matter as was presented by interested persons regarding the proposal, the following amendments are hereby adopted. Such amendments are necessary in order to conform Regulations 106 [26 CFR, Part 402], relating to the employees' tax and the employers' tax under the Federal Insurance Contributions Act (Subchapter A, Chapter 9, Internal Revenue Code), to sections 101, 102, 412(a), and 413 of such Social Security Act Amendments of 1946, and Regulations 107 [26 CFR, Part 403], relating to the excise tax on employers under the Federal Unemployment Tax Act (Subchapter C, Chapter 9, Internal Revenue Code), to sections 302 to 305, inclusive, 412(b), and 416(b) of such Social Security Act Amendments of 1946, and are as follows:

REGULATIONS 106 [26 CFR, PART 402].

PARAGRAPH 1. Immediately preceding the caption "SECTION 3797 (a) AND (b) OF THE INTERNAL REVENUE CODE" as set forth preceding section 402.201 [26 CFR, 402.201], the following is inserted:

SECTION 412(a) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

Section 1426(a)(1) of the Federal Insurance Contributions Act (Internal Revenue Code, sec. 1426(a)(1)) is amended to read as follows:

"(1) That part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid, prior to January 1, 1947, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to $3,000 with respect to employment after 1936 has been paid to an individual by an employer during any calendar year after 1946, is paid to such individual by such employer during such calendar year; ".

PAR. 2. Section 402.201 [26 CFR, 402.201] is amended by inserting after paragraph (*o*) [26 CFR, 402.201(o)] the following new paragraph:

(*p*) *Social Security Act Amendments of 1946* means the Act approved August 10, 1946 (Public Law 719, Seventy-ninth Congress; 60 Stat., 978).

PAR. 3. Immediately preceding section 402.227 [26 CFR, 402.227], the following is inserted:

SECTION 412(a) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946

Section 1426(a)(1) of the Federal Insurance Contributions Act (Internal Revenue Code, sec. 1426(a)(1)) is amended to read as follows:

"(1) That part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid, prior to January 1, 1947, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to $3,000 with respect to employment after 1936 has been paid to an individual by an employer during any calendar year after 1946, is paid to such individual by such employer during such calendar year;".

PAR. 4. Section 402.227(*a*) [26 CFR, 402.227(a)] is amended by striking out the period at the end of the first sentence thereof and inserting in lieu thereof a comma and the following: "and as further amended by section 412(a) of the Social Security Act Amendments of 1946."

PAR. 5. Section 402.228(*a*) [26 CFR, 402.228(a)] is amended as follows:

(A) By striking out the first three sentences of such section and inserting in lieu thereof the following:

(1) *In general.*—Section 1426(a)(1) of the Act provides an annual $3,000 limitation on the amount of remuneration that may constitute wages, by excepting from the term "wages" remuneration paid after $3,000 has been paid. Under such section as amended by section 412(a) of the Social Security Act Amendments of 1946, the amount first to be included in wages, after which the exception operates, is measured in two ways, depending on whether the remuneration is paid before 1947 or is paid after 1946. In the case of remuneration paid before 1947, the amount first to be included in wages is remuneration paid up to and including $3,000 for employment performed by an employee for his employer during each calendar year regardless of when paid (before 1947); and additional amounts *for employment performed in such calendar year* by such employee for such employer are excluded regardless of when paid (before 1947). In the case of remuneration paid after 1946, the amount first to be included in wages in each calendar year is remuneration up to and including $3,000 paid in the calendar year by an employer to an employee for employment performed at any time after December 31, 1936; and additional amounts *paid in such calendar year* by such employer to such employee are excluded regardless of when earned. In general, the change is from an "earned within the calendar year basis" to a "paid within the calendar year basis." For a more complete explanation of the limitation, see subparagraphs (2) and (3) of this paragraph.

(2) *Remuneration paid before 1947.*—This subparagraph (2) (ending with example 3) applies only with respect to remuneration paid before January 1, 1947.

The term "wages" does not include that part of the remuneration paid before January 1, 1947, by an employer to an employee for employment performed for him during any calendar year which exceeds the first $3,000 paid by such employer to such employee for employment performed during such calendar year.

In the case of remuneration paid before 1947, the $3,000 limitation applies only if the remuneration received by an employee from the same employer for

employment during any one calendar year exceeds $3,000. The limitation in such case relates to remuneration for employment during any one calendar year and not to the amount of remuneration (irrespective of the year of employment) which is paid or received in any one calendar year.

(B) By inserting in the parenthetical matter in the third sentence of example 1, immediately after the word " received " the following: " before January 1, 1947,".

(C) By striking out the clause, immediately following example 1, " If the employee has more than one employer during a calendar year," and inserting in lieu thereof the following: " In the case of remuneration paid before 1947, if the employee has more than one employer during a calendar year,".

(D) By inserting at the beginning of the first and fifth sentences of example 2 the following: " During 1940."

(E) By inserting immediately following the word " and " where it last appears in the first sentence of example 3, the following: " during such year."

(F) By inserting immediately following example 3 the following new subparagraph:

(3) *Remuneration paid after 1946.*—This subparagraph (3) applies only with respect to remuneration paid after December 31, 1946.

The term " wages " does not include that part of the remuneration paid within any calendar year beginning after December 31, 1946, by an employer to an employee which exceeds the first $3,000 paid within such calendar year by such employer to such employee for employment performed for him at any time after December 31, 1936.

In the case of remuneration paid after 1946, the $3,000 limitation applies only if the remuneration received during any one calendar year by an employee from the same employer for employment performed after 1936 exceeds $3,000. The limitation in such case relates to the amount of remuneration received during any one calendar year for employment after 1936 and not to the amount of remuneration for employment performed in any one calendar year.

Example 1. Employee G, in 1947, receives $2,500 from employer H on account of $3,000 due him for employment performed in 1947. In 1948 G receives from employer H the balance of $500 due him for employment performed in the prior year (1947), and thereafter in 1948 also receives $3,000 for employment performed in 1948 for employer H. The $2,500 received in 1947 is subject to tax in 1947. The balance of $500 received in 1948 for employment during 1947 is subject to tax in 1948, as is also the first $2,500 paid of the $3,000 for employment during 1948 (this $500 for 1947 employment added to the first $2,500 paid for 1948 employment constitutes the maximum wages which could be received by G in 1948 from any one employer). The final $500 received by G from H in 1948 is not included as wages and is not subject to the tax.

Example 2. Employee I, in 1946, receives $3,000 from employer J on account of $6,000 due him for employment performed in 1946. In 1947, before receiving any remuneration for employment performed in 1947, employee I receives the balance of $3,000 due him from J on account of employment performed in 1946. The $3,000 received in 1946 constitutes wages in 1946 and is subject to the tax, in accordance with the provisions set forth in subparagraph (2) of this paragraph. The balance of $3,000 received in 1947 on account of employment in 1946 constitutes wages and is subject to the tax in 1947, in accordance with the provisions set forth in this subparagraph (3). The $3,000 received in 1947 for 1946 employment constitutes the maximum wages which could be received by I from J in 1947. Any further remuneration received in 1947 by employee I for services performed for J is not included as wages and is not subject to the tax, whether for services performed before, during, or after 1947. (Assuming the same amounts of remuneration and times of payment, the same result would be reached if employee I had left the employ of J and performed no further services for J after 1946.)

If during a calendar year (after 1946) the employee received remuneration from more than one employer, the limitation of wages to the first $3,000 of

remuneration received applies, not to the aggregate remuneration received from all employers with respect to employment performed after 1936, but instead to the remuneration received during such calendar year from *each* employer with respect to employment performed after 1936. In such case the first $3,000 received during the calendar year from each employer constitutes wages and is subject to the tax, even though, under section 1401(d) of the Act, the employee may be entitled to a refund of any amount of employees' tax deducted from his wages which exceeds the employees' tax with respect to the first $3,000 of wages received during the calendar year from all employers. (In this connection and in connection with the two examples immediately following, see section 402.705 [26 CFR, 402.705], relating to special refunds of employees' tax on wages over $3,000.)

Example 3. During 1947 employee K receives from employer L a salary of $600 a month for employment performed for L during the first seven months of 1947, or total remuneration of $4,200. At the end of the fifth month K has received $3,000 from employer L, and only that part of his total remuneration from L constitutes wages subject to the tax. The $600 received by employee K from employer L in the sixth month, and the like amount received in the seventh month, are not included as wages and are not subject to the tax. At the end of the seventh month K leaves the employ of L and enters the employ of M. K receives remuneration of $600 a month from employer M in each of the remaining five months of 1947, or total remuneration of $3,000 from employer M. The entire $3,000 received by K from employer M constitutes wages and is subject to the tax. Thus, the first $3,000 received from employer L and the entire $3,000 received from employer M constitute wages.

Example 4. During the calendar year 1947 N is simultaneously an officer (an employee) of the O Corporation, the P Corporation, and the Q Corporation and during such year receives a salary of $3,000 from each corporation. Each $3,000 received by N from each of the corporations, O, P, and Q (whether or not such corporations are related) constitutes wages and is subject to the tax.

PAR. 6. Immediately preceding section 402.301 [26 CFR, 402.301], the following is inserted:

SECTION 101 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

Clauses (1) and (2) of section 1400 of the Federal Insurance Contributions Act (Internal Revenue Code, sec. 1400), as amended, are amended to read as follows:

"(1) With respect to wages received during the calendar years 1939 to 1947, both inclusive, the rate shall be 1 per centum.

"(2) With respect to wages received during the calendar year 1948, the rate shall be 2½ per centum."

PAR. 7. Section 402.302, as amended by Treasury Decision 5487, approved December 27, 1945 [C. B. 1946–1, 248] [26 CFR, 402.302], is further amended to read as follows:

SEC. 402.302. RATES AND COMPUTATION OF EMPLOYEES' TAX.—The rates of employees' tax applicable for the respective calendar years are as follows:

	Per cent
For the calendar years 1940 to 1947, both inclusive	1
For the calendar year 1948	2½
For the calendar year 1949 and subsequent calendar years	3

The employees' tax is computed by applying to the wages received by the employee the rate in effect at the time such wages are received.

Example. During 1947 A is an employee of B and is engaged in the performance of services which constitute employment (see section 402.203). In the following year, 1948, A receives from B $1,000 as remuneration for services performed by A in the preceding year. The tax is payable at the 2½ per cent rate in effect for the calendar year 1948 (the year in which the wages are received) and not at the 1 per cent rate which is in effect for the calendar year 1947 (the year in which the services were performed).

PAR. 8. Immediately preceding section 402.401 [26 CFR, 402.401], the following is inserted:

SECTION 102 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

Clauses (1) and (2) of section 1410 of such Act (Internal Revenue Code, sec. 1410), as amended, are amended to read as follows:

"(1) With respect to wages paid during the calendar years 1939 to 1947, both inclusive, the rate shall be 1 per centum.

"(2) With respect to wages paid during the calendar year 1948 the rate shall be 2½ per centum."

PAR. 9. Section 402.402, as amended by Treasury Decision 5487 [26 CFR, 402.402], is further amended to read as follows:

SEC. 402.402. RATES AND COMPUTATION OF EMPLOYERS' TAX.—The rates of employers' tax applicable for the respective calendar years are as follows:

	Per cent.
For the calendar years 1940 to 1947, both inclusive	1
For the calendar year 1948	2½
For the calendar year 1949 and subsequent calendar years	3

The employers' tax is computed by applying to the wages paid by the employer the rate in effect at the time such wages are paid.

PAR. 10. Immediately preceding section 402.705 [26 CFR, 402.705], the following is inserted:

SECTION 413 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

Section 1401(d) of the Federal Insurance Contributions Act (Internal Revenue Code, sec. 1401(d)) is amended to read as follows:

"(d) SPECIAL REFUNDS.—

"(1) WAGES RECEIVED BEFORE 1947.—If by reason of an employee rendering service for more than one employer during any calendar year after the calendar year 1939, the wages of the employee with respect to employment during such year exceed $3,000, the employee shall be entitled to a refund of any amount of tax, with respect to such wages, imposed by section 1400, deducted from such wages and paid to the collector, which exceeds the tax with respect to the first $3,000 of such wages received. Refund under this section may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax; except that no such refund shall be made unless (A) the employee makes a claim, establishing his right thereto, after the calendar year in which the employment was performed with respect to which refund of tax is claimed, and (B) such claim is made within two years after the calendar year in which the wages are received with respect to which refund of tax is claimed. No interest shall be allowed or paid with respect to any such refund. No refund shall be made under this paragraph with respect to wages received after December 31, 1946.

"(2) WAGES RECEIVED AFTER 1946.—If by reason of an employee receiving wages from more than one employer during any calendar year after the calendar year 1946, the wages received by him during such year exceed $3,000, the employee shall be entitled to a refund of any amount of tax, with respect to such wages, imposed by section 1400 and deducted from the employee's wages (whether or not paid to the collector), which exceeds the tax with respect to the first $3,000 of such wages received. Refund under this section may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax; except that no such refund shall be made unless (A) the employee makes a claim, establishing his right thereto, after the calendar year in which the

wages were received with respect to which refund of tax is claimed, and (B) such claim is made within two years after the calendar year in which such wages were received. No interest shall be allowed or paid with respect to any such refund."

PAR. 11. Section 402.705, as amended by Treasury Decision 5487 [26 CFR, 402.705], is further amended as follows:

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

(*a*) *In general.*—If an employee receives wages from more than one employer, his aggregate wages from all employers may exceed the annual $3,000 limitation on wages from a single employer provided by section 1426(a)(1) of the Act. (See section 402.228(*a*) [26 CFR, 402.228(a)], relating to the $3,000 limitation.) Section 1401(d) of the Act provides in certain cases for refund to an employee of a portion of the employees' tax in event of such an excess. By reason of the amendment of such section by section 413 of the Social Security Act Amendments of 1946, the conditions and limitations upon the refunds differ in certain respects, depending upon whether the tax, refund of which is claimed, is imposed with respect to wages received before 1947 or with respect to wages received after 1946.

(*b*) *Wages received before 1947.*—This paragraph relates only to refunds, under section 1401(d)(1) of the Act, of employees' tax with respect to wages received before January 1, 1947. If, prior to 1947, an employee receives wages in excess of $3,000 from two or more employers for services performed during the calendar year 1940 or any subsequent calendar year, the employee may file a claim for refund of the amount, if any, by which the employees' tax deducted and paid to a collector with respect to such wages exceeds the employees' tax with respect to the first $3,000 of such wages.

(B) By striking out the words "Each claim" at the beginning of the third sentence of the first paragraph and inserting in lieu thereof "Each such claim."

(C) By inserting in the clause numbered (4) in the fourth sentence of the first paragraph, immediately after the word "year" where it first appears, the words "prior to 1947."

(D) By striking the word "section" wherever appearing therein from the last two sentences of the first paragraph, and inserting in lieu thereof "paragraph."

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

Example 1. Employee A in the calendar year 1946 receives taxable wages in the amount of $2,000 from each of his employers, B, C, and D, for services performed during such year, or a total of $6,000. Employees' tax is deducted from A's wages and paid to the collector, in the amount of $20 by B and $20 by C, or a total of $40. Employer D pays employees' tax in the amount of $20 to the collector *without deducting such tax from A's wages.* The employees' tax with respect to the first $3,000 of such wages is $30. A may file a claim for refund of $10.

Example 2. Employee E in the calendar year 1946 performs employment for employers F and G, for which E is entitled to remuneration of $3,000 from each employer, or a total of $6,000. On account of such employment E in 1946 receives wages in the amount of $3,000 from F, and $2,000 from G; and on January 1, 1947, E receives the remaining $1,000 of wages from G. Employees' tax was deducted and paid to the collector as follows: In 1946, by employer F, $30, and by employer G, $20; and in 1947, by employer G, $10. Thus E, prior to January 1, 1947, received $5,000 in wages for services performed during the calendar year 1946, with respect to which wages $50 of employees' tax was deducted and paid to the collector. The amount of employees' tax with respect to the first $3,000 of such wages is $30. E may file a claim for refund of $20. (The $1,000 of wages received on January 1, 1947, and $10 of employees' tax with respect thereto, have no bearing on this claim because the wages were received after December 31, 1946; but if in 1947 E receives wages from one or more employers in addition to employer G, and the total wages received in such year from all employers

exceeds $3,000, E may be entitled to another special refund of employees' tax. The determination in such case would include consideration of the $1,000 wages received on January 1, 1947, and the $10 of employees' tax with respect thereto, and such determination would be made under section 1401(d)(2) of the Act, which is dealt with in paragraph (c), below, of this section.)

(c) *Wages received after 1946.*—This paragraph relates only to refunds, under section 1401(d)(2) of the Act, of employees' tax with respect to wages received after December 31, 1946. If, during any calendar year beginning after December 31, 1946, an employee receives wages in excess of $3,000 from two or more employers, the employee may file a claim for refund of the amount, if any, by which the employees' tax imposed with respect to such wages and deducted therefrom exceeds the employees' tax with respect to the first $3,000 of such wages. (See sections 402.227 and 402.228 [26 CFR, 402.227 and 402.228], relating to wages.) Each such claim shall be made with respect to wages received within one calendar year (regardless of the year or years after 1936 during which the services are performed for which such wages are received). The employee shall submit with the claim, as a part thereof, a statement setting forth the following information, with respect to each employer from whom he received wages during the calendar year: (1) the name and address of such employer, (2) the account number of the employee and the employee's name as reported by the employer on his returns, (3) the amount of wages received during the calendar year to which the claim relates, (4) the amount of employees' tax, if any, deducted from such wages, and (5) the amount of such tax, if any, which has been refunded or otherwise returned to the employee. Other information may be required, but should be submitted only upon the receipt of a specific request therefor. The employee's claim shall be made on Form 843, in accordance with these regulations and the instructions relating to such form, and shall be filed with the collector for the district in which the employee resides. No interest will be allowed or paid by the Government on the amount of any refund to which this paragraph relates. No refund to which this paragraph relates will be made unless (1) the employee files a claim, establishing his right thereto, after the calendar year in which the wages are received with respect to which refund of tax is claimed, and (2) such claim is filed within two years after the calendar year in which such wages are received.

Example 1. Employee H in the calendar year 1947 receives taxable wages in the amount of $2,000 from each of his employers I, J, and K, for services performed during such year (or at any time after December 31, 1946), or a total of $6,000. Employees' tax is deducted from H's wages, in the amount of $20 by I and $20 by J, or a total of $40. Employer K pays employees' tax in the amount of $20 to the collector *without deducting such tax from H's wages.* The employees' tax with respect to the first $3,000 of such wages is $30. H may file a claim for refund of $10.

Example 2. Employee L in the calendar year 1947 performs employment for employers M and N, for which L is entitled to remuneration of $3,000 from each employer, or a total of $6,000. On account of such employment L in 1946 received an advance payment of $1,000 in wages from M; and in 1947 receives wages in the amount of $2,000 from M, and $3,000 from N. Employees' tax was deducted as follows: in 1946, $10 by employer M; and in 1947, $20 by employer M, and $30 by employer N. Thus L in the calendar year 1947 received $5,000 in wages, from which $50 of employees' tax was deducted. The amount of employees' tax with respect to the first $3,000 of such wages received in 1947 is $30. L may file a claim for refund of $20. (The $1,000 advance of wages received in 1946 from M, and $10 of employees' tax with respect thereto, have no bearing on this claim, because the wages were not received in 1947; and such amounts could not form the basis for a refund unless L prior to 1947 received from M and at least one more employer advance wages totaling more than $3,000 for employment to be performed during 1947, in which case L's right to refund would be determined under section 1401(d)(1) of the Act, which is dealt with in paragraph (b), above, of this section.)

REGULATIONS 107 [26 CFR, PART 403].

PAR. 12. Immediately preceding the caption "SECTION 3797 (a) AND (b) OF THE INTERNAL REVENUE CODE" as set forth preceding section 403.201 [26 CFR, 403.201], the following is inserted:

SECTION 412(b) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

Section 1607(b)(1) of the Federal Unemployment Tax Act (Internal Revenue Code, sec. 1607(b)(1)) is amended to read as follows:

"(1) That part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid after December 31, 1939, and prior to January 1, 1947, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to $3,000 with respect to employment after 1938 has been paid to an individual by an employer during any calendar year after 1946, is paid to such individual by such employer during such calendar year;"

SECTION 302 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

That part of section 1607(c) of the Internal Revenue Code, as amended, which reads as follows:

"(c) EMPLOYMENT.—The term 'employment' means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him, irrespective of the citizenship or residence of either, except—"

is amended, effective July 1, 1946, to read as follows:

"(c) EMPLOYMENT.—The term 'employment' means any service performed prior to July 1, 1946, which was employment as defined in this section as in effect at the time the service was performed; and any service, of whatever nature, performed after June 30, 1946, by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—".

SECTION 303 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

Section 1607(c)(4) of the Internal Revenue Code, as amended, is amended, effective July 1, 1946, to read as follows:

"(4) Service performed on or in connection with a vessel not an American vessel by an employee, if the employee is employed on and in connection with such vessel when outside the United States;".

SECTION 304 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

(a) Section 1607(c)(15) of such Code is amended by striking out "or" at the end thereof.

(b) Section 1607(c)(16) of such Code is amended by striking out the period and inserting in lieu thereof the following: "; or"

(c) Section 1607(c) of such Code is further amended by adding after paragraph (16) a new paragraph to read as follows:

"(17) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except (A)

service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (B) service performed on or in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States)."

(d) The amendments made by this section shall take effect July 1, 1946.

SECTION 305 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

Section 1607 of such Code, as amended, is further amended, effective July 1, 1946, by adding after subsection (m) a new subsection to read as follows:

"(n) AMERICAN VESSEL.—The term 'American vessel' means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State."

SECTION 416(b) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

The last sentence of subsection (f) of section 1607 of the Federal Unemployment Tax Act, as amended, is amended by striking out the period at the end thereof and inserting in lieu thereof the following: " : *Provided*, That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration."

PAR. 13. Section 403.201 [26 CFR, 403.201] is amended by inserting after paragraph (m) [26 CFR, 403.201(m)] the following new paragraph:

(*n*) *Social Security Act Amendments of 1946* means the Act approved August 10, 1946 (Public Law 719, Seventy-ninth Congress; 60 Stat., 978).

PAR. 14. Immediately preceding the caption "SECTION 1607(c) OF THE FEDERAL UNEMPLOYMENT TAX ACT, AS ENACTED FEBRUARY 10, 1939," as set forth preceding section 403.202 [26 CFR, 403.202], the following is inserted:

SECTION 302 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

That part of section 1607(c) of the Internal Revenue Code, as amended, which reads as follows:

"(c) EMPLOYMENT.—The term 'employment' means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date * * *"

is amended, effective July 1, 1946, to read as follows:

"(c) EMPLOYMENT.—The term 'employment' means any service performed prior to July 1, 1946, which was employment as defined in this section as in effect at the time the service was performed * * *"

PAR. 15. Section 403.202, as amended by Treasury Decision 5519, approved June 14, 1946 [C. B. 1946–2, 139] [26 CFR, 403.202], is amended by striking out the first three sentences thereof and inserting in lieu thereof the following:

Under the provisions of section 1607(c) of the Federal Unemployment Tax Act as amended, effective July 1, 1946, by section 302 of the Social Security Act

Amendments of 1946, services performed prior to July 1, 1946, constitute employment if they were employment as defined in section 1607(c) as in effect at the time the service was performed. The provision in effect prior to January 1, 1940, and therefore applicable to services performed prior to such date, is section 1607(c) of the Federal Unemployment Tax Act as originally enacted February 10, 1939, as modified by section 13(a) of the Railroad Unemployment Insurance Act. Thus, services performed prior to January 1, 1940, within the United States by an employee for the person employing him, constitute employment within the meaning of the Federal Unemployment Tax Act in force on and after January 1, 1940, unless the services are excepted by section 1607(c) as originally enacted, as modified by such section 13(a).

PAR. 16. Immediately preceding section 403.203 [26 CFR, 403.203] the following is inserted:

SECTION 302 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

That part of section 1607(c) of the Internal Revenue Code, as amended, which reads as follows:

"(c) EMPLOYMENT.—The term 'employment' means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him, irrespective of the citizenship or residence of either, except—"

is amended, effective July 1, 1946, to read as follows:

"(c) EMPLOYMENT.—The term 'employment' means any service performed prior to July 1, 1946, which was employment as defined in this section as in effect at the time the service was performed; and any service, of whatever nature, performed after June 30, 1946, by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—".

SECTION 305 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

Section 1607 of such Code, as amended, is further amended, effective July 1, 1946, by adding after subsection (m) a new subsection to read as follows:

"(n) AMERICAN VESSEL.—The term 'American vessel' means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State."

PAR. 17. Section 403.203, as amended by Treasury Decision 5519 [26 CFR, 403.203], is amended to read as follows:

SEC. 403.203. EMPLOYMENT AFTER DECEMBER 31, 1939.—(a) *In general.*—Whether services performed on or after January 1, 1940, constitute employment is determined under section 1607(c) of the Act, that is, section 1607(c), as amended, effective January 1, 1940, by section 614 of the Social Security Act Amendments of 1939, and as amended, effective January 1, 1946, by section 4(d) of the International Organizations Immunities Act, and as further amended, effective July 1, 1946, by sections 302, 303, and 304 of the Social Security Act Amendments of 1946. This section of these regulations, and all sections of this subpart B which follow (except sections 403.227 and 403.228 [26 CFR, 403.227 and 403.228], relating to wages), apply with respect only to services performed after December 31, 1939. Such sections apply with respect to services performed at any time after such date, except those provisions thereof in which a different period of appli-

cation is expressly stated. (For provisions relating to the circumstances under which services which do not constitute employment are nevertheless deemed to be employment, and relating to the circumstances under which services which constitute employment are nevertheless deemed not to be employment, see section 403.207 [26 CFR, 403.207]. For provisions relating to the circumstances under which certain services with respect to which the collection of tax is prohibited are deemed not to be included within the term "employment" as used in these regulations, see section 403.206 [26 CFR, 403.206]. For provisions relating to services performed prior to January 1, 1940, see section 403.202 [26 CFR, 403.202].)

(*b*) *Services performed within the United States.*—Services performed on or after January 1, 1940, within the United States, that is, within any of the several States, the District of Columbia, or the Territory of Alaska or Hawaii, by an employee for the person employing him, unless specifically excepted by section 1607(c) of the Act, constitute employment within the meaning of the Act. Services performed outside the United States, that is, outside the several States, the District of Columbia, and the Territories of Alaska and Hawaii (except certain services performed after June 30, 1946, on or in connection with an American vessel—see paragraph (*c*)), do not constitute employment.

With respect to services performed within the United States, the place where the contract of service is entered into and the citizenship or residence of the employee or of the person employing him are immaterial. Thus, the employee and the person employing him may be citizens and residents of a foreign country and the contract of service may be entered into in a foreign country, and yet, if the employee under such contract actually performs services within the United States, there may be to that extent employment within the meaning of the Act.

(*c*) *Services performed outside the United States.*—Services performed on or after July 1, 1946, by an employee for the person employing him "on or in connection with" an American vessel outside the United States constitute employment provided:

(1) The employee is also employed "on and in connection with" such vessel when outside the United States; and

(2) The services are performed under a contract of service, between the employee and the person employing him, which is entered into within the United States, or during the performance of which the vessel touches at a port within the United States; and

(3) The services are not excepted under section 1607(c) of the Act. (See particularly section 403.226b of these regulations [26 CFR, 403.226b], relating to fishing.)

An employee performs services on *and* in connection with the vessel if he performs services on the vessel which are also in connection with the vessel. Services performed *on* the vessel as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Services may be performed on the vessel, however, which have no connection with it, as in the case of services performed by an employee while on the vessel merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

If services are performed by an employee "on and in connection with" an American vessel when outside the United States and conditions (2) and (3) above are met, then the services of that employee performed on *or* in connection with the vessel constitute employment. The expression "on or in connection with" refers not only to services performed on the vessel but also to services connected with the vessel which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

Services performed by a member of the crew or other employee whose contract of service is not entered into within the United States, and during the performance of which the vessel does not touch at a port within the United States, do not constitute employment, notwithstanding similar services performed by others on or in connection with the vessel may constitute employment.

The word "vessel" includes every description of watercraft, or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

The term "American vessel" means any vessel which is documented (that is, registered, enrolled, or licensed) or numbered in conformity with the laws of the United States. It also includes any vessel which is neither documented nor numbered under the laws of the United States, nor documented under the laws of any foreign country, if the crew of such vessel is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State (including the District of Columbia or the Territory of Alaska or Hawaii).

With respect to services performed outside the United States, the citizenship or residence of the employee is immaterial, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether a vessel is an American vessel.

(*d*) *Services performed for Bonneville Power Administrator.*—Notwithstanding any other provision of these regulations, such services as constitute employment under section 1607(m) of the Act shall constitute employment within the meaning of the Act and of these regulations (including section 403.205 [26 CFR, 403.205], relating to who are employers). Section 1607(m) of the Act relates to services performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee of the United States employed through the Bonneville Power Administrator.

PAR. 18. Immediately preceding the caption "SECTION 5(b) OF THE INTERNATIONAL ORGANIZATIONS IMMUNITIES ACT," as inserted by Treasury Decision 5519 preceding section 403.206 [26 CFR, 403.206], the following is inserted:

SECTION 302 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

That part of section 1607(c) of the Internal Revenue Code, as amended, which reads as follows:

"(c) EMPLOYMENT.—The term 'employment' means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—"

is amended, effective July 1, 1946, to read as follows:

"(c) EMPLOYMENT.—The term 'employment' means any service performed prior to July 1, 1946, which was employment as defined in this section as in effect at the time the service was performed; and any service, of whatever nature, performed after June 30, 1946, by an employee for the person employing him * * * except—".

PAR. 19. Section 403.206, as amended by Treasury Decision 5519 [26 CFR, 403.206], is further amended as follows:

(A) By striking out the period at the end of the first sentence and inserting in lieu thereof a comma and the following: "and as further amended, effective July 1, 1946, by sections 302, 303, and 304 of the Social Security Act Amendments of 1946."

(B) By striking out the following sentences where they appear:

This section, section 403.207 (relating to included and excluded services), and sections 403.208 to 403.226, inclusive (relating to certain classes of excepted services), apply with respect only to services performed on or after January 1, 1940. Section 403.226a, relating to an additional class of excepted services, applies with respect only to services performed on or after January 1, 1946.

and by inserting in lieu thereof the following:

This section, and the sections which follow it relating to included and excluded services and the several classes of excepted services, apply with respect to services performed at any time after December 31, 1939, except where a different period of application is expressly stated.

PAR. 20. In those provisions of law which read as follows:

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

where they appear preceding each section from 403.208 to 403.226a [26 CFR, 403.208 to 403.226a], both inclusive, the phrase "after December 31, 1939, within the United States" is stricken, and "* * *" is inserted in lieu thereof, so that such provisions of law read as follows:

The term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

PAR. 21. Immediately preceding section 403.211 [26 CFR, 403.211] the following is inserted:

SECTION 303 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

Section 1607(c)(4) of the Internal Revenue Code, as amended, is amended, effective July 1, 1946, to read as follows:

"(4) Service performed on or in connection with a vessel not an American vessel by an employee, if the employee is employed on and in connection with such vessel when outside the United States;".

PAR. 22. Section 403.211 [26 CFR, 403.211] is amended to read as follows:

SEC. 403.211. MARITIME SERVICES.—(*a*) *In general.*—Section 1607(c)(4) of the Act, as amended, effective January 1, 1940, by section 614 of the Social Security Act Amendments of 1939, excepts service performed within the United States as an officer or member of the crew of a vessel on the navigable waters of the United States. Such exception, which is dealt with in paragraph (*b*), below, applies only with respect to services performed before July 1, 1946. Section 1607(c)(4) of the Act, as amended, effective July 1, 1946, by section 303 of the Social Security Act Amendments of 1946, excepts service performed within the United States on or in connection with a vessel not an American vessel by an employee, if the employee is employed on and in connection with such vessel when outside the United States. Such exception, which is dealt with in paragraph (*c*), below, applies only with respect to services performed on or after July 1, 1946. (For definitions of "vessel" and "American vessel," see section 403.203(*c*) [26 CFR, 403.203(c)].)

(*b*) *Services performed prior to July 1, 1946.*—The expression "navigable waters of the United States" means such waters as are navigable in fact and which by themselves or their connection with other waters form a continuous channel for commerce with foreign countries or among the States.

The expression "officer or member of the crew" includes the master or officer in charge of the vessel, however designated, and every individual, subject to his authority, serving on board and contributing in any way to the operation and welfare of the vessel. The exception extends, for example, to services rendered by the master, mates, pilots, pursers, surgeons, stewards, engineers, firemen, cooks, clerks, carpenters, deck hands, porters, and chambermaids, and by seal hunters and fishermen on sealing and fishing vessels.

(*c*) *Services performed after June 30, 1946.*—In order for services performed after June 30, 1946, within the United States "on or in connection with" a vessel not an American vessel to be excepted, the services must be performed by an employee who is also employed "on and in connection with" the vessel when outside the United States.

An employee performs services on *and* in connection with the vessel if he performs services on the vessel when outside the United States which are also in connection with the vessel. Services performed *on* the vessel outside the United States as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Services may be performed

on the vessel, however, which have no connection with it, as in the case of services performed by an employee while on the vessel merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

The expression "on or in connection with" refers not only to services performed on the vessel but also to services connected with the vessel which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

The citizenship or residence of the employee and the place where the contract of service is entered into are immaterial for purposes of this exception, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether the vessel is an American vessel.

Since the only services performed outside the United States which constitute employment are those described in section 403.203(*c*) [26 CFR, 403.203(c)] (relating to services performed outside the United States on or in connection with an American vessel), services performed outside the United States on or in connection with a vessel not an American vessel in any event do not constitute employment.

PAR. 23. The first sentence of section 403.213, as amended by Treasury Decision 5502, approved March 18, 1946 [C. B. 1946–1, 250] [26 CFR, 403.213], is amended by striking out "403.203(*b*)" and inserting in lieu thereof "403.203(*d*) [26 CFR, 403.203(d)]."

PAR. 24. Immediately after section 403.226a, as added by Treasury Decision 5519 [26 CFR, 403.226a], the following is inserted:

SECTION 1607(c)(17) OF THE ACT.

The term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

(17) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except (A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (B) service performed on or in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States). (Sec. 1607(c)(17), I. R. C., as added, effective July 1, 1946, by sec. 304(c), Social Security Act Amendments of 1946.)

SEC. 403.226b. FISHING.—(*a*) *In general.*—Subject to the limitations prescribed in paragraphs (*b*) and (*c*), the services performed on or after July 1, 1946, as described in this paragraph are excepted. Services performed by an individual in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish (for example, oysters, clams, and mussels), crustacea (for example, lobsters, crabs, and shrimps), sponges, seaweeds, or other aquatic forms of animal and vegetable life are excepted. The exception extends to services performed as an officer or member of the crew of a vessel while the vessel is engaged in any such activity whether or not the officer or member of the crew is himself so engaged. In the case of an individual who is engaged in any such activity in the employ of any person, the services performed, by such individual in the employ of such person, as an ordinary incident to any such activity are also excepted. Similarly, for example, the shore services of an officer or member of the crew of a vessel engaged in any such activity are excepted if such services are an ordinary incident to any such activity. Services performed as an ordinary incident to any such activity may include, for example, services performed in such cleaning, icing, and packing of fish as are necessary for the immediate preservation of the catch.

(*b*) *Salmon and halibut fishing.*—Services performed in connection with the catching or taking of salmon or halibut, for commercial purposes, are not within the exception. Thus, neither the services of an officer or member of the crew of a vessel (irrespective of its tonnage) which is engaged in the catching or taking of salmon or halibut, for commercial purposes, nor the services of any other individual in connection with such activity, are within the exception.

(*c*) *Vessels of more than 10 tons.*—Services described in paragraph (*a*) performed on or in connection with a vessel of more than 10 net tons are not within the exception. For purposes of the exception, the tonnage of the vessel shall be determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States.

PAR. 25. Immediately preceding section 403.227 [26 CFR, 403.227], the following is inserted:

SECTION 412(b) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

Section 1607(b)(1) of the Federal Unemployment Tax Act (Internal Revenue Code, sec. 1607(b)(1)) is amended to read as follows:

"(1) That part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid after December 31, 1939, and prior to January 1, 1947, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to $3,000 with respect to employment after 1938 has been paid to an individual by an employer during any calendar year after 1946, is paid to such individual by such employer during such calendar year;".

PAR. 26. Section 403.227(*a*) [26 CFR, 403.227(a)] is amended by striking out the period at the end of the first sentence thereof and inserting in lieu thereof a comma and the following: "and as further amended by section 412(b) of the Social Security Act Amendments of 1946."

PAR. 27. Section 403.228(*a*) [26 CFR, 403.228(a)] is amended as follows:

(A) By striking out the first three sentences of such section and inserting in lieu thereof the following:

(1) *In general.*—Section 1607(b)(1) of the Act provides an annual $3,000 limitation on the amount of remuneration that may constitute wages, by excepting from the term "wages" remuneration paid after $3,000 has been paid. Under such section as amended by section 412(b) of the Social Security Act Amendments of 1946, the amount first to be included in wages, after which the exception operates, is measured in two ways, depending on whether the remuneration is paid before 1947 or is paid after 1946. In the case of remuneration paid before 1947, the amount first to be included in wages is remuneration paid up to and including $3,000 for employment performed by an employee for his employer during each calendar year regardless of when paid (before 1947); and additional amounts *for employment performed in such calendar year* by such employee for such employer are excluded regardless of when paid (before 1947). In the case of remuneration paid after 1946, the amount first to be included in wages in each calendar year is remuneration up to and including $3,000 paid in the calendar year by an employer to an employee for employment performed at any time after December 31, 1938; and additional amounts *paid in such calendar year* by such employer to such employee are excluded regardless of when earned. In general, the change is from an "earned within the calendar year basis" to a "paid within the calendar year basis." For a more complete explanation of the limitation, see subparagraphs (2) and (3) of this paragraph.

(2) *Remuneration paid before 1947.*—This subparagraph (2) (ending with Example 3) applies only with respect to remuneration paid before January 1, 1947.

The term " wages " does not include that part of the remuneration paid before January 1, 1947, by an employer to an employee for employment performed for him during any calendar year which exceeds the first $3,000 paid by such employer to such employee for employment performed during such calendar year.

In the case of remuneration paid before 1947, the $3,000 limitation applies only if the remuneration paid to an employee by the same employer for employment during any one calendar year exceeds $3,000. The limitation in such case relates to remuneration for employment during any one calendar year and not to the amount of remuneration (irrespective of the year of employment) which is paid in any one calendar year.

(B) By inserting in the parenthetical matter in the third sentence of example 1, immediately after the word " paid " where it last appears therein, the following: " before January 1, 1947,".

(C) By striking out the clause immediately following example 1, " If an employee has more than one employer during a calendar year," and inserting in lieu thereof the following: " In the case of remuneration paid before 1947, if an employee has more than one employer during a calendar year,".

(D) By inserting at the beginning of the first and fifth sentences of example 2 the following: " During 1940."

(E) By inserting at the beginning of the second sentence of example 3, the following: " During such year."

(F) By inserting immediately following example 3 the following new subparagraph:

(3) *Remuneration paid after 1946.*—This subparagraph (3) applies only with respect to remuneration paid after December 31, 1946.

The term " wages " does not include that part of the remuneration paid within any calendar year beginning after December 31, 1946, by an employer to an employee which exceeds the first $3,000 paid within such calendar year by such employer to such employee for employment performed for him at any time after December 31, 1938.

In the case of remuneration paid after 1946, the $3,000 limitation applies only if the remuneration paid during any one calender year by an employer to the same employee for employment performed after 1938 exceeds $3,000. The limitation in such case relates to the amount of remuneration paid during any one calendar year for employment after 1938 and not to the amount of remuneration for employment performed in any one calendar year.

Example 1. Employer H, in 1947, pays employee G $2,500 on account of $3,000 due him for employment performed in 1947. In 1948 employer H pays employee G the balance of $500 due him for employment performed in the prior year (1947), and thereafter in 1948 also pays G $3,000 for employment performed in 1948. The $2,500 paid in 1947 is subject to tax in 1947. The balance of $500 paid in 1948 for employment during 1947 is subject to tax in 1948, as is also the first $2,500 paid of the $3,000 for employment during 1948 (this $500 for 1947 employment added to the first $2,500 paid for 1948 employment constitutes the maximum wages which could be paid in 1948 by H to G). The final $500 paid by H to G in 1948 is not included as wages and is not subject to the tax.

Example 2. Employer J, in 1946, pays $3,000 to employee I on account of $6,000 due him for employment performed in 1946. In 1947 before paying any remuneration for employment performed in 1947 employer J pays to I the balance of $3,000 due employee I on account of employment performed in 1946. The $3,000 paid in 1946 constitutes wages in 1946 and is subject to the tax, in accordance with the provisions set forth in subparagraph (2) of this paragraph. The balance of $3,000 paid in 1947 on account of employment in 1946 constitutes wages and is subject to the tax in 1947 in accordance with the provisions set forth in this subparagraph (3). The $3,000 paid in 1947 for 1946 employment constitutes the maximum wages which could be paid by J to I in 1947. Any further remuneration paid in 1947 to employee I for services performed for J is not included as wages and is not subject to the tax, whether for services performed before, during, or after 1947. (Assuming the same amounts of remuner-

ation and times of payment, the same result would be reached if employee I had left the employ of J and performed no further services for J after 1946.)

If during a calendar year (after 1946) an employee is paid remuneration by more than one employer, the limitation of wages to the first $3,000 of remuneration paid applies, not to the aggregate remuneration paid by all employers with respect to employment performed after 1938, but instead to the remuneration paid during such calendar year by *each* employer with respect to employment performed after 1938. In such case the first $3,000 paid during the calendar year by each employer constitutes wages and is subject to the tax.

Example 3. During 1947 employer L pays to employee K a salary of $600 a month for employment performed for L during the first seven months of 1947, or total remuneration of $4,200. At the end of the fifth month K has been paid $3,000 by employer L, and only that part of his total remuneration from L constitutes wages subject to the tax. The $600 paid to employee K by employer L in the sixth month, and the like amount paid in the seventh month, are not included as wages and are not subject to the tax. At the end of the seventh month K leaves the employ of L and enters the employ of M. Employer M pays to K remuneration of $600 a month in each of the remaining five months of 1947, or total remuneration of $3,000. The entire $3,000 paid by M to employee K constitutes wages and is subject to the tax. Thus, the first $3,000 paid by employer L and the entire $3,000 paid by employer M constitute wages.

Example 4. During the calendar year 1947 N is simultaneously an officer (an employee) of the O Corporation, the P Corporation, and the Q Corporation, each such corporation being an employer for such year. During such year N is paid a salary of $3,000 by each corporation. Each $3,000 paid to N by each of the corporations O, P, and Q (whether or not such corporations are related) constitutes wages and is subject to the tax.

PAR. 28. Immediately preceding section 403.401 [26 CFR, 403.401], the following is inserted:

SECTION 416(b) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1946.

The last sentence of subsection (f) of section 1607 of the Federal Unemployment Tax Act, as amended, is amended by striking out the period at the end thereof and inserting in lieu thereof the following: ": *Provided*, That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration."

PAR. 29. This Treasury decision shall be effective on the thirty-first day after the date of its publication in the Federal Register.

(This Treasury decision is issued under the authority contained in sections 1429 and 1609 of the Internal Revenue Code (53 Stat., 178, 188; 26 U. S. C., 1429, 1609) and sections 101, 102, 302, 303, 304, 305, 412, 413, and 416(b) of the Social Security Act Amendments of 1946 (Public Law 719, Seventy-ninth Congress; 60 Stat., 978), approved August 10, 1946.)

JOSEPH D. NUNAN, Jr.,
Commissioner of Internal Revenue.

Approved June 23, 1947.

JOSEPH J. O'CONNELL, Jr.,
Acting Secretary of the Treasury.

Published in the Federal Register June 27, 1947.)

SECTION 1426: Definitions. 1947-25-12712
REGULATIONS 106, SECTION 402.201: General definitions and use of terms. T. D. 5592
(Also Sections 1400 and 1410; Regulations 106, Sections 402.302 and 402.402.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER D, PART 402.—EMPLOYEES' TAX AND EMPLOYERS' TAX UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT.

Regulations 106 amended to conform to certain provisions of the Social Security Act Amendments of 1947, changing the rates of the taxes under the Federal Insurance Contributions Act for the calendar year 1948 and subsequent years.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 106 [26 CFR, Part 402], relating to the employees' tax and the employers' tax under the Federal Insurance Contributions Act (Subchapter A, Chapter 9, Internal Revenue Code), to sections 1, 2, and 6 of the Social Security Act Amendments of 1947 (Public Law 379, Eighteenth Congress), approved August 6, 1947 [page 346, this Bulletin], such regulations are amended as follows:

PARAGRAPH 1. Immediately preceding section 402.201 [26 CFR, 402.201], the following is inserted:

SECTION 6 OF PUBLIC LAW 379 (EIGHTIETH CONGRESS), APPROVED AUGUST 6, 1947.

This Act may be cited as the "Social Security Act Amendments of 1947."

PAR. 2. Section 402.201 [26 CFR, 402.201] is amended by inserting after paragraph (*p*) [26 CFR, 402.201(p)], added by Treasury Decision 5566, approved June 23, 1947 [page 148, this Bulletin], the following new paragraph:

(*q*) *Social Security Act Amendments of 1947* means the Act approved August 6, 1947 (Public Law 379, Eightieth Congress).

PAR. 3. Immediately preceding section 402.301 [26 CFR, 402.301], the following is inserted:

SECTION 1 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1947.

That clauses (1), (2), and (3) of section 1400 of the Federal Insurance Contributions Act (Internal Revenue Code, sec. 1400), as amended, are hereby amended to read as follows:

"(1) With respect to wages received during the calendar years 1939 to 1949, both inclusive, the rate shall be 1 per centum.

"(2) With respect to wages received during the calendar years 1950 and 1951, the rate shall be 1½ per centum.

"(3) With respect to wages received after December 31, 1951, the rate shall be 2 per centum."

PAR. 4. Section 402.302, as amended by Treasury Decision 5566 [26 CFR, 402.302], is further amended to read as follows:

SEC. 402.302. RATES AND COMPUTATION OF EMPLOYEES' TAX.—The rates of employees' tax applicable for the respective calendar years are as follows:

	Per cent.
For the calendar years 1940 to 1949, both inclusive	1
For the calendar years 1950 and 1951	1½
For the calendar year 1952 and subsequent calendar years	2

The employees' tax is computed by applying to the wages received by the employee the rate in effect at the time such wages are received.

Example. During 1949 A is an employee of B and is engaged in the performance of services which constitute employment (see section 402.203). In the following year, 1950, A receives from B $1,000 as remuneration for services performed by A in the preceding year. The tax is payable at the 1½ per cent rate in effect for the calendar year 1950 (the year in which the wages are received) and not at the 1 per cent rate which is in effect for the calendar year 1949 (the year in which the services are performed).

PAR. 5. Immediately preceding section 402.401 [26 CFR, 402.401], the following is inserted:

SECTION 2 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1947.

Clauses (1), (2), and (3) of section 1410 of the Federal Insurance Contributions Act (Internal Revenue Code, sec. 1410), as amended, are hereby amended to read as follows:

"(1) With respect to wages paid during the calendar years 1939 to 1949, both inclusive, the rate shall be 1 per centum.

"(2) With respect to wages paid during the calendar years 1950 and 1951, the rate shall be 1½ per centum.

"(3) With respect to wages paid after December 31, 1951, the rate shall be 2 per centum."

PAR. 6. Section 402.402, as amended by Treasury Decision 5566 [26 CFR, 402.402], is further amended to read as follows:

SEC. 402.402. RATES AND COMPUTATION OF EMPLOYERS' TAX.—The rates of employers' tax applicable for the respective calendar years are as follows:

	Per cent.
For the calendar years 1940 to 1949, both inclusive	1
For the calendar years 1950 and 1951	1½
For the calendar year 1952 and subsequent calendar years	2

The employers' tax is computed by applying to the wages paid by the employer the rate in effect at the time such wages are paid.

(This Treasury decision is issued under the authority contained in section 1429 of the Internal Revenue Code (53 Stat., 178; 26 U. S. C., 1429) and sections 1, 2, and 6 of the Social Security Act Amendments of 1947 (Public Law 379, Eightieth Congress), approved August 6, 1947.)

Because the amendments made by this Treasury decision merely give effect to the change in the rates of the taxes under the Federal Insurance Contributions Act made by sections 1 and 2 of the Social Security Act Amendments of 1947, 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.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 20, 1947.

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

(Filed with the Division of the Federal Register November 25, 1947, 8.46 a. m.)

SECTION 1426: Definitions. 1947–15–12598
REGULATIONS 106, SECTION 402.204: Who are employees. Ct. D. 1688
(Also Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Section 403.204; and Social Security Act, Sections 811 and 907; Regulations 91 and 90, Articles 3 and 205.)

SOCIAL SECURITY TAX—SOCIAL SECURITY ACT—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT.

1. EMPLOYEES—INDEPENDENT CONTRACTORS—TESTS APPLICABLE IN DETERMINING DISTINCTION BETWEEN EMPLOYEES AND INDEPENDENT CONTRACTORS.

Held: Coal unloaders who unload coal from railroad cars for a retail dealer who is in a position to exercise all necessary supervision over their simple tasks are not independent contractors but employees within the meaning of Titles VIII and IX of the Social Security Act and Subchapters A and C of Chapter 9 of the Internal Revenue Code. Truckers who own and drive their own trucks, hire their own helpers, in one instance hauling for a single business and the other for any customer, with much responsibility for investment and management, are independent contractors within the meaning of the above statutory provisions. The relationship of employer-employee is not to be determined solely by the idea of control over the details of the service rendered. The primary consideration in the determination of whether an individual is an employee for social security tax purposes is whether effectuation of the policy and purposes of the Social Security Act comprehend securing to such individual the rights guaranteed and protection afforded by such Act. Permanency of the relation, the skill required, the investment in the facilities for work and opportunities for profit or loss from the activities are also factors. It is the total situation, however, that controls. The rule applied to the National Labor Relations Act in *Board* v. *Hearst Publications* (322 U. S., 111) is also applicable to social security legislation.

2. DECISION AFFIRMED.

Decision of the United States Circuit Court of Appeals, Seventh Circuit (156 Fed. (2d), 412), affirmed.

3. DECISION AFFIRMED IN PART AND REVERSED IN PART.

Decision of the United States Circuit Court of Appeals, Tenth Circuit (155 Fed. (2d), 356), affirmed in part and reversed in part.

SUPREME COURT OF THE UNITED STATES.

312. *The United States of America, petitioner,* v. *Albert Silk, Doing Business as Albert Silk Coal Co.*

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

673. *Carter H. Harrison, Individually and as Collector of Internal Revenue, petitioner,* v. *Greyvan Lines, Inc.*

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

[June 16, 1947.]

OPINION.

Mr. Justice REED delivered the opinion of the Court.

We consider together the above two cases. Both involve suits to recover sums exacted from businesses by the Commissioner of Internal Revenue as employment taxes on employers under the Social Security Act.[1] In both instances the taxes were collected on assessments made administratively by the Commissioner because he concluded the persons here involved were employees of the taxpayers. Both cases turn on a determination as to whether the workers involved were employees under that Act or whether they were independent contractors. Writs of certiorari were granted (— U. S., —, and — U. S., —), because of the general importance in the collection of social security taxes of deciding what are the applicable standards for the determination of employees under the Act. Varying standards have been applied in the Federal courts.[2]

Respondent in No. 312, Albert Silk, doing business as the Albert Silk Coal Co., sued the United States, petitioner, to recover taxes alleged to have been illegally assessed and collected from respondent for the years 1936 through 1939 under the Social Security Act. The taxes were levied on respondent as an employer of certain workmen some of whom were engaged in unloading railway coal cars and the others in making retail deliveries of coal by truck.

Respondent sells coal at retail in the city of Topeka, Kans. His coalyard consists of two buildings, one for an office and the other a gathering place for workers, railroad tracks upon which carloads of coal are delivered by the railroad, and bins for the different types of coal. Respondent pays those who work as unloaders an agreed price per ton to unload coal from the railroad cars. These men come to the yard when and as they please and are assigned a car to unload and a place to put the coal. They furnish their own tools, work when they wish and work for others at will. One of these unloaders testified that he worked as regularly "as a man has to when he has to eat" but there was also testimony that some of the unloaders were floaters who came to the yard only intermittently.

Respondent owns no trucks himself but contracts with workers who own their own trucks to deliver coal at a uniform price per ton. This is paid to the trucker by the respondent out of the price he receives for the coal from the customer. When an order for coal is taken in the company office, a bell is rung which rings in the building used by the truckers. The truckers have voluntarily adopted a call list upon which their names come up in turn, and the top man on the list has an opportunity to deliver the coal ordered. The truckers are not instructed how to do their jobs, but are merely given a ticket telling them where the coal is to be delivered and whether the charge is to be collected or not. Any damage caused by them is paid for by the company. The district court found that the truckers could and often did refuse to make a delivery without penalty. Further, the court found that the truckers may come and go as they please and frequently did leave the premises without permission. They may and did haul for

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[1] Titles VIII and IX, Social Security Act (49 Stat., 636 and 639), as repealed in part (53 Stat., 1).
See Internal Revenue Code, Chapter 9, Subchapters A and C.

[2] *Texas Co.* v. *Higgins* (118 Fed. (2d), 636); *Jones* v. *Goodson* (121 Fed. (2d), 176); *Deecy Products Co.* v. *Welch* (124 Fed. (2d), 592); *American Oil Co.* v. *Fly* (135 Fed. (2d), 491); *Glenn* v. *Beard* (141 Fed. (2d), 376); *Magruder* v. *Yellow Cab Co.* (141 Fed. (2d), 324); *United States* v. *Mutual Trucking Co.* (141 Fed. (2d), 655); *Glenn* v. *Standard Oil Co.* (148 Fed. (2d), 51, 53); *McGowan* v. *Lazeroff* (148 Fed. (2d), 512); *United States* v. *Wholesale Oil Co.* (154 Fed. (2d), 745); *United States* v. *Vogue, Inc.* (145 Fed. (2d), 609, 612); *United States* v. *Aberdeen Aerie, No. 24* (148 Fed. (2d), 655, 658); *Grace* v. *Magruder* (148 Fed. (2d), 679, 680–681); *Nevins, Inc.*, v. *Rothensies* (151 Fed. (2d), 189).

others when they pleased. They pay all the expenses of operating their trucks, and furnish extra help necessary to the delivery of the coal and all equipment except the yard storage bins. No record is kept of their time. They are paid after each trip, at the end of the day or at the end of the week, as they request.

The collector ruled that the unloaders and truckers were employees of the respondent during the years 1936 through 1939 within the meaning of the Social Security Act and he accordingly assessed additional taxes under Titles VIII and IX of the Social Security Act and Subchapters A and C of Chapter 9 of the Internal Revenue Code. Respondent filed a claim for a refund which was denied. He then brought this action. Both the district court and the circuit court of appeals [3] thought that the truckers and unloaders were independent contractors and allowed the recovery.

Respondent in No. 673, Greyvan Lines, Inc., a common carrier by motor truck, sued the petitioner, a collector of internal revenue, to recover employment taxes alleged to have been illegally assessed and collected from it under similar provisions of the Social Security Act involved in Silk's case for the years or parts of years 1937 through the first quarter of 1942. From a holding for the respondent in the district court petitioner appealed. The circuit court of appeals affirmed. The chief question in this case is whether truckmen who perform the actual service of carrying the goods shipped by the public are employees of the respondent. Both the district court and the circuit court of appeals [4] thought that the truckmen were independent contractors.

The respondent operates its trucking business under a permit issued by the Interstate Commerce Commission under the "grandfather clause" of the Motor Carrier Act. (32 M. C. C., 719, 723.) It operates throughout 38 States and parts of Canada, carrying largely household furniture. While its principal office is in Chicago, it maintains agencies to solicit business in many of the larger cities of the areas it serves, from which it contracts to move goods. As early as 1930, before the passage of the Social Security Act, the respondent adopted the system of relations with the truckmen here concerned, which gives rise to the present issue. The system was based on contracts with the truckmen under which the truckmen were required to haul exclusively for the respondent and to furnish their own trucks and all equipment and labor necessary to pick up, handle and deliver shipments, to pay all expenses of operation, to furnish all fire, theft, and collision insurance which the respondent might specify, to pay for all loss or damage to shipments and to indemnify the company for any loss caused it by the acts of the truckmen, their servants and employees, to paint the designation "Greyvan Lines" on their trucks, to collect all money due the company from shippers or consignees, and to turn in such moneys at the office to which they report after delivering a shipment, to post bonds with the company in the amount of $1,000 and cash deposits of $250 pending final settlement of accounts, to personally drive their trucks at all times or be present on the truck when a competent relief driver was driving (except in emergencies, when a substitute might be employed with the approval of the company), and to follow all rules, regulations, and instructions of the company. All contracts or bills of lading for the shipment of goods were to be between the respondent and the shipper. The company's instructions covered directions to the truckmen as to where and when to load freight. If freight was tendered the truckmen, they were under obligation to notify the company so that it could complete the contract for shipment in its own name. As remuneration, the truckmen were to receive from the company a percentage of the tariff charged by the company varying between 50 and 52 per cent and a bonus up to 3 per cent for satisfactory performance of the service. The contract was terminable at any time by either party. These truckmen were required to take a short course of instruction in the company's methods of doing business before carrying out their contractual obligations to haul. The company maintained a staff of dispatchers who issued orders for the truckmen's movements, although not the routes to be used, and to which the truckmen, at intervals reported their positions. Cargo insurance was carried by the company. All permits, certificates and franchises "necessary to the operation of the vehicle in the service of the company as a motor carrier under any Federal or State law" were to be obtained at the company's expense.

The record shows the following additional undisputed facts, not contained in the findings. A manual of instructions given by the respondent to the truckmen, and a contract between the company and Local No. 711 of the Inter-

[3] 155 Fed. (2d), 356.
[4] 156 Fed. (2d), 412.

national Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America were introduced in evidence. It suffices to say that the manual purported to regulate in detail the conduct of the truckmen in the performance of their duties, and that the agreement with the union provided that any truckman must first be a member of the union, and that grievances would be referred to representatives of the company and the union. A company official testified that the manual was impractical and that no attempt was made to enforce it. We understand the union contract was in effect. The company had some trucks driven by truckmen who were admittedly company employees. Operations by the company under the two systems were carried out in the same manner. The insurance required by the company was carried under a blanket company policy for which the truckmen were charged proportionately.

The Social Security Act of 1935 was the result of long consideration by the President and Congress of the evil of the burdens that rest upon large numbers of our people because of the insecurities of modern life, particularly old age and unemployment. It was enacted in an effort to coordinate the forces of Government and industry for solving the problems.[5] The principal method adopted by Congress to advance its purposes was to provide for periodic payments in the nature of annuities to the elderly and compensation to workers during periods of unemployment. Employment taxes, such as we are here considering, are necessary to produce the revenue for Federal participation in the program of alleviation. Employers do not pay taxes on certain groups of employees, such as agricultural or domestic workers but none of these exceptions are applicable to these cases. (Sections 811 and 907.) Taxes are laid as excises on a percentage of wages paid the nonexempt employees. (Sections 804 and 901; I. R. C., sections 1410, 1600.) "Wages" means all remuneration for the employment that is covered by the Act, cash or otherwise. (Sections 811, 907; I. R. C., sections 1426, 1607(b).) "Employment" means "any service, of whatever nature, performed * * * by an employee for his employer, except— * * * Agricultural labor;" etc. (Sections 811(b), 907(c); I. R. C., sections 1426(b), 1607(c).) As a corollary to the coverage of employees whose wages are the basis for the employment taxes under the tax sections of the social security legislation, rights to benefit payments under Federal old age insurance depend upon the receipt of wages as employees under the same sections. (53 Stat., 1360, sections 202, 209 (a), (b), (g), 205(c)(1).) (See *Social Security Board* v. *Nierotko*, 327 U. S., 358.) This relationship between the tax sections and the benefit sections emphasizes the underlying purpose of the legislation—the protection of its beneficiaries from some of the hardships of existence. (*Helvering* v. *Davis*, supra, 640.) No definition of employer or employee applicable to these cases occurs in the Act. (See section 907(a) and I. R. C., section 1607(h).) Compare, as to carrier employment, I. R. C., section 1532(d), as amended by Public Law 572, Seventy-ninth Congress, second session, section 1 [C. B. 1946–2, 269].) Nothing that is helpful in determining the scope of the coverage of the tax sections of the Social Security Act has come to our attention in the legislative history of the passage of the Act or amendments thereto.

Since Congress has made clear by its many exemptions, such as, for example, the broad categories of agricultural labor and domestic service (53 Stat., 1384, 1393), that it was not its purpose to make the Act cover the whole field of service to every business enterprise, the sections in question are to be read with the exemptions in mind. The very specificity of the exemptions, however, and the generality of the employment definitions[6] indicates that the terms "employment" and "employee," are to be construed to accomplish the purposes of the legislation. As the Federal social security legislation is an attack on recognized evils in our national economy, a constricted interpretation of the phrasing by the courts would not comport with its purpose. Such an interpretation would only make for a continuance, to a considerable degree, of the difficulties for which the remedy

[5] Message of the President, January 17, 1935, and Report of the Committee on Economic Security (H. Doc. No. 81, Seventy-fourth Congress, first session; S. Rept. No. 628, Seventy-fourth Congress, first session; S. Rept. No. 734, Seventy-sixth Congress, first session; H. Rept. No. 615, Seventy-fourth Congress, first session; H. Rept. No. 728, Seventy-sixth Congress, first session. *Steward Machine Co.* v. *Davis*, 301 U. S., 548 [Ct. D. 1236, C. B., 1937–1, 444]; *Helvering* v. *Davis*, 301 U. S., 619 [Ct. D. 1235, C. B. 1937–1, 360].)

[6] See 53 Stat., 1384, 1393, "The term 'employment' means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him, irrespective of the citizenship or residence of either, except—." Compare 49 Stat., 639 and 643.

was devised and would invite adroit schemes by some employers and employees to avoid the immediate burdens at the expense of the benefits sought by the legislation.[7] These considerations have heretofore guided our construction of the Act. (*Buckstaff Bath House Co.* v. *McKinley*, 308 U. S., 358; *Social Security Board* v. *Nierotko*, 327 U. S., 358.)

Of course, this does not mean that all who render service to an industry are employees. (Compare *Metcalf & Eddy* v. *Mitchell*, 269 U. S., 514, 520 [T. D. 3824, C. B. V–1, 218 (1926)].) Obviously the private contractor who undertakes to build at a fixed price or on cost-plus a new plant on specifications is not an employee of the industry thus served nor are his employees. The distributor who undertakes to market at his own risk the product of another, or the producer who agrees so to manufacture for another ordinarily can not be said to have the employer-employee relationship. Production and distribution are different segments of business. The purposes of the legislation are not frustrated because the Government collects employment taxes from the distributor instead of the producer or the other way around.

The problem of differentiating between employee and an independent contractor or between an agent and an independent contractor has given difficulty through the years before social legislation multiplied its importance. When the matter arose in the administration of the National Labor Relations Act, we pointed out that the legal standards to fix responsibility for acts of servants, employees or agents had not been reduced to such certainty that it could be said there was "some simple, uniform and easily applicable test." The word "employee," we said, was not there used as a word of art, and its content in its context was a Federal problem to be construed "in the light of the mischief to be corrected and the end to be attained." We concluded that, since that end was the elimination of labor disputes and industrial strife, "employees" included workers who were such as a matter of economic reality. The aim of the Act was to remedy the inequality of bargaining power in controversies over wages, hours and working conditions. We rejected the test of the "technical concepts pertinent to an employer's legal responsibility to third persons for acts of his servants." This is often referred to as power of control, whether exercised or not, over the manner of performing service to the industry. (Restatement of the Law, Agency, section 220.) We approved the statement of the National Labor Relations Board that "the primary consideration in the determination of the applicability of the statutory definition is whether effectuation of the declared policy and purposes of the Act comprehend securing to the individual the rights guaranteed and protection afforded by the Act." (*Board* v. *Hearst Publications*, 322 U. S., 111, 120, 123, 124, 128, 131.)

Application of the social security legislation should follow the same rule that we applied to the National Labor Relations Act in the Hearst case. This, of course, does not leave courts free to determine the employer-employee relationship without regard to the provisions of the Act. The taxpayer must be an "employer" and the man who receives wages an "employee." There is no indication that Congress intended to change normal business relationships through which one business organization obtained the services of another to perform a portion of production or distribution. Few businesses are so completely integrated that they can themselves produce the raw material, manufacture and distribute the finished product to the ultimate consumer without assistance from independent contractors. The Social Security Act was drawn with this industrial situation as a part of the surroundings in which it was to be enforced. Where a part of an industrial process is in the hands of independent contractors, they are the ones who should pay the social security taxes.

The long-standing regulations of the Treasury and the Federal Security Agency (H. Doc. 595, Seventy-ninth Congress, second session) recognize that independent contractors exist under the Act. The pertinent portions are set out in the margin.[8] Certainly the industry's right to control how "work shall be

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[7] Nothing to suggest tax avoidance appears in these records.

[8] Treasury Regulations 90, promulgated under Title IX of the Social Security Act, article 205:

"Generally the 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 to 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. * * * The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In

done" is a factor in the determination of whether the worker is an employee or independent contractor. The Government points out that the regulations were construed by the Commissioner of Internal Revenue to cover the circumstances here presented. This is shown by his additional tax assessments. Other instances of such administrative determinations are called to our attention.[9]

So far as the regulations refer to the effect of contracts, we think their statement of the law can not be challenged successfully. Contracts, however "skillfully devised" (*Lucas* v. *Earl*, 281 U. S., 111, 115), should not be permitted to shift tax liability as definitely fixed by the statutes.[10]

Probably it is quite impossible to extract from the statute a rule of thumb to define the limits of the employer-employee relationship. The Social Security Agency and the courts will find that degrees of control, opportunities for profit or loss, investment in facilities, permanency of relation and skill required in the claimed independent operation are important for decision. No one is controlling nor is the list complete. These unloaders and truckers and their assistants are from one standpoint an integral part of the businesses of retailing coal or transporting freight. Their energy, care and judgment may conserve their equipment or increase their earnings but Greyvan and Silk are the directors of their businesses. On the other hand, the truckmen hire their own assistants, own their trucks, pay their own expenses, with minor exceptions, and depend upon their own initiative, judgment and energy for a large part of their success.

Both lower courts in both cases have determined that these workers are independent contractors. These inferences were drawn by the courts from facts concerning which there is no real dispute. The excerpts from the opinions below show the reasons for their conclusions.[11]

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general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor, not an employee.

"If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if two individuals in fact stand in the relation of employer and employee to each other, it is of no consequence that the employee is designated as a partner, coadventurer, agent, or independent contractor.

"The measurement, method, or designation of compensation is also immaterial, if the relationship of employer and employee in fact exists.

"Individuals performing services as independent contractors are not employees. Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees." (26 C. F. R., section 400.205. See also Treasury Regulations 91, 26 C. F. R., section 401.3.)

[9] The citation of these cases does not imply approval or disapproval of the results. The cases do show the construction of the regulation by the agency. (*United States* v. *Mutual Trucking Co.*, 141 Fed. (2d), 655; *Jones* v. *Goodson*, 121 Fed. (2d), 176; *Magruder* v. *Yellow Cab Co.*, 141 Fed. (2d), 324; *Texas Co.* v. *Higgins*, 118 Fed. (2d), 636; *American Oil Co.* v. *Fly*, 135 Fed. (2d), 491; *Glenn* v. *Standard Oil Co.*, 148 Fed. (2d), 51.)

See also note 2.

[10] *Gregory* v. *Helvering* (293 U. S., 465 [Ct. D. 911, C. B. XIV–1, 193 (1935)]); *Griffiths* v. *Commissioner* (308 U. S., 355 [Ct. D. 1431, C. B. 1940–1, 136]); *Higgins* v. *Smith* (308 U. S., 473 [Ct. D. 1434, C. B. 1940–1, 127]); *Helvering* v. *Clifford* (309 U. S., 331 [Ct. D. 1444, C. B. 1940–1, 105]).

[11] *United States* v. *Silk* (155 Fed. (2d), 356, 358–359): "But even while they work for appellee they are not subject to his control as to the method or manner in which they are to do their work. The undisputed evidence is that the only supervision or control ever exercised or that could be exercised over the haulers was to give them the sales ticket if they were willing to take it, and let them deliver the coal. They were free to choose any route in going to or returning. They were not required even to take the coal for delivery.

"We think that the relationship between appellee and the unloaders is not materially different from that between him and the haulers. In response to a question on cross examination, appellee did testify that the unloaders did what his superintendent at the coalyard told them to do, but when considered in the light of all his testimony, all that this answer meant was that they unloaded the car assigned to them into the designated bin. * * *

"The undisputed facts fail to establish such reasonable measure of direction and control over the method and means of performing the services performed by these workers as is necessary to establish a legal relationship of employer and employee between appellee and the workers in question."

Greyvan Lines v. *Harrison* (156 Fed. (2d), 412, 414–416). After stating the trial court's finding that the truckmen were not employees, the appellate court noted:

"Appellant contends that in determining these facts the court failed to give effect to important provisions of the contracts which it asserts clearly show the reservation of the right of control over the truckmen and their helpers as to the methods and means of their

Giving full consideration to the concurrence of the two lower courts in a contrary result, we can not agree that the unloaders in the Silk case were independent contractors.[12] They provided only picks and shovels. They had no opportunity to gain or lose except from the work of their hands and these simple tools. That the unloaders did not work regularly is not significant. They did work in the course of the employer's trade or business. This brings them under the coverage of the Act.[13] They are of the group that the Social Security Act was intended to aid. Silk was in a position to exercise all necessary supervision over their simple tasks. Unloaders have often been held to be employees in tort cases.[14]

There are cases, too, where driver-owners of trucks or wagons have been held employees[15] in accident suits at tort or under workmen's compensation laws. But we agree with the decisions below in Silk and Greyvan that where the arrangements leave the driver-owners so much responsibility for investment and management as here, they must be held to be independent contractors.[16] These driver-owners are small businessmen. They own their own trucks. They hire their own helpers. In one instance they haul for a single business, in the other for any customer. The distinction, though important, is not controlling. It is the total situation, including the risk undertaken, the control exercised, the opportunity for profit from sound management, that marks these driver-owners as independent contractors.

No. 312, *United States* v. *Silk*, is affirmed in part and reversed in part.

No. 673, *Harrison* v. *Greyvan Lines, Inc.*, is affirmed.

Mr. Justice BLACK, Mr. Justice DOUGLAS, and Mr. Justice MURPHY are of the view that the applicable principles of law, stated by the Court and with which they agree, require reversal of both judgments in their entirety.

Opinion by Mr. Justice RUTLEDGE concurring in part.

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operations which, it is agreed, furnish the test for determining the relationship here in question * * *."

It then discussed the manual and concluded:

"While it is true that many provisions of the manual, if strictly enforced, would go far to establish an employer-employee relationship between the company and its truckmen, we agree with appellee that there was evidence to justify the court's disregarding of it. It was not prepared until April, 1940, although the tax period involved was from November, 1937, through March, 1942, and there was no evidence to show any change or tightening of controls after its adoption and distribution; one driver testified that he was never instructed to follow the rules therein provided; an officer of the company testified that it had been prepared by a group of three men no longer in their employ, and that it had been impractical and was not adhered to."

After a discussion of the helper problem, this statement appears: "* * * the company can not be held liable for employment taxes on the wages of persons over whom it exerts no control, and of whose employment it has no knowledge. And this element of control of the truckmen over their own helpers goes far to prevent the employer-employee relationship from arising between them and the company. While many factors in this case indicate such control as to give rise to that relationship, we think the most vital one is missing because of the complete control of the truckmen as to how many, if any, and what helpers they make use of in their operations * * *."

[12] Cf. *Grace* v. *Magruder* (148 Fed. (2d), 679).

[13] I. R. C., Chapter 9, Subchapter A, section 1426(b):

"The term 'employment' means any service performed * * * by an employee for the person employing him * * * except—

* * * * * * *

"(3) Casual labor not in the course of the employer's trade or business: * * *."

[14] *Swift & Co.* v. *Alston* (48 Ga. App., 649); *Holmes* v. *Railroad Co.* (49 La. Ann., 1465); *Muncie Foundry Co.* v. *Thompson* (70 Ind. App., 157); *Chicago, R. I. & P. R. Co.* v. *Bennett* (36 Okla., 358); *Murray's Case* (130 Me., 181); *Decatur R. Co.* v. *Industrial Board* (276 Ill., 472); *Benjamin* v. *Fertilizer Co.* (169 Miss., 162).

[15] *Western Express Co.* v. *Smeltzer* (88 Fed. (2d), 94); *Industrial Commission* v. *Bonfils* (78 Colo., 306); *Coppes Bros. & Zook* v. *Pontius* (76 Ind. App., 298); *Burruss* v. *B. M. C. Logging Co.* (38 N. M., 254); *Bradley* v. *Republic Creosoting Co.* (281 Mich., 177); *Rouse* v. *Town of Bird Island* (169 Minn., 367); *Industrial Commission* v. *Hammond* (77 Colo., 414); *Kirk* v. *Lime Co. & Insurance Co.* (137 Me., 73); *Showers* v. *Lund* (123 Nebr., 56); *Burt* v. *Davis-Wood Lumber Co.* (157 La., 111); *Dunn* v. *Reeves Coal Yards Co., Inc.* (150 Minn., 282); *Waters* v. *Pioneer Fuel Co.* (52 Minn., 474); *Warner* v. *Hardwood Lumber Co.* (231 Mich., 328); *Frost* v. *Blue Ridge Timber Corporation* (158 Tenn., 18); *Lee* v. *Mark H. Brown Lumber Co.* (15 La. App., 294).

See particularly *Singer Manufacturing Co.* v. *Rahn* (132 U. S., 518).

[16] Compare *United States* v. *Mutual Trucking Co.* (141 Fed. (2d), 655); *Glenn* v. *Standard Oil Co.* (148 Fed. (2d), 51).

SECTION 1426: Definitions. 1947-15-12599
REGULATIONS 106, SECTION 402.204: Who are employees. Ct. D. 1689
(Also Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Section 403.204; and Social Security Act, Sections 811 and 907; Regulations 91 and 90, Articles 3 and 205.)

SOCIAL SECURITY TAX—SOCIAL SECURITY ACT—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT.

1. EMPLOYERS—INDEPENDENT CONTRACTORS—LEADERS OF "NAME BANDS"—STATUTORY POWER OF COMMISSIONER EXCEEDED IN ISSUING MIMEOGRAPHS 5638 AND 5767.

Leaders of so-called "name bands" who contract with ballroom operators to play at their establishments for a contract price, and who organize and train the bands, select the members and bear the loss or gain the profit after payment of wages and other band expenses, are employers of the band members within the meaning of Titles VIII and IX of the Social Security Act and corresponding provisions of the Internal Revenue Code. In the application of social legislation employees are those who as a matter of economic reality are dependent upon the business to which they render service. The band leaders are independent contractors despite the provisions of a union contract purporting to make the dance hall proprietors the employers of the musicians and their leaders. Mimeographs 5638 and 5767 (C. B. 1944, 547, 548) are erroneous and exceed the statutory power of the Commissioner.

2. DECISION REVERSED.

Decision of the United States Circuit Court of Appeals, Eighth Circuit (157 Fed. (2d), 295), reversed.

SUPREME COURT OF THE UNITED STATES.

Roy Bartels, Ed Bartels, Carl Bartels and Justin Conlon, d. b. a. Crystal Ballroom, petitioners, v. *E. H. Birmingham, Individually and as Collector of Internal Revenue for the State of Iowa, Griff Williams, et al.*

Larry V. Geer and Margaret Geer, d. b. a. Larry Geer Ballrooms, petitioners, v. *E. H. Birmingham, Individually and as Collector of Internal Revenue for the State of Iowa.*

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

[June 23, 1947.]

OPINION.

Mr. Justice REED delivered the opinion of the Court.

Petitioners, operators of public dance halls, brought these actions, which were consolidated for trial, against the respondent collector of internal revenue to recover taxes paid under the Social Security Act, Titles VIII and IX, and I. R. C., Chapter 9, Subchapters A and C. Recovery depends on whether petitioners' arrangements for bands to play at the dance halls made the band leaders and other members of the bands employees of the petitioners or whether, despite the arrangements, the leaders were independent contractors and therefore themselves the employers of the other members. Several band leaders were allowed to intervene in the Bartels case as defendants to protect their own interests. After a recovery in the district court was reversed by the circuit court of appeals (*Birmingham* v. *Bartels*, 157 Fed. (2d), 295), they sought certiorari which we granted because of the importance of the issue to the administration of the Act. (— U. S., —.) (See Nos. 312 and 673, *United States* v. *Silk* and *Harrison* v. *Greyvan Lines*, decided June 16, 1947 [Ct. D. 1688, page 167, this Bulletin].

These cases are not concerned with musicians hired by petitioners to play regularly for their dance halls but with "name bands" hired to play for limited en-

gagements at their establishments. These bands are built around a leader whose name, and distinctive style in the presentation and rendition of dance music, is intended to give each band a marked individuality. The leader contracts with different ballroom operators to play at their establishments for a contract price. Almost all of the engagements here involved were 1-night stands, some few being for several successive nights. The trial court found, and there is no real dispute, that the leader exercises complete control over the orchestra. He fixes the salaries of the musicians, pays them, and tells them what and how to play. He provides the sheet music and arrangements, the public address system, and the uniforms. He employs and discharges the musicians, and he pays agents' commissions, transportation and other expenses out of the sum received from the dance hall operators. Any excess is his profit and any deficit his personal loss. The operators of the dance halls furnish the piano but not the other instruments.

The American Federation of Musicians, of which the leaders and the musicians are members, adopted a standard contract known as "Form B." The terms of this contract create the difficulties in the determination of this case. As compensation to the bands, some contracts call for a guaranteed sum, with the privilege to the bands to take a percentage of the gross. Other contracts are for a fixed sum, only, and others for a percentage of gross, not to exceed a fixed sum. The contract states that the ballroom operator is the employer of the musicians and their leader, and "shall have complete control of the services which the employees will render under the specifications of this contract." The form paragraph, so far as pertinent, is set out in the margin.[1] The district court found that the contract was adopted by the union in order to shift the incidence of the social security taxes from the leader to the ballroom operator, and that it had no practical effect on the relations between the musicians, leader, and operator. The district court held that the question of employment under the Act was one of fact, and that the contract was only one factor to be considered. Since the district court believed that the contract was not entered into "by fair negotiation" and that its purpose was to protect the leaders from taxes as employers, it concluded that the contract was of no effect and that the leader was an independent contractor employing the musicians.

The circuit court of appeals thought otherwise. It concluded that the test of employment was the common law test of control, i. e., that one was an employer if he had the "right" to direct what should be done and how it should be done. It concluded that the contract between the parties gave the ballroom operators the "right" to control the musicians and the leader, whether or not the control was actually exercised. While the majority thought that such a contract was not binding on the Government, they thought it was binding on the parties and would control liability for employment taxes if the Bureau of Internal Revenue chose to accept the arrangement as valid. (*Birmingham* v. *Bartels*, supra, at 300.)

The Government here relies entirely on the contract, conceding that otherwise the band leaders are independent contractors employing the musicians. On the other hand, the band leaders involved contend also that though the contract be thought inconclusive, the leaders and musicians are employees of the operators. They rely upon the dependence of the orchestra members upon the ballroom operators judged in the light of the purposes of the Act.

In *United States* v. *Silk*, No. 312, supra, we held that the relationship of employer-employee, which determines the liability for employment taxes under the Social Security Act was not to be determined solely by the idea of control which an alleged employer may or could exercise over the details of the service rendered to his business by the worker or workers. Obviously control is characteristically

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[1] Witnesseth, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of Griff Williams, according to the following terms and conditions:

* * * * * * *

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the leader includes the cost of transportation, which will be reported by the leader to the employer. The employer hereby authorizes the leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. * * *

associated with the employer-employee relationship but in the application of social legislation employees are those who as a matter of economic reality are dependent upon the business to which they render service. In Silk, we pointed out that permanency of the relation, the skill required, the investment in the facilities for work and opportunities for profit or loss from the activities were also factors that should enter into judicial determination as to the coverage of the Social Security Act. It is the total situation that controls. These standards are as important in the entertainment field as we have just said, in Silk, that they were in that of distribution and transportation.

Consideration of the regulations of the Treasury and the Federal Security Agency, quoted in Silk at note 8, is necessary here. (I. R. C., Chapter 9, sections 1429, 1609.) Under those regulations, the Government successfully resisted the effort of a leader of a "name" band, like those here involved, to recover social security taxes paid on the wages of the members of his organization. (*Williams* v. *United States*, 126 Fed. (2d), 129.) The contract in that case was not "Form B" and did not contain any corresponding control clause. Two years later, the Commissioner of Internal Revenue issued Mimeographs 5638 (1944–5–11651) and 5767 (1944–22–11889), C. B. 1944, pages 547–548. They were directed at the status of musicians and variety entertainers appearing in theaters, night clubs, restaurants and similar establishments. Collectors and others were therein advised that a "Form B" or similar contract with the entertainers made operators of amusement places liable as employers under the Social Security Act. In the absence of such a contract, that is, in reality, the absence of the control clause of "Form B," the entertainers, "with short-term engagements for a number of different operators" of amusement places, would be considered "independent contractors." The argument of respondents to support the administrative interpretation of the regulations is that the Government may accept the voluntary contractual arrangements of the amusement operators and entertainers to shift the tax burden from the band leaders to the operators.[2] Cases are cited to support this position.[3] All of these cases, however, involve the problem of corporate or association entity. They are not pertinent upon the question of contracts to shift tax liability from one taxpayer to another wholly distinct and disconnected corporation or individual. We do not think that such a contractual shift authorizes the Commissioner to collect taxes from one not covered by the taxing statute. The interpretive rulings on the regulations, referred to in this paragraph do not have the force and effect of Treasury decisions.[4] We are of the opinion that such administrative action goes beyond routine and exceeds the statutory power of the Commissioner. (*Social Security Board* v. *Nierotko*, 327 U. S., 358, 369–370.)

This brings us then to a determination of whether the members of a "name band" under the circumstances heretofore detailed are employees of the operator of the dance hall or of the leader. If the operator is the employer, the leader is also his employee.

We are of the opinion that the elements of employment mark the band leader as the employer in these cases. The leader organizes and trains the band. He selects the members. It is his musical skill and showmanship that determines the success or failure of the organization. The relations between him and the other members are permanent; those between the band and the operator are transient. Maintenance costs are a charge against the price received for the performance. He bears the loss or gains the profit after payment of the members' wages and the other band expenses.

The judgments of the circuit court of appeals are reversed and those of the district court are affirmed.

Dissenting opinion by Mr. Justice DOUGLAS, with whom Mr. Justice BLACK and Mr. Justice MURPHY concur.

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[2] There is a contention that the contracts were coerced because the operators could not secure these musicians under other arrangements. We do not find it necessary to rely or pass upon that contention.

[3] *Edwards* v. *Chile Copper Co.* (270 U. S., 452, 456); *Burnet* v. *Commonwealth Improvement Co.* (287 U. S., 415 [Ct. D. 622, C. B. XII–1, 277 (1932)]); *New Colonial Ice Co.* v. *Helvering* (292 U. S., 435 [Ct. D. 841, C. B. XIII–1, 194 (1934)]); *Helvering* v. *Coleman Gilbert Associates* (296 U. S., 369, 374 [Ct. D. 1067, C. B. XV–1, 261 (1935)]); *Higgins* v. *Smith*, 308 U. S., 473, 477 [Ct. D. 1434, C. B. 1940–1, 127]); *Gray* v. *Powell* (314 U. S., 402); *Moline Properties, Inc.*, v. *Commissioner* (319 U. S., 436, 439 [Ct. D. 1584, C. B. 1943, 1011]); *Interstate Transit Lines* v. *Commissioner* (319 U. S., 590 [Ct. D. 1586, C. B. 1943, 1016]); *Schenley Corporation* v. *United States* (326 U. S., 432, 437).

[4] See Cumulative Bulletin 1944, notice, page I.

SECTION 1426: Definitions. 1947-22-12677
REGULATIONS 106, SECTION 402.205: Who are employers. Mim. 6187
(Also Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Section 403.205.)

Status of certain musicians for purposes of the Federal employment taxes and income tax withholding under section 1622 of the Internal Revenue Code.

Mimeograph 5638 (C. B. 1944, 547) and Mimeograph 5767 (C. B. 1944, 548) modified.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., September 25, 1947.

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

1. It has been the position of the Bureau that the operator for whom musicians, entertainers, and actors perform services pursuant to a "Form B" contract, or other contract having substantially similar provisions, is the employer of such musicians, including the leader, entertainers, and actors, for purposes of employment taxes and income tax withholding. (See paragraph 2 of Mimeograph 5638, C. B. 1944, 547, and paragraph 4 of Mimeograph 5767, C. B. 1944, 548.)

2. In the cases of *Roy Bartels et al.* v. *Birmingham* and *Larry V. Geer et al.* v. *Birmingham* (67 S. Ct., 1547 (June 23, 1947), Ct. D. 1689, page 174, this Bulletin), the question for decision was whether the members of an organized orchestra who performed services under a "Form B" contract of the American Federation of Musicians, and circumstances and conditions detailed in these cases, were employees of the operator or of the leader. The factual situation considered in such cases concerned organized orchestras engaged by the operators to play for limited engagements at their establishments. Each of such orchestras was built around a leader whose name, and distinctive style in the presentation and rendition of dance music, is intended to give the orchestra a marked individuality. The leader organized the orchestra and selected and trained the members thereof. Each leader entered into a "Form B" contract with each operator to play at his establishment for a contract price, usually for a 1-night stand or for several successive nights. Such contract provides that the operator is the employer of the musicians and their leader, and "shall have complete control of the services which the employees will render under the specifications of this contract." The United States Supreme Court held that such contractual arrangement was not conclusive of the relationship between the parties for purposes of the Federal employment taxes and stated as follows:

We are of the opinion that the elements of employment mark the orchestra leader as the employer in these cases. The leader organizes and trains the band. He selects the members. It is his musical skill and showmanship that determines the success or failure of the organization. The relations between him and the other members are permanent; those between the band and the operator are transient. Maintenance costs are a charge against the price received for the performance. He bears the loss or gains the profit after payment of the members' wages and the other band expenses.

3. The decision of the Court will be applied in similar cases, for Federal employment tax purposes. It is the position of the Bureau that the leaders of organized orchestras performing services under circumstances such as those present in the Bartels case will be considered the employers of the members of their musical organizations for purposes of income tax withholding. Accordingly, the leader, as employer, is required to collect from the individual members of his musical organization both the employees' tax under the Federal Insurance Contributions Act and income tax under section 1622 of the Internal Revenue Code, and to make returns and payments of such taxes to the collector of internal revenue. The leader also is required to pay employers' tax under the Federal Insurance Contributions Act with respect to wages paid by him to the members of his musical organization. Such wages also must be shown in his annual return under the Federal Unemployment Tax Act if he is an employer of eight or more as defined in that Act.

4. Mimeograph 5638 and Mimeograph 5767, in so far as they are in conflict with the decision of the Court cited herein, are hereby modified.

5. Under the authority granted in section 3791(b) of the Internal Revenue Code, an orchestra leader who performed services under a "Form B" contract, or other contract having substantially similar provisions, and who was considered to be in an employee status prior to the Bartels case, but is an employer under such decision, will not be required to file returns or pay taxes under the Federal Insurance Contributions Act or under section 1622 of the Internal Revenue Code with respect to the wages paid to the members of his musical organization prior to July 1, 1947, or to file returns or pay the tax under the Federal Unemployment Tax Act with respect to the wages paid to such individuals prior to January 1, 1947. Any such taxes which have been paid by the leaders, however, will not be refunded.

6. An orchestra leader who is held to be an employer by reason of the decision in the Bartels case is required to report and pay taxes under the Federal Insurance Contributions Act with respect to wages paid after June 30, 1947, to the members of his musical organization. Such leader is required also to pay the tax imposed by the Federal Unemployment Tax Act with respect to wages paid after December 31, 1946, if he is an employer of eight or more individuals as defined in that Act.

7. If doubt exists in any case, the facts should be presented to the Bureau with a request for a ruling.

8. Inquiries relative to the income tax withholding should refer to this mimeograph by number and be addressed to this office for the attention of IT:P:TR. Correspondence otherwise relating to the contents of this mimeograph should refer to the number hereof and to the symbols EmT:RR.

GEO. J. SCHOENEMAN,
Commissioner.

Approved September 25, 1947.

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

SECTION 1426: Definitions.
REGULATIONS 106, SECTION 402.216: Railroad industry—employees and employee representatives under section 1532 of the Internal Revenue Code.

Regulations amended to conform to Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress). (See T. D. 5574, page 180.)

SECTION 1426: Definitions.
REGULATIONS 106, SECTION 402.227: Wages.

Remuneration in excess of $3,000, received by an individual during any calendar year, not included as "wages." (See T. D. 5566, page 148.)

SECTION 1426: Definitions.
REGULATIONS 106, SECTION 402.228: Exclusions from wages.

Remuneration in excess of $3,000, received by an individual during any calendar year, not included as "wages." (See T. D. 5566, page 148.)

CHAPTER 9, SUBCHAPTER B.—RAILROAD RETIREMENT TAX ACT.

SECTION 1500: Rate of tax.
REGULATIONS 100, ARTICLE 201: Measure of employees' tax.

Regulations amended to conform to Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress). (See T. D. 5574, page 180.)

SECTION 1500: Rate of tax.
REGULATIONS 100, ARTICLE 202: Rates and computation of employees' tax.

Regulations amended to conform to Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress). Changes in rates of tax. (See T. D. 5574, page 180.)

SECTION 1501: Deduction of tax from compensation.
REGULATIONS 100, ARTICLE 203: Collection of, and liability for, employees' tax.

Regulations amended to conform to Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress). (See T. D. 5574, page 180.)

SECTION 1510: Rate of tax.
REGULATIONS 100, ARTICLE 401: Measure of employee representatives' tax.

Regulations amended to conform to Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress). (See T. D. 5574, page 180.)

SECTION 1510: Rate of tax.
REGULATIONS 100, ARTICLE 402: Rates and computation of employee representatives' tax.

Regulations amended to conform to Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress). (See T. D. 5574, below.)

SECTION 1520: Rate of tax.
REGULATIONS 100, ARTICLE 301: Measure of employers' tax.

Regulations amended to conform to Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress). (See T. D. 5574, below.)

SECTION 1520: Rate of tax.
REGULATIONS 100, ARTICLE 302: Rates and computation of employers' tax.

Regulations amended to conform to Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress). Changes in rates of tax. (See T. D. 5574, below.)

SECTION 1532: Definitions. 1947–17–12625
REGULATIONS 100, ARTICLE 1: Definitions of miscellaneous terms; applicability of provisions of Internal Revenue Code. T. D. 5574
(Also Sections 1500, 1501, 1510, 1520, 1532, 1536, and 1538; Regulations 100, Articles 2, 3, 5, 6, 7, 201, 202, 203, 301, 302, 401, 402, and 806; also Subchapter A (Federal Insurance Contributions Act), Section 1426; Regulations 106, Section 402.216; also Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Section 403.216.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER D, PARTS 402, 403, AND 410.

Regulations 100 only as made applicable to the Internal Revenue Code by Treasury Decision 4885 [C. B. 1939–1 (Part 1), 396], Regulations 106, and Regulations 107, amended to conform to certain provisions of the Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress [C. B. 1946–2, 269]).

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

To Collectors of Internal Revenue and Others Concerned:

On April 17, 1947, notice of proposed rule making, regarding amendments to the employment tax regulations under Subchapters A, B, and C of Chapter 9 of the Internal Revenue Code, made necessary by certain provisions of the Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress [C. B. 1946–2, 269]), was published in the Federal Register (12 F. R., 2479). After consideration of all such relevant matter as was presented by interested persons regarding

the proposal, the amendments set forth below are hereby adopted. The amendments are made in order to conform Regulations 100 [26 CFR, Part 410] only as made applicable to the Internal Revenue Code by Treasury Decision 4885 [C. B. 1939–1 (Part 1), 396] [26 CFR, Cum. Supp., 5876], relating to the employers' tax, employees' tax, and employee representatives' tax under Subchapter B of Chapter 9 of the Internal Revenue Code; Regulations 106 [26 CFR, Part 402], relating to the employees' tax and employers' tax under the Federal Insurance Contributions Act (Subchapter A, Chapter 9, Internal Revenue Code); and Regulations 107 [26 CFR, Part 403], relating to the excise tax on employers under the Federal Unemployment Tax Act (Subchapter C, Chapter 9, Internal Revenue Code), to sections 1, 2, 3, 401, and 402 of the Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress). Such regulations are amended as follows:

REGULATIONS 100 [26 CFR, PART 410].

PARAGRAPH 1. Immediately preceding article 1 [26 CFR, 410.1], the following is inserted:

SECTION 1 OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

* * * section 1532(d) of the Internal Revenue Code are each amended as follows: After the word "if" where it first appears therein insert "(i)" and for the phrase "which services he renders for compensation" substitute the following: "or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation" * * *. Said subsections are further amended by inserting at the end of the first proviso the following: ", and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation".

SECTION 3 (e) AND (f) OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

(e) Section 1532(b) of the Internal Revenue Code is amended to read as follows:

"(b) EMPLOYEE.—The term 'employee' means any individual in the service of one or more employers for compensation: *Provided, however,* That the term 'employee' shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if (i) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence will have been established to the satisfaction of the Railroad Retirement Board before July 1947; or (ii) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive; or (iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age sixty-five or until

August 1945, or (B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in clause (ii); or (iv) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within ten years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights: *Provided*, That an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last pay-roll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such pay-roll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a).

"The term 'employee' includes an officer of an employer.

"The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple."

(f) Section 1532(e) of the Internal Revenue Code is amended by adding at the end thereof the following new paragraph:

"A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, 'for time lost' the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost."

SECTION 402 OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

* * * * * * *

The amendments to section 1532 of the Internal Revenue Code made by sections 1 and 3 (e) and (f) shall be effective only with respect to services rendered after December 31, 1946. * * *

SECTION 3(g) OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

(g) Subchapter B of Chapter 9 of the Internal Revenue Code is amended by adding at the end thereof the following new section:

"SEC. 1538. TITLE OF SUBCHAPTER.

"This subchapter may be cited as the 'Railroad Retirement Tax Act'."

SECTION 401 OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

Except as otherwise provided in this Act, the provisions thereof shall become effective upon approval.

PAR. 2. Article 1 [26 CFR, 410.1] is amended as follows:

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

ARTICLE 1 [26 CFR, 410.41]. DEFINITIONS OF MISCELLANEOUS TERMS; APPLICABILITY OF PROVISIONS OF INTERNAL REVENUE CODE.

(B) By inserting at the end of the article the following:

(*m*) *Railroad Retirement Tax Act* means Subchapter B of Chapter 9 of the Internal Revenue Code, as amended.

(*n*) *Internal Revenue Code* means the Act approved February 10, 1939 (53 Stat., Part 1), entitled "An Act To consolidate and codify the internal revenue laws of the United States," as amended.

Subchapter B of Chapter 9 of the Internal Revenue Code corresponds to and, effective April 1, 1939, superseded the Carriers Taxing Act of 1937. Such subchapter comprises certain sections numbered from 1500 to 1538, both inclusive. All provisions of, or references to, the Carriers Taxing Act of 1937 or other laws of the United States which have been codified in the Internal Revenue Code, but which remain in the regulations in this part as made applicable to the Code, shall be deemed to be, and shall be read as if they were, the corresponding provisions of the Internal Revenue Code or references thereto.

PAR. 3. Article 2(*f*) [26 CFR, 410.2(f)] is amended to read as follows:

(*f*) Any subordinate unit of a national railway-labor-organization employer, that is, any State or National legislative committee, general committee, insurance department, or local lodge or division, of an employer as defined in paragraph (*e*) of this article, established pursuant to the constitution and by-laws of such employer.

PAR. 4. Immediately following the provisions of law under the caption "SECTIONS 3 AND 4 OF THE ACT APPROVED AUGUST 13, 1940 (PUBLIC, No. 764, SEVENTY-SIXTH CONGRESS, THIRD SESSION)," added by Treasury Decision 5017, approved October 24, 1940 [C. B. 1940–2, 266], preceding article 3 [26 CFR, 410.3], the following is inserted:

SECTION 3(e) OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

(e) Section 1532(b) of the Internal Revenue Code is amended to read as follows:

"(b) EMPLOYEE.—The term 'employee' means any individual in the service of one or more employers for compensation: *Provided, however,* That the term 'employee' shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if (i) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence will have been established to the satisfaction of the Railroad Retirement Board before July 1947; or (ii) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive; or (iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last

carrier by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age sixty-five or until August 1945, or (B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in clause (ii) ; or (iv) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within ten years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights: *Provided*, That an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last pay-roll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such pay-roll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a).

"The term 'employee' includes an officer of an employer.

"The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple."

PAR. 5. Immediately preceding the caption "SECTION 1 (h) AND (i) OF THE ACT" which precedes article 3 [26 CFR, 410.3], the following is inserted:

SECTION 14 OF THE ACT APPROVED APRIL 8, 1942 (PUBLIC LAW 520, SEVENTY-SEVENTH CONGRESS).

The first proviso in subsection (d) of section 1532 of the Internal Revenue Code, approved February 10, 1939 (53 Stat. 1), is hereby amended to read as follows: "*Provided, however*, That an individual shall be deemed to be in the service of an employer, other than a local lodge or division of a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such

mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to subsection (c) of section 1 of the Railroad Retirement Act of 1937 shall be applicable:".

The amendment in this section shall operate in the same manner and have the same effect as if it had been part of the Internal Revenue Code when that code was enacted on February 10, 1939 * * *.

SECTION 1 OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

* * * section 1532(d) of the Internal Revenue Code are each amended as follows: After the word "if" where it first appears therein insert "(i)" and for the phrase "which services he renders for compensation" substitute the following: "or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation" * * *. Said subsections are further amended by inserting at the end of the first proviso the following: ", and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation".

SECTION 402 OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

* * * * * * *

The amendments to section 1532 of the Internal Revenue Code made by sections 1 and 3(e) * * * shall be effective only with respect to services rendered after December 31, 1946. * * *

PAR. 6. Article 3, as amended by Treasury Decision 5017 and by Treasury Decision 5161 approved July 6, 1942 [C. B. 1942-2, 212] [26 CFR, 410.3], is further amended as follows:

(A) By striking out the last sentence of the first paragraph and the whole of the second paragraph of article 3(*a*) [26 CFR, 410.3(a)] and inserting in lieu thereof the following:

An individual performing services as an independent contractor is not subject to the continuing authority of the employer to supervise and direct the manner of rendition of such services.

An individual rendering professional or technical services or other personal services prior to January 1, 1947, to an employer for compensation is in the service of the employer if he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of such services. The fact that an individual rendering professional or technical services prior to January 1, 1947, is integrated into the staff of an employer is an important factor indicating that such individual is subject to the continuing authority of the employer to supervise and direct the manner of rendition of such services. With respect to other personal services rendered prior to January 1, 1947, the fact that such services are rendered on the property used in the employer's operations and that the rendition of such services is integrated into the employer's operations are important factors indicating that the individual rendering such services is subject to the continuing authority of the employer to supervise and direct the manner of rendition of such services. However, with respect to professional or technical services or other personal services rendered after December 31, 1946, the aforementioned factors are not merely indicia of the continuing authority of the employer to supervise and direct the manner of rendition of such services but instead constitute independent tests for determining whether the individual rendering such services is in the service of the employer with respect to the rendition of such services. Thus, an individual rendering professional or technical services to an employer for compensation is in the service of the employer with respect to such services rendered after December 31, 1946, if he is integrated into the

staff of the employer. Likewise, an individual rendering other personal services to an employer for compensation is in the service of the employer with respect to such services rendered after December 31, 1946, if the services are rendered on the property used in the employer's operations and the rendition of such services is integrated into the employer's operations. Under the two tests last mentioned, an individual rendering professional or technical services or other personal services after December 31, 1946, as an independent contractor may be, as to such services, in the service of an employer.

(B) By striking out the parenthetical cross-reference at the end of subparagraph (1) of article 3(*b*) [26 CFR, 410.3(b)(1)].

(C) By striking out subparagraph (2) of article 3(*b*) [26 CFR, 410.3(b)(2)] and inserting in lieu thereof the following:

> (2) An individual in the service of a local lodge or division is not an employee within the meaning of the law and the regulations in this part unless he was, on or after August 29, 1935, in the service of a *carrier* (see paragraph (*a*) of this article) or he was, on August 29, 1935, in the "employment relation" to a *carrier*.

With respect to services rendered prior to January 1, 1947, an individual was in the employment relation to a carrier on August 29, 1935, if on that date he was, in accordance with the established rules and practices in effect on the carrier, on furlough subject to call for service within or without the United States and ready and willing to serve, or on leave of absence, or absent on account of sickness or disability. However, an individual shall not be deemed to have been in the employment relation to a carrier on August 29, 1935, unless during the last pay-roll period before August 29, 1935, in which he rendered service to it, he was, with respect to that service, in the service of an employer (see paragraph (*a*) of this article).

With respect to services rendered after December 31, 1946, an individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if (i) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence will have been established to the satisfaction of the Railroad Retirement Board before July, 1947; or (ii) he was in the service of a carrier after August 29, 1935, and before January, 1946, in each of six calendar months, whether or not consecutive; or (iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age 65 or until August, 1945, or (B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August, 1945, call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in clause (ii); or (iv) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights. However, an individual shall not be deemed to have been in the employment relation to a carrier on August 29, 1935, if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last pay-roll period before August 29, 1935, in which he rendered service to a carrier he was not, with respect to any service in such pay-roll period, in the service of an employer (see paragraph (*a*) of this article).

(For definition of carrier, see article 2(*a*) [26 CFR, 410.2(a)].)

(D) By inserting at the end of subparagraph (3) of article 3(*c*) [26 CFR, 410.3(c)(3)] the following:

> However, no part of his remuneration for such service rendered after December 31, 1946, shall be regarded as compensation if the application of

such mileage formula, or such other formula as the Railroad Retirement Board may have prescribed, would result in his compensation for the service being less than 10 per cent of his remuneration for such service.

(E) By striking out the parenthetical cross-reference at the end of article 3(*c*) [26 CFR, 410.3(c)].

PAR. 7. Immediately following the provisions of law under the caption "SECTION 27 OF THE ACT APPROVED OCTOBER 10, 1940 (PUBLIC, No. 833, SEVENTY-SIXTH CONGRESS, THIRD SESSION)," added by Treasury Decision 5029, approved December 27, 1940 [C. B. 1941–1, 409], preceding article 5 [26 CFR, 410.5], the following is inserted:

SECTION 3(f) OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

(f) Section 1532(e) of the Internal Revenue Code is amended by adding at the end thereof the following new paragraph:

"A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, 'for time lost' the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost."

SECTION 402 OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

* * * * * * *

The amendments to section 1532 of the Internal Revenue Code made by sections * * * 3 * * * (f) shall be effective only with respect to services rendered after December 31, 1946. * * *

PAR. 8. Article 5, as amended by Treasury Decisions 5029 and 5161 [26 CFR, 410.5], is further amended to read as follows:

ART. 5 [26 CFR, 410.5]. DEFINITION OF "COMPENSATION."—The term "compensation" means all remuneration in money, or in something which may be used in lieu of money (for example, scrip and merchandise orders), which is earned by an individual for services rendered as an employee to one or more employers, or as an employee representative. A payment for services rendered after December 31, 1946, which is made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for services rendered by such individual as an employee of the employer. Likewise, a payment for services rendered after December 31, 1946, which is made by an employee organization (that is, a railway labor organization which is not included as an employer under the Act) to an employee representative through the organization's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for services rendered by the employee representative as such.

The term "compensation" is not confined to amounts earned or paid for active service, but includes amounts earned or paid for an identifiable period during which the employee is absent from the active service of the employer and, in the case of an employee representative, amounts earned or paid for an identifiable period during which the employee representative is absent from the active service of the employee organization. Amounts paid to an employee for an identifiable period of absence from the active service of the employer on account

of personal injury are included within the term "compensation." Like payments made to an employee representative on account of personal injury also constitute compensation. If a payment is made to an employee or employee representative with respect to a personal injury and includes pay for an identifiable period of absence from active service, the total payment shall be deemed to be paid for such period of absence from active service unless, at the time of payment, a part of such payment is specifically apportioned to factors other than absence from active service, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for such period of absence from active service. The presumption set forth in the preceding sentence is applicable only with respect to an identifiable period of absence from active service after December 31, 1946. Amounts paid to an employee or employee representative for loss of earnings during an identifiable period as the result of the displacement of the employee or employee representative to a less remunerative position or occupation shall be deemed to be paid for absence from active service during such period. Such amounts are also included within the term "compensation."

The term "compensation" does not include tips, or the voluntary payment by an employer of the employees' tax, without the deduction of such tax from the remuneration of the employee.

(See article 7 [26 CFR, 410.7], relating to when compensation is earned. See also article 201 [26 CFR, 410.201], article 301 [26 CFR, 410.301], and article 401 [26 CFR, 410.401], relating to the amount of compensation included for the purpose of determining the employees' tax, the employers' tax, and the employee representatives' tax, respectively. For special provisions relating to the compensation of certain general chairmen or assistant general chairmen of a general committee of a railway-labor-organization employer, see article 3(c) [26 CFR, 410.3(c)].)

PAR. 9. Article 6 [26 CFR, 410.6] is amended by inserting at the end thereof the following:

For provisions relating to payments for personal injury or for loss of earnings resulting from displacement to a less remunerative position or occupation, see article 5 [26 CFR, 410.5].

PAR. 10. Article 7 [26 CFR, 410.7] is amended by striking out the parenthetical cross-reference at the end of such article and inserting in lieu thereof the following:

A payment made by an employer or employee organization (that is, a railway labor organization which is not included as an employer under the Act) to an individual through the pay roll of the employer or employee organization for a period commencing after December 31, 1946, shall be presumed, in the absence of evidence to the contrary, to be for services rendered by such individual in the period covered by the pay roll and, thus, to have been earned in such period. (See articles 5 and 6 [26 CFR, 410.5 and 410.6].)

PAR. 11. Immediately preceding the caption "SECTION 27 OF THE ACT APPROVED OCTOBER 10, 1940 (PUBLIC, No. 833, SEVENTY-SIXTH CONGRESS, THIRD SESSION)," added by Treasury Decision 5029, which precedes article 201 [26 CFR, 410.201], the following is inserted:

SECTION 3(a) OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

(a) Section 1500 of the Internal Revenue Code is amended to read as follows:

"SEC. 1500. RATE OF TAX.

"In addition to other taxes, there shall be levied, collected, and paid upon the income of every employee a tax equal to the following percentages of so much of the compensation, paid to such employee after December 31, 1946, for services rendered by him after such date, as is not in excess of $300 for any calendar month:

"1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 5¾ per centum;

"2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 per centum;

"3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ per centum."

SECTION 402 OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

* * * * * * * * * * *

* * * The amendments made by section 3(a) * * * shall take effect January 1, 1947. Sections 1500 * * * of the Internal Revenue Code as in effect on December 31, 1946, shall remain in full force and effect on and after January 1, 1947, with respect to any remuneration which constitutes compensation under the law as in effect on December 31, 1946, to which such sections as amended by this Act are not applicable.

PAR. 12. Article 201, as amended by Treasury Decision 5029 [26 CFR, 410.201], is further amended as follows:

(A) By striking out paragraph (*a*) [26 CFR, 410.201(a)] and inserting in lieu thereof the following:

(*a*) *General rule.*—(1) *Compensation earned or paid prior to January 1, 1947.*—Except as provided in paragraph (*b*) of this article—

(i) the employees' tax with respect to compensation earned prior to January 1, 1947, is measured by the amount of compensation earned prior to such date by an individual as an employee for services rendered to one or more employers after March 31, 1939, excluding, however, the amount of such compensation in excess of $300 which is earned by the employee for services rendered during any one calendar month;

(ii) the employees' tax with respect to compensation paid prior to January 1, 1947, for services rendered after December 31, 1946, is measured by the amount of compensation paid prior to January 1, 1947, to an individual for services rendered as an employee to one or more employers after December 31, 1946, excluding, however, the amount of such compensation in excess of $300 which is paid prior to January 1, 1947, to the employee for services rendered during any one calendar month after 1946.

(For the purposes of the regulations in Chapter II of this part [26 CFR, Part 410, Subpart B], see articles 5, 6, 7, and 8 [26 CFR, 410.5, 410.6, 410.7, and 410.8], relating to compensation.)

(2) *Compensation paid after December 31, 1946, for services rendered after such date.*—Except as provided in paragraph (*b*) of this article, the employees' tax with respect to compensation paid after December 31, 1946, for services rendered after such date is measured by the amount of compensation paid after December 31, 1946, to an individual for services rendered as an employee to one or more employers after such date, excluding, however, the amount of such compensation in excess of $300 which is paid after December 31, 1946, to the employee for services rendered during any one calendar month after 1946.

(B) By striking out the designation "(*b*)" and inserting in lieu thereof the following:

(*b*) *Exception; employee of local lodge or division of railway-labor-organization employer.*

PAR. 13. Article 202 [26 CFR, 410.202] is amended to read as follows:

ART. 202 [26 CFR, 410.202]. RATES AND COMPUTATION OF EMPLOYEES' TAX.—(*a*) *Compensation earned or paid prior to January 1, 1947.*—The rates of employees' tax applicable for the respective calendar years with respect to compensation either earned or paid prior to January 1, 1947, are as follows:

	Per cent.
Compensation earned during the calendar year 1939	2¾
Compensation earned during the calendar years 1940, 1941, 1942	3
Compensation earned during the calendar years 1943, 1944, 1945	3¼
Compensation earned during the calendar years 1946, 1947, 1948	3½
Compensation earned during the calendar year 1949 and subsequent calendar years	3¾

The employees' tax with respect to compensation either earned or paid prior to January 1, 1947, is computed by applying to the amount of the employee's compensation with respect to which the employees' tax is imposed the rate for the calendar year in which the compensation is earned.

(*b*) *Compensation paid after December 31, 1946, for services rendered after such date.*—The rates of employees' tax applicable for the respective calendar years with respect to compensation paid after December 31, 1946, for services rendered after such date are as follows:

	Per cent.
Compensation paid during the calendar years 1947, 1948	5¾
Compensation paid during the calendar years 1949, 1950, 1951	6
Compensation paid during the calendar year 1952 and subsequent calendar years	6¼

The employees' tax with respect to compensation paid after December 31, 1946, for services rendered after such date is computed by applying to the amount of the employee's compensation with respect to which the employees' tax is imposed the rate for the calendar year in which the compensation is paid.

PAR. 14. Immediately preceding the caption "SECTION 607 OF THE REVENUE ACT OF 1934, MADE APPLICABLE BY SECTION 7(c) OF THE ACT" which precedes article 203 [26 CFR, 410.203], the following is inserted:

SECTION 3(b) OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

(b) The second sentence of section 1501(a) of the Internal Revenue Code is amended to read as follows: "If an employee is paid compensation after December 31, 1946, by more than one employer for services rendered during any calendar month after 1946 and the aggregate of such compensation is in excess of $300, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month shall be that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300, each subordinate unit of a national railway-labor-organization employer shall deduct such proportion of any additional tax as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month."

SECTION 402 OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

* * * * * * *

* * * The amendments made by section 3 * * * (b) * * * shall take effect January 1, 1947. * * *

PAR. 15. Article 203 [26 CFR, 410.203] is amended as follows:

(A) By striking out paragraph (*a*) [26 CFR, 410.203(a)] and inserting in lieu thereof the following:

(*a*) *Collection; general rule.*—The employer shall collect from each of his employees the employees' tax imposed with respect to the compensation of the employee by deducting or causing to be deducted the amount of such tax from the compensation subject to the tax as and when such compensation is paid. (As to the measure of the employees' tax, see article 201 [26 CFR, 410.201].)

(B) By striking out paragraph (*b*) [26 CFR, 410.203(b)] and inserting in lieu thereof the following:

(*b*) *Collection; aggregate monthly compensation in excess of $300 paid by two or more employers.*—(1) *Compensation earned or paid prior to January 1, 1947.*—If during any one calendar month before 1947 an employee earns compensation from two or more employers and if the aggregate of such compensation paid is in excess of $300, each employer shall deduct, from the compensation as and when paid by him to the employee, the employees' tax with respect to that proportion of $300 of compensation which the compensation paid by such employer to the employee for the month bears to the total compensation paid to such employee by all employers for that month. If an employee is paid compensation prior to January 1, 1947, by two or more employers for services rendered during any one calendar month after 1946, and if the aggregate compensation paid to such employee prior to January 1, 1947, by all employers for services rendered during such month is in excess of $300, each employer shall deduct, from the compensation as and when paid by him to the employee, the employees' tax with respect to that proportion of $300 of compensation which the compensation paid by such employer prior to January 1, 1947, to the employee for the month bears to the total compensation paid prior to January 1, 1947, to such employee by all employers for that month. (See article 201(*b*) [26 CFR, 410.201 (b)], which provides that for the purpose of determining the employees' tax certain nominal compensation earned by an employee of a local lodge or division of a railway-labor-organization employer shall be disregarded.)

(2) *Compensation paid after December 31, 1946, for services rendered after such date.*—If an employee is paid compensation after December 31, 1946, by two or more employers for services rendered during any one calendar month after 1946, and if the aggregate compensation paid to such employee after December 31, 1946, by all employers for services rendered during such month is in excess of $300, the employees' tax to be deducted by each employer from the compensation as and when paid by him to the employee shall be determined as follows:

(i) If such compensation is paid by two or more employers, none of whom is a subordinate unit of a national railway-labor-organization employer (see article 2(*f*) [26 CFR, 410.2(f)]), each employer shall deduct the employees' tax with respect to that proportion of $300 of compensation which the compensation paid after December 31, 1946, by such employer to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all employers for that month (see example (1), below);

(ii) If such compensation is paid by two or more employers, each of which is a subordinate unit of a national railway-labor-organization employer, each subordinate unit shall deduct the employees' tax with respect to that proportion of $300 of compensation which the compensation paid after December 31, 1946, by such subordinate unit to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all such subordinate units for that month;

(iii) If such compensation is paid by two or more employers, only one of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and if the compensation paid after December 31, 1946, to the employee by the employer other than a subordinate unit equals or exceeds $300 for the month, then no employees' tax shall be deducted by any such subordinate unit from the compensation paid by it after December 31, 1946, to such employee for that month, and the employer other than a subordinate unit shall deduct the employees' tax with respect to $300 of compensation paid by him after December 31, 1946, to such employee for that month (see example (2), below);

(iv) If such compensation is paid by two or more employers other than a subordinate unit of a national railway-labor-organization employer and by one or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after December 31, 1946, to the employee by the employers other than a subordinate unit equals or exceeds $300 for the month, then no employees' tax shall be deducted by any such subordinate unit from the compensation paid by it after December 31, 1946, to such employee for that month, and each employer other than a subordinate unit shall deduct the employees' tax with respect to that proportion of $300

of compensation which the compensation paid after December 31, 1946, by such employer to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all such employers other than a subordinate unit for that month (see example (3), below);

(v) If such compensation is paid by two or more employers, only one of whom is a subordinate unit of a national railway-labor-organization employer, and if the total compensation paid after December 31, 1946, to the employee by all employers other than the subordinate unit is less than $300 for the month, then each employer other than the subordinate unit shall deduct the employees' tax with respect to the full amount of compensation paid by him after December 31, 1946, to such employee for that month, and the subordinate unit of a national railway-labor-organization employer shall deduct the employees' tax with respect to the remainder of $300 of compensation less the total compensation paid after December 31, 1946, to such employee for that month by all other employers (see example (4), below); or

(vi) If such compensation is paid by one or more employers other than a subordinate unit of a national railway-labor-organization employer and by two or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after December 31, 1946, to the employee by all employers other than the subordinate units is less than $300 for the month, then each employer other than the subordinate units shall deduct the employees' tax with respect to the full amount of compensation paid by him after December 31, 1946, to such employee for that month, and each subordinate unit of a national railway-labor-organization employer shall deduct the employees' tax with respect to that proportion of the remainder of $300 of compensation less the total compensation paid after December 31, 1946, to such employee for the month by all employers other than the subordinate units which the compensation paid after December 31, 1946, by such subordinate unit to the employee for that month bears to the total compensation paid after December 31, 1946, to such employee by all such subordinate units for that month (see example (5), below).

(See article 201(*b*) [26 CFR, 410.201(b)], which provides that for the purpose of determining the employees' tax certain nominal compensation earned by an employee of a local lodge or division of a railway-labor-organization employer shall be disregarded.)

The application of certain of the foregoing principles may be illustrated by the following examples:

Example (*1*). A, an employee, renders services during January, 1947, for employers X, Y, and Z, none of whom is a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of $100 by X, $100 by Y, and $200 by Z, or an aggregate of $400 for the month. In such case X pays one-fourth of A's aggregate compensation for the month, Y pays one-fourth, and Z pays one-half. X and Y, therefore, are each required to deduct the employees' tax with respect to one-fourth of $300, or $75, and Z is required to deduct the employees' tax with respect to one-half of $300, or $150.

Example (*2*). A, an employee, renders services during January, 1947, for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of $300 by X, $50 by Y, and $25 by Z. Since the compensation paid A for the month by X equals $300, neither Y nor Z is required to deduct any employees' tax from the compensation paid by them to A for the month; and X is required to deduct the employees' tax with respect to the full $300 paid by him to A for the month.

Example (*3*). A, an employee, renders services during January, 1947, for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of $200 by W and $200 by X, or an aggregate of $400 for the month, and compensation of $50 by Y and $50 by Z. Since the aggregate compensation paid A for the month by W and X is in excess of $300, neither Y nor Z is required to deduct any employees' tax from the compensation paid by them to A for the month. Of the aggregate compensation of $400 paid A for the month by W and X, W pays one-half and X pays one-half. W and X, therefore, are each required to deduct the employees' tax with respect to one-half of $300, or $150.

Example (4). A, an employee, renders services during January, 1947, for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employer Y, a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of $250 by X and $100 by Y. In such case X is required to deduct the employees' tax with respect to the full $250 paid by him to A for the month; and Y is required to deduct the employees' tax only with respect to $50 ($300 minus $250 paid by X).

Example (5). A, an employee, renders services during January, 1947, for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of $140 by W, $100 by X, $50 by Y, and $100 by Z. In such case W and X are each required to deduct the employees' tax with respect to the full amount paid by them to A for the month, that is, W with respect to $140 and X with respect to $100; and Y and Z are each required to deduct the employees' tax with respect to their proportionate share of $60 ($300 minus $240 paid by W and X). Of the aggregate compensation of $150 paid by Y and Z, $50, or one-third, was paid by Y, and $100, or two-thirds, was paid by Z. In such case Y is required to deduct the employees' tax with respect to one-third of $60, or $20, and Z is required to deduct the employees' tax with respect to two-thirds of $60, or $40.

(3) *Undercollections or overcollections.*—Any undercollection or overcollection of employees' tax resulting from the employer's inability to determine, at the time compensation is paid, the correct amount of compensation with respect to which the deduction should be made shall be corrected in accordance with the provisions of Chapter VI [26 CFR, Part 410, Subpart F], relating to an adjustment of employees' tax and employers' tax, and Chapter VII [26 CFR, Part 410, Subpart G], relating to credits and refunds.

(C) By striking out the designation "(*c*)" and inserting in lieu thereof the following:

(*c*) *When fractional part of cent may be disregarded.*

(D) By striking out the designation "(*d*)" and inserting in lieu thereof the following:

(*d*) *Employer's liability.*

PAR. 16. Immediately preceding the caption "SECTION 27 OF THE ACT APPROVED OCTOBER 10, 1940 (PUBLIC, NO. 833, SEVENTY-SIXTH CONGRESS, THIRD SESSION)" which precedes article 301 [26 CFR, 410.301], the following is inserted:

SECTION 3(d) OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

(d) Section 1520 of the Internal Revenue Code is amended to read as follows:

"SEC. 1520. RATE OF TAX.

"In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of so much of the compensation, paid by such employer after December 31, 1946, for services rendered to him after December 31, 1936, as is, with respect to any employee for any calendar month, not in excess of $300: *Provided, however*, That if an employee is paid compensation after December 31, 1946, by more than one employer for services rendered during any calendar month after 1936, the tax imposed by this section shall apply to not more than $300 of the aggregate compensation paid to such employee by all such employers after December 31, 1946, for services rendered during such month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services rendered during such

month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional tax as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month:

"1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 5¾ per centum;

"2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 per centum;

"3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ per centum."

SECTION 402 OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

* * * * * * *

* * * The amendments made by section 3 * * * (d) shall take effect January 1, 1947. Sections * * * 1520 of the Internal Revenue Code as in effect on December 31, 1946, shall remain in full force and effect on and after January 1, 1947, with respect to any remuneration which constitutes compensation under the law as in effect on December 31, 1946, to which such sections as amended by this Act are not applicable.

PAR. 17. Article 301, as amended by Treasury Decision 5029 [26 CFR, 410.301], is further amended to read as follows:

ART. 301 [26 CFR, 410.301]. MEASURE OF EMPLOYERS' TAX.—(*a*) *General rule.*—(1) *Compensation paid prior to January 1, 1947.*—Except as provided in paragraphs (*b*)(1) and (*c*) of this article, the employers' tax with respect to compensation paid prior to January 1, 1947, is measured by the amount of compensation paid prior to such date by an employer to his employees for services rendered after December 31, 1936, excluding, however, the amount of compensation in excess of $300 which is paid prior to January 1, 1947, by the employer to any employee for services rendered during any one calendar month. (For the purposes of the regulations in Chapter III of this part [26 CFR, Part 410, Subpart C], see articles 5, 6, and 7 [26 CFR, 410.5, 410.6, and 410.7], relating to compensation, and particularly article 8 [26 CFR, 410.8], relating to the time when compensation is deemed to be paid.)

(2) *Compensation paid after December 31, 1946.*—Except as provided in paragraphs (*b*)(2) and (*c*) of this article, the employers' tax with respect to compensation paid after December 31, 1946, is measured by the amount of compensation paid after such date by an employer to his employees for services rendered after December 31, 1936, excluding, however, the amount of compensation in excess of $300 which is paid after December 31, 1946, by the employer to any employee for services rendered during any one calendar month.

(*b*) *Aggregate monthly compensation in excess of $300 paid by two or more employers.*—(1) *Compensation paid prior to January 1, 1947.*—If an employee is paid compensation prior to January 1, 1947, by two or more employers for services rendered during any one calendar month after 1936, and if the aggregate compensation paid to such employee prior to January 1, 1947, by all employers for services rendered during such month is in excess of $300, then there is included in the measure of the employers' tax of each employer with respect to the compensation paid by him prior to January 1, 1947, to the employee for the month only that proportion of $300 which the compensation paid to the employee prior to January 1, 1947, by such employer for the month bears to the total compensation paid prior to January 1, 1947, to such employee by all employers for that month. (See paragraph (*c*) of this article, which provides that for the purpose of determining the employers' tax certain nominal compensation earned by an employee of a local lodge or division of a railway-labor-organization employer shall be disregarded.)

(2) *Compensation paid after December 31, 1946.*—If an employee is paid compensation after December 31, 1946, by two or more employers for services rendered during any one calendar month after 1936, and if the aggregate compensation paid to such employee after December 31, 1946, by all employers for services rendered during such month is in excess of $300, the measure of the employers' tax of each employer with respect to the compensation paid by him after December 31, 1946, to the employee for the month shall be determined as follows:

(i) If such compensation is paid by two or more employers, none of whom is a subordinate unit of a national railway-labor-organization employer (see article 2(*f*) [26 CFR, 410.2(f)]), the measure of the employers' tax of each employer shall be that proportion of $300 which the compensation paid after December 31, 1946, by such employer to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all employers for that month (see example (1), below);

(ii) If such compensation is paid by two or more employers, each of which is a subordinate unit of a national railway-labor-organization employer, the measure of the employers' tax of each subordinate unit shall be that proportion of $300 which the compensation paid after December 31, 1946, by such subordinate unit to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all such subordinate units for that month;

(iii) If such compensation is paid by two or more employers, only one of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and if the compensation paid after December 31, 1946, to the employee by the employer other than a subordinate unit equals or exceeds $300 for the month, then no subordinate unit shall be liable for any employers' tax with respect to the compensation paid by it after December 31, 1946, to such employee for that month, and the measure of the employers' tax of the employer other than a subordinate unit with respect to the compensation paid by him after December 31, 1946, to such employee for that month shall be $300 (see example (2), below);

(iv) If such compensation is paid by two or more employers other than a subordinate unit of a national railway-labor-organization employer and by one or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after December 31, 1946, to the employee by the employers other than a subordinate unit equals or exceeds $300 for the month, then no subordinate unit shall be liable for any employers' tax with respect to the compensation paid by it after December 31, 1946, to such employee for that month, and the measure of the employers' tax of each employer other than a subordinate unit shall be that proportion of $300 which the compensation paid after December 31, 1946, by such employer to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all such employers other than a subordinate unit for that month (see example (3), below);

(v) If such compensation is paid by two or more employers, only one of whom is a subordinate unit of a national railway-labor-organization employer, and if the total compensation paid after December 31, 1946, to the employee by all employers other than the subordinate unit is less than $300 for the month, then the measure of the employers' tax of each employer other than the subordinate unit shall be the full amount of compensation paid by him after December 31, 1946, to such employee for that month, and the measure of the employers' tax of the subordinate unit of a national railway-labor-organization employer shall be the remainder of $300 less the total compensation paid after December 31, 1946, to such employee for that month by all other employers (see example (4), below); or

(vi) If such compensation is paid by one or more employers other than a subordinate unit of a national railway-labor-organization employer and by two or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after December 31, 1946, to the employee by all employers other than the subordinate units is less than $300 for the month, then the measure of the employers' tax of each employer other than the subordinate units shall be the full amount of compensation paid by him after December 31, 1946, to such employee for that month, and the measure of the employers' tax of each subordinate unit of a national railway-labor-organization employer shall be that proportion

of the remainder of $300 less the total compensation paid after December 31, 1946, to such employee for the month by all employers other than the subordinate units which the compensation paid after December 31, 1946, by such subordinate unit to the employee for that month bears to the total compensation paid after December 31, 1946, to such employee by all such subordinate units for that month (see example (5), below).

(See paragraph (*c*) of this article, which provides that for the purpose of determining the employers' tax certain nominal compensation earned by an employee of a local lodge or division of a railway-labor-organization employer shall be disregarded.)

The application of certain of the foregoing principles may be illustrated by the following examples:

Example (1). A, an employee, renders services during January, 1947, for employers X and Y, neither of whom is a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of $200 by X and $300 by Y, or an aggregate of $500 for the month. In such case X pays two-fifths of A's aggregate compensation for the month, and Y pays three-fifths. X, therefore, is liable for the employers' tax with respect to two-fifths of $300, or $120, and Y is liable for the employers' tax with respect to three-fifths of $300, or $180.

Example (2). A, an employee, renders services during January, 1947, for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employer Y, a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of $350 by X and $50 by Y. Since the compensation paid A for the month by X exceeds $300, Y is not liable for any employers' tax with respect to the compensation paid A for the month; and X is liable for the employers' tax with respect to $300 of the compensation paid by him to A for the month.

Example (3). A, an employee, renders services during January, 1947, for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of $150 by W and $300 by X, or an aggregate of $450 for the month, and compensation of $100 by Y and $50 by Z. Since the aggregate compensation paid A for the month by W and X is in excess of $300, neither Y nor Z is liable for any employers' tax with respect to the compensation paid by them to A for the month. Of the aggregate compensation of $450 paid A for the month by W and X, W pays one-third and X pays two-thirds. W, therefore, is liable for the employers' tax with respect to one-third of $300, or $100, and X is liable for the employers' tax with respect to two-thirds of $300, or $200.

Example (4). A, an employee, renders services during January, 1947, for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employer Y, a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of $250 by X and $100 by Y. In such case X is liable for the employers' tax with respect to the full $250 paid by him to A for the month; and Y is liable for the employers' tax with respect to $50 ($300 minus $250 paid by X).

Example (5). A, an employee, renders services during January, 1947, for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of $140 by W, $100 by X, $50 by Y, and $100 by Z. In such case W and X are each liable for the employers' tax with respect to the full amount paid by them to A for the month, that is, W with respect to $140 and X with respect to $100; and Y and Z are each liable for the employers' tax with respect to their proportionate share of $60 ($300 minus $240 paid by W and X). Of the aggregate compensation of $150 paid by Y and Z, $50, or one-third, was paid by Y, and $100, or two-thirds, was paid by Z. In such case Y is liable for the employers' tax with respect to one-third of $60, or $20, and Z is liable for the employers' tax with respect to two-thirds of $60, or $40.

(*c*) *Nominal monthly compensation earned by employee of local lodge or division of railway-labor-organization employer.*—If the amount of compensation earned in any calendar month by an individual as an employee in the service of

a local lodge or division of a railway-labor-organization employer is less than $3, such amount shall be disregarded for the purpose of determining the employers' tax, provided:

(1) such compensation is earned before April 1, 1940, and the taxes thereon are not paid to the collector before July 1, 1940, or

(2) such compensation is earned after March 31, 1940.

(*d*) *Underpayments or overpayments.*—Any underpayment or overpayment of employers' tax resulting from the employer's inability to determine, at the time such tax is paid, the correct amount of compensation with respect to which the tax should be paid shall be corrected in accordance with the provisions of article 603 [26 CFR, 410.603], relating to adjustment of employers' tax, and Chapter VII [26 CFR, Part 410, Subpart G], relating to credits and refunds.

PAR. 18. Article 302 [26 CFR, 410.302] is amended to read as follows:

ART. 302 [26 CFR, 410.302]. RATES AND COMPUTATION OF EMPLOYERS' TAX.—(*a*) *Compensation paid prior to January 1, 1947.*—The rates of employers' tax applicable for the respective calendar years with respect to compensation paid prior to January 1, 1947, are as follows:

	Per cent.
Compensation earned during the calendar year 1939	2¾
Compensation earned during the calendar years 1940, 1941, 1942	3
Compensation earned during the calendar years 1943, 1944, 1945	3¼
Compensation earned during the calendar years 1946, 1947, 1948	3½
Compensation earned during the calendar year 1949 and subsequent calendar years	3¾

The employers' tax with respect to compensation paid prior to January 1, 1947, is computed by applying to the amount of compensation with respect to which the employers' tax is imposed the rate for the calendar year in which the compensation is earned.

(*b*) *Compensation paid after December 31, 1946.*—The rates of employers' tax applicable for the respective calendar years with respect to compensation paid after December 31, 1946, are as follows:

	Per cent.
Compensation paid during the calendar years 1947, 1948	5¾
Compensation paid during the calendar years 1949, 1950, 1951	6
Compensation paid during the calendar year 1952 and subsequent calendar years	6¼

The employers' tax with respect to compensation paid after December 31, 1946, is computed by applying to the amount of compensation with respect to which the employers' tax is imposed the rate for the calendar year in which the compensation is paid.

PAR. 19. Immediately preceding article 401 [26 CFR, 410.401], the following is inserted:

SECTION 3(c) OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

(c) Section 1510 of the Internal Revenue Code is amended to read as follows:

"SEC. 1510. RATE OF TAX.

"In addition to other taxes, there shall be levied, collected, and paid upon the income of each employee representative a tax equal to the following percentages of so much of the compensation, paid to such employee representative after December 31, 1946, for services rendered by him after such date, as is not in excess of $300 for any calendar month:

"1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 11½ per centum;

"2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 12 per centum;

"3. With respect to compensation paid after December 31, 1951, the rate shall be 12½ per centum."

SECTION 402 OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

* * * * * * * *

* * * The amendments made by section 3 * * * (c) * * * shall take effect January 1, 1947. Sections * * * 1510 * * * of the Internal Revenue Code as in effect on December 31, 1946, shall remain in full force and effect on and after January 1, 1947, with respect to any remuneration which constitutes compensation under the law as in effect on December 31, 1946, to which such sections as amended by this Act are not applicable.

PAR. 20. Article 401 [26 CFR, 410.401] is amended to read as follows:

ART. 401 [26 CFR, 410.401]. MEASURE OF EMPLOYEE REPRESENTATIVES' TAX.—(*a*) *Compensation earned or paid prior to January 1, 1947.*—The employee representatives' tax with respect to compensation earned prior to January 1, 1947, is measured by so much of the compensation earned prior to such date by an individual for services rendered after March 31, 1939, as an employee representative, as does not exceed $300 for any one calendar month. The employee representatives' tax with respect to compensation paid prior to January 1, 1947, for services rendered after December 31, 1946, is measured by so much of the compensation paid prior to January 1, 1947, to an individual for services rendered after December 31, 1946, as an employee representative, as does not exceed $300 for any one calendar month. (For the purposes of the regulations in Chapter IV of this part [26 CFR, Part 410, Subpart D], see articles 5, 6, 7, and 8 [26 CFR, 410.5, 410.6, 410.7, and 410.8], relating to compensation.)

(*b*) *Compensation paid after December 31, 1946, for services rendered after such date.*—The employee representatives' tax with respect to compensation paid after December 31, 1946, for services rendered after such date is measured by so much of the compensation paid after December 31, 1946, to an individual for services rendered after such date, as an employee representative, as does not exceed $300 for any one calendar month.

PAR. 21. Article 402 [26 CFR, 410.402] is amended to read as follows:

ART. 402 [26 CFR, 410.402]. RATES AND COMPUTATION OF EMPLOYEE REPRESENTATIVES' TAX.—(*a*) *Compensation earned or paid prior to January 1, 1947.*—The rates of employee representatives' tax applicable for the respective calendar years with respect to compensation either earned or paid prior to January 1, 1947, are as follows:

	Per cent.
Compensation earned during the calendar year 1939	5½
Compensation earned during the calendar years 1940, 1941, 1942	6
Compensation earned during the calendar years 1943, 1944, 1945	6½
Compensation earned during the calendar years 1946, 1947, 1948	7
Compensation earned during the calendar year 1949 and subsequent calendar years	7½

The employee representatives' tax with respect to compensation either earned or paid prior to January 1, 1947, is computed by applying to the amount of compensation with respect to which the employee representatives' tax is imposed the rate for the calendar year in which the compensation is earned.

(*b*) *Compensation paid after December 31, 1946, for services rendered after such date.*—The rates of employee representatives' tax applicable for the respective calendar years with respect to compensation paid after December 31, 1946, for services rendered after such date are as follows:

	Per cent.
Compensation paid during the calendar years 1947, 1948	11½
Compensation paid during the calendar years 1949, 1950, 1951	12
Compensation paid during the calendar year 1952 and subsequent calendar years	12½

The employee representatives' tax with respect to compensation paid after December 31, 1946, for services rendered after such date is computed by applying to the amount of compensation with respect to which the employee representatives' tax is imposed the rate for the calendar year in which the compensation is paid.

PAR. 22. Article 806(*c*) [26 CFR, 410.806(c)] is amended by inserting at the end thereof the following:

With respect to services rendered after December 31, 1946, the records of each individual liable for employee representatives' tax shall show, in lieu of the information required by paragraph (2), above, the amount and date of each payment of compensation (including any sum withheld therefrom) earned as an employee representative and as an employee and the period of services covered by such payment.

REGULATIONS 106 [26 CFR, PART 402].

PAR. 23. Immediately preceding section 402.216 [26 CFR, 402.216], the following is inserted:

SECTION 1 OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

* * * section 1532(d) of the Internal Revenue Code are each amended as follows: After the word "if" where it first appears therein insert "(i)" and for the phrase "which services he renders for compensation" substitute the following: "or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation" * * *. Said subsections are further amended by inserting at the end of the first proviso the following: ", and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation".

SECTION 3 (e) AND (f) OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

(e) Section 1532(b) of the Internal Revenue Code is amended to read as follows:

"(b) EMPLOYEE.—The term 'employee' means any individual in the service of one or more employers for compensation: *Provided, however,* That the term 'employee' shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if (i) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence will have been established to the satisfaction of the Railroad Retirement Board before July 1947; or (ii) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive; or (iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age sixty-five or until August 1945, or (B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in clause (ii); or (iv) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within ten years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights: *Provided,* That an

individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last pay-roll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such pay-roll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a).

"The term 'employee' includes an officer of an employer.

"The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple."

(f) Section 1532(e) of the Internal Revenue Code is amended by adding at the end thereof the following new paragraph:

"A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, 'for time lost' the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment. a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost."

SECTION 402 OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

* * * * * * *

The amendments to section 1532 of the Internal Revenue Code made by sections 1 and 3 (e) and (f) shall be effective only with respect to services rendered after December 31, 1946. * * *

SECTION 3(g) OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

Subchapter B of Chapter 9 of the Internal Revenue Code is amended by adding at the end thereof the following new section:

"SEC. 1538. TITLE OF SUBCHAPTER.

"This subchapter may be cited as the 'Railroad Retirement Tax Act'."

SECTION 401 OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

Except as otherwise provided in this Act, the provisions thereof shall become effective upon approval.

REGULATIONS 107 [26 CFR, PART 403].

PAR. 24. Immediately preceding section 403.216 [26 CFR, 403.216], the following is inserted:

SECTION 1 OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

* * * section 1(e) of the Railroad Unemployment Insurance Act * * * are each amended as follows: After the word "if" where it

first appears therein insert "(i)" and for the phrase "which services he renders for compensation" substitute the following: "or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation" * * *. Said subsections are further amended by inserting at the end of the first proviso the following: ", and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation".

SECTION 2 OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

* * * section 1(i) of the Railroad Unemployment Insurance Act is amended by substituting for the word "payable" the word "paid"; and by inserting * * * at the end of said section 1(i) of the Railroad Unemployment Insurance Act, the following: "A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, 'for time lost' the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 8, the period during which such compensation will have been earned." * * *

SECTION 401 OF THE ACT APPROVED JULY 31, 1946 (PUBLIC LAW 572, SEVENTY-NINTH CONGRESS).

Except as otherwise provided in this Act, the provisions thereof shall become effective upon approval.

(This Treasury decision is issued under the authority contained in sections 1429, 1535, and 1609 of the Internal Revenue Code (53 Stat., 178, 183, 188; 26 U. S. C., 1429, 1535, 1609) and sections 1, 2, 3, 401, and 402 of the Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress), and shall be effective on the thirty-first day after the date of its publication in the Federal Register.)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved July 31, 1947.

JOSEPH J. O'CONNELL, Jr.,
Acting Secretary of the Treasury.

(Published in the Federal Register August 6, 1947.)

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SECTION 1532: Definitions.
REGULATIONS 100, ARTICLE 2: Who are employers.

Regulations amended. Changes in wording of article 2(*f*), relating to subordinate units of national railway labor organizations. (See T. D. 5574, page 180.)

SECTION 1532: Definitions.
REGULATIONS 100, ARTICLE 3: Who are employees.

Regulations amended to conform to Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress). Changes in definition of employee. (See T. D. 5574, page 180.)

SECTION 1532: Definitions.
REGULATIONS 100, ARTICLE 5: Definition of "compensation."

Regulations amended to conform to Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress). Changes in definition of "compensation." (See T. D. 5574, page 180.)

SECTION 1532: Definitions.
REGULATIONS 100, ARTICLE 6: Items included as compensation.

Regulations amended to conform to Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress). Reference to article 5. (See T. D. 5574, page 180.)

SECTION 1532: Definitions.
REGULATIONS 100, ARTICLE 7: Compensation—when earned.

Regulations amended to conform to Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress). (See T. D. 5574, page 180.)

SECTION 1536: Other laws applicable.
REGULATIONS 100, ARTICLE 806: Records.

Regulations amended to conform to Act approved July 31, 1946 (Public Law 572, Seventy-ninth Congress). (See T. D. 5574, page 180.)

SECTION 1538: Title of subchapter.
REGULATIONS 100, ARTICLE 1: Definitions of miscellaneous terms; applicability of provisions of Internal Revenue Code.

Citation of Subchapter B of Chapter 9 of the Internal Revenue Code as the Railroad Retirement Tax Act. (See T. D. 5574, page 180.)

CHAPTER 9, SUBCHAPTER C.—FEDERAL UNEMPLOYMENT TAX ACT.

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.201: General definitions and use of terms.

Designation of Act approved August 10, 1946, as Social Security Act Amendments of 1946. (See T. D. 5566, page 148.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.202: Employment prior January 1, 1940. (See T. D. 5566, page 148.)

Status of services performed prior to July 1, 1946, and prior to January 1, 1940. (See T. D. 5566, page 18.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.203: Employment after December 31, 1939.

Status of services performed after December 31, 1939. (See T. D. 5566, page 148.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.204: Who are employees.

Truck owner-drivers and coal unloaders. (See Ct. D. 1688, page 167.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.204: Who are employees.

Orchestra leaders and members. (See Ct. D. 1689, page 174.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.205: Who are employers.

Status of musicians. (See Mim. 6187, page 177.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.206: Excepted services in general.

Status of services performed after December 31, 1939. (See T. D. 5566, page 148.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.211: Officers and members of crews.

Maritime services performed after July 1, 1946. (See T. D. 5566, page 148.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.216: Railroad industry—employees and employee representatives under the Railroad Unemployment Insurance Act.

Regulations amended to conform to Act approved July 31, 1946, (Public Law 572, Seventy-ninth Congress). (See T. D. 5574, page 180.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.226(*b*): Fishing.

Status of services performed in certain fishing activities after July 1, 1946. (See T. D. 5566, page 148.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.227: Wages.

Wages in excess of $3,000 paid to an individual during any calendar year, excluded. (See T. D. 5566, page 148.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.228: Exclusion from wages.

Wages in excess of $3,000 paid to an individual during any calendar year, excluded. (See T. D. 5566, page 148.)

TAXES UNDER SOCIAL SECURITY ACT.

TITLE VIII.—TAXES WITH RESPECT TO EMPLOYMENT.

SECTION 811: Definitions.
REGULATIONS 91, ARTICLE 3: Who are employees.

Truck owner-drivers and coal unloaders. (See Ct. D. 1688, page 167.)

SECTION 811: Definitions.
REGULATIONS 91, ARTICLE 3: Who are employees.

Orchestra leaders and members. (See Ct. D. 1689, page 174.)

TITLE IX.—TAX ON EMPLOYERS OF EIGHT OR MORE.

SECTION 907: Definitions.
REGULATIONS 90, ARTICLE 205: Employed individuals.

Truck owner-drivers and coal unloaders. (See Ct. D. 1688, page 167.)

SECTION 907: Definitions.
REGULATIONS 90, ARTICLE 205: Employed individuals.

Orchestra leaders and members. (See Ct. D. 1689, page 174.)

MISCELLANEOUS TAX RULINGS.

INTERNAL REVENUE CODE.

1947–14–12588

TITLE 26—INTERNAL REVENUE.—CHAPTER I, PARTS 130 AND 143.

Exemption from taxes.

JUNE 20, 1947.

By virtue of the authority vested in me by section 307(c) of the Revenue Act of 1943 (Public Law 235, Seventy-eighth Congress), as amended by section 303 of the Revenue Act of 1945 (Public Law 214, Seventy-ninth Congress), exemption is hereby authorized: (1) from the taxes imposed by section 3465 of the Internal Revenue Code (26 U. S. C., 3465) as to any payment for telephone, telegraph, cable, radio, or leased wire services or facilities furnished directly to the United States and for which payment is made directly by the United States: *Provided*, That nothing in this authorization shall be construed to authorize any exemption as to payments for services or facilities furnished to a contractor, or other person, operating under a contract to perform work on behalf of, or to furnish articles or materials to, the United States Government or any agency thereof; (2) from the tax imposed by section 3469 of the Internal Revenue Code (26 U. S. C., 3469) as to any payment for transportation of persons furnished to the United States upon a United States Government transportation request; (3) from the tax imposed by section 3475 of the Internal Revenue Code (26 U. S. C., 3475) as to any payment for transportation of property to or from the Government of the United States shipped on a United States Government bill of lading.

NOTE.—The text set forth above affects the notes following 26 CFR, 1944 Supp., 130.44, 130.61, and the note preceding 26 CFR, 1944 Supp., 143.20.

JOSEPH J. O'CONNELL, Jr.,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 25, 1947, 8.50 a. m.)

1947–15–12600

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PARTS 316 AND 320.

Exemption from manufacturers' and retailers' excise taxes.

JUNE 30, 1947.

By virtue of the authority vested in me by section 307(c) of the Revenue Act of 1943 (Public Law 235, Seventy-eighth Congress), as amended by section 303 of the Revenue Act of 1945 (Public Law 214,

Seventy-ninth Congress), exemption is hereby authorized from the taxes imposed by Chapters 19 and 29 of the Internal Revenue Code (26 U. S. C., Chapters 19 and 29), with respect to articles sold on or after June 1, 1944, to any corporation created by Act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864 (American Red Cross), for its exclusive use, at a price not including such taxes.

NOTE.—The text set forth above affects the notes for Parts 316 and 320 of Title 26 in the 1944 Supplement to the Code of Federal Regulations.

JOSEPH J. O'CONNELL, JR.,
Acting Secretary of the Treasury.

ESTATE TAX.

SECTION 811(e)(2), AS ADDED BY SECTION 402(b) OF THE REVENUE ACT OF 1942.—GROSS ESTATE—COMMUNITY INTERESTS.

REGULATIONS 105, SECTION 81.23: Community property. 1947–23–12687 E. T. 20

Where the decedent and the surviving spouse were engaged in a joint business enterprise in which the survivor rendered regular, substantial, and gainful personal services, and not merely incidental or occasional services or household duties, property of the marital community which is shown to be economically attributable to such survivor's personal services is regarded as having been received as, or derived from, "compensation for personal services actually rendered by the surviving spouse" within the meaning of section 811(e)(2) of the Internal Revenue Code, even though the survivor did not receive compensation in the form of salary or wages.

Advice is requested as to the treatment, for Federal estate tax purposes, of property of a marital community which is economically attributable, as hereinafter described, to personal services of the surviving spouse.

Shortly after marriage the decedent and his wife opened a store. The wife, instead of performing the customary services of a housewife, worked regularly in the store with her husband until the time of his death. Her business activities included the hiring of employees, purchase of merchandise, supervision of sales, and review of applications for credit. Neither spouse drew any definite salary. All property acquired during coverture was community property under the law of the State of their residence. All such property was earned in the operation of the store, or was acquired in exchange for property so earned, or represented income on the investment of such property.

Section 811(e)(2) of the Internal Revenue Code, as added by section 402(b) of the Revenue Act of 1942, provides that there shall be included in the gross estate any community property held by the decedent and surviving spouse:

* * * except such part thereof as may be shown to have been received as compensation for personal services actually rendered by the surviving spouse or derived originally from such compensation or from separate property of the surviving spouse.

Section 811(e)(2) further provides that the interest included in the gross estate shall not be less than the value of such part of the community property as was subject to the decedent's power of testamentary disposition.

The essential purpose of this exception is shown in the report of the Committee on Finance (Senate Report No. 1631, C. B. 1942–2, 674), which states:

The amendments thus make due provision for the exclusion from the gross estate of that portion of the community property which is economically attributable to the survivor.

The report of the Committee on Ways and Means (House Report No. 2333, C. B. 1942–2, 402), after commenting on the preferential treatment accorded by the then existing statute to estates of spouses in community property States, reads in part as follows:

Your committee seeks to remedy this situation by providing that such property is includible in the gross estate of the husband unless it can be shown to

have been received as compensation for personal services actually rendered by the surviving wife or derived originally from such compensation or other separate property of the surviving wife. This follows somewhat the treatment which is accorded to joint estates under the existing law.

The committee thus recognized that generally it is through the efforts of the husband that community property is acquired, and that in the application of the amendment, only that part of the community property which was subject to the wife's power of testamentary disposition would usually be found to be includible in her gross estate, but that where the husband was the first to die, the entire community property would usually be found to be includible in his gross estate. However, where a portion of the community property is shown to be economically attributable to personal services or separate property of the surviving wife, the statutory exception is to apply.

In view of the expressed congressional intent, the terms " compensation " and " personal services " appear to have been used in the statute in a comprehensive sense. The former term is not restricted to salary or wages, nor does usage of the latter term contemplate that the personal services of the surviving spouse must have been rendered to a third person. Personal services, within the meaning of the statute, may also be rendered by spouses who are gainfully self-employed, either independently or in a joint enterprise. The Bureau has consistently held that the part of section 402 of the Revenue Act of 1942 which excludes from the gross estate of the decedent any part of the community property shown to have been received as compensation for personal services rendered by the surviving spouse or derived originally from such compensation does not mean that only such property may be excluded which was derived from salaries or wages earned by the surviving spouse.

In the instant case the surviving spouse performed in the store regular, substantial, and gainful services, the same as would be rendered by a business partner or business employee, and not merely incidental or occasional services or household duties. Even though the surviving spouse did not receive compensation in the form of salary or wages, the portion of the community property which is shown to be economically attributable to such survivor's personal services is regarded as having been received as, or derived from, " compensation for personal services actually rendered by the surviving spouse " within the meaning of the statute.

REGULATIONS 105, SECTION 81.24: Property subject to power of appointment by decedent. 1947–21–12666 T. D. 5577

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 81.—REGULATIONS RELATING TO ESTATE TAX.

Regulations 105 amended to conform to Public Law 112 (Eightieth Congress [page 334, this Bulletin]), relating to release of powers of appointment.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 105 [26 CFR, Part 81] to Public Law 112 (Eightieth Congress, first session), approved June 25, 1947 [page 334, this Bulletin], such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately following Public Law 393 (Seventy-ninth Congress, second session), which was inserted in such regulations by Treasury Decision 5523, approved July 2, 1946 [C. B. 1946–2, 163], and before section 302(f) of the Revenue Act of 1926 (as originally enacted) as set forth preceding section 81.24, the following:

PUBLIC LAW 112 (EIGHTIETH CONGRESS, FIRST SESSION), APPROVED JUNE 25, 1947.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 403(d)(3) of the Revenue Act of 1942 (relating to the release of certain powers of appointment) is hereby amended by striking out "July 1, 1947" wherever it appears and inserting in lieu thereof "July 1, 1948" * * *.

PAR. 2. Section 81.24(b), added by Treasury Decision 5239, approved March 10, 1943 [C. B. 1943, 1081], as amended by Treasury Decision 5523, approved July 2, 1946, is further amended as follows:

(A) By striking out "June 30, 1947" wherever it appears and inserting in lieu thereof "June 30, 1948."

(B) By striking from the first sentence of subparagraph (3) "(as amended by Public Law 393 (Seventy-ninth Congress), approved May 29, 1946)" and inserting in lieu thereof "(as amended by Public Law 112 (Eightieth Congress), approved June 25, 1947)."

(C) By striking out "July 1, 1947" wherever it appears and inserting in lieu thereof "July 1, 1948."

(This Treasury decision is issued under authority contained in section 3791 of the Internal Revenue Code (53 Stat., 467; 26 U. S. C., 3791) and Public Law 112 (Eightieth Congress), approved June 25, 1947.)

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

This Treasury decision shall be effective upon filing with the Division of the Federal Register.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved September 30, 1947.

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

(Filed with the Division of the Federal Register October 7, 1947, 8.55 a. m.)

EXCISE TAXES.

1947–22–12678
Mim. 6194

Termination of certain governmental excise tax exemptions and the continuation of others.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., October 9, 1947.

Collectors of Internal Revenue and Others Concerned:

Section 307 of the Revenue Act of 1943 amended various sections of the Internal Revenue Code so as to terminate, effective as of June 1, 1944, most of the excise tax exemptions formerly applicable to taxable articles or services furnished to the United States Government. In certain cases, the termination of the exemption was made prospective to take effect as of the the 1st day of the first month which begins six months or more after the date of the termination of hostilities in the recent war. Since the President has proclaimed the cessation of hostilities in the recent war as of December 31, 1946, the termination of exemption in the latter class of cases became effective on June 30, 1947.

Section 307(c) of the Revenue Act of 1943 empowered the Secretary of the Treasury to authorize, under certain conditions, excise tax exemptions with respect to taxable articles or services furnished to the United States Government. Under the provisions of such section as originally enacted, the special exemptions so authorized could be made effective only for the period terminating as of the 1st day of the first month which begins six months or more after the termination of hostilities in the recent war. However, such section was amended by section 303 of the Revenue Act of 1945 so as to remove such limitation, and the Secretary is now empowered to make these special exemptions effective indefinitely. The Secretary had authorized certain exemptions under the law as originally enacted, and these exemptions necessarily expired on June 30, 1947. As to some of these special exemptions, the Secretary recently authorized their continuance indefinitely.

The effects of the foregoing changes in exemptions with respect to the various classes of excise taxes affected thereby are summarized below:

(1) RETAILERS' EXCISE TAXES.

The exemption from the retailers' excise taxes imposed under Chapter 19 of the Internal Revenue Code in the case of articles sold at a tax-excluded price to the American Red Cross for its exclusive use, as originally authorized by the Secretary under date of June 27, 1944, has now been continued to remain in effect indefinitely through another authorization of the Secretary issued under date of June 30, 1947.[1]

(2) MANUFACTURERS' EXCISE TAXES.

A. The termination of the exemptions from the tax on sales of pistols and revolvers imposed by section 2700 of the Internal Revenue Code; from the tax on sales of radio receiving sets, etc., including

[1] See copy of Secretary's authorization on page 212.

certain components thereof, phonograph records, and musical instruments imposed by section 3404; and from the tax on certain firearms, shells, and cartridges imposed by section 3407, which had been deferred until six months after the cessation of hostilities in the recent war, became effective on June 30, 1947.

B. The exemption from the tax on tires and inner tubes imposed by section 3400 of the Internal Revenue Code in the case of sales to the War and Navy Departments as authorized by the Secretary under date of May 31, 1944, expired on June 30, 1947.

C. The exemption from the manufacturers' excise taxes imposed under Chapter 29 of the Internal Revenue Code in the case of articles sold at a tax-excluded price to the American Red Cross for its exclusive use as originally authorized by the Secretary under date of June 27, 1944, has now been continued to remain in effect indefinitely through another authorization of the Secretary issued under date of June 30, 1947.[1]

(3) TAXES ON TRANSPORTATION AND COMMUNICATION SERVICES.

A. The exemptions from the taxes on telephone, telegraph, etc., facilities imposed by section 3465 of the Internal Revenue Code; from the tax on the transportation of persons imposed by section 3469; and the tax on the transportation of property imposed by section 3475, as authorized by the Secretary under date of April 29, 1944, subject to the conditions described in such authorization, have been continued to remain in effect indefinitely through another authorization of the Secretary issued under date of June 20, 1947 [see below].

B. The exemption from the tax on the transportation of property with respect to amounts paid by or to the War Shipping Administration for the transportation of property from one point in the United States to another, except between points on the Great Lakes, as provided by section 3475(b) of the Internal Revenue Code expired on June 30, 1947.

This mimeograph supplements the information contained in Mimeograph 5681 [C. B. 1944, 589], Mimeograph 5696 [C. B. 1944, 610], and Mimeograph 5712 [C. B. 1944, 593].

Correspondence relating to this mimeograph should refer to its number and to the symbols MT.

GEO. J. SCHOENEMAN,
Commissioner.

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TITLE 26—INTERNAL REVENUE.—CHAPTER I, PART 130 AND PART 143.

Exemption from taxes.

JUNE 20, 1947.

By virtue of the authority vested in me by section 307(c) of the Revenue Act of 1943 (Public Law 235, Seventy-eighth Congress), as amended by section 503 of the Revenue Act of 1945 (Public Law 214, Seventy-ninth Congress), exemption is hereby authorized: (1) from the taxes imposed by section 3465 of the Internal Revenue Code (26 U. S. C., 3465) as to any payment for telephone, telegraph, cable, radio, or leased wire services or facilities furnished directly to the United States and for which payment is made directly by the United States: *Provided*, That nothing in this authorization shall be construed to authorize any exemption as to payments for services or facilities furnished to a contractor, or other person.

[1] See copy of Secretary's authorization on page 212.

operating under a contract to perform work on behalf of, or to furnish articles or materials to, the United States Government or any agency thereof; (2) from the tax imposed by section 3469 of the Internal Revenue Code (26 U. S. C., 3469) as to any payment for transportation of persons furnished to the United States upon a United States Government transportation request; (3) from the tax imposed by section 3475 of the Internal Revenue Code (26 U. S. C., 3475) as to any payment for transportation of property to or from the Government of the United States shipped on a United States Government bill of lading.

JOSEPH J. O'CONNELL, Jr.,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 25, 1947, 8.50 a. m.)

SUBCHAPTER C, PART 316 AND PART 320.

Exemption from manufacturers and retailers excise taxes.

JUNE 30, 1947.

By virtue of the authority vested in me by section 307(c) of the Revenue Act of 1943 (Public Law 235, Seventy-eighth Congress), as amended by section 303 of the Revenue Act of 1945 (Public Law 214, Seventy-ninth Congress), exemption is hereby authorized from the taxes imposed by Chapters 19 and 29 of the Internal Revenue Code (26 U. S. C., Chapters 19 and 29), with respect to articles sold on or after June 1, 1944, to any corporation created by Act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864 (American Red Cross), for its exclusive use, at a price not including such taxes.

JOSEPH J. O'CONNELL, Jr.,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register July 3, 1947, 8.48 a. m.)

STAMP TAXES.

REGULATIONS 71, SECTIONS 113.35 and 113.35½. 1947–21–12667
T. D. 5578

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 113.—DOCUMENTARY STAMP TAXES.

Amending sections 113.35 and 113.35½ of Regulations 71, relating to specific exemptions provided in section 1802 (b) and (c) of the Internal Revenue Code.

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

To Collectors of Internal Revenue and Others Concerned:

On July 15, 1947, notice of proposed rule making relating to the specific exemptions provided in section 1802 (b) and (c) of the Internal Revenue Code from the tax imposed by section 1802(b) on sales and transfers of capital stock was published in the Federal Register (12 F. R., 4688). No objection to the rules proposed having been received, the following amendments to Regulations 71 [26 CFR, Part 113] are hereby adopted. These amendments eliminate the requirement of various certificates and statements to cover the several exemptions under section 1802 (b) and (c) and in lieu thereof provide a single simplified form of exemption certificate. While the amendments specifically deal only with sales and transfers of stock, they will permit the use of a similar simplified exemption certificate in the case of corresponding exempt transfers of bonds under section 3481 (a) and (b) of the Internal Revenue Code since section 113.65 of Regulations 71, as amended by Treasury Decision 5202, approved December 17, 1942 [C. B. 1942–2, 258] [26 CFR, 113.65], makes the rules with respect to stock transfer tax exemptions applicable with respect to the corresponding bond transfer tax exemptions.

Regulations 71 [26 CFR, Part 113] are amended as follows:

PARAGRAPH 1. Section 113.35 [26 CFR, 113.35] is amended to read as follows:

SEC. 113.35. SPECIFIC EXEMPTIONS PROVIDED IN SECTION 1802(b).—(*a*) *Stock deposited as collateral security.*—The tax does not apply to an agreement evidencing a deposit of certificates of stock as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of certificates so deposited. The exemption applies also to transfers of stock to a nominee of the lender and from such nominee back to the lender, if the stock is at all times held as collateral security for the loan; and to the return of the stock to the borrower by the lender or his nominee upon payment of the loan. The exemption does not apply, however, to deposits of stock as collateral security made otherwise than in connection with a money loan.

The person making an exempt transfer under this subsection shall furnish and attach to the certificate an exemption certificate in substantially the form prescribed in subsection (*h*).

(*b*) *Return of stock loaned.*—The tax does not apply to the return of stock loaned; but the person returning such stock shall furnish and attach to the certificate an exemption certificate in substantially the form prescribed in subsection (*h*). (But see section 113.33(*b*).)

(*c*) *Transfer from customer to broker.*—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 ownership or interest therein, is exempt from stamp tax and does not require an exemption certificate. If, in the same circumstances, the stock is transferred to the name of the broker,

or to the name of the broker's registered nominee, the transfer is also exempt from tax, provided the broker, at the time of such transfer, furnishes and attaches to the certificate an exemption certificate in substantially the form prescribed in subsection (*h*).

For provisions relating to the registration of nominees, see section 113.153.

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 subsection (*f*) of this section.) 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.

(*d*) *Transfer from broker to customer.*—The mere delivery of a certificate of stock by a purchasing broker to his customer, if tax was paid upon the sale of the stock to such broker who has no ownership or interest therein, is not subject to stamp tax and does not require an exemption certificate.

If the stock is transferred to the purchasing broker or his 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 without payment of tax. If the tax was paid upon transfer to the purchasing broker, transfer may be made to the name of his nominee and from such nominee to the name of the purchaser, without payment of tax. However, no exemption under this paragraph will apply unless the broker at the time of the exempt transfer attaches to the stock certificate an exemption certificate in substantially the form indicated by subsection (*h*).

For provisions relating to the registration of nominees, see section 113.153.

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 tax payment, since the law requires that 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 subsection (*f*) of this section.) However, liability is not incurred by the mere delivery of a certificate of stock by an agent having no title or interest in the stock, or by a broker for the account of such agent.

(*e*) *Transfers between fiduciaries and their nominees.*—The tax does not apply to deliveries or transfers of stock from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, if the stock continues to be held by such nominee for the same purpose for which it would be held if retained by such fiduciary, or from the nominee to such fiduciary. The person making an exempt transfer under this subsection shall, at the time of such transfer, furnish and attach to the certificate an exemption certificate in substantially the form prescribed in subsection (*h*).

(*f*) *Transfers to or by a custodian.*—The tax does not apply to the delivery or transfer of stock from the owner thereof to a custodian if under a written agreement between the owner and the custodian the stock so delivered or transferred is 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 from such custodian to such owner.

The tax also does not apply to the delivery or transfer from such custodian 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 continues to be held by the nominee for the same purpose for which it would be held if retained by such custodian; or from such nominee to such custodian or the owner. No exemption is granted unless the nominee is registered in the manner provided in section 113.153.

The tax further does not apply to the delivery or transfer of stock from a custodian of the owner to another custodian of the owner, or from the registered nominee of the first custodian to the second custodian or the registered nominee of the latter, if the transfer would have been exempt under the first or second paragraphs of this subsection if made by the owner direct to the second custodian or the registered nominee of the latter.

The exemption specified in this subsection shall not be granted in any case unless the delivery or transfer is accompanied by an exemption certificate, signed by the custodian, in substantially the form prescribed in subsection (*h*).

The custodian contemplated by this subsection is a mere custodian and does not include a trustee. A mere custodian is a person to whom there are delivered or transferred shares or certificates of stock to be held or disposed of by the custodian for, and subject at all times to the instructions of, the owner and not otherwise.

(*g*) *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 Commissioner 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.

(*h*) *Exemption certificate.*—Each exempt delivery or transfer specified in subsections (*a*) to (*f*), inclusive, except as otherwise shown therein, shall be accompanied by a certificate in substantially the following form:

> It is hereby certified that the transfer of the attached shares is made under such circumstances as to come within one of the exemptions specified in section 1802 of the Internal Revenue Code and that evidence in proof of the exemption is maintained by the undersigned and is available for inspection by internal revenue officers.
>
> ---
> (Signature.)

PAR. 2. Section 113.35½, as added by Treasury Decision 5202, approved December 17, 1942 [26 CFR, 113.35a], is amended as follows:

(A) By striking out "(*a*)" immediately preceding the first sentence, and by changing the second sentence to read as follows:

However, no exemption under section 1802(c) may be allowed unless the delivery or transfer is accompanied by a certificate in substantially the form prescribed in section 113.35(*h*).

(B) By striking out subsection (*b*).

(This Treasury decision is issued under the authority contained in section 3791 of the Internal Revenue Code (53 Stat., 467; 26 U. S. C., 3791).)

This Treasury decision, being within the parenthetical exception to section 4(c) of the Administrative Procedure Act, shall be effective upon its filing for publication in the Federal Register.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved September 30, 1947.

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

(Filed with the Division of the Federal Register October 7, 1947, 8.55 a. m.)

MISCELLANEOUS RULINGS.

SECTION 3 OF THE VINSON ACT (48 STAT., 503, 505), AS AMENDED.

1947–21–12664
Mim. 6185

Reports required under profit-limiting provisions of the Vinson Act.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., September 15, 1947.

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

The repeal of the excess profits tax again brought into effect the profit-limiting provisions (section 3) of the Vinson Act (48 Stat., 503, at 505), as amended by the Act of June 25, 1936 (49 Stat., 1926), and the Act of April 3, 1939 (53 Stat., 555, at 560), with respect to excess profit on contracts for naval vessels and aircraft and contracts for Army aircraft. As to the scope of the Act upon its reapplication, see I. T. 3822 (C. B. 1946–2, 186). There has been no repeal of the Vinson Act. Reports under such Act are required to be filed in accordance with the provisions of sections 17.15 and 17.16 of Treasury Decision 4906 (C. B. 1939–2, 404, 419–420), relating to excess profit on contracts and subcontracts for naval vessels and aircraft, and sections 16.14 and 16.15 of Treasury Decision 4909 (C. B. 1939–2, 422, 433–434), relating to excess profit on contracts and subcontracts for Army aircraft.

Upon the completion of any contract or subcontract coming within the scope of the reapplication of the Vinson Act, the contracting party is required to make a report, under oath, to the Secretary of the Navy or the Secretary of War, as the case may be.

In addition, annual reports of such contracts and subcontracts completed by a contracting party within an income-taxable year are required to be filed on or before the 15th day of the ninth month following the close of the contracting party's income-taxable year with the collector of internal revenue for the collection district in which the contracting party's Federal income tax return is required to be filed.

However, a general extension of time is hereby granted to contractors and subcontractors to and including March 15, 1948, for filing annual reports of profit under the profit-limiting provisions of the Vinson Act, as amended, for the calendar year 1946 and for fiscal years ended in 1947 prior to June 1, 1947. Contractors and subcontractors who take advantage of this extension of time will be charged interest at the rate of 6 per cent per annum on the unpaid installments of excess profit, if any, from the original due date until paid. The foregoing extension

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of time is granted under section 53(a)(2) of the Revenue Act of 1934, as made applicable by section 651 of the Internal Revenue Code.

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

GEO. J. SCHOENEMAN,
Commissioner.

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

1947–22–12675
I. T. 3874

INTERNAL REVENUE CODE.

Postponement of due dates for filing individual income tax returns and for payment of the tax for the years 1941 through 1946 where such due dates, as postponed by section 3804 of the Internal Revenue Code, as amended by Public Law 384, Eightieth Congress, approved August 8, 1947, would fall on December 31, 1947.

Advice has been requested as to the policy which will be followed in the application of section 3804 of the Internal Revenue Code, as amended by Public Law 384, Eightieth Congress, approved August 8, 1947 (page 348, this Bulletin), with respect to the income tax returns of individuals for the years 1941 through 1946, in any case in which the due date, as postponed by section 3804 of the Code as so amended, for filing such returns and paying the tax would fall on December 31, 1947. In such cases, it will be the policy of the Commissioner to grant to such individuals a further postponement to whichever of the following dates is the earliest:

(1) The 15th day of the sixth month following the month in which the individual ceases (except by reason of death or incompetency) to be outside the Americas or serving as a member of the military or naval forces of the United States on sea duty or outside the continential United States; or

(2) June 15, 1948; or

(3) The 15th day of the third month following the month in which an executor, administrator, or a conservator of the estate of the taxpayer qualifies.

A taxpayer desiring to take advantage of the above-mentioned postponement should attach to each of his returns a statement showing the periods of time after December 6, 1941, and prior to January 1, 1948, including dates, during which the taxpayer has been outside the Americas or, if a member of the military or naval forces of the United States, has been serving on sea duty or outside the continental United States.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

SALARY STABILIZATION.

1947–21–12670
T. D. 5579

TITLE 29—LABOR.—CHAPTER VIII, PART 1003.—PROCEDURE RELATIVE TO A DETERMINATION THAT SALARIES OR WAGES SUBJECT TO THE JURISDICTION OF THE NATIONAL WAGE STABILIZATION BOARD WERE PAID IN CONTRAVENTION OF THE ACT OF OCTOBER 2, 1942, AS AMENDED.

To provide for the abolition of the Salary Stabilization Unit and for the transfer of its powers and duties to the Income Tax Unit of the Bureau of Internal Revenue.

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

To Collectors of Internal Revenue and Others Concerned:

The powers and duties heretofore conferred upon the Head of the Salary Stabilization Unit of the Bureau of Internal Revenue under the provisions of Treasury Decision 5176 [C. B. 1942–2, 347] (7 F. R., 8820), as amended by Treasury Decision 5511 [C. B. 1946–1, 308] (11 F. R., 4724 (29 CFR, Part 1001), are hereby transferred to the Deputy Commissioner of the Income Tax Unit of the Bureau of Internal Revenue, and the Salary Stabilization Unit, created under the provisions of Treasury Decision 5176 (29 CFR, Part 1001), is hereby abolished.

In view of the abolition of the Salary Stabilization Unit and the transfer to the Deputy Commissioner of the Income Tax Unit of the powers and duties conferred upon the Head of the Salary Stabilization Unit, the words "Salary Stabilization Unit," wherever they might appear in the regulations of the Commissioner of Internal Revenue relating to the stabilization of wages and salaries under the Act of October 2, 1942, as amended, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes" (56 Stat., 765; 50 U. S. C., App., sections 961–971), or in mimeographs, memoranda, orders, or forms issued under the above-mentioned regulations, on and after the effective date of this Treasury decision, shall be read: Income Tax Unit. Likewise, the words "Deputy Commissioner of the Salary Stabilization Unit" or the words "Head, Salary Stabilization Unit" shall be read: Deputy Commissioner of the Income Tax Unit.

This Treasury decision shall be effective upon filing for publication with the Federal Register.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved October 10, 1947.

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

(Filed with the Division of the Federal Register October 15, 1947, 8.45 a. m.)

ALCOHOL TAX.

INTERNAL REVENUE CODE.

1947–15–12602
T. D. 5571

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 194.—WHOLESALE AND RETAIL DEALERS IN LIQUORS.

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

To District Supervisors, Collectors of Internal Revenue, and Others Concerned:

1. On May 6, 1947, notice of proposed rule making regarding the keeping of records by wholesale liquor dealers was published in the Federal Register (12 F. R., 3020).

2. After consideration of all such relevant matter as was presented by interested persons regarding the proposal, the following amendments to sections 194.27(*a*), 194.75 (*a*) and (*b*), 194.76, and 194.78(*a*) of Regulations 20, approved June 6, 1940 (26 CFR, Cum. Supp., Part 194), are hereby adopted.

3. These amendments are designed to supplement existing regulations by providing more definite instructions regarding the keeping of records involving the receipt and disposal of distilled spirits through transactions in warehouse receipts.

4. Regulations 20, approved June 6, 1940 (26 CFR, Cum. Supp., Part 194), as amended, are hereby amended as follows:

SECTION 194.27. WAREHOUSE RECEIPTS COVERING SPIRITS.—(*a*) Since the sale of warehouse receipts for spirits is equivalent to the sale of spirits, a person engaged in the business of selling, or offering for sale, warehouse receipts for spirits stored in Government bonded warehouses, or elsewhere, incurs liability to special tax as a dealer in liquors, unless exempted by the provisions of sections 194.62 to 194.73, inclusive.

SEC. 194.75. RECORDS TO BE KEPT BY WHOLESALE LIQUOR DEALERS.—(*a*) Every wholesale dealer in liquors who sells distilled spirits (by warehouse receipt or otherwise) shall keep Record 52, "Wholesale Liquor Dealer's Record," and render monthly transcripts, Form 52A and 52B, "Wholesale Liquor Dealer's Monthly Report," and Form 338, "Wholesale Liquor Dealer's Monthly Report (Summary of Forms 52A and 52B)." Separate Records 52 shall be maintained and separate Forms 338 shall be rendered for (1) the recording of transactions in warehouse receipts and (2) the recording of receipts and removal of spirits. The Record 52 and Form 338 covering transactions in warehouse receipts shall be so identified.

(1) The receipt and disposal of non-negotiable warehouse receipts issued by a warehouseman to the owner of spirits as evidence of the custody of the spirits need not be entered in the Record 52. The receipt and disposal of other warehouse receipts or the surrender thereof to a warehouseman to effect changes in identification of the spirits represented thereby (by change of package or bottling) must be recorded in Record 52.

(*b*) Daily entries shall be made on Record 52 of all distilled spirits received and disposed of (by warehouse receipt or otherwise), as indicated by the headings of the various columns, and in accordance with the instructions printed thereon and contained in pertinent regulations, not later than the close of business of the day on which the transactions occur: *Provided*, That if the keeping of such separate record is approved by the district supervisor, a wholesale liquor dealer

may keep a separate record of the disposal of distilled spirits, showing the data required to be entered on Record 52, but the daily entries of the disposal of distilled spirits shall be made on Record 52 not later than the close of business of the following business day.

* * * * * * *

SEC. 194.76. SEPARATE RECORD OF SERIAL NUMBERS OF CASES.—Serial numbers of cases of distilled spirits disposed of need not be entered on Record 52: *Provided*, That the proprietor keeps at his place of business a separate record, showing such serial numbers, with necessary identifying data, including the date of removal (or the date of disposal in the case of warehouse receipts) and the name and address of the person or persons to whom sold and consigned: *Provided further*, That the keeping of such record is approved by the district supervisor. Such separate record may be kept in book form (including loose-leaf books) or may consist of commercial papers, such as invoices or bills. Such books, invoices, and bills shall be preserved for a period of four years and in such manner that the required information may be readily ascertained therefrom, and, during such period, shall be available during business hours for inspection and the taking of abstracts therefrom by revenue officers. If a record in book form is kept, entries shall be made on such separate approved record not later than the close of business of the day on which the transactions occur. The dealer shall note on Record 52, in the column for reporting serial numbers of cases of spirits disposed of, "Serial numbers shown on commercial records per authority, dated ----------." (Sec. 2857, I. R. C.)

SEC. 194.78. PLACE WHERE RECORD 52 SHALL BE KEPT.—(*a*) Every wholesale dealer in liquors shall keep the Record 52 covering transactions in warehouse receipts at the place of business covered by the wholesale liquor dealer special tax stamp, and, except as provided in paragraph (*b*) of this section, shall keep Records 52 covering the receipt and removal of spirits at such premises.

5. This Treasury decision shall be effective on the thirty-first day after the date of its publication in the Federal Register.

(Sections 2857, 2858, 3254, and 3791 of the Internal Revenue Code (26 U. S. C. A., 2857, 2858, 3254, and 3791).)

JOSEPH D. NUNAN, Jr.,
Commissioner of Internal Revenue.

Approved July 8, 1947.

JOSEPH J. O'CONNELL, Jr.,
Acting Secretary of the Treasury.

(Published in the Federal Register July 12, 1947.)

REGULATIONS 7 (1945), SECTIONS 178.8, 178.10, 178.12, etc. 1947–19–12642
T. D. 5575

TITLE 26—INTERNAL REVENUE—CHAPTER I, SUBCHAPTER C, PART 178.—WINE.

Amending Regulations 7.

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

To District Supervisors and Others Concerned:

1. The Act of July 14, 1947 (Public Law 186, Eightieth Congress [page 336, this Bulletin]), amends the Internal Revenue Code as follows:

1. Section 2801(e)(4) of the Internal Revenue Code is amended (a) by deleting from the second sentence thereof the words "having no interior communication with any other department or part of such premises", and (b) by adding immediately at the end thereof the following new sentence: "The provisions of this paragraph shall apply in the same manner and to the same extent to aperitif wines other than vermouth."

2. Section 3043(a), Internal Revenue Code, is amended by deleting the colon in the second sentence thereof and inserting in lieu thereof the following: ", nor to apply to or prohibit the fermentation of grape wine retsina with resin on bonded winery premises:".

3. Section 3044(b), Internal Revenue Code, is amended by deleting the words "and not more than 13 per centum of alcohol after complete fermentation," and inserting in lieu thereof the words "and not more than 13 per centum of alcohol after complete fermentation or, if sweetened, after complete fermentation and sweetening,".

4. Section 3045, Internal Revenue Code, is amended by deleting the period at the end thereof and adding the following: ": *Provided*, That in the case of wines produced from loganberries, currants, or gooseberries, respectively, having a normal acidity of twenty parts or more per thousand, the volume of the resultant product may be increased more than 35 per centum but not more than 60 per centum by the addition of sugar and water solution under such regulations as the Commissioner of Internal Revenue may prescribe".

2. Notice and public procedure under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, are found to be unnecessary in connection with the issuance of these regulations for the reason that the sole purpose of the law, which the regulations are designed to implement, is to remove restrictions to permit (*a*) interior communication between the vermouth department and other departments or parts of a bonded winery, (*b*) the production of aperitif wines in the vermouth department of the winery, (*c*) the production of retsina wine on bonded winery premises, (*d*) wines produced with sugar-water solution to be fermented somewhat in excess of 13 per cent of alcohol, so that subsequent sweetening will not lower the alcoholic content below the present 13 per cent limit, and (*e*) the acidity of loganberry, currant, and gooseberry wines to be adjusted with a sugar-water solution not in excess of 60 per cent (instead of the present 35 per cent) of the volume of the resultant product. It is also found necessary to make these regulations immediately effective to permit winemakers to benefit by the legislation during the current vintage season and to avoid confusion in operations and the keeping of records.

3. Pursuant to the foregoing provisions of law and sections 3176 and 3901, Internal Revenue Code, Regulations 7 (26 CFR, Part 178) are hereby amended in these respects:

(*a*) Sections 178.8(*c*), 178.10, 178.12, 178.24, 178.27, 178.45(*c*), 178.82, 178.87, 178.129, 178.137, 178.160, 178.161, 178.183, 178.184, 178.185, 178.199, 178.200, 178.215, 178.238, 178.263, 178.264, 178.310, 178.370, 178.375, 178.377, 178.378, 178.382, 178.383, 178.398, and 178.401 are amended by inserting the term " or other aperitif wine " immediately after the word " vermouth " wherever such word appears in such sections.

(*b*) Section 178.143 is amended by deleting the words " shall not contain more than 13 per cent of alcohol after complete fermentation " and inserting in lieu thereof the words " shall not contain more than 13 per cent of alcohol after complete fermentation or, if sweetened, after complete fermentation and sweetening."

(*c*) Section 178.144 is amended by deleting the words " may not contain more than 13 per cent of alcohol after complete fermentation " and inserting in lieu thereof the words " may not contain more than 13 per cent of alcohol after complete fermentation or, if sweetened, after complete fermentation and sweetening," and by deleting the sentence " The alcoholic content of the wine must not exceed 13 per cent by volume at any time during the process of fermentation."

(*d*) Section 178.149(*a*) is amended by deleting the words "which contain more than 13 per cent alcohol by volume after fermentation" and inserting in lieu thereof the words "which contain more than 13 per cent alcohol by volume after complete fermentation or, if sweetened, after complete fermentation and sweetening."

(*e*) Sections 178.5, 178.21, 178.136, 178.145, 178.150, 178.152, 178.153, 178.157, 178.159, 178.162, 178.182, 178.186, 178.187, and 178.211 are amended, and sections 178.57a, 178.136a, and 178.211a are added, as follows:

SEC. 178.5. DEFINITIONS.—

* * * * * * *

(*a*) a "Aperitif Wine" shall mean aperitif wine manufactured in accordance with section 2801(e)(4), I. R. C., as amended, and sections 178.182 to 178.187, inclusive, of these regulations, as amended, and conforming to the standards of identity for aperitif wines prescribed in Regulations 4 (27 CFR, Part 4), issued under the Federal Alcohol Administration Act.

* * * * * * *

(*z*) "Wine," when used without qualification, includes all still wines, champagne and other sparkling wines, artificially carbonated wine, retsina wine, and vermouth or other aperitif wine produced on bonded winery premises.

* * * * * * *

SEC. 178.21. VERMOUTH OR OTHER APERITIF WINE DEPARTMENT.—Winemakers desiring to manufacture vermouth or other aperitif wine must provide a separate department, consisting of a room or rooms, for such operations in the bonded winery. The department must be of sufficient size to permit manufacturing operations and the storage of supplies necessary or incidental to the manufacture of vermouth or other aperitif wine on bonded winery premises. The entrance to the department may be from any part of the winery premises (other than the fortifying room) or it may lead directly into a public street, yard, or passageway. (Secs. 2801(e)(4), 3176, 3901, I. R. C.)

SEC. 187.57a. CONSENTS OF SURETY, COVERING APERITIF WINE OR RETSINA WINE.—Where a winemaker's operations are covered by a bond on Form 699 or Form 700, or a bond on Form 700–A, revised January, 1946, or prior thereto, and such winemaker desires to produce or receive aperitif wine (other than vermouth) or retsina wine, he shall file consent of surety on Form 1533 covering such operations. (Secs. 3040, 3176, 3901, I. R. C.)

SEC. 178.136. ESSENCES, FLAVORING, COLORING, ETC.—Except as provided in sections 178.136a and 178.137, winemakers may not add essences, extracts, flavoring, coloring matter, or similar nonfermentable materials to wine (including the juice or fruit) on bonded premises, before, during, or after fermentation. The addition of such materials to wine, or to the juice or fruit from which the wine is made, makes the product a spurious, imitation, or compound liquor within the meaning and contemplation of section 3254(g), I. R. C., and for that reason constitutes rectification. If a winemaker desires to add such materials to wine (except in the production or manufacture of retsina wine, vermouth, or other aperitif wine), he must tax-pay and remove the wine to a rectifying plant, where the materials may be added and the rectification tax of 30 cents a proof gallon paid on the finished product. (Secs. 2800(a)(5), 2801(e)(4), 3036(a), 3044, 3045, 3176, 3254(g), 3901, I. R. C.)

SEC. 178.136a. RETSINA WINE.—The restriction relative to the addition of flavoring material to wine does not apply to the production of retsina wine by the addition of resin before or during fermentation of grape wine, since the law makes special provision therefor. A statement of formula and process on Form 698—Supplemental must be filed pursuant to the provisions of section 178.156. The authority of law to produce retsina wine on bonded winery premises may not be construed as authorizing the production of products similar to retsina wine. (Secs. 3043, 3176, 3901, I. R. C.)

SEC. 178.145. FRUIT AND BERRY WINES.—

* * * * * * *

(*a*) *Use of dry sugar for fermenting.*—Where it is desired to use dry sugar for the purpose of perfecting such wines according to standards, as authorized in the preceding paragraph, there may be added to the unfermented juice sufficient

dry sugar to raise the sugar content of the juice to a point necessary to produce (ferment) wine with an alcoholic content of not more than 13 per cent by volume after complete fermentation or, if the wine is to be sweetened, after complete fermentation and sweetening. The sugar content, both natural and added, required to produce 13 per cent alcohol by volume is 20.24 degrees Balling, after correction for temperature and deduction of 2 degrees for nonsugar solids. See Tables II, III, and IV in the Appendix, showing the Balling correction for temperature and nonsugar solids, and the quantity of sugar required, according to the Balling of the juice, to ferment 13 per cent alcohol by volume.

(*b*) *Amelioration.*—Where the juice or wine has natural deficiencies, whether dry sugar has been added as provided in paragraph (*a*) or not, there may be added to the juice or to the wine, or both, a solution of water and pure cane, beet, or dextrose sugar, containing, respectively, not less than 95 per cent of actual sugar, calculated on a dry basis, for the purpose of correcting such deficiencies: *Provided*, That the resulting product (1) must contain not less than 5 parts per thousand of acid before fermentation, (2) may not contain more than 13 per cent of alcohol after complete fermentation or, if sweetened, after complete fermentation and sweetening, and (3) may not be increased more than 35 per cent in volume (60 per cent where loganberries, currants, or gooseberries are used). The quantities of water and sugar composing the solution shall be in the proportion necessary to correct the natural deficiencies in the juice or wine. Where both the pulp and juice are deposited in the fermenters, the volume of the pulp must be excluded in calculating the quantity of sugar-water solution that may be added. The volume of the juice or wine, including the increase therein caused by the addition of the dry sugar where used, must be not less than 65 per cent of the resulting product (40 per cent where loganberries, currants, or gooseberries are used) and the sugar and water solution must be not more than 35 per cent of the resulting product (60 per cent where loganberries, currants, or gooseberries are used). The following table shows the maximum quantity in gallons of sugar-water solution that may be added to each thousand gallons of juice (exclusive of the pulp), based on the acid expressed in parts per thousand of citric acid (malic acid for apple juice):

Parts per 1,000 fixed acid.	Gallons of juice.	Gallons of sugar-water allowed.	Parts per 1,000 fixed acid.	Gallons of juice.	Gallons of sugar-water allowed.
5.1	1,000	20.0	6.5	1,000	300.0
5.2	1,000	40.0	6.6	1,000	320.0
5.3	1,000	60.0	6.7	1,000	340.0
5.4	1,000	80.0	6.8	1,000	360.0
5.5	1,000	100.0	6.9	1,000	380.0
5.6	1,000	120.0	7.0	1,000	400.0
5.7	1,000	140.0	7.1	1,000	420.0
5.8	1,000	160.0	7.2	1,000	440.0
5.9	1,000	180.0	7.3	1,000	460.0
6.0	1,000	200.0	7.4	1,000	480.0
6.1	1,000	220.0	7.5	1,000	500.0
6.2	1,000	240.0	7.6	1,000	520.0
6.3	1,000	260.0	For all acidity over 7.6	1,000	[1] 538.4
6.4	1,000	280.0			

[1] Limitation not applicable to loganberry, currant, or gooseberry juice.

A maximum of 1,500 gallons of sugar-water solution may be added to each 1,000 gallons of loganberry, currant, or gooseberry juice. Where all of the sugar-water solution authorized is not used prior to or during fermentation, the remainder or any part thereof may be used, in addition to the dry sugar authorized in paragraph (*b*), to sweeten the wine after fermentation, provided the unfermented sugar content of the wine is not increased beyond 15 per cent by weight, or 20 per cent by weight where the wine is made from fruit (other than grapes) having a natural acid content not less than 7.5 parts per thousand.

(1) *Records.*—When both the juice and the resulting wine are ameliorated with a sugar-water solution, there must be indicated on Form 701 that the resulting wine is to be further ameliorated, and there must be indicated on Form 702

that the juice is also ameliorated, in order that it may be determined that the total quantity of sugar-water solution used in both the juice and the resulting wine does not exceed the 35 per cent limitation (60 per cent in the case of loganberries, currants, or gooseberries). Each lot of juice and resulting wine so ameliorated must be numbered as Lot 1, Lot 2, etc., the same lot number being shown on Form 701 in which the amelioration of the juice is reported and on Form 702 in which the amelioration of the resulting wine is reported, together with the notation "See Form 702 for further amelioration," or "See Form 701 for prior amelioration," as the case may be.

* * * * * * *

SEC. 178.150. ILLUSTRATIONS.—Wines made by the following methods come within the classification of nonstandard wines:

(1) the use of sugar in excess of the 11 per cent limitation for sweetening;

(2) the development of more than 13 per cent of alcohol by fermentation after the addition of sugar, or sugar-water solution within the 35 per cent limitation (60 per cent limitation for loganberries, currants, or gooseberries), where the alcoholic content is not reduced to 13 per cent or less by the addition of sweetening material after fermentation; and

(3) the use of invert sugar, maltose, levulose, or glucose; or of cane, beet, or dextrose sugar containing less than 95 per cent of actual sugar calculated on a dry basis. (Secs. 3036(a), 3044, 3045, 3176, 3901, I. R. C.)

SEC. 178.152. LABELING.—Substandard wines must be marked or labeled "Substandard ---------- Wine," the blank to be filled in with the name of the fruit, berry, or other agricultural product used. In each instance all parts of the designation must appear in lettering of substantially the same size and kind. (Secs. 3176, 3901, I. R. C.)

SEC. 178.153. ILLUSTRATIONS.—Wines made by the following methods come within the classification of substandard wines:

(1) the use of a sugar-water solution in excess of the 35 per cent limitation (60 per cent in the case of loganberry, currant, or gooseberry wine), or water in excess of the 10 per cent limitation;

(2) the reduction of the acid content below 5 parts per thousand by the addition of water or sugar-water solution; and

(3) wines required to be labeled "substandard" under section 21, class 8(c), Regulations No. 4 (27 CFR, Part 4). (Secs. 3176, 3901, I. R. C.)

SEC. 178.157. RECTIFICATION.—The filing of a statement of formula and process does not give the winemaker the privilege of making a rectified product on bonded winery premises. Except as provided in section 178.137, caramel, "True Fruit" flavoring extracts, or other coloring and flavoring materials (including juice or wine from another kind of fruit or berry), may be added to wine, only after the wine has been tax-paid and removed to a rectifying plant. Except as provided in section 178.136a, coloring or flavoring material may not be added to the juice or fruit before, during, or after fermentation. The mixing together of unfermented juices of different fruits or berries or agricultural products for the purpose of producing a formula wine is not rectification. (Secs. 2800(a).(5), 2801(e)(4), 3043, 3176, 3254(g), 3901, I. R. C.)

SEC. 178.159. MATERIALS.—Formula wines must be produced by the fermentation of suitable fermentable materials, as provided in section 178.133. Nonfermentable coloring or flavoring materials may not be used in the manufacture, including cellar treatment, of such wines, except as authorized in the manufacture of vermouth, or other aperitif wine, retsina wine, champagne, sparkling wine, and artificially carbonated wine. The use of such nonfermentable coloring or flavoring materials constitutes rectification and may be done only at a rectifying plant. (Secs. 2800(a)(5), 2801(e)(4), 3176, 3254(g), 3901, I. R. C.)

SEC. 178.162. BLENDING.—A formula wine (other than heavy bodied blending wine) may not be blended with a wine made under another formula, nor with standard wine, except as provided in section 178.210. (Secs. 3176, 3254(g), 3901, I. R. C.)

SEC. 178.182. MANUFACTURE.—Vermouth or other aperitif wine, conforming to standards of identity for vermouth or such other aperitif wine prescribed in Regulations No. 4 (27 CFR, Part 4), may be manufactured with fortified sweet wine on bonded winery premises in accordance with approved formulas and processes, as provided in sections 178.183 to 178.187, inclusive. The vermouth or other aperitif wine may be manufactured only in a separate department of the winery premises. Such department shall be known as the vermouth or other aperitif wine department. No wine other than fortified sweet wine may be

used in the manufacture of vermouth, or other aperitif wine, on bonded winery premises. No distilled spirits may be added to fortified sweet wine used in the manufacture of vermouth or other aperitif wine or to the vermouth or other aperitif wine during or after its manufacture: *Provided*, That approved essences, in the manufacture of which distilled spirits are used as an extractive and solvent, may be used in manufacturing vermouth or other aperitif wine in accordance with section 178.183. (Secs. 2801(e)(4), 3176, 3901, I. R. C.)

SEC. 178.186. PRODUCTS OTHER THAN VERMOUTH OR APERITIF WINE.—Flavored wines and other specialties may not be manufactured on bonded winery premises under the guise of vermouth or other aperitif wine. Only true vermouth or other aperitif wine may be made in the vermouth or other aperitif wine department of a winery, and the product must be definitely designated and sold as vermouth or as aperitif wine, as the case may be. (Secs. 2800(a)(5), 2801(e)(4), 3176, 3254(g), 3901, I. R. C.)

SEC. 178.187. STORAGE, ETC., AFTER MANUFACTURE.—Upon completion of manufacture in the vermouth or other aperitif wine department of the winery, the vermouth or other aperitif wine may be stored, blended, bottled, shipped, etc. (but not fortified or carbonated), in the same manner as wine, in the vermouth or other aperitif wine department, or elsewhere in the winery if it is kept separate and apart from wine and the containers are marked vermouth or aperitif wine, as the case may be. (Secs. 3176, 3901, I. R. C.)

SEC. 178.211. VERMOUTH OR OTHER APERITIF WINES.—Vermouths may be mixed or blended with each other for the sole purpose of perfecting them according to commercial standards, but may not be mixed or blended with any other wines. Likewise, the same kinds of aperitif wines may be mixed or blended with each other for the sole purpose of perfecting them according to commercial standards, but may not be mixed or blended with other kinds of aperitif wines, or with any other wines. (Secs. 3043, 3176, 3901, I. R. C.)

SEC. 178.211a. RETSINA WINE.—Retsina wines may be mixed or blended with each other for the sole purpose of perfecting them according to commercial standards, but such wines may not be mixed or blended with other wines. (Secs. 3043, 3176, 3901, I. R. C.)

4. This Treasury decision shall be effective upon filing for publication in the Federal Register.

(Sections 2800, 2801, 3036, 3040, 3043, 3044, 3045, 3176, 3254, and 3901 of the Internal Revenue Code (26 U. S. C. A., 2800, 2801, 3036, 3040, 3043, 3044, 3045, 3176, 3254, and 3901).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 28, 1947.

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

(Filed with the Division of the Federal Register September 5, 1947, 8.46 a. m.)

INDUSTRIAL ALCOHOL.

INTERNAL REVENUE CODE.

REGULATIONS 3, SECTIONS 182.6 (*h*) and (*a*–1), 182.94, 182.99, etc. 1947–15–12603 T. D. 5568

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 182.—INDUSTRIAL ALCOHOL.

Amending Regulations 3.

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

To District Supervisors and Others Concerned:

1. On April 23, 1947, a notice of proposed rule making regarding industrial alcohol was published in the Federal Register (12 F. R., 2605).

2. After consideration of all such relevant matter as was presented by interested persons regarding the proposal, the following amendments of Regulations 3, "Industrial Alcohol" (26 CFR, Part 182), sections 182.6 (*h*) and (*a*–1), 182.94, 182.99, 182.102, 182.175, 182.179, 182.182, 182.183, 182.229(*g*), 182.371(*a*), 182.377(*a*), 182.383(*a*), 182.389(*a*), 182.514, 182.706, 182.728, 182.731, 182.738, 182.750, 182.752(*b*), 182.754 (paragraph 1), 182.785, 182.786, 182.798, 182.802, 182.811, 182.812 (paragraph 1), 182.813, 182.816, 182.908, 182.994, 182.995, 182.997, and 182.1006 are hereby adopted.

3. These amendments are designed to terminate the transportation in tank trucks of tax-free alcohol and tax-free distilled spirits authorized by regulations issued during the national emergency due to the shortage of transportation facilities, but considered a jeopardy to the revenue during peacetime; to strengthen the requirements for the transportation in tank trucks of denatured alcohol; and to authorize the transportation in tank trucks of butyl alcohol, acetone, ether and fusel oil produced by industrial alcohol plants.

ARTICLE IV.—DEFINITIONS.

SEC. 182.6. DEFINITIONS.—(*h*) "Carrier" shall mean a person or agency regularly engaged in the transportation of movable property by railroad, steamship, ferryboat, barge, motortruck, airplane, or other vehicle capable of being used as a means of transportation on land, in water, or through the air. The term "motor carrier" shall mean a motor carrier licensed under the Motor Carrier Act of 1935 or an applicable State law, the consignor or consignee acting as a private carrier, or a private carrier employed by, or acting as agent for, the consignor or consignee.

(*a*–1) "Tank car" shall mean a railroad tank car conforming to the requirements of these regulations. "Tank truck" shall mean a motor driven tank truck, including tank truck trailer, conforming to the requirements of these regulations and of a capacity of not less than 1,000 gallons. (Secs. 3105, 3124, 3176, I. R. C.)

ARTICLE VII.—EQUIPMENT.

DENATURING PLANTS.

SEC. 182.94. DENATURED ALCOHOL STORAGE TANKS.—The proprietor of the denaturing plant shall provide substantially constructed denatured alcohol storage tanks for the storage of all alcohol denatured by him, unless permission is granted

by the district supervisor to use mixing tanks for the storage of denatured alcohol or the denatured alcohol is drawn into packages or other portable containers for immediate shipment or storage in the denatured alcohol storeroom, or transferred to tank cars or tank trucks for immediate shipment, or transferred by pipe line to contiguous premises operated by the denaturer. Where denatured alcohol storage tanks are provided, they shall be constructed and secured in conformity with the provisions of section 182.74, and must be equipped with a suitable measuring device whereby the actual contents will be correctly indicated: *Provided*, That wooden storage tanks may be used for formulas for which metal storage tanks are unsuitable. Each such tank shall have plainly and legibly painted thereon the words "Denatured Alcohol Storage Tank," followed by its serial number and capacity in wine gallons. The denatured alcohol storage tanks must be located in the denaturing plant: *Provided further*, That the proprietor may be permitted to store denatured alcohol in tanks constructed in conformity with these provisions not necessarily located in a room or building, provided they are permanently fixed and of such size that they may not be readily removed. (Secs. 2829, 3105, 3124, 3176, I. R. C.)

SPECIALLY DENATURED ALCOHOL USERS' PREMISES.

SEC. 182.99. TANKS.—If the proprietor desires to receive specially denatured alcohol in tank cars, tank trucks, or by pipe line from a denaturing plant on contiguous premises operated by him, he must provide tanks for the storage of the specially denatured alcohol so received by him. Each such tank must be constructed of metal, and shall be of uniform dimensions and equipped with a suitable measuring device whereby the actual contents will be correctly indicated: *Provided*, That wooden tanks may be used for formulas for which metal tanks are unsuitable. Each such tank shall have plainly and legibly painted thereon the words "Specially Denatured Alcohol Storage Tank," followed by its serial number and capacity in wine gallons. The tanks shall be equipped for locking in such a manner as to prevent access to the denatured alcohol. (Secs. 2829, 3105, 3124, 3176, I. R. C.)

SPECIALLY DENATURED ALCOHOL BONDED DEALERS' PREMISES.

SEC. 182.102. TANKS.—If specially denatured alcohol is received in tank cars or tank trucks, the proprietor must provide suitable storage tanks for the storage of such alcohol. Each such tank must be constructed in the manner prescribed in section 182.99 and all openings affording access to the contents shall be equipped for locking. Each such tank must have plainly and legibly painted thereon the words "Specially Denatured Alcohol Storage Tank," followed by its serial number and capacity in wine gallons, and be equipped with a suitable measuring device, whereby the actual contents will be correctly indicated. (Secs. 2829, 3105, 3124, 3176, I. R. C.)

ARTICLE IX.—QUALIFYING DOCUMENTS.

CARRIERS.

SEC. 182.175. APPLICATION, FORM 144.—Every person desiring to transport tax-free alcohol or specially denatured alcohol must file Form 144, "Application for Permit to Transport Tax-free or Specially Denatured Alcohol," in triplicate, for permit so to do. The carrier will specify the mode of transportation, such as railroad, express company, steamship, barge line, truck, etc., and the supervisory districts in which tax-free or specially denatured alcohol will be transported. Where steamship or barge lines or motor carriers operate between certain points and over certain courses or routes, such points and courses or routes will be specified in the application. Where the mode of transportation is by tank truck, the carrier will give the serial number of each tank truck and its capacity. In cases where transportation is in more than one supervisory district, the application shall be filed with the district supervisor in whose district the principal office or place of business of the applicant is located. The provisions of sections 182.105, 182.106, 182.115, 182.117, and 182.118 are hereby extended, in so far as applicable, to carriers.

(*a*) *Persons entitled to permit.*—Basic permits to transport tax-free or specially denatured alcohol shall be issued only to reputable carriers who are actively and regularly engaged generally in the legitimate business of transportation, and who possess adequate facilities to insure safe delivery at destination of any

tax-free or specially denatured alcohol transported by them. (Secs. 3105, 3114(a), 3124, 3176, I. R. C.)

SEC. 182.179. CONDITIONS OF APPROVAL.—No application shall be approved unless and until it is established by the applicant to the satisfaction of the district supervisor that he is a reputable carrier and is actively and regularly engaged generally in the legitimate business of transportation and that he possesses adequate facilities to insure safe delivery at destination of any tax-free alcohol or specially denatured alcohol which may be transported by him. No application for an original or renewal permit for the transportation in tank trucks of specially denatured alcohol shall be approved unless and until it is determined by the district supervisor, after inspection, that each tank truck meets the requirements of these regulations. (Secs. 3105, 3124, 3176, I. R. C.)

SEC. 182.182. BOND, FORM 49.—(*a*) *Tax-free alcohol and specially denatured alcohol in containers other than tank trucks.*—Every person filing an application for a basic permit to transport tax-free alcohol or specially denatured alcohol, upon filing his application, Form 144, and before issuance of basic permit pursuant thereto, and before transporting any tax-free alcohol or specially denatured alcohol, shall execute a bond on Form 49, "Bond to Transport Specially Denatured or Tax-free Alcohol," in triplicate, in conformity with the provisions of Article X, and file the same with the district supervisor: *Provided*, That a bond will not be required if the applicant is a railroad or steamship company, or an express company operating thereon, or a motor carrier who has qualified with the Interstate Commerce Commission as a "self-insurer."

(*b*) *Specially denatured alcohol in tank trucks.*—(1) *Transportation by motor carriers.*—Motor carriers, as defined in these regulations, in order to transport specially denatured alcohol by tank trucks, must procure permits so to do, in accordance with these regulations and file bond, Form 49, in the penal sum specified in section 182.183. Where such permit is obtained and bond is filed, the permit will also authorize transportation of tax-free alcohol or specially denatured alcohol in barrels or drums without additional bond requirement.

(2) *Transportation by consignors or consignees.*—A consignor or consignee, in order to transport specially denatured alcohol in tank trucks controlled and operated by such consignor or consignee, must file application on Form 144 and procure permit, Form 145, authorizing such transportation and file consent of surety, Form 1533, on his bond Form 1432-A, 1435, 1475, or 1480, extending the terms thereof to be liable for the tax, together with penalties and interest on all specially denatured alcohol withdrawn, transported, used, or sold in violation of laws or regulations now or hereafter in force. If the maximum of the present bond is not sufficient when computed as set forth in section 182.183, a new bond in a sufficient penal sum must be furnished to cover the additional liability. These requirements shall not apply where specially denatured alcohol is withdrawn by the United States or any governmental agency thereof and is transported in tank trucks operated by employees of the United States.

(3) *Present permits and bonds.*—Basic permits and bonds now held by motor carriers, and by consignors and consignees, which authorize the transportation of tax-free alcohol and specially denatured alcohol, may, on application and the filing of consents of surety, be modified to authorize tank truck shipments of specially denatured alcohol and to contain an undertaking to be liable for the tax, or an amount equal to the tax as provided in subparagraph (2) of paragraph (*b*). The consent of surety (or, if preferred, a new bond) must be filed so that the principal and surety will be responsible to the extent specified in section 182.183. (Secs. 3105, 3114(a), 3124, 3176, I. R. C.)

SEC. 182.183. PENAL SUM.—The penal sum of the bond must be computed at the rate of not less than $1,000 for each vehicle (other than a tank truck) to be used by the permittee, nor more than $10,000 for all such vehicles so used. The penal sum of the bond for the transportation of specially denatured alcohol in tank trucks shall be in the penal sum of $50,000 for each such tank truck, and not more than $200,000 for the total of all trucks used. (Secs. 3105, 3114(a), 3124, 3176, I. R. C.)

ARTICLE XIII.—BASIC PERMITS.

ISSUANCE OF ORIGINAL BASIC PERMITS.

SEC. 182.229. LIMITATIONS UNDER PERMIT.—(*g*) *Permit to transport tax-free and specially denatured alcohol, Form 145.*—The permit will specify the supervisory districts in which the carrier will be permitted to transport tax-free or

specially denatured alcohol. If the carrier is a steamship or barge line or motor carrier operating between certain points and over certain courses or routes, such points and courses or routes will be specified in the permit. If the carrier is other than a railroad, steamship, express company, or motor carrier qualified with the Interstate Commerce Commission as a "self-insurer," or has filed bond in less than the maximum penal sum, specified in section 182.183, the permit shall specify the number of vehicles to be used by the permittee in transporting tax-free or specially denatured alcohol in vehicles other than tank trucks and in case of tank trucks the permit shall specify the number of tank trucks to be used in the transportation of specifically denatured alcohol and the serial number and capacity of each. (Secs. 3105, 3114, 3124, 3176, I. R. C.)

ARTICLE XXI.—OPERATION OF INDUSTRIAL ALCOHOL PLANTS.

COLLECTION AND REMOVAL OF FUSEL OIL.

SEC. 182.371. REMOVAL.—(*a*) *Containers.*—Removable fusel oil may be drawn off into barrels, drums, or similar packages, or into tank cars or tank trucks. Packages containing such fusel oil shall be marked by the proprietor with his name, plant number, location (city or town and State), the words "Fusel Oil," and the date of removal in distinct and legible letters. When removal is made in tank cars or tank trucks, the proprietor will affix to the route board of each tank car or tank truck a label containing such data. (Secs. 3105, 3124, 3176, I. R. C.)

PRODUCTION AND REMOVAL OF BUTYL ALCOHOL.

SEC. 182.377. REMOVAL.—(*a*) *Containers.*—Removable butyl alcohol may be drawn off into barrels, drums, or similar packages, or into tank cars or tank trucks. Packages containing such butyl alcohol shall be marked by the proprietor with his name, plant number, location (city or town and State), and the words "Butyl Alcohol," and the date of removal in distinct and legible letters. When removal is made in tank cars or tank trucks, the proprietor will affix to the route board of each tank car or tank truck a label containing such data. (Secs. 3105, 3124, 3176, I. R. C.)

PRODUCTION AND REMOVAL OF ACETONE.

SEC. 182.383. REMOVAL.—(*a*) *Containers.*—Removable acetone may be drawn off into barrels, drums, or similar packages, or into tank cars or tank trucks. Packages containing such acetone shall be marked by the proprietor with his name, plant number, location (city or town and State), the word "Acetone," and the date of removal in distinct and legible letters. When removal is made in tank cars or tank trucks, the proprietor will affix to the route board of each tank car or tank truck a label containing such data. (Secs. 3105, 3124, 3176, I. R. C.)

PRODUCTION AND REMOVAL OF ETHER.

SEC. 182.389. REMOVAL.—(*a*) *Containers.*—Removable ether may be drawn off into barrels, drums, or similar packages, or into tank cars or tank trucks. Packages containing such ether shall be marked by the proprietor with his name, plant number, location (city or town and State), the word "Ether," and the date of removal in distinct and legible letters. When removal is made in tank cars or tank trucks, the proprietor will affix to the route board of each tank car or tank truck a label containing such data. (Secs. 3105, 3124, 3176, I. R. C.)

ARTICLE XXII.—OPERATION OF INDUSTRIAL ALCOHOL BONDED WAREHOUSES.

APPROVED CONTAINERS.

SEC. 182.514. TANK WAGONS AND TANK TRUCKS PROHIBITED.—The transportation of undenatured ethyl alcohol in tank wagons or tank trucks will not be permitted. (Secs. 3101, 3105, 3124, 3176, I. R. C.)

ARTICLE XXV.—OPERATION OF INDUSTRIAL ALCOHOL DENATURING PLANTS.

DENATURING MATERIALS.

SEC. 182.706. SAMPLE FOR CHEMIST.—The storekeeper-gauger shall take a 1-pint sample of each lot of each denaturant received at the denaturing plant, and

forward or deliver the sample to the authorized chemist. Where a lot of any denaturant is received in a tank car, tank truck, or in packages and is placed in two or more storage tanks, or is received in a number of packages and retained therein pending analysis and approval of the denaturant, the storekeeper-gauger will take a proportionate sample from each tank or package, as the case may be, and thoroughly mingle the samples together. From this mixture the officer will take a 1-pint sample and forward or deliver it to the authorized chemist. The storekeeper-gauger shall then lock the tanks with a Government lock or securely close and seal the packages and none of the contents of the tanks or packages may be used until the sample has been officially tested and approved and a report of such test is received by the storekeeper-gauger in charge of the denaturing plant. All samples submitted for analysis must be placed in heavy glass bottles or other suitable containers, to be provided by the denaturer, and must be securely closed and sealed with a wax seal furnished for this purpose or a paper seal signed by the storekeeper-gauger taking the sample.

(*a*) *Labels on samples.*—Each sample shall have a label, Form 1469, "Label for Denaturing Material," affixed thereto showing the name of the denaturer, plant number, serial number of the tank, or the number and kind of the package from which the sample was taken, the kind and quantity of the denaturant represented by the sample, the date taken, and the name of the officer taking the sample. (Secs. 3070, 3102, 3105, 3124, 3176, I. R. C.)

APPROVED CONTAINERS.

SEC. 182.728. RAILROAD TANK CARS OR TANK TRUCKS.—Denatured alcohol may be shipped in railroad tank cars only where the premises of both the denaturer and the consignee are equipped with suitable railroad siding facilities. Denatured alcohol may be transported by tank trucks only where suitable storage tanks are provided on the consignee's premises. The manhole covers, outlet valves, and all other openings on all railroad tank cars or tank trucks used for shipping denatured alcohol shall be equipped with facilities for sealing so that the contents can not be removed without showing evidence of tampering. Railroad or other appropriate seals, dissimilar in marking from cap seals used by the Bureau of Internal Revenue, for securing manhole covers, outlet valves, and all other openings in tank cars or tank trucks containing denatured alcohol shall be furnished and affixed by the carrier or the proprietor: *Provided*, That serially numbered cap seals for use on tank trucks for the transportation of specially denatured alcohol shipped from denaturing plants shall be furnished by the Government and affixed by the storekeeper-gauger. Immediately after filling, the tank car or tank truck shall be sealed in such a manner as will secure all openings affording access to the contents of the tank.

(*a*) *Shipments of completely denatured alcohol.*—(1) *To denaturers and their agents.*—Completely denatured alcohol may be shipped in tank cars or tank trucks to other denaturing plants, as authorized in section 182.743. Completely denatured alcohol may also be shipped in tank cars or tank trucks by the denaturer to a person or concern acting as his agent, where the title does not pass from the denaturer, for transfer to packages for sale to others, and such packages shall be furnished by the denaturer. When completely denatured alcohol is thus shipped, the packages filled by the agent must be marked the same as if filled in the denaturing plant of the denaturer (except that the registry number of such plant will be omitted), and must also bear the embossed symbol and serial number, as required in section 182.727. Completely denatured alcohol may also be shipped in tank cars or tank trucks by the denaturer to himself at other premises for disposition in the same manner as in the case of completely denatured alcohol disposed of directly from the denaturing plant of the producer, or it may be so shipped by the denaturer to other producers of completely denatured alcohol at points not on the denaturing plant premises of such other producers, where the product will be filled into properly marked and embossed packages of the person to whom the shipment is made.

(2) *To users.*—Upon approval of the district supervisor, completely denatured alcohol may be shipped in tank cars or tank trucks to manufacturers for their own exclusive use and not for resale: *Provided*, That the completely denatured alcohol is run directly from the tank car or tank truck into suitable storage tanks on the manufacturer's premises. Manufacturers desiring to procure completely denatured alcohol in tank cars or tank trucks shall file application therefor with the district supervisor of their district. If the completely denatured alcohol is to be procured from a denaturer located in the same district, the application shall

be filed in triplicate, and if the completely denatured alcohol is to be procured from another district, the application shall be filed in quadruplicate. The application shall give the name and address of the denaturer from whom it is desired to procure the completely denatured alcohol, and shall specify the quantity to be received, the reasons for desiring to receive the completely denatured alcohol in tank cars or tank trucks and whether the applicant's premises are equipped with railroad siding facilities. Where it is desired to receive completely denatured alcohol in tank cars or tank trucks regularly, the application may be made for that purpose. If the district supervisor approves the application he will note his approval on all copies thereof, retain one copy, return one copy to the applicant, and forward one copy to the denaturer, and, where shipment is to be made from another district, one copy to the district supervisor of such district. (Secs. 2808, 3070, 3105, 3108(a), 3109, 3124, 3176, I. R. C.)

SEC. 182.731. TANK TRUCKS.—Tank trucks may be used for transporting completely denatured alcohol or specially denatured alcohol subject to the provisions of these regulations. Every tank truck used to transport denatured alcohol must conform to the following requirements: The tank shall be securely and permanently attached to the frame or chassis of the truck or trailer and shall be securely constructed. Interior bulkheads or stiffeners must have proper drainage cut-outs. Manhole covers, outlet valves, vents or pressure relief valves, and all other openings shall be equipped for sealing so as to prevent unauthorized access to the contents of the tank. Outlets of each compartment must be so arranged that delivery of any compartment will not afford access to the contents of any other compartment. Partial delivery, by meter or otherwise, will not be permitted. There shall be but one consignor per load and not less than the entire contents of any one compartment shall be delivered to any one consignee. Calibrated charts, prepared or certified by competent and recognized authorities or engineers, showing the capacity of each compartment in wine gallons for each inch of depth shall be carried in each truck. Each tank truck shall also be equipped with a route board, at least 10 by 12 inches, constructed of substantial material and permanently attached thereto by roundheaded or carriage bolts, nutted and riveted, battered or welded. Provision will also be made for protection, against the weather, of the permit and label by the use of celluloid or equally substantial material. A copy of the basic permit under which transportation is authorized (as required by section 182.230) and the prescribed label will be affixed to such route board. Tanks shall be so constructed that they will completely drain the contents of each compartment, even when the ground is not perfectly level. Suitable ladders and cat walks, permanently attached, must be provided in order to permit ready examination of manholes and other openings. Provision shall be made for the proper grounding of tank trucks when filling or emptying. Prior to filling, the storekeeper-gauger, or the proprietor where no storekeeper-gauger is assigned, shall determine whether the tank truck is authorized to be used by comparing the serial number and the capacity of the tank as marked thereon, with the copy of the basic permit, and will inspect all openings to the tank truck to determine whether they may be effectively sealed. If the tank does not meet such requirements, its use for the transportation of denatured alcohol will not be permitted. After filling, the storekeeper-gauger or the proprietor, as the case may be, shall seal the tank truck in such a manner as will secure all openings affording access to the contents of the tank. (Secs. 3070, 3105, 3108(a), 3109, 3124, 3176, I. R. C.)

MARKS AND BRANDS.

SEC. 182.738. TANK CARS AND TANK TRUCKS.—(*a*) *Tank cars.*—Every railroad tank car used to transport denatured alcohol must have permanently and legibly marked or painted thereon its number, capacity in wine gallons, and the name or symbols of the owner. If the tank car consists of two or more compartments, each compartment must be identified by a letter of the alphabet, such as "A," "B," etc., and the capacity in wine gallons of the compartment must be marked thereon. The denaturer shall securely attach to the route board of each such tank car a label showing the name, registry number, and location (city or town and State) of the denaturing plant, and the name, address, and permit number (if any) of the person to whom the denatured alcohol is shipped, followed by the date of shipment.

(*b*) *Tank trucks.*—Every tank truck used to transport denatured alcohol must have permanently and legibly marked or painted thereon its number, capacity in wine gallons, and the name of the owner in letters at least four inches in height. If the tank truck consists of two or more compartments, each compart-

ment must be identified by a letter of the alphabet, such as "A," "B," etc., and the capacity in wine gallons of each compartment must be marked thereon. The consignor shall securely attach to the route board of each tank truck a label showing the name, registry number, and location (city or town and State) of the shipping plant or premises; the name, address, and permit number (if any) of the person to whom the denatured alcohol is shipped, followed by the date of shipment; the quantity in wine gallons; and the formula number of denatured alcohol contained in each compartment. Such labels shall be destroyed upon emptying the tank truck. (Secs. 2808, 3105, 3124, 3176, I. R. C.)

TRANSFER OF DENATURED ALCOHOL BETWEEN DENATURING PLANTS.

SEC. 182.750. RECEIPT OF DENATURED ALCOHOL; GENERAL.—Upon receipt of the Forms 1467 and 1473, the storekeeper-gauger in charge of the receiving denaturing plant will make a memorandum record of the shipment and deliver the forms to the proprietor. When the denatured alcohol is received at the denaturing plant, the proprietor and the storekeeper-gauger will examine the shipment and where packages bear evidence of having sustained losses in transit, or railroad tank cars or tank trucks bear evidence of having sustained a loss, the losses will be determined and a report of such losses and of the examination of the shipment will be made to the district supervisor. (Secs. 3105, 3124, 3176, I. R. C.)

SEC. 182.752. METHOD OF DEPOSIT.—(*b*) *Denatured alcohol received in tank cars or tank trucks.*—Denatured alcohol received in tank cars or tank trucks shall be weighed or measured and transferred immediately to storage tanks. If it is desired to receive denatured alcohol in railroad tank cars, proper railroad siding facilities must be provided at the denaturing plant. When denatured alcohol is received in tank cars or tank trucks, the seals must not be broken or any denatured alcohol removed, except in the presence of the storekeeper-gauger assigned to the receiving denaturing plant. (Secs. 3105, 3124, 3176, I. R. C.)

WITHDRAWAL OF DENATURED ALCOHOL.

SEC. 182.754. SPECIALLY DENATURED ALCOHOL.—Specially denatured alcohol may be procured under appropriate permit by manufacturers using specially denatured alcohol, dealers in specially denatured alcohol, and the United States or governmental agency thereof. Prospective permittees or manufacturers may procure samples of specially denatured alcohol, as provided in section 182.826. Specially denatured alcohol must be removed from denaturing plants in approved containers, including tank cars and tank trucks provided the consignee's premises are equipped with suitable storage tanks. The exact contents of each package must be determined and the package marked in accordance with these regulations. The details of such packages shall be entered on the appropriate forms as hereinafter provided. Specially denatured alcohol removed from denaturing plants must be transported in accordance with section 182.677. The denaturer shall present the permit, Form 1477, 1485, 1486, or 1512, authorizing shipment to the storekeeper-gauger prior to withdrawal. (Secs. 3070, 3105, 3108(a), 3109, 3114(a), 3124, 3176, I. R. C.)

RECORDS AND REPORTS OF PROPRIETOR.

SEC. 182.785. FORM 1453–A.—When specially denatured alcohol is shipped to the United States or a governmental agency thereof, the proprietor will prepare one copy of Form 1453–A, except in the case of tank truck shipments when two copies will be prepared, and deliver them to the storekeeper-gauger who will check the forms with the records and permit, and, if found to agree therewith, he will initial all copies of the form and in the case of tank truck shipments, enclose one copy in a sealed envelope addressed to the Government officer to whom the specially denatured alcohol is consigned, and give the same to the driver of the tank truck for delivery to such officer. Upon receipt of the specially denatured alcohol, the receiving Government officer will execute the certificate of receipt on the form, after noting thereon any deficiency in the quantity received, and forward it to the district supervisor specified at the bottom of the form. The other copy of Form 1453–A will be forwarded by the storekeeper-gauger at the time of shipment to the district supervisor of the district in which the consignor's premises are located. The data required by section 182.786 to be entered

on Form 1473 covering tank truck shipments will be entered on Form 1453–A for such transactions. The provisions of section 182.786(d) will be followed by district supervisors in verifying such shipments of specially denatured alcohol. (Secs. 3070, 3105, 3124, 3176, I. R. C.)

SEC. 182.786. FORM 1473.—When specially denatured alcohol is shipped from the denaturing plant, the proprietor will prepare Form 1473 reporting the shipment. One copy of the form will be made for intradistrict shipments, and two copies for interdistrict shipments. An additional copy of the form will be prepared in the case of tank truck shipments. Where the proof of the alcohol used in producing specially denatured alcohol is other than 190 degrees of proof, the proof must be shown on Form 1473. Where shipments are made in tank cars, tank trucks, or consist of barrels or drums in carload lots, the name of the carrier and number of the car or tank truck, together with the routing (in the case of railroad tank cars or box cars), shall be entered on the form. The consignor shall not change the routing without giving prompt notice of such action to the district supervisor of his district, and if shipment is made to another district, to the district supervisor of such district. In addition, the serial numbers of the seals used, and in the case of tank trucks, the State license number, the driver's full name, and the driver's permit number, and State issuing the same, shall be accorded on all copies of Form 1473.

(*a*) *Disposition of forms.*—At the time of shipment, the proprietor will deliver all copies of Form 1473 to the storekeeper-gauger, who will check the forms with the records and permits (in the case of specially denatured alcohol), and if found to agree therewith, he will initial the forms. In the case of tank truck shipments, he will enclose one copy in a sealed envelope addressed to the consignee, and give the same to the driver of the tank truck for delivery to the consignee. On receipt at the consignee's premises, the storekeeper-gauger or the consignee will receipt for the shipment, verify the information on the form, and note thereon any discrepancies relative to the shipment. The Form 1473 will be forwarded by the storekeeper-gauger or the consignee immediately to the district supervisor of the district in which the consignor is located. In addition, on the day shipments are made, the storekeeper-gauger will forward one copy of the form to the district supervisor of the district in which the consignor is located, and, if shipments are made to another district, one copy to the district supervisor of such district. The same procedure will be followed where shipments in tank trucks are made of completely denatured alcohol, except Forms 1473 will be modified to read "completely" instead of "specially" denatured alcohol.

(*b*) *Intradistrict shipments.*—Where shipment is made to a consignee located in the same district as the denaturing plant, the district supervisor will check Form 1473 with the monthly reports of the consignor and the consignee, and, if receipt of the shipment is duly reported by the consignee and the form agrees with the consignor's monthly report, the district supervisor will initial Part II of the form.

(*c*) *Interdistrict shipments.*—Where shipment is made to another district, the district supervisor of the consignee's district will check Form 1473 with the consignee's monthly report, and, if receipt of the shipment is duly reported, he will execute Part III of the form and forward it to the district supervisor of the district from which the alcohol was shipped, who will check the receipted form with the consignor's monthly report, and, if found to agree therewith, he will initial Part II of the form.

(*d*) *Nonreceipt of shipment.*—When specially denatured alcohol is not received within a reasonable time after shipment, or where any material or unexplained difference exists between the kind and quantity shipped and that received, or where there is reasonable ground to suspect that the specially denatured alcohol has been or will be used for purposes other than those authorized by the consignee's permit and by the law and regulations, the district supervisor shall investigate each case and take appropriate action in respect thereto. In addition, the district supervisor will check daily, on receipt, the Form 1473 covering tank truck shipments, and make any inquiry which he deems necessary with respect to any discrepancy. In the event of failure to receive a form from the storekeeper-gauger at the consignee's premises or from the consignee, as the case may be, within the time normally required for the truck to make the shipment and the form to be sent by mail, the district supervisor will make appropriate investigation. (Secs. 3070, 3105, 3124, 3176, I. R. C.)

ARTICLE XXVI.—SALE AND USE OF COMPLETELY DENATURED ALCOHOL.

PROPRIETARY ANTIFREEZE SOLUTIONS.

SEC. 182.798. MANUFACTURE OF PROPRIETARY ANTIFREEZE SOLUTIONS.—Proprietary antifreeze solutions may be made with completely denatured alcohol for sale under trade names: *Provided*, That materials such as dye, rust inhibitor, petroleum distillates, etc., satisfactory to the Commissioner are added to the completely denatured alcohol in sufficient quantities to materially change the composition and character of the completely denatured alcohol. Such solutions are not classified as completely denatured alcohol and may not be marked, branded, or sold as completely denatured alcohol. Completely denatured alcohol may not be obtained in tank cars or tank trucks for use in manufacturing proprietary antifreeze solutions except by producers of denatured alcohol. (Secs. 3070, 3105, 3109, 3111, 3124, 3176, I. R. C.)

SEC. 182.802. PROHIBITED CONTAINERS.—Proprietary antifreeze solutions may not be shipped in tank cars, tank trucks, tank wagons, or packages exceeding 55 wine gallons in capacity, except when shipped in tank cars or tank trucks by manufacturers to themselves at another location for packaging thereat in accordance with these regulations. (Secs. 3070, 3105, 3124, 3176, I. R. C.)

ARTICLE XXVII.—OPERATIONS BY DEALERS IN SPECIALLY DENATURED ALCOHOL.

RECEIPT OF SPECIALLY DENATURED ALCOHOL.

SEC. 182.811. RAILROAD TANK CARS OR TANK TRUCKS.—If the bonded dealer receives specially denatured alcohol in railroad tank cars, railroad siding facilities for the receipt of such tank cars must be provided at the bonded dealer's premises. The denatured alcohol received in tank cars or tank trucks must be immediately deposited in storage tanks constructed in conformity with the provisions of section 182.102. When so deposited, the formula of the denatured alcohol shall be plainly marked on the storage tank. (Secs. 3070, 3105, 3124, 3176, I. R. C.)

FILLING OF PACKAGES BY BONDED DEALERS.

SEC. 182.812. WHEN PERMISSIBLE.—Bonded dealers who receive specially denatured alcohol in tank cars or tank trucks and transfer the same to storage tanks in their storerooms, as provided in section 182.811, may fill packages of such specially denatured alcohol. Bonded dealers may also fill packages of specially denatured alcohol from denaturers' original packages where such original packages have been so damaged in transit as to necessitate repackaging, or where, upon receipt of approved Form 1477, Form 1485, Form 1486, or Form 1512, it is necessary to fill smaller packages for sale to authorized permittees in quantities less than the contents of the denaturer's original package, and specially denatured alcohol of the formula desired is not available in storage tanks for the filling of such packages. (Secs. 2808, 2866, 3070, 3105, 3124, 3176, I. R. C.)

SEC. 182.813. SALE.—Specially denatured alcohol may be sold by bonded dealers holding basic permit, Form 1476, to manufacturers using specially denatured alcohol, and to other bonded dealers in specially denatured alcohol, pursuant to withdrawal permit, Form 1485 or Form 1477, as the case may be. Bonded dealers may also furnish samples of specially denatured alcohol to manufacturers, other bonded dealers, and to prospective permittees pursuant to sample permit, Form 1512: *Provided*, That in the case of samples, where the quality involved in any case does not exceed 8 fluid ounces, permit, Form 1512, will not be required. Sales of specially denatured alcohol may also be made to the United States or governmental agencies thereof pursuant to permit, Form 1468. The provisions of section 182.754, respecting sales of specially denatured alcohol by denaturers, are hereby made applicable to sales of specially denatured alcohol by bonded dealers. Specially denatured alcohol sold by bonded dealers must be transported in accordance with section 182.677. Record and report of such transactions shall be reported on Form 1478, as provided in section 182.822. Tank trucks used for the transportation of specially denatured alcohol by bonded dealers, after filling, shall be sealed by appropriate seals, serially numbered, furnished and affixed by the shipper. The seal shall be dissimilar in marking from the cap seals used by the Bureau of Internal Revenue. The serial numbers of seals used and the data with respect to the carrier set forth in section

182.786 will be recorded by the dealer on Form 1473. One copy of the form will be forwarded by the dealer to the district supervisor of the district in which the dealer is located. One copy of the form will be forwarded to, and verified by, the consignee, and forwarded by him to the district supervisor of the district in which the consignor is located. (Secs. 3070, 3105, 3109, 3114(a), 3124, 3176, I. R. C.)

LOSSES OF SPECIALLY DENATURED ALCOHOL.

SEC. 182.816. LOSSES IN TRANSIT.—Losses in transit to bonded dealer's premises must be ascertained at the time the specially denatured alcohol is received by the bonded dealer. Accordingly, when packages, tank cars, or tank trucks are received which show evidence of having sustained a loss in transit the bonded dealer should determine the extent of the loss at that time. The quantity ascertained to have been lost will be reported on Form 1478 on the line on which receipt of the shipment is reported, and in the column provided therefor. Where the quantity lost from any package, tank car, or tank truck exceeds 1 per cent of the quantity originally contained therein, claim for allowance of the entire quantity lost from the package, tank car, or tank truck will be made by the bonded dealer. If the loss does not exceed 1 per cent, so calculated, claim for allowance will not be required, provided there are no circumstances indicating that the specially denatured alcohol lost or any part thereof, was unlawfully used or removed. (Secs. 3105, 3113, 3124, 3176, I. R. C.)

ARTICLE XXXII.—CARRIERS.

SEC. 182.908. RESTRICTED USE OF CONTAINERS.—(*a*) *Tank wagons or tank trucks.*—Tank wagons or tank trucks shall not be used for the transportation of undenatured ethyl alcohol.

(*b*) *Railroad tank cars.*—Shipment of alcohol or denatured alcohol by railroad tank cars may be made only when the premises of the consignor and consignee are equipped with satisfactory railroad siding facilities and the consignee is otherwise authorized to receive such shipment. (Secs. 3105, 3111, 3114(a), 3124, 3176, I. R. C.)

ARTICLE XLV.—IMPORTATION OF ALCOHOL FOR INDUSTRIAL PURPOSES.

SEC. 182.994. CUSTOMS GAUGE AND RELEASE.—Prior to release from customs custody, the alcohol will be gauged by a customs officer who will enter the details of the gauge on all copies of the Form 1440. When shipments are made in tank cars, the details of the gauge of each tank car will be reported separately thereon in accordance with the column headings on the Form 1440. The customs officer will also show on each copy of Form 1440 the country of exportation of the alcohol. In addition, he will ascertain and state on each copy of the Form 1440 the rate of customs duty paid on the alcohol and the rate of customs duty which would have been applicable had such spirits been imported for beverage purposes. The customs officer will forward two copies of Form 1440 to the storekeeper-gauger at the industrial alcohol plant, bonded warehouse, or denaturing plant designated in the application, and retain one copy for customs purposes. The storekeeper-gauger at the plant or warehouse will, on receipt of the two copies of Form 1440, verify the shipment, note on both copies any discrepancies, forward one copy to the district supervisor of the district in which the plant or warehouse is located, and deliver the remaining copy to the proprietor of the plant or warehouse. (Secs. 3105, 3124, 3125(a), 3176, I. R. C.)

SEC. 182.995. TANK CARS TO BE SEALED.—(*a*) Where shipments of alcohol from customs custody to the industrial alcohol plant, bonded warehouse, or denaturing plant are made in tank cars, all openings affording access to the tanks will be sealed by the customs officer with customs seals.

(*b*) *Packages.*—Where shipments of alcohol from customs custody are made in packages, the customs officer will gauge and release the alcohol pursuant to appropriate permit, Form 1436 or Form 1463, and application, Form 1440, in triplicate, in the same manner as alcohol shipped in tank cars, except that the sealing of the car in which transported will not be required. (Secs. 3105, 3124, 3125(a), 3176, I. R. C.)

SEC. 182.997. GAUGING.—Upon receipt of the alcohol at the industrial alcohol plant, bonded warehouse, or denaturing plant from customs custody, it will be gauged in accordance with Articles XXI and XXV and the Gauging Manual, pro-

vided that where the bonded premises consist of storage tanks only, the spirits may be gauged upon receipt at such premises by any one of the following four methods, preference to be given in the order named:

(1) Weighed in scale tanks.
(2) Gauged by volume in accurately calibrated storage tanks.
(3) Weighed on railroad car scales located on bonded premises by weighing tank cars before and after filling and emptying, as the case may be.
(4) Gauged by volume in accurately calibrated tank cars. (Secs. 3105, 3124, 3125(a), 3176, I. R. C.)

ARTICLE XLVI.—WITHDRAWAL OF IMPORTED ALCOHOL TAX FREE FOR USE OF THE UNITED STATES.

SEC. 182.1006. BILL OF LADING AND CUSTOMS SEALS.—Where the alcohol is transported by common carrier, the person to whom the alcohol was delivered for shipment shall furnish a copy of the bill of lading covering transportation of the alcohol from the port of entry to final destination to the governmental agency of the United States to whom the alcohol is consigned. If the alcohol is shipped in tank cars, all openings affording access to the tanks will be sealed by the customs officer with customs seals. (Secs. 3105, 3124, 3125(b), 3176, I. R. C.)

4. Treasury Decision 5121, approved February 26, 1942 [C. B. 1942–1, 330], and Treasury Decision 5164, approved July 15, 1942 [C. B. 1942–2, 312], are hereby revoked.

5. This Treasury decision shall be effective on the thirty-first day after the date of its publication in the Federal Register.

(This Treasury decision is issued under the authority contained in sections 2808, 2829, 2866, 3070, 3101, 3102, 3105, 3108, 3109, 3111, 3113, 3114, 3124, 3125, and 3176 of the Internal Revenue Code (U. S. C., title 26, sections 2808, 2829, 2866, 3070, 3101, 3102, 3105, 3108, 3109, 3111, 3113, 3114, 3124, 3125, and 3176).)

JOSEPH D. NUNAN, Jr.,
Commissioner.

Approved July 3, 1947.

JOSEPH J. O'CONNELL, Jr.,
Acting Secretary of the Treasury.

(Published in the Federal Register July 12, 1947.)

REGULATIONS 3, SECTIONS 182.619, 182.768, 182.970, 182.971, 182.972. 1947–24–12701 T. D. 5583

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 182.—INDUSTRIAL ALCOHOL.

Amending Regulations 3.

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

To District Supervisors and Others Concerned:

1. Section 507, Title V, of the Philippine Trade Act of 1946 (Public Law 371, Seventy-ninth Congress), approved April 30, 1946 [C. B. 1946–1, 334], reads in part as follows:

SEC. 507. SPECIAL EXCISE PROVISIONS RELATING TO THE PHILIPPINES REPEALED.

(a) Section 2800(a)(4) of the Internal Revenue Code is amended by amending the heading to read:

"(4) ALCOHOLIC COMPOUNDS FROM PUERTO RICO AND VIRGIN ISLANDS.—";

and by amending subparagraph (B) to read as follows:

"(B) VIRGIN ISLANDS.—For provisions relating to tax on alcoholic compounds from the Virgin Islands, see section 3350."

(b) Sections 3340, 3341, and 3342 of the Internal Revenue Code are repealed, effective July 4, 1946.

* * * * * * *

2. For the reason that the law repeals the provisions of the Internal Revenue Code pursuant to which the original regulations or parts thereof are prescribed, and because these regulations are designed merely to revoke the provisions of the regulations which are not now applicable, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act. On and after July 4, 1946, the Philippines will be treated as a foreign country instead of a possession of the United States under these regulations.

3. Pursuant to the foregoing provisions of law and section 3176, Internal Revenue Code, Regulations 3 (26 CFR, Part 182) are amended, effective as of July 4, 1946, in these respects:

(*a*) Section 182.619 is amended by striking out "the Philippine Islands," and the Code citation "3341(b),".

(*b*) Section 182.768 is amended by striking out "the Philippine Islands," and by striking out "(Secs. 3341(b), 3361(b), I. R. C., Supp.)" and inserting in lieu thereof "(Sec. 3361(b), I. R. C., Supp.)."

(*c*) Sections 182.970, 182.971, and 182.972 are hereby revoked.

4. On and after July 4, 1946, all alcohol, denatured alcohol, and products containing alcohol or denatured alcohol, imported into the United States from the Philippine Islands, will be subject to sections 182.967, 182.968, and 182.969 of Regulations 3 (26 CFR, Part 182).

5. This Treasury decision is issued under the authority contained in section 3176 of the Internal Revenue Code.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 13, 1947.

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

(Filed with the Division of the Federal Register November 20, 1947, 8.56 a. m.)

DISTILLED SPIRITS.

INTERNAL REVENUE CODE.

REGULATIONS 10, SECTIONS 185.19, 185.31, ETC. 1947–24–12699
T. D. 5581

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 185.—WAREHOUSING OF DISTILLED SPIRITS.

Amending Regulations 10.

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

To District Supervisors, Collectors of Internal Revenue, and Others Concerned:

1. The Act of July 14, 1947 (Public Law 187, Eightieth Congress [page 337, this Bulletin]), amends section 2801 of the Internal Revenue Code by adding to subsection (e) the following paragraph:

> (5) BLENDING OF BEVERAGE BRANDIES.—Fruit brandies distilled from the same kind of fruit at not more than one hundred and seventy degrees proof may, for the sole purpose of perfecting such brandies according to commercial standards, be mixed or blended with each other, or with any such mixture or blend, by the distiller thereof in any internal revenue bonded warehouse operated by him exclusively for the storage of brandy or wine spirits, and the provisions of this section and of sections 2800(a)(5) and 3254(g) relating to rectification or other internal revenue laws of the United States shall not be held to apply to or prohibit such mixing or blending, and brandies so mixed or blended may be packaged, stored, transported, transferred in bond, withdrawn from bond tax-paid or tax-free, or be otherwise disposed of, in the same manner as such brandies not so mixed or blended: *Provided*, That, in addition to the tax imposed by this chapter on the production of distilled spirits, there shall be paid a tax of 30 cents as to each proof gallon (and a proportionate tax at a like rate on all fractional parts of such proof gallon) of brandy so mixed or blended (except when withdrawn tax-free and accounted for or when lost and allowance is made therefor), such tax to be paid by rectified spirits stamps affixed to the packages at the time of withdrawal. The Commissioner, under rules and regulations to be by him prescribed with the approval of the Secretary, upon the presentation of proof to his satisfaction of the loss by leakage, evaporation, theft, or otherwise of fruit brandies so blended or mixed, not occurring as the result of any negligence, connivance, collusion, or fraud on the part of the warehouseman or his agents, is hereby authorized to remit or refund the taxes assessed or paid upon such lost brandies: *Provided, however*, That such remission or refund shall be allowed only to the extent that the warehouseman is not indemnified or recompensed for such tax, and that losses of fruit brandies occurring prior to any such mixing or blending shall be allowable in accordance with section 2901. The term "distiller" as used herein shall include any one or more distillers associated as members of any farm cooperative, or any one or more distillers affiliated within the meaning of section 17(a)(5) of the Federal Alcohol Administration Act, as amended, or any fruit distiller for whose account, recorded with the district supervisor at the time of production, the brandy to be blended was produced. The Commissioner may, with the approval of the Secretary, make such rules or regulations as he may deem necessary to carry these provisions into effect.

2. Notice and public procedure under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, are found to be contrary to the public interest in connection with the issuance of these regula-

tions for the reason that distillers have indicated a desire to produce during the current vintage season brandy for the account of other distillers, who intend to blend brandy in internal revenue bonded warehouses operated by them. Where brandy is produced by one distiller for the account of another distiller such brandy, to be eligible for blending, must be recorded with the district supervisor at the time of production as having been produced for that distiller. It is necessary that regulations be prescribed for recording such production of brandy. If requirements for notice and public procedure were followed, regulations could not be made available to the industry until the end or near end of the vintage season. For the same reason it is found in the public interest to make these regulations immediately effective upon publication.

3. Pursuant to the foregoing provisions of law and sections 2806(e), 2857, 2859, 2868, 2872, 2873, 2875, 2878, 2879, 2882, 2883, 2884, 2885, 2886, 2888, 2901, 2903, 2904, 2905, 2910, 2915, 3031, 3033, 3170, 3176, and 3953 of the Internal Revenue Code (U. S. C., Title 26, sections 2806(e), 2857, 2859, 2868, 2872, 2873, 2875, 2878, 2879, 2882, 2883, 2884, 2885, 2886, 2888, 2901, 2903, 2904, 2905, 2910, 2915, 3031, 3033, 3170, 3176, and 3953), Regulations 10 (26 CFR, Part 185) are hereby amended in these respects:

(*a*) Sections 185.19, 185.31, 185.39, 185.51, 185.142, 185.155, 185.156, 185.157, 185.184, 185.198, 185.205, 185.258, 185.271, 185.272, 185.273, 185.299, 185.316, 185.344, 185.438, 185.464, 185.465, 185.466, 185.467, 185.468, 185.469, 185.471, 185.472, 185.480, and 185.481 are amended; and

(*b*) Sections 185.30a, 185.275a, 185.276a, 185.464a, and 185.514 to 185.526, inclusive, are added as follows:

SEC. 185.19. OTHER ROOMS.—* * *

* * * * * * *

(*c*) *Brandy-blending department.*—Where brandies are to be mixed or blended in an internal revenue bonded warehouse, under the provisions of section 2801(e)(5), I. R. C., for the sole purpose of perfecting such brandies according to commercial standards, a separate room or building, constituting a part of the internal revenue bonded warehouse, must be provided for that purpose. Such room or building shall be known as the brandy-blending department and must be constructed in accordance with the provisions of sections 185.5 to 185.16, inclusive. The brandy-blending department must be completely separated from contiguous rooms or buildings by solid unbroken partitions and floors of substantial construction. Such partitions shall extend from the ground to the roof or from the floor to the ceiling, if a room is used, and if the brandy-blending department is under the same roof, or in the same building in which is located a rectifying plant, or tax-paid bottling house, the two premises must not have any means of communication with each other within the building. No door, window, or other opening into another room or building of the warehouse will be permitted: *Provided,* That not more than two doors may be permitted in the wall or partition separating the brandy-blending department from the storage portion of the warehouse to be used exclusively for the purpose of transferring brandy between the brandy-blending department and the storage portion of the warehouse. The communicating doors must be equipped for locking with Government locks on the storage side of the warehouse and must be kept locked except while brandy is being transferred between the brandy-blending department and the storage portion of the warehouse: *Provided,* That where brandy-blending operations have been discontinued and all brandies have been removed from the brandy-blending department the locks on the doors connecting the brandy-blending department with the storage portion of the warehouse may be removed and the brandy-blending department used for any other authorized warehouse purpose as provided in section 185.515(*b*).

The brandy-blending department must be equipped with a requisite number of suitable tanks in which to blend brandies, scales for weighing packages, facilities for dumping packages, facilities for filling, marking and branding packages, and a desk and cabinet for use of the Government officer. The room or building must be well lighted, heated, and of sufficient dimensions to permit the work of regauging, dumping, filling, gauging, marking, and branding the packages efficiently and expeditiously. Lighting facilities must be permanently installed and spaced throughout the room or building to permit supervision of the entire premises and must be of sufficient power to permit efficient performance of gauging duties without the aid of auxiliary lights or outside light. A sign, bearing the words "Brandy-Blending Department," shall be placed over the entrance door of the room or building. (Secs. 2801(e)(5), 2873, 3176, I. R. C.)

SEC. 185.30a. BRANDY-BLENDING TANKS.—Brandy-blending tanks shall be constructed, installed, and equipped in the manner prescribed in section 185.30 for the construction, installation, and equipment of storage tanks. Each such tank shall have plainly and legibly painted thereon, or on a plate securely attached thereto, the words "Brandy-blending Tank," followed by its serial number and capacity in wine gallons. (Secs. 2801(e)(5), 2873, 3176, I. R. C.)

SEC. 185.31. PIPE LINES.—* * *

* * * * * * *

(c) *Pipe lines in brandy-blending department.*—(1) *Connecting dump trough and brandy-blending tank.*—The pipe line connecting the dump trough to each brandy-blending tank must be a fixed metal pipe line exposed to view throughout its entire length: *Provided*, That if a pump is required to move brandy from the dump trough to the blending tank, the pipe line may be broken and connected at the inlet and outlet sides of the pump and secured by Government cap seals: *And provided further*, That where a number of brandy-blending tanks are installed, the pipe lines to the tanks may be connected at the pump to a manifold connection so arranged and equipped with Government locked valves as to permit the control of the flow of brandy into each tank. Hose connections may not be used. There shall be painted on a board, or similar plate, attached to each pipe line extending from the manifold to the brandy-blending tanks a number corresponding to the serial number of the tank to which the pipe line is connected.

(2) *Connecting brandy-blending tank to package filling manifold.*—The outlet of one blending tank may not be connected with the outlet of another blending tank: *Provided*, That where there is more than one tank and a draw-off manifold is used for filling packages the outlet of each tank may be connected with the manifold by means of a permanent metal pipe line. (Secs. 2883, 3176, I. R. C.)

SEC. 185.39. DESCRIPTION OF PREMISES.—The application shall contain a complete description of the building or room constituting the warehouse, including the height, width, and length, the materials of which constructed, the means of ingress and egress, and the manner of securing windows and doors and other openings. If the warehouse consists of an entire building, the number of stories and the height of each story shall be given. If the warehouse consists of a room or floor of a building, an exact description of the building in which the room or floor is situated and its precise location therein shall be given. If the warehouse consists of separate buildings, the same shall be designated alphabetically, as "Building A," "Building B," etc., and each shall be described separately and the capacity, in barrels, cases, or tanks, of each given. Each floor of each building shall be described separately, unless the dimensions and construction of all floors are identical and are used for the same purpose. If a bottling-in-bond room or a brandy-blending department is provided, it will be separately described as to location, construction and security. The designated serial number and capacity of each tank and other apparatus, and the daily bottling capacity in wine gallons shall also be stated. If a quick-aging room or gauging room is provided, a separate description of each shall be given. The Government office shall be separately described in the application, the location, construction, and equipment thereof being shown. (Secs. 2801(e)(5), 2873, 3176, I. R. C.)

SEC. 185.51. TRANSPORTATION AND WAREHOUSING BOND, FORM 1571.—Every person desiring the establishment of an internal revenue bonded warehouse shall, upon filing his application, Form 27–D, execute bond on Form 1571, Transportation and Warehousing Bond, in triplicate, in conformity with the provisions of sections 185.57 to 185.76, inclusive, and file the same with the district supervisor. The penal sum of such bond shall be not less than the amount of internal revenue tax at the rate prescribed by law on the quantity of distilled spirits that will be

stored in such warehouse and in transit thereto at any one time, including distilled spirits bottled for export, plus the amount of additional tax at the rate of 30 cents a proof gallon attaching to brandy blended under the provisions of section 2801(e)(5), I. R. C., that will be on hand or in transit to the warehouse at any one time: *Provided*, That the maximum penal sum of such bond shall not exceed $200,000 for each such warehouse. Proprietors of internal revenue bonded warehouses desiring to blend brandies under the provisions of section 2801(e)(5), I. R. C., and having on file Form 1571, Transportation and Warehousing Bond, revised December, 1941, or revised prior to such time, shall file consent of surety on Form 1533 to cover the blending of brandies and the additional tax liability. (Secs. 2801(e)(5), 2872, 2879(c), 3176, I. R. C.)

SEC. 185.142. OPERATIONS REQUIRING IMMEDIATE SUPERVISION.—The immediate supervision of the storekeeper-gauger is required (1) whenever spirits are entered into or withdrawn from the warehouse; (2) whenever spirits are transferred from one building to another; (3) whenever spirits are bottled in bond; (4) whenever spirits are drawn from warehouse storage tanks into packages; (5) whenever a change of package is made for exportation, or to prevent loss by leakage, or for other authorized purposes; (6) whenever samples of spirits are obtained from packages; (7) whenever spirits in distiller's original packages are reduced in proof after removal from the warehouse and before removal from the warehouse premises or the tax-free premises of the proprietor; (8) whenever brandy-blending operations are being conducted; or (9) whenever spirits in the warehouse are by reason of other circumstances so exposed to loss. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.155. STOREKEEPER-GAUGER TO BE INFORMED.—Where spirits are received for deposit from a distillery operated by the proprietor of the warehouse on the same or contiguous premises, and the penal sum of the transportation and warehousing bond is less than the maximum of $200,000, the district supervisor shall inform the storekeeper-gauger in charge of the warehouse of the penal sum of the bond, and the storekeeper-gauger shall see that the quantity of spirits deposited in the warehouse is within the limits of the bond. Such information shall also be furnished where brandies are blended under the provisions of section 2801(e)(5), I. R. C. (when the penal sum of the bond is less than the maximum), and the storekeeper-gauger shall see that the penal sum of the bond is sufficient to cover the additional tax of 30 cents a proof gallon on all blended brandy on hand or in transit to the warehouse at any one time as well as the tax under section 2800(a)(1), I. R. C., on all brandy on hand at any one time. (Secs. 2801(e)(5), 2879, 3176, I. R. C.)

SEC. 185.156. STOREKEEPER-GAUGER'S COPIES OF DEPOSIT FORMS.—All copies of Forms 236, 1520, 1619, and 1620, covering the deposit of spirits in internal revenue bonded warehouses, and all copies of Forms 1685 and 1520 covering the blending of brandy and the return thereof to the storage portion of the warehouse, shall be filed by the storekeeper-gauger as permanent records, in accordance with the procedure prescribed in sections 185.465 to 185.471, inclusive. (Secs. 2801(e)(5), 2883, 2915, 3176, I. R. C.)

SEC. 185.157. FORMS 1513, 1621, AND 1622.—The storekeeper-gauger in charge of an internal revenue bonded warehouse shall enter all spirits deposited in the warehouse, including blended brandies returned from the brandy-blending department, on his monthly bonded warehouse return, Form 1513, and shall make appropriate entries in his files index, Form 1622, and in his summary of deposits and withdrawals, Form 1621, as provided in sections 185.465 to 185.473, inclusive (Secs. 2801(e)(5), 2915, 3176, I. R. C.)

SEC. 185.184. EXAMINATION OF RECORDS.—During June and December of each year the storekeeper-gauger shall examine Forms 1621 to determine whether the 8-year period of storage in bond on any spirits still in the warehouse will expire during the ensuing 6-month period. Where the examination of Forms 1621 shows that there are such spirits still in the warehouse, the storekeeper-gauger will ascertain the date of the original entry for deposit thereof from Form 1520 or Form 1619 if the spirits are in packages or other bulk containers, or from Form 1620 if the spirits are in cases, and shall determine the date of the expiration of the 8-year bonded period of all such spirits. The storekeeper-gauger shall make a list of all such packages or cases, showing the date of the expiration of the bonded period of storage of each. Where spirits of different dates of production in the same distilling season are mingled at the time of bottling, or brandies of different dates of production are blended under the provisions of section 2801(e)(5), I. R. C., the bonded period of storage for such spirits or

brandies will begin to run from the date of the original entry for deposit of the oldest spirits or brandies so mingled. (Sec. 3176, I. R. C.)

SEC. 185.198. EQUALIZING WANTAGE PROHIBITED.—Except as provided in sections 185.171, 185.172, 185.173, and 185.514, distilled spirits may not be transferred from one package to another or consolidated by combining the contents of two or more packages during storage in bond. The proprietor of an internal revenue bonded warehouse who transfers, or causes to be transferred, spirits from one package to another for the purpose of equalizing wantage, or for any other purpose, except as authorized by law or regulations, will render himself liable for immediate payment of the tax on all such spirits according to the original gauge, in addition to severe penalties. The law provides that whenever any person evades, or attempts to evade, the payment of the tax on any distilled spirits in any manner whatever, he shall forfeit and pay double the amount of the tax so evaded, or attempted to be evaded. (Secs. 2801(e)(5), 2806(e), 2868, 2901(a), 3176, I. R. C.)

SEC. 185.205. TANK CARS AND STORAGE TANKS.—Except as provided in sections 185.220 to 185.225, inclusive, in the case of brandy and fruit spirits intended for the fortification of wine and in section 185.525 in the case of blended brandies, no allowance can be made for losses of distilled spirits by leakage or evaporation from tank cars, or from warehouse storage tanks or packages filled from such storage tanks: *Provided*, That where there is a deficiency of not over one-half of 1 per cent shown on regauge of spirits in a tank car or storage tank in a bonded warehouse, such deficiency will be regarded as due to a variation in gauge if there is no evidence to the contrary, and no tax will be collected thereon: *And provided further*, That allowance for losses by leakage and evaporation will be made in accordance with sections 185.200 to 185.203, inclusive, upon regauge for withdrawal of packages of brandy or fruit spirits filled from warehouse storage tanks prior to June 26, 1936, and which were in warehouse on August 4, 1939, the period for such allowance being calculated from the date of filling of the package to the date of regauge for withdrawal. (Secs. 2901, 3176, I. R. C.)

SEC. 185.258. AFFIXING AND CANCELING STAMPS.—When packages of spirits are withdrawn upon tax-payment or for exportation, the tax-paid or export stamp will be affixed and canceled by the warehouseman, under the supervision of the storekeeper-gauger, in the manner prescribed in the Gauging Manual, before the package is removed from the warehouse. Likewise, when a package of blended brandy is removed tax-paid the class B rectified spirits stamp required to be affixed to such package under the provisions of section 2801(e)(5), I. R. C., shall be affixed and canceled in the manner prescribed in the Gauging Manual for the affixing and cancellation of tax-paid stamps before the package is removed from the warehouse. (Secs. 2801(e)(5), 2884, 2885(b), 3176, I. R. C.)

SEC. 185.271. STOREKEEPER-GAUGER'S RECORDS.—The storekeeper-gauger at an internal revenue bonded warehouse shall enter the date of withdrawal of all packages or other containers, and cases, of spirits removed from the warehouse in the appropriate column of Form 1520, Form 1619, or Form 1620, as the case may be, covering the deposit of the spirits, as provided in sections 185.465 to 185.471, inclusive. The storekeeper-gauger shall also enter the withdrawal of all spirits from the warehouse in his monthly record and return, Form 1513, and in his summary of deposits and withdrawals, Form 1621, as provided in sections 185.465 to 185.473, inclusive. The storekeeper-gauger shall also enter on the Form 1513 and Form 1621 the details of the withdrawal of brandy for blending and the return of the blended brandy to the warehouse. (Secs. 2801(e)(5), 2915, 3176, I. R. C.)

SEC. 185.272. FILING OF WITHDRAWAL PAPERS.—All copies of the withdrawal papers, Forms 179, 206, 236, 257, 543, 573, 655, 1518, 1519, 1520, and 1619, retained by the storekeeper-gauger upon the withdrawal of distilled spirits from the warehouse and the copy of Form 1685 retained by him upon completion of brandy-blending operations, as hereinafter provided, shall be filed by him in the manner prescribed in sections 185.465 to 185.471, inclusive. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.273. DISTRICT SUPERVISOR'S WAREHOUSE ACCOUNT.—The district supervisor shall enter all spirits removed from internal revenue bonded warehouses in his district, including brandies removed to brandy-blending departments for blending, during each month in the appropriate bonded spirits account, Form 1514, as provided in section 185.480. (Secs. 2801(e)(5), 3175, 3176, 3953, I. R. C.)

SEC. 185.275a. GAUGE AND TAX-PAYMENT OF BLENDED BRANDY.—If the spirits to be withdrawn are brandies blended in accordance with the provisions of section 2801(e)(5), I. R. C., the storekeeper-gauger shall compute the additional

tax at 30 cents per proof gallon on the quantity of spirits in each package at the time of regauge for withdrawal and shall enter in the appropriate column of Form 179 the total amount of tax due under section 2801(e)(5), I. R. C., in addition to the amount of tax due on the brandy under section 2800(a)(1), I. R. C. (Secs. 2801(e)(5), 2882, 2884, 3176, I. R. C.)

SEC. 185.276a. ISSUANCE OF RECTIFIED SPIRITS STAMPS.—Where the Form 179 covers blended brandies tax-paid at 30 cents per proof gallon in addition to the tax of $9 per proof gallon the collector shall issue a class B rectified spirits stamp, with proper coupons attached, for each package and shall enter the serial number of the stamps in the proper column of Form 1520 and at the proper line on Form 179. (Sec. 2801(e)(5), I. R. C.)

SEC. 185.299. TRANSFERS IN PACKAGES.—If the spirits to be transferred are in original packages or in packages filled from warehouse storage tanks, or are blended brandies in packages filled in the brandy-blending department, the storekeeper-gauger shall inspect the packages and supervise the weighing thereof as provided in the Gauging Manual and will prepare Form 1619, in quintuplicate, in accordance with the instructions on the form. In the case of blended brandies the storekeeper-gauger shall also show on Form 1619 the date and serial number of the Form 1685 covering the blending of the brandies, the date of original entry of the oldest brandy in the blend, and the date of original entry of the youngest brandy in the blend. Immediately after packages are weighed for transfer in bond, the proprietor may, if he so desires, take the proof of the spirits, provided such is done expeditiously and additional storekeeper-gaugers will not be required to supervise the operation. The taking of average or actual tare shall not be permitted. If the warehouseman prepares a record of such commercial gauge, two copies thereof shall be given to the storekeeper-gauger who shall retain one copy, and forward the other to the storekeeper-gauger at the receiving warehouse, as hereinafter provided, for reference if claim is filed for loss by theft, accident, or otherwise than by leakage or evaporation, or where claim is filed under section 2801(e)(5), I. R. C., for loss from packages of blended brandies. Upon withdrawal for transfer the packages shall be marked as provided in the Gauging Manual. (Secs. 2801(e)(5), 2875, 3176, I. R. C.)

SEC. 185.316. KINDS OF CONTAINERS.—Distilled spirits may be removed in bond, free of tax, as hereinafter provided, for export in (1) distillers' original packages, including those the contents of which have been reduced in proof to not less than 90 degrees; (2) new packages filled from distillers' original packages; (3) cases, when bottled in bond for export under the provisions of the regulations governing the bottling of distilled spirits in bond (26 CFR, Part 188); (4) wooden packages each containing two or more metallic cans of a capacity of not less than 5 wine gallons each; (5) in tank cars, in the case of spirits of not less than 180 degrees of proof transferred from the distillery to warehouse storage tanks for that purpose; and (6) in packages containing brandies blended under the provisions of these regulations. (Secs. 2801(e)(5), 2878, 2885, 2888, 2903, 2905, 2910, 3176, I. R. C.)

SEC. 185.344. DEFICIENCIES TO BE TAX-PAID.—Except as provided in section 185.525, all losses in excess of the statutory allowance on account of leakage and evaporation, as disclosed by the regauge of the distillers' original packages, and any additional loss in transferring the spirits to the new packages, as shown by the gauge of such packages, must be tax-paid in accordance with section 185.348, unless such loss is attributable to theft, accident, or other cause than leakage or evaporation, and claim for the remission of the tax thereon is filed. (Secs. 2801(e)(5), 2885, 2886, 2901, 3176, I. R. C.)

SEC. 185.438. TAX ON EXCESS LOSSES.—Where the regauge of packages, other than steel drums filled from warehouse storage tanks or packages of brandy blended under the provisions of section 2801(e)(5), I. R. C., discloses excess losses, the storekeeper-gauger will deliver all copies of Form 257, with Form 1520 attached, to the proprietor of the warehouse, who will forward them to the collector of internal revenue with his remittance to cover the tax due on such excess losses. The collector will certify to the payment of the tax on all copies of Form 257, retain one copy, and return the other copies to the proprietor of the warehouse, who will deliver them to the storekeeper-gauger. Where the regauge of steel drums filled from warehouse storage tanks discloses losses, the procedure prescribed in sections 185.220 to 185.225, inclusive, will be followed. Where the regauge of packages of blended brandy discloses losses, the procedure prescribed in section 185.525 will be followed. (Secs. 2801(e)(5), 2901(a), 3031(a), 3033, 3176, I. R. C.)

SEC. 185.464. EXEMPTIONS OF DISTILLER.—No distiller who has given the required bond and who sells only distilled spirits of his own production at the place of manufacture, or at the place of storage in bond, in the original packages to which the tax-paid stamps are affixed, shall be required to pay the special tax of a wholesale dealer in liquors on account of such sales. This provision does not exempt distillers from the payment of special taxes for sales of distilled spirits of their own production in bond (by warehouse receipt or otherwise), or in cases or containers other than the original packages, or for exportation, fortification of wine, use of the United States, etc., without attachment of tax-paid stamps to the original packages, nor does it exempt them from liability for special taxes where distilled spirits produced by other distillers are sold by them. This exemption does not apply to the sale of brandies blended and packaged by a distiller in an internal revenue bonded warehouse. (Secs. 2801(e)(5), 3176, 3250(a)(4), I. R. C.)

SEC. 185.464a. EXEMPTION FROM SPECIAL TAX AS A RECTIFIER.—Proprietors of internal revenue bonded warehouses who blend brandies under the provisions of section 2801(e)(5) of the Internal Revenue Code shall not be required to pay special tax as rectifiers. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.465. FILES INDEX, FORM 1622.—The storekeeper-gauger in charge of each internal revenue bonded warehouse where spirits produced by more than one distiller are received and stored, shall keep an index on Form 1622 of his files of reports and records, Form 1520, Form 1619, and Form 1620, covering all deposits of spirits in the warehouse, including spirits received from the bottling department after bottling in bond before tax-payment, packages filled from storage tanks for deposit in the warehouse, and packages filled from brandy-blending tanks for deposit in the warehouse. A separate files index may be kept of the record, Form 1620, covering the receipt or deposit of cases of bottled-in-bond spirits and of report on Form 1520 covering the deposit of packages of blended brandies. Entries shall be made in the files index as indicated by the headings of the columns and lines on forms and in accordance with instructions issued by the Commissioner. The list of distillers shall be prepared alphabetically and the sheets covering the deposits of spirits shall be arranged in the index in alphabetical order according to the names of the distillers. A separate sheet shall be used for the spirits produced at each distillery and the spirits deposited shall be entered on the sheet in chronological order according to the date of deposit. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.466. SUMMARY OF DEPOSITS AND WITHDRAWALS, FORM 1621.—The storekeeper-gauger in charge of each internal revenue bonded warehouse shall keep a summary on Form 1621 of the spirits entered into, withdrawn from, and remaining in warehouse. Entries shall be made as indicated by the headings of the columns and lines on the form and in accordance with instructions issued by the Commissioner. In the case of packages of blended brandies, the registry number of the warehouse where such packages were filled shall be substituted for the registry number of the distillery. The records shall be arranged alphabetically by States, (1) numerically by distilleries according to registry number within each State, and (2) in case of blended brandies, numerically by internal revenue bonded warehouses according to registry number within each State. Separate sheets shall be used for each kind of spirits (including blended brandies) and for each season's production, and for packages, cases, storage tanks, and packages of blended brandies. A statement of daily totals shall be kept on a separate sheet. This record shall also be used by storekeeper-gaugers in connection with the preparation of the statement on Form 1513 of spirits remaining in warehouse. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.467. FILES AND RECORDS COVERING DEPOSITS.—The storekeeper-gauger's copy of all Forms 1520, covering the deposit in warehouse of spirits received from distilleries; Forms 1619 and 1620, covering spirits received from other warehouses; Forms 1520, covering packages filled from storage tanks and retained in the warehouse; Forms 1520, covering packages filled from brandy-blending tanks; and Forms 1620, covering cases of bottled in bond spirits returned to the storage portion of the warehouse, shall be filed as permanent records, in bound form, in the office of the storekeeper-gauger. Before filing such forms the storekeeper-gauger shall make appropriate entries covering the receipt of the spirits in his files index, Form 1622, and in his summary of deposits and withdrawals, Form 1621. The storekeeper-gauger shall enter the date of deposit of the spirits in the warehouse at the bottom of each form. The Forms 1520, 1619, and 1620 shall be filed separately by form number, the forms in each file being grouped

under the name of the producing distiller (or warehouseman in the case of blended brandies) and arranged in chronological order according to the date of deposit, and in sequence to the serial numbers of the packages or cases where possible. Separate files shall be maintained for storage tanks and for packages filled from storage tanks and retained in the warehouse and for packages filled from brandy-blending tanks. Where two or more lots of spirits are deposited in the same storage tank the Forms 1520 covering such deposits shall be kept together and identifying notations shall be made on each form showing that they collectively represent the spirits deposited in the tank. Similar notations shall be made on Form 1622 in connection with the entries of the deposits. When the last deposit is made in a tank, a recapitulation of the deposits will be made on the Form 1520 covering the last deposit, and withdrawals will be noted on such form. The date of deposit of the spirits shall be entered at the bottom of each Form 236, covering spirits received in bond from other premises, at the bottom of each Form 1518 covering spirits bottled in bond and returned to the warehouse, and at the bottom of each Form 1685 covering brandy blended in brandy-blending tanks and returned to the warehouse and such forms shall be filed separately by form number in chronological order. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.468. FILES AND RECORDS COVERING WITHDRAWALS.—When spirits are to be withdrawn from warehouse, the storekeeper-gauger will secure from his files index information as to the location of the Form 1520, 1619, or 1620 covering the deposit of the spirits, including blended brandies returned to the storage portion of the warehouse from the brandy-blending department, and shall transcribe the necessary details therefrom to the appropriate withdrawal forms. Upon withdrawal of the spirits, the storekeeper-gauger shall indicate by proper red line blocking on the entry Form 1520, 1619, or 1620, the packages or cases withdrawn and the date and purpose of withdrawal. The storekeeper-gauger shall also make the necessary entries covering the withdrawals on Form 1621, and shall enter the date of withdrawal at the bottom of the retained copies of the withdrawal forms and applications. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.469. RETENTION OF RECORDS.—Each Form 1520, 1619, or 1620 covering the deposit of the spirits shall be retained in the active binder until all spirits covered by the form have been withdrawn, at which time such form shall be removed and filed in the same order in an inactive file. Each binder shall be appropriately marked to show the kind of forms it contains and the period covered thereby. The binders for packages received from the distillery on the same or contiguous premises, packages filled from storage tanks, packages of blended brandy filled in the brandy-blending department, and cases bottled at the warehouse shall also have shown thereon the serial numbers of the packages or cases. Where a change in proprietorship of the warehouse occurs, the files of all deposit and withdrawal forms shall be retained and continued in connection with the transactions of the successor. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.471. FILING WITHDRAWAL FORMS AND APPLICATIONS.—The copies of the reports of the withdrawal gauge, Form 1520, or the reports of removal for transfer in bond, Form 1619, retained by the storekeeper-gauger shall be filed separately in chronological order, according to the date of withdrawal noted at the bottom of the forms. The storekeeper-gauger's copies of withdrawal applications, Forms 179, 206, 236, 257, 543, 573, 655, 1518, 1519, and 1685, may be filed together or separately by form number, in chronological order, in the same manner as the withdrawal forms. The withdrawal reports and applications for each month shall be separated in the file by proper markers, and each file shall be appropriately marked to show the kind of forms contained therein and the period covered thereby. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.472. METHOD OF KEEPING RETURN.—The storekeeper-gauger in charge of every internal revenue bonded warehouse shall keep a monthly record on Form 1513 of all distilled spirits deposited in, withdrawn from, and remaining in the warehouse. Such deposit, withdrawal, and inventory records, shall include blended brandies received into the storage portion of the warehouse from the brandy-blending department, brandies removed from the storage portion of the warehouse to the brandy-blending department, and blended brandies remaining in the storage portion of warehouse at the end of the month. As to blended brandy, the statement of spirits remaining in the warehouse shall be reported according to the season and year of production of the oldest brandy in the blend. All the information indicated by the headings of the columns and lines and the instructions printed on the form shall be entered on the form in the order stated

in such instructions. The record shall be kept in bound form available for inspection by Government officers. (Secs. 2801(e)(5), 2915, 3176, I. R. C.)

SEC. 185.480. FORM 1514.—Each district supervisor shall render a monthly warehouse account on Form 1514 of transactions at internal revenue bonded warehouses for each State within his district. Such record shall cover brandies removed from the storage portion of a warehouse to the brandy-blending department and blended brandy returned to the storage portion of the warehouse from the brandy-blending department. The required data will be obtained from the monthly warehouse reports of storekeeper-gaugers on Form 1513, after the reports have been audited. The entries shall be made as indicated by the headings of the columns and lines, and in accordance with the instructions printed on the form. Form 1514 shall be prepared in duplicate and one copy, with the supporting copies of Form 1513, shall be forwarded to the Commissioner not later than the last day of the month succeeding that for which rendered. The remaining copy shall be retained by the district supervisor. (Secs. 2801(e)(5), 3170, 3176, 3953, I. R. C.)

SEC. 185.481. FORM 332.—Each district supervisor shall render an annual report on Form 332, by kind, seasons, and years of production, of distilled spirits in internal revenue bonded warehouses at the close of the fiscal year (June 30), for each State within his district. In the case of blended brandy the season and year of the oldest brandy in the blend shall be considered the season and year of the blended brandy. The entries shall be made as indicated by the headings of the columns and lines and in accordance with the instructions printed on the form. Form 332 shall be prepared in duplicate and one copy shall be forwarded to the Commissioner not later than July 31 of each year. The remaining copy shall be retained by the district supervisor. (Sec. 3176, I. R. C.)

ARTICLE L.—BLENDING OF BRANDIES.

SEC. 185.514. GENERAL.—(*a*) *Limitations.*—Fruit brandies distilled from the same kind of fruit at not more than 170 degrees proof may, for the sole purpose of perfecting such brandies according to commercial standards, be mixed or blended with each other, or with any such mixture or blend, by the distiller thereof in any internal revenue bonded warehouse operated by him exclusively for the storage of brandy or wine spirits. The blending must improve (perfect) the brandy according to the approved commercial standard of the blended product. Any blending of brandy of standard quality with brandy of inferior quality for the purpose of stretching or increasing the volume of the standard quality brandy and which results in the manufacture of a product inferior to the standard quality brandy before blending, constitutes rectification and may not be done on internal revenue bonded warehouse premises. The term "distiller" as used in this section includes any one or more distillers associated as members of any farm cooperative, or any one or more distillers affiliated within the meaning of section 17(a)(5) of the Federal Alcohol Administration Act, as amended, or any fruit distiller for whose account, recorded with the district supervisor at the time of production, the brandy to be blended was produced. Accordingly, for the purpose of determining eligibility for blending, brandy distilled from the same kind of fruit at not more than 170 degrees proof shall be considered distilled by the distiller operating the internal revenue bonded warehouse (1) where it was actually distilled by him; (2) where it was produced by a distiller associated with him as a member of a farm cooperative; (3) where it was produced by a distiller affiliated with him, that is, one of such distillers has control of the other or the distillers are subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise; or (4) where it was produced for his account, provided such production was recorded with the district supervisor at the time of production as required in subsection (*b*) of this section.

(*b*) *Recording of production.*—When brandy to be blended is produced for the account of the distiller, the following procedure shall be observed:

(1) The distiller at whose warehouse brandies are to be blended shall file with the district supervisor a certified copy of the agreement under which the brandy is to be produced for his account. The agreement shall set forth the name and registry number of the producing distiller, kind, the approximate amount of brandy to be produced, and the approximate time of production, and should clearly show that the producing distiller was engaged to produce brandy for the account of the blending distiller.

(2) Upon receipt of the agreement the district supervisor shall examine it closely. To conform to the law brandy to be blended must actually be produced

for the account of the blending distiller. If it appears that the agreement is a contract to produce brandy for the account of the blending distiller and is not merely a contract to sell production, the district supervisor shall notify the storekeeper-gauger assigned to the premises of the producing distiller of the names of the distillers involved and the kind and quantity of brandy to be produced for blending, with the following instructions:

(i) Upon completion of the entry gauge and execution of the Distiller's Entry for Deposit, the storekeeper-gauger shall examine the packages involved and, where the distiller has affixed to a package a tag stating "Produced for the account of (name of distiller for whom produced)" and the district supervisor has advised the storekeeper-gauger of the agreement to produce for the account of that blending distiller, he shall make a notation on the reverse side of all copies of the Form 1520 stating in effect "Produced for the account of (name of distiller for whom produced)." If only a portion of the brandy covered by the Form 1520 was produced for the account of the fruit distiller who intends to blend brandy, the storekeeper-gauger shall show the serial numbers of the packages and aggregate proof gallons of brandy so produced. The statement shall be signed by the storekeeper-gauger. In the absence of tags on the containers denoting for whom the brandy was produced, or in the absence of a statement by the district supervisor relative to the agreement under which the brandy was produced, the storekeeper-gauger shall not assume that the brandies were produced for the account of another and shall make no statement relative thereto.

(ii) Where brandy produced for the account of a fruit distiller is transferred in bond, a transcript of the storekeeper-gauger's statement shall be made on each copy of Form 1619. The transcript shall be shown on the face of the Form 1619 or on the reverse. If shown on the reverse, proper reference thereto should be made in the space to the left of "Date received in warehouse."

(3) Upon receipt of a copy of Form 1520 showing brandy produced for the account of a blending distiller, the district supervisor shall note on the agreement, or on a suitable index card, the date of production, the serial numbers of the packages, and the aggregate proof gallons covered by the Form 1520. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.515. NOTICE REQUIRED.—(*a*) *Notice of commencement.*—After the brandy-blending department has been duly approved by the Commissioner, the proprietor of the warehouse shall, before beginning blending operations, give notice, in triplicate, to the district supervisor through the storekeeper-gauger in charge of the warehouse, of his intention to blend brandies. Upon approval of the notice by the district supervisor, two copies shall be forwarded to the storekeeper-gauger in charge and the original copy shall be retained in his office. The storekeeper-gauger shall deliver one copy to the proprietor, and retain the other copy in the Government office.

(*b*) *Notice of discontinuance.*—In the event the proprietor desires to discontinue blending operations, either temporarily or permanently, and to use the space and facilities of the blending department for other duly authorized warehouse purposes, he shall give notice, in triplicate, of discontinuance to the district supervisor through the storekeeper-gauger in charge of the warehouse that all brandies have been removed from the brandy-blending department and shall state the purpose or purposes for which he proposes to use the department. The storekeeper-gauger shall inspect the brandy-blending department and if all brandies have been reported therefrom, he shall certify to such fact on each copy of the notice of discontinuance and forward the three copies to the district supervisor. The district supervisor shall examine the notice and if the proposed use stated by the warehouseman is in accordance with law and regulations he shall endorse his approval on each copy of the notice. Upon approval by the district supervisor, two copies of the notice shall be forwarded to the storekeeper-gauger in charge and the original copy shall be retained in his office. The storekeeper-gauger shall deliver one copy to the proprietor, and the other copy shall be retained by him in the Government office. The storekeeper-gauger shall then remove the locks from the doors to the brandy-blending department. Where brandy-blending tanks are to be used for other purposes, such as the storage of fortifying brandy, the tanks must be temporarily marked to show such use, but the permanent marks on the tanks should not be

disturbed. After notice of discontinuance has been approved, and before resuming blending operations, a new notice of commencement must be filed and approved. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.516. APPLICATION TO BLEND AND REPORT OF GAUGE.—(*a*) *Application, Form 1685.*—When a distiller desires to blend brandies at his warehouse he shall file application on Form 1685, in quadruplicate, fully describing the brandies to be blended and giving all the information called for by the form. Each form shall be given a serial number beginning with "1" for the 1st day of January of each year and running consecutively thereafter to December 31, inclusive. The application shall show, as to each kind of brandy not previously blended, the following:

(1) The number of packages,
(2) The serial numbers of the packages,
(3) The kind of brandy as marked on the packages,
(4) The date of original entry for deposit,
(5) Original tax gallons,
(6) Proof of distillation,
(7) The name of the producing distiller, registry number of the distillery and State in which the distillery is located, or,

if brandies previously blended are to be dumped for blending with other brandies, the application shall show (in respect to such previously blended brandies) the following:

(1) The number of packages,
(2) The serial numbers of the packages,
(3) The kind of brandy as marked on the packages,
(4) Date of original entry of oldest brandy in blend,
(5) Date of original entry of youngest brandy in blend,
(6) Proof gallons marked on the packages,
(7) The name of the blending distiller and registry number of the warehouse in which the blending was done and State in which the warehouse is located,
(8) Date and serial number of the Form 1685 covering each prior blend and the name of the blending distiller, registry number of the warehouse in which the blending was done and State in which the warehouse is located, as shown on each such Form 1685. Where a prior blending was effected in a warehouse in another district, a copy of the Form 1685 covering such blending shall be submitted with the application.

Where two or more types of brandy produced from the same kind of fruit (such as grape lees brandy, grape pomace brandy, grape brandy) are to be blended together, the applicant shall state the percentage of each type of brandy to be contained in the resultant blend. Where any brandy to be blended was produced at a distillery operated under a name other than the name of the blending distiller, the application shall show whether such distillery was operated by an associate or by an affiliate, or whether the brandy was produced for the account of the blending distiller. The application shall show the proposed designation of kind for the brandy after blending.

(i) *Evidence of affiliation or association.*—Where brandy produced by an associate or an affiliate of the blending distiller is to be blended, the blending distiller must file with the district supervisor documentary evidence establishing such association or affiliation.

(ii) *Bond coverage.*—The blending distiller must state, as to the brandy produced by each distiller, whether the producer thereof has filed consent of surety on Form 1533 stipulating that his distiller's bond shall continue to be liable for the tax imposed by section 2800(a)(1), I. R. C., on such brandy after it has been blended with other brandy. The consent of surety may be prepared to cover a specific lot or lots of brandy, or to cover all brandy produced by the distiller which is blended with other brandy.

(*b*) *Action by district supervisor.*—All copies of Form 1685 shall be submitted to the district supervisor for his approval. Upon receipt of the application the district supervisor shall determine whether the proposed designation of kind for the blended brandy conforms to the provisions of section 21, class 4, of Regulations 5, as amended, relating to the labeling and advertising of distilled spirits

under the provisions of the Federal Alcohol Administration Act and shall otherwise determine that the brandies described on the form are eligible for blending pursuant to the provisions of section 2801(e)(5), I. R. C. The district supervisor shall determine whether, for each distiller of brandy to be blended, there is on file a consent of surety stipulating that the distiller's bond shall continue to be liable for the tax imposed by section 2800(a)(1), I. R. C., after brandy produced by such distiller has been blended. The district supervisor shall also determine whether documentary evidence has been submitted to establish (1) that the brandy was produced by a distiller associated with the blending distiller as a member of a bona fide farm cooperative, or (2) that the brandy was produced by a distiller affiliated (as defined in section 185.514) with the blending distiller, or (3) that the brandy was produced by a distiller for the account of the blending distiller and such production was recorded (as required by section 185.514). Where the applicant has not established that the proposed blending will be in accordance with the provisions of these regulations, the district supervisor shall not approve the application and shall return it with a statement showing the reason therefor. If the district supervisor is doubtful whether the proposed designation of kind is correct, or if he is doubtful for other reasons that the application should be approved, the matter should be submitted to the Commissioner for advice. If the application is approved all copies of the Form 1685 should be forwarded by the district supervisor to the storekeeper-gauger in charge of the internal revenue bonded warehouse.

(c) *Action by the storekeeper-gauger.*—Upon receipt of the approved application, Form 1685, the storekeeper-gauger shall inspect and gauge the packages and make detailed report of such gauge on Form 1520, in quadruplicate. Where brandies covered by the application, Form 1685, were produced by different distillers or at different distilleries, separate report of gauge, Form 1520, shall be prepared for the product of each distiller or distillery. The storekeeper-gauger shall, in every instance, note on Forms 1520 the serial number and date of the application, Form 1685.

(1) *Verification.*—Where the quantity of a type or lot of brandy to be blended with another type or lot of brandy is limited to a maximum percentage, the storekeeper-gauger and the distiller should examine the Forms 1520 covering the regauge of the brandy which is limited to a maximum percentage to determine (before the report of the storekeeper-gauger on Form 1685 is executed) that the quantity of such brandy (calculated on a proof-gallon basis) is not in excess of the maximum percentage authorized by the approved application. Where the quantity of a type or lot of brandy regauged exceeds the maximum percentage authorized for blending, the storekeeper-gauger may, at the distiller's request, delete the packages containing such quantities (in no case less than a whole package) from the application and line out the entries on the regauge report and permit the return of the packages to the storage portion of the warehouse. The deletion in the application must be verified by the distiller and initialed by him. Where compliance with the statement of maximum percentage can not be obtained in this manner, the blending operation should be suspended and the matter submitted to the district supervisor for advice.

(2) *Disposition of Forms 1685.*—Upon completion of the report as to brandy dumped, blended, and returned to the storage portion of the warehouse, the storekeeper-gauger shall forward one copy of the form and one copy of Form 1520 to the district supervisor, deliver one copy of each form to the proprietor of the warehouse, and file one copy of each form in his office. Where a copy of Form 1685 was not sent to the collector of internal revenue for the reason that excess losses from distillers' original packages were not disclosed, the extra copy of Form 1685 and of Form 1520 shall be destroyed by the storekeeper-gauger.

(d) *Audit by district supervisor.*—At the time of auditing Forms 1520 and 1685 covering the blending of brandies the district supervisor shall determine whether the quantities blended were in a proportion which would permit the designation of kind given to the resultant blend. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.517. EXCESS LOSSES TO BE TAX-PAID.—Where packages containing a blend of brandies are to be dumped for further blending, losses from such packages shall be considered in accordance with the provisions of section 185.525. All losses from distillers' original packages in excess of the statutory allowance provided in section 2901(a), I. R. C., as amended, must be tax-paid. If

the regauge discloses excess losses or deficiencies to be tax-paid, all copies of the Form 1685, together with a copy of the report of gauge on Form 1520, shall be forwarded by the proprietor with remittance for the tax on such excess losses or deficiencies to the collector for the district in which the bonded warehouse is located. The collector shall execute a certificate as to the payment of tax on all copies of Form 1685, retain one copy thereof and the copy of Form 1520 and forward the other copies to the storekeeper-gauger in charge of the warehouse. Where no excess loss is disclosed by the regauge, the Forms 1685 and 1520 shall not be sent to the collector. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.518. BLENDING PRIOR TO PAYMENT OF TAX ON LOSSES.—Packages of brandies for blending may be dumped into the brandy-blending tank immediately after they are gauged. The storekeeper-gauger may permit brandies to be drawn from brandy-blending tanks before payment of the tax on excess losses from packages dumped. However, Forms 1685 and 1520, together with remittance, must be transmitted to the collector immediately, and when such is done the blending and drawing off of such brandies into packages and the return thereof to the storage portion of the warehouse may be permitted prior to the return of Forms 1685 to the storekeeper-gauger by the collector: *Provided*, That in such cases an extra copy of Form 1685 covering the packages dumped should be furnished the officer at the brandy-blending department in order that he may make proper report of brandy-blending operations. Upon return of the receipted Forms 1685 from the collector, the storekeeper-gauger shall compare the amounts, and if found to be in agreement, the extra copy shall be destroyed. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.519. TRANSFER OF BRANDIES TO BLENDING TANK.—Before brandies are transferred to the brandy-blending tank, the storekeeper-gauger shall lock the outlet to the tank, and after all brandies have been transferred to the brandy-blending tank the storekeeper-gauger shall lock the inlet to the tank. The contents of the tank must be thoroughly agitated, the proof determined, and the contents of the tank gauged. The proof so determined shall be considered the proof of the brandy drawn into packages from the tank. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.520. DISPOSITION OF EMPTY PACKAGES.—Immediately upon being emptied, the packages from which brandies were dumped for blending shall be examined by the storekeeper-gauger for the purpose of determining that all brandies were removed therefrom; shall have all the marks and brands obliterated; and be removed from the warehouse: *Provided*, That in the event such packages are to be used as containers for the blended brandies, so many as are required to contain the blended brandies may be retained in the brandy-blending department for that purpose. Such empty packages shall be segregated from any filled packages in the brandy-blending department. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.521. DRAWING OFF BRANDIES.—Brandies must be drawn from the brandy-blending tank into packages on or before the third day following the deposit of the same therein. When brandies are to be drawn from the tank the storekeeper-gauger shall see that all valves and openings other than the necessary outlet valve are closed and locked before the brandies are drawn from the tank. The storekeeper-gauger shall open and close the locks, but it shall be the duty of the warehouseman to manipulate the stopcocks or valves controlling the flow of the spirits. The storekeeper-gauger assigned to the brandy-blending department is required to be present and personally supervise the drawing off of all brandy in the tank, the marking and branding of all packages filled therefrom. He shall also see that all mechanical duties connected with such operations are properly performed as provided herein and in the Gauging Manual. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.522. GAUGING OF BLENDED BRANDY.—All brandies drawn from brandy-blending tanks shall be gauged by the storekeeper-gauger and reported on Form 1520. All information indicated by the headings of the various columns and lines and instructions printed on the form shall be furnished. The storekeeper-gauger shall, in every instance, note on Form 1520 the serial number of the application, Form 1685, under which the brandies were blended and the dates of original entry of (1) the oldest brandy and (2) the youngest brandy contained in the blend. Brandies drawn into packages shall be gauged according to the rules prescribed in the Gauging Manual. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.523. NUMBERING OF PACKAGES.—All packages filled from brandy-blending tanks shall be serially numbered, separately from packages filled at the distillery or from storage tanks in the bonded warehouse, beginning with number "1," preceded by the letters "BL," as "BL–1," "BL–2," etc. The symbol "BL" shall be considered a part of the serial number and must be shown as part of the serial number on all official forms or records. (Secs. 2801(e)(5), 2825, 2878, 2883, 3176, I. R. C.)

SEC. 185.524. MARKING OF PACKAGES.—Immediately upon the filling of the packages, or prior to filling, the blending distiller shall mark upon the head of the package by branding or stenciling the following information:

1. The kind of brandy as shown on the Form 1685.
2. The words "Blended by."
3. The name of the blending distiller.
4. The registered number of the warehouse, and the State in which the warehouse is located.
5. The serial number of the package.
6. The date of filling of the package.
7. The date of original entry of the oldest brandy in the mixture.
8. The date of original entry of the youngest brandy in the mixture.
9. Proof of blended brandy.
10. Tare of container.
11. Proof gallon content.
12. By whom inspected.

The following is an illustration of the marking of packages:

GRAPE BRANDY

Blended by

John Doe Distilling Co.
I. R. B. W. No. 217, Calif.

P. 127	S. N.–BL 10907
T. 101	Filled 7–29–47
P. G. 61.30	Orig. Ent. O. B. 6–19–45
	Orig. Ent. Y. B. 6–19–46
	Inspected
(Space reserved for withdrawal marks and stamps)	James Roe U. S. S. G.

Such marks and brands shall be placed upon the packages in letters and figures not less than three-fourths inch in height or one-half inch in the case of half-barrels. The head of the package bearing these marks shall be known as the "Government head." No marks other than those required by these regulations and the applicable provisions of the Gauging Manual shall be placed upon the Government head of such package. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.525. LOSSES OF BLENDED BRANDY.—(*a*) *General.*—The taxes (imposed by sections 2800(a)(1) and 2801(e)(5), I. R. C.) on blended brandy lost by leakage, evaporation, theft, or otherwise, not occurring as the result of any negligence, connivance, collusion, or fraud on the part of the warehouseman or his agents may be remitted or refunded to the extent that the warehouseman is not indemnified or recompensed for such loss.

(*b*) *Losses from brandy-blending tank.*—The quantity (proof gallons) of brandy which is lost from the brandy-blending tank shall be determined each time the tank is emptied. The extent of the loss shall be established by comparison of the quantity (proof gallons) dumped from packages into the tank with the total quantity (proof gallons) drawn into packages therefrom, as shown by the gauge Form 1520, and the Form 1685. Where the loss of brandy does not exceed 1 per cent of the actual quantity deposited in the tank, claim for allowance of the loss will not be required, provided there are no circumstances indi-

cating that the brandy or any portion thereof was lost as the result of negligence, connivance, collusion or fraud on the part of the warehouseman or his agents.

(c) *Loss from packages.*—The quantity (proof gallons) of blended brandy which is lost from packages shall be determined by regauge prior to dumping for further blending and upon the withdrawal of packages from the warehouse tax-paid or for any tax-free purpose. The quantity found to be so lost shall be entered by the storekeeper-gauger in the proper column of Form 1520. Claim for allowance of the loss will not be required, provided there are no circumstances indicating that the brandy, or any part thereof, was lost as the result of negligence, connivance, collusion, or fraud on the part of the warehouseman or his agents.

(d) *Losses indicating tampering.*—Where the gauge of packages filled from brandy-blending tanks or the regauge of such packages upon withdrawal indicates that the contents of the tanks or packages have been tampered with, as where a material deficiency is found and there is no evidence of loss by leakage, evaporation, or casualty, or where deterioration in proof not accountable for by variation in gauge is disclosed the officer shall immediately notify the district supervisor of all the facts in the case and shall not permit the tank to be emptied or the packages to be removed pending receipt of instructions from the district supervisor.

(e) *Claim for losses from brandy-blending tank.*—Allowance will not be made for losses of blended brandy from a brandy-blending tank where there are circumstances indicating that the losses were the result of negligence, connivance, collusion, or fraud on the part of the warehouseman or his agents, or where the losses are in excess of 1 per cent of the quantity (proof gallons) deposited in the tank, unless the cause of each loss is satisfactorily explained in a claim for remission of the tax. The claim should be prepared and filed in accordance with the applicable provisions of sections 185.210 to 185.212, inclusive.

(f) *Claim for losses on storage or in transit.*—Allowance will not be made for losses of blended brandy sustained while on storage in, or in transit to, a bonded warehouse where there are circumstances indicating that the losses were the result of negligence, connivance, collusion, or fraud on the part of the warehouseman or his agents, unless the cause of each loss is satisfactorily explained in a claim for remission or refund of the tax. The claim should be prepared and filed in accordance with the applicable provisions of sections 185.210 to 185.212, inclusive. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 185.526. WITHDRAWAL OF BLENDED BRANDIES.—Brandies mixed or blended in accordance with the provisions of these regulations may be stored, transported, transferred in bond, withdrawn from bond tax-paid or tax-free, or be otherwise disposed of, in the same manner as such brandies not so mixed or blended. The foregoing should not be construed as meaning that such blended brandies are eligible for bottling in bond. (Secs. 2801(e)(5), 3176, I. R. C.)

4. This Treasury decision shall be effective upon publication in the Federal Register. (Sections 2801(e)(5), 2806(e), 2857, 2859, 2868, 2872, 2873, 2875, 2878, 2879, 2882, 2883, 2884, 2885, 2886, 2888, 2901, 2903, 2904, 2905, 2910, 2915, 3031, 3033, 3170, 3176, and 3953 of the Internal Revenue Code (U. S. C., Title 26, sections 2801(e)(5), 2806(e), 2857, 2859, 2868, 2872, 2873, 2875, 2878, 2879, 2882, 2883, 2884, 2885, 2886, 2888, 2901, 2903, 2904, 2905, 2910, 2915, 3031, 3033, 3170, 3176, and 3953.)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 13, 1947.

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

(Published in the Federal Register November 20, 1947.)

REGULATIONS 10, SECTIONS 185.409, 185.412, 185.413. 1947–24–12703
T. D. 5585

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 185.—WAREHOUSING OF DISTILLED SPIRITS.

Amending Regulations 10.

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

To District Supervisors and Others Concerned:

1. Section 507, Title V, of the Philippine Trade Act of 1946 (Public Law 371, Seventy-ninth Congress), approved April 30, 1946 [C. B. 1946–1, 334], reads in part as follows:

SEC. 507. SPECIAL EXCISE PROVISIONS RELATING TO THE PHILIPPINES REPEALED.

* * * * * * *

(b) Sections 3340, 3341, and 3342 of the Internal Revenue Code are repealed, effective July 4, 1946.

* * * * * * *

2. For the reason that the law repeals the provisions of the Internal Revenue Code pursuant to which the original regulations or parts thereof are prescribed, and because these regulations are designed merely to revoke the provisions of the regulations which are not now applicable, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act. On and after July 4, 1946, the Philippines will be treated as a foreign country instead of a possession of the United States under these regulations.

3. Pursuant to the foregoing provisions of law and section 3176, Internal Revenue Code, Regulations 10 (26 CFR, Part 185) are amended, effective July 4, 1946, in these respects:

(*a*) Section 185.409 is amended by striking out "the Philippine Islands," and the Code citation "3341(b),".

(*b*) Section 185.412 is amended to read as follows:

Any manufacturer who manufactures medicines, preparations, compositions, perfumeries, cosmetics, and cordials and other liquors, for export, at a duly constituted manufacturing bonded warehouse established in accordance with law, may withdraw distilled spirits in distillers' original packages from any internal revenue bonded warehouse, free of tax, for use in the manufacture of such products. The law provides that distilled spirits may be removed from internal revenue bonded warehouses without payment of tax and transported to bonded manufacturing warehouses, class 6, to be rectified, or reduced in proof and bottled, and exported or shipped to Puerto Rico. (*; Secs. 2891, 3177, 3178, I. R. C.; Sec. 6, 32 Stat., 55, 19 U. S. C., 152(a).)

(*c*) Section 185.413 is amended to read as follows:

When any manufacturer, who is the proprietor of a customs manufacturing bonded warehouse, desires to remove distillers' original packages of distilled spirits to such warehouse from an internal revenue bonded warehouse, free of tax, for use in the manufacture of medicines, preparations, compositions, perfumeries, cosmetics, and cordials and other liquors, for export, or, in the case of spirits rectified or reduced in proof and bottled, for export or shipment to Puerto Rico,

he shall execute application, Form 206, in triplicate, indicating thereon that the spirits are to be withdrawn for transfer to a customs manufacturing warehouse. The proprietor of the internal revenue bonded warehouse from which the spirits are to be removed shall execute request on Form 206 for regauge of the packages covered by the application. The provisions of Article XXXIII, relating to the gauging, taxpayment of excess losses, stamping, and removal of distillers' original packages for exportation, shall so far as applicable apply to packages to be removed to customs manufacturing warehouses. (*; Sec. 2891(a), I. R. C.)

4. This Treasury decision is issued under the authority contained in section 3176, Internal Revenue Code.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 13, 1947.

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

(Filed with the Division of the Federal Register November 20, 1947, 8.56 a. m.)

REGULATIONS 15 (1940). 1947–16–12613
T. D. 5573

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 190.—RECTIFICATION OF SPIRITS AND WINES.

Amending Regulations 15 (1940).

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

To District Supervisors and Others Concerned:

1. On April 5, 1947, notice of proposed rule making regarding rectification of spirits and wine was published in the Federal Register (12 F. R., 2290).

2. After consideration of all such relevant matter as was presented by interested persons regarding the proposal, the following added section 190.9a and amendments to sections 190.42, 190.153, 190.203, 190.279, 190.280, 190.281, 190.414, and 190.416 of Regulations 15, approved May 20, 1940 (26 CFR, Part 190), are hereby adopted.

3. These amendments are designed to regulate the use by rectifiers of alcoholic flavoring material subject to drawback under section 3250(1), I. R. C., to provide for more practicable operation of rectifying plants by eliminating unnecessary requirements relative to construction and operation, to provide a more efficient method of determining proof of sweetened spirits and wines, and to permit the gauging by weight of rectified products containing solids.

4. Regulations 15, approved May 20, 1940 (26 CFR, Part 190), as amended, are hereby amended as follows:

SEC. 190.9a. USE OF ALCOHOLIC FLAVORING MATERIALS.—(*a*) *Limitation.*—The use of alcoholic flavors or flavoring extracts manufactured on premises other than a rectifying plant must be limited by the rectifier, so that the quantity of alcohol (proof gallons) contained therein will not represent more than 2½ per cent of the quantity of alcohol (proof gallons) contained in the finished product, except as provided in subsection (*b*) of this section. For example, 100 gallons of a finished cordial, 50 degrees of proof, contain 50 proof gallons. As 2½ per cent of 50 equals 1.25, the cordial could contain not more than 1.25

proof gallons of alcohol derived from such flavors or flavoring extracts used in its manufacture.

(*b*) *Exception to limitation.*—In any case where the use of flavors or flavoring extracts in quantities in excess of the 2½ per cent limitation prescribed in subsection (*a*) of this section is required, such limitation shall not apply to the use of any flavors or flavoring extracts in excess thereof if the flavoring material used is purchased directly from the manufacturer and, as to each lot of purchased flavors or flavoring extracts containing alcohol, the rectifier has available for examination by the storekeeper-gauger an affidavit of the manufacturer showing: (1) the quantity; (2) the date of manufacture; (3) the kind and brand of each flavor or flavoring extract; and (4) that drawback under section 3250(1), I. R. C., has not been nor will be claimed on any alcohol or distilled spirits contained in the flavor or flavoring extract.

(*c*) *New formulas required.*—The manufacture of rectified products in which are used alcoholic flavors or flavoring extracts to an extent not consistent with the provisions of this section and section 190.153, as amended, shall be discontinued within 90 days after the effective date of this regulation. New formulas, submitted for the purpose of showing the use of alcoholic flavors or flavoring extracts in the manufacture of rectified products, must furnish the information required by section 190.153, as amended. (Secs. 2801(e)(1), 3176, 3250(1), I. R. C.)

SEC. 190.42. STILLS.—All stills in the rectifying plant shall be located in the rectifying room and shall be of substantial construction and must have a clear space of not less than one foot around them. Every still must have plainly and legibly painted thereon words indicating its use, or uses, as "Gin Still," "Cordial Still," "Water Still," etc., followed by its serial number and capacity in wine gallons. All stills, except water stills and cordial stills of not more than 250 wine-gallon capacity, shall be connected with the receiving tanks by continuous permanent pipe lines: *Provided*, That, where such receiving tank is mounted on scales, the pipe line may be connected with the tank by means of flexible connections with the ends permanently attached and secured by means of Government cap seals, or by brazing or welding, to the inlet of the tank and to the pipe line. If the gin still is equipped with a pipe line to bypass the berry basket, such pipe line must be equipped with a valve for locking with a Government lock. (Secs. 2801(e)(1), 3176, I. R. C.)

SEC. 190.153. DESCRIPTION OF FORMULA.—

* * * * * * *

(*a*) *Flavoring material.*—Formulas providing for the use of alcoholic flavors or flavoring extracts under the provisions of section 190.9a, in addition to showing the kind of and percentage (by volume) of such material used, must specify the percentage of alcohol (by volume) contained therein. Any formula requiring the use of flavoring materials in excess of the 2½ per cent limitation provided in section 190.9a(*a*) shall show the quantity of alcohol in the finished product derived from (1) flavors or flavoring extracts subject to drawback under section 3250(1), I. R. C., and (2) flavors or flavoring extracts on which drawback has not been nor will be claimed, and, as to the latter, shall show whether such material is manufactured on rectifying plant premises or obtained from a manufacturer, and if obtained from a manufacturer, whether there will be on file at the rectifying plant a sworn statement by the manufacturer that drawback under section 3250(1), I. R. C., has not been nor will be claimed on such material. (Secs. 2801(e)(1), 3176, I. R. C.)

SEC. 190.203. PRODUCTION.—Gin may be produced exempt from the rectifying tax by the redistillation of a pure spirit over juniper berries and other aromatics. Gin so produced must be run into a receiving tank from which it must be promptly (*a*) drawn into packages, gauged, stamped, and removed to the finished products room, or (*b*) transferred to a bottling tank, gauged, and (1) bottled and removed to the finished products room or (2) conveyed by pipe line to a contiguous tax-paid bottling house or rectifying plant for bottling. (See secs. 190.313 to 190.339.) (Secs. 2800(a)(5), 2801(e)(1), 3176, I. R. C.)

SEC. 190.279. DETERMINING PROOF OF SWEETENED SPIRITS, WINES, ETC.—The alcoholic content (*a*) of blended whiskies containing more than 0.6 gram or 600 milligrams of solids per 100 milliliters derived from blending materials such as sherry wine, prune juice, caramel, glycerine, etc., and (*b*) of wines, cordials, liqueurs, and other rectified products containing saccharine or other solid matter will be determined by the use of an approved ebulliometer or a small laboratory still provided by the rectifier in accordance with sections 190.313 to 190.331, inclusive. When

using such instruments rectifiers must follow closely the instructions furnished therewith in order that accurate determinations may be made. Instructions relative to the use of small laboratory stills (or wine sets) and the following ebulliometers: Arnaldo-Sala (with shield), Braun, Juerst, Lefco, L'Ebulliometer Levesque (with shield), Malligand (with shield), Salleron Dujardin, "TAG" (with shield), and E. B. Torino (with shield), are also set forth in the Appendix to Regulations 7, Wine—1945 (26 CFR, Part 178). The alcoholic content of blended spirits containing not more than 0.6 gram or 600 milligrams of solids per 100 milliliters derived from blending materials will be determined by the use of a standard hydrometer or a small still. If determined by a standard hydrometer an obscuration correction factor may be added to the apparent proof in order to obtain the true proof of the blended spirits. Experience has shown that 0.1 gram or 100 milligrams of solids per 100 milliliters will obscure the true proof 0.4 of 1° of proof. For example, if a blended whisky contains 0.25 gram or 250 milligrams of solids per 100 milliliters and the apparent proof corrected to 60° Fahrenheit is found to be 89° proof by a standard hydrometer, a correction factor of 1° of proof (2.5 times 0.4) due to the solids may be added to the apparent proof, hence the true proof would be 90°. The solids in blended spirits due to blending materials will be determined by evaporating 25 milliliters of the blended spirits in a weighed dish on a steam bath and then heating for 30 minutes at the temperature of boiling water in a drying oven. The solids thus determined, multipled by 4, will give the solids in 100 milliliters of blended spirits. The correction factor to be used then will be determined on the basis that every 100 milligramss of solids will obscure the proof 0.4 of 1° of proof. The ebulliometer should not be used in determining the alcoholic content of blended spirits containing not more than 0.6 gram or 600 milligrams of solids per 100 milliliters. (Secs. 2801(e)(1), 2861, 3176, I. R. C.)

SEC. 190.280. DETERMINING CONTENTS BY WEIGHT.—Rectified spirits containing not more than 0.6 gram or 600 milligrams of saccharine or other solid matter per 100 milliliters which are transferred to portable packages or to a bottling tank mounted on scales may be gauged by weight in accordance with the official Gauging Manual. To this end accurate scales must be provided. Government officers will frequently test, by means of the test weights provided in accordance with section 190.32, the accuracy of the scales used for weighing packages. Scales used for weighing spirits in lots of not over 500 gallons in bottling tanks will be tested from time to time under the supervision of the storekeeper-gauger by means of the test weights provided in accordance with section 190.32. Such scales will be tested by placing the prescribed test weights upon the scales and checking the weight registered on the beam of the scales. The test weights will then be removed without disturbing the beam and the bottling tank filled with spirits or water to the same weight, whereupon the test weights will again be placed upon the scales, the spirits or water being retained in the tank, and the weight registered on the beam checked. This operation will then be continued until the scales have been checked in 500-pound notches at all weights for which the scales are used. Rectifiers will have scales used for weighing spirits in larger lots tested and their accuracy certified by State, county, or city departments of weights and measures at intervals of not more than six months. The storekeeper-gauger will not permit the use of any scales not so tested or which upon testing are found to be inaccurate. (Secs. 2801(e)(1), 2861, 3176, I. R. C.)

SEC. 190.281. DETERMINING CONTENTS BY MEASURE.—Rectified spirits transferred to a bottling tank not mounted on scales, and spirits, wines, cordials, liqueurs, and other rectified products containing saccharine and other solid matter will be gauged by measure to determine the wine-gallon content (corrected to volume in accordance with table 7 of the Gauging Manual); the proof-gallon content will then be determined by multiplying the wine-gallon content by the proof (pointed off in two decimal places) of the spirits. If the spirits, wines, cordials, liqueurs, and other rectified products containing saccharine or other solid matter are transferred to packages, the capacity of each package must be ascertained before the liquors are placed therein, or the quantity to be placed in each package must first be ascertained by actual measure in another vessel provided for that purpose: *Provided, however*, That the quantity in wine gallons of any liquor placed in packages may be determined by weight if the specific gravity of the liquor is ascertained and used in calculating the volume. (Secs. 2801(e)(1), 2861, 3176, I. R. C.)

SEC. 190.414. PACKAGES OF DISTILLED SPIRITS.—In addition to the serial number, there shall be plainly and durably burned, cut, imprinted, or stenciled on

the Government head of each barrel or similar container of distilled spirits (*a*) the kind of spirits; (*b*) the wine-gallon content; (*c*) the proof of the spirits; (*d*) the proof-gallon content; (*e*) the tare of the container; (*f*) the date of filling; (*g*) the number of the approved formula under which rectified; (*h*) the name (or trade name or style) of the rectifier; (*i*) the location (city or town, and State) of the rectifying plant; and (*j*) the number of the rectifier's basic permit issued under the Federal Alcohol Administration Act: *Provided*, That if the spirits were rectified by such rectifier, or if the spirits are unrectified spirits which were produced by such rectifier at a distillery, he may use in connection with his name the designation "Rectifier" or "Distiller," respectively. (Secs. 2801(e)(1), 2861, 3176, I. R. C.)

SEC. 190.416. PACKAGES AND CASES OF WINE.—The rectifier shall place marks upon packages and cases of wine similar to the marks required by sections 190.414 and 190.415 to be placed upon packages and cases of distilled spirits, except: The tare need not be marked on the packages; the alcoholic content of the wine will be shown in percentage by volume in lieu of the proof; and, in the case of unrectified wine, the proof gallons may be omitted. (Secs. 2801(e)(1), 3040, 3176, I. R. C.)

5. This Treasury Decision shall be effective on the thirty-first day after the date of its publication in the Federal Register.

(Sections 2800(a)(5), 2801(e)(1), 2861, 3040, 3176, and 3250(1) of the Internal Revenue Code (26 U. S. C. A., 2800, 2801, 2861, 3040, 3176, and 3250).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved July 16, 1947.

JOSEPH J. O'CONNELL, JR.,
Acting Secretary of the Treasury.

(Published in the Federal Register July 23, 1947.)

REGULATIONS 21, SECTION 191.1. 1947–24–12705
T. D. 5587

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 191.—IMPORTATION OF DISTILLED SPIRITS AND WINES.

Amending Regulations 21.

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

To District Supervisors and Others Concerned:

1. Section 507, Title V, of the Philippine Trade Act of 1946 (Public Law 371, Seventy-ninth Congress), approved April 30, 1946 [C. B. 1946–1, 334], reads in part as follows:

> SEC. 507. SPECIAL EXCISE PROVISIONS RELATING TO THE PHILIPPINES REPEALED.
>
> * * * * * * *
>
> (b) Sections 3340, 3341, and 3342 of the Internal Revenue Code are repealed, effective July 4, 1946.
>
> * * * * * * *

2. For the reason that the law repeals the provisions of the Internal Revenue Code pursuant to which the original regulations or parts thereof are prescribed, and because these regulations are designed merely to revoke the provisions of the regulations which are not now applicable, it is found that it is unnecessary to issue this Treasury de-

cision 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. On and after July 4, 1946, the Philippines will be treated as a foreign country instead of a possession of the United States under these regulations.

3. Pursuant to the foregoing provisions of law and section 3176, Internal Revenue Code, Regulations 21 (26 CFR, Part 191) are amended in this respect:

(*a*) Effective as of July 4, 1946, section 191.1 is amended by striking out ", Philippine Islands,".

4. This Treasury decision is issued under the authority contained in section 3176, Internal Revenue Code.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 13, 1947.

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

(Filed with the Division of the Federal Register November 20, 1947, 8.47 a. m.)

REGULATIONS 23, SECTIONS 181.9, 181.10, ETC. 1947–24–12700
T. D. 5582

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 181.—STILLS AND DISTILLING APPARATUS.

Amending Regulations 23.

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

To District Supervisors, Collectors of Internal Revenue, and Others Concerned:

1. On August 7, 1947, notice of proposed rule making regarding stills and distilling apparatus was published in the Federal Register (12 F. R., 5367).

2. After consideration of such relevant matter as was presented by interested persons, the following added subsection 181.13(*g*); amendments of subsections 181.13(*a*), 181.14(*a*), and 181.15(*c*); and amendments of sections 181.9, 181.10, and 181.19 of Regulations 23, approved March 30, 1940 (26 CFR, Part 181), are hereby adopted.

3. These amendments are designed to permit the tax-free exportation of distilling apparatus not intended for use in distilling; to provide full control of the removal and use of distilling apparatus; to permit ready identification of distilling apparatus; and to prevent loss or destruction of special (commodity) tax stamps affixed to distilling apparatus.

SEC. 181.9. NAME PLATE OF MANUFACTURER OF STILL.—Each still and worm or condenser must be identified as follows:

(1) Name of manufacturer.
(2) Address of manufacturer.
(3) Manufacturer's serial number for the article.

Such identification shall be shown by the manufacturer on a plate, securely attached to the apparatus by riveting or brazing, or be cut, by the manufacturer, by suitable die legibly and durably in the material of which the apparatus is made. The identification marks may not be covered by insulating or other material, or otherwise obscured or concealed. Such marks on stills and worms or condensers will be disclosed by the manufacturer or vendor in the notice to the collector, and in the affidavits required by sections 181.13 and 181.14. (Sec. 3791, I. R. C.)

SEC. 181.10. PAYMENT OF TAX.—(*a*) *Special tax return.*—Special (occupational) taxes imposed on manufacturers of stills and worms or condensers and the special (commodity) taxes on such articles will be paid by the manufacturer pursuant to the filing of a special tax return, Form 11, showing the information required by the form. Such returns shall be sworn to before a notary public or other official duly authorized to administer oaths.

(*b*) *Special (occupational) tax.*—The special (occupational) tax as manufacturer of stills is due on the 1st day of July in each year, or on commencing such trade or business. In the former case, the tax shall be reckoned for one year, and in the latter, it shall be reckoned proportionately from the 1st day of the month in which the liability to the special tax commenced, to and including the 30th day of June following. It shall be the duty of the special-tax payers to render their returns with required remittances to the collector at such times within the calendar month in which the special tax liability commenced as shall enable him to receive such returns, duly signed and verified, together with the remittances, not later than the last day of the month, except in cases of sickness or absence, as provided by section 3634, I. R. C.

(1) *Posting of stamp.*—The special (occupational) tax stamp must be conspicuously posted in the establishment or place of business of the manufacturer of stills.

(*c*) *Special (commodity) tax.*—The special (commodity) tax on each still or worm or condenser intended for distilling is due when the manufacture thereof is completed and must be paid at the time such article is removed from the place of manufacture or at the time of being set up, if manufactured on the premises where intended to be used, by affixing to the article the special (commodity) tax stamp provided by the Commissioner. At the time of affixing such stamp it must be canceled by the manufacturer by writing across the face thereof, in permanent ink, the word "canceled" followed by the name of the manufacturer, the manufacturer's serial number of the article, and the date of cancellation.

(1) *Method of affixing stamp.*—After cancellation of the stamp has been completed, the stamp shall be enclosed in a moisture proof case having a transparent face. The case, with stamp enclosed, must be secured to the article by means of screws, bolts, or rivets, or by brazing. (Secs. 3270, 3271, 3272, 3273, 3634, 3791, I. R. C.)

SEC. 181.13. TAXABLE STATUS OF STILLS.—(*a*) *Evidence of use.*—Any still or worm or condenser (as defined by section 181.3), with the exception only of retorts for the production of wood alcohol, sold to a user by the manufacturer or otherwise disposed of or used by the manufacturer, will be presumed to be intended for use in distilling, as defined by section 181.12, unless, as to each still or worm or condenser, satisfactory evidence shall be filed, as hereinafter provided, showing that the same will not be used for distilling. Unless such evidence is filed, special (occupational) tax as manufacturer of stills will be incurred by the manufacturer and special (commodity) tax on each still or worm or condenser must be paid by the manufacturer at the time of its removal from the place of manufacture or, if manufactured on the premises where intended to be used, at the time of being set up.

* * * * * * *

(*g*) *Exportation.*—Stills or worms or condensers intended for purposes other than distilling as defined in section 181.12 may be removed for export by the manufacturer, or dealer, subject to the application and permit prescribed by section 181.14(*a*) without payment of the commodity tax thereon. The collector will note on the permit issued in such case the following: "To be removed for export to (inserting the name and address of the consignee and the foreign port to which the article is to be exported)—No commodity tax due." Such stills or distilling apparatus will have branded or stamped thereon, in a conspicuous place, the words "For Export," followed by the serial number of the article and the manufacturer's name. When such articles are manufactured from metal plates,

the words "For Export" with the serial number of the article and the manufacturer's name directly thereunder, will be stamped (in letters and figures which must, in no case, be less than one-half inch in height) thereon with a suitable die, or otherwise permanently affixed to each article. Where the article is constructed of or encased in wood, the words "For Export," the serial number of the article and the manufacturer's name will be branded thereon. (Sec. 3791, I. R. C.)

SEC. 181.14. PROCEDURE FOR REMOVAL AND USE.—(*a*) *Application and permit for removal.*—No still, boiler (doubler or pot still), worm, condenser, or other distilling apparatus, shall be removed from the premises of the manufacturer, or dealer, as the case may be, for delivery to a user, or for his own use, or for export without payment of tax, until the collector of the district in which the manufacturer or vendor is located has received from the manufacturer or vendor an application on Form 110, in triplicate, for permission to remove the distilling apparatus, and permit on such form has been received from such collector to remove the same. Such application shall disclose the name and address of the manufacturer or vendor, the approximate date the apparatus is to be removed, the name and address of the person by whom the apparatus is to be used or the name and address of the person to whom the apparatus is to be exported, the purpose for which it is to be used, the type and kind of apparatus, its capacity, the manufacturer's serial number of the apparatus, and, if the apparatus is taxable, the serial number of the manufacturer's special (occupational) tax stamp and the serial number of the special (commodity)tax stamp for the apparatus. The collector issuing the removal permit shall furnish a copy of such permit either (1) to the district supervisor in whose district the apparatus is to be set up, registered and used, or (2) in the case of removal for export, to the collector of customs at the port of exportation who upon exportation shall endorse thereon a certificate that the article described in the body of the application has been exported and return the Form 110 to the collector of internal revenue. No distilling apparatus may be set up or used for distilling as defined by section 181.12 without application to and permit from the district supervisor in whose district the apparatus is to be used as provided in section 181.14(*b*). (See sections 181.17 to 181.27, inclusive, relative to exportation of stills with benefit of drawback.)

* * * * * * *

SEC. 181.15(*c*). CHANGE IN LOCATION OR OWNERSHIP OF DISTILLING APPARATUS.—In the event a user desires to remove any distilling apparatus to another location after the same has been registered, no permit therefor will be required. The user must, however, prior to removal, file Form 26 to register the apparatus "not for use" and to disclose the location to which the removal is to be made and the approximate date of such removal. After removal, no such distilling apparatus intended for use in distilling, as defined in section 181.12, may be again set up without application to and permit from the district supervisor in whose district the apparatus is to be used, as provided in section 181.14(*b*). Likewise, when a user sells or otherwise disposes of any distilling apparatus, no permit for removal, sale, or disposition thereof will be required. The user must, however, prior to disposal of such apparatus, file Form 26 with the district supervisor to register the apparatus "not for use" and to disclose the method of disposition (sale, destruction, or otherwise), the name and address of the person to whom disposed of, the approximate date the apparatus is to be removed and the purpose for which it is intended to be used. After removal, no such distilling apparatus intended for use in distilling, as defined in section 181.12, may be again set up without application to and permit from the district supervisor in whose district the apparatus is to be used, as provided in section 181.14(*b*). Where there has been a change in ownership, custodianship, control, or a removal to other premises, of any still or distilling apparatus, the person in whose possession, custody, or under whose control the still or distilling apparatus is set up must immediately register the same with the district supervisor. (Secs. 2810, 2818, 3170, 3791, I. R. C.)

SEC. 181.19. DRAWBACK OF TAX.—Under the law the allowance of drawback is restricted to the tax paid on stills "manufactured for export and actually exported." No drawback can be allowed on worms or condensers exported. Where commodity tax has been paid on stills intended for export and drawback is desired, the manufacturer shall brand such articles, make application for allowance of drawback, and deliver such articles into custom's custody as provided in sections 181.20, 181.21, 181.22, and 181.23. (Sec. 3250(j)(3), I. R. C.)

4. This Treasury decision shall be effective on the thirty-first day after the date of its publication in the Federal Register. (Sections 2810, 2818, 3170, 3176, 3250(j), 3270, 3271, 3272, 3273, 3634, and 3791 of the Internal Revenue Code (26 U. S. C. A., 2810, 2818, 3170, 3176, 3250(j), 3270, 3271, 3272, 3273, 3634, and 3791).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 13, 1947.

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

(Published in the Federal Register November 20, 1947.)

REGULATIONS 23, SECTION 181.18: Puerto Rico and Philippine Islands. 1947–24–12706
T. D. 5588

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 181.—STILLS AND DISTILLING APPARATUS.

Amending Regulations 23.

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

To District Supervisors and Others Concerned:

1. Section 507, Title V, of the Philippine Trade Act of 1946 (Public Law 371, Seventy-ninth Congress), approved April 30, 1946 [C. B. 1946–1, 334], reads in part as follows:

> SEC. 507. SPECIAL EXCISE PROVISIONS RELATING TO THE PHILIPPINES REPEALED.
>
> * * * * * * *
>
> (b) Sections 3340, 3341, and 3342 of the Internal Revenue Code are repealed, effective July 4, 1946.
>
> * * * * * * *

2. For the reason that the law repeals the provisions of the Internal Revenue Code pursuant to which the original regulations or parts thereof are prescribed, and because these regulations are designed merely to revoke the provisions of the regulations which are not now applicable, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act. On and after July 4, 1946, the Philippines will be treated as a foreign country instead of a possession of the United States under these regulations.

3. Pursuant to the foregoing provisions of law and section 3176, Internal Revenue Code, Regulations 23 (26 CFR, Part 181) are amended in these respects:

(*a*) Effective as of July 4, 1946, section 181.18 is amended by striking out the words "and Philippine Islands" in the title thereof, the words "or to the Philippine Islands" in the section and the Code citation "3341(c),".

4. This Treasury decision is issued under the authority contained in section 3176, Internal Revenue Code.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 13, 1947.

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

(Filed with the Division of the Federal Register November 20, 1947, 8.57 a. m.)

REGULATIONS 24, SECTIONS 180.1, 180.2, 180.146–180.179. 1947–24–12707
T. D. 5589

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 180.—LIQUORS AND ARTICLES FROM PUERTO RICA, VIRGIN ISLANDS, AND PHILIPPINE ISLANDS.

Amending Regulations 24.

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

To District Supervisors and Others Concerned:

1. Section 506, Title V, of the Philippine Trade Act of 1946 (Public Law 371, Seventy-ninth Congress), approved April 30, 1946 [C. B. 1946–1, 334], reads in part as follows:

> SEC. 506. TERMINATION OF PAYMENTS INTO PHILIPPINE TREASURY.
>
> * * * * * * *
>
> (b) Sections * * * 3343 of the Internal Revenue Code are repealed, effective July 4, 1946.

2. Section 507, Title V, of the said Philippine Trade Act of 1946 reads in part as follows:

> SEC. 507. SPECIAL EXCISE PROVISIONS RELATING TO THE PHILIPPINES REPEALED.
>
> (a) Section 2800(a)(4) of the Internal Revenue Code is amended by amending the heading to read:
>
> "(4) ALCOHOLIC COMPOUNDS FROM PUERTO RICO AND VIRGIN ISLANDS.—";
>
> and by amending subparagraph (B) to read as follows:
>
> "(B) VIRGIN ISLANDS.—For provisions relating to tax on alcoholic compounds from the Virgin Islands, see section 3350."
>
> (b) Sections 3340, 3341, and 3342 of the Internal Revenue Code are repealed, effective July 4, 1946.
>
> * * * * * * *

3. For the reason that the law repeals the provisions of the Internal Revenue Code pursuant to which the original regulations or parts thereof are prescribed, and because these regulations are designed merely to revoke the provisions of the regulations which are not now applicable, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or

subject to the effective date limitation of section 4(c) of said Act. On and after July 4, 1946, the Philippines will be treated as a foreign country instead of a possession of the United States under these regulations.

4. Pursuant to the foregoing provisions of law and section 3176, Internal Revenue Code, Regulations 24 (26 CFR, Part 180) are amended, effective July 4, 1946, in these respects:

(*a*) Section 180.1 is amended to read as follows:

ALCOHOLIC PRODUCTS COMING INTO THE UNITED STATES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—These regulations are prescribed pursuant to the provisions of law governing the collection of internal revenue taxes on alcoholic products coming into the United States from Puerto Rico and the Virgin Islands. (Secs. 3350, 3360, 4041, I. R. C.)

(*b*) Section 180.2 is amended to read as follows:

These regulations shall supersede all prior regulations relating to alcoholic products coming into the United States from Puerto Rico and the Virgin Islands to the extent that such prior regulations are inconsistent herewith. All prior regulations which are inconsistent herewith shall remain in force and effect for the assessment and collection of all such taxes and penalties, for the imposition of all penalties, civil and criminal, and for the enforcement of all forfeitures which have accrued thereunder. (Secs. 3350, 3360, 4041, I. R. C.)

(*c*) Sections 180.146 to 180.179, inclusive (Subpart III), relating to products coming into the United States from the Philippine Islands are hereby revoked.

5. On and after July 4, 1946, all distilled spirits and wines imported into the United States from the Philippine Islands will be governed by Regulations 21 (26 CFR, Part 191).

6. This Treasury decision is issued under the authority contained in section 3176, Internal Revenue Code.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 13, 1947.

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

(Filed with the Division of the Federal Register November 20, 1947, 8.57 a. m.)

REGULATIONS 28, SECTIONS 176.5, 176.69. 1947–24–12708
T. D. 5590

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 176.—DRAWBACK ON DISTILLED SPIRITS AND WINE.

Amending Regulations 28.

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

To District Supervisors and Others Concerned:

1. Section 507, Title V, of the Philippine Trade Act of 1946 (Public Law 371, Seventy-ninth Congress), approved April 30, 1946 [C. B. 1946–1, 334], reads in part as follows:

SEC. 507. SPECIAL EXCISE PROVISIONS RELATING TO THE PHILIPPINES REPEALED.

* * * * * * *

(b) Sections 3340, 3341, and 3342 of the Internal Revenue Code are repealed, effective July 4, 1946.

* * * * * * *

2. For the reason that the law repeals the provisions of the Internal Revenue Code pursuant to which the original regulations or parts thereof are prescribed, and because these regulations are designed merely to revoke the provisions of the regulations which are not now applicable, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act. On and after July 4, 1946, the Philippines will be treated as a foreign country instead of a possession of the United States under these regulations.

3. Pursuant to the foregoing provisions of law and sections 2887, as amended, and 3176, Internal Revenue Code, and section 313(i) of the Tariff Act of 1930, as amended (19 U. S. C., Sup. V, 1313(i)), Regulations 28 (26 CFR, Part 176) are amended in these respects:

(*a*) Effective as of July 4, 1946, section 176.5 is amended by striking ing out "the Philippine Islands," and the Code citation "3341(c), as amended,".

(*b*) Effective as of July 4, 1946, section 176.69 is amended by striking out "the Philippine Islands," and the Code citation "3341(c), as amended,".

4. This Treasury decision is issued under the authority contained in sections 2887, as amended, and 3176, Internal Revenue Code, and section 313(i) of the Tariff Act of 1930, as amended.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 13, 1947.

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

(Filed with the Division of the Federal Register November 20, 1947, 8.55 a. m.)

REGULATIONS 29, SECTIONS 197.2, etc. 1947–16–12612
T. D. 5572

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 197.—DRAWBACK OF TAX ON DISTILLED SPIRITS USED IN THE MANUFACTURE OF NONBEVERAGE PRODUCTS.

Amending Regulations 29.

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

To District Supervisors, Collectors of Internal Revenue, and Others Concerned:

1. On April 23, 1947, notice of proposed rule making regarding drawback of tax on distilled spirits used in the manufacture of non-

beverage products was published in the Federal Register (12 F. R., 2610).

2. After consideration of all such relevant matter as was presented by interested persons regarding the proposal, sections 197.8, 197.24(*c*)(2), 197.26, 197.33, and 197.34 of Regulations 29, approved November 30, 1944 (26 CFR, Cum. Sup., Part 197), are hereby revoked and the following amendments to sections 197.2, 197.3, 197.5, 197.17, 197.18, 197.21, 197.22, 197.23(*d*), 197.24(*d*), 197.24(*e*), 197.25, and 197.28 of Regulations 29, approved November 30, 1944 (26 CFR, Cum. Sup., Part 197), are hereby adopted.

3. These amendments are designed to eliminate obsolete provisions of the regulations, to provide a more efficient procedure for the filing of claims, and to provide accounting procedure pursuant to the provisions of section 309 of the Revenue Act of 1943 amending section 3250(1), Internal Revenue Code.

4. Regulations 29, approved November 30, 1944 (26 CFR, Cum. Sup., Part 197), as amended, are hereby amended as follows:

SEC. 197.2. DEFINITIONS.—As used in the regulations, in this part, the following terms shall have the meaning as defined herein:

(*a*) "Domestic distilled spirits" and "Distilled spirits" shall mean that substance known as ethyl alcohol produced at industrial alcohol plants operated under Regulations 3 (26 CFR, Cum. Sup., Part 182), and those substances known as whisky, brandy, rum, or other spirits, produced at registered distilleries or fruit distilleries operated under Regulations 4 (26 CFR, Cum. Sup., Part 183) and 5 (26 CFR, Cum. Sup., Part 184).

(*b*) "Year" shall mean the period which begins July 1 and ends on the following June 30.

(*c*) "Intermediate products" shall mean products containing distilled spirits which are not subject to drawback until used in a nonbeverage product eligible for drawback.

SEC. 197.3. TERMS USED IN THE STATUTE.—

* * * * * * *

(*c*) "*Time.*"—The "time" at which distilled spirits shall be deemed to have been used is when the product contains the ingredients called for by an approved formula, or formulas prescribed by the United States Pharmacopoeia, the National Formulary, or the American Institute of Homeopathy, as the case may be. (Sec. 3250(1), I. R. C.)

(*d*) "*Filed.*"—A claim for drawback shall be deemed to have been "*filed*" when it is delivered to the office of the proper district supervisor, Alcohol Tax Unit, and by that office received.

(*e*) "*Total annual withdrawals.*"—The term "total annual withdrawals" shall mean the total quantity of distilled spirits (proof gallons) which are used in the manufacture or production of nonbeverage products during a year.

SEC. 197.5. PAYMENT AND RATES OF SPECIAL TAX.—Each person who uses distilled spirits in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes, in order to be eligible to claim the drawback on the distilled spirits so used, must pay special tax at the rate of $25 per annum for total annual withdrawals not exceeding 25 proof gallons of distilled spirits; $50 per annum for total annual withdrawals not exceeding 50 proof gallons; or $100 per annum for total annual withdrawals of more than 50 proof gallons. Where a claim is filed in the first quarter of a year, covering distilled spirits used during the last quarter of the preceding year, and special tax has not been paid for the preceding year, special tax for such preceding year must be paid in the appropriate amount prior to or at the time of filing the claim. Special tax, based upon estimated withdrawals, may be paid in advance of actual withdrawals. Adjustments of the special tax where improperly paid will be made in accordance with section 197.17. The manufacturer is not required to pay the special tax if he does not claim drawback on the distilled spirits used by him. (Secs. 3250(1) and 4041(a), I. R. C.)

SEC. 197.17. CHANGE TO HIGHER OR LOWER RATE OF SPECIAL TAX.—(*a*) *Change to higher rate.*—A manufacturer of nonbeverage products who pays special tax of $25 per annum and has filed or intends to file a claim or claims for drawback covering distilled spirits in excess of 25 proof gallons used during the year for which the special tax was paid must pay special tax of $50 or $100, as the case may be, and obtain a stamp therefor. The manufacturer may thereupon submit the special tax stamp of $25 to the collector of internal revenue to whom the special tax was paid with a claim on Form 843 for refund of the value thereof. Similar procedure will govern in the case of a manufacturer of nonbeverage products who pays special tax of $50 and has filed or intends to file claim for drawback covering distilled spirits used in excess of 50 proof gallons.

(*b*) *Change to lower rate.*—A manufacturer of nonbeverage products who pays special tax of $100 or $50 per annum, as the case may be, and, during the year for which the special tax was paid, files claim or claims for drawback covering the use of not more than 50 or 25 proof gallons of distilled spirits, as the case may be, may file a claim on Form 843 for refund of the difference between the special tax paid and the special tax due. The special tax stamp shall be attached to the claim. (Secs. 3250(1), 3304, 3770, and 4041(a), I. R. C.)

SEC. 197.18. REFUND OF SPECIAL TAX.—Refund of special tax may be made if it is established that the taxpayer did not file a claim for drawback for the period covered by the special tax stamp. Where claim for drawback was filed, refund of special tax may be made if it is established that no drawback was allowed or paid for the period covered by the stamp. (Secs. 3250(1) and 3770, I. R. C.)

SEC. 197.21. CLAIMS.—The claim for drawback shall be filed on Form 843, "Claim," in duplicate, with the district supervisor, Alcohol Tax Unit, for the district in which the place of manufacture is located, and shall pertain only to distilled spirits used in the manufacture or production of nonbeverage products during any one quarter of the year, and only one claim may be filed for each quarter. (Sec. 3250(1), I. R. C.)

SEC. 197.22. DATE OF FILING CLAIM.—The claim for drawback must be filed with the district supervisor, Alcohol Tax Unit, within the three months next succeeding the quarter in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products. (Sec. 3250(1), I. R. C.)

SEC. 197.23. INFORMATION TO BE SHOWN BY THE CLAIM.—

* * * * * * *

(*d*) That the nonbeverage products were manufactured in compliance with (1) quantitative formulas filed with the Commissioner on Form 1678 prior to or at the time of manufacture, or (2) formulas prescribed by the United State Pharmacopoeia, the National Formulary, or the American Institute of Homeopathy.

SEC. 197.24. SUPPORTING DATA.—Each claim will be accompanied by statements of supporting data which shall be prepared in duplicate. One copy shall be attached to the original and one copy shall be attached to the duplicate of the claim.

* * * * * * *

(*d*) *Summaries.*—(1) *Summary of distilled spirits.*—A statement showing in proof gallons the quantity of all distilled spirits on hand at the beginning of the quarter, quantity in process beginning of the quarter, quantity received during the quarter, quantity used during the quarter in the manufacture of nonbeverage products subject to drawback, quantity used in the manufacture of intermediate products, quantity otherwise used not subject to drawback, quantity in process at the end of the quarter, and the quantity remaining on hand at the end of the quarter. Distilled spirits in process will include distilled spirits represented in unfinished nonbeverage products, mixtures, menstruums, etc. Any discrepancy between the amount of distilled spirits on hand at the end of the quarter as disclosed by actual inventory and the amount shown by the manufacturer's records must be reported in the summary with an explanation of the cause thereof.

(2) *Summary of distilled spirits recovered from the dregs or marc of percolation, or extraction of products eligible for drawback under section 3250(l), Internal Revenue Code.*—A statement showing in proof gallons the quantity of all recovered distilled spirits on hand at the beginning of the quarter, quantity in process beginning of the quarter, quantity recovered during the quarter, quantity used not subject to drawback, quantity in process at the end of the quarter, and the quantity remaining on hand at the end of the quarter. Any discrepancy between the amount of recovered distilled spirits on hand at the end of the quarter

as disclosed by actual inventory and the amount shown by the manufacturer's records must be reported in the summary with an explanation of the cause thereof. Distilled spirits recovered from dregs or marc of percolation, or extraction, of products eligible for drawback may be reused in the manufacture of medicines or flavoring extracts of the kind in which originally used. Such recovered distilled spirits are not eligible for drawback and may be reused only in the manufacture of nonbeverage products. They may not be used in the manufacture of intermediate products. (Sec. 190.4(*f*), Regulations 15.)

(3) *Summary of distilled spirits recovered from the dregs or marc of percolation, or extraction, of intermediate products.*—A statement showing in proof gallons the quantity of all recovered distilled spirits on hand at the beginning of the quarter, quantity in process beginning of the quarter, quantity recovered during the quarter, quantity used during the quarter in the manufacture of nonbeverage products subject to drawback, quantity otherwise used, and the quantity remaining on hand at the end of the quarter. Any discrepancy between the amount of recovered distilled spirits on hand at the end of the quarter as disclosed by actual inventory and the amount shown by the manufacturer's records must be reported in the summary with an explanation of the cause thereof. Any distilled spirits recovered from the dregs or marc of percolation, or extraction, of intermediate products as defined in the regulations in this part are eligible for drawback of tax only when used in the manufacture of a nonbeverage product.

(*e*) *Statement of intermediate products.*—A statement showing the quantity in wine gallons of each intermediate product and the quantity of distilled spirits (proof gallons) *used* therein: (1) on hand at the beginning of the quarter, (2) produced during the quarter, and (3) on hand at the end of the quarter, and showing the quantity in wine gallons of each intermediate product and the quantity of the distilled spirits *contained therein* (proof gallons): (1) used during the quarter in eligible products, (2) used during the quarter in other intermediate products, and (3) otherwise disposed of during the quarter. Any discrepancy between the amount of intermediate products on hand at the end of the quarter as disclosed by actual inventory and the amount shown by the manufacturer's records must be reported in the statement with an explanation of the cause thereof. Only the distilled spirits remaining in an intermediate product at the time of its use in the manufacture of an approved nonbeverage product are eligible for drawback.

SEC. 197.25. HANDLING OF CLAIMS.—The district supervisor, Alcohol Tax Unit, will date-stamp each copy of the claim on Form 843, and, after recording, will examine the claim for the purpose of determining whether it is properly executed and that all supporting data have been submitted and will conduct such inquiries and investigations as may be necessary to verify that drawback is allowable on the distilled spirits covered by the claim. After completion of such verification he will forward the original copies of the claim and supporting data, and a copy of the report of investigation, with his recommendation as to the merit of the claim to the Commissioner. (Sec. 4041(a), I. R. C.)

SEC. 197.28. STATEMENT OF PROCESS.—The Commissioner, at his discretion, may at any time require any person claiming drawback under the regulations in this part to file a statement of process in addition to that required by Form 1678 and such other data as he may deem necessary for consideration of such person's claim for drawback. When such additional data are required, the statement of process should be submitted in triplicate with copies of the commercial labels used on the finished products. (Sec. 3250(1), I. R. C.)

5. This Treasury decision shall be effective on the thirty-first day after the date of its publication in the Federal Register.

(Sections 3250 and 4041 of the Internal Revenue Code (26 U. S. C. A., 3250 and 4041).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved July 16, 1947.

JOSEPH J. O'CONNELL, Jr.,
Acting Secretary of the Treasury.

(Published in the Federal Register July 23, 1947.)

FERMENTED MALT LIQUORS.

REGULATIONS 18, SECTION 192.192. 1947–24–12704
T. D. 5586

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 192.—FERMENTED MALT LIQUORS.

Amending Regulations 18.

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

To District Supervisors and Others Concerned:

1. Section 507, Title V, of the Philippine Trade Act of 1946 (Public Law 371, Seventy-ninth Congress), approved April 30, 1946 [C. B. 1946–1, 334], reads in part as follows:

> SEC. 507. SPECIAL EXCISE PROVISIONS RELATING TO THE PHILIPPINES REPEALED.
>
> * * * * * * *
>
> (b) Sections 3340, 3341, and 3342 of the Internal Revenue Code are repealed, effective July 4, 1946.
>
> * * * * * * *

2. For the reason that the law repeals the provisions of the Internal Revenue Code pursuant to which the original regulations or parts thereof are prescribed, and because these regulations are designed merely to revoke the provisions of the regulations which are not now applicable, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act. On and after July 4, 1946, the Philippines will be treated as a foreign country instead of a possession of the United States under these regulations.

3. Pursuant to the foregoing provisions of law and section 3176, Internal Revenue Code, Regulations 18 (26 CFR, Part 192) are amended in this respect:

(*a*) Effective as of July 4, 1946, section 192.192 is amended by striking out " the Philippine Islands,".

4. This Treasury decision is issued under the authority contained in section 3176, Internal Revenue Code.

GEO. J. SCHOENEMAN.
Commissioner of Internal Revenue.

Approved November 13, 1947.

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

(Filed with the Division of the Federal Register November 20, 1947, 8.57 a. m.)

WINE.

REGULATIONS 7, SECTION 178.283. 1947–24–12702
T. D. 5584

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 178.—WINE.

Amending Regulations 7.

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

To District Supervisors and Others Concerned:

1. Section 507, Title V, of the Philippine Trade Act of 1946 (Public Law 371, Seventy-ninth Congress), approved April 30, 1946 [C. B. 1946–1, 334], reads in part as follows:

SEC. 507. SPECIAL EXCISE PROVISIONS RELATING TO THE PHILIPPINES REPEALED.

* * * * * * *

(b) Sections 3340, 3341, and 3342 of the Internal Revenue Code are repealed, effective July 4, 1946.

* * * * * * *

2. For the reason that the law repeals the provisions of the Internal Revenue Code pursuant to which the original regulations or parts thereof are prescribed, and because these regulations are designed merely to revoke the provisions of the regulations which are not now applicable, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act. On and after July 4, 1946, the Philippines will be treated as a foreign country instead of a possession of the United States under these regulations.

3. Pursuant to the foregoing provisions of law and section 3176, Internal Revenue Code, Regulations 7 (26 CFR, Part 178) are amended in these respects:

(*a*) Effective as of July 4, 1946, section 178.283 is amended by striking out "Philippine Islands," in the title thereof, "the Philippine Islands," in the section, and the Code citation "3341(b),".

4. This Treasury decision is issued under the authority contained in section 3176, Internal Revenue Code.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 13, 1947.

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

(Filed with the Division of the Federal Register, November 20, 1947, 8.56 a. m.)

OLEOMARGARINE.[a]

1947–15–12604
MS. 312

Schedule of oleomargarine produced and materials used during the month of May, 1947, as compared with May, 1946.

	May, 1947.	May, 1946.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 32, 874, 474	39, 819, 778
Total withdrawn tax-paid	35, 010, 592	39, 947, 281
Ingredient schedule of uncolored oleomargarine:		
Butter culture	3	530
Butter flavor	67	283
Citric acid	4	184
Coconut oil [2]	184, 675	
Corn oil	462, 975	485, 879
Cottonseed flakes	6, 583	
Cottonseed oil	12, 501, 965	15, 629, 660
Derivative of glycerine	51, 309	66, 026
Diacetyl	62	97
Estearine		8, 265
Lecithin	42, 443	51, 144
Milk	5, 767, 319	6, 673, 319
Monostearine	45, 566	31, 955
Neutral lard	165, 737	149, 134
Oleo oil	172, 536	143, 791
Oleo stearine	263, 538	139. 834
Oleo stock	26, 505	16, 980
Peanut oil	1, 511, 211	866, 305
Salt	1, 009, 948	1, 225, 045
Soda (benzoate of)	24, 612	28, 551
Soya bean oil	11. 339, 281	15, 006, 159
Tallow		2, 700
Vitamin concentrate	4, 947	7, 473
Total	33, 581, 286	40, 533, 314
Total production of colored oleomargarine	[3] 4, 855, 764	[4] 2, 148, 700
Total withdrawn tax-paid	1, 482, 793	1, 583, 138
Ingredient schedule of colored oleomargarine:		
Butter flavor	66	76
Coconut oil [2]	2, 378, 107	
Color	2, 526	1, 576
Corn oil	1, 796	177
Cottonseed flakes	40	1, 150
Cottonseed oil	479, 067	513. 986
Derivative of glycerine	10, 662	2, 441
Diacetyl	27	30
Estearine		178
Lecithin	4, 066	1, 546
Milk	812, 370	360, 466
Monostearine	1. 376	1, 264
Neutral lard	9, 978	24, 571
Oleo oil	10, 098	12, 885
Oleo stearine	17	
Oleo stock	8, 400	1. 050
Peanut oil	31, 130	14, 219
Salt	141, 082	74, 064
Soda (benzoate of)	2, 946	1, 274
Soya bean oil	984, 525	1, 151, 441
Vitamin concentrate	854	281
Total	4, 879, 133	2, 162, 675

[a] All figures are subject to revision until published in the Commissioner's annual report.

[1] Of the amount produced, 41,046 pounds were reworked.

[2] 1,242,307 pounds of this oil used in oleomargarine manufactured for export by, or from, the United States, and 1,320,475 pounds used in production of the product for domestic consumption.

[3] Of the amount produced, 22,158 pounds were reworked.

[4] Of the amount produced, 32 pounds were reworked.

1947–17–12626
MS. 313

Schedule of oleomargarine produced and materials used during the month of June, 1947, as compared with June, 1946.

	June, 1947.	June, 1946.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 38,585,841	[2] 31,464,581
Total withdrawn tax-paid	37,872,497	33,575,560
Ingredient schedule of uncolored oleomargarine:		
Butter culture		105
Butter flavor	156	501
Citric acid	12	164
Coconut oil [3]	204,677	
Corn oil	607,609	511,313
Cottonseed flakes	1,660	
Cottonseed oil	15,745,337	13,082,725
Derivative of glycerine	61,356	59,144
Diacetyl	66	46
Estearine		6,930
Lecithin	48,325	41,521
Milk	6,505,526	5,342,095
Monostearine	48,400	25,591
Neutral lard	142,317	103,577
Oleo oil	122,203	120,057
Oleo stearine	269,307	87,649
Oleo stock	31,245	16,585
Peanut oil	1,319,682	600,760
Salt	1,195,356	951,836
Soda (benzoate of)	29,003	24,068
Soya bean oil	12,890,976	11,012,600
Tallow		900
Vitamin concentrate	5,428	6,837
Total	39,228,641	31,995,004
Total production of colored oleomargarine	[4] 2,814,242	4,597,159
Total withdrawn tax-paid	1,776,793	991,805
Ingredient schedule of colored oleomargarine:		
Butter flavor	43	25
Coconut oil [3]	492,402	
Color	1,837	3,081
Corn oil	114	
Cottonseed flakes		1,190
Cottonseed oil	662,089	421,247
Derivative of glycerine	4,753	6,878
Diacetyl	14	229
Estearine		222
Lecithin	2,357	4,520
Milk	473,057	759,783
Monostearine	1,266	2,298
Neutral lard	2,900	16,446
Oleo oil	12,500	8,215
Oleo stock	10,600	
Peanut oil	42,706	6,647
Salt	93,326	152,120
Soda (benzoate of)	1,464	2,847
Soya bean oil	1,044,686	3,237,686
Soya bean flakes		5,000
Vitamin concentrate	359	579
Total	2,846,473	4,629,013

[1] Of the amount produced, 32,450 pounds were reworked.
[2] Of the amount produced, 594 pounds were reworked.
[3] 309,536 pounds of this oil used in oleomargarine manufactured for export by, or from, the United States, and 387,543 pounds used in production of the product for domestic consumption.
[4] Of the amount produced, 288 pounds were reworked.

1947–19–12643
MS. 314

Schedule of oleomargarine produced and materials used during the month of July, 1947, as compared with July, 1946.

	July, 1947.	July, 1946.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 44, 555, 553	[2] 38, 333, 190
Total withdrawn tax-paid	45, 348, 649	35, 985, 441
Ingredient schedule of uncolored oleomargarine:		
Butter culture		103
Butter flavor	160	238
Citric acid	21	105
Coconut oil [3]	129, 310	
Corn oil	433, 808	508, 072
Cottonseed flakes	360	
Cottonseed oil	19, 052, 298	15, 752, 211
Derivative of glycerine	69, 777	68, 073
Diacetyl	95	62
Estearine		9, 824
Lecithin	53, 029	48, 408
Milk	7, 506, 616	6, 432, 175
Monostearine	57, 469	28, 409
Neutral lard	188, 561	133, 709
Oleo oil	177, 136	131, 223
Oleo stearine	295, 741	117, 175
Oleo stock	31, 010	15, 345
Peanut oil	2, 188, 469	1, 269, 295
Salt	1, 383, 952	1, 172, 663
Soda (benzoate of)	34, 735	27, 917
Soya bean oil	13, 873, 069	13, 286, 271
Vitamin concentrate	6, 586	7, 446
Total	45, 482, 202	39, 008, 724
Total production of colored oleomargarine	[4] 4, 341, 888	8, 929, 285
Total withdrawn tax-paid	2, 099, 300	1, 246, 212
Ingredient schedule of colored oleomargarine:		
Butter flavor	63	32
Coconut oil [3]	706, 394	
Color	4, 454	7, 148
Corn oil	5, 130	22
Cottonseed flakes	600	4, 875
Cottonseed oil	953, 851	379, 908
Derivative of glycerine	8, 251	17, 211
Diacetyl	16	284
Estearine		326
Lecithin	4, 707	9, 342
Milk	761, 166	1, 434, 179
Monostearine	1, 826	2, 724
Neutral lard	5, 032	12, 060
Oleo oil	4, 768	6, 033
Oleo stock	2, 919	
Peanut oil	43, 299	19, 946
Salt	142, 098	289, 846
Soda (benzoate of)	3, 175	4, 610
Soya bean flakes		15, 000
Soya bean oil	1, 789, 504	6, 793, 425
Vitamin concentrate	482	1, 227
Total	4, 437, 735	8, 998, 198

[1] Of the amount produced, 5,384 pounds were reworked.
[2] Of the amount produced, 3,162 pounds were reworked.
[3] 327,273 pounds of this oil used in oleomargarine manufactured for export by, or from, the United States, and 508,431 pounds used in production of the product for domestic consumption.
[4] Of the amount produced, 24 pounds were reworked.

1947–21–12665
MS. 315

Schedule of oleomargarine produced and materials used during the month of August, 1947, as compared with August, 1946.

	August, 1947.	August, 1946.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 45,822,289	[2] 38,233,715
Total withdrawn tax-paid	45,271,353	39,679,711
Ingredient schedule of uncolored oleomargarine:		
Butter culture		220
Butter flavor	179	285
Citric acid	11	252
Coconut oil [3]	178,840	
Corn oil	789,009	365,549
Cottonseed oil	19,218,964	16,068,765
Cottonseed stearine	2	
Derivative of glycerine	78,452	61,731
Diacetyl	135	106
Estearine		6,676
Lecithin	56,368	48,765
Milk	7,762,994	6,481,486
Monostearine	55,235	31,127
Neutral lard	186,288	85,614
Oleo oil	183,387	106,360
Oleo stearine	257,566	199,757
Oleo stock	37,287	17,705
Peanut oil	1,821,271	1,364,437
Salt	1,413,005	1,213,095
Soda (benzoate of)	34,613	26,458
Soya bean flakes		9,380
Soya bean oil	14,422,394	12,758,410
Vitamin concentrate	6,437	6,632
Total	46,502,437	38,852,810
Total production of colored oleomargarine	4,219,158	5,167,856
Total withdrawn tax-paid	1,979,860	1,101,660
Ingredient schedule of colored oleomargarine:		
Butter flavor	69	16
Coconut oil [3]	1,197,062	
Color	3,963	3,421
Corn oil	3,449	91
Cottonseed flakes	950	3,135
Cottonseed oil	896,359	432,683
Derivative of glycerine	5,997	4,438
Diacetyl	18	406
Estearine		86
Lecithin	3,962	3,914
Milk	737,103	838,699
Monostearine	1,970	2,377
Neutral lard	20,274	13,554
Oleo oil	17,170	6,783
Oleo stock	7,552	
Peanut oil	45,045	15,866
Salt	139,527	166,555
Soda (benzoate of)	2,735	2,871
Soya bean oil	1,268,129	3,685,259
Soya bean flakes		5,620
Vitamin concentrate	482	736
Total	4,351,816	5,186,510

[1] Of the amount produced, 16,252 pounds were reworked.
[2] Of the amount produced, 31,140 pounds were reworked.
[3] 348,502 pounds of this oil used in oleomargarine manufactured for export by, or from, the United States, and 1,027,400 pounds used in production of the product for domestic consumption.

1947–24–12696
MS. 316

Schedule of oleomargarine produced and materials used during the month of September, 1947, as compared with September, 1946.

	September, 1947.	September, 1946.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 62,300,451	[2] 31,671,785
Total withdrawn tax-paid	64,852,636	31,451,135
Ingredient schedule of uncolored oleomargarine:		
Butter culture		109
Butter flavor	239	178
Citric acid	21	264
Coconut oil [3]	307,520	
Corn oil	1,182,757	341,451
Cottonseed flakes	1,085	
Cottonseed oil	26,493,135	13,045,957
Cottonseed stearine	27	
Derivative of glycerine	101,693	53,108
Diacetyl	193	59
Lecithin	73,793	41,982
Milk	10,482,667	5,334,593
Monostearine	73,694	36,368
Neutral lard	347,041	91,075
Oleo oil	347,033	124,403
Oleo stearine	369,261	187,112
Oleo stock	75,469	19,993
Peanut oil	2,160,446	865,899
Salt	1,938,018	948,049
Soda (benzoate of)	45,180	21,937
Soya bean oil	19,387,382	11,193,892
Vitamin concentrate	12,458	5,694
Total	63,399,112	32,312,123
Total production of colored oleomargarine	5,121,915	[4] 5,395,605
Total withdrawn tax-paid	2,917,949	921,525
Ingredient schedule of colored oleomargarine:		
Butter flavor	48	15
Coconut oil [3]	772,728	2,059,697
Color	6,218	2,595
Corn oil	16,388	83
Cottonseed flakes	2,272	
Cottonseed oil	1,397,704	414,990
Derivative of glycerine	9,235	10,045
Diacetyl	20	42
Lecithin	5,487	7,098
Milk	890,230	884,950
Monostearine	3,015	1,516
Neutral lard	22,198	17,526
Oleo oil	18,831	8,762
Oleo stock	400	
Peanut oil	27,184	15,702
Salt	167,890	178,888
Soda (benzoate of)	2,697	3,960
Soya bean oil	1,870,701	1,858,816
Soya bean stearine	10,590	
Vitamin concentrate	640	511
Total	5,224,476	5,465,196

[1] Of the amount produced, 7,337 pounds were reworked.
[2] Of the amount produced, 2,411 pounds were reworked.
[3] 246,348 pounds of this oil used in oleomargarine manufactured for export by, or from, the United States, and 833,900 pounds used in production of the product for domestic consumption.
[4] Of the amount produced, 320 pounds were reworked.

1947–26–12720
MS. 317

Schedule of oleomargarine produced and materials used during the month of October, 1947, as compared with October, 1946.

	October, 1947.	October, 1946.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 80,661,636	50,619,830
Total withdrawn tax-paid	79,197,400	49,897,793
Ingredient schedule of uncolored oleomargarine:		
Butter culture		68
Butter flavor	310	232
Citric acid	14	298
Coconut oil [2]	230,300	
Corn oil	885,183	637,480
Cottonseed flakes	480	
Cottonseed oil	39,515,890	22,303,914
Cottonseed stearine	27	
Derivative of glycerine	128,142	82,443
Diacetyl	225	63
Lecithin	94,732	61,822
Milk	13,554,373	8,515,911
Monostearine	89,684	58,389
Neutral lard	386,205	102,369
Oleo oil	354,056	114,630
Oleo stearine	422,524	117,552
Oleo stock	103,800	32,355
Peanut oil	815,937	809,200
Salt	2,530,120	1,614,785
Soda (benzoate of)	59,219	36,468
Soya bean oil	22,747,612	16,923,669
Soya bean stearine		12,200
Vitamin concentrate	12,352	8,642
Total	81,931,185	51,432,490
Total production of colored oleomargarine	6,343,107	9,651,350
Total withdrawn tax-paid	3,696,750	1,530,123
Ingredient schedule of colored oleomargarine:		
Butter flavor	66	23
Coconut oil [2]	1,520,495	6,187,749
Color	3,664	4,508
Corn oil	20,278	2,683
Cottonseed flakes	3,300	
Cottonseed oil	2,038,102	528,376
Derivative of glycerine	7,348	9,694
Diacetyl	40	173
Lecithin	5,557	6,539
Milk	1,090,184	1,585,196
Monostearine	3,955	3,411
Neutral lard	18,617	19,109
Oleo oil	22,460	9,554
Oleo stock	13,000	
Peanut oil	4,442	1,363
Salt	202,107	316,292
Soda (benzoate of)	2,732	3,998
Soya bean oil	1,504,986	1,143,527
Soya bean stearine		2,400
Vitamin concentrate	711	1,316
Total	6,462,044	9,825,911

[1] Of the amount produced, 3,873 pounds were reworked.
[2] 297,780 pounds of this oil used in oleomargarine manufactured for export by, or from, the United States, and 1,453,015 pounds used in production of the product for domestic consumption.

CIGARS, TOBACCO, AND CIGARETTES.

1947–15–12601
T. D. 5570

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 142.—TAX-FREE WITHDRAWALS OF CIGARS FROM CUSTOMS BONDED WAREHOUSES, CLASS 6.

Amendment of regulations.

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

To Collectors of Internal Revenue and Others Concerned:

On April 24, 1947, notice of proposed rule making regarding the tax-free withdrawal of cigars from customs bonded warehouses, class 6, was published in the Federal Register (12 F. R., 2635): No objection to the rules proposed having been received, the following amendments to Treasury Decision 5438 [C. B. 1945, 509] [26 CFR, Part 142] are hereby adopted. These amendments are designed to eliminate provisions relative to the tax-free withdrawal from such bonded warehouses of cigars for use of the military or naval forces of the United States in United States Territories, which tax-free withdrawals were permissible only until the date on which the President proclaimed that hostilities in the present war have terminated. The President having proclaimed the termination of hostilities, the provisions of Treasury Decision 5438, for withdrawal tax-free from customs bonded warehouses, of cigars for use of the military or naval forces of the United States in United States Territories, were rendered obsolete and, accordingly, they are eliminated by the amendments hereby made. The amendments are also designed to adopt procedure consonant with customs procedure and establish the greatest practicable degree of coordination of the Internal Revenue and Customs Bureaus, in respect of the withdrawals of cigars without payment of internal revenue tax from the customs warehouses indicated.

Treasury Decision 5438, approved February 7, 1945 [26 CFR, Part 142], is amended as follows:

(A) By inserting immediately following the heading "Table of Contents" an additional center heading as follows:
"SUBPART A."

(B) By changing the first line of the table of contents reading "142.0. Scope of regulations" to read "142.0. Scope of Subpart A."

(C) By inserting immediately following the table of contents the following:

SUBPART B.

142.20. Scope of Subpart B.
142.21. Definitions.
142.22. Shipment restricted.
142.23. Bond.
142.24. Packing, marking, or branding.
142.25. Shipping containers.
142.26. Application for withdrawal.
142.27. Inspection and verification of shipment.
142.28. Report of inspecting officer.

142.29. Delay in withdrawal of shipment; cancellation of shipment.
142.30. Change in consignee.
142.31. Withdrawal of shipment and disposition of original of application, Form 550.
142.32. Return of shipment to warehouse.
142.33. Tax liability.
142.34. Credit for shipment.
142.35. Penalties.

(D) By inserting immediately preceding section 142.0 a center heading as follows: "SUBPART A."

(E) By substituting for the words "these regulations" wherever occurring in sections 142.0 to 142.15, inclusive, the words "the regulations in this subpart."

(F) By changing the heading of section 142.0 "Scope of regulations" to read "Scope of Subpart A."

(G) By inserting in the first sentence of section 142.0 immediately following the word "withdrawal" the following: ", prior to the effective date of Treasury Decision 5570,".

(H) By inserting immediately following section 142.15 the following:

SUBPART B.

SECTION 142.20. SCOPE OF SUBPART B.—This subpart comprising sections 142.20 to 142.35, inclusive, relates to the withdrawal, on and after the effective date of Treasury Decision 5570, without payment of tax from customs bonded manufacturing warehouses, class 6, for export to foreign countries or shipment to possessions of the United States, of cigars produced in such warehouses of imported tobacco on which the duties have been paid. Duties paid on tobacco used in the manufacture of cigars withdrawn under this subpart may not be recovered. However, this subpart is exclusive only with respect to the withdrawal of cigars for shipment to a foreign country or possession of the United States where the customs regulations are not applicable to such shipment. This subpart does not relate to any withdrawal of cigars made of imported tobacco on which the customs duties have not been paid, which withdrawals must always be made in accordance with customs regulations and procedure.

SEC. 142.21. DEFINITIONS.—As used in this subpart:

(*a*) The term "collector" means the collector of internal revenue for the district in which is located the customs bonded manufacturing warehouse, class 6, from which withdrawal of cigars under this subpart is made or intended to be made.

(*b*) The term "manufacturer" means the proprietor of a customs bonded manufacturing warehouse, class 6.

(*c*) The term "warehouse" means a customs bonded manufacturing warehouse, class 6, where cigars withdrawn, or intended to be withdrawn, under this subpart, are made.

(*d*) The term "Commissioner" means the Commissioner of Internal Revenue.

SEC. 2135 [INTERNAL REVENUE CODE]. EXEMPTION FROM TAX (AS AMENDED BY ACT APPROVED MARCH 23, 1943, 57 STAT. 42).

(a) SHIPMENT TO FOREIGN COUNTRIES AND POSSESSIONS OF THE UNITED STATES.—

(1) MANUFACTURES.—Manufactured tobacco, snuff, cigars or cigarettes may be removed for export to a foreign country or for shipment to a possession of the United States (or, until the date on which the President proclaims that hostilities in the present war have terminated, to a territory of the United States for the use of members of the military or naval forces of the United States) without payment of tax under such rules and regulations and the making of such entries, and the filing of such bonds and bills of lading as the Commissioner, with the approval of the Secretary, shall prescribe.

A PROCLAMATION.

* I, Harry S. Truman, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946. *

SEC. 142.22. SHIPMENT RESTRICTED.—The withdrawal of cigars under this subpart, without payment of tax, may be made only for export to foreign countries or possessions of the United States where the United States internal revenue laws are not in effect.

SEC. 142.23. BOND.—Before or at the time of filing his first application ,a manufacturer who desires to withdraw cigars from his warehouse without payment of tax under this subpart shall furnish to the collector a bond, in duplicate, in such form as the Commissioner shall prescribe, with surety satisfactory to the collector. The penal sum of the bond shall be sufficient to cover the estimated amount of tax which shall at any time constitute a charge against the bond, and in no case less than $5,000. When the bond, in duplicate, is received by the collector, he shall, if the bond meets with his approval, make endorsement to that effect on both the original and duplicate of the bond and forward the duplicate to the Commissioner. The liability under such bond shall be a continuing one, and will be subject to increase or decrease as withdrawals are made and completed. When the limit of liability under such bond has been reached, further withdrawals may not be made thereunder. Instead, a new bond, in duplicate, must be filed by the manufacturer, under which subsequent withdrawals shall be made.

SEC. 142.24. PACKING, MARKING OR BRANDING.—Cigars withdrawn under this subpart may be put up in packages of any sizes desired. Each package of cigars shall have securely affixed in place of the internal revenue stamp a label, which label shall be readily distinguishable from an internal revenue stamp and on which shall be printed the following legend:

"Free of tax. For use only outside the jurisdiction of the internal revenue laws of the United States."

SEC. 142.25. SHIPPING CONTAINERS.—Each shipping container in which cigars are to be withdrawn under this subpart shall be plainly numbered by the manufacturer, the number to be a consecutive one of a series beginning with No. 1, and begin again with No. 1 on July 1 of each subsequent year.

Shipping containers shall not be closed and fastened ,until their contents have been inspected and verified by a customs officer at the warehouse, as hereinafter prescribed.

SEC. 142.26. APPLICATION FOR WITHDRAWAL.—An application on Internal Revenue Form 550, appropriately modified, shall be executed and filed by the manufacturer with the collector for each shipment intended to be withdrawn under this subpart. Such application shall be filed in triplicate for each parcel post shipment, and in quadruplicate for each shipment otherwise than by parcel post. Each application shall bear a serial number, such number to be a consecutive one of a series beginning with No. 1 to cover the first shipment, and commencing again with No. 1 on July 1 of each year thereafter. Copies of each application shall bear the same serial number as the original. Each application shall be completely and legibly modified and filled in. The cigars described in the application shall not be withdrawn from the warehouse until after inspection and verification by the customs officer as hereinafter required.

Upon receipt of each application, properly executed, the collector shall, if the tax liability on the particular shipment does not increase the outstanding liability in excess of the penal sum of the bond under which the withdrawal is to be made, immediately after signing the original and each copy of the application, forward the original and the two or three copies of the application to the customs officer in charge of the warehouse from which the shipment is to be withdrawn, in order that the customs officer can make proper inspection and verification of the cigars described in the application.

SEC. 142.27. INSPECTION AND VERIFICATION OF SHIPMENT.—It shall be the duty of the customs officer in charge of the warehouse from which the shipment of cigars is to be withdrawn under this subpart to inspect the shipment and determine definitely that the shipment contains the exact class and quantity of cigars specified in the application, and that the boxes or packages of such cigars

meet the requirements of this subpart. The packing of the shipping containers shall be under the supervision of the customs officer who will see that the number required by this subpart is properly inscribed on each shipping container.

Cigars withdrawn under this subpart may be stored within the jurisdiction of the internal revenue laws of the United States only under Government control and supervision, or with the approval of the Commissioner. Cigars withdrawn and otherwise held in such jurisdiction are subject to seizure by and forfeiture to the United States.

SEC. 142.28. REPORT OF INSPECTING OFFICER.—After inspection and verification of the shipment have been completed and the shipping containers have been made ready for withdrawal and the customs officer has filled in and signed his report on the original and each copy of the application, the shipment shall be released for withdrawal by the manufacturer. One copy of the application is to be retained for customs purposes, one copy forwarded immediately to the collector, and the original and the remaining copy delivered to the manufacturer to go forward with the shipment and be disposed of as hereinafter prescribed.

SEC. 142.29. DELAY IN WITHDRAWAL OF SHIPMENT; CANCELLATION OF SHIPMENT.—In case a shipment is not withdrawn from the warehouse within 10 days after inspection and verification as provided in this subpart, the manufacturer must advise the collector as to the probable date of withdrawal. If the order for the shipment has been canceled, the manufacturer should so advise the collector and request permission to return the shipment to stock in the warehouse under the supervision of the customs officer in charge of the warehouse.

SEC. 142.30. CHANGE IN CONSIGNEE.—If, after inspection and verification, but before withdrawal of the shipment, the manufacturer for good and sufficient reasons desires to change the consignee or the address of the original consignee shown by the application, the manufacturer shall forward to the collector for correction and endorsement the original and copy of the application delivered to him by the inspecting officer with a letter setting forth his reasons for the change. The collector, after making correction and endorsement of the change, shall forward the original and copy of the application to the customs officer in charge of the warehouse with a letter instructing the customs officer to make similar change in the copy of the application which he retained after inspection and verification of the shipment, and to deliver the original and copy of the application to the manufacturer.

SEC. 142.31. WITHDRAWAL OF SHIPMENT AND DISPOSITION OF ORIGINAL OF APPLICATION, FORM 550.—(*a*) *General.*—After the shipment has been released for withdrawal, the manufacturer shall enter on the original and copy of the application the actual date of withdrawal of the shipment from the warehouse, after which the shipment may go forward to the consignee. The original and copy of the application shall then be disposed of by the manufacturer as hereinafter prescribed.

(*b*) *Shipment other than by parcel post.*—(1) If the warehouse is located at the port of exportation, the manufacturer shall file with the collector of customs at the port, at least six hours prior to lading of the shipment, the original and one copy of the application on Form 550 returned to him by the customs officer who inspected the shipment at the warehouse.

(2) If the warehouse is located elsewhere than at the port of exportation, the manufacturer shall forward the original and one copy of the application on Form 550 to the collector of customs at the port or to the agent of the manufacturer at the port so that these forms may reach or be filed with the collector of customs at least six hours prior to lading of the shipment. Where the original and one copy of the Form 550 are forwarded by the manufacturer to his agent at the port, the agent may fill in the name of the carrier or exporting vessel and give the location of the pier where the shipment will be laden.

(3) In case of exportation to a foreign contiguous territory by rail through a border port the manufacturer will forward the original and one copy of the application on Form 550 to the collector of customs at the border port through which the shipment will be routed for exportation.

(4) After the shipment has been inspected and laden on the exporting vessel or carrier or where the shipment has been inspected at the border port of exit with respect to shipment to a foreign contiguous territory the customs inspector who supervised the inspection and lading of the shipment will execute the

certificate of inspection and lading on the reverse side of both the original and copy of the Form 550 and return these forms to his collector of customs. After the vessel or carrier has cleared from the port of exportation or exit, the collector of customs will execute the certificate of exportation on both the original and copy of the Form 550, retain the copy for his file and forward the completed original to the collector of internal revenue of the district from which the shipment originated as indicated on the back of the form.

(c) *Shipment by parcel post.*—If the shipment is to be made by parcel post, the manufacturer shall execute on each shipping container or parcel a waiver of his right to withdraw the container or parcel from the mails, and then at the time of mailing present the original Form 550 covering the shipment to the postmaster or his agent for execution of the certificate of mailing provided on the back of the form. The original Form 550 so executed shall be filed promptly thereafter by the manufacturer with the collector.

SEC. 142.32. RETURN OF SHIPMENT TO WAREHOUSE.—If, after withdrawal, the manufacturer desires to return a shipment to the warehouse, he must make application to the Commissioner for permission to do so. The manufacturer must identify the shipment, and show where it has been since it left the factory, where held and in whose custody it is at the time of making application, and the reasons for returning the shipment. After receipt of such application, the Commissioner will issue appropriate instructions. The return of cigars to the warehouse will operate only to relieve the manufacturer of liability to internal revenue tax. Cigars so returned may not thereafter be withdrawn with benefit of refund of duties on the tobacco of which the cigars were made. (Section 558, Tariff Act of 1930, as amended (19 U. S. C., 1558).)

SEC. 142.33. TAX LIABILITY.—The responsibility for the delivery to the consignee of cigars withdrawn under this subpart shall rest upon the manufacturer making the withdrawal, who will be liable for the internal revenue tax on any cigars withdrawn or delivered otherwise than in accordance with this subpart.

SEC. 142.34. CREDIT FOR SHIPMENT.—Upon receipt of the original of the application on Form 550 with the "Certificate of Inspection and Lading" and the "Certificate of Exportation" executed by the appropriate customs officers or the "Certificate of Mailing by Parcel Post" executed by the appropriate postal officer with no shortage reported, the collector shall enter the proper credit in the account, Form 94, which he shall keep with the bond under which the shipment was made. In case a shortage is reported, the collector shall enter credit for the cigars actually delivered and require the manufacturer to pay the amount of tax due on the shortage.

SEC. 142.35. PENALTIES.—Various sections of the Internal Revenue Code impose severe penalties for the unlawful withdrawal of cigars from the place of manufacture and for the possession, use, or delivery within the United States (including its Territories) of manufactured cigars upon which the tax has not been paid. These sections apply to cigars withdrawn without the payment of tax under this subpart, and, accordingly, any person withdrawing, possessing, using, or delivering any such cigars otherwise than as authorized by this subpart may be subject to the penalties prescribed by these sections of the Code.

This Treasury decision shall be effective on the thirty-first day after the date of its publication in the Federal Register.

This Treasury decision is issued under the authority contained in section 2135 of the Internal Revenue Code (53 Stat., 234; sec. 3, 44 Stat., 1382; sec. 556, 46 Stat., 743 (26 U. S. C., 2135; 5 U. S. C., 281b; 19 U. S. C., 1556)).

JOSEPH D. NUNAN, Jr.,
Commissioner of Internal Revenue.
FRANK DOW,
Acting Commissioner of Customs.

Approved July 8, 1947.

JOSEPH J. O'CONNELL, Jr.,
Acting Secretary of the Treasury.

(Published in the Federal Register July 12, 1947.)

TOBACCO.[a]

1947–14–12586
T. 188

Statement of manufactured tobacco produced, by classes, during the month of April, 1947, as compared with April, 1946.

	April, 1947.	April, 1946
	Pounds.	*Pounds.*
Plug	3, 761, 603	4, 172, 418
Twist	438, 361	498, 336
Fine-cut chewing	336, 884	289, 843
Scrap chewing	3, 302, 372	3, 647, 310
Smoking	8, 799, 116	7, 808, 436
Snuff	3, 246, 227	3, 333, 482
Total	19, 884, 563	19, 749, 825

1947–16–12614
T. 190

Statement of manufactured tobacco produced, by classes, during the month of May, 1947, as compared with May, 1946.

	May, 1947.	May, 1946
	Pounds.	*Pounds.*
Plug	1, 978, 647	4, 481, 071
Twist	344, 493	528, 731
Fine-cut chewing	295, 324	333, 864
Scrap chewing	3, 080, 876	2, 737, 523
Smoking	7, 575, 948	10, 051, 492
Snuff	3, 197, 728	3, 339, 233
Total	16, 473, 016	21, 471, 914

1947–19–12644
T. 192

Statement of manufactured tobacco produced, by classes, during the month of June, 1947, as compared with June, 1946.

	June, 1947.	June, 1946
	Pounds.	*Pounds.*
Plug	3, 000, 687	4, 279, 811
Twist	311, 745	458, 214
Fine-cut chewing	326, 209	301, 694
Scrap chewing	3, 211, 332	3, 635, 258
Smoking	8, 499, 932	9, 394, 685
Snuff	3, 006, 677	3, 021, 968
Total	18, 356, 582	21, 091, 630

[a] All figures are subject to revision until published in the Commissioner's annual report.

1947–20–12653
T. 194

Statement of manufactured tobacco produced, by classes, during the month of July, 1947, as compared with July, 1946.

	July, 1947.	July, 1946.
	Pounds.	*Pounds.*
Plug	4, 756, 268	4, 656, 517
Twist	427, 085	497, 041
Fine-cut chewing	856, 881	326, 240
Scrap chewing	2, 912, 645	3, 968, 333
Smoking	9, 345, 137	8, 908, 806
Snuff	2, 968, 211	2, 721, 097
Total	21, 266, 227	21, 078, 034

1947–23–12688
T. 196

Revised statement of manufactured tobacco produced, by classes, during the month of July, 1947, as compared with July, 1946.

	July, 1947.	July, 1946.
	Pounds.	*Pounds.*
Plug	4, 756, 268	4, 656, 517
Twist	427, 085	497, 041
Fine-cut chewing	302, 786	326, 240
Scrap chewing	3, 466, 740	3, 968, 333
Smoking	9, 345, 137	8, 908, 806
Snuff	2, 968, 211	2, 721, 097
Total	21, 266, 227	21, 078, 034

1947–23–12689
T. 197

Statement of manufactured tobacco produced, by classes, during the month of August, 1947, as compared with August, 1946.

	August, 1947.	August, 1946.
	Pounds.	*Pounds.*
Plug	5, 002, 017	4, 631, 117
Twist	439, 729	510, 600
Fine-cut chewing	305, 617	373, 820
Scrap chewing	3, 660, 664	4, 437, 432
Smoking	9, 880, 718	9, 485, 833
Snuff	3, 340, 747	3, 429, 135
Total	22, 629, 492	22, 867, 937

1947–25–12713
T. 199

Statement of manufactured tobacco produced, by classes, during the month of September, 1947, as compared with September, 1946.

	September, 1947.	September, 1946.
	Pounds.	*Pounds.*
Plug	4,892,407	4,361,432
Twist	465,899	461,179
Fine-cut chewing	332,253	311,485
Scrap chewing	3,974,544	3,859,656
Smoking	10,848,984	9,617,652
Snuff	3,719,175	3,060,591
Total	24,233,262	21,671,995

CIGARETTES.[a]

1947–14–12587
T. 189

Preliminary statement of small cigarettes removed for consumption during the month of May, 1947, as compared with removals for the same month of 1946.

Removals.	May, 1947	May, 1946.
	Number.	*Number.*
Tax-paid	25, 759, 294, 775	29, 601, 968, 167
Tax-free	2, 965, 630, 746	3, 018, 500, 392
Total	28, 724, 925, 521	32, 620, 468, 559

1947–16–12615
T. 191

Preliminary statement of small cigarettes removed for consumption during the month of June, 1947, as compared with removals for the same month of 1946

Removals	June, 1947	June, 1946.
	Number.	*Number.*
Tax-paid	28, 540, 383, 823	26, 631, 765, 344
Tax-free	2, 268, 787, 855	2, 444, 429, 841
Total	30, 809, 171, 678	29, 076, 195, 185

1947–19–12645
T. 193

Preliminary statement of small cigarettes removed for consumption during the month of July, 1947, as compared with removals for the same month of 1946.

Removals.	July, 1947.	July, 1946.
	Number.	*Number.*
Tax-paid	29, 371, 450, 330	25, 519, 155, 150
Tax-free	2, 332, 787, 267	2, 486, 877, 611
Total	31, 704, 237, 597	28, 006, 032, 761

1947–20–12654
T. 195

Preliminary statement of small cigarettes removed for consumption during the month of August, 1947, as compared with removals for the same month of 1946.

Removals.	August, 1947.	August, 1946
	Number.	*Number.*
Tax-paid	28, 943, 458, 733	28, 530, 389, 273
Tax-free	2, 528, 434, 114	2, 665, 073, 617
Total	31, 471, 892, 847	31, 195, 462, 890

[a] All figures are subject to revision until published in the Commissioner's annual report.

1947–23–12690
T. 198

Preliminary statement of small cigarettes removed for consumption during the month of September, 1947, as compared with removals for the same month of 1946.

Removals.	September, 1947.	September, 1946
	Number.	*Number.*
Tax-paid	29, 400, 695, 795	27, 303, 283, 935
Tax-free	2, 705, 572, 810	1, 944, 205, 909
Total	32, 106, 268, 605	29, 247, 489, 844

1947–25–12714
T. 200

Preliminary statement of small cigarettes removed for consumption during the month of October, 1947, as compared with removals for the same month of 1946.

Removals.	October, 1947.	October, 1946.
	Number.	*Number.*
Tax-paid	33, 140, 675, 250	32, 690, 429, 883
Tax-free	3, 526, 928, 600	2, 561, 010, 193
Total	36, 667, 603, 850	35, 251, 440, 076

MISCELLANEOUS.

1947-23-12684
Mim. 6197

Cards entitling attorneys or agents to practice before the Treasury Department.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., October 16, 1947.

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

1. (*a*) Instructions contained in Mimeograph 4317, dated April 3, 1935 (C. B. XIV–1, 544 (1935)), and other like instructions on the subject heretofore issued by both the Committee on Practice and by the Bureau, are hereby modified to accord with instructions contained in a communication dated September 2, 1947, from the Chairman of the Committee on Practice, Treasury Department, announcing the policy of that Committee with respect to the recognition to be accorded *permanent* enrollment cards issued to attorneys or agents by the Committee on Practice or by its predecessor, the Committee on Enrollment and Disbarment of the Treasury Department.

(*b*) The instructions referred to are as follows:

(1) A permanent enrollment card, issued by the Committee on Practice, shall be considered valid until canceled by reason of the resignation of the enrollee; or as a result of disbarment proceedings; or until placed on the inactive list by order of the Committee.

(2) White permanent enrollment cards should be recognized by the various officers of the Treasury Department but the holders of such cards should be requested to forward same for the issuance of a new card in order that their names may be taken from the "not heard from" file and placed on the active list.

2. Accordingly, officials and employees of the Bureau hereafter will be governed by the instructions contained in the above-quoted communication relating to permanent enrollment cards issued by the Committee on Practice or by its predecessor, the Committee on Enrollment and Disbarment. White *temporary* enrollment cards are effective for a period of six months from the date of issuance.

3. Correspondence with respect to the instructions contained in this mimeograph should be addressed to the Commissioner of Internal Revenue, attention Com: PR.

GEO. J. SCHOENEMAN,
Commissioner.

COMMITTEE ON PRACTICE.

1947–18–12632
D. C. 230 (Rev.)

LAWS AND REGULATIONS GOVERNING THE RECOGNITION OF AGENTS, ATTORNEYS, AND OTHER PERSONS REPRESENTING CLAIMANTS BEFORE THE TREASURY DEPARTMENT AND OFFICES THEREOF.

DEPARTMENT CIRCULAR NO. 230[1] (AS REVISED TO MAY 29, 1947).

PART 10—PRACTICE OF ATTORNEYS AND AGENTS BEFORE THE TREASURY DEPARTMENT.

Sections 10.1 to 10.13, inclusive, are Part 10 as published in the original edition of the Code of Federal Regulations and as amended from time to time thereafter, including minor clarifying and technical amendments now made.

Section.

10.1. Committee established.
10.2. Rules and regulations relating to practice.
10.3. Qualifications for enrollment.
10.4. Application for enrollment.
10.5. Customhouse brokers.
10.6. Roster of enrollees; enrollment cards.
10.7. Proceedings for disbarment, suspension, and reinstatement.
10.8. Authority to prosecute claims.
10.9. Substitution of attorneys or agents; revocation of authority.
10.10. Disreputable conduct.
10.11. Striking names from roll.
10.12. Application and effective date of regulations.
10.13. Withdrawal or amendment of regulations.

AUTHORITY: Sections 10.1 to 10.13, inclusive, issued under section 3, 23 Stat., 258; Public Law 404, Seventy-ninth Congress, 60 Stat., 237; 5 U. S. C., 261.

SECTION 10.1. COMMITTEE ESTABLISHED.—(*a*) *Committee on Practice.*—A Committee on Practice is hereby created consisting of such number of members as shall be appointed by the Secretary of the Treasury. The Secretary shall designate a chairman of the Committee. The Secretary in his discretion may appoint a part-time member or members of the Committee, and, whenever in his judgment such action is necessary, the Secretary may appoint some person to serve temporarily as a substitute for a regular member of the Committee. The Committee shall have such powers to prescribe rules for its own government and procedure as are set forth elsewhere in the regulations in this part. The Committee shall meet at such times as it may designate or at the call of the chairman. Two members of the Committee shall constitute a quorum.

(*b*) *Duties of the Committee.*—The Committee shall receive and act upon applications to be recognized as attorneys or agents before the Treasury Department; receive and act upon applications for reenrollment from attorneys or agents who have been disbarred; conduct hearings; make inquiries; and perform other duties as prescribed herein.

(*c*) *Secretary of the Committee.*—The Secretary of the Treasury may appoint a person to act as secretary of the Committee or designate a member of the Committee to act as secretary. The secretary of the Committee shall keep and maintain its records, shall have custody of all its papers, records, rolls, and files, and shall perform such other duties reasonably incident to his office as the Committee shall direct. If no secretary is appointed or designated, the duties herein enumerated shall devolve upon the chairman of the Committee, or upon such person or persons as he may designate.

(*d*) *Attorney for the Government.*—The Secretary of the Treasury shall appoint an attorney not a member of the Committee as attorney for the Government to prepare and present all formal statements of charges against enrolled attorneys or agents, to supervise the gathering of evidence in support of such

[1] Effective October 1, 1936. This circular supersedes Treasury Department Circular No. 230, dated October 1, 1934, and the amendments thereof and supplements thereto.

charges, including the taking of depositions, to represent the Government in all proceedings before the Committee, to represent the Government in all proceedings pursuant to section 10.7, and to perform other duties incident to his position.

SEC. 10.2. RULES AND REGULATIONS RELATING TO PRACTICE.—(*a*) *Eligibility to practice.*—(1) No attorney or agent shall be eligible to practice before the Treasury Department unless such attorney or agent is enrolled in accordance with the regulations in this part or prior regulations, except that any individual may appear, without enrollment, on his own behalf or in behalf of a member of his immediate family if such appearance is without compensation; and a member of a partnership, an officer of a corporation, or an authorized regular employee of an individual, partnership, corporation, or estate, may likewise appear, without enrollment, in any matter relating to such individual, partnership, corporation, or estate pending before the Treasury Department if he presents adequate identification to the officials of the Department. Enrollment is not required for appearances by trustees, receivers, guardians, administrators, and executors on behalf of trusts, receiverships, guardianships, or estates of which such persons are the trustees, receivers, guardians, administrators, or executors, if adequate identification is presented to the officials of the Department. This rule also applies to an individual, a partnership, an estate or trust, or a corporation with respect to the liability of the individual, partnership, estate or trust, or corporation as a transferee of property of a taxpayer and to a fiduciary with respect to the liability of the fiduciary under section 518(a), 48 Stat., 760; 31 U. S. C., 192. No enrolled person or other person authorized to appear before the Treasury Department without enrollment shall represent a claimant before the Treasury Department in any matter to which the enrollee, as officer or employee of the United States, gave personal consideration or as to the facts of which he gained knowledge while in the Government service.

(2) No former officer, clerk, or employee of the Treasury Department shall act as attorney or agent, or as the employee of an attorney or agent within two years after the termination of such Treasury employment, in any matter pending in such Department during the period of his employment therein, unless he shall first obtain the written consent thereto of the Secretary of the Treasury or his duly authorized representative. This consent will not be granted unless it appears (i) that the applicant was not, during the period of two years immediately preceding the date of application, employed in the particular departmental or field section in which was pending the matter, to handle which consent is sought, provided that this requirement shall not apply to persons employed in an administrative capacity such as head of a unit, division, or section, or employed as a reviewer or conferee or in an advisory capacity; and (ii) that employment as an agent or attorney is not prohibited by section 5, 17 Stat., 202; 5 U. S. C., 99, or other law, or by the regulations of the Treasury Department. Such applicant shall be required to file a declaration to the effect that he gave no personal consideration to such matter and had no knowledge of the facts involved in such matter while he was employed in the Department and that he is not now associated with, and will not be associated with, any former employee who has gained knowledge of the case while employed by the Treasury Department, and that his employment is not prohibited by law, or by the regulations of the Treasury Department. The statements contained in such declaration shall not be sufficient if disproved by an examination of the files and records pertaining to the case. Applications for consent should be directed to the Committee on Practice on Form 901 and should state the former connection with the Department of the applicant and identify the matter in which the applicant desires to appear. The applicant shall be promptly advised as to his privilege to appear in the particular matter, and this notice shall be filed by him in the record of the case.

(3) Nor shall any enrolled person knowingly (i) assist a person who has been employed by a client to represent him before the Treasury Department in connection with any matter to which such person gave personal consideration or as to the facts of which such person gained personal knowledge while in the Government service, or (ii) accept assistance from any such person in connection with any such matter, or (iii) share fees with any such person in connection with any such matter.

(*b*) *Scope of practice before the Department.*—Practice before the Treasury Department shall be deemed to comprehend all matters connected with the presentation of a client's interests to the Treasury Department, including the preparation and filing of necessary written documents, and correspondence with

the Treasury Department relative to such interests. Unless otherwise stated the term "Treasury Department" as used in this paragraph and elsewhere in this part includes any division, branch, bureau, office, or unit of the Treasury Department, whether in Washington or in the field, and any officer or employee of any such division, branch, bureau, office, or unit.

(*c*) *Knowledge of client's omission.*—Each enrolled attorney or agent who knows that a client has not complied with the law or has made an error in, or an omission from, any return, document, affidavit, or other paper, which the law requires such client to execute, shall advise his client promptly of the fact of such noncompliance, error, or omission.

(*d*) *Duty of enrollees concerning violations.*—It shall be the duty of an enrolled attorney or agent, when requested by the Committee or the attorney for the Government, to give the Committee or the said attorney any information which he may have concerning violations of the regulations in this part or of the occurrence of any acts or omissions which would be grounds for suspension or disbarment, unless said information is privileged.

(*e*) *Use of fictitious names.*—Every enrolled attorney or agent practicing as an individual shall use his legal name in the conduct of his legal, accounting, or other professional practice. The term "company," "associates," "accountants," "auditors," "engineers," or other plural forms suggesting a partnership, or language of similar import, used in connection with a name or title, or any fictitious title, or trade name, shall be used only by a bona fide partnership consisting of two or more members, and all stationery, listings, advertisements, and announcements of enrolled persons shall conform to the principles herein stated.

(*f*) *Rights and duties of agents.*—An agent enrolled before the Treasury Department shall have the same rights, powers, and privileges and be subject to the same duties as an enrolled attorney: *Provided*, That an enrolled agent shall not have the privilege of drafting or preparing any written instrument by which title to real or personal property may be conveyed or transferred for the purpose of affecting Federal taxes, nor shall such enrolled agent advise a client as to the legal sufficiency of such an instrument or its legal effect upon the Federal taxes of such client: *And provided further*, That nothing in the regulations in this part shall be construed as authorizing persons not members of the bar to practice law.

(*g*) *Certification of documents.*—Every claim, affidavit, written argument, brief, or statement of fact, prepared or filed by an enrolled attorney or agent in any matter pending before the Treasury Department, shall have affixed thereto a statement signed by such attorney or agent showing whether he prepared such document and whether or not he knows of his own knowledge that the statements of fact contained therein are true.

(*h*) (Revoked.)

(*i*) *Enrollees as notaries.*—No enrolled attorney or agent as notary public shall take acknowledgments, administer oaths, certify papers, or perform any official act in connection with matters in which he is employed as counsel, attorney, or agent, or in which he may be in any way interested before the Treasury Department. Under the provisions of this paragraph an enrolled person who is a notary public is prohibited from taking any acknowledgment, oath, or certification as a notary public in connection with any tax return, protest, or other document which he has prepared or in the preparation of which he has assisted. (26 Op. Atty. Gen., 236.)

(*j*) *Unimpaired status required.*—It shall be incumbent upon each enrolled person (1) who is authorized to practice as a certified public accountant or as a public accountant to maintain unimpaired his right to practice as a certified public accountant or public accountant; (2) who is admitted to practice before any court to maintain unimpaired his right to practice before such court; and (3) who is enrolled or admitted to practice before another department or agency of the Government to maintain unimpaired his standing before such department or agency.

(*k*) *Certain partnerships prohibited.*—No enrolled person shall maintain a partnership for the practice of law, accountancy, or other related professional service with a person who is under disbarment from practicing before the Treasury Department or any other Government department or agency, or with an unenrolled person who is neither an attorney legally practicing law nor a certified public accountant or a public accountant legally practicing accountancy.

(*l*) *Practice by corporations prohibited.*—No enrolled person shall be connected with an accounting corporation either as officer, employee, or stockholder;

nor shall any enrolled person, while employed as an officer, employee, attorney, or agent of any corporation, practice before the Treasury Department on behalf of such corporation as the representative of the officers, employees, directors, stockholders or members, customers or clients, of such corporation, except as permitted by section 10.5. The term "corporation" as used in this paragraph and elsewhere in this part shall be deemed to include associations, joint stock companies, and insurance companies. Nothing contained herein shall prevent an enrolled person from being employed by agricultural cooperative associations, on a nonprofit basis and not subject to Federal income taxes, to represent before the Treasury Department the groups or units constituting membership of such associations: *Provided*, That individuals may not be so represented.

(*m*) *Clients of unenrolled persons.*—No enrolled person shall represent before the Treasury Department clients of an unenrolled person who is neither an attorney nor an accountant regularly engaged in the practice of accountancy nor a customhouse broker, or who to the knowledge of the enrolled person solicits business, obtains clients, or otherwise conducts his practice in a manner forbidden under the regulations in this part to enrolled persons.

(*n*) *Assistance from unenrolled persons.*—No enrolled person shall in any Treasury Department matter knowingly and directly or indirectly:

(1) Employ or accept assistance from any unenrolled person whose application for enrollment shall at any time have been denied for a cause involving moral turpitude, or from a person who has been disbarred from practice before any department or agency of the Government or before any court of record, or who is under suspension from practice before any such department, agency, or court, or who has been deprived of his certificate as a certified public accountant or public accountant, or whose name after the effective date hereof has been stricken from the roll of attorneys and agents authorized to represent claimants before the Treasury Department in the course of disbarment proceedings against him, or

(2) Accept employment as associate, correspondent, or subagent, from, or share fees with, any such person, or any person who is not an attorney or a public accountant regularly engaged in the practice of accountancy, or who is not a licensed customhouse broker.

(*o*) *Preparation of financial statements.*—Each enrolled person shall exercise due diligence in preparing financial statements for clients and in certifying to the correctness of the same.

(*p*) *Diligence as to accuracy.*—Each enrolled person shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any Treasury Department matter, and no enrolled person shall withhold information relative to any such matter from a client who is entitled to the information.

(*q*) *Moneys received in trust.*—Each enrolled person shall promptly pay over to the Government when due all sums received for the payment of any duty, tax, or other debt or obligation owing to the Government, and shall promptly account to clients for funds received for them from the Government, or received from a client in excess of the charges properly payable in respect of the client's business.

(*r*) *Endorsement of client's checks.*—No enrolled person shall without authority of his client endorse or accept any Government draft, check, or warrant drawn to the order of such client.

(*s*) *Use of influence forbidden.*—No enrolled person shall attempt to influence the action of any official or employee of the Treasury Department in any Treasury Department matter by the use of threats, false accusations, duress, or by the offer of any special inducement or promise of advantage, or by the bestowing of any gift or favor or other thing of value.

(*t*) *Production of records.*—No enrolled person shall neglect or refuse to produce records or evidence in any matter before the Treasury Department upon proper and lawful demand by a duly authorized agent of the Department, unless the attorney or agent has reasonable grounds to believe and does believe that the said demand is of doubtful legality; or shall otherwise interfere, or attempt to interfere, with any proper and lawful efforts by such Department or agent to procure such information.

(*u*) *Attempting to obtain information.*—No enrolled person shall procure, or attempt to procure, directly or indirectly, from Government records or other Government sources information of any kind which is not made available by proper authority.

(*v*) *Solicitation and advertising, direct or indirect, prohibited.*—No enrolled attorney or agent shall in any manner whatsoever solicit, directly or indirectly, or by implication, employment from persons not clients or friends in matters before the Treasury Department or in matters related thereto. Among other things the following shall be deemed to be prohibited by this paragraph:

(1) The publication of articles or the delivery of addresses on Federal tax questions by an enrolled person over the radio or elsewhere in connection with which the name of the firm of which he is a member, associate, or employee, or the address of the writer or speaker is given either by the writer, speaker, announcer, or publisher, provided that nothing herein shall be construed to prohibit the publication, by periodicals admitted to second-class mailing privileges, of such information concerning contributors of articles as is usually published in such periodicals.

(2) The mailing of circulars, letters, pamphlets, or other printed or written matter to persons not clients or friends of such enrolled person which contain no direct solicitation of employment but which do include the name and a description of the practice and address of such enrolled person.

(3) Advertising in one or more of the following forms: (i) Signs, printing, or other advertising matter, indicating previous connection with the Treasury Department; (ii) representation, orally, in writing, or in any other manner, of special influence with the officials or employees of the Treasury Department through acquaintance or otherwise; (iii) the use of any title or other description of the attorney or agent or his practice which tends to suggest some connection with the Treasury Department of the United States, and any title or description containing the words "United States" shall be presumed to carry such suggestion, except that there is no objection to the use of the words "Enrolled to practice before the United States Treasury Department"; (iv) distribution of bulletins, circulars, pamphlets, or so-called "tax services," to persons who are not clients or friends of the attorney or agent containing decisions or rulings of the Treasury Department, The Tax Court of the United States, or courts on Federal tax matters, or comment thereon by the attorney or agent; (v) distribution to persons not clients or friends of the practitioner of circulars or pamphlets advertising any business, educational, or social institution, or organization, which circular or pamphlet contains a card or advertisement of the practice of such attorney or agent.

(4) The following kinds of advertising will not be deemed to constitute a violation of this paragraph:

(i) Letterheads, professional cards, and the customary professional insertions in professional, telephone, and city directories, or in newspapers, trade or professional journals, or other publications admitted to second-class mailing privileges, provided they set forth only the name and address of the attorney or agent or the name of the firm of which he is a member or with which he is associated, a brief description of the nature of his practice, to wit, whether he practices as an attorney or accountant, and, if desired, any field of practice or service in which such attorney or agent may specialize;

(ii) The distribution by former officers or employees of the Government of cards briefly stating the fact of their former official status and announcing their new association: *Provided,* The cards are addressed only to personal or business acquaintances: *And provided further,* That such cards are distributed only once and within a reasonable time after severance of official connection with the Government and within 30 days after the formation of a new association.

(*w*) *Preparation of documents by enrollees.*—Each enrolled person shall exercise due diligence in preparing or assisting in the preparation of, approving, and filing returns, documents, affidavits, and other papers relating to Treasury Department matters, and in otherwise representing clients before the Treasury Department; and no enrolled person shall unreasonably delay the prompt disposition of matters before the Treasury Department by neglecting to answer correspondence, by unreasonably delaying the filing of closing agreements, by filing frivolous claims for refunds, or otherwise.

(*x*) *Duty to request name to be stricken upon accepting employment with the United States.*—It shall be the duty of every enrolled person who becomes a judge of any court of record or an officer or employee (1) of the United States, (2) of any corporation owned wholly by the United States, (3) of the District of Co-

lumbia, or (4) of any State or subdivision thereof whose duties disclose facts or information applicable to Federal tax matters, to request the Committee on Practice to place his name on the inactive list of Treasury Department practitioners during the period of such incumbency. Any person who on becoming an officer or employee of the Treasury Department requested that his name be stricken from the roll and surrendered his enrollment card to the Committee for cancellation and whose employment with the Department has been or shall be terminated in good standing shall be entitled upon his written request to have his name restored to the roll and his enrollment card returned to him.

(*y*) *Fees; agreements.*—(1) No enrolled person shall exact from his clients a manifestly unreasonable fee, whether contingent or otherwise, in any matter before the Treasury Department. The reasonableness of a fee in any case is within the limits a matter of judgment and depends upon all the facts and circumstances thereof, including the complexity and difficulty of the case, the amount of time and labor required for its proper preparation and presentation, the amount involved, and the professional standing and experience of the attorney or agent.

(2) A wholly contingent fee agreement shall not be entered into with a client by an enrolled person unless the financial status of the client is such that he would otherwise be unable to obtain the services of an attorney or agent. Partially contingent fee agreements are permissible where provision is made for the payment of a minimum fee, substantial in relation to the possible maximum fee, which minimum fee is to be paid and retained irrespective of the outcome of the proceeding. Such minimum fee need not be paid in advance, if provision for its payment is made irrespective of the outcome of the case. The payment of or agreement to pay a nominal minimum fee will not satisfy the requirements of this subparagraph.

(3) Whenever an enrolled attorney or agent shall enter into a contract to represent a client before the Treasury Department on a wholly or partially contingent basis, he shall file with the Committee a signed statement to that effect, containing the terms of the contract as they relate to compensation.

(4) When a power of attorney is filed with the Treasury Department it shall be the duty of the attorney or agent filing the same to file therewith a statement as follows:

(Place) _____.
(Date) _____.

(have)
This is to certify that I (have not) entered into a contingent or partially contingent fee agreement for the representation before the Department of _____ in the matter of _____ under the terms of a power of attorney filed with the Treasury Department on _____ and (in case a contingent or partially contingent fee agreement has been made) that a report of such fee agreement (has) been made to the Committee on Practice.
(has not)

_____.

This requirement shall not be applicable to the powers of attorney wherein the authority granted is limited to the filing of tax or information returns.

(*z*) *Duty to observe canons of ethics.*—Each enrolled person shall conduct his practice in an ethical and professional manner and it shall be the duty of each enrolled attorney to observe the canons of ethics as adopted by the American Bar Association and of each enrolled agent to observe the ethical standards of the accounting profession. Among other forms of unethical and unprofessional conduct the following will be deemed to constitute such conduct: The use of intemperate and abusive language, the making of false accusations or statements knowing them to be false, or the circulation of malicious and libelous matter in connection with Treasury practice.

SEC. 10.3. QUALIFICATIONS FOR ENROLLMENT.—(*a*) (1) Persons of the following classes who are found, upon consideration of their applications, to possess the qualifications required by the regulations in this part may be admitted to practice before the Treasury Department as attorneys or agents respectively:

(i) Attorneys at law who have been admitted to practice before the courts of any State or Territory, or the District of Columbia, and who are lawfully engaged in the active practice of their profession.

(ii) Certified public accountants who have duly qualified to practice as certified public accountants in their own names, under the laws and regulations of any State or Territory, or the District of Columbia, and who are lawfully engaged in active practice as certified public accountants.

(2) Applicants who are employed by corporations on a full-time basis and who do not maintain offices apart from such employment with their services available to the general public will not be considered to be in active practice within the meaning of the term as used above.

(3) Applicants for enrollment to practice before the Treasury Department are required by statute to "show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases." (5 U. S. C., 261.) The burden is upon applicants to establish clearly their right to enrollment by showing that they possess (i) a good character and reputation, (ii) an adequate education, and (iii) a knowledge of the laws and regulations relating to tax matters and other subjects which they expect to handle before the Department and of the rules and regulations governing practice before the Department.

(4) Good character and good reputation are not identical requirements. The former is determined by the applicant's actual qualities; the latter depends upon the opinion entertained of the applicant by those who have had the opportunity of knowing him in the community in which he resides or in which he practices his profession. It follows that evidence of any act or omission which tends to establish lack of integrity or untrustworthiness or other qualities reprehensible in a professional man, is material as bearing upon the character of the applicant, notwithstanding there is clear proof that his reputation is good. An applicant must furnish as references the names and addresses of at least six persons who are acquainted with his reputation and with whom the applicant has come in contact in his profession or business.

(*b*) (1) Among the causes sufficient to justify denial of an application for enrollment are: Any conduct, or practices, or proposed practices, which would constitute a violation of any of the provisions of the regulations in this part if the applicant were enrolled or any other conduct which would be a ground for suspension or disbarment under the applicable law or laws; any conduct which would be deemed grossly unfair in commercial transactions by accepted standards; or a bad reputation imputing to an applicant conduct of a criminal, dishonest, or unethical kind.

(2) The Committee on Practice will endeavor to ascertain all the facts deemed necessary by it to pass upon any application without expense or undue inconvenience to the applicant. In the event, however, that the Committee is not satisfied with the information received, it may require the applicant to appear in person before the Committee or before some person or persons designated by it for the purpose of undergoing additional written or oral examination as to his fitness for enrollment. The Committee may grant a hearing on an application at the applicant's request.

(*c*) Application for enrollment may be denied in any case in which it appears that the applicant has terminated his employment with the Treasury Department in violation of an obligation assumed as a condition of such employment to remain in the service of the Department for a specified period or for a reasonable time.

(*d*) Only citizens of the United States over the age of 21 years are eligible for enrollment. A person who is unable for any reason to take the oath of allegiance, and to support the Constitution of the United States, as required of persons prosecuting claims against the United States by Title 31, section 204, United States Code, can not be enrolled.

(*e*) Corporations and partnerships are ineligible for enrollment.

(*f*) Officers and employees of any State, or subdivision thereof, whose duties require them to pass upon, investigate, or deal with tax matters of such State or subdivision, shall be ineligible for enrollment, provided such employment may disclose facts or information applicable to Federal tax matters.

(*g*) Judges of courts of record shall be ineligible for enrollment.

(*h*) All persons to whom section 198 or section 203 of Title 18 of the United States Code applies, all persons prohibited by other law from representing claimants against the United States, all persons regularly employed by corporations owned wholly by the United States, and all persons regularly employed by the District of Columbia shall be ineligible for enrollment.

(*i*) The qualifications for enrollment stated in paragraph (*a*)(1) (i) and (ii) are prerequisites for general enrollment for practice before the Treasury Department.

(*j*) *Special enrollment.*—However, special enrollment for the presentation of matters before a particular bureau or divsion may be effected in the following manner: An applicant for such special enrollment shall present his qualifications to the Committee. The Committee shall prescribe an examination for such applicant. If the Committee is satisfied that the applicant is possessed of the qualifications necessary to enable him to render valuable services to claimants and other persons before the particular bureau or division before which he is seeking authorization to practice, it shall issue to the applicant an appropriate special enrollment card.

(*k*) *Authority for a particular matter.*—Moreover, authority for the presentation of a particular matter before the Treasury Department may be effected in the following manner: An applicant for such authority shall present his qualifications to the Committee. If the Committee is satisfied that the applicant is possessed of the qualifications necessary to enable him to render valuable services to his principal in the presentation of the particular matter before the Treasury Department, it shall issue to the applicant an appropriate letter of authority. Such a letter of authority shall not be necessary, except in the case of matters before the Bureau of Internal Revenue, if the officer or employee of the bureau or division before whom appearance is made is satisfied that the person appearing is not under orders of suspension or disbarment from the Treasury Department and is so clearly qualified that application to the Committee would be a useless formality.

Nothing in paragraphs (*j*) and (*k*) shall authorize any procedure to permit a person to act as a customhouse broker without compliance with the requirements of Part 11 of this chapter, nor limit the rights granted by such Part 11 to customhouse brokers to represent their clients before the Treasury Department.

SEC. 10.4. APPLICATION FOR ENROLLMENT.—Applicants for enrollment shall submit to the Committee an application in duplicate properly executed on Form 23. Applications in any other form may not be considered. Members of the bar of an American court of records will apply for enrollment as attorneys; all other applicants will apply for enrollment as agents. All applications for enrollment must be individual. While members of a partnership should apply as individuals and not in the partnership name, an enrolled attorney or agent may represent clients before the Treasury Department in the name of the partnership of which he is a member or with which he is otherwise regularly connected. In case all of the members of a partnership are not enrolled, then the enrolled attorney or agent shall be responsible for any acts or omissions of the unenrolled partner or partners which are in violation of law or of the provisions of the regulations in this part, to the same extent as though the offending partner himself were enrolled.

SEC. 10.5. CUSTOMHOUSE BROKERS.—Section 641 of the Tariff Act of 1930 (46 Stat., 759; 19 U. S. C., 1641), as amended, provides in part that the Secretary of the Treasury may prescribe rules and regulations governing the licensing as customhouse brokers of citizens of the United States of good moral character, and of corporations, associations, and partnerships. The Department's regulations pursuant thereto are published in Part 11 of this chapter. A customhouse broker so licensed requires no further enrollment under the regulations in this part for the transaction, within the customs districts in which he is licensed, of any business relating specifically to the importation or exportation of merchandise under customs or internal-revenue laws. He is also entitled, without further license or enrollment, to represent claimants or other persons before the Treasury Department in Washington in any matter in which he acted as a customhouse broker in any district in which he is licensed. When serving in such capacity, a licensed customhouse broker shall, in addition to being subject to the provisions of section 641 of the Tariff Act of 1930, as amended, and the rules and regulations thereunder, be subject also to all the provisions of the laws and regulations set forth in this part, as revised from time to time, and shall be responsible as specified in 31 CFR, 11.7(d) for violation of any such laws or regulations committed by his or its officers, employees, or authorized attorneys or agents, in connection with the prosecution on behalf of the principal of any business before the Treasury Department in Washington.

SEC. 10.6. ROSTER OF ENROLLEES; ENROLLMENT CARDS.—(*a*) *Roster of attorneys and agents.*—A roster of all attorneys and agents who make application for enrollment or who are enrolled, or whose applications have been denied, or who have been suspended or disbarred, will be kept in the office of the Committee on Practice. All bureaus, offices, and divisions of the Treasury Department subject to the exceptions in section 10.5 in the case of the Bureau of Customs, are pro-

hibited from recognizing or dealing with any unenrolled attorney or agent as the representative of any person having a claim pending before the Department: *Provided*, That the Committee on Practice may grant, pending action upon an application, temporary recognition to an applicant not required to take an examination in connection with his application: *And provided further*, That an unenrolled person who has not been disbarred or suspended from practice before the Treasury Department may be permitted to make initial appearance in a particular case. Such permission shall in no case authorize an unenrolled person to appear before the Treasury Department in Washington, D. C., or to represent a claimant in any formal hearing. It shall be the duty of the Government official before whom such person appears to notify him that if he wishes to appear further in the case, or in any formal hearing, or before the Treasury Department in Washington, it will be necessary to file an application for enrollment.

(*b*) *Information as to enrollment.*—The Committee will furnish upon request information as to whether any individual is enrolled. Other information will be made available to the various departments and agencies of the Government and to any person entitled to receive the same in accordance with the rules and regulations of the Treasury Department, and, except as prohibited by law, access to the files and records of the Committee will be granted to The Tax Court of the United States and its representatives.

(*c*) *Enrollment cards.*—The Committee on Practice shall issue an enrollment card to every attorney or agent upon his enrollment. Unless advised to the contrary by the Committee on Practice, any officer of the Treasury Department may consider the holder of such an enrollment card as duly authorized to practice before the Department.

SEC. 10.7. PROCEEDINGS FOR DISBARMENT, SUSPENSION, AND REINSTATEMENT.—(*a*) *Proceedings for suspension and disbarment.*—If an officer or employee of the Treasury Department has reason to believe that an enrolled attorney or agent has violated any provision of the laws or regulations governing practice before the Treasury Department, or if a complaint concerning any enrolled attorney or agent is made to any such officer or employee, he shall promptly make a written report thereof to the attorney for the Government. If any other person has information of such violations, he may also make written report thereof to the said attorney. The attorney and the Committee will treat as strictly confidential the identity of the informant in any case in which the informant is other than an officer or employee of the Treasury Department, unless the informant in giving his information states that his identity and connection therewith are not confidential.

(*b*) *Rules of procedure.*—The attorney for the Government may, either on the basis of such information or upon his own motion where he has cause to believe that any enrolled attorney or agent has violated any provision of the laws or regulations governing practice before the Treasury Department, institute proceedings for suspension or disbarment against any enrolled attorney or agent, hereinafter called the respondent in this paragraph, by filing with the Committee a statement of charges signed by the attorney for the Government. Subject to the provisions of the Administrative Procedure Act (60 Stat., 237), such proceedings shall be governed by the following rules:

(1) *Opportunity to avoid proceeding.*—The attorney for the Government shall, before a proceeding is instituted, give to the respondent notice in writing that:

(i) Transmits a copy of the proposed statement of charges, or a specification of the substance thereof;

(ii) Cites sections 5(b) and 9(b) of the Administrative Procedure Act;

(iii) Calls upon the respondent to show cause why the proceeding should not be instituted;

(iv) Informs the respondent that the notice affords him opportunity to make submissions and demonstrations of the character contemplated by the cited statutory provisions;

(v) Invites any negotiation that the respondent deems it desirable to enter into; and

(vi) Specifies a reasonable time for response to such notice: *Provided*, That, if prior to institution of the proceeding, the attorney for the Government determines that the case is one in which such notice would be improper and unnecessary, he shall file his findings and his reasons therefor in the record, and such proceeding may be instituted without first giving notice.

(2) *Service.*—(i) *Service of notice and statement of charges.*—Notice of a proceeding for suspension or disbarment, signed by the Secretary or a member of the Committee, shall be served upon the respondent in the following manner:

(*a*) By delivery to the respondent personally, or

(*b*) By registered mail, with demand for a return card signed by the respondent: *Provided*, That, if an enrolled attorney or agent shall have signed and filed with the Committee on Practice his written consent to be served in some other manner it shall be sufficient if service is made in that manner. Where the service is by registered mail, the receipt of the return card duly signed shall be satisfactory evidence of service. The notice shall give the place and time within which the respondent shall file his answer, which time shall be not less than 20 days from the date of service of the notice, and shall contain or be accompanied by a statement of charges, which statement shall be signed by the attorney for the Government.

(ii) *Service of papers other than notice and statement of charges.*—Papers other than the original notice and statement of charges shall be served on the respondent as follows:

(*a*) By delivering the same to the respondent personally, or by registered mail; or

(*b*) By leaving them at his office with his clerk or with a person in charge thereof; or

(*c*) By depositing them in a United States post office or post office box, enclosed in a sealed envelope, plainly addressed to such respondent at the address under which he is enrolled or at his last address known to the Committee.

(*d*) When the respondent is represented by attorney, by service upon the attorney in the same manner as provided in subdivisions (*a*), (*b*), and (*c*) of this subdivision for service on the respondent.

(3) *Examiner.*—There shall preside at the reception of the evidence an examiner, appointed as provided in the Administrative Procedure Act: *Provided, however*, That until examiners are appointed as provided in said Act (but in no case initiated after June 10, 1947), the Committee shall act as examiner, and its action shall be taken by majority vote.

(4) *Filing of papers.*—Whenever under this paragraph the filing of a paper in a proceeding is required or permitted, and the place of filing is not specified either by rule of the examiner in the particular proceeding or pursuant to this paragraph, the paper shall be filed with the Committee on Practice, Treasury Department, Washington, D. C.

(5) *Extension of time.*—In any case in which the time for filing, pleading, making a submittal, or making an appeal, shall have expired, or shall be about to expire, to the prejudice of a party, the examiner shall have the power in his discretion and upon appropriate application and showing by the party prejudiced, to extend the time, as justice may be deemed to require.

(6) *Negotiation.*—At any time prior to hearing by the examiner, the attorney for the Government is authorized, in his sound discretion, to negotiate with the respondent for the purposes contemplated by sections 5(b) and 9(b) of the Administrative Procedure Act. The parties may at any time during the hearing limit the issues by stipulation. Any stipulations resulting from such negotiation shall be entered in the record.

(7) *Resignation to avoid disbarment.*—If pursuant to negotiation (or otherwise) the respondent resigns to avoid possible institution of disbarment proceedings, or to avoid possible disbarment or suspension in a pending proceeding, the Committee may, upon motion of the attorney for the Government, accept the resignation. If the Committee overrules the motion it shall enter a formal order which shall recite the findings of fact and conclusions of the Committee and which shall be made of record in the proceeding, if any, against the respondent before the examiner.

(8) *Statement of charges.*—The statement of charges shall give a plain and concise description of the facts which it is claimed constitute grounds for suspension or disbarment, without a detailed description of such facts. A statement of charges which fairly informs the respondent of the charges against him so that he is able to prepare his defense shall be deemed sufficient. Different means by which a purpose may have been accomplished or different intents with which acts

may have been committed may be alleged in the statement of charges in a single count in the alternative.

(9) *Bill of particulars.*—If, in order to prepare his defense, the respondent desires additional information as to the time and place of the alleged misconduct, or the means by which it was committed, or any other more specific information concerning the alleged misconduct, he may present a motion in writing to the examiner asking that the statement of charges be made more specific, setting forth in such motion in specific manner in what respect the statement of charges leaves him in doubt and describing the particular language of the statement of charges as to which additional information is needed. If in the opinion of the examiner such information is reasonably necessary to enable the respondent to prepare his defense, the examiner shall direct the attorney for the Government to furnish the respondent with an amended statement of charges giving the needed information.

(10) *Answer.*—The respondent's answer shall be filed in writing within the time specified in the original notice unless on application the time is extended pursuant to subparagraph (5) of this paragraph. The answer shall be made under oath before a notary public or other officer authorized to administer oaths and shall be filed in duplicate with the Committee on Practice.

(11) *Content of answer.*—In his answer the respondent should specifically admit or deny every material allegation of fact in the statement of charges. Every allegation in the statement of charges not denied shall be deemed admitted, unless the respondent shall state in his answer that he has no knowledge thereof sufficient to form a belief, which statement shall be considered a denial. In answer to a statement of charges, no enrolled person shall deny a material allegation of fact which he knows to be true, or state in such answer that he is without sufficient information to form a belief when in fact he possesses such information.

(12) *Affirmative defense.*—In his answer the respondent may also state affirmatively special matters of defense, and shall not give in evidence any matters in avoidance or of defense, consistent with the truth of the allegations of the statement of charges, unless in his answer he states such matters specifically.

(13) *Complaining witness.*—The attorney for the Government may in his discretion furnish a complaining witness with a copy of the answer if in his opinion such action will aid in ascertaining the truth or falsity of the charges. The term "complaining witness" for the purposes of this provision shall include any officer or employee of the Treasury Department or any enrolled attorney or agent who may have reported the alleged misconduct to the attorney for the Government, or any other person upon whose information the attorney for the Government has instituted the proceeding.

(14) *Reply to answer.*—If the answer contains affirmative matter in avoidance, consistent with the truth of the material allegations in the statement of charges, a reply by the attorney for the Government admitting or denying the new matter set forth in the answer shall be filed and served upon the respondent.

(15) *Supplemental charges.*—If it appears that a denial of a material allegation of fact in the statement of charges, or a statement that the respondent has no knowledge sufficient to form a belief, was made in bad faith in the answer; or that the respondent has knowingly introduced false testimony during proceedings against him for suspension or disbarment, the attorney for the Government may thereupon file supplemental charges, which charges may be tried with the other charges in the case, provided the respondent shall be given due notice thereof and afforded an opportunity for preparing a defense thereto.

(16) *Sufficiency of the pleadings.*—The examiner shall have authority to pass upon the sufficiency of the statement of charges, the answer, and all other pleadings. The parties may be heard upon the sufficiency of any pleadings whenever in the opinion of the examiner a hearing thereon is necessary or desirable.

(17) *Immaterial mistakes.*—The examiner shall disregard an immaterial misnomer of a third person, an immaterial mistake in the description of any person, thing, or place or the ownership of any property, a failure to prove immaterial allegations in the description of the respondent's conduct, or any other immaterial mistake in the pleadings.

(18) *Hearings.*—Subject to this paragraph the examiner may determine the time, place, and manner in which hearings shall be conducted; the form in which evidence shall be received, and may adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of suspension, disbarment, and reinstatement cases. Written notice of the time and place of all hearings shall be given the respondent in the manner provided

in this paragraph for the service of papers. No hearing shall be held in less than 10 days from the date of service on the respondent of the notice of such hearing, except that the examiner may postpone or adjourn hearings when necessary or desirable, on notice to the parties.

(19) *Testimony.*—Unless the examiner shall otherwise direct, the testimony of witnesses at all hearings will be taken under oath and stenographically recorded and transcribed.

(20) *Depositions.*—Depositions for use at a hearing may, with the written approval of the examiner, be taken by either the attorney for the Government or the respondent, or their duly authorized representatives, upon oral or written interrogatories, before any officer duly authorized to administer an oath for general purposes, or an officer of the Internal Revenue Bureau authorized to administer an oath in internal revenue matters, upon not less than 10 days' written notice to the other party. Such notice shall state the names of the witnesses, and the time and place where such depositions are to be taken: *Provided,* That when depositions are taken as aforesaid, if both parties are present or represented at the time and place specified for the taking of the depositions, either party may, after the examination of the witnesses produced under the order of the examiner, be entitled to produce and examine other witnesses; but in such case one day's notice must be given to the other party or his duly authorized representative there present, unless such notice is waived: *And provided further,* That the parties or their duly authorized representatives may agree in writing upon a time when and place at which such depositions are to be taken, without formal notice. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served with the notice, and copies of any written cross-interrogatories shall be mailed or delivered to the opposing party or his duly authorized representatives at least five days before the time of taking the depositions.

(21) *Documents.*—Whenever any book, document, or paper is introduced as an exhibit in a proceeding, the examiner may authorize, upon such conditions as he may deem proper, the withdrawal of such exhibit upon the request of the attorney for the Government, or of the respondent or his attorney.

(22) *Proof; partial.*—If the examiner finds that a part of the charges in the statement of charges is not sufficiently proved but that the residue thereof is so proved, he may base his findings on any facts established by the evidence which are grounds for suspension or disbarment and which are substantially charged by the said residue of the statement of charges.

(23) *Proof; variance.*—In the case of a variance between the allegations in the statement of charges and the evidence, the examiner shall have power to base his findings on any facts established by the evidence which are grounds for suspension or disbarment, and to order the amendment of the statement of charges to conform to the evidence: *Provided,* That the respondent has had or is given reasonable opportunity to present his defense to such amended charges, with such postponements of the hearing as may be reasonably necessary to permit the respondent to present such defense.

(24) *Submittals.*—After the reception of evidence has been concluded, the examiner shall by rule afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. In the event that depositions are introduced on behalf of the Government at the hearing or in the event that oral testimony in support of the charges is produced by the Government at the hearing, the attorney for the Government, as soon as possible after the hearing, shall prepare and file with the examiner proposed findings of fact based upon all the evidence in the case.

(25) *Exceptions to proposed findings.*—Upon receipt of proposed findings and conclusions submitted by a party pursuant to subparagraph (24) of this paragraph, the examiner shall forward to the other parties in the case or their attorneys a copy thereof together with a copy of the transcript of such oral testimony and depositions as may have been introduced. Such parties shall have not less than 10 days after receipt of such papers in which to submit in writing to the examiner their exceptions, if any, to such proposed findings and conclusions. Neither such parties nor their attorneys shall have the right to receive any copies of exhibits introduced at the hearing or at the taking of the depositions. Such parties or their attorneys, however, shall have the right to examine all exhibits. Upon receipt of such exceptions, or after the time for filing such exceptions has expired if no such exceptions are filed the examiner shall make his findings and conclusions as required by subparagraph (26) of this paragraph.

(26) *Decision by the examiner.*—After the parties rest, the examiner shall make his decision in the case, which decision shall include (i) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record and (ii) a recommended order of suspension or disbarment or his order to dismiss the charges, as the case may require. In making his findings and conclusions as to the truth of any charges which are duly put in issue by the papers in any case and upon which a hearing is had, the examiner shall be guided by the preponderance of reliable, probative, and substantial evidence. If at any hearing upon issues of fact raised by the papers in the case the respondent fails to put in any evidence, the examiner may base his findings upon the evidence submitted by the attorney for the Government.

(27) *Effect of initial decision.*—If the decision of the examiner does not contemplate the suspension or disbarment of the respondent, such initial decision in the absence of an appeal pursuant to subparagraph (28) of this paragraph shall without further proceedings become the decision of the Secretary of the Treasury.

(28) *Appeal.*—Any party adversely affected or aggrieved, within 30 days after the decision is filed with the Committee, has the right to appeal from such initial decision of the examiner by filing notice of appeal and to submit exceptions to the decision and supporting reasons therefor, which submittals shall be included in the record of the case. Upon the expiration of said period, the entire record shall be transmitted to the Secretary of the Treasury.

(29) *Submittals on recommended decision.*—If the recommended decision of the examiner contemplates the suspension or disbarment of the respondent, any party has the right, within 30 days after the decision is filed with the Committee, to submit exceptions to such recommended decision and supporting reasons therefor, which submittals shall be included in the record of the case. Upon the expiration of said period, the entire record shall be transmitted to the Secretary of the Treasury.

(30) *Decision by Secretary of the Treasury.*—The Secretary of the Treasury will make the agency decision in each case in which an appeal has been taken from the initial decision of the examiner as provided in subparagraph (28) of this paragraph and in each case in which the decision of the examiner contemplates the suspension or disbarment of the respondent. In making such decision, the Secretary of the Treasury, pursuant to the provisions of the Administrative Procedure Act, will review the whole record or such portions thereof as may be cited by any party to permit limiting of the issues.

(31) *Notice of decisions.*—Each decision (initial, recommended, or agency) shall promptly be filed in the record, and the Committee shall thereupon give notice thereof to the parties in the manner prescribed for the service of papers.

(32) *Notice of suspension or disbarment.*—Upon issuance of an order of suspension or disbarment of an attorney or agent by the Secretary of the Treasury notice thereof shall be given by the Committee to the heads of all interested bureaus, offices, and divisions of the Treasury Department and to other interested departments and agencies of the Government in such manner as the Committee may determine. Such person will not thereafter be recognized during the period of suspension or disbarment as an attorney or agent in any matter before the Treasury Department. Notice in such manner as the Committee may determine may be given to the proper authorities in the State from which an enrolled attorney, certified public accountant, or public accountant derives his license to practice in the event that such attorney, certified public accountant, or public accountant is suspended or disbarred.

(33) *Reopening.*—Any attorney or agent who has been suspended or disbarred may make written application to the Committee to have the order of suspension or disbarment vacated or modified upon the ground (i) of newly discovered evidence, or (ii) that important evidence is now available which the applicant was unable to produce at the original hearing by the exercise of due diligence. Every application for reinstatement shall be filed with the Committee in duplicate. Such application must set forth specifically the precise character of the evidence to be relied upon in its support and shall state the reasons why the applicant was unable to produce it when the original charges were heard. If the examiner after due consideration of the application shall deem it sufficiently meritorious to warrant a hearing, he shall so advise the Committee, who shall set a time and place for such hearing and give due notice thereof to the applicant. Upon the conclusion of the hearing the Committee shall transmit the recommended decision of the examiner to the Secretary of the Treasury for his approval or disapproval. In the event that the Secretary shall issue an order vacating or modifying the

prior order of suspension or disbarment, notice thereof shall be given by the Committee to all those to whom notice of the original order of suspension or disbarment was sent. In all cases not covered by the foregoing provisions, a disbarred attorney or agent who desires to be restored to the roll must file a new application for enrollment and otherwise comply with the requirements of section 10.3.

(34) *Saving provision.*—The regulations governing suspension, disbarment, and reinstatement that were in force and effect March 31, 1947, are referred to in this subparagraph as the old rules. This paragraph as amended effective April 1, 1947, is referred to in this subparagraph as the new rules. The old rules shall continue to govern any proceeding that was instituted prior to March 31, 1947: *Provided, however*, That if in the course of the proceeding there is taken any action that is authorized by the old rules but that is not authorized by the new rules, said action shall not constitute grounds for disturbing any order thereafter made in the proceeding: (i) Unless it is shown that the action was in derogation of substantive rights, and not merely procedural rights; and (ii) unless upon occurrence of the action the respondent made timely objection supported by his reasons, and the objection was overruled: *Provided further*, That adherence may be had to the new rules pursuant to stipulation of the parties.

SEC. 10.8. AUTHORITY TO PROSECUTE CLAIMS.—A power of attorney from the principal in proper form may be required of enrolled attorneys or agents in any case by heads of bureaus, offices, and divisions. In the prosecution of claims before the Bureau of Internal Revenue, involving the assertion of demands for payment of money by the United States, proper powers of attorney shall always be filed before an attorney or agent is recognized.

SEC. 10.9. SUBSTITUTION OF ATTORNEYS OR AGENTS; REVOCATION OF AUTHORITY.—(*a*) *Substitution of attorneys or agents.*—Where the power of attorney under which an enrolled attorney or agent is acting expressly confers the power of substitution, such attorney or agent may, by a duly executed instrument, substitute another enrolled attorney or agent in his stead: *Provided*, That such other attorney or agent will be recognized as such only after due notice in writing has been given the head of the bureau, office, unit, or division before which the matter is pending: *And provided further*, That where the enrolled attorney or agent designated in the power of attorney, with power of substitution, has himself by reason of his suspension or disbarment or his subsequent entry into Government service become ineligible further to represent before the Treasury Department the client who executed the power, the Treasury Department shall be under no obligation to recognize any substitute power of attorney executed at any time by such attorney or agent, authorizing some other enrolled attorney or agent to appear before the Department upon behalf of such client, and it will be necessary for such client to retain a new attorney or agent.

(*b*) *Conflicting powers of attorney.*—Where there is a contest between members of a dissolved firm or between two or more attorneys or agents, acting under the same power of attorney, as to which one is entitled to prosecute a matter pending before the Treasury Department or to receive a draft, warrant, or check, the client only shall thereafter be recognized, unless the members or survivors of the dissolved firm, or the contesting attorneys or agents, file an agreement signed by all designating which of them shall be entitled to prosecute such matter or to receive the said draft, warrant, or check. In no case shall the delivery of a final draft, warrant, or check to the client be delayed more than 60 days by reason of failure to file such agreement.

(*c*) *Revocation of powers.*—The revocation of an authority to represent a claimant before the Treasury Department shall in no case become effective, so far as the Department is concerned, until due notice in writing has been given the head of the bureau, office, or division before which such matter is pending, and the filing of evidence of notification of the revocation to the attorney whose power has been revoked.

SEC. 10.10. DISREPUTABLE CONDUCT.—(*a*) The Secretary of the Treasury may after due notice and opportunity for hearing suspend, and disbar from further practice before the Treasury Department any attorney or agent shown to be incompetent, disreputable, or who refuses to comply with the rules and regulations in this part, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement.

(*b*) Among other forms of disreputable conduct the following are deemed to constitute such conduct:

(1) Conviction of a crime involving moral turpitude.

(2) Making false answers in the application for enrollment with knowledge that such answers are false.

(3) Preparing or filing for himself or another a false Federal income tax return or other statement on which Federal taxes may be based, knowing the same to be false.

(4) Suggesting to a client or a prospective client an illegal plan for evading payment of Federal taxes, knowing the same to be illegal.

(5) Giving false testimony in any proceeding before the Committee on Practice, or in any other proceeding before the Treasury Department, or before any tribunal authorized to pass upon Federal tax matters, knowing the same to be false.

(6) Filing any false or fraudulently altered document or affidavit in any case or other proceeding before the Treasury Department, or procuring the filing thereof, knowing the same to be false or fraudulently altered.

(7) Using, with intent to deceive, false or misleading representations to procure employment in any case or proceeding before the Treasury Department.

(8) Giving, with intent to deceive, false or misleading information relative to a matter pending before the Treasury Department to any officer or agent of the Department.

(9) Preparing a false financial statement for a corporation, partnership, association, or individual, or certifying the correctness of such false statement, knowing the same to be false.

(10) Imparting to a client false information relative to the progress of a case or other proceeding before the Treasury Department, knowing the same to be false.

(11) False representations by an enrolled agent that he is an attorney or a certified public accountant.

(12) Preparing or assisting in the preparation of, or filing, a false claim against the United States, knowing the same to be false.

(13) Approving, for filing, a false income tax return prepared by some other person, knowing the same to be false.

(14) Misappropriation of sums received from clients for the purpose of payment of taxes or other obligations due the Government, or of funds or other property belonging to a client.

(15) Improper retention of a fee for which no services have been rendered.

(16) Obtaining or attempting to obtain money or other thing of value from a claimant by false representations, knowing the same to be false.

(17) Obtaining or attempting to obtain money or other thing of value from a claimant by duress or undue influence.

(18) Concealing or attempting to conceal assets in order to evade the payment of Federal taxes.

(19) Representing to a client or prospective client that the attorney or agent can obtain extraordinary favors from the Treasury Department or an officer or employee thereof or has access to unusual sources of information within the Department.

(20) Soliciting or procuring the giving of false testimony in any proceeding before the Committee on Practice or in any other proceeding before the Treasury Department.

SEC. 10.11. STRIKING NAMES FROM ROLL.—(*a*) On request of an attorney or agent, the Committee may strike his name from the roll, but before granting the request the Committee shall make inquiries to ascertain whether the request has been made in order to evade proceedings for suspension or disbarment, in which event the request shall be denied unless the Committee shall deem it to the best interest of all parties concerned to grant such request.

(*b*) The Committee may upon motion of the attorney for the Government or upon its own motion strike from the roll the name of any person who has failed to supply the information required by section 15 of Department Circular 230, revised October 1, 1934, provided that any attorney or agent whose name has been so stricken from the roll may have his name restored thereto by filing with the Committee such information and a statement showing that his failure to supply it within the time specified in such circular was not due to any fault on his part. Upon the receipt of such information and statement, the name of such attorney or agent shall be restored to the roll unless it shall appear that he is ineligible for

enrollment, in which event he shall be advised of the fact and given 60 days within which to present to the Committee satisfactory evidence that he is eligible for enrollment.

SEC. 10.12. APPLICATION AND EFFECTIVE DATE OF REGULATIONS.—The regulations in this part supersede the regulations promulgated by Treasury Department Circular No. 230 of October 1, 1934, relating to the recognition of attorneys, agents, and others, as heretofore amended and supplemented. This part shall apply to attorneys, agents, and licensed customhouse brokers representing claimants before any office of the Treasury Department, with such exceptions as to customhouse brokers as are set forth in section 10.5, and shall be effective from and after October 1, 1936. The regulations in this part shall also apply to all unsettled matters then pending in this Department or which may hereafter be presented or referred to the Department or offices thereof for adjudication, and shall be applicable to all those now enrolled to practice before the Treasury Department as attorney or agent, and all proceedings within the purview of section 3 of the Act of July 7, 1884 (23 Stat., 258, 5 U. S. C., 261), after October 1, 1936, shall in all procedural matters be governed by the provisions of the regulations in this part and such supplementary rules as may from time to time be adopted pursuant to said regulations: *Provided*, That violations of the regulations committed prior to October 1, 1936, shall in all substantive matters be dealt with according to the provisions of the regulations in force at the time when the act or acts alleged to constitute such violations occurred.

SEC. 10.13. WITHDRAWAL OR AMENDMENT OF REGULATIONS.—The Secretary of the Treasury reserves the power to withdraw or amend or supplement at any time or from time to time all or any of the regulations in this part, and may make such special orders as he may deem proper in any case.

[SEAL]

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

MAY 29, 1947.

PART 12—ORGANIZATION AND FUNCTIONS OF THE COMMITTEE ON PRACTICE.

SECTION 12.1. ORGANIZATION AND FUNCTIONS.—(*a*) The central organization and functions of the Committee on Practice are described generally in Treasury Department Circular No. 230, Revised (31 CFR, Part 10), and Treasury Department Circular No. 559 (31 CFR, Part 11).

(*b*) The Committee on Practice has no field organization.

SEC. 12.2. DELEGATIONS OF AUTHORITY.—There have been no delegations of final authority by the Committee on Practice.

SEC. 12.3. INFORMATION, REQUESTS, AND SUBMITTALS.—The public may secure information from, or make submittals or requests to, the Committee on Practice, Treasury Department, Room 106, Tower Building, Fourteenth and K Streets NW., Washington 25, D. C., by personal appearance, by telephone, or by written communication.

SEC. 12.4. OFFICIAL RECORDS.—(*a*) There are made available to public inspection at the office of the Committee on Practice:

(1) The roster of all persons admitted to practice before the Treasury Department pursuant to the Act of July 7, 1884 (23 Stat., 258, 5 U. S. C., 261).

(2) The roster of all persons licensed as customhouse brokers pursuant to amended section 641 of the Tariff Act of 1930 (46 Stat., 759, 19 U. S. C., 1641).

(3) The final opinion or order in the adjudication of any case in which there was sought revocation of any license of the character indicated in paragraphs (*a*) (1) and (2) of this section, provided the licensee (or former licensee) expressly consents to publication.

(*b*) Matters of official record pertaining to the enrollment of persons to practice before the Treasury Department and pertaining to the licensing of customhouse brokers are available at the office of the Committee on Practice to persons properly and directly concerned.

(*c*) The official records pertaining to the revocation (or the proposed revocation) of licenses of the character indicated in paragraphs (*a*) (1) and (2) of this section, and to the investigation of applicants therefor, constitute confidential information, except as provided in paragraphs (*a*) and (*b*) of this section. These records are held confidential for these good causes:

(1) Publication is capable of injuring licensees and former licensees without furthering the public interest.

(2) Much of the information is elicited without the aid of the subpena power on the assurance that the sources will be protected.

SEC. 12.5. SUBSTANTIVE RULES.—The substantive rules and statements of general policy of the Committee on Practice are embodied in Treasury Department Circular No. 230, Revised (31 CFR, Part 10), regarding practice before the Treasury Department, and in Treasury Department Circular No. 559 (31 CFR, Part 11) regarding customhouse brokers.

PART 13—PROCEDURES OF THE COMMITTEE ON PRACTICE.

SECTION 13.1. PROCEDURES.—(*a*) Licensing to practice before the Treasury Department is subject to this procedure:

(1) An applicant is required to file with the Committee on Practice an application on the form prescribed by section 4 of Treasury Department Circular No. 230, Revised (31 CFR, 10.4). The application form calls for these items of information regarding the applicant: identification, description and location of his practice, qualifications, references, etc. Copies of the form may be procured from the Committee on Practice.

(2) Upon receipt of the application, the Committee on Practice grants a temporary license, provided the application is regular on its face; provided the averments of fact made therein, if true, would warrant issuance of a license; provided nothing of record before the Committee on Practice indicates the averments to be untrue; and provided there is nothing before the Committee on Practice to indicate that the applicant has not a good character.

(3) If a temporary license is not granted, the Committee on Practice accords the applicant an opportunity by correspondence or conference to correct any deficiency in the application.

(4) Upon the granting of a temporary license the Committee on Practice refers the application to the Intelligence Unit of the Bureau of Internal Revenue, Treasury Department, for investigation as to the truth of the averments made in the application and as to the character of the applicant.

(5) Upon completion of investigation, the Intelligence Unit sends the resultant report to the Committee on Practice for consideration.

(6) If the application and the investigative report are favorable to the applicant, the Committee on Practice recommends to the Secretary of the Treasury that the temporary license be replaced with a permanent license, replacement normally being accomplished in due course without the necessity of special request or petition on the part of the applicant.

(7) If the application and investigative report are not favorable to the applicant, the Committee on Practice by letter notifies the applicant of the apparent deficiencies and accords the applicant opportunity to show cause why a permanent license should be granted, the nature of the opportunity being determined by the character of the questions presented by the deficiencies.

(8) A controverted question is not determined adversely to the applicant by the Committee on Practice without according the applicant the opportunity for a hearing.

(9) Upon determination by the Committee on Practice that an application should be denied, the Committee on Practice so recommends to the Secretary of the Treasury, who thereupon affirms, overrules, or remands the recommendation.

(*b*) Licensing (i. e., the granting of the consent of the Secretary of the Treasury to) former personnel of the Treasury Department to act as attorney or agent (or as employee of an attorney or agent) within two years after the termination of the employment by the Treasury Department is subject to the procedure described in section 2(*a*) of Treasury Department Circular No. 230, Revised (31 CFR, 10.2(*a*)(2)). The application form prescribed by section 2(*a*) of the circular calls for the items of information specified in that section. Copies of the form may be procured from the Committee on Practice.

(*c*) Proceedings for suspension, disbarment, and reinstatement of licensees to practice before the Treasury Department are subject to the procedure described in section 7 of the Treasury Department Circular No. 230, Revised (31 CFR, 10.7).

(*d*) Licensing to be a customhouse broker is subject to the procedure described in sections 3 and 4 of Treasury Department Circular No. 559 (31 CFR, 11.3, 11.4). The application form prescribed by section 3(*a*) of the circular calls for these items of information regarding the applicant: identification, de-

scription and location of his business, qualifications, references, etc. Copies of the form may be procured from the Committee on Practice and from the offices of collectors of customs.

(*e*) Proceedings for revocation and suspension of customhouse brokers' licenses are subject to the procedure described in sections 10, 11, and 13 of Treasury Department Circular No. 559 (31 CFR, 11.10, 11.11, 11.13).

[SEAL] JOSEPH J. O'CONNELL, JR.,
Acting Secretary.

STATUTES.

Section 3 of the Act of July 7, 1884 (23 Stat., 258; 5 U. S. C., 261):

"That the Secretary of the Treasury may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. And such Secretary may after due notice and opportunity for hearing suspend, and disbar from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular letter, or by advertisement."

Section 109 of the Act of March 4, 1909 (35 Stat., 1107); Section 109 of the Criminal Code (18 U. S. C., 198):

"Whoever, being an officer of the United States, or a person holding any place of trust or profit, or discharging any official function under, or in connection with, any executive department of the Government of the United States, or under the Senate or House of Representatives of the United States, shall act as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, shall aid or assist in the prosecution or support of any such claim, or receive any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both."

Section 113 of the Act of March 4, 1909 (35 Stat., 1109); Section 113 of the Criminal Code; as amended by the Act of October 8, 1940 (54 Stat., 1021; 18 U. S. C., 203):

"Whoever, being elected or appointed a Senator, Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, or being the head of a department, or other officer or clerk in the employ of the United States, shall, directly or indirectly, receive, or agree to receive, any compensation whatever for any services rendered or to be rendered to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party or directly or indirectly interested, before any department, court martial, bureau, officer, or any civil, military, or naval commission whatever, shall be fined not more than $10,000 and imprisoned not more than two years; and shall, moreover, thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States.

"Retired officers of the Army, Navy, Marine Corps, and Coast Guard of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section: *Provided*, That nothing herein shall be construed to allow any retired officer to represent any person in the sale of anything to the Government through the department in whose service he holds a retired status."

Section 190 of the Revised Statutes (5 U. S. C., 99):

"It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employee in any of the departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said departments

while he was, such officer, clerk, or employee, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employee."

Section 3793(b) of the Internal Revenue Code (26 U. S. C., 3793(b)):

"Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony, and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution."

Section 1 of the Act of April 27, 1916 (39 Stat., 54; 5 U. S. C., 101):

"It shall be unlawful for any person, firm, or corporation practicing before any department or office of the Government to use the name of any Member of either House of Congress or of any officer of the Government in advertising the said business."

Section 3478 of the Revised Statutes (31 U. S. C., 204):

"Any person prosecuting claims, either as attorney or on his own account, before any of the departments or bureaus of the United States, shall be required to take the oath of allegiance, and to support the Constitution of the United States, as required of persons in the civil service."

Act of June 29, 1906 (34 Stat., 622):

"That section five hundred and fifty-eight of the Code of Law for the District of Columbia, relating to notaries public, be amended by adding at the end of said section the following: '*Provided*, That the appointment of any person as such notary public, or the acceptance of his commission as such, or the performance of the duties thereunder, shall not disqualify or prevent such person from representing clients before any of the departments of the United States Government in the District of Columbia or elsewhere, provided such person so appointed as a notary public who appears to practice or represent clients before any such department is not otherwise engaged in Government employ, and shall be admitted by the heads of such departments to practice therein in accordance with the rules and regulations prescribed for other persons or attorneys who are admitted to practice therein: *And provided further*, That no notary public shall be authorized to take acknowledgments, administer oaths, certify papers, or perform any official acts 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 any of the departments aforesaid.'" (Held by (1907) 26 Op. Atty. Gen., 236, to apply to all notaries who may practice before the departments.)

Section 161 of the Revised Statutes (5 U. S. C., 22):

"The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

Section 19(e) of the Contract Settlement Act of 1944 (58 Stat., 667; 41 U. S. C., 119):

"(e) It shall be unlawful for any person employed in any Government agency, including commissioned officers assigned to duty in such agency, during the period such person is engaged in such employment or service, to prosecute, or to act as counsel, attorney, or agent for prosecuting, any claim against the United States, or for any such person within two years after the time when such employment or service has ceased, to prosecute, or to act as counsel, attorney, or agent for prosecuting, any claim against the United States involving any subject matter directly connected with which such person was so employed or performed duty. Any person violating any provision of this subsection shall be fined not more than $10,000 or imprisoned for not more than one year, or both."

Section 403 (a)(1) and (j) of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended by section 701(b) of the Act of February 25, 1944 (58 Stat., 78; 50 U. S. C. App., 1191 (a)(1) and (j):

"(1) The term 'Department' means the War Department, the Navy Department, the Treasury Department, the Maritime Commission, the War Shipping

Administration, Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation, and Rubber Reserve Company, respectively.

* * * * * * *

"(j) Nothing in sections 109 and 113 of the Criminal Code (U. S. C., title 18, sections 198 and 203) or in section 190 of the Revised Statutes (U. S. C., title 5, sec. 99) shall be deemed to prevent any person by reason of service in a Department or the Board during the period (or a part thereof) beginning May 27, 1940, and ending six months after the termination of hostilities in the present war, as proclaimed by the President, from acting as counsel, agent, or attorney for prosecuting any claim against the United States: *Provided*, That such person shall not prosecute any claim against the United States (1) involving any subject matter directly connected with which such person was so employed, or (2) during the period such person is engaged in employment in a Department."

EXCERPTS—ADMINISTRATIVE PROCEDURE ACT (60 STAT., 237).

ADJUDICATION.

SEC. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or election; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

(a) NOTICE.—Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) PROCEDURE.—The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 7 and 8.

(c) SEPARATION OF FUNCTIONS.—The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

(d) DECLARATORY ORDERS.—The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

HEARINGS.

SEC. 7. In the hearings which section 4 or 5 requires to be conducted pursuant to this section—

(a) PRESIDING OFFICERS.—There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3)

one or more examiners appointed as provided in this Act; but nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) HEARING POWERS.—Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take any other action authorized by agency rule consistent with this Act.

(c) EVIDENCE.—Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or application for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) RECORD.—The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

DECISIONS.

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

(a) ACTION BY SUBORDINATES.—In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires.

(b) SUBMITTALS AND DECISIONS.—Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions

of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

SANCTIONS AND POWERS.

SEC. 9. In the exercise of any power or authority—

(a) IN GENERAL.—No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

(b) LICENSES.—In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this Act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

FORM 23
TREASURY DEPARTMENT
COMMITTEE ON PRACTICE
(Rev. May 29, 1947)

APPLICATION FOR ADMISSION TO PRACTICE BEFORE THE TREASURY DEPARTMENT[1]

I, _____
residing at Street address _____ City _____
State _____, with office at Street address _____
City _____, State _____, hereby apply for admission to practice as _____ to represent others before the Treasury Department, and submit the
(Attorney or agent[2])
following information for consideration in determining my eligibility and fitness for such practice, in compliance with Treasury regulations as set forth in Department Circular No. 230, revised May 29, 1947:

1. (*a*) Are you a citizen of the United States? _____ (*b*) Natural born? _____ (*c*) Naturalized? _____ (*d*) Where and when were you naturalized?[3] _____ (*e*) Date of birth _____ Place of birth _____

2. (*a*) Are you a member of the bar? _____ (*b*) If so, of what court?[4] _____ (*c*) Are you now in good standing at said bar? _____

3. (*a*) Do you hold a certificate as a *certified* public accountant? _____ (*b*) If so, from what State? _____ (*c*) Are you now in good standing under said certificate? _____

4. What is your present occupation? _____

5. Are you engaged in your business or profession on your individual account? _____; or as a member of a partnership? _____; or as an employee? _____

[1] All applications must be submitted in duplicate on these forms. Typewriter and carbon paper should be used.
[2] Members of the bar of an American court of record will apply as attorneys; all others as agents.
[3] If citizenship is derivative state name of parent.
[4] Name of State court preferred.

(*a*) Under what name or style do you practice? _____

(*b*) If a member of a partnership, is any member of the parnership an unenrolled person who is neither an attorney, a certified public accountant, nor a public accountant? _____

(*c*) If an employee, give name and address of your employer, and the nature of your employment _____

6. If enrolled, will it be your purpose, as an officer or employee of a corporation or association, to represent the officers, employees, stockholders or members, clients, or customers of such corporation or association? _____ An unqualified negative answer is required. See sec. 10.2(*l*), Department Circular 230. Representation of officers, employees, etc., of corporations as individuals if retained and paid by them, or the representation of agricultural cooperative associations as permitted under sec. 10.2(*l*), Department Circular 230, is not inconsistent with a negative answer to the above.

7. Do you own stock in, or are you an officer or employee of, any accounting or auditing corporation? _____

8. Are you familiar with the contents of Department Circular No. 230, revised May 29, 1947? _____

9. If you are not a member of an American bar or a *certified* public accountant, outline the extent and nature of your education; your personal or business experience, with names of your employers; and the particular qualifications you possess which you believe render you competent to represent other persons before the Treasury Department. Use paper the size of this form and submit duplicate copies.

10. Submit names and addresses of six business or professional references who are familiar with your professional work.

11. Has any complaint ever been filed or charge made against you before any person or tribunal having authority to institute or try proceedings for suspension or disbarment from practice or for the revocation of a license or certificate to practice or for expulsion from membership in a professional society? _____ If so, state particulars _____

12. Have you ever been defendant in a criminal prosecution? _____ If so, state the circumstances and result _____

13. Are you an officer or employee of the United States, of any corporation wholly owned by the United States, or of the District of Columbia? _____ (*a*) If you have ever been so employed, state employment and date of separation therefrom _____

14. Do you agree, if you are admitted to practice before the Treasury Department, to give the Committee on Practice written notice of any change in your mailing address, and any change in your professional connection, or the name and style under which you practice, and agree further that, in the event any proceedings shall be instituted against you at any time before the Committee on Practice, a written notice thereof, together with a statement of the charges against you, sent to you by registered mail to the last address filed by you with the Committee, shall constitute due and sufficient notice? _____

I, _____, do solemnly swear (or affirm) that the statements contained in the foregoing application are true and correct; that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion; that, if authorized to represent others before the Treasury Department, I will at all times conduct myself strictly in compliance with the laws, regulations, and rules governing practice before the Treasury Department, as now constituted or as they may hereafter be lawfully altered or amended; and that I will employ

for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor; so help me God.[9]

(Signature) _____,
(Address) _____.

Subscribed and sworn to before me this _____ day of _____ 19____

(Signature of officer) _____
(Official title) _____

[Impress seal here.]

[9] An oath as included herein is required of persons prosecuting claims against the United States (Title 31, section 204, United States Code) and may be taken before any notary public, justice of the peace, or other person legally authorized to administer an oath in the State, Territory, or District where the application is executed.

THE TAX COURT OF THE UNITED STATES (FORMERLY UNITED STATES BOARD OF TAX APPEALS).

1947–24–12697

RULES OF PRACTICE BEFORE THE TAX COURT OF THE UNITED STATES (REVISED TO NOVEMBER 3, 1947).

INTRODUCTION.

These revised rules are promulgated pursuant to authority of section 1111, Internal Revenue Code, which provides that "The proceedings of the [Court] and its divisions shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the [Court] may prescribe and in accordance with the rules of evidence applicable in the courts of the District of Columbia in the type of proceedings which prior to September 16, 1938, were within the jurisdiction of the courts of equity of said District."

Congress in the Revenue Acts has enacted provisions relating to the organization, jurisdiction, and procedure of The Tax Court of the United States, and to the action of the Bureau of Internal Revenue with respect to the assessment and collection of deficiencies when a petition has been filed with the Court. Reference is made to those statutory provisions in the Revenue Acts for procedural requirements other than those relating to the conduct of proceedings before the Court and its division to which these rules of practice are limited. Attention is called to the Internal Revenue Code for convenient reference, and particularly to sections 271, 272, 273, 1100, 1142, and amendments, and section 504, Revenue Act of 1942.

RULE 1. BUSINESS HOURS.

The office of the clerk of the Court at Washington, D. C., shall be open during business hours on all days, except Saturdays, Sundays, and legal holidays, for the purpose of receiving petitions, pleadings, motions, and the like. "Business hours" are from 8.45 o'clock a. m. to 5.15 o'clock p. m.

RULE 2. ADMISSION TO PRACTICE.

Applicants who establish to the satisfaction of the Court that they are citizens of the United States, of good moral character and repute, and possessed of the requisite qualifications to represent others in the preparation and trial of cases, may be admitted to practice before the Court.

All applicants, before being admitted to practice, must take a written examination or examinations given by the Court; provided, however, that a current certificate from the clerk of the appropriate court, showing that the applicant is an attorney at law who has been admitted to practice before and is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any State or Territory or of the District of Columbia, may be accepted in lieu of examination. The Court, before admitting an applicant to practice, may require him to take an oral examination in addition to the written examination. Any person who has thrice failed a written examination given by the Court shall not thereafter be eligible for admission to practice before the Court.

An application to be filed must be on the form provided by the Court. Application blanks and other necessary information will be furnished by the secretary of the Court upon request.

An applicant for admission by examination must be sponsored by at least three persons, theretofore enrolled to practice before this Court, each of whom must send his letter of recommendation directly to the Court where it will be treated as a confidential communication. The sponsor shall state in his letter fully and frankly the extent of his acquaintance with the applicant, his opinion of the moral character and repute of the applicant, and his opinion of the qualifications of the applicant to practice before this Court. The Court may in its discretion accept an applicant with less than three such sponsors.

The Court will hold an examination for applicants at its offices in Washington, D. C., on the second Wednesday in September of each year and at such other times and places as it may designate. The Court will notify each applicant,

whose application is in order, of the time and place at which he is to present himself for examination, and the applicant must present that notice to the examiner as his authority for taking an examination. An applicant seeking to qualify by examination must accompany his application with a fee of $10. (For name of payee, see rule 8.)

Corporations and firms will not be admitted or recognized.

Practitioners before this Court shall carry on their practice in accordance with the letter and spirit of the canons of professional ethics as adopted by the American Bar Association.

The Court may deny admission to, suspend, or disbar any person who in its judgment does not possess the requisite qualifications to represent others, or who is lacking in character, integrity, or proper professional conduct. No person shall be suspended for more than 60 days or disbarred until he has been afforded an opportunity to be heard. A division may immediately suspend any person for not more than 60 days for contempt or misconduct during the course of any proceeding.

The Court may require any practitioner before it to furnish a statement under oath of the terms and circumstances of his employment in any proceeding.

Rule 3. Personal Representation in Lieu of Counsel.

Any individual taxpayer or member of a taxpayer partnership may appear for himself or such partnership upon adequate identification to the Court. A taxpayer corporation may be represented by a bona fide officer of the corporation upon permission granted, in its discretion, by the Court or the division sitting.

Rule 4. Form and Style of Papers.

(*a*) All papers filed with the Court shall be either printed or typewritten, and shall be fastened on the left side only, and shall have a caption, and a signature, and copies, as specified below.

(*b*) Printed papers shall be printed in 10 or 12 point type, on good unglazed paper, 5⅞ inches wide by 9 inches long, with inside margin not less than 1 inch wide, and with double-leaded text and single-leaded quotations.

(*c*) Typewritten papers shall be typed on only one side of plain white paper, 8½ inches wide by 11 inches long, and weighing not less than 16 pounds to the ream, and shall have no backs or covers.

(*d*) Citations shall be in italics when printed and shall be underscored when typewritten.

(*e*) The proper caption omitting all prefixes and titles shall be placed on all papers filed. The full given name and surname of each individual petitioner shall be set forth in the caption, but without any prefix or title, such as "Mrs.," "Dr.," etc. The name of the estate, the trust, or the other person for whom he acts, shall be given first by each petitioner who is a fiduciary, followed then by his own name and pertinent title, thus: "Estate of John Doe, deceased, Richard Roe, Executor." (See rules 5 and 6(*a*) and Appendix I, Form No. 2.)

(*f*) The signature, either of the petitioner or of his counsel, shall be subscribed to the petition in writing, and shall be in individual and not in firm name, except that the signature of a petitioner corporation shall be in the name of the corporation by one of its active officers, thus: "John Doe, Inc., by Richard Roe, president." The name and the mailing address of the petitioner or counsel actually signing shall be typed or printed immediately beneath the written signature.

(*g*) Four conformed copies shall be filed with the signed original of every paper filed, except as otherwise provided in these rules. Papers to be filed in more than one proceeding (as a motion to consolidate, or in proceedings already consolidated) shall include one additional copy for each such additional proceeding.

(*h*) All copies shall be clear and legible, but they may be on any weight paper.

Rule 5. Proper Parties.

The proceeding shall be brought by and in the name of the person against whom the Commissioner determined the deficiency [or liability, as the case may be], or by and in the full descriptive name of the fiduciary legally entitled to institute a proceeding on behalf of such person.

In the event of a variance between the name set forth in the notice of deficiency or liability and the correct name, a statement of the reasons for such variance shall be set forth in the petition. (See rules 4, 6, and 23.)

RULE 6. INITIATION OF A PROCEEDING—PETITION.

A proceeding shall be initiated by filing with the Court a petition, as provided in rules 4, 5, and 8, and substantially in accordance with Form 2, shown in Appendix I. (See rule 7.) The petition shall be complete in itself so as fully to state the issues. It shall contain:

(*a*) A caption in the following form:

THE TAX COURT OF THE UNITED STATES.

———————————————, *petitioner*,
v.
Commissioner of Internal Revenue, respondent. } Docket No.

PETITION.

(*b*) Proper allegations showing jurisdiction in the Court.

(*c*) A statement of the amount of the deficiency [or liability, as the case may be], determined by the Commissioner, the nature of the tax, the period for which determined, and the collection district in which the return was filed.

(*d*) Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency. Issues in respect of which the burden of proof is by statute placed upon the Commissioner will not be deemed to be raised by the petitioner in the absence of assignments of error in respect thereof. Each assignment of error shall be numbered.

(*e*) Clear and concise numbered statements of the facts upon which the petitioner relies as sustaining the assignments of error, except those assignments of error in respect of which the burden of proof is by statute placed upon the Commissioner.

(*f*) A prayer, setting forth relief sought by the petitioner.

(*g*) The signature of the petitioner or that of his counsel. (See rule 4.)

(*h*) A verification by the petitioner; provided that where the petitioner is sojourning outside the United States or is a nonresident alien, the petition may be verified by a duly appointed attorney in fact, who shall attach to the petition a copy of the power of attorney under which he acts and who shall state in his verification that he acts pursuant to such power, that such power has not been revoked; that petitioner is absent from the United States, and the grounds of his knowledge of the facts alleged in the petition. As used herein the term "United States" includes only the States and the District of Columbia. A notary public is not authorized to administer oaths, etc., in matters in which he is employed as counsel. (See title 1, ch. 5, D. C. Code, 1940, and 26 Op. A. G., 236.)

The verification shall contain a statement that the fiduciaries signing and verifying have authority to act for the taxpayer.

Where the petitioner is a corporation, the person verifying shall state in his verification that he has authority to act for the corporation.

The signature and the verification to the petition shall be considered the certificate of those performing these acts that there is good ground for the petition, the proceeding has not been instituted merely for delay, and it is not frivolous.

(*i*) A copy of the notice of deficiency [or liability, as the case may be] shall be appended to the petition. If a statement has accompanied the notice of deficiency, so much thereof as is material to the issues set out in the assignments of error likewise shall be appended. If the notice of deficiency refers to prior notices from the Bureau, which are necessary to elucidate the determination, such parts thereof as are material to the issues set out in the assignments of error shall likewise be appended. (See Appendix I, Form No. 2.)

RULE 7. FILING OF PETITION.

An original and four clear copies of the petition, either printed or typewritten as provided by rule 4, shall be filed with the Court. (See rule 9.) The copies of the petition shall be conformed to the original by the petitioner.

Failure to file a sufficient number of copies, as provided in this rule, or to conform to the requirements of rules 4, 5, and 8, shall be ground for the dismissal of the proceeding.

No telegram, cable, radio, or similar message will be recognized as a petition.

RULE 8. FEE FOR FILING PETITION.

The fee for filing a petition with the Court shall be $10, payable at the time of filing. Make checks, money orders, etc., payable to the Treasurer of the United States.

RULE 9. FILING.

Any document to be filed with the Court must be filed in the office of the clerk of the Court in Washington, D. C., during business hours (see rule 1); provided, that a division hearing a proceeding may permit documents pertaining thereto to be filed at the hearing.

RULE 11. DOCKET.

Upon receipt of the petition, the proceeding will be docketed and assigned a number and the parties notified thereof. This number shall be placed by the parties on all papers thereafter filed in the proceeding.

RULE 12. SERVICE OF THE PETITION.

Upon filing of a petition and the copies, as prescribed in rule 7, the clerk will serve a copy upon the Commissioner.

RULE 14. ANSWER.

After service upon him of a copy of the petition, the Commissioner shall have 60 days within which to file an answer or 45 days within which to move in respect of the petition. The answer shall be so drawn as fully and completely to advise the petitioner and the Court of the nature of the defense. It shall contain a specific admission or denial of each material allegation of fact contained in the petition and a statement of any facts upon which the Commissioner relies for defense or for affirmative relief or to sustain any issue raised in the petition in respect of which issue the burden of proof is, by statute, placed upon the Commissioner. Paragraphs of the answer shall be numbered to correspond to those of the petition to which they relate. An original and three copies of the answer shall be filed, of which the original shall be signed by the Commissioner or his counsel and the copies conformed by him.

The clerk will serve one copy of the answer upon the petitioner or his counsel of record by registered mail.

RULE 15. REPLY.

If the answer of the Commissioner sets forth facts upon which he relies for affirmative relief, or contains a statement of the facts upon which he relies to sustain an issue in respect of which the burden of proof is placed upon him by statute, the petitioner shall, within 45 days after a copy of such answer is mailed to him or his counsel of record by registered mail, file a reply which shall contain a specific admission or denial of each material allegation of fact contained in the answer and shall set forth any facts upon which he relies for defense. Each paragraph contained in the reply shall be numbered to correspond with the paragraphs of the answer. An original and four copies of the reply shall be filed, of which the original shall be signed by the petitioner or his counsel and the copies conformed by him.

The Court upon motion of the respondent in which good cause is shown, or upon its own motion, may require the verification of any reply.

The clerk will serve one copy of the reply upon the Commissioner.

RULE 16. JOINDER OF ISSUE.

A proceeding shall be deemed at issue upon the filing of the answer unless a reply is required under rule 15, in which event the proceeding shall be deemed at issue upon filing of the reply.

Rule 17. Amended and Supplemental Pleadings.

The petitioner may, as of course, amend his petition at any time before answer is filed. After answer is filed, a petition may be amended only by consent of the Commissioner or on leave of the Court.

All motions to amend, made prior to the hearing, must be accompanied by the proposed amendments or amended pleading.

Upon motion made, the Court may, in its discretion, at any time before the conclusion of the hearing, permit a party to a proceeding to amend the pleadings to conform to the proof.

When motions to amend are granted at the hearing, the amendment or amended pleadings shall be filed at the hearing or with the Court within such time as the division may fix.

(See rules 4 and 19.)

Rule 18. Pleadings—General.

The Court, upon motion of either party in which good cause is shown, or upon its own motion, may order a further and better statement of the nature of the claim or defense, or of any matter stated in any pleading. Such a motion filed by a party shall point out the defects complained of and the details desired. If such order of the Court is not obeyed within 15 days or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or may make such other order as it deems just.

If no reply is required by these rules, each and every material allegation of fact set out in the answer shall be deemed to be denied. Any new or affirmative matter contained in the reply shall be deemed to be denied.

Where an answer has been filed, each and every material allegation of fact set out in the petition and not expressly admitted or denied in the answer, shall be deemed to be admitted. Where a reply is required by these rules and a reply has been filed, each and every material allegation of fact set out in the answer and not expressly admitted or denied in the reply shall be deemed to be admitted.

Where no answer is filed or where a reply is required by these rules, but no reply is filed, the adverse party, within 45 days after the expiration of the time fixed by these rules for filing the answer or the reply, as the case may be, may file a motion with the Court calling attention to the fact that the pleading has not been filed within the specified time and certain material allegations of fact have not been denied, and requesting the Court to enter its order that those particular undenied allegations shall be deemed to be admitted. The Court will serve a copy of this motion upon the other party and issue an order to show cause, returnable on or before a day certain. If the above-described motion is not filed within the prescribed time, the allegations of the pleading to which there was no response shall be deemed to be denied.

Rule 19. Motions.

Motions must be timely. If a motion, other than one relating to the receipt of evidence during trial, is made orally during trial. the maker thereof shall promptly reduce it to writing and file it with the Court unless the division directs otherwise. Motions shall be prepared in the form and style prescribed by rule 4. The clerk will serve a copy of each motion upon the opposite party. Motions will be acted upon as justice may require and may, in the discretion of the Court, be placed upon the calendar for argument. (See also rule 30(*b*).) The filing of a motion shall not constitute cause for postponement of a hearing from the date set.

No motion for rehearing, further hearing, or reconsideration may, except by special leave, be filed more than 30 days after the opinion has been served; and no motion to vacate or revise a decision may, except by special leave, be filed more than 30 days after the decision has been entered. No motion covered by this paragraph shall be joined to or made a part of any other motion.

Rule 20. Extensions of Time.

Continuances, extensions of time (except for the filing of the petition and except as otherwise provided in these rules), and adjournments may be ordered by the Court on its own motion or may be granted by it in its discretion on motion of either party filed in writing and showing good and sufficient cause therefor.

RULE 21. DISMISSAL.

A proceeding may be dismissed for cause upon motion of either party or of the Court.

RULE 22. SERVICE.

(*a*) *Upon petitioner.*—If there is no counsel of record, service will be made upon the petitioner.

(*b*) *Upon first counsel of record.*—Service upon any counsel of record will be deemed service upon the party, but, where there are more than one, service will be made only upon counsel for petitioner whose appearance was first entered of record—unless the first counsel of record, by writing filed with the Court, designates other counsel to receive service, in which event service will be so made.

(*c*) *Upon respondent.*—Service may be made upon any named respondent in person, upon deputies duly designated by him to accept service, or upon counsel appearing for the respondent in the proceeding. (See rules 12, 14, and 15.)

RULE 23. SUBSTITUTION OF PARTIES.

In the event of the death of a petitioner or for other cause, the Court may order the substitution of the proper parties. In the event of mistake in the name or title of a proper party, the Court may order substitution of the proper name or title. (See rule 5.)

Motions for substitution should be accompanied by a proper certificate of the court or official having custody of the record showing the interest of the party substituted. In the event of a change in the name of a corporation or other party petitioner, a motion to amend the pleadings to show such change should be filed, accompanied by a copy of the certificate, decree, or other document, effecting such change, certified by the official having custody of such document, unless the parties have agreed to the change and have so indicated in the record.

RULE 24. SUBSTITUTION OR WITHDRAWAL OF COUNSEL—ENTRY OF APPEARANCE.

Counsel of record in any proceeding desiring to withdraw or any petitioner desiring to withdraw counsel of record must file a motion with the Court requesting leave therefor and must show in the motion that notice of the proposed change has been given to the client or to counsel being withdrawn, as the case may be. An original and two copies of the motion must be filed. The Court may, in its discretion, withhold the permission requested in such motions.

Where the petition is not subscribed by counsel, or counsel of record has withdrawn, counsel subsequently appearing for the petitioner shall immediately file two copies of his entry of appearance, which shall include statements of his admission to practice before the Court and of his mailing address.

Notice of a change in the mailing address of counsel or petitioner shall be filed promptly with the Court, in duplicate, and a separate notice shall be filed for each docket number involved.

RULE 25. CALENDARS.

(*a*) *Washington and circuit calendars.*—Each proceeding when at issue will be placed either upon the Washington calendar or upon a circuit calendar, in accordance with rule 26. (See Appendix II.)

(*b*) *Hearing calendars.*—The clerk, as directed from time to time by the Presiding Judge, will prepare hearing calendars.

(*c*) *Reserve calendar.*—A proceeding which is at issue may be placed upon the reserve calendar for good cause shown, as, for example, to await the decision of the Supreme Court in a pending case.

RULE 26 PLACE OF HEARING—REQUESTS AND DESIGNATION.

The petitioner at the time of filing the petition shall also file a request showing the name of the place where he would prefer the hearing on the merits to be held. A copy of this request will be served upon the Commissioner by the clerk of the Court.

If the petitioner has filed no request the respondent shall file at the time he files his answer, a request showing the name of the place preferred by him. A copy will be served upon the petitioner by the clerk of the Court.

These requests shall not be bound as a part of the petition or answer but shall be separate therefrom and shall consist of an original and two copies.

The Court will designate the place of hearing in accordance with the statutory provision that the time and place of trial shall be fixed "with as little inconvenience and expense to taxpayers as is practicable," and, in all cases, will notify the parties of the place at which or in the vicinity of which the hearing on the merits will be held.

If either party desires a change in designation of the place of hearing he must file a motion to that effect, stating fully his reasons therefor. Such motions, made after the notice of the time of the hearing has been mailed, will not be deemed to have been timely filed.

In case it is necessary for the Court to hear the parties on matters other than the merits, such hearing will be held in Washington unless good cause is shown for holding it elsewhere.

(See Appendix II for further information to assist in making requests as to place of hearing.)

RULE 27. NOTICE OF HEARING.

When a proceeding has been placed upon the hearing calendar the clerk will, not less than 15 days in advance, notify the parties of the place where and the date when it will be called.

RULE 28. CALL OF CALENDAR AND ASSIGNMENT FOR HEARING.

The hearing calendar of proceedings to be heard at Washington will be called at 9.30 a. m. The hearing calendar of proceedings to be heard elsewhere will be called at the time indicated in the notice of hearing. Proceedings will be assigned therefrom for hearing in due course.

RULE 29. FAILURE TO APPEAR.

The unexcused absence of a party or his counsel on the day set for the hearing of any proceeding will not be the occasion for delay. The hearing will proceed and the case will be regarded as submitted on the part of the absent party or parties.

The Court may require appearance for argument or it may accept briefs in lieu of personal appearance.

RULE 30. SUBMISSION WITHOUT HEARING OR APPEARANCE.

(*a*) *Submission of cases without hearing where facts are uncontested.*—Any proceeding not requiring a hearing for the submission of evidence (as, for example, where sufficient facts have been admitted, stipulated, or included in the record in some other way), may be submitted at any time by notice of the parties filed with the Court. The parties need not wait for the proceeding to be calendared and need not appear in person. The Presiding Judge will then assign the proceeding to a division for report, which division, upon request of the parties, will fix a time for filing briefs or for oral argument.

(*b*) A contested motion, not predicated upon an issue of fact, may be submitted in the same way.

(See, however, rule 31.)

RULE 31. EVIDENCE AND THE SUBMISSION OF EVIDENCE.

(*a*) *Rules applicable.*—The proceedings of the Court and its divisions will be conducted in accordance with the rules of evidence applicable in the courts of the District of Columbia in the type of proceedings which prior to September 16, 1938, were within the jurisdiction of the courts of equity of said District.

(*b*) *Stipulations.*—The parties, by stipulation in writing filed with the Court or presented at the hearing, may agree upon any facts involved in a proceeding. Stipulations filed need not be formally offered to be considered in evidence. Written stipulations shall be filed in duplicate. Duplicates of exhibits appended to the stipulation need not be provided unless requested. Both parties shall endeavor to stipulate evidence to the fullest extent to which either complete or qualified agreement can be reached. If all evidence lending itself to stipulation, as, for example, entries or summaries from books of account and other records,

has not been stipulated at the time the notice of the date of the hearing is mailed, then the party desiring to introduce such evidence shall confer with his adversary or opposing counsel promptly after receipt of the hearing notice, in an effort to stipulate such facts. Any objection to the relevancy of a particular part or all of a stipulation should be noted in the stipulation, but the Court will give consideration to any objection to the relevancy of stipulated facts made at the hearing. The Court may set aside a stipulation where justice requires, but will not receive evidence tending to qualify, change, or contradict any fact properly introduced into the record by stipulation.

(*c*) *Depositions must be offered.*—Testimony taken by deposition will not be considered until offered and received in evidence.

(*d*) Exhibits attached to a stipulation or a deposition shall be numbered serially, i. e., 1, 2, 3, etc., if offered by the petitioner; shall be lettered serially, i. e., A, B, C, etc., if offered by the respondent; and shall be marked serially, i. e., 1-A, 2-B, 3-C, etc., if offered as a joint exhibit.

(*e*) *Documentary evidence.*—(1) When books, records, papers, or documents have been received in evidence, a copy thereof or of so much thereof as may be material or relevant may, in the discretion of the division holding the hearing, be substituted therefor.

(2) After the decision of the Court in any proceeding has become final, the Court may, upon motion, permit the withdrawal by the party entitled thereto of original exhibits, or the Court may, on its own motion, make such other disposition thereof as it deems advisable.

(*f*) *Not evidence.*—Statements in the petition or ex parte affidavits and briefs do not constitute evidence.

(*g*) *Failure of proof.*—Failure to adduce evidence in support of the material facts alleged in the petition and denied by the Commissioner in his answer will be ground for dismissal. Where there is a joinder of issue on questions of fact, the provisions of rule 30 do not relieve the party upon whom rests the burden of proof from properly producing evidence to support the issues.

Rule 32. Burden of Proof.

The burden of proof shall be upon the petitioner, except as otherwise provided by statute, and except that in respect of any new matter pleaded in his answer, it shall be upon the respondent.

Rule 35. Briefs.

The parties should be prepared to make oral arguments at the conclusion of the hearing or to file written citations of authorities at that time if the division so directs. The filing of briefs and the making of oral arguments shall be in accordance with the directions of the judge presiding at the hearing. If the division does not direct otherwise, each party shall have 45 days after the day on which the hearing was concluded within which to file a brief and either party may file a reply brief within 15 days after the filing of the original brief by his opponent. After a brief has been filed, the clerk will serve a copy upon the opposite party, unless the brief bears a notation that a copy has already been served.

If briefs are typewritten, an original and two copies shall be filed; if printed, 20 copies. Each brief shall contain on its front flyleaf a table of contents with page references, supplemented by a list of all citations, alphabetically arranged as to cases cited, together with references to pages Citations shall be in italics, when printed, and underscored when typewritten

The form of all briefs shall be as follows:

(*a*) A statement of the nature of the controversy, the tax involved, and the issues to be decided.

(*b*) The party having the burden of proof shall set forth complete statements of the facts based upon the evidence. Each statement shall be numbered, shall be complete in itself, and shall consist of a concise statement of the essential fact and not a discussion or argument relating to the evidence or the law. Reference to the pages of the transcript or the exhibits relied upon in support thereof shall be inserted after each separate statement.

If the other party disagrees with any or all of the statements of fact, he shall set forth each correction which he believes the evidence requires and shall give the same numbers to his statements of fact as appear in his opponent's brief. His statement of fact shall be set forth in accordance with the requirements above designated.

(c) A concise statement of the points upon which the party relies.

(d) *The argument.*—The argument shall set forth the points of law relied upon and any discussion of the evidence deemed necessary to support the statement of fact. (See rule 4.)

RULE 40. TRANSCRIPTS OF PROCEEDINGS.

Hearings before the Court or its divisions shall be stenographically reported and a transcript thereof shall be made if, in the opinion of the Court or of the division holding the hearing, a permanent record of the hearing is deemed necessary. Transcripts shall be supplied to the parties and to the public by the official reporter at such rates as may be fixed by contract between the Court and the reporter.

RULE 44. SUBPENAS.

(a) *How issued.*—The party desiring a subpena must make a timely application therefor, in writing.

(b) *Application for.*—The application shall state the name and address of each witness required, the time and place at which and the officer before whom he is to appear, and whether he may designate someone to appear in his place. Only the original of the application need be filed. (See Appendix I, Form No. 3.)

(c) *For production of documents.*—If evidence other than oral testimony is required, such as documents or written data, the application shall set forth the specific matter to be produced and sufficient facts to indicate that such matter is reasonably necessary to establish the cause of action or defense of the applicant.

(d) *Service and proof.*—The Court will not serve subpenas, but will leave service to be procured by the party making the application. Service may be made by any citizen of the United States over the age of 21 years and competent to be a witness, and not a party to or in any way interested in the proceeding. Proof of service may be made by affidavit.

RULE 45. DEPOSITIONS.

(a) *Application to take.*—When either party desires to take a deposition, he shall file with the Court a verified application and two conformed copies, together with an additional copy for each additional docket number involved. The Court upon request will furnish forms for this purpose. If the space in the form furnished by the Court is inadequate for setting forth the reasons in support of the application in any particular case, a substitute form may be used, but the substitute must contain all of the information called for on the Court's form. (See Appendix I, Form No. 5a.)

(b) *Limitation on time for application to take.*—Applications to take depositions must be filed at least 30 days prior to the date set for the hearing of the proceeding, and such depositions must be completed and filed with the Court at least 10 days prior to the hearing: *Provided*, Such applications will not be regarded as sufficient ground for the granting of a continuance from the date or place of the hearing theretofore set, unless the proceeding shall have been at issue less than 60 days and the motion for continuance shall have been filed not less than 20 days prior to said date of hearing: *Provided further*, That under special circumstances, and for good cause shown, the Court may otherwise order.

(c) *Qualification of officer.*—The officer before whom depositions are taken must be authorized to administer oaths. (Section 3632, I. R. C.) In no case shall a deposition be taken before any person who has any office connection or business employment with either party or his counsel except by consent of the parties and when no other officer is available, and in his certificate of return to such deposition such officer shall so certify.

(d) *Order for taking.*—Upon receipt of such application, the clerk will serve a copy thereof on the opposite party, and allow a reasonable time for objection thereto. Thereafter, the Court will, in its discretion, make an order, a copy of which will be mailed or delivered to the parties or their counsel, wherein the Court will name the witness whose deposition is to be taken and specify the time when, the place where, and the officer before whom the witness is to testify, but such time, place, and officer specified in the Court's order may or may not be the same as set forth in the application. The applicant shall thereupon make all necessary arrangements for the taking of each deposition and shall furnish the officer before whom it is to be taken with a copy of the order above mentioned.

(e) *By stipulation.*—At any time after issue is joined, the parties or their counsel may, by stipulation duly signed and filed, take depositions. In such cases, the stipulation shall state the name and address of each witness, the time when and the place where such depositions will be taken, and the name, address, and official title of the officer before whom it is proposed to take the depositions. In such cases, no order to take depositions will be issued, but they shall be taken and returned by the officer in accordance with the rules of the Court.

(f) *Manner of taking.*—Each witness must first take the oath or affirm. The questions propounded to him and his answers must be recorded verbatim.

Objections to questions or answers shall be explicitly but briefly and concisely stated and recorded without any unnecessary comment, explanation, or argument by counsel for either party.

(g) *Other witnesses to be excluded.*—At the request of either party, a person whom either expects or intends to call as a witness in the same or any related proceeding shall be excluded from the room where the testimony of a witness is being taken. If such person remains in the room or within hearing of the examination after such request has been made, he shall not thereafter be permitted to testify except by the consent of the party who requested his exclusion.

(h) *Depositions to be signed.*—The testimony of the witness when transcribed shall be read to or by him and shall be signed by him. (See Appendix I, Form No. 6.)

(i) *Form in which depositions must be returned to the Court.*—When a deposition is returned to the Court it must show the docket number and the caption (the names of the parties) of the proceeding as they appear in the Court's records, the place and date of taking, the name of the witness, the party by whom called, the names of counsel present, indicating which party each counsel represents, and (in the body of the deposition) the name of counsel examining or cross-examining the witness.

The officer must so fasten the sheets of the deposition that they can not be tampered with. He must spare no pains to return to the Court the exact testimony he has taken. All exhibits must be carefully marked so as to be capable of identification, and when practicable must be attached to the deposition.

The officer must properly execute and attach to the deposition a certificate of return in the form prescribed. (See Appendix I, Form No. 6.)

(j) *Return of.*—The officer must enclose the original depositions and exhibits, together with two copies of the depositions, in a sealed packet, with postage or other transportation charges prepaid, and direct and forward the same to The Tax Court of the United States, Washington 25, D. C. In each case, the original of the depositions must be directed and forwarded to the Court. The officer may, however, upon written request, deliver a copy of the depositions to either or to both of the parties, or to their representatives, in lieu of sending such copies to the Court as above provided. If one or both of the required copies are delivered by the officer taking the depositions, he shall attach to his return the written request of the party or parties, or of their counsel to whom such copy or copies were delivered, and shall state in his certificate of return the fact of delivery by him of such copy or copies. If copies of the depositions are delivered by the officer taking the same, no service of copies of such depositions upon the party or his counsel of record will be made by the Court.

Rule 46. Depositions Upon Written Interrogatories.

Depositions may be taken in the discretion of the Court upon written interrogatories in substantially the same manner as provided in rule 45 for depositions upon oral examination. An original and five copies of the interrogatories must be filed with the application. The clerk will serve one copy of the application and of the interrogatories upon the opposite party. If the opposite party desires to file objections or cross-interrogatories, he must do so within 15 days after the application and interrogatories have been served upon him. Cross-interrogatories must consist of an original and five copies. The clerk will serve one copy thereof upon the opposite party who, if he has any objection thereto, must file his objections within 15 days thereafter. The application and the interrogatories must be filed in sufficient time to allow for objections, cross-interrogatories, and objections thereto as provided above, and for filing of the complete depositions at least 10 days prior to the hearing.

No person other than the witness, a stenographic reporter, and the officer taking the deposition upon written interrogatories and cross-interrogatories shall be present at the examination of the witness. This fact shall be certified by the

officer taking the deposition. That officer shall propound the interrogatories and cross-interrogatories to the witness in their order and cause the testimony to be reduced to writing in the witness' own words.

Depositions obtained in foreign countries must be taken upon written interrogatories, except as otherwise directed by the Court for cause shown.

RULE 47. TENDER OF AND OBJECTIONS TO DEPOSITIONS.

The deposition of any witness whether taken upon oral examination or upon written interrogatories shall not constitute a part of the record until offered and received in evidence (see rule 31), but the consideration of any objection to the receipt of a deposition or any part thereof will be limited as set forth in this rule.

Where depositions are taken upon oral examination objections to the competency of a witness or to the competency, relevancy, or materiality of testimony may be made at the hearing, even though not noted at or before the taking of the deposition, unless the ground for the objection is one which might have been obviated or removed if presented at or before the time of the taking of the deposition. Objections directed to errors and irregularities in the manner of taking the deposition, in the form of any question or answer, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might have been obviated, removed or cured if promptly presented will not be considered unless made at the taking of the deposition. (See rule 45(*f*).)

No objections to written interrogatories or cross-interrogatories will be considered subsequent to the taking of the deposition unless they have been made in the manner and within the time prescribed therefor by rule 46.

Errors or irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the officer under rules 45 and 46 shall not form the basis for objections but questions in respect thereto shall be raised on a motion to suppress the deposition in whole or in part made with reasonable promptness after such defect is or with due diligence might have been ascertained.

RULE 48. COMMISSIONERS OF THE TAX COURT.

(*a*) The term "commissioner" as used in this rule 48 applies to any attorney on the legal staff of this Court who shall have been designated by the Presiding Judge as a "commissioner in a particular case" pursuant to section 1114 of the Internal Revenue Code, as amended by section 503 of the Revenue Act of 1943.

(*b*) The commissioner shall conduct the hearing in such case in accordance with the Court's rules of practice. He shall rule upon objections and other evidentiary matters in accordance with the rules of evidence as provided in section 1111, and shall exercise such further and incidental authority, including the issuance of subpenas, as may be necessary for the conduct of the hearing.

(*c*) Unless otherwise directed the parties shall have 30 days from the closing of proof in the case for filing proposed findings of fact. Such findings of fact shall be prepared in the manner and form prescribed in the first paragraph of rule 35(*b*).

Upon the filing by the parties of their proposed findings of fact, the commissioner shall prepare and submit to the Court or a division thereof a report of his findings of fact based upon the evidence in the case, and copies thereof shall be served upon both parties.

Within 20 days from the filing of the commissioner's proposed findings of fact the parties may file exceptions thereto which will be considered by the division to which the case is assigned.

(*d*) Unless otherwise directed by the Court, the parties shall have 45 days from the date of the filing of the commissioner's proposed findings of fact within which to file briefs, and 15 days additional within which to file reply briefs. Each brief shall be prepared in the manner and form prescribed in rule 35.

(*e*) Upon motion of either party or upon its own motion, the division to which the case is assigned may in its discretion direct oral argument and set a date therefor.

RULE 50. COMPUTATIONS BY PARTIES FOR ENTRY OF DECISION.

Where the Court has promulgated or entered its opinion determining the issues in a proceeding, it may withhold entry of its decision for the purpose of permitting the parties to submit computations pursuant to the Court's determination of the issues, showing the correct amount of the deficiency or overpayment to

be entered as the decision. If the parties are in agreement as to the amount of the deficiency or overpayment to be entered as the decision pursuant to the report of the Court, they or either of them shall file promptly with the Court an original and two copies of a computation showing the amount of the deficiency or overpayment and that there is no disagreement that the figures shown are in accordance with the report of the Court. The Court will then enter its decision. If, however, the parties are not in agreement as to the amount of the deficiency or overpayment to be entered as the decision, in accordance with the report of the Court, either of them may file with the Court a computation of the deficiency or overpayment believed by him to be in accordance with the report of the Court. The clerk will serve a copy thereof upon the opposite party, will place the matter upon the hearing calendar for argument in due course, and will serve notice of the argument upon both parties. If the opposite party fails to file objection, accompanied by an alternative computation, at least five days prior to the date of such argument, or any continuance thereof, the Court may enter decision in accordance with the computation already submitted. If in accordance with this rule computations are submitted by the parties which differ as to the amount to be entered as the decision of the Court, the parties will be afforded an opportunity to be heard in argument thereon on the date fixed, the Court will determine the correct deficiency or overpayment and enter its decision.

Any argument under this rule will be confined strictly to the consideration of the correct computation of the deficiency or overpayment resulting from the report already made, and no argument will be heard upon or consideration given to the issues or matters already disposed of by such report or of any new issues. This rule is not to be regarded as affording an opportunity for rehearing or reconsideration.

Rule 51. Preparation of Record on Review—Costs.

Immediately after the contents of a record on review have been settled or agreed to, the clerk will notify the petitioner of the costs and charges for the preparation, comparison, and certification of said records; such charges to be determined in accordance with the provisions of section 1133, Internal Revenue Code, and the Act of September 27, 1944 (58 Stat., 743).

No transcript will be certified and transmitted to the appellate court until the costs and charges therefor have been paid. (For name of payee, see rule 8.)

A petitioner for review who requests the clerk to certify but not to prepare documents for transmission to a United States circuit court of appeals or to the United States Court of Appeals for the District of Columbia shall furnish the clerk with the copies of the documents to be certified.

(For statutory provisions relating to Court review of Tax Court decisions see Subchapter B, Section 1140 et seq., I. R. C. For forms of bonds, see Appendix I, Forms Nos. 7 and 8. The rules of the appellate court to which the appeal is being taken should be consulted.)

Rule 53. Copies of Records—Fees for Furnishing.

A plain or a certified copy of any document, record, entry, or other paper pertaining to a proceeding before this Court may be had upon application to the clerk, the fee to be charged and collected therefor to be determined in accordance with the provisions of section 1133, Internal Revenue Code, and the Act of September 27, 1944 (58 Stat., 743).

Rule 60. Fees and Mileage.

Section 1115 of the Internal Revenue Code provides:

"(a) Amount.—Any witness summoned or whose deposition is taken under section 1114 shall receive the same fees and mileage as witnesses in courts of the United States.

"(b) Payment.—Such fees and mileage and the expenses of taking any such deposition shall be paid as follows:

"(1) Witnesses for Commissioner.—In the case of witnesses for the Commissioner, such payments shall be made by the Secretary out of any moneys appropriated for the collection of internal-revenue taxes, and may be made in advance.

"(2) Other witnesses.—In the case of any other witnesses, such payments shall be made, subject to rules prescribed by the Board [Court], by the party at whose instance the witness appears or the deposition is taken."

No witness, other than one for the Commissioner, shall be required to testify in any proceeding before the Court until he shall have been tendered the fees and mileage to which he is entitled in accordance with the above provision of law.

RULE 61. COMPUTATION OF TIME—SATURDAYS, SUNDAYS, AND HOLIDAYS.

The day of the act, event, or default starting any period of time prescribed or allowed by these rules or by an order of this Court shall not be counted as a part of the period, but Saturdays, Sundays, and legal holidays in the District of Columbia shall count just as any other days, except that when the period would expire on a Saturday, Sunday, or legal holiday in the District of Columbia, it shall extend to and include the next succeeding day that is not a Saturday, Sunday, or such legal holiday.

The following-named days are legal holidays within the District of Columbia:

New Year's Day, January 1 (U. S. C., Title 5, sec. 87).

Inauguration Day, every fourth year (48 Stat., 879; D. C. Code, Title 22, sec. 126).

Washington's Birthday, February 22 (U. S. C., Title 5, sec. 87).

Decoration Day, May 30 (U. S. C., Title 5, sec. 87).

Fourth of July (U. S. C., Title 5, sec. 87).

Labor Day, first Monday in September (U. S. C., Title 5, sec. 87).

Armistice Day, November 11 (52 Stat., 351).

Thanksgiving Day, fourth Thursday of November, Joint Resolution approved December 26, 1941 (Public Law 379, Seventy-seventh Congress).

Christmas Day, December 25 (U. S. C., Title 5, sec. 87).

When legal holidays fall on Sunday the next day shall be a holiday (22 Stat., 1; D. C. Code, Title 22, sec. 126).

RULE 63. PROCEEDINGS BASED UPON DISALLOWANCE OF CLAIMS FOR REFUND OR RELIEF.

All of the rules of practice, with appropriate changes in wording wherever necessary, shall apply to proceedings involving the disallowance of claims for refund or relief over which this Court has jurisdiction. Petitions in such cases shall have attached to them a copy of the notice of disallowance, together with whatever statements may accompany that notice, and shall also have attached to them a copy of the claim or application for refund or relief. In cases where no appeal lies from the decision of The Tax Court a copy of the claim or application need be attached only to the original and first copy of the petition.

RULE 64. RENEGOTIATION OF WAR CONTRACTS CASES.

I. Except as otherwise prescribed by this rule, proceedings for the redetermination of excessive profits under the Renegotiation Act[1] shall be governed by the existing rules of practice before this Court. Where any of the existing rules (except rule 48) or the matter contained in the Appendix refer to the Commissioner, such rules and the matter in the Appendix, when applied to a proceeding for the redetermination of excessive profits under the Renegotiation Act, shall refer to the War Contracts Price Adjustment Board or to the Secretary as defined and used in that Act. Similarly references to the taxpayer shall refer to the contractor or subcontractor; references to tax shall refer to profits under a contract or subcontract subject to renegotiation, or to excessive profits thereunder, dependent upon context; and references to the determination of a deficiency, or a notice of such determination, shall refer to the order of the board or the Secretary determining the amount of excessive profits.

II. A proceeding for the redetermination of excessive profits under the Renegotiation Act shall be initiated by the filing of a petition, as provided in Rules 4, 5, 7, and 8. (See Form No. 2, Appendix I.)

In proceedings initiated under section 403(e)(1) of the Act, the War Contracts Price Adjustment Board shall be shown as the respondent. In proceedings initiated under section 403(e)(2) of the Act, the Secretary as referred to in that section shall be shown as the respondent.

The petition shall be complete in itself so as fully to state the issues. It shall contain:

[1] Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended by section 701, Revenue Act of 1943.

(*a*) A caption in the following form:

THE TAX COURT OF THE UNITED STATES.

----------, *petitioner*,
v. } Docket No.
----------, *respondent*.

PETITION.

(*b*) Proper allegations showing jurisdiction in the Court.

(*c*) A statement of the amount of excessive profits determined by the board or the Secretary, as the case may be, the period for which determined and the amount thereof in controversy. If the determination of excessive profits was made on the basis of a specific contract or contracts, the petition shall identify the contract or contracts and shall state the period covered thereby.

(*d*) Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the board or the Secretary in the determination of excessive profits. Each assignment of error shall be numbered.

(*e*) Clear and concise numbered statements of the facts upon which the petitioner relies as sustaining the assignments of error. The allegations of fact shall contain a statement of the amount received or accrued during the period in question under the contracts or subcontracts subject to renegotiation, the costs paid or incurred with respect thereto and the profits derived therefrom, the type and character of business done, and any other facts pertinent to a determination of the errors alleged.

(*f*) A prayer, setting forth relief sought by the petitioner.

(*g*) The signature of the petitioner or that of his counsel. (See rule 4.)

(*h*) A verification by the petitioner in accordance with the applicable provision of subsection (*h*) of rule 6.

(*i*) A copy of the notice by the board, and a copy of the order of the board, or of its delegatee, as the case may be, determining the amount of excessive profits, which notice and order form the basis for the initiation of the proceeding under section 403(e)(1) of the Act, or a copy of the order by the Secretary determining the amount of excessive profits, which order forms the basis for the initiation of the proceeding under section 403(e)(2) of the Act, shall be appended to the petition. If a statement has been furnished to the petitioner by the board or the Secretary setting forth the facts upon which the determination of excessive profits was based and the reasons for such determination, a copy of such statement shall also be appended to the petition.

III. Any claim for the redetermination of an amount of excessive profits greater than the amount shown in the notice of determination shall be made by the respondent in his answer filed under rule 14, or in an amendment thereto filed under rule 17 at or before the time of the hearing.

IV. With respect to the matter covered by rule 60, attention is directed to section 403(e)(1) of the Renegotiation Act.

APPENDIX.

I. FORMS

These forms are subject to amendment as circumstances may render necessary.

No. 2. Petition.
No. 3. Application for subpena.
No. 5a. Application for order to take depositions.
No. 6. Certificate on return of depositions.
No. 7. Appeal bond, form of, corporate surety.
No. 8. Appeal bond, form of, approved collateral.
No. 8a. Power of attorney and agreement—Corporate appellants.
No. 8b. Power of attorney and agreement—Individual appellants.

(NOTE.—Read rule 4 of the rules of practice of the Court and carefully observe the requirements thereof as to form, size, and style of papers.)

NO. 2.—PETITION.

(See rules 4, 5a, 6, 7, and 8.)

THE TAX COURT OF THE UNITED STATES.

----------, *petitioner*,
v. } Docket No.
Commissioner of Internal Revenue, respondent.

PETITION.

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols) dated _____, 19____, and as a basis of his proceeding alleges as follows:

1. The petitioner is (set forth whether individual, corporation, fiduciary, etc., as provided in rule 6) with principal office (or residence) at _____ (Street.) _____, _____. The return for the period here involved was filed with the collector for the _____ district of _____. (City.) (State.)

2. The notice of deficiency (a copy of which is attached and marked exhibit A) was mailed to the petitioner on _____, 19____.

3. The taxes in controversy are (income, profits, estate, or gift) taxes for the (calendar or fiscal year) year 19__ and in the amount of _____ dollars (state as exactly as possible the amount in dispute).

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors: (Enumerate specifically the assignments of error in a concise manner and avoid pleading facts which properly belong in the succeeding paragraph.)

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows: (Here set forth allegations of the facts relied upon—but not the evidence—in orderly and logical sequence, with subparagraphs lettered, so as fully to inform the Court of the issues to be presented and to enable the Commissioner to admit each or deny each specific allegation.)

Wherefore, the petitioner prays that this Court may hear the proceeding and (here state the relief desired).

(Signed) _____
(Petitioner or counsel.)

_____
(Post-office address.)

STATE OF _____ }
County of _____ } *ss:*

_____, being duly sworn, says that he is the petitioner (if a corporation, or fiduciary, state title of office or trust of person verifying and that he is duly authorized to verify the foregoing petition) above named; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

(Signed) _____

Subscribed and sworn to before me this _____ day of _____, 19____.

(Signed) _____
(Official title.)

[SEAL]

NO. 3.—APPLICATION FOR SUBPENA.

_____, *petitioner*,
v.
Commissioner of Internal Revenue, respondent. } Docket No.

To The Tax Court of the United States:

Application is hereby made for the issuance of a subpena for the attendance before _____
(The Tax Court of the United States or the name and official title of the person authorized to take depositions.)
at _____ on _____
at _____ o'clock _____ m. of the following persons whose oral testimony

is desired on behalf of the _____ in the above-
(Petitioner or respondent.)
entitled proceeding:

NAME.	ADDRESS.
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Dated _____, 19____.

(Signed) _____
(Post-office address) _____
_____

NO. 5a.—APPLICATION FOR ORDER TO TAKE DEPOSITIONS.

(See rules 45 and 46.)

THE TAX COURT OF THE UNITED STATES.

_____, *petitioner*,
v.
Commissioner of Internal Revenue, respondent.
} Docket No.

APPLICATION FOR ORDER TO TAKE DEPOSITIONS.

To The Tax Court of the United States:

1. Application is hereby made by the above-named _____
(Petitioner or respondent.)
for an order to take the deposition__ of the following-named person__:

NAME OF WITNESS.	POST-OFFICE ADDRESS.
(a)_____	_____
(b)_____	_____
(c)_____	_____
(d)_____	_____

2. It is desired to take the depositions of the persons above named and each of them for the following reasons:

(a) _____ will testify to the following material matters:
_____
_____
(Set forth briefly the matter upon which said witness will be called to testify.)

(b) _____ will testify to the following material matters:
_____
_____

(c) _____ will testify to the following material matters:
_____
_____

(d) _____ will testify to the following material matters:
_____
_____

3. The reasons why _____ desires to take the
(Petitioner or respondent.)
testimony of the above-named persons rather than have them appear personally and testify before the Court are as follows: (State specifically reasons for each witness.)

4. It is desired to take the testimony of _____
(Names of witnesses.)
_____
on the _____ day of _____, 19__, at the hour of _____ o'clock ____ m.
(A date sufficiently in advance of the day set for hearing of the proceedings to enable the deposition to be completed and filed with the Court at least 10 days prior to the hearing.)
before _____ in the city of _____,
(State name and title of official.)
State of _____, at room _____
(Give number of room, street
_____
number, and name of building.)

5. That _____ is a
(Name of official before whom depositions are to be taken.)
_____, who has no office connection or business employ-
(Give official title.)
ment with the petitioner or his counsel.

Dated _____, 19____.

(Signed) _____
(Petitioner or counsel.)

_____
(Post-office address.)

STATE OF _____ }
County of _____ } *ss:*

_____, being duly sworn, says that the fore-
(Petitioner or counsel.)
going application for order to take depositions is made in good faith and for the reasons therein stated and that the same is not made for purposes of delay.

(Signed) _____

Subscribed and sworn to before me this _____
day of _____, 19____.

(Signed) _____
(Official title.)

[SEAL]

NO. 6.—CERTIFICATE ON RETURN.

To the Tax Court of the United States:

I, _____, the person named in the foregoing order to take depositions, hereby certify:

1. That I proceeded, on the _____ day of _____, A. D. 19____, at the office of _____, in the city of _____, State of _____, at _____ o'clock, __m., under the said order and in the presence of _____, and _____ the counsel for the respective parties, to take the following depositions, viz:

_____, a witness produced on behalf of the _____;
(Petitioner or respondent.)

_____, a witness produced on behalf of the _____;
(Petitioner or respondent.)

_____, a witness produced on behalf of the _____;
(Petitioner or respondent.)

2. That each witness was examined under oath at such times and places as conditions of adjournment required, and that the testimony of each witness (or his answers to the interrogatories filed) was taken stenographically and reduced to typewriting by me or under my direction.

3. That after the testimony of each witness had been reduced to writing the transcript of the testimony was read and signed by the witness in my presence, and that each witness acknowledged before me that his testimony was in all respects truly and correctly transcribed.

4. That, after the signing of the deposition in my presence, no alterations or changes were made therein.

5. That I have no office connection or business employment with the petitioner or his attorney except that _____, objection to which was
(State connection.)
waived by both parties to the proceeding.

[SEAL]

_____
(Signature of person taking deposition.)

_____
(Official title.)

_____
(Post-office address.)

NOTE.—This form when properly executed should be attached to and bound with the transcript preceding the first page thereof. It should then be enclosed in a sealed packet, with postage or other transportation charges prepaid, and directed and forwarded to The Tax Court of the United States, Washington 25, D. C.

NO. 7.—BOND WITH CORPORATE SURETY.

The following is a satisfactory form of bond for use in case bond with a corporate surety approved by the Treasury Department is to be furnished to stay the assessment and collection of tax involved in an appeal from a decision of The Tax Court.

THE TAX COURT OF THE UNITED STATES.

Washington, D. C.

_____, *petitioner*,
v. } Docket No.
Commissioner of Internal Revenue, respondent.

BOND.

Know all men by these presents, that we _____ as principal, and _____, as surety, are held and firmly bound unto the above-named Commissioner of Internal Revenue and/or the United States of America, in the sum of $_____ (double the deficiency or such sum as The Tax Court has fixed upon petitioner's prior motion), to be paid to the said Commissioner of Internal Revenue and/or the United States of America for the payment of which well and truly to be made we bind ourselves and each of us and our successors and assigns jointly and severally firmly by these presents. Sealed with our seals and dated the _____ day of _____, in the year of our Lord one thousand nine hundred and _____.

Whereas, the above-named _____, _____ is filing or is about to file with The Tax Court of the United States a petition for review of the said Court's decision in respect of the tax liability of the above petitioner for the taxable year or years _____, by the Circuit Court of Appeals of the United States for the _____ Circuit to reverse the decision rendered in the above-entitled cause.

Now, therefore, the condition of this obligation is such, that if the above-named _____ shall file its petition for review and shall prosecute said petition for review to effect and shall pay the deficiency as finally determined, together with any interest, additional amounts or additions to the tax provided for by law, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Attest: _____

_____ By _____
(Corporate seal.) Secretary. Title.

Attest: _____

_____ By _____
(Corporate seal.) Secretary. Title.

NO. (8A AND 8B).—BOND—APPROVED COLLATERAL.

A satisfactory form of bond for use in case an appellant desires to furnish approved collateral (Treasury Department Circular No. 154), instead of furnishing a corporate surety bond, and also forms of powers of attorney covering the pledged collateral are shown below:

THE TAX COURT OF THE UNITED STATES.

Washington, D. C.

----------, *petitioner*,
v. } Docket No.
Commissioner of Internal Revenue, respondent.

BOND.

Know all men by these presents, that ---------- is held and firmly bound unto the above-named Commissioner of Internal Revenue and/or the United States of America in the sum of ---------- ($----------) dollars, to be paid to the said Commissioner of Internal Revenue and/or the United States of America, for the payment of which, well and truly to be made, the ---------- binds itself and its successors, firmly by these presents. Sealed with our seal and dated the ---------- day of ----------, in the year of our Lord one thousand nine hundred and ----------.

Whereas, the above-named ---------- is filing or is about to file with The Tax Court of the United States, a petition for review of the said Court's decision in respect of the tax liability of the above petitioner for the taxable year or years ---------- by the Circuit Court of Appeals of the United States for the ---------- Circuit to reverse the decision rendered in the above-entitled cause.

Now, therefore, the condition of this obligation is such that if the above-named ---------- shall file its petition for review and shall prosecute said petition for review to effect and shall pay the deficiency as finally determined, together with any interest, additional amounts or additions to the tax provided for by law, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

The above-bounden obligor, in order the more fully to secure the Commissioner of Internal Revenue and/or the United States in the payment of the aforementioned sum, hereby pledges as security therefor bonds/notes of the United States in a sum equal at their par value to the aforementioned sum, to wit: ---------- ---------- dollars ($----------), which said bonds/notes are numbered serially and are in the denominations and amounts, and are otherwise more particularly described as follows: ----------
---
---
which said bonds/notes have this day been deposited with the clerk of The Tax Court of the United States and his receipt taken therefor.

Contemporaneously herewith the undersigned has also executed and delivered an irrevocable power of attorney and agreement in favor of the clerk of The Tax Court of the United States, authorizing and empowering him, as such attorney to collect or sell or transfer or assign the above-described bonds/notes so deposited, or any part thereof, in case of any default in the performance of any of the above-named conditions or stipulations.

[Corporate seal.]

By ----------
Title.

Attest:

Secretary.

Approved by ----------
Judge, The Tax Court of the United States.

Date:

NO. 8a.—POWER OF ATTORNEY AND AGREEMENT.

Know all men by these presents, that _____, a corporation duly incorporated under the laws of the State of _____, and having its principal office in the city of _____, State of _____, in pursuance of a resolution of the board of directors of said corporation, passed on the _____ day of _____, 19__, a duly certified copy of which resolution is hereto attached, does hereby constitute and appoint the clerk of The Tax Court of the United States as attorney for said corporation, for and in the name of said corporation to collect or to sell, assign, and transfer certain United States Liberty bonds, Treasury notes, or other United States bonds/notes, the property of said corporation, described as follows:

Title of coupon bonds/notes.	Total face amount.	Denomination.	Serial No.	Interest dates

Title of bonds/notes registered in name of and assigned in blank.	Total face amount.	Denomination	Serial No	Interest dates

such bonds/notes having been deposited by it, pursuant to authority conferred by section 1126 of the Revenue Act of 1926, approved February 26, 1926, and subject to the provisions thereof, as security for the faithful performance of any and all of the conditions or stipulations of a certain obligation entered into by it with the Commissioner of Internal Revenue and/or the United States under date of _____, which is hereby made a part thereof, and the undersigned agrees that, in case of any default in the performance of any of the conditions and stipulations of such undertaking, its said attorney shall have full power to collect said bonds/notes or any part thereof, or to sell, assign, and transfer said bonds/notes or any part thereof without notice, at public or private sale, or to transfer or assign to another for the purpose of effecting either public or private sale, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived, and the proceeds of such sale or collection, in whole or in part to be applied to the satisfaction of any damages, demands, or deficiency arising by reason of such default, as may be deemed best, and the undersigned further agrees that the authority herein granted is irrevocable.

And said corporation hereby for itself, its successors and assigns, ratifies and confirms whatever its said attorney shall do by virtue of these presents.

In witness whereof, the _____, the corporation hereinabove named, by _____, duly authorized to
(Name and title of officer.)
act in the premises, has executed this instrument and caused the seal of the corporation to be hereto affixed this _____ day of _____, 19__.

[Corporate Seal.] _____

By _____

Before me, the undersigned, a notary public within and for the county of _____, in the State of _____, personally appeared _____, and for and in behalf of said _____,
(Name and title of officer.)
corporation, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this _____ day of _____, 19__.

[Notarial Seal.] _____
Notary Public.

My commission expires _____.

NO. 8b.—POWER OF ATTORNEY AND AGREEMENT BY INDIVIDUAL APPELLANTS.

Know all men by these presents, that I (we), _____, do hereby constitute and appoint the clerk of The Tax Court of The United States as attorney for me (us), and in my (our) name to collect or to sell, assign, and transfer certain United States Liberty bonds, Treasury notes, or other United States bonds/notes, being my (our) property described as follows:

Title of coupon bonds/notes.	Total face amount.	Denomination.	Serial No.	Interest dates.

Title of bonds/notes registered in name of and assigned in blank.	Total face amount.	Denomination.	Serial No	Interest dates

such bonds/notes having been deposited by me (us) pursuant to authority conferred by section 1126 of the Revenue Act of 1926, approved February 26, 1926, and subject to the provisions thereof, as security for the faithful performance of any and all of the conditions or stipulations of a certain obligation entered into by me (us) with the Commissioner of Internal Revenue and/or the United States under date of _____, which is hereby made a part thereof, and I (we) agree that, in case of any default in the performance of any of the conditions and stipulations of such undertaking, my (our) said attorney shall have full power to collect said bonds/notes or any part thereof, or to sell, assign, and transfer said bonds/notes or any part thereof without notice, at public or private sale, or to transfer or assign to another for the purpose of effecting either public or private sale, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived, and the proceeds of such sale or collection, in whole or in part to be applied to the satisfaction of any damages, demands, or deficiency arising by reason of such default, as may be deemed best, and I (we) further agree that the authority herein granted is irrevocable.

And for myself (ourselves), my (our several) administrators, executors, and assigns, I (we) hereby ratify and confirm whatever my (our) said attorney shall do by virtue of these presents.

In witness whereof, I (we) hereinabove named, have executed this instrument and affixed my (our) seal this _____ day of _____, 19___.

_____ [SEAL]

Before me, the undersigned, a notary public within and for the county of _____, in the State of _____, personally appeared _____, and acknowledged the execution of the foregoing
(Name of appellant.)
power of attorney.

Witness my hand and notarial seal this _____ day of _____, 19___.

[Notarial Seal]

_____
Notary Public.

My commission expires _____

II. REQUESTS FOR PLACE OF HEARING.

The Court will fix the times and places for its hearings in order to secure reasonable opportunity to taxpayers to be heard with as little inconvenience and expense to taxpayers as is practicable. (Section 1105, I. R. C.) Hearings may be held at any place requested if suitable accommodations are available and a sufficient number of cases are ready for hearing there. A partial list of cities where a combination of these circumstances has justified a calendar of hearings

recently appears below. It is published here merely to assist parties in making requests under rule 26. The grouping of certain cities in the list indicates that if one of those cities is requested, it may be necessary to hold the hearing at the other city in order to make up a sufficient calendar of hearings. Likewise, if sufficient cases are not ready for hearing in any particular city requested by taxpayers, or if suitable quarters are not available there, the Court may find it necessary to combine the hearings requested for that city and hold them along with the hearings requested for some other city in the vicinity.

LIST.

Alabama:
- Birmingham.
- Mobile.

Arkansas: Little Rock (alternative, Memphis, Tenn.).

California:
- Los Angeles.
- San Francisco.

Colorado: Denver.

District of Columbia: Washington.

Florida:
- Jacksonville.
- Miami.
- Tampa (alternative, Miami).

Georgia: Atlanta.

Hawaii: Honolulu (alternative, Los Angeles or San Francisco, Calif.).

Illinois: Chicago.

Indiana: Indianapolis.

Iowa: Des Moines.

Kentucky: Louisville.

Louisiana:
- New Orleans.
- Shreveport.

Maine: Portland (alternative, Boston, Mass.).

Massachusetts: Boston.

Michigan:
- Detroit.
- Grand Rapids.

Minnesota: St. Paul.

Missouri:
- Kansas City.
- St. Louis.

Montana: Helena.

Nebraska: Omaha.

New Jersey: Newark.

New York:
- Buffalo.
- New York City.

North Carolina:
- Greensboro.
- Raleigh.

Ohio:
- Cincinnati (alternative, Columbus).
- Cleveland.
- Columbus (alternative, Cincinnati).

Oklahoma:
- Oklahoma City (alternative, Tulsa).
- Tulsa (alternative, Oklahoma City).

Oregon: Portland.

Pennsylvania:
- Philadelphia (alternative, Washington, D. C., or New York, N. Y.).
- Pittsburgh.

South Carolina:
- Charleston.
- Columbia.

Tennessee:
- Knoxville (alternative, Atlanta, Ga.).
- Memphis.
- Nashville.

Texas:
- Dallas.
- Houston.

Utah: Salt Lake City.

Washington:
- Seattle.
- Spokane.

West Virginia: Charleston.

Wisconsin:
- Madison (alternative, Milwaukee).
- Milwaukee.

LEGISLATION.

1947–15–12605

H. J. RES. 210. PUBLIC LAW 112, EIGHTIETH CONGRESS [CHAPTER 143, FIRST SESSION].

Joint Resolution To extend the time for the release, free of estate and gift tax, of certain powers, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 403(d)(3) of the Revenue Act of 1942 (relating to the release of certain powers of appointment) is hereby amended by striking out "July 1, 1947" wherever it appears and inserting in lieu thereof "July 1, 1948"; and section 452(c) of the Revenue Act of 1942 is hereby amended to read as follows:

(c) RELEASE BEFORE JULY 1, 1948.—

(1) A release of a power to appoint before July 1, 1948, shall not be deemed a transfer of property by the individual possessing such power.

(2) This subsection shall apply to all calendar years prior to 1948 and to that part of the calendar year 1948 prior to July 1, 1948.

SEC. 2. (a) Section 1000(e) of the Internal Revenue Code (relating to certain discretionary trusts) is hereby amended by striking out "prior to January 1, 1945," and inserting in lieu thereof "on or before December 31, 1947 (or on a later date in any case where it is shown to the satisfaction of the Commissioner, in accordance with regulations prescribed by him with the approval of the Secretary, that failure to relinquish prior to such later date was for reasonable cause)".

(b) If any amount paid prior to the date of the enactment of this joint resolution constitutes an overpayment of gift tax solely by reason of the amendment made by this section, no interest shall be allowed or paid with respect to the amount of such overpayment.

SEC. 3. The last sentence of section 22(b)(9) and the last sentence of section 22(b)(10) of the Internal Revenue Code (relating to exclusion of income from discharge of indebtedness) are hereby amended by striking out "1947" and inserting in lieu thereof "1949".

Approved June 25, 1947.

1947–15–12606

H. R. 468. PUBLIC LAW 113, EIGHTIETH CONGRESS [CHAPTER 144, FIRST SESSION].

An Act To amend section 115 of the Internal Revenue Code in respect of distributions by personal holding companies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the last sentence of section 115(a) of the Internal Revenue Code is amended

to read as follows: "In the case of a corporation which, under the law applicable to the taxable year in which the distribution is made, is a personal holding company, or which, for the taxable year in respect of which the distribution is made under section 504(c) or section 506 or a corresponding provision of a prior income-tax law, is a personal holding company under the law applicable to such taxable year, such term also means any distribution (whether or not a dividend as defined in the preceding sentence) to its shareholders, whether in money or in other property, to the extent of its subchapter A net income, less the sum of the following:

"(1) The net operating loss credit provided in section 26(c)(1);

"(2) The dividend carry-over provided in section 27(c); and

"(3) The deduction for amounts for retirement of indebtedness provided in section 504(b)."

SEC. 2. The amendment made by section 1 shall be effective for all taxable years beginning after December 31, 1943.

SEC. 3. No interest shall be allowed or paid in respect of any overpayment of tax resulting from the foregoing amendment.

Approved June 25, 1947.

1947–14–12591

H. R. 2872. PUBLIC LAW 116, EIGHTIETH CONGRESS
[CHAPTER 147, FIRST SESSION].

An Act To amend further section 4 of the Public Debt Act of 1941, as amended, and clarify its application, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of the Public Debt Act of 1941 (Public, Numbered 7, Seventy-seventh Congress, first session), as amended by section 6 of the Public Debt Act of 1942 (Public, Numbered 510, Seventy-seventh Congress, second session), hereby is amended further to read as follows:

SEC. 4. (a) Interest upon obligations, and dividends, earnings, or other income from shares, certificates, stock, or other evidences of ownership, and gain from the sale or other disposition of such obligations and evidences of ownership issued on or after the effective date of the Public Debt Act of 1942 by the United States or any agency or instrumentality thereof shall not have any exemption, as such, and loss from the sale or other disposition of such obligations or evidences of ownership shall not have any special treatment, as such, under the Internal Revenue Code, or laws amendatory or supplementary thereto; except that any such obligations which the United States Maritime Commission or the Federal Housing Administration had, prior to March 1, 1941, contracted to issue at a future date, shall when issued bear such tax-exemption privileges as were, at the time of such contract, provided in the law authorizing their issuance. For the purposes of this subsection a Territory, a possession of the United States, and the District of Columbia, and any political subdivision thereof, and any agency or instrumentality of any one or more of the foregoing, shall not be considered as an agency or instrumentality of the United States.

(b) The provisions of this section shall, with respect to such obligations and evidences of ownership, be considered as amendatory of and supplementary to the respective Acts or parts of Acts authorizing the issuance of such obligations and evidences of ownership, as amended and supplemented.

(c) Nothing contained herein shall be construed to amend or repeal sections 114 and 115 of the Revenue Act of 1941.

Approved June 25, 1947.

1947–16–12616

H. R. 959. PUBLIC LAW 185, EIGHTIETH CONGRESS
[CHAPTER 245, FIRST SESSION].

An Act To amend section 3179(b) of the Internal Revenue Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 3179 of the Internal Revenue Code is amended to read as follows:

(b) DRAWBACK.—Upon the exportation of distilled spirits and wines manufactured or produced in the United States on which an internal-revenue tax has been paid, and which are contained in any cask or package or in bottles packed in cases or other containers, there shall be allowed, under regulations to be prescribed by the Commissioner, with the approval of the Secretary, a drawback equal in amount to the tax found to have been paid on such distilled spirits and wines: *Provided*, That such distilled spirits and wines have been packaged or bottled especially for export, under regulations prescribed by the Commissioner, with the approval of the Secretary. The Commissioner, with the approval of the Secretary, is authorized to prescribe regulations governing the determination and payment of drawback of internal-revenue tax on domestic distilled spirits and wines, including the requirement of such notices, bonds, bills of lading, and other evidence of payment of tax and exportation as shall be deemed necessary.

Approved July 14, 1947.

1947–16–12617

H. R. 1945. PUBLIC LAW 186, EIGHTIETH CONGRESS
[CHAPTER 246, FIRST SESSION].

An Act To amend sections 2801(e)(4), 3043(a), 3044(b), and 3045 of the Internal Revenue Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Internal Revenue Code be, and it is hereby, amended as follows:

1. Section 2801(e)(4) of the Internal Revenue Code is amended (a) by deleting from the second sentence thereof the words "having no interior communication with any other department or part of such premises", and (b) by adding immediately at the end thereof the following new sentence: "The provisions of this paragraph shall apply in the same manner and to the same extent to aperitif wines other than vermouth."

2. Section 3043(a), Internal Revenue Code, is amended by deleting the colon in the second sentence thereof and inserting in lieu thereof the following: ", nor to apply to or prohibit the fermentation of grape wine retsina with resin on bonded winery premises: ".

3. Section 3044(b), Internal Revenue Code, is amended by deleting the words "and not more than 13 per centum of alcohol after complete fermentation," and inserting in lieu thereof the words "and not more than 13 per centum of alcohol after complete fermentation or, if sweetened, after complete fermentation and sweetening,".

4. Section 3045, Internal Revenue Code, is amended by deleting the period at the end thereof and adding the following: " : *Provided*, That in the case of wines produced from loganberries, currants, or gooseberries, respectively, having a normal acidity of twenty parts or more per thousand, the volume of the resultant product may be increased more than 35 per centum but not more than 60 per centum

by the addition of sugar and water solution under such regulations as the Commissioner of Internal Revenue may prescribe."

Approved July 14, 1947.

1947–16–12618

H. R. 1946. PUBLIC LAW 187, EIGHTIETH CONGRESS
[CHAPTER 247, FIRST SESSION].

An Act To amend section 2801(e) of the Internal Revenue Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (e) of section 2801 of the Internal Revenue Code be, and it is hereby, amended by adding the following new numbered paragraph:

(5) BLENDING OF BEVERAGE BRANDIES.—Fruit brandies distilled from the same kind of fruit at not more than one hundred and seventy degrees proof may, for the sole purpose of perfecting such brandies according to commercial standards, be mixed or blended with each other, or with any such mixture or blend, by the distiller thereof in any internal revenue bonded warehouse operated by him exclusively for the storage of brandy or wine spirits, and the provisions of this section and of sections 2800(a)(5) and 3254(g) relating to rectification or other internal revenue laws of the United States shall not be held to apply to or prohibit such mixing or blending, and brandies so mixed or blended may be packaged, stored, transported, transferred in bond, withdrawn from bond tax-paid or tax-free, or be otherwise disposed of, in the same manner as such brandies not so mixed or blended: *Provided*, That, in addition to the tax imposed by this chapter on the production of distilled spirits, there shall be paid a tax of 30 cents as to each proof gallon (and a proportionate tax at a like rate on all fractional parts of such proof gallon) of brandy so mixed or blended (except when withdrawn tax-free and accounted for or when lost and allowance is made therefor), such tax to be paid by rectified spirits stamps affixed to the packages at the time of withdrawal. The Commissioner, under rules and regulations to be by him prescribed with the approval of the Secretary, upon the presentation of proof to his satisfaction of the loss by leakage, evaporation, theft, or otherwise of fruit brandies so blended or mixed, not occurring as the result of any negligence, connivance, collusion, or fraud on the part of the warehouseman or his agents, is hereby authorized to remit or refund the taxes assessed or paid upon such lost brandies: *Provided, however*, That such remission or refund shall be allowed only to the extent that the warehouseman is not indemnified or recompensed for such tax, and that losses of fruit brandies occurring prior to any such mixing or blending shall be allowable in accordance with section 2901. The terms "distiller" as used herein shall include any one or more distillers associated as members of any farm cooperative, or any one or more distillers affiliated within the meaning of section 17(a)(5) of the Federal Alcohol Administration Act, as amended, or any fruit distiller for whose account, recorded with the district supervisor at the time of production, the brandy to be blended was produced. The Commissioner may, with the approval of the Secretary, make such rules or regulations as he may deem necessary to carry these provisions into effect.

Approved July 14, 1947.

1947–16–12619

H. R. 3861. PUBLIC LAW 189, EIGHTIETH CONGRESS
[CHAPTER 249, FIRST SESSION].

An Act To allow to a successor railroad corporation the benefits of certain carry-overs of a predecessor corporation for the purposes of certain provisions of the Internal Revenue Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) if a rail-

road corporation (as defined in section 77m of the National Bankruptcy Act, as amended) (hereinafter referred to as successor corporation) has acquired, prior to January 1, 1950, property from another such railroad corporation (hereinafter referred to as predecessor corporation) in a receivership proceeding, or in a proceeding under section 77 of the National Bankrupty Act, as amended, and if the basis of the property so acquired is determined under section 113(a)(20) of the Internal Revenue Code, then, for the purposes of the determination under the Internal Revenue Code of—

(1) the "net operating loss carry-over" from any taxable year beginning after December 31, 1938, under the law applicable to such taxable year, and

(2) the "excess profits credit carry-over" or the "unused excess profits credit carry-over" from any taxable year beginning after December 31, 1939, under the law applicable to such taxable year, the net operating losses and the unused excess profits credits of such predecessor corporation for the taxable year in which the acquisition occurred and for the two preceding taxable years shall be carry-overs to such successor corporation in the manner and to the extent provided in regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, as necessary to apply such net operating losses and unused excess profits credits as carry-overs so far as possible as if the predecessor corporation had been made use of in such proceeding instead of the successor corporation.

(b) For the purposes of this section, the taxable year of the successor corporation in which the acquisition occurred shall be considered as a taxable year succeeding the taxable year of the predecessor corporation in which the acquisition occurred.

(c) For the purposes of this section, if the period, beginning on the first day of the taxable year of the predecessor corporation in which the acquisition occurred and ending on the last day of the taxable year of the successor corporation in which the acquisition occurred, is not more than twelve months, the number of taxable years to which such net operating loss or unused excess profits credit is a carry-over shall be three instead of two, and such regulations shall prescribe (as nearly as possible in the same manner as provided in section 122(b)(2) and section 710(c)(3)(B) of such code) the amount to be carried over to the last of such succeeding years.

SEC. 2. (a) In the case of any taxable year of the successor corporation, if—

(1) the aggregate for such taxable year of the taxes of the successor corporation imposed by chapter 1 and subchapter E of chapter 2 of the Internal Revenue Code, computed without regard to this Act,

is less than the amount of—

(2) the aggregate of such taxes (determined under regulations prescribed by the Commissioner with the approval of the Secretary) that would have been imposed on the predecessor corporation for such taxable year if the predecessor corporation had

been made use of in such proceeding instead of the successor corporation,

then the taxes of the successor corporation for such taxable year shall be the taxes computed without regard to this Act.

(b) In the case of any taxable year to which subsection (a) of this section is not applicable, if—

(1) the aggregate for such taxable year of the taxes of the successor corporation imposed by chapter 1 and subchapter E of chapter 2 of the Internal Revenue Code, computed without regard to this section,

is less than the amount of—

(2) the aggregate of such taxes (determined under regulations prescribed by the Commissioner with the approval of the Secretary) that would have been imposed on the predecessor corporation for such taxable year if the predecessor corporation had been made use of in such proceeding instead of the successor corporation,

then the taxes of the successor corporation for such taxable year shall be the taxes so determined under regulations as the taxes that would have been imposed on the predecessor corporation for such taxable year.

(c) This section shall be applicable to those taxable years of the successor corporation to which there is a carry-over of a net operating loss or unused excess profits credit under section 1, and to any later taxable year for which a net operating loss deduction or unused excess profits credit adjustment results or is increased by reason of the use in another year of a carry-over permitted under section 1.

SEC. 3. Where there are two or more predecessor corporations or two or more successor corporations, the provisions of sections 1 and 2 of this Act shall be applied only to such extent and subject to such conditions, limitations, and exceptions as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

SEC. 4. If the allowance of a credit or refund of an overpayment of tax resulting from the application of this Act is prevented, on the date of the enactment of this Act or within one year from such date, by the operation of any law or rule of law other than this section and other than section 3761 of the Internal Revenue Code, such overpayment shall be refunded or credited in the manner provided in the Internal Revenue Code if claim therefor is filed within one year from the date of the enactment of this Act. No interest shall be allowed or paid on any overpayment or deficiency resulting from the application of this Act.

Approved July 15, 1947.

1947–17–12627

H. R. 4011. PUBLIC LAW 226, EIGHTIETH CONGRESS
[CHAPTER 309, FIRST SESSION].

An Act To amend section 1602 of the Federal Unemployment Tax Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1602

of the Federal Unemployment Tax Act (Internal Revenue Code, sec. 1602), as amended, is hereby amended by adding at the end thereof a new subsection to read as follows:

(d) VOLUNTARY CONTRIBUTIONS.—A State law may, without being deemed to violate the standards set forth in subsection (a), permit voluntary contributions to be used in the computation of reduced rates if such contributions are paid prior to the expiration of one hundred and twenty days after the beginning of the year for which such rates are effective, or prior to January 1, 1948, whichever date is the later.

SEC. 2. The amendment made by section 1 shall be applicable only with respect to taxable years beginning after December 31, 1945.

Approved July 24, 1947.

1947–17–12628

H. R. 3444. PUBLIC LAW 310, EIGHTIETH CONGRESS
[CHAPTER 430, FIRST SESSION].

An Act To amend section 251 of the Internal Revenue Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 251 of the Internal Revenue Code (relating to income from sources within possessions of the United States) is hereby amended by adding at the end thereof a new subsection to read as follows:

(i) PRISONERS OF WAR AND INTERNEES.—In the case of a citizen of the United States taken as a prisoner of war while serving within a possession of the United States as a member of the military or naval forces of the United States, and in the case of a citizen interned by the enemy while serving as an employee within a possession of the United States—

(1) if such citizen was confined in any place not within a possession of the United States, such place of confinement shall, for the purposes of this section, be considered as within a possession of the United States; and

(2) any compensation received within the United States by such citizen attributable to the period of time during which such citizen was a prisoner of war or interned by the enemy shall, for the purposes of subsection (b), be considered as compensation received outside the United States.

SEC. 2. The amendment made by this Act shall be applicable to taxable years beginning after December 31, 1941.

Approved August 1, 1947.

1947–16–12620

H. R. 3603. PUBLIC LAW 321, SEVENTY-NINTH CONGRESS
[CHAPTER 82, SECOND SESSION].

An Act To provide for the sale of surplus war-built vessels, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Merchant Ship Sales Act of 1946".

* * * * * * *

DEFINITIONS.

SEC. 3. As used in this Act the term—

(a) "Commission" means the United States Maritime Commission.

(b) "War-built vessel" means an oceangoing vessel of one thousand

five hundred gross tons or more, owned by the United States and suitable for commercial use—

(1) which was constructed or contracted for by or for the account of the United States during the period, beginning January 1, 1941, and ending with September 2, 1945; or

(2) which, having been constructed during the period beginning September 3, 1939, and ending with September 2, 1945, was acquired by the United States during such period.

(c) "Prewar domestic cost", as applied to any type of vessel, means the amount determined by the Commission, and published by the Commission in the Federal Register, to be the amount for which a standard vessel of such type could have been constructed (without its national defense features) in the United States under normal conditions relating to labor, materials, and other elements of cost, obtaining on or about January 1, 1941. In no case shall the prewar domestic cost of any type of vessel be considered to be greater than 80 per centum of the domestic war cost of vessels of the same type.

(d) "Statutory sales price", as applied to a particular vessel, means, in the case of a dry-cargo vessel, an amount equal to 50 per centum of the prewar domestic cost of that type of vessel, and in the case of a tanker, such term means an amount equal to 87½ per centum of the prewar domestic cost of a tanker of that type, such amount in each case being adjusted as follows:

(1) If the Commission is of the opinion that the vessel is not in class, there shall be subtracted the amount estimated by the Commission as the cost of putting the vessel in class.

(2) If the Commission is of the opinion that the vessel lacks desirable features which are incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be lower if the standard vessel had also lacked such features, there shall be subtracted the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(3) If the Commission is of the opinion that the vessel contains desirable features which are not incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be higher if the standard vessel had also contained such features, there shall be added the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(4) There shall be subtracted, as representing normal depreciation, an amount computed by applying to the statutory sales price (determined without regard to this paragraph) the rate of 5 per centum per annum for the period beginning with the date of the original delivery of the vessel by its builder and ending with the date of sale or charter to the applicant in question, and there shall also be subtracted an amount computed by applying to the statutory sales price (determined without regard to this paragraph) such rate not in excess of 3 per centum per annum in the case of a vessel other than a tanker, and not in excess of 4 per centum per annum in the case of a tanker, for such period or

periods of war service as the Commission determines will make reasonable allowance for excessive wear and tear by reason of war service which cannot be or has not been otherwise compensated for under this subsection.

No adjustment, except in respect of passenger vessels constructed before January 1, 1941, shall be made under this Act which will result in a statutory sales price which (1) in the case of dry-cargo vessels (except Liberty type vessels) will be less than 35 per centum of the domestic war cost of vessels of the same type, (2) in the case of any Liberty type vessel will be less than 31½ per centum of the domestic war cost of vessels of such type, or (3) in the case of a tanker will be less than 50 per centum of the domestic war cost of tankers of the same type. For the purposes of this Act, except section 5, all Liberty vessels shall be considered to be vessels of one and the same type.

(e) "Domestic war cost" as applied to any type of vessel means the average construction cost (without national defense features) as determined by the Commission, of vessels of such type delivered during the calendar year 1944, except in case of any type of vessel the principal deliveries of which were made after the calendar year 1944, there shall be used in lieu of such year 1944 such period of not less than six consecutive calendar months as the Commission shall find to be most representative of war production costs of such type.

(f) "Cessation of hostilities" means the date proclaimed by the President as the date of the cessation of hostilities in the present war, or the date so specified in a concurrent resolution of the two Houses of the Congress, whichever is the earlier.

(g) "Citizen of the United States" includes a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act of 1916, as amended. The term "affiliated interest" as used in sections 9 and 10 of this Act includes any person affiliated or associated with a citizen applicant for benefits under this Act who the Commission, pursuant to rules and regulations prescribed hereunder, determines should be so included in order to carry out the policy and purposes of this Act.

* * * * * * *

ADJUSTMENT FOR PRIOR SALES TO CITIZENS.

SEC. 9. (a) A citizen of the United States who on the date of the enactment of this Act—

(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended, and which was delivered by its builder after December 31, 1940; or

(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him,

and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended;

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of publication of the applicable prewar domestic costs in the Federal Register under section 3(c) of this Act. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after September 2, 1945, under the provisions of title V (including section 504) or title VII of the Merchant Marine Act, 1936, as amended.

(b) Such adjustment shall be made, as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time. The amount of such adjustment shall be determined as follows:

(1) The Commission shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel as of such date of enactment. If such payment was less than 25 per centum of the statutory sales price of the vessel, the applicant shall pay the difference to the Commission.

(2) The applicant's indebtedness under any mortgage to the United States with respect to the vessel shall be adjusted.

(3) The adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel as of the date of the enactment of this Act over the sum of the cash payment retained by the United States under paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (7)) with respect to any vessel exchanged by the applicant on the original purchase. The adjusted mortgage indebtedness shall be payable in equal annual installments thereafter during the remaining life of such mortgage with interest on the portion of the statutory sales price remaining unpaid at the rate of 3½ per centum per annum.

(4) The Commission shall credit the applicant with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under paragraph (7)) over the statutory sales price of the vessel as of the date of the enactment of this Act to the extent not credited under paragraph (1).

(5) The Commission shall also credit the applicant with an amount equal to interest at the rate of 3½ per centum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with the date of the enactment of this Act) on the excess of the original purchase price of the vessel over the amount of any allowance allowed by the Commission on the exchange of any vessel on such purchase; the amount of such credit first being reduced by any interest on the original mortgage indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid shall be canceled.

(6) The applicant shall credit the Commission with all amounts paid by the United States to him as charter hire for use of the vessel (exclusive of service, if any, required under the terms of the charter) under any charter party made prior to the date of the enactment of this Act, and any charter hire for such use accrued up to such date of enactment and unpaid shall be canceled; and the Commission shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire for bare-boat use of vessels exchanged by the applicant on the original purchase (for the period beginning with date on which vessels so exchanged were delivered to the Commission and ending with the date of the enactment of this Act).

(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase shall be readjusted so as to limit such allowance to the amount provided for under section 8.

(8) There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c)(1), and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant resulting from the application of subsection (c)(1). If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid.

For the purposes of this subsection, the purchase price of a vessel on account of which a construction-differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended, shall be the net cost of the vessel to the owner.

(c) An adjustment shall be made under this section only if the applicant enters into an agreement with the Commission binding upon the citizen applicant and any affiliated interest to the effect that—

(1) depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act for Federal tax purposes shall be treated as not having been allowable; amounts credited to the Commission under subsection (b)(6) shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the applicant under subsection (b) (5) and (6) shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act;

(2) the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel on or after the date of the enactment of this Act under

any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment; and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act, depreciated to the date of loss at the rate of 5 per centum per annum; and,

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bare-boat charter made, on or after the date of the enactment of this Act, the compensation to be paid to the purchaser, his receivers, and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

(d) Section 506 of the Merchant Marine Act, 1936, as amended, shall not apply with respect to (1) any vessel which is eligible for an adjustment under this section, or (2) any vessel described in clause (1), (2), (3), or (4) of subsection (a) of this section, the contract for the construction of which is made after September 2, 1945, and prior to the date of enactment of this Act.

LIMITATION ON ELIGIBILITY FOR BENEFITS OF ACT

SEC. 10. No person shall be eligible to purchase or charter a war-built vessel under this Act, or to receive an adjustment under section 9, unless such person makes an agreement with the Commission binding upon such person and any affiliated interest to the effect that the liability of the United States under any charter party or taking for use, made or effected prior to the date of the enactment of this Act, for the loss, on or after such date of enactment and prior to September 3, 1947, of any vessel owned by such person and under charter to the United States (excluding a vessel with respect to which an adjustment is made under section 9) shall be limited to an amount equal to just compensation as of the date of said loss, determined pursuant to existing law, or such amount as may be mutually agreed upon subsequent to the date of the enactment of this Act as just compensation under the provisions of existing law.

* * * * * * *

TERMINATION DATE.

SEC. 14. No contract of sale or of charter shall be made under this Act after December 31, 1947.

Approved March 8, 1946.

1947–18–12633

H. R. 4257. PUBLIC LAW 356, EIGHTIETH CONGRESS
[CHAPTER 481, FIRST SESSION].

An Act To provide an extension of time for claiming credit or refund with respect to war losses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if a claim for credit or refund under the internal-revenue laws relates to an overpayment on account of the deductibility by the taxpayer of a loss in

respect of property considered destroyed or seized under section 127 (a) of the Internal Revenue Code, relating to war losses, for a taxable year beginning in 1941 or 1942, the three-year period of limitation prescribed in section 322(b)(1) of the Internal Revenue Code shall in no event expire prior to December 31, 1948. In the case of such a claim filed on or before December 31, 1948, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in section 322(b) (2) or (3) of the Internal Revenue Code, whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of the loss described in this section.

Approved August 4, 1947.

1947–18–12634

H. R. 479. PUBLIC LAW 367, EIGHTIETH CONGRESS
[CHAPTER 496, FIRST SESSION].

An Act Relating to the income-tax liability of members of the armed forces dying in the service.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 421 of the Internal Revenue Code (relating to abatement of tax for members of armed forces upon death) is amended to read as follows:

SEC. 421. ABATEMENT OF TAX FOR MEMBERS OF ARMED FORCES UPON DEATH.

In the case of any individual who dies on or after December 7, 1941, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations and prior to January 1, 1948—

(a) the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year (ending on or after December 7, 1941) during any part of which he was a member of such forces; and

(b) the tax under this chapter and under the corresponding title of each prior revenue law for taxable years preceding those specified in clause (a) which is unpaid at the date of his death (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

SEC. 2. If at any time prior to January 1, 1948, the allowance of a credit or refund of an overpayment of the tax for any taxable year specified in section 421(a) of the Internal Revenue Code (as amended by this Act) is prevented (except for the provisions of section 3801) by the operation of any law or rule of law, a credit or refund of the overpayment of such tax to the extent that the overpayment is attributable to the change in law made by this Act may, nevertheless, be allowed or made if a claim therefor is filed before January 1, 1949.

Approved August 5, 1947.

1947–18–12635

H. R. 3818. PUBLIC LAW 379, EIGHTIETH CONGRESS
[CHAPTER 510, FIRST SESSION].

An Act To amend the Federal Insurance Contributions Act with respect to rates of tax on employers and employees, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That clauses (1),

(2), and (3) of section 1400 of the Federal Insurance Contributions Act (Internal Revenue Code, sec. 1400), as amended, are hereby amended to read as follows:

(1) With respect to wages received during the calendar years 1939 to 1949, both inclusive, the rate shall be 1 per centum.
(2) With respect to wages received during the calendar years 1950 and 1951, the rate shall be 1½ per centum.
(3) With respect to wages received after December 31, 1951, the rate shall be 2 per centum.

SEC. 2. Clauses (1), (2), and (3) of section 1410 of the Federal Insurance Contributions Act (Internal Revenue Code, sec. 1410), as amended, are hereby amended to read as follows:

(1) With respect to wages paid during the calendar years 1939 to 1949, both inclusive, the rate shall be 1 per centum.
(2) With respect to wages paid during the calendar years 1950 and 1951, the rate shall be 1½ per centum.
(3) With respect to wages paid after December 31, 1951, the rate shall be 2 per centum.

SEC. 3. Section 504 of the Social Security Act Amendments of 1946 (Public Law 719, Seventy-ninth Congress), fixing the termination date of amendments relating to grants to States for old-age assistance, aid to the blind, and aid to dependent children, is hereby amended by striking out " December 31, 1947 " and inserting in lieu thereof " June 30, 1950 ".

SEC. 4. Section 603 of the War Mobilization and Reconversion Act of 1944 (terminating the provisions of such Act on June 30, 1947) shall not be applicable in the case of the amendments made by title IV of such Act to the Social Security Act.

SEC. 5. (a) Section 904(h) of the Social Security Act is hereby amended to read as follows:

(h) There is hereby established in the Unemployment Trust Fund a Federal unemployment account. There is hereby authorized to be appropriated to such Federal unemployment account a sum equal to (1) the excess of taxes collected prior to July 1, 1946, under title IX of this Act or under the Federal Unemployment Tax Act, over the total unemployment administrative expenditures made prior to July 1, 1946, plus (2) the excess of taxes collected in each fiscal year beginning after June 30, 1946, and ending prior to July 1, 1949, under the Federal Unemployment Tax Act, over the unemployment administrative expenditures made in such year, and the excess of such taxes collected during the period beginning on July 1, 1949, and ending on December 31, 1949, over the unemployment administrative expenditures made during such period. Any amounts in the Federal unemployment account on April 1, 1950, and any amounts repaid to such account after such date, shall be covered into the general fund of the Treasury. As used in this subsection, the term " unemployment administrative expenditures " means expenditures for grants under title III of this Act, expenditures for the administration of that title by the Board or the Administrator, and expenditures for the administration of title IX of this Act, or of the Federal Unemployment Tax Act by the Department of the Treasury, the Board, or the Administrator. For the purposes of this subsection there shall be deducted from the total amount of taxes collected prior to July 1, 1943, under title IX of this Act, the sum of $40,561,886.43 which was authorized to be appropriated by the Act of August 24, 1937 (50 Stat. 754) and the sum of $18,451,846 which was authorized to be appropriated by section 11(b) of the Railroad Unemployment Insurance Act.

(b) Section 1201(a) of the Social Security Act is hereby amended by striking out " on June 30, 1945, or on the last day in any ensuing calendar quarter which ends prior to July 1, 1947 ", and inserting in lieu thereof " on June 30, 1947, or on the last day in any ensuing calendar quarter which ends prior to January 1, 1950 ".

SEC. 6. This Act may be cited as the "Social Security Act Amendments of 1947."

Approved August 6, 1947.

1947–18–12636

H. R. 4069. PUBLIC LAW 384, EIGHTIETH CONGRESS
[CHAPTER 515, FIRST SESSION].

An Act To terminate certain tax provisions before the end of World War II.

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

* * * * * * *

SEC. 5. MERCHANT MARINE CONSTRUCTION RESERVE FUND.

For the purposes of the proviso of subsection (h) of section 511 of the Merchant Marine Act, 1936, as amended, added to such subsection by the Act of June 17, 1943 (57 Stat. 158), the present war shall be considered as having terminated on March 31, 1948.

SEC. 6. TAX DEFERMENTS OF SERVICE PERSONNEL.

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

(2) December 31, 1947; or

SEC. 7. ADDITIONAL ALLOWANCE FOR MILITARY AND NAVAL PERSONNEL.

Section 22(b)(13) of the Internal Revenue Code is hereby amended to read as follows:

(13) ADDITIONAL ALLOWANCE FOR MILITARY AND NAVAL PERSONNEL.—

(A) In the case of compensation received prior to January 1, 1949, during any taxable year, for active service as a commissioned officer (or a commissioned warrant officer) in the military or naval forces of the United States during the present war, or, in the case of a citizen or resident of the United States, as a member of the military or naval forces of any of the other United Nations during such war, so much of such compensation as does not exceed $1,500.

(B) Compensation received prior to January 1, 1949, during any taxable year, for active service as a member below the grade of commissioned officer (or commissioned warrant officer) in the military or naval forces of the United States during the present war.

SEC. 8. INVOLUNTARY LIQUIDATION AND REPLACEMENT OF INVENTORY.

Section 22(d)(6)(A) of the Internal Revenue Code is hereby amended by striking out "prior to the termination of the present war as proclaimed by the President" and inserting in lieu thereof "prior to January 1, 1948", and by striking out "not more than 3 years after the termination of the present war as proclaimed by the President" and inserting in lieu thereof "prior to January 1, 1951".

SEC. 9. ABATEMENT OF TAX FOR MEMBERS OF ARMED FORCES UPON DEATH.

Section 421 of the Internal Revenue Code is hereby amended by striking out "the termination of the present war as proclaimed by the President" and inserting in lieu thereof "January 1, 1948".

SEC. 10. COLLECTION OF INCOME TAX AT SOURCE ON WAGES.

(a) Section 1621(a) of the Internal Revenue Code is hereby amended by striking out paragraph (1), by striking out the sentence following paragraph (9), and by amending paragraph (8) to read as follows:

> (8) (A) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of a foreign country or countries, or
>
> (B) for services for an employer performed within a possession of the United States by a citizen of the United States, if it is reasonable to believe that at least 80 per centum of the remuneration to be paid to the employee by such employer during the calendar year will be for such services, or

(b) The amendments made by this section shall be applicable with respect to wages paid on or after January 1, 1948, except that the amendment striking out paragraph (1) of section 1621(a) of the Internal Revenue Code shall be applicable with respect to wages paid on or after January 1, 1949.

SEC. 11. TAX ON ADMISSIONS.

(a) Section 1700(a)(1) of the Internal Revenue Code is hereby amended by striking out "(except bona fide employees, municipal officers on official business, children under twelve years of age, members of the military or naval forces of the United States when in uniform, members of the military or naval forces of any of the United Nations, when in uniform, and members of the Civilian Conservation Corps when in uniform)", and inserting in lieu thereof: "(except bona fide employees, municipal officers on official business, and children under twelve years of age)", and by striking out the last sentence.

(b) The amendments made by subsection (a), insofar as applicable with respect to amounts paid for admission, shall be applicable to amounts paid after December 31, 1947, and, insofar as applicable to free admissions, shall be applicable with respect to such admissions after December 31, 1947.

SEC. 12. TRANSPORTATION TAX EXEMPTION OF MILITARY AND NAVAL PERSONNEL.

Section 3469(f)(2) of the Internal Revenue Code shall not be applicable to amounts paid after December 31, 1947.

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

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

> (c) LIMITATION ON TIME TO BE DISREGARDED.—The period of time disregarded under this section shall not extend beyond the date specified in clause (1) or clause (2) of this subsection, whichever is the earlier:
>
> (1) December 31, 1947, or such date later than December 31, 1947, as the Commissioner may fix in any case in which he makes a determination under subsection (b) if such determination is made after the date this subsection as amended takes effect and is based on the existence prior to January 1, 1948, of one or more of the circumstances specified in paragraph (1), (2), or (3) of subsection (b); or
>
> (2) in the case of an individual with respect to whom a period of time is disregarded under this section, the fifteenth day of the third month following the month in which an executor, administrator, or a conservator of the estate of such individual qualifies.

SEC. 14. CHINA TRADE ACT CORPORATIONS.

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

SEC. 15. PERCENTAGE DEPLETION.

(a) Section 124(e) of the Revenue Act of 1943 (relating to termination of percentage depletion for certain minerals) is repealed as of the date of its enactment.

(b) So much of section 114(b)(4) of the Internal Revenue Code (relating to percentage depletion for certain minerals) as precedes the second sentence thereof, is amended to read as follows:

> (4) PERCENTAGE DEPLETION FOR COAL, BAUXITE, FLUORSPAR, FLAKE GRAPHITE, VERMICULITE, BERYL, FELDSPAR, MICA, TALC (INCLUDING PYROPHYLLITE), LEPIDOLITE, SPODUMENE, BARITE, BALL, SAGGER, AND CHINA CLAY, ROCK ASPHALT, PHOSPHATE ROCK, TRONA, BENTONITE, GILSONITE, THENARDITE, AND METAL MINES, POTASH, AND SULFUR.—
>
> (A) In General.—The allowance for depletion under section 23(m) shall be, in the case of coal mines, 5 per centum, in the case of metal mines, bauxite, fluorspar, flake graphite, vermiculite, beryl, feldspar, mica, talc (including pyrophyllite), lepidolite, spodumene, barite, ball, sagger, and china clay, phosphate rock, rock asphalt mines, trona, bentonite, gilsonite, thenardite (from brines or mixtures of brine), and potash mines or deposits, 15 per centum, and in the case of sulfur mines or deposits, 23 per centum, of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property.

(c) The first sentence of section 114(b)(2) of the Internal Revenue Code (relating to discovery value) is amended to read as follows: " In the case of mines (other than metal, bauxite, coal, fluorspar, flake graphite, vermiculite, beryl, feldspar, mica, talc (including pyrophyllite), lepidolite, spodumene, barite, potash, ball, sagger, and china clay, phosphate rock, rock asphalt, trona, bentonite, gilsonite, thenardite, or sulfur mines) discovered by the taxpayer after February 28, 1913, the basis for depletion shall be the fair market value of the property at the date of discovery or within thirty days thereafter, if such mines were not acquired as the result of purchase of a proven tract or lease, and if the fair market value of the property is materially disproportionate to the cost."

(d) The amendments made by subsections (b) and (c) of this section shall be applicable with respect to taxable years beginning after December 31, 1946.

SEC. 16. CHARITABLE CONTRIBUTIONS BY CORPORATIONS.

Section 23(q)(2) of the Internal Revenue Code (relating to charitable and other contributions by corporations) is hereby amended by striking out " the date of the cessation of hostilities in the present war, as proclaimed by the President " and inserting in lieu thereof " December 31, 1948 ".

Approved August 8, 1947.

1947–18–12637

H. R. 3613. PUBLIC LAW 387, EIGHTIETH CONGRESS
[CHAPTER 518, FIRST SESSION].

An Act To amend sections 1802(a), 1802(b), and 3481(a) of the Internal Revenue Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1802(a) of the Internal Revenue Code is amended by deleting the period at the end of the next to the last sentence and inserting in lieu thereof the following: ": *Provided further*, That where such certificates (or shares, where no certificates are issued) are issued in a recapitalization, the tax payable shall be that proportion of the tax computed on such certificates or shares issued in the recapitalization that the amount dedicated as capital for the first time by the recapitalization, whether by a transfer of earned surplus or otherwise, bears to the total par value (or actual value if no par stock) of such certificates or shares issued in the recapitalization."

Section 1802(b) of the Internal Revenue Code is amended by inserting after the first proviso the following: "*Provided further*, That upon any transfer of an interest in a partnership owning shares or certificates of stock, the tax shall be limited to an amount equal to that percentage of a tax computed on the transfer of all of such shares or certificates of stock owned by the partnership as the interest transferred bears to the total interests in the partnership of all the partners: ".

Section 1802(b) of the Internal Revenue Code is amended by inserting in the second proviso following the word " deposited " a comma and the words " nor upon mere loans of stock ".

Section 3481(a) of the Internal Revenue Code is amended by inserting after " *Provided* " the following: " That upon any transfer of an interest in a partnership owning such instruments, the tax shall be limited to an amount equal to that percentage of a tax computed on the transfer of all of such instruments owned by the partnership as the interest transferred bears to the total interests in the partnership of all the partners: *Provided further*,".

Approved August 8, 1947.

1947–18–12638

H. R. 4075. PUBLIC LAW 388, EIGHTIETH CONGRESS
[CHAPTER 519, FIRST SESSION].

An Act To regulate commerce among the several States, with the Territories and possessions of the United States, and with foreign countries; to protect the welfare of consumers of sugars and of those engaged in the domestic sugar-producing industry; to promote the export trade of the United States; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Sugar Act of 1948 ".

* * * * * * *

TITLE V—AMENDMENTS TO THE INTERNAL REVENUE CODE.

SEC. 501. (a) Subsection (b) of section 3507 of the Internal Revenue Code (relating to the definition of "manufactured sugar") is amended by inserting in the parentheses after the word "added" therein the following: "or developed in the product".

(b) Section 3508 of the Internal Revenue Code (relating to termination of taxes) is amended to read as follows:

SEC. 3508. TERMINATION OF TAXES.

No tax shall be imposed under this chapter on the manufacture, use, or importation of sugar or articles composed in chief value of sugar after June 30, 1953. Notwithstanding the provisions of section 3490 or 3500, no tax shall be imposed under this chapter with respect to unsold sugar held by a manufacturer on June 30, 1953, or with respect to sugar or articles composed in chief value of sugar held in customs custody or control on such date.

With respect to any sugar or articles composed in chief value of sugar upon which tax imposed under section 3500 has been paid and which, on June 30, 1953, are held by the importer and intended for sale or other disposition, there shall be refunded (without interest) to such importer, subject to such regulations as may be prescribed by the Commissioner of Customs with the approval of the Secretary, an amount equal to the tax paid with respect to such sugar or articles composed in chief value of sugar.

(c) The amendments to the Internal Revenue Code provided for in this section shall become effective upon the first day of the second month following the date of the enactment of this Act.

Approved August 8, 1947.

COMMITTEE REPORTS.

1947–20–12655

TERMINATION OF WARTIME TAX PROVISIONS.

[House of Representatives Report No. 802, Eightieth Congress, First Session.]

[July 7, 1947.]

Mr. Knutson, from the Committee on Ways and Means, submitted the following report [to accompany H. R. 4069]:

The Committee on Ways and Means, to whom was referred the bill (H. R. 4069) to terminate certain tax provisions before the end of World War II, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

GENERAL STATEMENT.

The purpose of this bill is to provide for the termination of a number of war and emergency statutory provisions related to internal revenue and customs. The bill also makes amendments to the Internal Revenue Code appropriate in connection with the termination of certain of the statutes.

INTERNAL REVENUES.

The income tax exclusions of $1,500 of service pay (as to officers) and of all service pay (as to enlisted personnel) now allowed Army and Navy personnel are terminated December 31, 1947, and provision is made that service pay of such officers and enlisted personnel after December 31, 1947, will be brought within the provisions of the Internal Revenue Code providing for withholding of income tax at source on wages.

The provision of section 1621(a) of the Internal Revenue Code with respect to withholding of tax on remuneration for services outside of the United States is amended to relate such provision more closely to sections 116(a) and 251 of the Code relating, respectively, to earned income from sources without the United States and income from sources within possessions of the United States. This amendment is not limited to service personnel but includes civilians deriving income for services performed outside the United States.

The wartime provisions for special treatment under the admissions tax for members of the armed forces in uniform admitted free or at reduced rates, and which exempt from tax admissions to theaters and other activities operated on War and Navy Department reservations, are terminated December 31, 1947.

The transportation tax exemption applicable to members of the armed forces traveling on furlough tickets is terminated December 31, 1947.

Several provisions of law (sections 3804 and 3805 of the Internal Revenue Code and section 13 of the Missing Persons Act) which permit, because of circumstances connected with the war, postponement of the time for performing various acts in connection with Federal tax liabilities, such as filing of returns, payment of taxes, etc., are terminated December 31, 1947. However, provision is made, by amendment to section 3804, for the granting of further relief after such date by the Commissioner of Internal Revenue in unusual cases.

The wartime provision allowing abatement or refund of income tax in the case of members of the armed forces dying while in active service is amended to limit its operation to the cases of such persons dying before January 1, 1948.

In the case of taxpayers using the last-in first-out inventory method for income tax reporting, existing law makes special provision for replacement of inventories depleted by involuntary liquidation because of circumstances related to the war. This provision has been amended to provide that the relief is allowable where the involuntary liquidation occurred in a taxable year beginning prior to

August 1, 1947 (instead of prior to the termination of the war) and the replacement occurred in a taxable year ending prior to August 1, 1950 (instead of not more than three years after the termination of the war).

Percentage depletion was allowed certain minerals during the war period. The minerals affected are ball and sagger clay, fluorspar, and rock asphalt provided for under the Revenue Act of 1942, and barite, beryl, feldspar, flake graphite, mica, lepidolite, spodumene, talc, and vermiculite provided for under the Revenue Act of 1943. These allowances were terminated with respect to taxable years beginning after December 31, 1946, the date proclaimed by the President as the date of termination of hostilities in World War II.

Your committee, after hearings on the subject, is of the opinion that such allowances should be continued for taxable years beginning after December 31, 1946, and also that percentage depletion should be allowed in the case of china clay, bentonite, gilsonite, and thenardite for taxable years beginning after December 31, 1946. Accordingly, the bill eliminates the existing provisions providing for such termination and allows percentage depletion for the four additional items last mentioned for the years specified.

The fifteenth day after the date of the enactment of the bill is fixed as the date of the termination of the present war for the purposes of the proviso of section 511(h) of the Merchant Marine Act, 1936, which proviso permits, for tax purposes, further extension by the Maritime Commission of the period for the performance of certain acts with respect to ship construction reserve funds.

CUSTOMS.

The wartime suspension of tariff duties with respect to certain metal scrap is terminated June 30, 1948, and the wartime suspension of tariff duties on coconuts and coconut meat is terminated the thirtieth day following the enactment of the bill.

The wartime provisions permitting free entry of articles consigned to members of the United Nations armed forces, prisoners of war and enemy civilian internees, and of articles made by certain prisoners of war and internees detained by the enemy, is terminated June 30, 1948. The wartime provision permitting free entry of gifts in limited amounts from members of the armed forces, which terminated June 30, 1947, is extended to June 30, 1949, but on and after September 1, 1947, free entry is denied unless the article is purchased in or through authorized agencies of the armed forces of the United States or in accordance with regulations prescribed by the major geographical commands of the United States armed forces.

DETAILED DISCUSSION OF THE TECHNICAL PROVISIONS OF THE BILL.

SECTION 1.

Section 1 of the bill would amend the Act of March 13, 1942 (Public Law 497, Seventy-seventh Congress; 56 Stat., 171), which exempts from duty or internal revenue tax, scrap iron, scrap steel, relaying and rerolling rails, or nonferrous-metal scrap, entered for consumption or withdrawn from warehouse for consumption during the period beginning March 14, 1942, and ending with the termination of the unlimited national emergency proclaimed by the President on May 27, 1941. The proposed amendment provides that the period of exemption shall terminate with the close of June 30, 1948. However, by reason of the provisions of the Act of April 29, 1947 (Public Law 42, Eightieth Congress), copper scrap will continue to be exempt from the internal revenue tax imposed under section 3425 of the Internal Revenue Code until the close of March 31, 1949.

SECTION 2.

Section 2 of the bill would amend the joint resolution of June 27, 1942 (Public Law 635, Seventy-seventh Congress; 56 Stat., 462), to terminate as of the close of June 30, 1948, the privilege of importation free of duties or internal revenue taxes of articles for members of the armed forces of the United Nations, of articles for enemy prisoners of war and enemy civilian internees, and of articles made by members of the armed forces of the United Nations while detained as prisoners of war or by nationals of the United States detained by the enemy, entered for consumption or withdrawn from warehouse for consumption beginning June 27, 1942, and until the expiration of six months after the termination of the unlimited national emergency proclaimed by the President on May 27, 1941. Section 2 substitutes for the present termination clause the specific date July 1, 1948.

SECTION 3.

The Act of December 5, 1942 (Public Law 790, Seventy-seventh Congress; 56 Stat., 1041), allowed, until the expiration of six months after the termination of hostilities as determined by proclamation of the President, the entry free of customs duties or internal revenue import taxes of so much of any shipment as did not exceed $50 in value if there was filed in connection with the entry satisfactory evidence that the articles were bona fide gifts from a member of the armed forces of the United States on duty outside the continental limits of the United States. Pursuant to the President's proclamation, dated December 31, 1946, such exemption terminated on June 30, 1947. Section 3 of the bill amends such act, effective as of June 30, 1947, so as to extend the period for free entry through June 30, 1949. Section 3 also amends such act so as to deny free entry on or after September 1, 1947, unless the article is purchased "in or through authorized agencies of the armed forces of the United States or in accordance with regulations prescribed by the major geographical commands of the United States armed forces."

SECTION 4.

The Act of December 20, 1944 (Public Law 504, Seventy-eighth Congress; 58 Stat., 817), provides that no duty shall be collected under the Tariff Act of 1930, as amended, with respect to coconuts or coconut meat until the termination of the unlimited national emergency proclaimed by the President on May 27, 1941. Section 4 of the bill provides that such Act shall be inapplicable with respect to articles entered for consumption or withdrawn from warehouse for consumption on or after the thirtieth day after the date of the enactment of the bill.

SECTION 5.

Section 511 of the Merchant Marine Act of 1936 provides among other things for special tax treatment with respect to ship construction, reserve funds, certain percentages of which must be expended within periods of time determined under such section. Subsection (h) of section 511 provides a basis on which extensions of such periods of time may be granted, with a 2-year limitation, but until the termination of the present war further extensions may be granted ending not later than six months after the termination of the present war.

Section 5 of the bill provides that for the purpose of such subsection (h) the present war shall be considered as having terminated on the fifteenth day after the date the bill becomes law.

SECTION 6.

Section 13 of the Missing Persons Act provides for deferment for a limited period of the due dates of income tax returns and payment of income tax in the case of military and naval personnel and civilian employees of the Government held as prisoners of war or military and naval personnel on sea duty or outside the United States.

Paragraphs (1), (2), and (3) of subsection (c) of section 13 set forth rules for determining the earliest due date, depending on the circumstances, for filing return and payment of tax. Under paragraph (2) no deferment under section 13 can extend beyond the 15th day of the third month following the month in which the present war with Germany, Italy, and Japan is terminated, as proclaimed by the President. Section 6 of the bill would substitute for the language of paragraph (2) the specific date "December 31, 1947."

While the effect of the amendment is to make section 13 of the Missing Persons Act inoperative after December 31, 1947, relief in an appropriate case may be afforded after such date under section 3804 of the Internal Revenue Code as proposed to be amended by section 13 of the bill, or under section 513 of the Soldiers' and Sailors' Civil Relief Act of 1940.

SECTION 7.

This section would terminate December 31, 1947, the allowance under section 22(b)(13) of the Internal Revenue Code to military and naval personnel of certain exclusions from gross income.

Under section 22(b)(13) there are excluded from gross income: (*a*) In the case of compensation received during taxable years beginning after December 31, 1942, for active service as a commissioned officer (or commissioned warrant

officer) of the military or naval forces of the United States or as a member (if a citizen or resident of the United States) of the military or naval forces of any of the other United Nations, so much of such compensation as does not exceed $1,500; and (*b*) in the case of compensation received during taxable years beginning after December 31, 1940, for active service as a member below the grade of commissioned officer (or commissioned warrant officer) in the military or naval forces of the United States, the entire amount of such compensation.

Such exclusions are applicable only to compensation received prior to the termination of the present war as proclaimed by the President.

Section 7 would amend section 22(b)(13) of the Code to limit the application of the exclusions to compensation for active service received prior to January 1, 1948, rather than prior to the termination of the war as proclaimed by the President.

SECTION 8.

In the case of taxpayers using the elective-inventory method of income-tax reporting, section 22(d)(6)(A) of the Internal Revenue Code makes special provision with respect to replacement of base-stock inventories depleted by involuntary liquidation resulting from conditions prevailing during the war. Section 8 of the bill amends section 22(d)(6)(A) to make its provisions applicable in cases where the involuntary liquidation occurred in a taxable year beginning prior to August 1, 1947 (instead of in a taxable year beginning prior to the termination of the war), and the replacement occurred in a subsequent taxable year ending prior to August 1, 1950 (instead of a taxable year ending not more than three years after the termination of the war).

SECTION 9.

Section 9 would amend section 421 of the Internal Revenue Code, which allows abatement or refund of income tax in the case of members of the armed forces dying while in active service, to limit its operation to cases of persons dying prior to January 1, 1948. Section 421 now provides that where an individual dies on or after December 7, 1941, while in active service as a member of the military or naval forces of the United States or of any of the United Nations and prior to the termination of the present war as proclaimed by the President, there shall be no income tax liability for the taxable year in which his death occurred; that income tax under the Internal Revenue Code and the corresponding provisions of prior revenue laws for preceding taxable years which is unpaid at death shall not be assessed and if assessed the assessment shall be abated and if collected shall be credited or refunded as an overpayment. The effect of the amendment is to limit the operation of this provision of law to cases where the individual died prior to January 1, 1948.

SECTION 10.

Section 10 amends section 1621(a) of the Internal Revenue Code, which section defines the term "wages" for purposes of collection of income tax at the source on wages and lists certain classes of remuneration excluded from such definition.

Paragraph (1) of section 1621(a) excludes from the definition of wages, and hence from withholding of income tax at the source, remuneration for services performed as a member of the military or naval forces of the United States other than pensions and retired pay includible in gross income. Section 10(a) of the bill would strike out paragraph (1), thus making such remuneration subject under section 1622 of the Internal Revenue Code to withholding of income tax at the source.

Section 1621(a)(8) now excludes from the definintion of wages, and hence from withholding of income tax at the source, remuneration for services for an employer performed by a citizen or resident of the United States while outside the United States (as defined in section 3797(a)(9)) if the major part of the services for such employer during the calendar year is to be performed outside the United States.

Section 10(a) of the bill would amend paragraph (8) to limit its application to remuneration for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of a foreign country or countries, and to remuneration for services for an employer performed within a possession of the United States by a citizen of the United States, if it is reasonable to believe that at least 80 per cent of the

remuneration to be paid to the employee by such employer during the calendar year will be for such services. Such amendment brings paragraph (8) more closely in harmony with the provisions of sections 116(a) and 251 of the Internal Revenue Code relating, respectively, to earned income from sources without the United States and income from sources within possessions of the United States.

The amendment to paragraph (8) of section 1620(a) requires the deletion of the last sentence of section 1621(a) which provides that the exception of paragraph (8), with respect to services performed outside the United States, does not extend to wages paid for services performed on an American vessel or on any vessel as an employee of the United States employed through the War Shipping Administration. The tests provided in the proposed new paragraph (8) are considered adequate for the determination of any cases which fall within the contemplation of such last sentence and section 10(a) of the bill, accordingly, strikes out such last sentence.

Section 10(b) of the bill provides that the amendments made to section 1621(a) shall be applicable to wages paid on or after January 1, 1948.

SECTION 11.

This section would amend section 1700(a)(1) of the Internal Revenue Code to terminate the special treatment under the admissions tax with respect to free and reduced-rate admissions extended to members of the military or naval forces of the United States or of any of the United Nations when in uniform, and members of the Civilian Conservation Corps when in uniform. The amendment would also terminate the exemption under the admissions tax of amounts paid for admissions to theaters and other activities operated by or under the control of the War Department or the Navy Department within posts, camps, reservations, and other areas maintained by the Military or Naval Establishment. The amendments made by the section, in so far as they are applicable with respect to amounts paid for admission, are applicable to amounts paid after December 31, 1947, and, in so far as applicable to free admissions, are applicable with respect to such admissions after December 31, 1947.

SECTION 12.

This section would make inapplicable to amounts paid after December 31, 1947, the provisions of section 3469(f)(2) of the Internal Revenue Code which allows an exemption from the tax on the transportation of persons applicable to payments for transportation or facilities furnished under special tariffs providing for fares of not more than 1¼ cents per mile for round-trip tickets sold to personnel of the United States Army, Navy, Marine Corps, and Coast Guard traveling in uniform of the United States, and to members of the military or naval forces of any of the other United Nations traveling in uniform of such nation, at their own expense, when on official leave, furlough, or pass, including authorized cadets and midshipmen, issued on presentation of properly executed certificate.

SECTION 13.

Section 13 would amend section 3804 of the Internal Revenue Code to provide that no period of time after December 31, 1947, may be disregarded under such section except, under certain limitations, in cases in which the Commissioner makes a determination under section 3804(b) after the enactment of the bill.

Section 3804 is a wartime provision which has for its purpose the disregarding of a period of time in determining whether certain acts affecting Federal tax liabilities are timely performed and in determining the amount of any credit or refund (including interest). It is applicable both in the case of acts to be performed by the taxpayer and in the case of acts to be performed by the Government. Under subsection (c) of section 3804 the period of time disregarded shall not extend beyond whichever of the following dates is the earlier:

(1) The 15th day of the third month following the month in which the present war is terminated, or

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

Section 13 of the bill amends section 3804(c), in so far as it is based on the termination of the war, so as to provide a definite cut-off date of December 31, 1947, but permits a further period to be disregarded if the Commissioner so pre-

scribes in any case in which he makes a determination under section 3804(b) after the date of the enactment of this bill, and the determination is based on the existence prior to January 1, 1948, of one or more of the three following circumstances:

(1) By reason of an individual being outside the Americas,

(2) By reason of any locality (within or without the Americas) having been an area of enemy action or having been an area under the control of the enemy, or

(3) By reason of an individual in the military or naval forces of the United States being outside the States of the Union and the District of Columbia.

The effect of the amendment is that no period of time which is being disregarded under subsection (a), or being disregarded under subsection (b) of section 3804 pursuant to regulations prescribed or determinations made by the Commissioner prior to the enactment of the bill, may extend beyond December 31, 1947. Nor may any period after December 31, 1947, be disregarded under section 3804 except in the special cases in which the Commissioner makes a determination under section 3804(b) after the enactment of the bill. That is, no period after December 31, 1947, may be disregarded under the section, except in the relatively few cases where, by reason of circumstances coming within the scope of subsection (b) and existing prior to January 1, 1948, the Commissioner determines, after the enactment of the bill, that it is proper to extend the benefits of the section on behalf of either the taxpayer or the Government with respect to a period after December 31, 1947.

For such cases it is considered desirable to use the mechanism of subsection (b) of existing law which provides a basis for disregarding periods of time which may not be disregarded under subsection (a) or for disregarding a period of time in addition to that disregarded under subsection (a), and which is broader in scope than subsection (a).

It is contemplated that any period after December 31, 1947, disregarded under subsection (b), will be a reasonable one in the circumstances, and that if an exceptional case arises where the circumstances which make performance of an act impossible or impracticable are such that they will not be cured by the passage of time, a reasonable period may be disregarded under subsection (b) after which no period of time will be disregarded with respect to such act.

An example of the type of case in which the Commissioner is authorized under the amendment to disregard a period of time after December 31, 1947, is that of a member of the armed forces who returns to this country on, for example, March 1, 1948, after having been outside the Americas continuously for several years and by reason of having been outside the Americas prior to January 1, 1948, his circumstances are such that it is impossible or impracticable for him to file on March 15, 1948, his income-tax return for the calendar year 1947. In such case an appropriate period of time may be disregarded with respect to both the due date for filing such return and the due date of the tax.

SECTION 14.

Section 14 would amend section 3805 of the Internal Revenue Code to terminate as of December 31, 1947, the wartime extension in the case of China Trade Act corporations of the due dates for filing income-tax returns and payment of tax. Existing law provides as to such corporations that for taxable years beginning after December 31, 1940, no income-tax return or payment of tax shall become due until the 15th day of the sixth month following the month in which the present war with Germany, Italy, and Japan is terminated, as proclaimed by the President. Section 14 substitutes for the war-termination clause the specific date December 31, 1947.

SECTION 15—PERCENTAGE DEPLETION.

Section 15 by amendment to section 114 of the Internal Revenue Code and by repeal of section 124(e) of the Revenue Act of 1943 continues in effect, as permanent legislation, the wartime allowance of percentage depletion at the rate of 15 per cent in the case of the following minerals: Fluorspar, flake graphite, vermiculite, beryl, feldspar, mica, talc, lepidolite, spodumene, barite, ball and sagger clay, and rock asphalt. Section 15 also adds china clay, bentonite, gilsonite, and thenardite.

Pursuant to the provisions of section 124(e) of the Revenue Act of 1943 and the President's proclamation of December 31, 1946, declaring hostilities in World War II terminated, the provisions of section 114 of the Code regarding percentage

depletion as to the items named above (except china clay, bentonite, gilsonite, and thenardite) ceased to be applicable with respect to taxable years beginning after December 31, 1946. Section 15 repeals section 124(c) of the Revenue Act of 1943 as of the date of its enactment and further provides that the amendments made to section 114 of the code shall be applicable with respect to taxable years beginning after December 31, 1946. The effect of this is that the percentage depletion rules as to the minerals named in existing law continue without change, and percentage depletion is allowable in the case of china clay, bentonite, gilsonite, and thenardite for taxable years beginning after December 31, 1946.

1947–20–12656

TERMINATION OF WARTIME TAX PROVISIONS.

[Senate Report No. 693, Eightieth Congress, First Session. Calendar No. 730.]

[July 23 (legislative day, July 16), 1947.]

Mr. Millikin, from the Committee on Finance, submitted the following report (to accompany H. R. 4069):

The Committee on Finance, to whom was referred the bill (H. R. 4069) to terminate certain tax provisions before the end of World War II, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

With the exception of committee amendments to sections 5, 7, 8, and 15 of the bill, and the addition by your committee of a section 16 to the bill, the bill is the same as passed by the House. The report of the Committee on Ways and Means on the bill is attached hereto as appendix A. [See House Report No. 802, Eightieth Congress, first session, pages 353–359, this Bulletin.] A detailed explanation of the bill (which, except with respect to the committee amendments, is equally applicable to the bill as reported by your committee) is included in the House report.

The first amendment in your committee bill is an amendment to section 5 of the bill. The committee amendment provides that for the purposes of the proviso clause of section 511(h) of the Merchant Marine Act, 1936, the present war shall be considered as having terminated on March 31, 1948, instead of on the fifteenth day after the date of the enactment of the bill as provided in the House bill.

Section 7 of the House bill amended section 22(b)(13) of the Internal Revenue Code so as to terminate on December 31, 1947, the income-tax exclusions of $1,500 of service pay (as to officers) and of all service pay (as to enlisted personnel) now allowed Army and Navy personnel. Your committee has amended section 7 to provide that the income-tax exclusion of all service pay allowed to personnel serving in the armed forces of the United States below the grade of commissioned officer (or commissioned warrant officer) shall not terminate until December 31, 1948. The bill as reported by your committee retains the provision of the House bill terminating on December 31, 1947, the income-tax exclusion of $1,500 of service pay now allowed to commissioned officers or commissioned warrant officers serving in the armed forces of the United States and to citizens or residents of the United States serving in the armed forces of any of the other United Nations.

Section 8 of the House bill amended section 22(d)(6)(A) of the Code which makes special provision, in the case of taxpayers using the last-in first-out inventory method for income-tax reporting, for replacement of inventories depleted by involuntary liquidation because of circumstances related to the war. Your committee amends section 8 of the bill to provide that the relief under section 22(d)(6)(A) of the Code is allowable where the involuntary liquidation occurred in a taxable year beginning prior to January 1, 1948 (instead of prior to August 1, 1947, as provided in the House bill), and the replacement of inventory occurred in a taxable year ending prior to January 1, 1951 (instead of prior to August 1, 1950, as provided in the House bill).

Section 15 of the House bill provided that the wartime provision for percentage depletion in the case of certain minerals should be continued as permanent legislation, and further provided for percentage depletion in the case of china clay, bentonite, gilsonite, and thenardite for taxable years beginning after December 31, 1946. Your committee amendment to this section of the bill adds

pyrophyllite and trona to the list of minerals for which percentage depletion is allowable for taxable years beginning after December 31, 1946.

Your committee further amended the House bill by adding section 16, for which there is no corresponding provision in the bill as passed by the House. Section 23(q)(2) of the Code provides that contributions or gifts (for religious, charitable, educational, etc., purposes) made by a corporation to an unincorporated organization (trust, chest, fund, or foundation) are not deductible if made within a taxable year beginning after December 31, 1946 (the date of the cessation of hostilities in the present war, as proclaimed by the President) unless such contributions or gifts are to be used within the United States or any of its possessions. Section 16 of the bill as reported by your committee amends section 23(q)(2) so that the requirement that such gifts or contributions must be used within the United States or any of its possessions is applicable only to taxable years beginning after December 31, 1948.

1947–20–12657

TERMINATION OF WARTIME TAX PROVISIONS.

[House of Representatives Report No. 1097, Eightieth Congress, First Session.]

[July 25, 1947.]

Mr. Knutson, from the committee of conference, submitted the following conference report [to accompany H. R. 4069]:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 4069) to terminate certain tax provisions, before the end of World War II, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

* * * * * * *

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 4069) to terminate certain tax provisions before the end of World War II, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Amendment No. 1: The House bill provided that for the purposes of the proviso of section 511(h) of the Merchant Marine Act, 1936, the present war shall be considered as having terminated on the fifteenth day after the date of the enactment of the bill. The Senate amendment provides that for such purposes the present war shall be considered as having terminated on March 31, 1948. The House recedes.

Amendment No. 2: The House bill amended section 22(b)(13) of the Internal Revenue Code so as to terminate on December 31, 1947, the income-tax exclusion of $1,500 of service pay now allowed to commissioned officers or commissioned warrant officers serving in the armed forces of the United States and to citizens or residents of the United States serving in the armed forces of any of the other United Nations. The Senate amendment provides that such income-tax exclusion shall not terminate until December 31, 1948. The House recedes.

Amendment No. 3: The House bill amended section 22(b)(13) of the Code so as to terminate on December 31, 1947, the income-tax exclusion of all service pay allowed under existing law to personnel serving in the armed forces of the United States below the grade of commissioned officer (or commissioned warrant officer). The Senate amendment provides that such income-tax exclusion shall not terminate until December 31, 1948. The House recedes.

Amendments Nos. 4 and 5: The House bill amended section 22(d)(6)(A) of the Code which makes special provisions, in the case of taxpayers using the last-in first-out method for income-tax reporting, for replacement of inventories depleted by involuntary liquidation because of circumstances related to the war. Section 8 of the House bill provided that the relief under section 22(d)(6)(A) of the Code is allowable if the involuntary liquidation occurred in a taxation year

beginning prior to August 1, 1947 (instead of prior to the termination of the war), and the replacement occurred in a taxable year ending prior to August 1, 1950 (instead of not more than three years after the termination of the war). Amendment No. 4 substitutes for the date August 1, 1947, the date January 1, 1948; and amendment No. 5 substitutes for the date August 1, 1950, the date January 1, 1951. The House recedes.

Amendment No. 6: The House bill amended section 1621(a) of the Code by striking out paragraph (1) thereof, which excludes from the definition of wages, and hence for withholding of income tax at source, remuneration for services performed as a member of the military or naval forces of the United States. The House bill provided that the amendment striking out paragraph (1) should be applicable with respect to wages paid on or after January 1, 1948. The Senate amendment provides that such amendment shall be applicable with respect to wages paid on or after January 1, 1949. The House recedes.

Amendment No. 7: This is a clerical amendment and the House recedes.

Amendment No. 8: This is a clerical amendment and the House recedes.

Amendment No. 9: This is a clerical amendment and the House recedes.

Amendment No. 10: This amendment provides for percentage depletion at the rate of 15 per cent in the case of bauxite for taxable years beginning after December 31, 1946. The House recedes.

Amendment No. 11: This amendment provides for percentage depletion at the rate of 15 per cent in the case of pyrophyllite for taxable years beginning after December 31, 1946. The House recedes.

Amendment No. 12: This amendment provides for percentage depletion at the rate of 15 per cent in the case of phosphate rock for taxable years beginning after December 31, 1946. The House recedes.

Amendment No. 13: This amendment provides for percentage depletion at the rate of 15 per cent in the case of trona for taxable years beginning after December 31, 1946. The House recedes.

Amendment No. 14: This amendment provides, with respect to percentage depletion, that—

"In the case of potash and thenardite, whether extracted from a mine or from a brine or other deposit, there shall be included in gross and net income from the property the income from other minerals or mineral salts extracted therefrom."

The Senate recedes.

Amendment No. 15: This is a technical amendment and the House recedes.

Amendment No. 16: This is a technical amendment and the House recedes.

Amendment No. 17: This is a technical amendment and the House recedes.

Amendment No. 18: This is a technical amendment and the House recedes.

Amendment No. 19: The Senate amendment adds a section 16 to the bill, for which there is no corresponding provision in the bill as passed by the House. Section 23(q)(2) of the Code provides that contributions or gifts (for religious, charitable, educational, etc., purposes) made by a corporation to an unincorporated association (trust, chest, fund, or foundation) are not deductible if made within a taxable year beginning after December 31, 1946 (the date of cessation of hostilities in the present war, as proclaimed by the President) unless such contributions or gifts are to be used within the United States or any of its possessions. The Senate amendment adding section 16 to the bill amends section 23(q)(2) so that the requirement that such gifts or contributions must be used within the United States or any of its possessions is applicable only to taxable years beginning after December 31, 1948, instead of December 31, 1946, as provided under existing law. The House recedes.

HAROLD KNUTSON,
DANIEL A. REED,
ROY O. WOODRUFF,
JERE COOPER,
WILBUR D. MILLS,
Managers on the part of the House.

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